

STATE OF NEW YORK PUBLIC EMPLOYMENT
RELATIONS BOARD

-----X
In the Matter of the Larchmont
Professional Firefighters X
Association, Local 895 IAFF X

Petitioner, X

-and- X
The Village of Larchmont, New York X

Respondent. X
-----X

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

MAY 21 1990

CONCILIATION

JAB-24; M88-220

INTEREST ARBITRATION
AWARD

APPEARANCES

For the Union

International Association of Firefighters,
Duncan MacRae, Vice-President

For the Village

RAINS & POGREBIN, P.C.
Craig R. Benson, Esq.
Stephen V. Altieri, Consultant
Carmin A. DeLuca, Treasurer

PUBLIC ARBITRATION PANEL

John E. Sands, Chairman
Terence M. O'Neil, Esq., Employer Panel Member
Thomas F. DeSoye, Esq., Union Panel Member

PRELIMINARY STATEMENT

On October 27, 1988, the Larchmont Professional Firefighters Association, Local 895, IAFF (hereinafter referred to as the "Union") filed a Petition for Compulsory Interest Arbitration with the Public Employment Relations Board (Joint Exhibit 1)^{1/}. The Village filed its Response to the Petition for Compulsory Interest Arbitration on November 11, 1988 (Jt. Ex. 2). On December 14, 1988, the undersigned were designated as the Public Arbitration Panel to resolve the dispute between the Village and the Union.

The initial session was conducted on May 31, 1989, with a second session held on June 29, 1989. Executive sessions were held by the Panel on July 25, 1989, and February 7, 1990. The delay between the executive sessions was a result of the parties continued good faith efforts to attempt to resolve this matter short of the issuance of a final Award. Despite these efforts, they were unable to mutually resolve the issues between them. Consequently the issuance of this Award became necessary.

^{1/} References to the Joint Exhibits shall be designated as Jt. Ex. ___, followed by the number of the exhibit; references to the Village's Exhibits shall be designated as V. Ex. ___, followed by the number of the exhibit; references to the Union's Exhibits shall be designated as U. Ex. ___, followed by the number of the exhibit.

The Petition for Interest Arbitration filed by the Union, and the Village's Response to the Petition contain the parties original demands which were submitted at the outset of negotiations. The Panel was left with the responsibility of reviewing the various proposals and prioritizing among the numerous demands which were placed before it. This was possible because of the experience of the two panel members appointed by the respective parties, and both were helpful to the Chairman in evaluating which demands should be addressed specifically in this Award.

BACKGROUND

The Larchmont Firefighters staff one fire station in the Village with five pieces of equipment on a 24 hour a day, 365 day a year operation. It is important to know, for background purposes, that the Village also has a paid police department who have previously settled their contract with the Village (U. Ex. 22) as well as another bargaining unit which has also voluntarily settled. (V. Ex. 31)

While negotiations with all of an employer's units are relevant in negotiations, the relationship between police and fire personnel in Westchester County is clearly the most relevant. While a lock-step parity relationship has neither been established, nor found by this Panel, the relationship between police and fire in all of Westchester and in the Village in particular is particularly relevant.^{2/}

^{2/} The Taylor Law provides that the panel take into account the following factors when making its Award:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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

(footnote continued)

The background of the police and fire negotiations in Larchmont clearly influenced this Award. It appears that in the prior two negotiations the firefighters voluntarily resolved their negotiations with the Village. The police, on the other hand, were unable to do so, and proceeded to interest arbitration. This process resulted in larger increases for the police than the firefighters ending up in a gap of over \$1600 between the pay of a top paid firefighter and a top paid patrolman. The Union's desire to "make-up" this gap along with the Village's insistence on some contributions toward health insurance can fairly be characterized as the two major stumbling blocks in the parties' efforts to voluntarily resolve this impasse. If a practical solution to both of these problems could

(footnote continued from previous page)
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 Panel's analysis of this impasse is consistent with these criteria.

have come about voluntarily, we believe that these negotiations could have been resolved without the inherent lengthy delay accompanying the interest arbitration process.

Both parties have submitted demands similar to those negotiated with other units in the Village and many of these are dealt with herein.

Issues^{3/}

1. Page 2, Article 4 - No Discrimination^{4/} - The Village has proposed the elimination of an anti-discrimination provision contained in the current contract. The provision merely paraphrases existing statutory protections afforded unit employees. (V. Ex. 40) Since the firefighters have adequate protection in this area by virtue of existing statutory provisions, we Award the Village's proposal to eliminate this clause.

2. Page 2, Article 6 - Probationary Period - The Village has proposed an extension of the probationary period. (V. Ex. 39) A similar extension was secured in the Village's negotiations with the police. (V. Ex. 22) Based on the similarity of the jobs at issue and the importance of properly evaluating these personnel, it is not unreasonable to extend the probationary period to a one

^{3/} Any issue not dealt with specifically in this Award is deemed rejected for lack of support in the record to influence a change in the existing agreement.

^{4/} The issues are dealt with in the order of their appearance in the collective bargaining agreement, not in order of priority and irrespective of the party proposing the charge.

year period. The Panel awards that Article 6 be amended to change the probationary period to 12 months.^{5/}

3. Page 3, Article 7 - Grievance Procedure - The Village has a number of proposals relating to the existing grievance procedure.

The first involves the addition of a provision which would prevent multiple proceedings when an employee chooses to utilize the grievance procedure instead of the statutory protections of the Civil Service Law with regard to discipline and discharge. In order to avoid such confusion, the Panel awards the addition of a clause in Section 2(a) that would provide as follows: "An employee who exercises his/her option to grieve under this provision waives their right to proceed under the provisions of the Civil Service Law." The addition of such a provision to the contract will avoid the possibility of a simultaneous disciplinary proceeding under the Civil Service Law and an arbitration under the provisions of the contract. This change avoids multiplicity of litigation which is to be avoided while retaining for the employee the right to elect the forum under which he chooses to proceed with regard to disciplinary action taken against him.

^{5/} The Village's original demand requested an extension at the discretion of the Chief. We believe that such discretion should not be included in the contract, but rather the same period should extend to all uniformed employees.

The Village also seeks the institution of a time limitation for the filing of grievances. Such a provision is almost universal in labor agreements and the Panel awards that the following provision be added to Section 4(b):

The grievance shall be filed within thirty (30) calendar days of the time of the grievance or the time the grievant became aware or should have become aware of the facts giving rise to the grievance.

The Village also seeks the addition of a clause that will insure that grievances continue to be processed in a timely fashion after they are filed. Such a provision is also almost universally contained in collective bargaining agreements throughout the State. The Panel therefore awards the addition of the following provision in Article 7, Section 4(b), Step 2 at the end of Line 3: "within fifteen (15) working days of the submission at Step 1".

4. Page 5, Article 10, Holidays. The Village has proposed certain clarifications in this area involving the method of accrual of holidays over the course of the year. Based on the presentation at the hearing and the method of accrual with other units in the Village, the Panel awards the addition of the following provision in Article 10, Section 1: "Holidays shall

accrue at the rate of two for January and one for every month of the year." This method of accrual is consistent with the other units in the Village and fair to the unit members.

5. Page 6, Article 12, Sick Leave Payout Upon Retirement. The Union has proposed improvements with regard to the payment of accumulated unused sick leave at the time of retirement. The Village negotiated an improvement in this area in the negotiations with its police. (V. Ex. 22) Accordingly, the Panel awards that Article 12, Section 2 be amended by changing "80%" to "66 2/3%" and "20%" to "33 1/3%". These changes will provide the firefighters with a greater payout at the time of their retirement while lessening the Village's long term payments towards health insurance premiums following retirement.

6. Page 6, Article 13, Longevity. The Union has proposed increases in the area of longevity. The Union has argued that its increases are justified based on comparability with other fire departments (U. Ex. 45) as well as inequities between firefighters and police.

While the Panel recognizes that the police and firefighters longevities are different, the cumulative effect of the different formulas provide for little variance over the

course of an employee's extended years of service with the Village. (V. Ex. 25) Accordingly, the Panel awards an increase effective June 1 of 1989 of \$50.00 for each of the longevities contained in Sections 1 through 3 in Article XII.

7. Page 7, Article 14, Educational Development. The Village has sought various changes with regard to the existing level of educational reimbursement provided to its employees. It argues that such changes are justified by logic, the intent of the initial provision, provisions in other fire contracts, and concessions negotiated with the police unit. (V. Exs. 22, 38) The Panel recognizes the legitimacy of the Village's argument to a degree and consequently awards the implementation of a two-tiered system with regard to educational benefits in the Village since the existing benefits are not justified when the applicable statutory criteria are applied.

Thus, the provisions of Section 1 should be amended so as to apply only to "employees hired on or before June 1, 1989". In addition, Line 2 of the current Section 1(a) should be amended by adding the word "undergraduate" between the words "approved" and "courses". In addition, in Line 4 the words "a degree" should be changed to "an associate or undergraduate degree".

In Section 1, Subsection B, for clarification purposes, in Line 2 the phrase "all approved courses" should be changed to "all such approved courses".

In addition, a new Subsection E should be added to Section 1 which would provide as follows: "The maximum number of courses for which an employee may be reimbursed for in any one year shall be four".

In addition, a new provision should be added applicable to employees hired after June 1, 1989. This provision will be a new Section 2 and will provide as follows:

Section 2. Employees hired after June 1, 1989, shall be eligible for the Educational Benefits outlined herein:

(a) Reimbursements for undergraduate courses in Fire Science where they receive a "C" grade or better to a maximum of 66 credits and a maximum of \$175 per credit hour.

(b) No employee may be reimbursed for more than 4 courses in any one year.

8. Article 17, Leaves of Absence Without Pay. The Village has proposed a number of substantive changes and clarifications with regard to this Article. The Panel finds no justification for any

substantive change, but does award the following wording amendments which represent clarifications only:

1. In Line 3 add after the first word "pay" the following "or other benefits".

2. In Line 12, change "that is" to "i.e.", and put a comma after the "i.e." and also after the phrase "past service".

9. Page 9, Article 19, Uniform and Clothing Allowance. The Union has proposed changes in this area based on comparability with other departments (U. Ex. 47) along with increases negotiated by the Village with its other uniformed force. (V. Ex. 22) Based on an analysis of the amounts paid in other departments and, more significantly, the increases negotiated by the Village with its police unit, the Panel awards that the uniform allowance in Section 1 be increased to \$300 for the first year of the agreement and \$350 effective June 1, 1989.

10. Page 9, Article 20, Health Insurance. This has been perhaps the most difficult issue to deal with in this impasse. The Village has proposed that firefighters contribute towards their health insurance coverage. Such a demand is one of the most difficult to achieve in any bargaining and one of the hardest proposals for a Union to accept from their side of the table.

The Village submitted a number of exhibits in support of its proposal that firefighters contribute towards their health insurance including private sector comparisons. (V. Exs. 34-37) The Village also points to a number of interest arbitration awards post Empire Plan increases^{6/} indicating that arbitrators have awarded the implementation of health insurance contributions limited to new hires and limited to, generally, the period of time until an officer reaches top grade or pay. (V. Exs. 9-11, 14) There have also been a number of settlements where similar provisions have been negotiated. (V. Exs. 15, 22) Interestingly, while police and firefighter settlements in the past have been very similar, the firefighter locals in Westchester have strongly, and to a better degree than police, resisted this form of contribution. The Union has argued that such a device affects those least able to pay and involves payment towards such coverage with after-tax dollars. They also argue that police are more able to pay these contributions because of their higher starting salaries. The Village also argues that similar contributions have been negotiated with its CSEA unit. (V. Ex. 31)

In evaluating the above, the Panel finds that few firefighter locals have agreed to the recently-instituted

^{6/} The Village's contributions to the firefighters health insurance plan have increased dramatically over the past few years. (V. Exs. 32-33)

contributions to health insurance by new hirees until they reach top grade. Particularly persuasive in denying the inclusion of such a provision in the Larchmont contract is the disparity in starting pay between police and firefighters.^{7/}

However, the Panel believes that the Village's inclusion of such a provision in its contracts with its police and CSEA units will result in a substantial monetary savings to it with new employees. Accordingly, a similar savings should at least be generated in these negotiations with the firefighters. In order to accomplish a portion of these savings in this area, the Panel awards that the Village should not be obligated to pay for health insurance for any new hire who is eligible to receive health insurance coverage through the plan of a spouse.

The possibility of dual coverage could also be eliminated by the implementation of a withdrawal bonus and that is also awarded by the Panel. In addition, the Village should have the right to switch carriers provided certain protections are afforded to the bargaining unit members. The language implementing these three recommendations are outlined below.

^{7/} The Village's savings in this area will be addressed in the "Salary" portion of the Award, infra.

Effective with the date of this award, (4/11/90) the Village shall not be obligated to pay health insurance premiums for any new hiree who is eligible to receive comparable health insurance coverage through a plan provided by his or her spouse. Should the employee's spouse lose eligibility, the new hire shall be entitled to enroll in the Village's plan.

The Village has the option to switch to comparable health insurance coverage, provided it consults with the Union and gives the Union 90 days notice of its intention to switch. The Village shall not change coverage in the event that the Union challenges comparable coverage until an award is issued or 120 days after the union files its demand for arbitration, whichever comes sooner. Grievances under this provision shall be submitted at Step 3. If the Village switches coverage, they will be obligated to pay the same percentage contribution that it is otherwise obligated to pay under the current Civil Service statutory rate minimum plus the current percentage of the unused sick leave paid toward the member's contribution.

Members of the unit who are covered by the Village's health insurance who withdraw from the Village's plan during the life of this agreement shall receive \$1,000 if they were covered by the family plan, and \$600 if they were receiving individual coverage, provided they remain uncovered by such plan for a period of twelve (12) consecutive months. Nothing contained herein shall preclude a member from reentering the plan provided, however, that in the case of a member who reenters in less than twelve (12) months, no payment shall be made.

Payments hereunder shall be made in the first pay period of December for the number of months uncovered.

11. Page 10, Article 20 - Dental Insurance - The Union has argued for an increase in the Village's contributions towards dental insurance based on comparability with other units (U. Ex. 49) and based on the Village's negotiated increases with its other units. (V. Ex. 22) The Panel finds these arguments persuasive and awards that the Village's contribution be increased from \$360 to \$400 effective in the first year of the agreement, and to \$480 effective in the second year of the agreement.

12. Page 12, Article 28 - Savings Clause - Section 2 of the existing agreement provides that terms and conditions of employment and other employee benefit programs now enjoyed by bargaining unit members not be abridged by this agreement. The Village has proposed that this provision be deleted from the agreement. The Panel rejects the deletion of the current clause, but, awards the addition of a sentence which would read as follows: "This provision shall be limited to mandatory subjects of bargaining." This should allay the Village's concerns about the extent of the existing provision and limit such clause to terms and conditions of employment which cover mandatory subjects of bargaining. Consequently, the Village will have no concern about altering items which are management prerogatives.

13. Page 12, Article 29 - Salaries - The salary proposals of the parties varied greatly, but the parameters of the increases must be shaped by increases granted in comparable communities, as well as increases negotiated in the Village.

The Village argues that, although Larchmont is certainly not a poor community, that it is approaching its constitutional tax limit at a rate higher than all but three other communities in Westchester, and that its true valued tax rate is in the top quarter in Westchester County. See V. Exs. 1 & 2. It also argues that the salary and benefit levels for the Larchmont firefighter far exceed an employee's base salary (V. Exs. 3-4). In addition, private sector settlements have been moderate over the last two years and National and State settlements have hovered around the 5% to 5 1/2% mark in 1988 and 1989. (V. Exs. 5-7) The Village has also pointed to recent settlements in police and firefighter locals in the County (V. Exs. 8-22) In addition the Village argues that when its firefighters are compared with other firefighters throughout the County, they compare favorably (V. Ex. 24)

The Union argues that its firefighters do not compare favorably with other communities (U. Exs. 43-44), although when one point in time is used as a basis of comparison, this position

is not justified. (V. Ex. 24) They also argue, persuasively, that the 1983 and 1896 PBA Arbitration Awards have served to spread the gap between first grade firefighters and first grade patrolmen in the Village. Factually this cannot be disputed.

The arguments by both parties are persuasive and the Panel believes that, to a degree the needs of both can be met with this Award. Thus, in order to avoid the expansion of the gap between first grade firefighters and first grade patrolmen, the Panel awards an increase of \$2,037 for 1988-89, and \$2,248 for 1989-90. The increases are identical to the dollar increases granted first grade patrolmen in the Village. Thus, the gap between the first grade patrolmen and firefighters will not expand during the life of this Award. The increases for fifth grade firefighters through second grade firefighters shall be 5.75% for 1988-99, and 6% for 1989-90 - the same percentage negotiated with the Village's patrolmen. The increases for Lieutenants and Captains should be the same as the percentage increases for the first grade firefighters in order to maintain their spreads.

Because of the failure of this Panel to award a contribution towards health insurance for new hirees, it does however, believe it necessary to make up for this economic loss

to the Village. Accordingly, we award that the starting salary for firefighters be rolled back by \$1,000 from \$23,000 to \$22,000, and that such salary be frozen for the life of the agreement. We believe that this rollback will generate a comparable savings to the Village over a four year period. ^{8/} We believe this compromise should satisfy the philosophical concerns of the firefighters, as well as the economic concerns of the Village. These adjustments are reflected on the attached Appendix A., which should replace the current Appendix "A" of the existing contract. (Attached is Appendix A)

We also believe that the Village has realized certain savings compared to its police deal by the deferral of any longevity increase until the second year of the agreement and by the deferral of the uniform increase.

^{8/} The Village's savings in salary occur in every year until the firefighter reaches first grade and also includes a savings in fringes which are based on salary, e.g., pension, social security.

APPENDIX "A"

VILLAGE OF LARCHMONT

FIRE DEPARTMENT ANNUAL WAGE SCHEDULE

Firefighters hired prior to June 1, 1987 shall be paid according to the schedule below

JUNE 1, 1988 to MAY 31, 1990

	<u>1988-1989</u>	<u>1989-1990</u>
5th Grade Fire Fighter (Start)	\$31,559	\$33,453
4th Grade Fire Fighter	32,594	34,550
3rd Grade Fire Fighter	33,651	35,670
2nd Grade Fire Fighter	34,685	36,766
1st Grade Fire Fighter	35,836	38,084
Lieutenants	41,650	44,232
Captains	44,071	46,803

Section 1. Employees shall be paid at the starting rate during their first year of continuous employment and shall advance to the next step in the pay schedule in the payroll period following the anniversary of employment until the maximum step is reached. The Village may give credit for prior experience to new employees permitting those employees to be paid at a higher step, but in no case shall employees be paid higher than the maximum step.

Fire Fighters hired after 6/1/87, shall be paid on the schedules listed below provided, however, that no current member of the unit shall have their salary reduced.

	<u>1987-1988</u>	<u>1988-1990</u>
5th Grade Fire Fighter (Start)	\$22,000	\$22,000
4th Grade Fire Fighter	25,449	26,021
3rd Grade Fire Fighter	28,918	30,042
2nd Grade Fire Fighter	32,377	34,063
1st Grade Fire Fighter	35,836	38,084

AFFIRMATION

State of New York:

I, John E. Sands, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

Date:



John E. Sands, Panel Chairman

AFFIRMATION

State of New York:

I, Terence M. O'Neil, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

I dissent on the following items:

Page 12, Issue 10, Article 20, Health Insurance - only on the denial of contributions.

Date: 4/11/90



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



ALAN C. BECKER
Notary Public, State of New York
No. 31-4667155
Qualified in ~~Albany~~ Ulster County
Commission Expires, December 31, 1990

AFFIRMATION

State of New York:

I, Thomas F. DeSoye, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

I dissent on the following items:

Page 6, Issue 2, Article 6 - Probationary Period

Page 8, Issue 4, Article 10, Holidays

Page 7, Issue 7, Article 14, Educational Development

Page 15, Issue 10, Article 20, Health Insurance

Date:

4/2/90



Thomas F. DeSoye, Esq., Employee Panel Member