

INTRODUCTION

The Town of Orangetown and the Orangetown Police Benevolent Association began negotiations prior to the expiration of their current agreement on December 31, 1986. The PBA, following an unsuccessful mediation effort, filed a Petition for Compulsory Interest Arbitration on June 23, 1987 (Ex.A #1). Improper Practice charges filed by the parties (i.e., U-9596 and U-9630) and Stay of Arbitration proceedings delayed the appointment of an Arbitration Panel. On September 2, 1987, the Public Arbitration Panel was designated. Subsequently, scheduling problems of the Employer representative further delayed the resumption of the process following an informal session on October 13th, 1987, until January 7th, 1988.

Pursuant to the provisions of the Civil Service Law, Section, 209.4, the Chairman, Employer and Employee members of the Public Interest Arbitration Panel were charged to heed, inter alia, the following statutory guidelines:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify 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 proceedings with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

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

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

BACKGROUND

The Town of Orangetown in Rockland County maintains a fully paid police department. The Town of Orangetown (hereinafter "Orangetown") is located in the southern part of Rockland County, adjoined on the north by the Town of Clarkstown and on the west by the Town of Ramapo. The Town consists of 22 square miles and has a population of 36,397, excluding the population of three incorporated villages, namely Nyack, Piermont and South Nyack/Grandview which employ their own police departments.

The Orangetown PBA bargaining currently consists of approximately 79 uniformed police officers, including patrolmen, sergeants, lieutenants and detectives, excluding radio operators, the Captain and Chief of Police. Orangetown ranks third with 79 employees behind Ramapo with 96 employees and Clarkstown with 124 employees. The current contract of the parties, determined by an arbitration award (Ex. T #4), expired on December 31, 1986. Thus, the instant Interest Arbitration Award will commence on January 1, 1987.

PROCEDURE

The Panel held an informal, organizational meeting on October 13, 1987 and subsequently conducted a formal hearing which was transcribed on January 7th and 13th, 1988. The Panel voted 2-1, Employee member dissenting, to adopt the stenographic transcript as the official record of the proceedings with the costs shared equally by the parties. (T, 173). The Town and the PBA were represented by counsel throughout these proceedings and afforded full opportunity to present evidence, witnesses and argument in support of their respective positions. The Public Interest Arbitration Panel admitted as evidence eighteen (18) Town Exhibits, five (5) PBA Exhibits and one (1) Arbitrator's Exhibit and one (1) Joint Exhibit. In addition, the parties submitted post-hearing briefs and reply briefs in support of their positions. All of the evidence submitted has been carefully considered in the preparation of this opinion and its accompanying award.

At the close of the hearing, the Panel met extensively in executive session and deliberated on each of the outstanding issues presented to it in the PBA petition and the Town response thereto. Although the representatives and the Chairman diligently sought to reach consensus on the numerous outstanding issues, this did not occur consequently complicating and prolonging the Chairman's task in the instant matter. Nevertheless, the Chairman commends Ms. McNamara and Mr. Solfaro for the time and effort they devoted to the process while recognizing their diametrically opposing positions on virtual all issues.

In reaching its conclusions, the Panel has been bound by the standards enunciated in Section 209.4(c)(v) of the Taylor Law with particular emphasis given to comparison of wages, hours, conditions of employment, ability to pay, overall costs, etc.

PBA PROPOSALS

In its Petition for Interest Arbitration, the PBA made several demands summarized as follows:

SCHEDULE A

Effective January 1, 1987, the base salaries of the patrolmen and officers shall be increased to the rates applicable for their designated rank as set forth in the base salary schedule set forth below:

Probationary	30,000
4th Grade	32,875
3rd Grade	35,750
2nd Grade	38,625
1st Grade	41,500
Detective	44,613
Sergeant	47,725
Lieutenant	54,884

Detective - 7.5% above 1st Grade

Sergeant - 15% above 1st Grade

Lieutenant - 15% above Sergeant

- (2) **Sergeants and Lieutenants** - A 15% differential between the ranks.
- (3) **Detectives** 7.5% differential and the cleaning of detectives of detectives clothing.
- (4) **Longevity** - every three (3) years without a CAP at \$550.00 per increment. Restoration of the "De Maio" increment after 15 years. All longevity payments on the anniversary date.
- (5) **Night Shift Differential** - Restoration of 6% night shift differential.
- (6) **Agency Fee**
- (7) **Sick Leave** (a) sick leave credits shall accrue at rate of two (2) days per month
 - (b) sick leave buy out
 - (c) separate accruals for family sick leave
 - (d) sick leave accruals during any period receiving benefits under Section 207-C General Municipal Law.
 - (e) Amend Section 12.8 to allow officer to pay municipality back with leave credits followings extended sick leave.
- (8) **Overtime** (a) triple time for working special events events while scheduled to be off-duty.
 - (b) other language changes
- (9) **Vacation** (a) increase number of vacation days as follows:

	<u>CURRENT</u>	<u>PROPOSED</u>
1 year	12 days	15 days
2 years	14 days	15 days

3 years	15 days	20 days
4 years	20 days	30 days
5-20 years	20 days (5-9 yrs.)	30 days
	22 days (9-10 yrs.)	
	25 days (10-15 yrs.)	
	30 days (15 yrs.+)	

After 20 yrs

35 days

- b) officers who use five or less days of sick shall be credited with up to five vacation days on a pro rata basis.

10) Holidays (a) payment of holidays in January and July.

(b) employee receiving benefits pursuant to GML 207-C shall receive holidays.

(c) officers who work on a holiday shall receive time and one-half in addition to other compensation.

11) Health Insurance

(a) clause providing "retired officers shall continue to receive health insurance benefits".

(b) delete clause permitting Town to charge insurance carriers at its discretion subject to arbitration.

(c) new optical plan.

12) Grievance Procedure

(a) extensive language changes

13) General Provisions (Tuition Reimbursement)

(a) delete \$45.00 cap and provide 75% tuition reimbursement for officers and children of officers killed in action.

TOWN OF ORANGETOWN PROPOSALS

(IN SUMMARY)

TERM: 2 Year Contract 1987-1988

1) SALARIES	<u>1/1/87</u>	<u>7/1/87</u>	<u>1/1/88</u>
PROBATIONARY	\$22,048	\$23,712	\$26,416
4TH GRADE	28,912	29,640	30,368
3RD GRADE	31,096	31,928	32,760
2ND GRADE	33,072	34,112	35,152
1ST GRADE	38,168	39,624	42,120
SERGEANT +4500 above 1st grade	42,668	44,124	46,620
LIEUTENANT +5000 above Sgt.	47,668	49,124	51,620
2) DETECTIVE/YOUTH OFFICER DIFFERENTIAL	- \$2,200		
3) NIGHT DIFFERENTIAL	- \$.80/hour w/current language.		
4) TUITION ASSISTANCE	- \$75.00 maximum per credit hour.		
5) SICK LEAVE	- Language modifications; reduced family sick leave usage from 96 hrs. to 78 hrs. per year.		
6) VACATION	- After 21 years of service - 31 days After 22 years of service - 32 days After 23 years of service - 33 days After 24 years of service - 34 days After 25 years of service - 35 days		
7) Implement the Blue Cross/Blue Shield Dental program at no cost to the PBA members.			
8. Longevity - Increase current \$475.00 to \$500.00.			
9. Disciplinary Procedure - Language modifications; elimination of named arbitrator's and use of PERB.			

I. Salaries
PBA Position

The PBA salary proposal, if awarded, would increase the base salary of first grade Orangetown patrolmen and officers from the current \$36,769 to \$41,500 on January 1, 1987 -- an increase of 12.87%. The base salaries for 2nd grade through 4th grade officers would be increased by 7% in 1987 (e.g. 35,750 X .07=\$38,253). [PBA Post Hearing Brief, p. 5a (Schedule A)]. The PBA did not provide a 1988 salary proposal in its petition for Compulsory Interest Arbitration to PERB, but submitted one in its post hearing brief, p. 5a.

In support of its salary proposal, the PBA has made direct comparisons with Clarkstown salaries and other compensation. According to the PBA, Clarkstown is the jurisdiction with which Orangetown should be compared in determining equitable salaries and related economic benefits. In this connection, the PBA states "since the time many of the current police officers started their careers in Orangetown, the Orangetown salary scale has been progressively falling behind the Town of Clarkstown" (PBA Ex. #1, p.5). In addition, the PBA maintains that if the Town's current proposals for 1987/1988 were compared with Clarkstown's over a five year period (holding constant these salaries) the Orangetown police officer would earn \$21,371 less than his/her counterpart. Moreover, the PBA contends the compensation gap increases when longevity steps (i.e., beginning at 3 years in Clarkstown) are factored in the equation.

The PBA maintains its salary proposal addresses a problem which was "exacerbated by the last arbitration award." Unlike the 1978 period where the Orangetown police officer fared better than his/her Clarkstown counterpart, the 1985 Arbitration Award caused severe retrogression. A comparative analysis of Orangetown Officers before and after the award (assuming a certain career path) found a 1984 wage gap at \$21,000 with Clarkstown and \$37,079 less in 1986 (PBA, Post Hearing Brief, p.5). Despite the panel's intent to equalized 1st grade Orangetown police officers with 1st grade Clarkstown police officers, the PBA argues that the 5% awarded for 1986 was soon eclipsed by a 7% Clarkstown settlement for 1986. The economic gap was compounded by reductions in night shift differentials, longevity, and other compensation so that the 5% was not totally realized and in fact the goal of Clarkstown "parity" diminished. An analysis of the wage differentials between Clarkstown and Orangetown prior to the last arbitration award (1984) and the effect after the award appears in the PBA Post Hearing Brief, p.3a.

Ability to Pay

According to the PBA, the ability to pay statutory criterion is a "non-issue" in the instant case. Citing a 6/87 letter from the Town supervisor that "Orangetown is the most financially sound community in Rockland County "and that" we spend large amounts of money to insure we have the most modern and well-equipped Police Department and among the highest paid police officers in the State. . .", the PBA claims the only issue is the Town's desire to pay fair wages. In contrast to these public statements, the PBA notes that the Town has spent thousands of dollars in litigation with the PBA, collected interest on

police wages for 1987 and 1988 during the pendency of the instant interest arbitration and authorized the hiring of nine (9) police officers prior to the issuance of the award, providing evidence of minimal concern over its ability to pay.

Conclusion

The PBA's proposed salary for 1st grade officers of \$41,500 would surpass Clarkstown's \$38,780 effective January, 1987. This overage is necessary in the PBA's judgment to rectify the detriment of the prior award which included other fringe benefit losses and, at the same time, restore Orangetown's higher paid ranking in Rockland County which existed prior to the award. The Town proposal of \$42,120 in 1988 (a reduction from \$42,640 previously offered for settlement) is deemed insufficient because Clarkstown officers would still receive more in 1988 -- \$42,997. Not only would 1st grade patrolmen receive less at the end of 1988 but so would officers in grades 2, 3, 4, and 5. Although the PBA did not provide 1988 salary proposal in its petition, it belatedly offered one in its Post Hearing Brief which, if awarded, would increase 1st grade officer's salaries to \$44,405 effective 1/1/88 (Post Hearing Brief, p.3a).

Town of Orangetown Position

The Town has submitted a salary proposal which would increase for 1st grade police officers base wages \$2855.00 or 7.75% above the 1986 wages and increase base wages \$2,496.00 or 6.30% above the 1987 wages. The total increase of \$5351.00 over the two year period, including compounding and a split wage increase in 1987, would result in 1st grade officer net wages of \$38,896 in 1987 and \$42,120 in 1988. The Town specifically has offered split wage increases of 3.8% on 1/1/87

and 3.8% on 7/1/87 resulting in a net increase of 5.7% or \$2127 for 1987, with 1.9% or \$728 rolling over into 1988. In 1988, the Town offers an additional 6.3% or \$2496, increasing base wages from \$39,624 to \$42,120. The net increase in base wages over 2 years is therefore \$5351 or 14.55%. The Town calculates that these wage increases for 1st grade officers through 1988 would compare favorably with Clarkstown. "The net result is that during the year 1988 a first grade patrolman in the Town of Orangetown will earn a total of only One Hundred Fifty (\$150.00) Dollars less or point zero (.04%) four percent less than his counterpart in the Town of Clarkstown. . ." (Town Post Hearing Brief, p.31). It is also noted that Clarkstown's 1st grade officer base wages received for 1987 will exceed Orangetown by \$563.00 or 1.45%. In addition, the Town deems its offer retains Orangetown's superiority over Ramapo 38,896 vs. 37,829 in 1987 and other Rockland County towns. The Ramapo wage offer of 15.73% over two years (1987-88) is discounted by the purported institution of a "voluntary drug testing program."

In contrast to the PBA 1987 wage proposal averaging 18% increases for ranks 2nd, 3rd and 4th, the Town has made offers ranging from 7.5% over 2 years for 4th grade officers to 8.8% over 2 years for 2nd grade officers. The Town justifies its lower offers to these ranks by noting that traditionally emphasis has been given to 1st grade officer salaries as opposed to the lower ranks. Eighty three (83%) percent of the officers in Orangetown are 1st grade or above and the Town ranks 1st among all Towns from 4th and 2nd grade patrolmen with its 1987 proposal, except Clarkstown which it considers abberational. For example, the Town argues that its 1987 wage proposal for 4th grade resulting in base wages of 29,640 will still exceed Ramapo's 4th grade

salary of 26,937 by \$2703 or 10.04%. Similar base wage advantages are cited for 3rd grade and 2nd grade officers vis a' vis Ramapo, Stony Point and Haverstraw, however, the gap between Orangetown and Clarkstown remains substantial (Town Post Hearing Brief, pp. 37-38). These statistical relationships continue in 1988 comparisons.

The Town further maintains that since police officers progress through the ranks over five years ultimately attaining 1st grade rank where they remain for most of their careers, 1st grade salaries are far more important than the lower ranks. In rejecting the PBA assertion that over a five year period beginning in January, 1984 (assuming grades 5 through 2 (4 years), 6 years at 1st grade, 5 years as a sergeant and 5 years as a lieutenant) that an Orangetown officer would earn \$21,100 less than a comparable Clarkstown officer, the Town contends "It can hardly be argued that officers during their 2nd, 3rd, and 4th years are denied fair and reasonable salary increases." Comparing Orangetown to itself from 1983 to 1988 prospectively, the Town finds percentage increases ranging from 51.43% for probationary to 4th grade in 1983-84 to 23.00% for the officer who was 2nd grade (\$32,214) at the end of the expired agreement and who would move to 1st grade on 1/1/87 and receive a base wage increase to \$39,624. (Town Brief, p.35).

The Town considers its wage proposal for probationary officers particularly generous. Under the Town's proposal the current \$20,313 salary for probationary officers would increase as follows:

1/1/87	22,048	+1735	= + 8.54%
7/1/87	23,712	+1664	= + 7.02%
1/1/88	26,416	+2704	= +11.40%
		2 year total	= +30.05%

Were the Panel to award the Town's proposal, the Town is confident that its starting salaries would be competitive with surrounding Towns, again except Clarkstown.

Ability to Pay

The Town presented a relative ability to pay position, preferring to shift the burden to the PBA to demonstrate its adherence to the statutory criterion. On the one hand, the Town provided no data, such as budgetary status or financial constraints, which would significantly limit its ability to pay. However, on the other hand, the Town argued that its ability to pay would become a factor if the PBA's wage and fringe benefit demands were awarded. According to the Town, in advancing its wage and related demands the PBA has not provided evidence of the Town's ability to pay or, for that matter, how the public interest would be served by awarding the PBA proposals. Equally distressing from the Town's perspective was the failure of the PBA to provide cost analyses for its various economic proposals singularly or collectively which in the Town's judgment "ignores the welfare of the public, the financial ability of the public employer to pay."

Comparability

The Town takes issue with the PBA's focus on Clarkstown as the jurisdiction most comparable to Orangetown. Clarkstown has a larger population than Orangetown 72,519 vs. 36,697 and is larger in area 39 square miles vs. 22 square miles. Orangetown also has the third largest or third smallest police force after Clarkstown and Ramapo. Given these facts, the Town argues that comparability should not be viewed exclusively in terms of Clarkstown standards but should include

all towns in Rockland County. When this is done, the Town contends, the superior wage and benefits package enjoyed by Orangetown police officers becomes evident. In short, the Town maintains that it "should not be compelled to provide salary and benefits disproportionate to those provided to other workers within the region simply because one municipality has chosen to be overly generous to its PBA."

Bargaining History

Referring to the predecessor Interest Arbitration Award (1985-86), the Town renewed its position then as one where it offered a 13% base wage increase for 1985, equalizing Orangetown with Clarkstown at that time for 1st grade police officers, in exchange for fringe benefit concessions in longevity, sick leave, night differential, and overtime. Although the 1986 wage increase contained in the award of 5% was surpassed by a 7% Clarkstown increase, the Town insists that 18.66% in base wage increases over two years constituted a substantial improvement in the salary structure and only could have been accomplished with the fringe benefit givebacks. "This increase was markedly higher than that provided to any other town police force in Rockland County, the average percentage increase for the years 1985 and 1986 being approximately six (6%) percent per annum." In the Town's view, the exchange of fringe benefits for wages concessions in 1985-86 "represented recognition by the Panel that Orangetown and Clarkstown were not true comparables. . ."

Unlike the PBA, the Town contends that an accurate reading of the 1985-86 award indicates that the Panel's intent was to equalize 1st grade officers in Orangetown and Clarkstown for 1985 only and not to establish parity in perpetuity. The "give and take" the Town considered critical in reaching the 1985-86 award should be preserved in the instant award. Benefits received for concessions made are an integral part of the bargaining process and should remain in balance during subsequent awards barring unforeseen circumstances.

Finally, the Town reviewed as illustration the sick leave buy out collective bargaining history, concluding that the Panel's award accelerated the buyout of "frozen accumulated sick leave" to minimize the impact of the 1985-86 wage increase. Having relinquished this benefit for a "substantial increase realized directly in their pockets," the PBA should not be allowed to reinstitute the same benefit through the instant Arbitration Panel.

Discussion/Analysis

The Panel's objective in the instant interest arbitration is to arrive at an equitable and reasonable award which logically considers the statutory criteria. This task has been complicated by the number of issues, the absence of consensus on either the conceptual or the substantive aspects of the process and the significant differences in the weight each party assigns to the statutory criteria.

The Town has been adamant with respect to the sanctity of the 1985-86 Interest Arbitration Award which clearly reduced several fringe benefits in order to equalize briefly 1st grade police officers in Orangetown with their Clarkstown counterparts. Although Clarkstown was viewed as the police department to emulate in 1985 insofar as 1st

grade patrolmen were concerned, the Town insists that parity over time was not the objective. According to the Town, the ability of Orangetown to pay mitigated against direct comparisons with Clarkstown and only via substantial adjustments in fringe benefits was the 1985 equalization effected.

The PBA has been equally exorcised over the 1985-86 award, considering it as extremely detrimental to the police department. Not only were salary increases, particularly in ranks other than 1st grade, considered "ridiculously low" but also the large reductions in fringe benefits deemed disasterous. According to the PBA, even the alleged express intent of the parties to "grant Orangetown 1st grade police officers the same salaries as Clarkstown" was not realized as Clarkstown surpassed Orangetown again in 1986. The PBA also challenges the Town's strict adherance to the prior award since negotiated agreements rather than imposed awards is the statutory criterion which the Panel is charged to heed.

From the outset, it should be stated that each interest arbitration is a de novo process. That is, while consideration of the statutory criteria is mandatory, an independent judgment must be made as to which combination of factors, accorded what weight shall constitute the final determination. Absent a severe ability to pay problem, in most interest arbitrations the comparability criterion seems to emerge as the first among equals. While the parties in negotiating their own agreements may preserve or expand disparities, engage in equitable or inequitable trade-offs and/or reinforce or suspend traditional wage patterns, the Arbitration Panel is accountable for the result of its award. As a de novo proceeding, the

Arbitration Panel need not be controlled by one criterion such as bargaining history but is obliged to evaluate each criterion to produce an equitable result for the period of the award. Needless to say, if one party made major concessions to achieve a particular objective both those concessions and that objective in current terms would be assessed.

The Panel Chairman is persuaded that there is no tangible ability to pay issue in the instant case. Neither party produced any evidence that the wage and fringe benefit offers promulgated would fiscally impair Orangetown. For the most part, the Public Employer, rather than the employee organization, initiates the ability to pay defense usually resulting in alternative financial analysis by the PBA. Clearly, sound fiscal management can be undermined by excessive compensation to employees, however, the data necessary for an ability to pay analysis has been omitted.

In reviewing the wage patterns since 1983, the Chairman notes that 1st grade police officers in Clarkstown except for 1985 have always been paid more than 1st grade police officers in Orangetown. The gap in 1983 and 1984 exceeded \$2000 and is currently \$1300. According to the Town, the major trade-off of fringe benefits for salaries was necessary in 1985 to close a \$1235 gap (32,221-30,986) which existed prior to the award. Despite the fact the Town contends a one time closure was the parties intent, the Chairman notes that the \$1300 gap has returned while the fringe benefits lost have not.

The prior arbitration award essentially accepts the Town's argument that the Town's desire "to manage its financial affairs in a prudent, conservative manner", given a 19% wage increase over 2 years,

justified the minimization of this cost impact through fringe benefit concessions. Having established this premise, the award addresses all other issues accordingly. Absent the data relied upon by the Panel, namely the comparative analysis between wages gained and fringe benefits lost, the instant Panel is constrained to focus on the pre and post salary patterns and the current condition.

In the Chairman's judgment, Clarkstown and Ramapo have police departments comparable to Orangetown. Although Stony Point and Haverstraw have some characteristics in common with Orangetown, as smaller departments comparisons with Orangetown, except for certain fringe benefits, is not useful.

The salary objective sought in the instant case is to maintain the relative position of Orangetown vis a vis Clarkstown and Ramapo and also correct any clear inequities discerned. The primary focus of this effort is 1st grade police officer's salaries, but not to the exclusion of other ranks. At the expiration of the current agreement (12-31-86), the three (3) towns listed below were positioned as follows:

Clarkstown	37,469	-700
Orangetown	36,769	
Ramapo	35,661	+1108

The Town's proposal for 1987, resulting in a net wage increase to \$38,896 would have the following effect:

Clarkstown	39,459	-563
Orangetown	38,896	
Ramapo	37,826	+1067

The Towns proposal for 1988, a 6.3% increase following 7.6% split raises in 1987 would along with Ramapos 15.73% over two years leave the Towns as follows:

Clarkstown	42,270 (net)	42,997 base
Orangetown	42,120 (net)	42,120 base
Ramapo	41,271 (net)	41,271 base

Although in terms of net wages Orangetown's 1st grade police officers would receive under the Town's proposal during 1987-88 \$713 less (563 + 150) than Clarkstown, 1st grade police officers, when the rollover of \$727 into 1989 is factored in the difference is \$1440 or over twice the base wage difference in 1986. Commencing 1989 negotiations, Orangetown officers at 42,120 would receive \$827 less in base wages than Clarkstown. In addition, Ramapo 1st grade patrolmen who in 1986 were \$1108 behind Orangetown would be closer at \$849 -- a \$259 gain.

The PBA proposal of 12.87% or 41,500 in 1987 appears excessive to the Panel majority. Were the PBA proposal awarded, Orangetown for the first time would surpass Clarkstown in base wages. That the Clarkstown public employer has chosen to retain leadership in police officer compensation does not mandate that Orangetown keep pace -- only that a fair and reasonable salary is paid. To the extent that the PBA proposal seeks retroactive compensation for the perceived inequities of the prior award, the Panel faces a dilemma. While the Panel can and will address current inequities to some extent, it cannot obliterate the effects of the prior award as if it never occurred.

Accordingly, with respect to first grade police officers, effective January 1, 1987 the following salaries are awarded retroactively as follows:

	<u>1/1/87</u>	<u>1/1/88</u>
<u>1st grade</u>	\$39,527	\$42,492

The above wage increase represents a 7.5% wage increase in 1987 followed by a 7.5% wage increase in 1988. The relationship among the three towns resulting therefrom is as follows:

	<u>1/1/87</u>	<u>7/1/87</u>	<u>NET</u>	<u>1/1/88</u>	<u>7/1/88</u> (base)	<u>NET</u>
Clarkstown	38,780	40,138	(39,459)	41,543	42,997	(42,270)
Ramapo	37,087	38,571	(37,829)	41,271		(41,271)
Orangetown (7.5%)	39,527		(39,527) 7.5%	42,492		(42,492)

Whereas Orangetown 1st grade police officers will receive \$68 more than Clarkstown in 1987 and \$222 more in 1988, the 1989 rollover of \$729 in Clarkstown exceeds the Orangetown temporary net wage advantage. In addition, the base wage of Clarkstown of \$42,997 will continue to exceed Orangetown at \$42,492 thus maintaining a traditional pattern -- albeit \$505 more. Moreover, the Ramapo/Orangetown equilibrium is maintained commencing 1989 as a \$1221 advantage for Orangetown proportionally consistent with the \$1108 differential which prevailed prior to the instant award. The awarded increase of 15.56% over two years keeps pace with the 15.73% allocated in Ramapo for 1987-88.

At this juncture, with only six months remaining for this contract period and absent any adverse fiscal evidence which split raises are normally designed to address, the panel has opted to award straight annual retroactive salary increases. Finally, the slight wage advantage obtained by Orangetown 1st grade police officers over Clarkstown in net 1987/88 wages is partial recognition of the net present value of money received in the future.

Grades - Probationary through 4th

With respect to probationary police officers, the Panel majority notes that prior to the last arbitration award Orangetown paid salaries approximately \$4700 less than Clarkstown and \$400 - \$500 more than Ramapo. After the award, the gap increased to \$6300 vs. Clarkstown and fell \$1000 behind Ramapo -- a clear reversal of pre-existing patterns. Again, the Town maintains that this \$1570 difference was the probationary officers contribution to equalizing 1st grade salaries for one year.

The Town is proposing to increase probationary salaries 30.05% over two years as follows:

<u>Year</u>	<u>Salary</u>	<u>Increase</u>	<u>Net Increase</u>
1986 Current	20,313		
1/1/87	22,048	+1735	+8.54%
7/1/87	23,712	+1664	+7.02%
1/1/88	26,416	+2704	+11.40%

In so doing, the Town contends Orangetown probationary officers salaries will be competitive with all other Towns, except Clarkstown. A \$6300 gap with Clarkstown would be reduced to \$5575 whereas the advantage over Ramapo would be restored to \$600.

The PBA, on the other hand, seeks parity with Clarkstown in its probationary officers proposal of \$30,000 beginning 1/1/87.

In the Panel majority's judgment, restoration of the relationship that existed prior to the last award seems equitable given the absence of data in the award explaining how the probationary reduction of \$1570 (1984-1986) contributed to the \$2600 1st grade increase. Implementation of the Town's proposal after 1988 will leave a \$5730 gap (32,146-26,416) with Clarkstown, but a \$1751 (26,416 -24,665) advantage over Ramapo.

The Chairman concurs with the parties in their mutual intent to significantly increase the salaries of probationary officers. To accomplish this end and to maintain Orangetown's traditional strong second place standing, we award 18% salary increases for the probationary officers rank effective 1/1/87 and 1/1/88 as follows:

	<u>Salary</u>	<u>(+) or (-)</u>	<u>Pct.</u>
1986 current	20,313		
1/1/87	23,969	+3656	18.00%
1/1/88	28,283	+4313	18.0%
			(20.40% compounded)
Clarkstown	32,146	-3836	
Ramapo	24,665	+4199	
<u>2nd - 4th grades</u>			

The PBA has argued that the Orangetown pay scale was closer to Clarkstown salaries prior to the last award than it was afterwards. Although in 1/1/84 Orangetown officers at every rank were paid somewhat less than Clarkstown officers, the differences increased in every category. Specifically, 4th grade increased from \$1,511 to \$5,076 (>\$3,565); 3rd grade increased from \$1,277 to \$4,410 (>\$3,133); and 2nd grade increased from \$1,164 to \$3,858 (>\$2,694). To rectify this situation, the PBA has proposed the following 1987 increases:

<u>Current</u>	<u>PBA 1/1/87</u>	<u>Pct. Increase</u>	<u>Amt.</u>
4th 28,202	32,875	16.6%	4673
3rd 30,265	35,750	18.5%	5605
2nd 32,214	38,625	19.90%	6411

The Town has proposed more modest increases, maintaining that "Orangetown ranks first to all Towns from 4th grade through 2nd grade with its 1987 proposal except for that aberration, the Town of Clarkstown". The Town proposes as follows for 1987/88.

<u>Current</u>	<u>Town 1/1/87 Pct</u>	<u>7/1/87</u>	<u>1/1/88</u>	<u>Total Pct.</u>
4th 28,202 +710	28,912 (2.5%)	29,640	30,368	7.68
3rd 30,265	31,096 (2.7%)	31,928	32,760	8.24
2nd 32,214	33,072 (2.7%)	34,112	35,152	9.12

The differences between Orangetown and its comparable Towns of Clarkstown and Ramapo would change as follows from 12/31/86 to 12/31/88 under the Town's offer.

<u>Orangetown</u>	<u>1/1/86</u>	<u>Ramapo</u>	<u>Clarkstown</u>
4th	28,202	24,905 (+3297)	33,278 (-5076)
3rd	30,265	28,930 (+1335)	34,625 (-4410)
2nd	32,214	31,400 (+ 814)	36,072 (-3858)
		(+5446)	(-13,344)

<u>Orangetown</u>	<u>12/31/88</u>	<u>Ramapo</u>	<u>Clarkstown</u>
4th	30,368	28,823 (+1545)	38,806 (-8438)
3rd	32,760	33,481 (+ 721)	40,203 (-7443)
2nd	35,152	36,340 (+1188)	41,600 (-6448)
		(+3454)	(-22,329)

Were the Panel to award the Town's proposal for grades 2-4 not only would Ramapo draw \$2000 closer to Orangetown but also the distance from Clarkstown would increase by \$9000 over the 3 years -- a substantial sum. Even the Town's calculations which show an advantage

over in Ramapo in 1987 of +2703 for 4th grade, +637 for 3rd grade and +150 for 2nd grade represent significant declines from the 1986 equivalent numbers and substantial differences from the pre 1985 period.

Prior to the last award, the 2nd - 4th grade gap with Clarkstown in 7/84 was \$4258 (\$ 88,281 - \$84,023) as compared to the 1/86 gap of \$13,344 and the Town's proposal which would create a \$22,329 differential. While the panel is reluctant to eliminate the effects of the prior award as the PBA proposes -- giving the award some precedential value and assuming some quid pro quo between the parties -- it is similarly reluctant to allow the 1986 gap in grades 2nd - 4th to increase dramatically as the Town proposes. Under the circumstances to stabilize this negative trend, the Panel majority awards as follows:

Effective 1/1/87 and 1/1/88 respectively, police officers in ranks 2nd, 3rd and 4th shall receive retroactive wages of 9.0% per annum as follows:

<u>Orangetown</u>	<u>Salary</u>	<u>Increase</u>	<u>Salary</u>	<u>Increase</u>
Current 1/1/86	1/1/87		1/1/88	
4th 28,202	30,740	+2538	33,507	+2767
3rd 30,265	32,989	+2724	35,958	+2969
2nd 32,214	35,113	+2899	38,273	+3160

The resulting comparisons with the two comparable Towns are as follows:

<u>12/31/88</u>	<u>Orangetown</u>	<u>Ramapo</u>	<u>Clarkstown</u>
4th	33,507	28,823 (+4684)	38,806 (-5299)
3rd	35,958	33,481 (+2477)	40,203 (-4245)
2nd	38,273	36,340 (+1933)	41,600 (-3327)
		(+9094)	(-12,871)

In conclusion, the foregoing award for police officer grades 2nd, 3rd, and 4th slightly decreases the negative wage differential vis a vis Clarkstown (\$73) from 1/1/86 while significantly increasing the positive wage differential vis a vis Ramapo (\$9094-5446=3648). The effects of the 1985-86 Award are carried forward with respect to Clarkstown but the instant award, as opposed to the Town's offer, holds constant the Orangetown/Clarkstown relationship thereafter.

In summarizing the salary award at this stage, probationary to 2nd grade, it should also be noted that Clarkstown police officers will receive 152,755 vs. the \$136,602 receive in Orangetown -- a difference of \$16,153. This sum clearly exceeds the pre-awarded differential of \$8993 (\$112,102 - 103,109) but is an improvement over the current differential of \$19,649 (\$130,643-110,994). Assuming 1st grade police officers receive salaries from years 5-20 approximately one thousand (\$1,000) greater than would have received without the 1985-86 award, the difference is technically made up, although Orangetown police officers remain \$16,153 behind Clarkstown but increasingly ahead of Ramapo.

2. Detectives/Youth Officer

Town Position

The Town proposed a flat dollar differential for detectives/youth officer of \$2200.00 above grade and rank. On an annualized basis, the salary received thereby would increase to \$40,368 on 1/1/87; \$41,824 on 7/1/87 and \$44,320 1/1/88. According to the Town, this annual increase of \$200.00 represents a 10.0.% increase over the current \$2,000 paid.

The Town rejects the PBA contention that the 7.5% differential for detectives is the norm in Rockland County since only Clarkstown and Stony Point have it. With respect to Clarkstown, the Town asserts that a 6.5% differential was paid in 1986; 7.0% differential in 1987 and will reach 7.5% in 1988.

In addition, the predecessor award is cited which eliminated all percentage differentials on the ground that "increased responsibilities for supervision have not increased significantly over the years "and therefore the differentials should not geometrically increase sergeants and lieutenantants wages. The \$2,000 differential above grade and rank of 1st grade would be increased as follows:

Current Detective/Youth Officer

12/31/86	<u>1/1/87</u>	<u>7/1/87</u>	<u>Net</u>	<u>1/1/88</u>	<u>Net</u>
38,769	40,368	41,824	(41,096)	44,320	44,320

The Town's \$2200 or \$200 increase over the current \$2000 is based on its wage proposals (e.g., \$2200 + 39624 = \$41,824) (7/1/87).

PBA Position

The PBA seeks a 7.5% differential and the cleaning of detectives clothing (A#1, Article Seven). In this connection the PBA notes that Clarkstown pays a 7.5% differential plus \$500 clothing allowance in 1988, 7% in 1987 plus a clothing allowances of \$400. Ramapo has 3 grades of detectives and pays flat salary differentials of \$300 below Sergeant, First Grade and Second Grade detective (PBA #3, p.24). The PBA maintains that these salary differentials range from 12% for 1st year detectives to 14% for 1st grade detectives (PBA #1 p. 18).

Analysis/Discussion

The logic utilized by the Town, derived from the prior award, is that a fixed relationship should exist between detectives and 1st grade police officers salaries. The \$2000 flat sum represented 5.4% of the 1st grade salary of \$36,769 as of 12/31/86. The Town's offer to increase this amount 10.0% to \$2200 would represent 5.76% of its 1/1/87 wage offer. Unlike the Town and prior arbitration panel, the instant Panel majority maintains that a dollar sum if not increased proportionally loses relative value over time. That is, the relationship between \$40,000 and \$2000 is not the same as the relationship between \$45,000 and \$2000.

Given the fact 3 of the 5 Towns, except Orangetown, use or rely upon a percentage differential to compensate detectives, an adjustment is appropriate.

Accordingly based on the instant award for 1st grade salaries, the cash equivalent of a 7% detectives differential is awarded as follows:

<u>1st Grade</u>	<u>1/1/87</u>	<u>Detectives</u>		<u>1/1/88</u>	<u>Detectives</u>
	39,527	+2769 = 42,294		42,492 + 2974 = \$45,466	

The Panel chairman credits the Town argument that it may choose to negotiate this compensation rather than have it automatically increase, however, the panel is obliged to award a fair sum comparable to similarly situated Towns.

The majority further awards that the Town shall provide for the cleaning of detectives' clothing used while serving in plainclothes or, in the alternative, pay each detective the sum of \$400 per annum for said purposes. Together, the detectives compensation and the cleaning service or clothing allowance approximate the wage increases granted 1st grade patrolmen. The language proposed by the PBA will suffice and is thus awarded as follows:

Add a new sentence for Article 7.2 "Officers assigned to plain-clothes shall have their outer clothing cleaned in lieu of uniforms during the time they are in such plain-clothes assignment".

As an alternative, the Town shall pay annually on January 1st, the sum of four hundred (\$400.00) dollars to each officer assigned in plain clothes.

3. Sergeants and Lieutenants

The prior panel eliminated the 15% rank differentials for sergeants and lieutenants, rationalizing these reductions as necessary to assist the Town in sustaining its 1st grade wage increases. In lieu

of the 15% differential, a flat dollar increase for sergeants of \$4,500 above 1st grade and a flat dollar increase for lieutenants of \$5000 above sergeants were established.

Discussion/Analysis

Clearly, the Town's proposal if enacted would further diminish the relative value of the sergeants' and lieutenants' wage differentials. With the Town's proposals, the \$4500 for sergeants and \$5000 for lieutenants becomes a progressively smaller percentage of their total salaries. Were this process to continue at some point the sergeant's/lieutenant's differential would become a nullity. Inasmuch as the parties placed a specific value on sergeant and lieutenant services over and above the rank below, logic and equity suggest that they should intend to preserve this relationship -- not erode it.

Given the fact that the comparable towns of Clarkstown and Ramapo as well as Stony Point will have a 14-15% differential for sergeants and lieutenants effective during 1988, the Panel majority discerns no plausible reason for denying this benefit to Orangetown officers. The 5% differential between the Town's offer and that paid by other police departments is not explainable, in the Chairman's opinion, by the reductions accompanying the 1985/86 award. I calculate an additional 5% for the (13) sergeants and the (5) lieutenants, exclusive of base wage increases to approximate \$65,000 over two years. $1400 \times (13) + 1900 \times (13) + 1200 \times (5) + 2200 \times (5) = 65,000$.

Accordingly, the Panel awards that effective 1/1/87, the rank differentials of fifteen (15%) percent between 1st grade police officers and sergeants and fifteen (15%) percent between sergeants and lieutenants shall be reinstated as follows:

Sergeants

current	1/1/87		1/1/88
41,269	45,456	(39,527 x .15) or 5929	48,866 (42,492 x .15) or 6374

Lieutenants

current	1/1/87		1/1/88
46,269	52,274	45,456 X .15 or 6818	\$56,196 (48,866 x .15) (or 7330)

Summary

The summary of base salaries and differentials awarded for police officers, effective January 1, 1987 is as follows:

	<u>1/1/87</u>	<u>1/1/88</u>
Probationary	23,969	28,283
4th Grade	30,740	33,507
3rd Grade	32,989	35,958
2nd Grade	35,113	38,273
1st Grade	39,527	42,492
Sergeant	45,456	48,866
Lieutenant	52,274	56,196
Detective	42,294	45,466
Detective Sgt.	48,225	51,840
Detective Lt.	55,043	59,170

4. **Longevity**

PBA POSITION

The PBA maintains that Orangetown police officers receive longevity payments substantially below the rest of the County. The removal of a special increment known as the "DeMaio" during the prior arbitration award exacerbated the problem. The "DeMaio" was paid to a patrolman or detective patrolman who attained fifteen years of service in those ranks.

The parties are currently litigating the interpretation of award language concerning longevity payments. The Town has removed the "DeMaio" increments from those patrolmen who received the increment prior to the issuance date of the award 12/85 as opposed to the effective date of the contract period covered by the award 1/1/85.

In addition, since Orangetown commences longevity at the seventh (7th) year whereas virtually all other towns and villages begin at step 4, Orangetown is least favored. "When Orangetown police officers received their first \$475 longevity payment for their 7th year of service, Clarkstown, Ramapo and Nyack police officers were receiving \$950 and had already received a total of \$2250 in longevity payments..."

To rectify the situation, the PBA proposes as follows:

6.2 Longevity pay shall be paid to employees who have completed three (3) years of service and on the subsequent three year anniversary date so long as the employee shall continue in the employ of Orangetown, said increments shall be in the sum of \$550.00.

All patrolmen shall reach the grade of first grade patrolmen after the completion of four years of service. The determination of the employee's period of service shall be based on the anniversary date of his original appointment to the Orangetown Police Department and not the date that his employment became permanent.

Town Position

The Town proposes to increase the existing longevity increment to \$500.00 at each existing longevity step of which there are six (6) steps. The Town further reiterated its argument during the prior interest arbitration that longevity is a recognition of knowledge and experience gained and eventually this compensation "maxes out" making

it "economically unsound to continue to pay an employee above the general wage increase. . . "Therefore, the Town believes the cap after six (6) longevity steps should be retained.

The Town further opposes the restoration of the "DeMaio" increment, declaring there is no justification for rewarding a patrolman for simply achieving 15 years on the force without being promoted. The Town also considers it inappropriate to grant a longevity increment (ie. Step 4) while the patrolman is moving through the incremental structure which itself is recognition of increased experience."

The Town contends its proposal will rank Orangetown "second only with Haverstraw with respect to the dollar equivalent paid to its police officers". Finally, the Town rejects the PBA proposal as insufficiently costed out. The Town calculates the PBA demands would cost an additional \$23,875 over 25 years.

Analysis/Discussion

The Panel Chairman can delineate areas of agreement and disagreement within the parties respective positions. The Chairman is persuaded that the PBA lost significant longevity benefits as a result of the prior award, particularly the "De Maio" increment. The PBA also documented the substantial longevity deficit existing in Orangetown as compared to other Rockland County police departments. For example, the Towns of Clarkstown, Ramapo, and Haverstraw pay \$8,000 to \$15,000 more over 25 years with Stony Point over \$20,000 more in longevity increments.

The Chair also agrees with the Town in its view that the "De Maio" increment lacked a rationale basis for its existence and probably, in the Chair's opinion constituted political largesse. If "De Maio" represented a substitute for the 4th year increment paid by virtually every Town, it also is problematic since the Town is correct in asserting that longevity cannot logically be paid while police officers are below 1st grade. And, finally, unrestricted longevity steps would seem to be pointless at some juncture.

Nevertheless, there is a discernible deficit which should be addressed. At the same time, the Panel majority awards that existing longevity benefits be retained. Therefore, the Panel majority awards as follows:

Article Six

6.2 Amend to read as follows:

Longevity pay shall be paid to employees who have completed six (6) years of service and on the subsequent three year anniversary date for seven (7) increments, including a twenty-fifth year, so long as the employee shall continue in the employ of the Town of Orangetown. Said increments shall be in the sum of \$525.00. The determination of the employee's period of service shall be based on the anniversary date of his original appointment to the Orangetown Police Department and not the date that his employment became permanent.

Employees who were originally credited, prior to December 2, 1985, with the additional longevity for patrolman and detective patrolman with fifteen (15) years of service (DeMaio) shall be entitled to continue to receive said longevity increment for as long as the employee remains a patrolman or detective patrolman.

Employees who originally received their first longevity increment in their fourth year of service shall continue to be entitled to receive an additional longevity increment every three (3) years, except that no such employee shall be entitled to receive additional increments after their twenty-fifth (25) year of service (8th increment), unless such employee had already attained their twenty-fifth (25) year of service prior to the December 1985 arbitration award. If an employee had already attained his twenty-fifth (25) year of service prior to the December 1985

arbitration award, he shall be entitled to all longevity increments he had at that time, but shall not be entitled to accrue any further longevity increments.

All increments shall be in the sum of \$525.

To summarize, as a result of the foregoing longevity award, the following cumulative pattern shall exist, effective January 1, 1987.

Years of service	<u>7</u>	<u>10</u>	<u>13</u>	<u>16</u>	<u>19</u>	<u>22</u>
longevity pymt.	525(3)	1050(3)	1575(3)	2100(3)	2625(3)	3150(3)
		<u>25</u>				
		3675				

5. Night Shift Differential

Town Position

The Town has proposed an increase to the night shift differential from 75 cents per hour to 80 cents per hour. The Town notes that only two (2) towns in Rockland County pay night differential, namely Orangetown and recently Clarkstown. In the Town's opinion, night differential should be paid "only when the officer works a night shift on a full-time basis as opposed to a rotating basis". Moreover, the Town contends, the night differential should not be a percentage -- as existed prior to the 1985-86 award -- but a flat sum reflecting the fact all officers are equally inconvenienced by the assignment.

"An officer who will receive the night differential of 80 cents per hour will earn a guaranteed amount of \$1,664.00 above base salary." Prior to 1985 the Town states night differential was paid only to officers who worked the hours and not while on leave, however, its current proposal guarantees the differential to the officers every pay period rather than quarterly "whether he works or not every pay period." (Town Brief, p.54).

PBA Position

According to the PBA, Clarkstown and Orangetown operate steady midnight tours where officers only work the night shift hours of 2300 to 0700 or 2400 to 0800. Clarkstown pays a 6% night shift differential to these officers and so did Orangetown prior to the last award which reduced the compensation to 75 cents per hour.

The award, in the PBA's judgment, also created a problem in that it distinguished the night differential to be included in the base pay rate for overtime computations under the Fair Labor Standards Act paid at 60 cents from the night differential not part of FLSA overtime computations paid at 75 cents. The Town has been paying 75 cents since the award, however, the PBA submits that FLSA "does require that night shift differential be included in overtime computations."

Analysis/Discussion

In the Panel Chairman's opinion, the stress factors associated with night work impact directly on those officers who work these shifts on a regular basis, irrespective of rank. The night shift differential should therefore reflect in economic terms the burden of such work. Although there is no evidence as to what the relationship of 75 cents was to the average hourly rate of Orangetown police officers during the prior award, the Town's offer of a 5 cents increase seems inadequate. An increase of 10 cents to 85 cents seems appropriate and commensurate with the 15% increase in base wages. The Chairman is also persuaded by the PBA's argument that the Fair Labor Standards Act requires that night shift differential be included in overtime computations.

Accordingly, it is awarded that Article 6.3 be amended to read as follows:

6.3 Effective January 1, 1987 Officers who are regularly scheduled to work between the hours of 2300 and 0800 shall receive an additional (\$.85) per hour over their normal base salary for all hours worked during such time. Payment for the night shift differential shall include shifts where the employees are off on any official paid leave (i.e., sick leave, vacation leave, personal leave, etc. and worker's compensation up to one (1) year).

6. Agency Fee

The PBA has proposed that an agency shop fee clause be added to the contract. Currently, all members of the bargaining unit, except one, are members of the PBA. The majority of Towns, except Orangetown and Ramapo have this provision.

The Town did not address the agency fee issue in its written submissions. In any event, the Chairman concludes the PBA has met the criteria usually required to incorporate an agency fee clause in an agreement. With 99% of the unit members enrolled in the PBA, the agency fee will not impinge significantly on the rights of those employees who choose not to join.

Accordingly, Article Four, Section 4.1 shall be deleted and replaced with the following clause:

ARTICLE FOUR

DUES CHECKOFF AND AGENCY SHOP FEE DEDUCTION

The Town agrees to deduct from the salary of all unit members who are not members of the Association, effective 9/1/88, an amount equivalent to the amount of dues payable to the Association, and to deduct from the salary of all unit members who are members of the Association, Said dues shall be deducted from each paycheck. The Association shall inform the Town of the amounts of dues to be deducted, and the individuals from whom dues are to be deducted. Written authorization by the employee shall be furnished to the Town

where such employee is an Association member. The Agency Shop Fee deduction shall be made in accordance with the provisions of Section 208.3 of the Civil Service Law.

The first sentence of Article 4.1 shall be deleted and replaced with the above.

7) Sick Leave
PBA Position

The PBA proposes to add a new Article 12.1 which would provide that sick leave credits shall accrue at the rate of 2 days per month comparable to other Rockland County Towns. The PBA further proposes that a new Article 12.2 be added that would provide for a sick leave buyout as in Clarkstown. According to the PBA, of the five Towns, "Orangetown is the only one without sick leave buyout or unlimited sick leave." In addition, the PBA proposes a Section 12.3 that would provide for separate accruals for family sick leave which would not be counted against the employee's accumulated sick leave.

The PBA proposes a Section 12.4 which would provide that sick leave credits shall continue to accrue while an employee is receiving benefits under Section 207c of the General Municipal Law. "Nothing in Section 207c prevents police officers from receiving sick leave accruals while receiving their salaries pursuant to Section 207-C." The PBA contends the Town unilaterally drafted contract language in Article 12.2 which denies employees sick leave accruals" during any month on leave of absence without pay or receiving benefits under Section 207c GML for one-half (1/2) or more of the month. This constitutes an inequity because officers injured on-the-job do not accrue sick leave while those injured off the job receive this benefit".

In addition, the PBA seeks to amend Section 12.8 to provide that after an employee reimburses the employer for any money paid while he was out on extended sick leave, he will be credited with his vacation, sick leave and other paid leave accruals. Finally, it is proposed that Section 12.8 permit the officer returning from extended sick leave to pay the municipality back with leave credits for vacation, etc. rather than immediately with money.

Town Position

The Town opposes reinstatement of a "sick leave buyout" program. Pursuant to the prior award, the Town accelerated its payment for all accumulated sick leave at a cost of \$750,000. (Ex. T#6). The elimination of the accumulated sick leave benefit began with the 1981-82 agreement.

The Town similarly opposes the PBA demand to add 4 1/2 days of sick leave per year to twenty four (24). According to the Town, the 4 1/2 reduction during the last award was another component of the contributions necessary to pay the 18.66% base wage increase. This demand along with a request for 24 family sick/bereavement days per year convinces the Town that cost impact is irrelevant to the Union.

Finally, the Town has a proposal to modify Section 12.15 to make it consistent with the prior award. The award reduced sick leave to 19.5 days or 156 hours per year from 24 days or 192 hours; therefore the 12 day family sick leave benefit should be proportionately reduced to 78 hours of the 156 hour total.

Analysis/Discussion

Despite the fact the vast majority of Rockland County Towns and Villages provide either unlimited sick leave or an accumulated sick leave buyout plan, the Panel majority concludes that Orangetown having

initiated a phase out of accumulated sick leave in the 1981-82 agreement which was finalized by the 1985-86 award shall not reinstitute the benefits via the instant arbitration award.

In addition, despite the fact a case can be made that it is inequitable for Orangetown not to allow its officers to accrue sick leave credits while they are receiving benefits under Section 207c of the General Municipal Law as do virtually all other Rockland County Towns it did not provide this benefit under Section 7.4 II of the 1983-84 agreement (Ex. T #1). This language while not identical to language contained in Section 12.2 of the current agreement (derived from the 1985/86 Award (T#4) and Town's additions) denied officers accruals in sick leave, vacation and other credits while receiving benefits under Section 207 (c) of the G.M.L. To resolve differences in this area, the parties should ultimately negotiate directly.*

* It should also be noted that the Clarkstown contract does not permit employees to accrue vacation, sick leave, or other credits while on sick leave or extended sick leave. (PBA #2).

However, Sections 12.7 and 12.8 are ambiguous in some respects. While 12.7 requires the employee to exhaust all his/her sick leave, vacation and personal leave credits in order to become eligible for sick leave at half-pay, Section 12.8 requires the employee, who cannot accrue vacation leave, etc. while on sick leave at one-half pay, to reimburse the Employer for any money paid for sick leave before separation from the department.

In the Panel majority's judgment, credits acquired after the employees return to work should be used to prospectively reimburse the employer. Otherwise, upon return to work the employee would not have any credits or money to reimburse the employer. With respect to the Town's proposal to reduce family sick leave to 78 hours, the Panel majority opts for the status quo despite the arithmetical imbalance.

PBA proposals to clarify existing contract language, correct an inequity or delete obsolete language shall be awarded as feasible.

Accordingly, it is awarded that Article Twelve shall be amended as follows:

Section 12.1	No change
Section 12.2	No change
Section 12.3	No change
Section 12.4	No change
Section 12.5	No change
Section 12.6	No change
Section 12.7	No change

12.8 Amend to read as follows:

"It is expressly agreed that any employee upon his/her returned to full-time duty shall, pursuant to the second sentence hereof, reimburse the employer for any time paid for extended sick leave before separation from the Department. Upon return to full-time duty, all vacation or other paid leave credits, except sick leave, shall be utilized prospectively first to reimburse the employer on an equivalent time basis for any such extended sick leave granted."

Employees will not accrue vacation, sick leave or other paid leave credits while on sick leave with one-half pay or on absence without pay.

12.9 Amend the first paragraph to read as follows:

"An employee who is out on sick leave with one-half (1/2) pay or extended sick leave absence without pay during the first year of such absence will continue to be provided with health insurance benefits at the employer's expense. Thereafter, an employee who desires to maintain his/her health insurance benefits shall pay the employer's premium rate for that month directly to the employer."

12.9 Paragraph #2

No Change: (Refers to leaves of absence without pay for personal or non-sick related absences).

- 12.10 No change
- 12.11 No change
- 12.12 Delete
- 12.13 Delete
- 12.14 Delete
- 12.15 No change (renumber to 12.12)

8) Overtime

PBA Position

The PBA proposes to replace current Articles 13.1 to 13.4 so as to conform the Orangetown overtime provisions to those found in Clarkstown, Ramapo et al. The PBA further proposes to add a Section 13.6 which address a problem considered unique to Orangetown, namely a triple time provision for those employees who are required to work a special event (e.g., parades) on scheduled days off. According to the PBA, the escalation of special events deprives these officers of their infrequent holidays and weekends off.

Town Position

In Executive Sessions, the Town objected to the proposed payment of triple time, indicating that no other Towns pay this rate. The Town's representative also stated that there is exclusivity with respect to Orangetown unit work and the hiring of outsiders would violate this concept as well as pose insurance liability problems.

Analysis/Discussion

The payment of time and one-half for overtime is the norm, therefore the Panel majority denies the PBA demand for double time. The Panel majority further notes that police officers who work in Orangetown assume both the advantages and disadvantages of employment in that community upon hiring. Parades apparently are a fact of life in Orangetown. Further documentation of the officer's hardships would be necessary to consider the PBA proposal. Neither importing the Clarkstown overtime provisions wholesale or severely restricting the management of the Orangetown Police Department serves the best interests of the parties. At the same time, the Panel majority notes that working conditions should be reasonable, fair and comparable to similar situated communities.

In this connection, the Panel majority awards that a new Section 13.3 be added to Article 13, a modification of the PBA proposal, guaranteeing rights under Section 971 of the Unconsolidated Laws as follows:

13.3 Nothing herein contained, however, shall require a police officer who may be on duty in the open air, or on the streets or in other public places to work in excess of eight (8) consecutive hours of each consecutive twenty-four (24) hours and no police officer shall

be assigned to more than forty (40) hours of duty during any seven (7) consecutive day period, except in an emergency, including mandatory overtime to insure the adequate manning of a shift.

Prior Article 13.3 shall be renumbered as Article 13.4 and so forth. All other PBA demands for revisions in the Overtime Article are Denied.

9) Vacation

PBA Position

The PBA contends the Orangetown vacation schedule is inadequate at all levels. Specifically, "in his 10th year of service, an Orangetown Police Officer receives only 22 days although both Ramapo and Clarkstown receive 30 days." Similarly, during his 15th year the Orangetown police officer receives 25 days while the Ramapo officer receive 35 days and the Clarkstown officer 30 days.

The PBA proposal to amend Article 8.7 is offered to remedy the problem as follows:

<u>Length of Service</u>	<u>Vacation Days</u>
1 year	15 days
2 years	15 days
3 years	20 days
4 years	30 days
5 - 20 years	30 days
After 20 years	35 days

The vacation schedule for the employees herein shall include all fifty-two (52) weeks of the year.

The PBA further proposes that contract language substituted for Article 8.3 permit employees to accrue vacation credits while receiving benefits pursuant to Section 207c of the General Municipal Law.

Town Position

The Town has proposed that an additional day be added for each year of service for years twenty one (21) through twenty five (25), resulting in the following vacation scheduled.

<u>Years of Service</u>	<u>Present</u>	<u>Proposed</u>
21	30	31
22	30	32
23	30	33
24	30	34
25	30	35

According to the Town, if awarded, their proposal would provide PBA members with "more vacation leave than any other officer in Rockland County." The Town also rejects the PBA effort to arbitrarily select "unique characteristics of contracts" tailored to meet the needs of various municipalities" as the basis for comparison.

In this connection, the Town cites the 243.5 day work schedule as the "premier schedule" within the County thus providing the Town with proportionately lower police coverage per officer. When the work schedule, holidays, and personal leave days are combined, the annual net days worked in Orangetown under the Town's proposal (199.78) compare favorably to other Towns (eg. Ramapo, 256 days).

In its Reply Brief, the PBA refuted the Town contentions and provided Exhibit D which sets forth the vacation entitlements of Ramapo and Clarkstown vis a vis Orangetown." The Orangetown police officers (over a 20 year career) would have receive a total of 109 days less than the Ramapo officer and 121 days less than the Clarkstown officer. (Reply Brief, p.11).

With respect to the Town's work chart data, the PBA contends the 243.5 day work year is inaccurate since Orangetown officers work 8.25 hours per day yielding 250 days for patrolmen and 261 days for some supervisors. Discrepancies were also found in the Ramapo schedule, specifically the omission of ten compensatory days.

Analysis/Discussion

The Panel majority is persuaded that a significant discrepancy in vacation benefits exists between Orangetown and the comparable police departments of Clarkstown and Ramapo -- not offset by other benefits. The current vacation schedule has not been adjusted in at least 5 years. The awarded adjustment combines aspects of the PBA and Town proposals. To rectify the discrepancies the following changes are awarded, effective January 1, 1988.

Amend Article 8.7 to read as follows:

For completed years of continuous service, year 1 through year 4 - no change in vacation credited.

For years five (5) through eight (8) increase from 20 days to 22, days, leaving year nine (9) at 22 days.

For years ten (10) through fourteen (14), increase from 25 days to 28 days.

For years fifteen (15) through twenty (20); no change; shall remain at 30 days.

For years 21 through year 25, one day per year as per the Town proposal.

Finally, the PBA demand to add an Article 8.3 is Denied.

10) Holidays

PBA Position

The PBA proposes to Amend Article 9.3 to provide for payment of holidays in January and July as was the practice prior to the last Arbitration Award. A Section 9.4 is sought which would permit holiday accrual under Section 207c GML. Again, the PBA argues that a police officer injured on the job should not be unfairly penalized. In addition, a Section 9.5 is proposed which would pay officers who work on a holiday time and one half.

Town Position

The Town opposes holiday accruals for Section 207c injuries because the matter is negotiable and the current provision has been in the contract since 1981-82. The Town also opposes time and one-half for working a holiday. In the Town's view the rotating work schedule which allocates manpower necessitates that certain officers will work holidays. On such occasions, the officers are paid for the holiday and given a compensatory day off -- a total of two days compensation.

Analysis/Discussion

In proposed Section 9.3, the PBA seeks return to the practice of posting holidays in advance of their occurrence. Under this system a patrolman could take a "holiday vacation" once the holidays were posted. Currently, the officers can only use those holidays which have occurred, but not posted, and if unused in the first or second six months of the year they are paid for the holidays.

The Panel majority concurs with the existing practice, as administratively defensible, and will therefore deny the PBA proposal to change that aspect of Section 9.3. However, the second sentence of

Section 9.3 (i.e., Payment of the unused holidays . . .etc.) should be changed to reflect the fact several holidays occur in November and December which the employee may have insufficient time to use.

Accordingly, the Panel majority awards the following:

Section 9.3

An employee may take a holiday as either time off, as they occur, with the approval of the Department Head or his designated representative, or elect to be paid his applicable rate at the time the holiday occurs. Payment of the unused holidays that occurred in the first six (6) months of the year will be paid during the first pay period in July. Those that occur during the second six (6) months of the year, will be paid during the last pay period of December, except that commencing 10/1/88 those unpaid holidays occurring in the months of October, November, December of the preceding year may be carried over and used, or paid at the rate of pay prevailing when they occurred for ninety (90) days or until March 31st of the following year. Those days carried over but not used or paid by March 31st shall be paid at the forementioned prevailing rate during the first payroll period in April. However, any employee who is separated from service prior to any of the above pay periods shall be compensated for those holidays that occurred and were not taken in time off.

Delete the last sentence: "No holiday credits shall be carried forward into the next year".

The balance of Article 9.3 shall be retained beginning with the sentence; "However, any employee . . . forward into the next year."

The PBA requests for a new Section 9.4 and Section 9.5 are denied. The Panel majority notes that, with respect to proposed Section 9.5, total compensation of one and one half days for working a holiday is not the practice in the comparable Towns.

11) Health Insurance

PBA Position

The PBA has proposed a revision of Article 14.4. According to the PBA, the prior arbitration panel adding the existing Section due to a misconstrual of Orangetown's health insurance benefits. Nassau County, unlike Orangetown, is self insured thereby permitting return to the plan if an employee leaves. The State Health Insurance Plan of which Orangetown is a member denies reentry to a retired employee who has not been covered for a year. To avoid future grievances and restore the parties' original intent, contract language revisions are proposed. The PBA further notes that "every police department in Rockland County covers retired police officers under their health insurance policy."

The PBA further proposes to substitute new Sections 14.2 and 14.3 which would respectively insure that the "Town shall pay the full premium for employees" health benefits and eliminate the arbitration clause should the employer opt to effectuate change.

Town Position

In Executive Sessions, the Town representative agreed that the current Empire Plan prohibited the reentry of the retirees once they left the State Plan. This issue was not addressed directly in the Town's briefs.

Analysis/Discussion

The Panel majority is persuaded that the parties did not intend to "diminish coverage for retirees." (Ex.T#4). The prior award noted the PBA concern at the time that benefits might be reduced. It appears that the arbitration panel may have inadvertently omitted certain Town

language while adopting other Town language permitting retirees to continue coverage (i.e., "If such duplication coverage is received, the individual shall either lose his Town coverage or pay to the Town the proportion of the cost of the premiums for the benefits otherwise being received, as same may be reasonably determined by the Town") Ex. T#2, p.41, Ex. T#4, p.40.

To rectify this oversight for police retirees, many of whom retired with the expectation that their health insurance premiums would be paid, the Panel majority awards the inclusion of the following Section 14.4 as a substitute for the current language.

14.4 Amend to read as follows:

Retired police officers shall continue to receive the benefits set forth in this article.

To rectify problems which may arise if the Town opts to substitute insurance carriers before an arbitrator has determined the plan substituted to be substantially the same as the plan currently in effect, the Panel majority awards the following changes in Sections 14.1 and 14.3.

In Section 14.1, Paragraph #2, Sentence #3, substitute:

The Employer may not substitute the new carrier or self-insurance program, or a combination of the two, prior to any such arbitration decision.

Delete the last sentence.

In Section 14.3, Paragraph #2, sentence #3.

The Employer may not substitute . . . etc. (as indicated above for Section 14.1).

Section 14.5 - No changes

The PBA demand for an Optical Plan is Denied. Evidence that only one police department, namely Clarkstown, provides an optical plan comparable to that requested by the PBA was insufficient.

12) General Provisions (Tuition Reimbursement)

PBA Position

The PBA contends that Articles 21.3 and 21.6 be amended to reflect the increased cost of tuition over the past decade. The \$45.00 maximum limitation on the 75% reimbursement ratio is deemed insufficient for police officers and the children of officers killed and disabled in the line of duty. The PBA would remove the \$45.00 cap as a solution. The PBA further notes that few officers use the benefit and therefore the approximate annual cost to the Town is \$1000.

Town Position

The Town notes that the tuition reimbursement benefit does not exist in the Towns of Clarkstown and Stony Point and in Ramapo and Haverstraw there are restrictions on its use such as prior course approval. The Town proposes to increase to \$75.00 the tuition reimbursement maximums -- a \$30.00 or 67% increase.

Analysis/Discussion

The tuition reimbursement cap rather than the 75% reimbursement rate is the actual determinant of tuition benefits. The ideal solution to this issue is to determine what the relationship was in 1978 (the last time the rate was increased) between \$45.00 and the average tuition paid and to upwardly adjust the reimbursement to reflect 1988 costs. This would ensure preservation of the parties original intent.

According to the PBA, tuition at Mercy College for 9/87-9/88 is \$165.00 and at Pace University \$195.00 (PBA Reply Brief p.28). If \$45.00 represented 75% of tuition costs in 1978 (assuming the Cap was set proportionately), then average tuition costs at that time were approximately \$60.00. According to the PBA, current tuition costs range from a low of \$145 at St. Thomas Aquinas and Dominican to a high of \$195 at Pace University based on 1987-88 data. Therefore, tuition costs have increased approximately threefold and a corresponding increase in the Cap would yield \$135.00. A reasonable adjustment under the circumstances is to increase the maximum tuition reimbursement to one hundred (\$100.00) dollars.

Accordingly, it is awarded that effective 9/1/88 Sections 21.3 and 21.6 be amended to increase the maximum tuition reimbursement from \$45.00 per credit to one hundred (\$100.00) per credit.

13) Grievance Procedure, Article Sixteen

The parties in order to resolve various differences concerning the grievance procedure, reflected in the submission of two versions of the Collective Bargaining Agreement (i.e T #5 and T #6), have mutually consented to changes in the grievance procedure. These agreed upon changes, together with changes determined by the Panel majority, constitute the arbitration award as follows:

Section I - Definitions

5. "Grievance" . . .etc. Delete the clause "which relate to or involve employee health or safety, physical facilities, equipment furnished to employees or supervisors of employees"

Discussion

The Panel majority holds that the foregoing limitation on the subject matter for grievances inhibits the use of the grievance procedure to resolve differences and ensure positive labor-management relations.

Paragraph No. 6 - No change

Add new Paragraph No.7

7. Department Head shall mean the Chief of Police.

Add new Section No. 8

8) The first level of management shall mean the Captain of Police.

Section II - General

Paragraph No. 1 - No change

Paragraph No. 2 - Change as follows:

A grievance in writing is required from the grievants hereunder and shall be submitted pursuant to the Section III - Step 1 as set forth herein.

Paragraph No. 3 - Change as follows: "thirty (30) business days" to forty-five (45) business days.

Paragraph No. 4 - No change

Paragraph No. 5 - No change

Paragraph No. 6 - Change thirty (30) business days to forty-five (45) business days.

Paragraph No. 7 - No change

Paragraph No. 8 - Change as follows:

8. Failure by the Employer to meet the various time requirements specified herein shall result in a grievance proceeding to the next step. Failure by the grievant to meet the various time requirements specified herein shall be deemed a waiver of the grievance. These requirements shall be effective 10/1/88.

Discussion

Given the fact paragraph No. 8 is contested by the PBA and sentence No. 2 of paragraph No. 8 is punitive (a waiver of rights), to balance the equities in grievance filing an increase to forty-five (45) days in paragraphs No. 2 and No. 3 is warranted.

Section III - Procedure

Step 1: No change

Step 2: No change

Step 3: Arbitration stage. Add the following to Paragraph No. 1
" . . . as set forth by the Public Employment Relations
Board (P.E.R.B.),"

including its procedures for the selection of an
arbitrator.

Delete Section No. 2. Discussion: Adherence to P.E.R.B.
procedural rules renders this paragraph redundant or
conflictual.

Paragraphs No. 3, No. 4 and No. 5 - No change except to
renumber as No. 2, No. 3 and No. 4.

14) Article Fifteen - Disciplinary Procedure

In Section 15.1, Step 2, the name of Jerome Rubenstein who is
deceased shall be deleted. Following sentence one of 15.1,
Step 2 shall be added a sentence as follows:

In the event a member of the arbitration panel is no longer
available to serve, the remaining two panel members shall
jointly select a third arbitrator from a list of six (6)
names, three names submitted by the employer and three names
submitted by the Union.

The parties have consented to delete Section 15.3 in its entirety.

The parties have agreed to delete the second sentence of
Section 15.4 beginning with: "The arbitration hearing . . ."

Renumber 15.4, 15.5, 15.6 as 15.3, 15.4 and 15.5.

Conclusion

In the Panel majority's opinion, as a result of the prior interest arbitration award, the pendulum swung too far in order to achieve the short term objective of equalizing the salaries of first grade police officers. Although the parties may not have known it at the time, in retrospect it is patent that the Town was awarded too many concessions for the salary benefits it bestowed. The instant award, while recognizing that certain decisions are irrevocable without the mutual consent of the parties, has attempted to partially rectify the imbalance. In so doing, the Panel majority has expectations that the collective bargaining process and constructive labor-management relations can be restored and the parties can hopefully negotiate successor agreements.

Concurring Dissenting
Concurring as to Issues Nos. _____
Dissenting as to Issues Nos. ALL

Anthony V. Solfaro
Anthony V. Solfaro
Employer Member

State of New York } SS:
County of _____ }

On this 26th day of AUGUST, 1988 before me came Anthony V. Solfaro to me known to be the person who executed the foregoing Arbitration Award and he duly represented to me he executed the same.

Bessie A. Bullock
BESSIE A. BULLOCK
Notary Public, State of New York
No. 4939568
Qualified in Rockland County
Commission Expires July 25, 1990

Concurring Dissenting
Concurring as to Issues Nos. ALL
Dissenting as to Issues Nos. _____

Maureen McNamara
Maureen McNamara, Esq.
Employee Member

State of New York } SS:
County of Rockland }

On this 19th day of August, 1988 before me came Maureen McNamara to me known to be the person who executed the foregoing Arbitration Award and she duly represented to me she executed the same.

Deborah Steincolor

DEBORAH STEINCOLOR
Notary Public, State of New York
No. 41-100579
Qualified in Orange County
Commission Expires March 16, 1989

Concurring/Dissenting
Concurring as to Issues Nos. _____
Concurring as to Issues Nos. _____



Professor Robert T. Simmelkjaer, Esq.
Panel Chairman

State of New York }SS:
County of New York }

On this 15th day of August, 1988 before me came Robert T. Simmelkjaer to me known to be the person who executed the foregoing Arbitration Award and he duly represented to me he executed the same.



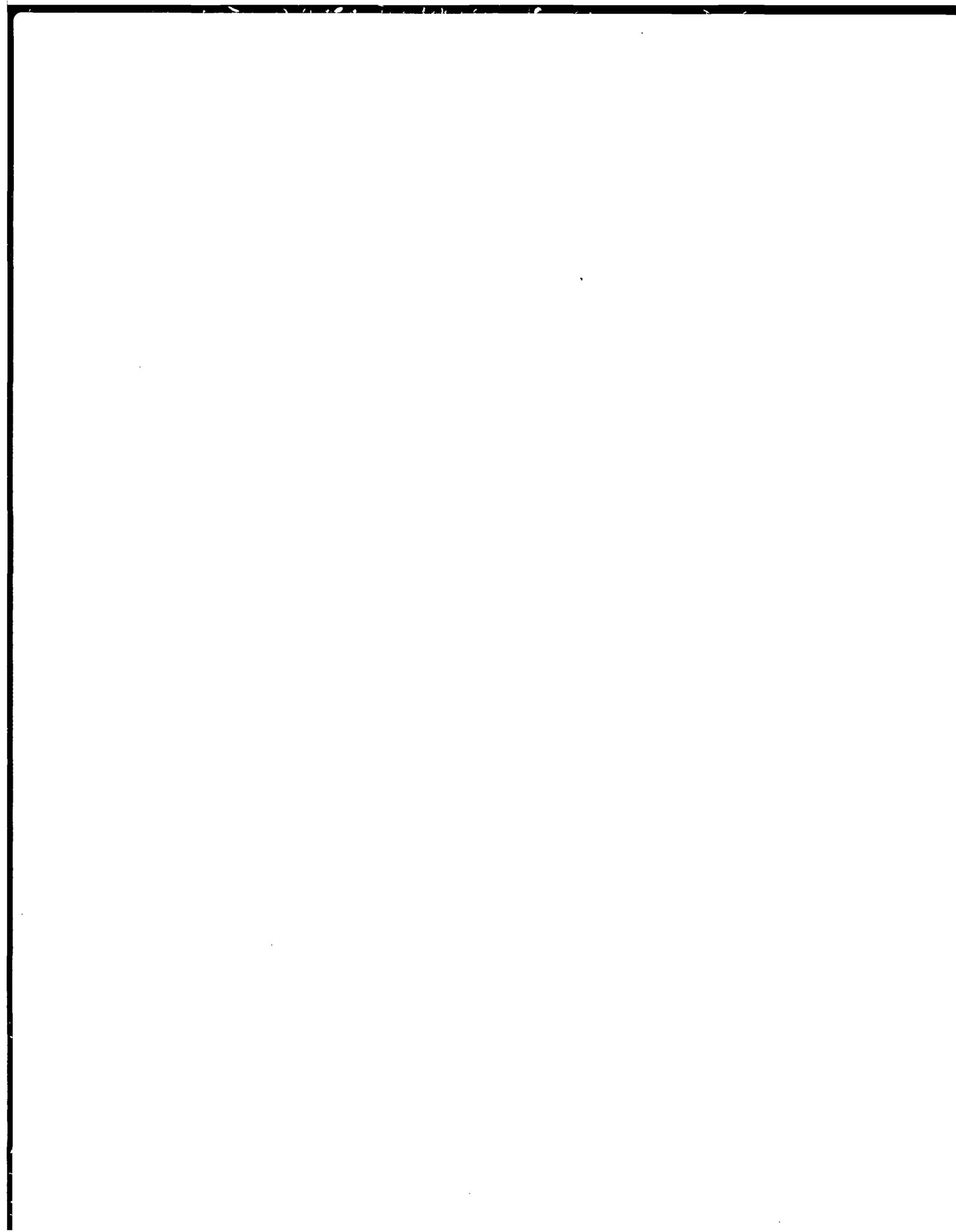
HELEN A. KLOMPUS
Notary Public, State of New York
No. 31-4504933
Qualified in New York County
Commission Expires 12/31/89

CONCURRING OPINION OF THE EMPLOYEE PANEL MEMBER

Under the Taylor Law a public arbitration panel's function is to make a just and reasonable determination of the matters in dispute. The attached award has been written by the Panel's Chairman. I would not have reached an identical determination on each individual item, nor do I agree with the rationale offered for the determination on every individual item. However, when the award is considered as a whole, I believe that the Chairman has reached a just and reasonable determination of the matters in dispute. Consequently, I accept the Chairman's determination and I concur in the entire award.

One item deserves further comment; the Chairman has awarded, under Article 13.3 "...no police officer shall be assigned to more than forty (40) hours of duty during any seven (7) consecutive day period, except in an emergency, including mandatory overtime to insure the adequate manning of a shift." In Orangetown, if an unusual number of officers unexpectedly phoned in sick, a volunteer(s) would be solicited to work the succeeding shift. If there were no volunteers, the overtime would be assigned in the reverse order of seniority, in order to insure sufficient manning. During executive sessions, I expressed the PBA's willingness to work ordered overtime under these circumstances. Although technically not an "emergency", this type of situation cannot be anticipated. The language "including mandatory overtime to insure the adequate manning of a shift" is included on consent of the PBA under these limited circumstances, but is not in any way meant to include manning for pre-planned events.


MAUREEN MCNAMARA



-----X

IN THE MATTER OF COMPULSORY INTEREST ARBITRATION

BETWEEN

ORANGETOWN POLICE BENEVOLENT ASSOCIATION,

Petitioner,

AND

TOWN OF ORANGETOWN,

Respondent.

-----X

I write this separate opinion in order to dissent from the entire award which denied the Town of Orangetown a just and reasonable determination based upon the mandated criteria as set forth in Section 209.4 of the Civil Service Law, which reads as follows:

"(iii) the public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or

written as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties;

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring

similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

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

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

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement, then for a period not to exceed two years from

the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority."

The chairman has ruled in twelve (12) areas. They are as follows:

1. Base salary - probationary through first grade patrolman, detective/youth officer, sergeants and lieutenants.
2. Longevity
3. Night differential
4. Agency shop fee
5. Sick leave
6. Overtime
7. Vacation
8. Holidays
9. Health Insurance
10. Tuition reimbursement
11. Grievance procedure
12. Disciplinary procedure

During the proceedings, the petitioner failed to present the required evidence to support its positions as contained in its petition for compulsory interest arbitration with P.E.R.B. other than to state that a particular salary and/or benefit exists elsewhere in Rockland County. The chairman incorrectly shifted the burden to the Town by requiring it to defend why the laundry list of demands

made by the PBA should not be granted, instead of why not?

It is apparent to the employer panel member, that the reinstatement of benefits originally addressed in the 1985/1986 award as well as the outrageous expansion of other benefits demanded, reflects an unconscionable determination by the chairman while recreating an imbalance in the contract between the parties favoring the petitioner. The interest and welfare of the public has not been served by the panel chairman's determination in the areas addressed in the award.

The employer panel member takes a very strong exception to the total award as a package. The PBA received extraordinary increases in the probationary through fourth grade patrolman and only a little less for the first grade patrolman as proposed by the Town. It must be noted that the PBA never made a demand in its petition to P.E.R.B. for any 1988 salary or benefit considerations. Additionally, in the area of base salary, the detective/youth officer was increased for the first time ever to a cash equivalent of seven percent (7%). The sergeants are to receive fifteen percent (15%) above the first grade patrolman and the lieutenant is to receive fifteen percent (15%) above the sergeant which had been deleted in the most recent award of 1985/1986. In the area of longevity, the chairman took it upon himself to not only increase the current longevity for the second award in a row, but expanded the length of time in which a PBA member is entitled to receive longevity which was diminished most recently in the 1985/1986 award. In the area of night differential, the PBA received

an increase that the chairman thought was appropriate and commensurate with the fifteen percent (15%) increase in base wages for the first (1st) grade patrolman. The chairman provided an agency shop fee deduction for this unit even though it was acknowledged that only one member is not an active dues paying member and that one (1) of the two (2) comparables used by the chairman for the significant majority of the award, does not have this benefit. In the area of overtime, the chairman grants rights under Section 971 of the Unconsolidated Laws as proposed by the PBA which will place the parties in a confrontational mode with the potential of limiting the Town's rights in this area. On the subject of vacation, the chairman grants the PBA excessive increases by awarding vacation increases in the fifth, sixth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth year of service. In addressing the area of health insurance, the chairman has awarded that retired police officers shall continue to receive health insurance coverage at no cost to that employee which was diminished in the last award (1985-1986). The chairman's obvious lack of understanding of what was accomplished in the last arbitration award in this area has now placed this Town in the untenable position of paying for an additional twenty (20) years, if not modified by either future agreement or arbitration award, the excessive cost of health insurance for those retired employees who are still eligible to seek and have other employment upon retirement in their middle forties. In the same area, the chairman has exercised excessive

power and authority by modifying the ability of the Town to seek a substitute or self-insured program prior to the arbitration proceeding of that article by requiring the Town to file and go through the process of arbitration before it may seek to save the taxpayers the ever increasing cost of health insurance. Again, this is a significant modification from the current benefit. In the area of tuition reimbursement, there was absolutely no evidence provided by the PBA in its demand, but instead the chairman decided to create evidence and propose increases which were in excess of even the large increases proposed by the Town. In the area of the grievance procedure, the major thrust was to expand the right of the PBA to file a grievance within forty-five (45) business days rather than thirty (30) business days which was the current benefit. In the last significant area to be addressed by the chairman, he insisted on keeping the current system of named arbitrators rather than allowing the Town and the PBA to use the good offices of the Public Employment Relations Board (P.E.R.B.) which the record indicates was acceptable even to the PBA but not incorporated into the award by this chairman. The employer panel member reiterates his very strong exception to the total award as a package and firmly believes the chairman abused his power and authority as set forth in the statutory criteria.

The employer panel member, as stated in his July 22, 1988 letter to the chairman, which is also to be attached and be considered

a part of the official dissenting opinion, believes that the chairman ruled in areas which were either not before him nor the required evidence presented for him to rule on; therefore, by rendering his decision, he does not reflect a just and reasonable determination based upon the mandated criteria as set forth in the statute.

DATED: AUGUST 29, 1988

Anthony V. Solearo

ANTHONY V. SOLEARO
EMPLOYER PANEL MEMBER

Sworn to before me this
29th day of August, 1988

Nancy Jacaruso
NOTARY PUBLIC STATE OF NEW YORK

NANCY JACARUSO
Notary Public, State of N.Y.
No. 4854478
Qualified in Rockland County *90*
Commission Expires March 10, 19—