



The parties are signatories to a Collective Bargaining Agreement which expired on May 31, 2002. Negotiations and Mediation failed to produce a successor labor contract. As a result the procedures set forth in Section 209.4 of the Civil Service Law ("Taylor Law") were invoked. Consequently, the undersigned Panel was constituted in accordance with the rules and regulations of the Public Employment Relations Board ("PERB"). Hearings were held before the Panel on May 17, 2004; June 8, 2004; and July 12, 2004. In addition, the Panel met in executive session on July 20, 2004.

During the course of these proceedings, the parties agreed that, to expedite our findings, the Panel would issue an Award only to be followed by an Opinion. We issued that Award on September 21, 2004. This Opinion and re-issued Award follows.

#### **POSITIONS OF THE PARTIES<sup>1</sup>**

##### **PBA**

The PBA contends generally that substantial improvements in wages and benefits are due Police Officers in Bronxville. This is so, it stresses, because

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<sup>1</sup>To expedite this Opinion, I have summarized the parties' positions.

over the years many benefits have been eroded as a result of a prior Arbitration Award rendered for the period 1994-96. PBA Exhibit 3. It is against this background that its proposals must be viewed, the PBA maintains.

Specifically, the PBA asserts, a two year Award, the maximum permitted under the Taylor Law absent agreement of the parties, is warranted. In that period the PBA seeks an across-the-board increase of ten per cent. Article IV(I).

The Village can well afford this wage improvement, the PBA contends. In this context it cites the testimony and report of Kevin Decker. PBA Exhibit 18. He asserts that the Police Department has spent less money than budgeted in the last two fiscal years. Also, Decker recalls, the Village has received more in revenue than it budgeted for the same period. In addition, Decker notes, a one per cent increase in Police salaries costs the Village \$21,000, which is far less than the realized savings noted above. Therefore, the PBA argues, the wages it seeks will have little impact upon the Village's fiscal condition.

The PBA acknowledges that Police Officers here are reasonably well compensated. However, it alleges, raises of five per cent a year are well within the range

of increases elsewhere. In this context, it notes that Port Chester Police Officers received an increase of 5.2% for fiscal year 2002<sup>2</sup> and the raises in the Village of Rye Brook and Scarsdale matched or exceeded 4.0 per cent for 2003. Thus, the PBA asserts, five per cent increases per year are reasonable and justified.

The PBA strongly urges that the Village be required to pay 100 per cent of medical insurance premiums for Officers and spouses upon the Officers' retirement. It alleges that the current percentages (65 per cent for individual coverage and 50 per cent for family coverage) are unrealistically low when compared to other communities. It also cites jurisdictions where improvements have been made on this issue (e.g., Yorktown). Thus, it insists, compelling reasons exist for the Panel to award this proposal.

As to longevity, the PBA notes that all Police Officers hired after June 1, 1984 receive flat dollar amounts instead of percentages of their base salaries. In its view, these Officers, who comprise the great majority of the work force, should receive the same percentages as those hired prior to this date. Also, the PBA maintains, the percentages should be increased for

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<sup>2</sup>This was a "split" raise, i.e., 2.6% every six months.

all members of the bargaining unit.

Concerning overtime, the PBA asserts that the ban be lifted which prohibits Officers from working overtime which results in being on duty for two consecutive shifts. It argues that Officers can best determine their ability to function successfully under these circumstances. In addition, it asks that Officers be paid at double time if mandated to work overtime.

In addition, the PBA notes that currently Officers with fifteen years' service may accumulate a maximum of 80 hours of compensatory time. It asks that this limit be raised to 88 hours and that the fifteen years' service requirement be deleted.

Finally, on the issue of overtime, the PBA asks that Police Officers be allowed to take the first four days of compensatory time off without any limitation.

Concerning funeral expenses, the PBA notes that the Agreement provides for the payment of \$6,500 for the funeral of an Officer who dies in the actual performance of duty. This figure is unreasonably low and should be increased to \$10,000, the PBA submits.

Finally, the PBA asks that the uniform allowance for Officers be increased to the amount provided for Detectives. It suggests this proposal is fair, and

should be granted.

In sum, the PBA contends that its proposals are reasonable and supported by the record adduced at the hearings. Accordingly, it asks that they be awarded as presented.

The Village acknowledges it has the ability to pay reasonable increases. However, it submits, it cannot pay anywhere near the increases the PBA seeks. It suggests that wages here are already quite high, the fourth highest in Westchester County. Village Exhibit 35. Also, the Village maintains, benefit levels in this jurisdiction exceed those elsewhere.

In addition, the Village asserts, its fiscal condition is not as favorable as the PBA would have the Panel believe. It notes that health insurance premiums are rising substantially. Also, it points out, payments to the Retirement System have increased dramatically as well.

Given these factors, the Village contends that increases for PBA unit members should be less than the going rate elsewhere. Hence, it suggests, increases of less than 3.5 per cent per year are justified under these circumstances.

Concerning compensatory time and overtime, the

Village insists that substantial changes are needed to reduce overtime costs and increase efficiency within the Department. To that end, it makes the following proposals:

Article VI, Section 1(c)  
Accrued Compensatory Time - implement a procedure so that members of the unit who have in excess of 80 hours of comp. time utilize such comp. time by using 20% of their accumulation above 80 hours over the next five (5) years.

Article VI, Section 3  
Two Days Carte Blanche Compensatory Time - delete.

Article VI, Section 4, add as one of the days on which no compensatory time may be used.

Subsection (f) from page 12, i.e., holidays

Make the current Subsection (f) (g).

Add (h) "Compensatory time may not be taken at either end of a vacation."

Article IX, Section 3 - clarify that personal leave is not to be taken in conjunction with compensatory time to extend a vacation.

Concerning Tours of Duty, the Village maintains that Officers in Bronxville work a shorter schedule than found in most other Westchester County jurisdictions. Therefore, it asks that their annual work schedule be increased by two (2) training days and two (2) plug-in days per year.

As to Health Insurance, the Village asks that the

percentage contribution now required for those Officers hired after June 1, 1979 be applied to all members of the bargaining unit. Moreover, it urges, the dollar cap (\$162 for individual coverage and \$421 for family coverage) is unrealistically low and should be lifted. Also on health insurance, the Village asks that Article XIII, Section 4 be modified to read, "Benefits shall be substantially equal to the benefits of the Empire Plan."

Concerning sick leave, the Village contends that there is substantial evidence to conclude that sick leave abuse is a significant problem among members of the bargaining unit. Consequently, it makes a number of proposals designed to reduce sick leave utilization. It also seeks the inclusion of an Attendance Control Program which, it claims, is fair to Police officers. These proposals are:

- scheduling elective surgery by mutual agreement;
- requiring Officers who leave work early due to illness to see a physician designated by the Village before their departure;
- incorporating the following program into the Agreement:

**ATTENDANCE CONTROL PROGRAM**

Members of the unit who are identified by the Chief or his designee ("Chief") as having a record of unusual use of sick leave or have

used six (6) sick days in that calendar year ("sick leave use"), shall meet with the Chief about their sick leave use. At that counseling session, the member of the unit would be advised that he fell into a category of having a record of sick leave use that generated the need for a meeting. The member of the unit will then be given the opportunity to advise the Chief of any special circumstances that would explain the sick leave use. If there were no reason acceptable to the Chief to explain the number of absences or the unusual nature, the unit member will be advised that their sick leave use will be further monitored by the Chief.

If over a period not to exceed four (4) months such monitored unit members' attendance does not improve to a level acceptable to the Chief, they will thereafter be required to visit their own physician or the Department's physician during the time covered by sick leave and provide a note from the physician upon return from any sick leave absence indicating the date and time of the visit and the reason such unit members were unable to perform the functions of their job on that shift.

Over the period of time mentioned in paragraph 2, the unit members' attendance will again be monitored for a period of time not to exceed four (4) months. If the monitored unit members' attendance does not improve to a level acceptable to the Chief, the monitored unit members may be required to visit the Department physician during such alleged illness and provide a note from the Department physician upon return from the sick leave absence with the same data required as the note from their own physician.

If either their own physician or the Department physician is unavailable during the shift the sick leave is used, members will visit the emergency room of the hospital nearest to their home and provide a note from the physician who examined them indicating the

information outlined above.

The Village shall reimburse members of the unit for any costs incurred by visits to the Village's physician and/or an emergency room that are not covered by insurance.

The Department's Rules and Regulations with regard to sick leave use shall remain in effect, provided however, that if any conflict exists between these provisions and the Department's Rules and Regulations, the provisions of this Agreement shall control.

Exhibit A

Finally, the Village notes that there exists a letter of agreement between the parties regarding how overtime is to be assigned among rank and file and Superior Officers. It asks that the letter include Lieutenants, as well.

In sum, the Village asserts its proposals properly balance the needs of Police Officers with its interests and obligations. Accordingly, it asks that they be awarded as indicated above.

#### **DISCUSSION AND FINDINGS**

Several introductory comments are appropriate. As the parties are aware, I derive my authority from Section 209.4 of the Civil Service Law of the State of New York ("Taylor Law"). That provision sets forth the criteria I must apply in rendering a just and proper determination. Those criteria are:

- 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 interest and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of the 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 the 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(V) of the CSL

Accordingly, and based solely on these criteria and the evidence adduced at the hearings, the Panel makes the following findings.

**1. Term of the Award**

The Taylor Act prohibits an Award exceeding two years, absent the agreement of the parties. Unfortunately, they were unable to agree upon a longer term Award. Thus, even though my Award returns the

parties to the bargaining table immediately, I am constrained to limit it to the period June 1, 2002 through May 31, 2004.

2. **Wages**

Obviously, wages are the most significant economic factor in my findings. They represent the largest cost item to the Employer. They are the basic term and condition of employment for bargaining unit members.

There is no doubt the Village has the ability to pay reasonable wage increases. As the testimony and supporting documentation submitted by the PBA Financial Consultant Kevin Decker makes clear, tax rates in the Village are relatively low. Bronxville ranks 20<sup>th</sup> out of 22 villages in Westchester County (PBA Exhibit 18, Appendix 7). Clearly, then, Bronxville does not overly burden its citizens, as compared to other communities.

Also, the Village appears to be fiscally sound and its budgets reflect prudent financial management. The Village ended the 2003 fiscal year with a total fund balance equal to almost thirty per cent of its annual budget and, as Decker observed, the State Comptroller's Office recommends balances in the five to ten per cent range.

The Village noted that pension and health insurance

premium costs are rising substantially. This is so. However, these costs are increasing by the same amount for all municipalities. As such their impact here is not a basis to grant increases below those received elsewhere.

It is also true, as the Village pointed out, that it appropriated over a half million dollars of its fund balance to balance the 2004 budget. While it is not clear whether the entire amount will have to be utilized to balance the budget, the record reveals that as a result of conservative projections, revenue estimates have generally fallen short of actual revenues and expenditure estimates have exceeded actual expenditures in at least six of the last eight years. As such, I conclude, the Village's appropriation to balance the 2004 budget does not prevent it from granting reasonable wage increases.

What constitutes reasonable wage increases? The record reveals the following data for Police Officer raises in other Westchester County communities. Taylor Law criteria, (a) above.

	2002	2003
Average increase	3.74 per cent	3.78 per cent

PBA Exhibit 7b

The Village suggested that Bronxville's wages should be increased by an amount less than the averages elsewhere because Bronxville already is the fourth highest paying community in Westchester County. However, a review of the six highest paying areas does not alter the averages cited above.

**Top Six Wage Payers in Westchester County  
(Ranked as of 06/01)**

Rank	Municipality	6/02	6/03
1	Hastings	\$72,186 (4.0%)	\$75,073 (4.0%)
2	Buchanan	\$71,597 (3.5%)	Expired
3	Pelham Manor	\$71,322 (3.75%)	\$73,997 (3.75%)
4	Bronxville	Pending Interest Arbitration	Pending Interest Arbitration
5	Mamaroneck Village	\$70,412 (3.75%)	Expired
6	Briarcliff Manor	\$70,112 (3.5%)	\$72,654 (3.625%)

The average wage increase for the six highest paying municipalities is 3.70 per cent for 2002 and 3.79 per cent for 2003. Thus, I find, there is no basis to conclude that Police Officers should receive less than a 3.75 per cent increase for these years. Nor is there any basis for their wage improvements to exceed this figure. Police Officers are already well compensated and I find no reason for their relative standing to be improved.

Also, the Village suggested that the Bronxville work schedule and time off compares favorably with other police jurisdictions. This may well be so, though leave accruals for post-1996 hires are less favorable than for pre-1996 hires. See for example Village Exhibits 23, 36, 38 and 39. However, I do not find these comparisons so skewed as to justify granting a lower wage package than the going rate.

Finally, on the issue of wages, I note the Village's reliance on increases granted Village employees represented by the International Brotherhood of Teamsters. However, those improvements, 3.5 per cent for 2002 and 2003, are not entitled to greater weight than the 3.75 per cent pattern for Police Officers in other Westchester County communities, as noted above. Thus, while increases negotiated for non-sworn personnel in the Village warrant some consideration, they do not justify reducing the 3.75 per cent wage improvement, as established elsewhere. Accordingly, I award 3.75 per cent wage increase for 2002 and 2003.

### **3. Health Insurance**

Currently, the Village pays, upon retirement, 65 per cent of the individual employee's cost and 50 per cent of the employee's family cost for Officers hired after June

1, 1979, the great majority of the police force. The PBA contended this figure was unreasonably low, citing other communities with higher payments. PBA Exhibit 13. On the other hand, the Village suggested that the cap of \$162 per year for individuals and \$421 for families until Officers hired on or after June 1, 1979 reach the rank of Police Officer - fifth year is also unreasonably low.

Normally, these two imbalances should be redressed in a proceeding such as this. However, I am convinced, the matter should be addressed by the parties and not in this Interest Arbitration proceeding. My Award covers the period June 1, 2002 through May 31, 2004. The parties should be permitted to resolve this issue in bargaining particularly since any significant change in the figures cited above will likely have an impact upon Officers' decisions to retire from the force. Thus, both the PBA and Village's proposals concerning health insurance are rejected at this time.

This ruling should not be misinterpreted. Adjustments by a third party in the rates of contribution noted above might well be warranted, given the data submitted by the parties. Nonetheless, and for the foregoing reasons, I reject all proposals concerning health insurance.

### 3. **Accrued Compensatory Time**

Both the Village and the PBA's proposals make sense. A number of Officers have accrued compensatory time above 80 hours, the record reveals. Village Exhibit 4. They should not simply lose that time through no fault of their own.

On the other hand, the Village has a right to expect Police Officers will make efforts to take their accrued compensatory time so that the accruals do not expand unreasonably. Consequently, I shall require that the 80 hours of compensatory time be increased to 88, and that those who have accumulated more than 88 hours be required to use twenty per cent of that excess accumulation over the next five years.

The parties made proposals concerning what are commonly called "carte blanche" days, a form of compensatory time. Essentially, Officers with more than fifteen years' service may take two compensatory days off with little or no restrictions.

The PBA proposed that this benefit be expanded and the Village asked that it be eliminated.

I find the Village's argument to have merit. Virtually unrestricted compensatory days hampers the Village's ability to efficiently manage its police force,

I am convinced. Thus, while I shall not eliminate this benefit, a reduction from two to one "carte blanche" day is justified, and the Village's proposal is granted to this extent.

Finally, on the issue of compensatory time, I do not find sufficient evidence in the record to justify granting the PBA's proposal to eliminate the fifteen year service requirement to accumulate compensatory time.

#### 5. **Overtime**

The PBA asked that forced overtime be paid at twice regular wages. It also asked that its members be permitted to work two successive shifts.

As to the former proposal, I find that double pay for forced overtime is excessive. Concerning working double shifts, an Opinion and Award issued by Arbitrator Robert Simmelkjaer adequately sets forth the rationale why consecutive shifts should not be permitted. Village Exhibit 47. I find no evidence since that Award was issued which would justify a contrary result. Thus, the PBA's proposals concerning overtime must be rejected.

#### 6. **Funeral Expenses**

The PBA has demonstrated that the stipend for funeral expenses for Officers who die in the line of duty (\$6,500) is unreasonably low. PBA Exhibit 11. Thus, I

shall order that the current payment be increased to \$8,800.

**7. Longevity**

The PBA asked that the current longevity stipends be increased and expressed as a percentage of base wages. While longevity payments are not the highest of cited municipalities they are certainly at or above the average for relevant jurisdictions. Consequently, I find no basis to improve this benefit.

**8. Uniform Maintenance Allowance**

The PBA asked that the uniform maintenance allowance be increased to equal the detective clothing allowance. The relevant data does not support such an increase, especially in light of the relatively high wages granted Police Officers. Consequently, the PBA's proposal must be rejected, I find.

**9. Use of Leave Time**

The Village made a number of proposals to restrict the use of personal leave or compensatory time. I have reviewed these proposals carefully. Based upon that review, I find that one proposal should be granted. It is fair to require that personal leave not be taken in conjunction with compensatory time to extend a vacation. In all other respects, however, the Village's proposals

on this issue are rejected.

**10. Tours of Duty**

The Village asked that each member of the bargaining unit be responsible to work two training days and two plug in days as part of their regular annual work schedule. While Village Exhibit 12 suggests that Bronxville's Police Officers work fewer days than in many other Westchester County jurisdictions, some communities work fewer days than here. Also, comparisons such as these are not completely reliable for length of tours, giveback days and other variables must be taken into account. On the whole then, I do not find such a disparity between the number of days worked here and elsewhere as to justify granting the Village's proposal, either in whole or in part. Consequently, it is rejected.

**12. Sick Leave**

The Village submitted a number of proposals concerning sick leave. They need not be recited here. Suffice it to say, the record does not justify granting the proposals the Village seeks. Also, major changes, such as an attendance control policy, are best left to the parties to negotiate.

However, one proposal of the Village's should be

granted, I find. Elective surgery is, by definition, surgery which need not be performed immediately. Consequently, it is fair that this type of surgery be scheduled upon the agreement of the Officer and the Chief. Accordingly, this proposal of the Village's is granted.

**13. Letter of Agreement re: Overtime**

It is reasonable to require that Lieutenants, like Sergeants, be included in the parties' letter agreement regarding overtime. Thus, this proposal is granted.

**14. Other Proposals**

All other proposals of the parties, whether or not specifically addressed herein, are rejected.

**AWARD**

**1. Term of Award**

The term of this Award shall be June 1, 2002 through May 31, 2004.

**2. Wages**

Wages shall be increased as follows:

Effective June 1, 2002 - 3.75 per cent

Effective June 1, 2003 - 3.75 per cent

**3. Funeral Expense**

Article X(2) shall be modified to provide for a funeral expense not to exceed \$8,800.

**4. Accrued Compensatory Time**

(a) Article VI, Section 1(c) shall be modified to provide that members of the bargaining unit who have accumulated in excess of 88 hours of compensatory time shall utilize twenty per cent (20%) of their accumulation above 88 hours per year over the next five (5) years. In addition, references in the Collective Bargaining Agreement to "80 hours of compensatory time" shall be changed to "88 hours."

(b) Article VI, Section 3 shall be modified by substituting the number one (1) for the number

two (2) as contained therein.

**5. Personal Leave**

Article IX, Section 3 shall be amended to provide that personal leave may not be taken in conjunction with compensatory time to extend a vacation.

**6. Sick Leave**

A new provision entitled "Elective Surgery" shall be added as follows:

Elective surgery, which shall be defined as "surgery which need not be scheduled as soon as possible," shall be scheduled by mutual agreement of the Chief and the Officer involved.

**7. Overtime**

The Letter of Agreement between the parties (Village Exhibit 21) shall be modified by adding "Lieutenants" as the last option before assignments are made. As modified the Letter of Agreement shall be incorporated into the Collective Bargaining Agreement.

**8. All other proposals of the parties are rejected.**

DATED: September 22, 2004 Howard C. Edelman  
HOWARD C. EDELMAN, ESQ., ARBITRATOR

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

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

DATED: September 22, 2004 Howard C. Edelman  
HOWARD C. EDELMAN, ESQ., ARBITRATOR



