

**NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS PANEL
INTEREST ARBITRATION PANEL**

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In the Matter of the Arbitration :
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 between :
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Village of Buchanan :
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 (herein, "Village") :
 :
 -and- :
 :
Buchanan Police Benevolent Association :
 :
 (herein, "PBA") :
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Re: Case No.: IA 95-029; M95-045 :
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**OPINION
and
AWARD**

BY: Tri-Partite Arbitration Panel:
Theodore H. Lang, Ph.D., Neutral Chairperson, 795 Addison Street,
Woodmere, NY 11598
Ralph Purdy, President, N.Y.S. Federation of Police, PA Designee
Terence M. O'Neil, Esq., Village Designee

APPEARANCES:

For the Village:
Jessica S. Weinstein, Esq., of Rains & Pogrebin, P.C.
Tom Jankowski, Village Administrator

For the Police Benevolent Association:
Thomas P. Halley, Esq.
Michael Godshall, President

The New York State Public Employment Relations Board (herein, "PERB"), Hon. Pauline R. Kinsella, Chairperson, on or about February 13, 1996, invoked the provisions of Section 209.4, of the Civil Service Law and designated the Undersigned as the Public Arbitration Panel for the purposes of making a just and reasonable determination of this

dispute. This Opinion and Award was prepared by the Public Panel Member and Chairman of the Panel, Theodore H. Lang, Ph.D.

HISTORY OF THE IMPASSE

The latest formal Agreement between the PBA and the Village covering a unit consisting of "all of the Police Officers ... employed by the Village except the Chief of Police and civilian workers", was for a three year period from June 1, 1991 through May 31, 1994. The parties were unsuccessful in negotiating a settlement of a contract for the period from June 1, 1994 through May 31, 1997 and PERB assigned a Mediator. The parties were still unable to reach a settlement. On December 11, 1995, the PBA petitioned PERB for compulsory Interest Arbitration on a total of 11 issues, including a three-year term as the first issue under date of December 22, 1995. The Village responded incorporating six contract articles it seeks to change or add.

The proposals of the PBA are listed below:

1. Term of Agreement
2. Percentage Wage Increase
3. Optical Insurance
4. Calculation of Hourly Rate of Pay
5. Shift Differential
6. Arbitration
7. Holiday
8. a. Sergeant Differential
b. Detective \$1,200 Stipend
9. Longevity Payments
10. PBA Days
11. Floater*

* Will not be considered by Arbitration Panel because it is the subject of an I.P. charge filed with PERB by the Village against the PBA.

The proposals of the Village are listed below:

1. Floater
2. Salary Credit for outside service
3. Sick Leave
4. Continuing Education and Training
5. Grievances and Arbitration Procedures
6. Drug Testing.

Hearings were held on May 7 and June 25, 1996. The parties stipulated that the Record of this Case should be constituted solely of the exhibits and testimony supplied by the Parties and the notes of the Chairman and that the parties do not wish a transcript. The Village and the PBA had ample and full opportunity to submit exhibits, examine and cross examine witnesses, and make oral argument. There were four joint exhibits, over 30 PBA exhibits and over 60 village exhibits. Neither party presented oral testimony of witnesses.

The Village filed an Improper Practice Charge against the PBA in regard to Item 11, "Floater"; the parties agreed the Arbitration Panel would not deal with that proposal by the PBA.

The Panel met in executive session on July 31, 1996.

In regard to all items, the Panel has considered seriously the provisions applicable to compulsory interest arbitrations pursuant to §209.4 of the Civil Service Law, which provides in part:

- (v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:
 - a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar

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

- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The following items are denied. There is no comparative data justifying the change sought by the party, and there is no persuasive argument which, in the judgment of the Panel* justifies the proposal:

<u>PBA Proposals</u>	<u>Subject</u>
4	Calculation of Hourly Rate of Pay
5	Shift Differential
7	Holidays
8a	Sergeant Differential
9	Longevity Payments
<u>Town Proposals</u>	<u>Subject</u>
1	Floater

Proposals Approved, in whole or in part:

PBA Proposal 1 on Duration

PBA Proposal 1 is for a two year agreement, although both parties in negotiations were interested in a three year term. Under the Civil Service Law, we are limited to a two year Award.

* When the term Panel is used hereafter in the Opinion, it refers to a majority of the Panel.

Accordingly, it is AWARDED that Page 1, first unnumbered paragraph be amended by deletion of "for the period commencing June 1, 1991 and ending May 31, 1994" and the substitution therefor of "for the period commencing June 1, 1994 and ending May 31, 1996", and ARTICLE XVIII - TERM* OF AGREEMENT shall be amended to read as follows:

The Agreement shall be for a term commencing June 1, 1994 and terminating May 31, 1996.

PBA Proposal 2 on Percentage Wage Increase

The PBA proposes a 5% increase effective June 1, 1994 and a 4.75% increase effective June 1, 1995. The formal position of the Town at the interest arbitration did not include an offer of a percentage wage increase.

In support of its position, the PBA relies heavily on the Town's Teamsters Local 456 having received the following percentage increases:

<u>Percentage</u>	<u>Effective Date</u>
4%	6/1/94
4.75%	6/1/95
5%	6/1/96

and that there has been a pattern of the PBA and the Teamsters receiving the same increases. In addition, the PBA introduced copious evidence that the Town has the ability to pay the percentage increases requested. The Town has no debt outstanding and no debt anticipated. It has surpluses of over one million dollars in its 6/1/93 - 5/31/94 budget, \$840,000 in its 6/1/94 - 5/31/95 budget and \$970,000 in its 6/1/95 - 5/31/96 budget.

* The expired Agreement has a typographical error and the incorrect word "Terms" appears therein.

The annual salary cost of a 5% increase in 6/1/94 would only be \$27,130, and only \$36,682 including pensions. The June 1, 1995 proposal percentage of 4.75% would only cost \$27,062, with pensions approximately \$36,000.

The Town vigorously opposes the PBA's argument of an absolute tie-in with the Teamsters and makes the following points in resisting increases of 5% and 4.75% on June 1, 1994 and June 1, 1995, respectively:

1. As of June/July, 1995, Buchanan police wages rank No. 1 and are the highest in all village and town police forces in the County of Westchester.
2. A 3% increase, which the Town is not recommending, would still leave Buchanan police wages ranking first in the County.
3. The residents of the Village are not wealthy. The median value of a home in 1990 in Buchanan was \$190,700, compared to the Westchester County median value of \$283,500.
4. The CPI for 1994 and 1995 was under 3%.
5. Of the six highest paid police in departments Westchester County, Buchanan police have a shorter work schedule in days worked than four police staffs. Only Bronxville requires fewer days of work.

DISCUSSION

Neither party presented data giving the percentage increases granted for police in 1994 and 1995 in towns and villages in Westchester County which is the data most frequently presented in police interest arbitration. It is clear that the Village has the ability to pay a reasonable percentage increase, even the figure of 5% effective June 1, 1994 and 4.75% effective June 1, 1995 sought by the PBA.

Most influential on the Panel was the fact that in a community with modest family incomes, the Buchanan police are the highest paid among towns and villages in Westchester County. Most persuasive was Village Exhibits 43 and 48. Vx43 ranks

Buchanan first, at \$52,532, in Westchester County in top police officer salary in June/July, 1993. The second ranked is Hastings at \$51,332. Vx48 compares four of the six villages or towns with the highest wages, namely, Buchanan, Hastings, Mamaroneck and Irvington (Ryebrook and Bronxville wages for 1994 and 1995 are not available) and postulated 3% increases for two years for Buchanan and establishes without controversion that Buchanan with two 3% increases would still remain first in rank among police in Westchester County. It is the Panel's judgment that a fair and reasonable increase would be one that maintains the prior existing relationships and that two increases of 3.5% would have that effect.

Accordingly, the Panel AWARDS a retroactive 3.5% increase effective June 1, 1994 and a retroactive 3.5% increase effective June 1, 1995.

To implement these percentage increases, the Panel AWARDS as follows:

ARTICLE III. Compensation be amended to read as follows:

Section A. Annual Salary: Employees shall be entitled to an annual salary based upon years of service according to the following schedule on the dates indicated:

	<u>6/1/94-5/31/95</u>	<u>6/1/95-5/31/96</u>
After four (4) years of service	\$54,372	\$56,275
After three (3) years of service	\$48,163	\$49,848
After two (2) years of service	\$44,676	\$46,240
After one (1) year of service	\$41,213	\$42,655
Starting salary	\$37,751	\$39,072
Sergeant	\$58,260	\$60,299

Detective: The detective shall receive an annual stipend of \$1,200.00 payable in the first pay period of December in each year.

Employees shall be paid weekly.

PBA Proposal 8B on the Detective Differential

The PBA proposes that the Detective receive a \$1,200 salary differential in lieu of an annual stipend of \$1,200 payable in the first pay period of December in each year. The Village opposes this change. The PBA argues that the treatment of the Detective differential is unusual and that it is more normal that the differential be a part of regular wages. The Village argues that ultimately, there will be a cost to the Village as percentage raises increase the Detective differential.

The Panel concludes that the \$1,200 differential should be a part of regular wages, effective May 31, 1996.

Accordingly, the Panel AWARDS as follows:

Effective May 31, 1996, ARTICLE III be further amended by deletion of the language relating to Detective and the substitution of a line under Sergeant reading as follows:

Police Officer (4 years of service) assigned as Detective	\$57,475 (effective 5/31/96)
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PBA Proposal No. 3 - Optical

The PBA proposes that Article V A be amended by increasing the \$150 optical benefit by \$50, to \$200. In support of its proposal, the PBA points to internal comparisons within the Village, citing the Teamsters Agreement. The Village presented no convincing comparative data controverting the PBA's argument and evidence.

Accordingly, the Panel AWARDS that the last unnumbered paragraph in ARTICLE 5A - Benefit Plans, be amended to read as follows:

The Village agrees to pay Two Hundred (\$200.00) Dollars per Employee and/or per member of the Employee's family for the purchase and/or repair of eyeglasses for the Employee and/or the Employee's family.

PBA Proposal No. 6. Arbitration and Village Proposal No. 5. Grievance/Arbitration

Article XIV - Disputes and Grievances of the expired Agreement reads as follows:

- A. Any grievances arising concerning the interpretation or application of the terms of this Agreement or the rights claimed to exist thereunder shall be processed in accordance with the following procedure:
1. Such grievance by an Employee and/or Employees presented to the Association representative shall be presented to the Association representative in writing.
 2. In the event such grievance is not resolved within five (5) working days from such presentation, it shall then be presented by the Association to the Chief of Police.
 3. In the event such grievance is not satisfactorily resolved or adjusted at the preceding step of the procedure, then the Association may present the same to the Village Board or its designee for settlement in writing.
 4. In the event that any grievance is not then disposed of, it may be referred by either party to arbitration before an impartial arbitrator. The award of the impartial arbitrator shall be binding on the parties.

The PBA seeks to amend this Article by specifying that the parties shall use the services of a PERB Arbitration Panel.

The Village proposes the following:

Pg. 15, Article XIV, A - Grievance Procedure -

Subsection 1 - Add: "within fifteen (15) days of the events giving rise to the grievance."

Subsection 3 - Add: "To be processed to this stage, the grievant shall be present at the Village Board meeting."

Page 15, Article XIV, A - Grievance Procedure - subsection 4, add the following to sentence 2:

"The grievant shall also sign the Demand for Arbitration. The Arbitrator shall be selected pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association."

The Village argues that there is a need for a time limit for the submitting of a grievance; and that the officer who is aggrieved should be present at the various steps, including the Demand for Arbitration, to insure that the officer is truly interested in the grievance.

The PBA agrees that there be a time limit for the filing of the grievance, that it be 30 days rather than 15 days, that the 30 days starts to run when the officer knew, or should have known, of the violation, and that the Village should also be required to abide by the time limits in this Article.

DISCUSSION

The Panel agreed unanimously on a 30 day limit for the filing of a grievance, after the officer knew, or should have known, of the alleged contractual violation; that the Grievant must sign the grievance unless physically unable to do so; and that the services of the American Arbitration Association Labor Panel be utilized.

Accordingly, the Panel AWARDS as follows:

- 1. ARTICLE XIV - Disputes and Grievances, Sections 1 and 4 be amended to read as follows:**
 - 1. Within thirty (30) days of the time an employee or employees knew, or should have known, of the events giving rise to the grievance, such grievance by an Employee and/or Employees presented to the Association representative shall be presented to the Association representative in writing. The Employee and/or Employees shall personally sign the grievance unless physically unable to do so.**

4. **In the event that any grievance is not then disposed of, it may be referred by either party to arbitration before an impartial arbitrator. The arbitrator shall be selected pursuant to the Voluntary Labor Arbitration Rules of the American Arbitration Association. The award of the impartial arbitrator shall be binding on the parties.**

PBA Proposal No. 10. PBA Days

Article II - Unit Recognition, Section F of the expired Agreement reads as follows:

- F. **One (1) delegate from the Association may attend to Association business, conferences and/or meetings with pay, for total period not to exceed five (5) days on a twenty (20) days notice to the Chief by the Association.**

The PBA proposes reducing the notice to the Chief from twenty (20) days to seven (7) days, arguing that the 20 days notice is unnecessarily and excessively long and hampers the efficient use of the time allowed in the Agreement. The Village objects.

DISCUSSION

The Panel finds the argument of the PBA persuasive. While the Village objects, it does not give a good reason for the need for twenty (20) days notice.

Accordingly, the Panel **AWARDS** that Article II, Section F be amended by deletion of "twenty (20) days notice" and the substitution of "seven (7) days notice".

Village Proposal No. 2. Salary Credits for Outside Services.

Article III - Compensation, Section D of the expired Agreement reads as follows, in part:

Years of service shall include credit for time served or other law enforcement agencies prior to the Employee becoming a member of the Village of Buchanan Police Department.

Article XII - Years of Service, Anniversary Date, reads, in part, as follows:

Years of service shall include credit for time served on other law enforcement agencies prior to an Employee becoming a member of the Village of Buchanan Police Department.

The Village proposes that both the above quoted paragraphs be deleted, arguing as follows:

The State Town Law in §153 already covers transfers, as follows:

Transfers from one town police department to another town or village police department in the same county may be made upon the mutual consent of the appointing officers of the departments affected. Any member of such police force who is or has been transferred shall receive credit with the department to which he is transferred for time served on the police force or in the department of any village or town within the same county, as though the full time had been served with the department to which he has been transferred, for purposes of seniority, promotion, pensions and general administration.

Also, the State Municipal Law in §5711-q, ¶ 7 already covers transfers within Westchester County as follows:

Transfers. Transfers from one village police department to another village or town police department in Westchester county may be made upon the mutual consent of the appointing officers of the departments affected. Any member of such police force who has been or who shall hereafter be so transferred shall receive credit with the village department to which he is transferred for time served on the police force of any village or town within Westchester county, as though the full time was served with the department to which he has been transferred, for the purpose of seniority, promotions, pensions and general administration.

The PBA opposes this proposal stating that the present language is satisfactory, that the Village has control since it decides to accept transfers and that such an amendment might affect present employees.

DISCUSSION

This is a small police department. The present language is very loosely drawn and does not even specify that the years of service must be as a police officer. The Panel

finds the argument of the Village together with the cited present laws persuasive. However, present employees must be protected.

Accordingly, the Panel AWARDS that the two paragraphs remain in the Agreement to protect the rights of incumbents but that "Effective May 31, 1996, the two paragraphs shall not apply to new hires." An appropriate footnote shall be placed in the Agreement.

Village Proposal No. 3. Sick Leave.

ARTICLE V. (Welfare, Vacation and Sick Leave, Death Leave and Leave of Absence), Section C (Sick Leave) reads in part, as follows:

Employees who separate, for other than just cause, from the Village of Buchanan Police Department shall be entitled to cash payment for accumulated sick leave according to the following schedules:

0-35 sick days accumulated:	38% of sick days accumulated at the Employees normal rate of pay.
36-70 sick days accumulated:	50% of sick days accumulated at the Employees normal rate of pay.
71-105 sick days accumulated:	65% of sick days accumulated at Employees normal rate of pay.
106 to maximum allowance sick days accumulated:	75% of allowable sick days accumulated at the Employees normal rate of pay.

The Village proposes that if an officer is separated from the Department, the final year's sick leave earnings shall be prorated, one day of sick leave credited for each month or part thereof that the employee has appeared on the payroll. The Village argues that, upon separation from the service employees should be given credit only at the rate of one day of sick leave earned per month. The PBA opposes this change, arguing that an

employee may lose from one to 12 days sick leave for pay purposes and that this matter is now in arbitration.

DISCUSSION

The Village argues that an employee who separates himself from the Department shortly after his anniversary date is receiving a gift of public funds since he will not be rendering 12 months of service during which he has need for the sick leave. This argument is persuasive to the Panel.

Accordingly, the Panel recommends, unanimously, that the following paragraph be added at the end of Section C:

Solely for the purpose of cash payment to an employee upon separation, for other than just cause, the final year's sick leave earnings shall be prorated with one day of sick leave credited for each month or part thereof that the employee has appeared on the payroll.

Village Proposal No. 4. Continuing Education and Training.

The prefatory unnumbered Paragraph of ARTICLE XI (Continuing Education and Training Program) reads, as follows:

The Association and the Village recognizes that the furtherance of Police Service to the public is enhanced by the training and education of Police Officers, and to that end, the following policy for paying certain costs relating to such education and training is agreed upon.

The PBA proposes that the present paragraph be deleted and the following substituted:

The Association and the Village recognize that the furtherance of Police Service to the public may be enhanced by further education of Police Officers. To that end, the following policy for reimbursement of costs relating to such education and/or training is agreed upon. The employee shall make a written request directed to the Village Board, through the Village Administrator, for prior approval of their request. This written request shall be filed with the Village Administrator at least 60 days prior to registering for any classes or training. Approval shall be at the sole

discretion of the Village Board. Any expense that may occur prior to this approval shall be at the employee's own cost.

The Village argues that the Village Board is the controlling budgetary agent of the Village and that Board approval must be obtained before the expenditure can be considered authorized.

The PBA is willing to have a written request that the Village could approve or reject and that an employee's application must be submitted within a reasonable time frame. However, the PBA insists that if the Board does not act within a reasonable period of time, the application should be considered approved.

DISCUSSION

Both parties recognize the desirability of amending ARTICLE XI. Accordingly, the Panel AWARDS unanimously that ARTICLE XI be amended by deletion of the present wording and the substitution of the following:

ARTICLE XI

CONTINUING EDUCATION AND TRAINING PROGRAM

- A. The Association and the Village recognize that the furtherance of Police Service to the public may be enhanced by further education of Police Officers. To that end, the following policy for reimbursement of costs relating to such education and/or training is agreed upon. The employee shall make a written request directed to the Village Board, through the Village Administrator, with a copy to the Police Chief, for prior approval of the request by the Village Board. The request shall include the name and number of the course, and the school. Approval by the Village Board shall not be unreasonably denied or delayed. The Village Board need not reimburse the employee where the application has been denied.**
- 1. All Employees are eligible to apply for this benefit.**
 - 2. All Employees shall be permitted to enroll in approved courses in Police Science and/or in regular recognized police educational courses.**

3. **Employees duly enrolled in approved courses shall attend such course and perform all study/work relating thereto in off-duty time.**
 4. **The Village shall pay the tuition costs of approved courses and the cost of books as required by the Institution. All benefits enumerated heretofore shall be subject to the successful completion of said course (defined as a passing grade).**
- B. **Any Employee who has earned, as of April 30, 1977, an Associate Degree, regardless of curriculum, shall be compensated Two Hundred (\$200.00) Dollars extra pay per year.**
 - C. **Any Employee who earns a degree in Police Science or Criminal Justice shall be compensated annually according to the following schedule:**

Associate's Degree	\$250.00
Bachelor's Degree	\$375.00
Master's Degree	\$450.00
 - D. **Employees shall receive an annual stipend if certified as set forth below:**

First Responder	\$50.00
Emergency Medical Technician	\$100.00
 - E. **The extra compensation earned under this Article shall be paid to each Employee by December 1st of each year.**

Village Proposal No. 6. Drug Testing

The expired Agreement is silent on this subject. The Village proposes a procedure for "reasonable suspicion" drug testing emphasizing that it is not a "random" drug testing procedure, arguing that police officers have great access to drugs, that it can be a conflict of interest for a police officer to use drugs in any way, that for a police officer to use drugs jeopardizes the safety of the community, that the U.S. Department of Transportation now mandates random drug testing for truck drivers of large trucks and that the Village has a drug testing program for its Teamsters local.

The PBA's position is that it has no objection in principal to a "reasonable suspicion" drug testing procedure, but that it is concerned that the language proposed by the Village is too vague. The PBA had ample opportunity to propose changes in the language proposed by the Village but did not do so.

DISCUSSION

The desirability of a "reasonable suspicion" drug testing procedure for police officers is beyond dispute. The language provided by the Village has been carefully reviewed by the Board. It is customary language for a "reasonable suspicion" testing program. The application of this procedure is subject to grievance if the standards for "reasonable suspicion" are violated or if the procedure has been violated. It is, therefore, **AWARDED** by the Panel that the following **ARTICLE XVIII**, be included in the Agreement with the subsequent article renumbered.

Drug and Alcohol Policy

- 1. The use of illegal controlled substances or alcohol by employees adversely affects the Village's ability to safely deliver services, impairs the efficiency of the work force, endangers the safety of employees and the public, and undermines public trust. The Village and the Union, therefore, agree that the use, sale, distribution or possession of illegal controlled substances by any employee is prohibited. Testing positive pursuant to the procedures below shall be deemed to be a violation of Section 1 herein. The Village and the Union also agree that employees are prohibited from using, selling, distributing or being under the influence of alcohol while on duty. Employees in violation of this policy are subject to disciplinary action, up to and including discharge, unless such occurred in the performance of duty in the course of an authorized assignment.**
- 2. Unless otherwise noted, all discipline under this policy shall be in accordance with applicable provisions of the collective bargaining agreement, the Civil Service Law and the Unconsolidated Laws of the State of New York.**

- 3. Based on reasonable suspicion of a violation of §1, members of the bargaining unit shall be subject to urinalysis testing for illegal controlled substance use or breathalyzer testing for alcohol use. Any employee who refuses to submit to testing, or refuses to cooperate with the testing procedures, may be subject to discipline, including discharge. Attempts to alter or substitute the testing specimen shall be deemed a refusal to take the test.**
- a. The order to submit to testing must be justified by a reasonable suspicion of a violation of §1.**
 - b. While the "reasonable suspicion" standard does not lend itself to precise definition or mechanical application, vague or unparticularized or unspecified or rudimentary hunches or intuitive feelings do not meet the standard.**
 - c. "Reasonable suspicion" is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. "Reasonable suspicion" must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from those facts.**
 - d. "Reasonable suspicion" may be based, among other things, on the following:**
 - 1. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or physical symptoms of being under the influence of drugs or alcohol; or**
 - 2. A pattern of unusual or abnormal conduct or erratic behavior (e.g., unexplained excessive absenteeism, lateness, or early leaves); or**
 - 3. Arrest or conviction for a drug-related offense, or the identification by law enforcement personnel of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking; or**
 - 4. Information provided by a reliable and credible source; or**
 - 5. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.**

- e. **Disputes concerning the matter of reasonable suspicion to order a test shall be subject to review by way of the contract grievance procedure or as part of the disciplinary hearing. Such dispute may, at the Village's option, be incorporated with any proceeding filed concerning discipline resulting from such testing.**
- f. **The decision to test an employee shall be made by the Chief of Police, or in his absence, his designee, after consultation with the Village Manager, in accordance with the standards discussed above.**
- g. **It is intended that where a decision is made to test, the employee shall be given a direct order to submit to the test and advised of his/her right to have a Union representative present for such testing. The test shall not be delayed more than one (1) hour after the Union has been notified of such order to accommodate the presence of a Union official. The test shall be conducted immediately thereafter. The employee shall be given a brief statement of the basis for reasonable suspicion prior to the testing. Notice to the Union shall be satisfied by speaking to the first of any of not more than five (5) persons whose names and telephone numbers have been provided, in writing, by the Union to the Chief of Police or by telephoning each such number (leaving a message when possible) if no direct contact can be made.**
- h. **For purposes of reasonable suspicion only, where reasonable suspicion is based on information provided by a confidential informant, defined as an employee or agent of a governmental law enforcement agency or the employee's department, the identity of the source need not be disclosed at the time of the test, except for the name of the governmental law enforcement agency involved, if any.**
- i. **Notwithstanding the foregoing, not less than 24 hours prior to any hearing, the Union shall be provided with a written statement containing the facts upon which the Village will rely in sustaining its burden of demonstrating reasonable suspicion.**

- 4. Insofar as practical, the sample collection process shall be confidential with due regard for the dignity and privacy of the employee. There shall be no direct observation of giving of urine specimens, unless there is reason to believe that the specimen may be tampered with, in which event direct observation shall be made by a person of the same gender as the employee giving the specimen. The employee shall cooperate with requests for information concerning use of medications and acknowledgment of giving the specimen.**
- 5. Specimens shall be collected by a monitor designated by the Village. The sample shall be divided into two (2) aliquots. The employee shall provide a sufficient amount of the sample to allow for an initial screening, a confirmatory test, and for later testing if requested by the employee. In the event an insufficient sample is produced, the employee's ability to have a second test performed may be adversely impacted. The monitor shall mark and seal the specimen to preserve its chain of custody. Thereafter, the specimen shall be transported to the testing laboratory in a manner which shall insure its integrity and identification of chain of custody. The laboratory selected to perform testing shall be certified by the National Institute on Drug Abuse (NIDA) of the Department of Health and Human Services. One sample shall be used for purposes of testing by the laboratory and the second sample shall be maintained by the laboratory in accordance with recognized procedures for purposes hereinafter described.**
- 6. For drug testing, initial urinalysis testing shall be conducted by means of an enzyme multiplied immunoassay test (EMIT). All specimens identified as positive on the initial test shall be confirmed using a gas chromatography/mass spectrometry test (GC/MS). For those drugs for which NIDA standards exist, a test shall be deemed positive for the presence of drugs in accordance with such NIDA standards. The laboratory shall report as negative all specimens which are negative on either the initial test or the confirmatory test. Only specimens which test positive on both the initial test and the confirmatory test shall be reported as positive. All tests conducted pursuant to this procedure will be paid for by the Village.**
- 7. For alcohol testing, the employee shall submit to a breathalyzer test to be administered by an agent designated by the Chief of Police. Such test results shall be given the same weight as provided under applicable provisions of the New York State Vehicle and Traffic Law.**

8. **Drug test results shall be forwarded from the testing laboratory to a Medical Review Officer (MRO) or the staff of the MRO. The MRO shall be designated by the Village and must be a licensed physician with knowledge of substance abuse disorders and possess the appropriate medical training to interpret and evaluate test results. The Union will be notified of any change in the MRO.**
9. **The MRO shall analyze the test results. If the MRO receives a positive test result, he shall interview the individual in question, review the individual's medical history, and review other relevant biomedical information. The MRO will evaluate these factors to determine whether a justification exists for the positive test result. Evidence to justify a positive test result may include, but is not limited to, a valid prescription or verification from the individual's physician verifying a valid prescription. If the MRO determines that justification exists, the test result will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. The MRO shall then forward all test results to the Chief of Police, the Village Manager and the Mayor.**
10. **Urine samples shall be maintained by the Village's designated laboratory in accordance with appropriate procedures for a period of six (6) months following the test.**
11. **After an employee receives notice from the Village of a positive test result, the employee may make a written request to the Chief of Police within fourteen (14) calendar days to have the second sample tested at a different laboratory duly licensed by NIDA. The employee shall be responsible for all costs related to transportation and testing and for the preservation of the chain of custody. The test results shall be delivered by the laboratory to the employee and Chief of Police, the Village Manager and the Mayor. Testing and positive results will be in accordance with paragraph 6 above.**

CONCLUDING REMARKS

All terms and conditions of the expired Agreement, which are not affected by this Opinion and Award, shall be continued into the June 1, 1994 - May 31, 1996 Agreement, unchanged. It is most unfortunate that the history of this Case has resulted in an Award which is retroactive for its entire term. The fixing of salaries and terms and conditions for the police collective bargaining unit in the Village of Buchanan for the period from

Public Employer Panel Member

Dissenting on Items: Town
Proposal 1; PBA Proposals 3,8B,
10

A handwritten signature in black ink, appearing to read "T. O'Neil", written over a horizontal line.

Terence M. O'Neil

PERB IA 95-029; M95-045 -- VILLAGE OF BUCHANAN V.
BUCHANAN POLICE ASSOCIATION

Regarding Police Association proposals:

- #4 Calculation of Hourly Rate of Pay
- #5 Shift Differential
- #7 Holiday
- #8a Sergeant Differential
- #9 Longevity Payments

As I indicated in our panel discussions I believe that the Association set forth the appropriate documents and arguments to support their position on each of the aforementioned items, therefore as the advocate for the Association I opposed the Panel's finding on each of these items.

Ralph M. Fiedly

Association proposal #1, term of contract, I support the proposal due to the fact that the panel is limited under Civil Service Law to a two year award.

Ralph M. Fiedly

Association Proposal #2, Wage Increase, I must support this proposal due to the fact that the advocate for the village opposes the percentage amount and argues that it should be lower. Therefore, I support the position of the majority of the panel.

Ralph M. Fiedly

Association Proposal #8b, Detective Differential, I support the majority opinion of the panel regarding this issue.

Ralph M. Fiedly

Association Proposal #3, Optical, I support the majority opinion of the panel regarding this issue.

Rafael M. Rudy

Association proposal #6, Arbitration and Village proposal #5 Grievance/Arbitration. As noted the panel unanimously agrees on the changes to Article XIV of the collective bargaining agreement as set forth in the award.

Rafael M. Rudy

Association proposal #10, PBA Days, I support the majority opinion of the panel regarding this issue.

Rafael M. Rudy

Village Proposal #1, Floater, I support the position of the panel due to the fact that this issue is presently before PERB as an Improper Practice and the panel should not interfere.

Rafael M. Rudy

Village Proposal #2, Salary Credits for Outside Service, I oppose the villages proposal, and support the position of the Association. It is my opinion that all present members of the bargaining unit must be protected.

Village Proposal #3, Sick Leave, I support the decision of the panel regarding this issue, to clarify the wording of the collective bargaining agreement.

Rafael M. Rudy

Village Proposal #4, Continuing Education and Training, I support this proposal as it is set forth in this award to clarify the wording in the present collective bargaining agreement.

Rafael m. Pineda

Village Proposal #6, Drug Testing, I support the Associations position, they have no objection to reasonable suspicion as it pertains to drug testing and support their position of a drug free work environment. Contrary to the villages position that the Association had ample time to propose changes regarding this proposal, I take issue with this due to the fact that the Association did not receive official notice of this policy until the panel was convened. Therefore, I oppose the panels award on the principle that this item should have been negotiated between the parties. It should be noted that this policy also includes a policy on Alcohol.

Rafael m. Pineda
