
IN THE MATTER OF THE COMPULSORY
INTEREST ARBITRATION

between

VILLAGE OF HEMPSTEAD

and

THE POLICE BENEVOLENT ASSOCIATION
of HEMPSTEAD, N.Y., INC.

N. Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
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CONCILIATION

N.Y. Public Employment
Relations Board Case No. 1A 27:M77-495

Arbitration Panel:
Arthur T. Jacobs, Chairman
Frank DeSetto, Village Clerk
Lt. Harry Villardi, PBA

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Appearances:

For the Village

Thomas Lamberti, Esq., of Cullen and Dykman
William F. Sammon, Jr., Deputy Clerk-Treasurer
Donald M. Hollman, Controller
Thomas X. Scott, Chief, Police Department
William H. Blackmore, Real Estate Broker

For the PBA

John Coffey, Esq., of Gehrig, Ritter,
Coffey, McHale & McBride
Horace Kramer, Esq.
Philip Kuski, President
George Patri, Recording Secretary
James Kiernan, Treasurer
Peter Leonetti, PBA
Peter Rutledge, C.P.A.

Award

Of the demands made by the PBA:

1. The increase of 9¼ per cent in base salaries is denied. Instead the first four steps in the salary scale of police officers shall be increased by \$1,000 and all other steps by \$1,200 effective June 1, 1977; and all steps for all officers shall be increased \$1,000 as of June 1, 1978.
2. The additional \$300 sought in night differential pay is denied.
3. The additional day's termination pay for the first five years of service is denied.
4. The request for the establishment of a Labor-Management Committee within the Police Department is granted. It shall be composed of three representatives of the Village and the President of and two other members elected by the PBA.

The function of this Committee shall be to facilitate communications between the parties to promote a climate conducive to constructive employee relations, to recommend resolution of employee relations problems which may arise in the administration of this Collective Bargaining Agreement between the Village and the PBA, and to discuss other conditions of employment. The results, if any, of these recommendations and discussions are not binding upon the Village.

The Committee will meet at mutually acceptable times and places, with either party having the right to request a meeting. Requests for meetings should be made at least a week in advance with the requesting party submitting an agenda of topics for discussion.

Nothing contained in this award is intended to restrict in any way the normal informal discussion and resolutions of problems by the Hempstead Police Department and PBA representatives.

5. The request for pay for performance of duty in a higher rank after five work days is denied. Such work is prohibited by State law (L.1958, (790)).

Of the demands made by the Village:

1. The request for a two year contract is granted. This award covers the period June 1, 1977 to May 31, 1979.
2. The request that all police officers work a 255 day annual work schedule is denied. However, all police officers hired after May 31, 1977 shall work a 249 day annual work schedule effective one week after the date of this award.
3. The request that police officers' work charts shall not be prescribed by contract is denied.
4. The request that the \$300 equipment allowance be eliminated is denied.
5. The request that the additional half day sick leave provided indefinitely after exhaustion of an officer's cumulative annual 26 day sick leave be eliminated is granted in part. Effective June 1, 1977 the additional one-half day entitlement shall be limited to a one-year period.
6. The request that police officers must make an irrevocable application for retirement by January 20th of the fiscal year prior to the anticipated retirement date is denied.
7. The request that termination pay and accumulated sick leave pay shall only be paid on retirement is granted in part. Such pay shall not be given, effective June 1, 1977, to officers discharged for cause or who resign rather than face charges.
8. The request that police officers no longer be the only persons who may function as Election Day poll attendants is granted.

The above determinations shall be incorporated into the Collective Bargaining Agreement between the parties.

Dated: January 9, 1979
County of Bergen
State of New Jersey

Arthur T. Jacobs
Arthur T. Jacobs,
Chairman

On this 9 day of January 1979
before me personally came and
appeared Arthur T. Jacobs to me
known and known to me to be the
individual described in and who
executed the foregoing instrument
and he acknowledged to me that he
executed the same.

Charles Royal, Notary
ESTABLISHED
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 1, 1980

Dated:
County of Nassau
State of New York

Frank DeSetto
Frank DeSetto,
Village Member

On this 30 day of January 1979
before me personally came and
appeared Frank DeSetto to me
known and known to me to be the
individual described in and who
executed the foregoing instrument
and he acknowledged to me that he
executed the same.

NAHEDA KNOWLES
NOTARY PUBLIC, State of New York
No. 30-4502786
Qualified in Nassau County
Commission Expires March 30, 1979
Naheda Knowles

Dated:
County of Nassau
State of New York

Harry Villardi
Harry Villardi,
PBA Member

On this 30 day of January 1979
before me personally came and
appeared Harry Villardi to me
known and known to me to be the
individual described in and who
executed the foregoing instrument
and he acknowledged to me that he
executed the same.

Dissented to as per
attached opinion

NAHEDA KNOWLES
NOTARY PUBLIC, State of New York
No. 30-4502786
Qualified in Nassau County
Commission Expires March 30, 1979
Naheda Knowles

Findings and Discussion

This dispute was assigned to the arbitration panel on January 31, 1978.* The ensuing proceedings have been exhaustive and arduous: 15 hearings of varying lengths adding up to a total of 125 hours, 3,230 pages of transcript, and 520 exhibits; very able, detailed, and lengthy briefs; and about 10 hours of panel deliberation. A majority of the panel agreed on the awards granted above and on the findings discussed below. In some instances, such as the two year contract period, the panel was unanimous. In every instance the chairman was part of the majority.

The Village, with some 39,000 population, located in the center of Nassau County, of which it has long been known as "the Hub," employs 80 police officers of various ranks and approximately 220 other employees. The last two year Agreement between the Village and the PBA expired on May 31, 1977. An impasse in negotiations for a new contract was declared on August 3, 1977. Mediation proved unsuccessful and, therefore, as provided by law compulsory arbitration proceedings were instituted by the State Public Employment Relations Board. The parties chose Arthur T. Jacobs to be the neutral chairman of the panel. Mr. Frank DeSetto, the Village Clerk, was selected by the Village as its representative on the panel, and Lt. Harry Villardi was so selected by the PBA.

Section 209, 4 (V) of Article 14 (the Taylor Law) of the Civil Service Law requires arbitrators of police and fire disputes to specify the basis for their findings, having given consideration to factors listed in (V) a, b, c and d. Our findings are briefly summarized below; they are amply supported by the transcript of the hearings.

(V)a. Comparisons of the wages, hours, and conditions of employment of the Village's police with other pertinent employees show:

- 1) Taking, as the parties did, a 5 year police officer as the standard of comparison, the Village's salary rate as of fiscal year 1976-77 was \$18,178 for 232 days work a year.
- 2) The Nassau County police officers, to whom the Village's police historically linked their wages and hours and, to some extent, other working conditions until 1976, received an

arbitration award raising maximum salaries by \$5,224 or 27.2 per cent over the 1976-78 period. The County's Superior Officers received an arbitration award, paralleling the award to the County's regular officers, of \$5,400 over the two year period commencing January 1, 1977. The first award raised the 5-year veteran's salary to

\$18,974 as of January 1, 1977
\$19,674 as of July 1, 1977
\$20,374 as of January 1, 1978
\$21,000 as of July 1, 1978

- 3) Five municipalities in the County pay their police the same rate as Nassau County: Freeport, Glen Cove, Great Neck Estates, Old Westbury, Kings Point; the first three like the County work their police only 232 days a year, but for Old Westbury the total is 244 days and for Kings Point 237 days. The remaining 17 jurisdictions paid 5-year veterans salaries of lesser amounts.
- 4) Hempstead is bordered on its north by the Village of Garden City. Its 5-year veteran received \$18,500 for the 1977-78 fiscal year and \$20,100 for the 1978-79 fiscal year and works 245 days a year. On the south is the Village of Rockville Centre. Its 5-year veteran received \$18,869 for 249 days work as of January 1, 1977; no later data became available during the hearings. Unincorporated areas, covered by Nassau County police, border Hempstead on its east and west.

As a base salary alone, therefore, the Garden City officer received \$75.51 a day in 1977-78 and \$82.04 a day in 1978-79 and a Rockville Centre officer \$75.78 as of January 1, 1977, compared with a Hempstead officer's rate of \$78.35 a day as of 1976-77.

- 5) The Suffolk County police get the \$21,000 rate for a 232 day year for all police except those hired beginning December 5, 1977, the latter being required to work 242 days during their first four years of service. There was no evidence presented at the hearings that any of the County's 13 other police forces received the County rate.
- 6) In New York City, the base salaries in 1978 were lower than paid by Nassau and Suffolk counties. For New York City police the total was \$18,649 on July 1, 1978 and \$19,347 on October 1, 1978 (including a \$750 cost of living allowance). Their work

year is 249 days and their daily rate as of October 1, 1978, therefore, \$77.70.

- 7) Without going into detail, comparable communities in Westchester County also pay their officers considerably less than the Nassau County rate.
- 8) The other Village of Hempstead employees are covered by a two year contract ending May 31, 1979, which gave them \$550 at the beginning of each fiscal year and eliminated the graded salary plan for new hires after June 1, 1977. This salary increase averaged about 4½ per cent in fiscal year 1977-78. Their work year includes 26 more days than does the police officer's schedule.
- 9) Workers with comparable or greater responsibility in the Village's service get substantially less pay than do the police. Unrefuted data at the hearings, for example, showed that a 10-year police officer received total compensation, including all fringe benefits, nearly \$4000 more than the supervisor of water plant operations, a police sergeant over \$11,000 more than the Superintendent of Alarms, and nearly \$12,000 more than the Deputy Superintendent of Public Works, a police Lieutenant over \$11,000 more than the Superintendent of Public Works and nearly \$9,000 more than the Superintendent of the Building Department. While it is difficult to prove that all the comparisons made are between comparable job descriptions, there is no gainsaying that the non-police jobs cited carry heavy responsibilities which many personnel experts could evaluate as equal to or greater than police officers making a higher salary for fewer work days.
- 10) Although the comparisons provided the panel with the wages paid somewhat comparable jobs in private industry were scanty, the evidence did show that the Village's police receive higher salaries.

It is the PBA's contention that the salaries its members receive should be tied to those paid the County police, because historically the Village paid \$125 a year above the County rate. This historical relationship carries weight, but it alone does not justify under the Taylor Law an identical salary scale for Hempstead's police force, especially in the light of the lower salaries paid by most jurisdictions to an estimated 29,000 out of the region's (narrowly defined as Nassau, Suffolk and Westchester Counties and New York City) 35,400 police officers and even more relevantly by the municipalities with police forces in Nassau and Suffolk counties.

The Village demands that the police officers be scheduled to work, before vacation and personal allowance, 255 days instead of their present 232 day chart. Prior to the last two-year agreement the police worked a 249 day schedule; the 255 day schedule was in effect until 1970.

Our findings on comparative scheduling are to some extent given above and include:

- 1) Three of the five jurisdictions which pay the County police scale also have adopted the County's 232 day work schedule. A fourth requires 237 days and the fifth 244 days.
- 2) A few jurisdictions in Suffolk and Westchester Counties use the 255 day schedule.
- 3) In Nassau County the 232 day schedule is followed by at least five municipalities whose salary rate is below the County's. The next most prevalent schedule is 249 days followed by six communities. Hempstead's two neighboring villages, Garden City and Rockville Centre, have 245 and 249 day schedules, respectively, but the Garden City contract gives the police no personal days off whereas the Hempstead police get six such days off from the scheduled year.
- 4) The New York City police work a 249 day schedule.
- 5) Comparable schedules of other Village of Hempstead employees call for 261 working days.

The Village asserted, without contradiction from the PBA, that the 232 day schedule was adopted in 1975 out of fear that with the County offering 232 days the Village would have to follow suit if it wished to fill its vacancies. It points out that labor market conditions today have reversed and that police applicants are available and willing to work longer schedules.

To the arbitration panel majority it seems that the 249 day work schedule is not inappropriate for new hires; they have known, anyway, that this schedule was a prime Village demand before they were hired and has been ever since.

The working conditions of police officers in the Village are undoubtedly the worst or among the worst on Long Island and perhaps can be better compared to those of police in New York City.

Their workload is probably by far the heaviest of any police force in the State. On this basis alone, if there were no other considerations, the Village's police force deserve as high a remuneration as the County police.

Comparisons between the Village's police and police and/or other employees in comparable communities on the other items in dispute in this arbitration reveal no patterns of consequence. Moreover, the panel members do agree unanimously on one point: that the provisions of the 1975-77 Agreement should not be changed without strong justification. Basically, a majority of the panel find no such justification in the record except that a ceiling does need to be put upon sick leave to protect the taxpayers against an unlimited and uncalculable liability and that retirement pay should be truly limited to the purpose for which it was established.

(V)b. Most of the lengthy hearings in this case were devoted to examination of "the interests and welfare of the public and the financial ability of the employer to pay." The necessity of an excellent police department to the welfare of the Village is indisputable. That the Hempstead police constitutes a force in which the Village takes great pride is also undisputed. Disagreement centered exclusively on the financial ability of the Village to meet the PBA's money demands.

Our basic findings on this problem are:

- 1) Since 1969-70 the Village has been declining economically.
- 2) This decline is likely to continue for at least another two years; expert witnesses for both parties so agreed.
- 3) The assessed valuation of Village property is decreasing and is likely to continue decreasing for the next few years.
- 4) The Village is already levying 95 per cent of the taxes it is allowed to collect. The tax margin available for fiscal year 1978-79 totals only \$553,000 out of around a \$11,400,000 legal 2% potential, and with declining evaluations is going to fall within the next few years to around \$500,000.
- 5) Tax certiorari proceedings seeking lower assessments of commercial property and delinquent tax collections have both increased substantially over the past two years.

- 6) Hempstead is among the County's poorest communities; it ranked 71st out of 78 in median income in the 1970 census and 66th out of 69 in per capita income from 1969 to 1974 -- the latest data available. And it has the highest number of residents on welfare in the County. Yet it is still wealthier than most New York State communities.
- 7) The Village's average effective tax rate in 1977-78 of 5.29 per cent per \$100 assessed valuation is at a dangerously high level and perhaps beginning to be confiscatory. The PBA did show that the effective rate is lower for residences and higher for commercial and industrial property. It concluded that tax increases would be largely absorbed by the 60 per cent of assessed valuation in the latter category, but it failed to prove that such properties could absorb them. The possibility, if not probability is that higher taxes could lead to more tax certioraris and more business shutdowns.
- 8) At a hearing on December 19, 1978 it was agreed by both parties that the Village would probably enter fiscal year 1979-80 with a surplus of approximately \$539,000 including federal revenue sharing funds, without counting the salary increases to be awarded by this panel. The current year began with a surplus of \$1,461,000, again including federal revenue sharing funds, carried over from 1977-78. Hence, assuming equivalent 1978-79 and 1979-80 budgets, the Village must make up a gap of \$924,000 in its 1979-80 budget either by raising taxes or cutting expenditures, even without allowance for wage and salary increases to its 300 employees and for the higher costs of the equipment, supplies, and other services it must buy.
- 9) The Village has approximately \$450,000 in a reserve for bonded debt, accumulated when redemption of bonds early in the 1977-78 fiscal year was postponed until much later. The PBA maintains this money could be made available to the Village's operating budget. Legally it can be, but the transfer is subject to a permissive referendum and undoubtedly sentiment for using it to reduce the indebtedness and not for current operations would emerge if the Village's Board sought to move it to the operating budget. Its availability, therefore, as a consideration in this arbitration is, therefore, speculative. Moreover, even if it were transferred, a budget gap of \$474,000 would still remain for 1979-80.

The majority of this panel concludes that currently and over the next year or more the Village's ability to absorb higher costs is extremely limited. The tax margin available does not seem anywhere near adequate for it to continue present services at the inevitably higher costs of this inflationary period.

10) Yet, despite this depressing picture, the long range prospects of the Village appear good.

(V)c. This subsection requires certain comparisons of job "peculiarities" with those in "other trades or professions."

Our findings:

- 1) The police are far more subject to hazards in their employment than other employees except possibly fire fighters. While their accident rate is less than certain other occupations, the danger from people and the constant stress under which they work are extraordinary.
- 2) Their physical qualifications must be superior to most employees in our society.
- 3) Their educational qualifications, however, are no greater than requirements in most of this country's jobs. High school graduation, the Hempstead requirement, is the minimum level of educational attainment in virtually all employment other than unskilled and semi-skilled labor these days. No proof was presented that post-secondary education is necessary for a police officer to be competent in his job.
- 4) No evidence was presented at the hearings to prove higher or lower mental qualifications for police officers than for employees in other trades or professions.
- 5) Likewise there was no evidence presented on training requirements.

(V)d. References have been made above to those aspects of the previous Agreements between the parties pertinent to the issues in dispute in this arbitration.

The panel concludes that the Hempstead police by the nature of their employment in comparison with the benefits received by other police in the area deserve as high a salary as any community on Long Island provides. However, its majority concludes that the Village cannot presently afford that high a level. The Village's present ability to pay is drastically limited by its close proximity to the 2 per cent tax margin and by the relatively depressed state currently of its economy.

Fortunately, there is available to the panel a justifiable arrangement which would increase the ability of the Village to raise the pay of its police force. That arrangement is the lengthening of the number of work days from 232 to the more reasonable and common standard of 249 for all new employees. Thereby, the Village can provide its present level of police coverage with fewer and fewer police, estimated over time to total a saving of five positions.

Our pay award takes this factor into consideration. For most of the Village's police force it constitutes a 12.1 per cent increase during the 1977-79 period. We know this sum both disappoints the high expectations of the police and yet creates serious fiscal problems for the Village vis-a-vis its other employees and its overall budget requirements relative to its tax margin. Nevertheless, it seems as fair a compromise figure as the unique circumstances of this dispute can generate and we pray that both parties accept it as such.

1979

CONCURRING OPINION

CONCURRENCE

I have reluctantly agreed to the award written by the neutral chairman of the arbitration panel, except I dissent from the denial of Village demands 3 and 4.

The Village's position was that the wage increase for police officers be no greater than that granted to CSEA employees of \$550.00 a year over the two year period. Such an increase would have brought the base salary of a 5 year patrolman to \$19,278. This increase would mean that a patrolman of five years would take home \$21,641 each year after adding his other pay items of night pay, holiday pay and equipment allowance. This take-home pay would be substantially greater than that received by New York City police officers during the same period.

The Village was willing to pay a higher wage increase provided it received more work days from its police officers. In part the award reflects this position. It was the Village's position that all its police officers work 255 days a year. This basically is the work year for all other Village employees as well as almost all police officer throughout the country. However, the Nassau County police and other police departments on Long Island have a work year of 232 days. The PBA's expert witness, Horace Kramer, conceded that present day

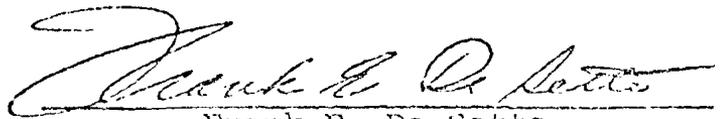
economics require that municipalities deliver their services more productively. The time off received by police officers for vacations and personal days and in their annual duty chart is in excess of eleven weeks a year. Hempstead's fiscal crisis requires that its municipal services be more efficiently provided. While agreeing to this award, the Village retains its goal of a longer work year for all police officers to be achieved in future negotiations.

It was the position of the Village that work charts should not be prescribed by the contract. The schedule of police officers is and should be a management right. Crime has no fixed chart and the Chief of Police should have discretion to schedule employees. This position is also a goal for future negotiations.

It was the position of the Village that the \$300 equipment allowance should be eliminated. This allowance is being used for cleaning clothes since the Village provides virtually all of the equipment a police officer needs. Again, this position is a goal for future negotiations.

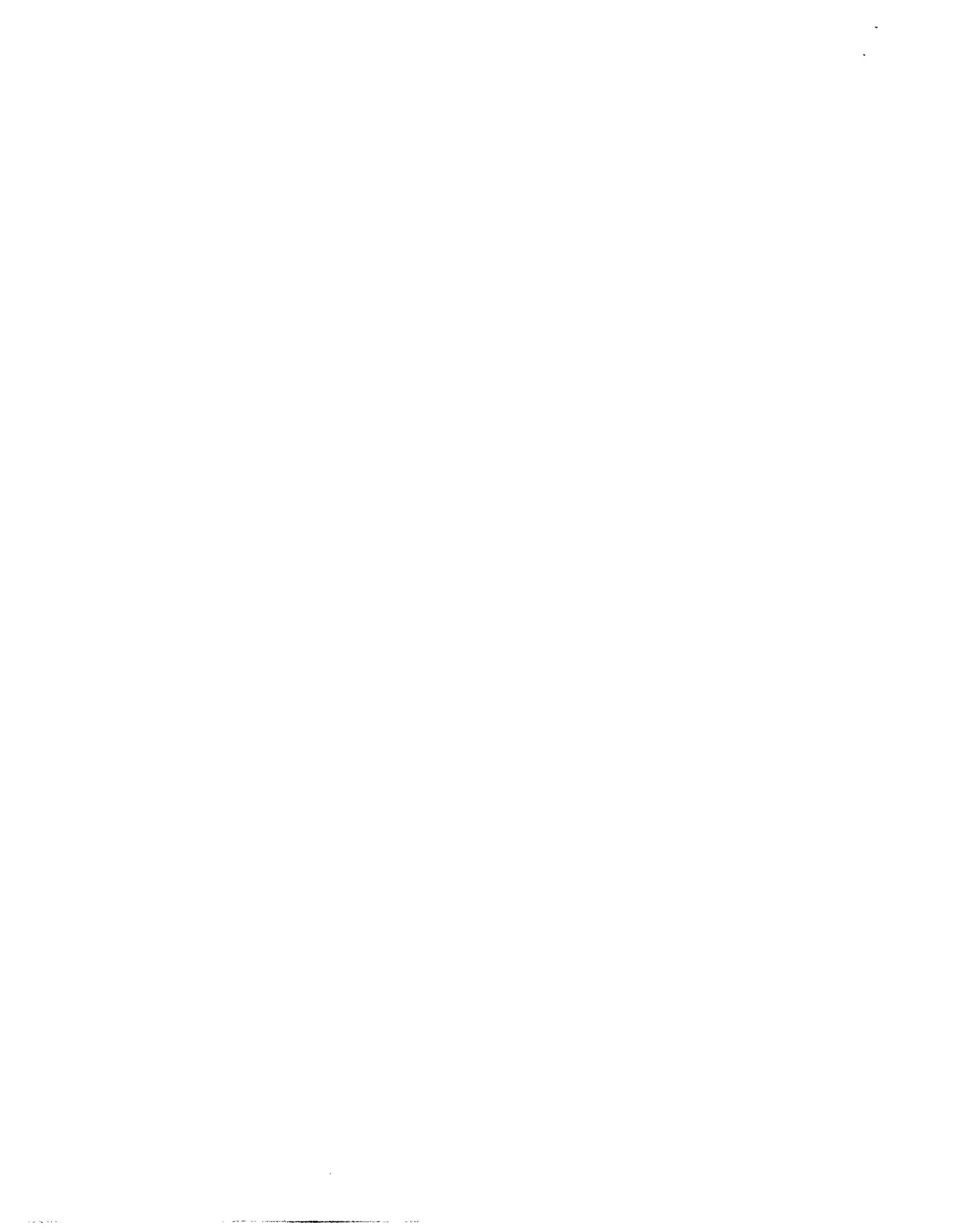
I cannot accept the conclusion of the Chairman that the Hempstead police by the nature of their employment deserve as high a salary as any community on Long Island provides.

As the findings and discussion of the panel point out, such a conclusion depends on a consideration of various criteria other than the nature of the employment alone.



Frank E. De Setto
Village Panel Member Concurring

Dated: January 22, 1979



Dissenting Opinion of Panel Member

HARRY VILLARDI

I vigorously dissent from the greatest portion of the award and opinion of the Panel majority in this case. For the purposes of this opinion, I will individually discuss each determination made.

PBA DEMANDS

1. I dissent from the denial of the demand for the 9 1/4% increase per year in base salary. The reason for the majority of the Panel's denial was the inability of the Village to pay although it was conceded that our members otherwise deserved the requested amounts. The following facts must be emphasized:

Dr. Jacobs makes ten (10) findings on "ability to pay" on pages eight (8) and nine (9) of his decision. In Points eight (8) and nine (9) Dr. Jacobs states that unencumbered surplus funds for the Village as it entered the 1979-1980 fiscal year would be \$539,000 including Federal Reserve Sharing. He contrasts this with \$1,461,000 for the beginning of the 1978-1979 year and hence a gap of \$924,000. (Point 8)

In Point 9 he concedes \$450,000 unencumbered funds in bonded reserve. Dr. Jacobs argues that use for certain operating expenses would be subject to a permissive referendum and this makes its use questionable. However, he argues that even if it were so used the gap of unencumbered surplus 1979-1980 compared to 1978-1979 would still be \$474,000.

RESPONSE: (Three Points)

I. The encumbered surplus excluding the unencumbered bonded reserve (Debt Service Money) would be more than \$539,000. On pages 3013 and 3014 of the record, Donald M. Hollman, the Village Controller, in direct testimony (for the village) stated that in the month of June, 1978 he paid the June 1978 payroll from surplus funds existing at the end of the Village fiscal year, May 31, 1978. The Village payroll approximately \$650,000 a month. In addition, Mr. Hollman volunteered that he paid \$150,000 in principle and \$30,000 (In Debt Service) in interest in June of 1978 from the May 31, 1978 surplus. On page 3056 of the record, Mr. Hollman confirmed figures in the July 11th were on line items 9710.7 and 9730.6 which would indicate a surplus in Debt Service Fund of \$548,532. This figure is \$130,000 more than the \$412,000 listed in Village Exhibit 158 and later conceded to be \$450,000 when interest is added.

Certainly with these concessions in a Village which has a historic record of large unencumbered budget surpluses at the end of each fiscal year (page 1841 and 1845 of the record) the pattern has been developed where it is likely a good portion of the June money spent by the Village from May 31, 1978 surplus will turn up as surplus on May 31, 1979. Dr. Jacobs chose to ignore this evidence.

Regarding the \$450,000 unencumbered debt service money, the threat of a permissive referendum is miniscule particularly when the use of this reserve would be used to reduce the ensuing year's taxes. However, as Mr. Hollman conceded in cross-examination on page 3066 of the record, the unencumbered bond funds could also be used to reduce the amount which normally would be requested in the 1979-1980 budget for debt service.

Finally, in estimating the unencumbered surplus which would exist as of May 31, 1979 Dr. Jacobs ignored the following facts resulting from the 1978-1979 budget.

1. The 1977-1978 budget appropriation (PBA Exhibit 82-G) was \$12,981,664 (rounded) and revenues include \$1,228,200 for revenues other than real estate. The tax levy was \$10,695,464 (rounded).

2. Village Exhibit 158 shows 1977-1978 expenditures to be \$12,516,227 including \$412,000 placed in the "Reserve Bond Fund". Net expenditures, therefore, were \$12,104,227. On the revenue side No 158 shows \$1,589,962 (rounded) was received as revenues other than real estate taxes. This figure is \$361,762 more than was budgeted as revenue in 1977-78.

3. For 1978-1979 (PBA Exhibit 82 i) the Village's appropriation was \$13,512,279, \$530,615 more than the 1977-1978 appropriation and \$1,408,052 more than what was actually expended in 1977-1978. On the revenue side, the real estate tax levy for 1978-1979 was \$10,856,982 or \$261,388 more than the 1977-1978 tax levy. Of more significance, the 1978-1979 Village budget only projects \$1,194,297 in revenues other than real estate whereas \$1,589,962 was actually recorded in this category for 1977-1978 as an underestimation of \$395,665.

4. Village Exhibit 159 projects as actual expenditures (exclusive of police award) for 1978-1979 an expenditure of \$13,062,279 which is \$450,000 less than actual expenditures. Village Exhibit #159 also projects as revenues other than real estate \$1,594,297 or \$400,000 more than the Village budgeted for 1978-1979. The Village's own projections would show \$850,000 in unencumbered surplus that would result from 1978-1979 exclusive of the \$539,000 surplus mentioned by Dr. Jacobs plus the \$450,000 bond surplus. The Village does partly offset this \$850,000 by claiming the 1978-1979 real estate tax levy will have a shortfall of \$550,000 (Village Exhibit #159). Since the shortfall for 1977-1978 approximated \$400,000 and for 1976-1977 - \$332,000 \$550,000 seems very severe. But even with a \$550,000 shortfall, the surplus as of May 31, 1979 should be \$300,000. If the shortfall is \$500,000, the surplus would be \$350,000.

5. In summary then, even based on Village projections (No. 159) and in addition to the \$539,000 and \$450,000 surpluses previously conceded (a total of 989,000) there would be an additional surplus at a minimum of \$300,000. The total of unencumbered surpluses as of May 31, 1979 would be \$1,289,000 against the 1,461,000 listed by Dr. Jacobs in his Point 8. The gap at the maximum would be \$172,000 and not \$474,000 (Dr. Jacobs in Point 9). However, if the shortfall were only \$500,000 in real estate tax levies the gap would be only \$122,000 and this excludes the real possibility that the June 1978 expenditures described above may well produce an additional unexpended surplus of up to \$830,000.

II. Dr. Jacobs ignored completely the fact that the Village of Hempstead has its own police force by choice. It is not mandated.

On Pages 1754 through 1770 of the record the PBA Exhibit pointed out that the various villages in the County avail themselves of County and Town services in different amounts. On page 1764 of the record it was

shown that the Village of Valley Stream chose to be part of the county police district. As a result the Valley Stream General Tax Rate was \$8.998 compared to Hempstead's \$5.53.

Section 803 of the County Government Law permits a Village to request that its territory become part of the county police district. If approved by the County Board of Supervisors the Village shifts its expenditures to each property owner in the Village who will now be subject to the County Police District Tax.

The point is that police expenditures, now about 30% of the Village appropriation can, in fact, never cause the Village to exceed its taxing margin. When the Village feels it can no longer afford to give its residents adequate police service they can relinquish their own police force and let the County assume the cost of the responsibility. If the Village and its residents feel it is important to keep their own police force they can keep it but they face the possibility of relinquishing other programs which they do not consider equally vital.

In summary, police is not a mandated service to the Village. Ability to pay only relates to the Village in terms of whether they keep their own police force or relinquish the services to Nassau County.

III. Dr. Jacobs ignores the "bad faith" exhibited by the Village in disclosing their ability to pay.

The record will show:

1. While the Village pointed out their shortfall in real estate tax collections they did not disclose until after the PBA introduced its expert Morace J. Kramer that the Village received substantial amounts of back taxes plus interest and penalties. From 1977-1978 this amounted to about \$250,000.

2. The Village failed to disclose surplus in their Federal Revenue Sharing Fund until the PBA documented said surplus.

3. The Village showed they appropriated \$500,000 in surplus to their 1977-1978 budget and \$800,000 to their 1978-1979 budget but failed to disclose that as of May 31, 1977 their actual surplus was \$1,221,074 and after the appropriation of \$500,000 had at the beginning of these arbitration hearings \$721,074 in unencumbered funds - more than enough to meet the PBA demands from the abolition of the 1978-1979 budget.

4. That the unencumbered surplus exclusive of debt service was some \$120,000 more than the \$539,000 figure listed by Dr. Jacobs but in December of 1978 the Village appropriated from the surplus some \$120,000 in funds for non-1978-1979 budgetted items including a flood light truck for the fire department. This truck could have been purchased either through a bond issue or from the contingency fund. The Village simply chose a method which would decrease funds available for a police award.

5. The Village should have included in their 1977-1978 budget and 1978-1979 some amount of money in anticipation of some dollar award to the police. This is a normal fiscal procedure. The Village of Hempstead failed to do this.

6. The Village at the arbitration hearings made an issue of tax assessments suits and its affect on its fiscality. Yet its bond prospectus in 1978 stated there were no law suits pending which individually or as aggregate which could affect its fiscality.

In summary, the Village bargained in bad faith. Its evidence at this hearing was in bad faith. It was bad faith for the Village to spend unencumbered surplus funds while the arbitration was pending.

2. I dissent from the denial of the additional \$300 sought in night differential pay. The basis for the payment of night differential is to provide a standard differential between day work and night work as in the case of Nassau County and many villages where the night work is worth 10% more. To maintain the night differential at \$1,000 while increasing the base salary destroys the concept of creating a standard differential between the two. Certainly, if night work was worth a certain percentage more than day work in 1976, there is certainly no evidence to indicate that it is worth any percentage less in 1977 or 1978 or that the night work has become easier. In fact, the evidence is overwhelming to the contrary that the number of injuries and the amount of stress which is caused our members in the evening hours in Hempstead has been spiraling over the last two (2) years so that, if anything, the percentage differential between night and day work should have been increased and certainly not decreased.

3. I dissent from the determination denying the additional day's termination pay for the first five (5) years of service. Termination pay is compensation paid a member at separation from service for dedicated years, and is ludicrous to provide a lesser amount for the first five (5) years which seems to indicate that those years were either less dedicated or less stressful. The County and the majority of the jurisdictions receive five (5) days a year for all years of service, and there is no reason to differentiate between years depending on when such years were worked.

4. I agree with the establishment of the Labor Management Committee.

5. I dissent from the denial of the request for pay for performance of duty in a higher rank after five (5) days. The reason given that such work is prohibited by State law is baseless since the only thing that the Civil Service Law provides is that a member may not be assigned, except in cases of emergencies, to performance outside his rank, but there is no provision in the law for automatic payment in the event that such action is taken by the Village. In fact, it was only the Chapter Laws of 1978 which provided that a Grievance Arbitration Panel could award damages against Villages for working a member out of rank. In fact, unless the PBA were to take article 78 proceedings every time to challenge the action of the Village, this language, which was denied by the Arbitration Panel, must necessarily be included in the contract.

VILLAGE DEMANDS

1. I agree with the granting of the two (2) year contract.

2. I agree with the denial of the Village's request that all police officers work a 255 day annual work schedule. However, I dissent from the Panel's award that all police officers hired after May 31, 1977 work a 249 day annual work schedule. It is ludicrous that the Panel took such action in the case of new employees and in contradiction to their basic findings which were on page 7 and 8, "The working conditions of police officers in the Village are undoubtedly the worst or among the worst on Long Island and perhaps can be better compared to those of police in New York City. Their work load is probably by far the heaviest of any police force in the State. On this basis alone, if there were no other considerations, the Village's police force deserves as high a remuneration as the County force." On the basis of these statements alone, the work chart for new employees and for old employees should have been reduced, and certainly not increased for members appointed after June 1, 1977.
3. I agree with the denial of the Village's request that police officers' work charts not be prescribed by contract.
4. I agree with the denial of the Village's request that the \$300 equipment allowance be eliminated.
5. I dissent from the Panel's determination that effective June 1, 1977, the additional 1/2 day entitlement after the exhaustion of sick leave be limited to a one (1) year period. The County and several villages presently enjoy this benefit. In fact, it was voluntarily negotiated by the Village into the contract because of their understanding of the disaster which would be caused a member who is taken completely off the payroll due to an extended off-duty illness such as heart disease, cancer, etc. It is unreasonable to grant this one (1) year cap when there has been absolutely no evidence presented at all by the Village that such benefit has proven itself to be financially burdensome to the Village or indiscriminately used by members of the department.
6. I agree with the denial of the request that police officers must make an irrevocable application for retirement by January 20 of the fiscal year prior to the anticipated retirement date.
7. I dissent from the granting of the request that effective June 1, 1977, termination pay and accumulated sick leave pay not be given to officers discharged for cause or who resign rather than face charges. Termination pay and accumulated sick leave pay must, by necessity, be compared to an annuity fund where monies are earned year after year due to dedicated years of service or, in the case of sick leave, due to an excellent attendance record, and held in trust so to speak by the Village until the member's separation from service. It is truly a double punishment to fine a man pursuant to a disciplinary proceeding or otherwise compel his resignation prior to his earning pension and then fail to pay to him those benefits accrued by him in the form of termination and sick leave payments.
8. I dissent from the granting of the Village's request that police officers no longer be the only persons who may function as Election Day poll attendants. The protection of the integrity of the election process has traditionally been placed in the hands of police officers who, by law, are mandated to be

free from political involvement to the extent of not being allowed to join political organizations or make contribution to candidates of their choice. To now place this delicate procedure in the hands of auxiliary police, volunteers, etc., who are most likely politically active in work, party or the other, will destroy the integrity of the most valued individual right our citizens enjoy and subject Hempstead to the appearance of impropriety which must be scrupulously avoided less the citizens perceive the Village in an erroneous light.

As far as general statements of the majority of the Arbitration Panel are concerned, on page 6 there is a statement that, "Workers with comparable or greater responsibility in the Village's service get substantially less pay than do the police. There is then a comparison with Superintendent of Alarms, a Superintendent of the Building, etc. This nonsensical comparative study has as much worth as comparing apples to oranges since there is no basis for comparing job stress, dangers inherent in the work, comparability with other police officers in other jurisdictions, etc. All these jobs with which the comparison was made are non-competitive positions, and there is no basis for the majority of the Arbitration Panel using them as any type of criteria as they themselves admitted that it is difficult to prove that the comparisons made are between comparable job descriptions. Also, the statement that, "Although the comparisons provided the Panel with the wages paid somewhat comparable jobs in private industry were scanty, the evidence did show that the Village's police receive higher salaries...." The obvious response to this ludicrousness is, "So what", and since the evidence was scanty, this should not have been used at all in the consideration of the Panel.

The majority of the Arbitration Panel found that the police are far more subject to hazards than other employees and that the danger from people and the constant stress under which they work are extraordinary. They also found that their physical qualifications must be superior to most employees in our society. Consequently, any comparisons to other employees which were made without taking these criteria into consideration must, by necessity, be invalid as having an erroneous base upon which inferences were made. In fact, the reality of the situation, on the one point where the Arbitration Panel indicated a low educational requirement is that approximately 1/3 of the police officers have college education exceeding two (2) years of college credits and, with the difficult tasks that police officers are called upon to perform, it is ridiculous to state that there is no post-secondary education necessary for a police officer to be competent in his job as was stated by the Arbitration Panel.

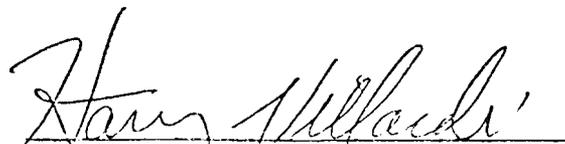
CONCLUSION

The majority of the Arbitration Panel talks about a 12.1% increase over two (2) years, which is ridiculously low in and of itself, but the truth of the matter is that the majority of the members in the Hempstead Police Department of all ranks and designations will be receiving between an 8.5% and 11.8% increase over this two (2) year period. Consequently, the award in this case lies in the face of some of the strongest evidence justifying a much higher wage and fringe benefit package for members

of the Hempstead Police Department. By all the standard measures of comparability which include but are not limited to other police jurisdictions, risks of the job, productivity, etc., the determination should have been that the members receive a much higher salary base than the County and much more improved fringe benefits rather than just the opposite which was the result. The award, in this case, simply imposed the personal feelings of the majority of the Arbitration Panel which was blind to evidence presented at the hearing, and their presently-conceived determinations should be expected of the partisan member but is strictly prohibited in the case of the neutral member who should have divorced himself of his personal feelings toward police and judged the case on the merits alone. The Arbitration Panel is supposed to make an award based on facts, and, since it was not done on this basis, the process and the community are the less for it.

I respectfully dissent from the award in this case in those areas as previously indicated.

Dated: January 28, 1979


HARRY VILLARDI
PBA Panel Member Dissenting

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