

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

– between –

VILLAGE OF PELHAM PROFESSIONAL FIREFIGHTERS, LOCAL 2213
IAFF,

– and –

VILLAGE OF PELHAM.

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

Before: Carol Wittenberg, Public Panel Member

Richard S. Corenthal, Esq.
Union Panel Member

Ernest R. Stolzer, Esq.
Employer Panel Member

1A2011-007

Appearances:

For the Union Joni H. Kletter, Esq.
Meyer, Suozzi, English & Klein, P.C.

For the Village: Christopher T. Kurtz, Esq.
Hilary L. Moreira, Esq.
Bond, Schoeneck & King, PLLC

BACKGROUND

Village of Pelham Professional Firefighters, Local 2213, International Association of Firefighters, AFL-CIO (“Union” or “Local 2213”) and Village of Pelham (“Employer” or “Village”) were parties to a collective bargaining agreement covering the period June 1, 2005–May 31, 2009 (“Agreement”), the terms of which remain in full force and effect. On March 24, 2009, the parties

commenced negotiations for a successor agreement, and subsequently held nine additional bargaining sessions during the period May 2009–April 2011.

After bargaining to impasse, the Union filed a Petition for Public Interest Arbitration with the New York State Public Employment Relations Board (“PERB”) on June 28, 2011. Shortly thereafter, on July 15, 2011 and July 26, 2011, respectively, the Village and the Union filed improper practice charges with PERB, each alleging that their adversary had submitted to interest arbitration non-mandatory subjects of bargaining and/or proposals that were not the subject of negotiations, in violation of the Taylor Law.

Pursuant to a Stipulation of Agreement dated January 11, 2012, both parties agreed to withdraw from consideration by the Panel certain proposals, as well as the improper practice charges. Hearings were held before the Panel on February 6 and 8, and March 16, 2012. 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. The parties submitted post-hearing briefs on May 25, 2012 and the record was thereafter closed. The Panel met in Executive Session on October 16, 2012.

The Village is located in Westchester County.¹ The Village’s Fire Department consists of 15 Career Firefighters, all of whom are represented by the Union. They include five Lieutenants and ten Firefighters. In addition to

¹ The parties agreed that, pursuant to New York Civil Service Law § 209.4(c)(v), comparable Westchester communities shall be the villages of Pelham Manor, Port Chester, Larchmont, and Scarsdale, the towns of Eastchester and Mamaroneck, and the cities of Mount Vernon, New Rochelle, and Rye. The exhibits offered in support of the parties’ proposals rely extensively, but not exclusively, on comparisons to those nine communities.

responding to various types of fires, Career Firefighters are also first responders to medical emergencies in the Village. The Village also has volunteer firefighters who respond to fires and other emergencies.

The issues submitted to the Panel consist primarily of economic proposals, including those addressing wages, benefits, and other salary enhancements. The parties also submitted proposals addressing the Agreement's minimum staffing provision. That provision provides that "the Village agrees to man the firehouse with three (3) Firefighters at all times." (Un. Ex. 6, Art. XXIII, § 2). The Union argues that the provision should be amended to increase the minimum manning number from three to four, while the Village proposes to delete the provision in its entirety. In advancing their proposals on the minimum manning issue, both parties addressed the State Department of Labor's OSHA standard, commonly called the "Two-In, Two-Out Rule," and its relationship to Firefighter staffing and safety. The Rule requires that, for a structural fire, at least two firefighters enter oxygen deficient atmosphere and remain in visual or voice contact with each other while at least two other firefighters remain outside.

POSITIONS OF THE PARTIES

Union Contract Proposals

1. Wages
 - a. *Base salaries: The Union proposes a retroactive 4% annual wage increase effective June 1, 2009-May 31, 2010, and a retroactive 4% annual wage increase effective June 1, 2010-May 31, 2011.*

The Union takes the position that the two proposed 4% wage increases are necessary to bring the salaries of the Village Firefighters closer to the salary

level of comparable career Firefighters in Westchester County, as well as other Village employees. It contends that the starting annual salary of a Village Firefighter is substantially below the starting salaries of Village Police and Department of Public Works ("DPW") employees. (Un. Ex. 10). In addition, it contends that a Village First Grade Firefighter (without EMT) is paid the second lowest salary after four years among comparable Westchester communities. (Un. Ex. 1, 19).

The Union states that because its Career Firefighters have not had a raise in over four years, without a wage increase their salaries will slip further behind those of Firefighters in comparable Westchester Firehouses. The Union asserts that such Firefighters are paid "substantially more" than Village Firefighters.

The Union further argues that its proposed 4% annual wage increases are consistent with wage increases among comparable Fire Departments, particularly Pelham Manor and Larchmont which, it asserts, closely resemble the Village in terms of Fire Department size, populations, affluence and rising real estate values. (Un. Ex. 18). The proposal is also consistent, the Union notes, with the Village's Police Department/PBA 3.85% wage increase and the Village's DPW/CSEA 3.75% wage increase, both negotiated with the Village in 2009.

The Union contends that the Village has the ability to pay for a reasonable increase in salary, as well as other benefits. In support of this contention, the Union cites to testimony by its expert witness, Kevin R. Decker,²

² Mr. Decker is an economist and consultant. He is a partner in Valuation Resource Group, LLC and directs the economic research of Decker Economics, an economic consulting firm. (Un. Ex. 6)

who made findings regarding the Village's budget and financial records, among them that the value of taxable real property in the Village has grown by almost 2% in the last five years, and sales tax revenue has increased over the past two years. (Un. Ex. 7D, 7H, 7I). Decker also testified that the Village maintains an AA+ bond rating from Moody's, uses less than 34% of its State constitutional tax limit, and is authorized to raise an additional \$18.4 million in tax revenue without violating the tax limit. (Un. Ex. 7F). Regarding the State's Tax Cap, with the permitted exclusions for tax base growth and excess pension costs, the Village's allowable tax levy increase will be approximately 3.4%. (Un. Ex. 7).

The Union asserts that the Village has offered little or no justification for its minimal wage proposal and has also failed to demonstrate an inability to pay the Union's wage proposals. The Village's proposals are unjustified when compared to the wage increases it agreed to pay the Village Police and DPW laborers in 2009.

Finally, the Union asserts that the proposed wage increases are warranted by the workload and increased responsibilities of the Village's Career Firefighters and Lieutenants. These Firefighters respond to a broad range of fire and medical emergencies with "extremely limited" manpower and resources. These emergencies have included several multi-alarm fires requiring the rescue of inhabitants, and a hazardous materials leak. (Un. Brief, p. 12).

- b. *The Union proposes the following salary enhancements:*
- i. *Lieutenant differential: a 14% wage differential for lieutenants;*
 - ii. *Longevity pay increase: based on a percentage of 2%, 3%, 4%, and 5%, in lieu of dollar amounts.*

The Union asserts that the Village's Fire Lieutenants are the lowest paid in Westchester County. (Un. Ex. 21). Further, the current differential between Lieutenants and the highest paid Firefighter is 4%. (Un. Ex. 2). The Union states that this differential is the lowest among the comparable communities, where the differential ranges from 12.5% to 28%. (Un. Ex. 12, 20). The proposed 14% differential is consistent with the comparable communities as well as Village Police Sergeants. (Un. Brief, p. 16; Un. Ex. 12, 20, 21). The Union contends that it has adequately shown that the Village has the ability to pay such increase.

The Union argues that an increased differential is warranted by the increased workload of the Village's Fire Lieutenants. In certain circumstances, Lieutenants fill in for the Fire Chief, who works on a part-time basis. The Union argues that due to inadequate staffing, Lieutenants are asked to perform the duties of Incident Commander at structural fires and other emergencies. Moreover, several Lieutenants have been asked to serve as the Acting Chief while the part-time Chief has been absent or the position has been vacant. According to the Union, the Village is the only Fire Department among the comparables with a part-time Fire Chief.

The Union notes that there are current Firefighters who would make excellent Lieutenants but who do not apply due to the low pay. (Un. Brief, p. 15). However, a pay increase would provide an attractive incentive for Firefighters and would also make the position more competitive. (*Id.*)

With regard to a longevity pay increase, the Union contends that Village Firefighters receive the lowest longevity payments for years of service among Westchester comparables. (Un. Ex. 22). In addition, Village Police and DPW employees are paid significantly higher longevity payments than Village Firefighters for reasons that are unjustified. (Un. Ex. 15). The Union asserts that longevity serves as a reward to a Firefighter who has put in many years on the force and has been dedicated to the Village. The Union proposes percentage increases, as opposed to dollar amounts, to give Firefighters longevity amounts that are closer to those paid to other Village employees and Firefighters in the comparable communities.

2. Additional Benefits and Economic Issues

- a. *Contractual holidays: The Union proposes that Firefighters working on any of the thirteen contractual holidays be paid at time-and-a-half.*

The Union states that members are currently paid on a straight-time basis for contractual holidays. It points out that, not only is it customary for public employees to be paid overtime for working on holidays, but also New York's General Municipal Law mandates payment of time and a half for at least eight contractual holidays. Moreover, Village Police and DPW employees are paid at two times the regular pay rate when required to work on five (5) of their listed holidays, while DPW employees are paid double time if required to work on a Sunday or contract holiday and 2½ times if required to work on Thanksgiving Day, Christmas Day or New Year's Day. (Un. Ex. 13).

The Union notes that the Village presented no testimony or evidence to support its proposals to reduce the number of paid holidays from 13 to 12 and to pay holidays based on a 10-hour day as opposed to a 12-hour day.

b. *Dental plan: The Union proposes that the Village pay the full cost of the dental benefit.*

The Union states that the Village pays the lowest dental benefits for Firefighters among Westchester comparables, and it contributes significantly less to the Firefighters' dental plan than it does to the Village's Police and DPW union employees. (Un. Ex. 16, 17, 23). The Union proposes that the Village pay \$900 towards dental benefits per employee, which it contends is consistent with the amount it pays its other union employees for this benefit. (Un. Ex. 16).

c. *Bereavement leave: The Union proposes increasing paid bereavement leave to at least 48 hours.*

Paid bereavement leave for Firefighters is currently limited to 24 hours, which the Union claims is one of the lowest paid among the comparable communities. (Un. Ex. 25). It asserts that the range for bereavement leave among comparables is two to five days. (*Id.*). Increasing the bereavement leave to 48 hours would allow a Firefighter to attend the wake and the funeral of a family member since they are likely to take place on different days.

d. *Medical coverage for line of duty death: The Union proposes that the Village provide medical coverage for a member's family for three years after the member's death.*

The Union asserts that Firefighters in the Fairview Fire District, Scarsdale, and New Rochelle all provide full health insurance coverage to the spouse of a Firefighter killed in the line of duty. (Un. Ex. 55). It asserts that

three years is a reasonable period of time for the family of the deceased Firefighter to obtain alternate coverage.

- e. *Post-retirement health insurance cost: The Union proposes that the amount of health insurance that a retiree must pay be reduced to 15%.*

Retired Village Firefighters currently must contribute 25% to the cost of their health insurance plan. The Union asserts that this rate is high compared to comparable communities. (Un. Ex. 55). It also contends that the Village pays the entire cost of health insurance for Village Police and DPW retirees. (Un. Ex. 11). The Union proposes that the cost of post-retirement health insurance be reduced to 15%, and notes that the Village has not demonstrated an inability to pay an additional 10% for the limited number of retired Firefighters affected.

- f. *Accrued sick days: The Union proposes increasing the number of accrued sick days that members may give each other from six to twelve.*

The Union asserts that this is a no cost proposal for the Village. It simply seeks to increase from six to twelve days the amount of sick leave that a Firefighter can donate to a colleague who is on extended medical leave due to injury or long-term illness and has exhausted his sick leave. The Union notes that Lt. McCann testified that no one is abusing sick leave and that a majority of the Village's Firefighters were given a bonus for not using all of their allotted sick days. (Un. Brief, p. 16; Un. Ex. 50).

3. Minimum Manning and Response to Village's Proposal for Voluntary Call backs

- a. *Minimum manning: The Union proposes to increase the minimum number of Firefighters required to respond to a call from three to four.*

The Union states that Village Firefighters often respond to emergency calls with three or fewer Firefighters and are forced to handle fires without adequate manpower. This is a violation of the "Two-In, Two-Out Rule," which requires that, for a structural fire, at least two Firefighters enter the oxygen deficient atmosphere and remain in visual or voice contact with each other while at least two other Firefighters remain outside. The Union asserts that the Village's refusal to comply with the Rule jeopardizes Firefighters' lives by forcing them to enter burning buildings alone. The Union notes that the Village has been issued serious Public Employee Safety and Health violations by the DOH and has received substantial fines as a result of its failure to comply with the Rule. (Un. Ex. 26-31). Given that a minimum of four Firefighters is required to comply with the Rule, the Union rejects the Village's proposal to delete the minimum manning provision from the Agreement.

According to the Union, increasing the minimum manning requirement from three to four Firefighters would also permit the Incident Commander ("IC") to be the "head coach" and remain on the outside of the burning structure, instead of having to go inside due to a shortage of manpower. The Union argues that it is imperative that the IC remain outside the structure to direct the response and communicate with all personnel.

- b. *Voluntary call back: The Union opposes the Village's proposal to remove the contractual language that requires that three Firefighters must staff the Firehouse while other units are responding to mutual aid calls.*

The Union argues that the Village's proposal to eliminate the maintenance of a three person staffing level in the event of mutual aid calls from

neighboring communities would undermine the reciprocity needed for mutual aid and jeopardize the safety of Firefighters who are left to staff the Firehouse and who may be called to respond to another emergency in the Village while others are responding to mutual aid calls. The Union also contends that the current contractual provision is a cost effective way to supplement staffing and is an asset for the Village because Firefighters are only guaranteed one hour of call back pay and are not compensated for their travel time responding to call backs.

4. Response to Additional Village Proposals

- a. *Payment for Health Insurance Incentive: The Panel should reject the Village's proposal to provide a \$1500 payment to unit members who elect to receive alternate health coverage instead of a percentage of the premium cost.*

The Union states that the Village's proposal discourages members from opting out of the Village's health plan because it decreases the financial incentive to do so. The Village has failed to present evidence showing that it cannot afford to pay the current health insurance buyout amount.

- b. *Health Insurance Contribution Increase: The Panel should reject the Village's proposal to increase the amounts members pay for health insurance coverage*

The Union argues that the Village's Career Firefighters are already paying the highest amount for health insurance compared to other Village employees and Firefighters in the comparable communities. (Un. Ex. 55). The Village's proposed increases are unfair because the Village pays 100% of family health insurance costs for Village Police after four years of service and 100% of the health insurance cost of DPW/CSEA members, except for DPW employees hired prior to June 2004, who contribute 4%. The Village has offered no

justification for treating its Firefighters so differently on this issue. Moreover, the Village has failed to demonstrate an inability to continue to pay for health insurance coverage at the current levels.

Village Contract Proposals

1. Wages

- a. *Base salary: The Village proposes a 0% increase effective June 1, 2009 and a 1% increase effective June 1, 2010.*

The Village contends that its proposal is reasonable in light of its current financial circumstances, its demographics, and its “ability to pay,” and is in line with the trends of the comparable communities. The Village states that the Union’s proposal for a 4% increase is unreasonable, and notes that the Union’s financial expert, Mr. Decker, testified that the Village is capable of providing a “reasonable” wage increase. He did not testify that the Village could afford a 4% increase.

The Village points to a number of factors which it contends limit its ability to pay for the Union’s proposal, including the recently passed State Tax Cap legislation, the current economic crisis, and the effect of both factors on the Village. The Village points out the 2012-13 fiscal year will be the first covered by the Tax Cap. Because of the uncertainty of how it will affect municipalities, it would be financially irresponsible to mandate significant wage and benefit increases. Moreover, Village Trustee Marty testified that the Board of Trustees is strongly reluctant to override the Tax Cap and wants to propose a budget that stayed within its parameters. (Vill. Brief, p. 7). The wage and benefit increases proposed by the Union are not reasonable in light of the Board of Trustees’

objective as agreement to these proposals would effectively override the Village's attempt to stay within the Tax Cap.

The Village also cites the lingering economic crisis and the effect it's had on Village finances and residents. The Village states that its fund balance has been decreasing for the past five years and is down to 4.2%, less than a third to one-half of the reserve fund balance recommended by Mr. Decker. (Vill. Brief, p. 9; Un. Ex. 7L). The Village contends that it also faces steep increases in pension costs and health insurance costs, over which it has no control. (Vill. Ex. F-H). These costs are forecasted to rise steadily in the coming years. (Vill. Brief, p. 9). In addition, the Village asserts that it faced declining mortgage and sales tax revenues, and decreased interest earnings during the years for which this Award will apply. (Vill. Ex. A-C). Moreover, its residents already have a disproportionately high property tax burden. (Un. Ex. E). Finally, the Village states that it has an over \$1.9 million bond payment that will be used for repairs with payments scheduled to start during the 2012-13 fiscal year. (Vill. Ex. K).

2. Additional Benefits and Economic Issues

- a. *Reduction in the number of holidays: Reduce the number of holidays from 13 to 11, and pay unit members' one lump sum based on a 10 hour day.*

The Village proposes eliminating holidays for Washington's Birthday, February 12, and Firefighter's Birthday, and adding a President's Day holiday. The Village contends that nearly half of the comparable municipalities provide 12 or fewer holidays per year. (Un. Ex. 24). Of the municipalities that provide 13 or more holidays, only three pay for them based on a 12 hour day. (Vill. Ex. R, S, Y). The Village believes that its proposal will bring it into alignment with

the comparable communities. In addition, reducing paid holiday entitlements by two days per year and to a rate of 10 hours per day would result in significant savings to the Village in overtime compensation for replacement Firefighters and cash payouts.

- b. *Payment for Health Insurance Incentive: Provide a \$1500 payment to unit members who elect to receive alternate health coverage instead of a percentage of the premium cost.*

The Village contends that this proposal will provide the Village with needed cost savings. It notes that only two out of the other nine comparable communities offer a health insurance incentive that provides payment in the form of a percentage of the premium, while the others pay a fixed dollar amount. (Vill. Ex. V, W).

- c. *Health Insurance Contribution Increase:*
 - i. *For employees hired after January 1, 2006, the Village proposes increasing the contributions from 15% to 25% in the 7th year of employment and from 25% to 50% of the premiums upon retirement;*
 - ii. *For employees hired on or after January 1, 1990 and before January 1, 2006, the Village proposes reducing the amount of health insurance premiums that the Village pays for individual coverage from 100% to 85% in the 7th year of employment and requiring family plan members to pay 25% of the premium. Upon retirement, health and hospital contributions would be increased from 25% to 30% of the premiums;*
 - iii. *For employees hired between February 1, 1987 and January 1, 1990, the Village proposes reducing the amount of health insurance premiums that that Village pays for individual and family coverage from 100% to 90% upon the completion of five years of service and, upon retirement, increasing the health and hospital contribution to 30% of the premiums.*

The Village states that health insurance is the one primary area, absent cutting salaries, where the Village can make a significant impact on its employee costs. It maintains that the Village, like all local governments, needs help from its employees in paying for health insurance costs that are "spiraling out of control." It points to evidence it provided of the impact of the annual percentage and dollar cost increases associated with public employee health insurance on the Village. (Vill. Ex. G, H). While it recognizes the cost-impact on individual union members, it stresses that Village residents already bear large portions of this fiscal burden through tax increases. The Village contends that its retirement-based proposals are reasonable and consistent with its proposal to increase the contribution for active employees.

- d. Sick leave: The Village proposes to delete Art. IX, § 3 of the Agreement, which provides for a maximum of 120 days of sick leave which may be taken as sick leave only, and replace it with a provision for a maximum of 960 hours of sick leave which may be taken as sick leave only.*

The Village contends that this proposal will reduce its financial exposure to paying for Firefighter illness while still providing Firefighters with "significant protection."

- e. Clothing allowance: The Village proposes no change to the contractual clothing allowance, which is \$800 per year.*

The Village states that the current clothing allowance is higher than any comparable Westchester municipality and an increase in the annual stipend is not warranted. (Vill. Ex. R-Z).

3. Minimum Manning and Voluntary Callbacks

- a. *The Village proposes to delete Art. XXIII, § 2 of the Agreement, which states, "Effective March 7, 1998, the Village agrees to man the Firehouse with three (3) Firefighters at all times."*

The Village states that none of the comparable municipalities have a minimum manning provision that contractually requires their own Firehouses to be manned by even just one Firefighter, let alone three, as in the current Agreement, or four, as proposed by the Union. It points out that contractual minimum manning provides untenable job security that drives up salaries and overtime for the Village.

Chief Stone testified that there is no law or regulation that requires a minimum of three Firefighters on duty, and that the realities of financial considerations (*i.e.*, overtime pay in a small department and Village such as Pelham) must also be taken into account. The Village argues that with total overtime costs in 2010-2011 reaching approximately \$276,862, or approximately \$17,000 per year in overtime pay for each of the 16 unit members, it is necessary to alleviate the Fire Department of the fixed costs associated with overtime from minimum manning. This way, Chief Stone can direct the Fire Department in the most efficient manner possible – taking into account operational, safety and fiscal considerations.

The Village contends that staffing decisions must be its prerogative as management to exercise in an "operational and practical context" that is free from the rigidity mandated by this contractual rule.

- b. *Overtime and callbacks: The Village proposes amending the Agreement regarding the number of Firefighters permitted to respond to emergencies.*

The Village asserts that its overtime costs in 2010-2011 amounted to approximately \$276,862 for the Firefighter unit, which equals approximately \$17,000 per member per year in overtime pay, in addition to base salary and other economic benefits. (Vill. Ex. I). The Village seeks to reduce its overtime expenses by providing the Chief the management discretion to limit the number of Firefighters that respond to all fires and emergencies, with the exception of structural fires, and by eliminating the contractual provision that requires that three Firefighters must staff the Firehouse. The Village contends that its proposal would help the Village control overtime costs by removing the language in the collective bargaining agreement that limits the Chief's management control over staffing decisions thereby preventing unnecessary municipal expenditures.

4. Response to Additional Union Proposals: It is the Village's position that the Union proposals listed below each involve an economic cost and/or lack evidentiary support. As such, the Village rejects them in their entirety.
 - a. *Lieutenant differential: The Panel should reject the Union's proposal for a 14% wage differential;*
 - b. *Longevity pay increase: The Panel should reject the Union's proposal to convert longevity payments from a flat dollar amount to a percentage;*
 - c. *Dental plan: The Panel should reject the Union's proposal to require the Village to pay 100% of dental costs;*
 - d. *Bereavement leave: The Panel should reject the Union's proposal to increase bereavement leave to 48 hours;*
 - e. *Medical coverage for family members in event of line of duty death: The Panel should reject the Union's proposal to provide three years of medical coverage for family members;*

- f. *Post-retirement health insurance cost: The Panel should reject the Union's proposal to decrease a retiree's health insurance contribution.*

DECISION

At the outset, the Panel has reviewed and considered all of the criteria detailed in Section 209.4 of the Civil Service Law ("Taylor Law") including:

- a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interests and welfare of the public and the financial ability of the public employer to pay;
- c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;
- d) the terms of the 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 parties stipulated to certain communities in Westchester County that are comparable to Pelham. (*see fn. 1*). The salary for First Grade Firefighters (with EMT) in the comparable communities, which are also similar to Pelham in terms of wealth of their residents, value of their homes, and stability of home prices exceed those in the Village. Further, without a significant increase in salary, Village firefighters will fall further behind firefighters in comparable Westchester communities.

The Union contends that increases of 4% are necessary to bring Village firefighters closer to the salary level of other Firefighters in comparable communities. The Village contends that such increases are unreasonable in light

of the Village's current financial circumstances, its "ability to pay" and trends in comparable communities.

The Panel recognizes the effect of the 2009 financial crisis on the Village and other comparable communities in Westchester County. The Panel also takes note that the wage increases firefighters received in some of these comparable communities, in particular Pelham Manor and Larchmont, who received wage increases of 4%, pre-dated the 2009 financial crisis and the timing of the agreements on wages must, therefore, be taken into consideration by the Panel.

In assessing the Village's ability to pay, the Panel has considered the general state of the economy, the Village's current financial circumstances and the overall tax burden on taxpayers. The Panel finds that notable evidence of the Village's ability to pay is its negotiated agreements with two other collective bargaining groups following the financial crisis, the Pelham CSEA/DPW, Local 860 and, in particular the Village's other public safety unit, the PBA. For the year 2009, Pelham police received an increase of 3.875%. The police received a 3.75% increase in 2010. In 2010, the CSEA/DPW unit received an increase of 2.25% and a total of 5.5% over three years. Under the circumstances, the Panel finds that the Village has the ability to pay increases to Firefighters of 3% in year one and 2.75 % in year two, and that such increases are both fair and reasonable considering both comparability and the Village's ability to pay.

The Panel has also considered that Fire Lieutenants salaries are significantly below those in comparable communities within the county. In fact, Fire Lieutenants are the lowest paid within comparable communities. The

differential between Lieutenants and the highest paid Firefighter in the Village is 4%. This is compared to the percentage differentials in the comparable communities with fire departments that have lieutenants: New Rochelle – 20%; Mount Vernon – 19.5%; Larchmont – 15.5%; Mamaroneck – 14.5%; and Eastchester- 13%. Therefore, in order to bring the Lieutenants salaries closer in line with those performing similar work and to spread the differential within the Village, the Panel finds that Lieutenants shall be granted an increase in the percentage differential between the annual salary of a fire fighter and lieutenant of 3% in the first year of the Award and an additional 3% in the second year of the Award. The Panel also determines that no increase in longevity payments are warranted at this time.

In addition to considering comparability and ability to pay, the Panel has considered the interests and welfare of the public. We find that it is in the public interest for the Village to have firefighters who are competitively compensated. Upon consideration of the other economic increases the Union has requested, the Panel finds that an increase toward dental insurance is warranted to make firefighters dental benefits more consistent with the benefits provided to other Village employees, notably police officers and DPW employees. The current dental benefit of \$300 per firefighter per year shall be increased to \$800 per year and shall become effective on the last day of the Award. (*i.e.*, May 31, 2011).

In addition, the Panel finds that the number of holidays provided by the Village to Firefighters exceeds this benefit to comparable communities. Therefore, Firefighters' holidays shall be reduced from 13 to 12 per year by

eliminating Washington's Birthday and February 12th but adding President's Day effective the last day of the Award (*i.e.*, May 31, 2011). The back pay to individual firefighters that results from this Award shall reflect the reduction of holidays from 13 to 12 per year effective as of May 31, 2011. The Panel also grants the Union's proposal to increase the number of accrued sick days that members may give each other from six to twelve. The record establishes that there is no issue of sick leave abuse in the Village and that such use is intended to be used for only long-term catastrophic illness or injury.

Both sides have made proposals involving medical coverage, the Union requesting coverage for line of duty death for a member's family for three years after the member's death and a reduction in post-retirement health insurance from 25% to 15%. The Village made a proposal to provide a \$1500 payment to unit members who elect to receive alternate health coverage instead of a percentage of the premium costs. The Village also proposed to increase the amounts members pay for health insurance coverage.

The Panel finds that no change in coverage or increase in the amount members pay for health insurance is warranted at this time. In so deciding, the Panel is sensitive to the financial burden on employees who already contribute significantly to their health costs.

Finally, both parties have addressed Article XXIII, Section 2 of the Agreement, the minimum manning article. The Village proposes to delete the article, which requires the staffing of the firehouse with "three (3) Firefighters at all times." The Union proposes increasing the minimum number of Firefighters

required to respond to a call from three to four. The Village points out that none of the comparable communities in Westchester has a minimum manning provision, let alone one that requires manning by three firefighters. The Village argues that there is no law that requires a minimum of three firefighters to be on duty and that such a requirement has serious financial consequences, including overtime pay. The Union contends that the "Two-In, Two-Out Rule" requires four firefighters to handle a structural fire and that failure to do so compromises safety of both firefighters and the public.

After prolonged consideration and debate about this issue, the Panel finds that there should be no change to Article XXIII, Section 2 of the Agreement. The article has been a part of the parties' Agreement for many years. The Panel has no information into what tradeoffs were given when this article was first negotiated. However, a public panel needs to be cautious in altering or eliminating a contract clause in interest arbitration without having an understanding of how the clause was first incorporated into the parties' Agreement and what considerations were made for obtaining the clause. Accordingly, the Panel denies proposals from both the Union and the Village on this issue.

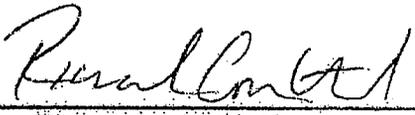
Further, except as set forth in this Award, the Union and Village's other demands are rejected.

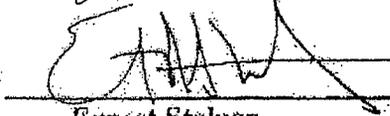
AWARD

1. Firefighters shall be granted salary increases of 3% in the first year of the contract and 2.75% in the second year of the contract.
2. Fire Lieutenants shall be granted an increase in the percentage differential between the annual salary of a firefighter and lieutenant of 3% in the first year of the contract and 3% in the second year of the contract.
3. The dental benefit per firefighter per year shall be increased to \$800 per firefighter per year and shall become effective on the last day of the Award (i.e., May 31, 2011).
4. Firefighters' holidays shall be reduced from 13 to 12 per year by eliminating Washington's Birthday and February 12th but adding President's Day effective the last day of the Award (i.e., May 31, 2011). The back pay to individual firefighters that results from this Award shall reflect the reduction of holidays from 13 to 12 per year effective as of May 31, 2011.
5. The Panel grants the Union's proposal to increase the number of accrued sick days that members may give each other from six to twelve.
6. Except as set forth in this Award, the Union and Village's other demands are rejected.

Dated: March 27, 2013


Carol A. Wittenberg
Public Panel Member


Richard Corenthal
Union Panel Member
(concur/dissent)


Ernest Stolzer
Employer Panel Member
(concur/dissent)