

INTRODUCTION

This Interest Arbitration arises under the provisions of Section 209.4 of the New York Civil Service Law. By letter dated April 11, 1995, from Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board (PERB), this Panel was advised it had been designated as the Panel Members of this Compulsory Interest Arbitration Panel and that John G. Watson would serve as the chairperson of the Panel. The function of the Panel was to make a just and reasonable determination of the parties' bargaining impasse between the Town of Orchard Park (hereafter referred to as the Town) and the Orchard Park Police Benevolent Association (hereafter referred to as the PBA).

Pursuant to statutory authority, the Panel conducted a hearing in Orchard Park on May 31, 1995, at which time the parties were afforded a full opportunity to make their arguments, offer exhibits and the testimony of witnesses, and to otherwise engage in a defense of their respective contentions. Each of the parties submitted written presentations with supporting documentation to the Panel.

The Panel met in Executive Session in Orchard Park on June 14, 1995, July 12, 1995, October 3, 1995, and again on October 12, 1995. The Panel has extensively reviewed the positions of the parties including their respective testimonies at the hearing as well as their written documentation in rendering the Interest Arbitration Award. The Panel has also taken into consideration the provisions of Section 209.4(c)(v) which provides:

In arriving at such a determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

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

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

d. the terms of collective bargaining 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.

Prior to reaching a decision, the Panel carefully studied and discussed the information submitted by the parties which had been carefully prepared and presented by them at the Hearing. Particular attention was given to the comparative data presented by the parties.

After due consideration, a majority of this Panel has arrived at the following conclusions concerning the impasse and its resolution.

Comparable Communities Issue

Both of the parties very competently argued the "Comparable Communities Issue" for purposes of the Panel's evaluation of the various proposals which are the subject of this Interest Arbitration Proceeding. It is obvious, however, the parties have been selective in applying the provisions of a particular community's police contract to a given issue. While both of the parties cited a number of comparable communities throughout the written information provided to the Panel, there is a degree of commonality as well as divergence found in the data submitted by the parties. Consequently, the Panel has attempted to ferret through the information in order to come to what the Panel construes to be a fair and equitable award based upon its deliberations. Furthermore, the Panel has attempted to evaluate each proposal on its own merit.

Town's Ability to Pay

In reviewing the information submitted by the parties concerning the Town's ability to pay, the Panel has little question that the Town has the ability to pay for the economic improvements awarded herein. The town is financially sound, and this factor was taken into consideration by the Panel.

Unresolved Issues

- A. Issues Submitted by the Union
 - 1. Indemnification
 - 2. Personnel Files
 - 3. Holidays
 - 4. Dental Plan
 - 5. Vision Plan
 - 6. Surviving Spouse (Medical Insurance)
 - 7. Sick Leave Accumulation
 - 8. Family Sick Leave
 - 9. Sick Leave Bank
 - 10. Clothing Allowance
 - 11. Association Rights
 - 12. Sick-Leave Redemption

- B. Issues Submitted by the Town
 - 1. Management Rights
 - 2. Grievance Procedures (Definition)
 - 3. Grievance Procedures (Working Days_
 - 4. Arbitration
 - 5. Number of Days in Contract Year
 - 6. Outside Work
 - 7. Illness in Immediate Family
 - 8. In-service Training
 - 9. Work Schedule Changes
 - 10. Past Practice Clause

- C. Issues Submitted by both Parties
 - 1. Compensatory Time
 - 2. Vacations
 - 3. Compensation
 - 4. Longevity
 - 5. Medical Insurance

ISSUES SUBMITTED BY THE UNION

ISSUES

1. Indemnification

PBA

The PBA proposed that Article IV, Section 4-3, be amended as follows:

The Town will indemnify each Police Officer for claims made against him based upon false arrest, false imprisonment, civil rights violations and other torts within indemnification coverage pursuant to the provisions of Section 40-j of the General Municipal Law, and Section 1983 et seq. of the United States Code.

Town

The Town indicated it is not willing to add the PBA's proposed indemnification language to the new agreement.

Current Contract Language

Section 4-3. Indemnification

Notwithstanding the provisions of any general, special or local law, charter or code to the contrary, the Town shall be liable for and shall assume the liability to the extent that it shall save harmless any Police Officer employed by the Town for any negligent act or tort, provided the officer, at the time of the negligent act or tort complained of, was acting in the performance of his duties and within the scope of his employment.

A Police Officer, although excused from official duty at the time, shall be deemed to be acting in the discharge of his duty when engaged in the immediate and actual performance of a public duty imposed by law, and such public duty performed was for the benefit of the citizens of the community wherein such public duty was performed, and the Town, authority or agency derived no special benefit in its corporate capacity.

POSITIONS OF THE PARTIES

PBA

The PBA indicated the necessity of punitive damage indemnification and other protections against civil litigations is underscored by the rising number of such actions filed in both state and federal courts in recent years. The PBA indicated excessive force claims against police officers have always been at the heart of police misconduct litigations and are often instituted for the purpose of countering an underlying criminal charge. The PBA also noted its request is consistent with a resolution approved by the Town Council, and inasmuch as this language has been included in the Town Charter, it makes sense to include it in the contract. Since this indemnification provision was passed by a resolution of the Town Council and is currently not included in the agreement, it could be altered unilaterally by the Town. Therefore, the PBA argued this provision should be included in the new agreement.

TOWN

The Town indicated the cost associated with the proposal of the PBA would be borne directly by the taxpayers since no insurance company will provide a clause to pick up this coverage at this time due to the high risk liability involved. The Town also indicated indemnifying police officers for conduct that would warrant the assessment of exemplary or punitive damages sends out the wrong message to the public-at-large and the police officers themselves.

OPINION AND AWARD

In light of the fact the Town Council has already approved a resolution providing indemnification language and has included this language in the Town Charter, it is the opinion of the Panel that the language from the Town Charter should be included in the new agreement.

ISSUES

2. Personnel Files

PBA

The PBA proposed the following new contract language concerning Personnel Files be added to the new agreement.

Section 4-4. Personnel Files

Materials placed in the officer's disciplinary file which are written reprimands shall be purged from said file on its two year anniversary. Any disciplinary actions with more severe penalties that are more than five (5) years old, will not be considered for purposes of promotion, special assignments, or other disciplinary actions, excluding dereliction of duty charges.

Town

The Town indicated it is not willing to add the PBA's proposed Personnel Files provision to the new agreement.

POSITIONS OF THE PARTIES

PBA

The PBA indicated this proposal seeks to eliminate outdated personnel records as many of these records serve no useful purpose for the employer.

TOWN

The Town noted it is opposed to this proposal as it would not give a proper evaluation of the personnel record of an officer if documents were purged from its contents.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Personnel Files, it is the opinion of the Panel the PBA has not submitted compelling evidence to support its view that this proposal be added to the new agreement.

ISSUES3. HolidaysPBA

The PBA proposed to include Easter Sunday as a designated holiday.

TOWN

The Town indicated it is not willing to add Easter Sunday as a designated holiday to the new agreement.

Current Contract LanguageSection 11-2. Holidays

In addition to regularly scheduled days off, every Police Officer in the unit covered by this Agreement, will be entitled to the following holidays with full pay:

- | | |
|---------------------------|----------------------------|
| (a) New Year's Day | (h) Columbus Day |
| (b) Lincoln's Birthday | (i) Veteran's Day |
| (c) Washington's Birthday | (j) Thanksgiving Day |
| (d) Good Friday | (k) Christmas Day |
| (e) Memorial Day | (l) Election Day |
| (f) Independence Day | (m) Martin Luther King Day |
| (g) Labor Day | |

POSITIONS OF THE PARTIESPBA

The PBA noted that four of six comparable towns provide Easter Sunday as a holiday for their respective police force. The PBA further noted Easter Sunday is a significant religious holiday, and as an overwhelming majority of the officers are of the Christian faith, Easter Sunday should be a holiday for them.

TOWN

The Town indicated that the PBA currently receives thirteen (13) holidays which are equal to or more than a substantial majority of the comparable departments.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Holidays, it is the opinion of the Panel that there be no change in the number of holidays in the new agreement. This fact is predominantly based on the number of holidays currently being received by comparable departments.

ISSUES4. Dental PlanPBA

The PBA proposed to increase the schedule of coverage under the current Dental Plan by 25 percent in 1995, and every year thereafter adjust the schedule to compensate for any cost-of-living increases.

TOWN

The Town indicated it is not willing to add the PBA's Dental Plan proposal to the new agreement.

Current Contract LanguageSection 12-2. Dental Plan

The town should provide, at no cost to the Police Officer, full family coverage of Basic Dental Plan (High Coverage) with Riders A, B, and C for every Police Officer in the unit covered by this Agreement. The Town reserves the right to change the company, providing the coverage is equivalent. The town will discuss such anticipated change with the Association.

POSITIONS OF THE PARTIESPBA

The PBA indicated that it has recently become aware of the fact that the Town became self-insured in 1990 for dental benefits. The PBA indicated that this change would most certainly fund the proposal of the PBA without any additional cost to the Town. The PBA also indicated it has not had an increase in its level of dental benefits in five (5) years, while during the same period of time the cost of dental care has nearly doubled. The PBA also indicated that since the Town is self-insured, it has the ability

to negotiate directly with any provider of dental services and obtain the best rates.

TOWN

The Town indicated the proposal of the PBA would increase the annual dental cost \$2,880, an increase of approximately 31 percent. The increase in the second year would be approximately \$2,900, or an increase of approximately 32 percent.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning the Dental Plan proposal, it is the opinion of the Panel the proposed plan should not be added to the new agreement.

ISSUES

5. Vision Plan

PBA

The PBA proposed that the Town provide a Vision Plan at no cost to the officer or his family.

TOWN

The Town indicated it is not willing to add the proposed Vision Plan to the new agreement.

POSITIONS OF THE PARTIES

PBA

The PBA noted that good vision is extremely important for a Police Officer and could be the difference between life and death. The PBA noted the proposed plan would cost the Town approximately \$4,300 on a yearly basis which would not have a noticeable impact on the Town's budget. The PBA also noted that the Towns of Hamburg, Cheektowaga, Amherst, and West Seneca all provide vision plans for their officers.

TOWN

The Town noted the cost of the Vision Plan proposal and indicated this is a benefit the employer cannot control in terms of cost.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning the proposed Vision Plan, the Panel feels the PBA has not submitted compelling evidence to support its view that this proposal be added to the new agreement.

ISSUES6. Surviving Spouse (Medical Insurance)PBA

The PBA proposed that all medical insurance benefits provided under Article XII be made available to any officer's surviving spouse. This would consist of medical coverage, dental coverage, and vision coverage, should vision coverage be granted in the new agreement.

TOWN

The Town indicated it is not willing to add this provision to the new agreement.

POSITIONS OF THE PARTIESPBA

The PBA indicated the Town currently provides health insurance to an officer or his or her surviving spouse by applying accumulated sick time toward health insurance premiums at age 65. The PBA noted this benefit is one that can rapidly be depleted as it is eroded by the cost of living, inflation, and rising health care costs. The PBA stated it is concerned that an officer's untimely death at a young age would deprive his or her spouse of medical coverage.

TOWN

The Town indicated there are too many unknown variables in this proposal to even cost it out.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Medical Insurance for a Surviving Spouse, the Panel is of the opinion this proposal should not be added to the new agreement.

ISSUES7. Sick Leave AccumulationPBA

The PBA proposed to increase the rate of sick time an officer earns from 1.5 days to 2 days per month with a maximum accumulation in 1995 of 250 days. The 250-day maximum accumulation would be increased by 20 days each year thereafter.

TOWN

The Town indicated it is not willing to add the Sick-Leave Accumulation proposal to the new agreement.

Current Contract LanguageSection 15-1. Sick Leave

A Police Officer in the unit covered by this Agreement shall earn sick time allowance for illness at the rate of one and one-half (1.5) days per month which time shall be accumulated to a maximum of two hundred twenty (220) days.

POSITIONS OF THE PARTIESPBA

The PBA noted the economics of accumulating sick time do not have any negative impact on the Town. The PBA also noted that at retirement there is a limitation on how many days may be accumulated and the percentage of sick days that may be redeemed. The PBA indicated the proposal is very modest in comparison with other surrounding towns - data was submitted by the PBA to support this view.

TOWN

The Town indicated that in comparing the department with other departments in the area, no other department earns sick leave at

the amount of two days per month. Furthermore, the Town indicated that should this proposal be granted, in three short years the officers would be ahead of every other police department in the area, and the gap would quickly widen thereafter. Also, the Town noted that any increase in sick leave accumulation would cost the Town additional money when the officer applies the maximum number of sick days accumulated and uses it to pay for health insurance after retirement.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Sick Leave Accumulation, it is the opinion of the Panel this proposal should not be added to the new agreement as a comparison of other departments shows that none of the other departments have two days per month of sick time. Furthermore, the 220 days maximum accumulation appears to be more than appropriate compared to the other departments in the area.

ISSUES8. Family Sick LeavePBA

The PBA proposed that the amount of sick leave time that can be taken if a family member is sick be increased from three (3) days per year to five (5) days per year. The PBA proposal also expands the definition of family to include brother, step-brother, sister, step-sister, parent, step-parent or parent-in-law outside the household.

TOWN

The Town indicated it is not willing to add the Family Sick Leave proposal to the new agreement.

Current Contract LanguageSection 15-5. Illness in Immediate Family

Leave of absence with pay not to exceed three (3) days per year, non-accumulative, to be applicable to sick leave benefit for illness in immediate family. Immediate family for the purpose of this paragraph shall include spouse, son, daughter, step-children. A mother and father who reside in the Police Officer's household shall also be included for purposes of this Section.

POSITIONS OF THE PARTIESPBA

The PBA noted this proposal is not to be construed as an increase in the overall number of sick days an officer is entitled to each year, but rather the proposal merely increases the number of days an officer may designate as "family" sick days, as opposed to individual sick days. The PBA indicated that because of the

cost of living in Orchard Park there is a necessity to have dual income families. When children of the officers become sick, it becomes necessary to provide for child care in the home. Furthermore, the PBA noted the use of family sick days has apparently not presented a problem in recent years.

TOWN

The Town noted that in comparing the officers with other comparable departments, the few that grant more than three days for family sick leave only grant it for the immediate family. The Town also noted that close to half the departments do not grant family sick leave time at all.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Family Sick Leave, it is the opinion of the Panel this proposal should not be added to the new agreement.

ISSUES9. Sick Leave BankPBA

The PBA proposed that a Sick Bank be created to aid police officers who, due to serious illness or accident, have exhausted all their sick time. Each officer who participates in the Bank will initially contribute two (2) sick-leave days from current accumulations. Thereafter, the Bank will be credited with any sick time that is accumulated in excess of the maximum amount specified in Section 15-1 of the Collective Bargaining Agreement. The new language for this proposal is as follows:

In order to aid Police Officers whose regular sick leave has been exhausted, a sick bank will be created.

Each officer who participates in the sick bank will initially contribute two (2) accumulated sick-leave days from his current accumulated sick leave. Thereafter additional sick days will be contributed to the bank by crediting said bank with any sick time credit in excess of each officers (sic) maximum accumulated time, pursuant to section 15.1 of the CBA. The town shall notify the OPPBA by January 31st of each year of each officers (sic) excess time and the total sick time to be credited to the bank. An officer who elected not to participate will not be allowed to enter the sick leave bank, except between January 1 and January 31st each year.

An officer who is a participant in the sick bank and who believes he will exhaust all of his accumulated sick leave, may apply to the OPPBA, in writing no sooner than five (5) days prior to his accumulated sick time ending, for sick leave transfer from the bank. The member shall provide to the OPPBA a physician's order stating the member's illness. The membership of the OPPBA shall approve or disapprove the transfer, by a majority vote, as soon as practicable.

The OPPBA will thereafter notify the town of the approval of sick transfer and shall provide the town with a copy of the physician's order.

The town shall apply time from the sick bank to the approved member, from the time his regular sick time had expired, until such time as the member returns to work or until the sick bank has been depleted. Should the sick bank become depleted, the bank shall be suspended until such time as the town credits time in January of the current year.

TOWN

The Town indicated it is not willing to add the Sick Bank proposal to the new agreement.

POSITIONS OF THE PARTIES

PBA

The PBA indicated it is not seeking any contribution from the Town relative to this proposal, and there are no administrative costs associated with it since the PBA will manage the Sick Bank. The PBA also indicated that a review of comparable towns reveals that five departments have provisions for Sick Leave Banks.

TOWN

The Town indicated that the establishment of a Sick Leave Bank enables abusers of sick leave another avenue to take paid time off from work. This may also protect an individual who abuses sick leave from disciplinary action. Furthermore, as the Sick Bank grows larger, there will never be a loss of sick time and a lengthy illness would be very expensive to the Town.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Sick Leave Bank, it is the opinion of the Panel that this proposal not be added to the new agreement.

ISSUES10. Clothing AllowancePBA

The PBA proposed an increase in the annual supplemental uniform allowance from \$425 per year to \$525 per year in 1995 and \$625 per year in 1996.

TOWN

The Town indicated it is not willing to increase the clothing allowance in the new agreement.

Current Contract LanguageSection 23-3. Clothing Allowance

Every Police Officer in the unit covered by this Agreement shall receive a supplemental annual uniform allowance consisting of \$400.00. Starting in 1994 the uniform allowance shall be \$425.00.

POSITIONS OF THE PARTIESPBA

The PBA indicated the Police Department budget for uniform allowances and replacements in 1995 is \$30,000. With 30 officers in the department, this amounts to an allotment of \$1,000 for each officer. The PBA proposal does not come close to approaching this amount per officer. The PBA also noted that its proposal represents a modest figure in comparison with other comparable departments. The PBA noted the cost of purchasing additional uniform pieces and accessories, as well as maintenance costs, exceeds the present allowance for its officers.

TOWN

The Town indicated this proposal is nothing more than another way to give police officers "hidden" money other than in their salaries. The Town also indicated that by approving this proposal it would result in a two-year increase in spending of \$6,459, thereby increasing the total contract costs over the current costs by \$9,688.50.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Clothing Allowance, it is the opinion of the Panel that a modest increase is warranted. Accordingly, it is recommended the Clothing Allowance be increased to \$475 in 1995 and to \$525 in 1996.

ISSUES11. Association RightsPBA

The PBA proposes to increase the number of paid days allowed for two members' attendance at state-wide conventions and meetings of the Police Conference, from three (3) days to four (4) days per member.

TOWN

The Town indicated it is not willing to add the PBA's proposal to the new agreement.

Current Contract LanguageSection 26-2. Association Rights

Two members of the Association designated to represent its members shall have the right to attend statewide conventions and meetings of the Police Conference and shall be allowed three (3) days per year without loss of pay for the purpose of attending same. The Town agrees to pay the necessary and ordinary expenses incurred by such delegates. Such Police Officers shall obtain approval one (1) week in advance from the Chief of Police for such attendance so as to allow for efficient operation and schedule adjustments.

POSITIONS OF THE PARTIESPBA

The PBA indicated the reasoning behind this proposal is that the yearly Police Conference of New York is a four (4) day event. Furthermore, the Town benefits from better relations with the PBA as its officers become more familiar with labor issues in the

public sector labor arena. Also, the other comparable towns do not disallow this kind of leave time.

TOWN

The Town indicated the cost of this proposal would involve \$450 in increased spending for two (2) years and an \$872 increase in the total contract costs over the current cost. The Town also indicated that a significant majority of comparable departments do not pay the expenses incurred in attending these union conferences and meetings.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Association Rights, it is the opinion of the Panel that this proposal not be added to the new agreement.

ISSUES12. SICK-LEAVE REDEMPTIONPBA

The PBA proposed that seventy-five (75) percent of an officer's accumulated sick time shall be compensated at the time of his or her retirement. The value of the remaining sick leave (25 percent) is to be applied toward supplemental medical coverage for the officer after reaching the age of 65. The benefits proposed are also to be provided to a surviving spouse of any Police Officer or retired Police Officer.

TOWN

The Town indicated it is not willing to add the Sick Leave Redemption proposal to the new agreement.

POSITIONS OF THE PARTIESPBA

The PBA indicated Orchard Park provides a negligible retirement health insurance benefit that is unprotected from market forces such as inflation and cost of living increases. On the other hand, almost all other comparable towns redeem unused sick time at retirement. Information was submitted by the PBA to support this view. The PBA indicated that while the Town has stated this is an "exceptionally generous benefit," the PBA feels this is not the case. The PBA indicated the Town actually deprives an officer of investing his redeemed sick leave and instead allows the funds to languish. The PBA noted that because of inflation the sum is quickly consumed by post-retirement health care expenses.

An example was given to show how these monies are eroded through inflation. The PBA argued that retirees in the public sector typically lag behind their private sector counterparts in pension and retirement benefits, and Police Officers have come to rely on sick leave redemption after retirement to supplement their reduced income. The PBA noted that the Town has avoided any fiscal responsibility with these funds, and the PBA submits that the redeemed value of sick time should go directly to the officer as in other comparable communities.

TOWN

The Town noted the PBA proposal concerning Sick Leave Redemption is an extremely costly new demand. The Town noted that to buy back sick leave is repugnant to the word "professionalism" which police officers claim they are. The Town noted that it should not be necessary for a professional person to need an incentive to be honest. The Town further noted that granting Police Officers large sums of money at retirement just because they honestly did not take unwarranted sick time is a repulsive policy that is in total contrast to the American work ethic. Further, the Town noted the taxpayers' interest must be taken into consideration. The Town also cited the previous Interest Arbitration Award concerning this issue from 1991 and noted the proposal was not accepted at that time. The Town cited newspaper reports concerning this issue. Finally, the Town noted that while other municipalities may provide sick leave redemption, the elected officials in Orchard Park will not commit the taxpayers in their community to this type of abuse or indebtedness.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Sick Leave Redemption, it is the opinion of the Panel that the Sick Leave Redemption proposal be added to the new agreement in a very modest fashion. In reviewing the comparable data there is no question that other departments cited by the PBA have included Sick Leave Redemption in their contracts. Furthermore, the information submitted by the parties concerning the ability to pay shows that the Town is in a very favorable position financially. While the Panel is sympathetic to the position of the Town that this is a new and costly proposal, notwithstanding this fact, other municipalities have capitulated to police bargaining units relative to this issue. Accordingly, Orchard Park Police Officers should receive twenty-five (25) percent of their accumulated sick time to be compensated at the time of his or her retirement. The value of the remaining sick leave (75 percent) is to be applied toward supplemental medical coverage for the officer after reaching the age of 65.

ISSUES SUBMITTED BY THE TOWN

ISSUES

1. MANAGEMENT RIGHTS

TOWN

The Town requested to amend the present Management Rights language in the agreement to the following:

Except as expressly limited by specific provisions of this Agreement, all of the authority, rights, functions and responsibilities already possessed by the Town are retained by it, including, but not limited to, the right: to determine the purposes, objectives, and policies of the Town; to determine the numbers and locations of its facilities and the manner, methods, means, number, and qualifications of personnel for the conduct of the Town's business; to change existing or introduce new equipment, operations, methods, processes, or facilities; to hire, retain, promote, assign, or transfer employees; to direct, deploy and utilize the work force; to establish specifications for each class of positions; to schedule operations; to layoff, recall, terminate, discharge, discipline or demote employees; and to enforce work rules, quantitative and qualitative standards of performance; provided that these rights shall not be contrary to the specific provisions of this Agreement.

It is understood that the exercise or non-exercise of rights hereby retained by the Town shall not be deemed a waiver of any such right or prevent the Town from exercising such rights in any way in the future.

It is understood and agreed that the Town shall have the right, from time to time, to publish work rules and other regulations necessary to effect its management rights heretofore expressed, provided that such rules and regulations shall be reduced to writing, and published to Police Officers prior to the effective date of such regulations, which do not violate this Agreement.

These management functions and prerogatives and any acts the Town necessitated by mandate or by state or federal governmental authority shall not be subject to the grievance or arbitration procedures of this Agreement.

PBA

The PBA indicated it is not willing to add the Management Rights proposal to the new agreement.

Current Contract LanguageSection 2-1. Management Rights

The management of the Police Department and the direction of the working forces and the operation of the Police Force, including the hiring, promoting and retiring of Police Officers; the suspending, discharging or otherwise disciplining of Police Officers for just cause, any reduction or increase in the working forces, the scheduling of work, exclusive of those rights contained herein, and the control and regulation of the use of all equipment and other property of the Town are the exclusive function of the Town Board; provided, however, that in the exercise of such functions, the Town Board shall observe the provisions of this Agreement and shall not discriminate against any Police Officer or applicant for employment because of his membership in or lawful activity on behalf of the Orchard Park Police Benevolent Association, Inc.

POSITIONS OF THE PARTIESTOWN

The Town indicated it is requesting a more detailed Management Rights clause in the new agreement.

PBA

The PBA indicated the Town proposal would essentially give the Town the unfettered discretion to do just about anything with the police force. It eliminates the Just Cause provision for discipline and discharge, the right to union representation, and

allows the Town to create work rules without negotiating with the Union. The PBA indicated the current Management Rights clause is common in most collective bargaining agreements.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning the Management Rights proposal, it is the opinion of the Panel the proposal should not be added to the new agreement. As noted by the PBA, the current Management Rights clause is similar to the type of clause included in most public employment collective bargaining agreements.

ISSUES2. GRIEVANCE PROCEDURES (Definition)TOWN

The Town proposed Section 3-1 of Article III, Grievance Procedures, be changed as follows:

A grievance under this provision shall mean any claim regarding the application, meaning or interpretation of this agreement.

PBA

The PBA indicated it is not willing to modify Section 3-1, Article III, Grievance Procedures, of the agreement.

Current Contract Language

Section 3-1. Definition: A grievance under this provision shall mean any claim by a Police Officer in the unit covered by this Agreement based upon any claimed violation of this agreement or any rules and regulations, including matters relating to working conditions, in effect over which the Town has control.

POSITIONS OF THE PARTIESTOWN

The Town indicated it should have the authority to maintain and establish any rules or regulations pertaining to the department's welfare as well as the public's welfare. The Town also indicated the proposal makes sense because a grievance should only pertain to matters in dispute which are contained in the collective bargaining agreement to which the parties have mutually negotiated. Finally, the Town noted ninety-nine (99) percent of the collective bargaining agreements contain the exact language the Town is requesting.

PBA

The PBA indicated this proposal would limit the rights of an officer to grieve a violation of a rule or regulation, or a matter involving working conditions. The PBA also noted there have been no particular problems with the present provisions, as there is no history of any grievances or past practice violations arising out of this language dating back to 1964. Further, the PBA stated the Town will not realize any monetary savings by making this change.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning the Grievance Procedures definition, it is the opinion of the Panel this proposal should not be added to the new agreement. The parties have not incurred any problems with the current provision and the Panel sees no need to alter it at this time.

ISSUES3. GRIEVANCE PROCEDURES (Working Days)TOWN

The Town proposed Section 3-2 of Article III, Grievance Procedures, be changed as follows:

Article III, Section 3-2, Stage Two. The fourth sentence in this paragraph should read as follows:

Within five (5) working days thereafter, the Chief of Police will render a decision thereon, in writing, and present it to the representative of the Association.

PBA

The PBA indicated it is willing to make the change as noted in the proposal by the Town.

Current Contract Language

Section 3-2. Stage 2 - If the grievance is not resolved at Stage One, it shall be reduced to writing, within fourteen (14) working days after denial at Stage One, setting forth the facts upon which the claim is based; the date of the occurrence complained of; the sections of the Agreement rules or regulations claimed to be violated, and the relief sought. Each written grievance must be signed by the grievant and presented to the Association representative for processing. The Association representative will then present the written grievance to the Chief of Police. Within five (5) days thereafter, the Chief of Police will render a decision thereon, in writing, and present it to the representative of the Association.

POSITIONS OF THE PARTIESTOWN

The Town noted the intent of the proposed change is to give the Chief a couple of more days to answer a grievance if a weekend is involved.

PBA

The PBA noted that if by "working days" the Town means Monday through Friday, it may agree to the change.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning the Grievance Procedures (Working Days), it is the opinion of the Panel this change as proposed by the Town should be added to the new agreement.

ISSUES4. ARBITRATIONTOWN

The Town proposed Section 3-4 of Article III, Arbitration, be changed to read as follows:

Article III, Section 3-4. Arbitration

(a) The Association or the Town will apply to the Federal Mediation and Conciliation Service for a list of five (5) arbitrators for each grievance to be heard. The Association and the Town shall select an arbitrator by each party alternately crossing off the name of an arbitrator until one remains, after commencing the procedure by a coin flip. The name of the remaining person shall be designated as the arbitrator. Each party may reject one (1) entire list of potential arbitrators supplied by F.M.C.S.

PBA

The PBA indicated it is not willing to change Section 3-4, Arbitration as proposed by the Town in the new agreement.

Current Contract LanguageSection 3-4. Arbitration

(a) The Association or the Town will apply to the New York State Public Employment Relations Board for a list of five (5) arbitrators for each grievance to be heard. The Association and the Town shall select an arbitrator by each party alternately crossing off the name of an arbitrator until one remains, after commencing the procedure by a coin flip. The name of the remaining person shall be designated as the arbitrator. Each party may reject one (1) entire list of potential arbitrators supplied by P.E.R.B.

POSITIONS OF THE PARTIES

TOWN

The Town indicated it is requesting the language be changed from arbitrator lists being received from PERB to FMCS as PERB is charging for each arbitration list, and FMCS is not charging for such lists.

PBA

The PBA indicated that while FMCS arbitrators are eminently qualified, the arbitration expenses for FMCS arbitrators which are divided by the parties are higher than what is typically paid to PERB arbitrators. The PBA also indicated that the PERB arbitrators have an understanding of labor conditions in Western New York and also have an understanding of the New York State Public Sector Labor Law including the Taylor Law. The PBA indicated FMCS arbitrators typically arbitrate in the private sector and might not have the same experience and familiarity with the issues and practices of the public sector employers and their employees as PERB arbitrators.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Arbitration, it is the opinion of the Panel that the proposal of the Town not be added to the new agreement.

ISSUES5. NUMBER OF DAYS IN CONTRACT YEARTOWN

The Town proposed Section 6-1 of Article VI, be changed to reflect the days in the contract year. The Town is requesting a routine change in the days for 1995 to 260 days, and for 1996 to 262 days.

PBA

The PBA indicated it is willing to make this change in the new agreement.

Current Contract LanguageSection 6-1. Salary

The hourly rate shall be determined by dividing the annual salary by 2080. The payment of wages will be done by dividing the annual salary in 1993 by 261 and in 1994 by 260.

POSITIONS OF THE PARTIESTOWN

The Town indicated it is requesting a routine change in the work days for the 1995 and 1996 years.

PBA

The PBA indicated it is willing to make the proposed change in the new agreement.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning number of days in the contract year, it is the opinion of the Panel that the proposed change of the Town be added to the new agreement.

ISSUES6. OUTSIDE WORKTOWN

The Town proposed the following Outside Work provision be added to the new agreement.

A Police Officer shall be prohibited from working any outside employment within any twenty four (24) hour period in which he/she uses sick leave for illness or injury. This also includes Section 207c of the General Municipal Law.

PBA

The PBA indicated it is not willing to add the proposed Outside Work provision to the new agreement.

POSITIONS OF THE PARTIESTOWN

The Town indicated it is requesting the proposed language in an effort to reduce sick time abuse.

PBA

The PBA indicated its membership has no responsibility to the Town outside of hours of regular employment. The PBA further noted this language is unnecessary since the Town may discipline an officer for any abuse of sick leave privileges and, in fact, has brought disciplinary charges against a member for suspected abuse of sick leave privileges. Furthermore, to the extent that this proposal seeks to limit an officer's activity while out on GML-207(c), it is inappropriate for Panel determination in Compulsory Interest Arbitration.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Outside Work, it the opinion of the Panel that the proposal should not be added to the new agreement as the Town currently has the ability to handle sick leave abuse through other means.

ISSUES7. ILLNESS IN IMMEDIATE FAMILYTOWN

The Town proposed Section 15-6 of Article XV, be changed in the new contract to read as follows:

A Police Officer who is unable to report for duty by reason of illness in the immediate family shall immediately, and not less than, two (2) hours prior to his or her scheduled tour or duty, notify the Police Department of that fact and shall state who in the family is ill and in need of his or her attention.

PBA

The PBA indicated it is not willing to change Section 15-6 of Article XV in the new agreement as proposed by the Town.

Current Contract LanguageSection 15-6. Illness in Immediate Family

Leave of absence with pay not to exceed three (3) days per year, non-accumulative, to be applicable to sick leave benefit for illness in immediate family. Immediate family for the purpose of this paragraph, shall include spouse, son, daughter and step-children. A mother and father who reside in the Police Officer's household shall also be included for purposes of this section.

POSITIONS OF THE PARTIESTOWN

The Town noted the intent of the additional language is to enable the Chief of Police to properly schedule his personnel, and in the event there is a question of abuse, the department would be able to properly investigate the incident.

PBA

The PBA indicated this proposal is an unwarranted intrusion into the officer's and his family's personal privacy. The PBA objects to the monitoring of its membership in such a fashion as the proposal reflects a mistrust on behalf of the Town that is misplaced and insulting. Further, the Town has adequate protections under Section 15-3 of the agreement for redressing sick time abuse.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning the Illness in Immediate Family proposal, the Panel is of the opinion this proposal should not be added to the new agreement as the Town currently has the necessary means to handle sick leave abuse of the officers.

ISSUES8. IN-SERVICE TRAINING.TOWN

The Town proposed Section 22-1 of Article XXII, be changed to read as follows:

[amend - add second sentence):

Compensatory time off will not be granted for in-service training.

PBA

The PBA indicated it is not willing to change Section 22-1 of Article XXII in the new agreement as proposed by the Town.

Current Contract LanguageSection 22-1. In-Service Training

Any member of the bargaining unit specifically required to attend in-service training (i.e., training under the direction of the Town of Orchard Park Police department) shall be compensated for such time at his regular straight time rate of pay if the training takes place during the regularly scheduled tour of duty, and at the rate of time and one-half (1-1/2), if the in-service training takes place during the Officer's off duty hours.

POSITIONS OF THE PARTIESTOWN

The Town indicated this proposal ties into its previous proposal concerning compensatory time where the Chief of Police would like to reduce the occasions a Police Officer may accumulate compensatory time in order to reduce scheduling and manpower needs.

PBA

Refer to the arguments under Compensatory Time.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning In-Service Training, it is the opinion of the Panel that this proposal should not be added to the new agreement.

ISSUES9. WORK SCHEDULE CHANGESTOWN

The Town proposed that Section 28-4 of Article XXVIII be changed from forty-eight (48) to seventy-two (72) hours.

PBA

The PBA indicated it is not willing to change Section 28-4 of Article XXVII in the new agreement.

Current Contract LanguageSection 28.4. Miscellaneous Provisions

Upon posting of the work schedule by the Chief of Police, any scheduled days off granted under the provisions of the Collective Bargaining Agreement cannot be cancelled by the Chief of Police. Also, said scheduled days off cannot be cancelled by the requesting Officer unless forty-eight (48) hours' notice is given. The scheduled days off shall be posted at the time of posting of the shift schedule.

POSITIONS OF THE PARTIESTOWN

The Town indicated the proposed change is to enable the Chief of Police a little longer time to schedule personnel and avoid overtime.

PBA

The PBA indicated the Town specifically agreed to and negotiated this wording in a Grievance settlement in November 1988. In that settlement an officer could cancel within forty-eight (48) hours and the Town would have forty-eight (48) hours to make a scheduled change.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Work Schedule Changes, it is the opinion of the Panel that this proposal should not be added to the new agreement as a previous settlement between the parties allows for forty-eight (48) hours' notice to be given by an Officer for cancelling scheduled days off.

ISSUES10. PAST PRACTICE CLAUSETOWN

The Town proposed Section 28-6 of Article XXVIII of the agreement be deleted in the new contract.

PBA

The PBA indicated it is not willing to delete Section 28-6 of Article XXVIII in the new agreement.

Current Contract LanguageSection 28-6. Miscellaneous Provisions

This Agreement will supercede conflicting rules, regulations or past practices, heretofore existing. Established past practices not specifically covered herein shall continue in full force and effect.

POSITIONS OF THE PARTIESTOWN

The Town indicated this paragraph is ambiguous and contradictory and, therefore, should be deleted from the agreement.

PBA

The PBA indicated this section of the agreement was awarded in a Compulsory Interest Arbitration resulting in the contract in 1991-92. The PBA noted this provision reduces the number of improper practice complaints litigated between the parties, since its inclusion in the contract allows for wider latitude in grievance arbitration. The PBA indicated this provision is

relatively new to the parties and has served both sides well in its brief existence. The PBA stated it should not be eliminated, especially since the Town cannot articulate any compelling reasons for doing so.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning the Past Practice clause, it is the opinion of the Panel that this provision not be deleted from the new contract.

ISSUES SUBMITTED BY BOTH PARTIES

ISSUES

1. COMPENSATORY TIME

PBA

The PBA proposed Section 9.4 of Article IX be changed in the new agreement to reflect an increase in the number of compensatory hours an officer may accumulate from 32 hours to 40 hours.

TOWN

The Town proposed the following language concerning Compensatory Time be added to the new agreement.

In lieu of overtime pay, a Police Officer shall have the option of receiving earned compensatory time off at the rate of time and one-half (1 1/2) for all overtime worked that was contiguous to a regularly scheduled tour of duty. Any overtime duty will be compensated at the rate of time and one-half (1 1/2) the regular hourly rate. Compensatory time off will not be granted for non-contiguous overtime.

Current Contract Language

Section 9-4. Compensatory Time

In lieu of overtime pay, a Police Officer shall have the option of receiving earned compensatory time off at the rate of time and one-half (1 1/2). Compensatory time off may be taken in the minimum amount of one-half hour at the discretion of the Chief of Police or his designee. In the even (sic) a Police Officer's earned compensatory time off is not taken in the year earned, he may carry such time off from year to year... but in no event shall accumulated compensatory time ever exceed thirty-two (32) hours. If an Officer is paid for his compensatory time, it shall be at the rate earned.

POSITIONS OF THE PARTIES

PBA

The PBA noted the 40 hours accumulation is actually quite modest by Fair Labor Standards Act limits. The PBA also noted the Town has proposed that the right to earn compensatory time be limited to hours worked as overtime that are contiguous to an officer's shift. According to the PBA, this would effectively eliminate compensatory time for call-ins, court time, and other hours worked that are not in conjunction with the regular shift. The PBA stated a comparison of compensatory time in surrounding municipalities reveals that Orchard Park Police Officers have the lowest accumulation threshold at 32 hours.

TOWN

The Town indicated the PBA's request to increase the compensatory time is not appropriate or necessary and, furthermore, by granting this proposal it would put more strain on the amount of overtime generated to fill patrols. The Town further noted the Town's proposal seeks to establish that earned compensatory time off will only be granted for hours worked that are contiguous to a regularly-scheduled tour of duty. The Town indicated its proposal is aimed at maintaining fiscal restraint by granting the right to earn compensatory time off only for those occasions where it involves coming in to work earlier or staying later than a scheduled shift.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Compensatory Time, it is the opinion of the Panel that neither of the proposals be added to the new agreement. Accordingly, the Compensatory Time will remain unchanged in the new agreement.

ISSUES2. VacationsPBA

The PBA proposed to increase its vacation to five (5) weeks after fifteen (15) years of service. In addition, the PBA proposal would credit an officer with one additional vacation day for each day worked after fifteen (15) years.

TOWN

The Town indicated it is not willing to provide five (5) weeks of vacation after fifteen (15) years of service.

The Town also proposed that a Police Officer be allowed to use only one week of vacation in single-day increments as opposed to the present contract language which allows an officer to use up to two weeks of vacation in single-day increments.

Current Contract LanguageSection 10.1. Vacation

After 1 year of employment: 2 weeks (10 days)

After 5 years of employment: 3 weeks (15 days)

After 10 years of employment: 4 weeks (20 days)

After 18 years of employment: 5 weeks (25 days)

Section 10-11

A Police Officer will be allowed to use up to two (2) weeks of vacation leave in single-day increments, subject to prior approval by the Chief of Police or his designee.

POSITIONS OF THE PARTIES

PBA

The PBA argued the fifteen-year/five-week benefit is largely available in other comparable departments in Erie County. The PBA noted that other departments that do not provide this benefit do not require that their officers work as many days or hours per year as Orchard Park Police Officers. The PBA also noted that there are higher crime rates in Orchard Park than in some of the other districts and with these high crime rates, with fewer officers on the streets working more hours and days per year, translates into more stressful working conditions. The PBA also noted the economic impact of this proposal is minimal.

The PBA stated it does not see the necessity for changing the language as proposed by the Town to use only one week of vacation in single-day increments as opposed to the present contract language which allows an officer to use up to two weeks of vacation in single-day increments. This proposal would unfairly restrict all members of the unit, and particularly newer members of the department, from getting time off in the summer months.

TOWN

The Town noted that in comparison with other departments, the PBA's current vacation schedule bodes fairly well, and granting the proposal would place them well above other departments in terms of vacation time off. Furthermore, the projected total contract costs over current costs would be approximately \$86,600.

The Town also noted that its proposal, in effect, reduces the problem of rescheduling personnel to maintain a proper manning of personnel within the department.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Vacations, it is the opinion of the Panel that neither the proposal of the PBA nor that of the Town should be added to the new agreement.

ISSUES

3. COMPENSATION

PBA

The PBA has requested a salary increase in the amount of seven (7) percent effective January 1, 1995, and seven (7) percent effective January 1, 1996. In addition, the PBA has requested that the pay scale for Detective be set at four and one-half (4-1/2) percent above the pay rate of the highest-paid patrolman.

TOWN

The Town proposed a three (3) percent increase in each of the two (2) years of the new agreement.

POSITIONS OF THE PARTIES

PBA

The PBA indicated the Orchard Park Police Officers are paid at a lower hourly rate than police officers in comparable municipalities. Comparative data was submitted by the PBA to support this contention showing that Orchard Park represents the lowest hourly rate of all other comparable communities. The data shows that the average hourly rate of pay of other municipalities exceeds Orchard Park by \$1.19 per hour, or 6.1 percent. Even assuming an increase at 6.46 percent (the Town has already increased its portion of the Public Safety budget for police services by this percentage), the Police Officers would still lag behind the average hourly rate of pay of officers in comparable municipalities. In addition, the officers would also be working an

average of eighty (80) hours a year more than officers in comparable communities. The PBA indicated that Orchard Park Police Officers are required to live within the Town boundaries and as a result are forced to pay very high prices for housing within the Orchard Park community. Their property taxes are, accordingly, also commensurately higher in Orchard Park. According to the PBA, because of the high cost of housing and high taxes, many of the Orchard Park Police Officers are engaged in some sort of outside employment. Nearly one-half of the officers supplement their full-time police jobs with other employment, and 16 of 21 officers who responded to a survey indicate that their spouses either work full-time or part-time.

The PBA indicated the Orchard Park Detective currently earns only 3.4 percent more than the highest-paid patrolman; therefore, the PBA has requested the pay scale for Detectives be set at four and one-half (4-1/2) percent above the pay rate of the highest-paid patrolman. This is based upon a comparison of Detectives' wages in surrounding towns which reveals that the Orchard Park Police Department is the only department that does not maintain an adequate differential between the ranks. In support of this view, the pay for Detectives from several other departments was cited by the PBA.

Furthermore, the PBA indicated the Town has the ability to pay. Its tax base is rapidly growing every year; there is a very healthy undesignated fund balance; and taxpayers have enjoyed a reduction in taxes over the last three years. These economic indicators point to the view that the Town has the ability to fund the PBA's proposed salary increase.

TOWN

The Town noted that the members of the Orchard Park Police Department receive one of the highest rates of pay and benefit packages of any agency in Erie County. Further, Orchard Park is one of the least dangerous of municipalities to work in and, based upon this factor, the proposal should be rejected in its entirety. In comparing the Orchard Park Police Department with other municipalities, the Town noted that if no increase were to be awarded to the officers for 1995, the PBA would be the fifth highest-paid police department. Should a three (3) percent raise be granted during the first year of the contract, the Police Officers would be the second highest-paid police department, only \$276 shy of the highest-paid department. The Town also noted that should a three (3) percent raise be granted to the Police Officers and Detectives, the Detectives would be close to the highest-paid in the area. Given the analysis of the Town, any salary award above three (3) percent would be out of line with what other departments are receiving. The Town also noted that the consumer price index for this area for the 1994 calendar year was only 2.6 percent.

The Town submitted comparable information of salary increases for Police Officers for a number of other districts in the area for the period from 1990 through 1997. That information shows increases typically in the three (3) to four and one-half (4-1/2) percent range for 1994 and three (3) to five (5) percent range for 1995.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Compensation, it is the opinion of the Panel that the Police Officers should receive a three (3) percent salary increase effective January 1, 1995, and a three (3) percent salary increase effective January 1, 1996. Furthermore, it is the opinion of the Panel that the Detectives should receive salary at a rate of four (4) percent above the highest-paid officer in the bargaining unit.

ISSUES4. LONGEVITYPBA

The PBA proposed that the officers' longevity payment be increased from \$300 annually for each four (4) years of continuous service, to payments of \$350 beginning in 1995 for each three (3) years of continuous services, and payments of \$400 beginning in 1996 for each three (3) years of continuous service.

TOWN

The Town proposed the maximum amount of longevity paid for any given year shall not exceed \$2,000.

Current Contract Language

Article VII Section 7-1. Each Police Officer in the unit covered by this Agreement shall be entitled to and will receive \$300.00 annually for each four (4) years of continuous service as a Police Officer. The computation of the years of service shall be based upon the date of hire and shall change on the anniversary date thereafter.

POSITIONS OF THE PARTIESPBA

The PBA noted that longevity payments are a reward for loyal and longstanding service within the department while also serving as a hedge against attrition. The PBA noted the proposal on longevity complements the goals and objectives of Chief Henning for the year 1995. The PBA noted the Orchard Park Police Officers at the first step are receiving longevity payments well below other comparable departments. The PBA further noted the actual total

costs for implementing this proposal are negligible for both reducing the steps as well as increasing the incremental payments. Finally, the PBA argued the Town's proposal seeking to cap the longevity payments sends out the wrong message to all officers, but especially offends those who have diligently worked and endured in a very difficult job over an extended period of time.

TOWN

Relative to the proposal of the PBA, the Town indicated that should an officer have a 32-year career, the cash payments to the Orchard Park Police Officers would be considerably higher than those of the other towns with which they are compared. The Town also noted that granting the proposal of the PBA would result in additional spending of approximately \$23,000 in 1995 and \$11,000 in 1996.

The Town indicated it is requesting a cap be placed on the longevity scale as is currently done in all other municipalities.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Longevity Payments, it is the opinion of the Panel the following Longevity Payments provision for Police Officers be added to the new agreement.

Each Police Officer in the unit covered by this Agreement shall be entitled to and will receive longevity payments according to the following schedule:

<u>Years of Continuous Service</u>	<u>1995</u>	<u>1996</u>
4	350	400
8	650	700
12	950	1,000
16	1,250	1,300
20	1,550	1,600
24	1,850	1,900
28	2,150	2,200

The computation of the years of service shall be based upon the date of hire and shall change on the anniversary date thereafter. There shall be seven (7) steps in the schedule, and the maximum longevity payment shall be capped at \$2,200. Should any Police Officer as of January 1, 1995, receive a longevity payment greater than \$2,150, such officer shall continue to receive the greater longevity payment.

ISSUES5. MEDICAL INSURANCEPBA

The PBA indicated it is opposed to any changes in the levels of medical coverage, any increased deductibles, any caps on health insurance benefits, and strongly is opposed to allowing the Town to select a new base medical plan each year. The PBA, therefore, rejects the Town's proposal concerning health insurance.

In addition to the above complete coverage, the PBA also seeks the following:

1. Reduce the prescription co-pay to \$2.00;
2. Reduce the major medical deductible to \$50/\$100;
3. Increase coverage to include preventative care for newborns;
4. Increase coverage for maximum psychiatric care;
5. Increase coverage for maximum chiropractic care;
6. Amend the last sentence of paragraph 1 so that the Town, despite providing equivalent coverage would need the Union's approval to change health insurance plans. Furthermore, the PBA seeks that the Town self-insure if equivalent coverage or plans become unavailable.

TOWN

The Town is proposing the following:

Medical Insurance

The Town shall provide one (1) of the following health insurance programs:

- A. Blue Cross/Blue Shield Hospital Contract 42/43, Medical Contract 60/61 and Major Medical BCMM-7 (ff) 100 deductible.
Rider 8 (Age 23), \$5.00 co-pay prescription drug Rider without contraceptives, \$250 deductible code C (in-hospital)

B. Independent Health Silver I	
Outpatient	\$10 copay
Outpatient X-rays	\$10 copay
Outpatient Surgery	\$10 copay
Emergency Ambulance	\$25 copay
Emergency Room Services	\$35 copay, \$15 at designated hospitals
Mental Health (outpatient)	20 visits, 50% copay
Hospitalization	\$240 copay (1 per single) (2 per family)
Prescription Drugs (without contraceptives)	\$5.00 copay
Age 23 Rider (full time student)	

Once a year, prior to the open window period for employee selection of a health insurance plan, the Town shall notify employees which health insurance plan will be provided by the Town, either A or B. In the event an employee selects the other plan that the Town has selected, and there are additional premium costs, the employee will be responsible for the additional premium cost.

The Town shall have the option of providing two (2) single health insurance policies instead of a family plan, for married employees who have no dependent children, provided it is acceptable to the insurance company. In the event that a family plan is needed, due to dependents, the change from single to family will be done as soon as possible.

The Town reserves the right to change health insurance companies after consultation with the union, and provided the plans are similar in coverage.

All new employees hired on or after January 1, 1995, shall pay a portion of the health insurance premium of 25 percent from the first (1st) of month following completion of their probationary period until the first (1st) of month following the five (5) years of service.

If an employee is covered under another health insurance plan either by another employer or by coverage under his/her spouse's health insurance plan, then the employee shall not be eligible for coverage under the Town's plan unless such plan is proven not to be similar with the Town's plan, but under no circumstances shall the employee be covered under double coverage. If, at some later date, it is proven that the employee or his/her spouse is no longer covered by another plan, then

that employee may be considered eligible for coverage under the Town's plan.

The cost of the above proposed plans will be as follows;

<u>Blue Cross/Blue Shield</u>	
<u>Single</u>	<u>Family</u>
180.30	404.34
<u>Independent Health</u>	
103.27	286.32

Current Contract Language

Section 12-1. Medical Insurance

The Town shall provide, at no cost to the Police Officer, as soon as practicable after signing up this Agreement, Health Insurance, Blue Shield benefit coverage identified as Traditional Choice Extra (Basic coverage identified as Traditional Choice Extra (Basic Hospital); \$5.00 co-pay Prescription Drug Rider (without contraceptives); and Rider 8 (dependent children to age 23) and Rider 21 (Psychiatric Care/\$500.00 Outpatient Maximum). The Town reserves the right to change health insurance companies, providing the coverage is equivalent to the above. The Town shall discuss such anticipated change with the Association.

A Police Officer shall not be provided with health insurance coverage by the Town if the Police Officer is provided with equivalent coverage elsewhere, without cost to the Officer. If said insurance is terminated, the Officer will be provided coverage as provided herein. The Town shall have the option of providing two (2) single health insurance policies instead of a family plan, for married employees who have no dependent children. In the event a family plan is required, the change from single to family will be accomplished as soon as practicable.

POSITIONS OF THE PARTIES

PBA

The PBA noted that over the past five years it has made concessions to the Town that have decreased the Town's health care contributions per officer while increasing officers' out-of-pocket

expenses. Between 1989 and 1994 the Town has saved approximately \$77,600 in medical premiums due to the concessions by the PBA. The PBA also noted that due to an impending change that will in all likelihood be made by the officers, the Town will incur even greater savings in health care premiums.

TOWN

The Town noted employers must contain health insurance costs, and the proposal submitted by the Town provides medical insurance coverage. The Town noted employees will be able to choose a plan paid for by the Town, or if they choose the other plan would have to pay the difference between the two plans. The Town noted that if this is unacceptable to the PBA, a monetary premium cap would have to be put into place.

OPINION AND AWARD

In reviewing the information submitted by the parties concerning Medical Insurance, it is the opinion of the Panel that the following proposal be accepted by the parties.

Medical Insurance

Option 1: The Town shall provide the highest plan offered by Blue Cross and Blue Shield of Western New York (presently: Standard Hospital Contract 42/43 and Select Medical Contract 60/61), with the following riders:

Dependents to age 23	(rider 8)
Out of Area Benefits	(rider 48)
Psychiatric Care \$500	(rider 21)
Unlimited Major Medical with \$100 Deductible	(BCMM-7 rider FF)
\$5.00 prescription co-pay	(rider C)

All riders shall be added to the hospital contract as well as the medical contract as available.

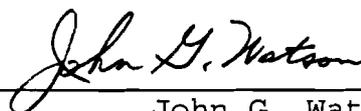
Option 2: The Town shall provide the highest group health contract offered by Independent Health (presently: The Gold Plan), with the following riders:

Dependents to age 23 (rider 8)
\$5.00 prescription co-pay (rider 30)

The Town reserves the right to change health insurance companies, providing the coverage is equivalent to the aforementioned. The Town shall discuss such anticipated changes with the Association.

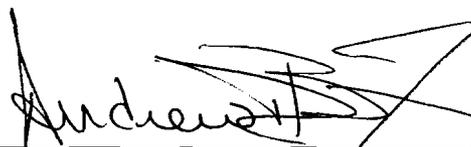
The Award for the above proposal is based on the fact that the Police Officers should not have a reduction in medical coverage, and it appears that the coverage of the officers would be fair and comparable given their ability to select from Options 1 or 2 cited above.

Date: *December 1*, 1995



John G. Watson
Arbitrator
Panel Chairman

Norman J. Stocker
Town Panel Member



Andrew D. Benz
PBA Panel Member



Associated Labor Consultants

Labor / Management Consultants

November 27, 1995

Mr. John G. Watson
Arbitrator
6 Maple Avenue
Franklinville, New York 14737

Dear John:

Enclosed is my response to your letter regarding the Interest Arbitration Award for the Town of Orchard Park and Orchard Park Police Benevolent Association, PERB Case No. IA94-028: M94-328. I have elected to answer with a dissent from the entire opinion and award.

If you have any inquiries about my response, please contact me.

Sincerely,

N.J. Stocker
Consultant/Arbitrator

ms

enclosure

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF IMPASSE

between

ORCHARD PARK POLICE
BENEVOLENT ASSOCIATION,

Petitioner

and

TOWN OF ORCHARD PARK,

Respondent

CASE #
IA94-028
M-94-328

Arbitration Panel:

John G. Watson, Ph.D
Public Panel Member and Chairman

Andrew Benz
Employee Organization Panel Member

Norman J. Stocker
Public Employer Panel Member

The undersigned, Norman J. Stocker, the Public Employer Panel member in the above entitled interest arbitration, strongly dissents from the Opinion and Award as set forth and signed by Chairperson, John G. Watson, and Employee Organization Panel member, Andrew Benz.

The majority panel members decided their obligation was, pursuant to Civil Service Law Sec. 209.4(c), to compare wages and hours and conditions of employment of Orchard Park Police Officers with wages, hours, and conditions of employment of other employees performing similar services in police departments in the surrounding area. This negotiation which resulted in the instant proceedings is just one example of the

eventual elimination of interest arbitration, in its present form, in New York State.

One of the main issues the Police Benevolent Association brought to the bargaining table was sick leave redemption, "Seventy-five percent of an officer's accumulated sick time shall be compensated at the time of his or her retirement." Only after two negotiations meetings between the parties, the first meeting just to set ground rules, the Association declared impasse and moved all of their proposals to impasse when the Town would not agree to any sick leave redemption. With very little negotiations, the Association treated mediation as a joke and moved to interest arbitration. The Chairman of the Interest Arbitration Panel was determined by a check off procedure from a list of names supplied from the New York State Public Employment Relations Board. Based solely on reviewing comparable data on surrounding police departments, the Chairman of this arbitration panel concluded a form of the Association's proposal on sick leave redemption should be added to the Agreement, a redemption, 25%. In quoting the Chairman, "While the panel is sympathetic to the position of the Town that this is a new and costly proposal, notwithstanding this fact, other municipalities have capitulated to police bargaining units relative to this issue." It was clearly pointed out to the chairman of this panel that not one other community who provides this issue in the Western New York area was directed to do so by an interest arbitration panel. The other communities' elected officials voluntarily and through a negotiation process agreed to

provide sick leave redemption. In their negotiation process who knows what exchanged between the Town or Village and the Police Association to receive this benefit, possibly no salary increase at all. An example of how costly this can be to the Orchard Park taxpayer, it is anticipated that the first retiree leaving the department after this award will receive \$10,000.00 for his sick leave redemption at 25%, a bonus check when leaving.

The elected officials of this Town do not agree that employees who already receive far greater fringe benefits than the average private sector employee should be allowed to cash in accumulated sick leave days just because they did not use them during their working career, and furthermore, cash them in at the rate of pay at the time of retirement and not at the rate of pay when accumulated. In the private sector employers are mandated to provide disability insurance protection for employees who are off from work because of illness or injury after a waiting period and this only provides a percentage of the employee's pay. In the public sector, disability insurance is not mandated by law, and public employers generally self insured with paid sick days. Now a chairman of an interest arbitration panel is mandating an employer to allow employees to cash them in at the time of retirement.

Not only did this liberal chairman grant an exorbitant monetary issue of sick leave redemption, an increase in clothing allowance in both years and an increase in longevity both years, he also awarded a 3.0% increase in salary in the first and second year of the award with very little consideration to the Town

proposals.

This interest arbitration award should take notice among all public employers in New York State to lobby for an end to the present form of interest arbitration. This charade to the collective negotiations process was never intended under the Taylor Law.

For these matters, I respectfully dissent from the entire opinion and award.

Dated: Buffalo, New York

November 27, 1995



Norman J. Stocker
Public Employer Panel Member