STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF COMPULSORY INTEREST ARBITRATION between TOWN OF YORKTOWN POLICE BENEVOLENT ASSOCIATION Petitioner and TOWN OF YORKTOWN Respondent	Case No. IA93-003 M92 - 562 AWARD OF THE PUBLIC ARBITRATION PANEL

INTEREST ARBITRATION PANEL

Prof. Robert T. Simmelkjaer, Esq.	Chairman, Public Panel Member
Mr. Ernest R. Stolzer, Esq., Rains & Pogrebin, P.C.	Employer Panel Member
Ms. Maureen McNamara, Esq., McNamara & Bunyan	Employee Panel Member

APPEARANCES

FOR THE PBA

Richard Bunyan, Esq., McNamara & Bunyan
Clarence Lander, President, PBA
Margaret Guinan, Vice President, PBA
Michelle Killian, Paralegal

FOR THE TOWN

Nancy E. Soper, Esq., Rains & Pogrebin, P.C.
Robert Killeen, Town Assessor
Thomas Stanley, Town Comptroller

INTRODUCTION

The Town of Yorktown (hereinafter "The Town") and the Town of Yorktown Police Benevolent Association (hereinafter "The Union or PBA") began negotiations for a successor agreement prior to the expiration of their current agreement on December 31, 1992. The Union filed a petition for Compulsory Interest Arbitration on April 14, 1993 (J-1). The petitioner's demands for a successor agreement set forth in Exhibit A incorporated eleven (11) contract articles and several economic and non-economic items including: salaries, longevity, clothing allowance, holidays, overtime, personal leave, vacation, health insurance, welfare fund, association rights, transportation and miscellaneous.

In its response to the petition for Compulsory Interest Arbitration (J-2), the Town offered several proposals for a successor contract to the 1991-92 collective bargaining agreement, including economic and contract language encompassing subjects such as: recognition, extra pay, holidays, detective compensatory time, personal leave, payment for unused sick leave sick leave accrual/posting, health insurance, annual workdays and employee drug testing.

On June 28, 1993 Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board, designated a Public Arbitration Panel under Section 209.4 of the New York Civil Service Law for the purpose of making a just and reasonable determination of this dispute. The Panel held hearings on October 6th and November 16th, 1993. Subsequently, the Panel met in Executive Session on December 8, 1993 and January 11, 1994.

The Town and the PBA were represented by counsel throughout these proceedings and afforded full opportunity to present evidence, witnesses and arguments in support of their respective positions. The

Panel admitted as evidence seventeen (17) Town Exhibits, eighty three (83) PBA Exhibits and three (3) Joint Exhibits. The hearing was not transcribed and neither party submitted post-hearing briefs. All of the evidence submitted has been carefully considered by the Panel in the preparation of this opinion and its accompanying award.

Pursuant to the provisions of the Civil Service 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 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 . . .

PBA PROPOSALS

ARTICLE	CURRENT 1992	PROPOSED 1993
ARTICLE III: COMPENSATION		
Section I: Salary		8%
1st Year Patrolmen	$30,309	$32,734
2nd Year Patrolmen	$35,254	$38,074
3rd Year Patrolmen	$40,214	$43,431
4th Year Patrolmen	$45,154	$48,757

Detective	$50,112	$54,121
Sergeant	$51,917	$56,070

Section 5:

K-9 Stipend:	$500	$700

ARTICLE IV: CLOTHING ALLOWANCE

Section 1: Detectives

	$650	$900

ARTICLE V: EXTRA PAY, HOLIDAYS, OVERTIME

Section 2:

	Max accum of comp time - 64 hours	Max accum - 90 hours.
	Section 5 (b): Employees paid at time and one-half for 4 holidays if worked.	Employees paid at time and one-half for 8 holidays if worked.
	Section 6: Outdated restrictions on use of Detectives compensatory time.	Delete

ARTICLE VI: PERSONAL LEAVE:

Section 1:	3 personal days	6 personal days

ARTICLE VII: VACATION:

Section 1(c):	All vacation days not selected by 12/15 will be assigned by the Sergeant.	If employee does not pick entire vacation he may later use vacations days when department is not scheduled to be at minimum manning levels.
Section 2:	6 months-4 days 1 year-16 days 5 years-20 days 10 years-25 days	6 months-4 days 1 year-18 days 5 years-24 days 10 years-29 days

ARTICLE X: HEALTH INSURANCE, DENTAL BENEFIT, WELFARE FUND:

	New	Section 1(b): Employees who withdraw from Town's Health insurance plan shall receive $2,000 if the employee was covered by a family plan and $1,200 if the employee was receiving individual coverage.
Section 4:		
	Town contributes $810 per year to Welfare fund (includes dental)	Town contributes $900 per year
Section 5:		Town shall pay to PBA full cost of optical plan. Plan to be selected by PBA

ARTICLE XI: ASSOCIATION RIGHTS

Section 1:	Association representatives are permitted to appear at public hearings or Boards of Inquiry upon request of members	Amend last sentence: Association representatives shall be permited to appear at public hearing or any arbitrations, administrative or legal proceedings affecting the terms and conditions of employment of a member(s)
Section 4:	Two members have right to attend meetings and conventions of police conferences without loss of pay or time in accordance with the requirements	Delete "in accordance with the requirements of the audit and control bureau of the NYS Controllers Office"

	of the audit and control bureau of the NYS Controllers Office	
Section 6:	PBA President/or designee granted up to 6 days for PBA business	PBA President and/or designee granted up to 12 days for PBA business
	Last Sentence: President or designee must notify Chief at least week prior to the use of PBA day	The PBA President or designee shall notify the Department at a reasonable time in advance.

ARTICLE XII: LONGEVITY

Section 1:

After 7 years - $450	After 7 years - $500
After 10 years - $800	After 10 years - $900
After 13 years - $1,075	After 13 years - $1,200
After 16 years - $1,325	After 16 years - $1,600
After 19 years - $1,575	After 19 years - $2,000
New	After 22 years - $2,500

ARTICLE XIX: SALARY DEDUCTION

Town turned dues over at the end of each calendar month	Town to turn over dues pay date

ARTICLE XV: MISCELLANEOUS

Notice to PBA of changes	Nothing in the Section shall be construed as a waiver of Association's of rights to negotiate such changes or the impact of such changes

ARTICLE XVII: TRANSPORTATION ALLOWANCE

20 cents/mile use of personal vehicle	27 cents/mile

TOWN OF YORKTOWN PROPOSALS

PROPOSALS FOR SUCCESSOR CONTRACT TO 1991-92 COLLECTIVE BARGAINING AGREEMENT

1. Article 1, Section 1,
   Recognition

   Amend to provide as follows:

   "The Town recognizes the Association as the sole and exclusive representative of the employees of the Town of Yorktown Police Department in the titles listed in Article III, Section 1 of this Agreement."

2. Article V, Section 1,
   Extra Pay, Holidays, and Overtime

   Reduce minimum hours for court appearances to three (3) hours.

3. Article V, Section 5,
   Holidays

   Delete subsections (a) and (c); and, replace subsection (b) with the following:

   "All officers shall receive a lump sum cash payment equal to thirteen (13) days' pay in lieu of holidays. Said payment shall be made on the first payday in December."

4. Article V, Section 6
   Detective Compensatory Time

   Delete.

5. Article VI, Section 1(a),
   Personal Leave

   Amend third sentence to provide as follows:

   "Any unused personal days remaining at the end

of the year may be added to the employee's vacation for the following year."

6. Article VII, Section 7
Payment for Unused Sick Leave Upon Retirement

Amend to provide:

"An employee who retires with twenty (20) years of service shall receive a cash payment for fifty (50%) percent of the number of his/her accumulated sick days in excess of sixty (60) such accumulated days. In order to be entitled to this benefit, the employee must be eligible for retirement, and must properly signify, in writing, his/her intent to retire."

7. Article VIII, Section 1
Sick Leave

Amend first sentence to provide as follows:

"All employees shall be entitled to sick leave to be accrued on the basis of one and one-quarter (1 1/4) days per month."

8. Article VIII, Section 2,
Sick Leave Accrual

Delete.

9. Article VIII, Section 3,
Sick Leave Posting

Amend to provide:

"The Town shall compile a list of employees' accrued sick leave as of December 31 of each calendar year, which list shall be posted on or about the following February 1."

10. Article X, Section 1
Health Insurance

Amend first sentence of Section 1 to provide as follows:

"The Town shall contribute seventy-five (75%) of the annual premium for each unit for the continuation of the present hospitalization plan."

11. Annual Workdays

Increase annual workdays by six (6) days per officer.

12. Employee Drug Testing Program

Topic of employee drug testing program to be discussed.

Collective Bargaining History

Prior to the instant impasse, the parties entered into a two year agreement from 1/1/91 through 12/31/92. The award of an Interest Arbitration Panel (Gold Award) resolved the 1991-92 contract providing a base wage increase of 6% in 1991 followed by 4% in 1992. The wage increase of four (4%) percent for top step patrolmen increased their salaries from $43,409 on 7/1/91 to $45,145 commencing 1/1/92. For patrolmen hired after 3/2/92, the $30,309 starting salary effective 1/1/92 was reduced "to twenty-five (25%) percent of the annual cost of family health coverage . . . the Town will continue to pay 100% of the cost of health insurance for unit members.

ISSUE: SALARIES

PBA POSITION

Town's Ability to Pay

The PBA has demanded an 8% salary base salary increase effective 1/1/93. With respect to salaries commencing 1/1/94, the PBA deferred to the Panel's discretion. The PBA maintains that the Town's fiscal condition will support its salary demands. Referring to Moody's Municipal Credit Report which indicates the Town's credit rating is A1 as of May 12, 1992, the PBA concluded the Town's financial position is satisfactory without serious ability to pay problems. Although no bonds in Westchester County receive Moody's highest rating of Aaa, Yorktown's A1 rating is average for

the county with eight jurisdictions rated above (Aa, Aa1), seventeen rated A1 and five below (Baa, A) (P-76).

Despite its relatively sound fiscal situation, the Moody's analysis notes that "several successive operating deficits have drawn down General Fund balances, potentially limiting the Town's financial liability." The Fund balance stood at $820,000 or 6.4% of revenue at the end of 1991. Furthermore, the report indicated that Yorktown's assessed values which expanded steadily during the past decade, dipped in 1992 because of state-mandated reductions in utility assessments" (P-74).

With respect to other revenue sources "Yorktown began receiving a share of the Westchester County sales tax during 1991, and anticipated other revenues for 1992 which would offset a reduction in property, taxes and the loss of a major share of the Town's state aid." The position of special revenue funds which accounted for highway, library and utility operations and one-half of the Town's operating expenditures remained stable with the year end 1990 balance accounting for one-third of revenues.

As additional evidence of the Town's ability to pay, a political campaign flyer was introduced wherein the successful candidate for Town supervisor stated that "1992 spending was under budget by over $700,000 and Town spending was $100,000 less than in 1991 while services were maintained" (P-80). In June, 1993 Town Supervisor Bock indicated that there had been tax reductions in 1992 and 1993 and he projected no increases for 1994 (P-81).

The PBA provided newspaper articles which reported the Town's successful appeal of its 1992 equalization rate. Town Assessor, Robert Killeen, was quoted as stating that the Town would save approximately $325,000 in lower county and school taxes for individual property owners (P-

82). Moreover, a distribution of mortgage taxes collected by the county was expected to yield $455,879 to the Town. (P-83).

The PBA also maintains that "housing values and per capita income for the Town of Yorktown are well above state norms and have increased steadily during the 1980's." Finally, retrenchment at the IBM research laboratory which has been the Town's major employer for twenty years is not expected to adversely impact the facility.

Comparability

To justify an 8% salary increase, the PBA submitted comparability data which indicates that during 1992 Yorktown police officers received a four (4%) percent wage increase whereas the county average was 5.9% (P-62). According to the PBA the top grade patrolmen received an average salary of $47,128 as of 7/92 and $47,800 as of 1/93. Given the $45,145 earned by Town police officers since 1/1/92, a 6.22% salary increase would be necessary to raise Town salaries to the 7/93 average of $49,400 (P-62, pp. 4-6). The PBA further maintains that a 10.2% salary increase would be required to equalize Yorktown police officers with comparable jurisdictions.

Based upon the PBA calculations, for municipalities which have settled contracts for 1993, the average salary increase was 4.9%. Were the Panel to award the PBA salary proposal of 8%, the PBA salary schedule would approach the average in the county with top grade patrolmen receiving nearly the 1/93 county average of $47,800 as follows:

	Current/1992	Proposed/1993
1st Year Patrolmen	$30,309	$32,734
2nd Year Patrolmen	$35,254	$38,074
3rd Year Patrolmen	$40,214	$43,431
4th Year Patrolmen	$45,154	$48,757

TOWN POSITION

Ability To Pay

Mr. Robert Killeen, Town Assessor, testified that "bad news" is evident as the Town maintains "a present and continuing slump" referring to the Town's assessment data. Mr. Killeen testified that an estimated 120,750,00 of assessed property value in 1993 would represent a decline of 2.29% since 1992 following a 3.17% decline from 1991 to 1992. He noted that not since 1990 had assessed property value increased; therefore if the estimate is accurate, 1993 would mark the third consecutive annual decline.

Reference was made to certiorari proceedings involving several Town properties. A court order reducing the 1990-1992 assessment on the complex known as Villas on the Lake was expected to cost the Town $73,000 in tax revenue (T-12). Mr. Killeen testified that a reduction in taxes on the Hunters Brook property could result in an additional $85,000 loss to the Town. And, with respect to the Best Newmark condominiums, the Town would absorb 20% of the estimated assessed valuation reductions of $6,000,000.

Property tax delinquencies were cited as a potential source of revenue loss. For example, as of 10/93, the Waterside Development liens accounted for approximately one million dollars in delinquencies (T-12).

On cross-examination, Mr. Killeen acknowledged that the Pine Tree development with twenty-one single family homes would add $211,000 to Town tax revenues once on the tax rolls. At the same time, he noted that the assessed value of the IBM facility had declined from 9 million to 3 million.

According to Mr. Killeen, property values which peaked in 1986 were used to determine the 1989 equalization rate and those increases in

assessed valuation noted are a function of the lag in the equalization rate. "As the equalization rate declines property values increase but the rate of increase declines as they approach market value."

Finally, he acknowledged that there had been no tax increase in 1992.

Mr. Thomas Stanley, Town Comptroller, in alluding to the Town's 1994 Budget, testified that recycling fees of 36,000 originally charged to the General Fund were reallocated to a special district fund effective 1993 to avoid litigation. Those taxpayers in the refuse district would pay an additional $6.92.

He reiterated some of the testimony regarding tax delinquencies but added that the Town holds 2.3 million in reserve against uncollected taxes. The 1990 Waterside lien remains open unlike the 1989 liens where foreclosure or collection has occurred obviating the need for reserves.

Addressing Town sales tax revenue, Mr. Stanley stated that revenues for the four quarters of 1992 resulted in a budget deficit of 201,000 ($2,053,737 vs. $2,255,000). The same amount was budgeted for 1993 and as of the close of the instant hearing record fourth quarter sales (normally the highest) of $601,172 were necessary to meet budget projections (T-15). Effective 1/91, legislation provides that the Town receives 1/2% of the state sales tax revenues through 1995. Without the sales tax, the 1993 tax rate would be 95.40 as opposed to 77.15 (T-14a).

On cross-examination, he testified that the Town's presentation is designed to obtain a favorable credit rating. He described the county mortgage tax as a means of refinancing income and estimated filing fees in 1994 to be from 875K to 900K.

In comparing the 1991 budgeted amount of $614,375 for police retirement (T-14b) with the $200,000 allocated in the 1992 budget, he testified

that on 12/15/92 the Town paid $200,000 of the bill due to avoid a fund balance deficit which would have occurred if the total was paid. In 1993, $564,000 was paid. The $614,000 expenditure in the 1994 budget will make the Town current in its police retirement benefits.

Comparability

The Town provided data which indicates that while Yorktown is a police force of 50 officers, there are 45 police officers in the bargaining unit, nine (9) of which are members of the Tier I 20 year Retirement Plan and thirty-six (36) of which are members of the Tier II 20 year Retirement Plan. The average salaries plus overtime and benefits of the Tier I members is $59,811 whereas the Tier II members average $53,090 (T-1a, 1b).

Recent interest arbitration awards were submitted by the Town. For example, the Mount Pleasant award provided for base salary increases averaging 4.5%. The Bedford award provided a one year increase of 4% whereas Ossining provided 4% commencing 1/1/93 (T-2).

The Town referred to its CSEA agreement covering the period 1/1/92 through 12/31/95 as evidence of the excessive PBA demands. The CSEA salary increases provide for split increases in 1993 (1/1/93 and 7/1/93) constituting a 3% increase in base salaries followed by a 4% increase on 1/1/94 (T-4). The Town further notes that not only are blue collar employees of the Town receiving lower salaries and salary increases, they also contribute 25% of the cost for family health insurance. In addition, the average salary for CSEA employees including civilian police dispatchers was $35,048 (T-3).

The Consumer Price Index data provided by the Town indicate a CPI change from 1992 to 1993 of 2.14% (T-6).

ANALYSIS/DISCUSSION

The Town's financial condition, despite certain negative factors, remains fundamentally sound. Although Yorktown has several factors which could have a future impact on its fiscal prospects, there is insufficient evidence that these elements over a two year period will adversely impact the Town's ability to pay a wage within the range provided by comparable jurisdictions. The Town's capacity to manage the consequences of an economic downturn which permeated the county and state is manifest, inter alia, in its retention of its A1 bond rating.

The three year decline in the assessed valuation reflects this countywide trend which is partially and temporarily attributable to state mandated reductions in utility assessments. A decline in the General Fund to 6.4% of revenue in 1991 is problematic, however, additional sources of revenue appear to offset this development. The Town will continue to receive a share of the state sales tax revenue which should equal or exceed the $2,255,000 sum projected for 1993. In addition, as Moody's notes, the position of special revenue funds which accounted for one-third of revenues and one-half of the Town's operating expenditures has remained stable.

Equally significant, as evidence of the Town's ability to pay a reasonable wage increase, is the fact that Town spending in 1992 was under budget by over $700,000. As a by-product of its fiscal prudence, the Town has had tax reductions in 1992 and 1993 with no tax increases projected for 1994.

The Town has also saved $325,000 effective 1992 due to the successful appeal of its 1992 equalization rate (P-82). In addition, a redistribution of

mortgage taxes collected by the county was expected to yield revenue of $455,879.

Although tax revenue losses are anticipated, the major ratable in Yorktown, the IBM research facility, will continue to be a reliable source of revenue and employment. The Town provided data indicating that certiorari proceedings may cost the Town revenue. For example, the Villas on the Lake reassessment may result in a $73,000 tax reduction, Hunters Brook an additional $85,000 and Best Newmark 20% of $6,000,000. The tax delinquency at the Waterside Development could account for an approximately one million dollar loss.

Juxtaposed against the contingencies of tax revenue declines from certiorari appeals and tax delinquencies are the tangible gains anticipated from new properties on the tax rolls. The Town Assessor acknowledged that the Pine Tree development should add $211,000 in tax revenues. With respect to the uncollected taxes, the Town has established a 2.3 million reserve fund to absorb any realized revenue deficits.

On balance, the Town's ability to pay vis a vis comparable Westchester municipalities seems satisfactory with no current problems which necessitate severe budgetary restrictions. The Town is cognizant of potential financial problems, but has managed effectively avoiding both employee layoffs and tax increases. Reviewing the record, the Panel is persuaded that the Town can afford wage increases for its police officers within the middle range of similarly situated Westchester communities.

Ascertaining which communities are comparable to Yorktown is difficult. The PBA maintains that all town and village police departments in Westchester County, together with all downstate town and village departments within a 25 mile radius of the Town with police forces of at

least forty-five officers are comparables, whereas the Town has cited the salaries of civil service employees. Both sources of data are consistent with the statutory criteria. Based upon proximity to Yorktown, size of police department and proximity to Yorktown the following towns/villages are deemed most comparable:

Town/Village	Personnel (Full-Time)	Salaries 1992	1993	1994	7/92	Top Salary 1/1/93
Bedford	37	4.0	3	—		48,097
Eastchester	42	6 (4/2)	—	—	47,018	
Harrison	63	5.0	—	—	46,052	
Ossining Village	48	4.5	4.0	—	—	—
Mt. Pleasant	43	6 (3/3)	4.25	—		46,820
Portchester	62	6.5	—	—		45,318
Scarsdale	45	5.85	4.5	—	—	—
Mamaroneck Vill.	39	6.0	—	—		48,120
Yorktown	50	4.0	—	—	45,145	* 47,402

It should be noted that the comparables utilized in the Gold Award were similar except that Cortlandt (17), Greenburgh (137) and New Castle (37) were considered.

The average salary paid top grade police officers in the above cited municipalities (except Scarsdale and Ossining) was $46,904, effective 1/1/93 well above the $45,145 received by Town police officers. The county average of 5.9% also significantly exceeds Yorktown PBA salary increase of 4% in 1992. Salary increase data is sparse for contracts commencing 1/1/93 with the four comparables available averaging 3.81%. When the county average of 4.9% for 1993 salary increases and the below average increase of 4.0% in 1992 are factored in a reasonable rationale for awarding Town police officers 5.0% in 1993 emerges. Considering a two year average of 10.8%, a PBA salary increase of 5.0% in 1993 would following the 4.0% awarded in 1992 yield an aggregate two year increase of 9.0% and still leave the Yorktown PBA in the lower range. Needless to say, no justification can be

found for recouping prior losses during the current economic climate, however, comparability and previous bargaining history are established statutory criteria which the Panel must evaluate.

Determining a wage increase for 1994 presents a challenging problem as virtually very few police contracts have been settled for 1994. Since the economic data presents neither a convincing case for another downturn or significant growth, a wage increase is projected which will maintain Town police officers at a steady state, ensuring they maintain their relative position without causing the Town to incur unreasonable financial burdens. A salary increase of 4.5% commencing on 1/1/94 should accomplish this objective. Again, a three year average salary increase of 13.5% is equitable given the 10.8% county average during the 1992-1993 period. A 2.7% average increase for other municipalities in 1994 (which is improbable) would be necessary to equalize its three year average with Yorktown.

Thus, the likelihood is that even with the awarded increase of 9.5% for the two year period 1993-94 Yorktown over the three year period ending 12/31/94 will still fall below the average increase for the county.

As of 12/31/94 the salaries of top grade patrolman in Yorktown will be $49,535 which should compare favorably with other comparable jurisdictions. The awarded 1/1/93 salary of $47,402 is less than county average of $47,800. It is also less than the 1/93 salaries in Bedford ($48,097); Mamaroneck ($48,120) and should be less than Eastchester ($47,018 as of 7/92) and Harrison ($46,052) if settled for 4% increases commencing 1/1/93.

AWARD

Effective 1/1/93, the salaries for all grades and ranks in the bargaining unit shall be increased by 5% above the salaries in effect on 12/31/92.

Effective 1/1/94, the salaries for all ranks represented by this bargaining unit shall be increased by 4.5% above the salaries in effect on 12/31/93.

Such retroactive monies will be paid by the Town as soon as administratively possible.

ISSUE #2: HEALTH INSURANCE

The Town has proposed to amend Article X, Section 1, Health Insurance to decrease to 75% its contribution to the annual premium. Currently, the Town pays the entire cost of the hospitalization plan. An identical provision is contained in the Superior Officers Agreement (P-73). The Gold Interest Arbitration Award provided that salaries of new hires could be reduced by 25% of cost of health insurance "from starting to completion of three years of service" (P-3). The Town would continue to pay 100% of the cost of health insurance for unit members. The Gold Award was incorporated in the 1991-92 agreement.

Discussion

The Town has documented the continuing rise in the cost of health insurance. The family medical insurance rate has risen 22% since 1991, from $396 in 1991 to $493 in 1994 (T-5). In the Panel's opinion, grounds for maintaining the status quo are twofold. First, the large majority of other towns have experienced similar increases while maintaining 100% coverage. Second, Yorktown obtained some relief in the prior Interest Arbitration.

AWARD

Accordingly, it is awarded that no change be made in Article X, Section 1.

ISSUES #3: PAYMENT FOR UNUSED SICK LEAVE UPON RETIREMENT

The Town has proposed to amend Article VII, Section 7 to reduce the current cash payment for accumulated sick leave days upon retirement from 75% to 50%. The Town maintains that as compared to other municipalities, the Yorktown benefit is excessive.

Discussion

The accumulated sick leave buyout cannot be viewed in isolation from other contractual benefits. In that regard Yorktown ranks at the average or below average level in several economic benefits, including salary.

In addition, for the most part, accumulated sick leave buyout has been the quid pro quo for unlimited sick leave. At least 50% of the county departments provide unlimited sick leave (T-7).

Nonetheless, even for those municipalities which provided a buyout provision upon retirement, the Yorktown benefit is generous. Since the Panel concludes that it would be unfair to deprive current employees who anticipated the benefit, especially those approaching retirement, a reasonable alternative would impact only upon new hires.

AWARD

Accordingly, it is awarded that Article VII, Section 7 be amended to provide as follows:

1. The first paragraph of Section 7 shall remain as set forth in the 1991-1992 Collective Bargaining Agreement. A second paragraph shall be added as follows:

Employees hired after 7/1/94 shall be eligible to receive upon retirement after twenty (20) years of service sixty-six and two-thirds (66 2/3%) of the number of his/her accumulated, unused sick leave days. In order to be entitled to this benefit, the employee must be eligible for retirement, and must properly signify, in writing, his/her intent to retire. An employee who dies while still employed by the Town shall be entitled to receive a cash payment for sixty-six and two-thirds (66 2/3%) of his/her accumulated unused sick days, which payment shall be made to his/her legally determined beneficiary.

ISSUE #4: PERSONAL LEAVE

The PBA has requested that the current provision of three (3) personal days be increased to six (6) personal days. The Town has proposed that "any unused personal days remaining at the end of the year be added to the employee's vacation for the following year."

Discussion

Yorktown PBA clearly falls within the lowest quartile of municipalities in the provision of personal leave days with three (3) days. Assuming comparable benefits elsewhere in their contracts, three personal days is much less than average as 39 municipalities in Westchester County provide four (4) or more days. On balance, one (1) additional personal day seems feasible.

AWARD

Commencing on 1/1/94, Article VI, Section I shall be amended to provide for four (4) personal days.

ISSUE #5: WELFARE FUND

The PBA proposes that the "Town contribute nine hundred dollars ($900) per year for each employee to the Welfare Fund." It also proposes that the Town absorb the full cost of an optical plan. Currently the Town contributes eight hundred and ten ($810.00) per year. The PBA estimates that the current cost of the dental plan ($880) withthe addition of a new optical plan ($207), the total benefit package would be $1,087 to which the

Town contributes ($810). In the last contract the Town's contribution to the Welfare Fund was increased thirty ($30.00) dollars per annum. A proportional increase is warranted for the 1993-94 agreement.

AWARD

Accordingly, it is awarded that the Town's contribution to the Welfare Fund be increased forty dollars ($40.00) per annum, per member to the sum of $850.00 per member, effective 1/1/93, and to $890.00 per member, effective 1/1/94.

ISSUE #6

The PBA proposes to amend Article III, Compensation, Section 5 to provide that members of the canine unit receive a seven hundred dollar ($700.00) annual payment to provide for the care and maintenance of their dogs during their off-duty time. Evidence was provided that other municipalities either provide overtime compensation, use of a police car, time off for grooming or higher stipends. The PBA also entered as evidence a U.S. District Court decision which held that home dog care for canine patrol officers is compensable under the FLSA.

AWARD

Accordingly, it is awarded that compensation for canine patrol officers be increased and Article III, Section 5 be amended as follows:

Effective 1/1/93: "shall receive six hundred ($600.00) dollar annual payment ..."

Effective 1/1/94: "shall receive seven hundred ($700.00) dollar annual payment ..."

ISSUE #7

Article I, Section I, Recognition shall be amended as follows: "The Town recognizes the Association as the sole and exclusive representative of all police officers below the rank of lieutenant employed by the Town of Yorktown."

OTHER ISSUES

Also as proposed by the Town, Article V, Section 6, Detectives Compensatory Time, shall be deleted. The phrase at the end of Article XI, Section 4 "in accordance with the requirements of the Audit and Control Bureau of the New York State Comptroller's Office." shall also be deleted, and is so awarded.

CONCLUSION

All other provisions and language contained in the 1991-92 Agreement are hereby continued, except as specifically modified in this award.

State of New York:
County of Rockland

On the 22 day of June 1994, before me came Robert T. Simmelkjaer, to me known to be the person who executed the foregoing Arbitration Award and (s)he duly affirmed to me that (s)he executed the same.

I concur with/dissent from
the above award

Prof. Robert T. Simmelkjaer, Esq.
Public Panel Member and Chairman

PASCAL STORINO NO. 4523097
Notary Public State of New York
Qualified in Westchester County
Commision Expires 3-31-1996
PJDC

State of New York:

County of ROCKLAND

On the 10th day of JUNE 1994, before me came Maureen McNamara, Esq. to me known to be the person who executed the foregoing Arbitration Award and (s)he duly affirmed to me that (s)he executed the same.

I concur with/~~dissent from~~
the above award

Maureen McNamara

Maureen McNamara, Esq.
Employee Panel Member

Sworn to before me
this 10th day of June 1994

Richard P. Bunyan

RICHARD P. BUNYAN
Notary Public, State of New York
No. 4991550
Qualified in Westchester County
Commission Expires Feb. 3, 1996

State of New York:

County of NASSAU

On the 8TH day of JUNE 1994, before me came Ernest R. Stolzer, Esq. to me known to be the person who executed the foregoing Arbitration Award and (s)he duly affirmed to me that (s)he executed the same.

I ~~concur with~~ dissent from the above award.

MY DISSENTING OPINION IS ATTACHED

Ernest R. Stolzer, Esq.
Employer Panel Member

Sworn to before me
this 8th day of June, 1994.

Maureen MacFarland

MAUREEN MACFARLAND
Notary Public, State of New York
No. 4874655
Qualified in Nassau County
Term Expires October 27, 1994

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
----------X

IN THE MATTER OF COMPULSORY
INTEREST ARBITRATION

between

Case No. IA93-003
M92-562

TOWN OF YORKTOWN POLICE
BENEVOLENT ASSOCIATION,

Petitioner,

and

TOWN OF YORKTOWN,

Respondent.

----------X

DISSENTING OPINION OF THE EMPLOYER PANEL MEMBER

I have no choice but to dissent from the opinion of the Panel Chairman, which is joined in by the Employee Organization Panel member.

I strongly disagree with the salary award of 5% increase for 1993 and 4.5% increase for 1994, for a number of reasons.

First, the salary increase for 1993 is well in excess of the settlements for 1993 for communities in Westchester County comparable to the Town of Yorktown. Those settlements are stated on page 17 of the majority's Award. The average settlement in 1993 for communities comparable to Yorktown is approximately 3.93%. I do not understand why the Town should be paying a full percentage point higher increase in wages compared with comparable communities. This is especially true when one considers that a wage increase of 3.93%, would far exceed the increase in the CPI for 1993, which was 2.14%. (Town Exhibit 6).

The Panel majority places significant emphasis on the fact that the Yorktown PBA was awarded a wage increase of 4% for the 1992 fiscal year by the Public Interest Arbitration Panel that decided the 1991-92 contract. The Chairman's opinion goes on to state the 4.0% raise was significantly less than the 5.9% average increase in 1992 for police officers throughout the County. In its award, the Panel majority states that "[n]eedless to say, no justification can be found for recouping prior losses during the current economic climate, . . ." I do agree with the Panel on

this point. Unfortunately the majority pays "lip service" to that premise, and goes on to award monies in excess of the average percentage wage increase for comparable communities in 1993.

I also disagree with the characterization of a four (4%) percent raise for 1992 as a "loss" for the PBA members. In my view, a raise of that dimension in the economic climate that has existed for the last few years was clearly a gain for the employees, i.e. their salaries are 4% higher than the year before. There are many employees in this State, in both the public and private sector, who wish they had suffered the "loss" of a 4% wage increase in 1993.

The Panel also states that "[r]eviewing the record, the Panel is persuaded that the Town can afford wage increases for its police officers within the middle range of similarly situated Westchester communities." If that were truly the case, the Panel would have awarded a 3.9% increase for 1993.

I also believe that the majority opinion is wrong in its assessment of the Town's ability to pay. The prudence of the Town in its spending for 1992 should not result in the punishment of a higher than average wage settlement in 1993. Similarly, the Panel majority ignores the declining property tax assessment roll and mischaracterizes certain of the Town's problems with the declining tax rate. For instance, on pages 10 and 15 of the majority opinion, it is stated that the Town "would save approximately $325,000 in lower county and school taxes for individual property owners" because of a 1992 equalization rate appeal. That is an incorrect analysis of the evidence. Mr. Killeen did not testify that the appeal of the equalization rate would save the Town money or reduce the Town tax. The Town collects taxes on behalf of the County and school district and then submits those monies to those governmental agencies. The change in equalization rate does not reduce the amount of monies necessary to operate the Town and those monies must still be gotten from the taxpayers. Similarly, the Panel majority states that the Town has $2.3 million in reserve against uncollected taxes and attempts to give the impression those monies are available for a settlement. That was not the testimony of the Comptroller, Mr. Stanley. The $2.3 million reserve does not represent actual monies held in a reserve account, but rather a line on the Town's balance sheet representing taxes owed to it but not paid. To realize those actual monies the Town must follow the legal procedures to foreclose on the properties and sell them to pay the taxes. Those procedures are cumbersome and will take a long time to complete without any guarantee the Town will realize that full amount.

Finally, and probably most important to me, the PBA members comprise only approximately 25% of the total workforce of the Town. The vast majority of the remaining employees are unionized and represented by the CSEA. Those employees have an average salary of $35,048 while police officers have an average annual salary of $54,434. (Town Exhibits 1 and 3). In addition, more than half of employees within the CSEA unit contribute 25% of the annual cost of their health insurance. However, the Panel majority ignores the comparability of the police officers with their fellow employees in the Town. The CSEA agreed to a split wage increase for 1993 of 2% effective January 1, 1993 and 2% effective July 1, 1993, with an additional 4% increase effective January 1, 1994. The PBA Award unfairly exceeds the CSEA settlement by a significant amount. The following is a comparison of the total increases received by the two (2) units for 1993 and 1994:

	PBA	CSEA
Increase in salary rate over the two (2) years	9.5%	8.0%
Actual increase in dollars on average salary over the two (2) year period	$5,171	$2,804

These figures do not reflect the fact that many of the CSEA members contributed $1,398 toward health insurance in 1993 and will have to contribute $1,479 in 1994.

In summary, I simply cannot agree to the Panel majority's determination on the salary issue, and, therefore, respectfully dissent.

Ernest R. Stolzer