

BACKGROUND

The District of Lake Mohegan and the Lake Mohegan Firefighters were parties to a collective bargaining agreement which expired on December 31, 1997, after which the parties were without a contract. Efforts at settlement resulted in the appointment of a Mediator by the Public Employment Relations Board, whose efforts were unsuccessful. The Association then filed a Petition for Compulsory Interest Arbitration dated April 20, 1998 to which the Lake Mohegan Fire District filed a response on May 5, 1998. The Association submitted non-mandatory subjects of bargaining to interest arbitration which resulted in an improper practice charge filed by the Lake Mohegan Fire District. There followed a letter dated June 01, 1998 from the Director of Conciliation, Public Employment Relations Board, designating the members of the Public Interest Arbitration Panel "for the purpose of making a just and reasonable determination of this dispute." (Designation of Public Interest Arbitration Panel, June 01, 1998)

Hearings were held on the following dates: September 11, 1998, January 7, 1999 and January 13, 1999. The Panel of Arbitrators held hearings on the above dates to receive

The Firefighters Association is hereinafter referred to as the "Association" or the "Union." The District of Lake Mohegan is hereinafter referred to as the "Association" or the "Employer."

testimony, exhibits and the arguments of the parties. Following the date of the last hearing, briefs were submitted by counsel for the District and the Association, after which members of the arbitration panel met in executive session to express their views on the issues in dispute.

The Civil Service Law 209.4 mandates that the panel consider the following criteria in making the "just and reasonable determination of the matters in dispute." These criteria are:

- a. comparison of the wages, hours and condition of employment of the employee 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.

Prior to a consideration of the four open issues agreed upon by the parties as unresolved, the matter of comparability (not an issue) was raised by the Association.

The Association takes the position that over the years, there have been major changes which make the District's preference for a sole comparison between Lake Mohegan and Peekskill impractical and unrealistic. Instead, the Association presses for comparative review of benefits and salaries of the Lake Mohegan Fire Department with the other Westchester County combination fire departments, but not including Mt. Vernon, New Rochelle, White Plains and Yonkers. The Association does not ignore the consideration of Peekskill in this broader group, but wishes to expand the base by including the additional fire departments.

The Association believes that a comparison with Peekskill alone, would not have the same meaning as it had in 1989, when an Arbitrator showed that there was reasonable rationale to use Peekskill as the sole source for comparison. At that time, the Arbitrator found that "although in many respects the entire county is relevant for evaluation, there are sufficient differences among fire districts in size and financing that they are less useful for comparative purposes." Peekskill is the most comparable municipality for those purposes, not only because of size but also proximity to the Lake Mohegan Fire District, plus the fact that both the District and the Association have used Peekskill

for comparison in past negotiations and, indeed, in present negotiations prior to invoking interest arbitration." (Peter A. Prosper Arbitration Award, Lake Mohegan Fire District, 1989, District Exhibit re. comparability, #1) In this award, the Arbitrator used size, proximity and past comparison in support of his position.

The second arbitration award cited as justification for a comparison of Peekskill with Lake Mohegan was written in the year 1991, when arbitrator Robert Simmelkjaer referenced prior interest arbitration awards to support his position. In that dispute, a Peekskill Firefighters case, the Arbitrator relied on prior interest arbitration cases to support his conclusion while referring to Arbitrator Prosper's position that other non-Westchester cities within commuting distances should be considered, such as Newburgh, Kingston, Poughkeepsie and Beacon.

The Association distinguishes the differences between Lake Mohegan and Peekskill, and acknowledges that although the number of paid firefighters -- Lake Mohegan has 25, while Peekskill has 23 -- is almost identical, the Peekskill firefighters are responsible for 4.5 square miles, while the Lake Mohegan firefighters are responsible for 40 square miles. Peekskill has a population of less than 20,000, while Lake Mohegan has a population of 40,000 inhabitants. As a consequence, the

Association maintains that the above information, which appears in its exhibit #17, generates more calls for service, and experiences increased hazards.

It would be natural to expect to see that, with the disparity in population between the Peekskill and the Lake Mohegan Fire District, that the number of calls would have risen in Lake Mohegan. In 1997, Lake Mohegan firefighters responded to some 30% more calls than did Peekskill firefighters. However, Lake Mohegan responded to some 2300 calls in 1997, and was the busiest fire department in the Westchester County comparables. (Union Exhibit #18). In the same year, Peekskill is shown to have responded to 1240 fewer fires.

The Association places considerable emphasis on the increased number of fires to which Lake Mohegan has responded, among other factors, as a strong reason to favor comparability with Westchester County communities with combination fire departments. The Association would include Peekskill, but would not include Mt. Vernon, New Rochelle, White Plains and Yonkers. The Association maintains that, in light of the greater number of calls for service on the part of the Lake Mohegan firefighters, it is no longer viable for Lake Mohegan to compare itself with Peekskill, alone, because Lake Mohegan has "outgrown" Peekskill and is on a par with the other combination fire departments in Westchester County.

The Association relied heavily on the findings of Mr. Kevin Decker, Economist, who researched, charted, and presented for the arbitration, exhibits and commentary pertaining to household incomes (Peekskill is almost one-half that of Lake Mohegan); to full property wealth (Lake Mohegan's per firefighter full property wealth is more than double that of Peekskill; (\$72.26 million vs \$32.82 million); to a comparison of the duties and responsibilities of the Lake Mohegan firefighters as against those of the professional firefighters in the Westchester Combination fire departments. Since Chief Brown testified that they all "drive apparatus to the fire scene, operate equipment, lay fire hose, make search and rescues, extinguish the fires and more," the Association concludes that "comparability should properly extend beyond Peekskill, to Westchester County combination fire departments."

The Lake Mohegan Fire District takes issue with the arguments set forth by the Association as to its position. The District maintains that "there is not one fire department or district in the County that even the Association's exhibits demonstrate to be most comparable to Lake Mohegan." The District cites, as example, Union Exhibit 23A which purports to demonstrate that all 14 County combination departments should be viewed as comparable to Lake Mohegan. However, those departments do not have a similar governing or taxing structure, and even more critical, consist of fire districts, towns, villages, coterminus villages and cities.

The Lake Mohegan Fire Department Chief Barry Brown confirmed the similarity which exists between his department, and that of Peekskill. He testified that both departments: "(1) are overwhelmingly staffed by volunteers rather than paid personnel (U. Ex 24); (2) are-headed by a volunteer; (3) exclusively utilize paid personnel as motor pump operators; (4) utilize volunteer rather than paid personnel to fight interior fires unless the paid personnel are the first to arrive at the scene; and (5) have experienced an increase in firematic responses over the past five years." (Lake Mohegan brief, page 8)

It would appear that where the Lake Mohegan District Compares itself closely with another district with respect to a benefit or a practice, that comparison ceases when reviewing another benefit or practice with Lake Mohegan and the same firefighters district. And so, a comparison of the Median Household Income for Lake Mohegan compares closely with that of Eastchester (Association Exhibit 23C), but when these two Fire Districts are studied as to their approximate population, (Associate Exhibit #23A), there is a difference of a population of over 8,000. Such a comparison, therefore, becomes unrealistic. More important, the historical pattern of comparability between Lake Mohegan and Peekskill regarding salary (District Exhibit #32); vacations (District Exhibit #36); holidays, sick leave and personal leave (District Exhibit #37) and other contractual items remain comparable and unchanged over the years.

The neutral Arbitrator believes that a consideration of other fire districts could be vital for a number of reasons, one of which is the competitive aspect. The hearing considered the importance of retaining the well trained, experienced firefighters at Lake Mohegan, and that District's experience at having lost a firefighter to another District due to a better benefit or a higher salary. For this reason, it is important to compare the terms of comparable facilities elsewhere, to be sensitive to what changes may be taking place in the "trade." It cannot be disputed that each locale differs in population, in income, in types of business and residences, in the service it provides (EMT or not), in size, in location, in calls, and in a myriad of other factors which distinguish one from another. However, there are common denominators in all firefighters jobs, whether in Pelham, Peekskill or Lake Mohegan. Some may be more demanding, more hazardous and more stressful than others, but they all have a community of interests, and for that reason alone, a consideration of other districts is warranted.

The Issues

This Interest Arbitration concerns four demands for the contractual period from January 1, 1998 to December 31, 1999. Apart from salary, the Association has stated that it has deliberately reduced the number of open issues to a minimum so that each demand may be given the attention the Association considers

to be essential. Both the Association and the District agree to keep the number of open issues to four, and agree, as well, as to the specific four issues. They are:

1. Salary
2. Longevity
3. EMT Certification
4. Jury Duty

1. SALARY

The Lake Mohegan Fire District is comprised of professional firefighters, supplemented by volunteer firefighters. There are twenty-eight professional firefighters, a Captain and two Lieutenants, but the bargaining unit represents twenty-five full time firefighters. Following are some of the functions they perform: firefighting, emergency medical service, and dispatching; in addition, they do regular maintenance of equipment, housekeeping and training associated with the performance of these services. (Association Brief, page 3)

The Association demands for a salary increase is a 7% increase for January 1, 1998 to December 31, 1998, and a 7% salary increase for the second year, January 1, 1999 to December 31, 1999. The Association justifies the demand of 7% for each of two years, in that it takes the position that the Lake Mohegan top grade firefighters' salary is 8.04% behind the average of top grade salaries of the comparable firefighters groups by the end of 1997; by December 31, 1999, Lake Mohegan will fall behind another 7.77%. Thus, the demand for a 7% increase for 1998 and

again a 7% increase in 1999 is justified. Furthermore, the Association takes the position that the District has the ability to pay the increase for the two years.

The Association believes that the increase in the workload since the 1995 contract was negotiated is one of the valid justifications for the asked increase. It claims that Lake Mohegan responds to over twice as many calls for service as the Peekskill Firefighters, with approximately the same number of firefighters. In 1995, Lake Mohegan responded to 1750 calls; by 1997, it responded to 2300 calls, and through October, 1998, it had responded to 1974 calls, before the year was over. (District Exhibit #55)

Since there has been an increase in the number of requests for firefighters who could handle medical emergencies, those without medical certification "must carry out the rest of the workload, and structural fire calls have increased. The Lake Mohegan has become a much busier fire department in the last several years." (Testimony of Fire Chief Barry Brown) In view of the fact that the Association takes the position that a comparison between Lake Mohegan firefighters and Peekskill firefighters is not in order, any conclusion based on a comparison between the two districts is, similarly, not in order. The Association, therefore, makes the point that the more appropriate comparison is between Lake Mohegan Fire Department and the Westchester County combination fire departments, including

Peekskill, but excluding Mt. Vernon, New Rochelle, White Plains and Yonkers.

Having established that there are fourteen communities in Westchester County which are comparable, in Mr. Decker's opinion, he then examined the median household income and property wealth of the comparable communities. Based on Union Exhibit 23(C), the Association and Mr. Decker concluded that Lake Mohegan is roughly in the middle of the comparable communities as far as median household income is concerned.

Mr. Decker believes that the financial condition of the Mohegan District is healthy and would have no difficulty in paying the increase demand of the Association. He concluded, in Union Exhibit #23K, that "the District consistently ran general operating surpluses in five out of the last six years; at the conclusion of 1997 fiscal year, the District had an equity fund balance of about 600,000; and most likely the District will have, for 1998 and 1999, surpluses in the general fund budgets."

Mr. Decker, through his Union Exhibit #23M, wished to show that the Mohegan District had a Cumulative Operating surplus from 1992-1997, with more funds taken in than expended; that capital expenditures are paid off out of operating revenues; that the financial picture of Mohegan District is so solvent that it has money left over at the end of the year and lowered property taxes in 1998, although they were raised in 1999. For the period of time this Interest Arbitration covers, 1998-1999,

the Association, through Mr. Decker, maintains that in the 1998 budget, retirement contributions, hospital, medical and dental appropriations were estimated at considerably higher than reality; and there is an amount of \$750,000 in the 1998 and 1999 budgets which had been transferred to a reserve fund. Not having sufficient facts to form a judgment, the Neutral Arbitrator will not comment on the introduction of salary increases granted by the District to the Treasurer, Secretary, and Counsel. Not made available by the Association was the prior salaries of these people, the year of the former increase, or any comparative data.

The Mohegan District asserts that the Association's base salary demands are excessive. The increases in their wages outstripped increases in the consumer price index. The District offers, in its Exhibit #28, that between 1976 and 1997, fire-fighter salaries increased by 480%, as against the rise in the cost of living for the same period of 172%.

The Mohegan District recommended, in its brief, an increase of 2% in each six month period, which, it claims, is in excess of the Consumer Price Index. When this pattern of increases is granted, in addition to longevity payments, holiday pay, overtime, and EMT stipends, the calculated dollar amount is forbidding. When the raises granted to Peekskill, Pelham and Port Chester, and excluding the four municipalities (Mount Vernon, New Rochelle, White Plains and Yonkers) the average 1998 raise

granted to the County's remaining firefighters was 3.64%. (Union Exhibit #23H) When White Plains (2% on July 1, 1998, 2% on January 1, 1999, 3% on July 1, 1999) and Mount Vernon (3% on July 1, 1998, 3% on April 1, 1999) are taken into account, the rate of 3.64% becomes lower. (District Exhibit #26, 27)

The District reminds us that a firefighter may submit a resignation for what may appear to offer higher wages and better benefits at another fire district, there may be many other reasons for a firefighter to resign for another position elsewhere. The neutral Arbitrator has cited the example of firefighters resignations, not as a justification for instituting a higher increase than she thinks warranted, but as a reason for looking at Lake Mohegan with other than the Peekskill District to achieve a broad knowledge of trends.

The base salaries for unit members shall be as per Appendix "A" which reflects wage increases of 2% on each step effective January 1, 1998, 2% on each step effective July 1, 1998, and 4% on each step effective January 1, 1999.

II LONGEVITY

The longevity clause in the collective bargaining agreement calls for each firefighter to receive \$200 for each five years of service. Thus, a firefighter with ten years of service would receive an annual payment of \$400 in longevity. The Association proposes to increase the \$200 payment to \$300 after each five years of service, so as to enable a firefighter with ten years of service to receive \$600 annually.

Longevity is viewed as a reward to those firefighters who are very important in that they have been on the job for many years, are very proficient as firefighters, and are dedicated to the Lake Mohegan Fire District. Since the amount of the reward is compensation for years of service, longevity pay increases as the years of service at the District increase.

The benefit of this clause, of course, is to provide an incentive to the more experienced and knowledgeable firefighters to stay. This becomes more important when many of the firefighters are young, as in the case in Lake Mohegan. According to the Mohegan District Exhibit #30, more than one-half the number of the Lake Mohegan professional firefighters have worked there under nine years.

Apart for the monetary demand made by the Professional Firefighters Association, it also demands that the method of payment be converted to a one time annual lump sum payment payable "immediately following the anniversary of the firefighter's appointment with the District."

The District rejects the monetary demand. It states in its brief that even if one were to review the Association's comparables, no other department provides a longevity payment earlier in its member's tenure. (Union Exhibit #231) Only one district, Harrison, offers a more generous initial incentive. By the end of the firefighter's 14th year at Lake Mohegan, its benefit is as generous as is provided in one-half of those comparables. If the Association's longevity demand were to be accepted by the panel, the District's relative annual ranking would rise after 20 years past Peekskill and all other Association comparables, but for two.

The District and the Association appear to support the concept of one time annual payments. The District does not support paying the longevity benefit "up front," which would grant the employee his longevity benefit one year earlier than the collective bargaining agreement requires. The District Exhibit #40 claims that seven of the 18 Westchester County fire departments have a lump sum provision at one time of the year such as April, or December, to make the administration of the plan simple to implement. (District Exhibit #40)

There shall be no change in the longevity payment.

An increased "up front" amount of payment for longevity is denied, but the request for one time annual payment in December, prorated, is approved, after such time has been earned.

III EMT CERTIFICATION PAY

The Collective Bargaining Agreement, Article VII, provides for EMT's to receive a stipend of \$1,000 per year. (Joint Exhibit #9) The stipend is paid to the professional firefighters who are Certified Emergency Medical Technicians. The Association asks that for the second year of the new contract (1999) the stipend be raised to \$1,500.

The Association has submitted into evidence a comparison of the amounts paid to firefighters elsewhere who are EMT Certified and who provide emergency medical service in the locations below (Association Exhibit J). Although the Association's survey shows the 1997 as well as the 1998 stipend, for this purpose, only the 1998 will be reported. Of the five fire departments in Westchester, Eastchester demanded \$1,500 and/or \$1,750, Fairview paid \$1,546, Greenville paid \$1,546, Peekskill paid \$1,000/600 and Pelham paid \$1,555.

Witnesses for the Association testified that in 1997, Lake Mohegan responded to more calls than any other studied fire department, and that the majority of the calls were for emergency medical service. Peekskill, in that year, ceased its EMT service.

The Lake Mohegan District, in its brief, reports that the Association seeks an increase to \$1,500 retroactive to January 1, 1998, and to \$2,000 retroactive to January 1, 1999. (Joint Exhibit #1, Ex. 2, p.1) There was no reference made by

the Association that it seeks an increase in January, 1999 to \$2,000 from \$1,500 in January, 1998. Both the District and the Association agree that the firefighters who are EMT Certified provide a "superb and valuable service to District residents. As a consequence, the District proposes that the stipend be retroactively increased to \$1,200 per year. (Joint Exhibit #1, Ex. 3, p.2)

The District, in proposing an increase to \$1,200, claims that this is a reasonable increase, which would raise the stipend by 20%. This new rate would be more reasonable than three of the comparable locations studied.

The neutral Arbitrator Awards an increase to \$1,500 retroactive to January 1, 1999. In order to qualify for the stipend, the firefighters must work at least one-half of their regularly scheduled days/nights in the month.

The stipend to EMT qualified firefighters shall be increased to \$1,500, retroactive to January 1, 1999.

IV Jury Duty

The expired Collective Bargaining Agreement is silent as to coverage for jury duty. That being the case, the Association fears that the District could discipline a firefighter by deducting from his salary and benefits or accrued leave time if a firefighter is called on to serve. In an effort

for a firefighter to avoid being penalized, the Association recommends the following clause:

Jury Duty:

A firefighter who is called to jury duty shall be required to notify the captain or his designee within forty eight (48) hours from receiving a notice for jury duty by providing a copy of such notice to the captain or his designee. Jury duty shall include either Grand Jury or Petit Jury both in Federal or State court. In the event the firefighter is placed on a jury standby schedule and not required to be present in court, the firefighter shall report to work as scheduled and if notified to report to court shall immediately notify the captain or his designee.

In the event a firefighter is required to be present in court pursuant to the jury duty notice while he/she is scheduled to work, such firefighter shall be excused from work with no loss of pay or benefits. The excused from work shall include tours for which he/she is scheduled to work any part of the calendar day/night that he/she is required to attend court.

The firefighter shall reimburse the District any payment received from the court system for jury service for each day that they are excused from duty and paid by the District.

In the event the District schedules a replacement for a firefighter excused for jury duty and attendance for jury duty for such day/night, is cancelled, the District shall have the right to cancel the overtime tour prior to the replacement firefighter commencing work at the scheduled start of the overtime tour.

The Association introduced, through testimony, that six firefighter groups with which the Professional Firefighters Association compared itself have jury duty clauses in their contracts.

The Mohegan District has not divulged its practice which may be the same as the Association's proposal. Nothing has been said as to the manner in which jury duty has been treated in the past. Perhaps the firefighters at Lake Mohegan have not been called, or perhaps firefighters have been called and treated to their satisfaction. Whatever the reason, the neutral Arbitrator has not been shown that there is a need for such a clause as shown above. The fact that a jury duty clause is absent from the contract does not justify including it in the contract.

The demand is denied.

Conclusion

This Award is the result of a study by the Chairperson of this Panel, based upon all the testimony, extensive exhibits, the Economist's research and conclusions, and the briefs of the parties.

All terms in the Collective Bargaining Agreement remain unchanged, except for those which have been modified by this Award.

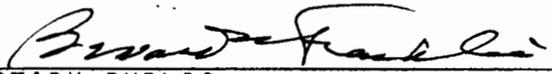

Linda Robins Franklin
Panel Chairperson

NEW YORK, NEW YORK

January 30, 2000

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) SS:

On this thirtieth day of January, 2000, before me personally came and appeared LINDA ROBINS FRANKLIN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and she acknowledged to me that she executed the same.



NOTARY PUBLIC

BERNARD M. FRANKLIN
Notary Public, State of New York
No. 31-4808834
Qualified in New York County
Commission Expires 6/30/2000

Concurring/Dissenting

Concurring as to Issues Nos. 1-2-3-4
Dissenting as to Issues Nos. _____



Edward J. Fennell
Employee Panel Member

Concurring/Dissenting

Concurring as to Issues Nos. 1-2-3-4
Dissenting as to Issues Nos. _____



Richard K. Zuckerman, Esquire
Employer Panel Member

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF
IAFF 2956, LAKE MOHEGAN PROFESSIONAL
FIREFIGHTERS**

PETITIONER,

-AND-

THE LAKE MOHEGAN FIRE DISTRICT

RESPONDENT.

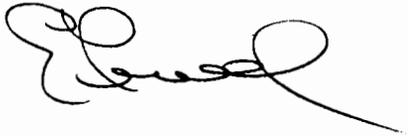
PERB# M97-349

**Concurring Opinion
Of Employee Member
Edward J. Fennell**

It is extremely important to emphasize that the panel chair took note of Westchester County fire service units other than the City of Peekskill.

In considering the issue of EMT pay the chair took specific note of Eastchester, Fairview and Greenville units, taking note that Peekskill did not qualify as a comparable as they had discontinued that EMT service.

Local 2956 does not believe this award provides the pay equity with other county departments, but it does acknowledge that establishing comparability with these units is an important step to this goal.



**Edward J. Fennell
Employee Panel Member
February 10, 2000**

CONCURRING OPINION OF EMPLOYER PANEL MEMBER

I concur completely with Public Panel Member Franklin's award on the four items submitted to us for consideration.

I write separately only to emphasize Ms. Franklin's reaffirmation of prior precedent regarding the issue of comparability. As Ms. Franklin notes in her Opinion, neither the District's desire for comparability solely with Peekskill, nor the Association's desire for complete comparability with the rest of the County (other than the four southern tier cities) is consistent with the precedent set by Arbitrators Prosper and Simmelkjaer. Instead, as all three Arbitrators have now held, it is appropriate for a Lake Mohegan panel to consider evidence about the terms and conditions of employment enjoyed by paid fire fighters other than those employed by Lake Mohegan and Peekskill. As all three have now also held, though, the most comparable municipality for these purposes remains Peekskill, due to, among other things, their continued geographic contiguity, the nearly identical sizes of their paid forces, the highly similar nature of the services the paid members provide, the existence in both municipalities of large, active volunteer fire fighting forces, and the parties' own bargaining history. Consistent with this, I note that Ms. Franklin's award regarding salary for 1998 is identical to that negotiated in Peekskill, and that there was no evidence before the Panel about Peekskill's 1999 contract.



Richard K. Zuckerman
Employer Panel Member