

IA 92-024

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
MAY 12 1994
CONCILIATION**

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
-----*
In the Matter of the Arbitration

between

THE PELHAM FIREMEN'S TAYLOR ACT
COMMITTEE, LOCAL 2213, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL-CIO

and

THE VILLAGE OF PELHAM
-----*

Before the Interest Arbitration Panel:
Carol Wittenberg: Chairperson
Thomas F. DeSoye: Employee-Appointed Member
Matthew Galligan: Employer-Appointed Member

For the Union:
Law Office of Thomas F. DeSoye
by Donald P. Henry, Esquire
Ernest Pillig, President, Pelham Firemen's
Taylor Act Committee, IAFF
Joseph Gioia, Vice-President, Pelham Firemen's
Taylor Act Committee, IAFF
Julian Keiser, Treasurer, Pelham Firemen's
Taylor Act Committee, IAFF
Duncan MacRae, Executive Vice-President,
New York State Professional Firefighters'
Association
Edward Fennell, Municipal Financial Consultant

For the Village:
Keane & Beane, P.C.
by Ronald A. Longo, Esquire
Michael DeLong, Village Administrator

OPINION

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, the above-named interest arbitration panel was designated to hear and decide the matters at impasse. The panel held hearings in the Village of Pelham on July 29, 1993 and October 22, 1993. The parties had a full opportunity to examine and cross-examine witnesses, to submit documentation and to make oral argument in support of their respective positions. Post-hearing briefs were received on January 18, 1994. The Panel met in executive session on January 20, 1994.

In making our determination, the Panel acted in accordance with the statutory criteria set forth in Section 209.4 of the Taylor Law which states in relevant part:

(v) the 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 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 Union submitted the following issues to the Panel for their consideration:

- 1. Salary
- 2. Holidays and Holiday Pay
- 3. Call Back Pay
- 4. Uniform Allowance
- 5. Dental Allowance
- 6. Longevity Pay
- 7. Replacement Pay
- 8. Overtime
- 9. Union Business
- 10. Quarterly Check
- 11. Differential Pay
- 12. Captain Position
- 13. Minimum Manning
- 14. Retirement Incentive
- 15. Vacation
- 16. Retirement Plan

The Village submitted the following issues to the Panel:

- 1. Recognition
- 2. Overtime and Callback
- 3. Holidays
- 4. Vacation
- 5. Hospital, Welfare and Retirement
- 6. Previous Practice
- 7. Grievance Machinery and Arbitration
- 8. Clothing
- 9. Sick Leave
- 10. Dental Insurance

The Panel has limited the award to the major issues before it which include salary, longevity pay and sick leave. Each of these items is discussed in full below.

SALARY

Position of the Union

Effective December 1, 1991 the salary schedule for the bargaining unit should be increased by 10%; effective December 1, 1992 the salary schedule of the bargaining unit should be increased by 10%.

The Union seeks across-the-board salary increases of 10 percent for each year of a two-year contract, 10 percent effective December 1, 1991 and 10 percent effective December 1, 1992. The Union submitted documentation to illustrate that at \$37,731, Pelham firefighters rank last on the profile of Westchester County professional fire departments. The Union points out some of the more notable disparities in top salaries within the County, specifically the Village of Pelham Manor with a top salary of \$47,223, Larchmont with a top salary of \$46,735 and Harrison with a top salary of \$46,050. The Union contends that only in starting salary, where Pelham falls in the middle compared with other Westchester communities, is there reasonable comparability in salary.

The Union submitted a document detailing recent firefighter salary increases in the County. The exhibit shows increases ranging from 3 percent to 6.5 percent per year for the years covered by this arbitration award.

The Union also points out the disparity in pay between firefighters and police officers in Pelham, noting that the top pay of a Pelham police officer exceeds that of a firefighter by approximately \$4300 per year as of June 1, 1991. Despite this disparity, Pelham police officers received a 4.5 percent wage increase on December 1, 1991, a 2 percent increase on December 1, 1992, a 5.75 percent increase on June 1, 1993 and a 6 percent increase on June 1, 1994. The Union notes that the salary offer made to firefighters is not only less than the amount negotiated with police officers, it is less than the Village's negotiated agreement with its CSEA unit.

Position of the Village

Effective December 1, 1991 the salary schedule of the bargaining unit to be increased by 2 percent; effective June 1, 1992 the salary schedule of the bargaining unit to be increased by 2 percent; effective December 1, 1992 the salary schedule of the bargaining unit to be increased by 2 percent; effective June 1, 1993 the salary schedule of the bargaining unit to be increased by 2 percent.

The Village contends that the firefighters should be provided with reasonable wage increases within the Village's ability to pay. The Village points out that it is not a wealthy community. It had a sizeable negative fund balance at the end of 1991-1992, a period which covers a major portion of the first year of this award. While the Village was able to eliminate the negative fund equity, it was not able to accomplish this until the end of 1992-1993.

The Village notes that it relies heavily on real property taxes for its revenue. Surrounding cities, on the other hand, have additional revenue sources upon which they can draw. Moreover, the Village has a steadily declining tax base. The Village contends that increases during the term covered by this award would most likely come at the expense of other Village services.

The Village also argues that the Panel should consider the effects of the recession being experienced in the New York Metropolitan Region, including the effect on unemployment. The Village contends that the Union cannot justify its economic demands on the cost of living in the area or on the CPI during the period covered by the two years of an award.

In comparing the salaries of firefighters in Pelham to salaries in comparable communities, the Village asserts that unit

salaries are roughly equivalent to where they have been over the past ten years if not in a better position. The average wage differential between Pelham's maximum salary and those in surrounding communities has significantly decreased since 1980 when the average difference was approximately 10.6 percent. The current average differential in 1991 was 7.4 percent.

The Village disputes the Association's reliance on the comparison between the salaries of firefighters and police officers. It notes that firefighters' maximum salaries have traditionally been less than maximum police officer salaries. Moreover, the differential has been reduced over the last ten years. Furthermore, the Village contends that the level of activity in the Police Department compared with that of the Fire Department justifies any difference in wages.

FINDINGS ON SALARY

Both parties have presented the Panel with salary comparisons and ability to pay arguments. While it is true that Pelham ranks favorably in starting salary compared with like Fire Departments in the county the top salaries of Pelham firefighters is low compared with its surrounding communities. While the parties attempted to

move toward rectifying this disparity in the last round of bargaining, Pelham firefighters remain the lowest paid within comparable communities.

Nevertheless, the Association's request for a 21 percent compounded increase over two years is unwarranted. Similarly, the Village's offer of 8.24 percent compounded over two years, does little to redress the disparity in wages since it would leave Pelham firefighters at a maximum salary of \$40,842, well below that of comparable communities. In fashioning our salary award, the Panel has considered the maximum salaries in communities which are either contiguous to Pelham or are sound shore communities. This comparison reveals the following:

<u>Community</u>	<u>Starting Salary 11/30/91</u>	<u>Top Salary 11/30/91</u>	<u>Top Salary 11/30/93</u>
Pelham	\$24,564	\$37,731	----
Pelham Manor	22,509	40,180	\$47,223
Larchmont	23,500	42,390	46,735
Mamaroneck	22,000	41,435	45,790
Eastchester	27,393	43,546	47,538
Scarsdale	20,000	43,554	48,210
Rye	24,526	39,180	----
New Rochelle	23,129	39,659	43,300
Portchester	22,000	38,468	----
Mount Vernon	21,150	40,304	----

The Panel is persuaded that increases are warranted beyond what the Village offered and in excess of what was negotiated with other bargaining units within the Village in order to bring firefighters into line with their counterparts in neighboring

communities. The Panel has considered, however, the favorable position of newly hired firefighters as well as the financial circumstances of the Village during the term of this award. In light of these factors, the Panel awards the following with respect to salary increases:

Effective 12/1/92	2.35%
Effective 6/1/92	2.30%
Effective 12/1/92	2.25%
Effective 6/1/93	2.2%
Effective 11/30/93	4.8%

In addition, the starting salary of a firefighter shall be frozen at \$24,564.

LONGEVITY

Position of the Union

Effective after 5 years	1% of salary
Effective after 10 years	2% of salary
Effective after 15 years	3% of salary
Effective after 20 years	4% of salary

The Union contends that the current longevity payments are low compared with those received by firefighters in comparable communities as well as with police and CSEA units within the Village. Pelham firefighters currently receive the following longevity schedule:

After five years	\$125
After ten years	\$225
After fifteen years	\$325
After twenty years	\$500

Pelham police officers receive the following longevity schedule:

After ten years	\$ 420
After fifteen years	\$ 835
After twenty years	\$1250

CSEA employees receive the following longevity schedule:

After five years	\$ 500
After ten years	\$ 600
After fifteen years	\$ 650
After twenty years	\$ 750
After twenty-five years	\$1100

The Union claims that Pelham is virtually last at every step of longevity compared with other firefighters within the County. The Union notes that other departments provide a higher longevity schedule in addition to granting considerably higher salaries.

POSITION OF THE VILLAGE

The Village has offered no increase in its current longevity schedule. It notes, however, that the Union's request to convert longevity amounts to percentage increases is virtually unprecedented in the county.

With regard to any request to increase the amount of the longevity schedule, the Village makes the same arguments put forth with regard to salary increases, namely, ability to pay and the

historical relationship with comparable titles in surrounding communities. The Village asks that no increases in the longevity schedule be granted.

FINDINGS

The Panel is persuaded that the longevity schedule in Pelham is low compared with other continuous and/or sound shore communities. The disparity is greatest at the top of the longevity schedule. The Panel is convinced that an appropriate comparison is between Pelham firefighters and firefighters in other communities rather than comparisons with different titles within Pelham. Therefore, the Panel awards the following longevity schedule effective 11/30/93:

After five years	\$125
After ten years	\$325
After fifteen years	\$475
After twenty years	\$750

SICK LEAVE

POSITION OF THE VILLAGE

Firefighters currently have unlimited sick leave subject to the discretion of the Department Chief. Moreover, there is no sick leave provision in the current contract.

The Village contends that the benefit of unlimited sick leave is uncommon within the county. More usual is a provision granting a limited number of days accrued on an annual basis to be accumulated to a maximum limit.

The Village asserts that average sick leave usage has been in double digits since 1989 and that the cost to replace employees on leave is approximately 10 percent of payroll. The Village seeks a sick leave clause which provides the following: one day per month; sick leave to be used solely for illness or injury caused on the job; the right to examine by a physician of the Village's choice and deny leave to anyone found capable of working; the right to restrict firefighters to their place of residence or confinement while on leave; the right to request a doctor's note after six days of absence within a calendar year; and accumulation of sick leave up to a maximum of 120 days.

The Village seeks these sick leave rights as a method to control time and cost. The Village asserts that the existing sick leave bonus in the contract has not proven successful in controlling sick leave usage.

POSITION OF THE UNION

The Union objects to any attempt by the Village to alter its current unlimited sick leave benefit. The Union strongly challenges the Village's proposal to confine firefighters for the duration of their sick leave.

FINDINGS

The Panel is persuaded that there is a sound basis for the Village's request to control and restrict the use of sick leave. Not only does the benefit create a significant cost for the Village, there are no current adequate controls on its use. Furthermore, the Village submitted evidence which supports its position that most comparable communities provide a set number of sick days per year which may be accumulated to a maximum amount.

The Panel, in granting the Village's request for a sick leave clause including controls, has considered the need to offset the salary increases granted to members of the bargaining unit. We are cognizant, however, of the potential impact on current bargaining unit members who may sustain an extended illness during the first

years of limited sick leave use and have provided protection for them in our award. We find that the sick leave clause shall read as follows:

ARTICLE XIII - SICK LEAVE

1. Effective June 1, 1993, bargaining unit members shall be granted sick leave at an accrual rate of one (1) day per month for an annual sick leave of twelve (12) days. Sick leave shall be defined as absence from duty by a bargaining unit member because of his or her sickness, disability or injury not incurred while on duty.
2. Bargaining unit members who use six (6) sick leave days in a six (6) month period, other than for sick leave days supported by a doctor's note, or who use four (4) or more sick days without a doctor's note on the day before, the day of, or the day after a holiday in a six (6) month period, shall be placed on a sick leave monitoring program for the following six (6) months. No bargaining unit member shall be placed on a monitoring program before five (5) days actual written notice to the Union and the member. A bargaining unit member on the monitoring program, and only those members on the monitoring program, shall be subject to the following conditions:
 - a. The member shall not leave his/her residence or place of confinement unless notification is given to the Department of where the member is going and the telephone number of that location.
 - b. During the use of sick leave while on the monitoring program, a member shall be subject to a visit or telephone contact by a Village representative

After six (6) months on the sick leave monitoring program, a member's use of sick leave during that period shall be reviewed. The employee shall be taken off the program if he/she has used fewer than

six (6) sick leave days (other than for days supported by a doctor's note), and has not violated the conditions of the sick leave monitoring program previously set forth.

3. Sick leave may be accumulated to a maximum of 120 days and may be taken as sick leave only.
4. All bargaining unit members hired prior to the date of this Award who requires sick leave which necessitates his being absent for a period of time in excess of his accumulated sick leave shall be granted up to twelve (12) additional days sick leave for each year of service prior to the date of this award, not to exceed 120 days, provided such sick leave is supported by a doctor's note.
5. Members of the bargaining unit may, at their sole discretion, give up to six (6) of their accrued sick days to any other member of the unit who has exhausted all his/her accumulated sick leave time due to catastrophic illness or injury.
6. Upon written request, members of the bargaining unit shall be informed in writing of the amount of unused accumulated sick leave.

OTHER PROPOSALS

The Panel has decided not to grant any of the other proposals made either by the Union or the Village. We have chosen not to comment on any of these proposals except for our listing at the outset, in the interest of efficiency and expediency. We note, moreover, that the term of the contract awarded here has already expired. The parties, therefore, will have an opportunity to address all remaining issues in the next round of bargaining.

AWARD

The award between the Village of Pelham and the Pelham Firemen's Taylor Act Committee, Local 2213, IAFF, shall commence on 12/1/91 and expire on 11/30/93. All provisions of the expired agreement shall continue in full force and effect except as modified below:

1. Salary
Effective 12/1/91 an increase of 2.35%
Effective 6/1/92 an increase of 2.30%
Effective 12/1/92 an increase of 2.25%
Effective 6/1/93 an increase of 2.2%
Effective 11/30/93 an increase of 4.8%
- Starting salary to be frozen at \$24,564

December 1, 1991

First Grade	\$38,618
Second Grade	\$32,737
Third Grade	\$30,970
Fourth Grade	\$29,198
Fifth Grade	\$24,564

June 1, 1992

First Grade	\$39,506
Second Grade	\$33,490
Third Grade	\$31,682
Fourth Grade	\$29,870
Fifth Grade	\$24,564

December 1, 1992

First Grade	\$40,395
Second Grade	\$34,244
Third Grade	\$32,395
Fourth Grade	\$30,542
Fifth Grade	\$24,564

June 1, 1993

First Grade	\$41,284
Second Grade	\$34,997
Third Grade	\$33,108
Fourth Grade	\$31,214
Fifth Grade	\$24,564

November 30, 1993

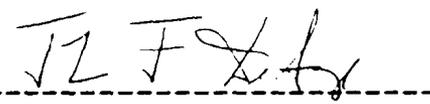
First Grade	\$43,266
Second Grade	\$36,677
Third Grade	\$34,697
Fourth Grade	\$32,712
Fifth Grade	\$24,564

2. Longevity schedule
 - After five years \$125
 - After ten years \$325
 - After fifteen years \$475
 - After twenty years \$750
3. Sick Leave (as per findings)

Dated: April 6, 1994

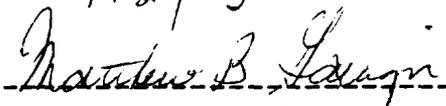


Carol Wittenberg
Chairperson



Thomas F. DeSoye
Employee-Appointed Member
(concur/dissent)

192 / 3

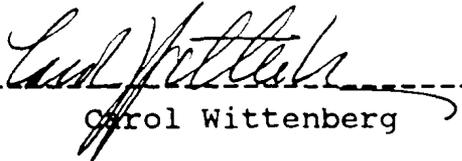


Matthew Galligan
Employer-Appointed Member
(concur/dissent)

3 / 162

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.



Carol Wittenberg

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

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.



Matthew Galligan

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

Between

The Pelham Firemen's Taylor Act Committee
Local 2213, International Association of
Firefighters, AFL-CIO

And

Village of Pelham

Separate Opinion and Award by the Employer Panel Member

I write this separate opinion in order to dissent from Item #1 of the award as determined by the Chairman and Employee Panel Member.

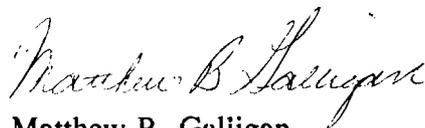
In making the determination, the Panel is required to act in accordance with the statutory criteria set forth in Section 209.4 of the Civil Service Law, which includes, but is not limited to, the interest and welfare of the public and the financial ability of the public employer to pay. The Panel shall make a just and reasonable determination of the matters in dispute. However, the final salary coveted by the Chairman and Employee Panel Member is neither just nor reasonable and a stark example of an award that is arbitrary and capricious. The Chairman and Employee Panel Member determined the salary desired at the end of the award term by merely considering the maximum salaries in communities, which are either contiguous to Pelham or are sound shore communities, but without regard to the Village's ability to pay. While the Panel appropriately utilized the Village's sampling of contiguous and sound shore communities rather than the Union's proposal to consider all of Westchester County and a portion of Putnam County, the Chairman and Employee Panel Member fashioned the award by merely selecting the perceived lower first grade salary of those in the statistical sample (with contracts in place during the award period) and pegging a salary award to that community's first grade salary. The community, New Rochelle, is a city and, as such, has certain rights and privileges that are not afforded to a Village such as Pelham. This includes, but is not limited to, the ability to increase sales tax charged to compensate for revenue required.

Fashioning the salary award by merely considering the maximum salary in communities, which are either contiguous to Pelham or are sound shore communities, the Chairman and Employee Panel Member fail to consider equally relevant items such as per capita income, assessed valuation and the tax rate per \$1,000 of assessed valuation. These items constitute the Village's ability or, more succinctly, inability to pay a salary award, particularly an

award that equates to approximately 1.3% of the total Village operating budget. The award, as fashioned by the Chairman and the Employee Panel Member, will increase property taxes by approximately \$2.50 per \$1,000 of assessed valuation. When comparing Pelham to the nine other contiguous and sound shore communities' statistical sampling, Pelham ranks seventh in per capita income (Employer #8) and for full value per capita (Employer #7). Another vital financial item that the Chairman and Employee Panel Member failed to consider appropriately is the significant negative fund balance that existed during all but six months of the award period.

Other vital non-financial factors were not appropriately considered by the Chairman and Employee Panel Member in fashioning the award. This includes, but is not limited to the annual number of responses and time expended on responses. The Village of Pelham ranks third lowest in the comparison of the Village to nine contiguous and sound shore communities. (See Employer Exhibits #9 and 10.) Comparing the Village of Pelham to the other nine communities of the statistical sampling, two communities are cities. Cities, as expected, possess residential areas similar to those which predominate Pelham, but also possess significantly more higher-density housing (apartments) plus commercial and industrial areas uncommon to Pelham. Additionally, the Village fire fighters expend only approximately 1.2% of total time on responses. (Employer #11)

The aforementioned financial and non-financial evidence stated in this dissenting opinion supports the evidentiary material presented by the Village of Pelham and the Village's expert testimony presented during the arbitration hearing, which, in turn, justifies a salary award that is less than being so directed by the Chairman.



Matthew B. Galligan
Employer Panel Member