

NYC 9/25/86
RECEIVED

JUN 20 1986

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

CONCILIATION

-----X

In the Matter of the Public Arbitration :
- between - :
INCORPORATED VILLAGE OF LARCHMONT, :
Public Employer, :
- and - :
LARCHMONT POLICE BENEVOLENT :
ASSOCIATION, INC., :
Union. :
Pursuant to Section 209.4(c) of the :
Civil Service Law. :

PANEL'S
DETERMINATION
AND
BASIS FOR
FINDINGS
Case No.
IA 86-13; M 86-107

-----X

APPEARANCES

For the Public Employer:

Michael A. Hagan Associates
By: Michael A. Hagan
Carmine De Luca
William J. Keresev

Labor Relations Consultant
Village Treasurer
Chief of Police

For the Union:

Axelrod, Cornachio
& Famighetti, Esqs.
By: Joseph H. Lovintz
Gregory Innes
Walter Burke
Steven Rubeo

Counsel
Of Counsel
Patrolman
Patrolman
Detective

Public Arbitration Panel:

Philip J. Ruffo, Esq.
Richard McCarthy
Michael C. Axelrod, Esq.

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

SUMMARY OF AWARD

Set forth below are matters which were considered by the Panel as to the Village of Larchmont's financial ability to pay and those at issue as a result of the impasse between the Village and the Larchmont Village P.B.A.

1. Ability to Pay:

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

2. Wages:

a) Increases:

7% wage increase effective June 1, 1986

7% wage increase effective June 1, 1987

Increases are effective and cover all members of the PBA bargaining unit.

b) Starting Salaries;

Effective June 1, 1986, all police officers hired on and after that date shall have a starting salary of \$25,000 for the 5th grade police officer and thereafter progress as follows: \$27,000 upon becoming a 4th grade police officer; \$29,000 upon becoming a 3rd grade police officer; \$31,000 upon becoming a 2nd grade police officer; and \$33,121 upon becoming a 1st grade police officer which is

the top salary applicable to all police officers hired prior to June 1, 1986. It will be noted that the starting salary does not lead to a permanent "two-tiered" pay structure but endures temporarily until the hiree attains 5th grade police officer status.

3. Hours of Work;

No change.

The present work schedule, as contained in Article 7 of the predecessor collective bargaining agreement, is to continue without change during the term of the successor agreement.

4. Holiday Pay:

The number of paid holidays (13) is to remain the same as provided in the predecessor agreement. However, three of those days are to be designated "super holidays" (Christmas, Easter Sunday and Thanksgiving or any three days designated by the Village), and are to be paid at the premium rate of double time the regular rate of pay provided the police officer works on the "Super holiday".

5. Night Differential Pay:

Not awarded.

6. Longevity Pay:

An additional step is provided which grants the police officer \$150.00 after 5 years of service. This additional step is applicable only to police officers hired after June 1, 1987. There will, therefore, effective June 1, 1987, be four longevity steps in the following amounts upon completion of the following years of service: 5 years - \$150; 10 years - \$500; 15 years - \$600; and 20 years - \$750.

7. Payment of Health Insurance Premiums for Employees Retiring During the Term of the Agreement:

No change from the Village's present obligation under the predecessor agreement.

8. Sick Leave:

The present number of 12 sick leave days credited only upon completion of every month of service is increased by one day to 13 and is credited on a calendar year basis, i.e., 13 paid sick leave days annually.

9. Term of Agreement:

Two (2) years, commencing June 1, 1986 and ending May 31, 1988. The predecessor agreement expired May 31, 1986.

I

Preliminary Statement

By a communication dated October 6, 1986, the New York State 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.

In accordance with the above cited authority, hearings were held on the following dates: December 9 and 10, 1986; and January 21 and April 6, 1987.

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.

The record made herein was somewhat extensive consisting of 35 pages of handwritten notes by the Chairman and a total of 23 exhibits, the majority being multi-paged. Three of the Exhibits of the Larchmont Police Benevolent Association, Inc. (hereinafter PBA) consisted of three sepa-

rate volumes of materials labelled Volume 1, Volume 2 and Volume 3. In addition, the parties submitted post-hearing briefs which were received on May 8, 1987 from Union counsel and May 11, 1987 from the Public Employer's representative.

Thereafter, the Panel met in Executive Session at the Village Hall, Larchmont, New York, on June 19, 1987, 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 *all the 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 this 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 the collective agreements negotiated between the parties in the past providing for compensation and fringe benefits including, but not limited to, the provisions for salary, insurance and retirement benefits, paid time off and job security.

III

The Parties - Their Bargaining Relationship

The Village of Larchmont is a relatively small community with a population of approximately 6,300 ranking 15th out of the 22 incorporated villages of Westchester County. (See: Population Statistics by Westchester County, Department of Planning). Its Police Department is commensurate in size consisting of a uniformed force of 25 members plus 1 Police Chief. (See Village of Larchmont Budget, 1986-1987, Schedule D, A-3120.1, Police Department). The uniformed force consists of : 2 Lieutenants, 5 Sergeants (patrol), 1 Sergeant Detective, 16 Patrolmen and 1 Patrolman-Detective. (See Village of Larchmont Budget, above).

The Union is the exclusive bargaining representative of a bargaining unit consisting of 25 members, i.e., the uniformed force as described above.

The bargaining relationship has been established through successive collective bargaining agreements, the most recent being the predecessor agreement for a term of two (2) years, effective and commencing June 1, 1984, and terminating May 31, 1986.

The current dispute stems from an impasse in negotiations for a successor collective bargaining agreement commencing June 1, 1986. ^{1/}

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.

Both parties agree that there are seven (7) issues in dispute, as follows: 1 - The Work Schedule; 2 - Holidays (Increase and premium pay for some "super-holidays"); 3 - Sick Leave (Increase); 4 - Longevity (Increase); 5 - Insurance (Increase in Village's share toward Health Insurance premium - synchronized with accumulated sick leave); 6 - Night Differential; and 7 - Wages (including Village's counter-proposal for a reduction in the starting salary of Patrolmen).

IV

Major Terms And Conditions Of Employment
In The Predecessor Collective Bargaining
Agreement Covering The Period From June
1, 1984 To May 31, 1986

A summary of the major terms and conditions of employment provided for in the predecessor collective bargaining agreement, which expired on May 31, 1986, is as follows:

1. Hours of Work - Article 7

Eight (8) hour day. Work week of five 8 hour tours with 16 hours off duty between each 8 hour tour and 72 hours off duty between each work week. The annual number of days constituting the work year is 248.9. (See Tri-County Survey and extrapolation therefrom. PBA Ex. E).

2. Holidays - Article 9

13 paid holidays at straight time payable in December of each year. Prorated upon termination of employment for any reason.

3. Vacations - Article 10

For the following years of service: 12 days for 1 year; 15 days from 1 to 5 years completed; 20 days from 5 to 10 years completed; 25 days after 10 years completed, but 20 days if hired after March 1, 1984.

Vacation schedule subject to Chief's discretion in certain instances.

4. Sick Leave - Article 11

One paid day for non-duty connected injury or illness for each month of completed service. Upon retirement the cash value of 80% of all unused accumulated sick leave may be applied against the cost of employee's health insurance in accordance with Section 167-5 of the Civil Service

Law; the remaining 20% is payable to the employee in cash. There is no limit as to the number of days that may be accumulated which is payable in cash at the daily rate at retirement.

5. Longevity - Article 12

From 10-15 years - \$500.00

From 15-20 years - \$600.00

From 20+ years - \$750.00

Payable annually on July 1st in one lump sum.

6. Educational Development - Article 13

Reimbursement for tuition and instructional materials for previously approved courses in Police science after satisfactory completion.

7. Funeral Leave - Article 14

Three (3) consecutive days limited to immediate family members: spouse, child, father, mother, mother-in-law, father-in-law, brother or sister.

8. Union Business Leave - Article 15

Essentially, one (1) employee designated by the Union for grievances and two (2) employees for contract negotiations. Time spent is without loss of pay.

Also, ten (10) working days without pay loss to the

President of the Union, or his designee, per contract year to attend conventions and police association meetings. Reasonable advance notice required.

9. Uniforms and Clothing - Article 16

\$300.00 to Patrolmen; \$500.00 to Patrolmen, Detectives and Sergeant-Detectives - for uniform maintenance.

Payable in July of each fiscal year.

10. Insurance and Pensions - Article 17

Medical and Hospitalization Plan (N.Y.S. Government Employees Health Insurance Program) paid by the Village for all employees, eligible spouses and children.

Guaranteed Ordinary Death Benefit paid by Village under Section 360(b) of the N.Y.S. Retirement and Social Security Law.

Retirement benefits adopted by the Village under the N.Y.S. Retirement and Social Security Law.

Dental Plan for all employees, their eligible spouses and dependents. Paid by the Village up to \$25.00 per family unit and \$15.00 per individual employee.

11. Annual Salary Schedule - Appendix A

	<u>1984-85</u>		<u>1985-86</u> <u>(Currently in effect)</u>
5th grade Patrolman (start)	\$25,460	7%	\$27,242
4th grade Patrolman	26,475	7%	28,328
3rd grade Patrolman	27,185	7%	29,090
2nd grade Patrolman	28,060	7%	30,025
1st grade Patrolman (Top)	28,930	7%	30,955
Detective-Patrolman	30,412	7%	32,541
Sergeant	33,492	7%	35,836
Detective Sergeant	34,327	7%	36,730
Lieutenant	37,611	7%	40,244

V

Financial Ability To Pay

At the outset, the Panel's view is that the statute is, fundamentally, designed to enable a Public Administration Panel to arrive at a just and reasonable determination of all issues in dispute between the parties after weighing and assessing 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 does not plead a financial inability to

pay the members of its police force a wage increase. In fact, the Village has successfully negotiated wage increases at 6% with two unions (Firefighters and Clerical), for each of two years (1986-1987), and with another union (Public Works) for a 6% increase for each of three years, i.e., 1986, 1987 and 1988. (See Village's brief, page 2 and press report 12/2/86). Also, the Village has granted seven (7%) percent wage increases to two of its officials and an increase to its attorney in December, 1986, retroactive, in each instance, to June 1, 1986. (See press report, 12/2/86, "Larchmont OKs raises for its officials"). Further, the Village has offered a wage increase to its police force members of 6% in each of two years (1986-1987). (As previously mentioned the Village's offer does not include retroactivity to June 1, 1986, the date that the successor agreement would commence, but rather to the date when the parties mutually come to an agreement on a wage increase). In urging this Panel to adopt the Village's offer rather than the PBA's demand of an 8% wage increase for each of the two years, 1986 and 1987, the Village does not contend that it cannot financially meet the PBA's demand, but that for other reasons the PBA's demand is unsupportable. It may, in this pertinent respect, be noted that the matter of the Village's financial ability is not referred to or even mentioned in its post-hearing brief, though other issues and matters are

presented vigorously and at some length. Rather, the sole concern expressed by the Village at the hearing, which could or might have an effect on its financial ability, was the constitutional limitation with respect to its power to tax its real property - the principal and substantial source of all its revenue - at a rate in excess of 100%. In this respect the Village pointed out that it is now virtually at the limit of its constitutional power to increase further its property tax rate. For the past three fiscal years (1983-84, 1984-85, and 1985-86), the Village's tax rate has been within a margin of ten percent of its 100% constitutional limit. (See "Village Constitutional Tax Limit", included in PBA Ex. D, Schedule 7). For the fiscal year 1987-88 the margin augurs no better, coming even closer to the 100% constitutional limit.

The Village's concern that its taxing power over its real property is nearing the constitutional limit is a relevant factor which must be weighed by the Panel as to the Village's financial ability to pay its employees a wage increase. In this respect there may be a financial difficulty to pay a wage increase considering the fact that the cost of managing a small village, such as Larchmont, including the cost of police protection, may run relatively high. This is not too unusual considering the contemporary scene of the

rising cost of government. 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 with 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, to some extent, affected by the Village's limited power to tax its real property as a revenue source, 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 Village's financial ability to pay and finds the following:

The Village's constitutional power to tax its real property is limited but not preempted; the Village retains its taxing power though, as indicated, it may ^{not} exercise absolute governance.

Cash surpluses have been noted in the General Fund for the fiscal years 1985 and 1986 in the amounts of \$795,000 and \$600,000, respectively, and an estimated \$205,175 and \$205,830 have, respectively, been appropriated out of the General Fund in each fiscal year leaving a cash surplus for the fiscal year commencing June 1, 1987. (See Schedule 3, "Estimated Cash Surpluses At End Of Present Fiscal Year", Village of Larchmont Budget for 1985-1986 and 1986-1987, PBA Ex. D). Surpluses, with some exceptions, may be used for any Village purpose.

Though nearing its constitutional limit since 1983 to tax its real property, the Village of Larchmont has always met its payroll obligations to its employees, consistently granting wage increases, including the fiscal years 1985, 1986 and 1987. There is no evidence to the contrary that the Village has not met its obligations in all other respects.

For the fiscal year 1985-1986 the Village's Budget recommends for police salaries the amount of \$957,000 which represents an increase of \$132,645 or approximately 16% over and above the amount (\$824,355) budgeted for police salaries for fiscal 1984-1985. (See Schedule I-A, Appropriations - General Fund, Police, A-3120.0, PBA Ex. D).

The amount recommended for police salaries in fis-

cal 1986-1987 is \$972,000 representing an increase of only 1.5% over fiscal 1985-1986. However, it should be noted that an average of the increases recommended in the budgets of the two fiscal years is 8.8% which is slightly more than the PBA's demand of 8% for each fiscal year. It should be emphasized that the budgets provide various sums for employee benefits other than for salaries, such as for pensions, holiday and vacation pay.

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 the equities establish that the PBA's demands, in toto, do not warrant complete acceptance of those demands. In this respect the record establishes that the Village has managed its fiscal affairs in a consistently prudent manner, showing no deficits, annual surpluses, no indication that default is imminent or that there is any need of emergency measures or assistance to extricate it from any financial distress. Very significantly, as a barometer of its financial soundness, the paper (bonds, notes, etc.) issued by the Village has acceptance in the securities market at a reasonable rate of interest with its credit rating unimpaired. The bottom line is that the Village of Larchmont is in complete control of the management and operations of its fiscal affairs.

The Panel concludes its analysis by observing that financial ability to pay is concomitant with power to raise revenue while financial difficulty to pay indicates the existence of fiscal problems which may be overcome by the exercise of the power to raise revenue.

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 Larchmont 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.

VI

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 May 31, 1986. The successor agreement will com-

mence June 1, 1986 and have an expiration date of May 31, 1988 - approximately one (1) year from this writing. Obviously this means that the parties will be returning to the negotiating scrimmage line within one year of the second anniversary date of the successor agreement. To what extent such frequent bargaining encounters serve to enhance the stability in a bargaining relationship should be carefully weighed by the parties. Certainly in terms of the need for sound fiscal and budgetary planning a longer term agreement would seem advisable. However, as noted, the Panel's jurisdiction is statutorily limited in this respect and 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, 1986 and ending May 31, 1988.

VII

The Economic Issues In Dispute (Wages and Fringe Benefits)

Wages

(a) The PBA's Demand and the Village's Counter-Offer:

The PBA demands an 8% wage increase in each of two years, effective June 1, 1986 and June 1, 1987. In support

of its demand the PBA has selected 12 of the 22 villages in Westchester County as a basis for comparing the wage structures of the police forces of those villages with that of the police force of the Village of Larchmont. ^{2/}

In support of its wage increase demand, the PBA contends that the Larchmont police officers' wages are far below the wages paid by other Westchester County villages to their police officers, though Larchmont is more affluent than many of those villages. Further, the PBA contends that an 8% wage increase is consistent with prior wage increases granted by Larchmont to its police officers since 1980 and that such an increase in 1986 would mean that the Larchmont police officer would be earning \$33,431 which would still be \$500 below the 1986 Buchanan Village police officer wage (\$34,939) and the Mamaroneck Village police officer (\$34,100). ^{3/}

As for 1987, the PBA, referring to the same comparison table, whose data is limited, points out that an 8% wage increase would mean a salary of \$36,105 for the Larchmont police officers, below that of the Mamaroneck police officers at \$36,300, thus far occupying first place in 1987.

The Village's counter-offer for 1986 and 1987 is 6%, respectively, for each year. Referring to the Tri-County Survey Comparison Table, the Village points out that of the 16

villages which had completed negotiations, only 2 villages had given an 8% increase for 1986; 4 had settled for either 7% or 7.5%; and the remainder (10) had settled for less than 7%. With a 6% wage increase in each of two years (1986-1987) the Larchmont police officers will be in seventh position on the County villages' wage scale without any loss in prior wage position. Thus, the Village's counter-offer compares fairly and equitably with the wage increases received by the police officers of the other villages, remaining in a stable position, not having regressed in the wage scale.

In addition, the Village counter-demands for a lower starting salary for hirees at \$23,000. In support of its demand the Village contends that the present annual starting wage of a 5th grade Larchmont Patrolman is \$27,242. If that starting wage was also to be subject to its 6% wage offer for 1986, the starting wage for a Larchmont 5th grade Patrolman would be \$28,876 or close to \$29,000 which is far in excess of the starting salaries of those villages whose top salaries for police officers exceed Larchmont. For example, in 1985, while the top salary of a Mamaroneck Police Officer was \$32,000 the starting salary was \$20,000 and for Pelham, while the top salary was \$31,244, the starting salary was \$21,403. (See Village Exhs. 7C and 7A respectively). Other starting Salaries for 1986, substantially below Larchmont, are Bronx-

ville - \$23,964 (Village Ex. 7E); Pelham Manor - \$21,303 (Village Ex. 7H); Pleasantville - \$21,534 (Village Ex. I); Scarsdale - \$15,000 (Village Ex. 7D; and Tuckahoe - \$20,000 (Village Ex. 7G). Thus, a \$23,000 starting salary for the Larchmont police officer, which is the same as the recently negotiated starting salary for the Larchmont Firefighter, would be in line with the starting salaries of the police officers of at least 7 other villages. The Village contends that should it be required to maintain the present starting salary for Larchmont new police officers, it "will be faced with personnel reductions in order to keep costs in line in the future", and that, as noted by the starting salaries of other villages, the present starting salary of \$27,242 is not necessary "to recruit new officers". (See Village post-hearing brief, page 23).

The PBA strenuously resists any reduction in the starting salary of new police officers emphasizing the high qualifications for the job, the rigorous training regimen required of candidates for the police force, and the stressful and hazardous nature of the job. (See PBA Ex. 1A).

(b) The Panel's Analysis:

1. Wages:

The Panel recognizes the merit of the PBA's contention concerning the high qualifications as a prerequisite to

the police officer position as well as the rigorous training in preparation for the job and, thereafter, once on the job, the stressful and hazardous nature of the job. Studies show that the "burn-out" nature of the police officer's job is not mere puffing but statistically established and unchallenged. But this is generally true of the job affecting most police officers and not unique to the Larchmont police officer, though in some instances the Westchester County statistics indicate that the Larchmont police officer deals more often with serious criminal activity than his colleagues in some other villages. Correspondingly, the same statistics show more criminal activity in some other villages engaging those police officers to a greater degree in a more hazardous environment. Thus, the "productivity" factor tends to result in a balance which is useful only to the extent that a comparison demonstrates nothing dispositive one way or the other. The Panel is, therefore, of the view, based upon the record as a whole, that the weightier factor centers on wage comparisons with other comparable or closely comparable jurisdictions as offering a sounder and more probative basis upon which to make a determination concerning a just and reasonable wage increase as well as for a starting salary.

The table below shows the top salary positions of the police officers of 21 out of the 22 Westchester County villages for 1985-1986. (From the Tri-County Federation Sur-

vey of Comparison Tables. N.B. Harrison is not listed).

	<u>Village</u>	<u>1985-1986 Wage</u>
1.	Hastings	\$32,461
2.	Buchanan	32,351
3.	Mamaroneck	32,000
4.	Croton	31,762
5.	Briarcliff Manor	31,650
6.	Pelham	31,244
7.	Scarsdale	31,175
8.	Tarrytown	30,983
*9.	Larchmont	30,955
10.	Dobbs Ferry	30,846
11.	Pleasantville	30,802
12.	Mt. Kisko	30,641
13.	Ardsley	30,534
14.	Pelham Manor	30,400
15.	Irvington	30,341
16.	Elmsford	30,138
17.	Port Chester	30,000
18.	Bronxville	29,925
19.	Tuckahoe	29,764
20.	North Tarrytown	29,628
21.	Ossining	29,176

It is noted that Larchmont is just over the dividing line separating the lower and upper halves of the wage

scales of 21 villages and that the difference between Pelham, which is in 6th place on the Villages' wage scales, and Larchmont is only \$289 - the equivalent of two days pay throughout the work year. The work year is 248.9 or 249 days for both Pelham and Larchmont. Based on the 1985-1986 wage scales, the Larchmont police officers occupy a comfortable though substantially subordinate position to the police officers employed by the first five villages. For example, some \$695 and \$1,500 still separates the Larchmont police officers from the police officers employed, respectively, by Briarcliff Manor (fifth place) and Hastings (first place). The Panel is, therefore, convinced that the Larchmont police officers merit an upward adjustment on the Villages' 1986-1987 and 1987-1988 wage scales. To implement the wage comparison factor a partial narrowing of the wage spread is necessary between the Larchmont police officers and the police officers employed by the Villages occupying the first five positions on the 1985-1986 wage scales.

The Panel notes that the Tri-County Survey reported 17 wage settlements for 1986 and that of this number 7 villages granted wage increases to their police officers from 7% to 8% and 10 villages from 5.9% to 6.6%. The average percentage increase for police officers of all 17 villages for 1986 was 7.18%.

As for 1987, the Panel notes that the Tri-County Survey reports six wage settlements ranging from 6.2% to 7% and that the average settlement for police officers of all six villages is 6.6%.

(c) The Panel's Determination:

There is no magic formula for determining wage or salary levels in the public sector. Persons with equal intelligence and integrity might well differ as to the applicability or weight to be given to any one criterion. The Panel has found that the Larchmont police officers should keep apace with their colleagues in the other villages according to the Survey referred to by the PBA and the Village of Larchmont 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 financial 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 Larchmont (all members of the bargain-

ing unit) are entitled to the wage increases on the dates as set forth below:

Accordingly, it is the JUST and REASONABLE DETERMINATION of the Panel that the following across-the-board wage increases be granted to the Larchmont Village police officers, all members of the bargaining unit, as follows:

1. A 7% wage increase over and above the wages paid to the bargaining unit members on May 31, 1986, for the period effective and commencing June 1, 1986, and ending May 31, 1987.

2. A 7% wage increase over and above the wages paid to the bargaining unit members on May 31, 1987, for the period effective and commencing June 1, 1987, and ending May 31, 1988.

The table (Appendix A - Page 48) illustrates the wage scale positions of Westchester County villages, including Larchmont, for the years 1985, 1986 and, to the extent reported by the Tri-County Survey, for 1987, the percentage and dollar amount wage increases as appears from the Survey and as computed for 1986 and 1987.

As shown by the table (Appendix A) the following is noted:

1. Larchmont has advanced from 9th place in 1985 to 6th place in 1986 and 4th place in 1987 (to the extent that wages are reported by the Survey for 1987).

2. In 1985 the difference between Pelham in 6th position and Larchmont in 9th position was \$289.00.

3. In 1986 the difference between Pelham in 4th position and Larchmont in 6th position is \$310.00.

4. In 1987 the difference between Pelham in 3rd position and Larchmont in 4th position is \$132.00.

The relative positions of Pelham and Larchmont are maintained though somewhat narrowed between 1985 and 1987. The work schedules of 248.9 days per work year are the same. The population of Pelham is 6,848 and Larchmont is 6,308 as revealed by the latest population statistics for Westchester County villages.

The arbitration awards for police units for 1986 averaged 6.45 per cent statewide; 6.5 percent upstate; and 6.4 percent downstate. (PERB News, Vol. 20, No. 4, April, 1987). Thus the percentage increase of 7% for Larchmont is approximately 1/2% above statewide awards for all police units and consistent with the percentage increases for the Westchester County villages in 1986.

Starting Salaries:

As previously cited the Village has submitted data in support of its counter-demand for a lower starting salary, effective June 1, 1986, for police officers hired after that date. That data shows that in six recently negotiated contracts the starting salaries for police officers range from \$15,000 to \$23,965, substantially below the starting salary of \$29,148 effective June 1, 1986 (including the 7% wage increase) for the Larchmont 5th grade police officer. Obviously, while six settlements do not establish a conclusive basis for comparison purposes, enough is demonstrated to conclude that there is a substantial trend to establish a "double tier" wage scale. This is the feature which evokes the PBA's strenuous opposition since, in effect, it establishes two different wage scales for employees who do exactly the same job, face the same hazards, and whose qualifications and skills for the job are the same. On the other hand, the economics of the situation cannot be denied. Villages paying top salaries to their police officers (Mamaroneck in 3rd position and Pelham in 6th position) have starting salaries of \$20,000 and \$21,403, respectively. In determining a JUST and REASONABLE wage increase for the Larchmont police officers, the Panel has noted the near wage parity with Pelham for 1985, 1986 and 1987. And, though the reported wage settlements for 1987 included only six villages, the Panel's analysis found support in the record

in determining a wage increase for the Larchmont police officers for that year. By a parity of reason the Panel is able to determine a starting salary for the Larchmont police officer hired after June 1, 1987.

The Panel's sole concern in awarding a starting salary for newly hired police officers after a particular date is that it establishes a two-tier labor-management agreement which affects a class of employees based solely on the accidental date of hire and not upon skill, qualification or scope of duties. Under such circumstances the two-tier agreement cannot but be prone to a form of invidious discrimination from an economic aspect affecting the lower paid employees and, therefore, placing in question the Union's duty of fair representation to all employees in the bargaining unit. Authority exists for the principle that a two-tiered collective bargaining agreement in regard to wages is sustainable if the wage scale differences are not permanently fixed, but temporarily fixed so that after a reasonable time period all wage differences are eliminated and the usual factors (qualification, skill, scope of duties, etc.) take hold eliminating the date of hire as the sole criterion to fix wage scales. (See: "The Two-Tiered Labor-Management Agreement and The Duty of Fair Representation" by Liggett, page 236, April, 1987 Labor Law Journal, CCH).

Accordingly, it is the JUST and REASONABLE DETERMINATION of the Panel that salaries for police officers of the Village of Larchmont hired on or after June 1, 1987, including the starting salary, be fixed in accordance with the table below:

<u>Grade</u>	<u>6/1/85</u>	<u>Hired Prior to 6/1/87</u>	<u>Hired After 6/1/87</u>	<u>Difference</u>
5th (start)	\$27,242	\$29,148	\$25,000	\$4,148
4th	28,328	30, ³ 110	27,000	3, ³ 110
3rd	29,090	31,126	29,000	2,126
2nd	30,025	32,126	31,000	1,126
1st (top)	30,955	33,121	33,121	None

The table above demonstrates that after 5 years the police officer hiree attains top salary eliminating any salary distinction thereafter.

The Panel notes, based upon the evidence in the record, that Larchmont is authorized to hire two police officers and, in addition, of the five police officers now on line of duty injury leave, some two or three are, or soon will be, processed for retirement. Thus, within the next year or two the Village will be in a position of hiring from two to five new police officers and the starting salary, together with the salary progressions, as shown in the above table, will represent a significant saving to the Village. The saving for one

newly hired police officer will be approximately \$10,500 after five years.

2. Work Schedules:

PBA's Demand and Village's Opposition:

At the present time the Larchmont police officers' work schedule consists of 5 eight hour tours with 16 hours off duty between each 8 hour tour and 72 hours off duty between each work week.

The PBA demands that the present work chart be replaced with a work chart consisting of rotating shifts working five days with two days off after the first set of midnight shifts and then working four nights with three days off for the second set of midnight shifts. The PBA claims that its proposed work chart would not require additional manpower, or additional overtime to maintain existing manpower staffing.

The Village challenges the PBA's work chart, adducing testimony through the Chief of Police that, if adopted, the PBA's work chart would have the opposite effect resulting in a disorganized work schedule. For example, the PBA's work chart would result in a reduction from the present 249 day work year to 241 - or 8 work days less per year. The Chief also testified that reducing the present work schedule would

compound the present staffing problem due to five police officers being on prolonged leave status due to line of duty injuries.

Panel's Analysis:

In a study of the Survey regarding the work schedules of 21 villages, the Panel notes that the work year of the following villages consists of the following number of days:

- 248.9 days - Buchanan, Harrison, Larchmont, Mamaroneck, Ossining, Pelham, Port Chester and Scarsdale.
- 255.5 days - Dobbs Ferry, Pelham Manor, and Tuckahoe.
- 243.3 days - Ardsley, Croton, Elmsford, Hastings, Irvington, North Tarrytown, Pleasantville and Tarrytown.
- 238.0 days - Bronxville.
- 237.5 days - Mt. Kisko.

Thus, three villages have more work days per year; ten have less; and eight have the same number of work days per year. In terms of a more/less distribution, 11 villages have the same or more work days per year and 10 have less.

The Panel's analysis is that a work year shortened by 8 work days is, in effect, a wage increase since, obviously, the police officers will be paid the same wages, including the

increases, herein awarded for working less time. The wage increases herein awarded are based upon the retention of the work chart now in effect. Moreover, and no less important, the Panel notes that approximately 20% of the police force is now on Line of Duty Injury Leave and will be in the foreseeable future. Consequently, the Panel feels that any reduction in the work chart may lead to serious dislocations in the management of the force and, therefore, declines to make any chart changes now.

Panel's Determination:

Accordingly, it is the JUST and REASONABLE DETERMINATION of the Panel that the work schedule contained in Article 7, Section 1 be continued in the successor agreement without change.

3. Holidays:

PBA's Demand and The Village's Opposition:

Under Article 9 of the predecessor agreement the Larchmont police officers are entitled to straight time pay for 13 undesignated holidays which is payable in December of each year.

The PBA demands that some of the 13 holidays should be designated and payable at the rate of double time and one-half, i.e. if the police officer is called in to work on a

particular designated holiday he shall be entitled to straight time pay for the holiday plus time and one-half for working the designated holiday. The PBA proposes the holiday premium pay only for certain days such as Christmas, Easter or Thanksgiving which are, usually, family celebrated holidays and, hence, labelled as "super-holidays" by the PBA.

The Village contends that in prior negotiations it "bought-off" the designated holiday feature and agreed to pay simply for 13 additional days without any change in the work year, i.e., the equivalent of being paid 252 days, but working 249 days.

The Panel's Analysis:

An analysis of the Tri-County Survey reveals that all 22 villages provide for holiday pay. Ten villages provide 13 paid holidays; ten provide for 10 paid holidays; and two provide for more than 13 paid holidays. In terms of premium holiday pay the distribution of villages is as follows: 5 pay double time for 4 holidays; 2 pay double time for 5 holidays; 2 pay double time for 13 holidays; 1 pays double time for 2 holidays; and 1 pays time and one-half for 2 holidays. Thus, ten villages do not pay premium holiday pay; eleven do.

The Village opposes premium holiday pay on the ground

that it is not the prevailing practice in Westchester County and, in this respect, points out that only 2 of the 22 villages pay premium holiday pay for all 13 holidays.

The Panel's analysis is that the Survey demonstrates as much support for awarding holiday premium pay as for denying it. The number of villages not paying premium holiday pay is offset by the number of villages that pay premium pay at a double time rate which is a significant offset sufficient to warrant consideration of premium holiday pay at the double time rate.

The Panel's Determination:

Accordingly, it is the Panel's JUST and REASONABLE DETERMINATION that, effective July 1, 1987, the Larchmont Village police officers shall be entitled to 13 paid holidays, 3 of which shall be paid at the premium rate of double time the regular rate of pay, i.e., the holiday pay to which the police officer is entitled when not called in to work plus the regular rate of pay for the day he is called in to work. The remaining ten paid holidays shall, as heretofore, be paid at the regular rate of pay. The three premium paid holidays shall be Christmas Day, Easter Sunday and Thanksgiving Day or any three days that the Village may designate.

4. Night Shift Differential Pay:

The PBA's Demand and the Village's Opposition:

The PBA demands night shift differential pay of 10% over base pay contending that the rigor of night work merits additional compensation notwithstanding the fact that the Larchmont police officers work a rotating shift.

The Village opposes the PBA's demand contending that since there is an equal distribution of night work by reason of the rotating shift, and because the police officer's annual wage takes into consideration the rigors of his job, there is no basis for awarding night shift differential pay.

The Panel's Analysis:

The record falls short of providing an evidentiary foundation to guide the Panel as to night shift differential pay.

The Panel's Determination:

Accordingly, it is the Panel's JUST and REASONABLE DETERMINATION that the PBA's demand for night shift differential pay be, and the same hereby is, DENIED.

5. Longevity Pay:

PBA's Demand and the Village's Opposition:

Under the predecessor agreement, as a result of the Interest Arbitration Award in February, 1983, longevity pay is

granted at three intervals over a period of 20 years of service as follows: \$500 after 10 years; \$600 after 15 years; and \$750 after 20 years.

The PBA demands \$500 after 6 years; \$1,000 after 10 years; and \$1,500 after 15 years.

The PBA, relying on the Tri-County Survey, contends, generally, that Larchmont lags behind a majority of the other villages in paying longevity pay at earlier intervals so that the police officers of the other villages receive longevity pay before the Larchmont police officers and are ahead for that reason.

The Village contends that the Larchmont police officers were granted a substantial longevity improvement by the February, 1983 Interest Arbitration Award and is still the prevailing practice as shown by the data in the Tri-County Survey. Also, the PBA longevity benefit is the most generous among the Village's other three bargaining units.

The Panel's Analysis:

The Tri-County Survey shows that out of 22 Villages listed, 17 report longevity payments to their police officers prior to 10 years of service; Larchmont pays after 10 years of service. Obviously, police officers in the 17 villages are beneficiaries of additional pay, prior to the Larchmont police

officers, as follows: 8 villages provide longevity pay after 6 years of service (Bronxville, Croton, Dobbs Ferry, Hastings, Mamaroneck, Ossining, Pleasantville and Tuckahoe); 2 villages provide longevity pay after 5 years of service (Buchanan and Tarrytown); 3 villages provide longevity pay after 8 years of service (Briarcliff, Elmsford and Scarsdale); 2 villages provide longevity pay after 7 years of service (Mt. Kisko and North Tarrytown), and 2 villages provide longevity pay after 9 years of service (Irvington and Port Chester). Nineteen villages provide for longevity pay between the 15th and 20th year of service, again illustrating the more favorable position of police officers in a substantial majority of the villages as to longevity pay. Nine villages provide for longevity pay at four intervals; Larchmont at three intervals.

The Village's analysis of the Survey addresses the number of villages that paid more longevity pay than Larchmont to its police officers after the same lengths of service. As a result, the Village's analysis shows that only one village paid more than \$500 after 10 years of service; six villages paid more than \$600 after 10 years of service; and ten villages paid more than \$750 after 20 years of service. (See page 17, Village's post-hearing brief). More significantly, the Village's analysis does not address the overwhelming number of villages that favored their police officers with longev-

ity pay at intervals earlier than the Larchmont intervals and thereby placed additional pay in the pay envelopes of the police officers of those other villages.

The Panel's Determination:

Accordingly, based upon the data submitted, it is the Panel's JUST and REASONABLE DETERMINATION that an additional interval be added, effective June 1, 1987, so that longevity pay will be paid to the Larchmont police officers after completion of five (5) years of service in the sum of \$150.00 who have been hired after June 1, 1987. In all other respects the present longevity schedule and pay shall remain the same.

6. Payment of Health Insurance Premiums for Employees Retiring During the Term of the Agreement:

The PBA's Demand and the Village's Opposition:

The PBA demands that the Village pay the full cost of all health insurance premiums for all employees (and dependents) who retire during the term of the contract.

The Village proposes to continue its obligation under the predecessor agreement by continuing to apply 80% of the cash value of all unused accumulated sick leave to the payment of the retired employee's share of the health insurance premium. The remaining 20% of such cash value will continue to be paid in cash to the retired employee.

The Panel's Analysis:

The Panel notes that the Village's commitment to pay a portion of the health insurance premium is tied in with the unlimited sick leave benefit enjoyed by the Larchmont police officer. While many villages have a cap on the number of accumulated sick leave days during the police officer's career Larchmont has no cap.

According to the Tri-County Survey the data indicates that 12 out of 21 villages showed instances of "paid on retirement" with no number sufficiently probative to warrant a reasonable conclusion. Overall, the data indicates a variety of arrangements with no sufficiently specific number affording an acceptable comparison base.

The Panel's Determination:

Accordingly, based upon the data submitted, and considering the benefit of unlimited accumulated sick leave, the Panel's JUST and REASONABLE DETERMINATION is that Article 11 of the predecessor agreement be continued as to the Village's obligation with respect to health insurance premiums, i.e., that there be no contractual change in the Village's existing obligation in accordance with Section 167-5 of the Civil Service Law.

7. Sick Leave:

The PBA's Demand and The Village's Opposition:

Under the predecessor agreement the Larchmont police officer is entitled to paid sick leave for non-duty connected injury or illness at the rate of one day for each completed month of employment.

The PBA demands that the number of sick leave days be increased from 12 to 15 and such days be credited in advance as of January 1st of each calendar year. Further, the PBA demands that 50% of all accumulated unused sick leave be paid in cash at the police officer's retirement.

The Village opposes the PBA demands on the grounds that: (i) the present sick leave benefit is generous in that it provides for an unlimited number of sick leave days payable at the daily rate of pay at the time the employee retires; (ii) granting sick leave only upon completion of a month's service is proper and consistent with other benefits (vacation, longevity, etc.) that are also granted only upon completion of a stated time in service.

The Panel's Analysis:

The data reported in the Tri-County Survey shows that of 21 villages, 6 grant 12 sick leave days per year; 6 grant 15 days per year; and 9 grant an unlimited number of

sick leave days. The underlying reason for sick leave pay is to assure that an employee incurs no loss of income during a period of legitimate illness. Sick leave pay is for an employee who is legitimately sick.

While, as the Village contends, there is no clear majority in favor of 15 sick leave days as the PBA demands, there is no annual limit on the number of sick leave days that police officers of nine villages may need. On the basis of comparable benefits, as shown by the Survey, a slight benefit is established for the Larchmont police officer. Further, the present one day sick leave for each month of completed service does not address or respond to the contingency of an illness which, in any one particular month, may be for more than one day. This could involve a deduction in the police officer's pay or projecting no credit for sick leave days in future months - an administrative task needlessly incurred.

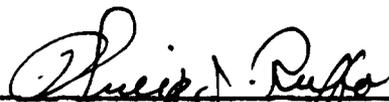
The Panel's Determination:

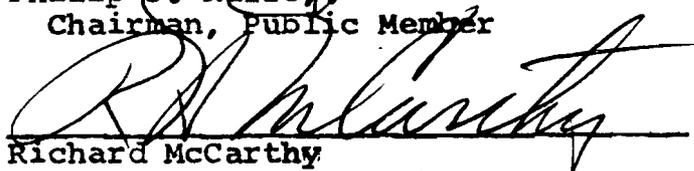
Accordingly, it is the Panel's JUST and REASONABLE DETERMINATION that the sick leave days be increased from 12 to 13 per year and that credit for such sick leave days be granted on an annual ^{fiscal} basis rather than completion of service on a monthly basis.

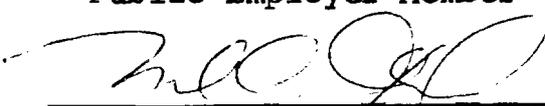
As To All Other Matters

As to all other matters recited under Part VII of this Award, labelled "The Economic Issues In Dispute", and as to all other matters in the predecessor collective bargain-agreement terminating May 31, 1986, 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, 1986. 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 Larchmont to pay such wages and benefits as well as the financial limitations which preclude further benefits other than those herein awarded. The Panel has in this respect considered the interests of the Village and its taxpayers to maintain a well organized and properly motivated police force whose compensation meets the objective standards of fairness, equity and reasonableness.

Dated: June 19, 1987


Philip J. Ruffo,
Chairman, Public Member


Richard McCarthy
Public Employer Member


Michael C. Axelrod,
Employee Organization Member

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

On this 9th day of June, 1987, 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.

BENJAMIN JAFFE
NOTARY PUBLIC, State of New York
No. 41-7055900 Queens County
Term Expires Aug. 31, 1991


Notary Public

STATE OF NEW YORK)
COUNTY OF Westchester) SS:

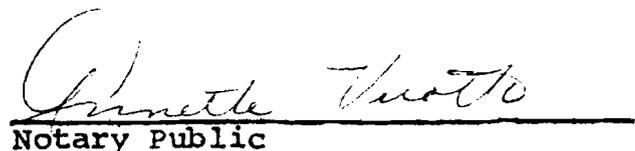
On this 14th day of June, 1987, before me personally appeared RICHARD McCARTHY, to me known and known to me to be the Public Employer Member described in and who executed the foregoing Award, and he duly acknowledged to me that he executed the same.


Notary Public

ANNETTE VUOTTO
Notary Public, State of New York
No. 80-8407280
Qualified in Westchester County
Commission Expires January 31, 1991

STATE OF NEW YORK)
COUNTY OF Westchester) SS:

On this 19th day of June, 1987, before me personally appeared MICHAEL C. AXELROD, 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

ANNETTE VUOTTO
Notary Public, State of New York
No. 80-8487250
Qualified in Westchester County
Commission Expires January 31, 1991

Footnotes

1. The Village objects to wage increases being effective retroactively, though acknowledging that this is a matter within the Panel's power. (See Village Post-Hearing Memorandum, pages 22-23). For the reasons hereinafter mentioned under the topic "Wages (Increases)", the Village's objection was not adopted and wage increases were made effective on June 1, 1986, the effective date of the successor agreement.

2. The Panel is in accord with the use of the Tri-County Federation Survey of Comparison Tables (hereinafter "Survey") by the parties as an appropriate and proper basis for comparison purposes in all respects, including wages. To the extent that the PBA implies that the wage structures of Nassau and Suffolk Counties should likewise be considered for comparable purposes the Panel has concluded otherwise. There are too many different variables (population, industry, crime statistics, bargaining history, traditions, etc.) militating against a common ground for comparison purposes with Westchester County. The circle of comparability has limits.

3. As a basis for comparability to support its demand, the PBA has submitted a table of comparison consisting of only 12 villages. (PBA Ex. 8). The Panel notes that the Tri-County Survey lists 21 villages out of 22 (Harrison not being listed) for 1985 and 1986 and that there is no reported wage activity for 1986 for 3 villages (Croton, Hastings and Pelham Manor). The PBA's Exhibit E showing the 12 villages is an extrapolation from the Tri-County Survey. All salaries represent the top salaries of police officers in the various villages of Westchester County. The Panel's view is that the PBA's table of comparison listing only 12 villages is narrow, not affording a maximum basis for comparison and is unacceptable. The Survey's report, referred to by the Village, listing the available data of all villages is adopted as sounder basis for comparison purposes.

APPENDIX A

<u>Village</u>	<u>1985 Wage</u>	<u>1986 % Increase</u>	<u>Village</u>	<u>1986 Wage</u>	<u>1987 % Increase</u>	<u>Village</u>	<u>1987 Wage</u>
1. Hastings	\$32,461	Not Reported	1. Buchanan	\$34,939	-	1. Mamaroneck	\$36,300
2. Buchanan	32,351	8.0	2. Mamaroneck	34,100	6.4 (1st)	2. Briarcliff	35,595
3. Mamaroneck	32,000	6.6	3. Briarcliff	33,517	6.2 (2nd)	3. Pelham	35,571
4. Croton	31,762	Not Reported	4. Pelham	33,431	7.0 (3rd)	4. *Larchmont	35,439
5. Briarcliff	31,650	5.9	5. Scarsdale	33,170	-	5. Dobbs Ferry	34,789
6. Pelham	31,244	7.0	6. *Larchmont	33,121	7.0 (4th)	6. Bronxville	34,621
7. Scarsdale	31,175	6.4	7. Tarrytown	32,981	-	7. Tuckahoe	34,236
8. Tarrytown	30,983	6.5	8. Ardsley	32,855	-	8. Hastings	Not Reported
9. *Larchmont	30,955	7.0	9. Pleasantville	32,804	-	9. Buchanan	Not Reported
10. Dobbs Ferry	30,846	6.0	10. Dobbs Ferry	32,697	6.3 (5th)	10. Scarsdale	Not Reported
11. Pleasantville	30,802	6.5	11. Mt. Kisko	32,633	-	11. Tarrytown	Not Reported
12. Mt. Kisko	30,641	6.5	12. Bronxville	32,508	6.5 (6th)	12. Pleasantville	Not Reported
13. Ardsley	30,535	7.6	13. Irvington	32,314	-	13. Mt. Kisko	Not Reported
14. Pelham Manor	30,400	Not Reported	14. Elmsford	32,097	-	14. Ardsley	Not Reported
15. Irvington	30,341	6.5	15. North Tarrytown	31,891	-	15. Pelham Manor	Not Reported
16. Elmsford	30,138	6.5	16. Tuckahoe	31,847	7.0 (7th)	16. Irvington	Not Reported
17. Port Chester	30,000	6.0	17. Port Chester	31,800	-	17. Elmsford	Not Reported
18. Bronxville	29,925	8.5	18. Ossining	31,775	-	18. Port Chester	Not Reported
19. Tuckahoe	29,764	8.3	19. Croton	31,762	-	19. North Tarrytown	Not Reported
20. North Tarrytown	29,628	7.6	20. Hastings	Not Reported	-	20. Ossining	Not Reported
21. Ossining	29,176	8.9	21. Pelham Manor	Not Reported	-	21. Croton	Not Reported