

MAY 04 1998

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

CONCILIATION

IN THE MATTER OF THE INTEREST ARBITRATION

- between -

THE FREDONIA PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 2931

- and -

THE VILLAGE OF FREDONIA

PERB CASE NOS. IA96-014; M95-427

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

PUBLIC ARBITRATION PANEL MEMBERS

Miriam Winokur
Neutral Member and Chairperson

Donald H. Ehinger
Employer Designated Panel Member

James J. Stoye
Union Designated Panel Member

APPEARANCES

For the Union:

Charles S. DeAngelo, Esq.
Fessenden, Laumer & DeAngelo
81 Forest Avenue - P.O. Box 590
Jamestown, New York 14702-0590

For the Village:

Michael A. Connors, Esq.
Seven South Hedley Street
Cheektowaga, New York 14206

INTRODUCTION

The current Collective Bargaining Agreement ("Agreement" or "Contract") between the Fredonia Professional Firefighters Association Local 2931 ("Association", "Union" or "Firefighters") and the Village of Fredonia ("Village" or "Employer") was executed by the parties in or about March, 1996, and covers the period June 1, 1995 through May 31, 1998 (Joint Exhibit #1).¹ Pursuant to New York State Public Employment Relations Board ("PERB ") Rule Section 205.3 et seq, a Petition for Compulsory Interest Arbitration was filed on behalf of the Firefighters on June 26, 1996, to which the Village filed an Answer on July 29, 1996. Pauline R. Kinsella, PERB Chairperson, designated an Interest Arbitration Panel ("Panel") on August 19, 1996, whose purpose was to make a just and reasonable determination regarding the matter in dispute between the Village and the Union. Members serving on the panel were Miriam Winokur as Neutral Chairperson, Donald H. Ehinger as the Employer Designated Member and James J. Stoye as the Union designated member.

APPLICABLE STATUTORY PROVISION

Section 209.4

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

¹Hereafter exhibits submitted jointly will be referenced as JX, Union exhibits as UX and Village exhibits as VX.

APPLICABLE CONTRACT PROVISION

ARTICLE V

Section 5.01 - Work Week

The work period shall consist of up to fifty three (53) hours in a seven (7) day period.

The schedule will be drawn up by the Association two (2) weeks prior to the first of the month and submitted to the Fire Chief, the Village Administrator, and the Village Board for approval. The approved schedule will be posted one (1) week prior to the month to which the schedule applies. ...

BACKGROUND

The Village of Fredonia Fire Department ("Department") services the Village and the Town of Pomfret, a 42 square mile area whose approximate total population is 23,000 when SUNY Fredonia is in session. The Village presently employs six (6) full time paid Firefighters, one of whom is limited to light duty. There also is a Volunteer Chief as well as unpaid volunteer firefighters. For a number of years the Village had utilized a forty-four (44) hour work week as the base for scheduling their paid Professional Firefighters. In April 1995, a new Mayor took office and at a November 2, 1995 meeting, the Village Board of Trustees ("Board") reduced the number of hours a firefighter could be regularly scheduled from forty-four (44) to forty (40) hours per week. After the change the Union met with the Village on February 6, 1996, and made a demand for a seven percent (7%) wage increase. The parties were unable to arrive at an agreement and following a response from the Village on March 5, 1996, the Union declared impasse. Subsequent to the designation of this Panel, the parties agreed to place the interest arbitration hearing on hold pending completion of a rights arbitration proceeding which was held before Arbitrator Douglas J. Bantle on February 28, 1997. In his award Arbitrator Bantle found that the issue of the impact of the schedule change was independent of the rights arbitration matter before him, that:

"Even though there was significant testimony about changes resulting from the adjustment from the forty-four (44) hour to forty (40) hours schedule presented by the Association witnesses, it is my view that those issues are ones which must be addressed in the impact bargaining" (Village Preliminary Brief, Appendix D).

The Interest Arbitration Hearing addressing the impact of the change in hours commenced on June 17 and November 17, 1997, in the Village of Fredonia Municipal Building, Fredonia, New York, at which time the parties were provided with full opportunity to present evidence, oral argument and to offer the testimony of duly sworn witnesses. As witnesses the Union called Carl Brandt, Union President; James M. Sedota, Village Administrator; and Charles A. Frazita, Acting Fire Chief, appearing in response to a subpoena. There were no witnesses called by the Village. At the hearing's conclusion the parties agreed to submit written closing arguments that were to be followed by reply briefs which were to be postmarked no later than December 18, 1997. All briefs were timely submitted and the record was closed upon their receipt by the Panel.

Following are the positions of the parties and discussion and opinion of their respective submissions.

ISSUE

Each party framed the issue differently. The Union claims the issue is:

Is there an impact on the Fredonia Professional Firefighters as a result of the Village of Fredonia's unilateral reduction in the number of working hours from 44 hours to 40 hours per week for Firefighters employed by the Village? If so, what is the appropriate measure of compensation that should be paid to the Firefighters for that impact? (Union's Post Hearing Brief, pages 1-2)

The Village frames the issue as:

Whether or not the decision by the Village of Fredonia to limit its firefighters to a forty (40) hour work week created an impact on the unit members which should be acted upon. (Village's Closing Argument, page 1)

The issues stated by each party are essentially similar in that they seek an answer to the question of whether there was an impact resulting from the Village's change in workweek hours and if

there was, would the Firefighters be entitled to compensation because of the change. The Panel will respond to the combined issues.

POSITIONS OF THE PARTIES

THE FIREFIGHTERS

Herewith summarized from their Post Hearing Brief, the Union's contentions are:

That it rejects the Village's position that when it made the change in hours the employer's "right" to act under the contract is evidence of a waiver of the Union's right to "impact compensation"; that for twenty-four years the past practice had been to utilize a 44 hour work week as the base to schedule the Firefighters and the unilateral change automatically impacted on the Firefighters by reducing their hours of work four hours per week, resulting in a domino-like negative effect that, in addition to the obvious wage loss, affected other working conditions (e.g. safety and health, reduction of retirement benefits, and scheduling); that the Village's position that it had the right to make the decision to change does not deal with the issue of the responsibility to compensate the Firefighters for the negative "impact" of that "decision" on their terms and conditions of employment and Arbitrator Bantle recognized in his Award that the issue was an impact issue; that (1) an employer may have the "management prerogative" to make changes but must negotiate concerning the "impact" of that decision or action on the terms and conditions of employment of the affected employees; and (2) impact bargaining has regularly been required and applied to issues with regard to "manning", "deployment of personnel", and "staffing patterns"; that although the Village had the "right" to make the decision, as PERB held in Local 589, International Association of Firefighters and City of Newburgh, 18 PERB and affirmed 18 PERB 113017 (1985), it had the duty to negotiate and/or pay the Firefighters for the resulting "impact" (Brief p. 8).

Further, that the annual reduction of income caused by the Village's change in hours will be \$3623.23 (per Statement offered by the Village), which is a more than a 10% pay reduction and a loss of 208 hours of work and/or the equivalent of 5 work weeks per Firefighter; that in addition to the loss of

wages, according to Carl Brandt's New York State Local Retirement System summary of wages paid to date (Union Exhibits A - E, Union Exhibit 8a), the reduction of working hours also results in a reduction in earnings reported for retirement benefit purposes for all the Firefighters; that the reduction is actually larger than that set forth on the statement of earnings because the change occurred in November of 1995 and four months of the 1995-96 period reflected regular hours of work and not the reduction; that the subsequent increase in wages after 1996 is attributable to wage increases received, not to the increase in number of hours or gross pay, which has not occurred to date (Brief, p. 11); that comparisons of the salaries of the Fredonia Firefighters to those of surrounding communities indicate that the Village's pay scale is ninth of nine comparable communities with regard to total compensation paid to Firefighters and is ranked eighth out of nine in longevity and seventh out of nine on holiday pay (Union Exhibit 9a); and that Fredonia is last in the total base salary and hourly rate of pay of Jamestown, Dunkirk and Fredonia (Union Exhibit 9b).

The Union also claims that the frequency of having an unmanned station has increased tremendously during the day due to the impact of the reduction of hours and that the reduction has also had a devastating impact on the number of paid Firefighters available on a daily basis and the Village has refused the Union's request to restore the hours (Brief, p. 12); that only two volunteer Firefighters are certified to the paramedic level and few volunteers are qualified for interior fire fighting and to handle HazMat situations; that according to the only recent death and injury survey available, one of every three Firefighters are affected by line of duty injuries ; that during a sample ten month period reviewed by Brandt, there was an insufficient number of paid/volunteer staff available on 12 difference rescue/MVA/HazMat calls and 5 fire calls and of the total of 6 fire calls received during that period, 5 were understaffed, pursuant to the Fire Chief's staffing requirements; that Chief Frazita noted that a recent drill exercise had to be canceled due to lack of attendance by volunteer Firefighters (Brief, pp. 13-14).

The Union maintains in addition that Brandt's testimony and Union Exhibits 1 through 4, indicate that having a 44 hour base work week has been a significant benefit to the Firefighters for the

16 years Firefighters' current Brandt has been doing the scheduling; that a 44 hour work week allowed him to schedule all of the Firefighters a year in advance so that each Firefighter could predict well in advance what weddings, social gatherings, holidays and other day off related matters they could attend; that because of the change the employee' schedules have had to be changed on a regular basis and even with the so called one month predictable schedule, there has not been full predictability within the one month period (Brief pp. 15-16).

The Union requests as resolution that the Panel award the Firefighters a 7% wage increase, which would only increase the annual wage of the Firefighters by \$2,427.00, which is approximately \$1200 less than the out of pocket loss to the Firefighters, or the alleged savings to the Village as a result of the change. The Union maintains that the Firefighters have been reasonable in demanding only a 7% increase, therefore, it should be honored and not reduced.

THE VILLAGE

Herewith summarized from their written closing argument, the contentions of the Village are:

That pursuant to Section 209, subdivision 4c(v d) of the Law the "...panel shall make a just and reasonable determination of the matters in dispute..." and among the prevailing factors to be considered are, "d. the terms of collective bargaining agreements negotiated between the parties in the past..."; that there is no question that the Village has acted in accordance with its rights and authority under the current bargaining agreement; that the provisions of the Taylor Law governing these proceedings do not require the Panel to take action simply because there has been a change; that to the extent that any confusion could have existed on this point, the matter became clear with the issuance of Arbitrator Bantle's decision, which the Association is asking the Panel to ignore and to insert an additional caveat into the contractual relationship between the parties, that in exercising these rights the Village must face an increase in the negotiated salary.

The Village claims it has fully met the terms of the negotiated agreement and the testimony of Association witnesses clearly supports the Village's position, the Association being unable to point to a

single contractual benefit that was affected by limiting weekly schedules to forty (40) hours per week, in that the wages required by the bargaining agreement are based on 2080 hours per year - 40 hours per week times 52 weeks and have been paid in full, as have all other contractual benefits based on a 2080 hours per year hourly pay; that there is no contractual guarantee for the additional four hours of overtime previously scheduled and Holidays, Vacations, Sick leave, Personal leave, Bereavement leave, and Union leave are all based on a normal 8 hour day and have been paid to the Firefighters in full; that the only conclusions that can be drawn from the evidence offered at the hearing are that Firefighters are currently receiving all of the negotiated contractual benefits as they are set forth in the Collective Bargaining Agreement including wages, and any other benefit based upon hourly wage i.e. vacation, holidays, sick days etc.; that the Collective Bargaining Agreement does not in any way guarantee overtime hours; that the change in scheduling guidelines from forty (40) hours per week to forty-four (44) hours per week did not violate the Agreement and the number of persons per shift is the sole prerogative of the Village.

The Village contends that the Panel is being asked to inject itself into the negotiating process and negotiate a better deal than the firefighters did for themselves when they had the opportunity in the past and will have in the near future; that since it is clear that the Panel lacks the authority to order a return to the previous schedule, the Union is asking the Panel to alter the salary schedule by some 17%, a number reached by adding the requested 7% wage increase to the existing 10% reduction in work time and to accede to this request would be wrong.

The Village concludes that it has acted completely within the bounds of the contract it negotiated with the Firefighters' Association; that it is unfortunate that the Association is not happy with the results of these actions, however, their discontent is insufficient grounds for the Panel to issue an undeserved wage increase - especially when the majority of the complaints alleged and discussed will in no way be changed by this increase. The Village respectfully requests that the Panel issue an award maintaining the status quo and allows the parties to seek contractual changes through the normal bargaining process.

DISCUSSION AND OPINION

The Union argues that even though the Village had the right to make the decision to reduce the hours, according to 18 PERB 113017 (1985), it had the duty to negotiate and/or pay the Firefighters for the resulting impact. We note in response to the Union's contention that the Village refused to bargain the impact of the four hour reduction in the Firefighters work week, that the Union met with the Village on February 6, 1997, and submitted a demand for a 7% increase in wages. If the Union felt that the Village was in violation of the Statute by refusing to bargain the impact of the change, it could have sought a ruling from PERB by filing an unfair labor practice charge against the Village. This Panel is not the appropriate forum before whom to make that charge.

The Union claims that impact bargaining has regularly been required and applied to issues with regard to such issues as manning, deployment of personnel, and staffing patterns. It submits that in the case of City of Batavia and City of Batavia Firefighters, IAFF Local 896, (Union Exhibit C) the issue presented was staffing and manning reductions and the union had proposed a salary increase and other increased benefits based on the impact on the remaining Firefighters. A review of the Award indicates that the facts were not on point with those in the instant case. The issue in Batavia concerned a reduction in staffing and manning and the union sought to return the staffing level to the level it had been prior to the reduction. The panel in that case awarded a sliding scale of salary increases which could be reduced by increasing the level of firefighters to what it had been before the City's change (Exhibit C, p. 9 - Union Post Hearing Brief p. 9). The Batavia award is not germane to the Union's stated issue in this case since there were no reductions in staffing or manning by the Village, only the reduction of four hours in the work week and the sole remedy the Union is seeking is reimbursement for the financial impact.

The instant issue requires the Panel to determine whether there was an impact on the Firefighters as a result of the reduction in hours. The Union offered extensive testimony and evidence to support their claim that the reduction in hours impacted on the safety of the Firefighters, however, the record reflects that the Village stated that it does not dispute that the scheduling change had a

financial impact on the firefighters since a person who is paid for 44 hours a week will make more money than a person who is paid for only 40 at the same hourly rate, it only disagrees that the Firefighters should be compensated for hours not worked. Since there is no dispute that the change hours had an impact the Firefighters, the issue requires the Panel's determination as to whether there is appropriate compensation for the impact.

During the instant hearing the Union's major emphasis concerned the safety of the Firefighters resulting from the change, contending that because of the reduction of hours the frequency of having an unmanned station has increased during the day, which affects the number of paid Firefighters available on a daily basis, but that the Village has refused the Union's request to restore the hours. The Union also cited the fact that only two volunteer Firefighters are certified to the paramedic level and few volunteers are qualified for interior fire fighting and to handle HazMat situations and during a sample ten month period reviewed by Brandt, there were an insufficient number of paid/volunteer staff available on 12 difference rescue/MVA/HazMat calls and 5 fire calls; that of the total of 6 fire calls received during that period, 5 were understaffed, according to the Fire Chief's staffing requirements. The Union also notes that Chief Frazita testified that a recent drill exercise had to be canceled due to lack of attendance by volunteer Firefighters.

The Village argues compellingly in response to the Union's arguments that the utilization of single man shifts existed under the previous scheduling guidelines and was simply expanded by the change in question and the listing of calls in Union Exhibit No. 10 demonstrates only a slight increase in single man responses; that the additional argument that there are less "trained" emergency medical personnel available with a reduction in paid firefighters on a particular shift, fails to take into account the fact that the Collective Bargaining Agreement only mandates that two of the six paid firefighters maintain even basic certification; and that the Union's arguments ignore the fact that coverage is also provided by personnel from the Volunteer Fire Department. The Village also argues that the Union's position fails to recognize that the decision about the number of persons on a particular shift belongs solely to the Village, and that in his Award Arbitrator Bantle had observed that the

parties had already settled a previous Improper Practice Charge by agreeing the number of firefighters per shift was the sole prerogative of the Village (footnote No. 6 on page 11).

The Union also claims that the 44 hour schedule was a past practice and that Brandt testified that it had been in place at least during the 16 years he was with the Department. However, the Village was not contractually obligated to continue the 44 hour work week and even though the Village may have permissively continued the practice, as was determined by Arbitrator Bantle, it had the management right to unilaterally discontinue it, consequently the Union cannot assert past practice to support their position.

The Union argues that the 44 hour base work week has been a significant benefit to the Firefighters, which, according to his testimony allowed Brandt to schedule the Firefighters a year in advance, affording them the ability to predict in advance what weddings, social gatherings, holidays and other day off related matters they could attend. The Union claims that the change has caused the employees' schedules to be changed on a regular basis and even with the so called one month predictable schedule, there has not been full predictability. We can agree that the change in schedule may very well have inconvenienced the firefighters, but the Union does not indicate how an increase in compensation would alleviate those inconveniences.

Notwithstanding the Union's position regarding safety, the issue stated by the Union references neither safety factors, benefits, staffing or anything else, only that upon determining there was an impact "what is left to this Panel's discretion is a determination of the appropriate value of the impact that occurred because of the Village's change from a 44 hour to a 40 hour work week schedule." (Post Hearing Brief p. 9). The purpose of impact bargaining is to provide those employees who are affected with an opportunity to address any negative impact caused by an employer's change to terms and conditions of employment. The only remedy for the impact sought by the Union is financial and although the testimony and evidence submitted by the Union addressed concerns about safety, it was not established why the Firefighters should continue to be paid the same salary they received for working 44 hours, even though they are now only working four. There was no information forthcoming

to show how a 7% increase would alleviate the problems the Union claims resulted from the reduction in hours. The safe and efficient functioning of the Department are matters that are the responsibility of the Village, which is subject to the consequences of decisions made about scheduling if those decisions ultimately affect the safety of the employees and residents.

The Village maintains that the Firefighters are not entitled to be paid for hours they are not working and argues compellingly that there is no contractual guarantee for the previously scheduled additional four hours, an argument that receives support from a review of the language in Section 5.01 of the parties Agreement which specifies only that the work period can consist of up to 53 hours in a 7 day period. Nothing in the language obligates the Village to continue the 44 hour work period, as noted by Arbitrator Bantle in his Award with regard to past practice that:

"... clear contract language contained in Sections 14.01 and 5.01 which gives the Village the right to 1) determine the number of hours to be worked (as long as it is not over 53 in a 7 day period) and 2) to approve or disapprove work schedules, which obviously contain the hours of work (supra, p. 10)

The Parties have stipulated that the instant case does not represent a traditional interest arbitration matter because it is an impact arbitration resulting from a reduction of working hours and by mutual agreement the parties have focused on the change of hours and the criteria relevant to that issue, not all of the terms and conditions of employment as a result of a negotiated impasse. The Union confirmed the Village's observation that the Firefighters are still receiving the other benefits set forth in the contract and neither the salary comparisons submitted by the Union, or the impact of the reduction in earnings reported for retirement benefits, are a consideration in the resolution of the question of the appropriate value of the impact of the change in hours.

With regarding the Union's comparisons of the salaries of the Fredonia Firefighters to those of other municipalities (UX 9a, 9b), the Village is correct that the question in this proceeding is one of impact of the Village's actions, whereas that type of comparison is appropriate for a traditional interest arbitration where negotiations for a successor agreement have resulted in impasse and moved to binding interest arbitration. The parties have also agreed that a review of the Village's budget and

consideration of the ability to pay criteria was not necessary given the factual background of this proceeding (Union post hearing brief, p. 4), consequently the Panel is not required to consider comparisons of the conditions of employment of the employees involved in the arbitration proceeding with those of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities, pursuant to Section 209.4(v)(a). If the firefighters are dissatisfied with their salaries they can bring their concerns to the bargaining table when they negotiate the next contract, the appropriate place for the Union to address any inequities they feel are the result of the reduction in pay because of the reduction in work week hours.

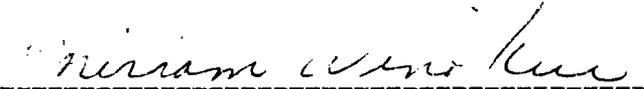
There is no evidence that the increase requested by the Union would alleviate any problems with safety or resolve the inconveniences the Firefighters claim were caused by the change in scheduling. In response to the issue, at least a majority of the Panel concurs with the Award which is that:

AWARD

Under the terms of the Collective Bargaining Agreement the Village of Fredonia was neither obligated to continue the 44 hour work week or to pay the Fredonia Professional Firefighters for hours they do not work. No appropriate value could be determined for the impact of the reduction of hours in the Firefighters work week schedule. The request for a seven percent (7%) increase is denied.

Respectfully submitted

Date: APRIL 30, 1998



Miriam Winokur
Public Panel Member and Chairperson

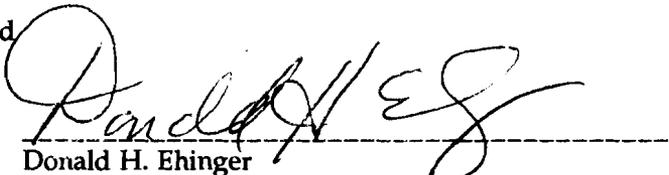
I (concur) (do not concur) with the above Award

Date:

James J. Stoye
Employee Organization Panel Member

I (concur) (~~do not concur~~) with the above Award

Date:



Donald H. Ehinger
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF) SS

On this 30 day of April, 1998, before me personally came and appeared MIRIAM WINOKUR, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that she executed the same.

Douglas L. Winokur

Notary Public

DOUGLAS L. WINOKUR
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES DECEMBER 31 1998

STATE OF NEW YORK)
COUNTY OF) SS

On this _____ day of _____, 1998, before me personally came and appeared JAMES J. STOYLE, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

STATE OF ~~NEW YORK~~ *Florida*)
COUNTY OF *Charlotte*) SS

On this 13th day of *February*, 1998, before me personally came and appeared DONALD H. EHINGER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Dr. Lic. - 304-570-578

Linda L. Mortenson

Notary Public

DISSENTING OPINION OF JAMES J. STOYLE
EMPLOYEE ORGANIZATION DESIGNATED PANEL MEMBER

The panel is incorrect in stating that the Village "refused to bargain the impact of the four hour reduction". To the contrary, the Union stated that the Village did bargain but refused to agree to the Union's demand for a wage increase. The Village, as stated by the majority herein, has consistently argued that there was no duty to pay on the facts of the case, nevertheless, the Village did bargain. This was not a failure to bargain case, it is a what is the impact of a change of hours interest arbitration case.

On the issue as to whether or not there are any similarities between this case and the Batavia case, I believe that there is. While the numbers are not the same, the end results are the same. They lost manpower as did the Fredonia Department. Fredonia has lost one man on a day shift which equals a loss of 20% of its available manpower on shifts that there is little or no help from volunteers. This was supported by both Mr. Brandt's and Fire Chief Frazita's testimony. This is without a doubt a very dangerous position to put these people in.

To suggest that there is no reduction in staffing or manning by the Village as in the Batavia case clearly illustrates that the panel has not recognized the realities of firefighting staffing. The evidence was overwhelming in establishing that the reduction from 44 hours to 40 hours has caused a reduction in available firefighters on the job. The number of available

Firefighters to fight fires and to answer emergency calls has clearly been reduced. Tell the next Firefighter who goes on a call by himself on a shift where two Firefighters used to be scheduled that he's enjoying the same staffing levels as he had under the 44 hour work schedule.

In response to the statement that there was no evidence that the increase requested by the Union would alleviate any problems of safety, the Union is simply saying that they are now working under less safe conditions and want to be compensated for the extra danger that they face everyday. The Batavia case is right on point in this regard. They are simply seeking relief for the immediate loss of income in their present employment and even more important to help restore some or all of their future pensions.

The Union did request restoral of the four (4) hours by the Village which demand was rejected. Contrary to the panel majority's contention, the 7% demand then is the typical way employees negatively affected by a change in staffing are compensated for the impact of the change. See Batavia. Moreover, the Union suggested that the panel tie the wage increase award to staffing by permitting the Village to save money if it properly restored staffing levels. See Union Brief at page 19 where the Union stated:

The Fredonia Professional Firefighters Association Local 2931 has only asked for a seven percent (7%) wage increase which is less than the amount saved by the Village by reducing the Firefighters' hours from forty-four (44) to forty (40) hours. The panel should award the requested seven percent (7%) wage increase. If the Village of Fredonia wishes to restore the hours the seven percent (7%) wage increase would be proportionately reduced, or not paid

if all hours are restored, from the date of the change forward.

The panel's opinion to the contrary simply does not make sense. An appropriate value could easily be determined for the impact of the reduction of available staffing hours. The panel has abrogated its duty by stating it cannot do the job it has been employed to do. A new panel should be empanelled to do so.

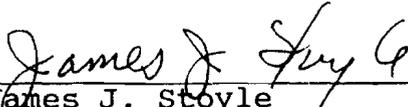
On the issue of whether or not the Village was contractually obligated to the 44 hour work week, it was painfully obvious that it was not written into the contract. On the other hand, there was the fact that upon hiring, these men were told that while they wouldn't make as much as other Firefighters, the extra 4 hours a week would even things out. To me that amounts to an oral contract that should be honored or at least negotiated to new terms that both parties can agree with. The Village also contended that the Union was asking this panel to negotiate more money for them than they did for themselves during contract talks. This is not the case at all. They are simply asking that a benefit that has been in place for more than 20 years be returned to them.

On the matter of comparing their unit to others in the area, again, I feel that it is important in that by taking the 4 hours away from these people they are being told to do the same dangerous job as their brother and sister firefighters for even less than before. This is also having a very negative effect on their pensions. As it stands now, each of these men will receive over \$1,000.00 a year less than when they were

working the 44 hour work week.

In closing, I believe this panel is obligated to bring some form of relief to this Union which has negatively impacted both in terms of safety and financially due to the unilateral changes in the terms and conditions of employment.

I do not concur with the Award of the majority of the panel.


James J. Stoyle
Employee Organization Panel Member

AWARD

Under the terms of the Collective Bargaining Agreement the Village of Fredonia was neither obligated to continue the 44 hour work week or to pay the Fredonia Professional Firefighters for hours they do not work. No appropriate value could be determined for the impact of the reduction of hours in the Firefighters work week schedule. The request for a seven percent (7%) increase is denied.

Respectfully submitted

Date:

Miriam Winokur
Public Panel Member and Chairperson

I ~~(concur)~~ (do not concur) with the above Award

Date: *April 28, 1998*

James J. Stoye

James J. Stoye
Employee Organization Panel Member

I (concur) (do not concur) with the above Award

Date:

Donald H. Ehinger
Employer Panel Member

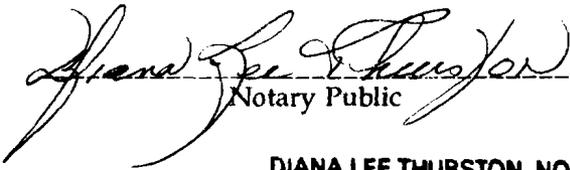
STATE OF NEW YORK)
COUNTY OF) SS

On this day of , 1998, before me personally came and appeared MIRIAM WINOKUR, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that she executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF Chautauqua) SS

On this 28th day of April , 1998, before me personally came and appeared JAMES J. STOYLE, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Notary Public

DIANA LEE THURSTON, NO. 4726152
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires Jan. 31, 1999

STATE OF NEW YORK)
COUNTY OF) SS

On this day of , 1998, before me personally came and appeared DONALD H. EHINGER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public