

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Public :  
Arbitration :

- between - :

THE VILLAGE OF NORTHPORT, :  
Public Employer, :

PANEL'S  
DETERMINATION  
AND BASIS  
FOR FINDINGS

- and - :

NORTHPORT POLICE BENEVOLENT :  
ASSOCIATION, INC., :

Employee Organization. :

Pursuant to Section 209.4 of the :  
Civil Service Law. :

Case No. IA 83-26; M 83-351 :  
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APPEARANCES

For the Public Employer:

John H. Gross, Esq. Counsel

For the Employee Organization:

Axelrod, Cornachio, Famighetti  
& Capetola, Esqs. Counsel  
By: Michael C. Axelrod, Esq. Of Counsel

Before The Public Arbitration Panel:

Philip J. Ruffo, Esq. Public Member and Chairman  
Peter Nolan Public Employer Member  
Gene Roemer Employee Organization Member

I

Preliminary Statement

By a communication dated November 3, 1983, the New York Public Employment Relations Board designated the above named persons, constituting a Public Arbitration Panel, pursuant to Section 209.4 of the New York Civil Service (Taylor) Law for the purpose of making a just and reasonable determination concerning the dispute (impasse) between the parties in the above captioned proceeding as to the unresolved matters and issues hereinafter set forth, discussed, analyzed and determined.

In accordance with the above cited authority, a hearing with respect to the unresolved matters was held on December 23, 1983, at the Village Hall, Village of Northport, New York.

At the hearing, the parties were accorded full opportunity to present testimony under oath, evidence and exhibits relative to the matters and issues in dispute and, in addition, were accorded the opportunity of cross-examination and to present arguments in support of their respective positions.

The record made in the within proceeding consists of: 119 pages of transcript <sup>1</sup> which includes testimony,

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1. References herein to the testimony, comments and other matter taken at the hearing are indicated by the symbols in parentheses "(Tr. p. or pps.)", the symbol "Tr." referring to the transcript, the symbols "p" or "pps" referring to the page or pages on which the testimony, com-

the positions of the parties and arguments of counsel and a total of 22 exhibits, the majority being multi-pages. (The petitioner (PBA) submitted 21 exhibits; one (1) exhibit, the subsisting collective bargaining agreement, was jointly submitted).

Subsequent to the close of the hearing, the Panel met in Executive Session on the 2<sup>nd</sup> day of February, 1984, for the purpose of discussing, analyzing and determining all of the issues in the record presented to the Panel for determination.

After due consideration and deliberation of all of the evidence, including the testimony, exhibits and arguments of counsel, the Panel's just and reasonable determinations, as hereinafter set forth, with respect to all of the unresolved matters and issues, are concurred in by a majority of the Panel Members, the Public Employer member dissenting.

## II

### Statutory Criteria

Consistent with statutory requirement, and to the extent supported by the evidence in the record, the Panel

adhered to the criteria set forth in Section 209.4(c)(v) of the Civil Service Law to make a just and reasonable determination of the matters in dispute, specifying the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

"(a) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

(b) The interests and welfare of the public and the financial ability of the public employer to pay;

(c) Comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

(d) The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provision for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security."

### III

#### The Parties - Their Bargaining Relationship

The Village of Northport has a year-round population of approximately 7,800 which is increased slightly during the summer months because it is somewhat of a resort attraction generating a modest increase in activity for which four additional part-time police officers are hired augmenting the permanent Village Police Force which consists of 19 members as follows: One Chief, four Sergeants, one Lieutenant and thirteen Police Officers. (Tr. pps. 16-18). The PBA is the exclusive bargaining representative of the Sergeants, Lieutenant (Superior Officers) and the Police Officers. (Tr. pps. 16-18). The Superior Officers are not involved in the instant impasse dispute since they are receiving the benefits under the current Collective Bargaining Agreement executed November 16, 1982. (Joint Ex. 1; Tr. pps. 7-8). The wage increases and longevity benefits received by the Superior Officers are patterned after the Suffolk County Superior Officers Association and, therefore, the benefits for those unit members "are in place". (Tr. pps. 7-8; 16). Therefore, the instant impasse dispute affects solely the thirteen Police Officers with respect to wages and longevity as well as a demand for an improved dental plan which would also include the Superior Officers since the present dental plan maintained by the Village

covers all bargaining unit members. (Tr. pps. 16-17).

The parties have had, and continue to have, a bargaining relationship spanning many years as evidenced by a wage data sheet covering contract wage increases from March 1, 1971, through February 1983 (PBA Ex. 6), and as further evidenced by the following agreements: one year from March 1, 1972 through February 28, 1973 (PBA Ex. 7); up to the immediate predecessor two year agreement, commencing March 1, 1980, ending February 28, 1982 (PBA Ex. 13); and the current agreement, dated November 16, 1982, now in full force and effect for a term of three (3) years, commencing March 1, 1982, ending February 28, 1985. (Joint Ex. 1). It is acknowledged by both sides that the Northport-PBA collective bargaining agreements commence on the first day of March to coincide with the Village's fiscal year, as well as the anniversary date on which wage increases and other designated benefits become effective during the term of the collective bargaining agreement. (Tr. pps. 40-41; page 2, Village Response to the Petition herein to Arbitrate, PBA Ex. 5). The Village's fiscal year ends on the last day of the following February.

The present dispute stems from an impasse in negotiations with respect to three items (wages, longevity and a demand by the PBA for an improved dental plan) all of

which, under the current collective bargaining agreement, are subject to a reopening for negotiations and to be effective for the last two years of the current agreement commencing March 1, 1983.

#### IV

#### The Reopener Provisions and the Matters Covered

As stated above the current collective agreement is for a term of three (3) years, commencing March 1, 1982, and ending February 28, 1985. The said agreement contains provisions for the reopening of negotiations with respect to three matters cited below, the pertinent language in each instance being as follows:

#### "Section 4. - WAGES

A) Negotiations for wages for the 1983-84 and 1984-85 Village fiscal years for Police Officers shall be open for negotiations." (page 3).

The same section pertaining to wages contains three columns (starting on the bottom of page 2 of the agreement) each column captioned, "Effective 3/1/82", "Effective 3/1/83" and "Effective 3/1/84". Under the

first column the annual wages of police officers in various grades, depending on years of service, are set forth for the year commencing March 1, 1982. Under the latter two columns, for each of the years commencing March 1, 1983 and March 1, 1984, the term "reopen" is set forth with no annual wages under either column.

"Section 5. - LONGEVITY PAY

Effective March 1, 1983, the longevity rate shall be subject to further negotiations." (Paragraph 1, page 4).

"Section 6 - INSURANCE

However, within forty-five (45) days from the execution of this agreement, the parties shall meet and confer regarding the selection of a new dental plan. Furthermore, the issue of dental plan coverage shall be subject to negotiations for the 1984-85 contract year." (Paragraph B) 1, page 6). (Underlining supplied).

V

The Facts and Positions of the Parties

A - The Facts:

The facts herein are not essentially in dispute as, for example, they might or could have been had the

within bargaining impasse concerned the terms and conditions of a successor or renewal agreement. In such a case the impasse, winding its way to Interest Arbitration, would necessarily entail an analysis of the entire record within the scope and ambit of all of the statutory criteria since all terms and conditions of employment must be deliberated and ultimately determined by a Public Arbitration Panel in accordance with the Taylor Law standards. In the instant case, a successor agreement is in place for a three year term and, as will abundantly appear, the terms and conditions of employment now at impasse have, in the negotiations for the current agreement, been agreed to based upon a bargaining symbiosis of the parties' own choosing as ultimately reflected in the Suffolk County-PBA Suffolk County Collective Bargaining Agreement (PBA Ex. 16). Thus, in August, 1983, with respect to wage increases, the Village offered the PBA, "A salary increase for the reopener year equal to the percentage of increase granted to the Suffolk County PBA by the County of Suffolk" and, with respect to Longevity, "An increase in longevity pay equal to the County PBA settlement only." (See paragraphs 2a) and d) of Village's Response to the PBA's Petition for Arbitration (PBA Ex. 5; Tr. pps. 24, 32, 41). The Village's offer "was rejected by the PBA" whose demands exceeded those of the Suffolk County-PBA agreement because the Village's offer made in August, 1983, fol-

lowed by more than six (6) months after March 1, 1983, the effective reopener date of the current agreement, and after the Suffolk County-PBA Interest Award which was made in April, 1983. (See paragraph 4 of PBA's Petition For Arbitration, PBA Ex. 4; Tr. pps. 32-41). Also at impasse is the PBA's rejected demand of "A new dental package ..... for the 1984-85 fiscal year, pursuant to a reopener provision in the collective bargaining agreement." (See paragraph 6, PBA Petition For Arbitration, PBA Ex. 4; and paragraph 2c) of Village's Response to PBA's Petition for Arbitration, PBA Ex. 5).

The principal characteristic marking the conduct of bargaining between the Village and the PBA resulting in prior collective bargaining agreements, as well as the current agreement, was and is the Suffolk County-PBA agreement. Except for matters concerning local job conditions, unique, necessary, or indigenous to the traditions of the Village's Police Force, the evidence on this score is unrebutted as illustrated by the various comments in the record made by Counsel for the PBA and the Village. Illustrative of the foregoing comments are the following passages culled from the transcript:

By Counsel for the PBA:

"The police sergeants and lieutenants have already reached agreement on wages using the

County of Suffolk, specifically, the Superior Officer's Association as a pattern to reach these rates ..... " (Tr. pps. 7-8).

Again, though there is pattern bargaining with Suffolk County as the objective, it is not exact in all matters as it is, for example, with Night Differential and in this respect:

"..... we intend to use Suffolk County as a barometer or base. This has been the past history of the negotiations between the Village and the PBA. To a large extent, the contracts have been patterned after the Suffolk County PBA contracts." (Tr. pps. 10-11).

"..... but, basically, a police officer in Suffolk County and Northport take the same examination, go to the same Police Academy, have the same qualifications for employment and the tendency in Northport has always been the difference between the County of Suffolk and the Village is that there's a boundary. On one side of the line is Suffolk County and the other side of the line is the Village of Northport, but it's the same community with the same qualifications." (Tr. p. 45).

The "new" demand for parity with the Suffolk County PBA was raised in 1974 because of "an intervening agreement consummated by Suffolk County and its PBA" .... "with regard to scheduling." (Tr. p. 62). The reason for this "new and understandable demand - parity" was because:

"The Northport Village Police works in close cooperation with Suffolk County. They often respond to the same call on each other for assistance. Their officers have got the same requirements and were trained at the same Police Academy. Their forms are identical and the duties of the respective forces are basically the same." (Tr. p. 62).

And, though the Night Differential is not subject to reopening for negotiations under the current agreement which, therefore, places the Northport Police Officers behind their Suffolk County colleagues in this benefit, the Northport PBA is "looking to catch up when we have the right to bargain on that subject, etc." (Tr. p. 31).

By Counsel for the Village:

Though there have been significant differences in the negotiated settlements between Suffolk County and Northport because of "local exigencies":

"We concede that in the past wages have tracked the County of Suffolk, etc." (Tr. p. 19).

As to longevity:

"All of this must be taken into contention of our offer which we'll point out to you which was made last August to the PBA which was compatible with the County of Suffolk on longevity for the next two years." (Tr. pps. 24-25).

As to Wages:

"They are entitled to comparability of wages of Suffolk County." (Tr. p. 26).

Again, by the Arbitrator:

"If you've engaged in pattern or tandem bargaining with Suffolk County PBA being the criterion, you have to wait and see what happens there and then what happens there, you bargain on that basis."

"Mr. Gross: That's correct." (Tr. p. 37).

The conduct of the Northport Village-PBA bargaining through the years was aptly described by counsel for the Northport PBA when, on page 55 of the transcript, he stated in pertinent part:

"In 1974, they were a little behind Suffolk County and then passed Suffolk County, percentages being somewhat similar, somewhat dissimilar, but, basically, there were a number of contracts that showed whatever the County of Suffolk got the PBA would get. It's a fairly close relationship each side jumping ahead from time to time." (Tr. p. 55). (See also PBA Ex. 6).

Parenthetically, it is noted that the "parity" clause in the 1980-1982 collective agreement with reference to Suffolk County "was knocked out" by PERB following the Village's resistance to such a clause because the Village would not go along with certain items apparently tied to Suffolk County. (Tr. p. 55). In this connection the Chair-

man of this Panel notes the prior PERB decision which held that the vice of a parity clause exists within the bargaining context of one public employer and a union representing a bargaining unit of its employees in as much as such a clause inhibits bargaining between the one public employer and other units of its employees. (City of New York, 10 PERB Paragraph 3003 (1977)). Parity is, therefore, not a vice when it is sought as to units of comparable employees of other employers but does not involve the same public employer and other units of its employees. In any event, the Appellate Division, Third Department, on January 14, 1982, held that a corresponding parity clause, in each of a fire-fighters and police agreement, mandating equality of treatment among groups of the same employer, is not per se invalid or prohibited. (City of Schenectady, app. and City Firefighters Union, Local 28, etc., Resp., 15 PERB Paragraph 7510, page 7529).

The link between the Village and the County in the thrust to equalize the total worth of benefits, even though local requirements necessitate different working conditions, is illustrated by the working schedules of the County and the Village police forces and the Village's willingness to compensate its police officers in a manner which does not place them at a disadvantage with the County Police

Officers. For example, while the working year schedule of the Northport police officers is greater consisting of a rotation schedule of 255 days and that of the County 232 days, (i.e. 23 less work days), "That's balanced off by 11 days off and 12 days pay, etc." granted to the Northport police officers. (Tr. p. 56). This modification in the Northport work schedule, based on local conditions, occurred approximately two years after the County change of its schedule. (Tr. p. 57). It is because adjustments in the Northport-PBA agreements are contemplated in accordance with the County agreements that the parties are able to conclude an agreement between them and the reason "why the reopeners were put in there" (Tr. pps. 58-59), and why "retroactivity was the device in order to make up for any inequity by reason of waiting to see what Suffolk County did." (Tr. pp. 60-61). "..... the tradition of the parties has been to make the payments retroactive. That's been the consistent practice of the parties. There's no denying that on the part of the Village." (Tr. pps. 114-115).

B. - Positions Of the Parties:

The positions of the parties are expressed repeat-

edly and variously stemming from three interrelated basic factors: (i) the conduct of collective bargaining and its results between Northport and the Northpart PBA in terms of major economic matters, linked to the bargaining settlements between the County and the County's PBA, i.e., the bargaining-settlement linkage factor; (ii) the different commencement and termination dates of the Northport-PBA, County-PBA contracts, each contract timed to, and coinciding with, the respective fiscal year of the particular public employer, i.e. the contract-fiscal year factor; and (iii) the bargaining process geared, in each instance, to the fiscal year of the particular public employer, i.e., the bargaining-fiscal year factor.

The above foregoing factors operate inexorably to shape the contours of the instant dispute and substantially, if not completely, dominate the bargaining efforts of the parties to consummate an agreement.

The respective positions of the parties, rooted in the foregoing factors, are as follows:

A - The Union:

Though the PBA does not feel that the Village has bargained in bad faith, it has not actively engaged in collective bargaining with the PBA in a manner which would have

led to an earlier settlement and, therefore, the delay in bargaining resulted in an economic loss to the bargaining unit members which was compounded and exacerbated by the delay in the County-PBA settlement impeding a final settlement between the Village and the Village PBA. (Tr. pps. 12-13; 30-33; 39-41; 51, 73). Thus, the Northport police officers are one year behind, at the point of the hearing date, from their County colleagues who have been receiving their wage increase and other benefits effective January 1, 1983. (Tr. pps. 30-33). Thus, the PBA is "looking for something extra to compensate for the loss of purchasing power of the last several years" and "what we are seeking ..... is a raise similar to what Suffolk County PBA received with an addition of \$200 ..... in the nature of a one-time bonus to attempt to compensate the individuals for the loss of their purchasing power, etc." (Tr. pps. 13; 101).

As for longevity, the PBA is "interested in either a percentage or a rate that is similar to Suffolk County, etc." (Tr. p. 14).

As for a dental insurance plan, the PBA claims that the present plan maintained by the Village is inadequate and seeks an increase in the Village's contribution from the present \$250 per year, per member, to \$500 which would enable the PBA to participate in either a state-wide

plan under the Police Conference of New York or a GHI plan "called the Spectrum 2,000 M." (Tr. pps. 14-15; 94-95).

Further, in support of its position the PBA offered evidence as to the hazardous and stressful nature of a police officer's profession, contending that the hazards and stress of the job have an effect upon the police officer's personal, social, and domestic life. (Tr. pps. 46-48; PBA Exs. 2 and 3).

B - The Village:

At the outset, counsel for the Village asserted that the Village's ability to pay is not in issue. "We will concede the Village has sufficient funds to pay all of the demanded increases." (Tr. p. 19).

However, expressing a willingness, consistent with its prior offer, to grant the same wage increases and longevity benefit to the PBA bargaining unit members as provided in the County-PBA agreement, the Village resists any attempt by the Northport PBA to obtain more based on the PBA's contention that its members sustained a loss of purchasing power as compared to the County PBA members who have been receiving their benefits effective since January 1, 1983 under their collective bargaining agreement. (Tr. pps. 23-25; 62-63; 103-110; 114-117). The Village denies

that it lagged in its bargaining efforts contending that any delay is partly attributable to the PBA which rejected the Village's offer made soon after the County-PBA agreement was executed in April, 1983, pointing out that the delay in the consummation of the County-PBA agreement, to which the PBA and the Village looked for guidance, was due to factors beyond the control of the Village or the Village PBA. (Tr. pps. 23-24; 41, 62-63; 103-110; 114-117). Actually, according to the Village, the Northport PBA and its members "... want more than the County of Suffolk" in order to make up for the night differential benefit which the Northport PBA had previously settled upon prior to the County-PBA agreement and which is not included in the re-opener provision as are wages and longevity. (Tr. p. 23, 204). The PBA's contention that the delay in bargaining, which it attributes solely to the Village, is pretextual. The conduct of bargaining linked to the County was the method chosen by the PBA and, therefore, "If they chose to follow the County in a pattern bargain, whatever we want to label it, there's going to be delay". (Tr. p. 106). Moreover, "We have always had delay and they have accepted it." (Tr. pps. 107-108). The remedy has not been more than the County agreement but, rather, "the tradition of the parties" and "the consistent practice" has been "to make the payments retroactive". (Tr. p. 114). Therefore,

the Village should not be required to grant the PBA unit members more than the County agreement provides for in wage increases and longevity because of an alleged delay which, traditionally, is normal. (Tr. p. 24). The delay involved was, for the reasons indicated, not unusual: "Particularly, in the context of delay occasioned by their delay, by the County of Suffolk, and, particularly, because they filed a petition after we offered parity which is what they now want." (Tr. pp. 108-109).

As for the dental insurance plan, the Village acknowledges that it has a duty to bargain (Tr. p. 111), but that there has been no bargaining because "The Village of Northport has yet to receive a specific articulated, quantified proposal for dental insurance." (Tr. pps. 25, 80-84; 109-110). The PBA disputes the Village's assertion that it never received a dental plan from the PBA. (Tr. p. 84). However, the Village will consider a plan proposed by the PBA and, accordingly, respond. (Tr. pps. 110-111; 118-119).

VI

The Panel's Authority

The reopener provision of the usual collective agreement is generally restrictive in scope confined to matters specifically set forth in the reopener provision. A reopener provision is, in effect, an agreement as to the subject matter or matters the parties will negotiate for effectiveness at some agreed upon fixed time during the collective bargaining agreement. As the record herein abundantly attests, negotiations under the reopener provisions for wage increases and longevity comprehended a standard for comparability which the parties had previously agreed to in the negotiations prior to the execution of the instant three year collective bargaining agreement. This agreement was a continuum of a bargaining tradition which inhered, more or less the calculus of local conditions, mutual acceptance of the County agreement as the beacon for major economic benefits. The apparent exception to this criterion is the dental plan, the cost of which the parties obviously intended to negotiate within the parameters of the cost of a total economic package. In this respect it may be noted that no evidence of dental plans and coverage of dental benefits of comparable jurisdictions of comparable employees is offered which could formulate a foundation upon which the Panel could make a determination.

It is, on the other hand, unequivocally plain that the reopener provisions of the collective bargaining agreement, and the articulated positions of the parties, substantiated by the record evidence in its entirety, endow the Panel with authority to make a Just and Reasonable Determination with respect to: (i) Wages; (ii) Longevity; and (iii) a dental insurance plan or an alternative thereto. Each of the aforementioned matters is expressly left open under the agreement for negotiations between the parties for the last two years of the three year collective agreement commencing March 1, 1982 and ending February 28, 1985. Under the reopener provisions, and as the record evidence clearly supports, the wage increases are to be effective on each of the anniversary dates of the agreement, i.e., March 1, 1983 and March 1, 1984; and as to longevity and a dental plan on March 1, 1983. Support for the foregoing is found in the transcript as follows:

\*THE HEARING OFFICER: I take it the reopener relates to the final two years of the three year agreement?

MR. GROSS: I will make a point for the record. I think, technically, you are limited to the first year of the reopener on dental insurance, first year on salary which we have yet to reach the applicable of the reopener. However, in the interest of not having to do this again, we will not object to the Panel reviewing the two years' worth of monetary reopener and two years' worth of dental reopener. The dental clause is broken

into two parts. Within the first forty-five days, parties will agree to meet to discuss dental insurance and the second sentence talks about a reopener of this coming March. Technically, we could ask the Panel to defer. However, in the interest of resolving this and not having time to negotiate in the future, we would have no objection to the Panel rendering a binding determination for the salary for this year and the next year and the dental insurance for the two years and the longevity issue for the two years. That would be in each of the three instances effective March 1, 1983 for wages and longevity and March 1, 1984 for dental. Mr. Axelrod, do you agree with that?

MR. AXELROD: Yes. I agree with it, although I disagree the Village is conceding. I think it's a right, the PBA has by law that the Panel has the option of awarding a two-year agreement."

Further support for the Panel's authority to make determinations as to the aforementioned three matters for the last two years of the agreement is found on page 90 of the transcript:

"MR. GROSS: If I may respectfully, at the opening of this proceeding, I indicated to the Hearing Panel, Professor Ruffo, particularly, while I believe your jurisdiction is limited to the third year, not the fourth year, I conceded to add the two years in."<sup>2</sup> (Underlining supplied).

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2. The reference to the "fourth" year is obviously a refutation of the PBA's contention that the Panel's jurisdiction may include prescribing a two year contract beyond March 1, 1984, extending to February 28, 1986 for a fourth year. As indicated, however, the Panel's view is that its jurisdiction is coextensive with the term of the collective bargaining agreement commencing with the reopener date, March 1, 1983. Further, no evidence has been presented to the Panel with respect to a "fourth" year and, it may be noted, that the PBA's demands do not include a "fourth" year. (PBA Ex. 4). What is dispositive is the Village's concession, "to add the two years in", commencing March 1, 1983.

## VII

### The Economic Issues In Dispute (Wages and Fringe Benefits)

#### 1. Wages:

##### a) The Panel's Analysis and Findings:

The record evidence leaves no doubt that, in accordance with the prior history of bargaining, the parties executed the current three year agreement (March 1, 1982 - February 28, 1985) on November 16, 1982. (Joint Ex. 1). The said agreement constituted a complete integrated agreement as to all matters for the full term of the agreement except for wages, longevity and a dental plan. As for the former two matters the record is categorically clear that at the time of the execution of the current agreement the wages for the Suffolk County police officers, for the calendar years 1983 and 1984, had not as yet been settled or determined. Thus, the parties, as historically the practice, made provision for a reopener as to negotiations for wages for the years commencing March 1, 1983 and March 1, 1984. Though the commitment is to negotiate only, it is unequivocally plain, again consistent with the historical pattern of bargaining, that, upon the settlement and determination of the wage increases for the Suffolk County police officers, the Northport police officers would receive the same percentage wage increases

for the years left "open" in the current collective bargaining agreement, i.e. 1983 and 1984.

It was not until April 11, 1983, some five months after the execution of the current agreement, that a Suffolk County Public Arbitration Panel issued its award prescribing wage increases for the Suffolk County Police Officer for the calendar years 1983 and 1984. By doing so, the said award provided for wage increases pursuant to the reopener provision of the Suffolk County-PBA agreement previously executed in April, 1981. (See PBA Exs. 17, Award; and 16, Suffolk County Agreement).

The time interval of some six (6) months between the end of the first year of the Northport-PBA agreement, superimposed by an additional time period during which the procedures for this arbitration will have been exhausted, total some 12 to 13 months. It is this time interval which is the root cause for the PBA's rejection of the same wage increases granted to the Suffolk County police officers. For, claims the Northport PBA, the Suffolk County police officers have been receiving their 1983 wage increase since April, 1983, retroactive to January 1, 1983 while the Northport police officers have yet to receive any wage increase at year's end 1983. The result, argues the PBA, is an inequity due to a loss in purchasing power or real wages des-

pite any retroactive wage increase given from March 1, 1983. Thus, the PBA seeks to "catch-up" by the "bonus" sum of \$200.00 which it computes is the fair amount to redress the inequity which amount need not be built into the wage structure.

The PBA's "catch-up" thrust elicits an understanding chord. For, on its face, the predicate or standard between the County and Northport police officers being one of equal treatment, it would follow that anything less than equality is inequitable. The premise, sound in the abstract, falters in the light of the surrounding circumstances which, in the final analysis, must govern the outcome now, as it has in the past.

In the first place, empirical experience demonstrates that while the bargaining process is intended and designed to accomplish equity for employees, the actual result is rarely a perfected equity; nor does equity necessarily mean equality in all respects. Thus, delays in the bargaining process are not unusual and to attempt to evaluate delays in terms of fault, absent bad faith, may turn out to be a labor in inutility. In the instant case, closely scrutinizing and analyzing the delay and the reasons for the delay, there would seem to be little, if any, justification to award a "catch-up" bonus because of the delay fac-

tor which, in the first instance, was built-in by choice, and, in the second instance, was due to the invocation of statutory redress.

Secondly, the parties could have negotiated wage increases for the three year term of the agreement. Had they done so, the equities could have been in place from the inception based upon a direct and bilateral determination by the parties themselves without reference to any outside criterion. Thus, the matter of establishing an equitable wage structure was always, as it will again be at the conclusion of the current agreement, within the direct control of the parties.

Thirdly, the "Bonus" amount assumed to be representative of an amount required to recoup a "loss in purchasing power" does not demonstrate the kind of an amount which is unconscionable and, therefore, warrants discarding the bargaining conduct to which the parties have adapted and which, on the whole, has fulfilled a pragmatic purpose and objective. At this point in the bargaining relationship of the parties a more practical purpose is served by upholding the equilibrium induced by the parties' adoption of the collective bargaining conduct resulting in the current agreement. The wisdom or unwisdom displayed at the bargaining table is best left to the discretion of the parties in the

expectation that should subsequent events prove the decision to be harmful or prejudicial to one side it will, in short order, be corrected where it should be - at the bargaining table.

As amended by the Suffolk County Public Arbitration Panel, the County's collective bargaining agreement provides for wage increases as follows: 7.75% effective January 1, 1983 and 8% effective January 1, 1984. (Tr. p. 97; PBA Ex. 17). (Not relevant to this proceeding is the Suffolk award which also prescribes an 8% wage increase for calendar 1985. Presumably, this figure will guide the Northport-PBA negotiations for a successor agreement, effective March 1, 1985 - unless, of course, one of the parties clearly indicates to the other that it wants to bargain without Suffolk County being the only or exclusive standard or, if it is, that the successor agreement will have to reflect the County settlement plus some monetary addition to make up for the lag in the effectiveness of the Northport wage increases).

b) The Panel's Determination:

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that ~~across-the-board~~ wage increases be granted to all police officers of the Village of Northport and that Section 4, "Wages" of the current collective bargaining agreement be modified and, as modified, provide for the following wage increases:

7.75% effective March 1, 1983; and  
8% effective March 1, 1984.

Further, the said modification shall refer to the new schedule of wages which schedule is set forth below and shall be known as "Wage Schedule A" and be annexed to the current agreement. The said schedule shall set forth the wages of the Northport police officers in the various grades, during the three year term of the agreement, effective on March 1, 1982, March 1, 1983, and March 1, 1984, as follows:

"Section 4 - Wages

A) The wages for the duration of this contract shall be as follows for employees hired before March 1, 1981:

|                           | <u>Effective<br/>3/1/82</u> | <u>Effective<br/>3/1/83</u> | <u>Effective<br/>3/1/84</u> |
|---------------------------|-----------------------------|-----------------------------|-----------------------------|
| Police Officer (1st year) | \$19,840                    | Not Appl.                   | Not Appl.                   |
| Police Officer (2nd year) | \$24,749                    | Not Appl.                   | Not Appl.                   |
| Police Officer (3rd year) | \$26,135                    | \$28,160                    | \$30,412                    |
| Police Officer (4th year) | \$27,548                    | \$29,683                    | \$32,057                    |
| Police Officer (5th year) | \$28,522                    | \$30,732                    | \$33,191                    |
| Sergeant                  | \$33,929                    | \$36,440                    | \$39,100                    |
| Lieutenant                | \$37,769                    | \$40,564                    | \$43,125                    |

*3 2/7/84  
Call by  
Dorothy  
Dugan  
Clerk -  
corrected  
by both  
sides*

The wages for Police Officer for the 1983-84 and 1984-85 fiscal years, who were hired after March 1, 1981, shall be as follows:

|                           | <u>Effective</u><br><u>3/1/82</u> | <u>Effective</u><br><u>3/1/83</u>   | <u>Effective</u><br><u>3/1/84</u> |                                  |
|---------------------------|-----------------------------------|-------------------------------------|-----------------------------------|----------------------------------|
| Police Officer (1st year) | \$16,306                          | \$17,570                            | \$18,975                          |                                  |
| Police Officer (2nd year) | \$18,456                          | \$19,886                            | \$21,476                          | 2/17/84-<br>7 call by<br>Deborah |
| Police Officer (3rd year) | \$20,606                          | \$22,203                            | \$23,979                          | Dugan<br>Clevix                  |
| Police Officer (4th year) | \$23,022                          | \$24,806                            | \$26,791                          | corrected<br>by both<br>Sides    |
| Police Officer (5th year) | \$25,528                          | \$27,506                            | \$29,706                          |                                  |
| Police Officer (6th year) | \$26,907                          | \$28, <del>884</del> <sup>992</sup> | \$31,194                          | 312                              |
| Police Officer (7th year) | \$28,522                          | \$30,732                            | \$33,191                          |                                  |

2. Longevity:

a) The Panel's Analysis and Findings:

For all of the reasons mentioned with respect to wages the Panel's view is that the Northport police officers are entitled to the same longevity rate and schedule as the County police officers now have. The current Northport-PBA agreement provides for the reopening of negotiations concerning longevity effective March 1, 1983. The Panel interprets this provision to mean that longevity benefits, had they been negotiated or accepted as offered by the Village, would have been effective March 1, 1983. The Panel is not presented with any reason or evidence why, therefore, its determination ought not to be made effective as of March 1, 1983.

The PBA invites the Panel's attention to the Suffolk County longevity benefits pointing out its comparability

to the Northport-PBA agreement, except that the Suffolk County agreement provides for \$520.00 after fifteen (15) years of service whereas the Northport-PBA agreement provides for \$400.00 after the same number of years of service. (Tr. p. 97). Consistent with the Panel's views heretofore expressed concerning the historical bargaining conduct of the parties, and the underlying bases for such conduct, the Panel's judgment is that the Northport police officers should be brought up to the same level as their colleagues in Suffolk County.

b) The Panel's Determination:

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that, effective March 1, 1983, section 5, "Longevity Pay" of the current agreement be modified to the extent that the sum of Five Hundred (\$500.00) Dollars additional be paid to a Northport Village police officer after fifteen (15) years of completed service instead of Four Hundred (\$400.00) Dollars, and, as so modified, section 5 shall, in all other respects, remain the same (except for the reopener provision whose utility is now ineffectual).

This Panel is aware of the seniority award made by the Suffolk County Public Arbitration Panel to the effect that, effective January 1, 1985, the County's police officers will be entitled to \$660.00 after six (6) years of service,

not payable until the sixth (6th) year. This represents an increase of \$60.00 over the present amount of \$600.00 after six (6) years of service. However, as noted, the effective date of payment is January 1, 1985 - two (2) months prior to the expiration of the Northport-PBA current agreement. Again, equity carried to perfection would require some pro-rata computation involving some two (2) months and an amount hardly demonstrative of a need for correction at this point. The fact that the parties will and can, in less than a year from now, deal with that matter directly in negotiations, and perhaps to better advantage, outweighs any very modest change in this respect now.

3. A Dental Plan:

a) The Panel's Analysis and Findings:

The reopener provision for the matter of a dental plan requires, in the first instance, that the parties meet and confer "within forty-five (45) days from the execution of this agreement regarding the selection of a dental plan". The agreement was executed on November 16, 1982. The particular provision continues, "Furthermore, the issue of dental plan coverage shall be subject to negotiations for the 1984-85 contract year." Thus, reasonably interpreted, the provision contemplates negotiations for a dental plan or dental coverage by December 31, 1982, for effectiveness for the

fiscal or contract year 1983-1984 and, again ("Furthermore"), for the 1984-1985 fiscal or contract year. Admittedly, there has never been negotiations with respect to a dental plan. ("There's been no specific discussion on any specific plan." And, "There's been no collective bargaining on any specific dental plan.") (Tr. pps. 109 and 110). However, the Village is amenable to do so now, conceding that: "It's our duty to do so under the contract" (Tr. p. 110), though contending that it was never presented with any specific plan by the PBA which the latter disputes. Needless to say, the obligation to bargain on a mandatory item, such as a dental plan is bilateral. The particular provision requires that, ".... the parties shall meet and confer, etc." Responsibility to initiate bargaining is not laid on the shoulder of one party alone, though from a practical aspect one would expect the PBA to do the initiating. However, that it may not have implies no penalty. Certainly, no waiver has been spelled out.

After analysis of the record in its entirety, resolution of the dental insurance plan issue is best summed up by the Village's position, that is, ".... We will not object to the Panel reviewing .... two years worth of dental reopener", and, ".... we would have no objection to the Panel rendering a binding determination for the .... dental insurance for the two years, etc." (Tr. p. 27). The cost

of the existing dental plan, as given by the PBA, is computed at \$251.06 annually, per member. (Tr. p. 95). The plan proposed by the PBA is estimated at approximately \$480.32 annually, per member, or approximately \$230 more, annually, per member. (Tr. pps. 94-95). If the figures of the PBA are accepted the estimated cost of an improved dental plan, retroactive to March 1, 1983, would cost the Village approximately \$6,000 (\$230 per year or \$460 for two years X 13 police officers). However, in the words of counsel for the PBA with specific reference to negotiating a dental plan, retroactive to March 1, 1983, "...there's no point in negotiating on this because you can't have retroactivity in dental benefits" and, "if we don't have a new policy, the old policy will control." (Tr. pps. 84-85).

At the Panel Executive Session held on February 2, 1984, it was ascertained by the Panel that the sum of \$251.06 paid by the Village, annually per member, includes the sum of \$100.00 as and for life insurance premium, annually, per member. Thus, the sum actually paid by the Village for the dental coverage of unit members is \$151.00 per member, annually, multiplied by 18 unit members (13 police officers and 5 superior officers), yielding a total annual sum of \$2,718 now paid by the Village for the dental coverage of the bargaining unit members.

A rational and common sense approach, as suggested

by Counsel for the PBA, dispels the introduction of a dental plan with retroactive benefits which are now beyond grasp. On the other hand, there is still time to provide for dental coverage benefits effective March 1, 1984. Thus, the only negotiable phase involves the contract year 1984-1985. On balance, based on all of the circumstances and the reality involved, a more rational and equitable approach is for the Village to pay a premium to a dental plan or carrier of the PBA's selection which will reflect an improvement in dental benefits for the unit members for the contract year 1984-1985. It may be noted that the parties will, within one year from now, be in a position to resume negotiations for a successor agreement, effective March 1, 1985, at which time a thorough assessment may be made by the parties to consider the relative merits of various dental plans. In the interim the one selected by the PBA will suffice for the contract year 1984-1985.

b) The Panel's Determination:

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Village pay to a dental plan or carrier of the PBA's selection the sum of \$350.00 per member, annually, for the contract year 1984-1985, which sum shall include the sum of \$151.00 now paid by the Village for the dental coverage of the unit members. The total sum to be paid by the Village is \$6,300.00 for the contract year 1984-1985 which sum includes the present \$2,718.00 now paid by the

Village for the dental coverage of 18 bargaining unit members. Payments by the Village shall be made, at its option, directly to the carrier or dental plan selected by the PBA upon the presentation to the Village of an invoice or bill for premium payments. The PBA shall advise the Village of its dental plan or carrier selection upon receipt of this Award which shall then be the dental plan in place and instead of the existing dental coverage now in effect.

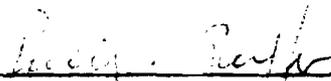
#### Conclusion

In rendering the several determinations herein, the Panel has made an earnest effort to understand and weigh the respective equities and merits of the parties' positions. The Panel has concluded that the wage increases herein granted and the benefits constitute a just and reasonable determination of all issues submitted to the Panel based upon all of the facts and circumstances, supported by a rational analysis of the evidence contained in the record.

It is in the interest of the Village's taxpayers that their village have a well organized and properly motivated police force whose compensation and other benefits meet the objective standards of fairness, equity, justice and reasonableness. Illustrative is the matter of the night

differential which is a significant part of a police officer's compensation and which is not, at the present time, available to the Northport police officers. The opportunity to negotiate this benefit, against the backdrop of the County's night differential, in line with the parties' historical pattern of bargaining, will be available for effective implementation with the commencement of the successor agreement beginning March 1, 1985.

Dated: February 2, 1984

  
Philip J. Ruffo,  
Chairman, Public Member

**Dissents**  
*Dissent* ~~Concurs~~   
Peter Nolan,  
Public Employer Member

~~Dissents~~  
**Concurs**   
Gene A. Roemer  
Employee Organization Member

ACKNOWLEDGMENTS

STATE OF NEW YORK        )  
                                  )    SS:  
COUNTY OF                 )

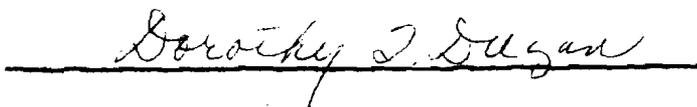
On this 2nd day of February, 1984, before me personally appeared PHILIP J. RUFFO, to me known and known to me to be the Chairman, Public Member, described in and who executed the foregoing Panel's Determination and Basis for Findings, and he duly acknowledged to me that he executed the same.



DOZOLY J. DUGAN  
Notary Public, State of New York  
No. 417066900 - Suffolk County  
Term Expires March 31, 1984

STATE OF NEW YORK        )  
                                  )    SS:  
COUNTY OF *Suffolk*        )

On this 2<sup>nd</sup> day of February, 1984, before me personally appeared PETER NOLAN, to me known and known to me to be the Public Employer Member, described in and who executed the foregoing Panel's Determination and Basis for Findings, and he duly acknowledged to me that he executed the same.



STATE OF NEW YORK            )  
                                      )  
COUNTY OF *Suffolk*        )    SS:

On this *2<sup>nd</sup>* day of February, 1984, before me personally appeared GENE A. ROEMER, to me known and known to me to be the Employee Organization Member, described in and who executed the foregoing Panel's Determination and Basis for Findings, and he duly acknowledged to me that he executed the same.

*Dorothy J. Duggan*

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