

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

-----XXX
**In the Matter of the Interest Arbitration Between:
Town of Kent**

JUN 04 2001

**FINAL AND BINDING OPINION AND AWARD
OF TRIPARTITE ARBITRATION PANEL**

**Town of Kent Police Association
Case No: IA 099-023; M 098 -345
-----XXX**

The Public Arbitration Panel members are:

- PUBLIC PANEL MEMBER & CHAIRMAN: Joel M. Douglas, Ph.D.**
- PUBLIC EMPLOYEE PANEL MEMBER: Ralph M. Purdy
President, NYS Federation of Police**
- PUBLIC EMPLOYER PANEL MEMBER: Dennis J. Illuminate
Town Councilman**

Appearances:

- For the Town of Kent Timothy J. Curtiss, Esq.
Town Attorney**
- For the Kent Police Association: Thomas P. Halley, Esq.
NYS Federation of Police Associations**
- Date: December 8, 2000**

Pursuant to the provisions of Section 209.4 of the Civil Service Law, and in accordance with the rules of the Public Employment Relations Board, an interest arbitration panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the Town of Kent ("Town") and the Police Association of the Town of Kent ("Association") A hearing was held in Kent, New York on May 22, 2000 during which time

both parties were represented and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs.

An executive session was held in Kent on the same date during which time the Panel deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. The parties then submitted certain requested data in their post-hearing briefs. The results of those deliberations are contained in the AWARD that constitutes the Panel's best judgment as to a just and reasonable solution of the impasse.

Those issues presented by the parties that are not specifically addressed in this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety.¹ However, the stipulation of settlement as to other issues (JX #4) shall be incorporated in this Award and made part of this Award, along with the stipulated amendments to item # 4 and Item #11, as set forth in footnote #1. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

In arriving at this Award, the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

¹**During the course of the negotiations the parties entered into a stipulation of fact which reflected prior negotiated agreements that impact on the term and conditions of employment covered in this Opinion and Award. (JX #4) During the course of the arbitration, the Association acknowledged, on the record, that Item #4 of said stipulation that the \$250.00 paid to each police officer for the dress blouse uniform allowance is to be paid directly to the employee but only after the submission of a voucher/receipt indicating that payment has been made by the officer. Item #11 of said stipulation should further provide that although the Chief of Police has the power to make a recommendation to grant GML 207C leave, the actual determination of such leave is to be made by the Town Board.**

In arriving at its 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 proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

The Town of Kent, located in Putnam County, NY, has an estimated population of 12,000. The Police Department operates 24 hours per day seven days per week. The bargaining unit at impasse consists of twenty full-time police officers and includes all ranks with the exception of the Chief of Police. The previous Agreement covered the period January

1, 1995 - December 31, 1998. (JX #1)

ISSUES AT IMPASSE

The parties began negotiations for a successor agreement on October 27, 1998. At that time there were approximately twenty-eight items at impasse. Through understandings reached in the mediation process, and by consolidating several issues, six impasse items were left unresolved. At the arbitration hearing the parties agreed to submit the following issues for evaluation and decision by the Panel. Many of the proposals had numerous components; however, for the sake of succinctness, they have been consolidated into their major categories. Where viable, the aforementioned demands and subsequent recommendations have been consolidated to address the needs of both parties. The issues at impasse and submitted to the undersigned included:

POLICE ASSOCIATION PROPOSALS

1. Salary
2. Rank differential for Detectives
3. College Tuition reimbursement
4. Welfare Plan contributions by the Town
5. Vacation Parity
6. Holiday Pay

TOWN PROPOSALS

1. Health Insurance contributions for all employees.
-

ISSUE NUMBER ONE
SALARY DISCUSSION AND AWARD

The Association is seeking wage increases of four per cent per year for each of four years of the successor contract and additional advances in rank differential. The Town proposed raises of three percent per year. The Town further submitted that offsets are required in the areas of leave accumulation and health insurance to fund these adjustments. As has been often said, wage and salary determination is far from an exact science; however, the undersigned was guided by the criteria set forth in the Taylor Law. Among other factors these included the:

... comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with employees generally in public and private employment in comparable communities. Section 209.4 of the Act:

Additional criteria included:

... (b) the interests and welfare of the public and the financial ability of the public employer to pay. (Section 209.4 of the Act)

As is so frequently the case, negotiated benefits obtained at the bargaining table by either party were afforded presumptive preservation.

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. (Section 209.4 of the Act)

The Panel has considered all the cited statutory criteria and first addresses the comparability standard. As in most interest arbitration cases, comparability is a major

concern. The parties have agreed that comparability is best found among the Carmel Police Department, The Office of the Sheriff, and the Town of Kent Police. These departments received annual salary increases of four percent; however due to the peculiarities of longevity and incremental steps, at various points along the continuum, and when considering total remuneration Kent Police officers are compensated as well as their counterparts. These comparables have been in place for several collective bargained agreements and will not be upset by this panel. These three departments are the major police forces in Putnam County and no other department meets the comparability criteria. The comparability positions articulated by the parties are persuasive. Should either the Town or the Association wish to dramatically alter their comparability understandings, they are free to so negotiate but for the Panel to upset bargaining history through an interest arbitration award and unilaterally revise comparability standards, is unwarranted at this time.

The Panel has considered county-area comparables and notes that wage and salary adjustment in Putnam County in 2000 - 2002 for full-time salaried police departments have ranged in the area of three to four percent. In fashioning this recommendation, the Arbitrator was aware of the relationship that existed between the Town of Kent Police Association and other police unions within Putnam County. The awarded increase of 3.00% to the base wages for Town of Kent police officers in 1998, 1999, 2000 and 2001 should maintain the relative unit wide positions in a comparable County position.

The Panel Chairman further considered the role that CPI has played in interest arbitration. Widely accepted as one of the criteria utilized in the formulation of compensation and benefits, the record demonstrates that for the year calendar year 1997 -1998, the CPI

(NYNENJ-U Jan - Jan) was 2.6%. Furthermore, since 1990 the parties have either negotiated or have been the recipient of salary adjustments greater than the CPI.

The record documents that the proposals submitted by the Town as opposed to those suggested by the Association are more consistent with the Town's financial condition and that they are able to sustain the awarded increases. The financial condition and demographics of the Town documents the absence of industry. Of the five Putnam Count townships, Kent has the highest assessable rate per thousand and the least amount of tax base rateables. Concomitantly, taxes are above the County median. Yet, according to the Union, there exists a surplus in the Town fund balance. (PBA X#4) Additionally, said balance has increased over the past several years.² (PBA X# 4) The cash on hand in the unrestricted account is \$1,500,000. (PBA X#9)

Based on the record and the statutory criteria, including the Town's ability to pay, it is the opinion of the Panel that the salary AWARD herein is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following salary adjustments:

a) For the period January 1, 1999 through December 31, 1999, the current police officers' salary schedule shall be increased by 3.00 percent retroactive to January 1, 1999.

b) For the period January 1, 2000 through December 31, 2000, the current police officers' salary schedule shall be increased by 3.00 percent retroactive to January 1, 2000.

c) For the period January 1, 2001 through December 31, 2001, the current police officers' salary schedule shall be increased by 3.00 percent.

²The 1999 NYS Comptroller report cites underestimated revenue and overestimated expenditures. This has resulted in a retention in the excess balance fund. (PBA X#4) (see p.8)

d) For the period January 1, 2002 through December 31, 2002, the current police officers' salary schedule shall be increased by 3.00 percent.

NOTE:

RETROACTIVITY

DISCUSSION AND AWARD

Due to the length of time that has elapsed from the expiration date of the previous Collective Bargaining Agreement, the Panel Chairman suggested that the parties consider a three to four-year Award; however, unless otherwise authorized by the parties, the Panel is limited by statute to a maximum two-year Award. (Section 209.4(v) of the Civil Service Law). Authorization was forthcoming by the parties and accordingly the term of this Award shall be for four years - from January 1, 1999 - December 31, 2002. Additionally, the benefits provided in this Award shall be deemed retroactive and shall apply to all officers currently on payroll. All provisions and language contained in the prior Agreements are hereby continued, except as specifically modified in this Award.

ISSUE NUMBER TWO

RANK DIFFERENTIAL FOR DETECTIVES

DISCUSSION AND AWARD

The Association seeks an increase the present detectives' differential. The present value of the differential is six percent. The Town rejects any such increases. The record is unclear whether this issue was resolved during the course of negotiations and mediation. The Town submits that an agreement was reached while the Association contests that claim.³ Differential are commonplace in police Agreements. While the amount varies, the present Kent differential

³Whether this issue was originally resolved is not controlling on the Arbitration panel. As long as an impasse exists, and the issue was properly submitted in the original petition, it is properly before the Panel. The claimed agreement was apparently predicated on linkage to other contractual items.

has not been changed for several years and is currently in danger of falling victim to salary compression. Thus, the record documents that an increase is warranted and accordingly one is awarded.

Based on the above stated criteria, the Town has the requisite ability to pay these increases awarded by the panel. Additionally, the impact of these increases on total unit payroll is minimal. Thus, the Panel Awards the following:

- a) Effective the January 1, 1999, the differential for Detectives Russo and Duskoff shall be increased to nine per cent.
- b) Effective January 1, 2000 the differential for Detective Locascio shall be increased to seven per cent.
- c) Effective January 1, 2001, the differential for Detective Locascio shall be increased to eight per cent.
- d) Effective January 1, 2002, the differential for Detective Locascio shall be increased to nine per cent.

ISSUE NUMBER THREE
COLLEGE TUITION REIMBURSEMENT

DISCUSSION AND AWARD

The Town seeks to modify the present college tuition reimbursement plan by imposing a \$2000.00 cap per year per employee. An additional cap would be to limit tuition expenditures to an annual payment of \$10,000.00 Further limitations would be to eliminate any graduate school reimbursement and to impose a course grade schedule for reimbursement purposes.⁴ The Association rejects any limitations and suggests the continuation of the status quo. (PBA X# 5)

⁴Neighboring Carmel Police Officers receive an annual payment of \$600.00 per year for an Associates degree and \$900 for a Baccalaureate.

Course grades linked to reimbursement are not unusual and serve as an additional motivational factor. The reimbursement plan purposed by the Town; 100% for the grade of A, 75% for the grade of B, and 50% for the grade of C was suggested and is hereby Awarded. This condition is set forth prospectively since it would be inequitable to retroactively impose such a course grade requirement. However any limitation on not reimbursing for graduate school are unfounded and is rejected.

Thus, the Panel Awards the following:

- a) Effective July 1, 2001 the following tuition grade policy shall be placed into effect: 100% for the grade of A, 75% for the grade of B, and 50% for the grade of C.
- b) There will be a \$10,000 annual cap on the reimbursement by the Town.
- c) Any unused tuition reimbursement under the \$10,000 annual cap shall be carried over and added to the tuition reimbursement line item for the following years, even if said line item would thereby be in excess of \$10,000 solely as a result of such carryover.

ISSUE NUMBER FOUR

WELFARE PLAN CONTRIBUTIONS

DISCUSSION AND AWARD

The present system provides for Town payment of \$656.00 per year to police officers with dependents and \$432.00 for officer without dependents. (PBA X#6) At issue is the question of Town payments for a union funded optical plan. The Town of Carmel pays \$535.92 per year and an additional optical coverage of \$161.00. Additionally, the Association is seeking the inclusion of a new optical plan. The proposed optical plan is hereby rejected. The increase is within the means of the Town to pay and is supported by the CPI increases. Thus, the Panel Awards the following:

Effective January 1, 1999 the welfare plan contribution pursuant to Article XX, A of the Contract shall be \$70.00 per month and \$43.00 per month, in place and instead of \$60 per month and \$33 per month. Article XX D is deleted.

**ISSUE NUMBER FIVE
VACATION PARITY**

DISCUSSION AND AWARD

There exists at present a two-tier vacation schedule. Officers hired pre 7/1/95 receive twelve days vacation in years two through four, fifteen days in years four through six, twenty days in years seven and eight, twenty-two days in year nine and ten, twenty-six days in years eleven and thirty days in year twelve. Employees hired post 7/1/95 receive less vacation than those hired prior to that date. (JX #1) The affected employees are seeking parity with the more senior employees. The Town opposes such a change and notes that Kent Police officers are permitted to “sell back” unused vacation days on an annual basis. Thus, any increase in vacation days would be cost prohibitive. (PBA X#7, # 8, The Town has proposed a new system whereby vacation parity would be reinstated but the affected police officers would have to surrender the annual sell back provision.⁵

Carmel Police officers receive fourteen vacation days per year and accumulate an additional day per year up to a maximum of twenty days at year seven. Between year eight through fifteen they receive twenty-one days. Between year sixteen and beyond, they max out at thirty days.

The record documents that the costs associated with the Association’s demand are minimal. (PBA X# 7) Unless there is a compelling reason to continue the two-tier system,

⁵This provision would cease to exist in an officer’s final year of employment.

conversion to a unitary system is recommended. Two tier vacation systems are the exception and may serve as the basis for unnecessary morale problems. Additionally, this issue was considered in the formulation of the salary adjustments and certain offsets attributable to salary have been accounted for. The vacation modifications are within the means of the Towns ability to pay. Thus, the Panel Awards the following:

- a) Effective January 1, 2001, the Town shall implement the pre July 1, 1995 vacation schedule for all police officers.

ISSUE NUMBER SIX

HEALTH INSURANCE CONTRIBUTIONS

DISCUSSION AND AWARD

The Town seeks a contribution in health insurance from its employees. The Union opposes any change in this area. At present the health insurance plan is fully paid by the Town. Proposed is a five percent contribution toward the individual health plan and ten percent toward the plan. The present family plan costs the Town approximately \$7,000 per year. Carmel Police Officers receive fully paid health insurance while new members of the Sheriff's Department contribute twenty-five percent. That rate decreases with job seniority.

This issue was contested with the Association seeking the preservation of the status quo while the Town argued for contributions. Relying in part on the presumptive theory, the Panel would have needed compelling evidence to award such a change. That the parties have negotiated an employer-funded health insurance system for many years was noted. Considering the overall financial condition of the town, as well as the raises awarded, no change in health insurance funding was awarded. Thus, the Panel Awards the following:

- a) The present employer health insurance funding formula shall continue.
-

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this ¹⁸th day of ^{Dec} 2000 before me personally came Joel M. Douglas to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Lynn J. Maier
LYNN J. MAIER
WESTCHESTER COUNTY
#02 MA 4697866
EXPIRES OCT. 31, 2001

LYNN J. MAIER
NOTARY PUBLIC, State of New York
No. 02MA4697866
Qualified in Westchester County
Commission Expires October 31, 2001

STATE OF NEW YORK
COUNTY OF ~~WESTCHESTER~~

PAUL D. HARTMAN
Notary Public, State of New York
No. 4741118
Qualified in Westchester County
Commission Expires March 30, 2001

On this ¹¹th day of ^{December} 2000 before me personally came Ralph M. Purdy to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Paul D. Hartman

STATE OF NEW YORK
COUNTY OF ~~Putnam~~

On this ¹³th day of ^{Dec} 2000 before me personally came Dennis J. Illuminate to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Caroline A. Van Tassel

CAROLINE A. VAN TASSEL
Notary Public State of New York
No. 4960681
Qualified in Dutchess County
Commission Expires 02-04-02

A-W-A-R-D

NOTE** TERM and RETROACTIVITY

Based upon a stipulation from the parties, the term of this Award is from January 1, 1999 to December 31, 2002.

CONCUR *Rafael Sanchez* DISSENT _____
CONCUR *Jim [Signature]* DISSENT _____

1. SALARY AND COMPENSATION

a) For the period January 1, 1999 through December 31, 1999, the current police officers' salary schedule shall be increased by 3.00 percent retroactive to January 1, ~~1998~~. *1999* *Ref?*

b) For the period January 1, 2000 through December 31, 2000, the current police officers' salary schedule shall be increased by 3.00 percent retroactive to January 1, 2000.

c) For the period January 1, 2001 through December 31, 2001, the current police officers' salary schedule shall be increased by 3.00 percent.

d) For the period January 1, 2002 through December 31, 2002, the current police officers' salary schedule shall be increased by 3.00 percent.

CONCUR *Rafael Sanchez* DISSENT _____
CONCUR *Jim [Signature]* DISSENT _____

2. **DETECTIVES DIFFERENTIAL**

a) Effective the January 1, 1999, the differential for Detectives Russo and Duskoff shall be increased to nine per cent.

b) Effective January 1, ²⁰⁰⁰ ~~1999~~ the differential for Detective Locascio shall be increased to seven per cent.

c) Effective January 1, 2001, the differential for Detective Locascio shall be increased to eight per cent.

d) Effective January 1, 2002, the differential for Detective Locascio shall be increased to nine per cent.

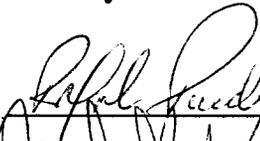
CONCUR  DISSENT _____
CONCUR  DISSENT _____

3. **COLLEGE TUITION**

Effective July 1, 2001 the following tuition grade policy shall be placed into effect: 100% for the grade of A, 75% for the grade of B, and 50% for the grade of C.

There will be a \$10,000 annual cap on the reimbursement by the Town.

Any unused tuition reimbursement under the \$10,000 annual cap shall be carried over and added to the tuition reimbursement line item for the following years, even if said line item would thereby be in excess of \$10,000 solely as a result of such carryover.

CONCUR  DISSENT _____
CONCUR  DISSENT _____

4. **WELFARE PLAN CONTRIBUTIONS BY THE TOWN**

Effective January 1, 1999 the welfare plan contribution pursuant to Article XX, A of the Contract shall be \$70.00 per month and \$43.00 per month, in place and instead of \$60 per month and \$33 per month. Article XX D is deleted.

CONCUR *Paul Hardy* DISSENT _____
CONCUR *Chris J. [Signature]* DISSENT _____

5. **VACATION PARITY**

Effective January 1, 2001, Town shall implement the pre July 1, 1995 vacation schedule for all police officers.

CONCUR *Paul Hardy* DISSENT _____
CONCUR *Chris J. [Signature]* DISSENT _____

6. **HEALTH INSURANCE CONTRIBUTIONS FOR ALL EMPLOYEES**

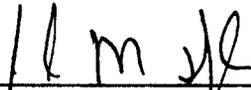
The present employer health insurance funding formula shall continue.

CONCUR *Paul Hardy* DISSENT _____
CONCUR *Chris J. [Signature]* DISSENT _____

THOSE ISSUES PRESENTED BY THE PARTIES THAT ARE NOT SPECIFICALLY ADDRESSED IN THIS AWARD WERE ALSO CAREFULLY CONSIDERED BY THE PUBLIC ARBITRATION PANEL, BUT REJECTED IN THEIR ENTIRETY.

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



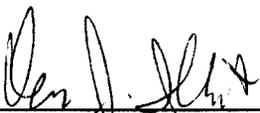
Joel M. Douglas, Ph.D.
Public Panel Member and Chairman
Dated: 12/18/00

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Ralph M. Purdy
Employee Panel Member
Dated: 12-11-00

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Dennis J. Illuminate
Employer Panel Member
Dated: 12/13/00