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In the Matter of the Compulsory
Interest Arbitration Between

THE RIVERHEAD POLICE BENEVOLENT
ASSOCIATION, INC.,

Petitioner,

- and -

THE TOWN OF RIVERHEAD,

Respondent.

----------X

Case No. IA92-029
M92-022

OPINION AND AWARD

Before the Public Arbitration Panel:

Max Doner, Esq.	Public Member and Chairperson
Richard K. Zuckerman, Esq.	Employer-Appointed Member
Edward W. Guzdek	Employee Organization Member

Appearances:

For the Town:

Rains and Pogrebin, P.C.
John T. Bauer, Esq.

For the PBA:

Erick F. Larsen, Esq.

OPINION AND AWARD

INTRODUCTION

The collective bargaining agreement between the Riverhead Police Benevolent Association, Inc. (hereinafter the "PBA") and the Town of Riverhead (hereinafter the "Town") expired by its terms on December 31, 1991. When the parties reached an impasse in their negotiations for a successor agreement, a Public Employment Relations Board ("PERB") appointed mediator unsuccessfully attempted to effect a settlement.

Thereafter, pursuant to New York State Civil Service Law Section 209.4, and in accordance with the rules of PERB, the above named Public Arbitration Panel was designated to make inquiry, determinations and issue an Award on various items submitted to the Panel by the parties. The Panel held hearings on April 22, May 12 and November 15, 1993 and subsequently met in executive session on January 12, 1994.

At the arbitration hearings, both parties were represented by counsel and were afforded full opportunity to present oral and written evidence, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. The parties submitted approximately 120 exhibits to the Panel for review. The parties also submitted written post-hearing briefs as well as several written replies to those briefs.

In making our determination the Panel acted in accordance with and gave due consideration to the relevant

statutory criteria as set forth in Section 209.4 of the Taylor Law:

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.

ISSUES PRESENTED

The amended petition filed by the PBA contained proposals on the following issues (Jt. Ex. 1):

1. Court Recall
2. Night Differential
3. K-9 Differential
4. Longevity
5. Tour Changes
6. Detective Upgrades
7. Child Care Leave
8. Field Officer Training
9. Salary
10. Vacation

The response of the Town to the PBA's amended petition contained proposals on the following issues (Jt. Ex. 2):

1. Hospitalization and Medical Insurance
2. Dental Plan
3. Optical Plan
4. Death Leave
5. Overtime
6. Excuse From Duties for PBA's Representative
7. Duty Tours
8. Sick Leave
9. Drug and Alcohol Testing

PRELIMINARY CONSIDERATIONS

As noted, the collective bargaining agreement expired by its terms on December 31, 1991. The parties have agreed that this Panel should issue an Award covering the next two years, i.e., covering the period January 1, 1992 through and including December 31, 1993.

All demands and proposals not discussed and awarded in this Opinion and Award are rejected by the Panel. In addition, except where otherwise specifically noted in this Opinion and Award, the Panel awards the continuation, unchanged, of all provisions of the parties' 1989-1991 contract.

One specific exception to the foregoing is that the parties have, for reasons not presented to the Panel, explicitly agreed not to grant the Panel jurisdiction to award the continuation of certain "nonmandatory" provisions of the expired contract. We note that the PBA's Amended Petition for Compulsory Interest Arbitration (Jt. Ex. 1, ¶ 12) and the Town's Response to the Amended Petition (Jt. Ex. 2, ¶ 2) expressly state that the

parties are not submitting to the Panel for consideration or continuation the following nonmandatory contract sections:

a) Article III (1) (para. 2) (second sentence)
b) Article X (fourth sentence)
c) Article XX(B)
d) Article XX(C)
e) Article XX(E)
f) Article XX(G)
g) Article XX(H)
h) Article XXVI
i) Article XXVII
j) Article XXX

Accordingly, the Panel does not award, or otherwise consider the issue of, the continuation of these contract provisions into the parties' new agreement.

BACKGROUND

The Town of Riverhead is located in Suffolk County on the eastern end of Long Island (Town Ex. 1). According to the 1990 United States census, the Town has a population of 23,011 (Town Ex. 2). It has a land area of 67.4 square miles (PBA Ex. 1). The PBA's bargaining unit consists of approximately 55 employees. The unit is described in the recognition clause of the collective bargaining agreement as "all Police Officers and Detectives employed in the Police Department in the Town of Riverhead, Suffolk County, New York" (Jt. Ex. 3, Article I).

COMPARABLE COMMUNITIES

Civil Service Law Section 209.4 requires the Panel to, among other things, compare this unit's terms and conditions of employment with those of persons "in comparable communities." The Town argues that PBA unit members' terms and conditions of employment should be primarily compared with those of police

officers in the four other Long Island East End towns: East Hampton, Shelter Island, Southampton and Southold (Town Ex. 1). The Town also claims that it is appropriate for the Panel to consider the terms and conditions of employment of other Town workers, both unionized (the SOA and CSEA) and non-union (managerial and confidential employees). At the hearing, the PBA contended that the appropriate comparison should be wider in scope, including those municipalities in Suffolk and Nassau Counties which have police departments with more than ten and thirty-five officers, respectively, and which responded to a PBA survey prepared for this proceeding (PBA Ex. 4).

The Panel carefully and fully considered all of the evidence presented by the parties regarding the comparability issue. Our findings regarding appropriate comparables are described in more detail below.

RESOLUTION OF OPEN ISSUES

A. PBA PROPOSALS

1. Court Recall

Article VI(B) of the parties' collective bargaining agreement guarantees unit members at least two hours' pay at time and one-half if they are required to report to court outside of their regular work hours. This translates into three hours at straight time pay. The PBA proposes that the court recall guarantee be increased to four hours at time and one-half, or six hours at straight time pay.

In support of this demand, the PBA submitted data showing that court recall pay is higher in other communities (PBA Ex. 4). The Town countered that the PBA's demand would double the Town's cost for court recall pay. Moreover, the Town argued that when a comparison is made with other East End Towns, an increase is not justified.

Because there is insufficient evidence to justify the PBA's proposal, it is denied.

2. **Night Differential**

Article VIII(B) of the parties' contract provides night differential in the amount of $2,500. The PBA seeks an increase of $500 in each year of the new contract. The PBA presented comparative data in support of this demand (PBA Ex. 4). The Town countered that when a comparison is made with other East End Towns, no increase is justified (Town Ex. 63). The Town also argued that night differential was increased significantly in the expired contract (Jt. Ex. 3, Article VIII(B)) and that the PBA's demand, if accepted, would cost the Town an additional $66,000 (Town Ex. 64).

The Panel agrees that the current benefit level is inadequate when compared with that enjoyed by police in East Hampton, Southold and Southampton. On the other hand, we believe the increase sought by the PBA to be excessive, particularly given the Town's limited ability to pay for improvements in wages and fringe benefits (see the discussion on Salaries in this

Opinion and Award for a more detailed analysis of the ability to pay issue).

Accordingly, the Panel awards a $200 increase in the present night differential benefit, effective July 1, 1993. This will increase the rate enjoyed by the members to $2,700, while costing the Town only $100 per eligible member during the 1993 calendar year. We believe that this award properly balances the PBA's right to receive night differential pay in an amount that is competitive with night differential pay received by police officers in comparable communities against the Town's ability to pay the increased costs associated with the Award.

3. **K-9 Differential**

Article VIII(C) of the parties' contract provides a $3,300.00 differential for employees assigned to the K-9 unit. The PBA demands that this be increased to an amount that is 50% higher than night differential pay. The PBA claims that the 50% difference was excluded from the most recent contract due to a drafting oversight. The PBA further presented compelling testimony about the duties and responsibilities of the Department's K-9 handlers and the financial burdens associated with their job.

While acknowledging the efforts of its K-9 unit, the Town counters that the removal of the disputed language from the contract was deliberate and not an oversight as claimed by the PBA. In addition, the Town points out that it already pays more

in K-9 differential that East Hampton, the only other East End Town with a K-9 unit.

The Panel finds it unnecessary to determine whether a drafting oversight was responsible for the change in K-9 differential in the last contract. It is undisputed that prior to the last contract, the K-9 differential was 50% greater than the contract provision for night differential. The reason for this distinction, based on the unrefuted testimony of the PBA's witnesses, was to compensate K-9 officers for the added risks and expenses associated with K-9 work and to compensate them for time spent caring for their dog. Because these factors are still present today, the Panel feels it is appropriate to pay K-9 officers a differential in the amount proposed by the PBA.

Thus, effective January 1, 1992, the Panel amends Article VIII(C) to provide for a K-9 differential that is 50% greater than the then current night differential figure.

4. <u>Longevity</u>

Article XI of the parties' contract provides longevity pay as follows: 4% of base pay after ten years of service; 6% of base pay after fifteen years of service; and 7% of base pay after eighteen years of service. The PBA proposes the following changes: (1) add a new step of 4% after seven years of employment; and (2) increase the payment after year ten from 4% to 5%.

The PBA claims that the current benefit levels are insufficient when compared with those enjoyed in other comparable

communities (PBA Ex. 4). In response, the Town argues that the present benefit is more than adequate when compared with the other three East End Towns (Town Ex. 65) and other Town employees (Town Ex. 50), and that, in any event, it cannot afford the additional cost associated with the increases sought by the PBA.

There is insufficient evidence to justify the PBA's demand. It is, therefore, rejected.

5. Tour Changes

The PBA proposes that any police officer who is required by the Town to change his/her tour of duty on fewer than seven days' notice be compensated at the rate of time and one-half for all hours worked on the changed tour. The PBA offered insufficient evidence supporting this demand, particularly given the testimony of Police Chief Grattan that granting it would seriously interfere with the flexibility his Department needs to efficiently staff tours of duty. Accordingly, the PBA's proposal is denied.

6. Detective Upgrades

The contract's salary schedule contains three detective grades, with Grade III being the lowest in terms of pay and Grade I the highest. Article XVIII provides the Chief with discretion as to whether a promotion from one grade to another should be made.

The PBA seeks a change so that pay upgrades to Grade II are automatic after two years in Grade III and Grade I pay upgrades are automatic after two years in Grade II. The Town

countered, through the testimony of Chief Grattan, that the contract provides detectives with an incentive to seek advancement through merit rather than mere longevity.

Although the Panel understands the PBA's concerns regarding the lack of detective upgrades, we believe that the Chief addressed these concerns to a large extent when he testified that the 1994 budget provides funding for two detective upgrades. For all of these reasons, the Panel rejects this demand.

7. Child Care Leaves

The PBA asks that a provision on child care leaves be added to the contract. To a large extent, the need for this demand has been eliminated by the recently enacted Family and Medical Leave Act. Moreover, the Panel believes that such a benefit is more appropriately adopted through collective bargaining than compulsory interest arbitration. For these reasons, the Panel rejects the PBA's proposal.

8. Field Officer Training

The PBA proposes that members receive one hour of additional pay for each day an officer is involved in field training of a police recruit. The PBA offered the testimony of Mike Reed that Field Training Officers ("FTOs") were required to expend time beyond their regular tours to complete paperwork related to their training duties. The Town did not dispute the value of the service provided, but did indicate a concern about its financial cost.

Under these circumstances, the Panel believes that the PBA has justified an award of some amount of additional pay to FTOs. However, the one hour sought by the PBA does not appear warranted by the facts. Southampton, which has the only other East End Town contract providing extra compensation for FTOs, provides one-half (½) hour of overtime compensation to FTOs.

The Panel finds that this one-half (½) hour figure, for days on which the FTOs actually train recruits, is appropriate to address the concerns raised by the PBA. In addition, because the evidence demonstrates that the time spent by FTOs in preparing paperwork often occurs after the completion of the officer's regular tour of duty, the additional compensation should be paid at the rate of time and one-half. Thus, in effect, FTOs will be entitled to receive an additional three-quarters (3/4) of an hour's pay on days that they actually engage in the training of police recruits.

Since this is a new benefit, we believe it appropriate to ensure that reasonable procedural protections are implemented to prevent actual or perceived abuse. Accordingly, the Panel awards that, as a condition for the receipt of each day's additional pay, FTOs must submit all required paperwork to the Chief or his designee within one-half hour after the end of the FTO's tour. This will ensure that paperwork is submitted promptly and also avoid unnecessary extra compensation on those days when there is no need to prepare any paperwork.

For all of the above reasons, the Panel issues the following award:

> Effective January 1, 1993, each employee designated by the Chief of Police as a Field Training Officer (FTO) shall be paid one-half (1/2) hour in cash at time and one-half (1 1/2) for each day actually spent in field training of probationary police officers as compensation for time spent preparing paperwork related to such duties. In order to receive compensation for a particular day, the FTO must submit all relevant paperwork to the Chief or his/her designee within one-half hour of the end of the FTO's tour.

9. **Salaries**

Salaries, of course, are the biggest employee cost item for any public employer and usually the most important of all bargaining demands for an employee organization. It is for these reasons that particular attention must be given to a municipality's ability to pay for increased salaries, while at the same time providing employees with competitive raises and salaries, taking into consideration the nature of work performed and comparisons with other comparable communities.

The Town's ability to pay is clearly limited. The overall downturn in the economy that has plagued the region (Town Exs. 10-22, 42) has taken its toll on the Town. Not only have its various sources of revenue (such as state aid, interest income and fund balance) decreased (Town Exs. 23-25), but its tax rate has increased (Town Exs. 27, 28), due largely to a declining tax base (Town Ex. 26). The Town's financial difficulties are exacerbated by the large amount of property located within the Town that is not subject to taxation (Town Exs. 29, 30), as well

as by the low relative wealth of its residents (Town Exs. 31-36). In addition, the Town's debt load has increased significantly since 1987 (Town Ex. 38), and is expected to rise even further to cover expenses related to capping and closing the Town's landfill. Finally, at the end of 1993, the Town was required to pay nearly $700,000 to a resident in a damage award for false arrest (Town Exs. 43, 44). This was an unbudgeted and unexpected cost to the Town.

Jack Hansen testified that, due to fiscal constraints, the Town budgeted no money for salary increases in 1993. Indeed, the Town's non-union employees and those represented by the CSEA both received salary freezes in 1993 (Town Ex. 70). Moreover, the Town argues that PBA salaries are quite reasonable when viewed in comparison with the other East End Town salaries (Town Ex. 72). The Town also points to the fact that, in general, wage increases for public-sector employees are at their lowest level in a decade (Town Ex. 69).

In sum, the Town argues that it cannot afford in 1992 to improve wages and benefits much beyond where they were in 1991, that it cannot afford any improvement in 1993, and that, comparatively, little if any improvement is warranted in either year.

On the other hand, the PBA paints a rosier picture of the Town's current and projected fiscal condition. For example, it focuses much attention on the Town's fund balance, which stood at $1,494,019 in 1991 (PBA Ex. 1, Table 3) and $1,128,557 in 1992

(Town Ex. 25). These figures, argues the PBA, establish that the Town can afford to pay a reasonable wage increase.

The PBA also argues that the Town's tax rate is not high when compared with other Towns in Suffolk County (PBA Ex. 1, Table 1). The PBA also asserts that because the Town has exhausted just 17.05% of its constitutional debt limit, it has sufficient resources to pay the wage increases sought by the PBA (PBA Ex. 1, Table 2). The PBA also argues that, if necessary, the Town can raise taxes to pay for a wage increase. In this context, the PBA offered data showing that each one percent increase is salary would have the effect of increasing the property tax levy .41% (PBA Ex. 1, Table 7). Moreover, the PBA points to recent police settlements and/or interest arbitration awards across Long Island, which according to the PBA, show increases in the 3% through 6% range (PBA Ex. 4, 35). The PBA urges that comparable increases are necessary to keep pace with other settlements and increases in the cost of living.

Initially, the Panel notes that it believes that the Town's fiscal woes are for the most part real and not imagined, especially with regard to fiscal year 1993. The PBA has not seriously challenged Mr. Hansen's analysis of Town assessments, unanticipated liabilities and other factors showing declining revenues and increasing expenses/service reductions. Using the PBA's own data, the Town ranks near the top of all ten Suffolk County Towns at both the low end and high end of the tax rate range utilized by the PBA. More importantly, Riverhead ranks

highest in tax rates of all East End Towns (id.). As the Town pointed out, this relatively high tax burden is shouldered by residents with low relative wealth.

While we understand the PBA's desire to anticipate what both sides hope will some day soon be a new, fiscally revitalized Riverhead, we are constrained to examine the Town's ability to pay for this award, and not a future settlement or award.

One long accepted means used by interest arbitration panels and fact finders to ascertain what a municipality can afford to pay (or at least what it perceives that it can afford to pay) is to examine the salary increases accorded to its other employees. The unit represented by the Civil Service Employees Association operated under two contracts during the period covered by this Award: a two year contract covering January 1, 1991 through December 31, 1992 (Town Ex. 48) and a three year contract covering the period January 1, 1993 through December 31, 1995 (Town Ex. 49).

In the first contract, employees received a 3% raise effective January 1, 1991, a 2% raise effective January 1, 1992 and another 2% raise effective July 1, 1992 (Town Ex. 48). There was no step movement in either year. In the second, current contract, employee salaries were frozen in 1993, followed by raises of 3.5% effective January 1, 1994 and 4.0% effective January 1, 1995, with step movement occurring on January 1, 1994 and April 1, 1995 (Town Ex. 49). The Town's nonunion employees

received a 3.6% salary increase in 1992 and a wage freeze in 1993, both without step movement (Town Ex. 70).

This evidence demonstrates that the Town had a documented ability to pay for a 1992 wage increase for its PBA unit members of somewhere between 3% (the cost in 1992 to the Town of the CSEA's split salary raise) and 3.6%. In 1993, the record supports the Town's contention that it cannot afford any new raises, since its other employees did not receive pay raises except as the natural result of the approximately 1% rollover effect of the prior year's split salary increase for CSEA unit members.

With this evidence in mind, we turn to the data submitted regarding raises afforded other police units during calendar years 1992 and 1993. Much of the PBA's salary data compares the Town with municipalities in Nassau County and Suffolk County villages, as well as Suffolk County itself (PBA Ex. 4, 35). Such a comparison is inconsistent with the parties' long-standing bargaining history. Instead, the more appropriate analysis is with the other East End Towns of Southampton, Southold and East Hampton.

As of December 31, 1991, the top step salaries within these police departments were as follows (Town Ex. 72):

Salary (5th Year Officer)

	1991
Southampton Town	$49,747
Riverhead Town	49,305
Southold Town	47,429
East Hampton Town	46,168

For the years 1992 and 1993, raises were negotiated/awarded for these units as follows:

Salary Increases

	1992	1993
Southampton Town	2% (1/1/92) 2% (7/1/92)	3.3% (1/1/93)
East Hampton Town	2% (2/1/92) 3% (12/1/92)	3% (3/1/93) 3% (9/1/93)
Southold Town	5% (1/1/92)	3% (10/1/93)

Combined, this data persuades us that, on balance, the salaries paid to Riverhead police officers under the expired contract were fair and reasonable and do not require us to make any special adjustments during the term of this Award. It also convinces us that some type of wage improvement is necessary in order to keep Riverhead police officers' salaries competitive with their East End brethren. On the other hand, though, we are mindful of the Town's demonstrated economic problems, and our obligation to carefully balance those problems with the police officers' legitimate expectations.

Based upon all of the evidence and arguments presented by the parties, and with due consideration having been given to the Town's ability to pay as well as a comparison with appropriate comparable communities, the Panel makes the following salary award:

a. Effective January 1, 1992, each step on the salary schedule, including detectives and investigators, shall be increased by 2%, except that starting pay shall be frozen at the December 31, 1991 rate;

b. Effective September 1, 1992, each step on the salary schedule, including detectives and investigators, shall be increased by 3.75%, except that starting pay shall remain frozen at the December 31, 1991 rate;

c. Effective January 1, 1993, all steps on the salary schedule, including detectives and investigators, shall remain frozen at the December 31, 1992 rates.

This award allows the salaries of PBA unit members to remain competitive by granting a fairly significant increase in 1992, an increase which is consistent in rate with that in other comparable jurisdictions, while also according due regard to the Town's financial dilemma by ordering a freeze on starting salaries and an overall salary freeze in 1993. Even with the freeze in 1993, unit members will not suffer a diminution in their 1991 comparative ranking with police officers in the other East End Towns:

Salaries (5th Year Officer)

	1992
Riverhead Town	$52,177
Southampton Town	51,757
Southold Town	49,800
East Hampton Town	48,504

Salaries (5th Year Officer)

	1993
Southampton Town	$53,455
Riverhead Town	52,177
East Hampton Town	51,294
Southold Town	51,294

In addition, this award is also equitable when compared with raises earned by the Town's other employees, who received approximately the same increase in earnings during 1992, along with a salary freeze in 1993.

Although the base rate salary increase awarded in 1992 is significantly higher for the PBA than for other Town employees, we believe that this is justified by comparisons with wage increases received by police officers in other East End Towns. In addition, we believe that the "cost" to new officers of having their starting salaries frozen is more than offset by the significant increases in salary they will receive because of the existence of automatic step increases.

While we realize that awarding a wage freeze in 1993 is a serious step, we believe that no other decision can reasonably be made given the Town's fiscal situation. Moreover, our decision is not without precedent. For example, wage freezes for police units were negotiated in Shelter Island in 1993 (Town Ex. 46) and awarded in Suffolk County for the first 15 months of a four year award effective January 1, 1992 (PBA Ex. 32). In addition, police officers received wage freezes in 1992 in the Village of Amityville and the County of Nassau (PBA Ex. 35).

It is so awarded.

10. <u>Vacation</u>

The parties' contract contains the following vacation schedule: ten days of vacation during an employee's first two years of employment; seventeen days after two years; nineteen

days after five years; twenty-four days after ten years; and twenty-seven days after fifteen years. The PBA requests an additional vacation step after seven years of employment of twenty-two days.

The PBA's demand is denied. A comparison with East Hampton, Southold and Southampton Towns reveals that the Town's vacation policy ranks second best over a twenty-year career (Town Ex. 75). In addition, the PBA's own data ranks the Town as sixth out of ten departments in Suffolk County over a twenty-year career (PBA Ex. 1). This data does not compel that we award the change sought by the PBA.

B. TOWN PROPOSALS

1. Health Insurance

The Town made five substantive proposals with regard to health insurance: (1) cap the Town's contribution at the rate in effect on December 31, 1991, the date that the collective bargaining agreement expired; (2) require all new hires to enroll in an HMO, with the option of joining another plan after one year of employment; (3) require new employees to wait six months before coverage commences; (4) eliminate coverage for those employees who are eligible for coverage under a comparable plan of a spouse; and (5) allow the Town the option to change carriers or self-insure.

The Town's proposals are directed at reducing its costs for health insurance. The Town offered evidence that health care

costs have increased significantly (Town Exs. 51-56, 58) and that employer attempts to control these costs have become somewhat common (Town Exs. 51-55, 58). The PBA, while acknowledging the need to contain costs, argued that the changes sought by the Town are not justified when compared with police units in other municipalities (PBA Exs. 36, 40).

Although the Panel acknowledges that health insurance costs have grown, it is not persuaded that the sweeping changes sought by the Town are justified. This is especially true since many of the changes proposed by the Town are not found in police contracts in surrounding communities (most notably the Towns of Southampton, Southold and East Hampton).

This is not to say, however, that no change is in order. As the Town pointed out at the hearing, other Town employees have been required to take steps to help reduce the Town's health insurance costs (Town Ex. 50). It is only fair, therefore, that the police also take some action to reduce costs.

We believe, though, that this Award, which calls for moderate wage and benefit improvements, is not the place for mandatory cost containment measures. We note that the CSEA contract provides for a bonus payment to those persons who voluntarily decline their health insurance benefit. This is a win-win method of attempting to contain insurance costs, and we believe that this is an appropriate place for the parties in this proceeding to commence their efforts.

For this reason, the Panel makes the following award with regard to health insurance:

> An employee may elect to change enrollment in the health insurance plan from family coverage to individual or no coverage, or from individual coverage to no coverage. In this event, the employee shall receive 45% of the savings to the Town, provided the Employee remains in such changed status for a period of twelve (12) consecutive months. Payment shall be made annually thereafter during the June or December first following the end of the twelve month period, provided that the employee remains in the changed status. Employees who change enrollment mid-year during the first year that this provision is implemented shall receive payment on a prorata basis. Nothing in this provision shall preclude an employee from reenrolling in his/her previous coverage within the twelve (12) month period, provided, however, that if the employee does so in fewer than twelve (12) months, no payment shall be made.

2. <u>Dental and Optical Plans</u>

The Town proposes capping its contribution for the dental and optical plans at the rates in effect on December 31, 1991, as well as requiring new hires to wait six months before coverage commences. As with health insurance, the Town's proposals on dental and optical coverage are aimed at cutting costs. The PBA argues that this drastic change in benefits is not justified when comparisons are done with other police units (PBA Ex. 40).

Our review of police contracts from surrounding communities, as well as the terms and conditions of employment of the Town's other employees, reveals that there is insufficient precedential justification for the Town's proposals. Since the Town has failed to persuade us that an award of these demands is warranted in this proceeding, they are denied.

3. **Death Leave**

The Town proposes reducing the number of death leave days from four to three and creating a two-tier level of leave depending on the employee's relationship with the decreased. The Town attempts to justify these proposals largely on the basis of reducing costs. The PBA, on the other hand, argues that there is no compelling need for changing this long-standing benefit.

The Panel is skeptical that a reduction is death leave benefits will result in any significant reduction in costs to the Town. In addition, it is important that employees be given an appropriate level of death leave benefits for purposes of mourning and resolving family matters related to the death of relative or close family member. Since the Panel is not convinced that the changes sought by the Town are justified, these proposals are rejected.

4. **Overtime**

The Town proposes eliminating overtime pay for hours worked beyond eight in a day. The PBA argues that police in all other departments in Suffolk County working a similar duty chart

to the Town receive overtime pay after eight hours in a day (PBA Ex. 40).

The Town offered no evidence from which we can comfortably award a change in such a common contract provision. This proposal is, therefore, denied.

5. **Excuse From Duties of the PBA Representatives**

The contract provides that up to four PBA members shall be excused from duty for purposes of contract negotiations. The Town proposes amending the contract to provide that no more than two on-duty members may be excused at any one time. The Town argues, among other things, that awarding this proposal would result in a cost savings and reduce potential staffing problems. The PBA opposes any change in the present benefit.

The Panel is simply not persuaded that this proposal would be so beneficial to the Town as to offset the hardship that it might cause the PBA and its negotiators. Thus, and since the Town has presented us with no evidence of abuse by the PBA, this proposal is denied.

6. **Duty Tours**

The Town proposes adding five more workdays to the two hundred thirty-eight day schedule and increasing from eighteen to twenty-four months the two hundred sixty-day schedule for new hires. It argues that this will increase productivity and provide more flexibility for staffing and training purposes. The PBA objects to any increase in the work year for any member of its unit.

Although this proposal, if granted, would clearly result in a significant cost savings to the Town and allow the Police Chief greater flexibility in scheduling unit members for training and other special assignments, it is not justified when viewed in the context of police contracts in comparable communities (PBA Ex. 37). The Panel is not inclined to award this proposal under these circumstances.

7. Sick Leave

Article XXIII(E) of the contract provides that employees who have not used any sick leave entitlement in a given contract year shall receive two additional sick days. The Town proposes deleting this provision as redundant of Article XXIII(I) and as a cost-cutting measure. The PBA objects to any diminution of the present benefit.

This proposal is denied. If anything, it would appear that the current provision was implemented to reduce sick leave, and the Town has not proven to the contrary. While it is curious that there are two different contract provisions providing for an incentive not to use sick days, there is no evidence before us about how this happened or why. Under these circumstances, we will leave this issue to the bargaining table rather than disturb the status quo.

8. Drug and Alcohol Testing

The Town proposes adding a drug and alcohol testing policy and procedure to the contract. The policy, as proposed, provides for both random and reasonable suspicion testing.

In support of this proposal, the Town relied primarily upon the testimony of Chief Grattan, who stressed that illegal drug and alcohol use by police officers could adversely affect the integrity of the entire Department. He also testified that drug and alcohol use by police officers could have disastrous consequences both to them and those around them (e.g., operation of vehicles, gun use) and that a police officer who uses drugs could compromise his or her position. In addition, the Town noted that its contract with the CSEA already contains a comprehensive drug and alcohol testing policy and procedure (Town Ex. 50).

In response, the PBA takes the position that in the event the Panel awards drug and alcohol testing, it is entitled to binding arbitration of all grievances, whether or not related to the drug and alcohol testing policy. In reply, the Town asserts that the PBA demanded binding arbitration only with regard to grievances relating to the drug and alcohol testing policy, and not generally for all grievances.

The Panel believes that some type of drug and alcohol testing policy and procedure is in order, especially since the PBA did not voice a principled objection to the concept. The testimony of the Chief, which was unrebutted by the PBA, was particularly relevant. In addition, if the Town's employees covered by the CSEA contract are subject to drug and alcohol testing, there is no compelling justification why the police (who generally engage in more safety sensitive type work) should not

also be subject to testing. Moreover, it is important to us that the policy and procedure proposed by the Town contains numerous safeguards to protect employees from abuse or inaccurate test results.

The Panel is not persuaded, however, that mandatory random testing is in order, especially when a comparison is made with police contracts in other communities. Furthermore, the Town's contract with the CSEA, discussed above, provides for reasonable suspicion, but not random, testing. In addition, we believe that any agreement on random testing is at this point best left to the bargaining table.

For all of the above reasons, the Panel awards the drug and alcohol policy and procedure proposed by the Town, with the exception of that portion relating to random testing. Of course, to the extent applicable, the parties' contract provision governing the employees' Bill of Rights (Jt. Ex. 3, Article XXVI) is hereby specifically incorporated by reference into that policy and procedure. In addition, aggrieved employees would always have the right to utilize the contractual grievance procedure to address covered disputes about this new provision of the contract.

The Panel finds it unnecessary to decide the scope of the PBA's binding arbitration demand, because there is no evidence before us mandating the awarding of binding arbitration, regardless of scope. This would be a substantive change in the parties' relationship and one we are loathe to make in the

absence of evidence that the Town has abused the current procedure. In addition, to the extent the PBA demands binding arbitration to protect members' rights against improper testing (see PBA Brief, page 33), we believe that this concern has been significantly alleviated by our refusal to award random testing. Accordingly, we believe that there is no justification for adding binding arbitration to the contract.

However, since the PBA has placed the grievance procedure issue before us, we have reviewed the present procedure and find that it is less than conducive to the prompt and equitable resolution of grievances regarding the drug and alcohol testing procedure and other covered disputes between the parties.

The current contract provision reads as follows:

> Grievance Procedure - A grievance shall be defined as any alleged violation of the terms and conditions of the collective bargaining agreement and/or terms and conditions of employment and/or disciplinary procedures and all like matters including disputes concerning line of duty injured status of employees and any and all disciplinary charges of employees. There shall be three steps as follows:
>
> 1. Immediate supervisor;
> 2. Chief of Police; and
> 3. Town Board.
>
> Any Employee under New York State Law has the right to file an Article 78 proceeding.

(Jt. Ex. 3, Article XXVI).

Thus, the contract contains no time limits for the initiation or resolution of disputes, or any procedural mechanism for movement from one step of the grievance procedure to another. The Panel finds that this is particularly offensive to the rights of all covered employees, not to mention the relationship between the PBA and the Town. This concern is heightened by our Award of the drug and alcohol testing policy and procedure, which, as noted, makes certain disputes relating to testing subject to the grievance procedure.

For these reasons, and cognizant of the late date of this Award, the Panel awards that the contract's grievance procedure be amended to read as follows for all grievances filed after December 15, 1993:

> General Principals:
>
> 1. Time limits set forth herein may be extended or diminished only by mutual, written agreement of all parties concerned.
>
> 2. Failure at any level of the grievance procedure to communicate a decision to the aggrieved party or his/her representative within the specified time limit shall permit the lodging of an appeal at the next level of the procedure within the time which would have been allotted had the decision been communicated by the final day.
>
> 3. Any Employee under New York State Law has the right to file an Article 78 proceeding.
>
> 4. If a grievance is sustained, the remedy shall not exceed or cover more than 30 calendar days before the date on which the grievance was filed.

Grievance Procedure

A "grievance" shall be defined as any alleged violation of the terms and conditions of the collective bargaining agreement and/or terms and conditions of employment and/or disciplinary procedures and all like matters including disputes concerning line of duty injured status of employees and any and all disciplinary charges against employees.

All grievances must be filed as outlined below within thirty calendar days from the date on which the event or condition constituting the grievance occurred, or the date on which the grievant knew or reasonably should have known of the event or condition, whichever is later.

There shall be three procedural steps as follows:

First Step. The first procedural step shall consist of the employee's presentation of the grievance in writing to his/her immediate supervisor. A written decision or determination thereon shall be made by the immediate supervisor within 10 calendar days from the time of submission. A copy of the decision shall be mailed to the aggrieved employee, the PBA and the Chief of Police.

Second Step:

A. If the employee is not satisfied with the decision at Step 1, he/she may appeal the grievance to the Chief of Police by written notice within fifteen calendar days from the date of the decision at Step 1.

B. Within fifteen calendar days after receipt of the appeal, the Chief of Police shall render a decision. A copy of the decision shall be mailed to the aggrieved employee and the PBA.

Third Step:

A. If the employee or the PBA is not satisfied with the decision at Step 2, either or both may submit the grievance in

writing to the Town Board within fifteen calendar days of the date of the decision at Step 2.

B. Within fifteen calendar days after receipt of the appeal, or at its next regularly scheduled meeting, whichever is later, the Town Board shall consider the grievance in Executive Session. The Board may hold a hearing if it believes it is necessary.

C. Within seven calendar days after it has completed its consideration of the grievance, the Town Board shall render a written decision on the grievance. A copy of the decision shall be mailed to the aggrieved employee, the PBA and the Chief of Police.

CONCLUDING REMARKS

Due to the history of this case, the duration of our Award has already expired. This is unfortunate. Setting salaries and other terms and conditions of employment for the Town's police officers is long overdue. It goes without saying that police protection is an important government function. The Panel believes, therefore, that the speedy implementation of this Award would be in the best interests of the PBA membership, the Town and residents of the Town. It is hoped that the parties will commence negotiations expeditiously and that a new agreement, acceptable to both parties, can be worked out in due course.

SUMMARY OF AWARD

For the reasons set forth above, it is hereby awarded that the provisions of the parties' 1991-1992 collective bargaining agreement shall continue unchanged, and all of the parties' proposals are hereby rejected, except as follows:

1. The Panel does not award, or otherwise consider the issue of, the continuation into the parties' new agreement of the following provisions of the 1991-1992 contract:

a) Article III (1) (para. 2) (second sentence)
b) Article X (fourth sentence)
c) Article XX(B)
d) Article XX(C)
e) Article XX(E)
f) Article XX(G)
g) Article XX(H)
h) Article XXVI
i) Article XXVII
j) Article XXX

2. Duration (Article XXXI): two years, i.e., covering the period January 1, 1992 through and including December 31, 1993.

3. Night Differential: Amend Article VIII(B) as follows: Effective July 1, 1993, $200 increase, to $2,700.

4. K-9 Differential: Effective January 1, 1992, amend Article VIII(C) to provide for a K-9 differential that is 50% greater than the then current night differential figure.

5. Field Officer Training: Add Article VIII(F) as follows: Effective January 1, 1993, each employee designated by the Chief of Police as a Field Training Officer (FTO) shall be paid one-half (1/2) hour in cash at time and one-half (1 1/2) for each day actually spent in field training of probationary police

officers as compensation for time spent preparing paperwork related to such duties. In order to receive compensation for a particular day, the FTO must submit all relevant paperwork to the Chief or his/her designee within one-half hour of the end of the FTO's tour.

6. Salaries: Amend Article XXXVII and salary schedule as follows:

(a) Effective January 1, 1992, each step on the salary schedule, including detectives and investigators, shall be increased by 2%, except that starting pay shall be frozen at the December 31, 1991 rate;

(b) Effective September 1, 1992, each step on the salary schedule, including detectives and investigators, shall be increased by 3.75%, except that starting pay shall remain frozen at the December 31, 1991 rate;

(c) Effective January 1, 1993, all steps on the salary schedule, including detectives and investigators, shall remain frozen at the December 31, 1992 rates.

7. Health Insurance: Amend Article III, Section 1, by adding the following: An employee may elect to change enrollment in the health insurance plan from family coverage to individual or no coverage, or from individual coverage to no coverage. In this event, the employee shall receive 45% of the savings to the Town, provided the Employee remains in such changed status for a period of twelve (12) consecutive months. Payment shall be made annually thereafter during June or December first following the

end of the twelve (12) month period, provided that the employee remains in the changed status. Employees who change enrollment mid-year during the first year that this provision is implemented shall receive payment on a prorata basis. Nothing in this provision shall preclude an employee from reenrolling in his/her previous coverage within the twelve (12) month period, provided however, that if the employee does so in fewer than twelve (12) months, no payment shall be made.

8. Drug and Alcohol Testing: Add Article XXXVIII to the contract as follows:

ARTICLE XXXVIII - DRUGS AND ALCOHOL

1. The use of illegal controlled substances or alcohol by employees adversely affects the Town's ability to safely deliver services, impairs the efficiency of the workforce, endangers the safety of employees and the public, and undermines public trust. Therefore, the use, sale, distribution, or possession of illegal controlled substances or alcohol by any employee while on duty is prohibited. In addition, employees are prohibited from being under the influence of illegal controlled substances or alcohol while on duty. Employees in violation of this policy are subject to disciplinary action, up to and including discharge.

2. Unless otherwise noted, all discipline under this policy shall be in accordance with applicable provisions of law.

3. Any employee who refuses to submit to testing or who refuses to cooperate with the testing procedures may be subject to

discipline, including discharge. Attempts to alter or substitute the testing specimen will be deemed a refusal to take the test.

4. The procedures and provisions of Article XXVI (Bill of Rights) are specifically applicable to this Policy and Procedure.

TESTING

5. Members of the bargaining unit shall be subject to urinalysis testing based upon a reasonable suspicion of illegal controlled substance or alcohol use.

(a) The order to submit to testing must be justified by a reasonable suspicion that the employee is or may be under the influence of illegal controlled substances or alcohol while on duty, or is engaging in the use, sale, distribution, or possession of illegal controlled substances or alcohol while on duty.

(b) While the "reasonable suspicion" standard does not lend itself to precise definition or mechanical application, vague or unparticularized or unspecified or rudimentary hunches or intuitive feelings do not meet the standard.

(c) Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from those facts.

(d) Reasonable suspicion may be based, among other things, on the following:

1. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or physical symptoms of being under the influence of drugs or alcohol; or

2. A pattern of unusual or abnormal conduct or erratic behavior (e.g. excessive absenteeism, lateness or early leaves); or

3. Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking; or

4. Information provided by a reliable and credible source; or

5. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

(e) It is intended that where a decision is made to test, the employee will be given a direct order to submit to the test, and the PBA shall be notified of such order. The test shall be conducted immediately thereafter. The employee shall be given a brief verbal statement of the basis for reasonable suspicion.

(f) Where reasonable suspicion is based on information provided by a confidential informant, defined as an employee or agent of a governmental law enforcement agency or the employee's department, the identity

of the source need not be disclosed, except for the name of the governmental law enforcement agency involved, if any. The Town shall not be required to identify a confidential informant in any proceeding, nor can evidence supplied by a confidential informant be suppressed because of a refusal to identify the name of the source.

NEW EMPLOYEES

6. All new employees shall be subject to suspicionless testing prior to appointment. Such employees found in violation of the Town's drug/alcohol policy shall be subject to immediate discharge.

TEST PROCEDURES

7. Insofar as practical, the sample collection process shall be confidential with due regard for the dignity and privacy of the employee. There shall be no direct observation of giving of urine specimens, unless there is reason to believe that the specimen may be tampered with, in which event direct observation shall be made by a person of the same gender as the employee giving the specimen.

8. Specimens shall be collected under the supervision of a monitor designated by the Town. The monitor shall mark and seal the specimen to preserve its chain of custody. Thereafter, the specimen shall be transported to the testing laboratory in a manner which shall insure its integrity and chain of custody. The laboratory selected to perform testing shall be certified by the National Institute on Drug Abuse (NIDA) of the Department of Health and Human Services.

9. Initial urinalysis testing shall be conducted by means of an enzyme multiplied immunoassay test (EMIT). All specimens identified as positive on the initial test shall be confirmed using a gas chromatography/mass spectrometry test (GC/MS). The laboratory shall report as negative all specimens which are negative on either the initial test or the confirmatory test. Only specimens which test positive on both the initial test and the confirmatory test shall be reported as positive. Copies of results shall be sent to the Town and the employee. All tests conducted pursuant to this procedure will be paid for by the Town.

10. In the event the test procedures reveal the presence of illegal controlled substances or their metabolites or alcohol, such employee may be subject to discipline, including discharge. However, in the first instance of such positive drug or alcohol test, any disciplinary charges may be suspended in the Town's sole discretion if the employee agrees in writing to complete counseling and treatment on his/her own time for such illegal controlled substance use or alcohol use in a program jointly agreed to by the Town and the PBA. The employee shall agree, as a condition to the suspension of the disciplinary charges, that if he or she fails to attend or complete the program, he or she shall be deemed to have resigned from employment. The employee shall also agree, as a condition to the suspension of the disciplinary charges or penalty, that for a period of one (1) year following the completion of treatment, he or she shall be subject to periodic random testing for illegal controlled substances

and/or alcohol, and that, if he or she completes counseling and treatment but tests positive for illegal controlled substances or alcohol during such one year period, the Town may reinstitute the suspended charges, in addition to preferring new charges. Upon completion of treatment, as outlined above, and the one year period, the original disciplinary charges or penalty shall be considered resolved. The record of such charges and their resolution (the charges, the answer, and the stipulation) shall remain in the employee's file unless the parties otherwise agree.

9. Grievance Procedure: For all grievances filed after December 15, 1993, replace the grievance procedure in Article XXVI with the following:

General Principals:

1. Time limits set forth herein may be extended or diminished only by mutual, written agreement of all parties concerned.

2. Failure at any level of the grievance procedure to communicate a decision to the aggrieved party or his/her representative within the specified time limit shall permit the lodging of an appeal at the next level of the procedure within the time which would have been allotted had the decision been communicated by the final day.

3. Any employee under New York State law has the right to file an Article 78 proceeding.

4. If a grievance is sustained, the remedy shall not exceed or cover more than 30 calendar days before the date on which the grievance was filed.

Grievance Procedure

A "grievance" shall be defined as any alleged violation of the terms and conditions of the collective bargaining agreement and/or terms and conditions of employment and/or disciplinary procedures and all like matters including disputes concerning line of duty injured status of employees and any and all disciplinary charges against employees.

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B. Within fifteen calendar days after receipt of the appeal, the Chief of Police shall render a decision. A copy of the decision shall be mailed to the aggrieved employee and the PBA.

Third Step:

A. If the employee or the PBA is not satisfied with the decision at Step 2, either or both may submit the grievance in

writing to the Town Board within fifteen calendar days of the date of the decision at Step 2.

B. Within fifteen calendar days after receipt of the appeal, or at its next regularly scheduled meeting, whichever is later, the Town Board shall consider the grievance in Executive Session. The Board may hold a hearing if it believes it is necessary.

C. Within seven calendar days after it has completed its consideration of the grievance, the Town Board shall render a written decision on the grievance. A copy of the decision shall be mailed to the aggrieved employee, the PBA and the Chief of Police.

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

X CONCUR
__ DISSENT

I hereby affirm pursuant to CPLR §7507 that I am the individual described in and who executed this instrument which is my Award.

Max Doner, Chairperson

Sworn to before me this
1st day of April, 1994.

Gladys S. Pepper
Notary Public

GLADYS S. PEPPER
Notary Public, State of New York
No. 30-4656082
Qualified in Nassau County
Commission Expires Nov. 30, 1995

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

X CONCUR
__ DISSENT

I hereby affirm pursuant to CPLR §7507 that I am the individual described in and who executed this instrument which is my Award.

Richard K. Zuckerman
Employer Panel Member

Sworn to before me this
1st day of April, 1994.

Bruce R. Millman
Notary Public

BRUCE R. MILLMAN
Notary Public, State of New York
No. 31-4518068
Qualified in New York County
Commission Expires January 31, 1995

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

X CONCUR
__ DISSENT

I hereby affirm pursuant to CPLR §7507 that I am the individual described in and who executed this instrument which is my Award. Although I concur with the award, I dissent from awarding no salary increase January 1, 1993.

Edward Guzdek
Employee Panel Member

Sworn to before me this
__ day of _____, 1994.

Notary Public

JAMES B. TUTTLE
Notary Public, State of New York
No. 5011266
Qualified in Saratoga County
Commission Expires April 19, 19