

INTRODUCTION

The Eastchester Fire District (hereinafter “the District”) and the Eastchester Professional Firefighters Association, Inc., Local 916 (hereinafter “the Association” or “the Union”) began negotiations for a successor agreement prior to the December 31, 1997 expiration of their current agreement. The Association filed a Petition for Compulsory Interest Arbitration on April 2, 1998 (Jt. Ex. #1).^{*} The Association’s demands for a successor agreement, commencing January 1, 1998, encompass seven (7) existing articles in the collective bargaining agreement and propose the addition of five (5) new articles.

With respect to the expired agreement, the Association has demanded increases in wages, holidays, personal leave days, eye care and the uniform allowance. The proposed additional articles consider improvements in Captain’s Conference Time, Check-In-Time, Child Care Leave, Kelly Days and Safety.

In its Response to the Petition for Compulsory Interest Arbitration, dated April 17, 1998, the District, in addition to addressing many of the issues raised by the Association, proposed several changes in economic benefits as well as revised contract language. In addition to recommending that salaries be frozen and personal leave days, sick leave and vacation be reduced, the District further proposed that member contributions to Medical

^{*} It should be noted that the Petition was filed by the law firm of Trager, Cronin & Byczek, L.L.P. which designated Mr. Richard P. Bunyan, Esq., as the Employee Panel Member. Subsequently, during the course of the interest arbitration proceedings, the Association became represented by Bunyan and Baumgartner, L.L.P.

Insurance be increased to 25%. In terms of additions to the successor agreement, the District proposed a provision entitled Employee Evaluation which would, inter alia, subject unit members to “bi-annual written evaluations in accordance with a procedure and on a form promulgated by the Department” (Jt. Ex. #2).

On June 1, 1998, Richard A. Curreri, Director of Conciliation, New York State Public Employment Relations Board, designated a Public Arbitration Panel under Section 209.4 of the New York Civil Service Law “for the purpose of making a just and reasonable determination of this dispute.” Pursuant to that objective, the Panel held hearings on November 13, 1998 and January 25, 1999. Subsequently, the Panel met in Executive Session on February 4, March 3, March 15 and July 30, 1999. The Panel also met on January 26, 2000. There were also additional conferences by telephone, and a number of draft awards exchanged and commented upon.

The District and the Association were represented by counsel throughout these proceedings and afforded full opportunity to present evidence and arguments in support of their respective positions, including testimony and documentation. The Panel admitted as evidence three (3) Joint Exhibits, thirty five (35) Union Exhibits and forty-three (43) District Exhibits. The hearing was not transcribed. Given the fact that the Panel members for both sides are experienced advocates, neither party submitted a post-hearing brief. All of the evidence submitted has been carefully considered by the Panel in the preparation of this award and accompanying opinion.

In its deliberations, the Panel has been guided by the statutory criteria set forth in the Civil Service Law as follows:

- 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. . .

Preliminary Matters

At the commencement of the hearing on November 13, 1998, the Association withdrew its demands for Night Differential (Article 2), increased personal leave (Article 8), Association Business (Article 17) and First Responder Training (Article 18) (U. Ex. #19).

Proposals of the Parties

The Association and the District presented the following proposals to the Panel:

ASSOCIATION PROPOSALS

FOR AN AGREEMENT TO COMMENCE JANUARY 1, 1998:

Article 2 WAGES:

Amend salary scale to provide for a two (2) year agreement with a seven (7%) percent across the board wage increase per year.

Amend Paragraph to reflect a pay scale which is broken down to an hourly rate of pay, rather than an annual salary.

Amend paragraph 5 as follows:

There shall be a twenty-eight (28%) percent differential between the salaries of top paid firefighter and Captain. Effective January 1, 1999 there shall be a thirty (30%) percent differential between the salaries of top paid firefighter and Captain.

Amend Paragraph 6 to reflect an EMT differential as follows:

1998 . . .	\$1,250.00
1999 . . .	\$1,500.00

Amend Paragraph 6 by adding the following sentence at the end:

Any member of the bargaining unit who is certified as a First Responder shall receive a seven hundred and fifty (\$750.00) dollar increase in annual base salary so long as such certification remains current. Effective January 1, 1999 the annual base salary of any firefighter or officer who is certified

as a First Responder shall be increased by one thousand (\$1,000.00) dollars so long as such certification remains current.

Add new Paragraph 9 as follows:

Effective January 1, 1998 members of the bargaining unit shall be entitled to a three (3%) percent night shift differential which will be paid for all hours worked between 6:00 p.m. and 8:00 a.m.

Article 6 HOLIDAYS:

Amend Article as follows:

1. The parties agreed that all paid personnel shall receive twelve (12) holidays a year, whether worked or not. All of said twelve (12) holidays shall be paid for in salary at the hourly rate equal to a twelve (12) hour day of a fire fighter or officer in accordance with Article 2 of this Agreement.
2. Any member of the bargaining unit who is a veteran shall be entitled to Veterans Day and memorial Day off. In the event the granting of these days off causes an overtime consequence, the member can choose to take the day at another time when it does not incur overtime.

Article 8 LEAVE:

Amend Paragraph 4 – Compassionate as follows: Include the member's aunt and uncle in the definition of immediate family.

Article 8 A MEDICAL AND INSURANCE BENEFITS:

Add the following at the end of Paragraph 1 – Medical Insurance as follows:

Any member of the bargaining unit covered by the Employer's health insurance plan who is also covered by a (1) different or (2) an equal or better health insurance plan may, at such employee's option, notify the Employer in writing that he/she is electing to decline or waive all or part of the Employer-paid health insurance coverage for which the employee is and would continue to be eligible during the next twelve (12) months. The member must document to the Employer that he/she does, in fact, have coverage under this different or equal to or better plan. The Employer will then pay such employee by December 15th fifty percent (50%) of the Employer's savings.

It is further agreed by the parties that any employee who elects to receive a cash payment hereunder may, at any time during said twelve (12) month period for which said payment was made in advance to him/her, send written notice to the Employer that he/she wishes to resume health coverage by the Employer's carrier. In such event, the employee's coverage by the Employer's carrier shall begin as soon as possible and shall include Employer-provided coverage during any waiting period provided the employee repays to the Employer the pro-rated portion of the cash payment previously received hereunder.

The Employer will allow employees to waive and decline coverage during said twelve (12) month period, in which case and pro-rated cash payment will be made to such employees. The same shall apply to employees whose coverage status changes from single to family during said twelve (12) month period and who wish to decline or waive the additional coverage for the remainder of the twelve (12) month period. Finally, employees who have received cash payments for declining and waiving family coverage hereunder and who become ineligible for family coverage during said twelve (12) month period shall repay to the Employer the pro-rated portion of the cash payment previously received hereunder for said waiver.

Waivers hereunder shall be valid for a maximum of twelve (12) months and, failing a subsequent waiver, the employee shall automatically be given Employer-provided coverage.

Amend Paragraph 2 – Dental Insurance as follows:

Effective January 1, 1998 the Fire District will contribute one and one-half (1 ½%) percent annually of the top firefighter salary to the Association's dental welfare plan. This shall increase to one and three-quarters (1 ¾%) percent effective January 1, 1999. The Association must also cover five (5) Fire District employees designated by the District for the same coverage provided to the members of the bargaining unit. The Trustees of the Plan shall provide the Fire District with an annual report/audit of the Plan.

Amend Article 8 A. – Medical and Insurance Benefits to include the following:

Add new Subdivision 5 as follows:

EYE CARE:

The District will pay one hundred and fifty (\$150.00) dollars per member per year for the purchase or repair of eyeglasses or contact lenses for either the individual employee or his dependents. This amount shall increase to one hundred and seventy-five (\$175.00) dollars in 1999. The District will pay within thirty (30) days of the presentation by the member of a receipt for said item.

Article 11 UNIFORMS:

Amend Paragraph 4 as follows:

All members of the bargaining unit shall receive a uniform cleaning allowance of five hundred (\$500.00) dollars annually.

Article 18 TRAINING:

Add new Paragraph 2 as follows:

Members of the bargaining unit shall be permitted time off from their work schedule to attend certifications for Emergency Medical Technician (all levels).

ADD NEW ARTICLES AS FOLLOWS:

Article CAPTAIN'S CONFERENCE TIME:

Members of the bargaining unit who hold the rank of Captain shall receive forty (40) hours of pay at the straight time rate for attendance at staff meetings and/or for work performed pursuant to their committee assignments. Any time spent in excess of forty (40) hours of conference time will be paid at the rate of time and one-half. It is understood that this time shall not be used to cover a shortage of an assigned group.

Article CHECK IN TIME:

Each member of the bargaining unit shall be paid for an additional fifteen (15) minutes per tour for the purpose of turnout. Such time will be spent briefing the members relief of the status of the facilities and equipment assigned to that member of the bargaining unit.

Article CHILD CARE LEAVE:

Upon the birth or adoption of a child, members of the bargaining unit shall be entitled to three (3) days off from work. If such birth or adoption occurs or the members regularly scheduled day off, the member shall be entitled to his next three (3) work days off.

Article KELLY DAYS

Any member of the bargaining unit may be permitted to sell back up to three (3) Kelly Days annually, based upon a twelve (12) hour day. Every effort shall be made to pay the member for the sell back of the Kelly Days on the next payroll period.

Article SAFETY:

The District and the Union agree that extra work and safety considerations arise from a reduction in manpower. Accordingly, the District agrees to pay a hazardous duty payment equal to time and one-half for all hours worked when less than one Captain and fifteen firefighters are assigned to a tour of duty.

FIRE DISTRICT PROPOSALS

(1) Pages 2-3, Article 1, Wages – Change references from “association members” to “unit members.”

(2) Page 4, Article 2, Section 3, Wages – Amend to provide:

The annual salaries for all unit members shall be frozen at the salaries in effect on December 31, 1997.

(3) Page 4, Article 2, Section 5, Captain Differential – Delete.

(4) Page 6, Article 5, Swapping of Tours – Add the following:

Unit members are limited to four (4) mutual exchanges of tours per calendar year. In extraordinary circumstances the Chief may allow additional mutual exchanges in his sole non-grievable discretion.

Requests for mutual exchanges must be made in writing to the Chief and/or his designee at least seventy-two (72) hours in advance of the tour requested to be exchanged. If the request is made less than seventy-two (72) hours in advance, the specific reason for the exchange must be provided.

The written request must state the tour and date that the exchanged tour will be repaid, and the repayment date must be within two (2) weeks of the exchanged tour or the request for an exchange will be automatically denied.

- (5) Page 6, Article 7, Section 1, Vacation – Add the following:

No more than two (2) firefighters in a squad will be scheduled to be off duty at one time due to vacation, Kelly days and/or personal days.

- (6) Page 7, Article 8, Section 3, Personal Leave Days -

Amend first sentence of the first paragraph to provide:

“The Employer may grant up to two (2) personal days per year for personal business that cannot be accomplished other than during the employee’s scheduled tour of duty, providing the requests for same . . . The request for a personal leave day must state the specific reason for the request”

Second Paragraph – Delete;

Amend (1) to provide:

“Members may be granted a personal leave day only if there is sufficient relief personnel available.”

Delete (3) (a), (b) and (c).

- (7) Page 9, Article 8, Section 5, Sick Leave – Reduce sick leave per year from twenty (20) days to twelve (12) days.

- (8) Page 10, Article 8A, Section 1, Medical Insurance -

All unit members shall contribute twenty-five (25%) percent of the annual cost of the health insurance coverage provided by the Employer.

Unit members who are eligible for substantially equivalent coverage under the medical insurance plan of another shall not be eligible for coverage under the Fire District’s Plan.

- (9) Page 12, Article 11, Uniforms – Add the following:

“Employees shall wear only the uniforms authorized by the Department.”

- (10) Page 13, Article 13, Increments – Delete Section 2.
- (11) Page 15, Article 15, Bill of Rights – Delete – non-mandatory.
- (12) New Provision – Add the following to the contract:

“Kelly days shall be scheduled at the discretion of the Chief.”

- (13) New Provision – Add the following to the contract:

“Employee Evaluation”

Unit members shall be subject to bi-annual written evaluations in accordance with a procedure and on a form promulgated by the Department. The written evaluations of all officers shall be made by the Captains, subject to the review and approval of the Chief and/or his designee. Captains shall be evaluated by the Chief and/or his designee. (See pp. 13-16 for complete form)

- (14) New Provision – Add the following to the contract:

“Command Discipline – All unit employees shall be subject to the Command Discipline Procedure instituted by the Fire District.” (See pp. 17-19 for procedure)

- (15) New Provision – Add the following language:

The Association recognizes that the Employer has complete authority over the policies and administration of the Fire Department and to make all decisions concerning the operation of the Fire District and direction of its work force, as well as all rights normally inherent in management, except as in otherwise limited by a specific term of this AGREEMENT. The failure to exercise any of these rights shall not be deemed to be a waiver thereof.

The Fire District is vested with, but not limited to, the following specific reserved rights, except as otherwise provided in this AGREEMENT: the right to determine its services, staffing and scheduling thereof, including the hours of performing these services, the methods, processes and means of its operations, changes in

existing methods and facilities, the right to open, relocate and close any facility, the right to locate its employees where deemed necessary, to hire employees on a full-time, less than full-time or part-time basis; to employ employees on a regular, probationary, or temporary basis and assign them to duties; the right to supervise and direct employees in the performance of their duties, the right to promote employees, the right to suspend or discharge employees or take other appropriate disciplinary action; the right to establish and promulgate rules, policies, procedures and regulations from time to time, and to add to or change such rules, policies, procedures and regulations subject to the Civil Service Law; right to determine staffing; and the right to contract or subcontract work performed by unit members.

The Association agrees the Fire District may alter, amend or modify any "terms and conditions of employment" not specifically covered by a provision of this Agreement after consultation with the Association.

(16) New Provision – Add the following language in bold type:

TAYLOR LAW NOTICE

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISIONS OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY PROVIDING THE ADDITIONAL FUNDS THEREFOR SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

**EASTCHESTER FIRE DISTRICT
FORMAL PERFORMANCE EVALUATIONS**

Proposed: January 13, 1998

PURPOSE:

The purpose of this Order is to provide a procedure relative to the personnel evaluation and process.

POLICY

To provide a means of facilitating and documenting employee development and measuring employee performance as compared to specific job requirements.

PROCEDURE:

- A. All regular members of the Eastchester Fire Department shall receive a minimum of one formal performance evaluation from their direct supervisor annually. However, the Fire Chief may require more than one evaluation annually at his/her discretion.
- B. Captains shall be formally evaluated by the Fire Chief a minimum of one (1) time per year. Additional formal evaluations may be performed at the discretion of the Fire Chief.
- C. Probationary members shall receive a formal performance evaluation every three months of their first year of employment.
- D. The evaluator charged with preparing a formal performance evaluation shall conduct a performance evaluation interview with the member being evaluated at the time that the formal evaluation is presented to the involved member. While reviewing the evaluation form together, the rater and the member will discuss and clarify any issue(s) raised by the evaluation. The individual being evaluated must sign the evaluation, indicating receipt and review of the evaluation but not agreement with its conclusions. The individual being evaluated shall be afforded the opportunity to make a written response to the evaluation which shall be attached to the Evaluation Form and filed in the Personnel File. Such written response must be submitted to the evaluator within five (5) calendar days of the Performance Evaluation Interview.
- E. Squad Commanders shall communicate with their subordinates regularly and shall establish a constructive dialogue with their subordinates relative to job performance. The Fire Chief shall communicate in like manner with the Squad commanders and members of the Department. If necessary, regular informal performance evaluation interviews should be established to maximize communication. Problems and/or deficiencies in performance should be addressed with the member prior to the formal evaluation.

- F. Formal personnel evaluations shall be written on the standard Performance Evaluation form.
- G. Supervisors are not limited to the items listed on the standard Performance Evaluation Form. Other relevant performance criteria may be included in the evaluation on an individual basis, so long as such criteria are pertinent to the development and evaluation of the member being evaluated.
- H. Complete evaluation forms shall be returned to the Fire Chief for his review as soon as possible.
- I. The scheduling of formal evaluations shall be dictated by the Fire Chief.
- J. The written formal evaluation and written responses, if any, shall be maintained in the employee's permanent personnel file.
- K. Evaluation of the performance employees is not limited to the formal Performance Evaluation, but may also include other written oral observations, performance reports and communication to the employees as deemed necessary by the evaluators and Fire Chief (Jt. Ex. #2).

EASTCHESTER FIRE DEPARTMENT

Proposed: January 13, 1998

SUBJECT: COMMAND DISCIPLINE**POLICY:**

To provide for the authoritative utilization of supervisory discipline of minor violations of Department Rules & Regulations and expectations of conduct at an appropriate management level.

To dispose of specified rules violations without resorting to formal charges and departmental hearings.

DEFINITION:

“Command Discipline” – A procedure to correct minor deficiencies, non judicial punitive action and maintain discipline within the command of the supervisory officer.

PURPOSE:

Enable the immediate supervisor to deal effectively with minor violations.

Provide additional tools for Superior Officers in carrying out the supervisory function.

Create a disciplinary structure between members of the Department and their immediate supervisor.

ELEMENTS:

Command Discipline shall be discretionary on the part of the supervisors and will be voluntary on the part of the member concerned.

Supervisor Officers at all levels are to continue to utilize all means available to improve attitudes and performances. Command Discipline procedures will provide additional strength to the supervisory function in situations requiring emphatic discipline rather verbal admonition, yet not serious enough to require formal charges.

PROCEDURE:

1. All of the following conditions must exist before Command Discipline may be instituted.
 - A. The minor violation is not aggravated by concurrent circumstances which make it inappropriate for disposition by Command Discipline.
 - B. The Department member is not on probation as a result of a previous disciplinary proceeding.
 - C. The member of the Department has not been the subject of either two (2) Command Disciplines and/or formal charges within the past twelve (12) calendar months.
 - D. The member of the Department does not contest the accuracy of the facts reported and does not desire a trial of the issue (voluntarily submits to Command Discipline accepting the facts as presented).
 - E. The Supervisor believes that the future performance of the member of the Department will be improved through the application of the Command Discipline.
 - F. In the case of Command Discipline recommended by Squad Commanders, the Fire Chief concurs with the Supervisor's recommendation.

SQUAD COMMANDER:

1. Investigate to determine if allegation is substantiated.
2. Indicate findings in a written report if allegation is unsubstantiated.
3. If substantiated and it is the intent to dispose of incident under Command Discipline, interview member concerned. Advise member of alleged violation. Forward a written report of the results of the investigation and recommendations to the Fire Chief.

FIRE CHIEF:

1. Inform members of results of investigation and if allegation is substantiated, advise member that he/she may:
 - A. Accept findings and proposed penalty.

- B. Decline to accept Command Discipline and choose formal charges and a hearing on such charges.
2. If member decides to accept the findings of the proposed penalty, have the member execute a written waiver of his/her right to formal disciplinary charges and a hearing on those charges, and acceptance of the proposed findings and proposed penalty.

IF MEMBER ELECTS FORMAL CHARGES:

1. Formal charges and specifications shall be prepared by the Fire Chief and a hearing scheduled in accordance with the law.

AUTHORIZED PENALTIES UNDER COMMAND DISCIPLINE

When proposing under Command Discipline, a Squad Commander and/or Fire Chief may recommend any one of the following:

- A. Forfeiture of vacation days, personal days, Kelly days, compensatory time and/or other accumulated paid leave days.
- B. Forfeiture of up to five (5) regular days off which shall not exceed one (1) day per excused period.
- C. Change of member's tour of duty to work additional tours but not to exceed four (4) tours.

In addition, the above actions would not preclude a Superior Officer from:

- D. Warning and admonishing orally or in writing which would be filed with papers.
- E. Changing of the assignment of the offending member either temporarily or permanently.

PERSONNEL FILE:

Such Command Discipline shall become part of the member's permanent personal file.

BACKGROUND

The Eastchester Fire Department encompasses the geographical boundaries of the Town of Eastchester, and the Villages of Bronxville and Tuckahoe. The District is organized pursuant to New York State Statute and is governed by an elected Board of Fire Commissioners. The District serves a resident population of 31,600 and operates five fire stations. Primary emergency response service is provided by 71 full-time personnel augmented by the members of five volunteer fire companies. As noted in the Executive Summary of the MMA Consulting Group, Inc. report, the Fire Department made 1,508 emergency responses in 1994, including 146 fires and 337 rescue calls (U. Ex. #28 @ 1)..

ISSUE: WAGES

Association Position

The Association has demanded a seven (7%) percent wage increase per annum for each year of a two (2) year agreement covering the period January 1, 1998 through December 31, 1999. To support its salary proposal, the Association called as its primary witness, Kevin R. Decker, of Decker Economics.(U. Ex. #20).

Ability to Pay

Referring to several charts prepared for presentation to the Panel, (U. Ex. #21), Mr. Decker reviewed the fiscal and economic condition of the District.

Initially, he distinguished the status of municipalities, including cities, towns and villages, from that of Fire Districts. According to Mr. Decker, unlike municipalities which provide a range of municipal services, Fire Districts have been established solely to provide fire services. Given these distinctions, Mr. Decker concluded that comparison of Eastchester with other Fire Districts, as opposed to municipalities which have Fire Departments, would be most relevant. For this comparative analysis, he utilized the Fire Districts of Lake Mohegan, Greenville, Hartsdale and Fairview.

According to Mr. Decker, the District has a "healthy fiscal and economic base." As a measure of community wealth, he utilized Full Value Property Wealth Per Paid Firefighter for Westchester County Fire Districts with paid Personnel. In comparing the five Fire Districts, he found that Lake Mohegan had \$81.55 million dollars in equalized full property value supporting each Firefighter, whereas Eastchester had \$49.63 million. In descending order Greenville had \$35.57; Hartsdale, \$28.77 and Fairview \$26.34 (U. Ex. #21 @ 3). Inasmuch as property taxes constitutes 98% of the revenues raised by the District, he concluded that Eastchester was in sound fiscal condition on this measure of wealth.

Mr. Decker further testified that the equalization rate for the District is determined on a combined equalization rate for the Town of Eastchester and the Villages of Bronxville and Tuckahoe. The 1998 Budgeted Assessed Valuation of the three communities was \$124,199,307.

The Decker analysis addressed Taxable Full Value Property Growth: 1993 – 98 (Westchester County Fire Districts with Paid Personnel) and found that Eastchester's overall growth rate during the five year period was 18.9%, with Greenville second at 15.0% and Lake Mohegan at -2.8% experiencing negative growth. Given this data, Decker concluded that, relative to other similarly situated Fire Districts, Eastchester was in "good financial health." As of the fiscal period ending March 31, 1998, Eastchester's full property value was \$3,375.0 (millions) with a town-wide equalization rate of .0428.

Since property value constitutes the "overwhelming" revenue source for Fire Districts, Decker concluded that the Association's wage demands are reasonable and within the District's ability to pay.

Decker's analysis of the District's ability to pay included review of its General Fund and Combined Funds Operating Results, with the latter encompassing reserve funds (debt service and capital projects). This analysis revealed that the District "ended the 1997 Fiscal Year with a Combined Fund Balance of \$601,067 or approximately 8.4% of Combined Operating Expenditures. Of the reported Fund Balance, \$146,476 is unreserved and unappropriated and \$392,764 has been reserved for financing of construction or acquisition of capital improvement or equipment."

Decker further notes that the "1998 budget includes appropriations of \$525,400 for State Retirement System Contributions," as compared to \$380,765 contributed in 1997. Although the amount budgeted in 1998 constituted a 38% increase, since the State only

billed \$55,740 in 1998, “ a savings of nearly \$470,000 from the budgeted amount” was achieved.

Additional items budgeted in 1998 and 1999 are as follows:

	<u>1998</u>	<u>1999</u>
State Retirement	525,400	440,500
Certiorari Payments	400,000	350,000
Social Security	354,000	
Apparatus Replacement	100,000	145,000

According to Decker, Retirement System Contributions for 1999, based on estimated payroll for 1999, should be \$280,000 (with amortization).

Other than property tax revenues, Decker notes that miscellaneous revenue from all other sources between 1992 and 1997 have averaged \$53,538 (all funds) and \$40,535 (General Fund only).

Finally, in terms of tax burden, Eastchester’s Assessed Value Tax Rate of 59.87 per \$1,000 dollars was less than Fairview’s \$64.01 but exceeded Hartsdale’s \$57.94. Eastchester’s Full Value Tax Rate of \$2.20 per thousand was fourth among the five comparable Fire District’s which ranged from \$4.17 (Greenville) to \$4.83 (Fairview).

Cost of Living

Finally, in addressing the Cost of Living Statutory Criterion, the Association provided data which indicates that at \$270,833, Westchester County has the highest Residential Median Sale Price for homes in the New York Metropolitan Area. This data combined with a residency requirement for new hires is deemed further support for the Association's wage proposal (U. Ex. #23).

Comparability

Addressing wage comparability of Eastchester Firefighters vis a' vis the Districts of Fairview, Greenville, Hartsdale and Lake Mohegan, Decker found that the Eastchester top step salary of \$55,614 in 1997 exceeded the salaries of the other districts by percentages of 2.60% to 5.15%. For example, the Eastchester year 5 top salary of \$55,614 exceeded the \$53,303 average of the other Districts by 4.16%, whereas its year 1 starting salary of \$32,508 exceeded the average starting salary of \$31,662 by 2.60% (Un. Ex. #21 @6).

However, despite the current favorable position of Eastchester Firefighters, Decker's analysis reveals that this relative standing is eroding. Therefore, at minimum, a 5% per annum wage increase is deemed necessary to maintain equilibrium. To project an appropriate wage increase for Eastchester, Decker factored in the available 1998-2000 Westchester County Paid Fire Districts salary increases as follows:

Fire District	1998 Percentage <u>Increase</u>	1999 Percentage <u>Increase</u>	2000 Percentage <u>Increase</u>
Fairview	2.50%	N/A	N/A
Greenville	4.00%	N/A	N/A
Hartsdale	3.50%	4.00%	N/A
Lake Mohegan	N/A	N/A	N/A
Average	3.33%	4.00%	N/A

Excluding the .75%, Fairview Firefighters received as EMT compensation, he found a range of 3.33% to 4.00%. In the Association's view, unless the panel awards a salary increase supportive of the Association's position, Firefighter wages are fraught with potential for further erosion. To reinforce this contention, Decker compared each of the four Fire Districts to Eastchester in 1992 and 1997 to calculate a "Relative Salary Standing Eroding" factor. Decker's data indicates that in 1992 the top step Firefighter salary in Eastchester was 6.04% above the average, whereas in 1997 that advantage had declined to 4.34%. According to Decker, in order for Eastchester to have maintained its relative standing in 1992, its 1997 salary should have been \$56,522 as opposed to the current salary of \$55,614.

DISTRICT POSITION

Ability to Pay

Although the District maintains that its Firefighters should be fairly compensated and may be entitled to some raise in the second year, it cannot justify a salary increase that continues their status as the highest paid Firefighters in Westchester County.

The District argues that an examination of the relevant data supports a District ranking somewhere in the middle of Westchester County fire departments. It submits that while the District's Bronxville residents median household income ranks 3rd out of 23 Westchester Villages, and 4th out of 43 Cities, Villages and Towns in the County, its Town of Eastchester residents rank 13th out of 14 Westchester Towns, and 25th out of 43 Cities, Villages and Towns in the County. Its Tuckahoe residents rank 18th out of 23 Villages, and 35th of 43 Westchester Cities, Villages and Towns (D. Ex. #23). The District is therefore composed of one wealthy portion (Bronxville), and two relatively poor communities (Eastchester and Tuckahoe). Id. The District submits its per capita comparisons are no better. (See D. Ex. #24). The two relatively poor communities make up over 80% of the population of the District. The population of the three (3) communities are: Eastchester – 18,537; Tuckahoe – 6,302; Bronxville – 6,028 (U. Ex. #27, p. 7).

The District further argues that while there is a strong argument for a salary somewhere in the middle of the County during the last year of the contract (1997), its \$55,614 Top Grade Firefighter Rate was the highest in the County (D. Ex. #26).

The District also provided data regarding Overlapping Real Property Taxes for the fiscal year ending 1996 which indicated that Eastchester, Bronxville and Tuckahoe not only paid tax rates of \$158.38 per \$1,000 in Assessed Valuation to the County, but also paid school district, fire district and other taxes as well, thus increasing the overall tax burden (D. Ex. #25).

In terms of District Assessed Valuation, the District notes a downward trend of 13.5% since 1991, from \$138,927,135 to \$122,296,157 (1999) (D. Ex. #38). Reviewing the District Tax Rate during the 1991-1999 period, an increase of 55.4% (\$35.95 to \$61.05) is deemed evidence of a declining ability to pay even though the District has “held back on taxes” and allocated available District revenues between Firefighters salaries and benefits and equipment (D. Ex. #39).

To illustrate the problem faced by the District in certiorari claims, a rebate of \$303,000 granted a commercial property owner was submitted as evidence (D. Ex. #41).

Finally, in terms of ability to pay, the District argues that the defeat of a Fire Equipment Bond Issue (4 to 1) is further evidence of its inability to meet the Association’s economic demands (D. Exs. 6A-B).

The District's position herein is not only a reflection of this vote, but also has placed the District in the unenviable position of paying for equipment as it becomes due.

Comparability

As further support for its wage freeze proposal, the District cites to comparability data. First, the District does not concur with the Association in its view that Fairview, Greenville, Hartsdale and Lake Mohegan are the only comparables for Eastchester. It argues that other cities, towns and villages with Fire Departments should be considered as well such as: Harrison, Larchmont, Scarsdale, Mamaroneck, Peekskill, Mt. Vernon, New Rochelle, White Plains and Yonkers.

Referring to an exhibit entitled Wages for Top Grade Firefighters (1997), the District notes that at \$55,614, Eastchester Firefighters were ranked No. 1, with Association comparables Hartsdale second at \$55,000; Fairview third at \$54,847; and Greenville seventh at \$54,081 (D. Ex. #26).

In 1998, Harrison's Firefighters were paid \$58,443 for the year, which made them **the** highest paid (D. Ex. #27).⁴ Hartsdale was ranked second at \$56,925, Greenville fourth at \$56,244 and Fairview fifth at \$56,218. Lake Mohegan was not settled for 1998 (Id.)

⁴ The District submits that Harrison's settlement that moved it from 4th to 1st was an anomaly and unrelated to any objective criteria. It further submits that virtually no employer, absent political consideration, has given 5% raises in this economy – especially with no “catch-up” factor

Moreover, the District argues that there are two other areas that “inflate” its #1 ranking even further.

An analysis of longevity payments reveals that the District has the best longevity plan in the County with the exception of White Plains and Scarsdale, both of whom are paid far less than Eastchester in base salary (D. Exs. #34, #26, #27).⁵ When the Fire Districts alone are compared, the payments over a 21 year period are as follows:

Eastchester	\$16,020
Hartsdale	9,350
Fairview	9,316
Lake Mohegan	6,800
Greenville	0

(D. Ex. #34).

The longevity payments for a 21-year firefighter are \$2,624 in Eastchester vs. \$1,100 for a Hartsdale firefighter. (Id.) Thus, the Eastchester advantage increases by over \$1,500 per year each year after 20 years. (Id.) Thus, it argues, even if the District fell slightly behind Hartsdale in base pay with a freeze, it would still be #1 for its senior people because of the longevities.

In addition, the District argues that its \$1,000 EMT stipend also enhances its ranking. Hartsdale and Scarsdale and Lake Mohegan have no EMT differential (D. Ex. #36). Greenville and Fairview as of 1/1/98 both have a 2.75% EMT differential. Applied to top grade, this comes to \$1,546 in Greenville and Fairview (D. Exs. #36 and #27).

⁵ Over the 21- year period, Scarsdale exceeds the District’s longevity payouts by \$2,130; while White Plains exceeds it by \$8,186 (D. Ex. #34).

The District also strongly urges the Panel to consider the differences in pension benefits between it and other comparables. The District provides pension benefits pursuant to § 384-e of the NYS Police and Fireman's Retirement System.

Section 384-e provides a benefit of 1/60th of final average salary for each year of service creditable under Section 384-d (the 20 year plan of most departments) in excess of 20 years. Thus, for example, a member with 32 years of service with a final average salary of \$55,000 would receive a pension of \$38,500 under Section 384-e, instead of \$27,500 under 384-d. The Section 384-d plan maxes out at 50% (See D. Ex. #30, p.2). The District argues that the generous and costly benefit (see infra) must be taken into account in any comparability study – particularly since Hartsdale and Scarsdale and many others do not have this benefit (D. Ex. #33).

To understand its argument, the District urges the Panel to examine its pension contributions for its firefighters for this benefit, compared to those municipalities that have not adopted it. The differences in annual contributions for the years 1994-2000 are tabulated below: ⁶

Years	% of Payroll Contributed by Those <u>Fire Dept. w/o. 384-e</u>		% Contributed by <u>Eastchester F. D.</u>	
	<u>Tier 1</u>	<u>Tier 2</u>	<u>Tier 1</u>	<u>Tier 2</u>
1994	3.7%	11.2%	11.9%	11.6%
1995	10.8%	9.8%	19.6%	12.6%
1996	9.9%	9.0%	18.7%	11.7%
1997	7.1%	6.4%	15.6%	8.6%
1998	4.4%	4.0%	12.7%	5.9%

⁶ The 2000 rates are Police and Fire Retirement System estimates (D. Ex. #31).

1999	.3%	.3%	8.5%	2.0%
2000	2.9%	2.9%	11.2%	4.6%

D. Ex. #31.⁷ As demonstrated above, the District argues that for Tier 1 members this annual cost has been “astronomical”, ranging from a low of 8.21%, to a high of 8.8% of total payroll. These percentages, it argues, are equivalent to salary increases, since they are applied to total salaries. For Tier 2 members the annual cost has ranged from a high of 2.8% to a low of .4% (D. Ex. #31).

There was also an additional \$320,000 initial cost to buy into the Plan (D. Ex. #30). As of 12/15/98, the District had paid a \$303,281 amortized amount – for a Department of only 71 paid personal (\$4,271 per member).

In all of Westchester County, other than Eastchester, only Yonkers, Greenville and Fairview have this plan (D. Ex. #33).

The District submits when all these factors are taken into account, a freeze – at least for 1998 – is justified. The District is so far ahead of the communities below the top 50th percentile, they become irrelevant. It urges the Panel to compare the following 1998 statistics (this figure includes a salary freeze for Eastchester for 1998) for the top 7 paid departments, plus Lake Mohegan.

⁷ There was testimony by the Union’s witness that the District opted into this Plan in 1991.

	Base Salary	Pension ⁴	Longevity ⁵	EMT Stipend	Total
Eastchester	\$55,614	\$2,780	\$2,624	\$1,000	\$62,018
Hartsdale	56,925	0	1,100	0	58,025
Fairview	56,218	2,810	1,096	1,546	61,670
Greenville	56,244	2,812	0	1,546	60,602
Lake Mohegan	49,282 ⁶	N/A	N/A	N/A	N/A
Scarsdale	55,851	0	2,050	0	57,901
Harrison	58,443	0	1,075	0	59,518
Pelham Manor	56,299	0	0	0	56,299

As can be seen, even if a freeze were awarded for 1998, the District's firefighters would remain the best compensated in all of Westchester. ⁷

⁴ For purposes of comparison, the District used a 5% additional cost for those with 384-e (See comparison reg. Pensions above.)

⁵ For purposes of comparison, the District used the 20 year longevity payment.

⁶ This figure is a 1997 rate because 1998 is not yet available. This figure is so far behind the District, the other figures for Lake Mohegan are irrelevant.

⁷ If holiday pay is added, this conclusion is not changed for Greenville and Hartsdale who have only 1 more holiday. Fairview has 3 additional holidays and its total compensation would be about \$600 above the District. (Ex. 21, p.12)

The District also argues that the PBA statistics used by the Union, support its position (emphasis District). While PBA rankings countywide were not submitted, there are large variances in the rates for the 3 police departments within the District.

Bronxville PBA	\$60,340
Eastchester PBA	\$59,605
Tuckahoe PBA	\$59,233

The District argues that this also suggests a ranking other than 1st. Indeed, it argues that a salary comparable to Scarsdale, which ranks 6th, would be more reasonable (D. Exs. #26 and #27).

While the District recognizes that it negotiated the contracts that resulted in this illogical ranking, over the years it has at least reduced the gap by which it was #1. (See U. Ex. #21). It submits that the time has come to dip at least a little below this lofty ranking in salary only.

COST OF LIVING

The District submitted an Exhibit which showed that the rise in the CPI for the months of 1998 had averaged 1.46% over the 12 months of 1998 (D. Ex. #29).

ANALYSIS/DISCUSSION

Considering the economic evidence submitted by the parties in its entirety, the Panel Majority is persuaded that the District remains in sound fiscal condition. Despite a 13.5% decline in assessed valuation since 1991, a phenomenon which may be

characteristic of Westchester County, the fiscal capacity of the District has remained relatively stable and hence its ability to pay not significantly reduced.

Among the factors the Panel Majority deems probative of the District's fiscal condition is its combined fund balance of \$601,067.00, representing 8.4% of its combined operating expenditures. Although the general rule is to maintain 5% to 10% of operating expenditures as the fund balance reserve, a 8.4% fund balance indicates that the District is closer to the upper end of the range. It should be further noted that the year end balance has doubled since 1993-1994 when it averaged \$300,000. Also, unlike Districts with financial problems, there was no evidence of a reduced bond rating (e.g. Standard and Poors) or debt concerns identified by the Comptroller's office.

As opposed to financial problems, evidence that the District has over budgeted certain accounts reinforces its ability to pay a reasonable salary increase. For example, the amounts budgeted for the State Retirement System have exceeded the actual amounts expended. The difference between the \$525,400 appropriated in 1998 and the \$55,740 billed by the State provides the District with a potential savings of \$470,000.

Similarly over budgeted has been the certiorari account where the budgeted amounts of \$400,000 and \$350,000 in 1998 and 1999 respectively are juxtaposed against the payout experience of \$276,200 in 1997 and \$294,477 in 1996. While the District's data indicates that this amount may increase slightly, there should still be a surplus in the certiorari account.

Additional evidence of fiscal capacity is reflected in the amounts set aside for apparatus replacement, namely \$1,000,000 in 1998 and \$440,500 in 1999. Generally speaking, Districts with financial problems assign low priority to capital expenditures. The fact that the District was able to underwrite its apparatus replacement program out of available revenues, as opposed to bonding the project, following the defeat of the bond issue, constitutes, in the Panel Majority's opinion, a net positive fiscal result.

In terms of ability to pay, the Panel Chairman is cognizant of data which indicates that the District's lower ranking on Westchester County median household income and correspondingly higher tax rate has been demanding, particularly given overlapping tax obligations. Whereas the less wealthy areas of the District (Eastchester and Tuckahoe) apparently find firefighter compensation at the top level problematic, the Panel Chairman notes that they participated in the decisions which encompasses all three District areas and are thereby collectively accountable for the result. Therefore, notwithstanding some fiscal constraints, the District has previously decided to assume the cost of high quality fire services. Whether the District should be compelled to continue the pre-existing level of Fire District financial support, including Firefighter compensation, is the issue at hand.

On balance, the Panel Majority concludes that the District has experienced economic growth equal to or superior to that of surrounding Fire Districts, as evidenced both by its full value property growth of 18.9% from 1993-98 and its fund balances, notwithstanding an apparent decline in Fire District assessed valuation derived from the 1991-1999 Fire District budgets. In the view of the Panel majority, the District should, on

the one hand, be commended for its prudent fiscal policies which have ensured fiscal stability, but, on the other hand, barring unforeseen developments, be declared able to afford a reasonable wage increase for its Firefighters commensurate with that capacity.

The pivotal consideration in the instant case is comparability. There is no dispute that at the end of the 1997 calendar year, Eastchester Firefighters at \$55,614 were the highest paid among the Association's four comparable Fire District and indeed in all of Westchester County. Unless the District's proposal to freeze wages for two years is awarded, this high ranking is likely to continue.

In effect, the parties have articulated diametrically opposite positions. The Association, noting a decline in Eastchester's relative standing vis a' vis Fairview, Greenville, Hartsdale and Lake Mohegan, has proposed a 5.0% per annum wage restoration. The District, on the other hand, perceiving no basis for continuing Eastchester Firefighters as the highest paid in the County, seeks a deceleration via a wage freeze. Following a review of the comparability data submitted, the Panel Chairman can support neither wage objective.

First, the Panel majority is persuaded that the most appropriate comparables for Eastchester are the four (4) Westchester County Fire Districts with paid personnel. Although comparison with the Fire Departments of cities, towns and villages are useful and permitted by the statutory criteria, the Panel majority considers the unique role of Fire Districts, including their limited service function and fiscal structure, more appropriate for comparability analysis. In terms of comparability analysis, the Panel

majority assigns primary significance to the Fire District data and accords secondary significance to the village departments such as Scarsdale.

A review of the incomplete data submitted persuades the Panel Chairman that the wage increase awarded Eastchester Firefighters should neither attempt to close gaps (1992-1997) which have occurred over time, but neither should their wage increases be eliminated for two years. A reasonable solution to this problem is a wage increase which will downwardly adjust Eastchester's relative standing among Hartsdale, Greenville, Lake Mohegan and Fairview. It is relevant that the Bronxville and Tuckahoe Police received wage increases of 3.5% (6/1/97 to 5/31/99) as well as the Eastchester CSEA. The Eastchester police employees represented by the Teamsters receive 3.7% and 3.6% respectively over this period. Although the District correctly notes that the settlements were all with different employers, and in no case were these employees the highest paid in the county, the Panel Majority notes that there were also common components, namely the Villages of Tuckahoe and Bronxville and the Town of Eastchester.

In the Panel Chairman's opinion, the fundamental distinction between the District's position and that of the Panel Chairman is the rate at which the Firefighters should be brought in line with the primary comparable Districts. The District would have the Panel effectuate a steeper decrement in the wages paid to the Eastchester Firefighters in order to accelerate the pace at which its relative wages decline and its wage advantage over other Fire Districts decreases. The resulting impact of the District's 1.5% CPI based wage increase would be as follows:

Fire Dept.	'98 Base Salary	20 Year Longevity	EMT Stipend	Total	Pension
Eastchester	\$56,448	\$2,624	\$1,000	\$60,072	384-e
Hartsdale	56,925	1,100	0	58,025	----
Fairview	56,218	1,096	1,546	58,860	384-e
Greenville	56,244	0	1,546	57,790	384-e
Lake Mohegan	N/A	N/A	N/A	N/A	N/A
Scarsdale	55,851	2,050	0	57,901	----
Harrison	58,443	1,075	0	59,518	----
Pelham Manor	56,299	0	0	56,299	----

Thus, while Eastchester's base salary would trail Harrison (\$1,995) and Hartsdale (\$477), when longevity and EMT stipends are taken into account, Eastchester would still be #1. In addition, neither of these departments has the generous and expensive 384-e pension plan – which Eastchester has had since 1991.

For, 1999, the District maintains that a 3.5% wage increase would likely continue Eastchester's status as Number One.

According to the District, it would be difficult for the Union to argue its firefighters should be paid even a higher amount above these other communities given the respective wealth of Scarsdale, Harrison, Pelham Manor, etc. While the Panel Majority is cognizant of the concerns expressed by the less wealthy areas of the District, namely, Eastchester and Tuckahoe, the revenue generated by the Fire District also includes the more affluent Bronxville community and therefore the aggregate ability of the District to pay is enhanced.

Clearly, the District has articulated a position which, in more compelling economic circumstances, might be warranted. However, the Panel Majority, considering the District's ability to pay and the comparability data of the primary comparables, finds that solely a CPI increase for 1998 as opposed to a real wage increase (i.e. an increase above the rate of inflation) is not warranted at this juncture. The Panel Chairman maintains that in the absence of dire economic conditions, the Firefighters wages should continue to gradually decline vis a' vis other comparable Fire District as they have been "eroding" since 1992.

From the paucity of data available, the Panel Majority calculates that the average wage increase for Fairview, Greenville and Hartsdale was 3.33%. To continue the realignment which has reduced Eastchester's wage advantage over the average wages of these three Districts by 1.7% over five years (6.04% to 4.34%) (U. Ex. #21), a below average wage increase of 3.00% for 1998 is awarded. This rate of average decrease projected over five years (excluding compounding) would be 1.65% or virtually equal to the ongoing rate of decline.

In determining a wage increase for 1999, the Panel Majority had even less primary Fire District comparability data to consider inasmuch as only Hartsdale had settled for a 4.00% wage increase. Although the District during Executive Sessions argued for a 3.5% wage increase in 1999, provided a 1.5% increase was awarded in 1998, the Panel Majority concludes that a 3.0% wage increase in 1999 is appropriate. Whereas the District's 5.0% figure over two years is 1.0% less than the 6.0% awarded by the Panel

Majority, extrapolation of the evidence indicates that the gap between the Eastchester Firefighters and its comparables will continue to shrink.

Undoubtedly, after the instant two year award, Eastchester will remain number one both in terms of wages and total economic benefits. The superiority of its longevity plan combined with its EMT stipend and 384-e pension will sustain its overall top level ranking. With respect to the pension plans, the Panel Majority recognizes the difference of opinion between the parties as to the time frame over which the 384-e Plan which Eastchester has had since 1991 should impact the wage structure.

In effect, the Panel Chairman, in awarding wage increases of 6.0% for the two year period, has accommodated the District's valid claim for some economic relief while, at the same time, minimized the rate of decline for two reasons. First, while there may not have been an economic justification when the District gradually increased Eastchester Firefighters wages to Number 1, the District's ability to pay has not appreciably changed since 1992. Therefore, absent significant economic problems, the decrease in the firefighters wage standing should similarly be gradual. Second, with a wage increase of 6.0% over two years, Eastchester Firefighters at \$57,282.42 in 1998 (3.0% x \$55,614.00) and \$59,000.89 in 1999 (3.0% x \$57,282.42) will be paid approximately \$350.00 more than Hartsdale Firefighters in 1998 (\$57,282.42 vs. \$56,925.00) but in 1999 they will fall approximately \$200.00 behind Hartsdale for the first time (\$59,202.00 vs. \$59,000.00). Moreover, Eastchester Firefighters will continue to have a declining economic advantage over Greenville, Fairview and similarly situated village departments.

AWARD

Accordingly, effective 1/1/98, the salaries for firefighters shall be retroactively increased across all steps by 3.0% above the salaries in effect on 12/31/97.

Effective 1/1/99, the salaries for Firefighters shall be retroactively increased across all steps by 3.0% above the salaries in effect on 12/31/98.

ISSUE #2: Captain's Pay Differential

Association Position

The Association has proposed that the Captain's Pay Differential, currently 25% above the top paid Firefighters, be increased to 28% in 1998 and 30% in 1999. The Association provided data which indicates that in 1997 Eastchester Captains at \$69,518 ranked 4th among the five comparable Fire Districts. Also, captains in Fairview, the only comparable where Firefighters are in the bargaining unit, received 35% above the top Firefighters.

District Position

The District estimated that the Association's proposal with "roll-ups" would cost the District an additional \$9,500 per Captain. The District maintains that the Association seeks to change the flat amount provided in the expired contract (\$66,844) into a percentage with undetermined consequences. The District also provided data which indicates that the Eastchester Captain's salaries compare favorably with such cities as

Mount Vernon and New Rochelle as well as the Village of Scarsdale. As previously noted, in most jurisdictions Captains are excluded from the bargaining unit (D. Ex. #37).

DISCUSSION

The Panel Majority considers the Association's proposal to convert the Captain's differential into a percentage premature. Although the Association enumerated several "additional duties and responsibilities Captains have assumed in the last 24 months" (U. Ex. #29), the role of the Captains, particularly vis a' vis Lieutenants, appears to be in a state of flux. While there was testimony that certain responsibilities involving dispatch and mutual aid calls have increased, differentiating the responsibilities of the recently added Lieutenants from Captains and Captains from Assistant Chief will require further analysis. In this connection, Chief Fennelly testified that many of the duties enumerated by the Association such as: roll call, scheduling vacation picks and canvassing membership on a crew are not exclusively Captain's duties.

Therefore, the Panel Majority, given the fact that the 6.0% wage increase awarded Firefighters when applied to Captain's salaries will generate larger total wage increases above Firefighters, concludes no additional differential is warranted at this time.

ISSUE #3: EMT Certification Pay

Association Position

The Association has proposed an increase in the current contractual amount of \$1,000 for EMT Certification to \$1,250.00 in 1998 and \$1,500.00 in 1999 – for

Firefighters who maintain their certification. In comparison, Fairview provided 2% above gross salaries for EMT Certification in 1997 which generated \$1,097 on top step. In 1998, this amount was increased to 2.75%, resulting in \$1,546. Greenville provides 2.75% above gross salaries for EMT-D Certification, resulting in \$1,487 on top step in 1997 and \$1,547 in 1998. Lake Mohegan, like Eastchester, pays \$1,000 for EMT Certification (U. Ex. #21). Hartsdale does not provide EMS Service and therefore included no stipend for EMT certification.

District Position

The District provided a survey of Westchester municipalities with emergency services. Approximately half paid no stipends to Firefighters who were EMT certified, including Harrison, which, effective 1/98, paid its Firefighters at the highest level. Hartsdale pays nothing for EMT certification. From the District's perspective, there should be no increases in EMT stipends until those who are behind catch up.

DISCUSSION

The evidence indicates that currently 26 Eastchester Firefighters possess EMT Certification. It is obviously beneficial to the District to have its Firefighters capable of providing emergency services, such as defibrillation, to the residents. While the Association's proposal to increase the EMT Certification stipend 50% by 1999 is designed to equalize Eastchester EMTs with Fairview and Greenville Firefighters who in 1998 received \$1,546 and \$1,547 respectively, the Panel Majority, recognizing that Eastchester Firefighters have superior benefits not provided in these Fire Districts, (e.g.

longevity) concludes that only a modest increase would be reasonable. One rationale for the increase is to maintain the incentive for Firefighters to be certified.

Accordingly, it is awarded that Paragraph 6 of Article 2 be amended to provide that EMT Certification Pay for Firefighters maintaining their certification increase one hundred (\$100.00) dollars to \$1,100.00 in 1998 and one hundred (\$100.00) dollars to \$1,200.00 in 1999.

ISSUE #4: First Responder Base Salary Increase

The Association did not include this item in its January 1, 1998 Proposal Summary or provide documentary or testimonial evidence at the hearing on this subject. Therefore, the Panel has not considered the issue.

ISSUE #5: Medical and Insurance Benefits [Article 8A]

Association Position

The Association proposes that the employee Firefighter at his/her option be permitted to notify the District that s(he) is electing to waive or decline all or part of the Employer-paid health insurance coverage during the next 12 months in exchange for the District paying the employee 50% of the Employer's savings. Under the Association's proposal, the member would have to document that s(he) has coverage different or equal to the Employer's plan. The waivers would be valid for 12 months and provide for renewal of Employer coverage once the waiver elapsed.

District Position

The District proposal would declare ineligible for employer paid coverage unit members who were eligible for substantially equivalent coverage under another plan.

DISCUSSION

The parties have agreement in principle for the addition of an opt-out clause in Article 8A. Where they disagree is the amount to be rebated to the employee who has dual coverage. Whereas the Association has proposed a 50% rebate (approximately \$3,000 per Firefighter), the District prefers a flat rate of approximately \$2,000. There is also a difference as to whether the employer or the employee initiates the change.

Accordingly, the Panel Majority awards that Paragraph 1, Article 8A be amended to provide language permitting the employee to initiate a buyout or waiver of the employee's dual family health insurance coverage. To ensure stability and predictability in the administration of the buyout/waiver option, the Panel proposes that a lump sum of \$2,500.00 be paid to the eligible employee per 12 month period. The employee can renew the waiver/buyout on an annual basis.

The sum exceeds the District's proposal because an employee opting out of dual coverage may lose some coverage (i.e. 80% vs. 100%).

In addition, the employer may exclude from coverage any employee who has "substantially equivalent coverage" through another plan. Any disputes arising with respect to what constitutes "substantially equivalent coverage" would be subject to Article 14 – the Grievance provision "provided however, that simply because the

alternative coverage is contributory, it shall not be deemed not to be 'substantially equivalent' unless such contribution is more than what the District employee is paying."

In the event there is an existing catastrophic illness or injury of a covered individual, the District may not exercise its buyout option if it would result in a loss of additional coverage unless the District can provide such additional coverage through another insurance policy.

This plan will not give the District a percent contribution, but will allow it to initiate savings by eliminating coverage for those employees who really do not need it. It also gives these employees, as well as those who voluntarily opt out, some remuneration for not having coverage through the District.

The Association's proposal is also applied to those whose coverage status changes from the individual plan to the family plan during the twelve month period. For these employees, the Panel awards that individual coverage waiver/buyout shall also be applicable and prorated against the amount provided family plan dual coverage waiver/buyout.

ISSUE #6: Dental Insurance

Association Position

Mr. Jonathan Burbank, Association Trust Fund Director, testified that dental claims made against the Dental Welfare Fund have exceeded its capacity to pay.

Effective January 1, 1997, the District contributed \$34,000 annually to the Plan. Given

the level of claims and the inadequacies of its financial resources, Mr. Burbank further testified that the Fund is paying only 55% of the reimbursement requested, even after capping orthodontics one time at \$750.00 and eliminating cosmetic dentistry. For the period January 1, 1997 through December 31, 1997, of the \$46,067 in claims submitted, the total paid on claims was \$25,408, with an uncovered claims amounting to \$20,659 (U. Ex. #24). For the 18 month period 1/11/96 through 6/2/97, expenses exceeded income by \$1,298.27 and for the period 1/1/97 through 4/1/98 a balance of \$8,132.14 remained (\$34,000 - \$26,658.50).

On cross-examination, Mr. Burbank acknowledged the existence of a reserve fund of \$30,000 "which is running down."

DISCUSSION

The evidence establishes that the Association's Dental Plan, which also covers five non-unit District employees, has a cash flow problem. Although reimbursing only 55% of the claims submitted and curtailing other dental benefits, the plan nevertheless ran out of money in July, 1997. From 1/1/95 to 12/31/97, the District increased its contribution from \$30,000 to \$34,000 which is 12% or \$58.00 per employee. Since the expired collective bargaining agreement covered three (3) years, a comparable increase for a two (2) year interest arbitration award would be in order.

Accordingly, it is awarded that the District shall increase its contribution to the Dental Welfare Fund as follows:

- 1) Effective January 1, 1998, the Fire District shall contribute \$35,500 annually to the Association's Dental Welfare Plan.
- 2) Effective January 1, 1999, the Fire District shall contribute \$37,000 annually to the Association's Dental Welfare Plan.

ISSUE #7: Training, Article 18

Association Position

The Association has proposed that "members be permitted time off to attend certification for EMT."

Captain Thomas Ferrara testified that previously (1995 – 1996), Firefighters were allowed to take a department car and radio to EMT classes. With a minimum of ten (10) Firefighters on a shift, 3 Firefighters could attend EMT training at once. This training modality continued for 7-8 years, unlike the present situation where Firefighters must attend the EMT courses in the evening.

The Association also submitted as evidence a calendar/schedule indicating that on Tuesdays/Thursdays (among the 18 days when EMT classes are held) Group 3 is working seven (7) evenings and attending class eleven (11) times while off-duty (U. Ex. #27). The EMS Fire Rescue and First Response Protocol, as well as the District's EMT Training Policy signed by the Acting Chairman of the Fire Commissioners, were submitted (U. Ex. #25, #26). In the policy, the District commits itself to allow, "to the extent possible," a maximum of three (3) firefighters to leave their scheduled tour of duty for those hours they are in attendance at an EMT course.

District Position

The District maintains that providing Firefighters with an EMT stipend, as well as released time to attend EMT training, is excessive. Chief Fennelly testified that currently 26 Firefighters have EMT certification while approximately 20 are certified as First Responders. According to Chief Fennelly, if Firefighters are released from duty in order to be trained as EMTs, it would impact scheduling, reduce staffing to a minimum and affect initial response.

On cross-examination, he testified that it was desirable to have the maximum number of trained EMT's and, if feasible, EMT training should be conducted in the Fire District as with First Responder training. Previous EMT training has been conducted in New Rochelle which is contiguous to Eastchester. However, if a mutual aid call was received, Firefighters in training would be outside the Fire District. Finally, the Chief acknowledged that under the prior arrangement Firefighters on duty would not attend training unless relief was available.

DISCUSSION

On balance, the Panel Majority concludes, that despite the Association's positive objective of maximizing the opportunities for Firefighters to become EMT trained, for safety and related reasons, the Chief should retain some discretion in scheduling personnel for training. Although conducting EMT training on site in the District seems the most reasonable approach, the evidence indicates that off-site training could become problematic. Contract language which would mandate that Firefighters receive time off

to attend EMT classes, even if the Chief retained the discretion to determine minimum response levels, could complicate the delivery of fire services. In the near future, the District's commitment to release 3 firefighters, where feasible, should suffice.

As an alternative, the Panel majority awards that a Joint Committee comprised of the Chief, the Association President, a Captain and others designated by the Chief or President review the feasibility of conducting EMT Training in the District and scheduling it at mutually convenient times.

ISSUE #8: New Article, Captain's Conference Time

Association Position

The Association has proposed that Captain's "receive 40 hours of pay at straight time for attendance at staff meetings or work performed pursuant to their committee assignments. Time spent in excess of 40 hours will be paid time and one half."

District Position

Chief Fennelly testified that currently captains do not participate in staff meetings on their own time but rather receive time and one-half for each 2-3 hour meeting. He further testified that captains are not assigned to projects without compensation. For example, he maintained that Captain Lynch, who is in charge of the Apparatus Committee, receives overtime compensation for the time he spends with vendors. Finally, he maintained that "SOPs," which are cited in the captain job description, could be written during their regular tour of duty.

DISCUSSION

The Panel Majority, for reasons similar to the Captain's Differential proposal, is not persuaded that the contract should be amended to add new articles providing Captain's Conference Time. Until the role of Captains vis a' vis Lieutenants and Assistant Chief is clarified, particularly in terms of their "additional responsibilities," significant changes in contract language impacting their duties seems premature to the Panel. Moreover, there was no evidence that other fire districts provide this benefit.

ISSUE #9: Safety

Association Position

The Association proposes that Firefighters receive "[h]azardous duty payment equal to time and one-half for all hours worked when less than 1 Captain and 15 firefighters are assigned to a tour of duty."

Referring to the MMA Consulting Group Report (U. Ex. #28), Captain Ferrara testified that the District has selected Option #2 which entails increasing the staffing level for emergency response to 17 personnel per shift (necessitating the hiring of one additional Firefighter per shift). He acknowledged that currently staffing is one (1) Lieutenant short of minimum staffing. According to Captain Fennelly, routine deployment consists of 9 Firefighters, 1 Lieutenant and 1 Captain and therefore, with the exception of the additional Lieutenants, the District has not fully complied with the MMA recommendations.

District Position

The District, on the other hand, maintains that it has moved forward in implementing the recommendations of the consultants, including the increase in staffing levels and the purchase of the \$350,000 super-pumper and other equipment – at a total 5 year cost of \$1.8 million.

DISCUSSION

Interestingly, this issue is related to the EMT Training issue in that the maintenance of 17 personnel per shift, with a minimum of duty strength of 12 personnel, would permit a first response of 10 to 12 personnel and thereby release 1-2 firefighters for EMT training without conflict or safety concerns. Also, with 17 Firefighters on-duty, there would be a 5 Firefighter leeway, similarly permitting release time for EMT training.

With respect to the safety proposal, notwithstanding the expertise and recommendations of the consultants, the Panel majority was not persuaded that the shortfall of one (1) Lieutenant posed a significant safety hazard to the Firefighters. While the District intends to implement the consultants' recommendation of 17 personnel per shift, penalizing the District in the course of fulfilling this objective, absent a clear safety hazard, seems counterproductive.

Accordingly, the Association's safety proposal is not awarded.

OTHER ASSOCIATION PROPOSALS

Uniforms, Article 11

The Association proposal to provide members with \$500.00 for cleaning uniforms is denied. Only Captains currently receive \$250.00 for this purpose. Absent comparability data and given the parties' past practice, this proposal cannot be sustained.

Holidays, Article 6

The Association provided comparability data which indicates that Greenville and Hartsdale recognize 12 holidays, Fairview 14 holidays and Eastchester 11 holidays. A one (1) holiday increase is proposed.

The District estimates the cost of an additional holiday to be \$20,000. Given other benefits obtained in Eastchester not provided in the comparable Districts such as the 384-e pension plan, not provided in Hartsdale, and a superior longevity provision, the Panel majority finds that an additional holiday is not justified.

Kelly Days, New Article

This provision would incorporate in contract language time paid back to the Firefighter to reduce their work week for 40 hours. The Association claims that by selling these days back to the District at straight time, the District could avoid overtime.

In the Panel Majority's opinion, cost saving measures of benefit to the District, absence a persuasive evidentiary record, should be initiated by the District. Therefore, this issue is remanded to the parties for further negotiation.

Child Care Leave, New Article

No evidence was presented in support of this proposal. Therefore, it was not considered by the Panel.

OTHER DISTRICT ISSUES

Employee Evaluation/Command Discipline, New Articles/Bill of Rights

The District has proposed an extensive Employee Evaluation system, including bi-annual written evaluations and formal performance evaluations. The Command Discipline procedure *infra*, sets forth several conditions which must be met before discipline is instituted.

DISCUSSION

The first two issues are best left to the parties. It also appeared from discussions in Executive Sessions that there was much common ground on these issues. Consequently, the Panel Majority remands the issues (Employee Evaluations/Command Discipline) to the parties for further negotiation.

Therefore, it is awarded that if the parties have not reached agreement on these two issues, within 60 days of receipt of this award, they should be submitted to separate binding arbitrations on a last best offer basis pursuant to Article 14.

The current language on "Bill of Rights" (Dist. Proposal No. 11) appears unintelligible. Therefore, this issue should be further negotiated as well but not subject to last best offer binding arbitration.

Summary of Other District Issues

The focus of the District's case was on containment in the salary area and some concession in the health insurance area. It also presented persuasive comparative data on items: 5 (vacations); 7 (sick leave); and 9 (uniforms); as well as persuasive argument on Item 4 (Tour Swapping).

Given the District's focus on a limited increase in 1998, these items were not addressed in greater detail herein.

Parties Concurrence on Mutually Acceptable Issues

The parties have agreed to incorporate as part of the Award the following District proposals which are essentially "housekeeping": District proposal No. 1, changing references from "association members" to "unit members"; No. 9 [Article 11, Uniforms], add language which states: "Employees shall wear only the uniforms authorized by the Department"; and No. 16, add a Taylor Law Notice.

CONCLUSION

The foregoing constitutes the Panel's award with respect to the outstanding issues.

Given the delay in the process, the Panel urges the District, upon receipt of this award, to facilitate all retroactive payments to the members of Local 916 as expeditiously as possible.

CONCURRING OPINION OF PUBLIC EMPLOYEE PANEL MEMBER

As a Public Employee's representative on the Interest Arbitration Panel in this matter, I hereby concur in the result of this Award. However, I feel it necessary to submit this brief opinion in order to voice my opinion that I do not necessarily agree with the Chairman's rationale.

One of the statutory criteria contained in §209 of the Act includes a provision, which requires the panel to look at the history of bargaining between the two parties. It was the Union's position that the history of bargaining between the two parties indicates the Eastchester Firefighters have traditionally been paid at the "higher end" in relation to comparable communities. In addition, the Union established at the hearing that the District was in sound financial condition. Thus, at least in my mind, there was no reason to adopt the District's position, that the Eastchester Firefighter should be granted a below average salary increase.

However, based upon the totality of the facts and circumstances presented in this case, which include the Chairman's opinion that the most comparable communities were the four other fire districts with paid personnel in Westchester County, I must concur with the panel chairman.

DISSENTING OPINION OF EMPLOYER PANEL MEMBER

INTRODUCTION

By way of explanation, although by no means an excuse, I believe it is important to briefly go into the reason for the protracted period of time between the close of the hearings in this matter and the ultimate issuance of an award.

Both sides were represented by experienced and zealous advocates. This made the job of the Chairman extremely difficult. There were numerous drafts exchanged, much advocacy on both sides to alter the drafts, and a number of revisions made by the Chairman that required additional discussion and study. There was also an attempt to procure a unanimous award. This ultimately proved unsuccessful. This in turn necessitated the drafting and distribution of this dissenting opinion before the award could be finalized. I believe it would be fair to say that myself and the Chairman must share the responsibility for the bulk of the delay.

Much of the time spent on the earlier drafts was done in an effort to insure that the positions of the parties were accurately reflected in the body of the award. I commend the Chairman's patience in accepting the input from both sides to insure that their respective positions were fully articulated in the award. As a result of that hard work, the comments in my dissent will necessarily be somewhat limited.

COMPENSATION

The Chairman properly characterized the main dispute in this area when he indicated that the District wanted to accelerate the descent from a number one County ranking for the District.

I do not believe that there is any criteria that can justify Eastchester firefighters being the most highly compensated in all of Westchester County. The household and per capita incomes for the two municipalities that comprise 80% of the fire district (Town of Eastchester and Village of Tuckahoe) compare unfavorably to most municipalities in Westchester County. See D. Exs. 23, 24 and 27. While the Village of Bronxville, the third component of the District, is a relatively wealthy community, it represents only 20% of the District in terms of population (Union Ex. #27). Moreover, taxes have risen steadily in recent years, an indication that an effort is being made by these relatively poor communities to support the highest salary in the County (D. Ex. #39).

Eastchester's salary, in conjunction with its longevity, EMT differential and superior pension, provide its firefighters with the best compensation package in Westchester County. See D. Exs. 26, 27 and 34 and the chart on page 32 of the Chairman's opinion.

I believe an analysis of the chart on page 32 of the Chairman's opinion supports the District's proposal for a freeze in year 1 of the agreement. When the

relatively low cost of living figures are taken into account (1.46% [D. Ex. #29]), only a modest increase in the second year of the agreement is justified.

While I agree with the Chairman's conclusion that the District is in sound fiscal condition based on its fund balance and other applicable criteria, I do not believe that this, in and of itself, outweighs the other arguments mitigating against a number one ranking in the County.

Additionally, I think it was inappropriate to conclude that the most appropriate comparisons were the four other fire districts with paid personnel in the County. I believe such an analysis is incomplete and almost statistically insignificant.

I believe the raises over a two-year period should have been kept to a figure that would have placed Eastchester somewhere in the middle of all of the fire departments in Westchester County. I believe that would be a justifiable figure and that this goal should be vigorously pursued by the District in future negotiations.

OTHER ISSUES

While I commend the Chairman's opinion with regard to the proposal involving dual health insurance, which if policed properly can result in substantial savings to the District, in light of the compensation awarded by the majority, I believe the increases in the EMT certification and dental insurance, although modest, should not have been awarded.

Moreover, given what I consider to be relatively generous increases under the circumstances, more of the District's other proposals related to excessive fringe benefits could have been addressed more favorably.

CONCLUSION

I believe the analysis provided by the Chairman in his opinion is excellent. While I disagree with the conclusion, I feel comfortable that it was not reached because of a lack of understanding of the issues or a lack of a vigorous effort on the part of the District to secure its position.

State of New York:

County of N.Y.

On the 4th day of March 2000, before me came Robert T. Simmelkjaer, to me known to be the person who executed the foregoing Arbitration Award and he duly affirmed to me that he executed the same.

I concur with/dissent from the above award.



Prof. Robert T. Simmelkjaer, Esq.
Public Panel Member and Chairman



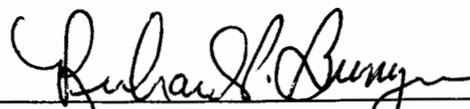
Notary Public
MOHINDER S. GULATI
NOTARY PUBLIC, State of New York
No. 31-4659357
Qualified in New York County
Commission Expires Nov. 30, 2000

State of New York:

County of ROCKLAND

On the 3rd day of March 2000, before me came Richard P. Bunyan, to me known to be the person who executed the foregoing Arbitration Award and he duly affirmed to me that he executed the same.

I concur with ~~disson~~ from the above award.



Richard P. Bunyan, Esq.
Employee Panel Member



Notary Public

LORRAINE VARA
Notary Public, State of New York
No. 01VA6022689
Qualified in Rockland County
Commission Expires April 5, 2021

State of New York:

County of NASSAU

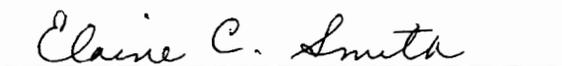
On the 31 day of MARCH 2000, before me came Terence M. O'Neil, to me known to be the person who executed the foregoing Arbitration Award and he duly affirmed to me that he executed the same.

I concur with ~~dissent from~~ the above award.

but dissent on SALARIES, EMT DIFFERENTIAL, DENTAL



Terence M. O'Neil, Esq.
Employer Panel Member



Notary Public

ELAINE C. SMITH
Notary Public, State of New York
No. 01SM5040188
Qualified in Nassau County
Commission Expires March 6, 2001