

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

- - - - -X

In the Matter of the Public Arbitration :

- between - :

INCORPORATED VILLAGE OF LAKE SUCCESS, :

Public Employer, :

- and - :

LAKE SUCCESS POLICE BENEVOLENT  
ASSOCIATION, INC., :

Union. :

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

PERB Case No. IA 84-28; M 84-342 :

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PANEL'S  
DETERMINATION  
AND BASIS FOR  
FINDINGS

APPEARANCES

For the Public Employer:

D'Amato, Forchelli, Libert, Iovino,  
Schwartz, Mineo and Weinstein, Esqs.

By: Peter R. Mineo, Esq.  
John Giordano

Christine A. Reed

Counsel  
Of Counsel  
Village Administrator,  
Budget Officer  
Clerk-Treasurer

For the Union:

Schlacter and Mauro, Esqs.  
Raymond A. Mauro, Esq.  
Michael Musto

William S. Roberts  
Frank Napoli  
Gary Breitweg

Counsel  
Of Counsel  
President, PBA  
Police Officer  
Police Sergeant  
Police Officer  
Police Officer

Before the Public Arbitration Panel:

Philip J. Ruffo, Esq.  
Albert Zimbalist  
Joseph Sanchez

Public Member and Chairman  
Public Employer Member  
Employee Organization  
(Union) Member

SUMMARY OF AWARD

Set forth below are matters of major economic and non-economic significance considered by the Panel:

1. Ability to Pay:

The Panel concluded that the Village of Lake Success does have the financial ability to pay the wage increases and benefits determined to be just and reasonable by the Panel.

2. Wages:

Police Officers:

Starting Pay

Effective June 1, 1984 - 20,000

Effective June 1, 1985 - 21,000

Upon Completion of Academy

Effective June 1, 1984 - 21,264

Effective June 1, 1985 - 22,264

First Year

Effective June 1, 1984 - 23,600

Effective June 1, 1985 - 25,016

General Wage Increase

After first year: Through Fourth Year:

6 3/4% - effective June 1, 1984

6 3/4% - effective June 1, 1985

Sergeant's Differential

Maintain approximate 18% differential between  
Police Officer's top pay and Sergeant's pay:

39,134 - effective June 1, 1984

41,781 - effective June 1, 1985

3. Retirement (Pension) Plan:

Maintain present 384-d pension plan and adopt non-contributory plan with age cap of 62. Village is to adopt 375-i pension plan and with option to adopt 375-j pension plan for effectiveness prior to May 31, 1986. If Village adopts 375-j plan, such plan is to be exclusive.

4. Sick Leave and Pay at Retirement:

Twenty (20) annual sick leave days continued.

Cap of 160 unused accumulated sick leave days payable at retirement increased to cap of 200 days. However, any unused sick leave days over 160 up to 200 is payable at the rate of one (1) day for every two (2) days. Unused sick leave days up to and including 160 remain payable at the rate of one (1) day for every day.

5. Grievance - Arbitration:

Grievance - Final and Binding Arbitration procedures to be implemented. Two step grievance procedure. First step to Police Chief; Second step to Village Board; Third step, final and binding arbitration to arbitrator mutually selected. All costs shared equally. (For definition of grievance, see within Determination).

6. Termination Days:

See Addendum attached hereto.

I

Preliminary Statement

By a communication dated January 14, 1985, 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 between the parties in the above captioned proceeding as to the matters and issues at impasse, hereinafter set forth and discussed. (Joint Ex. 3).

In accordance with the above cited authority, hearings were held in 1985 on the following dates: April 5, May 23, September 5, September 20, and October 17.

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

On the first two days of the hearings the parties agreed to proceed without a transcript in an effort to mediate the impasse and, if possible, narrow the issues with the assistance of the Panel. Thereafter, since mediative efforts were not successful in resolving all issues, the hearings proceeded in regular fashion with a transcript taken of the hearings on September 5, 20, and October 17, 1985. \*

The record made herein was somewhat extensive consisting of 260 pages of testimony and a total of 59 exhibits, the majority being multi-paged. (The Public Employer submitted 12 exhibits; the Employee Organization submitted 44 exhibits; and 3 were joint exhibits). In addition, the parties, through counsel, submitted post-hearing briefs which were received on December 23, 1985 from Union counsel, and December 27, 1985 from the Public Employer's counsel.

Subsequent to the close of the proceedings, the

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\*References to the testimony taken at the hearings are indicated by the following symbols in parenthesis: (Tr. pp. ) followed by the date of the hearing.

Panel met in Executive Session on January 15, 1986 for the purpose of discussing and deliberating all of the issues in the record presented to the Panel for determination.

After due consideration and deliberations of all of the evidence in the entire record, including the testimony, exhibits, arguments presented and the briefs of counsel, the Panel's determinations, as hereinafter set forth, are concurred in by a unanimous vote of all Panel Members.

## II

### Statutory Criteria

Consistent with statutory requirement, 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 interest 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 provisions for salary, insurance and retirement benefits, paid time off and job security.

### III

#### The Parties - Their Bargaining Relationship

The Village of Lake Success is a relatively small community with a population of approximately 2,800 residents. (Tr. p. 29, 9/20/85). Its Police Department is commensurate in size consisting of a uniformed force of 21 members - 1

Police Chief, 4 Sergeants and 16 Police Officers. (Tr. p. 23, 9/20/85). The foregoing figures indicate that there is one uniformed officer for every 140 village residents. The Police Department has no Captains, Lieutenants or Detectives. (Tr. pps. 23, 34, 9/20/85). Detective involvement is referred to the Sixth Precinct Nassau County Police Department. (Tr. p. 37, 9/20/85). The same is true of burglary investigations. (Tr. p. 38, 9/20/85). The work day is divided into three eight-hour tours manned by a Sergeant, three Police officers and a civilian dispatcher. (Tr. p. 25, 9/20/85). For purposes of rendering police services the Village is divided into four geographical areas covering four posts described in each instance as a "Country Club" area, a "residential" area, an "industrial" area, and a combination "residential and some industry" area. (Tr. p. 29, 9/20/85). (PBA Ex. L).

The Union is the exclusive bargaining representative of a bargaining unit consisting of 4 Sergeants and 16 Police Officers.

The bargaining relationship has been established through successive collective bargaining agreements, the most recent being a two (2) year agreement, effective June 1, 1982, and expiring May 31, 1984.

The current dispute stems from an impasse in nego-

tiations for a successor collective bargaining agreement effective and commencing June 1, 1984. The commencement date of collective bargaining agreements between the Village and the Union coincide with the Village's fiscal and budgetary year beginning June 1st and ending May 31st of the succeeding year.

#### IV

#### The Issues In Dispute

The Union presented thirty-three (33) issues, all of which were considered by the Panel and are set forth in Joint Ex. 1A as follows:

Base pay; new pay scale (steps); longevity; uniform equipment and maintenance; night differential; recall; compensatory time; duty chart; sick time (including accumulation and payment upon retirement); vacations; holidays; bereavement days; personal leave days; career retirement plan; terminal leave; vested rights; medical insurance coverage; term life insurance; meal break; meal period (overtime); meal allowance; night differential method of payment; dental plan and optical plan; incentive days; emergency leave days; grievance procedure; performance of duties of higher rank; automobile equipment; twelve hour restriction on continuous work

during swapped tours; line of duty injuries; per diem rate; tuition reimbursement; and civil service promotional appointments.

Though presenting all of the foregoing issues, an analysis of the record will reveal that, during the hearing and in its post-hearing brief, the Union focused mainly and at length on the following issues: wages; the adoption of a new pension plan (Section 375-i, Social Security and Retirement Act); annual sick leave and pay for cumulative sick leave upon retirement. Correspondingly, and in the main, the Village presented testimony responding at length to the foregoing matters as well as in its brief.

V

Major Terms and Conditions of Employment  
Set Forth in the Predecessor Collective  
Bargaining Agreement Covering the Period  
From June 1, 1982 to May 31, 1984

A summary of major terms and conditions of employment (economic and non-economic), provided for in the predecessor collective bargaining agreement, which expired on May 31, 1984, is as follows:

1. Salary Schedule (As of June 1, 1983 - May 31, 1984):

|                                 |          |
|---------------------------------|----------|
| Starting                        | \$16,000 |
| After police academy completion | 18,800   |
| After 1 year                    | 21,800   |
| After 2 years                   | 24,900   |
| After 3 years                   | 27,900   |
| After 4 years                   | 31,000   |
| *Sergeant                       | 36,664   |

2. Longevity (June 1, 1982 through May 31, 1984):

| <u>Years Of<br/>Completed Service</u> | <u>Additional<br/>Payment</u> | <u>Total Longevity<br/>Payment</u> |
|---------------------------------------|-------------------------------|------------------------------------|
| 6                                     | \$600.00                      | \$ 600.00                          |
| 10                                    | 400.00                        | 1,000.00                           |
| 15                                    | 600.00                        | 1,600.00                           |
| 16                                    | 100.00                        | 1,700.00                           |
| 17                                    | 50.00                         | 1,750.00                           |
| 18                                    | 50.00                         | 1,800.00                           |
| 19                                    | 50.00                         | 1,850.00                           |
| 20                                    | 50.00                         | 1,900.00                           |
| 21                                    | 50.00                         | 1,950.00                           |
| 22                                    | 50.00                         | 2,000.00                           |
| 23                                    | 50.00                         | 2,050.00                           |
| 24                                    | 50.00                         | 2,100.00                           |

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\*The differential in pay between Sergeant and top base pay of a Police Officer is slightly higher than 18%. (18% would be \$36,580).

3. Basic Work Week and Tour of Duty:

Three eight hour basic daily duty tours as follows:

- First Shift (11 P.M.-7 A.M.) 4 tours of duty followed by  
96 hours off.
- Second Shift (7 A.M.-3 P.M.) 5 tours of duty followed by  
72 off duty hours.
- Third Shift (3 P.M.-11 P.M.) 5 tours of duty followed by  
72 off duty hours.

4. Night Differential:

10% of base pay for actual work between 3 P.M. and  
7 A.M.

5. Overtime:

Time and one-half over basic work week or 8 hours;  
or compensatory time at employee's option. Longevity pay is  
included in computing overtime.

6. Holidays and Holiday Pay:

13 paid holidays. Time and one-half for scheduled  
work; double time and one-half if required to work on a non-  
scheduled work day. Plus special days designated by County  
Executive or Village Mayor.

7. Vacations and Other Leaves:

a) Vacations:

From 15 days after the first year of service to 27  
days after the fifth year of service.

b) Sick Days:

20 days per year; cumulative unlimited; unused sick

leave payable upon retirement for every day up to 160 days.

c) Personal:

5 days per year (non-cumulative).

d) Terminal Leave:

Credit for 5 days per year, cumulative; payable in cash up to 100 days at retirement. Also, payment upon separation for certain causes after 20 years.

8. Vesting of Terminal Pay:

Includes terminal leave days and accumulated sick leave days which vest after ten (10) years of service and payable on a pro-rata basis depending on years of service at employee's separation. Also benefits to which the employee is entitled (with specified exceptions) are payable upon termination for any reason including cause. The benefits include vacation, compensatory time, but excludes retirement benefits.

9. Pension:

Section 384-d of the Retirement and Social Security Law (New York) is applicable with Village assuming full cost. (Page 9, Village brief; Tr. pps. 38-39, 10/17/85).

10. Equipment and Uniform Allowance:

\$475.00 annually for equipment. Further, Village is required to supply uniform in accordance with past practice.

11. Insurance and Other Related Benefits:

a) Medical Coverage: Village pays full cost under New York State Health Insurance Plan.

b) Village assumes full cost including hospitalization for surviving spouse and/or dependent minor children for one year after member's decease.

c) Dental Plan: Village contributes \$200 per annum, per member, toward premium payment; additional cost, if any, by Union.

d) Funeral Expenses: Village pays up to \$2,500 for death incurred in Line of Duty.

e) Section 208-b of General Municipal Law benefits applicable.

12. Recall Time:

2 hours if member notified he is on call; minimum of 4 hours pay if recalled to duty.

VI

Financial Ability To Pay

At the outset, the Panel's view is that the statute is, fundamentally, designed to enable a Public Arbitration Panel to arrive at a just and reasonable determination of all issues in dispute between the parties after weighing and assess-

ing all of the facts and circumstances guided by the statutory criteria, as hereinabove set forth, including "the financial ability of the public employer to pay".

The Village's contentions of real concern, regarding its financial posture, now and in the near future, requires consideration to the extent that it stresses the allocation of \$100,000 of its surplus to defend a major law suit; the expenditure of funds to prosecute a significant violation of the Village Zoning Code; and an increase of \$87,000 in unavoidable insurance costs (Tr. pps. 70-80, 9/5/85). The Village's concern is relevant where the grant of wage increases and other benefits to its employees impacts upon the taxpayer's purse. However, it is an unavoidable fact of life that any expenditure by a governmental entity, including the Village, will always, to some degree, have some impact upon its taxpayers, or upon some planned or previously set budgetary allocations and priorities. Thus, while the cost of police protection may run relatively high, compared to the Village's other needs, there may be some financial difficulty to pay a wage increase. However, this is not too unusual considering the contemporary scene of the rising cost of government. For this reason, having analyzed the overall financial condition of the Village, the Panel is of the view that it should not, and in fact has not, ignored the Village's financial condition. Nor has the Panel viewed the Village's financial con-

dition as a wholly irrelevant consideration in determining the wage scale and other benefits for its employees. However, as a practical matter, as well as maintaining fidelity to the applicable statutory criteria, it is also incumbent upon the Panel to balance the needs of the members of the Village's police force for an equitable wage increase and the Village's financial ability to meet the cost of a fair and equitable wage increase and other benefits.

Accordingly, the Village's fiscal facts of life have been considered and while its financial condition is not optimum, its obligation to members of its police force, in terms of a cost factor, is no less than its obligation to pay the going rate for whatever resources it requires to sustain the Village as a viable governmental entity.

The Panel has reviewed and analyzed the evidence relevant to the issue of the Village's financial ability to pay. (Tr. pp. 7-83, 9/5/85; the following PBA exhibits: 'A' - Village Constitutional Tax Limit; 'B' - Debt Statement; 'C' - General Fund Balance; 'D' - Fund analysis of fund balance, reserve and unreserved, fiscal year ending May 31, 1985; 'E' - General Fund, summary statement of revenue and expenditures, budget for fiscal year ending May 31, 1984; and 'F' - General Fund, summary statement of revenue expenditure, budget and actual, for fiscal year ending May 31, 1985; and the following Village Exhibits: '1' - Summons

and Complaint; '2' - Summons and Complaint; and '3' - Insurance Documents).

In sum, the evidence, in its totality, establishes that the Village does have the financial ability to pay the members of its police force a wage increase and other benefits as herein determined, though not to the extent demanded by the PBA Union. In this respect the record establishes that the Village has managed its fiscal affairs in a consistently prudent manner, showing no deficits, annual surpluses, well within its constitutional debt and taxing limits, nowhere near the verge of default, with no need of emergency measures or assistance to extricate it from any financial distress and, very significantly, as a barometer of its financial soundness, with its credit rating unimpaired. The bottom line is that the Village of Lake Success is in complete control of the management and operations of its fiscal affairs.

The Panel's Determination:

Accordingly, based upon an analysis of the entire record, it is the:

JUST AND REASONABLE DETERMINATION of the Panel that the Village of Lake Success does have the financial ability to pay the members of its police force, members of the bargaining unit, the wage increases and other benefits as herein determined.

## VII

### The Term Of The Agreement

It may be noted that the Panel's authority to determine the period of a collective bargaining agreement is statutorily limited to two (2) years from the termination date of the predecessor bargaining agreement. (Civil Service Law, Section 209.4(vi) ). In this case, the predecessor agreement terminated on May 31, 1984 - some twenty (20) months as of this writing (January, 1986). Consequently, within the same time frame, the successor collective bargaining agreement will have an expiration date of May 31, 1986 - some four (4) months from now. The return to the negotiating scrimmage line while this Award is, in a manner of speaking, scarcely off the press, conjures some doubt whether the need for sound fiscal and budget planning is helped. This is particularly true in light of the Village's statutory obligation to negotiate with the representatives of its police force for the next successor collective bargaining agreement effective June 1, 1986. Yet, a studied analysis of the record, containing factual data and material, discloses the parties' preference for a two year collective bargaining agreement rather than an agreement of longer duration. The reluctance of the PBA for a three (3) year contract is manifest. (Tr. pps. 25, 31-32, 10/17/85). Thus, both by statutory limitation and the record made by the parties, the Panel has no alternative but to DETERMINE that

the successor collective bargaining agreement between the parties be for a term of two (2) years, commencing June 1, 1984 and ending May 31, 1986.

## VIII

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

#### 1. Wages:

The PBA's demand for a wage increase may be divided into three components: (i) an increase in starting salary; (ii) a general across-the-board increase; and (iii) the maintenance of a wage differential between the ranks of Sergeant and Police Officer.

(i) As for a starting salary, the PBA proposes an increase from the present \$16,000 to \$22,000, contending that the Village has the lowest starting salary for its police officers than that of fifteen other jurisdictions in Nassau County. (Tr. pps. 18-19, 10/17/85; PBA Ex. JJ; PBA brief, page 8). The jurisdictions invoked for comparison purposes, and the starting salaries for the years 1984 and 1985, are set forth in the table below:

| <u>Jurisdiction</u> | <u>1984</u> | <u>1985</u>   |
|---------------------|-------------|---------------|
| Rockville Centre    | \$18,420    | \$19,985      |
| Nassau County       | 21,068      | 22,795        |
| Malverne            | 20,844      | 22,303        |
| Lynbrook            | 18,000      | 20,000        |
| Long Beach          | 21,268      | 22,785        |
| Kings Point         | 23,957      | 27,944        |
| Hempstead           | 24,140      | 26,071        |
| Glen Cove           | 24,499      | 25,356        |
| Garden City         | 22,538      | 24,556        |
| Freeport            | 24,546      | 26,264        |
| Floral Park         | 20,397      | Not Available |
| Old Brookville      | 20,063      | 21,668        |
| Old Westbury        | 17,000      | 17,000        |
| Port Washington     | 21,568      | 23,295        |
| Sands Point         | 24,224      | 26,101        |

The Village acknowledges that the present starting salary of \$16,000 for its police officers is low and offers to increase it to \$20,000 for 1984 and \$21,000 for 1985 and increases in lesser amounts upon completion of a police officer's academy training and, thereafter, upon completion of the first year of service, effective in 1984 and 1985. The foregoing offer is based on the Village's recognition that it is necessary to attract and retain recruits assuring the continuity of a stable and experienced police force. (Tr.

pp. 72, 80-82; 10/17/85; Village Ex. 12; Village brief, p. 1).

(ii) As for wage increases following the starting salary and the period through academy training and the first year of service, the PBA demands 9% for the first year of the successor agreement, effective June 1, 1984; and 9% the second year, effective June 1, 1985 over and above the wage in effect on May 31, 1985. (Tr. p. 27, 10/17/85; PBA Ex. LL).

The Village offers 6% for each of the two years of the successor agreement. (Tr. p. 72; Village Ex. 12; Village brief, pages 1 and 18).

The 15 jurisdictions, referred to by the PBA and the Village for comparison purposes, and the top base pay for each jurisdiction for the years 1984 and 1985, are as follows:\*

| <u>Jurisdiction</u> | <u>1984 Salary</u> | <u>1985 Salary</u> |
|---------------------|--------------------|--------------------|
| Rockville Centre    | \$32,751           | \$35,371           |
| Nassau County       | 31,866 (Avg.)      | 34,989             |
| Malverne            | 33,491             | 35,835             |
| Lynbrook            | 32,222             | 34,993             |
| Long Beach          | 33,781             | 36,145             |
| Kings Point         | 34,831             | 37,617             |
| Hempstead           | 32,670             | 35,284             |
| Glen Cove           | 31,906             | 33,590 (Avg.)      |

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\*See PBA Exhibits KK, LL, MM, and JJ.

| <u>Jurisdiction</u> | <u>1984 Salary</u> | <u>1985 Salary</u> |
|---------------------|--------------------|--------------------|
| Garden City         | 31,596             | 34,440             |
| Freeport            | 33,047             | 35,361             |
| Floral Park         | 34,315             | Not Available      |
| Brookville          | 33,086             | 35,733             |
| Old Westbury        | 33,100             | 35,610             |
| Port Washington     | 33,279             | 35,608             |
| Sands Point         | 32,566             | 35,090             |

(iii) As for the differential between the ranks of Sergeant and Police Officer, the PBA demands that the present 18.3% differential be maintained, and, in any event, that the Lake Success Sergeant should be paid no less than the Nassau County Police Sergeant. (Tr. pp. 29-30, 10/17/85; PBA brief, page 9).

The Village's offer of a wage increase is the same for the Sergeant rank as it is for the Police Officer, i.e., 6% for each of the two years (1984-1985) of the successor collective bargaining agreement.

The jurisdictions invoked by the Village and the PBA for comparison purposes, and the Sergeant's pay for 1984 and 1985, are set forth in the table below as follows: \*

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\* Village Ex. 11;

| <u>Jurisdiction</u> | <u>6/1/84</u> | <u>6/1/85</u> |
|---------------------|---------------|---------------|
| Garden City         | \$37,334      | \$40,694      |
| Lynbrook            | 37,278        | 40,484        |
| Old Brookville      | 39,050        | 42,174        |
| Rockville Centre    | 38,008        | 41,048        |
| Nassau County *     | 39,561        | 42,162 (Avg.) |

It is noted that the top pay for the Lake Success police officer after four years was \$31,000 in 1983 and for Sergeant \$36,664 - a differential of 18.3%. The Village's offer of a 6% wage increase, effective June 1, 1984, would increase the police officer pay to \$32,860 and for Sergeant to \$38,863 - again, a differential of approximately 18%. The same differential of 18% will result, effective June 1, 1985, with the grant of a further wage increase of 6%. Consequently, it may be inferred that the Village has no objection, as such, in maintaining the same approximate 18% wage differential between the police officer and the Sergeant.

The Panel also notes that of the eleven (11) jurisdictions in the County, including Lake Success, four (4) maintain a pay differential fluctuating around 18% between the top pay of the police officer and Sergeant; four maintain a pay differential below 18% (two of the four maintain a pay differential of 15% or slightly higher); and only three of the eleven jurisdictions maintain a pay differential of 19%. The

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 \*PBA Ex. QQ

table below is illustrative (PBA Ex. PP):

| <u>Jurisdiction</u> | <u>Sergeant Differential</u> |
|---------------------|------------------------------|
| Lake Success        | 18.27%                       |
| Garden City         | 18 %                         |
| Old Brookville      | 18 %                         |
| Freeport            | 19 %                         |
| Hempstead           | 16 %                         |
| Floral Park         | 18.8 %                       |
| Old Westbury        | 19 %                         |
| Lynbrook            | 15.7 %                       |
| Port Washington     | 15 %                         |
| Kings Point         | 19 %                         |
| Rockville Centre    | 16 %                         |
| Nassau County       | 18.7 %                       |

#### The Panel's Analysis And Findings

The Panel has previously determined that the Village does have the financial ability to pay the members of its police force an equitable wage increase for the two year period commencing June 1, 1984 through May 31, 1986. However, the Panel is also of the view that the Village's present and projected financial position do not warrant the grant of the PBA's demands in full but, as herein determined, to a lesser extent though, again, above that proposed by the Village. In this respect the Panel is of the view that, based upon the

record as a whole, the factor of wage comparison, with other jurisdictions having a uniformed police force, is pertinent and offers a sounder and more probative basis upon which to predicate a determination concerning a just and reasonable wage increase concerning all three aspects of the wage structure: (i) starting pay; (ii) an across-the-board general wage increase after starting pay, academy training and first year of service; and (iii) the differential in pay between the police officer and the Sergeant. An analysis of the data offering comparative wage structures among the jurisdictions invoked by the PBA and the Village demonstrate that: (i) the starting salary of the Lake Success police officer is the lowest of all comparable jurisdictions and, therefore, requires upward adjustment; (ii) that comparable wage structures place the Lake Success police officer in 6th position among the 15 other jurisdictions in 1983 and that an upward wage adjustment is required so that the Lake Success police officer is not disadvantaged but, rather, that, during the two year term of the successor agreement, he maintains the same comparable position with his colleagues in the other jurisdictions; and that, as hereinbefore indicated, the evidence concerning the differential between the Lake Success police officer and Sergeant preponderates in favor of retaining the existing pay differential.

## The Panel's Determination As To Wages

### 1. Starting Pay and Pay Through First Year of Service:

As hereinbefore demonstrated, the record supports, and the Village acknowledges, that a higher starting pay is necessary to attract recruits to the Village police force and to assure their continued service on the force through the academy training and first year of service. Accordingly, the Village has offered the following: \$20,000 effective June 1, 1984, and \$21,000 effective June 1, 1985 as starting pay; \$21,264 effective June 1, 1984, and \$22,264 effective June 1, 1985 upon completion of academy training; and \$23,600 effective June 1, 1984, and \$25,016 effective June 1, 1985 for the first year of service.

Having reviewed the relevant data, it is the JUST AND REASONABLE DETERMINATION of the PANEL that the Village's offer, as hereinabove set forth, be implemented during and for the term of the successor agreement effective June 1, 1984 and ending May 31, 1986.

### 2. General Wage Increase (Police Officer)

### 3. Differential Between Police Officer and Sergeant's Pay:

The Panel has found that the record as a whole requires the Lake Success police officer and Sergeant keep apace with his colleagues in the other jurisdictions invoked

by the PBA and the Village for comparison purposes. In this connection the Panel has taken all statutory criteria into consideration and has applied the evidence and factual data submitted by the parties to the statutory criteria and, based upon its analysis of all of the facts and circumstances, the entire record, the relative weight to its finding regarding the Village's ability to pay, the interest and welfare of the public in maintaining an efficient and properly motivated police force, a comparison of the wage structures in comparable jurisdictions, the nature and scope of the police officer's job, has concluded that the police officers of the Village of Lake Success are entitled to the wage increases and the differentials as hereinbelow determined.

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that, following the first year of service, a wage increase be granted to all police officers of the Village of Lake Success on the dates set forth below, as follows:

a. 6 3/4% effective June 1, 1984 over and above base pay in effect on May 31, 1984; and

b. 6 3/4% effective June 1, 1985 over and above base pay in effect on May 31, 1985; and it is, FURTHER, the JUST AND REASONABLE DETERMINATION of the Panel that the wage differential between the police officer and Sergeant be main-

tained at approximately slightly more than 18% in accordance with the amounts set forth in the table below.

As computed by the Panel the various amounts representing the increases for each of the three wage components, and the effective dates, are set forth in the table below:

|                  | <u>6/1/84</u> | <u>6/1/85</u> |
|------------------|---------------|---------------|
| Start            | \$20,000      | \$21,000      |
| Complete Academy | 21,264        | 22,264        |
| 1 year           | 23,600        | 25,016        |
| 2 years          | 26,580        | 28,374        |
| 3 years          | 29,783        | 31,793        |
| 4 years *        | 33,092        | 35,326        |
| Sergeant         | 39,134        | 41,781        |

4. Career Retirement (Pension) Plan:

The Pension Plans applicable to members of a police force are set forth in various sections of the New York State Retirement and Social Security Act (Act). At the present time all members of the Village's police force are covered under section 384-d which is a contributory plan but, for all practical purposes, is non-contributory since the Village has adopted an "Increased Take-Home Plan" pursuant to which it

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 \*The Village's analysis of PBA's Ex. JJ, showing the comparative wages for top pay in 1984 and 1985, indicates that the average wage for all 15 jurisdictions in 1984 is \$32,898 and \$35,285 for 1985 - slightly lower than herein granted by the Panel.

pays the employees' contributions. (Tr. pps. 37-38, 44, 10/17/85).

The PBA demands that the Village adopt a pension plan making section 375-i of the Act applicable to the Village's police force, contending that all 15 jurisdictions in Nassau County, invoked for comparability purposes, all make section 375-i, in addition to section 384-d, applicable to their police forces. (Tr. pps. 73-74; PBA Ex. R).

The Village offers section 375-j of the Act even though, as it contends, the funding of a section 375-j plan in addition to the present 384-d plan will raise the Village's expenditures/budget significantly. (Village brief, pages 1-2, 10/17/19). Nevertheless, as stated by the Village attorney, "the Village has never seriously contested the PBA's demand for 375-i with a cap at age 62", (Tr. p. 5, 10/17/85), pointing out, however, that subsequent to the hearings in this matter section 375-j has been enacted with a mandatory retirement age of 62 to which the Village has no objection. (Village brief, page 2).

The 375-i plan is preferred by employees since its availability as a benefit would continue beyond 20 years of a police officer's service whereas "under 384-d there would be no additional benefit after 20 years of service". (Tr. p. 38, 10/17/85). In addition to the cost of adopting a 375-i

plan (approximately \$22,000, tr. pp. 42-43, 10/17/85), the Village's contribution to fund such a plan would increase from 31.7% under the 384-d plan to 37.9% under the 375-i plan. (Tr. pp. 44-47, 10/17/85). However, since only five members of the police force are now eligible to transfer from the non-contributory 384-d plan to the contributory 375-i plan, the increase would be \$18,812. (Tr. p. 51, 10/17/85). Nevertheless: "The contribution rate for 375-i is less than the contribution rate for 384-d non-contributory." (Tr. p. 53, 10/17/85). Significant is the fact that, while the Village's contribution would, as hereinabove cited, increase from 31.7% to 37.9% under the 375-i plan, the contribution rate is less than under 384-d and that had the Village adopted the 375-i plan, instead of the 384-d plan, it would have experienced a savings for many years since 1965. (Tr. pp. 74-75, 10/17/85). Further, all other 15 jurisdictions have for these many years been paying the 37.9% rate while the Village has not. (Tr. p. 74, 10/17/85). The main cost to the Village is in the adoption of the 375-i plan but that, in terms of contribution to the plan, there would be a savings and would represent a reduction in the Village's pro rata contribution to the retirement system for every employee electing to transfer into the 375-i plan. (Tr. pp. 74-75; 78-79, 10/17/85). And the cost of adopting the 375-i plan is incurred as a future cost. (Tr. p. 43, 10/17/85).

### The Panel's Analysis And Findings

The Panel has carefully analyzed the data concerning the comparative benefit to the employees of an appropriate pension plan, the cost to the Village of an appropriate pension plan, and the comparison with other jurisdictions invoked for comparability purposes. The Panel has concluded, and the record demonstrates, that all other jurisdictions have made available to members of their police force pension plans under sections 384-d and 375-i and that, fairly and reasonably, the Village's police officers merit the same. As for the cost factor of such pension plans it is the Panel's judgment that the Village can absorb such cost without causing any distortion in the totality of its financial posture or the economic package awarded herein. The Panel notes that the intensity with which the matter of pension plans was presented by the parties demonstrates that the matter of pensions is an inducement for experienced police officers to remain on the job and that such experience is to the advantage and benefit of the Village.

The Panel also notes, upon review of the record, that the PBA is willing to accept the adoption of a non-contributory pension plan, in addition to the present contributory 384-d plan, either under 375-i or 375-j, either of which provides for a retirement age of 62. The Village has also indicated support for a pension plan whose retirement age is capped at age 62.

### The Panel's Determination

Accordingly, based upon the record in its entirety, it is the:

JUST AND REASONABLE DETERMINATION that the Village of Lake Success shall adopt, within a reasonable time after receipt of this Award, for effectiveness prior to May 31, 1986, a non-contributory pension plan, viz., under section 375-i of the Retirement and Social Security Act (with a retirement age cap of 62) and, further, continue and maintain in effect the pension plan under section 384-d of the Act. The Village of Lake Success shall also have the option of adopting a pension plan under section 375-j of the Act (which has a statutory retirement age cap of 62) in lieu of a pension plan under section 375-i of the Act and should the Village adopt a pension plan under section 375-j of the Act such plan, in addition to the plan under section 384-d, shall be exclusive.

#### 5. Sick Leave and Payment of Unused Sick Leave at Retirement

At the present time the Village police officers are entitled to 20 sick leave days annually and to accumulate all unused sick leave days so that upon retirement, the police officer is entitled to be paid in cash for every day up to 160 days of unused sick leave days. Thus, if a police officer

has accumulated 160 days of unused sick leave at the time of retirement, he is entitled to be paid in cash for 160 days. (Tr. p. 14, 10/17/85).

The PBA demands that the sick leave benefit be improved as follows: An increase in sick leave days from 20 to 26 annually (Tr. pp. 14-15, 10/17/85); and an increase in the number of unused sick leave days from 160 to 200 payable at retirement on the basis of 1 day for every unused sick leave day up to 200 days. (Tr. p. 14, 10/17/85).

The Village opposes the PBA's demand, pointing out that while other jurisdictions do grant their police officers 26 sick leave days annually, "it is equally true that each of those jurisdictions only permits unused, accumulated sick leave to be 'traded' in for compensation on a 'two for one' basis". (Village brief, page 14; PBA Ex. FF). In this respect, the Village points out that if a police officer in the other jurisdictions retires with 200 unused sick leave days he receives 100 days pay in cash while the Lake Success police officer receives 160 days pay in cash for the 160 unused sick leave days he is permitted to accumulate. (Village brief, pp. 14-15; PBA Ex. FF).

#### The Panel's Analysis And Findings

The data available for 15 jurisdictions in the County

establishes that 13 grant 26 days (6 more than Lake Success); and 2 (Garden City and Lynbrook) grant unlimited sick leave days. (PBA Ex. FF). Sick leave days in all jurisdictions are cumulative up to a cap of 200 days (except for Old Westbury which uses a formula and Nassau County which grants 235 days). (PBA Ex. FF). However, whereas the other jurisdictions pay their police officers at retirement one day for every two days of accumulated sick leave days, Lake Success pays its police officers, at retirement, for every day of sick leave up to a cap of 160 days. Thus, while police officers in the other jurisdictions have a benefit advantage in terms of a year-to-year basis, the Lake Success police officer has the benefit advantage of retiring with up to 60 days of additional pay than his colleagues in other jurisdictions. The Panel is not inclined at this point to disturb the principle established by the parties, that is, bargaining for more pay at retirement by accepting less leave days annually. However, there is merit to the PBA's request for a more equitable consideration at retirement to balance the additional 6 days which police officers in the other jurisdictions receive annually. The balance is one of degree.

#### The Panel's Determination

Accordingly, based upon the record in its entirety, it is the JUST AND REASONABLE DETERMINATION of the Panel that:

a. The PBA's demand for an increase in the number of annual sick leave days from 20 to 26 be DENIED; and,

b. Effective June 1, 1984, the present unused sick leave benefit with a cap of 160 days, payable in cash at retirement, shall be increased to a cap of 200 days, payable in cash at retirement, as follows: 1 day for every unused sick leave day up to 160 days and, thereafter, for every day up to a cap of 200 days, 1 additional paid day for every 2 days of unused sick leave. Thus, assuming a Village police officer should accumulate 200 days at retirement he would, at that time, be entitled to receive 180 paid days.  $(160 + 40/2 = 180)$ .

6. Termination Days:

See Addendum annexed hereto and made part hereof as though fully incorporated herein.

IX

The Non-Economic Issues In Dispute

Grievance Procedure and Binding Arbitration

At the present time there is no grievance-arbitration procedure to resolve contractual disputes between the parties, though there have been one or two occasions in the past when grievances were resolved on the basis of an informal procedure. (Tr. pp. 6-14, 10/17/85).

The PBA is demanding a grievance procedure culmin-

ating in binding arbitration. (Tr. pp. 12-13, 10/17/85). The Village's position is: "To the extent the PBA seeks to expand that procedure to include a third and final step of binding arbitration, the Village takes no position and respectfully refers the matter to the Arbitration Panel for determination." (Village's Brief, page 14).

#### Panel's Analysis And Findings

The data available for 15 jurisdictions in the County discloses that 12 jurisdictions provide for grievance-final arbitration procedures and 3 (Old Westbury, Old Brookville and Nassau County) provide for advisory arbitration. Of all relevant jurisdictions, Lake Success is the only jurisdiction lacking any grievance-arbitration procedure. The Panel concludes that a grievance-final and binding arbitration procedure is preferable to no procedure for the resolution of contractual disputes. Experience demonstrates that harmony and stability in the bargaining relationship, as well as in the employer-employee relationship, is better served when grievances rooted in job irritants are subjected to impartial scrutiny rather than disposed of unilaterally by the employer.

#### Panel's Determination

Based upon the record, it is the JUST AND REASONABLE DETERMINATION of the Panel that the successor collect-

ive bargaining agreement, effective June 1, 1984, shall contain therein a provision for the resolution of employee grievances arising under the agreement. Said provision shall provide for (i) the definition of a grievance as any controversy arising under the terms of the agreement, or that a department rule or policy violates or is inconsistent with the terms and conditions of the collective agreement; (ii) time limits with respect to the presentation of a grievance, the adjustment of a step grievance; and the submission of an unadjusted step grievance to arbitration; and (iii) final and binding arbitration by an impartial arbitrator mutually selected by the Village and the PBA. Further, the grievance procedure shall consist of two steps - the first step to the Chief of Police and, if unadjusted, the second step to the Village Board. Final and binding arbitration shall be the third step with the costs of arbitration, including the arbitrator's fee, to be equally shared.

As an alternative to the above, the parties may negotiate a procedure mutually agreeable to them.

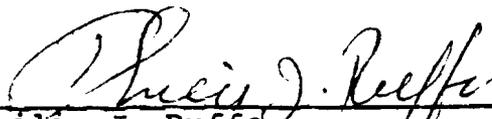
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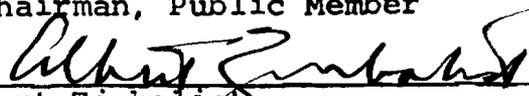
As To All Other Matters  
(Economic and Non-Economic)

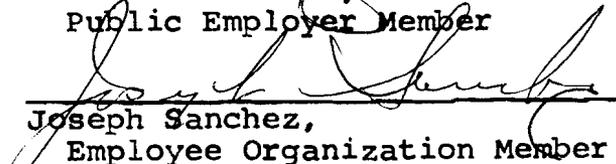
As to all other matters recited under Part Iv of

this Award, labelled "The Issues In Dispute", and as to all other matters in the collective bargaining agreement terminating May 31, 1984, whether or not addressed, as well as matters not herein addressed, disposed or submitted to the Panel, shall be carried over and incorporated into the successor agreement, effective June 1, 1984. In this respect the Panel has concluded that the wage increases and benefits herein awarded 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. The wage increases and benefits herein awarded take into consideration the financial ability of the Village of Lake Success to pay such wages and benefits as well as the financial limitations staying further obligations other than those herein provided. The Panel has also considered the interests of the Village and the taxpayers to maintain a well organized and properly motivated police force whose compensation meets the objective standards of fairness, equity, justness and reasonableness.

Dated: February 7, 1986

  
Philip J. Ruffo,  
Chairman, Public Member

  
Albert Zimbalist,  
Public Employer Member

  
Joseph Sanchez,  
Employee Organization Member

ADDENDUM

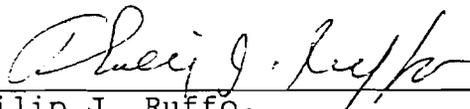
6. Termination Days:

With respect to Termination Days it is the JUST AND REASONABLE DETERMINATION that:

a) There be no change to the present contract provision concerning the accrual of terminal leave days of five(5) days per year for the first twenty (20) years of service.

b) Effective June 1, 1985, there will be an additional four(4) days per year for the 21st year of service through the 25th year of service with a maximum of twenty (20) days so that the overall accrual of terminal leave days shall not exceed 120 days maximum payout at retirement.

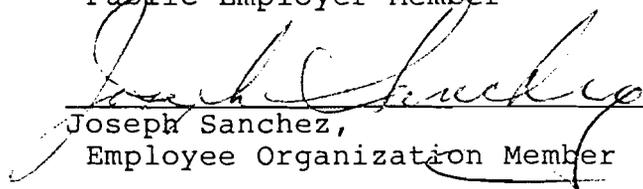
Dated: February 12, 1986



Philip J. Ruffo,  
Chairman, Public Member



Albert Zimbalist,  
Public Employer Member



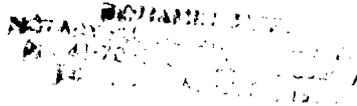
Joseph Sanchez,  
Employee Organization Member

ACKNOWLEDGMENTS

STATE OF NEW YORK    )  
                              )  
COUNTY OF QUEENS    )    SS:

On this 7th day of February, 1986, 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 Award, and he duly acknowledged to me that he executed the same.

  
\_\_\_\_\_  
Notary Public



STATE OF NEW YORK    )  
                              )  
COUNTY OF NASSAU    )    SS:

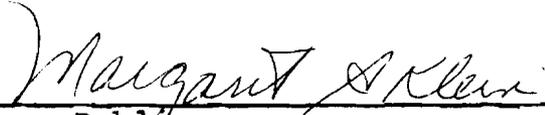
On this 12 day of February, 1986, before me personally appeared ALBERT ZIMBALIST, to me known and known to me to be the Public Employer Member described in and who executed the foregoing Award, and he duly acknowledged to me that he executed the same.

  
\_\_\_\_\_  
Notary Public

MARGARET A. KLEIN  
NOTARY PUBLIC, State of New York  
No. 52-4766332  
Qualified in Suffolk County  
My Commission Expires March 30, 1986 

STATE OF NEW YORK    )  
                          )  
COUNTY OF NASSAU    )    SS:

On this *12* day of February, 1986, before me personally appeared JOSEPH SANCHEZ, to me known and known to me to be the Employee Organization Member described in and who executed the foregoing Award, and he duly acknowledged to me that he executed the same.

  
\_\_\_\_\_  
Notary Public

MARGARET A. KLEIN  
NOTARY PUBLIC, State of New York  
No. 52-4786392  
Qualified in Suffolk County  
My Commission Expires March 30, 1986