

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of Compulsory Interest Arbitration

between
GREENBURGH UNIFORMED FIREFIGHTERS
ASSOCIATION (GREENVILLE UNIT)
LOCAL 2586, IAFF, AFL-CIO,CLC
Petitioner,

Case No. IA99-010;
M98-392

and

Chairperson's Opinion
and Award

GREENVILLE FIRE DISTRICT,
Respondent.

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Appearances:

For the Firefighters:
Greenburgh Uniformed Firefighters Association
Duncan MacRae, Representative for the Association

NY'S PUBLIC EMPLOYMENT RELATIONS BOARD
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For the Fire District:
Rains & Pogrebin, P.C.
Craig L. Olivo, Esq.

CONCILIATION

Public Arbitration Panel:
Donald P. Henry, Esq., Public Employee Organization Panel Member
Terence M. O'Neil, Esq., Public Employer Panel Member
Rosemary A. Townley, Esq., Panel Chairperson

BACKGROUND

The Greenville Fire District ("District" or "Fire District") and the Greenburgh Firefighters Association, Local 1586, IAFF, AFL-CIO, CLC ("Association") are signatories to a collective bargaining agreement that covered the period January 1, 1996 to December 31, 1998. (Association Exh. 10), Some time prior to the expiration of the

contract, the parties entered into negotiations for a successor agreement, but were unable to achieve one.

The Association filed a petition for compulsory arbitration dated August 14, 1999 with the State of New York Public Employment Relations Board ("PERB") pursuant to Section 209.4 of the Public Employees Fair Employment Act ("Act")("Taylor Law). The District filed with PERB its response and accompanying demands dated September 13, 1999.

Pursuant to the rules and regulations of the PERB, Rosemary A. Townley, Esq. was designated by the Director of Conciliation, Richard A. Curreri, on October 12, 1999, as the Public Member and Chairperson of the Panel appointed to hear and adjudicate the dispute. Mr. Curreri also confirmed the appointments of Donald P. Henry, Esq., as the Public Employee Organization Panel Member and Terence M. O'Neil, Esq., as the Public Employer Panel Member.

Hearings were held on April 10, May 10, July 31, October 23 and November 16, 2000. At these hearings, the Association and the District presented to the Panel various exhibits consisting of financial and other comparative data, as well as testimony. The parties waived their statutory right to a transcript. Each party was afforded full opportunity to present evidence and argument in support of their position and did so. Extensive evidence was submitted by the parties concerning the relevant statutory criteria, including testimony of a financial expert, budgetary and financial information as well as charts, reports and other data dealing with the relevant statutory criteria.

The parties presented post-hearing briefs which were received by April 10, 2001. Upon the Panel's receipt of the briefs, the Chairperson declared the record closed. The Panel met in Executive Session on May 2, 2001, June 6, 2001 and on July 30, 2001.

As a threshold matter, certain introductory comments are appropriate. The Panel is prohibited by statute and case law from issuing findings based on evidence adduced outside the hearing process. Therefore, the Panel's determination below is based solely on the evidence in the record.

The Panel was also mindful when making its determination of the criteria set forth in Section 209.4(c)(v) of the Taylor Law which are as follows:

- A. 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) Environmental 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, provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel was also aware that under the Taylor Law, it may consider "any other relevant factors." CSL Section 209.4(c)(v). The weight to be assigned each of these criteria is a determination for the Panel to make.

Pursuant to Section 209.4(c)(vi) of the Act, the maximum period of coverage for an Award by the Panel is two years commencing January 1, 1999 to December 31, 2000.

While the foregoing decision represents the Award of the Panel, the language selected in the Opinion is the responsibility solely of the Chairperson.

POSITIONS OF THE PARTIES/FINDINGS

1. Salaries and Longevity

The Association is seeking salary increases of 6.5% per year in each of the two years of the Award and additional advances in longevity, differentials, and overtime pay.

The District proposes salary increases of 3% per year in each of the two years of the Award.

Association Position

The Association maintains that the District has the ability to pay the requested increases, according to the report dated April 5, 2000, prepared by the Association's expert witness in municipal finance, Edward J. Fennell. (Association Exh. 1). In this report, Fennell reviewed the 1993, 1994, 1995, 1996, 1997 and 1998 Adjusted Annual Update Documents, the adopted District budgets of 1998, 1999 and 2000, the Comptroller's Municipal Report to the State Legislature for 1997, and the Annual Finance Report of fiscal year 1999. (Association Exh. 1, p. 3) These documents, according to Mr. Fennell, indicate that the District has a combined fund balance of approximately 30.3% to expenses. Mr. Fennell's report also points out that the District

has budgeted an increase in appropriations for personnel services for 2001 of 4% over the amounts spent in 2000, according to the District's Budget Report.

It also points to the testimony of the District's Treasurer/Secretary Lisa Geoghegan that the surpluses would continue into 2001 and that the District is not subject to the 2% tax limitation that is placed on municipalities. Her testimony indicates that while capital expense funds had been budgeted for the purchase of a fire apparatus with additional annual contributions from the general fund, no bids have as yet been accepted. In addition, the Association maintains that while funds had been appropriated, the expenditure had not been obligated. Thus, the Association concludes, any expenditure relative to an anticipated purchase would likely fall outside the statutory two year time frame of the Arbitration and should not be afforded any weight.

Moreover, the Association further refers to the testimony of Ms. Geoghegan concerning anticipated expenditures through the end of December 31, 2000, for its claim that there is an understatement of the actual balance rolling into the 2000 budget from the 1999 surplus of \$730,000, rather than the reported amount of \$350,000.

The Association further maintains that the District's obligation to the New York State Police and Fire Pension System was reduced by \$85,000 in 2001 from the 2000 assessed amount.

The Association also points to the 2001 tax rate of \$59.23 per \$1000 and the increase in the assessed valuation from 2000 to 2001, which resulted in a zero tax rate increase, yet the overall revenues increased \$42,598 from 2000 to 2001. Therefore, the 2001 tax rate will remain the same as it was in 2000. It also notes that anticipated expenses for tax refunds and certiorari claims were \$ 75,000 in 2000 and \$40,000 in

2001. (Association Exh. 5AA). Nor is there any evidence of record that the District has suffered a reduced bond rating, or has any debt problems that might be referenced by the New York State Department of Audit and Control.

While the District has the lowest tax rate of the three paid fire districts in the Town of Greenburgh, the average household income for residents of the District was \$101,901, which was the 7th wealthiest of 41 school districts reporting, according to an income survey including the Edgemont School District which has the same geographic boundaries as the District. (Association Exh. 63).

The Association also argues that the relevant basis for comparison, pursuant to the comparability language of the Taylor Law, is primarily that of the Fire Districts of Fairview and Hartsdale, with a look at other Westchester collective bargaining agreements for emerging trends. It points to the October 1983 Interest Arbitration Award of Arbitrator Martin F. Scheinman concerning the District and the Association which regarded Fairview and Hartsdale to be the most relevant comparables to the District based upon geographic size, population served, history and geographic proximity. (Association Exh. 5A) In addition, the evidence of record shows a longstanding tandem relationship among the three districts in areas such as:

- standardized mandatory breathing apparatus
- standard operating procedures for firefighters missing in a fire or other incident including a “Firefighter Assistant Search Team” (“FAST”) whereby all three districts are equally responsible for a missing firefighter
- combined responses by Greenville and Hartsdale under certain conditions
(Association Exhs. 35-42)

These three districts have also had a close relationship in terms of relative salary. Fairview had the highest salaries among the three districts from 1990-96 and again in 2000. Hartsdale met the Fairview levels in 1997 and exceeded them in 1998 and 1999. The Association points out that the salaries of the District were virtually even with Fairview in 1998.

The Association maintains that this historic relationship among the three districts provides support for its proposal that the Greenville top salary be raised to that of Fairview's, or at least between the Fairview and Hartsdale salaries.

Fairview firefighters received a 5% wage increase in both 1999 and 2000 under their collective bargaining agreement. Hartsdale firefighters received 4% and 3.9% respectively during the same two year period, during which time they received the 1/60th provision of Section 384-e of the New York State Policeman's and Fireman's Retirement Law. (Association Exh. 31).

The Association also points out that the District's assistant fire chief received a 21.75% total increase for the three year period beginning January 1, 1998 which should be considered by the Panel in making its determination. In addition, it points to the top base salary of \$65,019 and \$1500 longevity payment effective January 1, 2000 paid to an officer of the Greenburgh Police Department, which engages in joint responses to emergency medical incidents with the District. (Association 33-34)

The Association also argues that the hazards of the work of a firefighter are supported by a series of newspaper articles which highlight some of the dangerous elements of the position, as well as underscores the joint response among the three departments. (Association Exh. 42)

With respect to longevity, the Association argues that, excepting three districts or departments, all firefighters, including Fairview and Hartsdale, receive this payment in addition to their salaries. (Association Exh. 62). They also argue that holiday compensation fares poorly when compared to Fairview. Firefighters in Fairview receive 12 hours of holiday pay. (Association. Exh. 16). Fairview firefighters receive 14 paid holidays each year at 12 hours per holiday. The Association argues that its members should be paid for 13 holidays per year at 12 hours per holiday, which would put them on par with Hartsdale and one holiday behind Fairview.

Therefore, according to the Association, the District has the ability to pay a just and reasonable award.

The District's Position

The District argues that while it does not totally disagree that the Fairview and Hartsdale departments provide the most appropriate basis for comparison given their geographic proximity, close working relationship, and standardized procedures, it argues that the remaining departments in Westchester County must also be considered. To rely on only two other departments as a base of comparison would generate statistically insignificant results, given that the departments do not exist in a vacuum from the rest of the county. It urges that other departments which are close in geographic proximity, size, wealth and population, among other features, which are governed by the same economic trends and situations must also be considered, such as Eastchester, Harrison, Lake Mohegan, Larchmont, Mamaroneck, Mount Vernon, New Rochelle, Peekskill, Pelham,

Pelham Manor, Port Chester, Rye, Scarsdale, White Plains and Yonkers. (Association Exhs. 2; 64).

A comparison of the top grade wages during the 1997-2000 period, according to available data, demonstrates that the District's salaries ranked 7th out of 17 departments. If the Panel were to award the proposed 3% increase to base salaries for 1999-2000, the District would rank 4th and 3rd respectively in all of Westchester County. This would more than adequately maintain the historic ranking of the District, especially when compared to other departments that are responsible for greater land areas and populations.

A comparison of the District's salaries to Hartsdale and Fairview demonstrated that the wages and benefit levels in the District have been more aligned with those of Hartsdale, and have almost always been lower than Fairview. The District has maintained the lowest top grade salary among the three departments since 1990 in every year excepting 1998 when it was \$26 more than Fairview. The District points out that at least two other departments in Westchester County do not provide longevity, namely Eastchester and Harrison, and that there is no compelling reason why the Panel should grant this additional benefit, given the high ranking of the salaries under a 3% increase. Furthermore, such an increase would disturb the historic relationship among the three departments.

The District maintains that it has always ranked last among the three districts in terms of paid holidays. Nor has it been shown that the number of paid holidays are insufficient when compared to other departments.

The District also argues that any Association demands for longevity and holidays should not be granted based on this historic data.

The District also reminded the Panel that it has provided the Section 384-e enhanced pension option since 1995, at a cost of an additional \$441,000, when few other departments did so, and that only six departments reporting data offer it at this time. (District Exhs. 13-14).

Moreover, the District argues that the salary of the Assistant Chief should not be considered by the Panel as comparable. The District points out that the raises granted to him were based on merit, that he must negotiate his own contract without any interest arbitration option, and does not have the types of protections offered by the collective bargaining Agreement.

Nor should the Panel give any consideration to the Greenburgh Police Department salaries, as there is no evidence that the latter department is comparable under the applicable statutory criteria.

Despite the claim of the Association that the job is a hazardous one, the District points out that in 1998, nine of the 20 firefighters spent less than one hour at a structure fire, and that 8 of the 9 spent less than one-half hour. (District Exh. 42). It also points to the testimony of the Assistant Chief that this data is representative of other years as well.

With respect to the Association's ability to pay arguments, the District argues that the statute does not require that it put its financial future at risk, overextend its budget, or engage in fiscally irresponsible expenditures. The Panel must consider the current economic realities and the fact that if the District finds itself unable to meet its financial obligations, it would be forced to reduce services to the public. The ripple effect of such

an action on the area must also be considered, such as the discouragement of commercial enterprise and resultant increases in taxes, among others.

The District maintains that the Association's claim of a budget surplus of approximately \$730,000 for 2000 is a misunderstanding of Ms. Geoghegan's testimony. The actual budget surplus is approximately \$350,000, as would be the case in 2001, because this amount, which was placed in an unappropriated reserve fund for emergencies, was allocated by the District from 1999 moneys in order to offset any tax increase for the year 2000.

The assessed valuation of the District, which has fluctuated over the years, has returned to a level not seen during the past three years. (District Exh. 7) Therefore, the recent increase in valuation cannot be considered a potentially reliable source of revenue for the District.

While the tax rate of the District is factually correct, the District notes that it also has the lowest total assessed valuation of real property among the three departments. (Association Exh. 74) It claims that it is not possible to compare the District's tax rate to other communities because of the impossibility of segregating the rate into categories, as the tax rate of towns, villages and cites includes more than fire protection.

The District also argues that the household income figures provided by the Association were taken from a newspaper article containing a chart which references the year 1995 and therefore should be considered as dated or stale by the Panel.

With respect to the purchase of new fire apparatus, the District points to the testimony of Ms. Geoghegan who stated that two bids have come in, one at \$611,000 and the other at \$680,000. While the District has not as yet accepted a bid, it should be

obvious that either bid will eliminate money held in the Apparatus Fund. Therefore, this fund should not be considered as a source of revenue.

The District also argues that the Association failed to mention the recent \$50,000 increase in health insurance premiums experienced by the District (Association Exhibit 5AA), and the unrebutted testimony of Ms. Geoghegan that, based on information from the carrier, significant increases are expected in the future. (District Exh. 26). This information must be considered by the Panel in determining the District's ability to pay.

Moreover, the Panel must consider the CPI increases over the year, especially for the period 1995 to 2000, during which time the annual rise in the cost of living in the Metropolitan area never exceeded 3% and often was less than 2%. (District Exh. 4).

Findings

As noted above, the statutory criteria provide that the Panel evaluate both the financial ability of the public employer to pay, as well as a consideration of the interest and welfare of the public.

It should be obvious that any award which results in a salary increase which cannot be funded by the District and results in layoffs and/or reductions in services does not benefit the interest and welfare of the public. However, it should be equally obvious that the public interest and welfare is well-served by a stable, experienced firefighting force experiencing high morale. As a result, I am persuaded that any award which provides a compensation package which is a dramatic alteration from those offered to comparable firefighting departments or districts, logically cannot be in the best interest and welfare of the public.

Applying the statutory criteria to the evidence of record, as well as carefully reviewing the data concerning the financial status of the District, including both the budget analysis, as well as certain outstanding and potential liabilities, I conclude that the District appears to be in sound financial health and has the ability to pay a fair and reasonable award. While I recognize that the District's prudent financial management underlies its current circumstances, I do not believe that the Award is outside the confines of its ability to pay.

With respect to salary comparability, the Taylor Law requires that a "comparison (be made) of the wages, hours and conditions of employment" of the District's firefighters with that of "other employees performing similar services or requiring similar skills under similar working conditions...in comparable communities." It is common knowledge that one of the most contested areas in interest arbitration is the question of which jurisdictions are "comparable" for purposes of determining an award.

In the instant matter, weight must be given to the 1983 Interest Arbitration Award which found the districts of Fairview and Hartsdale to be the most relevant for comparability purposes. However, it must be stressed that consideration was given to data concerning other districts or departments in the County as well, given that the District, Fairview and Hartsdale do not exist in a vacuum with respect to collective bargaining trends and patterns. In addition, recognition must be given to the fact that these two other districts have historically provided a basis of comparability, as acknowledged by the parties, especially in terms of the top salary earned by firefighters in each of the districts. While these two other districts might not be statistically significant in the universe of all possible comparable districts, as argued by the District,

the historical evidence demonstrates that these two districts have provided a comparability basis, most importantly with respect to the top base salaries among the firefighters.

This is not surprising, in light of the reality that these districts are in close geographic proximity to each other, with Hartsdale at the northern border of Greenville, and Fairview on the northern border of Hartsdale. The salaries among these three districts have maintained a clear relationship over at least the past 10 years, most commonly with the Fairview district providing the highest top salary and Greenville the lowest. Moreover, the three departments engage in a number of shared activities, such as FAST and mutual responses to fires under certain conditions. Therefore, I conclude that these two districts provide the most relevant basis of comparison under the Taylor Law for purposes of comparability, at least in terms of top salaries paid to firefighters.

The Association has proposed that the top salary be raised to at least 6.5% on January 1, 1999 and January 1, 2000. The District has proposed a 3% increase during the same time period. I find both proposals to be unacceptable. While the financial health of the District is relatively sound at this point, there can be no justification under the Taylor Law criteria for a 6.5% increase. Such an Award could have a significant impact upon the District's ability to pay. Nor is the District's proposal justified under the relevant statutory criteria concerning comparability, as it would result in the District's firefighters falling significantly behind their traditional counterparts in Fairview and Hartsdale.

Rather, I am convinced that the appropriate base wage increase is that which would allow the District's firefighters to maintain their relative relationship among the three departments. The evidence does not support any compelling reason to deviate from

the parties' historic trend of maintaining relative salary parity among the three districts. Nor do I see any reason to change the District's salary ranking among the three districts, which historically has been below the other two districts, when arriving upon an appropriate increase.

In addition, I find that the position of a firefighter is one which is inherently dangerous, regardless of the locale or actual statistics concerning the outcome of the response, because the potential for serious injury or death is ever-present during the course of duty. Accordingly, the statutory criteria concerning the "comparison of the peculiarities of the trade or professions, including specifically, (1) Hazards of employment..." finds firefighting to be a particularly hazardous profession, which is a consideration when finding an appropriate compensation package.

I have analyzed the foregoing criteria pursuant to the Taylor Law and find the following base wage salary increases to be appropriate:

<u>1999</u>	4.0%
<u>2000</u>	4.0%

These figures take into account the historic relationship among the three districts. In all years, excepting one, when the percentage of salary increase was the same among the districts, Greenville's top salaries averaged approximately \$760 below that of Hartsdale, the next highest salary. (Association Exh. 43). For example, during 1990-92, the Hartsdale and Greenville top salaries were the same. Thereafter, the Greenville salaries were below that of Hartsdale, ranging from \$509 less in 1993 to \$939 less in

1996. In light of these statistics, the appropriate top salaries in Greenville should be as follows:

<u>1999</u>	\$58,494
<u>2000</u>	\$60,834

Moreover, with these increases, the firefighters in Greenville will surpass their counterparts in Fairview and Hartsdale in terms of total percentage of salary increase over a four year period. Greenville firefighters will enjoy a salary increase of 16.0% over this four year period, as opposed to salary increases of 15.0% in Fairview and 15.3% in Hartsdale. These top salaries would also maintain the historic relationship with Hartsdale and Fairview, as noted in the following chart:

	<u>1999</u>	<u>2000</u>
<u>Greenville</u>	\$58,494	\$60,834
<u>Hartsdale</u>	\$59,202	\$61,511
<u>Fairview</u>	\$59,062	\$62,015

I believe that these amounts meet the Taylor Law criteria concerning comparability, ability to pay, hazards of the profession, and other considerations.

With respect to the proposals concerning longevity, I find that this is a subject which is best left to the negotiation process and that it would not be appropriate to institute a contractual longevity provision for the first time through an interest arbitration award.

ADDITIONAL ASSOCIATION PROPOSALS

2. Work Shifts and the Use of Mutuals

There was a great deal of testimony and evidence presented to the Panel during the proceeding concerning the issue of the Association's proposal for a 24 hour work shift, as well as the use of exchanges of duty ("mutuals").

The Association argues that the parties agreed during the negotiations for the 1996-98 collective bargaining agreement that there would be an "experiment" with the use of mutuals in order to determine the efficacy of a 24 hour shift. It argues that the use of mutuals had been widespread since 1989; that captains were responsible for the approval of mutuals, pursuant to the "Book of Rules" for the District; and that firefighters widely used mutuals on an unlimited basis without denial from the captain since at least 1988. (Association Exhs. 76, 78-82). The Association also maintains that the occurrence of triple shifts ("triples") have also been widespread since 1989. It was also argued that the testimony of Captain Nugent was that all firefighters have met their training standards, did not demonstrate any fatigue or general performance problems while on a triple, that overtime slots often had to be filled by triples, and that the captains submitted reports for transmittal to the Board of Fire Commissioners ("Board" or "Commissioners"). Specifically, the Association points to as far back as 1989 and 1990 when individual Firefighters had more than 20 mutuals. (Association Exh. 80) It also argues that there was no distinction made between mutuals and triples.

The Association further contends that the testimony of Assistant Chief David Segnit shows the following: that mutual reports submitted on time were included in the materials sent to the Board prior to their meetings and that late reports from the captains

would not be included in the Board material; that from 1994 through May of 1999 mutual reports were submitted quarterly to the Chief and thereafter monthly mutual reports were required to be completed by the shift captains and submitted to the chief. (Association Exh. 76) It concludes that the Commissioners should have been aware of the use of mutuals prior to March of 1999.

Chief Raferty's restrictions on the use of mutuals on April 1, 1999 to the "status in effect prior to the 1996-98 contract" (Association Exh. 76), which was later clarified during the mediation process on June 25, 1999 to the 1994-96 mutual levels (District Exh. 38), was an attempt by the District to influence the outcome of potential negotiations, according to the Association.

It also contends that the testimony of the Commissioners that they did not agree to a one year experiment regarding the use of mutuals is contradicted by the testimony of Firefighter Gerald Quartuccio, who discussed the matter during negotiations with the Commissioners, as well as by the April 1 and June 25, 1999 memoranda issued by Chief Raferty which refers to the use of mutuals as an "experiment." (Association Exh. 76) The Association also contends that it would have been unlikely that a collective bargaining agreement could have been settled on all terms in November of 1995 and ratified in April 1996, without any meetings of the parties during the interim.

The Association argues that it was forced to appeal to PERB, restructure its priorities in arbitration and ultimately include it for consideration by the Panel, when the District limited the use of mutuals, pursuant to the Chief's 1999 memos.

The Association maintains that the Panel should award a return to the status quo ante whereby there would be a restoration of a firefighter's right to unlimited exchanges

of duty at the discretion of the captain as mandated by the Book of Rules. Or, in the alternative, it contends that a 24 hour shift be awarded to correct the injustices suffered by the firefighters by the curtailment of their mutual usage. It also argues that this issue should be regarded as an “ancillary area of adjudication” and not serve to subtract from the total Award.

On the other hand, the District argues that the testimony of Captain Nugent concerning this matter must be regarded as inherently biased in light of his membership in the Association. It points out that the Captain testified that the Chief could overrule any decision he made concerning the granting of mutuals and that quarterly reports were submitted by the Captains to the Chief. This submission shows that the Captain was monitoring the use of mutuals and that the practice was not that mutuals were subject only to the discretion of the captains. It also maintains, citing to certain decisions of PERB, that a proposal regarding the identification of which superior officer is to be charged with granting or disapproving mutuals would be a non-mandatory subject of bargaining because the assignment of such responsibilities is regarded to be a management prerogative.

The District further contends that the evidence does not support the Association’s argument that the District agreed to permit an increase in the use of mutuals during the 1996-98 time frame as an alternative to the Association’s proposal for a 24 hour shift. The Association’s primary witness concerning the background of the “experiment”, Firefighter Quartuccio, had a general recollection only of those discussions, did not have any notes from the bargaining sessions and could not recall who was present at key sessions or what was discussed.

Further, Commissioners Stuart Vogel and former Commissioner Stanley Penkin both testified that they never agreed to any experiment to accomplish 24 hour shifts, or that they discussed the use of triples. Mr. Penkin also presented written notes concerning the negotiations and resultant memoranda to the Board. (District Exhs. 35-37) They both testified that the only discussion they had with the Association concerned the possibility of trying to accommodate a small number of unit members who lived “up-the-line” (far north of Greenville) by providing them with increased flexibility in their schedules. This “experiment” then spread to other firefighters and resulted in an increase in the usage, resulting in 24, 34 and 38 hour shifts, which was far beyond the scope originally intended by the Commissioners.

The District further notes that whatever the circumstances behind the Chief’s decision to allow the “experiment” to go forward, the evidence is clear that it became uncontrolled, as a review of the exhibits submitted by the Association demonstrate. (Association Exhs. 79,81,82). When the Commissioners heard from labor counsel that mutuals had been employed to accomplish triples (34 and 38 hour shifts) for the entire department, they directed the Chief to end the “experiment” and return to the former practice whereby the Captains would approve the mutuals, subject to review by the Chief. It concludes that there was no diminishment of the rights formerly enjoyed by the members, but rather a return to the status quo ante which existed prior to the “experiment.”

The District argues that any claim by the Association that this issue should be regarded as an “ancillary” matter is overcome by the fact that it filed an Improper Practice Charge (“IPC”) at PERB and agreed with the District to settle it by having the

Panel issue an award concerning the matter. (Association Exh. 76). If the Association wished to consider this matter outside the Award, then it should have pursued its IPC.

It further points to the statistics which show that prior to the “experiment”, unit members used an average of 12 or 13 mutuals per man per year, and that any award by the Panel on this issue should be consistent with the average use allowed in past years and not be unlimited mutuals would be tantamount to 24 hour shifts. Such would be a major change that should only occur after the parties have reached a mutual agreement on the issue.

Findings

I have carefully considered the evidence and arguments of the parties and find that regardless of the intent or understanding of the parties concerning the “experiment”, the outcome resulted in a significant increase in the use of mutuals from 11 to 12 shifts per man during 1994 and 1995 respectively to 37-44 shifts per man during 1997 and 1998 respectively. (Association Exh. 31) The increased usage in mutuals, especially when resulting in numerous triples, legitimately raises significant concerns impacting the best interest and welfare of the public, such as having a ready force which would not be subject to a fatigue factor, and other concerns.

I believe that a reasonable approach to resolve this issue, within the statutory criteria, would be to limit the usage of mutuals to 15 shifts per firefighter a year effective December 31, 2000. This would place the District’s firefighters on par with their counterparts in Fairview whose use of mutuals is limited to 12 shifts a year, but who have two personal leave days.

In addition, the use of mutuals in the District shall be subject to the approval of the charge captain. Additional mutuals and mutuals resulting in triples may be granted at the discretion of the Chief, whose permission shall not be unreasonably denied. Any denial of additional days by the Chief may be grieved by the firefighter to the Board of Commissioners only.

3. Change in Work Schedule-Rotating Work Shifts

The current language in the Agreement provides a guaranteed rotating shift to members who were regularly assigned that rotating shift during December of 1972. The Association wishes to modify this language because a vast majority of the members have no assurance concerning the work schedule. It contends this is grossly unfair.

The District points out that the current Agreement provides it with the flexibility to change the work schedule from time to time following discussion with the Association and that the Association presented no evidence to support its proposal.

Findings

I find that the record contains no compelling reason or evidence to support such a change to the contract at this time. Therefore, the demand is not awarded.

4. Overtime

The Association requests that the overtime system be changed, using certain formulae depending upon the type of overtime used, as well providing overtime pay to firefighters for certain activities, such as attending courses and the annual inspection. It

also argues that a new section be added to the Agreement which would rework and codify the overtime regulations to take seniority into account.

The District argues that there is no evidence of record to support such a change and that the issue is a complicated one which should be addressed during negotiations.

Findings

I find that the record contains insufficient evidence to support such a change to the contract at this time. Therefore, the demand is not awarded.

5. Holidays

The Association proposes that the current language which provides for 12 holidays be modified by adding two additional ones, noting that Fairview, Harrison and Port Chester provide 14 and Hartsdale provides 13. It also requests that time-and-a-half be paid by the District on Easter, Thanksgiving, and Christmas, as these are family-oriented days which firefighters often miss due to their schedules.

The District argues that the firefighters already enjoy significant time off when compared to other departments and that the Association provided no evidence to support its proposal.

Findings

I find that the record contains no compelling reason or evidence to support such a change to the contract at this time. Therefore, the demand is not awarded.

6. Wellness Days

The Association proposes that the current contract language be modified to increase the number of wellness days from two to four. It also maintains that the current accrual system which provides for the earning of one day off, or one day's pay, per three month period needs further improvement to meet the objective of the language, which is to attain maximum productivity and eliminate potential abuse of sick leave.

The District argues that while virtually all members of the unit in 1998 and 1999 received at least one wellness day, none of them had perfect attendance over the course of the year, with some having more than eight days off, and some took as many as 13 days. Therefore, it concludes that the current incentive does not work and that the District's proposal to amend this language to base the accrual formula on a 12 month period be accepted in order to achieve maximum productivity and reducing sick leave.

Findings

I find that the current incentive program, in light of the attendance figures, is not working in an effective manner. A more workable plan is as follows:

Effective 2001

Perfect Attendance Jan.-Dec. 31	\$1000
One to three days of absence Jan-Dec. 31	\$ 500
More than three days of absence Jan-Dec. 31	\$ 0

7. Certifications and Pay Differentials

The Association proposes that certain pay differentials which are given to members performing services for which special certifications are required, such as an

EMT, a code enforcer and an arson investigator, should be given to those members who achieve a bachelor's degree in Fire Science. It argues that these would serve as a reward to those who perform these special services, and an incentive to the members to increase their professionalism.

The District maintains that there is no evidence to support this proposal and that certain of the titles mentioned by the Association, such as code enforcer and arson investigator, are those which the District does not have or plan to have. It also contends that it provides one of the most generous EMT stipends of any department in the county and pays an EMT, over an eight year period, at least three times the amount paid in Hartsdale and Fairview. (District Exh. 21)

Findings

I find that there is insufficient evidence to support the Association's demand and therefore it is not awarded.

8. Leaves of Absence

The Association argues that, given the use of mutuals has been restricted, there will be a greater need to rely upon leave time to attend to matters of importance, given that the use of mutuals has been restricted. It proposes the following: an increase in the number of bereavement leave days from five to 14; the addition of new provisions for maternity, jury duty and emergency leaves; and that two personal days a year be granted without explanation of the reason. It notes that their counterparts in Fairview receive two personal days and that the District is one of the few in the county that does not provide personal days.

The District argues that the members already receive a significant amount of leave time and that the increases proposed are drastic in nature. With respect to the leave provision proposal, the District maintains that it should be rejected, as the Association failed to provide comparative data concerning personal and other types of leave among other districts in the county. Also included is the fact that Hartsdale does not provide any personal leave days. It also argues that the members are able to use mutuals to achieve the same end.

With respect to jury duty and emergency leave, the District maintains that it has proposed that new provisions be added to the contract which would place reasonable limits on the length of time the District would be responsible to pay a member while on jury duty during regularly scheduled tours of duty, up to a maximum of 80 hours a year. With respect to emergency leave, the District proposes that new language be added to the contract to provide the granting of emergency leave by the Chief, Assistant Chief or, in their absence, a Captain, in their non-grievable discretion.

Findings

I find that the concept of emergency leave with pay to be worthy of the recognition of those situations when emergencies arise requiring the firefighter's presence. Therefore, language shall be included in the contract as follows:

Effective 2001, the Chief or the Assistant Chief, in their sole non-grievable discretion, may grant leave with pay for unforeseen emergency circumstances that arise during a firefighter's tour of duty that would require the presence of the firefighter (e.g. a child in an accident who is taken to the hospital). If the Chief and Assistant Chief cannot be contacted, such emergency leave may be granted by the Captain in charge.

In addition, in light of the fact that firefighters no longer have an automatic exemption from jury service under the law, I find the need for a clause concerning jury duty. The following language shall be incorporated into the contract to provide for such leave time:

Effective 2001, members of the unit will be relieved with pay for those hours necessary to serve on jury duty when their attendance is required during their regularly scheduled tour (not a mutual). Such leave time will include adequate time for travel to and from jury duty. Members of the unit will remain on duty until they must leave for such service and will return to the fire house when they are released from their jury duty.

Such released time will be for a maximum of 80 hours in any calendar year, excepting grand jury service. Additional jury duty time may be granted upon the discretion of the Chief.

Members of the unit shall provide as much written notice as possible to the Chief or his designee and provide verification of having served.

Members of the unit shall use the night before call-in system, if available.

All fees paid to the employee shall be endorsed over to the District, with the exception of when an employee appears for jury duty on his/her regularly scheduled day off, or on a day they are not released from duty. Reimbursement for mileage, tolls, parking and/or meals paid for while on jury duty shall be retained by the employee.

Given the use of mutuals and triples has been limited, the following language shall be added to the Agreement to provide personal leave:

Effective 2001, members of the unit may be granted one (1) personal leave shift per year to attend to matters which may only be handled during

working hours.

With respect to the other demands concerning leave time, I find insufficient evidence to support the inclusion of language in the contract and therefore do not award those demands.

9. Dental Insurance

The Association proposes an increase to \$1200 annually, from the current level of \$275 annually, for the cost of a dental plan for its members. It maintains that the District's plan is the second lowest in the county and that the proposed amount would put the members in line with Fairview and Hartsdale.

The District maintains that while the current amount is admittedly on the low end of those provided by most departments, it offers to increase the amount to \$375 in 2000.

Findings

I find that an increase in the amount is justified and that an appropriate amount would be an increase to \$400 annually during 1999 and to \$500 in 2000.

10. Medical Insurance

The Association proposes that the District memorialize its payment of the full cost of the New York State Health Insurance Program (Core Plus Medical and Psychiatric)("Empire Plan") for all firefighters and dependents by adding a provision to reflect its continuing obligation. It notes that their counterparts in Hartsdale and Fairview have a provision outlining the coverage provided, as well as receiving an additional benefit of moneys to be applied to annual premium payments.

The District argues that the evidence shows that the cost of medical insurance premiums will continue to grow during the coming years and that the members should be required to contribute 25% to the cost of the annual premiums. It points out that 10 out of 17 reporting departments have some form of employee contribution.

It also proposes that a provision be added to the contract to ensure that the costs to the District of an employee switching into an HMO does not exceed the costs of the Empire Plan.

The District further contends that it be granted the ability to switch to another plan having “substantially equivalent benefits.”

Findings

I find that the evidence supports the inclusion of language concerning health insurance premiums. The following provision shall be included in the contract:

The District agrees to provide the full cost of the New York State Health Insurance Program, known as the “Empire Plan”, (core plus enhancements) for all members of the unit and their dependents. The District shall have the right after notice to, and discussion with the Union to discontinue participation in the “Empire Plan” and to select a different health insurance provider, so long as the benefits are substantially equivalent to the “Empire Plan”.

Effective upon the issuance of this Award, members of the unit shall be entitled to participate in HMO’s to the extent currently available, provided however, the cost to the District shall not exceed the cost of premiums under the Empire Plan.

11. Association Release Time

The Association proposes that it be given 18 working shifts per year for Association release time, rather than the current 9 provided for in the contract. It argues

that the current amount of days is insufficient and points to the amount of time spent in the instant interest arbitration which is just one of the responsibilities of Association representatives.

The District argues that the current amount of time is sufficient and that no evidence was provided to the contrary. It also points to its counterproposal on this issue which seeks that the attendance of Association officials at monthly Association meetings and Executive Board meetings not affect the available manpower of a tour of duty and that time spent at these meetings be counted against the nine working shifts.

Findings

I find that while the current 9 shift entitlement for release time to be sufficient, deductions should not be made against these days when Association representatives are released from duty to attend monthly Union meetings and Executive Board meetings. The following language shall be added to the contract to address this concern:

Effective 2001, an Association representative may be released from duty to attend the monthly Union meetings and Executive Board meetings of the Union, provided adequate manpower (a full crew) is on duty. Such released time will not be deducted from the 9 day entitlement provided in Article XII. The Union official shall remain available for, and respond to, emergencies. The Union official shall remain in contact with the Fire Department and be reachable at all times.

12. Uniforms

The Association proposes that uniforms be “replaced due to wear or fit” rather than at the discretion of “the Chief and/or Board of Fire Commissioners” and that the

uniform maintenance allowance be raised to \$500 a year. It points out that their counterparts in Hartsdale receive \$450 a year.

The District argues that no evidence was presented in the record to support a change in the amount of the benefit.

Findings

I find that an increase in the uniform allowance to be unjustified and therefore it is not awarded.

13. EMT/College

The Association proposes that the limitation on EMT and EMT-D be eliminated and that members be paid for time spent at these courses with compensatory time which could later be redeemed in cash. It argues that the evidence of record demonstrates that the EMT service is an important one to the community, is a large part of the mission of the District and therefore the members should be rewarded for participation in this life saving service.

The District argues that the members currently receive a stipend when they complete a certification course in these areas and that the Association presented no evidence that more should be granted.

Findings

I find insufficient evidence to support the Association's proposal and therefore do not grant the demand.

14. Physical Examinations

The Association argues for a change in the current language of the Agreement to include a deadline for the taking of the physical examination.

The District argues that no evidence was presented to indicate that there was any problem with the current language.

Findings

I find insufficient evidence to support the Association's proposal and therefore do not grant the demand.

15. Disciplinary Proceedings

The Association argues for a reduction in the time of service to the Association of disciplinary charges against a member from 24 hours to 3 hours in order to allow the Association representatives to more quickly tend to the needs of the charged firefighter, as well as attempt to resolve the dispute.

The District argues that no evidence was presented by the Association in support of this proposal to demonstrate that the current time scheme was not effective. It also argues that its proposal to clarify the provision which provides reimbursement for a firefighter at straight time for time spent at his own disciplinary hearing be limited solely to those who have been found not guilty of all of the charges

Findings

I find insufficient evidence to justify a reduction in the time of service of disciplinary charges. Moreover, the current 24 hour time frame is a reasonable one in

terms of allowing adequate time to gather information so as to make an informed decision concerning the serious business of filing disciplinary charges.

I further agree with the District's sensible proposal that a firefighter who has been found "guilty of at least one of the charges" filed should not receive pay while attending the disciplinary hearing. The contract language shall be modified accordingly to reflect this additional provision.

16. Temperature

The Association argues that training should be suspended when the temperature exceeds 80 degrees Fahrenheit because the metabolic heat buildup that occurs when a firefighter wears heavy fire resistant gear, is a safety and health concern.

The District argues that this is a non-mandatory subject of negotiation and that there was no evidence of record to support the claim.

Findings

I find insufficient evidence of record to support this proposal and therefore do not grant the demand.

17. Sick Leave

The Association argues that there is no reference in the Agreement to sick leave and that it should be set forth in order to clarify the current entitlement. It also argues that the use of sick leave should be unlimited in nature, but agrees to be bound to the existing legal limitations on sick leave.

The District argues that no evidence was presented concerning this proposal.

Findings

I find insufficient evidence of record to support the Association's proposal and therefore do not grant the demand.

ADDITIONAL DISTRICT PROPOSALS¹18. Agency Fee

The District proposes adding a clause to the Agreement concerning agency fees to hold the District harmless for any legal challenge concerning the use of agency fee moneys by the Association once it has turned such moneys over to it. It maintains that it is a very common provision in collective bargaining agreements and that logic dictates that the District should not have to expend any of its resources to defend itself if any claims were to arise concerning the Association's use of the money. It also points out that the District has no control concerning the spending of this money once it is turned over to the Association.

Findings

I find insufficient evidence of record to support the District's proposal and therefore do not grant this demand.

¹ Certain of the District's proposals were addressed in the form of a response to the Association's proposals, as noted in the section entitled "Association Proposals."

19. Arbitration Rules

The District proposes that the provision concerning arbitration be amended to adopt the “Labor Rules of the American Arbitration Association” as a clarification of the rules being used. The Association argues that there is no evidence to support a change.

Findings

I believe that it would be in the best interests of the parties to clarify the contract to make it clear that the applicable rules are those which deal with traditional union-management disputes.

It is common knowledge that the American Arbitration Association has adopted new rules over the past few years dealing with arbitration of employment disputes. The first are the “Labor Rules” which apply to union-management collective bargaining disputes. The second are the “National Rules for the Resolution of Employment Disputes” which apply to non-unionized employment disputes.

Accordingly, the phrase “Labor Rules” shall be added to the provision of the contract in order to deal with this matter.

20. Health and Safety Committee

The District proposes that the contract’s current health and safety committee which is made up of three members appointed by the Association and two by the District be changed to add another District representative so that there would be parity between the parties as a matter of fairness. The Association opposes this demand because the record lacks sufficient evidence to support such a change.

Findings

I find insufficient evidence of record to support any change and therefore do not grant this demand.

21. Education Fund

The District proposes to reduce the amount of money available to the unit for tuition reimbursement as only three members have availed themselves of this benefit during the last 10 years, while none have done so over the past five years. It also argues that the total amount of the fund be reduced from \$20,000 a year to \$10,000 a year, given that it is the most generous of all funds provided among the 15 reporting departments in the County and the low level of usage among Association members.

The District also seeks to eliminate the payment of compensatory time to members who go to college level courses while scheduled to work. It contends that it should not have to pay both the tuition and the additional time off.

The Association argues that this fund should be regarded in the same manner as the apparatus equipment fund as there may be several years when expenditures may not be made. It also point out that, unlike the apparatus fund, this fund rolls over without additional contribution from the District.

Findings

I find this to be an issue better addressed by the parties during future negotiations.

22. Section 207-a Procedures

The District proposes that the existing Section 207-a procedure be modified in light of the recent changes in the law and its recent experiences.

The Association argues that there is no evidence of record to support the District's demand.

Findings

I find this issue to be one better addressed by the parties during future negotiations and therefore do not grant the demand.

23. Kelly Time

The District proposes that unit members only receive the amount of Kelly Time that they are entitled to by law, as they now receive compensatory time during many weeks, based upon the calculation used, when they have not actually worked more than 40 hours.

The Association argues that there was no evidence that the District's firefighters worked more or less than the statutory mandate and therefore it should be rejected.

Findings

The issue of Kelly time is one which is better addressed by the parties during future negotiations and therefore I do not grant the demand.

24. Time Off

The District proposes that no more than one firefighter per shift be granted time off pursuant to the following order of preference: vacation, Kelly Time, holidays, compensatory time. It maintains that this practice is consistent with the current practice described in Exhibit 31.

The Association argues that the District offered insufficient evidence on this matter.

Findings

There is insufficient evidence of record to make any findings concerning this matter and is one which is better addressed by the parties during future negotiations. Therefore, I do not grant the demand.

25. Grievance Procedure

The District proposes the inclusion of statute of limitations language which would require the filing of a grievance “within 10 working days following the event given rise to the grievance.” It points out that one of the five grievances introduced into the record was filed months after the alleged incident occurred.

It further argues that only one other of the reporting 15 departments have no statute of limitations in the grievance procedure language (District Exh. 2) It points to its proposals number 10 and number 16 to establish a statute of limitations for the filing of a grievance and to streamline the process by making the need for a hearing at the Board level discretionary on the part of the Board. It urges that its proposal of a 10 working day statute of limitation be adopted by the Panel.

The District argues that the Step 2 appeal language also should be modified so as to provide a hearing at the Board’s discretion only.

In response, the Association argues that four of the five grievances referred to by the District were filed in a timely manner. It also argues that the record contains no evidence concerning the circumstances surrounding the time frame of the filing of the

fifth grievance. It also argues that there was no evidence of record to support the District's proposal concerning a change in the appeal language.

Findings

I find that the addition of statute of limitations language would serve the interests of both parties, as an open-ended provision could lead to various interpretations at arbitration which might not have been anticipated by either party. I therefore find that a grievance shall be filed within 30 calendar days following the event which gave rise to the grievance. This will provide sufficient time for the Association's investigation of the grievance and the filing of a claim. In addition, the use of calendar rather than working days should eliminate any confusion as to the end point of the time limits.

With respect to the Step 2 appeal, I find that the language which provides for a hearing at the Board level upon request of the firefighter provides an additional forum for potential settlement of a dispute and therefore shall be maintained.

AWARD

1. Duration of Award: January 1, 1999 to December 31, 2000.

2. Salaries:

1999	4.0% increase
2000	4.0% increase

3. Mutuels:

Effective 2001, 15 shifts per year per firefighter shall be granted subject to approval of charge captain. Additional mutuels and mutuels resulting in triples may be granted at the discretion of Chief, whose discretion shall not be unreasonably exercised. Any denial of additional mutuels by the Chief shall be subject to grievance to the Board of Commissioners only.

4. Wellness Days:

<u>Effective 2001</u>	
Perfect Attendance Jan.-Dec. 31	\$1000
One to three days of absence Jan-Dec. 31	\$ 500
More than three days of absence Jan-Dec. 31	\$ 0

5. Leaves of Absence:

Emergency Leave: Effective 2001, the Chief or the Assistant Chief, in their sole non-grievable discretion, may grant leave with pay for unforeseen emergency circumstances that arise during a firefighter's tour of duty that would require the presence of the firefighter (e.g. a child in an accident who is taken to the hospital). If the Chief and Assistant Chief cannot be contacted, such emergency leave may be granted by the Captain in charge.

Jury Duty Leave: Effective 2001, members of the unit will be relieved with pay for those hours necessary to serve on jury duty their attendance is required during their regularly

scheduled tour (not a mutual). Such leave time will include adequate time for travel to and from jury duty. Members of the unit will remain on duty until they must leave for such service and will return to the fire house when they are released from their jury duty.

Such released time will be for a maximum of 80 hours in any calendar year, excepting grand jury service. Additional jury duty time may be granted upon the discretion of the Chief.

Members of the unit shall provide as much written notice as possible to the Chief or his designee and provide verification of having served.

Members of the unit shall use the night before call-in system, if available.

All fees paid to the employee shall be endorsed over to the District, with the exception of when an employee appears for jury duty on his/her regularly scheduled day off or on a day they are not released from duty.

Reimbursement for mileage, tolls, parking and/or meals paid for while on jury duty shall be retained by the employee.

Personal Leave: Effective 2001, members of the unit may be granted one (1) personal leave shift per year to attend to matters which may only be handled during working hours.

6. Dental Insurance: 1999 - \$400
 2000 - \$500

7. Medical Insurance:

The District agrees to provide the full cost of the New York State Health Insurance Program, known as the "Empire Plan", (core plus enhancements) for all members of the unit and their dependents. The District shall have the right after notice to, and discussion with the Union to discontinue participation in the "Empire Plan" and to select a different health insurance provider, so long as the benefits are substantially equivalent to the "Empire Plan".

Effective upon the issuance of this Award, members of the unit shall be entitled to participate in HMO's to the extent currently available, provided however, the cost to the District shall not exceed the cost of premiums under the Empire Plan.

8. Association

Release Time:

Effective 2001, an Association representative may be released from duty to attend the monthly Union meetings and Executive Board meetings of the Union, provided adequate manpower (a full crew) is on duty. Such released time will not be deducted from the 9 day entitlement provided in Article XII. The Union official shall remain available for, and respond to, emergencies. The Union official shall remain in contact with the Fire Department and be reachable at all times.

9. Disciplinary

Proceedings:

No pay for attendance at disciplinary hearing if firefighter found guilty of at least one of the charges.

10. Arbitration Rules:

Clarify reference of applicable rules to "Labor Rules of the American Arbitration Association."

11. Grievance Procedure:

Effective upon the signing of the Agreement, a grievance shall be filed within 30 calendar days following the event which gave rise to the grievance.

Dated: 8/3/01



Rosemary A. Townley, Panel Chairperson

Dated: 8/3/01



Terence M. O'Neil, Public Employer Panel Member

* 1, 3, 4, 5A, 5B, 6, 7, 8, Agree
9, 10, 11

#2, 5C Dissent

_____ Agree in Part, Dissent in Part

(See attached)

Dated: 8/3/01



Donald P. Henry, Public Employee Panel Member

* 1, 2, 4, 5A, 5C, 6, 7, Agree
8, 10

#3, 5B, 9, 11 Dissent

_____ Agree in Part, Dissent in Part

(See attached)

DONALD P. HENRY, ESQ, PUBLIC EMPLOYEE PANEL MEMBER, DISSENTING IN PART:

I dissent from the Chairperson's award regarding mutual exchanges of shifts between firefighters. The maximum non-discretionary entitlement of 15 shifts per year awarded by the Chairperson is far below the established practice at any time in more than 13 years.

The Association submitted documentary reports from captains, which went unrebutted in the record and which demonstrated that as far back as 1989 individual members were permitted to exchange as many as 29 shifts in a year, (U-80). The testimony of Captain Nugent established that during the course of his lengthy career with the District, mutuals were always unlimited as to number of shifts available. Captain Nugent also testified that although he accepted that technically the Chief may have the authority to deny a mutual, that in fact he had never heard of a mutual shift ever being denied. The existence of an extensive and liberal mutual practice in Greenville is uncontradicted.

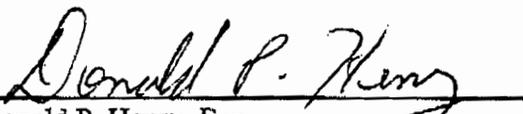
The Chairperson's finding that the level of existing mutuals raises *significant concerns impacting the best interest and welfare of the public, such as having a ready force which would not be subject to a fatigue factor and other concerns*, is simply without any support in the record. A review of the sections of the award which set forth the District's position on mutuals and the Chairperson's findings does not disclose a scintilla of evidence to support the proposition that the public was ever at risk, or the fire readiness of the firefighters compromised, as a result of a mutual exchange of duty. In fact captain Nugent expressly testified to the contrary.

In addition, the Chairperson unjustifiably accepted the District's distorted description of the pre 1996 practice as an average of 11 to 12 shifts per year. Averages by their very nature are a distortion as they consist of a blend of high utilization of mutuals with no utilization of mutuals. By accepting a statistical average as the basis for setting the maximum numerical limitation, the Chairperson has artificially denied unit members the full extent of the prior practice.

The Chairperson's attempt to buttress the low award of mutual exchanges through a comparison with Fairview's limitation of 12 mutual shifts per year is of no consolation to Greenville members. Notwithstanding that Fairview members have enjoyed personal days long before Greenville members, nowhere in the record was it demonstrated that Fairview ever enjoyed and thus gave up, a similar liberal mutual practice.

Of greater relevance to the practice at issue, was the testimony of Association Vice President James Damon, regarding the mutual practice in Hartsdale, the other comparable district. Vice President Damon testified that Hartsdale members enjoyed unlimited mutuals with respect to both the numbers of consecutive hours worked and the numbers of shifts per year. This unrebutted relevant testimony has been wholly ignored in this award.

Dated: White Plains, New York
August 3, 2001


Donald P. Henry, Esq
Association Panel Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

----- X

In the Matter of Compulsory Interest Arbitration

between
GREENBURGH UNIFORMED FIREFIGHTERS
ASSOCIATION (GREENVILLE UNIT)
LOCAL 2586, IAFF, AFL-CIO, CLC

Case No. IA99-10;
M98-392

Petitioner,

DISSENTING OPINION

and

GREENVILLE FIRE DISTRICT,

Respondent.

----- X

Although I voted in the majority on the overwhelming majority of issues in this proceeding, including what I consider to be the most important management issue, *i.e.*, mutuals, I feel compelled to file a dissenting opinion to explain my objections to Items 2 (Salaries) and 5c (Personal Leave).

Initially, I cannot overemphasize the importance of the management controls that have been achieved in the areas of mutuals. Not only does the Award restrict to 15 the number of shifts per year firefighters shall be granted, it also leaves the granting of mutuals that result in triples to the nonarbitrable discretion of the Chief. I believe it is clear from the District's history that the Chief will utilize his discretion very sparingly. Otherwise, the granting of mutuals that result in triples results in employees working 34

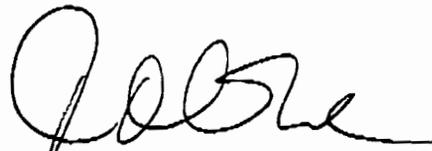
and/or 38 straight hours of work. The review of the Chief's decision is limited to the Board of Fire Commissioners. I submit this is where such a decision should be reviewed.

Moreover, the majority's opinion on wellness days, jury duty leave, controls on health insurance by capping HMO costs, and the introduction of a statute of limitations on the filing of a grievance, outweighed the areas where I was forced to dissent.

With regard to the issue of salaries, while I believe the 4% raise is somewhat high, it is certainly sustainable given the remainder of the Award.

Moreover, while I dissent to the reinstatement of one personal leave day, this is a benefit that does exist generally throughout Westchester County. Again, when balanced against the controls over mutuals, I can understand the majority's vote for this item.

Dated: Mineola, New York
August 3, 2001



TERENCE M. O'NEIL