

State of New York
PUBLIC EMPLOYMENT RELATIONS BOARD
50 Wolf Road
Albany, New York 12205

N.Y.S. PUBLIC EMPLOYMENT
RELATIONS BOARD
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CONCILIATION

Docket No. IA-32; 177-377

In the Matter of the Arbitration Between)
:)
VILLAGE OF KINGS POINT)
:)
- and -)
:)
KINGS POINT PATROLMEN'S BENEVOLENT ASSOCIATION)
:)

AWARD

The matter was submitted to arbitration on April 25, 1978. Hearings were held on that date at the offices of Rains, Pogrebin and Scher, Esqs. in Mineola, New York and on May 30, June 28 and August 4, 1978 at the offices of the Federal Mediation and Conciliation Service in Hempstead, New York before a public arbitration panel consisting of Bertrand B. Pogrebin, Esq., employer panel member; Albert Vernaskas, employee organization panel member, and Irvine L.H. Kerrison, public panel member and chairman.

Appearances were: Frederick D. Braid, Esq., counsel; Leonard S. Wegman, mayor -- for the village; Richard Hartman, Esq., counsel; James Gregory, treasurer; Michael Magee, secretary -- for the association.

At the close of the August 4, 1978 hearing, the parties stipulated:

1. Briefs to the members of the public arbitration panel and directly to the other party to be postmarked no later than Friday, August 25, 1978. By mutual agreement of August 24, 1978, this date was extended to Monday, August 28, 1978.

2. Reply briefs, if any, to the members of the public arbitration panel and directly to the other party to be postmarked no later than Friday,

September 1, 1978. By mutual agreement of August 30, 1978, this date was extended to Friday, September 15, 1978.

3. Executive session of the public arbitration panel is scheduled at 10:00 a.m., Tuesday, September 12, 1978 at the offices of the Federal Mediation and Conciliation Service in Hempstead, New York. By mutual agreement of September 5, 1978, this date was extended to Friday, October 20, 1978.

The undersigned public arbitration panel, having been designated under the authority vested in the New York State Public Employment Relations Board under Section 209.4 of the New York Civil Service Law, and having duly studied the testimony adduced and the exhibits submitted during the course of the hearings, and the briefs subsequently submitted, awards as follows:

Issue No. 1: Basic Work-Week and Tour of Duty

A 232 day schedule with the rotation delineated in the attached opinion.

Issue No. 2: Duration of Agreement

June 1, 1977 through May 31, 1978.

Issue No. 3: Insurance

The PBA demand is denied.

Issue No. 4: Longevity

Five hundred (\$500.00) dollars after six (6) years of completed service, nine hundred (\$900.00) dollars after ten (10) years of completed service, thirteen hundred (\$1,300.00) dollars after fifteen (15) years of completed service, and fifty (\$50.00) dollars for each year of completed service thereafter until retirement.

Issue No. 5: Mileage Allowance

Seventeen (17¢) cents per mile.

Issue No. 6: Night Differential

Ten (10%) per cent of the hourly compensation of patrolmen and sergeants.

Employees on authorized leave to be compensated if work schedules they would have had would have entitled them to night differential.

Issue No. 7: Personal Leave

The PBA demand is denied.

Issue No. 8: Sick Pay at Termination

Continuation of present provision of fifty (50%) per cent of accumulated and unused sick leave to a maximum of two hundred (200) days.

Issue No. 9: Termination Pay

Four days of terminal leave for each year of completed service prior to June 1, 1976 and five days of terminal leave for each year of completed service subsequent to June 1, 1976, credited retroactively to the first year of service.

Issue No. 10: Wages

Three and seven-tenths (3.7%) per cent increase in the base salaries of patrolmen and sergeants, effective June 1, 1977, and a further five and one-tenth (5.1%) per cent increase in those salaries, effective January 1, 1978, with concomitant adjustment along the salary schedule.

Issue No. 11: Dental Plan

The PBA demand is denied.

Issue No. 12: Supplemental Pay

The village demand is denied.

Issue No. 13: Clothing Allowance

A clothing allowance of three hundred (\$300.00) dollars for fiscal 1977.

Issue No. 14: Cleaning and Maintenance Allowance

A cleaning and maintenance allowance of three hundred fifty (\$350.00) dollars for fiscal 1977.

Issue No. 15: Retirement and Death Benefits

Village adoption of Section 360-b of the New York Retirement and Social Security Law.

Issue No. 16: Performance of Duty Out of Rank or Designation

An employee who is assigned to perform the duties of a higher-ranking officer or of a designated position with a higher rate of pay for more than one tour of duty will be compensated the difference between his regular rate and that of the position to which he is assigned for all time he performs the duties of that position.

Issue No. 17: Compensation for Loss of Personal Items

The village will compensate an employee only for loss of or damage to property on his person, e.g., eyeglasses, while he is performing police duties.

Issue No. 18: Time Off for Association President

The PBA demand is denied.

Issue No. 19: Existing Benefits Clause

The PBA demand is denied.

Issue No. 20: Vacation

The village demand is denied.

Issue No. 21: Sick Leave

The village demand is denied.

BERTRAND B. FOGEBRIN, ESQ.
Employer Panel Member
Assenting/Dissenting

State of New York)
)
County of Nassau)

SS:

On this 30th day of October, 1978 before me
personally appeared Bertrand B. Fogebryn, Esq.

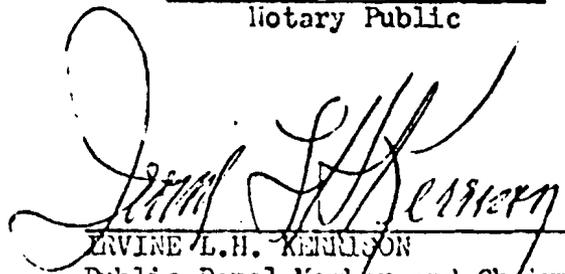
to me known to be the person described in and who executed the fore-going instrument, and acknowledged that he executed the same as his free act and deed.

Notary Public

ALBERT VERNASKAS
Employee Organization Panel Member
Assenting/Dissenting

State of New York)
) SS: On this 30th day of October, 1978 before me per-
County of Nassau) sonally appeared Albert Vernaskas to me known to
) be the person described in and who executed the fore-going instrument, and
) acknowledged that he executed the same as his free act and deed.

Notary Public



IRVINE L.H. KENNISON
Public Panel Member and Chairman
Assenting/Dissenting

State of New Jersey)
) SS: On this 30th day of October, 1978 before me per-
County of Middlesex) sonally appeared Irvine L.H. Kerrison to me
known to be the person described in and who executed the fore-going instru-
ment, and acknowledged that he executed the same as his free act and deed.

Notary Public

State of New York
PUBLIC EMPLOYMENT RELATIONS BOARD
50 Wolf Road
Albany, New York 12205

Docket No. IA-22; 177-377

In the Matter of the Arbitration Between)
)
VILLAGE OF KINGS POINT)
)
- and -)
)
KINGS POINT PATROLMEN'S BENEVOLENT ASSOCIATION)

OPINION

In arriving at the preceding award, the public arbitration panel took into consideration:

1. 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.

2. The interests and welfare of the public and the financial ability of the public employer to pay.

3. Comparison of peculiarities in regard to other trades or professions, including specifically, a) hazards of employment, b) physical qualifications, c) educational qualifications, d) mental qualifications, e) job training and skills.

4. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits.

The FBA maintains that there is a long-standing tandem relationship existing among and between Nassau and Suffolk counties and most village

jurisdictions in the immediate vicinity of Kings Point. Kings Point police is a force having conditions similar to all of the police forces in Nassau and Suffolk counties.

FBA Exhibits Nos. 1 through 6 show the continuing similarity between Nassau County and Kings Point contracts, and it is significant to note that the village has negotiated prior contracts without resort to mediation, fact-finding or arbitration.

FBA Exhibits Nos. 10 through 29, contracts of every police jurisdiction in Nassau County, demonstrate that all those jurisdictions have followed the lead of the county for over fifty years.

FBA Exhibits Nos. 30 through 34, Suffolk County police and superior officer contracts, show that those jurisdictions gained and then maintained parity with Nassau County.

FBA Exhibits Nos. 35 and 36, Amityville and Northport contracts, demonstrate further evidence of a strong tandem relationship in that, when Suffolk County achieved parity with Nassau County, these two Suffolk jurisdictions followed suit and accorded similar benefits.

FBA Exhibits Nos. 43 through 72, fact-finding recommendations and arbitration awards from Nassau and Suffolk county jurisdictions, alluded to more specifically in the following discussion of the Basic Work-Week and Tour of Duty, further support the existence of a long-standing Nassau-Suffolk-village jurisdiction tandem relationship.

The FBA maintains that there is no financial inability to pay on the part of the village. FBA Exhibits Nos. 73 through 79 so demonstrate and also provide information on village priorities which indicates that much of its revenue is used in areas less deserving than that of police protection.

The FBA maintains that Kings Point police activity is dramatically up.

PBA Exhibits Nos. 82 through 86 so demonstrate, and it is significant to note that those increased activities are being handled with the same complement of men which existed fifteen years ago.

The PBA maintains that the cost of living is up. PBA Exhibits Nos. 96, 100, 103, 108 and 109 so demonstrate, and indicate an obvious need for increases to at least keep pace with the upward spiral of living costs.

The PBA maintains that police work is stressful and should be compensated accordingly. PBA Exhibits Nos. 113, 116 through 123, 125 through 131 and 133, articles dealing with police stress, heart problems, hypertension, alcohol abuse and family strife, dramatically prove this point.

The PBA concludes that the long-standing tandem relationship existing among and between Nassau and Suffolk counties and most village jurisdictions in the immediate vicinity of Kings Point must be maintained with urgently needed improvements in all areas where inequity exists, especially that of work scheduling.

The village maintains that there is one major issue that transcends all others in this proceeding: whether or not there will be genuine collective bargaining with village jurisdiction police units and an end to the concentrated PBA drive to force outrageous excesses from Nassau County settlements on village jurisdictions such as Kings Point. It argues that unthinking fact-finders and arbitration panels have made this PBA "parity" gimmick, rather than solid evidence, more and more the norm.

The village maintains that for several years Kings Point police have been the beneficiaries of excessive settlements which have made them and police in neighboring jurisdictions among the highest paid in the country. This time the village has reached the end of the line and has been forced to pursue reason through arbitration.

The village maintains that, as one gimmick, the PBA has split its excessive demands into enough small parts so as to make no particular item seem too onerous. Cash in the pocket is sought through proposals designated wages, longevity, night differential, holiday compensation, supplemental pay, clothing allowance, and cleaning and maintenance allowance. Retirement benefits are sought through proposals designated retirement plan, retirement and death benefits, sick pay at termination, and termination pay.

The village maintains that, as a second gimmick, the PBA is using "parity" as a red herring to mask the fact that there is no rational justification for many of the things Nassau County accorded in its labor agreements.

The village concludes that the criteria cited at the beginning of this opinion, not alleged "parity", should be those on which the public arbitration panel renders its award.

In considering the criteria alluded to at the beginning of this opinion, the public arbitration panel concluded, overall, that past and present contiguous peer comparability should be given most weight.

Issue No. 1: Basic Work-Week and Tour of Duty

It is the position of the PBA that schedules should be rotated as follows:

- Five (5) 8-4 tours with seventy-two (72) hour swing.
- Five (5) 4-12 tours with seventy-two (72) hour swing.
- Four (4) 12-8 tours with ninety-six (96) hour swing.

Kings Point police now have a schedule consisting of six more working days than the schedules of Nassau County, Suffolk County and most village jurisdictions in the immediate area of employment. PBA Exhibit No. 9 demonstrates that Kings Point police are virtually the only area jurisdiction not enjoying the benefit of a 232 day schedule or compensation in lieu thereof. Area fact-finders and arbitrators quoted from PBA Exhibits Nos. 43 through 72 consistently have recommended or awarded a 232 day schedule or compensation in lieu

thereof. They point out that police cannot be expected to accept less than what has been determined as standard in a given region. The PBA argues that the area of scheduling is the greatest current area of inequity and is in urgent need of correction. PBA Exhibits Nos. 113, 116, 119-120, 123, 130 and related exhibits demonstrate the effect of improper scheduling on stress, heart conditions, hypertension and family relationships.

It is the position of the village that Kings Point police should work five (5) eight-hour tours with sixty-four (64) hour swing with no constant rotation of shifts from one week to the next, yielding a 260 day schedule. Village Exhibit No. 31 confirms that there is no legal impediment to elimination or curtailment of rotating tours. The 232 day schedule, originating in Nassau County, cannot be justified on the ground that a longer schedule is potentially dangerous to mental or physical health. Village Exhibit No. 26 demonstrates that police are better insurance risks than are, for example, bartenders. Moreover, as shown in Village Exhibit No. 4, Kings Point is a bucolic community, and Village Exhibit No. 8 demonstrates that most of the Kings Point police work consists of "aided cases" such as transporting an injured child to hospital. The fact-finders and arbitrators alluded to by the PBA, not negotiations between the parties, have resulted in unjustified "give away" parity originating, as already stated, in Nassau County. Village Exhibits Nos. 23 through 25 indicate that fewer hours for police must be coupled with an increase in crime in Nassau County. Village Exhibits Nos. 27 and 28 demonstrate that implementation of a 232 day schedule would require hiring of an additional officer to maintain existing police coverage in Kings Point.

The public arbitration panel concludes that the village fails to submit evidence that would warrant reduction in the obvious tandem relationship

existing among and between Nassau and Suffolk counties and most village jurisdictions in the immediate vicinity of Kings Point. The major consideration is that prior fact-finders' recommendations were accepted by and prior arbitration awards were binding on the parties to prior disputes. Giving the PBA a 232 day schedule assures that Kings Point police will not have to accept less than what has been determined as standard in their geographic area.

Issue No. 2: Duration of Agreement

The parties agree that the Agreement shall be effective as of June 1, 1977 and shall continue in full force and effect until and including May 31, 1978.

Issue No. 3: Insurance

It is the position of the PBA that an employee, either active or retired, will receive a paid life insurance policy in the amount of one hundred thousand dollars (\$100,000.00) with a double indemnity clause for accidental death. This policy is to be in addition to any benefits presently provided by the Village, the New York State Retirement System, or any other state or federal agency.

It is the position of the village that there will be no change in present insurance coverage.

Because the PBA presents no justification for this demand, the public arbitration panel denies it.

Issue No. 4: Longevity

It is the position of the PBA that a longevity payment of five hundred dollars (\$500.00) will be accorded after five (5) years of completed service and that an additional longevity payment of one hundred dollars (\$100.00) will be accorded for each year of completed service thereafter. The Kings

Point longevity schedule currently is behind both county and neighboring village jurisdictions and, because of the aforementioned tandem relationship, should be brought up.

It is the position of the village that longevity be frozen and that the approximately 1.92% per employee longevity increase demanded by the PBA be denied.

Because the village neither denies that the Kings Point longevity schedule currently is behind both county and neighboring village jurisdictions nor provides evidence supporting a longevity freeze per se, the public arbitration panel, looking again to the long-standing tandem relationship with Nassau County, awards:

1. \$500.00 after six years of completed service.
2. \$900.00 after ten years of completed service.
3. \$1,300.00 after fifteen years of completed service.
4. \$500.00 per year thereafter until retirement.

Issue No. 5: Mileage Allowance

It is the position of the PBA that the present mileage allowance of fifteen cents (15¢) be increased to twenty-five cents (25¢). Justification is sharply increased cost of gasoline, oil and maintenance.

It is the position of the village that there should be no increase in the present mileage allowance.

In line with the Nassau County settlement, the public arbitration panel raises the mileage allowance to seventeen cents (17¢).

Issue No. 6: Night Differential

It is the position of the PBA that the current night differential of one thousand dollars (\$1,000.00) for patrolmen and one thousand two hundred dollars (\$1,200.00) for sergeants be changed to ten per cent (10%) of the

hourly compensation for each. Justification is keeping up with night differential benefits paid in immediately adjacent village jurisdictions. Employees on authorized leave such as vacation are to be compensated if work schedules they would have had if they had not been on leave would have entitled them to night differential. Justification is such provision in contracts in immediately adjacent village jurisdictions paying percentage night differential.

It is the position of the village that night differential pay be frozen and that the approximately 2.1% increase in such pay demanded by the PBA be denied.

Because the village neither denies that the Kings Point night differential currently is behind that accorded in immediately adjacent village jurisdictions paying percentage night differential nor provides evidence supporting a night differential freeze per se, the public arbitration panel grants this demand.

Issue No. 7: Personal Leave

It is the position of the PBA that personal leave days be increased from five (5) to ten (10) per year. Justification is that at least Laurel Hollow and Hempstead provide more than five (5) days per year.

It is the position of the village that personal leave days remain at the current five (5) days per year.

In the absence of any solid PBA justification for an increase in personal leave days, the public arbitration panel denies this demand.

Issue No. 8: Sick Pay at Termination

It is the position of the PBA that an employee terminated because of resignation, retirement, dismissal or death, or his beneficiary, will be compensated one hundred (100%) per cent of his accumulated unused sick leave. Justification is that total payment rewards employees who have saved the

village the expense of covering employee absence.

It is the position of the village that a terminated employee, or his beneficiary, will be compensated fifty (50%) per cent of his accumulated and unused sick leave to a maximum of one hundred (100) days. Justification is that employees already average 13.4 sick days per year as indicated by PBA Exhibit No. 83, and that compensation for unused sick days in excess of one hundred (100) is nothing short of a "give away".

In the absence of solid evidence regarding its position from either party, the public arbitration panel continues the present entitlement of fifty (50%) per cent of an employee's accumulated and unused sick leave to a maximum of two hundred (200) days.

Issue No. 9: Termination Pay

It is the position of the PBA that an employee terminated because of resignation, retirement, dismissal or death, or his beneficiary, will be compensated six days of terminal leave for each year of completed service credited retroactively to the first year of service. Justification is reward for service.

It is the position of the village that employees who have completed more than ten years' service and who are terminated because of resignation, retirement, dismissal or death, or their beneficiaries, will be compensated four days of terminal leave for each year of completed service prior to June 1, 1976 and five days of terminal leave for each year of completed service subsequent to June 1, 1976 to a maximum of one hundred (100) days. Justification is that terminal leave is a costly extra that should be cut back.

On the basis of the evidence adduced, the public arbitration panel awards four days of terminal leave for each year of completed service prior

to June 1, 1976 and five days of terminal leave for each year of completed service subsequent to June 1, 1976 credited retroactively to the first year of service.

Issue No. 10: Wages

It is the position of the PBA that there will be a wage increase of fifteen (15%) per cent in the base salaries of patrolmen and sergeants. Major justification is maintenance of the continuing tandem relationship existing among and between Nassau and Suffolk counties and most village jurisdictions in the immediate vicinity of Kings Point. PBA Exhibits Nos. 1 through 6, 10 through 29, 30 through 34, 35 and 36 and 43 through 72, delineated above, spell out this relationship. Further justification is:

1. Village ability to pay as demonstrated in PBA Exhibits Nos. 73 through 79, also delineated above.
2. Increased police activity as demonstrated in PBA Exhibits Nos. 82 through 86, also delineated above.
3. Rising cost of living as demonstrated in PBA Exhibits Nos. 96, 100, 103, 108 and 109, also delineated above.
4. Stressful nature of police work as demonstrated in PBA Exhibits Nos. 113, 116 through 123, 125 through 131 and 133, also delineated above.

The PBA notes that, whatever the decision of the public arbitration panel, since Nassau County starts its fiscal year on January 1 and Kings Point does not do so until June 1, the latter will lag six months behind the former so far as both wages and fringes are concerned.

It is the position of the village that there will be an absolute freeze on all compensation.

Village Exhibits Nos. 10 through 12 indicate that:

1. Even with no increase at all, Kings Point starting and top base

salaries are substantially above the average figures taken from PERB surveys of eighty-six police jurisdictions in New York State, including some in Nassau and Suffolk counties.

2. The 1976 Kings Point starting base salary was \$13,537.; the 1977 statewide average starting base salary was \$11,494. Even with no increase at all, Kings Point starting base salary is 17.8% above the statewide average starting base salary.

Village Exhibit No. 13 indicates that the 1977-78 entry salary of a teacher in the Great Neck Public School system, which serves Kings Point, was \$12,254. Even with no increase, the 1976 Kings Point police starting base salary is 10.5% higher. That same exhibit shows that that salary exceeded the 1977 annual median starting salaries of accountants by 17.4%, auditors by 21.9%, chemists by 3.9%, computer operators by 59.3% and drafters by 22.2%.

Village Exhibit No. 17 indicates that the 1976 Kings Point police starting base salary was 25.4% higher than the 1976 average weekly earnings for a production worker in New York state.

Village Exhibits Nos. 14 and 15 indicate that, over the past five years, Kings Point police have received wages in excess of both the increase in CPI and increases accorded in other occupations requiring as much or more educational qualification as police work.

Village Exhibits Nos. 19 and 20, articles taken from the Wall Street Journal, indicate that CPI exaggerates inflationary impact; Kings Point police, therefore, are even further above the real increase in the cost of living.

Village Exhibit No. 18 indicates that BLS figured that real spendable earnings increased 2.9% over fiscal 1976-77, giving an individual nearly 3%

greater purchasing power.

Despite village contentions that wage increases accorded the PBA over the past few years are excessive and should be frozen at this point in time, the public arbitration panel again points out that the village negotiated those increases without recourse to mediation, fact-finding or arbitration, and was bound to negotiate further with the provisions of the instant contract as the starting point.

The public arbitration panel is of the opinion that the data with regard to comparable salaries and cost of living increases submitted by the village do not warrant reduction in the obvious tandem relationship alluded to throughout this opinion as the major justification for the PBA position on the major issues in dispute. Neither do those data fully address further justification for a wage increase put forward by the PBA.

The public arbitration panel concludes that the long-standing tandem relationship existing among and between Nassau and Suffolk counties and most village jurisdictions in the immediate vicinity of Kings Point should be maintained and awards a 3.7 per cent increase in the base salaries of patrolmen and sergeants, effective June 1, 1977, and a further 5.1 per cent increase in those salaries, effective January 1, 1978, with concomitant adjustment along the salary schedule.

Issue No. 11: Dental Plan

It is the position of the PBA that the village will increase its present one hundred fifty eight (\$158.00) dollar premium contribution to the dental plan to five hundred (\$500.00) dollars and will extend coverage to retired members and their families. Justification is that the present plan is not adequate.

It is the position of the village that there will be no change in the

present premium contribution.

Absent any solid evidence to substantiate the PBA claim that the present plan is inadequate, the public arbitration panel denies this demand.

Issue No. 12: Supplemental Pay

It is the position of the PBA that the supplemental pay provision remain in the contract between the parties. No change in this negotiated item is demanded.

It is the position of the village that the supplemental pay provision be deleted from the contract between the parties. Justification is that the compensation of Kings Point police is "fat enough" without this supplement.

Absent any solid rationale for deletion of supplemental pay from the contract between the parties, the public arbitration panel denies this demand.

Issue No. 13: Clothing Allowance

It is the position of the PBA that the village will increase its present three hundred (\$300.00) dollar clothing allowance to five hundred (\$500.00) dollars per year. Justification is the sharp increases in the costs of uniforms and accessories.

It is the position of the village that the clothing allowance will remain at three hundred (\$300.00) dollars per year.

Absent specific justification for the PBA position, the public arbitration panel denies this demand.

Issue No. 14: Cleaning and Maintenance Allowance

It is the position of the PBA that the village will increase its present three hundred fifty (\$350.00) dollar cleaning and maintenance allowance to five hundred (\$500.00) dollars per year. Again, justification is the sharp increases in the costs of cleaning and maintenance.

It is the position of the village that the clothing allowance will remain

at three hundred fifty (\$350.00) dollars per year.

Absent specific justification for the PBA position, the public arbitration panel denies this demand.

Issue No. 15: Retirement and Death Benefits

It is the position of the PBA that the village will adopt Section 360-b of the New York Retirement and Social Security Law, commonly known as the "Guaranteed Ordinary Death Benefit". Justification is:

1. It costs out at one-tenth (1/10%) per cent of one (1%) per cent of payroll, an amount between three hundred (\$300.00) dollars and four hundred (\$400.00) dollars annually for the entire force.

2. The legislation permits municipalities to adopt its provisions only until June 30, 1979 and Kings Point must act now if the benefit is to be accorded.

It is the position of the village that retirement and death benefits remain unchanged.

Given the relatively low cost of this item and its limited availability, the public arbitration panel grants this demand.

Issue No. 16: Performance of Duty Out of Rank or Designation

It is the position of the PBA that the village will compensate an employee who is assigned to perform the duties of a higher-ranking officer or of a designated position with a higher rate of pay for part of one tour of duty or more an amount equivalent to the difference between his regular rate and that of the position to which he is assigned. Justification is:

1. The village no longer will be able to assign a patrolman to perform the duties of a sergeant on a given tour to save the overtime that would have to be paid if a sergeant were called in.

2. In such a situation, the village would be paying the patrolman

at a sergeant's straight time rate instead of paying a called in sergeant at his overtime rate.

It is the position of the village that, given present benefits, the pay situation should be frozen and no additional benefits should be granted.

While an emergency on a given tour can make it necessary to assign a patrolman to higher paid duties for that tour, it is axiomatic in collective bargaining practice that the job, not the man, carries the rate. The public arbitration panel directs that the village will compensate an employee who is assigned to perform the duties of a higher-ranking officer or of a designated position with a higher rate of pay for more than one tour of duty the difference between his regular rate and that of the position to which he is assigned for all time he performs the duties of that position.

Issue No. 17: Compensation for Loss of Personal Items

It is the position of the PBA that the village will compensate an employee for loss of or damage to personal property while he is performing police duties, including personal vehicles and their contents when such vehicles are parked at or in close proximity to police headquarters or court. Justification is that such loss or damage occurs in the course of regular employment.

It is the position of the village again that, given present benefits, the pay situation should be frozen and no additional benefits should be granted.

The public arbitration panel directs that the village will compensate an employee only for loss of or damage to property on his person, e.g., eyeglasses, while he is performing police duties.

Issue No. 18: Time Off for Association President

It is the position of the PBA that the village will give the association

president two (2) days per month with pay to conduct association business, such time off to be cumulative. Justification is that this time is needed to permit him to perform the duties of his office.

It is the position of the village that the association president continue to be given time off with pay to attend the monthly meeting of the Nassau Police, the New York State Police Conference Convention and the installation dinner of the Nassau Police Conference.

Given the size of the Kings Point force, this demand is excessive and the public arbitration panel denies it.

Issue No. 19: Existing Benefits Clause

It is the position of the PBA that the village will agree to inclusion in the contract of an existing benefits clause so that any unilateral diminution of benefits now enjoyed by members, whether in the contract, rules and regulations, chief's orders, or elsewhere, would be a violation of the agreement with an appropriate remedy.

It is the position of the village that such a clause not be included in the contract.

The public arbitration panel is of the opinion that an existing benefits clause should be negotiated rather than granted through the arbitration process and denies this demand.

Issue No. 20: Vacation

It is the position of the PBA that the village retain the present vacation schedule as one negotiated by the parties.

It is the position of the village that the present vacation schedule is luxurious by any standard and should be scaled down as follows for new employees:

1. One year --- 10 days
2. Five years --- 15 days
3. Ten years --- 20 days

Justification is:

1. The present vacation schedule of 20 days after one year of service and 27 days after five years of service fails to reward employees for length of service, as is traditionally the case with respect to vacations.

2. Village Exhibit No. 30, a 1976 PERB report on fringes, indicates that only seven of fifty-six police jurisdictions statewide gave police 20 days vacation after only one year of service, and only four of those jurisdictions gave police more than 25 vacation days at any time.

3. Only new employees would be subject to the revised schedule.

The data put forward by the village do not persuade the public arbitration panel that the present vacation schedule should be scaled downward. It, therefore, denies this demand.

Issue No. 21: Sick Leave

It is the position of the PBA that the village retain the present sick leave entitlement of twenty-six (26) days annually as a benefit negotiated by the parties.

It is the position of the village that sick leave entitlement be scaled down to eight (8) days annually for new employees. Justification is:

1. Only new employees would be subject to the revised entitlement.
2. All this excessive sick leave entitlement does is insure police of a fat pay-out at retirement.

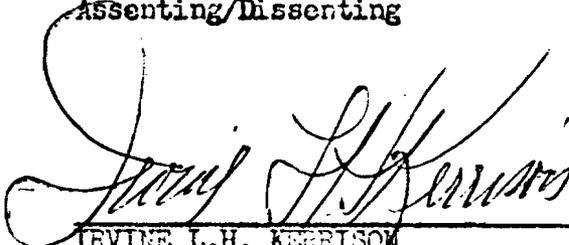
The data put forward by the village again do not persuade the public arbitration panel that present sick leave entitlement should be scaled downward. It, therefore, also denies this demand.

Dated: October 30, 1978

BERTRAND B. POGGERIN, ESQ.
Employer Panel Member
Assenting/Dissenting



ALBERT VERNAKAS
Employee Organization Panel Member
Assenting/Dissenting



IRVINE L.H. KERRISON
Public Panel Member and Chairman
Assenting/Dissenting

DISSENTING OPINION OF PANEL MEMBER
BERTRAND B. POGREBIN

I vigorously dissent from the Award and the Opinion of the panel majority in this case.

The majority merely gives lip service to the statutory criteria which it was bound to consider in making its determination. Although the statutory criteria are recited at the beginning of the majority's Opinion, the body of the Opinion provides no evidence that they have been considered. The respective positions of the parties are merely recited and no legitimate reason is offered for the conclusions reached. The majority merely substitutes "parity with the County settlements" instead of consideration of all relevant factors. In an effort to disguise such an improper basis for making an Award, the majority refers repeatedly to an alleged "tandem relationship" between and among Villages and the Counties of Nassau and Suffolk. This is nothing other than an insupportable extension of the claim of parity, which deprives the Village of the right to negotiate its own agreement and have the issues decided on the merits.

Parity as the basis for agreement in collective bargaining by municipalities is illegal. Voight v. Bowan, 9 PERB 7553 (App. Div. 2d Dep't 1976). Parties to a collective bargaining agreement cannot agree to set their terms and conditions on the basis of parity with another municipality. A fortiori, an arbitration panel certainly cannot disregard the statutory considerations set

forth in the Taylor Law and premise its Award on the basis of parity, something which the parties themselves could not do by mutual agreement.

In addition to its misplaced reliance on parity as the basis for the majority's Award, the majority also wrongfully shifts the burden of proof to the employer in this case. With respect to a number of issues, the majority's finding was based upon the fact that the employer had failed to show why a "tandem relationship" should not continue. However, the record shows that for Kings Point, there was no tandem or parity relationship. If there had been, there would have been no need for this proceeding. Consequently, there obviously was a burden on the PBA to establish, in accordance with the statutory criteria, a reason why each and every new term and condition it was seeking was justified. There was no obligation on the part of the employer to prove that it should not be granted. The burden has clearly been misplaced.

Further, in addition to the fact that the majority illegally relied on parity and wrongfully shifted the burden of proof to the employer, the Award is also premised in crucial areas on plain errors of fact which are at variance with the evidence in the record. Conclusions are claimed as based on findings that are without any support whatsoever in the record.

The majority Opinion cites PBA exhibits 1 through 6 as

showing similarity between the Nassau County and the Kings Point police contracts. It is not unusual that agreements covering similar employees will be similar. However, what the majority has done is to award the Kings Point PBA identity with the Nassau County contract in accordance with the proposals of the PBA. The basis, again, for doing so is parity or tandem relationship. The majority also cites PBA exhibits 10 through 29 as demonstrating that all of the police jurisdictions in Nassau County have followed the lead of Nassau County for over fifty (50) years. There is nothing in those exhibits to warrant any conclusion concerning the terms and conditions of employment for the jurisdictions involved beyond their latest collective bargaining agreement which, at most, would cover the past three years. Further, careful examination of all of the agreements shows that there are more dissimilarities than there are similarities between and among police contracts. Indeed, it is the rare case where there is identity between the Nassau County agreement and any other police jurisdiction agreement. Lastly, in its preliminary remarks, the majority cites PBA exhibits 82 through 86 as demonstrating that police activity in Kings Point has moved dramatically upward. In fact, careful examination of those exhibits and the testimony of PBA witnesses shows that police activity in Kings Point was less in 1977, the year in dispute in these proceedings, than it had been three years earlier.

Unfortunately, the unsupported conclusions reached in

the majority's preliminary remarks continued throughout their Opinion, as consideration of each major issue will show.

Issue No. 1: Basic Work Week and Tour of Duty

Nassau County voluntarily agreed to adopt a basic work year that was twenty-eight (28) days shorter than the standard work year in its 1973 negotiations with its police employees. Nassau County voluntarily accepted a fact finding recommendation. Thus, since 1973, when the County adopted the 4/96 duty chart, the police in Kings Point have not worked the same duty chart. Thus, for five years and three collective bargaining agreements, there has been no tandem relationship or parity between Kings Point and Nassau County insofar as the work chart is concerned. In this proceeding, the PBA offered no evidence to support its proposal for the 4/96 duty chart other than the fact that Nassau County and a number of other villages, less than a majority, worked the 4/96 duty chart.

It is true that a number of fact finders and interest arbitrators have awarded either the 4/96 duty chart or compensation in lieu thereof since Nassau County voluntarily agreed to give it to their employees. However, the Village correctly notes that none of these fact finding recommendations or interest arbitration awards has ever considered the merits of such a duty work chart. The only basis advanced for awarding the duty chart has been the fact that Nassau County had agreed to give it to their employees. It is significant to note that the fact finding

recommendation in the 1973-74 Nassau County PBA negotiations provided no basis for the recommendation of the 4/96 duty chart. There is no evidence in that recommendation that any of the statutory criteria which interest arbitration panels must today consider under the Taylor Law in making their awards was ever considered. Thus, the voluntary agreement of the County, which the Village asserts has no rational basis, does not comply with the statutory criteria now in effect for making interest arbitration awards, and should be given no weight.

The evidence submitted by the Village demonstrates that there was in fact no rational basis for the recommendation of the 4/96 duty chart in 1973. Village exhibit 22, an excerpt from the 1973 Nassau County PBA brief on the 4/96 issue, indicates that the argument advanced in support of the PBA's position for the much reduced work schedule was as follows, quoting from the Nassau County PBA's brief:

It is common knowledge and not in dispute that by working tours around the clock, under continual pressure, the Police Officer lowers his life expectancy. Similarly, the Officer's efficiency decreases on the midnight tours and elimination of one (1) of these tours is most desirable both from the employee and the employer standpoint.

The PBA in this case advanced the same rationale for the reduced work chart.

As noted previously, there was no rationale stated in

the 1973 Nassau County fact finding recommendation which recommended the 4/96 duty chart. In this case, there is no evidence to warrant the award of such work chart. Allegations that police officers have a lower life expectancy as a result of working rotating tours of duty are without any basis in fact whatsoever. On the contrary, insurance and actuarial statistics introduced by the Village demonstrate that a policeman's job takes less of a toll on his physical well-being than do other jobs that are generally regarded as not being particularly taxing. In Village exhibit 26, for example, policemen are rated along with barbers, clerical office workers, lab technicians, landscape gardeners, and similar occupations insofar as life expectancy is concerned. In contrast, as one would expect, firefighters and roofers do have shorter life expectancies than those in relatively safe occupations like police work. Further, Village exhibit 26 demonstrates that employers of police employees pay one of the lowest Workmen's Compensation rates. Of the seventeen occupations listed in Village exhibit 26, only two had lower Workmen's Compensation rates than police employees, namely clerical office workers and lab technicians. Every other occupation had a greater Workmen's Compensation rate, indicating a greater likelihood of injury on the job. Included among those working in occupations regarded as more hazardous than police work are barbers, bartenders, landscape gardeners, painters, plumbers, and masons. Moreover, Village exhibit 26 also shows

that with respect to accident insurance policemen are rated no higher, and in many cases lower, than most occupations which, again, are generally considered to be fairly safe and free from accidents.

The uncontroverted evidence introduced, therefore, definitely shows that policemen do not live shorter lives or suffer an inordinate number of injuries as a result of their employment. On the contrary, they have a relatively safe job and enjoy a normal life expectancy. The basic premise, therefore, for having a reduced work chart is nonexistent. There is no evidence that working rotating tours of duty contributes to an unusually high mortality or injury rate which justifies eliminating tours and providing for greater swings (i.e., free time) between tours.

With respect to the efficiency requirement, there was no evidence introduced in this proceeding to demonstrate that a policeman's efficiency on the midnight tour decreases. In addition, the assumption by the PBA in the Nassau County negotiations that policemen work under "continual pressure" was not supported by any evidence in this proceeding. Again, on the contrary, Kings Point is a bucolic village located on a peninsula along the north shore of Long Island. Village exhibit 4, which was also introduced by the PBA as their exhibit 91, clearly shows that Kings Point is isolated from the mainstream of Long Island traffic and transients and is completely devoid of any commercial or industrial areas and the problems attendant such areas for

law enforcement agencies. As clearly indicated by testimony of PBA witnesses (Transcript pages 152-155; pages 185-187; Petitioner's exhibits 75 and 82), the level of significant police activity in Kings Point, as reflected in the general reports, was lower in 1977 than it was three years earlier in 1974.

The majority's reference to PBA exhibits demonstrating the effect of improper scheduling on stress, heart conditions, hypertension and family relationships is incomprehensible. Nearly all of the documents, if not all, have absolutely no correlation whatsoever to working conditions in the Village of Kings Point. PBA exhibit 119 concerns police in Tennessee. Other exhibits refer to working conditions in ghettos and tenement areas which are nonexistent in Kings Point. PBA exhibits concerning stress in general do not overcome the previously mentioned exhibits introduced by the Village to indicate that the harmful effects of stress on police is obviously less than it is on quite a few other occupations which are generally regarded as not particularly taxing. With respect to the alleged deleterious effect of rotating tours on family relationships, the testimony of PBA witnesses (Transcript, pages 267-270) demonstrated that, even to the knowledge of Kings Point policemen, the stresses on family relationships was no different than on the family relationships of persons with whom they were acquainted who were not police officers.

Clearly, on the basis of the evidence introduced on the

merits of the 4/96 duty chart itself, there is no rationale basis for reducing the work schedules to such a short work year. The only argument which is advanced, in truth, is parity - with Nassau County and ostensibly with the other villages in Nassau and Suffolk Counties. However, of the twenty-three Nassau County police jurisdictions in Petitioner's exhibit 9, only nine, or less than half, currently work the two hundred and thirty-two (232) day work year which the 4/96 work chart represents. It is true that a number of the jurisdictions that do not work the 4/96 chart do pay their employees for the differential in days worked. However, there are also some who neither work the two hundred and thirty-two (232) day year nor pay for the extra days worked by their police. In any event, even assuming that the PBA had proven some rational basis for granting the 4/96 work chart, the majority has offered no reason as to why it has awarded the work chart itself rather than compensation in lieu of the extra days worked, especially in view of the uncontroverted evidence of the Village demonstrating that implementation of such a new work schedule would require the hiring of one additional employee at a cost of approximately \$27,252.14 to the Village, as demonstrated in Village exhibits 27 and 28.

Further, even assuming again that the police could have proved that working rotating tours does in fact have a deleterious effect on the health of police employees, the majority opinion does not explain why it has rejected the Village's proposal to

implement a fixed tour duty chart which would provide a normal work year, thereby increasing productivity as well as eliminating rotating tours. Certainly, the 4/96 duty chart does not eliminate rotating tours; it merely grants more time off at the expense of productivity, without eliminating what is supposedly the problem. It was demonstrated that hospitals and other private employers who must provide round-the-clock services do not work rotating tours of duty. For the most part, employees are hired to work on specific shifts and that is when they work. At most, there will be an infrequent rotation of employees from one shift to another. The Village demonstrated that there was no legal impediment to the elimination of rotating tours of duty. (Village exhibit 31)

Even more distressing was the majority Opinion's failure to acknowledge the trend to recapture days lost through the 4/96 work chart in those police jurisdictions where it has been granted. For example, as a result of the award in the latest Suffolk County binding arbitration, PBA exhibit 66, employees during their first five years of employment worked ten additional days, or a two hundred and forty-two day work year. In the Village of Old Westbury, as mpted at pages 433 to 436 of the transcript, where employees work two hundred forty-four (244) days and are compensated for most, but not all of the difference, employees in their first year of employment work a two hundred and sixty (260) day work year; in addition, employees during

their first five years of employment receive only three weeks of vacation as compared to the four weeks enjoyed in Kings Point. Likewise, as appears from PBA exhibit 24, police in the Old Brookville police force only enjoy three weeks vacation during their first five years of service. In the Village of Huntington Bay, the vacation schedule for new employees is even less than it is in Old Westbury and Old Brookville, and there is no specification of a duty work chart, the scheduling of work being left completely flexible to meet Village needs, as appears from Village exhibit 21.

The majority Opinion has clearly ignored all of the evidence. It has simply rubber-stamped the Nassau County debacle, completely ignoring the scandalous excesses which County negotiations have yielded, as clearly demonstrated from the three recently published Newsday articles which were submitted to the panel prior to its determination and the one article introduced at the hearing, Village exhibit , which raised serious questions about the capabilities and impartiality of the public member of the Nassau County panel.

Issue No. 4: Longevity

The majority awarded longevity identical to that in the Nassau County PBA agreement. The stated reason for this award is:

The Kings Point longevity schedule currently is behind both county and neighboring village jurisdictions and, because of the aforementioned tandem relationship, should be brought up.

However, the evidence introduced by the PBA in support of this proposal shows the contrary to be true. PBA exhibits 10 through 29, all Nassau County police jurisdiction collective bargaining agreements, clearly demonstrate that longevity payments paid by the Village of Kings Point equal or exceed those paid by every other police jurisdiction within Nassau County during the 1977 year. There is not one scintilla of evidence introduced by the PBA, aside from the Nassau County contract, which warrants the longevity adjustment which the majority awards. Yet, the majority awards parity with Nassau County on the basis of an unproven "long-standing tandem relationship" after misplacing the burden on the Village of denying what obviously had not been proven. The burden of proof was on the PBA to justify this proposal on the basis of the statutory criteria, and it failed to meet that burden.

Issue No. 6: Night Differential

Here again the majority misplaces the burden of proof. Rather than requiring the PBA to justify and prove the necessity for changing the method of payment of night differential, the burden is placed upon the Village to disprove the need for any change. The award of parity with Nassau County by the panel majority was justified as "keeping up with night differential benefits paid in immediately adjacent village jurisdictions." The evidence does not support this statement. Examination of the PBA's exhibits, numbers 10 through 29, the collective bargaining

agreements for all police jurisdictions within Nassau County, shows that of the nineteen police jurisdictions only two pay a 10% night differential. All others pay either a flat sum amount or an hourly rate, and in some cases there is no differential spelled out. The evidence clearly does not warrant any change in the methodology of night differential payment, which will by itself be the equivalent of approximately a 2% adjustment in wages.

Issue No. 10: Wages

The evidence of the Village in support of a general freeze on all compensation is overwhelmingly compelling. Comparison of the salaries in Kings Point with the average salaries in eighty-six police jurisdictions throughout New York State shows that the police in Kings Point, with no salary adjustment at all for 1977, would still be paid 17.8% above the average base salary entry level and 28.7% above the statewide average maximum salary level. More concretely, a policeman in Kings Point starts at a salary that is slightly more than \$2,000.00 greater per year than the starting salary of the average policeman in New York State; by the time the Kings Point policeman reaches the top of the pay scale, he is paid slightly more than \$4,000.00 per year more than the average policeman in New York State. And this, again, is based upon a comparison of 1976 Kings Point rates with 1977 statewide rates. Village exhibits 10 through 12 vividly demonstrate these inequities.

Village exhibits 13 and 16 show that Kings Point police have a starting salary that is greater than that of most professionals, including teachers who teach in the school system that serves Kings Point. In addition, they start at higher salaries than accountants, auditors, chemists, computer operators, and draftsmen, occupations which generally require greater educational qualifications than are required of police. In addition, Village exhibit 17 indicates that Kings Point police have a starting salary that is nearly \$3,000.00 more than that of the average production worker in New York State.

Village exhibits 14 and 15 demonstrate that over the past five years Kings Point police have enjoyed salary adjustments to base salary alone in excess of 74%, while increases in the Consumer Price Index during the same period were less than 36%. Increases received by professional employees during the same five year period, according to Village exhibit 16, all were less than the increases in the Consumer Price Index during the same period. Further, as Village exhibits 19 and 20 demonstrate, the Consumer Price Index overexaggerates inflationary impact, and, therefore, the police have fared even better vis a vis inflation than the preceding comments already show.

Notwithstanding the foregoing, the majority incomprehensibly, irresponsibly, and illegally makes its Award based upon parity.

Issue No. 12: Supplemental Pay

The evidence in the record clearly indicates that there is

no longer any justification for supplemental pay. Originally justified on the basis that the Village employees received their salary increases five months after the increase in the County went into effect, it is clear that in recent years the Village of Kings Point has put its salary adjustments into effect long before the Nassau County police have been paid. Although the fact that one employee group receives a wage increase at a point in time later than another is no justification for supplemental payment, in the present case, the original premise advanced by the PBA is no longer existent. If anything, if the supplemental pay concept is going to continue, the Village employees should be rebating the Village inasmuch as they have been paid in advance of the County employees during the past few years.

Issue No. 16: Performance of Duty Out of Rank or Designation

Although the PBA made a demand for this change in the agreement with the Village, it introduced no evidence to support that demand at the hearing and did not press for this change at the hearing. It is incomprehensible how, under such circumstances, any change in this provision could have been awarded.

Issue No. 17: Compensation for Loss of Personal Items

Here, again, although the demand was made by the PBA, no evidence was introduced at the hearing to support the PBA's position.

Issue No. 20: Vacation

Village exhibit 30, a summary of a survey of fifty-six

police jurisdictions in New York State, overwhelmingly shows that the vacation schedule enjoyed by Village police is generous. The majority of police jurisdictions have a vacation schedule as follows: ten (10) days vacation after one year of service, fifteen (15) days vacation after five years of service and twenty (20) days vacation after ten years of service. The evidence clearly warranted rolling back vacation schedules, thereby increasing productivity, to conform to those generally enjoyed throughout the State. However, all the Village sought was a modification in the vacation schedule for new employees, saving all current employees harmless from any rollback. Without any explanation, the majority opinion merely states, "the data put forward by the Village do not persuade the Public Arbitration Panel that the vacation schedule should be scaled downward."

What more does the Village have to show? The current vacation entitlement is clearly far more generous than the average entitlement enjoyed throughout the State. Further, as noted earlier, employees in Old Westbury and Old Brookville, comparable North Shore communities, enjoy only three weeks vacation during their first five years of employment. Further, new employees in Huntinton Bay enjoy even less vacation than employees in Old Brookville or Old Westbury.

CONCLUSION

The award in this case presents some of the strongest evidence in support of abandoning the interest arbitration

experiment that has been taking place in this State. It is a sad commentary to have employers and employees who have been unable to resolve their differences proceed to have their "day in court," so to speak, only to find that the judge or arbitrator is a rubber stamp, and that the evidence and arguments laboriously gathered and presented are not seriously considered. Yet, that is precisely what happened in this case.

Collective bargaining for police employees truly seems to be an extinct species on Long Island. The Award, in this case, simply imposed Nassau County's unreasoned award on Kings Point. The community is entitled to more, under the law. It is entitled to establish its own terms and conditions for its employees and to negotiate for itself. Failing that, the arbitration panel is to make an award based on facts. It has not been done in this case. The process and the community are the less for it.

I respectfully dissent from the Award in this case.

Dated: October 30, 1978


BERTRAND B. POGREBIN, ESQ.
Employer Panel Member Dissenting