

SEP 08 1992

CONCILIATION

In the Matter of Interest Arbitration between

ORANGETOWN POLICEMEN'S BENEVOLENT
ASSOCIATION

Petitioner

AND

TOWN OF ORANGETOWN, NEW YORK

Respondent

Opinion and Award

PERB Case No. IA91-01
M90-438

Reissue of Award and
Issue of Opinion

Before: The Public Arbitration Panel
Sumner Shapiro, Public Member & Chairperson
Arthur J. Ferraro, Esq., Employer Designated Panel Member
Maureen McNamara, Esq., Union Designated Panel Member

I. INTRODUCTION

This document constitutes the Opinion and Award¹ of a public arbitration panel designated by the New York State Public Employment Relations Board pursuant to Civil Service Law 209.4 on June 28, 1991. The petitioner is the Orangetown Policemen's Benevolent Association; hereinafter referred to as "the Petitioner," "the PBA," "the Union", or "the Employees". The respondent is the Town of Orangetown, New York; hereinafter referred to as "the Respondent," "the Town," or "the Employer."

The Petitioner and Respondent were parties to a Collective Bargaining Agreement which expired on December 31, 1990 without concurrence on the terms of a successor agreement. Following unfruitful effort to resolve their differences through mediation under the aegis of the New York State Public Employment Relations

¹See Background Information, II herein.

Board (PERB), the Union on March 26, 1991, petitioned PERB for Interest Arbitration setting forth 26 proposals which it sought to have implemented. The Employer responded on April 3, 1991, submitting on its behalf 37 proposals for changes in the expired Agreement.

Hearings convened in the conference room at the Orangetown Town Hall on August 28 and 29 and October 23, 1991 in which the parties were afforded unrestricted opportunity to present testimony and documentary evidence, examine and cross-examine witnesses and offer arguments in support of their respective positions. Both parties were represented by counsel and neither raised any objection to the fairness or completeness of the hearings.

The Panel is charged with making a just and reasonable determination of all issues before it. It is obligated to take into consideration, in addition to any other relevant factors, the following:

- A. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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 qualification; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- D. the terms of collective agreements negotiated 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.

The Public Arbitration Panel was constituted as follows:

Chairperson	Sumner Shapiro 64 Darroch Road Delmar, New York 12054
Union Designated Arbitrator:	Maureen McNamara, Esq. 2 Congers Road New City, New York 10956
Employer Designated Arbitrator:	Arthur Ferraro, Esq. One Calvary Drive P.O. Box 626 New City, New York 10956

Appearances were as follows:

For the Union:

Maureen McNamara, Esq.

Richard Bunyan
Law Clerk to Maureen McNamara

Steve Megdanis
Local PBA President

Jerry Bottari
Bargaining Team Member

Steve Fitzgerald
Bargaining Team Member

Edward Fitzgerald
Bargaining Team Member
James Casey
Bargaining Team Member

Robert VanCura
Rockland County PBA President

For the Employer:

Arthur Ferraro, Esq.

John Slattery*
J. Slattery & Co.
165 Forest Avenue
Pearl River, NY 10965

Roger Pellegrini*
Supervisor
Orangetown, New York

*Witness

The following exhibits were placed in evidence:

Joint Exhibits:

J1:

Collective Bargaining Agreement between the parties 1/1/89 -
12/31/90.

J2:

Petition for Interest Arbitration 3/26/91.

J3:

Respondent's answer to petition 4/3/91.

J4:

Copy of contract between Town of Clarkstown and Rockland County PBA for Clarkstown Police Department, 1/1/89 - 12/31/91.

J5:

Copy of Collective Bargaining Agreement between Town of Ramapo and Ramapo PBA, 1/1/89 - 12/31/91.

J6:

Copy of Agreement between Town of Stony Point, New York and Stony Point PBA, 1/1/90 - 12/31/92.

J7:

Copy of Agreement between Town of Haverstraw, New York and Haverstraw PBA, 1/1/87 - 12/31/89 and copy of Opinion and Award of Interest Arbitration Panel Case No.A89-31 modifying and extending agreement to 12/31/91.

J8:

Actuarial data relating to retirement.

J9:

Copy of Agreement between South Nyack - Grandview Joint Police Admin. Board and Rockland County PBA, 1/1/91 - 5/31/92.

J10:

Copy of Opinion and Award, Interest Arbitration Panel, Case No.IA84-36, Town of Orangetown and Orangetown PBA, 12/2/85.

J11:

Copy of Opinion and Award of Interest Arbitration Panel Case No.IA87-10, Orangetown PBA and Town of Orangetown, 8/15/88.

J12:

Copy of Agreement between Village of Suffern and Suffern PBA, 6/1/88 - 5/31/91.

Union Exhibits:

U1:

PBA presentation packet summarizing positions and arguments.

U2:

Copy of Clarkstown PD Monthly Report, July 1991, Squad 1, Compensatory Time Summary.

U3:

Copy of 1990 Census, Rockland County.

U4:

Copy of excerpt from Rockland Journal, October 2, 1991.

U5:

Copy of excerpt from Rockland Journal, October 6, 1991.

U6:

Copy of excerpt from Rockland Journal, October 3, 1991.

U7:

Information re: New York State Retirement System.

U8:

1990 Full Value Taxable Property per Capita, Clarkstown, Orangetown and Ramapo.

Town Exhibits:

T1:

Employer summary packet prepared by J. Slattery & Co.

T2:

Chart of Funds.

T3:

Chart of Assessment Methodology.

T4:

Chart of Time Off impact.

T5:

Orangetown Police Personnel Manpower Allocations 1991.

T6:

Orangetown's supplemental package to T1, dated November 24, 1991.

T7:

Calculation of financial impact of adopting 1946 hours per annum base for Overtime Payment calculations.

T8:

Copy of Town Resolution 609.

T9:

Packet of 7 sheets relating to 1991 negotiations and agreement between the Town of Orangetown and CSEA Unit.

T10:

Four sheets, Salary Schedule, Orangetown CSEA Bargaining Unit, 1991 - 1992.

T11:

Five sheets regarding Rockland County and Orange County, Aid concerning Housing Contingency Costs, 90-91-92.

T12:

Year-to-date budget summary, Orangetown, Town Outside of Village 1991 (Fund Two) as of September 1991.

T13:

Copy of a letter Ronald Longo, Plunkett & Jaffe, P.C. to Arthur Ferraro, 10/16/91 re: Suffern PBA and the Village of Suffern, contract renewal for 6/1/91 - 5/31/94.

II. POSITIONS OF THE PARTIES AND OPINION

A. Background. In order to provide the parties with an executed Award in advance of the expiration of the calendar year 1991, the Panel agreed to defer submission of the Opinion portion of this document to be incorporated in a subsequent reissue of the entire Opinion and Award at a later date. The anticipated date was in February of 1992, but regrettably, we were unable to meet that schedule.

1. Article 3.1 (c). Article three outlines rights of employees and 3.1 (c) requires the Department to advise employees of the nature of any investigation before commencing interrogation, making known the specific allegation and further requiring that employees who are being interrogated only as witnesses be so informed at the initial contact. The Employer proposed language changes explicitly indicating the term "Employee" to mean only the person under investigation and the objective of the proposal was to enable routine administrative questioning to proceed without undue encumbrance. The Union opposed the change on the basis that an individual's status as a witness may become subject to change in the course of the investigation and that other provisions of the article do address and recognize the Employer's administrative needs and prerogatives.

The Panel found that there was no showing of unreasonable past encumbrance and that proceeding on a hypothetical projection would be unwise. Therefore, the proposal is denied.

2. Article 3.1 (f). This provision of the Agreement imposes certain constraints upon investigators in treating with an employee under investigation specifically prohibiting the use of offensive language or threats of transfer or disciplinary action, but it did provide an exception from this prohibition; namely, the right to advise the Employee under investigation of the "...character of the discipline the Department intends to impose..." The Employer argued that it is inaccurate to state that the Department "intends" to impose as the matter would still be under investigation at that juncture.

The Panel adopted the Employer's view and awarded a change in language. Term "...intends to impose..." shall be altered to state "...may impose..." in the successor Agreement.

3. Article 3.1 (i). This Article provides the Employee with an opportunity to consult within 24 hours with his/her counsel or Union representative in non-criminal matters before being questioned. It explicitly states that the provision is not to be interpreted to prevent questioning of employees by their superiors about their conduct in the normal course of business. This subdivision further explicitly provided that it "...will not generally apply to questioning by employees below the third level of supervision, e.g., Sergeants and Platoon Commanders." The Employer proposed deletion of the entire subdivision and the Union agreed that the language was confusing since in practice it is a Sergeant who normally is assigned to question employees during investigation.

The Panel supported the Employer's proposal to the extent of

upholding the deletion of the caveat "...and will not generally apply to questioning by employees below the third level of supervision, e.g., Sergeants and Platoon Commanders" from the successor Agreement.

4. Article 4.1. Article four relates to dues checkoffs and Agency fee deductions. The Employer proposed several language changes designed to more exactly classify the nature and limits of the understandings between the parties. The first of these relates to the Agency fee deduction wherein the expired Agreement obligated the Employer to deduct from all persons in the Bargaining Unit who are not members of the Association, an amount equivalent to the dues payable to the Association. The Employer proposed further to define the amount to be deducted by stipulating it was to be the equivalent of dues payable to the Association by its members.

As the Employer's proposal was merely to articulate established practice, which in itself is not in controversy, the proposal is awarded.

Article 4.1 of the expired Agreement further required the Employer, to provide the dues checkoff authorization forms. The Employer, arguing that dues checkoff is performed on behalf of the PBA, proposed that the Union be required to provide the payroll deduction authorization forms which the individuals sign and return to the Employer authorizing the Employer to withhold Union dues and remit same to the Union.

The Panel subscribes to the Employer's view and awards the

inclusion of contract language revisions and deletions which will achieve the sought after results.

5. Article 4.2. The expired Agreement made reference to "...a list of names of the officers..." The Employer proposes it would be more consistent and accurate to refer to these people as "...employees..."

The Panel subscribes to the Employer's view and the requisite language revision is awarded.

6. Article 4.4 required the Union to certify in writing to the Employer the amount of dues and assessments to be deducted under the checkoff provisions. While it also required the Union to notify of changes and provides that such changes "shall not become effective until sixty (60) days following the receipt of notice by the Employer," the Town proposed some editorial changes and deletions which it argued would make the intent more explicit.

The Panel subscribed to the Employer's position with the further proviso that the contract be altered or revised to state that changes (in deductions) shall become effective "...as soon as practicable but not later than sixty (60) days..." as opposed to the prior provision which required that they "...shall not become effective until sixty (60) days..." Language provisions to achieve both objectives were awarded.

6'. Article 5.2. The provisions of this Article in the expired Agreement granted the Union President and/or his designee one hundred and twenty (120) hours fifteen (15) days per year

subject to certain restrictions to attend to Union related business. The Union proposed increasing this allowance to thirty (30) days and allowing, in addition fifteen (15) days for the Vice President. In consideration of the absorption of the Nyack police operations into the Orangetown Department which added some occasional travel time requirements in dealing with Union business, the President's time allowance was increased to one hundred forty-four (144) hours, eighteen (18) days per year and the proposal relating to the Vice President is denied.

7. Article 5.6 relates to Union business and contained a language anomaly when it stated "...differences of option..." where the clear intent was to state "...differences of opinion..." It further begins the next sentence with the word "such" where the first letter was not capitalized and the Employer proposed that this deficiency also be remedied in the successor Agreement.

Neither Employer proposal relating to Article 5.6 was controversial and both were awarded.

8. Article Six (6.1, 6.2 and 6.3). Article Six defines the salary plan and schedule. It includes specifically the base wage structure which appears as Schedule "A" in the Agreement, longevity pay which appears in subdivision 6.2 of the Agreement and night differentials which appear in subdivision 6.3. These define the totality of the direct compensation received by Employees all of which were at issue in the present proceeding where they constitute the parties' gravamina. We at this

junction address and analyze their respective general positions relating to the economic aspects of the impasse following which we treat with the specific issues of Salary, Longevity, and Night Differential pays.

X A. Union Position

The Union's position is simply that it is seeking to maintain the traditional compensation position of the Orangetown PBA relative to other departments in Rockland County. It acknowledges that it is seeking the nominally highest direct salaries in Rockland County, which it maintains it has historically enjoyed under recent contracts. The PBA insists its demands are justified both by the Employer's ample ability to pay and the fact that it has not received a level of fringe benefits comparable to those provided fellow Rockland County law enforcement officers even by less affluent communities. The Union further asserts that the Employer has historically understated its affluence and ability to pay by overstating anticipated expenses and understating likely forthcoming revenues. This practice allegedly persists in the present impasse. These differences accrue into putatively large Contingency and Surplus accounts where, in the Union view, there already resides sufficient monies to meet its wage and salary demands as well as further to substantially equalize fringe benefits where its members believe they are among the underprivileged. The PBA vigorously questions the depth of the Employer's own commitment to the proposals it advanced in the

present proceeding on the basis of charges that they fall measurably short of their offerings in negotiations which the Union considered and rejected as being inadequate.

B. Town Position

The Employer concedes that it did in fact offer to settle at a higher level at an earlier juncture in the present chain of events. It concedes also that it negotiated wage increases of 5 percent in each of two years with another Union representing the Town's office and clerical workers. However, the Employer advises, it arrived at its present posture in this proceeding after sustaining some substantial unanticipated cost increases and that, had it been aware of those added costs, it would not have agreed to the settlement it made with another Union at so high a level and that it certainly would not have offered the PBA the generous settlement which, in the Employer's view, was unrealistically and unwisely rejected by the Union. These developments, the Town claims, plunged it into relatively humble circumstances under which it has had to ferret out every possible saving. With the exception of a few very special circumstances where modest increases were granted, Town elected officials and professional administrators have seen their compensation level frozen for the time being. While it does not expect the PBA to ingest a dose of such drastic medicine, it does urge that the proposal advanced in the present proceedings are fair and equitable under the circumstances now prevailing as they place

the Town at or possibly even slightly beyond the limits of its present ability to pay.

The resources available for salaries and benefits, the Employer advises have been precipitously and drastically reduced by substantial and unanticipated cost increases. One very significant element is increases in the required contributions to the Employee Retirement Plan. New York State Retirement System actuaries had at first advised the Town that its contributions for 1991 would be nominally \$523,000 and the Town budgeted at that level. Subsequently after the budget and tax levy had been fixed, the actuaries notified that the 1991 contribution would have to be nominally \$773,000 for an increase of about 48 percent or nominally \$250,000. Further, that amount would increase by nearly 100 percent or nominally \$760,000 for the calendar year 1992. The Town has similarly been advised that its Workers' Compensation Insurance costs, budgeted at nominally \$240,000 for 1991 would rise to nominally \$400,000 in 1992, and although the respondent has been advised of this in advance of drawing up the 1992 budget, it nonetheless represents a substantial cost which must be provided for in the tax levy. Orangetown's allocation under State Aid to Localities which was at just under \$1 million in 1990, was reduced by 66 percent to just under \$330,000 in 1991 as it is expected to fall further to \$275,000 in 1992. The Employer emphasizes that in coping with both the unforeseen rise in expenses and reductions in revenues, it was compelled sharply to decrease the reserves in the surplus fund of the Town Outside

of Village, with whose budget we are here concerned. The Employer claims the prudent minimum surplus defined by its auditors and recommended by the State Controller going into 1991 is 5% of a projected 11.3 million dollar budget or nominally 566 thousand dollars. The unanticipated cost increases reduced an anticipated 593 thousand dollar surplus to about 326 thousand dollars. In effect, the respondent argues, it unknowingly entered fiscal 1991 with a surplus account shortfall of nominally 250 thousand dollars. The Town eschews the Union assertion that it is concealing within the surplus account monies which are available for police salaries and benefits. In fact, it responds, its 1991 surplus account is in a negative position relative to the reasonable minimum requirement. Thus the dictated future fiscal strategy is continuing acute commitment to "sharp pencil" budgeting.

The Town pleads an exacerbating further stress of yet undetermined magnitude on its revenue source. This arises out of a certiorari action by the Lederle Drug Company which owns one of the jurisdiction's major non-homestead taxable properties. Pending the determination by the court it has reserved an undisclosed sum in its Contingency account to cover possible retroactive rebates. Any decision adverse to the Town's position will as a continuing consequence, diminish the levy payable by the Lederle properties.

The Employer proceeds beyond the argument that recent developments have impaired its past ability to pay to questioning

the appropriateness of relying upon the prevailing practice among the larger Rockland County communities for comparison purposes. It asserts reference to broader geographic areas would be in order and further proposes that a responsible analysis should weigh in the balance other measures of equity to the taxpayers. Many among them it is urged, despite lengthy professional training and diligent devotion to their various careers, putatively do not enjoy compensation and fringe benefit packages matching or in reasonable proportion to those of an Orangetown Police Officer in his fifth year of service.

C. OPINION:

The Employer has raised a very meaningful, fundamental and long pondered question about the determinants of an equitable wage. Philosophers and theologians, including Aristotle and St. Thomas Aquinas, pondered the question of what constitutes a fair exchange though their concerns were primarily with goods rather than human labor for which there was no truly free market in their times. The birth of the Industrial Revolution gave rise for the first time, to a fully free class of labor in which the worker was no longer compelled as a matter of status to serve any lord or master. Rather he was as a matter of law, permitted to work or not work, to bargain, in theory at least, to arrive at an agreed upon rate of exchange of rewards for services. There evolved therefrom, a largely unstructured labor market wherein supply and demand were the arbiter of wages. From Adam Smith the

first of the formal "gloomy philosophers"; economists, popes, parsons, princes, politicians, philanthropists and social reformers, have with varying degrees of approbation or approval, pondered the workings of that marketplace. Society, in an effort to address perceived inequities, has sanctioned numbers of interventions into the marketplace to bring about more equitable balances among employers, employees and the general public. A succession of laws dealing with workers' compensation, child labor, unemployment insurance, social security, have all diminished laissez faire influence. The promulgation of statutes supporting the rights of workers to organize and bargain collectively with their employers, builds on the assumption that the practice will establish a balance of power between labor and management wherein equitable resolutions of conflicts will be realized. In the real world, both parties at the bargaining table, may yield to the realities of power without either believing his interests has been fairly or favorably considered.

Public employment bargaining, which has only relatively recently achieved maturity, presents special problems in that the consequences of contract bargaining tend to be less immediately identifiable in a product marketplace. The product here is services and the purchasers are the taxpayers of the community. While they may not in the short run readily opt to patronize others to obtain less costly service or determine that they will not subscribe to such a service at all, as they might with a consumer product, they may in the longer run, demand reductions,

relocate, or decline to locate or expand in the community. In the final analysis, public employers, like manufacturers, must deal with market constraints and the unions with whom they negotiate, cannot in the long run immunize themselves against the strictures of the marketplace. Somehow, a balance must be struck among conflicting interests. While we support the Employer's view that the equity concept is a two edged sword, we cannot escape the notion that it is subjectively determined. Indeed, it devolves upon the public member of an interest arbitration panel to attempt to maximize the thrust of objective input to the decision making process.

Students of compensation theory have been particularly energetic in attempting to develop rationalized, and hopefully more objective, instruments for determining equitable compensation. High levels of skills and education have not always correlated with higher levels of compensation. Occupations and professions in which the incumbents were most frequently women, such as nurses, librarians and social workers, have been notoriously less well compensated than predominantly male public safety employees. Some government jurisdictions have adopted comparable worth programs where compensation entitlement for each job is determined on the basis of defined levels of skill, education, working conditions and responsibilities inherent in positions. In some cases, past differentials between accountants and social workers or executive secretaries and park groundskeepers have been narrowed or reversed. But there is no

universal agreement that these outcomes are necessarily equitable as those who demure from the outcome argue against the factors employed and the weightings assigned. The late George Meany, who rose from a Bronx plumber ultimately to become President of the AFL-CIO, responded to critics of what they perceived to be exorbitantly high plumbers' salaries by noting that potential exposure to contagious diseases and other illnesses is particularly severe in crowded urban environments. In his view, it is in the final analysis, only good plumbing and good medical facilities that make urban life at all tolerable and possible. Since good plumbers and good doctors are required to provide these resources, one should, he explained, expect to find their respective compensations to compare favorably one with the other. Teachers who labor to lift the veil of ignorance from each generation scoff at this rationale citing their labors in acquiring and disseminating education as the critical underpinning without which there could be neither physicians or plumbers.

Typically, police officers citing comparable worth criteria may argue that their working conditions regularly entail exposure to injury and even death and that their compensation should reflect this inherent risk. They may further assert that they, under trying circumstances, bear a responsibility to deal with the public in a diplomatic and restrained manner to preserve respect for the employer and foreclose its exposure to damaging lawsuits charging unwarranted and abusive application of police

power. These are all tenable arguments and to each there is a rational counter argument. In the final analysis, the wisdom of the legislature is vindicated. We are admonished to look to the marketplace for guidelines by the statute which explicitly obligates us to consider a comparison of wages, hours and conditions of employment of similarly employed persons in comparable communities. We are further instructed to consider the interest and welfare of the public and explicitly its financial ability to pay which may create a basis for exception from prevailing practice in otherwise comparable jurisdictions. The selection of appropriate comparison standards is judgmental. However, in the matter at hand, we are aided by historical precedence as outlined in the award of the arbitration panel which provided the Opinion and Award in the interest arbitration between these parties, setting the terms of their agreement for the calendar years 1985 and 1986 respectively. In that proceeding, the Town implicitly recognized a basis for wage parity between the Orangetown First Grade Patrolman and those in the neighboring Town of Clarkstown. In conceding that point, the Town did, however, assert that it could not also equalize certain fringe benefits and paid leave provisions and sought to establish fixed dollar differentials between top level Patrolmen, Sergeants and Lieutenants. The panel in that arbitration did award such fixed differences fixing Sergeants' and Lieutenants' salaries within a range of \$50 to \$200 less than the top county levels by the midpoint of the first year of the contract. In the next

interest arbitration, IA87-10, another panel set the terms of the successor contract, reinstating percentage differentials by specifically stipulating that Sergeant's salaries would be 115 percent of a First Grade Patrolman and that Lieutenant's salaries would be 115 percent of those of Sergeants. Detectives and Youth Officers became entitled to 107 percent of a First Grade Patrolman's salary. Thus, the instant panel was provided established criteria for formulating the salary comparisons which we have relied upon preliminary to determine appropriate salaries, subject to possible modification in deference to ability to pay considerations.

The advocate members of the Panel were unyielding in their respective postures on the ability to pay question. The writer as Chairperson commends them for their diligence and acknowledges that concurrence in the award constitutes more of a recognition of reality than agreement with the writer's inferences and rationale.

We find the Employer's claim that its 1991 budget was thrown into disarray by unanticipated substantial added costs to be most persuasive. We accept also the urging that the earlier offer, which the Union rejected, would not in fact have been forthcoming had the Employer been aware of the impending fiscal surprise at the time. Even though the Chairperson was unaware of the amount of that offer when analyzing the evidence in the record, we note that we in this proceeding view the positions of the parties de novo and would not under any condition consider the Employer's

rejected offer to constitute a minimum, tenable award. If a rejected offer, or one which was advanced contingent upon the acceptance of other provisions which were rejected, were to become a floor in the ultimate settlement, the ability freely to explore and bargain would become so severely hobbled as to discourage settlement without resort to interest arbitration. Interest arbitration is intended to supplement rather than supplant meaningful direct negotiations between the parties. The Taylor Act bestows both privileges and responsibilities and encourages unfettered good faith bargaining. The amendment which subsequently provided interest arbitration as the final stage in public safety impasses, did not abrogate preexisting provisions.

The present matter came before the Panel in Executive Session virtually at the conclusion of the 1991 calendar year. We in fact, issued an expedited award only in an effort to facilitate payment of retroactive entitlements prior to the expiration of the 1991 fiscal and calendar year. This circumstance alone persuaded that an award covering two years, 1991 and 1992 respectively, was in order. While the issue of ability to pay was relevant to both years, 1991 in addition presented a special dimension arising out of the unanticipated cost increases, which because of timing anomalies, were unprovided for in the budget. Independent of any endemic inability-to-pay constraints, the Town was compelled to face up to a cash flow problem in the 1991 fiscal year. The impact of this development was to reduce the anticipated surplus carry

forward into 1992 from 593 thousand to 326 thousand dollars, which as previously noted, was nominally 240 thousand dollars shy of the recommended minimum surplus. It is, as the Employer asserts, true that surplus funds are not as a practical matter available to fund permanent salary increases as they would then have to be replenished to serve the need with which they are designed to cope. Those needs are to cover the costs of both certain forthcoming and predictable designated projects and unforeseen needs which may arise, the costs of which may be defrayed out of the undesignated portion of the surplus. The surplus fund, therefore, is a financial reservoir into which funds flow, sometimes slowly, to be accumulated to cover the costs of certain projects as the need for payment arises. In this case, the late August notification of the added pension plan premium put the undesignated 593 thousand dollar surplus precisely to the intended end use leaving an additional 326 thousand dollars available in that category. Presumably at that late point in the fiscal year, the Town could have deferred replenishment of the undesignated surplus into the next fiscal year and if it had done so, its ability to pay in fiscal 91 would not have been reduced by a 204 thousand dollar sum set forth in the Employer's pleadings. We are not, however, sufficiently knowledgeable or competent to pass judgment on the management options chosen by the jurisdictions elected officials. They undoubtedly involve parameters residing outside of the purview of this proceeding. We have, therefore, resolved the 1991 economic

issue after allowing for the Employer's election to replenish the undesignated surplus in 1991, but having done so factored consideration thereof into the 1992 determination.

In the matter of salaries the Employer had proposed a three year Agreement under which Employees would have received increases of 4 percent for the calendar and contract year of 1991 with an additional 4 1/2 percent in the succeeding year with a third increment of 5 percent being forthcoming in the third and final year. The Union proposed only a one year contract with an 11 percent increase, indicating it was willing to accede to a 2 year agreement, which is the maximum the Panel is legally permitted to award, if it were to receive 11 percent in the first year and something more than 8 percent in the second. Similar divisions were extant in the matter of longevity increments and shift differentials.

Our 1991 determinations were made on the basis of imputed direct salary costs for the Orangetown Bargaining Unit of a nominally 6 million dollars per annum at a staffing level of 100 members. On this basis we estimated potential costs to be as follows:

<u>Cost Basis</u>	<u>Nominal Added Annual Costs</u>
To establish parity with Clarkstown	\$377,000
To deplete amount Employer reported in reserve for full force of 100 persons	\$240,000
To meet requirements of award for full force of 100 persons	\$280,000

In actuality, the force has been operating at a reduced level of about 97 people and though there is some dispute about offsets against the savings attributable to disability pay, a Panel majority is persuaded that the cost of the award may be comfortably accommodated within limits of available salary designated resources. Our comparison, based on First Grade Patrolman's salaries as a benchmark, indicate that Orangetown officers will not overtake Clarkstown until December of 1991 at which point they will move into the lead by nominally 1.8 percent for a one month period. Since the Clarkstown 1992 salary schedule had not been agreed upon at the time of the Panel's deliberations, we were unable to make comparisons as of January 1, 1992.

The award brings Orangetown First Grade Patrolman up to and ahead of equivalently graded Ramapo colleagues by nominally 1 percent as of July 1991. Prior to that point in time, they lagged Ramapo by nominally 5 percent. Thus, the award establishes as of December 1991, a relative salary distribution among Orangetown, Clarkstown and Ramapo, which is generally in keeping with that established by the Public Arbitration Panel in IA87-10 (Joint Exhibit 11) wherein nominal parity prevailed between Clarkstown and Orangetown and Orangetown led Ramapo by an average of about 3.75 percent over the 1987 and 1988 calendar years. The actual salary values awarded by the present Panel are set forth in "Schedule A" of the Award Section of this document.

We approach the determination of the appropriate 1992

compensation level unencumbered by the September surprise of 1991. However, the Town's pleading for departure from the prior standard of comparability with its particular emphasis on Clarkstown and Ramapo must now be discreetly viewed. Orangetown, the Employer advises, is largely dependent upon real property taxes for revenue. In 1990, out of a total of 9.5 million dollars, 7.75 or approximately 81 percent derived from real property taxation. Total actual expenditures in 1990 were nominally 9.15 million dollars of which 6.4 million or essentially 70 percent were expended for public safety. The actual police budget which includes non-bargaining unit compensation and other expenses, was just over 6 million dollars. The 1991 budget rose to 11.3 million dollars, placing additional strain on real property taxpayers. About 57 percent of the tax base is represented by the value of Homesteads while about 43 percent of the tax base consists of commercial or Non-homestead properties. From 1987 through 1990, police expense rose by about 45 percent. The tax rate per thousand of evaluation for Homestead properties using 1988 as a base rose 49 percent. Over this same period, Non-homestead tax rates rose by 15.6 percent in 1989, but has declined in the 2 subsequent years and in 1991 was 3.5 percent below the 1988 level. The disparate situations of Homestead and Non-homestead taxpayers arises because the percentage of the total levy allocated to each of the categories, Homestead (residential) and Non-homestead (commercial) has remained fixed. Thus as the rate of growth of values in the Non-

homestead category exceeds the rate of increase in the budget, that sector will be able not only to absorb the added levy burden out of new revenues but in fact, will have a surplus of new revenues which will inure to the benefit of all taxpayers in the category in the form of actual tax reductions. This phenomenon has significantly impacted Orangetown where full valuation from 1988-89 through 1990-91 increased by nominally 40 percent on homestead property and 146 percent on commercial property. The ratio of Non-homestead values to total full values also rose by 50 percent over that period (Town Exhibit 6, page 54). The Employer (Town Exhibit 1, pp 21-22) acknowledges that there has been "...a limited increase in the assessment for homesteads over the years versus the expansion of commercial ratables which has pushed the Non-homestead rate below that of 1988." and it graphically illustrates that the homestead tax rate per 100 have, since 1988, risen roughly at the same rate as the increase in police expenses. We note that this correlation would change drastically if the ratio of the division of burden between commercial and homestead burden sharing were altered so that each individual commercial payor continued to shoulder its proportionate share of the rising expenses. The Employer established that the ratio of division currently in place is fixed by the New York State Board of Equalization and Assessment, but it was unable to indicate if and how these ratios may be changed if a jurisdiction wishes to do so. It is of course possible that the Town wishes to preserve the existing

arrangement as an inducement to continuing commercial expansion within its borders. If that is in fact the case, it is clearly a matter which lies within the purview of the electorate and its chosen officials and is of concern to this Panel only in connection with the weights to be accorded in assessing ability to pay.

One further observation relating to the graphic correlation between rising Homestead tax rates and the rising rate of increase in police expense (Town Exhibit 1, p. 22) is in order. Specifically, one should note that the zero point for the Homestead tax rate was chosen as 1988. Had 1987 been selected as the point of departure, the geometrical configuration would have been drastically altered with the rate of rise of Homestead tax rate being much less steep than that for police expenses.

The relationship between Homestead and Non-homestead taxables bears also on the Employer's argument that it is faced with a possible further impairment in ability to pay as a result of the Lederle certiorari action. In point of fact, the Lederle property is a non-homestead element and a reduction in the annual tax bill on the property would, it seems, merely increase or slow the decrease in the individual tax payments of others in that Non-homestead population. This adverse impact on the tax base as a whole would apparently be to deplete the reserves set aside for rebate purposes. If the excess pay out, if any, were to be recovered across the entire tax base, Homestead rates would be affected.

The respondent argues that Orangetown is a bedroom community and is not at the apex of per capita income in Rockland County and should not therefore, be expected to pay salaries and benefits which might be paid by jurisdictions in that category (Employer Exhibit 6, pp. 46, 46A, 47, 47B). In support of its contention it cites a table attributed to the Rockland County Department of Planning which for the most recent year, 1987, indicated the following:

<u>Community</u>	<u>Per Capita Income 1987</u>
Rockland County	\$15,917
Clarkstown	\$17,590
Haverstraw	\$13,148
Orangetown	\$17,517
Ramapo	\$14,902
Stony Point	\$13,746

The Employer argues that Ramapo, which is listed at \$14,902 per annum or nominally \$2600 less than Orangetown arrived at that position because included within its boundaries is the Village of New Square which is reported to have a per capita income of only \$2,515, New Square is a religious enclave with a population consisting of disproportionately large numbers of children and women who are not employed outside of the home. These factors alone would tend to depress per capita income. However, the Employer's exhibit listing 1988 population figures shows Ramapo with a population of 92,000 and the Village of New Square with a population of 2,620. Thus, with a per capita income of \$14,902, the Town would have had a gross income of 1,370,984,000 dollars. New Square, with a population of 2,620 at a per capita level

of 2,515 contributed only 6,589,300 dollars to the gross sum. The difference of 1,364,394,700 dollars would be attributable to the 92,000 minus 2,620 New Square residents or the other 89,380 residents of Ramapo. The per capita income excluding New Square would therefore be $1,364,394,700/89,380 = \$15,265$. This would place Ramapo slightly below the Rockland County average and would leave it entrenched in third position as the elimination of New Square would raise its per capita average by only 365 dollars per annum. Thus, the per capita income comparison taking Clarkstown as 100 percent would be as follows:

<u>Community</u>	<u>Per Capita Income as Percent of Clarkstown 1987</u>
Clarkstown	100
Orangetown	99.6
Rockland County	90.5
Ramapo without New Square	86.8
Ramapo inclusive of New Square	84.7
Stony Point	78.5
Haverstraw	74.8

We conclude from the Employer's statistics that there was no practically distinguishable difference in per capita income between Clarkstown and Orangetown in 1987 and that both exceeded that of Rockland County as a whole by more than 9 percent. Moreover with respect to Ramapo, even excluding New Square, Orangetown enjoyed an approximately 13 percent higher per capita income in 1987. The respondent further argued that Clarkstown or Ramapo are distinguishable from Orangetown in that they enjoy certain economies of scale because of their larger populations and dissimilar school districts, but none were cited and the

claim must be viewed merely as an allegation.

In further support of its position, the Employer cites the percentage ratio of taxes on Homesteads to their current selling prices in various Rockland County communities. The data indicates the following:

<u>Jurisdiction</u>	<u>Percent Ratio Combined Taxes to Selling Price</u>	<u>Percent of Ramapo Ratio</u>
Ramapo	2.02969	100
Clarkstown	1.865479	91.9
Orangetown	1.667630	82.2
Haverstraw	1.384759	68.2
Stony Point	1.233057	60.8

This, as the Employer notes, indicates that a house selling for \$200,000 in Ramapo would pay approximately \$4,059 in combined taxes. However, that same house would pay a combined tax of only about \$3,335 per annum in Orangetown. Moreover these data are of interest in connection with the Employer's allegation about economies of scale and dissimilar school districts benefitting both Clarkstown and Ramapo. That is certainly not evident from these data which indicate that both have higher effective tax burden than Orangetown running nearly 10 percent for Clarkstown and 18 percent for Ramapo. The respondent explains this by introducing another argument, to wit, that Orangetown does not have swimming pools or community centers in response to the dictates of its prudent and frugal taxpayers. As a result, the Town advises "our taxes are low because we do without". This reduces the argument to one of asserting that the Town does have the resources to pay but would not have them had they chosen to enjoy what are implicitly characterized as certain luxuries or

comforts provided by other communities. Of course it is always true that the community once it appropriates a sum of money for some identified project, may not appropriate the same money for another project. But, public safety is a first priority responsibility of local government and the evidence does not persuade that the taxpayers of Orangetown are enduring hardships or making sacrifices disproportionate to those being made in comparable communities in meeting this vital need.

We think it of significant moment that Orangetown which already apparently enjoys a favorable tax rate structure, entered the 1992 fiscal year with a projected decrease of about 15 percent in the Non-homestead category and for Homesteads, a minimum of 1.6 percent to as much as 20 percent depending the individual village involved. The prudent management of expenditures and services has made this commendable action possible but it is clearly not supportive of an argument of inability to pay. Moreover, it seems likely that this was achievable to some extent in 1992 because the surplus deficit was erased in 1991. The impact of that action was reflected in 1991 in the rationale and determinations relating to 1991 as it was against this backdrop and with the defined objective of generally preserving the established relationship among Clarkstown, Orangetown and Ramapo in particular that our determinations were made. As these jurisdictions were in the process of negotiation at the time of our deliberations, we must infer likely outcomes

and we are hypothesizing that Clarkstown in particular, will fix the 1992 First Grade Patrolman salary at somewhere between \$54,500 and \$54,850 per annum. A Panel majority concluded the most equitable award for Orangetown would be achieved by fixing the 1992 First Grade Patrolman salary near the upper limit and adjusting all other 1992 salaries in Schedule "A" proportionately. If the Panel has erred on the high side, appropriate adjustments may be implemented in the negotiating process relating to the 1993 agreement. Any extra monies received from December 1991 through December of 1992 will partially offset the differential adverse to Orangetown which prevailed from January to December, 1991. The salaries awarded for the years 1991 and 1992 are both set forth in Schedule A of the Award Section of this document.

9. Article 6.2 deals with Longevity Pay. Under the terms of the expired Agreement employees earned longevity pay entitlements after the completion of six years of service and the first increment in the sum of \$575 became payable. Additional increments in like amount became payable at three year intervals providing a total of 7 increments with the last becoming effective on the 25th year of service.

The Union proposes the addition of a \$450 increment at the fourth year of service with retention of the prior schedule for providing additional increments except that it would increase the increment value from \$575 to \$775. The Employer sought retention of the existing increment structure with the elimination of the

25th year longevity entitlement except for current recipients who would be "grandfathered-in".

Our analysis of the longevity issue is summarized on Table I herein (page 36). We have summarized the total for 25 years of service ignoring the time value of money. The calculation of present or future value on the basis of some assumed interest rate would provide a different distribution. Our analysis indicates the following:

<u>Jurisdiction and Condition</u>	<u>Total for 25 Years of Service</u>	<u>Percentage of Orangetown With Orangetown Prevailing Practice Taken as 100</u>
Clarkstown	\$55,200	137
Ramapo	\$45,500	113
Orangetown Prevailing Practice	\$ 4,250	100
Orangetown Employer Proposal	\$38,525	96
Orangetown Union Proposal	\$64,150	159
Orangetown Award	\$43,750	109

The Orangetown award will add a total of \$3,500 to an Employee's compensation over a 25 year period, which again, ignoring the time value of money, would amount to approximately 1/4 of 1 percent of salary. In awarding this adjustment the Panel recognized that Orangetown has lagged behind comparable practice in Clarkstown and Ramapo. It has in fact lagged behind the Rockland County unweighted average which was found to be at about \$45,850. We are, however, influenced most by the

Table I

Longevity Issue

Summary of Practice, Proposal, & Award¹

<u>Jurisdiction</u>		<u>Years of Service</u>								<u>Total for 25 yrs. Service</u>
		4	7	10	13	16	19	22	25	
Clarkstown	Increment	450	600	600	600	750	750	750	750	\$55,200
	Total \$ paid	450	1050	1650	2250	3000	3750	4500	5250	
Ramapo	Increment	500	500	500	500	500	500	500	--	\$45,500
	Total \$ paid	500	1000	1500	2000	2500	3000	3500	--	
Orangetown Present	Increment	--	575	575	575	575	575	575	575	\$40,250
	Total \$ paid	--	575	1150	1725	2300	2875	3450	4025	
Orangetown Employer Proposal	Increment	--	575	575	575	575	575	575	--	\$38,525
	Total \$ paid	--	575	1150	1725	2300	2875	3450	3450	
Orangetown Union Proposal	Increment	450	775	775	775	775	775	775	775	\$64,150
	Total \$ paid	450	1225	2000	2775	3550	4325	5100	5875	
Orangetown Award	Increment	--	625	625	625	625	625	625	625	\$43,750
	Total \$ paid	--	625	1250	1875	2500	3125	3750	4375	

¹Orangetown 25 yr. career difference
Award - Present = \$3500

relationship among Clarkstown, Ramapo and Orangetown. Orangetown has, as previously noted, provided a lesser level of fringe benefits than Clarkstown. The Union proposal would have placed that benefit level at 16 percent above Clarkstown and 41 percent above Ramapo. The Employer's proposal placed the Orangetown benefit 16 percent below Ramapo rather than at the prevailing 11.5 percent. This reduction of nominally 3 1/2 percent would be imposed entirely at the expense of the most senior members of the Department in their final years of service prior to retirement. We are provided with no justification for such action other than a general commitment to cost containment. We believe retention of the 25 year increment is appropriate and that a narrowing of the longevity differentials between Orangetown and Ramapo is justified. The Panel has therefore awarded retention of the longevity eligibility increments of the expired Agreement with the increments being increased from \$575 to \$625. A revised schedule "A" so providing appears in the Award.

10. Article 6.3. Article 6.3 of the expired Agreement stipulated that persons assigned to the night shift which is defined as between the hours of 2300 and 0800 be paid \$1.05 per hour over the normal base salary for all hours worked which were defined to include periods when employees were off duty due to sick leave, vacation leave, personal leave and worker's compensation for up to one year. The Union proposed retention of the clause subject to a modification which would fix the pay rate at 10 percent of the hourly rate which would provide a night

shift differential of approximately \$2.50 per hour. The Employer sought retention of the existing rate, but modification of the contract language which would entitle employees to the night differential only for those hours during which they actually worked. Thus, the night shift differential would not be paid for personal days, sick days, vacation days and the like.

The Union sought to reestablish the night shift differential payment on a percentage basis as it existed up until 1985 when an interest arbitration panel upheld the Employer's petition for conversion to a fixed hourly rate and at that time awarded the present \$1.05 per hour. The Union urged that if only the 6 percent differential had been retained, the present differential would be more than \$1.50 per hour and that the percentage rate in force in effect in comparable jurisdictions are at about the 10 percent level.

The Employer argued that many jurisdictions do not even pay night differentials, but that where they are paid, it is in recognition of the disruption in normal living schedules occasioned by one's being absent from the home and on duty during conventional sleeping hours. In its view, when the Employee is off duty for any reason, he or she is not sustaining that inconvenience and should not be entitled to differential payments intended to compensate for such sacrifices.

This matter was extensively discussed and vigorously debated in Executive Session. What emerged from that dialogue was the determination that the appropriate method of payment was an

annual salary increment, calculated on a days worked basis to be paid to persons on the night shift without reduction for time off on official paid leave as the amounts involved were estimated and factored into the compensation determination. In a balancing of the parties' respective interests and positions on this among other issues, the Panel awarded an annual salary increment of \$2,650 to become effective in the second year of the Agreement commencing January 1, 1992. The specific awarded contract language appears in the Award Section of this document.

11. Article 7.2 Article 7.2 of the expired Agreement obligates the Employer to provide for the cleaning of uniforms or plain clothes in lieu of uniforms for those so assigned. The Agreement provides the Employer with the alternative of paying what is in effect a clothing allowance in lieu of dry cleaning costs to persons assigned to plain clothes positions and that sum was set at \$400 per annum. In the case of uniformed employees, the Employer pays for uniform replacement on the basis of normal wear and tear. The Union sought an increase in this allowance to \$600 per annum, citing the practice in Ramapo where plain clothes people received a \$425 clothing allowance plus compensated dry cleaning and a \$150 equipment allowance for sox, shoes and the like, raising the total to \$575 per annum plus dry cleaning services. Clarkstown pays a flat allowance of \$500 per annum to detectives and \$750 per annum to all other plain clothes personnel. Other Rockland County communities pay as much as \$1500 per annum (Suffern) and reportedly none pay less than \$560

(Town of Haverstraw).

The Town argued that clothing allowance may not be viewed in isolation. Other communities which pay more may do so for fewer people, but more importantly, frequently fall far behind Orangetown in other more important and costly benefits.

In weighing this issue, we were constrained to conclude that the respondent's allowances do lag behind even modest allowances in other Rockland County Departments generally, as well as falling short of those in place in both Clarkstown and Ramapo. We have therefore awarded an increase of \$50 per annum, raising the allowance to \$450 commencing January 1, 1991 with a second increase of \$50, raising the total to \$500 per annum becoming effective January 1, 1992. The contractual language providing for this modification appears in the Award Section of this document.

12. Article 8.3 This provision of the Agreement deals with vacation time entitlements and specifically excludes persons on job related injury leave pursuant to the provisions of Section 207-c of the General Municipal Law from entitlement to vacation time during the period of disability. It further provides that no employee may receive more than fifty-two (52) weeks pay in a calendar year. The Panel's disposition in this matter is set forth in the Award Section of the document and further discussion at this juncture would be redundant and unproductive.

13. Article 8.6 Article 8.6 which deals with absences due to illness by persons who have depleted their sick leave

allowances contains a typographical error. It has been corrected in the modified language appearing in the Award Section hereof.

14. Article 8.7 This Article deals with the rate at which vacation credits are earned and both parties submitted proposals for modification. The Panel determined that it was inappropriate for it to continue further debate at that point in time and both parties' proposals are denied.

15. Article 9.2 The Union proposed a revision in this Article designed specifically to identify the dates on which holidays would be observed. The purpose of this proposal was to define the conditions under which employees would be eligible to receive premium pay, which was the object of a second Union proposal. Denial of that proposal rendered consideration of this matter moot and the proposal is denied.

16. Article 9.3 The Union proposed a modification to the provision of this Article which would have provided time and one half pay for holidays in lieu of straight time. A view of the supporting data indicated that this was not the practice in larger comparable jurisdictions and the proposal is denied.

The Employer also proposed changes in the language of this provision. It specifically sought to strike the phrase "of the preceding year" in the language specifying entitlements to holiday compensation in time or money, for worked holidays occurring in the last quarter of the calendar year which is carried over into the next year. The Panel found the phrase to be somewhat redundant but did not view it as a seed for potential

misinterpretation of the Agreement and the proposal relating thereto is therefore denied. The Employer further urged correction of a grammatical or typographical error which resulted in the omission of the word "be" and language implementing this correction is provided in the Award Section hereof.

17. Article 9.4 Article 9.4 of the expired Agreement provided that police receiving benefits under the provisions of the Section 207-c of the General Municipal Law which provides for salary continuation in the event of illness or injury incurred in the line of duty, are to be denied compensation for any holidays which occur during the time period for which 207-c benefits are being paid.

The Union sought pay for all such holidays arguing that in effect, a person on 207-c disability is assigned to non-active duty to facilitate recuperation and which should not impair entitlements which would accrue to the individual's benefit if he or she had been otherwise assigned to work on the holiday in some other Departmental capacity. The Employer's position is that an individual on sick leave is already off duty for the holiday, that they should not be paid twice for that day. In the Town's analysis, an Employee on active duty who elects to take a contractually specified holiday off is granted permission to do so, receives only one day's pay. In effect, he or she is permitted to take that day off without penalty and in the Employer's view that is precisely the prevailing situation for a person being compensated pursuant to the provisions of Section

207-c of the General Municipal Law.

In the Panel's discussion of this matter, attention focused on the situation of persons on 207-c leave who may ultimately be placed on disability retirement due to the persistence and/or severity of their job-related illness or injury. If these persons had been on active duty prior to retirement and had worked the holidays, the additional pay received would have been reflected in their annual earnings thereby contributing to a higher pension entitlement. Loss of this pay, therefore, adversely impacts the amount of pension which will be paid to persons whose job incurred injuries or illnesses make retirement imminent. The Panel was further persuaded that any special provision attempting to restrict a benefit to persons facing imminent retirement, would result, under the retirement pension regulations, in exclusion of those monies from the earnings record on the basis of which benefits are calculated. A Panel majority shared in the concern expressed on behalf of these people and, in deference thereto, formulated a revised Article 9.4 attempting to address that specific need while minimizing general impact upon the Employer's costs. The awarded contractual language appears in the Award Section of this document.

18. Article 10.2 Article 10.2 deals with the increments in which Personal Day eligibility may be earned. Under the expired Agreement, the Employee was credited with six days on January 1 of each year. The Employer's proposal was to change this

language to provide that the Employee would accrue Personal Day entitlements at the rate of 1/2 day per month. The Panel, in its review of the implementation complexities which would result from such a change, found them to embody numerous potential complications and the proposal is therefore denied.

19. Article 10.3 Under the terms of the expired Agreement, Personal Leave cannot be used in increments of less than 1 hour duration and only in 1 hour units. The Employer proposed altering this to 1/2 day or 4 hour units. In the exploration of this matter, the Panel found that there were numbers of situations in which the adoption of such a provision would result in the unproductive use of personal time. The proposal was therefore denied.

20. Article 12.1 This Article relates to the rate at which sick leave credits are earned. The Panel's findings and determination are set forth in the Award Section of this document.

21. Article 12.2 Article 12.2 was a Union proposal to permit persons on 207-c leave to earn sick credits as if they were on active duty. The philosophy of the parties relating to this is summarized in the discussion of Holiday Pay entitlement (see No. 17 above) and repetition would here serve no useful purpose. The proposal was denied as set forth in the Awards Section of this document.

The Employer also proposed a change in Article 12.2 which stated that 207-c benefit recipients would not be entitled to

sick leave credits "except as may be permitted in the future under section 207-c of the General Municipal Law." It is the Employer's position that even if permitted under the law, the payments would be improper because as was previously noted, persons on sick leave should not be earning further sick leave. The Panel in balancing the interests and concessions of the parties, sustained the Employer's proposal and contractual language implementing the revision in the successor Agreement appears in the Awards Section hereof.

22. Article 12.3 Article 12.3 deals with Employee notification of inability to report to duty and in the expired Agreement stated that it is "essential" that the Employee notify the Department. The Employer urges that the term "required" better describes the Employee's obligation. The Panel concurred and the required implementing revision is set forth in the Award segment of this document.

23. Article 12.11 Article 12.11 was a Union proposal to alter the ratio employed in crediting and converting unused Sick Days into Annual Leave Days. The Panel denied this proposal for reasons set forth in the Awards Section of this document.

24. Article 13.2 This Article deals with compensatory time off where the expired Agreement required that it be taken within the calendar quarter earned. The Union sought to extend the time limit to the calendar year as opposed to the quarter in which the entitlement was earned. The Employer sought to retain the existing limit, but suggested it might, at its option, extend the

allowance by one month beyond the quarter but that if the time were not taken by the end of that month, to then discharge the entitlement by payment.

The Union's position sought greater flexibility for its members, while the Employer attempted to avoid or minimize record keeping complexities. The Panel arrived at what it believes to be an equitable balance of interest and has awarded language consistent with that objective which appears in the Awards Section of this document.

25. Article 13.6 This Article relates to meal allowances paid when working overtime which the Union proposed to increase. The Union proposal was denied for reasons set forth in the Award segment of this document.

26. Article 13.7 This Article relates to the annual hours base employed in computing overtime where the Union proposed a reduction in the hours used. The proposal was denied for reasons set forth in the Award segment of this document.

27. Article 14.1 Article 14.1 is the subject of an Employer proposal to delete certain restrictions on its latitude in selecting insurance carriers. The proposal was denied for reasons set forth in the Awards segment of this document.

28. Article 14.2 This Article deals with Health Insurance premium payments where the Employer proposed cost sharing. The proposal was denied in conjunction with the denial of the proposal relating to Article 14.1 above.

29. Article 14.3 This Article relates to Dental Insurance

where both parties submitted proposals, both of which were denied in conjunction with the denial of the Article 14.1 proposal.

30. Article 14.5 Under the provisions of this Article in the expired Agreement, the Employer subscribed to life insurance on behalf of the Employee in the amount of twice the annual salary plus \$10,000 with an additional \$10,000 coverage in the even of accidental death or dismemberment with a ceiling of \$85,000. The Union proposed an increase in the \$85,000 ceiling to \$185,000. In support of its proposal it presented a summary of policies in effect in other Rockland County jurisdictions which indicated that Orangetown was at a somewhat lower level than others, probably because the existing provision was one of longstanding and had not been adjusted for inflationary and salary increases over the years. The Panel concluded that a life insurance policy in the amount of \$110,000 with a double indemnity provision would be equitable and contractual language effecting such a change appears in the Awards segment of this document.

The parties further committed to the institution of the change as promptly as practicable, but in any event by February 28, 1992.

31. Article 14.6 This Article in the expired Agreement provided for reimbursement to the Employee of expenses incurred in purchase of eyeglasses or contact lenses up to a maximum of \$60 per year. The Union sought to increase this ceiling to \$200 per year per person and to extend the benefit to the Employee and

his or her dependents. The Employer proposed retention of entitlement limitation to the Employee only with the annual ceiling being raised to \$120. A review of the evidence setting forth comparable practice in Rockland County, supported the Employer's position and the language implementing same appears in the Awards Section of this document.

32. Article 20.1 Article 20.1 dealing with the term of the Agreement was revised as set forth in the Award Section of this document.

33. Article 21.7 This Article in the expired Agreement stipulated that a retired employee would be permitted to retain and to receiving the necessary permit for his or her service revolver. The Union proposed changing the terminology of "revolver" to "weapon" reflecting recognition of changing technology. The proposal was sustained and appropriate language is set forth in the Awards segment of this document.

34. Article 21.9 This is a new provision, the inclusion of which was proposed by the Employer and which treats with random drug testing. The proposal was denied for reasons set forth in the Awards Section of this document.

III. AWARD:

The undersigned, constituting the duly designated Public Arbitration Panel in the above captioned Interest Arbitration having achieved majority concurrence, award as follows:

1. Article 3.1 c of the expired Agreement shall be

retained without modification in the successor Agreement and the proposal relating thereto is denied.

2. Article 3.1 f. The language of this provision in the expired Agreement stating ". . .of the discipline the Department intends to impose. . ." shall be redacted to state:

" . . .of the discipline the Department may impose. . ." in the successor Agreement. No further changes in this provision are before the Panel.

3. Article 3.1 i. The language of this provision in the expired Agreement stating ". . .and will not generally apply to question by employees below the third level of supervision, e.g., sergeants and platoon commanders." shall be deleted. The successor Agreement will then state:

"This clause is not to be interpreted in such a manner as to prevent questioning of employees by superiors with respect to their conduct in the normal course of business."

4. Article 4.1. The language of this provision in the expired Agreement shall be redacted for inclusion in the successor Agreement as follows: the portion stating ". . . equivalent to the amount of dues payable to the Association." shall be altered to state:

". . .the amount of dues payable to the Association by its members."

The sentence in the expired Agreement stating: "this request for dues deductions must be signed by the employee and the following authorization form shall be utilized:" shall be

altered for inclusion in the successor Agreement, to read:

"This request for dues deductions must be signed by the employee on a copy of the following authorization form to be provided by the Association."

The sentence in the expired Agreement stating "The Employer, however, will supply the Union with the forms specified in Section 4.1 at least sixty (60) days after execution of this Agreement." shall be deleted in its entirety.

5. Article 4.2. That portion in the expired Agreement stating, ". . .a list of names of the officers. . ." shall be altered for inclusion in the successor Agreement, to read:

" . . .a list of names of the employees. . ."

6. Article 4.4. This Article as it appears in the expired Agreement shall be redacted for inclusion in the successor Agreement, as follows: that portion reading ". . .regular dues and assessment to be deducted under. . ." shall be altered to read

". . .regular dues and assessments or any changes to be deducted. . ."

That portion of the expired Agreement stating: "Any changes in the amount of Union dues to be deducted or assessments made must be similarly certified by the Union, in writing to the Employer." shall be deleted. The immediately following sentence stating such changes shall not become effective until sixty (60) days. . ." shall be altered for inclusion in the successor Agreement, to read:

"changes shall become effective as soon as practicable but not later than sixty (60) days. . ."

7. Article 5.6. This provision appearing in the expired Agreement shall be altered for inclusion in the successor Agreement, as follows: that portion stating ". . .differences of opinion concerning. . ." shall be altered to read:

". . .differences of opinion. . ." That portion reading "such requests. . ." shall be altered to read:

"Such requests. . .".

8. Article 6.1 of the expired Agreement shall be deleted and replaced with the following:

6.1 Base wage scale for all employees will be in accordance with the schedule attached hereto marked schedule A. (see page 11).

6'. Article 5.2. This provision appearing in the expired Agreement shall be altered for inclusion in the successor Agreement as follows: that portion stating "...one hundred twenty (120) hours (15 days) per year...." shall be altered to read:

"...one hundred forty four (144) hours (18) days per year..."

Schedule "A"

	<u>1/1/91</u>	<u>7/1/91</u>	<u>12/1/91</u>	<u>1/1/92</u>
5th Grade	33383	34368	35073	36475
4th Grade	39549	40735	41550	43212
3rd Grade	42443	43716	44591	46374
2nd Grade	45176	46531	47462	49360
1st Grade	50155	51659	52693	54800
Sergeant	57678	59408	60596	63020
Lieutenant	66330	68320	69686	72474
Detective	53666	55276	56382	58637
Detective Sergeant	61189	63025	64285	66857
Detective Lieutenant	69841	71936	73375	76310

NOTE: Sergeants are to be paid at an annual rate of 15% greater than that in effect for First Grade Patrolman;

Lieutenants are to be paid at an annual rate of 15% greater than that in effect for Sergeants;

Detectives and Youth Officers receive the cash equivalent of a 7% differential above First Grade Patrolman, in excess of rank.

9. Article 6.2. Article 6.2 of the expired Agreement shall be altered for inclusion in the successor Agreement, to state as follows:

"said increments shall be in the sum of dollars, \$625.00."

That portion of the provision commencing with "All increments shall be in the sum of \$575.00 through the end of Article 6.2 shall be deleted and replaced with the following in the successor Agreement:

"All increments shall be in the sum of \$625.00.

The following cumulative pattern shall exist, effective January 1, 1992:

Years of Service	<u>7</u>	<u>10</u>	<u>13</u>	<u>16</u>
Longevity Payment	625(3)	1250(3)	1875(3)	2500(3)
	<u>19</u>	<u>22</u>	<u>25</u>	
	3125(3)	3750(3)	4375	

10. Article 6.3. Article 6.3 of the expired Agreement shall be deleted and replaced in the successor Agreement, by the following:

"6.3 Effective January 1, 1992 officers who are regularly scheduled to work between the hours of 2300 and 0800 shall received an additional annual salary increment of \$2650 over their normal base salary while assigned to that shift. Payment of this night shift increments shall not be reduced when employees are off on official paid leave (i.e., sick leave, vacation leave, personal leave, etc. and worker's compensation up to one year), nominal deductions for such time having been made

in the calculation of this annualized increment."

11. Article 7.2. Article 7.2 of the expired Agreement shall be altered for inclusion in the successor Agreement as follows. Delete the portion reading "As an alternative, the Town shall pay annually on January 1, the sum of four hundred (\$400.00) dollars to each officer assigned to plain clothes." The following shall be substituted for the deleted language:

"As an alternative, the Town shall pay annually retroactive to January 1, 1991, the sum of four hundred and fifty (\$450.00) dollars for the calendar year 1991 and thereafter commencing with January 1, 1992 shall pay five hundred (\$500.00) dollars to each officer assigned to plain clothes."

12. Article 8.3. The provision of the expired Agreement treats with ineligibility with employees receiving benefits under the provisions of Section 207-c of the General Municipal Law on vacation time. The Panel has determined that consideration of this and a number of other vacation time proposals to be best deferred to a more propitious time. The proposal is therefore denied.

13. Article 8.6. Article 8.6 of the expired Agreement shall be modified for inclusion in the successor Agreement as follows: that portion which reads ". . .to illness, but as no sick leave. . ." shall be modified to read:

". . .to illness, but has no sick leave. . ."

14. Article 8.7. This article in the expired Agreement relates to the rate at which vacation credits may be earned.

Both parties submitted proposal and the Panel determined that consideration of either or both was inappropriate at the present time juncture and both are therefore denied.

15. Article 9.2. This proposal was to identify observation dates for holidays for the purpose of determining premium time pay eligibility. As the Panel denied the Union pay eligibility proposal, it denied also its petition to revise Article 9.2.

16. Article 9.3. This proposal was to modify the provisions of this Article to provide time and one-half pay for holidays in lieu of straight time. The Panel majority denied the proposal. A further proposal for a language revision of Article 9.3 was sustained to the effect that the language of the expired Agreement stating ". . .December of the preceding may be carried over and used, or paid at the rate. . ." shall be altered for inclusion in the successor Agreement to read:

". . .December may be carried over and used or be paid at the rate. . .".

17. Article 9.4. Article 9.4 of the expired Agreement shall be deleted and the following should be substituted:

"Article 9.4. Employees receiving benefits pursuant to Section 207-C of the General Municipal Law, shall be entitled to holiday pay for all holidays which occur during the time the employee is receiving said benefits up to a maximum of eighteen (18) holidays during any one episode. However, any employee who has exhausted such entitlement with the episode continuing shall be entitled to convert unused vacation accruals to holiday pay."

18. Article 10.2. This proposal was to alter the Agreement to provide Personal Leave Day eligibility in half day increments as earned and was deemed to embody undesirable complications. It is therefore denied.

19. Article 10.3. This proposal was to alter the language of the Agreement to provide that Personal Leave could not be used in less than 4 hour increments. The Panel inferred that such an arrangement would compel unproductive depletion of Personal Leave credits and the proposal is therefore denied.

20. Article 12.1. This was a proposal to alter the language of the Agreement stipulating the rate at which Sick Leave is earned. It was found to be inconsistent with certain other established practices and is denied.

21. Article 12.2. The Union proposal relating to this Article of the expired Agreement was to permit employees to earn Sick Leave credits while receiving benefits under Section 207-C of the General Municipal Law. That proposal was denied on the basis of past practice and potential cost.

There was a further proposal relating to 12.2 which was sustained. Consequently, Article 12.2 of the expired Agreement which currently reads in part ". . .207-C of the General Municipal Law, except as may be permitted in the future under Section 207-C of the General Municipal Law." shall be modified for inclusion in the successor Agreement, to read:

". . .under the provisions of Section 207-C of the General Municipal Law."

22. Article 12.3. Article 12.3 of the expired Agreement shall be modified for inclusion in the successor Agreement to the effect that that portion stating

". . .it is essential that. . ." shall be revised to read:

". . .it is required. . ."

23. Article 12.11. The Union proposal relating to this Article in the expired Agreement, was to alter the ratio employed in crediting traded unused sick leave days for annual leave days. The Panel found this proposed ratio to be inconsistent with other established provisions of the Agreement and the proposal is denied.

24. Article 13.2. Article 13.2 of the expired Agreement shall be redacted for inclusion in the successor Agreement as follows: that portion stating ". . .compensatory time off within the calendar quarter earned. If the compensatory time off. . ." shall be revised to read:

". . .compensatory time off within the calendar quarter earned or the next calendar quarter; if requested and denied within that next calendar quarter, the employee will be paid. However, a request will be denied only if the time off is not compatible with the operating needs of the Department. If the compensatory time off. . ."

25. Article 13.6. A Union proposal for an increase in the meal allowance when working overtime was deemed to be unjustified in light of the minor increases in the price of meals outside the home since the expired Agreement allowance was instituted and the

proposal is denied.

26. Article 13.7. A Union proposal to reduce the annual hour base employed in computing overtime rates was found to be in conflict with other established practices and to entail a potentially large cost and is denied.

27. Article 14.1. The Employer proposed deletion of restrictions on its latitude in selecting an insurance carrier for its Health Insurance coverage. A similar proposal was made relating to Article 14.3 which treats with dental insurance coverage. In view of the point in time at which this Panel was deliberating and the fact that retroactive implementation would be impracticable, it is deemed appropriate to hold that the parties should defer consideration of these matters to impending negotiations and the proposal is therefore denied.

28. Article 14.2. This Article deals with payment of Health Insurance premiums where the Employer proposed cost sharing by the Employee. For reasons stated in treating with Article 14.1 above, the Panel deemed it appropriate to suggest deferral and the proposal is denied.

29. Article 14.3. This Article relates to Dental Insurance. The issues correspond to those addressed in dealing with Article 14.1 and 14.2 respectively. The proposal is denied.

30. Article 14.5. Article 14.5 of the expired Agreement shall be deleted and the successor Agreement shall state as follows:

"Article 14.5. The Employer will provide, at its own cost

and expense and without cost to an Employee who is a member of the bargaining unit, life insurance in the amount of \$110,000 and shall further provide a Double Indemnity provision."

This provision shall be instituted as soon as administratively practicable before February 28, 1992.

31. Article 14.6. Article 14.6 of the expired Agreement shall be revised for inclusion in the successor Agreement, as follows: that portion stating ". . .maximum of sixty (\$60) dollars per pair." shall be revised to read:

". . .a maximum of one hundred and twenty (\$120) dollars per pair."

32. Article 20.1 of the expired Agreement shall be deleted and a substitute shall appear in the successor Agreement as follows:

"20.1 This Agreement shall be in effect as of January 1, 1991, except as amended, and shall remain in effect through December 31, 1992."

33. Article 21.7. Article 21.7 of the expired Agreement shall be revised as follows: that portion stating ". . .his/her service revolver. . ." shall be altered to read:

". . .his/her weapon. . ."

34. New Provision - Random Drug Testing

To be Article 21.9. New provision - random drug testing. The Employer has proposed the adoption of a draft agreement drawn up for the nearby Stony Point jurisdiction. In view of the fact that the final form has not been definitively fixed and the time

junction at which the Panel's deliberations took place, it was deemed appropriate to defer further consideration in this matter to future negotiations and the proposal is denied.

Delmar, New York
March 28, 1992

Respectfully Submitted,
Sumner Shapiro
Sumner Shapiro
Chairperson
(Award portion previously signed
17, December, 1991)

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Sworn to before me this 15th day of September, 1992.

~~*Matthew J. Barbaro*~~
Notary Public

MATTHEW J. BARBARO
Notary Public, State of New York
Originally Qualified in Albany County
No. 4674478
Commission Expires May 31, 1994

Maureen McNamara
Maureen McNamara, Esq.
Union Designated Panel Member
Concurring
(Award portion previously signed
20, December, 1991)

STATE OF NEW YORK)
) ss.:
COUNTY OF ROCKLAND)

Sworn to before me this 11 day of August, 1992.

Richard P. Bunyan
Notary Public

RICHARD P. BUNYAN
Notary Public, State of New York
No. 4961550
Qualified in Westchester County
Commission Expires 02/03/94

