

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Arbitration, :
Pursuant to Section 209 of the Civil :
Service Law, of a Dispute Between :
CITY OF PEEKSKILL :
-and- :
PAID FIREMEN'S ASSOCIATION OF PEEKSKILL, :
NEW YORK, INC. :
-----X

RECEIVED
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COMMUNICATIONS

Case Nos. IA-40;
M77-590

AWARD OF ARBITRATORS

The undersigned arbitrators, having been designated in accord with the provisions of section 209 of the Civil Service Law, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

1. The duration of the parties' collective bargaining agreement shall be for a two-year term, commencing as of January 1, 1977 and expiring December 31, 1978.

2. Effective as of July 1, 1977, all members of the negotiating unit shall receive a rate increase of seven hundred fifty dollars (\$750.00). Effective as of July 1, 1978, all members of the negotiating unit shall receive a rate increase of seven hundred fifty dollars (\$750.00). As a

consequence of such rate increases, the annual salary of the classification Fireman (I) shall, effective July 1, 1977, be \$15,250 and shall, effective July 1, 1978, be \$16,000.

3. Cash compensation for overtime work during a calendar quarter shall hereafter be paid as soon as possible after its close.

4. Item 6(o) contained in the petition herein* is found to be a matter more appropriately to be resolved under the contractual grievance procedure than in interest arbitration. The Association's demand with respect thereto is hereby dismissed without prejudice to its subsequent assertion under that procedure and to the power of an arbitrator thereunder to grant prospective relief.

5. Except as reflected by denials of City proposals, all other items contained in the petition herein are hereby denied.

6. All references to "City Manager" or "Department Supervisor" in the documents which comprise the expired collective bargaining agreement shall, in the new collective bargaining agreement, be changed

*Item 6(o) reads as follows:

"That the present policy of paying less than a full days' [sic] pay for a sick day be discontinued."

to "City."

7. If a Fireman is assigned by the City to do the scheduling, he shall be paid an annual stipend of three hundred dollars (\$300.00).

8. The scheduling of compensatory time shall be made by the City.

9. Any employee who is ordered by the City to perform firefighting for a period which extends beyond his regular tour of duty shall be paid at the rate of time-and-one-half ($1\frac{1}{2}$) for the time worked.

10. Any employee working more than an average of forty (40) hours per week as computed over a thirteen (13) week cycle shall be compensated, at the option of the City, either by payment of overtime at the straight time rate or by compensatory time off. Overtime shall be equally distributed according to seniority.

11. The current practice, under which each employee is annually entitled to six "mutuals" and may, in the City's discretion, be accorded an additional two, shall be continued.

12. In place of the provision which appeared as Article VII, section 2 of the collective bargaining agreement effective as of January 1, 1973, the parties' new collective bargaining agreement

shall contain the following:

"All other City rules and regulations pertaining to sick leave shall be applicable, with the exception of section 5(j) of the existing Rules."

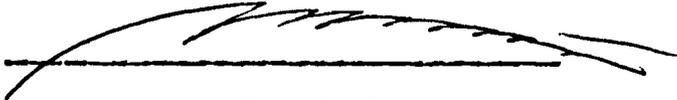
13. In place of the provision which appeared as Article XI, section 2 of the collective bargaining agreement effective as of January 1, 1973, the parties' new collective bargaining agreement shall contain the following:

"Work schedules shall be established by the City."

14. Except as reflected by denials of Association proposals, all other City proposals are hereby denied.

15. The parties shall as soon hereafter as practicable draft a new collective bargaining agreement which will supersede the documents that comprise the expired collective bargaining agreement and will reflect the substantive provisions hereof as well as those of tentative agreements reached before the invocation of interest arbitration. The arbitrators shall retain jurisdiction of the impasse, pending execution of such new collective

bargaining agreement, to resolve disputes that may arise concerning its text.



Jerome S. Rubenstein
Chairman and Neutral Arbitrator

Jerome J. Hersh
Employee Organization Arbitrator

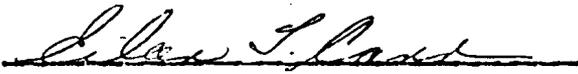


Terence M. O'Neil
Employer Arbitrator

STATE OF NEW YORK
COUNTY OF PUTNAM } ss.:

On this 8th day of November, 1978, before me personally came and appeared Jerome S. Rubenstein, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

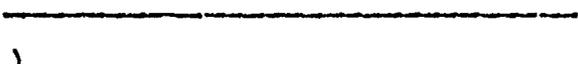
EILEEN T. CANN
Notary Public, State of New York
No. 4637808
Qualified in Dutchess County
Commission Expires March 30, 1980



STATE OF NEW YORK
COUNTY OF } ss.:

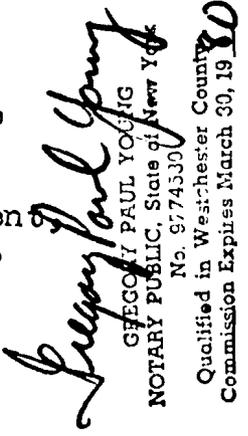
On this day of November, 1978, before me personally came and appeared Jerome J. Hersh, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

EILEEN T. CANN
Notary Public, State of New York
No. 4637808
Qualified in Dutchess County
Commission Expires March 30, 1980



STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

On this 21st day of November, 1978, before me personally came and appeared Terence M. O'Neil, to me known and known to me to be the individual described in an who executed the foregoing instrument, and he acknowledged to me that


GREGORY PAUL YOUNG
NOTARY PUBLIC, State of New York
No. 9774330
Qualified in Westchester County
Commission Expires March 30, 1980

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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CITY OF PEEKSKILL :

-and-

Case Nos. IA-40;
: M77-590

PAID FIREMEN'S ASSOCIATION OF PEEKSKILL, :
NEW YORK, INC. :

-----X

OPINION OF CHAIRMAN

Appearances

For the City:

Rains, Pogrebin & Scher
(Bruce R. Millman, Esq., of counsel)
Mineola, N. Y.

For the Association¹

Thomas Flynn, Vice President, International
Association of Fire Fighters
Yonkers, N. Y.

Statement of the Case

After extensive talks failed to produce
a successor to the collective bargaining agreement
that expired December 31, 1976, the Association on

1. At the first day of hearing, in Mr.
Flynn's absence, the Association was represented
by Mr. Angelo Clores of Yonkers, N. Y., a business
representative.

January 5, 1978 filed a petition with the Public Employment Relations Board (hereinafter referred to as "PERB" for the invocation of interest arbitration proceedings. The City thereupon filed an improper practice charge asserting that certain items set forth in the petition were nonmandatory subjects and therefore not properly referable to arbitration. On March 6, 1978, the Association filed a "supplemental amendment to petition"; and on March 20, 1978, the City filed its response, alluding to the improper practice charge and reiterating its contention as to nonarbitrability. By stipulation dated May 2, 1978, the parties agreed that the City would withdraw its improper practice charge and that the Association would amend its petition to delete certain items and modify others.²

By order of PERB Chairman Harold R. Newman dated May 10, 1978, I was designated chairman and neutral member of the arbitration panel, and Terence M. O'Neil, Esq. and Jerome J. Hersh, Esq. were named as partisan members, representing the City and the Association respectively.

Hearings were held at the Peekskill City Hall on June 12, July 18, August 22, and August 24, 1978. Ten witnesses testified under oath, and

2. The charge case bore PERB docket no. U-3208.

numerous documentary exhibits were received in evidence. Since neither party asked that a transcript be made, there was none.

After the close of hearings, the members of the panel reviewed the evidence and met in executive session on September 12, October 12, and November 1, 1978. At these sessions, there was extended discussion of each and every item at impasse, and votes were taken on all.

The accompanying award reflects the panel's disposition of the case before it. The disagreement of either of the partisan members with any of its provisions may be reflected in a separate opinion issued simultaneously with the award.

The award, as someone said of the giraffe, is the work-product of a committee. For the opinion, only I may be held responsible.

I have tried in the following text to sketch the reasoning which underlies the award. Since I am no mind-reader, it should be understood that what I have to say is largely descriptive of my own mental processes. That other members of the panel may have arrived at the same conclusion with respect to a particular issue does not mean that we travelled the same road to get there. However, the absence of a separate opinion on any point denotes our agreement on the broad "basis" of findings.

Discussion

I. GENERAL CONSIDERATIONS

Section 209.4 of the Civil Service Law establishes the procedure for the resolution of bargaining impasses between local governments and employee organizations that represent their policemen or firefighters. Subdivision (v) has this to say about the standards to be employed:

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

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

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

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

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

The impressive evidence proffered by both sides presents a bleak picture. Stated simply, Peekskill ranks materially behind other Westchester

communities in just about all indicia of wealth; and its firefighters are at best paid commensurately.

The Association argues that Peekskill firefighters--all of whom are residents of the City--are exposed to the same kinds of hazards as are men in other Westchester departments, pay Westchester prices (and sales taxes) for the necessities of life, and should be paid at levels fairly comparable with what obtains in other Westchester departments.

The City counters by asserting that in Peekskill volunteers bear the primary burden of fighting fires, while members of the paid force are responsible only for driving vehicles from the fire house to the scene of the fire and then readying equipment for use by the volunteers. It contends, in essence, that Peekskill's paid firefighters are merely truck drivers and, as such, paid at a reasonable rate for the area. Moreover, runs the argument, Peekskill is more adequately compared with several small cities in Dutchess and Orange than with her neighbors in Westchester, and those cities typically pay their firefighters somewhat less than Peekskill pays hers. I am reminded that the problems of a low tax base have recently been exacerbated by the dismantling of much of Standard Brands's manufacturing facility and the potential liability, arising from

pending certiorari litigation, to return a large amount of previously collected taxes to that firm.

The one note of hope depends upon Peekskill's favorable situation. It's my understanding that its spectacular prospects of the Hudson River and Bear Mountain, its bearable commute to New York City, and good access by car to numerous IBM facilities in the area have recently generated a fair amount of interest in the development of high-rise residential units, which conceivably would add much to the property rolls without materially burdening the local school system. Also, the hope has been expressed that the combination of a seemingly boundless supply of pure water, excellent rail facilities, and capacity to receive deep-water shipping might induce the local arrival of a manufacturing enterprise sufficiently large to plug the hole in the economy left by Standard Brands's departure.

This note of hope is at best a harbinger of things to come. For the present, only what is disclosed by the hard evidence is really germane.

The City's contention that Peekskill's paid firefighters are mostly truck drivers was flatly refuted by Chief Willard R. Dunwoody, who testified that their primary duty is to respond to fire alarms and, upon arrival at the scene, if needed, "to proceed to fight the fire." He estimated that

about twenty per cent of the time, an insufficient complement of volunteers would arrive, requiring the paid men to engage in actual firefighting. He noted that two men were recently cited for "a very dramatic rescue" and stated that rescue work is in general performed by the paid men because they are typically the first on the scene.

Although it is indisputable that most of Peekskill's firefighting is done by volunteers, it cannot thus be denied that the paid men do a good share of it, perhaps at unique levels of risk. If a comparison of the work done as firefighters by Peekskill's men with those of other departments were central to the resolution of this case, such comparison would have been in order. However, given the presently dominant aspect of financial data, it is sufficient to determine simply that Peekskill's firefighters are indeed firefighters and not misnamed truck drivers.

Before the commencement of the panel's executive sessions, Peekskill's police officers, who were then also involved in an interest arbitration, proposed a two-year contract calling for the following wage package:

January 1, 1977	\$500
July 1, 1977	\$500
January 1, 1978	\$500
July 1, 1978	\$500
January 1, 1979	\$1000.

The subsequent acceptance by the City of this proposal prompted modification of the salary positions taken by both sides in the present impasse. The panel duly took notice of this new evidence.

II. DIRECT COMPENSATION

(Award Items 1 and 2)

Under the police settlement, members of that force (because of the roll-over of July increases) will receive for 1977 \$750 more pay than for 1976; and for 1978, \$1000 more than for 1977.

The firefighters, unlike the police, have a roll-over from 1976 which directly affects 1977 compensation. In 1976, their pay rates were expressed as follows:

January 1	\$13,350
April 1	\$13,900
October 1	\$14,500.

Thus, although the firefighters' final annual rate for 1976 was \$14,500, their actual pay for the year was only \$13,912.50.

The police increase for 1977 was \$750 added

on to the 1976 compensation of \$14,897--a boost of 5.03%. If that percentage were applied mechanically to the firefighters' 1976 compensation of \$13,912.50, the result would be \$14,612.50. Our result of \$14,875 shakes out at 6.92%.

For 1978, under our formula, the firefighters will receive an increase in pay of \$750 over what they received for 1977. This would constitute a pay increase of 5.04%. The police, for that year, will receive an increase of \$1000--or 6.39%.

The police settlement is persuasive evidence of two crucial facts: the City's willingness (and, inferentially, ability) to pay increases of certain percentages to employees in a service comparable in size to its fire department; and the willingness of the men in that service, whose pay scales as police officers are comparable in terms of Westchester County standing to Peekskill's firefighters, to settle for increases of such percentages.

In essence, our award conforms roughly to the police settlement, but in order to give effect to the roll-over factor, shifts the order of percentages, and is slightly more favorable to the firefighters when their increases are viewed as a percentage of the former salary.

Neither of my partisan colleagues has expressed rapture over the result.

III. OVERTIME

(Award Items 3, 9, 10, and 11)

The Association sought a contractual requirement that cash compensation for overtime be paid at the end of each calendar quarter, rather than in December as at present, and that all work in excess of eight hours per day or forty hours per week be paid at time-and-a-half. The City proposed several refinements of contract language to express in readily understood fashion certain laconic provisions of the 1975 memorandum of understanding as well as the elimination of the current practice of according "mutuals," an arrangement under which firefighters swap tours of duty.

Although the "mutuals" practice, on its face, seems of dubious validity as an employment relations concept, it appears to be a fairly common thing in Westchester County. Since Chief Dunwoody opined that no great problems were caused by its use in Peekskill, the award provides for the continuation of the practice.

So far as the rate at which overtime is to be computed, a distinction must be made between that which is necessitated by the exigencies of a firefighting situation and that which arises by mere arithmetical computation from the fact that a scheduled

workweek may be as long as 42 hours or that a man may voluntarily work two or even three consecutive shifts as the result of "mutuals." In the former instance, premium pay seems appropriate; but in the latter, it would be no more than a disguised across-the-board pay increase (the 42-hour week) or an opportunity to create overtime situations (clever manipulation of the "mutuals").

IV. SCHEDULING OF WORK

(Award Items 7, 8, 10 and 13)

Article XI, sec. 2 of the agreement effective as of January 1, 1973 provided:

The work schedule shall be as hereto annexed unless otherwise agreed to by the City and the Association.

The "annexed" schedule was not in fact appended to the copy of the agreement received in evidence and, for all I know, never existed. At present, schedules of work, vacations, and the like are prepared by the City, acting through a disabled firefighter who receives an annual stipend of \$300 for this chore. The pertinent provisions of the award merely embody this practice.

V. FRINGE BENEFITS

(Award Items 5, 12, and 14)

The Association made a variety of proposals

for expansion of insurance benefits, paid time off (vacations, holidays, personal leave, etc.), and new perquisites like meal money. The City countered by proposing diminution of certain benefits and the imposition of absolute limits upon its cost for providing others, like medical insurance. Additionally, it sought to conform--to the extent legally permissible--the contractual provision concerning return to work after illness with practice for other groups of employees.

A comparison of Peekskill's fringe package with what obtains in other Westchester communities shows the picture here less favorable to employees than what generally is found elsewhere, but not to as marked a degree as in the area of direct compensation. Although a moderate upward revision might thus be warranted in prosperous times, it would be imprudent to contemplate one at this time, particularly since medical insurance costs perpetually escalate. On the other hand, any compression of benefits, particularly the maintenance of insurance contributions at a fixed dollar amount, would be unusually harsh. So far as the City's demand concerning pensions was concerned, the testimony of former City Manager David Goodman as to the savings achieved over the years through the device of establishing

a 20-year retirement program as a springing use was influential in motivating the decision to keep things as they are.

In the entire area of fringe benefits, the only change embodied in the award is the technical one of conforming procedures upon return to work from illness to what presently exists for other City employees.

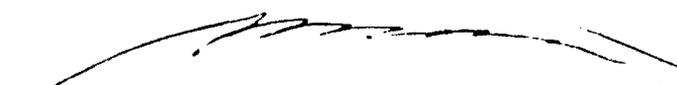
VI. ESTABLISHMENT AND
ENFORCEMENT OF RIGHTS

(Award Items 4, 6, and 15)

The panel was unable to determine, upon the basis of the evidence received at the hearings, what disposition to make of Item 6(o) of the petition. Since that item on its face refers to an extant practice which, one gathers, the Association deems violative of an obligation under the collective bargaining agreement, we concluded that the appropriate forum for its resolution is the grievance procedure.

By Items 6 and 15, we mandate the drafting of a new collective bargaining agreement to replace the hodgepodge of documents that at present constitutes a collective agreement, and we retain jurisdiction of the proceeding to resolve disputes that might arise in the course of preparing such a documents.

Dated: Brewster, N. Y.
November 8, 1978


Jerome S. Rubenstein, Chairman

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration,
Pursuant to Section 209 of the Civil
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CITY OF PEEKSKILL

Case Nos. IA-40;
M77-590

- and -

PAID FIREMEN'S ASSOCIATION OF PEEKSKILL,
NEW YORK, INC.

----- -x

AWARD OF THE MINORITY ARBITRATOR

The undersigned arbitrator, having been designated pursuant to provisions of Section 209 of the Civil Service Law, and having been duly sworn and having heard the proofs and allegations of the witnesses, AWARD as follows:

1. The duration of the contract shall be for a one-year term, commencing January 1, 1977 and expiring December 31, 1977.
2. Effective on January 1, 1977, all members of the negotiating unit shall receive an increase of Five Hundred (\$500) Dollars; and on July 1, 1977, all members shall receive an additional increase of Five Hundred (\$500) Dollars.

3. Cash compensation for overtime work beyond the State mandated 40 hour week shall be at time and a half.

4. The increased hazards resulting from the high rise construction, and the extensive use of toxic materials makes it mandatory for additional education to keep current with the latest techniques. Education for the personnel should be made available as programs are generated.

5. Overtime shall be paid every thirteen (13) weeks for the accumulated overtime worked and earned.

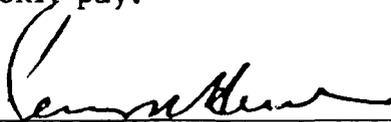
6. Supervision - that one (1) man per shift be designated in charge of the shift, and that appropriate designation of rank shall apply to the senior man.

7. That the man selected shall be from a competitive Civil Service List, and the rate of compensation for these men shall be 20% higher than the top paid firemen.

8. The current practice of mutuals shall continue.

9. The terms and conditions of the agreement of January 1, 1975, as modified hereinabove, shall continue in force and effect with regard to Paragraph 1 of said agreement.

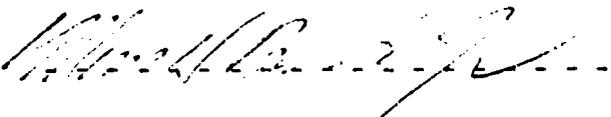
10. With regard to the nine (9) holidays, in the event that management requires any of the personnel to take off compensatory time up to five (5) days, then the remaining four (4) days shall be paid for at the rate of 1/8th of their biweekly pay.



JEROME J. HERSH
Employee Organization Arbitrator

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

On this 27th day of November, 1978, before me personally came and appeared Jerome J. Hersh, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.


MORRIS H. BANNISTER, JR.
NOTARY PUBLIC, STATE OF NEW YORK
WESTCHESTER COUNTY
MY COMMISSION EXPIRES MARCH 30, 1980



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PUBLIC EMPLOYMENT RELATIONS BOARD

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----- -x

OPINION

Appearances

For the City:

Rains, Pogrebin & Scher, Esqs.
(Bruce R. Millman, Esq., of counsel)
Mineola, New York

For the Association:

Thomas Flynn, Vice President
International Association of Fire Fighters
Yonkers, New York

Statement of the Case

The history in these proceedings reflect an honest effort to resolve differences between Labor and Management including negotiations with Thomas A. Newman, Mediator, in an attempt to resolve the problems.

The last agreement expired on December 31, 1976. The Association filed a petition with PERB on January 5, 1978 and an interest arbitration proceeding was commenced. The City claiming an improper practice in the petition resolved itself by an amended supplemental petition dated March 6, 1978, and a stipulation on file dated May 2, 1978 reflected the City's withdrawing of the improper practice charge on the basis of an amended petition.

Pursuant to an order of the Hon. Harold R. Newman dated May 10, 1978, Hon. Jerome S. Rubenstein was designated as Chairman and Neutral Arbitrator of the arbitration panel. Terence M. O'Neil represented the City and Jerome J. Hersh represented the Association.

The record reflects that there were numerous hearings commencing on June 12, 1978 and followed by a July 18th, August 22nd, and August 24th, 1978 hearings, and subsequent executive sessions. Numerous witnesses testified and a volume of documents were introduced into evidence.

The award annexed hereto reflects the minority view. It is the writer's opinion that the original period of time for which a contract was to be negotiated was for a one (1) year period.

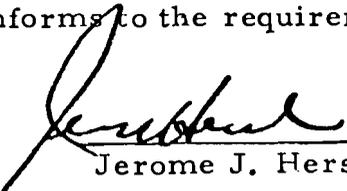
That in furtherance of this, during the course of testimony, counsel to the City, Terence M. O'Neil objected to the introduction of evidence on a two (2) year contract when offered by Thomas Flynn, representing the City.

The opinion written by the Neutral Hearing Arbitrator fully encompasses a recitation of the facts and views of the majority. The minority view reflects:

1. That the City has an ability to pay;
2. That the firemen are firemen in a dangerous and hazardous business;
3. That they are all local residents who have suffered increases of local taxes, water rates, inflation and Social Security increases.

The award to the police is carefully delineated in the opinion of the Hon. Jerome S. Rubenstein, and the writer believes that the award given the police for a one (1) year period should be given likewise to the firemen.

It is not the intention of the writer to express anything other than the minority view recognizing that it is a minority view, but since the sworn duty under the statute requires us to make a just and equitable decision, I believe that view conforms to the requirements of the statute.


Jerome J. Hersh

