

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

UNIFORMED FIREFIGHTERS ASSOCIATION OF SCARSDALE,
LOCAL 1394, IAFF, AFL-CIO

Employee Organization,

-and-

VILLAGE OF SCARSDALE

Public Employer,

OPINION

AND

AWARD

PERB Case No.: IA 2017-021; M2017-053

BEFORE: Jay M. Siegel, Esq.
Public Panel Member and Chairman

James Slevin, Esq.
Employee Organization Panel Member

Terry O'Neil, Esq.
Public Employer Panel Member

APPEARANCES:

For the Uniformed Firefighters Association of Scarsdale, Local 1394,
International Association of Firefighters, AFL-CIO
Archer, Byington, Glennon & Levine, LLP
By: Richard S. Corenthel, Esq., Of Counsel

For the Village of Scarsdale
Bond, Schoeneck & King, PLLC
By: Emily E. Iannucci, Esq. and Jacqueline A. Smith, Esq., Of Counsel

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board (PERB) to make a just and reasonable determination of a dispute between the Uniformed Firefighters Association of Scarsdale, Local 1394, International Association of Firefighters, AFL-CIO (Union) and the Village of Scarsdale (Village).

The Village is located in the southern part of the center of Westchester County. It shares borders with Hartsdale, Greenville, Fairview, White Plains and Eastchester.

The Village has approximately 17,800 residents and approximately 5,347 households. Most of its residents have a high degree of property and income wealth when compared to other communities in Westchester County, the State and the nation. Recent surveys indicate that its average household annual income is in excess of \$400,000. Recent average monthly home sales show that the average price of a home exceeds \$1 million.

The Village's Fire Department operates on a 24/7 basis. The bargaining unit currently has 6 fire captains and 39 firefighters. The only other uniformed firefighter is the Fire Chief, who is not in the bargaining unit.

The last collective bargaining agreement between the parties covered the period June 1, 2010 through May 31, 2017. In April 2017, the parties began negotiations for a successor contract but the negotiations were unsuccessful. Later in 2017, acting pursuant to the rules of procedure of PERB, a PERB-appointed mediator (who happens to be the Panel Chair in this dispute) met with the parties on two occasions. Mediation was

unsuccessful and on December 20, 2017, the Union filed a Petition for Interest Arbitration (Union Exhibit 4) pursuant to Section 209.4 of the Civil Service Law. The Union also filed scope charges at PERB challenging some of the Village's proposals.

The Village filed a timely response to the Petition but did not file scope charges challenging the Union's proposals. Thereafter, the parties settled the Union's scope charges and on October 3, 2018, the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

Hearings were conducted before the Panel at the offices of the Village on February 5, 2019, March 4, 2019 and May 14, 2019. At all three hearings, the parties were represented by counsel. Both parties were afforded the opportunity to present oral and documentary evidence in support of their respective positions. Both parties presented witnesses and submitted numerous and extensive exhibits and documentation, including written closing arguments.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. After significant discussion and deliberations during two Executive Sessions, the Panel reached an Award. The Award is a compromise. Although it does not fulfill all the wishes of either party, it is accepted and approved by all three Panel members. Accordingly, all references to "the Panel" in this Award shall mean the tripartite Panel.

The positions taken by both parties are adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, all of which are incorporated by reference into this Award. Such positions will merely be summarized

for the purposes of this Opinion and Award. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Award setting forth the terms and conditions for the period June 1, 2017 through May 31, 2019.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following criteria, as detailed in Section 209.4 of the Civil Service Law:

- 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.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that, in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "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."

Union Position

The Union notes that Section 209(4)(C)(v) of the Civil Service Law directs the Panel to compare wages, hours and conditions of employment of its members with employees who perform similar work and employees generally in public and private employment in comparable communities.

The Union contends that the parties have a long and well documented history of using the Scarsdale Police (PBA) and the surrounding Fire Districts of Greenville, Fairview and Hartsdale as its comparables. The Union stresses that, contrary to the Village's protestations, the parties have not used the Scarsdale Teamsters or the Scarsdale Civil Service Employees Association as comparables and the Panel should not use them as comparables in this case.

The Union maintains that, historically, the PBA has been recognized as a comparable because the nature of police and firefighting work shares a community of interest in that they both involve high risk situations and responding to life-threatening emergencies that can arise at any time. Both police and firefighters not only put their lives on the line every day, but they need unique training and require specific skills to successfully respond to these pressure-packed situations.

The Union maintains that this assertion is supported by a July 1987 interest arbitration award between the Union and the Village. On the issue of salary, neutral Arbitrator Howard C. Edelman stated that any analysis of salary must take into account the historical relationship that existed between the way the Village addressed wages for PBA members and wages for firefighters. His analysis determined that the data

demonstrated that there was a “historically close relationship between the two bargaining units.” (Union Exhibit 15).

According to the Union, a June 1989 interest arbitration award issued by neutral Arbitrator Joel M. Douglas, Ph.D, lends further credence to its argument that the PBA is the most relevant comparable with firefighters. Arbitrator Douglas held that the parity relationship between firefighters and PBA members was well documented (Union Exhibit 17).

The Union considers a 1988 interest arbitration award between the Village and the PBA to be of significant note. In that decision, neutral Arbitrator Martin F. Scheinman, Esq., stated that the Village firefighters’ settlement was the most important consideration in determining the appropriate salary increase for PBA members because both firefighters and PBA members work in high risk situations and that, historically, their salary increases have been similar.

The Union notes that, over the years, firefighters have been compared with police in interest arbitration proceedings in many Westchester jurisdictions. It cites interest arbitration awards involving the City of Peekskill, the Village of Pelham and the City of White Plains to bolster this assertion.

The Union points out that in 2014, the Village implemented a new Fire Department sick leave policy that is expressly based on sick leave usage in the Village’s Police Department. The Union notes that even though it successfully challenged this policy at PERB, the Village continues to utilize this policy while it pursues an appeal through the courts. In the Union’s estimation, the Village should not be able to have it both ways, i.e., use the Village Police Department as a comparable for sick leave use and

then take the position that the PBA should not be used as a comparable for other terms and conditions of employment.

The Union asserts that some important recent developments mandate giving greater weight to the Greenville, Fairview and Hartsdale Fire Districts as comparables. These developments include a litany of activities these departments perform together, including but not limited to automatic alarm, shared work agreements (such as Response to Technical Rescue Agreements, Firefighter Assist and Search Team, Technical Rescue Training and Automatic Aid Agreement with Greenville and Hartsdale), as well as training agreements between the Village and all three Fire Districts. The Union stresses that under these new agreements, firefighters from the Village and all three Fire Districts automatically respond to fire alarms together. They work side by side fighting dangerous fires, responding to emergencies and performing search and rescues. They even share equipment and fire apparatus.

The Union notes that Hartsdale Fire District Captain Chip Nanko provided detailed testimony about the integrated response and training between the Village and the other three Fire Districts. Captain Nanko also testified that he has been the inside officer for quite a few structure fires in the Village, managing his crew as well as serving as the inside officer for Village firefighters. Captain Nanko explained that when he is managing the inside, a captain from the Village would typically be managing the outside. To the Union, the record is obvious that the lives and safety of Village firefighters and the lives and safety of firefighters from the three Fire Districts are totally dependent on each other.

Prior interest arbitration awards serve as further evidence that the three Fire Districts are appropriate comparables. The Union cites three prior interest arbitration

awards where the Greenville, Hartsdale and Fairview Fire Districts were determined to be appropriate comparables with the Village's firefighters. In light of the prior interest arbitration awards, their close geographical proximity, and the work and training they perform side by side, it is uncontroverted that the three Fire Districts are relevant comparables.

The Union argues that it is not uncommon for municipal fire departments like the Village to be compared to neighboring fire districts. The Union cites a 2011 case involving the DeWitt Fire District. It also cites a 2011 case decided by the Panel Chair, where it was determined that the City of Peekskill was the most appropriate comparable to the Lake Mohegan Fire District.

For all of the reasons above, the Union urges the Panel to use the PBA as the most relevant comparable and to give great weight to the Greenville, Fairview and Hartsdale Fire District as comparables.

Village Position

The Village insists that the Village's PBA and the three Fire Districts are no longer the proper comparables. It maintains that that the Village's Civil Service Employees Association (CSEA) unit, the Teamsters Blue Collar and Facilities Units, the Village's non-unionized employees and the surrounding municipal Fire Departments of Larchmont, Pelham, Pelham Manor and Rye are the appropriate comparables.

The Village contends that PBA members are not comparable with firefighters because PBA members have historically earned much higher salaries than firefighters. The Village points out that a 2017-2018 Empire Center Report found that the average pay of a Village firefighter was \$111,001, while the average pay of a Village police officer

was \$133,896. The Village contends that if the units were truly comparable in responsibility, skill and value, their salaries would be almost identical, which they are not.

The Village contends that firefighters are not comparable with PBA members because their day to day jobs have little in common. While recognizing that firefighters face risks any time there is a fire, the Village points out that there are not that many fires in the Village, specifically 31 actual fires in 2018. In stark contrast, police officers face hazards every time they make a traffic stop, make arrests or respond to an emergency, which happens on most shifts for PBA members.

Unlike PBA members who are always active on patrol, firefighters often have some time during their workday to do what they want to do in the firehouse. While the Village recognizes that firefighters have daily cleaning tasks, maintenance and training, once that work is completed they are free to do what they want as long as they are not responding to an alarm. This includes sleep time between the hours of 10:30 p.m. and a little before 7:00 a.m.

The substantial difference in the pension benefits firefighters receive compared to PBA members also shows that these employees lack a community of interest. The Village states that, in 1999, it agreed to enroll firefighters in a 384-e retirement plan, a plan that provides far more generous benefits than the plan police officers are enrolled in. The annual pension payout for a Village firefighter is approximately \$74,500 while the average annual pension payout for a Village police officer is approximately \$64,500.

While the Village concedes that prior interest arbitration awards have found the PBA to be comparable with firefighters, the Village contends that these are no longer

relevant because they were awarded before the Village adopted the 384-e pension plan for its firefighters. The 384-e plan cost the Village approximately \$1 million to buy into it and continues to cost the Village more annually than the pension plan for PBA members. The result is that firefighters no longer receive the same salary increases as PBA members. In the Village's opinion, by bargaining for the 384-e pension plan, the firefighters chose to no longer be comparable to the PBA.

The Village insists that the three neighboring Fire Districts are not comparable because they are not fire departments located within a larger municipality like Scarsdale. The Village points out that, unlike a fire district, the Village has numerous responsibilities outside of fire services, e.g., police, public works, library, parks and recreation, etc. In stark contrast, a fire district is a separate political subdivision established solely to provide fire protection.

The Village's budgeting process is wholly different than that of a fire district. The budget process involves input from the Village Manager, the Board of Trustees and department heads. It garners a great deal of attention from Village residents. Fire District budget votes frequently have less than 100 people turn out to vote.

Another distinction between Fire Districts and firefighters in the Village is that the firefighters in the Fire Districts provide emergency medical services (EMS), while Village firefighters do not. This is significant to the Village as it notes that Captain Nanko testified that the Hartsdale Fire District has 600-700 EMS responses each year, which is 30 to 40 percent of its responses. The Village argues that the work of a firefighter performing EMS is an entirely different job than that of a firefighter who does not.

Finally, the Village argues that its firefighters are not comparable with the three Fire Districts because the Village is much larger than the Fire Districts and serves a much greater population. Whereas the Village has more than 17,000 residents covering 6.66 square miles, the Hartsdale Fire District has a population of 5,293 covering 0.90 square miles, the Greenville Fire District has a population of 7,116 covering 2.56 square miles and the Fairview Fire District has a population of 5,515 covering 3.48 square miles.

The Village insists that the municipal fire departments in Larchmont, Pelham, Pelham Manor and Rye are the most appropriate comparators. The Village points out that, like the Village, these municipal departments are part of a municipality that must account for the funding of other services. These municipal departments, like the Village, struggle to juggle the costs of providing a multitude of services beyond fire services to its communities.

Finally, the Village contends that its bargaining units other than the PBA and its non-union employees are appropriate comparables. The Village cites an interest arbitration award between it and the firefighters where neutral Arbitrator John Sands stated that “the agreements between the Village and its other Unions (the Teamsters and CSEA) are also especially relevant when determining the UFFA’s salary increases.” (Union Exhibit 11).

The Village observes that the firefighters have received very similar increases to those provided to Teamster employees. In fact, between 2010 and 2016, Teamsters employees received the same salary increases as firefighters in four of the seven years. In one of the seven years, Teamsters received greater salary increases than firefighters and firefighters received greater salary increases than Teamster employees in two of the seven

years. Teamster employees also face hazards when operating equipment and machinery and have to contend with natural hazards.

For all of the reasons above, the Village urges the Panel to find the municipalities of Larchmont, Pelham, Pelham Manor and Rye to be comparable, as well as Village employees represented by the Teamsters and CSEA, and Village employees not represented by a union.

Panel Determination on Comparability

The Panel Chair finds the Union's arguments on comparability to be more persuasive than the Village's. For the reasons to follow, the Scarsdale PBA, as well as the Greenville, Hartsdale and Fairview Fire Districts are the primary comparables with the Scarsdale Firefighters. Since there is some clear commonality between the Village's firefighters and the City of Rye, i.e., both high wealth communities serving similar sized populations and similar sized jurisdictions in close proximity, the Panel Chair finds that Rye could be a limited comparator in the future.¹

There are several important reasons why the Scarsdale PBA and the three Fire Districts are the comparables. The record establishes that these groups have been the comparables used by neutral arbitrators for years. (Union Exhibits 15, 17, 36). In a 1987 Interest Arbitration Award, Panel Chair Edelman found the PBA to be the primary comparator with the Village's firefighters. He noted the historical bargaining relationship both unions had with the Village, finding that salary increases for both groups were similar. This principle was again supported by Arbitrator Douglas in a 1989 Interest Arbitration Award between the Village and the firefighters and in a 1988 Interest

¹ Rye's square mileage and the size of the population it serves is almost identical to the Village's. However, since there is limited information in the record on Rye, it is not given consideration in this interest arbitration. The Village's commonality with Rye may be a basis for comparison in the future.

Arbitration Award by Arbitrator Scheinman involving the Village and the Scarsdale PBA.

The Panel Chair finds no compelling reason to deviate from these prior rulings. The Scarsdale firefighters and PBA members are the only interest arbitration employees in the Village. Employees in both groups receive specialized training so they can be there for the public on a moment's notice. Employees in both groups may put their lives on the line at any moment.

The Panel Chair has carefully considered the Village's argument that these awards are no longer applicable since the Village's firefighters opted for the 384-e pension around 1999. The Panel Chair will address this in more detail in the salary section. However, he finds that the firefighters' decision to seek 384-e benefits does not change their status as a direct comparator with the PBA. This is the case because the only time when firefighters' salary increases were not closely linked with the PBA was during the settlement when the firefighters enrolled in 384-e. Firefighters took lower wage increases than the PBA to offset the increased costs of the 384-e plan. However, the record reflects that, since that time, firefighters wage increases have substantially tracked PBA raises, i.e., within fractions of a percentage point.

The evidence presented persuades the Panel Chair that the Greenville, Fairview and Hartsdale Fire Districts must be primary comparators. Not only have they been historically used as comparators (Union Exhibits 15, 16 and 17), but these three Fire Districts now share an even greater community of interest than they once did. The record establishes that they work shoulder to shoulder with the Village's firefighters on a regular basis. The record is replete with evidence establishing just how linked these four

departments are. These departments have automatic alarm and shared work agreements, including but not limited to Firefighter Assist and Search Team and Technical Rescue Training. There is an Automatic Aid Agreement between the Village and the Greenville and Hartsdale Fire Districts and all of these entities regularly train together. This is in place because firefighters in all of these jurisdictions now automatically respond to alarms together. In practice, they work side by side fighting fires, performing rescues and performing searches. They share equipment and fire apparatus. Union witnesses and Village witnesses both corroborated these facts.

The Village is right next door to the three Fire Districts. Geographical proximity was one of the compelling reasons why the Panel Chair in this case previously found the City of Peekskill Fire Department to be the primary comparable with the Lake Mohegan Professional Firefighters in PERB Case IA 2009-16. This serves as an additional compelling reason in this case.

For all of the reasons above, the Panel finds the Scarsdale PBA and the Greenville, Hartsdale and Fairview Fire Districts to be the primary comparables.

INTERESTS AND WELFARE OF THE PUBLIC AND ABILITY TO PAY

Union Position

The Union stresses that the interests and welfare of the public are impacted by this proceeding in two ways. A fair wage and benefit package positively impacts firefighter morale, which allows its officers to provide the high level of service Village residents have come to expect. It also permits the Village to attract the cream of the crop in firefighting. It notes that Arbitrator Arthur Riegel found just this in a 2011 Interest Arbitration Award between the Village of Garden City and the Professional Firefighters

Association of Nassau County (PERB Case Number IA2011-021). In the Union's estimation, an inferior wage and benefit package adversely impacts the public by reducing the pool of highly qualified applicants.

With respect to ability to pay, the Union insists that all of the evidence overwhelmingly demonstrates that the Village has the ability to pay for its proposed increases in wages and benefits. It relies on the analysis and determination of Kevin R. Decker, an economist who has over 30 years of experience in labor economics and collective bargaining. The Union points out that after reviewing relevant data provided by the Village, as well as information maintained by the State about the Village, Mr. Decker concluded that the Village has the ability to pay for the Union's proposals.

According to the Union, Mr. Decker's analysis shows that, in 2018, the Village raised 68 percent of its funds from real property taxes. This is highly relevant because the data shows that the Village's full value real property tax base went up 24.9 percent between 2014 and 2019. Other strong economic trends identified by Mr. Decker include that the average family income in the Village is \$448,756, arguably the highest he has ever encountered, while the average home value exceeds \$1.5 million. At the same time, Mr. Decker notes that Village taxes have not been increasing at levels that would cause any issues for Village residents. He determined that the average Village tax bill went up \$159.63 between 2017 and 2019, which amounts to an average annual increase of 0.04% based on average family income of \$448,756.

The Union stresses that the Village's fund balances are healthy. Mr. Decker noted that it has had ten consecutive years of operating surplus. Mr. Decker testified that the Village's unrestricted fund balance rose from \$14.4 million in 2017 to \$15.6 million in

2018. He testified that the Village's total fund balance as a percentage of expenditures (29.2%) and the unrestricted fund balance as a percentage of expenditures (28%) evince strong fiscal management. Ultimately, since the Village consistently generates surpluses, its unrestricted fund balance of more than \$15.6 million is available for a myriad of expenditures, including salary increases.

The Union observes that Mr. Decker testified that the Village's fund balance recommendations exceed all of the recommendations made for sound fiscal practices, including Moody's, the Government Finance Officer's Association and the New York State Comptroller. The Union notes that Mr. Decker testified that the fund balance is in great shape. He complimented the Village on how well run it has been fiscally. He found that their projections each year are right on target and that the Village has been able to hit its targets while increasing assigned balance for things like future capital projects, contractual obligations and future retirement system payments.

Mr. Decker also found the Village's tax base to be on sound financial footing. Residents have a high level of education and virtually no unemployment. The Village is in close proximity to New York City and there is every reason to believe that excellent work opportunities for Village residents will continue to exist.

Mr. Decker's testimony and report noted the outcome of the New York State Comptroller's assessment of the Village in the Comptroller's fiscal stress monitoring system, which rates municipalities with financial difficulties. Mr. Decker found that the Village's 2018 rating of 1.67% out of 100 indicated no fiscal stress whatsoever. He also found that municipalities come under the scope of the fiscal stress monitoring system when their fiscal stress reaches 45%, which is far beyond the Village's fiscal stress level.

The Union stresses that the Village is universally known as one of the richest places in the United States. It cites a 2019 Bloomberg's annual richest places list placing Scarsdale in the Number 2 spot. It notes that the Village moved from Number 3 to Number 2 after a \$30,000 increase in average household income from 2018 to 2019 (Union Exhibit 70). The Union cites a May 2019 Redfin report showing the average sales prices of homes to have increased 18.1% over the past year (Union Exhibit 75).

The Union considers the Village's "Outstanding" rating from Moody's, the nation's top bond rating company, to be of significant importance. It notes that Moody's assessed the Village with its highest rating of AAA due to a variety of factors, including its "very strong wealth and income profile, an ample tax base and robust financial position." Moody's also noted the Village's "exceptionally light debt burden and a moderate pension liability."

The Union asserts that the Village did not introduce any evidence demonstrating an inability to pay or refuting Mr. Decker's assessment. Instead, the Village simply made claims that the Tax Reform and Jobs Act of 2017 (a.k.a., the recently adopted federal tax law) would adversely affect Village residents because it severely limits residents' ability to deduct State and local taxes ("SALT") from their federal income tax.

In the end analysis, since the credible and reliable factual data shows that the Village is financially stable and has the ability to pay for the Union's proposals, the Union urges the Panel to find that the Village has the ability to pay for its proposals.

Village Position

The Village does not dispute that it has the ability to pay for a reasonable award. It insists that the Panel cannot ignore the fact that there are limitations on the Village's

ability to pay. It maintains that the Panel should be assessing the Village's ability to pay based on what it should reasonably be expected to pay given its constituency, tax base, and its ongoing need to expend monies on other priorities such as maintaining a stable infrastructure and addressing all of the other services beyond fire protection that the Village cannot ignore.

The Village does not dispute the fact that its sound fiscal policies have served it well and have allowed it to maintain a strong standing by the bond agencies. In the Village's estimation, it should not be penalized for its diligent efforts to maintain a strong fiscal situation. It has a myriad of economic concerns outside of its control that have the potential to adversely impact the Village's revenues which cannot be ignored by the Panel.

The State's Tax Cap legislation is a reality the Village must contend with every fiscal year. As a result of the legislation, the Village generally cannot increase its property tax levy by more than 2% or the rate of inflation, whichever is lower. While the Village has exceeded the tax cap rate in three of the past five years, the Village maintains that it cannot be expected to do this on a regular basis going forward. Residents today are closely looking at their tax rates. They will object if taxes repeatedly exceed the tax cap.

Most importantly, the Trump Administration's Tax Cap and Jobs Act ("SALT"), which caps the amount of property taxes homeowner's can deduct from their federal taxes at \$10,000, has hit the Village's residents particularly hard. Numerous Village homeowners are paying thousands of dollars more in income taxes than they had in the past due to not being able to deduct property taxes. Village Treasure Louise McClure

testified that the federal legislation has “significantly reduced the deductions available to taxpayers here in Scarsdale.” (353).²

According to the Village, housing prices in Westchester, and particularly Scarsdale, are falling, at least in part, due to the federal legislation. The Village cites a 2018 Bloomberg Article indicating that in Scarsdale, median home prices dropped five percent in the first half of the year. The Article suggested that things were likely to get worse the next year as people felt the impact of the new tax laws for the first time (Village Exhibit 33).

The Village contends that sales of Westchester County properties worth \$2 million or more dropped 38% in the first few months of 2019. It notes that the high end market in Westchester is struggling (Village Exhibit 63). Since reduced property values will directly impact the Village’s revenues, fiscal prudence is mandated by the Panel.

Rising personnel costs also influence its ability to pay. The Village has limited control over such costs. It notes that since 2008-09, Village-wide insurance costs have increased by 76% and that dental and health insurance now accounts for a whopping 14% of the Village’s overall budget.

Pension costs also continue to rise. In 2014, they increased by 28.9%. While the Village concedes that they have decreased in recent years, the relevant facts are that 7.2% of the Village’s budget went toward pension contribution costs for its employees and pension costs have increased by 111% since 2009-2010 (Village Exhibit 7).

In the end analysis, the Village recognizes that it serves a financially healthy residential tax base. However, its costs have continued to rise and there is not an unlimited amount of money for the Village to distribute to its employees. For all of these

² Numbers in parenthesis refer to the page number from the transcripts made for this proceeding.

reasons, the Village urges the Panel to exercise fiscal prudence and to deny the Union its proposed salary increases of 4.75% per year.

Panel Determination on the Village's Ability to Pay

The Panel has carefully considered the statutory criteria regarding ability to pay as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs filed, forming the record in this matter.

The Village shows no signs of fiscal stress at this time. The Panel Chair finds that the record establishes that the fundamental economic conditions of the Village are strong. The Village has done an excellent job of managing its resources. Its New York State Comptroller's fiscal stress monitoring system score is 1.67%, which equates to no sign of fiscal stress. According to industry standards, it has a very strong fund balance, its residents own highly valuable properties and have strong employment. Moody's bond ratings have regularly given the Village the highest rating of AAA, which reflects its assessment that the Village has a sound financial position with healthy reserves, an affluent and sizeable tax base, and a below average tax burden. The Panel Chair is confident that the Village's prior fiscal management, along with its favorable economic conditions, will allow it to maintain a strong financial position. The Panel finds that the Village has the ability to pay for this Award and that the wage and other increases awarded herein constitute a fair and reasonable Award.

At the same time, the Village's strong financial position does not mean it has unlimited resources. The Village's concerns influence the Panel's determination on ability to pay to the extent that the Panel is rejecting most of the Union's proposals to

increase benefits and is not granting the Union's proposal on salary. Instead, the Panel is granting a reasonable salary proposal that comports with the Village's ability to pay and with the record overall.

COMPARISON OF PECULIARITIES OF THE FIREFIGHTING PROFESSION

The Panel has also carefully considered the statutory criteria regarding the comparison of the firefighting profession with other trades or professions, including specifically: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; and (5) job training and skills. The Union asserts that the firefighting profession is so unique that no other useful comparison can be made with other trades or professions other than the Scarsdale police.

The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of firefighting work and the unique training, skills, pressures and dangers that firefighters and police officers have the potential to face each day. The Panel Chair finds that the peculiarities of the profession mandate a direct comparison with firefighters and with the Scarsdale police.

TERMS OF THE PARTIES' COLLECTIVE BARGAINING AGREEMENTS

Pursuant to Section 209(4)(C)(v) of the Civil Service Law, the Panel is directed to consider the terms of collective bargaining agreements negotiated in the past. The record includes information from collective bargaining agreements dating back as far as 1978 to the most recent CBA (Village Exhibit 16 and Union Exhibit 1).

The Union stresses that an examination of this history reveals that its members have always been directly compared to the PBA because both groups perform critical safety functions for the Village. The history shows that firefighters have regularly received increases in wages and benefits that are competitive with the group of comparables and there is no reason to deviate from this history.

The Village takes notice of the prior agreements and interest arbitration awards between the parties. While recognizing this history, it maintains that there is no logical or compelling reason why the Village's firefighters should receive anything close to the wage increase and other benefit increases the Union is proposing. It contends that there are genuine limitations on its ability to pay that must be given credence. These include the New York Tax Cap Legislation, as well as the Federal Tax Cuts and Jobs Act, both of which have a direct impact on the Village's revenues and its taxpayers.

The Panel has carefully considered the terms of collective bargaining agreements negotiated in the past and the past interest arbitration awards. This past history influences the Panel in crafting a just and reasonable award.

BASE WAGES

Union Position

The Union is seeking a 4.75% salary increase to base wages in each year of the two year award. The Union maintains that the Village clearly has the ability to pay for its proposed increases and that these raises are necessary to close the growing gap between the salaries paid to Scarsdale firefighters and the amount paid to police officers and firefighters in the universe of comparables.

The Union notes that ability to pay is the first consideration as to whether salary increases should be granted. This consideration strongly favors the Union because the Village meets all recognized ability to pay standards with flying colors. The Union notes that Mr. Decker opined that the Village's financial condition is strong and that the Village has a steady work force with a tax base on steady financial footing. Mr. Decker further observed that the Village is not in any financial distress by any stretch of the imagination, as indicated by the Comptroller's numerous standards for making this determination.

The Union maintains that its proposed increase is strongly supported by a comparison of wages earned by Village police officers and wages earned by Village firefighters. According to the Union, the top pay of a Village police officer was \$111,840 in 2017-18, which is greater than 10% above the top pay of a Village firefighter, which is \$98,692. The need for a substantial wage adjustment is even starker when comparing the police captain and fire captain wages. Whereas top pay for captains in the Village's police department is approximately \$161,000, the top pay for a fire captain in the Village is \$126,325, which is approximately \$35,000 less than the Village police captains.

The Union stresses that this is the time for the firefighters to gain some ground vis-à-vis the comparables. The historical parity in wages that was recognized in the late 1980s in the Edelman, Douglas and Scheinman interest arbitration awards should be adopted in practice, which can only happen if firefighters start receiving higher wage increases than Village police officers.

The wage disparity is even more problematic when annual work hours are factored in. Village firefighters have a regular minimum work year that is 136 hours more than the minimum work year for Village police officers.

The Union insists that its proposal should be adopted because Village firefighters earn considerably less than the firefighters in the three neighboring Fire Districts. Top salaries for firefighters in Hartsdale, Greenville and Fairview are \$106,204, \$106,223 and \$105,462, respectively. This is approximately 7% more than the top pay for Village firefighters. When one considers that Village firefighters make substantial contributions toward the cost of their health insurance while firefighters in the three Fire Districts do not make any such contributions toward the cost of their health insurance, the Union's proposal seems eminently reasonable.

The Union finds it to be inexplicable that the Village has not proposed any meaningful salary increase after negotiating salary increases with Village police officers of 3% for 2017-18 and 3.5% for 2018-19. The Union stresses that the Village PBA has always been the primary comparator and that firefighter wage increases have substantially tracked the wages increases paid to Village police officers. Indeed, the Union notes that over the past 40 years, the only exception to this clear pattern was between 1999 and 2004 when the Union accepted less wage increases than police officers. However, firefighters accepted the lesser wage increases to offset the costs of enrolling in the more favorable pension plan, 384-e, which the firefighters negotiated with the Village. Since the 2004 negotiations, firefighters and police officers in the Village have gone back to their historical pattern, i.e., consistently receiving similar percentage salary increases. Thus, at a minimum, the Panel should grant firefighters wage

increases of 3% in 2017-18 and 3.5% in 2018-19, just as the Village mutually negotiated with its police officers.

Finally, the Union urges the Panel to provide its wages retroactively and to include all members who retired or were laid off subsequent to the two year period covered by the Award. The Union cites a prior case issued by the Panel Chair where he held that denying retroactive payments to retirees is fundamentally unfair because the now separated employees were performing the same work as the current employees during the time period in question.

Village Position

The Village maintains that the Panel should deny the Union's salary proposal. While acknowledging the important public safety work that firefighters perform, the Village asserts that the Union's proposal should be wholly rejected because its officers are already competitively compensated.

In the Village's estimation, the Union's proposed salary increase is completely excessive in this economic climate as it would be the most lucrative even among the comparables proposed by the Union. The Village stresses that there are no jurisdictions among the Union's group of comparables that agreed to average annual salary increases of 4.75%. Firefighters in Fairview, Greenville and Hartsdale received wage increases of 2% per year during the time period covered by this Award. While Village police officers received wage increases of 3% and 3.5% during the time covered by this Award, the Village urges the Panel not to look at this in isolation. It stresses that those wages were part of a multi-faceted settlement that included Village police officers agreeing to make substantial contributions toward health insurance.

The Union's proposal is also excessive when it is considered in the context of the other benefits its members enjoy. The Village points out that firefighters receive the lucrative Retirement and Social Security Law 384-e benefit. This provides an additional 1.66% of to an officer's final average salary for each year of service beyond 20 years. To the Village, this is noteworthy because it is expensive for the Village to provide this benefit and many of the comparables, including Village police officers, do not receive 384-e benefits.

The 384-e benefit enjoyed by firefighters accentuates precisely why the Village argues that there are limitations on what it has the ability to pay for. The Village points out that while Mr. Decker opined for the Union that the Village had the ability to pay for the Union's proposal, his report on this was incomplete. Mr. Decker acknowledged that his calculation did not include any analysis of the compounding effect of two consecutive years at 4.75%. These facts, coupled with the tax cap legislation and the increasing cost of personnel benefits, mandate a much lower salary increase than that proposed by the Union.

Moreover, while the Union wishes to use the Village PBA as a comparator, the evidence establishes that the Village PBA is no longer a valid comparator. The jobs are markedly different. Police officers face potential hazards each time they show up for work and make a traffic stop while firefighters are generally free to do what they want unless and until an alarm sounds.

Since the time the Village agreed to the 384-e pension plan with firefighters, the Union has not received the same salary increases as the PBA and the units no longer share a parity or pattern relationship. Thus, there is no basis for Union members to

receive wage adjustments of 3% in 2017-18 and 3.5% in 2018-2019. Moreover, while the Village objects to the argument that the three neighboring Fire Districts are comparable, the Village points out that these employees received salary increases of 2% per year during the period covered by this Award, far less than the raises proposed by the Union.

The Village asserts that firefighters have received almost identical salary increases as members of the Teamsters Blue Collar unit in the Village over the past ten years. With this in mind, the Village contends that there is no justification for firefighters to receive more than the 2% annual increase received by members of the Teamsters unit and all other Village employees during this time period. This amount is consistent with the CPI as well. In other words, there is no compelling reason why firefighters should receive substantially higher wage increases than all other Village employees, which is precisely what the Union is attempting to do in this proceeding. This argument is even more compelling when the cost to enroll firefighters in its pension and health insurance plans are factored in.

In terms of pure dollars, awarding the Union's proposed salary increases could have devastating effects on the Village's budget. The Village points out that awarding 3% per year would cost the Village over \$600,000 and this is much less than what the Union seeks. In the Village's view, the Union's wage expectations ignore the financial realities of the Village and its taxpayers. The Village urges the Panel to reject the Union's proposal and to award a reasonable proposal that comports with its arguments.³ It insists that firefighters will remain competitive and that their overall compensation will remain robust when other benefits are considered.

³ The Village states that it did not make a salary proposal because the Union's proposal was so outrageously high that it did not warrant a counterproposal except for zero.

Panel Determination on Base Wages

The Panel Chair has carefully considered the statutory criteria balancing the reasonable economic needs of the Village's firefighters with the obligations of the Village in the context of what is fair and reasonable.

Wages are one of the most important elements in any labor agreement. Employees have the utmost concern about the wages they will be paid and wages represent the greatest expenditure for the Village.

The record contains data that supports both parties' positions. The Village has genuine economic concerns. It cannot be sure about the impact the new federal tax law will have on its constituents. Its residents provide a significant portion of the revenue stream for the Village. Thus, the potential for an adverse impact that the new federal tax law may have on its taxpayers' bottom line is worrisome for the Village from a revenue standpoint.

While the Village has every right to have concerns for its taxpayers, the Panel Chair must assess the Village's overall finances in rendering an award. The Village is in a strong financial position. It has solid and reliable revenue streams and solid and reliable financial reserves. The Comptroller's assessment of the Village's overall financial health is very strong, indicating that the Village is not in any financial distress. The overall evidentiary picture regarding ability to pay shows that wage freezes are not justified and that the Village has the ability to pay for the raises awarded herein.

At the same time, the Panel Chair finds that the Union's proposed salary increases of 4.75% per year are not justified. First and foremost, there is no jurisdiction among the group of comparables that received average salary increases of 4.75% per year. Police

officers in the Village received salary increases of 3% in 2017-2018 and 3.5% in 2018-2019, while firefighters in the three neighboring Fire Districts received average salary increases of 2% during this time period.

The Panel Chair finds that the most relevant comparator to firefighters has been the Village's police officers. The data submitted by the Village in Village Exhibit 26 demonstrates that for the 20 years prior to firefighters agreeing to be enrolled in the more generous 384-e pension plan, firefighters and police officer received virtually the same wage increase each and every year. Between 1999 and 2004, this changed significantly. The data submitted by both the Union (Union Exhibit 39) and Village Exhibit 26 shows that firefighters agreed to much lower wage increases than police officers during this period to offset the increased costs of the 384-e plan. While the data submitted by both parties from 2004 to the present is not identical, it is almost the same. It shows that since 2004, firefighters have agreed to slightly lower wages than police officers. Some years it has been 0.25% less (2005-2006), some years it has been as high as 0.675% less (2011-2012), some years it has been as low as 0.1% less (2015-2016). There are also some years when firefighters and police received the same wage increases and there is even a year or two when firefighters received more than police officers. However, the overall trend the parties have been negotiating shows that in five of the past seven years, police officers have received a slightly higher wage rate than firefighters, sometimes as little as 0.1% (such as 2015-2016). This demonstrates to the Panel Chair that, while there is not exact parity in wage increases between police officers, there is a very clear pattern of firefighters receiving a fraction below the salary increase of police officers and

occasionally receiving the same or even slightly higher wage increases than police officers.

The parties history of their collective bargaining is an important practical and statutory factor regarding the manner in which the Panel feels it should adjudicate salary. After assessing all of the data, the Panel Chair determines a salary increase of 2.9% in 2017-2018 and an additional salary increase of 3.4% in 2018-2019 is the most appropriate increase. At 0.1% less per year than the wages received by police officers, it most comports with the recent historical salary trends firefighters and police officers have agreed to with the Village.

While the Panel Chair recognizes that this wage increase is above the increases received by the Fire District comparables, the wage adjustment is appropriate because it comports with Village police officer increases and Village firefighters earn less than firefighters in the Fire Districts. While the Panel is not attempting to impose parity between Village firefighters and the neighboring Fire Districts, the percentage increases imposed by the Panel are reasonable in that they will close some of the gap between Village firefighter wages and the wages of firefighters in the neighboring three Fire Districts.

In reaching the conclusion that salary schedules shall be increased by 2.9% effective June 1, 2017 and 3.4% effective June 1, 2018, the Panel Chair finds that the Village has the ability to pay for a fair increase in wages overall. This includes the fact that the Village has had budget surpluses in each of the past five years, four of which exceeded \$1 million, as well as the fact that the Village's fund balances have remained very healthy by any of the standard fund balance measurements.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON BASE WAGES

ARTICLE IV - COMPENSATION

Effective June 1, 2017 all salary rates will be increased by 2.9%, and an additional 3.4% effective June 1, 2018.

BEREAVEMENT LEAVE

Union Position

The Union proposes a one day bereavement leave benefit to attend services in the event of the death of a sister-in-law, brother-in-law and spousal grandparents. The Union focuses on testimony it elicited from one of its firefighters who testified that this is necessary because most firefighters have a sister-in-law and/or a brother-in-law and that their passing can be a tragic event for families. The Union proposes adding spousal grandparents for this benefit because spousal grandparents are often the only grandparents still alive in families.

The Union observes that the three neighboring Fire Districts have a clause allowing bereavement leave for deaths in the family such as this. Since the proposal is reasonable and the Village did not present any evidence rebutting the worthiness of the proposal, the Union urges the Panel to adopt the proposal.

Village Position

The Village insists that the Union has failed to present any support for this demand. It asserts that its firefighters receive highly competitive leave time benefits and that there is no compelling reason to further increase these benefits. It points out that firefighters have a very flexible personal leave benefit which allows them to take days off for personal business that cannot be accomplished at other times during their workday. In the Village's view, there is no compelling reason for the Panel to adopt the Union's proposal, particularly since firefighters are able to attend services for the deaths of relatives proposed by the Union by using personal leave time. When this is coupled with the fact that Village police officers do not have the bereavement leave benefit being proposed by the Union, it becomes abundantly clear that there is no basis to grant the Union's proposal.

Panel Determination on Bereavement Leave

The Panel Chair finds clear support in the record for the Union's bereavement leave proposal. First and foremost, the proposal is reasonable. It simply requests one day of bereavement leave to attend services for the death of a brother-in-law, sister-in-law and spousal grandparents. The list of relatives included for this benefit is not too broad and the number of days a firefighter can use is limited to one for each death. In addition, while Village police officers do not receive this benefit, a review of the bereavement leave provisions in the three neighboring Fire Districts demonstrates that this proposal comports with the bereavement leave benefits provided by those Fire Districts.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON BEREAVMENT LEAVE

ARTICLE XI– Add the following:

Effective on the last day of the Award, one day of bereavement leave shall be granted to attend services in the event of the death of a sister-in-law, brother-in-law and spousal grandparents.

EXTENDED VACATION LEAVE BENEFITS

Village Position

Article VI(B) of the current Agreement states that in a firefighter’s last year of employment, the authorized vacation period will be extended by the number of workdays equal to one-third (1/3) of the firefighter’s unused accumulated sick leave, to a maximum of 1,600 hours. The Village proposes to add a sentence clarifying that this section applies only to employees who are retiring and that this benefit is not applicable to employees who are terminated, resign, or leave Village employment for any reason other than retirement.

The Village requests this clarification because it is in litigation with a firefighter who was separated by the Village in 2018 under Section 71 of the Civil Service Law. The Village maintains that under this provision in the CBA, this extraordinary benefit was intended only to those employees who were leaving Village employment to retire. However, since the Village is now in litigation over this issue, it wishes to clarify the intent going forward.

Union Position

The Union asks the Panel to reject this proposal. It maintains that it defies logic that firefighters should not be able to use their personal accrued leave time for this benefit.

The Union stresses that one of its members who was terminated by the Village pursuant to Section 71 of the Civil Service Law is now in litigation with the Village. The Union claims that there is no compelling reason why an employee who is terminated pursuant to Section 71 of the Civil Service Law should not receive a portion of their earned accruals. The Union urges the Panel to steer clear of this proposal and avoid the potential of adversely affecting a former firefighter with pending litigation over this specific issue.

Panel Determination on Extended Leave Benefits

The Panel Chair finds that the Village's proposal should be granted. The extended sick leave provision is a generous benefit. It provides an incentive to unit members not to abuse their leave time and to accrue as much as possible. If they do this, they are permitted to convert up to 1,600 hours of accrued sick leave time to vacation leave in their last year of employment. While the current provision does not expressly state that it is only applicable to employees who are retiring, clarifying this is logical since the benefit is so generous and applies only to employees who are in their last year of employment.

The Panel Chair is sensitive to the Union's concern that this proposal not impact the one unit member who is currently in litigation with the Village over these benefits. The Panel Chair does not wish to impact that litigation in any manner whatsoever. In

adopting the Village's proposal, it is the Panel's intent to have this provision for employees who retire on or after the last day covered by the Award and not impact the current litigation in any way.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON EXTENDED LEAVE BENEFITS

ARTICLE VI(B) – Add the following:

For employees who retire on or after the last day of the Award, it is understood that this section shall apply only to employees upon retirement, including employees who are unable to return to work and receive a disability retirement. It is not intended for employees who are terminated, resign, or leave Village employment for any reason other than retirement. It is also understood that this language clarification will not be utilized by either side in the one situation described above where there is pending litigation.

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered by the Panel members. Many proposals that the parties consider to be of high importance, such as the Union's longevity proposal and the Village's proposal for increases in employee contributions toward health insurance⁴, have not been imposed by the Panel. In interest arbitration, as in collective bargaining, not all proposals are resolved and not all contentions are agreed with. The

⁴ The Village's proposal to increase health insurance premium contributions has not been awarded because Scarsdale firefighters have higher premium contributions than Scarsdale police officers.

Panel, in reaching what it has determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.

AWARD ON REMAINING ISSUES

Except as set forth in this Award, the Village’s demands are hereby rejected.

Except as set forth in this Award, the Union’s demands are hereby rejected.

DURATION OF AWARD

Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award is for the period commencing June 1, 2017 through May 31, 2019. The terms of this Award shall be effective on such dates as set forth herein and payable to any unit member working during such award term. Payment of any retroactive wage adjustment shall be made no later than 60 days after the execution of this Award.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is our award.

_____ JAY M. SIEGEL, ESQ. Public Panel Member and Chairman	_____ Date
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_____ TERRY O’NEIL, ESQ. Employer Panel Member	_____ Date
------------------------------------------------------	---------------

_____ JAMES SLEVIN, ESQ. Employee Organization Panel Member	_____ Date
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STATE OF NEW YORK)
COUNTY OF PUTNAM) ss. :

On this day of November 2019 before me personally came and appeared Jay M. Siegel, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF NASSAU) ss. :

On this day of November 2019 before me personally came and appeared James Slevin to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF NASSAU) ss. :

On this day of November 2019 before me personally came and appeared Terry O'Neil, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

Notary Public