

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE ARBITRATION BETWEEN:

VILLAGE OF OLD BROOKVILLE

-and-

OLD BROOKVILLE POLICE BENEVOLENT ASSOCIATION

CASE NO. CA-0022; M74-242

COMMISSIONER
PANEL'S
AWARD and OPINION

The PUBLIC ARBITRATION PANEL (hereinafter referred to as the "PANEL"), composed of Harry Rains, Esq., Village Appointee, Peter Reilly, PBA Appointee, and Paul G. Kell, Chairman, was appointed in accordance with the procedures of the New York State Public Employment Relations Board to inquire into the causes and circumstances of the continued impasse between the VILLAGE OF OLD BROOKVILLE (hereinafter referred to as the "VILLAGE"), and the OLD BROOKVILLE POLICE BENEVOLENT ASSOCIATION (hereinafter referred to as the "PBA"), and to make an Award accordingly.

Arbitration Hearings were held on June 18, 1975 and July 15, 1975 in Long Island, New York. Post-Hearing Briefs were received on August 11, 1975. All of the evidence having been received, the Arbitration Hearing was accordingly closed on August 12, 1975.

The Panel met in Executive Session on August 28, 1975. After due and deliberate consideration on all of the evidence, facts, exhibits and documents presented, the following is the Panel's Award.

APPEARANCES: FOR THE VILLAGE:

BERTRAND B. POGREBIN, Esq. of Rains, Pogrebin & Scher, Esqs.,
Attorney for the Village;
FREDERICK BRAID, Esq. of Rains, Pogrebin & Scher, Esqs.,
Attorney for the Village.

FOR THE PBA:

REYNOLD A. MAURO, Esq. of Richard Hartman, Esq., Attorney for PBA;
JOSEPH SANCHEZ, President, Chairman of Negotiations Committee;
ALFRED WOLF, Vice-President, Member of Negotiations Committee;
VITO SIMORESCHI, PBA Trustee, Member of Negotiations Committee;
ROBERT GARBEDIAN, Member of Negotiations Committee;
MIKE LIMONGELLI, President, Nassau Police Conference.

IN GENERAL:

(A) The dispute involves the continued impasse between the Village of Old Brookville and Old Brookville PBA for a contract to take effect June 1, 1974.

(B) The Parties failed to reach agreement after a Fact-Finding Report by Fact-Finder Kiss in 1974. A legislative determination set forth the terms and conditions for the year 1973-74. The Parties were unable to resolve the dispute for the 1974-75 contract, and the issues at impasse were submitted to Fact-Finding. A Fact-Finding Report was issued on March 15, 1975 by Fact-Finder Nathan Cohen, in which he recommended that the 4/96 Duty Chart be implemented retroactive to June 1, 1974; the Village rejected the Fact-Finding Report. The New York State Public Employment Relations Board on June 4, 1975 appointed a three member Public Arbitration Panel pursuant to Section 209.4 of the Civil Service Law.

(C) The Parties at the first Arbitration Hearing submitted 16 issues to impasse; namely:

Issue #1:	Salaries
Issue #2:	Work Schedules
Issue #3:	Personal Days
Issue #4:	Vacation Days
Issue #5:	Holidays
Issue #6:	Time for PBA President
Issue #7(a):	Grievance Procedure
Issue #7(b):	Disciplinary Procedure
Issue #8:	Night Differentials
Issue #9:	Clothing and Maintenance Allowance
Issue #10:	Premium Pay for Holidays Worked
Issue #11:	Over-Time Method of Calculation
Issue #12:	Life Insurance
Issue #13:	Dental Plan
Issue #14:	Mileage Allowance for Court Time
Issue #15:	Duration of Contract
Issue #16:	Supplemental Pay

(D) During the Arbitration Hearing the PBA withdrew Issue #5 "Holidays", and Issue #16 "Supplemental Pay", leaving 14 Issues for determination by the Panel.

(E) Since both Parties have limited the term of the contract for one year (Issue #15), the Panel's recommendations are based upon a one year agreement, namely: for the term June 1, 1974 through May 31, 1975.

(F) The "Position" of the Parties is intended to reflect a summary of the Parties' positions, and is not intended to be all inclusive. The "Discussion" of the Panel is intended to reflect some of the major evaluating factors used in the Award and is not intended to be all inclusive.

(G) The Panel has considered all of the evidence, facts, testimony, and exhibits submitted by the Parties. After due and deliberate consideration and evaluation of the material presented by the Parties, the Panel's Report which follows contains its Award.

(H) The PBA Appointee to the Panel concurs in the Award, despite his strong verbal objection to #2, #3, #4, #5 and #6 of the Award.

PERTINENT SECTIONS OF STATUTORY PROVISIONS: SECTION 209.4:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel may, but shall not be bound to, adopt any recommendation made by the fact-finder, and shall, so far as it deems them applicable, take into consideration the following and any other relevant circumstances:

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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

PERTINENT SECTIONS OF THE FACT-FINDER'S REPORT: JOSEPH S. KISS,
FACT-FINDER, DATED JANUARY 28, 1974:

Despite the best representations of the respective parties to the contrary, the fact-finder is hard put to find any significant difference in responsibility and work-load as between PBA and NCPD. There are counter-balances which, in over-all effect, tend to nullify what appear to be - at first glance - inequities. Hence it is concluded that the two departmental forces were closely akin, remuneratively, immediately prior to the signing of the NCPD agreement.

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Effective on June 1, 1974, the work schedule shall be as is proposed by PBA; ie; (5-72) (5-72) (4-96).

PERTINENT SECTIONS OF THE FACT-FINDER'S REPORT: NATHAN COHEN,
FACT-FINDER, DATED MARCH 15, 1975:

I have carefully considered both the evidence submitted and the arguments made by both parties and, on balance, it is my recommendation that the 4/96 duty chart be adopted. By any of the customarily used criteria for salary determination such as making comparisons with other similar employees, or by taking into consideration the peculiarities of the job as compared with other types of employees, or by considering the Employer's ability to absorb additional costs, the evidence appears to justify the Employer's adoption of the 4/96 duty chart.

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Finally, the argument is made by the Employer that any consideration of ability to pay must also take into account the fact that its per capita costs for police protection is more than double that paid by other residents in Nassau County. Yet I also note from the exhibits that the tax rates paid for police services by this Employer based on land valuation, the customary way of comparing property taxes, is substantially less than is paid by most other residents in Nassau County.

My recommendation, therefore, is that the parties adopt the 4/96 duty chart retroactive to June 1, 1974 and that the Employer pay the police for all work performed in excess of that duty chart. I further recommend that if the Employer determines that it is not feasible to implement the 4/96 duty chart and must continue its present duty chart or on a 5/72 basis, then it be permitted to do so as long it pays its police for all work performed in excess what would have been performed under a 4/96 duty chart.

PERTINENT SECTIONS OF THE AWARD OF THE PUBLIC ARBITRATION PANEL,
VILLAGE OF MALVERNE and MALVERNE PBA, DATED JULY, 1975:

Effective June 1, 1974, members who shall have their schedule rotated as follows: five (5) days on duty (8:00 a.m.-4:00 p.m.) -- a seventy-two (72) hour swing; four (4) days on duty (midnight-6:00 a.m.) -- a ninety-six (96) hour swing.

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Each member shall receive, at the election of the Village, either straight time pay or compensatory days off from June 1, 1974 to the actual implementation of this shortened work schedule, prorated to reflect the 17 day reduction in the work year.

ISSUE #2: WORK SCHEDULE: (4/96 DUTY CHART):

POSITION OF THE PARTIES:

The PBA requests a reduced Duty Chart from the current 5/80 schedule (255 days) to a 4/96 schedule (232 days); thus a reduction of 23 working days per year. The 4/96 schedule consists of four 8 hour midnight work shifts followed by 96 hours off, five 8 hour daily shifts followed by 72 hours off, and five 8 hour daily shifts followed by 72 hours off. The Village requests that the current schedule be maintained, or in the alternative, the adoption of the Village's proposed 5/64 schedule, which schedule would have "fixed shifts with the rotation of shifts periodically"; i.e., semi-annually or quarterly rotation; (semi-annual or quarterly rotation would reduce the 5/64 schedule of 260 working days to 255 working days).

The PBA supports its position for the 4/96 work schedule along the following lines: that all applicants for the Police Force, irrespective of which Nassau Police Force they join, are "appointed from the Nassau County Civil Service list"; that all take the same physical examination given by the Nassau County Civil Service Commission; that all attend the Training Academy of the Nassau County Police Department; that the "duties of an Old Brookville Police Officer equal or exceed the duties of the Police working in Nassau County"; that there is "no difference from the Nassau County Police Department", rather there is "comparability of work" between the PBA and the Nassau County Police Department; that there was a prior change in the County work chart in January, 1970, and an additional change in January, 1974 resulting in the 4/96 schedule; that "no changes have taken place in the Old Brookville duty chart for 20 years"; that 2 previous Fact-Finders (Kiss in

1974 and Cohen in 1975) recommended the 4/96 Duty Chart, but both Fact-Finding Reports were rejected by the Village; that the 4/96 could be implemented without the hiring of additional personnel; that the type of work currently performed in Old Brookville is comparable to the County, as well as other communities that maintain their own Police Force; that there exists the "ability to pay" in that it "rates as one of the wealthiest and under-taxed areas in the County", and that the 1975 Fact-Finding Report "carefully and accurately appraised the Village's position on taxes and affirmed its ability to pay"; that it is "undisputed" that the 4/96 is the "commonly accepted Duty Chart within the County of Nassau"; that Arbitrators have awarded the chart either in time or money in Departments similar to Old Brookville in arbitrations in Malverne and Lynbrook.

The PBA therefore argues that its request for a 4/96 schedule should be granted.

The Village argues against the introduction of the 4/96 work schedule and supports its position along the following lines: that 4/96 is not a "fact of life"; that the implementation and origin of the 4/96 was "irrational"; that the main question before the Panel is "whether or not collective bargaining with Police will continue to exist in Long Island" and whether or not "eligible representatives of the Towns and Villages will be able to bargain with their constituents with respect to their Police employees"; that the Panel should not "force the Nassau County settlement" upon Old Brookville; that the only rationale advanced by the PBA is "the County has it", which rationale is "absurd"; that the Fact-Finder's recommendations for the 1974-75 agreement "followed blindly the developing pattern within the County", and thus Fact-Finder Cohen's recommendation "should be given no weight whatsoever", but rather the Panel "must take a fresh look at the issues herein"; that although the Taylor Law suggests considerations of comparability and ability to pay as factors in making a determination, these are not the sole determining criteria, but are merely to be

considered as the Panel deems them applicable; that there is no supportive evidence that the 4/96 chart is "best suited" for Old Brookville, or that "additional time is necessary on swings between tours because of the needed relief from the rigors of the rotating schedule"; that if there is any "alleged debilitating impact of rotating tours of duty", the answer is the "elimination of rotating tours" rather than the 4/96 schedule, i.e., "establishment of fixed shifts, perhaps with rotation periodically", and thus the Village's proposal of 5/64 schedule; that to implement the 4/96 schedule would require "three additional Police Officers" at a "cost which would far exceed the salary demands of the PBA for the entire Police Force"; that the only other alternative suggested by the PBA was "to eliminate traffic services, and to foreclose the possibility of restating detective services"; that such decisions clearly lie with the employer and not the PBA; that even if there is a rationale basis for the 4/96, and even if other Villages have adopted the 4/96, those who have adopted the 4/96 are not comparable to Old Brookville, nor is the County Police Department comparable to Old Brookville; that the PBA demand for a one year contract represents increase of 20% to 30%; that the Panel should take into consideration "general economic conditions and be guided by traditional notions of equitable adjustments".

The Village therefore argues that the 4/96 Duty Chart should not be implemented, and the PBA's request for same should be denied.

DISCUSSION:

The single most important issue and the issue upon which the impasse revolves is the PBA's request for a 4/96 Duty Chart; it is the issue which created problems for the Parties in the 1973-74 negotiations, and is the single issue upon which the Fact-Finder made recommendations in the 1974-75 negotiations; Fact-Finder Cohen noted in his report that "both sides stated that if the Duty Chart issue were resolved, all the other open items would fall into place".

Essentially the differences between the Parties on the issue of the Duty Chart is as follows: the Village argues that there is a difference between the work performed by the PBA and the work performed by the Nassau County Police Department, and therefore the 4/96 is not warranted; that Old Brookville should be permitted to "negotiate its own agreement" and not be bound by any other agreement, including the Nassau County Police settlement. The PBA argues that there is a "past history of comparability"; that the Village has the "ability to pay"; and also notes the settlement of the Nassau County Police Department, as well as other Police units in the County. The Parties support their positions by a total of 67 exhibits, which purport to show the validity of their relative positions.

In reviewing the evidence, specific note is taken that the Police in Old Brookville come from the same Civil Service List as do all other Police, whether employed by Nassau County itself, or by any other community; that the PBA receive the same training as do all other Police in Nassau County. Thus the "physical qualifications, educational qualifications, mental qualifications, and job training and skills" are the same when comparing Old Brookville with all other Police in other communities in Nassau County, as well as the Nassau County Police Department.

In addition, when reviewing the "hazards of employment" between Old Brookville PBA and other Police units, the evidence requires a finding that while there may be some differences between Nassau County and Old Brookville, there are however many similarities; and there are more similarities than differences. There are also many similarities between Old Brookville and other communities in Nassau County that also maintain their own Police Departments. Note is also taken that although the Village retains the right to determine whether they shall maintain all or part of their Police Force, (a right which is in no way infringed upon by anything contained in this Arbitration Award), should the Village at any time

in the future choose to eliminate its Police Department, in whole or in part, such duties would then be taken over by the Nassau County Police Department.

The evidence also shows, as supported by the PBA exhibits, and reaffirmed in Fact-Finder Cohen's Report, that there does exist the ability to pay, i.e., namely, that the Village is not an impoverished community with a high tax rate. Rather the evidence shows that it is a community with two Universities, golf courses, country clubs, and with the average home on a 2-3 acre site.

As to the Village's argument that it should not be "forced to accept the Nassau County settlement", and that it "should be permitted to negotiate its own agreement", this Panel is in accord, and nothing in the Panel's Award should be construed otherwise; however, in considering the issue, the Panel is required to consider, as part of its evaluation "comparison of wages, hours and conditions of employment...of other employees performing similar services or requiring similar skills under similar working conditions". Where the evidence shows, as it does in this case, that there are similarities, serious consideration must be given to wages, hours and working conditions in other Police Units in the County.

The evidence shows that the Nassau County Police Department was on a 5/72 schedule, effective January, 1970, and went to a 4/96 schedule in January, 1974. The evidence also shows from PBA Exhibit #21 that not only Nassau County currently has a 4/96 schedule, but other Nassau County communities which maintain their own Police Force also have a 4/96 schedule. Whatever the initial rationale for suggesting and implementing and/or granting the 4/96 schedule, it has become part of "wages, hours and conditions of employment" within numerous communities in Nassau County, and must be given serious weight by the Panel.

In addition, while Section 209.4 reads that "in arriving at such determination, the Panel may, but shall not be bound to, adopt any recommendations made by the fact-finder", serious consideration

must be given to the Fact-Finder's recommendation; to do otherwise would make a mockery of the fact-finding stage of the impasse procedure. In the current case both the Fact-Finder for the 1973-74 agreement, and the 1974-75 agreement recommended the 4/96 Duty Chart. Thus two Fact-Finders have recommended improvements in the Duty Chart by the implementation of 4/96; one cannot disregard their valued findings, and the Panel should consider same.

The Panel notes the suggestion of the Village that an alternative to the 4/96 Chart would be its suggestion of a 5/64 Chart, which chart would contain "fixed shifts with semi-annual or quarterly rotation". However, there is no evidence that fixed shifts are the common practice for police officers; that the Village argues that fixed shifts are part of the private sector not controlling; there is no evidence that they are common in the law enforcement area.

In reviewing the evidence the Panel does find merit to the argument presented by the Village that it would require additional personnel to implement the 4/96 chart, and that it is the employer's prerogative to determine whether men would remain on "traffic service", or whether such men would be made part of the 4/96 Duty Chart, or whether two additional men shall be hired, "with the retention of the current traffic services"; it is not within the prerogative of the Panel to make that determination. The evidence shows that the implementation of the 4/96 chart involves a cost factor. The Panel also takes note of the Public Arbitration Panel's recommendations in both Lynbrook and Malverne, both issued in July, 1975, and both of which recommended a reduced Duty Chart, or equivalent pay in lieu thereof.

After evaluating all of the evidence, arguments, exhibits and documents presented by the Parties both at the hearing and in the Post-Hearing Briefs, and when considering the two Fact-Finder's Reports in Old Brookville, and when noting that not only the Nassau County Police Department but other communities in Nassau

County have granted the 4/96 schedule, and when noting the provisions of Section 209.4, the evidence requires a finding in favor of granting and implementing the 4/96 schedule.

However, specific note is taken that the Panel's Award is for a contract effective June 1, 1974. Since the 4/96 schedule cannot be implemented for the period June 1, 1974 through May 31, 1975, monetary compensation should be made at the straight time rate of pay; with 11½ days at the rate of pay in effect prior to December 1, 1974, and 11½ days at the rate of pay in effect after December 1, 1974.

The Panel thus takes note that the change in the Duty Chart to the 4/96 reduces the number of working days by 9% (255 to 232); this amount can be computed to have a specific monetary value (PBA Exhibit #19 and Village Exhibit #24), and can thus be converted to relate to an increase in compensation. The Panel makes specific reference that it will consider the value of the 4/96 Duty Chart when it considers requests for improvements in salaries and fringe benefits.

ISSUE #1: SALARIES:

POSITION OF THE PARTIES:

The PBA seeks a 10% salary increase (such 10% to be also included in holiday pay); the Village proposes, assuming no change in the Duty Chart, a salary increase of 7½%.

The PBA supports its position along the following lines: that the rates of Old Brookville are "among the lowest received"; that the "cost of living for the period before the Arbitration Panel exceeded 10%, while Police Officers in Old Brookville have received no increase"; that the recent Nassau County Arbitration Award exceeded the base pay of Brookville Patrolmen of "over 16%".

The PBA therefore suggests that their request is equitable, and same should be granted.

The Village supports its proposal, re-emphasizing that it is made "assuming no change in existing work schedule", along the following lines: that the Nassau County Police Department "received only a 7½% salary adjustment in 1974"; that the CPI figures contain "items that are paid for by the Village", i.e., health plan; that the Police in Old Brookville are not underpaid when compared with the majority of the Police within the State and within the Country; that the average starting salary of Police in the State is \$9,055, while Old Brookville is \$10,648; that the average top salary in the State is \$11,376. and Old Brookville is \$14,335; thus their salaries are above the average salaries within the State; that when comparing Police with other professions, Police are not underpaid.

The Village therefore suggests that its proposal of 7½%, assuming no change in the work schedule, is entirely justifiable, and should be accepted.

DISCUSSION:

The Consumer Price Index (CPI) for May, 1975 (the end of the period before the Panel) was 7.7%. Note is taken of the items such as "medical" that are included in the CPI (for which credit should be granted to the Village); note is also taken that other Police Units within the County have been granted salary adjustments.

To make valid comparisons between non-related units (Police and other Professionals), the Panel would have to have before it all of the factors included in the job evaluation plan; not having been presented with same, no valid comparisons can be made. However, valid comparisons should be made between various Police Units, with emphasis on Police Units within the County; comparisons of Police Units within the County have great weight, while comparisons of Police Units within the State have only relevance.

However, as has been noted under the issue of Duty Chart, the granting of the 4/96 has a monetary value; this must be taken into account in the Panel's recommendations on salaries.

After having evaluated the agreements in other jurisdictions, and after noting the rise in the CPI, and when noting the award granting the 4/96 Duty Chart and the compensation involved thereunder, the evidence requires a finding that the equitable salary adjustment for the Old Brookville PBA should be 6%, retroactive to December 1, 1974; limiting the retroactivity decreases the cost to the Village, while at the same time permitting the PBA to end the contract at a higher rate. When noting the salary adjustments together with the Duty Chart, equity would be granted to both Parties by this Award.

<u>ISSUE #3:</u>	<u>PERSONAL DAYS:</u>
<u>ISSUE #4:</u>	<u>VACATION DAYS:</u>
<u>ISSUE #6:</u>	<u>TIME FOR PBA PRESIDENT:</u>
<u>ISSUE #11:</u>	<u>OVERTIME METHOD OF CALCULATION:</u>
<u>ISSUE #12:</u>	<u>LIFE INSURANCE:</u>
<u>ISSUE #14:</u>	<u>MILEAGE ALLOWANCE FOR COURT TIME:</u>

POSITION OF THE PARTIES:

The PBA seeks the following changes in the above-cited issues, namely: an increase of two Personal Days (from 3 days to 5 days); an increase in Vacation Days from the current 15/25 working days to 20/27 working days (thus increase of between 2 and 5 Vacation Days, depending upon length of service); an increase from the current 12/7 to 25/20 for PBA time off; over-time to start after 10 minutes (from the current 30 minutes); a \$20,000. life insurance policy, fully paid by the Village; mileage allowance for Court time (currently only for recall time). The PBA supports its position by arguing that Old Brookville "rates amongst the lowest in benefits received".

To the requests for Personal Days, Vacation Days, PBA Days, Over-Time Method of Calculation, Life Insurance and Mileage Allowance for Court Time, the Village desires "to maintain the status quo". The Village supports its position along the following lines: that the request for increase in Personal Days, Vacation Days, and PBA Days would, in addition to the 4/96 Duty Chart,

further reduce the number of days available for "police coverage", in that the Personal Leave and Vacation Leave represents an additional 2.4% to 3.6% reduction; that personal matters can be attended to on off duty hours; that since 1970 the Village has had "different practices" with respect to vacations and personal leave in the County, which practice should be continued; that life insurance is currently under Section 208 of the General Municipal Law, as well as a benefit under the current retirement system; that the requested change for over-time compensation is "unnecessary and against established practice"; that the mileage allowance is "adequate", since Police Officers are "paid time and a half from the time they leave their home to the time they return from Court".

DISCUSSION:

All of the above-cited items, on Issues #3, #4, #6, #11, #12 and #14, are cost items, and must be considered by the Panel in light of the recommendations on Salaries and the 4/96 Schedule.

Since the Arbitration Award contains an affirmative recommendation for the 4/96 Duty Chart, and noting the salary adjustments awarded therein, the granting of changes in Personal Days, Vacation Days, Time for the PBA President, Over-Time Method of Calculation, Life Insurance, and Mileage Allowance for Court Time, is inappropriate at this time, and is therefore denied.

<u>ISSUE #8:</u>	<u>NIGHT DIFFERENTIALS:</u>
<u>ISSUE #9:</u>	<u>CLOTHING AND MAINTENANCE ALLOWANCE:</u>
<u>ISSUE #10:</u>	<u>PREMIUM PAY FOR HOLIDAYS WORKED:</u>
<u>ISSUE #13:</u>	<u>DENTAL PLAN:</u>

POSITION OF THE PARTIES:

The PBA seeks to eliminate the Supplemental Pay, and in its place seeks to obtain \$700. for night differentials, \$250. for clothing allowance, a Dental Plan with maximum of \$100. per employee, and time and a half for all hours worked on holidays. The Village seeks to maintain the current provision.

The PBA argues that the "Supplemental Pay" leads to a "short changing of Police Officers retiring from their job since it is not computed into their base"; and that they are "below" what ought to be granted for these benefits.

The Village argues that "one lump sum has been in existence for several years, and has continued under the recommendations of Fact-Finder Kiss"; that no specific Dental Plan was suggested; that separating the items would result in "higher costs to the Village", because that would result in higher pension benefits upon retirement; that there is no rationale for over-time for holidays since employees are on a rotating shift.

DISCUSSION:

As was cited by the Panel on Issues #3, #4, #6, #11, #12 and #14, these items equally are cost items. For the same reasons cited on Issues #3, #4, #6, #11, #12 and #14, changes in Night Differentials, Clothing and Maintenance Allowance, Premium Pay for Holidays Worked, and the Dental Plan, is inappropriate at this time, and is therefore denied, with the current \$1,100. per year Supplemental Pay continuing.

ISSUE #7(a): GRIEVANCE PROCEDURE;
ISSUE #7(b): DISCIPLINARY PROCEDURE;

POSITION OF THE PARTIES:

The PBA requests a four step grievance procedure limited to a "violation of the provisions of this contract", with the terminal step "being binding arbitration" before the American Arbitration Association. The Village agrees to a four step procedure before the American Arbitration Association, with the same definition of a grievance, but seeks "advisory arbitration" as the terminal step. The current agreement contains no grievance procedure.

The Village argues that there is no evidence to substantiate binding arbitration, no history of adverse experience under collective bargaining, and a "long, peaceful history between the Parties"; therefore they argue that advisory arbitration should be the terminal step.

The PBA argues that binding arbitration is necessary, and submits a series of contracts in Nassau County in support thereof.

The PBA also seeks a disciplinary procedure to be included in the contract. The Village argues that the "current statutory procedures are sufficient".

The PBA supports its position on a disciplinary procedure by submitting contract language which it cites it needs for protection. The Village argues in relation to a disciplinary procedure that the Civil Service Rights cannot be waived, and therefore any procedures "would not have a binding effect" insofar as an individual could pursue his Civil Service Rights after proceeding under the contract; that there has been no disciplinary procedures whatsoever or appeals involving disciplinary procedures, and therefore "no demonstrated need for contractual disciplinary procedure".

DISCUSSION:

The Parties have agreed to a four step grievance procedure, with the definition of a grievance as a violation of the provisions of the agreement; the issue separating the Parties is "advisory arbitration vs. binding arbitration".

There is no history between the Parties on arbitration experience and therefore no reason to suggest that advisory arbitration would not work. In addition, specific note is taken that a review of the documents submitted shows that even the Nassau County Police Department contract does not contain binding arbitration. Therefore the evidence requires a finding that the terminal step in the grievance procedure shall be "advisory arbitration".

On the issue of disciplinary procedure, the evidence shows that there are statutory proceedings available under the Civil Service Law, and the PBA admitted that they "cannot be waived"; to grant contractual procedures in addition to Civil Service procedures would grant "two bites at the apple". Without a showing of problems, and when noting the above, the request for a disciplinary procedure is denied.

AWARD OF THE PUBLIC ARBITRATION PANEL:

The Public Arbitration Panel renders the following Awards:

(1) Effective June 1, 1974, the Village implement the 4/96 Duty Chart. Since the time has already been worked for the year June 1, 1974 through May 31, 1975, members of the bargaining unit shall be paid for 23 additional days worked at the straight time rate of pay; with 11½ days at the rate of pay in effect prior to December 1, 1974, and 11½ days at the rate of pay in effect after December 1, 1974.

(2) Salaries shall be increased by 6%, retroactive to December 1, 1974.

(3) The PBA's request for changes in Personal Days, Vacation Days, Time for the PBA President, Overtime Method of Calculation, Life Insurance, and Mileage Allowance for Court Time is denied.

(4) The PBA's request for changes in Night Differentials, Clothing and Maintenance Allowance, Premium Pay for Holidays Worked, and Dental Plan is denied, with the current \$1,100. per year Supplemental Pay continuing.

(5) The contract shall contain a four step grievance machinery, with definition of a grievance as a violation of the provisions of the agreement, and with the terminal step as advisory arbitration.

(6) The request for a Disciplinary Procedure is denied.

DATED: September 2, 1975.

Respectfully submitted,

Harry Rains
 HARRY RAINS (I DISSENT)

Peter Reilly
 PETER REILLY (I CONCUR)

Paul G. Kell
 PAUL G. KELL, Chairman

STATE OF NEW YORK)
 COUNTY OF NASSAU) ss:

On this 9th day of September, 1975, before me, the subscriber, a Notary Public of New York, personally appeared HARRY RAINS, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

James J. Albright

NOTARY PUBLIC, State of New York

Commission Expires 12-27

STATE OF NEW YORK)
 COUNTY OF NASSAU) ss:

On this 8th day of September, 1975, before me, the subscriber, a Notary Public of New York, personally appeared PETER REILLY, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

James W. Albright

JAMES W. ALBRIGHT
 NOTARY PUBLIC, State of New York
 No. 3085330
 Qualified in the County of
 Term Expires March 31, 1977

STATE OF NEW JERSEY)
 COUNTY OF HUDSON) ss:

On this 2nd day of September, 1975, before me, the subscriber, a Notary Public of New Jersey, personally appeared PAUL G. KELL, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged that he executed the same.

Sonia K. Azarow
 SONIA K. AZAROW, Notary Public of N.J.
 My Commission expires April 22, 1979.

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration Between :
VILLAGE OF OLD BROOKVILLE : DISSENTING
- and - : OPINION
Case No. CA-0022;
OLD BROOKVILLE POLICE BENEVOLENT ASSOCIATION : M74-242

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Arguments advanced by the PBA and by the Village in support of their respective positions on the issues before the Panel were carefully and accurately set forth in detail by the majority Panel opinion. I dissent from the majority's opinion insofar as it awards the 4/96 work schedule, and completely support the arguments advanced by the Village against the introduction of this reduced work chart, as they are set forth on pages 6 and 7 of the majority opinion.

It is indeed unfortunate that the majority shows such slavish, wooden devotion to some, but not all, of the guidelines set forth by the Taylor Law for consideration in making an award. It is indeed unfortunate that the majority follows the two arbitration panels that have preceded this one in Nassau County. The majority has only served to help prove the Village's assertion that collective bargaining is no longer taking place in police negotiations in Nassau County.

Concededly, within the framework of the statutory guidelines, the Panel is required to consider as part of its evaluation comparisons of wages, hours and conditions of employment of other employees performing similar services or requiring

similar skills under similar working conditions. This, however, does not require blind adherence to obviously unjustifiable working conditions that may exist elsewhere. It does not require Procrustean application of the working conditions of a 3,500 member police force to a small village force of fewer than 30 employees. Furthermore, it does not require complete ignorance of prevailing economic conditions in existence when considering contract issues relating to monetary costs in terms of personnel needs and operating employment conditions.

Yet, at a time when unemployment is at its highest levels since the Great Depression; when private sector employees are taking wage cuts, freezes and reduced workweeks to save jobs; when settlements are beginning to moderate; the majority awards what amounts to an increase of some 12%, without even considering incremental adjustments that may be due employees. Further, with respect to the key issue in this dispute -- the 4/96 chart -- the majority awards the implementation of a counterproductive work schedule requiring, in addition to the increases awarded, the hiring of additional personnel. Notwithstanding a very effective and uncontradicted presentation by the Village demonstrating the lack of any supportable basis for the County's having given away the 4/96 chart, and the lack of any supportable, rational basis for adopting it here, the majority awards the schedule simply because the County did it and other villages have followed suit.

At a time, then, when all public employment is faced with stringent and self-evident need for improvement of productivity to accomplish financial savings that make possible the continued

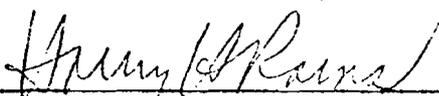
employment of full staffs and the improvement in their wage terms, the majority of this Panel has imposed upon this Village a work schedule that means its police will now have off one day out of every ten days presently worked. This Village will get ten percent less work from the same staff. Plainly, there is something basically wrong with such a result.

Unfortunately, and perhaps most importantly, the public interest, also one of the statutory guidelines to be used when making an award, has been completely ignored once again. The public is simply told to pay more for much less service. Elected representatives are left powerless to make and implement intelligent decisions affecting their constituents. Instead they are left saddled with the mistakes of others because of the happenstance that, by the time their dispute got to binding arbitration, too many others had made the same mistake. While we should be learning from the mistakes of our cities -- large and small alike, most notably, however, New York -- the majority sends this employer down the same path. The award blandly ignores the very important economic facts of life that most certainly was and would have continued to be a major factor in true bargaining between the parties at the bargaining table. Such a decision can only serve to discourage true bargaining between the parties, and could be an important incentive for the representatives of labor to "pass the buck" to the arbitration panel and avoid their own inherent responsibilities of leadership at the bargaining table. It is submitted that such results of arbitration awards are not in the best public interest.

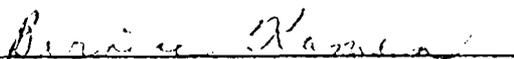
Accordingly, I strongly dissent from the majority opinion decision in this case awarding the 4/96 schedule. There never was any supportable, rational basis for the 4/96 schedule to begin with. The fact that Nassau County agreed to it, that other villages followed suit, and the fact that other arbitration panels have awarded it because they found it had been accepted elsewhere, does not change the most important consideration of all -- the fact that the schedule is an unjustifiable windfall to the employees at great public expense. Under such circumstances, clearly the statutory guideline of comparability should have been given the least weight. The majority award is, in my opinion, insupportable and contrary to the public interest.

Dated: September 10, 1975

Respectfully submitted,


HARRY H. RAINS

Sworn to before me this
10th day of September, 1975



BERNICE KAMEN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-715300
Qualified in Nassau County
Commission Expires March 31, 1976