

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration  
Between

THE VILLAGE OF SCARSDALE,  
Public Employer,

and

THE SCARSDALE UNIFORMED FIRE FIGHTERS  
ASSOCIATION SUFA, LOCAL 1394, IAFF,  
AFL-CIO,  
, Employee Organization.

PERB Case No.  
IA-92-030; M-92-243

JS Case No.  
1841

OPINION  
AND  
AWARD

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Before the Public Arbitration Panel:

JOHN E. SANDS, ESQ.  
TERENCE M. O'NEIL, ESQ.  
THOMAS F. DESOYE, ESQ.

Public Member and Chairperson  
Employer-Appointed Member  
Employee-Appointed Member

APPEARANCES

For the Village

Rains and Pogrebin, P.C.  
Craig R. Benson, Esq., of Counsel  
Richard J. Rohan, Personnel Director  
Steven Papalardo, Administrative Assistant to the  
Village Manager

For the Union

Duncan C. MacRae, Executive Vice President,  
NYS Professional Fire Fighters Association  
Duke Snyder, President, Scarsdale Uniformed Fire Fighters  
Association, SUFA  
Edward Fennel, Municipal Financial Consultant  
Robert McKeever, Captain, SUFA

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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CONCILIATION

OPINION OF CHAIRPERSON<sup>1</sup>

Pursuant to Section 209.4 of the New York State Civil Service Law, and in accordance with the rules of the Public Employment Relations Board (PERB), the above named Public Arbitration Panel was designated to make inquiry, determinations and issue an Award on various items submitted to impasse by the parties. A PERB appointed mediator had been assigned prior to commencement of the arbitration process but was unsuccessful in resolving the dispute. The panel held hearings in Scarsdale, New York on May 5 and June 2, 1993 and subsequently met in executive session on July 22 and August 10, 1993. At the arbitration hearings both parties were represented and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. The Interest Arbitration Opinion and Award follows.

In making our determination the panel acted in accordance with and gave due consideration to the relevant statutory criteria as set forth in Section 209.4 of the Taylor Law as cited below.

- 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

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<sup>1</sup>. The opinion herein was authored by the chairperson and it's his rationale. The items on which other panel member dissent is listed next to their signatures at the end of the award.

employees performing similar services or requiring similar skills under similar working conditions and with other employees is 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, . . .

The parties submitted the following items to the Panel for their consideration and Award.

- 1) Salary
- 2) Workweek
- 3) Overtime Compensation
- 4) Vacation
- 5) Sick/Personal/Bereavement Leave
- 6) Holidays
- 7) Personal Days
- 8) Health Insurance
- 9) Life Insurance
- 10) Retirement Benefits
- 11) Compensatory Time
- 12) Retroactivity
- 13) Uniform Allowances
- 14) Disciplinary Procedure
- 15) Education Benefits
- 16) Captain's Differential

Because of the inordinate amount of proposals from both sides of the table, the Panel has agreed to limit the award herein to what it considers the major items at issue in the interest arbitration; salary, health insurance and leave time.

With the exception of these issues, it would have been impractical and needlessly costly for the chairman to sift through the varied proposals and ascertain which ones were truly priorities of the respective parties. The chairman further notes that the two-year period covered by this award will expire May 31, 1994 and that it will not be long before the parties are back at the table negotiating for a successor agreement. It is thus the position of the chairman and the panel as a whole that the give-and-take of collective bargaining is a more appropriate way to resolve the many issues raised in the respective parties' proposals.

#### SALARY

#### UNION POSITION

The Union seeks a 10% increase above the current salaries, as well as increases in the starting salary and raising the Captain's differential. At the hearing it presented the testimony of Edward J. Fennel, a Municipal Finance Consultant.

Mr. Fennel testified that the Village is in sound fiscal condition and can easily afford to pay the increases sought by the union. Mr. Fennel presented the panel with evidence that Scarsdale had an unreserved and unappropriated fund balance of \$826,712 as of May 31, 1992. (Union Exhibit 1.) He also pointed out that Scarsdale had received more revenues than

anticipated during its fiscal year 1992 which resulted in an equity balance with was \$515,428 greater than anticipated. Mr. Fennel further pointed out that an increase in salary of one (1%) percent for the unit would correspond to \$20,432 and could be offset by a tax levy of .15%.

The union also presented information concerning other firefighter contracts in Westchester County as well as the contracts from other units in Scarsdale. It provided the Panel with a table which chronicled the most recent firefighter salary increases in the County. (Union Exhibit 7.) The exhibit evidenced increases ranging from three (3%) percent to six and one-half (6.5%) percent for the years at issue herein. It also presented the Panel with a salary profile which it alleged established that the 1991 salary of \$43,354 was slightly above the median. (Union Exhibits 8A and 8B.)

The union provided the Panel with an exhibit which shows that the starting salary for Scarsdale was the lowest in the County. (Union Exhibit 9.)

With respect to the Captain's differential, the union presented evidence and testimony that the Captains perform many tasks above and beyond the job responsibilities of the rank and file firefighters. (Union Exhibits 43-53.) They further claim

that the Captains' salaries are low as compared with other Captains in Westchester. (Union Exhibit 10.)

The union also provided the Panel with evidence concerning a collectively bargained settlement between the Village and Local 456 of the Teamsters. (Union Exhibit 4A.) The 1991-93 contract contains a 5.85% settlement for the fiscal year 1992-93.

Finally, the union presented evidence concerning the nature of firefighting responsibilities in the Village of Scarsdale. (Union Exhibits 34-39.) According to the union, these exhibits attest to superior qualifications and training of the Scarsdale firefighters, in addition to their superior handling of the day to day responsibilities inherent to their jobs.

In sum, the union contends that Scarsdale is a wealthy Village which can afford to pay the increases desired. It claims that its salary demands are reasonable when compared to the salary received by other firefighters in Westchester County. This is equally true with respect to the Captains. In addition, according to the union, the added responsibility of these positions justifies the demands to raise the differential. Finally, the union points to other settlements in the Village and maintains that its salary demands are justified.

## VILLAGE POSITION

The Village does not contest that it is fiscally sound and has the ability to pay a reasonable salary increase. It nonetheless contends that the economical climate in general has changed dramatically and that settlements as a whole, throughout the country, are lower than in prior years.

The Village presented the Panel with a PERB publication which recognized the changed nature of collective bargaining. (Village Exhibit 12.) The Article recognizes that there is public pressures from taxpayers of the various municipalities to keep costs down and that the unions must be realistic in their expectations and recognize that collective bargaining is a two-way, give-and-take, process. As proof of this alleged downward trend in negotiated increases, the Village submitted an exhibit which showed that private sector settlements during the first quarter of 1993 are down to 2.8% as compared with 3.1% in the prior year. To further evidence this trend, it provided the Panel with recent public settlements throughout the country. (Village Exhibit 14.)

The Village provided further evidence that its employee costs continue to rise as the result of factors which are beyond its control. It cites tremendous increases in retirement costs and workers compensation rates. (Village Exhibits 15-16.) It

also provided the Panel with an exhibit regarding supplemental payments it is obligated to provide pursuant to General Municipal Law 207-a. (Village Exhibit 17.)

With respect to the current salary levels of its firefighters, the Village showed that the salary increases have outpaced the rate of inflation from 1988 through the last negotiated increase in 1991. It points out that with increases of 2.5% for the years at issue herein, the cumulative effect of the raises will still continue to outpace inflation. (Village Exhibit 18.)

The Village argues that the relevant communities for a salary comparison are those communities which are contiguous: Eastchester, Fairview, Greenville, Mamaroneck, White Plains, Hartsdale and New Rochelle. (Village Exhibit 19.) It argues that a 2.5% increase for 1992-93 will leave it above the average salary for the contiguous communities.

Finally, the Village argues that a real salary comparison must take into account available overtime. It submitted an exhibit which showed that its overtime budget of \$166,500 for 41 firefighters was high when compared with other contiguous communities. (Village Exhibits 21 and 22.)

With respect to starting salary, the Village introduced evidence that it has never had a problem attracting individuals whenever a vacancy arises. (Village Exhibits 24 and 25.) As long as individuals continue to want to work for the Village at the current starting salary, there should be no need to increase that rate.

On the issue of the Captain's differential, the Village argues that when compared to other first line supervisors in the communities that are contiguous to Scarsdale, the Captain's salary would remain higher than average with a 2.5% increase. (Village Exhibit 23.) It further claims the union's assertions that Captains perform many added job functions is belied by the testimony presented at a PERB hearing several years ago here the union argued that the Captains shared a commonality of interests functions with the rank and file members. (Village Exhibit 35.) In any event, it is the position of the Village that no increase in the current differential is justified.

#### **FINDINGS**

While it is always difficult to determine what is a fair salary, both parties have presented the Panel with sufficient evidence to fashion an award consistent with the relevant statutory guidelines. The Village's ability to pay is not at issue herein. The un rebutted testimony of Mr. Fennel is

credited and establishes that the Village can afford a reasonable salary increase for the two years at issue.

Both parties presented the panel with salary comparisons. The Union argued that all paid firefighters in Westchester County were relevant. The Village asserted that only contiguous communities should be examined by the Panel. The Chairman does not find it necessary to determine which comparison is more valid. Using either salary comparison it is clear that Scarsdale has compensated its firefighters at a rate which is higher than the County median and the contiguous communities' median. It must be pointed out that the salary profile submitted by the Union compares the 1991-92 Scarsdale salary with salaries from other municipalities in Westchester which are applicable for later years. For example, the salary for Lake Mohegan --the municipality listed right above Scarsdale in the Union's chart in Exhibit 8-A-- is effective January 1, 1994. In any event, it is clear from both parties' exhibits that Scarsdale firefighters are not compensated unfairly using any basis of comparison.

As is so often the case, the union's request for a 10 percent increase is clearly too high, and the Village's request for a 2.5% increase too low. Significant is the survey presented as Union Exhibit 7 which lists the percentage increases for other communities. While not dispositive, the exhibit evidences a

range between 3% and 6.5% for the years in question, with most municipalities winding up somewhere in between these numbers. These figures provide some reasonable outside parameters for the structuring of a salary award in the instant case.

Although we do not limit our comparisons to the following communities, the chairman has been particularly influenced by the following recent voluntary salary settlements in communities which are contiguous (Union Exhibit 6), and which are offered by both parties for comparison purposes.

Union Exhibit 2C	Eastchester	1/1/93	3-1/2%	1/1/94	4%
Union Exhibit 2FF	White Plains	7/1/92	4%		
Union Exhibit 2Q	Mamaroneck	1/1/93	5%		
Union Exhibit 2I	Hartsdale	1/1/93	5%		
Union Exhibit 7	New Rochelle	1/1/93	3%	1/1/94	3%

In arriving at salary figures for the years in question, the Panel finds that the agreements between the Village and its other Unions (the Teamsters and CSEA) are also especially relevant. The Teamsters settled for 5.85% for the fiscal year 1992-93 as part of a two-year deal covering the period from June 1, 1991 - May 31, 1993. (Union Exhibit 4A.) The C.S.E.A. agreed to a one-year deal for the fiscal year 1992-93 which called for a salary increase of 4.5%. Significantly, as will be discussed more extensively in the Health Insurance section of the Award, both units agreed to make certain health insurance concessions as part of their respective settlements.

The panel finds that the increases granted to the Teamster and CSEA units represent reasonable increases for the two years at issue herein. The 4.5% settlement with the CSEA was negotiated a year after the Teamster settlement and evidences a recognition of lower settlements for contracts negotiated in 1992-93. The Panel notes, however, that the Village was able to partially offset the costs of the negotiated settlements with these other units with savings resulting from the health insurance givebacks. Because the health insurance concessions at issue herein cannot be applied retroactively, fairness dictates some downward modification of the 1992-93 salary award for firefighters. As a result, the Panel has determined that the 1992-93 salary award should provide for split increases which will partially offset the cost of the salary increase for that year.

In light of all of the evidence presented and all of the factors discussed, the Panel issues the following award with respect to salary:

Effective 6/1/92 - 4%

Effective 12/1/92 - 1.85%

Effective 6/1/93 - 4.5%

While these increases are in excess of the cost of living, they are well within the Village's ability to pay and are both consistent with the increases received by other units in the

Village and within the parameters of increases received in other communities in Westchester.

The Panel finds that the starting salary and Captain's differentials should remain unchanged. While the starting salary is recognizably low, the unrebutted evidence presented by the Village suggests that it does not have any problem recruiting qualified firefighters. Also, new hires do not contribute towards their health insurance as is done in some communities.

With respect to the Captain's differential, both parties presented compelling evidence for their respective positions. Although it cannot be disputed that the Captains perform work above and beyond the rank and file, there is already in place a substantial differential which recognizes the added responsibilities. The Panel is simply not convinced that there is any inequity that needs to be addressed in this area.

#### HEALTH INSURANCE

##### Village Position

The Village is seeking several modifications to its existing health plan as well as an employee sharing of the costs. The Village currently provides self-insured health coverage at no cost to all firefighters. Unfortunately, the self-insured plan

has ended up costing the Village over \$400,000 more than would be the case if it stayed in the Empire Plan. (Village Exhibit 3.)

The Village presented the testimony of Ray Gannon, an Insurance Consultant, regarding the current level of benefits and how they compare to the Empire Plan and other plans in Westchester. According to Mr. Gannon, the Village's Plan is as good as all other plans in Westchester. He provided a chart which shows this favorable comparison with respect to the Empire Plan. (Village Exhibit 4.)

Mr. Gannon also spoke about the changes in the Village Plan that were implemented in other collective bargaining units (with the exception of the PBA, which is also in Interest Arbitration) and with all non-union employees of the Village. The Village submitted exhibits which showed that it had eliminated the Participating Provider Network of its current health plan for all of these employees. (Village Exhibits 10 and 11.) It argues that it needs these and other proposed changes to maintain the current health plan. According to the testimony of Mr. Gannon, even if these changes are implemented, the Village Plan will still provide benefits equivalent to the Empire Plan and the other plans in Westchester. (Village Exhibit 4.)

As far as employee contributions are concerned, the

Village presented the Panel with evidence of the nationwide trend toward employee contributions. It argues that the number of employers requiring employee contributions in this regard has doubled over the past decade (Village Exhibit 5), and that this trend is applicable in the public sector as well. (Village Exhibit 7.) In order to offset rising costs and continue to provide excellent benefits, the Village argues that it must get help from the employees.

### Union Position

The union opposes any changes to the current health plan. Because the Participating Provider Network includes all of their current personal physicians, they argue that the elimination of the network will impose an extreme hardship.

With respect to the Village's proposal that they be made to contribute a percentage of the cost, the Union submitted exhibits which showed that the overwhelming number of firefighters in the County do not have to pay anything for their health insurance. (Union Exhibit 15.) According to the Union, the Village has no justification for requiring a contribution in this regard.

The union also points out that had the Village not

switched from the Empire Plan to its current plan, health insurance costs would be substantially less. (Village Exhibit 3.) Therefore, argues the union, its members should not have to pay, or suffer decreased benefits, as the result of the Village's decision to change plans.

### **FINDINGS**

Health Insurance has developed into one of the most difficult issues in collective bargaining. It is nonetheless an issue that must be addressed by the Panel herein. While for reasons that will be explained more extensively *infra*, we are adopting the Village's proposals to eliminate the Participating Provider Organization and increase the prescription co-payment from \$2 to \$5, we must reject the other proposed changes, including the Village's proposal for an employee contribution.

With the exception of the PBA, which is also in Interest Arbitration, all other employees of the Village have either agreed to the elimination of the PPO and the increase in the prescription drug co-payment or have had these changes unilaterally imposed upon them. As a result, there now exists a two-tier system with the police and firefighters in one tier and everyone else in the other tier.

We credit the testimony of Ray Gannon that even with

these changes, the Village's health insurance plan will still be as good as the Empire Plan. While we recognize that the elimination of the PPO may cause some initial hardship, this is a small price to pay for the continuation of a fully paid health insurance plan that provides equal benefits as compared to other plans in Westchester. We note that the Village has the contractual right to return to the Empire Plan and may want to explore this option if the cost of the current plan continues to outpace the Empire Plan.

For the same reason that the Panel has adopted the PPO and Prescription Co-payment proposals, it must reject the Village's remaining health insurance proposals. The only additional health insurance proposal that was agreed upon by any other unit in the Village was the chiropractic proposal. The Panel notes, however, that only the C.S.E.A. unit has agreed to this change; and it lacks the uniformity of the PPO and prescription co-pay proposals.

With respect to the proposal for an employee contribution, the Panel feels that this is an issue more appropriate for the bargaining table. We also note that no other employees of the Village are required to pay a share of the health insurance cost beyond the first few years of employment. In light of the elimination of the PPO and the increase of the Prescription Co-payment, it is our conclusion that an employee

contribution for health insurance is not justified at this time.

Effective with the signing of this award, the Participating Provider Organization is eliminated and the Prescription Brand drug co-payment is increased from \$2 to \$5. All other health insurance proposals are rejected.

**LEAVE TIME**

**Union Position**

The union argues that it receives less cumulative leave time than other firefighters and proposes an increase in vacation and personal leave. It submitted exhibits comparing holiday time, personal leave, sick leave, and vacation leave, which it claims establish that Scarsdale has less time off than other firefighters. (Union Exhibits 12, 13, 14 and 17.)

**Village Position**

The Village has proposed to cut into the current vacation provision and put limitations on what it argues is an ordinate amount of time off received by the firefighters. It provided the Panel with a chart which showed that the average firefighter works between 131.3 and 142.3 days per year. (Village Exhibit 26.) It also introduced a comparison which

showed that Scarsdale provides more combined vacation time and personal leave days off than any other of the contiguous communities. (Village Exhibits 28-31.)

### **FINDINGS**

The Panel rejects both parties' proposals regarding leave time. While we find that the Village does provide more vacation time and personal leave than most other fire departments, these facts are offset by apparent shortcomings with respect to payment for holidays. Looking at the entire fringe benefit package as a whole, the Panel is not convinced that any changes in all of these areas are warranted at this time.

### **OTHER ITEMS**

As indicated at the outset, with the exception of the above-addressed issues, because of the number and diversity of the parties' proposals, the Panel could not identify which items were considered priorities by either party. Keeping in mind that negotiations for a successor agreement will begin shortly, the Panel feels that any items not addressed herein are more appropriate for the bargaining table. As a result, with the exception of salary and

health insurance, all other proposals of both parties are rejected; and we issue the following

AWARD

The successor agreement between the Village of Scarsdale and the Scarsdale Uniformed Firefighters Association shall commence on June 1, 1992 and expire on May 31, 1994. That agreement shall continue in full force and effect except as modified below:

1. Salary

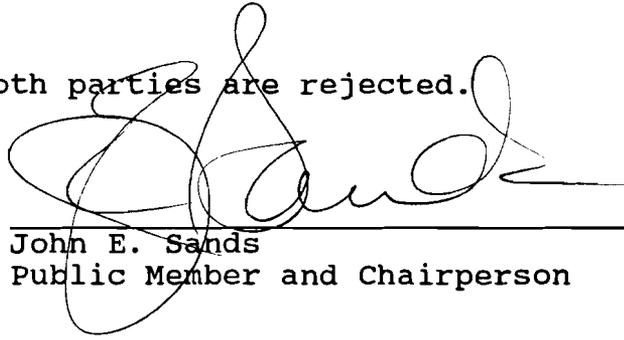
- a) Effective 6/1/92 salaries shall increase by 4%.
- b) Effective 12/1/92 salaries shall increase by 1.85%.
- c) Effective 6/1/93 salaries shall increase by 4.5%.

2. Health Insurance

- a) Effective with the signing of this Agreement, the Village will eliminate the Participating Provider Organization.
- b) Effective with the signing of this Agreement, the Village will increase the cost of brand name prescription co-payment from \$2 to \$5.

3. All other proposals of both parties are rejected.

Dated: August 24, 1993  
Montclair, New Jersey



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John E. Sands  
Public Member and Chairperson

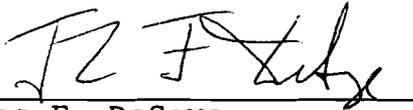


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Terence M. O'Neil  
Employer-Appointed Member

Dated: 8/24/93

Dissents from the first year of the wages; health insurance portion denying contributions and eliminating chiropractic coverage; and not reducing time off.



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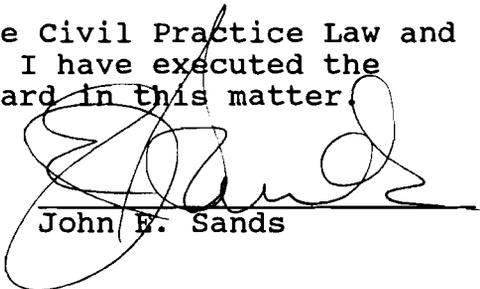
Thomas F. DeSoye  
Employee-Appointed Member

Dated: 8/27/93

Dissents from the second year of the wages; health insurance portion involving PPO and prescriptions; and failure to award fringe benefit increases.

**AFFIRMATION**

Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, I affirm that I have executed the foregoing as and for my Opinion and Award in this matter.



John B. Sands

**AFFIRMATION**

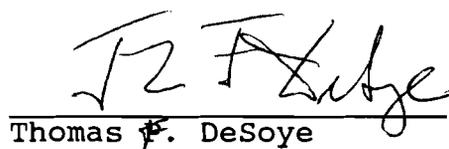
Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, I affirm that I have executed the foregoing as and for my Opinion and Award in this matter.



Terence M. O'Neil

**AFFIRMATION**

Pursuant to Article 75 of the Civil Practice Law and Rules of New York State, I affirm that I have executed the foregoing as and for my Opinion and Award in this matter.



Thomas F. DeSoye