STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

- X

In the Matter of the Arbitration X

between X

HARTSDALE FIRE DISTRICT X

"District" X

-and- X

GREENBURGH UNIFORMED FIREFIGHTERS' ASSOCIATION, LOCAL 1586, IAFF X

"Union" X

- X

Index Nos.
IA-90-010; M89-438

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
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CONCILIATION

APPEARANCES

For the District
Bernard J. Dushman, Esq., Attorney for District
Thomas V. O'Reilly, Commissioner
Michael L. Vaughn, Commissioner
Walter Schoonmaker, Fire Chief

For the Union
Donald Henry, Esq., Attorney for the Union
James Panico, President, Local 1586
Walter Ferguson, Executive Board Member, Local 1586

BEFORE: Stephen Perelson, Esq., Employer Panel Member
Thomas F. DeSoye, Esq., Employee Panel Member
Martin F. Scheinman, Esq., Public Panel Member

BACKGROUND

The parties are signatories to an Agreement which expired on December 31, 1989. Sometime prior thereto, they entered into negotiations for a successor agreement. These proved unsuccessful. Consequently, the Union filed a petition for Compulsory Interest Arbitration on July 10, 1990. Pursuant to the rules of the Public Employment Relations Board (PERB), the undersigned Panel was designated to hear and resolve the dispute.

A hearing was held before us on January 28, 1992. At that time, both parties introduced testimony and evidence in support of their respective positions. In addition, extensive written submissions were submitted. The hearing was declared closed on January 28, 1992.

Thereafter, the Panel met in Executive Session. The Panel deliberated and reached the conclusions set forth below. However, at the request of the Employee and Employer Panel Members, the Public Panel Member has drafted the Panel's Opinion. That is, the language selected herein is the responsibility of Mr. Scheinman.

OPEN ISSUES[1]

A. Union Proposals

1. <u>DURATION</u> - One year agreement, January 1, 1990 to December 31, 1990.

2. <u>SALARY</u> - Increase in base salary of 9% for the year 1990.

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[1] Certain proposals of the parties were withdrawn during the course of this proceeding and are not referred to herein.

3. HEALTH INSURANCE - Status quo.

4. DENTAL PLAN - District to provide payment of $55.00 per employee per month for dental coverage.

5. VACATION - Increase all vacations by one (1) tour and allow one (1) tour to be floating. Allow employees to carry over two (2) tours into final year and be allowed to sell back vacation in any one year.

6. OVERTIME - All overtime to be paid at time and one-half with the exception of desk watch and 104 hours special.

7. UNIFORM MAINTENANCE ALLOWANCE - Increase allowance by $250.00 to $450.00 for 1990.

8. MEAL REIMBURSEMENT - Same schedule of allowances as Officers.

9. CODE ENFORCEMENT OFFICERS - Compensate Firefighters who have completed Code Enforcement Training. In addition, for new members of the Department, while training as Code Enforcement Officers, they shall be compensated for all time spent training at time and one-half.

B. District Proposals

1. DURATION - Two year agreement, January 1, 1990 to December 31, 1991.

2. SALARY - An increase in base salary of 5% for 1990 and 5% for 1991.

3. HEALTH INSURANCE - Each Firefighter shall contribute 20% of the cost of insurance coverage.

4. DENTAL PLAN - No change to the current cap of forty

dollars ($40.00) per employee, per month, for dental coverage.

5. VACATION - No change from current contract.

6. OVERTIME - No change in existing practices.

7. UNIFORM MAINTENANCE ALLOWANCE - No change from the current allowance of $200.

8. MEAL REIMBURSEMENT - Agrees to the meal reimbursement schedule provided to Officers.

9. CODE ENFORCEMENT OFFICERS - No change in current practice. If a candidate for Code Enforcement Officer has not completed the necessary training prior to being hired, he or she will complete the training on his or her own time within eighteen (18) months of being hired.

POSITIONS OF THE PARTIES

A. The Union

The Union presents a number of arguments in support of its claim that Firefighters in Hartsdale are entitled to significant salary improvements. Chief among these is a comparison between wages in Hartsdale and other areas. According to the Union, these figures, for top salary Firefighters, are as follows:

Eastchester	$41,266
Scarsdale	$41,004
Fairview	$39,956
Greenville	$39,048
Hartsdale	$36,664

The Union asserts that its proposal is reasonable, when the salaries are compared. Specifically, it contends, Firefighters in Hartsdale are substantially underpaid when compared with other

similarly situated firefighters. As such, the Union argues a substantial increase would be needed to approach parity with other firefighters in the area. This is particularly so, according to the Union in that the parties have traditionally compared themselves to the Fairview District and the Greenville District. In fact, the Firefighters employed by Fairview and Greenville are represented by the same bargaining representative as those in Hartsdale.

Given the higher salaries in Fairview and Greenville, and given the salary in Eastchester (the only three Fire Districts within Westchester County which the Union claims have virtually identical make-ups as Hartsdale) a large increase is required to bring Hartsdale more in line with these other comparable communities, according to the Union. Therefore, it asks that its salary increase proposal be granted.

As to the proposal for an increased contribution towards dental insurance, the Union argues that in order to keep benefits constant with the Officers, increases are needed in the District's contribution. The Officers recently received an increase to fifty five dollars ($55) per employee, per month.

As to vacation accruals, the Union asks for an increase in all vacations by one (1) tour. It requests that one (1) tour be floating. The Union also asks that employees be allowed to carry over two (2) tours into their final year and be allowed to sell back vacation in any one year. The Union's claim for additional vacations is based on its compilation of relevant data for

Westchester County. According to the Union, its proposal is consistent with provisions in other agreements in Westchester County. It also claims that vacation flexibility is necessary given the scheduling of Firefighter tours.

Concerning uniform maintenance allowance, the Union seeks an increase of $250.00 to $450.00 per employee for 1990. It notes that Officers received an increase, and asserts that Firefighters should be treated similarly.

On meal allowance, the Union maintains that Officers currently receive the allowances it is requesting. The Union asks for $3.00 for breakfast, $7.00 for lunch and $10.00 for dinner. It requests no change in the current eligibility for allowances.

As to overtime, the Union asks that all overtime be paid at time and-one half, with certain exceptions. It asserts that Firefighters should be entitled to overtime like employees in most areas of the private and public sectors.

The Union also seeks a change in special overtime. This is commonly refereed to as "Kelly Time". Currently, Officers receive one hundred and four (104) hour of Kelly Time in pay. The Union seeks the option of taking some of this time as time off instead of receiving monetary compensation. It asserts that this proposal is necessary so as to provide Firefighters with greater flexibility in taking care of their private responsibilities.

Finally, the Union strenuously objects to the District's proposal that it make contributions to health insurance. It notes that none of the other Westchester County Firefighter Districts

have health insurance contributions for incumbents. This is so, according to the Union, despite the fact that this issue has been brought to arbitration in certain places and despite the fact that a number of municipalities have police units that have previously agreed to or imposed upon them a requirement to contribute to health insurance. It also cites an arbitration decision by a Public Arbitration Panel chaired by Arbitrator John Sands involving the Village of Larchmont and the Larchmont Professional Firefighters Association, Local 895, IAFF, wherein the employer's proposal for health insurance contributions was rejected by the Panel.

In all, the Union insists that there is no evidentiary basis for health insurance contributions by its members.

B. The District

The District seeks a two (2) year agreement for the period January 1, 1990 through December 31, 1991. As this Award will not be issued until 1992, the District believes that a one (1) year agreement which expired in 1990, would only result in more turmoil to the relationship between the parties.

The primary issue proposed by the District is for Firefighters to contribute 20% of the annual cost of providing health insurance under the Empire Plan. The District maintains that this cost has risen dramatically. Specifically, it points out that in 1981, the cost of medical insurance for an individual Firefighter was $443.16 annually. By 1990, it submits, that figure had risen to $2016.62 per year, an increase of 355%. In that same period, family

coverage rose from $1134.48 annually to $4583.43 or 304%. The District maintains that the Firefighters must be made aware of these rising costs. It insists that by sharing in these costs, the Firefighters would understand the additional costs that the District is required to pay even before it agrees to any salary increases.

In the District's view, having the Firefighters pay part of the premium would encourage prudent utilization of this benefit. It insists that the employees would become more interested in learning of the various options of cost containment.

In addition, the District points out that the concept of cost sharing for new hires has been negotiated by other Fire Departments in Westchester, specifically, in Pelham, Rye and New Rochelle.

The District proposes a wage increase of 5% in each of the two (2) year period covered by this Award. It asserts that such an increase is generous in light of the economic downturn of the economy in general, and Westchester County, in specific. The District points out that many employees have lost their jobs in these difficult economic times. Few, who have retained their jobs, have been able to count upon wage increases.

Nevertheless, the District acknowledges that other firefighters have received wage increases. Officers also have received wage improvements. Therefore, balancing the interests of the Firefighters with the general economic conditions (and the dramatic increase in health insurance costs paid by the District), the District concludes that a wage increase of 5% annually is more

than reasonable.

As to the dental plan, the District submits that there is no reason for the increase in its contribution per employee per month. It claims that it pays more than an adequate amount by providing forty dollars ($40.00) per month, per Firefighter. Therefore, the District asks that the Union's proposal be rejected.

Therefore, the District maintains that the trend among other comparable employers supports the concept of cost sharing. It asks for a 20% contribution by each Firefighter.

Concerning vacations, the District sees no need for any change as proposed by the Union. As the District sees it, this proposal is not warranted. It asserts that the vacation package provided by the District is more than adequate and is consistent with other benefits provided in comparable communities. Therefore, the District asks that it be rejected.

As to uniform maintenance allowance, the District argues that there is no justification for the increase sought by the Union. It notes that the uniform allowance profile in Westchester County demonstrates that Firefighters are treated relatively well in comparison to the other Westchester County fire units. It asks that the Panel reject this proposal.

Concerning meal reimbursement, the District agrees to the meal reimbursement schedule that is currently offered to Officers. It sees no dispute between the parties on this issue.

On overtime, District asks that the current overtime practices remain in effect. It also rejects any argument that a change in

Kelly Time is appropriate if it would have the effect of costing the District additional overtime.

OPINION

Several introductory comments are appropriate. The Panel is required to follow the relevant statutory criteria set forth in Section 209.4 of the Taylor Law. These criteria are:

> a. comparison of 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.

With these factors in mind, we turn to the specific circumstances of this dispute.

Given the date of this Award by the Panel, it is illogical and counterproductive for the Panel to issue an Award which covered the period January 1990 through December 31, 1990. Instead, we are persuaded that a two (2) year Award is appropriate here. Even this Award will have expired prior to its issuance.

Common sense dictates that the parties have some period of respite from the interruptions caused by collective negotiations and interest arbitration, where negotiations do not result in a voluntary settlement. For this reason, we are compelled to conclude that the District's proposal for a two (2) year Award makes more sense. Accordingly, we have set forth our findings and conclusions based upon a two (2) year Agreement. It shall cover the period January 1, 1990 through December 31, 1991.

As to the issue of wages, the Union requested a 9% salary increase for the year 1990. The District countered with a proposed 5% increase each year.

Considerations of the overall cost of this package, the cost of living and, most importantly, the historic relationship of Firefighter salaries to other comparable districts, convinces us that each party's proposal is unreasonable. The Union's proposal is excessive. The District's proposal, if accepted, would cause an increased gap between Hartsdale and the comparable communities. In our view, either proposal would fail to provide the parties the stability that is so important to the District, the Union and the citizens of Hartsdale.

The documents, charts, and graphs provided persuade us that the relevant universe for comparison of terms and conditions of employment, especially of salaries, is Fairview and Greenville.

This is true for several reasons.[2]

First, these Districts are similar in terms of geographic size, populations served, the nature of the geographic area nd the assessed valuation. Second, the record evidence demonstrates that for several years, these Districts have looked to each other as comparisons for determining wages, salaries and other terms and conditions of employment. A historic relationship dates back to at least 1972.

Third, these other Districts are closely situated geographically. Fairview borders Hartsdale to the north. Greenville borders Hartsdale to the south. This proximity supports the view that these three communities are particularly relevant to one another.

We conclude that Fairview and Greenville constitute the primary relevant universe for determining comparisons of wages, salaries and other terms and conditions of employment.

Salaries for Firefighters should continue to have a relationship to the salaries received by the Firefighters in the comparable districts of Fairview and Greenville. The current salary of Hartsdale Firefighters is $36,664. A 6.5% salary

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[2] Mr. Scheinman, in a prior Award, dated October 20, 1983, in Greenville (The Greenville Fire District and Greenville Uniformed Firefighters Association, Inc. Case No. IA 81-15, M80-670), determined that Hartsdale and Fairview were the relevant universe for comparisons of terms and conditions of employment. The rationale there is similar to the conclusions reached by this Panel. Accordingly, many of the conclusions set forth in the Greenville Award, regarding the issue of comparability, have been adopted here.

increase in 1990 will bring Hartsdale Firefighters, at the top step, to $39,047. This compares properly to Greenville's top salary of $39,048 and to Fairview's top salary of $39,956 in 1990.

Given the record evidence regarding the negotiations and or settlements in Fairview and Greenville for 1991, we are persuaded that an increase of 6.5% on January 1, 1991 will maintain the historic relationship amongst the comparable communities. This will foster stability in that each District will not be confronted by attempts to leap-frog over one another to the disadvantage of the employers, in general, and to the District, in particular.

By far, the most contested issue between the parties involves the District's proposal that Firefighters contribute 20% of the cost of health insurance. As indicated above, the District argued that such a contribution will make Firefighters better consumers of health care, more cognizant of the extraordinary increases annually in health care insurance and more appreciative of the impact these increases have had upon the District's budget.

We agree that the increases in health insurance costs have been excessive. We also agree that these costs have had a negative impact upon the District as it has had a negative impact on all employers.

However, we conclude that the arguments of the District, while somewhat compelling, do not provide the basis for concluding that health insurance contributions are appropriate from the Firefighters. There are several reasons that lead us to this conclusion.

First, there is no record evidence to suggest that health insurance rates would be reduced even if the Firefighters did become better consumers. After all, the District participates in the Empire Plan which covers hundreds of thousands of employees. Obviously, even the best of consumers would have no impact upon the rates charged to the District. Empire does not experience rate on a employer-by-employer basis.

Second, the District's desire to have the Firefighters understand and appreciate the magnitude of the cost increases experienced by the District can be accomplished by far less dramatic means than having Firefighters contribute for their health insurance. For example, the record evidence demonstrated that the District does not post the increases it receives from Empire, annually, on the bulletin boards. Nor does the District promulgate those increases to the Firefighters in any manner. If it did these, or any other similar communication, Firefighters would become increasingly knowledgeable and sensitive to the impact these increases have upon the District.

Third, the evidence at the hearing did not disclose a good deal of discussion between the parties about how to <u>mutually</u> address the concerns of health insurance costs. Today, it is not unusual for public sector employers and their employees to be immersed in serious discussions about how to save on health insurance costs. For example, many school districts have joined together to leave the Empire Plan for less expensive, although equivalent, health insurance programs.

We believe that such discussions should precede resort to health insurance contributions by Firefighters. We direct the parties to establish a committee to study the whole area of health insurance costs. It may well be that these discussions should involve other fire districts or other public employers located close to the District.

Fourth, we note that the idea of health insurance contributions by Firefighters does not exist in the majority of fire districts in Westchester. In fact, it does not exist in either Fairview or Greenville. Where it does exist, it appears that contributions have been required of only new hires.

While this evidence of the experience in comparable communities is not dispositive of this issue, we conclude that the fact that health insurance contributions are not universal is further support for the view that they ought not to be introduced into the District.

Finally, on the issue of health insurance, the timing of this Award must be recognized. As already indicated, this Award covers the period of time which has already lapsed. It would be inappropriate to announce a change in health insurance contributions going backwards to a period that is already expired. Moreover, an issue of this complexity requires an overall approach covering a series of years where experience may be monitored and where modifications and changes may be made.

Thus, we reject the District's proposal that Firefighters contribute to health insurance. However, we direct the parties to

mutually establish a study committee to investigate how to provide health insurance in a more cost effective manner to Firefighters without the need for shared contributions. This committee shall make recommendations to the District and to the Union within one hundred and twenty (120) days of this Award.

As to dental care benefits, the Union requests an increase to the level provided to Officers. The District opposes any increase in their premium contribution.

An adjustment in dental payments may be justified based on comparability, however, balancing all the relevant factors, we reject the Union's proposal. Specifically, given our decision not to grant the District's proposal for health insurance contributions, and given the fact that the timing of this Award was one of the bases for not granting the proposal, it would be inequitable at the same time to grant an increase in dental contributions for a period that has already lapsed. Moreover, the cost of dental insurance has not risen as dramatically as has health insurance.

We reject the Union's proposal. However, we believe that dental insurance should be one of the areas discussed by the joint committee being established to address health care costs.

The Union made a series of proposals regarding changes in the way vacations are provided in the District. We believe that only one has merit. We award that, prospectively, a Firefighter may work three (3) vacation tours, <u>once in his or her career</u>, and be paid overtime for those tours. All other proposals involving

vacation are rejected.

The Union proposed a change in special overtime (Kelly Time). Primarily, the Union's proposal is intended to permit the Firefighter to receive more time off. Currently, a Firefighter gets one hundred and four (104) hours Kelly Time in pay. The Union requests that Firefighters have the option of taking these hours in compensatory time.

We see no problem with the Union's proposal, as long as it does not create an overtime situation for the District. That is, the Union's proposal is granted, prospectively, to the extent that the taking of compensatory time does not result in overtime being required of other Firefighters.

The Union has also proposed changes in the area of uniform maintenance allowance based upon comparability with other districts and based upon the allowance received by Officers. The Panel awards that the uniform maintenance allowance be increased to four hundred and fifty dollars ($450), effective January 1, 1991, as was the uniform allowance provided to Officers.

As to meal reimbursement allowance, the parties have agreed that Firefighters shall receive the same allowances as Officers. That schedule is as follows:

Breakfast	$3.00
Dinner	$7.00[3]

The final issue to be addressed is payment for Code

[3] Apparently, this figure is increased to ten dollars ($10.00) when a Firefighter is held over for three (3) tours.

Enforcement Officers and for those Firefighters training to become Code Enforcement Officers.

We conclude that all Firefighters who currently have completed Code Enforcement Training shall receive a one time stipend of five hundred dollars ($500).

For new members of the Department, while becoming Code Enforcement Officers, we conclude that these Firefighters are entitled to payment for the time spent becoming Code Enforcement Officers as the District requires them to complete such training. However, we reject the proposal that Firefighters in such training be paid time and one-half for such time or be compensated for travel time to the training.

Instead, we award that any Firefighter who is working when the training is scheduled shall be relieved of his or her assignment and be given sufficient time to travel to that assignment (by being relieved in ample time to permit reasonable travel).

For Firefighters who are not working during the training time, he or she shall be paid straight time for all classroom hours. No travel or study time shall be compensated by the District.

In summary, we award the changes in the parties' current Agreement as specified above. Any proposal not specifically granted is hereby rejected.

AWARD

1. The Agreement shall commence on January 1, 1990 and expire on December 31, 1991.

2. Wages shall be increased as follows:

January 1, 1990 - 6.5%

January 1, 1991 - 6.5%

3. Health Insurance - The District's proposal that Firefighters contribute to health insurance is rejected. There shall be established a joint District-Union study committee which shall make recommendations within one hundred and twenty (120) days to the District and Union as more fully described above.

4. Dental Insurance - The Union's proposal is rejected. The study committee shall make recommendations on dental coverage.

5. Vacation - Firefighters may, prospectively, once in a career, work and be compensated overtime for three (3) vacation tours.

6. Special Overtime (Kelly Time) - Firefighters may, prospectively, take one hundred and four (104) hours of Kelly Time as compensatory time, and not in pay, as long as no overtime results.

6. Uniform Maintenance Allowance - Effective January 1, 1991, the uniform maintenance allowance shall be $450.00.

7. Meal Reimbursement - Effective December 31, 1991, the schedule of allowances is as follows:

Breakfast - $3.00
Dinner - $7.00

If Firefighters are held over for three (3) tours, the dinner allowance of seven dollars ($7.00) is increased to ten dollars ($10.00).

8. Code Enforcement Officers - Firefighters who have completed training shall receive a one time stipend of five hundred dollars ($500). Firefighters who are undergoing training shall receive straight time pay for all classroom hours or shall be relieved from their work assignment if the training is taking place during their work tour.

Martin F. Scheinman, Esq., Public Panel Member

5/12/92

Concur #1, #2, #3, #5, #6, #7, #8
Dissent #4

Thomas F. DeSoye, Employee Panel Member

Concur #1, #2, #4, #5, #7, #8
Dissent #3, #6

Stephen Perelson, Employer Panel Member