N.Y.S. PUBLIC EMPLOYMENT RELATIONS BOARD
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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Public Arbitration :

- between - :

TOWN OF GREENBURGH, a Municipal Corporation, :

Public Employer, :

- and - :

THE POLICE ASSOCIATION OF THE TOWN OF GREENBURGH, INC., :

Employee Organization. :

Pursuant to Section 209.4(c) of the Civil Service Law. :

- -X

PANEL'S DETERMINATION AND BASIS FOR FINDINGS

Case No. IA 80-40; M 80-556

APPEARANCES

For the Public Employer:

Anderson, Russell, Kill & Olick, P.C.	Counsel
By: Arthur S. Olick, Esq.	Of Counsel
Albert Schnall	Commissioner, Town of Greenburgh

For the Employee Organization:

Weckstein & Fulfree, Esqs.	Counsel
By: Morton N. Weckstein, Esq.	Of Counsel
John A. Kapica	President, The Police Association, Town of Greenburgh, Inc.

Before The Public Arbitration Panel:

Philip J. Ruffo, Esq.	Public Member and Chairman
Frank Reel, Esq.	Public Employer Member
Peter Reilly	Employee Organization Member

SUMMARY OF THE AWARD

Set forth below are the matters of major significance, economic and non-economic, considered and determined by the Panel.

1. Ability to Pay

The Panel concluded that the Town of Greenburgh does have the ability to pay the wage increases and other benefits determined to be just and reasonable.

2. Term of Contract

Two (2) years. From January 1, 1981 to December 31, 1982. (The parties agreed to a two (2) year term contract).

3. Wages

Across the board of Patrolman:

8-1/2% over and above the wage scale in effect on December 31, 1980, effective January 1, 1981.

8-1/2% over and above the wage scale in effect on December 31, 1981, effective January 1, 1982.

Present percentage differentials between and among the other ranks (Detective, Sergeant, Lieutenant and Captain) are to be maintained and continued, based upon the wages of Patrolman as computed, effective January 1, 1981 and January 1, 1982.

4. Holidays

In view of the wage increases herein granted, the Panel concluded that no change in the existing holiday benefits is warranted.

5. Welfare Fund Contributions

Effective January 1, 1981, direct contributions to the Association's Welfare Fund shall increase by $25.00, from $125.00 to $150.00 for the year 1981; and effective January 1, 1982, such contributions shall increase by $25.00 from $150.00 to $175.00 for the year 1982.

6. Uniform Replacement and Maintenance Allowance

In view of other benefits granted herein, the Panel concluded that no change in the existing uniform allowance is warranted.

7. Bereavement Leave

Effective January 1, 1982, three (3) days leave for death of member's brother or sister instead of one (1). All other provisions remain.

8. Meal Allowance

Effective January 1, 1981, meal allowance shall increase from $2.50 to $3.50. (Town concurs).

9. Discipline

(a) Effective November 1, 1981, all future discip-

linary matters shall be subject to either the Westchester County Police Act or, at the option of the police officer, to binding arbitration, the Arbitrator to be designated by the American Arbitration Association. Penalties that may be prescribed by the Arbitrator are those authorized under the Westchester County Police Act.

(b) Suspension without pay pending the determination of charges cannot exceed thirty (30) days; if it does the charged officer is entitled to his pay from the 31st day until charges are determined.

10. Joint Safety Committee

Effective November 1, 1981, an impasse in any matter before the Joint Safety Committee shall be submitted to Advisory Arbitration and any recommendation made by him is to be submitted to the Town Supervisor for his consideration and final determination.

11. The "Past Practice" Dispute

This matter, involving the timeliness of the Town's invoking arbitration to resolve the dispute and, in addition, the merits of the dispute, which involved an interpretation of contract language concerning additional days allotted to the Association's President, was determined in favor of the Town.

This dispute was jointly submitted to the Panel in lieu of pending litigation withdrawn by the Association.

I

Preliminary Statement

By a communication dated March 9, 1981, the New York Public Employment Relations Board designated the above named persons, constituting a Public Arbitration Panel, pursuant to Section 209.4 of the New York Civil Service (Taylor) Law for the purpose of making a just and reasonable determination concerning the dispute between the parties in the above captioned proceeding as to the matters and issues hereinafter set forth and discussed.

In accordance with the above cited authority, hearings were held on May 5, 6 and 28, 1981, at the Town Hall, Town of Greenburgh, Elmsford, New York.

At the hearings, the parties were accorded full opportunity to present testimony under oath, evidence and exhibits relative to the issues in dispute and, in addition, were accorded the opportunity of cross-examination and to present arguments in support of their respective positions.

The record made in the within proceeding was extensive consisting of some 160 pages of transcript of testimony

under oath and argument of counsel [1] and a total of 149 exhibits, the overwhelming number being multi-paged. (The Public Employer submitted 59 exhibits and the Police Association submitted 90 exhibits). [2] In addition, the parties submitted lengthy post-hearing briefs, totalling 167 pages, which addressed all of the unresolved issues between them. [2]

Subsequent to the close of the proceedings the Panel met in Executive Session on September 28 and October 23, 1981 for the purpose of discussing and deliberating all of the issues in the record presented to the Panel for determination. [3]

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1. References herein to the testimony, comments and other matter taken at the hearings are indicated by the following symbols in parentheses: "(Tr.___, p.__ or pps.__ 5/ /81)", the symbol 'Tr.' referring to the transcript, the symbols 'p' or 'pps.' referring to the page or pages on which the testimony, comments or other matter appear, followed by the date of the hearing.

2. Counsel to the parties agreed that all documentary evidence, subsequent to the last day of the hearing, was to be submitted by both sides by July 14, 1981, and that all briefs were to be exchanged and submitted by July 31, 1981 and, "Thereupon the matter will be fully submitted to the Panel", etc. (Tr. p. 82, 5/28/81). All matter having been submitted prior to July 31, 1981, and none further being requested by the parties or the Panel, the proceeding was deemed closed July 31, 1981.

3. At the hearing, the parties stipulated and agreed to submit to the Panel, for its binding determination, a long standing dispute concerning "Past Practices" which had been submitted to the prior Public Arbitration Panel but not decided by it. In accordance with the parties' request, and in the interest of assisting the parties to resolve all outstanding issues, the Panel agreed to consider and determine the issue of "Past Practices". Accordingly, counsel for the Association agreed to withdraw the Association's pending court motion to stay the Town of Greenburgh from submitting the issue to arbitration. (Tr. pps. 10-14, 5/8/81; 78-80, 5/28/81; see also Public Employer's brief, under "Past Practice Dispute", pages 46-55 and Association's brief under "Grievance", pages 106-111).

After due consideration and deliberation of all of the evidence, including the documents, briefs, and arguments presented, the Panel's determinations, as hereinafter set forth, are concurred in by a unanimous vote of its members.

II

Statutory Criteria

Consistent with statutory requirement, the Panel adhered to the criteria set forth in Section 209.4(c)(V) of the Civil Service Law to make a just and reasonable determination of the matters in dispute, specifying 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 other employees generally in public and private employment in

comparable communities;

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

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

(d) the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

III

The Parties - Their Bargaining Relationship

The Town of Greenburgh has a population of approximately 40,620 being the largest of 16 towns of Westchester County. Of the 16 towns, 11 have Police Departments including the Town of Greenburgh. There are, in addition, 6 cities and 21 villages in Westchester County, six of the villages being within the Town of Greenburgh and having their own police forces.

The budget of the Town of Greenburgh is based on a fiscal year coinciding with the calendar year commencing January 1st and ending December 31st. The Town's overall budget is divided into two major sections, i.e., the "Town Wide" budget and "The Town Outside" budget. It is the latter budget section which deals with and includes the total appropriations and total revenues concerning the operating expenses of various agencies including the Police Department and, more particularly, with allocations for Personal Services (wages) for members of the Police Department (Assoc. Exh. 12, pages B-1, B-5 and BB-2).

The entire authorized strength of the Police Department is budgeted for 110 positions.

The bargaining unit, of which the Association is the exclusive bargaining representative, consists of 103 members in various ranks as follows: 1 Captain, 9 Lieutenants, 13 Sergeants, 15 Detectives and 65 Patrolmen, 48 of whom are at maximum wage. (See page 12, Public Employer's Brief). The Chief is excluded from the bargaining unit.

The bargaining relationship between the parties began in 1968 and further established since then through successive collective bargaining agreements, the most recent of which expired on December 31, 1978. Since the expiration of that agreement the parties have conducted their relationship

under the terms of the prior expired agreement and the public interest award issued March, 1980, covering the two year period of 1979 and 1980. (See pages 49 and 50, Public Employer's Brief).

The current dispute stems from an impasse in negotiations for a successor collective bargaining agreement effective January 1, 1981.

IV

Issues Settled By Withdrawal or Agreement

The impasse between the parties resulted in the submission of the Association's 18 initial bargaining demands to the Panel for determination.

At the hearing the Association withdrew one demand (demand No. 4, "Basic Work Week") and modified one demand (demand No. 2, "Rank Differential") by foregoing an increase in the differential for all officer rank except for the rank of Captain and with respect to the Captain rank the Association's demand was to increase the differential by 5% - from 45% to 50% of a Patrolman, First Grade. (Tr. pps. 5, 6, 16-17, 5/5/81; and Association's Brief, pages 2 and 37).

In addition, the Association's demand No. 3 for a

two (2) year contract, commencing January 1, 1981, and ending December 31, 1982, was agreed to by the parties. (Tr. p. 6, 5/5/81).

It is, in addition, pertinent to note that the Town has not made any counter-demands requiring determination by the Panel. (Tr. p. 14, 5/5/81).

Thus, in addition to the "Past Practices" dispute, hereinbefore referred to, there are left for the Panel's determination 16 Association demands.

V

The Issues In Dispute

The issues in dispute, based upon the Association's demands, in addition to the "Past Practices" dispute are as follows:

1. Wages
2. Rank Differential
3. Night Differential
4. Recall and Standby
5. Longevity
6. Holidays
7. Welfare Fund Contributions
8. Sick Leave
9. Uniform Replacement and Maintenance Allowance
10. Insurance
11. Bereavement Leave
12. Meal Allowance
13. Association Rights

14. Additional Compensation for Carrying Weapons Off-duty
15. Discipline
16. Joint Safety Committee

VI

Major Economic Terms and Conditions of Employment Based Upon the Prior Public Interest Award Covering the Period January 1, 1979 and Ending December 31, 1980, And The Expired Collective Bargaining Agreement Covering the Period from January 1, 1977 and Ending December 31, 1978

Working conditions of major economic importance now in effect pursuant to the prior public interest award, covering the period January 1, 1979 to December 31, 1980, and the provisions of the expired collective bargaining agreement, covering the period January 1, 1977 to December 31, 1980, representing base pay and other direct cash payments (exclusive of longevity) to the officers in the various ranks, are set forth below as follows:

January 1, 1980 To December 31, 1980

Rank Or Designation	Base Pay	Holiday Pay (Estimated) 7-Cash 3-Compensatory	Uniform Allowance	Total
Patrolman I*	$21,107	$567**	$350	$22,024
Detective [1]	23,217	630	350	24,197
Sergeant [2]	24,273	658	350	25,281
Lieutenant [3]	27,439	735	350	28,524
Captain [4]	30,605	840	350	31,795

Longevity Pay (Based Upon Years of Completed Service):

7 years - $ 75.00
10 years - 150.00
15 years - 400.00
19 years - 700.00

70 members - or 66% - receive longevity payments (Town Ex. T-1).

1. Detective pay is 10% above Patrolman I base pay.

2. Sergeant pay is 15% above Patrolman I base pay.

3. Lieutenant pay is 30% above Patrolman I base pay.

4. Captain pay is 45% above Patrolman I base pay. Actual amount from page BB-2 of Town Outside budget is $31,305.

*Patrolman I is "bench mark" for base salaries (Page 33, Public Employer's Brief). All comparisons are based upon maximum earnings of Patrolman I. (Page 17, Association's Brief).

** Estimated based on 260 work days in year.

Overtime: Overtime is payable for all officers, except Captain, at the rate of time and one-half beyond 8 hours day and/or 40 hours week. May be converted to compensatory time up to limit of 16 hours during year.

Working Hours: Eight hour work day; Forty hour work week. Regular tours.

Vacation: Vacation is based upon years of service as follows:

After 1 year	-	5	working days
After 2 years	-	10	working days
After 3 years	-	15	working days
After 5 years	-	18	working days
After 10 years	-	21	working days
After 25 years	-	25	working days

Personal Leave Days: Five personal leave days subject to inquiry by a Superior Officer. May not be added to vacation days.

Sick Leave: Unlimited and fully paid if hired prior to January 1, 1977; 12 days per year up to a maximum of 200 days if hired after January 1, 1977.

Bereavement Leave: Four days for death of immediate family member (mother, father, spouse, child, father or mother-in law; one day for sister, brother, aunt or uncle of member's spouse).

Recall and Standby: Three hours at straight time pay, including one-half hour travelling time to and from home, if officer is recalled to duty. One-half regular hourly rate if officer is required to be on standby duty and is readily available by phone. Two hours minimum standby guarantee.

Court Time: Minimum of three hours pay if officer is required to appear in court during off duty.

Meals: One-half hour with pay. If recalled to duty for a minimum period of four hours officer granted $2.50 meal money.

Insurance: $10,000 coverage for accidental death and dismemberment and life insurance policy. Also, dental, medical and health insurance plans for all members without cost.

Welfare Plan Contribution: Town contributes $125.00 annually, per member, to Association administered trust fund for dental benefits; but benefits not to overlap those provided by Town's insurance coverage; nor may such contributions be used for pension benefits.

VII

Ability To Pay Issue

Vigorously stressed by both sides, constituting a major point of contention, is the issue of the "financial ability of the public employer" (Town of Greenburgh) to pay the bargaining unit members the wage increases and other economic benefits demanded by the Association.

At the outset, the Panel's view is that the statute is, fundamentally, designed to enable a Public Arbitration Panel to arrive at a just and reasonable determination of all issues in dispute between the parties after weighing and assessing all of the facts and circumstances guided by the statutory criteria, as hereinabove set forth, including "the financial ability of the public employer to pay".

A. The Association's Position:

The Association contends that the Town does have the financial ability to pay the wage increases and other economic (fringe) benefits it demands. (The Association's demand for wage increases alone is 10% for 1981 and an additional 10% for 1982). In urging the Town's financial ability to pay, the Association advances and relies, principally, upon nine factors which it asserts are proper and pertinent as a base upon which to determine the Town's financial ability to pay. Those factors are:

1. The Town's receipt of Federal Revenue Sharing Funds in 1981 in the amount of $497,000 which was unanticipated at the time the Town's budget was adopted in the Fall of 1980. In this respect the Town became the beneficiary of a substantial sum of money - close to a half million dollars - representing additional revenue, from non-taxable sources, which it then appropriated for purposes for which budgetary appropriations had already been made. A substantial portion - $333,000 - was appropriated to the Police and Firemen's Retirement Fund.

2. An appropriation of $225,000 to the Contingency Fund in the 1981 budget from which various sums could be transferred and appropriated to meet employee wage increases for 1981, as well as for other purposes.

3. The addition of new real property assessables to the 1981 assessment role resulting in increased assessments of $4,974,700 which will generate new revenue in 1982 in the amount of $178,000 based on the 1981 tax rate of 35.875 per $1,000 Assessed Valuation.

4. The sale at auction of public property (school building and six surrounding acres of land) in June, 1981, reportedly at $500,000, an indeterminate but not immodest amount of which will eventually go to the Town's coffers, though not as yet reflected in the 1981 current budget.

5. Wage increases of approximately 5.5%, for each of the years 1981 and 1982, negotiated with the Teamster's Union representing a group of the Town's employees, in addition to other fringe benefits, The increases for 1981 are a commitment payable out of sources in the current 1981 budget without the need to raise additional taxes to pay for such wage increases and fringe benefits due in 1981.

6. An appropriation of $2,519,889 for Police "Personal Services" (i.e. wages) in the 1981 budget (tentative) representing an increase of $134,370 over and above the same item - or approximately 5.5% - appropriated in the 1980 budget, as modified. (See page BB-2, Association Exh. 12, Town of Greenburgh Budget - 1981).

7. The Town of Greenburgh enjoys the largest tax base of any of the 16 towns in Westchester County with an Assessed Valuation of $335,953,614 as of 1981 and its residents are, from an income aspect, reasonably comfortable having a median family income of $24,600 which is above the median family income for the entire County estimated at $20,000, and above the Cities of White Plains and Yonkers estimated, respectively, at $19,600 and $17,300.

8. The financial soundness of the Town is evidenced by a total lack of financial distress, an indebtedness well within Constitutional limits, and possessing an unimpaired

credit rating rendering its securities marketable.

9. Based upon the Town's prior budgetary practices, particularly with respect to underestimating revenues and overestimating expenditures, in addition to unanticipated external aid from government sources, it is reasonable to infer that fiscal 1981 will yield a surplus, as in prior years, a substantial portion of which may be used to pay 1981 employee wage increases and that 1982 augurs no less a reasonable basis for meeting a substantial part, if not all, of the Union's demands for that year without any significant raise in taxes. In this respect a definitive improvement may be noted. While the tax rate from 1978 to 1979 - a one period - rose 5.859 per $1,000 of Assessed Valuation, the tax rate from 1979 to 1981, inclusive - a two year period - rose only 2.627 with 1980 witnessing a tax rate reduction of .43 less than the tax rate for 1979 which was 33.248.

B. <u>The Town's Position</u>:

The Town disputes the applicability of the factors urged by the Association to determine the issue of the financial ability to pay. Conceding that the Town "is economically sound" and "is neither richer nor poorer" in 1981 than it was in fiscal years 1979 and 1980, the Town, nevertheless, asserts that because the funds "have been used for other purposes" (Tr. p. 23, 5/28/81), there are no funds "of any sizeable amount"

for wage increases in the 1981 budget and, therefore, the Panel should consider, as relevant factors, "the burden on taxpayers and the difficulties faced by the public employer" in meeting the Union demands. (Public Employer's Brief, pages 4-5; 18). Accordingly, the Town takes issue with the position that equates "ability to pay" with the capacity of a public employer to draw upon its constitutional resources to meet its obligations". (Public Employer's Brief, page 5). In this respect, the Town points out that the statute couples "ability to pay" with the "interests and welfare of the public" and, therefore, ability to pay is not, per se, dispositive. In short, a fair analysis of the Town's position is that having already made an irrevocable choice regarding the expenditure of available budgetary funds for other Town purposes, it would now make it financially difficult and constitute a burden to impose upon the taxpayers any further effort to meet the Association's demands, except if those demands were limited to the 5% available in the budget and offered by the Town. Therefore, there is a financial ability to pay a 5% wage increase for 1981 and a like increase for 1982, but a financial inability to pay more, either in wages and/or fringes in either of those two years.

C. The Panel's Analysis and Finding:

Before addressing and disposing of the positions of the parties, a summary of the Town's budgetary practices, as

testified to by its Comptroller, is relevant and, therefore, useful in obtaining a clearer perspective and understanding of the Town's position. Such a summary, based on the Comptroller's testimony taken from Tr. pps. 55-57, 5/28/81, is as follows:

The budget, as initially adopted, does not project any appropriation for employee wage increases unless there is an existing obligation evidenced by a collective bargaining agreement. Therefore, budget adjustments and modifications are made in every instance where the contractual obligation comes into existence after the adoption of the budget and prior to its fiscal termination. Historically, however, there have always been sufficient funds within the budget to pay for wage increases that have been negotiated mid-term the budget. Though lacking a specific appropriation for a wage increase, funds can be, and are, transferred from other line items or sources within the budget, i.e., the Contingency Fund, available cash flow, unexpended funds appropriated for specific purposes, unanticipated external financial aid from the State or Federal governments and, if insufficient but necessary, the sale of short term budgetary notes which, historically, was not necessary "in recent years".

The Town raises a threshold contention concerning the interpretation to be given to the statutory criterion

prescribing the public employer's financial ability to pay "and" the interest and welfare of the public. In brief, that position, if adopted by the Panel would require fusing financial ability to pay with the interest and welfare of the public resulting in equally identical and interrelated concepts capable of only one conclusion, namely, that it would not be in the interest and welfare of the public to grant a wage increase to its employees if, to do so, the public employer would find it financially difficult. Thus, it follows that wherever it could be shown that the grant of a wage increase,beyond that proposed by the public employer, may or will require a tax increase, or the rearranging of budgetary allocations and priorities, previously set, then the concomitant is that the public employer lacks, in whole or in part, the financial ability to pay. As a contention it cannot be denied that there may be some appeal to what the Town argues, particularly where the grant of a wage increase impacts upon the taxpayer's purse. However, the Panel fails to perceive any eventuality where the grant of a wage increase will not have some impact on the taxpayer, or upon planned or previously set budgetary allocations and priorities. In any event, the Panel does not agree with the Town's contention believing that it may well be addressed to the Legislature as a criterion for future cases just as the Legislature, in 1978, specifically addressed the issue, by enacting legislation prohibiting an impasse panel from awarding a wage increase to New

York City employees in any particular wage impasse if an increase in the City's real property taxes would result. Chapter 201, New York Laws, 1978, in part, defines financial ability to pay as "the financial ability of the city ..... to pay the cost of any increase in wages or fringe benefits without requiring an increase in the level of city taxes, etc."

The Panel doubts whether the statute supports the construction urged by the Town for two reasons. First, it would be virtually impossible for the employees or the Panel to satisfy all of the requirements that would be necessary to show that a wage increase would not require a tax increase or a reallocation of previously set budgetary allocations and priorities. The statutory mandate to negotiate might well deteriorate into a meaningless ritual if such a limitation were imposed by the Panel, sua sponte, without an appropriate standard directed by the Legislature. Secondly, if the Legislature intended the Town's position to be binding, so that its budget, as adopted, would constitute conclusive evidence of an ability to pay, without further inquiry into other relevant and material facts concerning "ability", it could have easily done so. That it did not, demonstrates no valid justification for reading into the statute an interpretation that would restore employer-employee relations to what it was prior to the Taylor Law.

As for the "interest and welfare of the public", and the attempt to make it synonomous with "ability to pay", it may be argued with equal force that the interest and welfare of the public renders indispensable the maintenance of an efficient and highly motivated police force for the safety and protection of life and property. Thus, while the cost of police protection may run high there may, concededly, be a financial difficulty to pay a wage increase which is not unusual considering the contemporary scene in the public sector. But the financial difficulty to pay a wage increase, as the Town herein asserts, impacting upon the taxpayers or requiring the rearranging of budget allocations, does not, in the Panel's view, carry the same connotation as the financial inability to pay a wage increase. As previously stated any succor must, reasonably and logically, stem from the Legislature.

Viewing the record as a whole in this case it is undeniable that the grant of a wage increase to the Town's police force will have some impact upon the budget and the taxpayers. It is, however, less than clear in the record as to the extent a wage increase will impact or have upon the taxpayers or upon the relative priorities and allocations planned or set for the 1981 budget and the prospective 1982 budget. Nevertheless, based upon the evidence, the assump-

tion is well founded that the Town's budget is not a static or frozen document, and that latitude does exist for rearranging previously set budget allocations and priorities. Such decisions inhere in the Town as a function of government and not as a function of this Panel.

The Panel has studied and analyzed the evidence concerning the Town's financial ability to pay and finds that the Town does have the financial ability to grant a wage increase and other benefits, as herein determined, to the employees in the bargaining unit. That evidence, previously set forth, is summarized as follows: The Town's concession that it is "economically sound" and "is neither richer or poorer" in 1981 than it was in 1980 and 1979; the receipt of Federal funds infusing the budget with funds previously unanticipated; the existence of a Contingency Fund which may be used for wage increases; the addition of new real property assessables and the sale at public auction of public property generating new revenue; wage increases negotiated with other of the Town's employees; the Town's 5% wage increase offer to its police force members; the relatively sound income of the Town's residents when compared to the residents of other towns and municipalities within the County; the general financial soundness of the town evidencing no financial distress or heavy indebtedness close to its constitutional limit; and an

unimpaired credit rating rendering its securities marketable.

Thw Town's evidence concerning an increase in statutory mandated increases and the effect of inflation upon the costs of its operations; a tax base that for the past four years (1978-1981) shows a discouraging increase of only 3%; the political ramifications it experienced by an increase in the 1978-1979 tax rate; that much of the funds previously appropriated in the 1981 budget have already been expended for other purposes leaving little for a wage increase for the Town's police force thus creating a difficulty to pay a wage increase other than what is available in the budget and which the Town proposes; and its conclusions that the interests and welfare of the public do not warrant a wage increase beyond its proposal of 5% for 1981 and 1982, does not, in the Panel's view, effectively refute the Town's financial ability to pay a wage increase and other benefits as herein determined. While the Town's evidence, in toto, indicates some difficulty to pay a wage increase beyond that available in the budget and proposed by the Town, the difficulty to pay is not, by statutory implication or factually, for the reasons mentioned, the same as an "inability" to pay.

As indicated, the Panel does not, however, believe that the Town's overall financial condition can or should be ignored or that it is a wholly irrelevant consideration in

determining wage scales for its employees. However, as a practical matter and with circumspection and in good conscience, the Panel feels it incumbent, in complying with the statutory criteria, to try to balance the needs of the Town's police force for an equitable wage increase and the Town's ability to meet the cost of a wage increase.

Accordingly, the Panel has considered the Town's fiscal facts of life and notes, again, that while its financial condition is not optimum, its obligation to members of the Town's police force in terms of a cost factor is no less than its obligation to pay the going rate for whatever resources it requires to sustain the Town as a viable governmental entity. Finally, the Panel cannot help but observe that while the Town of Greenburgh may find it difficult to pay its employees wage increases, the difficulty is, in varying degrees, universal throughout the public sector community.

In sum, the evidence, in its totality, establishes that the Town does have the financial ability to pay the members of its police force a wage increase and other benefits as herein determined. Further, the evidence establishes the commendable conclusion that the Town of Greenburgh has managed its fiscal affairs consistently showing annual surplusses, no deficits, in complete control of its management and opera-

tions, nowhere near the verge of default, with no need of emergency measures or assistance to extricate it from any financial distress and, very significantly, as a barometer of its financial soundness, with its credit rating unimpaired.

D. The Panel's Determination:

Accordingly, based upon an analysis of the entire record, it is the:

JUST AND REASONABLE DETERMINATION of the Panel that the Town of Greenburgh does have the financial ability to pay the members of its police force, members of the bargaining unit, the wage increases and other benefits as herein determined.

N.B. While the Public Employer Member agrees that the Town of Greenburgh does have the resources to pay the wage increases herein granted, he does so for reasons other than those expressed in this Report, noting that the Town's fiscal status should have been more realistically considered.

VIII

The Term of the Agreement

It is the Panel's judgment, consistent with the parties' agreement, and based upon the record in its entirety, that the interests of the parties are better served by a collective agreement of at least two years. The need for sound fiscal and budget planning is self-evident, particularly in light of the Town's statutory obligation to negotiate with the representatives of its police force employees. The general

and overall operations and functions of the Town are better assured by the stability associated with multiple year commitments. The alternative is a hasty return to the negotiating scrimmage line when the parties should be devoting their time and energies to the needs of the Police Department and the safety and security of the Town's residents rather than retracking their efforts at short period intervals in the tedium of see-saw negotiations associated with collective agreements of less than multiple year duration. As it is, the parties will, slightly more than one year from the rendition of this Award, be squaring off facing each other across the bargaining table for a successor agreement commencing January 1, 1983.

A studied analysis of the record discloses the presence of factual data and material sufficient to predicate an agreement of two years commencing January 1, 1981 and terminating December 31, 1982.

It may also be noted that the Panel has the statutory authority to determine the period of a collective bargaining agreement not to exceed two years from the termination date of any previous bargaining agreement. (Civil Service Law, Section 209.4(VI)).

Accordingly, based upon the entire record, including the agreement of the parties, and the above cited statutory

authority, it is the:

JUST AND REASONABLE DETERMINATION of the Panel that the successor collective bargaining agreement between the parties be for a term of two (2) years, commencing January 1, 1981, and ending December 31, 1982.

IX

The Economic Issues In Dispute (Wages and Fringe Benefits)

1. Wages:

A. The Association's Position:

In order to restore the Town of Greenburgh Patrolmen to their preeminent pre-1974 wage status, prevent further decline in their wage structure, and provide a currently equitable wage structure, the Association demands an across the board wage increase as follows:

Effective January 1, 1981, a 10% across the board increase for Patrolmen over and above the effective wage on December 31, 1980; and, effective January 1, 1982, through December 31, 1982, a further across the board wage increase of 10% for Patrolmen over and above the wage in effect on December 31, 1981. In addition, the Association demands that

the existent differentials in ranks, for Detective, Sergeant and Lieutenant, based upon the base pay of Patrolmen, be maintained for the term of the successor agreement and that for the rank of Captain the differential be increased from 45% to 50% of the Patrolmen's base pay.

The Association's demand is based not only upon its contention that the Town has the financial ability to pay such wage increases but, in addition, upon the following factors: (1) Productivity; (2) Comparable wage structures in comparable jurisdictions; (3) The cost of living increase due to the inflationary spiral; and (4) The hazards and stress of the job.

As for the Town's financial ability to pay a wage increase, the Panel has already determined that the Town does have the financial ability to pay the members of its police force an equitable wage increase for the two year period encompassing 1981-1982. However, the Panel is of the view that the Town's present and projected financial position, balanced with the factors hereinafter analyzed and discussed, do not warrant the grant of the Association's wage demands in full but, as herein determined, to a lesser extent though, again, above that proposed by the Town.

(1) As to productivity, the Association points

out that there are 6 fewer budget lines for police officers, the authorized strength being 110 members whereas the existing force comprises 103 members. Thus, in the face of an increased crime rate, including an increase in the seven major crime categories, there are less police officers to cope with the crime problem than the authorized table of organization permits. As a consequence the workload of the police officer is on the rise with no visible diminution in the crime rate in the near future nor the Town's commitment to recruit new police officers to the authorized strength of the police force, and particularly to replace police officers who will soon retire.

(2) As for comparable wage structures, the Association contends that eleven of the sixteen Towns within Westchester County that have Police Departments are pertinent and should be considered for comparisons, though it would be proper for the Panel to consider the private sector as a basis for comparing wages. The data submitted by the Association regarding comparable wage structures indicates that the police force members of the Town of Greenburgh were the highest paid in the County until 1975 which represented a turning point followed by gradual declines in wages thereafter. In 1978 the decline deteriorated further so that in 1978 Greenburgh ranked seventh in the County, twelfth in the County in 1979, and fourteenth in the County in 1980. As to wage comparisons with the

other Towns in the County, the Association points out that in 1980, Greenburgh with a base annual salary of $21,107, ranked third behind Mamaroneck which was first with an annual base salary for Patrolman of $21,770 and behind Eastchester which was second with $21,116.

(3) As for the higher cost of living, the Association documents the constant rise in the CPI index, double digit inflation, and the erosion that the cost of living increase and inflation make into real income.

(4) As to the hazards and demands of the job, the Association points to studies showing that police duty is, in reality, a 24-hour job, fraught with danger and stress, and requires the kind of dedication often subordinating family and social life.

B. The Town's Position:

In response to the Association's position, and, affirmatively, in support of its own position, the Town points to the following:

(1) As to Productivity, the Town does not deny that its police force is, at present, below authorized strength. However, the Town contends that the authorized strength of any police force is a budgetary matter solely and does not necessarily reflect the actual need of police

officers at full strength, though there may be some relationship. In any event the Town's police force, at its present strength, is adequate to cope with the Town's problems. The police force is well trained, performs well, and the ratio of its members to the Town's population compares favorably with Cities within the County having greater populations and higher crime activity. Thus, the productivity factor, if it does exist, is minimal and not sufficiently significant to warrant consideration in justification of a wage increase.

(2) As for comparable wage structures the Town contends that while it compares with the City of White Plains and the Town of Yorktown in terms of population, "on balance, Greenburgh is most comparable to the Towns of Eastchester, Harrison and Rye and, most significantly, to the neighboring City of White Plains". The Town's conclusion is based upon its comparison analysis of the respective populations of the towns and city mentioned, the real property assessed valuations, the equalized true value of the properties (tax base) per capita, and the dollar value of real property ratables behind each resident of the towns and city mentioned. (See pages 10 and 11 of the Town's brief). Comparing the wages of all of the Towns in the County (not those alone which it deemed, on balance, to be most comparable with Greenburgh) the Town concludes that in 1980 it was $347 above the average wage scale (annual) and $233 above the annual median wage scale. (Page 35, Town's brief).

(3) As for the cost of living increase, the Town does not deny that the cost of living, as measured by the CPI, has steadily increased and, more particularly, in 1979 and 1980. However, the Town documents prior wage scales and benefits, in prior collective agreements, enjoyed by the Town's police force which kept pace with the CPI in the past and emphasizes that other benefits, such as pensions and medical coverage, are included as employee benefits and not paid for by the police force members, though listed as components in the CPI. For example, mandatory contributions for pensions increased to $786.884 per member in 1981 and health insurance costs increased 30% or $164 per member in 1981. Further, the Town contends that wages alone do not constitute a full or accurate measure of the total benefits enjoyed by the employees either by reason of the collective agreement or by statutory mandate. Other components of the total contract package, including all of the "fringe" benefits, should be considered when an analysis of comparisons is made. The Town of Greenburgh pays its police force members 57 cents in fringe benefits for every dollar it pays in direct salaries. Moreover, the Town of Greenburgh and its residents are just as much victimized by inflation as the police force members and the Town ought not to be placed in a position where it must indemnify its employees, or be an insurer, against the inflationary spiral. To impose such a burden may mean the curtail-

ment of services with a concomitant reduction in the work force.

(4) As for the hazards and demands of the job, the Town contends that such factors are considered in the calculation of the wage rate and, therefore, it is the value of the job considered as a whole that must be evaluated.

C. The Panel's Analysis and Findings:

While there is some merit to the Association's contentions concerning the aspects of Productivity (1) and the Hazards and the Demands of the job (4), the Panel is of the view, based upon its consideration of the record as a whole, that the other factors - wage comparisons with other comparable jurisdictions and the cost of living increase - offer a sounder and more probative basis upon which to base a determination concerning a just and reasonable wage increase. In addition, the Panel notes that to consider the factors of Productivity and the Hazards and Demands of the job, as bases for wage increases, would involve the Panel in an evaluation process regarding the respective weight to be assigned to each of those factors as parts of the total job content. In this respect the Panel believes that either an independent or a mutual in-depth study and analysis should be made by the parties and the results then negotiated directly by the parties. Until then the Panel believes that it would be embarking upon

an unchartered course without factual guidance yielding a speculative conclusion. As of the present the Panel is inclined to view the factor of the hazards and demands of the job as a built-in compensable factor.

a) As to Wage Comparisons:

The Panel is aware that circumstances and conditions vary in each jurisdiction which may uniquely account for the wage scale as eventually established in each jurisdiction. While, therefore, different circumstances and conditions spawn different individual results, the aggregate picture may, nevertheless, be useful as a guide, helpful in arriving at a determination concerning the justness and reasonableness of the wage increase under consideration. Pursuing this approach and, as the parties agree, using the rank of the First Grade Police Officer as a basis for the comparison of wage structures, the Panel has decided that all of the Towns in the County of Westchester, having their own Police Departments, constitute an appropriate framework within which to compare wages. In this respect, as the table below indicates (Table I), the Town of Greenburgh ranked fourth in the payment of wages to police officers in 1980.

Table I

Annual Base Wage for Police Officer (First Grade) in Eleven Towns in Westchester County for 1980

	Public Employer	1980 Wage Scale
1.	Mamaroneck	$21,770
2.	Harrison	21,241
3.	Eastchester	21,116
4.	Greenburgh	21,107
5.	Ossining	20,940
6.	Mt. Pleasant	20,816
7.	Rye	20,809
8.	North Castle	20,558
9.	New Castle	20,492
10.	Yorktown	20,257
11.	Bedford	20,250

From the above table it will be noted that the annual wage scales of the Towns of Harrison, Eastchester and Greenburgh vary insubstantially, all three being considerably behind Mamaroneck from $663 to $529 annually. On the other hand, the Town of Greenburgh pays its police officers from $167 to $857 more than the seven towns below it. On the whole, therefore, and on balance, it is the Panel's view that the wage scale of the Police Officers of the Town of Greenburgh compares favorably with the wage scales of the police officers of all of the other towns, with the one exception as noted.

It may, parenthetically, be noted that even if the wage scales of the public employers, as proposed by the Town of Greenburgh, were adopted by the Panel for comparison purposes, the practical effect would vary insignificantly. As

Table II below illustrates, the Town of Greenburgh ranks third.

Table II

The 1980 Wage Scales of the Public Employers Proposed by the Town of Greenburgh for Comparison Purposes

Public Employer	1980 Wage Scale
Harrison	$21,241
Eastchester	21,116
Greenburgh	21,107
Rye	20,809
White Plains	20,251

Again, except for the Town of Mamaroneck which has a substantial lead, the wage scales in Tables I and II illustrate an insignificant variance in terms of a result. The Towns of Greenburgh and Eastchester are still virtually the same and the Town of Greenburgh pays its police officers from $298 to $856 more than the Town of Rye and the City of White Plains, respectively. Again the conclusion is the same, that is, that the wage scales of the Police Officers of the Town of Greenburgh for 1980 compare favorably with the wage scales of the Police Officers of the other towns in Westchester County with one notable exception (Mamaroneck).

However, of further significance to the Panel, concurred in by both the Town and the Association, is the total cash amount actually received by the Town's police officers as compared to their colleagues in all of the other towns. When

the total cash amount composed of wages and fringes (principally longevity and holiday pay) is received, the police officer of the Town of Greenburgh still scales the fourth highest for the year 1980 as Table III below illustrates.

Table III

1980 Wage Scale and Direct Payments

	Public Employer	Wage Scale	Longevity (Highest Scale)	(Cash) Holiday Pay	Total
1.	Eastchester	$21,116	15 yrs. $ 845	11 days $ 1,394	$23,355
2.	Mamaroneck	21,770	19 yrs. 500	12 days 1,004	23,274
3.	Ossining	20,940	16 yrs. 550	13 days 1,046	22,536
4.	Greenburgh	21,107	19 yrs. 700	*7 days 568	22,375
5.	Yorktown	20,257	19 yrs. 1,250	11 days 857	22,364
6.	Bedford	20,250	20 yrs. 1,000	12 days 934	22,184
7.	Mt. Pleasant	20,816	20 yrs. 350	11 days 880	22,046
8.	Harrison	21,241	20 yrs. 300	*6 days 490	22,031
9.	New Castle	20,492	20 yrs. 550	12 days 945	21,987

*In addition, Greenburgh grants 3 holidays in compensatory time for non-veterans and 5 for veterans; Harrison grants 7 days in compensatory time; and Rye grants 12 days in compensatory time.

TABLE III (Continued)

	Public Employer	Wage Scale	Longevity (Highest Scale)	(Cash) Holiday Pay	Total
			20 years	13 days	
10.	North Castle	$20,558	$ 200	$ 1,028	$21,786
11.	Rye	20,809	None	* None	20,809

As Table III indicates, the Town of Greenburgh's police officer compares favorably with respect to direct payments based upon the dollar value of all economic benefits.

In a further analysis of wage comparisons, the Panel deems it significant that for the year 1981, the percentage rates of wage increases, over and above 1980, in the comparable jurisdictions, including those proposed by the Town, ranged from 8% to 11.1%. (See Table IV below).

*In addition, Rye grants 12 days in compensatory time.

Table IV

Public Employer	1980 Wage Scale	Rate Of Increase	1981 Wage Scale
Mamoroneck	$21,770	8%	$23,510
Yorktown	20,257	9%	22,781
Mt. Pleasant	20,816	9%	22,683
*Rye	20,809	9%	22,682
Ossining	20,940	8%	22,615
Bedford	20,250	11.1%	22,500
North Castle	20,558	8.5%	22,358
New Castle	20,492	9.0%	22,336
*White Plains (City)	20,251	9.0%	22,073
*Harrison	21,241	Not Settled	
*Eastchester	21,116	Not Settled	
Greenburgh	21,107	In Arbitration	

*Those jurisdictions proposed by the Town as "most comparable".

If the 1981 percentage wage rate increases were deemed dispositive of the financial ability of each one of the jurisdictions to pay such increases, then it would follow that, based upon the analysis herein concerning the Town of Greenburgh's financial ability to pay, a wage increase of between 8% and 11.1% could be appropriate.

(b) As to the Cost of Living Increase

The increased cost of living factor requires no elaboration being a recognized fact of life. Consumer prices, as measured by the CPI, rose 12.5 percent in 1980 outpacing wage increases in the private and public sectors for the same year. (See Monthly Labor Review, May, 1981, "Wage increases in 1980

outpaced by inflation", pages 55-57). (See also PERB News, April 1980, page two, "Bargaining outcomes ... in the public sector in New York State did not keep up with inflation during 1979-1980"). There were some reports indicating that double digit inflation was at an end and that the projection for the year 1981 would be an inflation rate of 8.5%. According to the Monthly Labor Review (June 1981) the CPI "increased at a seasonally adjusted rate of 9.6, following a 13.2 percent rate in the fourth quarter of 1980" (pages 14-21). (See also New York Times, July 24, 1981, reporting the CPI for the first six months of 1981). In the Times article, Samuel M. Ehrenhalt, the Regional Director, Bureau of Labor Statistics, U.S. Department of Labor, is quoted as follows: "The figures for June, as for the previous three months, reflected an ebbing of the strong inflation rate we saw last winter. The inflation rate for this region is about half what it was earlier this year." Nevertheless, though the rate of inflation appears to be moderating, the typical American worker continues to lose purchasing power because of the persistence of inflation and its threat to return to double digit figures. (See N.Y. Times-8/26/81-front page, "Consumer Prices Rose 1.2% in July").

The Panel is aware, as studies indicate, that a wage increase, in more instances than not, may not, on its face, satisfy the kind of a wage increase as suggested by the CPI. However, the CPI is not the sole factor nor dispositive in determining a just and reasonable wage increase. Compar-

able wage structures for comparable work in proximate comparable jurisdictions are also important. Further, as the CPI indicates, the wage component (the amount going into the pay envelope) is but one aspect of wages. Fringe benefits, such as the statutorily mandated retirement system and the cost of medical and dental coverage, contractually obligated, paid for either directly by the Town, or in the form of a contribution to the Association's Welfare Fund, form significantly integral parts of the total economic package denominated as wages and should also be considered in determining a just and reasonable wage increase.

There is no magic formula for determining wage or salary levels in the public sector. Certainly, no single criterion can be relied upon for a conclusive answer. Persons with equal intelligence and integrity might well differ as far as the applicability and weight to be given any one criterion. The Panel has taken all statutory criteria into consideration and has applied the evidence and factual data submitted by the parties to the statutory criteria and, based upon its analysis of all of the facts and circumstances, the entire record, the relative weight to each of its findings regarding the Town's financial ability to pay, the interest and welfare of the public in maintaining an efficient and properly motivated police force, a comparison of the wage structures in comparable jurisdictions, and the cost of living in-

crease, has concluded that the police officers of the Town of Greenburgh, in the rank or grade of Patrolman, are entitled to a just and reasonable upward adjustment of 8-1/2% in their wages for the years 1981 and an additional 8-1/2% in 1982 over and above the wage scales in effect on December 31, 1980 and December 31, 1981, respectively, and, further, that all existing wage percentage differentials in all ranks above Patrolman be maintained, based upon the rank of Patrolman, for the same period of time.

D. The Panel's Determination:

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that an across-the-board wage increase be granted to all members of the bargaining unit in the rank of Patrolman of the Town of Greenburgh on the dates set forth below, as follows:

> Eight and one-half (8-1/2%) percent effective January 1, 1981, over and above the wage scale in effect on December 31, 1980; and
>
> Eight and one-half (8-1/2%) percent, effective January 1, 1982, over and above the wage scale in effect on December 31, 1981; and

That all existing wage percentage differentials now in effect in the respective ranks of Detective, Sergeant, Lieutenant and Captain, based upon the wage scale of the Patrolman, as herein increased, shall be maintained during the years 1981 and 1982.

The Panel DIRECTS that the wage increase, effective January 1, 1981, be paid to each bargaining unit member no later than on the third payroll day following the date of this award, and that the wage increase as herein awarded be included in all wage checks thereafter.

The Panel notes that the wage increase herein determined for 1981 will be in the amount of $22,901 above the 1981 Town average of $22,587 and will rank the wage scale of the Town of Greenburgh's police officer second of the eleven comparative towns in the County. For 1982 the increase will amount to $24,846 which is $1,336 more or approximately 5.6% ahead of the Mamaroneck 1981 wage scale.

The Panel also notes that the Town has appropriated $2,519,889 in the 1981 budget (tentative) for Police "Personal Services" which is about $134,370 over and above the amount ($2,385,519) appropriated in the 1980 budget. 8% of $2,385,519 is about $190,840. Based upon the foregoing figures the additional amount of about $55,970 is needed to meet the 8% increase for 1981. The amount is one which the budget, as projected for 1981, can cope with. And, as previously indicated, the financial and fiscal posture of the Town is such that it can also cope with the 1982 wage increase as determined herein.

2. <u>Rank Differential</u>:

The matter of an increase in the percentage wage differential, being an inherent part of the wage structure, has

Already been determined in the Panel's consideration of a just and reasonable wage structure. That determination was for the continued maintenance of percentage wage differentials between and among all ranks, based upon the wages of the Patrolman. The Association's demand for an increase of 5% - from 45% to 50% of the Patrolman's base pay was, implicitly, denied and is now expressly denied, the Panel being of the view, after a consideration of all of the evidence in the record, that no change in the existing percentage wage differentials between and among the various ranks is warranted.

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that all percentage wage differentials, between and among all ranks (Detective, Sergeant, Lieutenant and Captain) be continued and maintained for the two year period 1981-1982, based upon the annual wage scale of First Grade Patrolman as herein increased for each of the years 1981 and 1982.

By way of illustration, the annual wage of the First Grade Patrolman will be increased to $22,901 in 1981 and $24,846 in 1982. The percentage wage differential of a Detective is 10% over and above the base pay of a First Grade Patrolman. Thus, for the year 1981, the annual wage of a Detective will be $25,191 and for 1982 will be $27,330. The

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same formula is applicable to all other ranks based on the respective percentage differentials.

3. Night Differential

The night differential demanded by the Association is a new benefit not heretofore granted. The demand is for a 4% differential in pay for those officers who work late at night and to those detective who work the 1700 through 0100 or the 1500 through 2300 tours. The Association admits that only three jurisdictions within the County provide for night differential pay. Nevertheless, the Association emphasizes the stressful nature of night work and its adverse consequences on the health of the police officer, his social and family life, as justification for additional pay for night work.

The Town opposes the Association's demand contending that police work is a twenty-four hour job with rotation of shifts an inseparable aspect of the job. Further, since only three other jurisdictions provide for night differential pay, it is obvious that the Association has not made out a supportable case for its demand.

A. The Panel's Analysis and Finding:

Upon consideration of the respective contentions of the parties, the Panel is of the view that while night work carries its own justification for a wage differential, even

for police officers, the Panel finds that to grant the demand, in any degree, would run counter to the parameters of a just and reasonable economic package in its totality and may cause some difficulty in the Town's financial and fiscal posture. Thus, while the Panel might view the Association's demand favorably were the Town's fiscal and financial situation slightly more favorable, the Panel is constrained to deny this demand. (The Association and the Town might consider direct negotiations for this benefit within the dimensions of the wage increases herein granted either for 1981 or 1982 effectiveness. The foregoing is only a suggestion by the Panel and not, under any circumstances, to be construed as a determination).

B. The Panel's Determination:

Accordingly, based upon the record in its entirety, it is the Panel's JUST AND REASONABLE DETERMINATION that the Association's demand for a pay differential for night work be DENIED.

4. Recall and Standby:

The existing collective agreement contains a provision for Recall and Standby time (Article IV).

The Association's demand is for a definition of the terms "Recall" and "Standby", asserting that the lack of definitions gives rise to disputes; and for an increase in the

standby time from half to the straight time rate for the present two hour minimum guarantee.

The Town opposes the demands contending that the demand for definitions, as spelled out by the Association, is a device to expand upon those benefits and, further, only two other towns in the County provide for standby time. In addition, the last Panel (1979-1980) granted a two hour minimum standby guarantee with retention of the current standby rate of 1-1/2 the police officer's rate of pay.

A. The Panel's Analysis and Findings:

Upon consideration of the respective contentions of the parties, the Panel expresses reluctance to engage in actual contract language involving definitions believing that the matter should be resolved in direct negotiation. As for any increase in the standby wage rate, the Panel has considered the entire record, particularly as to comparability, and finds that the existing provision for Recall and Standby is adequate.

B. The Panel's Determination:

Accordingly, based upon the record in its entirety, it is the Panel's JUST AND REASONABLE DETERMINATION that the Association's demand for Recall and Standby time be DENIED.

5. Longevity:

The Association's demand for an increase in longevity is as follows:

$ 150	(from $ 75)	after 7 years
$ 300	(from $150)	after 10 years
$ 800	(from $400)	after 15 years
$1,400	(from $700)	after 19 years

The Association predicates its demand upon a comparison with 38 other police departments in the County, including Cities, Villages and other Towns and, based upon such comparison, concludes that 24 of the police departments paid their police officers more longevity pay and 14 paid less. The Association contends that its demand, granted in full, will restore the bargaining unit to a position of equity within the County.

The Town opposes the demand pointing out that the prior Panel (1979-1980) granted a substantial longevity improvement and, therefore, a further improvement, after such a relatively short period of time, is unwarranted.

A. The Panel's Analysis and Finding:

The Panel notes that the Association has referred to all public employers within the County as a basis for comparing longevity payment whereas it previously urged that the Towns only should be considered for comparison purposes which, after analysis, was adopted by the Panel. Thus, when compar-

ing the 11 towns only, the Association concedes that Greenburgh ranks fourth on the scale of longevity for 1980. The Panel also notes that the Town of Greenburgh ranks fourth on the salary scale for the 11 towns and fourth in terms of total direct payments to its police officers for 1980 (See Table II). Thus, on a comparative basis, the police officers of the Town of Greenburgh are not otherwise disadvantaged requiring a longevity improvement at this time. In this connection the Panel notes that the overwhelming number of police officers - 70 members of the bargaining unit out of 103 (or approximately 66%) receive longevity payments which supplements actual wages received. Moreover, the prior panel (1979-1980) made an award improving longevity payments by $75, $150, $400 and $700 after 7, 10, 15 and 19 years of service, respectively, from $50, $100, $300 and $600, respectively. Such increases became effective January 1, 1980. A further longevity increase after only one year would, under all of the circumstances, appear unwarranted. The Panel believes that at the end of 1982 the Association's demand for a longevity upward adjustment may be presented in a more meritorious and favorable light based upon the status of comparable jurisdictions at that time.

B. <u>The Panel's Determination</u>:

Accordingly, based upon the record in its entirety,

it is the JUST AND REASONABLE DETERMINATION of the Panel that the Association's demand for an increase in longevity payments be DENIED.

6. Holidays:

A. The Demand and Positions of the Parties:

Under the existing bargaining relationship, the bargaining unit members are entitled to ten (10) holidays if non-veterans and twelve (12) holidays if veterans. Seven (7) of the holidays are payable in cash at the option of the member and the remainder are taken in compensatory time off. Thus, if the non-veteran police officer elects to take seven (7) holidays in cash he then is entitled to three (3)days in compensatory time off and if the veteran police officer also elects to take seven (7) days in cash he then is entitled to five (5) days in compensatory time off.

The Association's demand is to increase the number of holidays from ten (10) to twelve (12) for the non-veteran police officer and from twelve (12) to fourteen (14) for the veteran police officer. (The reference to "veteran" means a veteran of the United States Armed Forces). In addition, the demand includes the option to take any number of the days in cash rather than compensatory time off. There are presently 51 veterans and 52 non-veterans on the police force.

The Association's demand is based, principally, on the results of a comparison with the cities, towns and villages in the County which show that at the present time, the police officer of the Town of Greenburgh is next to the lowest in the holiday benefit. The Association also points out that the Town of Greenburgh is more generous to its other employees represented by two other unions. In both of the other instances the employees enjoy 13-1/2 holidays paid in cash. (Association's Exhs. 21-23). As an additional benefit, based upon the holiday benefit, both groups of employees received premium pay for working on a holiday (triple time in one instance and time and one-half in the other), while the holiday pay for the police officers is at straight time (Association's Exh. 23). In addition, the Association emphasizes that by increasing the option enabling the police officer to take any number of holidays in cash beyond the present seven will free more police officers for patrol duty which has been affected by the switching and assignment of more police officers to special duties such as Paramedic Unit, Special Investigations Unit, and Driving While Intoxicated Squad. According to the Association, the financial total impact upon the Town, based upon its demand for a 10% wage increase in 1980, will be an additional $19,462.89 in 1981 and $21,452.34 for 1982. (See page 64 of the Association's Brief).

The Town opposes the demand contending that in effect, the option demanded by the Association would mean 14 paid holidays for the non-veteran police officer and 16 paid holidays for the veteran police officer. The Town contends that nowhere in the County are 14 paid holidays granted and that the Town of Greenburgh's grant of holidays, as it now exists, "is Westchester's most generous". In this connection the Town points out that 60 of the Town's police officers are veterans and that since the job of a policeman is a daily job, requiring that he work on a daily basis, the holiday pay benefits are really "bonuses" and "disguised salary payments", though the Town "tries to recognize holidays as primarily time off -- the original justification for a holiday". Further, the Town points to the prior Panel's award (1979-1980) which, effective January 1, 1980, increases the option to take holidays in cash from 5 to 7 and, therefore, an improvement after only one year is unwarranted.

B. <u>The Panel's Analysis and Findings</u>:

At the outset the Panel believes its task is to place the Association's demand in proper perspective since there seems to be some misunderstanding as to the encompassing feature of the demand.

The Association's demand is for 12 and 14 days, respectively, depending on veteran's status with an option by the

police officer to take "any number up to the maximum" "in cash". The option does not appear to be restricted or limited so that a police officer may, if he so desires, avail himself of all holidays in cash. Whether he will or not, or is not likely to, is not the point. We treat with the language of the demand and the language clearly grants the police officer the option to elect all cash rather than part cash, part time off, or all time off in lieu of cash.

To the extent that the Town comprehends the Association's demand for 16 days, the Town misunderstands the limit of the demand. (See page 40, Town's Brief). Apparently, there are two days granted by statute to all public employees with veteran status. (Memorial Day and Veteran's Day). The statutory grant represents recognition by all of the people of the State of New York for the military service rendered by citizens of the State to the nation. In a substantial sense it represents the recognition of a grateful citizenry to those who made personal sacrifices for the protection of the State and the Nation against external threat. Other aspects, for the same reason, are also rewarded in the civil service of the State and its political subdivisions. (Additional points for entry and promotional examinations in public employment). The Panel is aware that the cost is imposed on the Town of Greenburgh. But the cost is imposed on all other public employers as well. Further, there are instances

where the Town of Greenburgh shares in the direct State aid formula to political subdivisions as other political subdivisions do, in addition to other forms of State aid. (Road building, welfare, housing development, etc.). The point is, at least as the Panel sees it, that to offset the statutory grant against a collective bargaining benefit would diminish the spirit and intent of the statute to benefit a particular class, singled out by the Legislature as the recipient of the beneficence of the entire people of the State. In such an instance the appeal should be to the Legislature, reminiscent of the Legislature's action in removing pensions as a negotiable item from the bargaining table. Nor is it possible to draw a line and conclude that the Town of Greenburgh sustains a financial loss by being a part of New York State and thus justify taking back the statutory two days holiday benefit.

As for the merits of the Association's demand, the evidence shows that, overall, Greenburgh ranks next to the lowest on the scale with respect to paid holiday benefits. Eight of the eleven towns in the County pay cash for holidays ranging from 11 to 13 days. Of the remaining towns, one (Harrison) grants 13 holidays - 6 in cash and 7 in compensatory time off - and the other (Rye) grants 12 days - all in compensatory time off. The Town's statement that its holiday benefit grant "is Westchester's most generous allowance" does

not appear to be supported by the evidence in terms of cash payments.

As for the other contentions of the Town (holiday pay is a form of disguised salary payment or a bonus, etc.), the Panel is of the opinion that no positive or constructive purpose is served by a response which would involve the underlying purpose and recent trends of holiday with pay, whether for policemen or employees engaged in other pursuits or occupations.

There is a difference between the figures submitted by both sides with respect to the number of police officers with veteran's status. The figure is obviously important since the more veterans there are on the police force, the better is the holiday benefit because veterans are entitled to 12 contractual days while non-veterans are entitled to 10 days. The Town claims there are 60 veterans and the Association claims 51 - or about half of the force, not the near two-thirds as the Town claims. The evidence, based upon the Town's police department records, supports the Association's figure. Further, the most senior members, closer to retirement, are veterans. This should eventually operate in favor of the Town with respect to the two extra days granted to veterans under the contract. For example, based on the department's roster, for the past five years - from 1977 to 1981 - out of 28 new members who joined the force, and are still on the force, only 2 are vete-

rans and 26 are non-veterans. (See Seniority Roster submitted with Association's Brief following page 56). On the other hand, based upon the same document, the Panel notes that from 1950 through 1965, out of 20 members who joined the force, and still on the force, only 3 are non-veterans and 17 are veterans. Five of the 17 veterans have, or will have, at least 25 years of service as of the end of 1981, one of the five having 30 years of service and another 28.

In evaluating the entire evidence, including the Town's financial and fiscal posture, the Panel finds that an improvement in the holiday benefit, is not warranted at this time in light of the wage increases and other benefits herein granted.

C. <u>The Panel's Determination</u>:

Accordingly, based upon the record in its entirety, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Association's demand for an improvement in the holiday benefit be DENIED and that the present holiday benefit continue and remain in effect during the years 1981 and 1982.

7. Welfare Plan Contributions:

A. The Demand and Positions of the Parties:

At the present time the Town is obligated to contribute to the Association's Welfare Fund the sum of $125 annually per unit member, plus the amount representing premiums the Town would have paid for dental coverage under the GHI plan. The total amount received by the Fund is about $20,500 (or about $200 per unit member) which is insufficient leaving a shortage of $6,800 for 1981 even after an assessment of $2,700 (or about $27 per unit member) upon the police force members. Removing the entire shortage of $9,500 (which includes the assessment) for the year 1981, and the anticipated premium increase for 1982, requires approximately $10,300 additionally for each year (1981-1982), which amounts to an additional contribution of approximately $100 per unit member for each of the years 1981-1982. This is the Association's demand. The Association states that the Fund will soon be depleted unless it is additionally funded by an increase in the contributions demanded. The Association points to the Town's contribution of $290 per year as a total welfare contribution for each of the Town's teamster members (Town's Exh. 15) and to the few other jurisdictions in the County which provide its employees with dental coverage.

The Town's reasons for opposing the Association's demands are set forth in its brief on page 46. They are: The Fund has not provided meaningful benefits; took an inordinately long time to get organized; entails administration expenses depleting the fund; the failure of the Fund to render timely account to the Town; the unit members are better off with direct payments; and the demand for contributions to the Fund impacts upon the Town's ability to meet the demand for wage increases which are more critically needed by the employees.

B. <u>The Panel's Analysis and Findings</u>:

The Panel notes that the very same arguments made by the Town before this Panel were made before the previous Panel (1979-1980) and were not accepted by that Panel, the result being an increase in the contribution to the Fund by $25, from $100 to $125, effective January 1, 1980.

The Panel is aware that dental coverage, particularly of the family variety, is costly and while it is a needed benefit the Town cannot, by reason of its financial and fiscal posture, be expected to pay the entire cost of such coverage. In a substantial respect the unit members must, at least for the present, share in the cost of maintaining such a benefit. The assessment upon the members now totals $2,700 or approximately $27. per unit member. The shortage is $6,800 or approxi-

mately $67 per member. Under all of the circumstances, particularly the Town's ability to partially fund dental coverage, the Panel finds that increases of $25 to the Fund for each of the years 1981 and 1982 are warranted. The increases herein granted will alleviate the present shortage so that whatever contribution is required to be made by individual unit members to defray the shortage will be substantially diminished.

The Panel notes that the Town's contribution to the Teamster Fund for dental coverage is for the years 1979 and 1980 and that the Town does not show that its financial resources are inadequate to contribute to the Fund. (Town's Exh. 14, Article XX, "Welfare").

C. The Panel's Determination:

Accordingly, based upon the record in its entirety, it is the Panel's JUST AND REASONABLE DETERMINATION that the Town of Greenburgh INCREASE its CONTRIBUTION to the Association's Fund for dental coverage as follows:

By $25.00 from $125.00 to $150.00 for the years 1981 and a further increase of $25.00 from $150.00 to $175.00 for the year 1982.

8. Sick Leave:

A. The Demand and Position of the Parties:

At the present time, members of the police force have sick leave benefits depending upon whether they joined the police force prior to or after January 1, 1977. If before, such members enjoy unlimited sick leave. If after, such members may accumulate sick leave days at the rate of 12 days a year and cumulatively up to 200 days.

The Association's demand is to increase the 12 days to 15 days with no maximum accumulation. In addition, in the event of a non-duty catastrophic illness or injury, the Association demands two years leave at full pay, provided that the member is physically able to return to full duty prior to the end of the two year period. The demand for additional sick leave days is coupled with a demand that a member's vacation period be expanded to two days who has not reported sick the prior year. In support of its position the Association focuses upon the nature of the job stressing its hazards and the requirement to work in all kinds of inclement weather rendering a police officer prone to illness and injury - whether duty connected or not. This is particularly true with respect to the older members of the force. As for duty connected injury the Town is covered by Workers Compensation so that it may recover a portion of the wages paid to the incapacitated police

officer or by a third party law suit if the injury is caused by a third party. Of importance and concern to the Association is the strong likelihood of a premature involuntary retirement should an officer incur an injury or illness which incapacitates him for a long period of time though within two years. The demand, if granted, could operate to preserve the police officer's job if he is able to return to full duty prior to the end of two years. In further support of its position the Association points to other jurisdictions within the County - Towns, Villages and Cities - which, in varying degrees, grant their police officers a better sick leave program. The towns are: Bedford, Harrison, Ossining, Mamaroneck, New Castle, North Castle and Rye. These towns either offer more sick leave days per year or an unlimited number of accumulated sick leave days depending on whether the date of hire was prior to, or after, January 1, 1972.

The Town's reason for opposing the Association's sick leave demand rests mainly on the comparative fairness of the Town's sick leave program when measured against other jurisdictions within the County and the fact that the prior Panel (1979-1980) found no merit in the Association's demand other than to increas the number of sick leave days from 10 to 12, specifically rejecting the Association's demand for unlimited sick leave days.

B. The Panel's Analysis and Findings:

Having reviewed the respective contentions of the parties and the data submitted by them in support of their respective positions the Panel finds that no basis exists in the record to change or adjust the existing sick leave program in any way. On balance, the Town's sick leave policy does not place its police officers in an unfavorable position when compared to the sick leave program of other jurisdictions. In addition, the Panel notes that in 1980 there was an average of 7.36 personal sick leave days per police officer, strongly indicating that there is no need to increase the present 12 sick leave days to 15; nor is the evidence persuasive that the cap of 200 cumulative sick leave days requires any change.

C. The Panel's Determination:

Accordingly, based upon the record in its entirety, it is the Panel's JUST AND REASONABLE DETERMINATION that the Association's demand for a revision of the Town's sick leave program be DENIED; it is the Panel's determination that the existing sick leave program be CONTINUED in all of its aspects.

9. Uniform Replacement and Maintenance Allowance:

A. The Demand and Positions of the Parties:

At the present time the police officer recruit receives $500 for initial uniform, equipment, etc. and, thereafter, the

sum of $350.00 annually to replace or maintain his uniform.

The Association demands an increase of $25.00 for each of the years 1981-1982 in both instances, i.e. an increase to $525.00 in 1981 and $550.00 in 1982; and an increase to $375.00 in 1981 and $400.00 in 1982.

Though the Town opposes the demand for the initial cost of the uniforms, contending that the existing allowance of $500.00 is adequate, it concedes that because of "the cost of items as well as comparisons with other County units, an increase of $25.00 - from $350.00 to $375.00, effective January 1, 1982, would be appropriate."

B. The Panel's Analysis, Findings and Determination:

Having reviewed the respective contentions of the parties, and more particularly the recent increase of $50.00 awarded by the prior Panel, effective January 1, 1980, and upon the entire record, the Panel finds that an increase of $25.00 as and for an allowance, for the replacement and maintenance of a member's uniform, ought not to be granted in view of the Panel's award regarding the increase granted in the contribution to the Union Health and Welfare Fund and that in all other respects the Association's demand is DENIED.

10. Insurance:

A. The Demand and Positions of the Parties:

The Association demands that the Town increase the Accidental Death and Dismemberment Coverage from $10,000 to $15,000 per member effective January 1, 1982, pointing out that the financial impact upon the Town is $2,163.

The Town opposes the demand pointing to the comparative coverages of other towns and jurisdictions within the County.

B. The Panel's Analysis, Findings and Determination:

After reviewing the respective contentions of the parties and, upon an analysis of the data submitted, the Panel finds that no need exists for increased insurance coverage. The record does not contain any experiential factor which would warrant any upward adjustment in coverage and a comparison with the coverage granted by other jurisdictions does not justify the grant of this demand.

Accordingly, based upon the record in its entirety, it is the JUST AND REASONABLE DETERMINATION that the Association's demand for an increase in the coverage of the Accidental Death and Dismemberment Policy, from $10,000 to $15,000 be DENIED; it is the DETERMINATION of the Panel that the existing coverage in the amount of $10,000 be CONTINUED.

11. Bereavement Leave:

A. The Demand and Positions of the Parties:

At the present time, unit members are entitled to bereavement leave with pay as follows:

1. Four days for the death of a mother, father, mother-in-law, father-in-law, spouse or children.

2. One day for sister, brother, aunt, uncle, or aunt or uncle of spouse.

The Association desires to include in the four day bereavement category a brother, sister, brother or sister-in-law, son or daughter-in-law, and the grandparents of the member or spouse.

The Association contends that in many past instances the unit members had to make last minute arrangements with other unit members so that a proper respect by the bereaved member could be shown in the family in the case of deceased relatives in the one day bereavement category. Therefore, the Association contends that more days are required to fulfill the moral obligation of a member.

The Town opposes the demand as a device to expand bereavement leave for non-productive duty.

B. The Panel's Analysis, Findings and Determination:

The Panel has reviewed this demand in light of the bereavement provisions of several collective bargaining agreements submitted by the Town as its exhibits (T-42 Mamaroneck, T-43 Hastings, T-46 Larchmont, T-47 Groton, T-49 Poughkeepsie, T-51 Yonkers, T-55 New Rochelle, T-56 Ossining, T-57 White Plains), and finds that the majority of such provisions, in the jurisdictions mentioned, do include a deceased brother or sister in the 3 or 4 day category and, in some instances, even grandparents and sons and daughters-in-law. It is the Panel's judgment that the Association presents a supportable case to include a deceased brother or sister in a 3 day category rather than one.

The Panel notes that unit members may avail themselves of five personal leave days which "are not subject to inquiry by superiors" (Article IX, Collective Agreement, Association's Exh. 2), and which could be used for additional time, if needed, for bereavement purposes.

Accordingly, based on the evidence in its entirety, it is the Panel's JUST AND REASONABLE DETERMINATION that, effective January 1, 1982, bargaining unit members be GRANTED three (3) days bereavement leave in the event of the death of a brother or sister and that, in all other respects, the pre-

sent bereavement policy CONTINUE and REMAIN the same for the years 1981 and 1982.

12. Meal Allowance:

A. Panel's Determination:

Based upon the evidence in its entirety and the Town's concurrence in the Association's demand, it is the JUST AND REASONABLE DETERMINATION of the Panel that, effective retroactively to January 1, 1981, a bargaining unit member recalled to emergency duty and is on such duty for a minimum of five (5) hours, shall be provided with a hot meal or compensation in the amount of $3.50 for said meal. Such compensation is to be made only upon the submission of the appropriate departmental voucher.

13. The Association's Rights:

At the present time the Association's President, or his designee, is allotted 24 days a year to attend to Association business which includes attending conventions, seminars and professional meetings as well as the time necessary to generate a set of contract demands to be presented during negotiations. (See page 99, Association's Brief). Thus, the demand is for five additional paid leave days "to be used for the finalization of the Union's contract demands prior to the commencement of future negotiations". The Association limits

its demand to every other year claiming that such time to prepare demands is necessary. If granted, the Association computes the demand, based upon the 10% wage increase it demanded, to be $565 or the equivalent of one week's salary for the present incumbent who holds the rank of Sergeant.

The Town opposes the demand contending that the time now allotted is sufficient as witness the effectiveness of the present Association's President and, further, to allow more time would be unnecessary and unconscionable. The taxpayers should not be underwriting the present incumbent's Association activities any more than they are already.

B. The Panel's Analysis, Findings and Determination:

The Panel notes that the thrust of the Town's opposition relates to the amount of time allotted to conduct Association business and not to the principle that such time may be necessary. Thus, the Town's opposition is one of degree only and not substantive.

The Panel also notes that the focus of the Association's demand is on the pre-negotiating period during which five days are claimed to be necessary to finalize contract demands.

The Panel further notes, though not brought to its attention by either side, that Article XXI of the collective

agreement provides for a five member negotiating committee who "shall receive necessary time off for collective negotiations" and that negotiations begin "on or about the 1st day of September, 1978". The Panel assumes the same practice continues since there is no request by the Association for a restoration of this practice because it has been withdrawn by the Town. Nor does the Association claim that it has been withdrawn.

It is the Panel's judgment that in as much as the Association now has the benefit of "necessary time off" for five of its members for collective negotiations, the finalization of contract demands, prior to their presentation at negotiations, is a matter of "homework" included as part of the time period during which the Association's demands are discussed and determined by its membership preparatory to actual negotiations. A demand that the Association's President requires more time in connection with the procedure following an impasse might be viewed differently. In such a case the organization and preparation of materials for hearings and the actual need for the presence of the Association's President at the hearings (which in this case took 3 days) may be valid considerations for negotiating more time. However, this is not the Association's demand which, again, refers to pre-negotiations time only.

Accordingly, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Association's demand for an additional five (5) days for its President to finalize contract demands is DENIED.

14. Additional Compensation for Carrying Weapon Off-Duty:

A. The Association's Demand and Positions of the Parties:

The Association demands $1.00 per day for every police officer who is required to carry his weapon (gun) while off-duty.

The demand is based mainly upon the Town's legislative mandate that the Greenburgh police officer carry his weapon while off-duty and the rigorous consequences which ensue because of this obligation. Much of the Association's comments is critical of the mandate.

The Town opposes the demand contending that if a police officer "doesn't want to carry a weapon he shouldn't join the police force" and that, "Next, we will be confronted with a demand for $1 a day for wearing a badge or strapping on a holster, etc.".

B. The Panel's Analysis, Findings and Determination:

At the outset the Panel is of the view that the Town's response is a non-sequitur to the Association's demand.

The individual who aspires to be a policeman is prepared to assume the duty and responsibility of carrying a weapon while on duty. Nor is he refusing to carry a weapon while off-duty if he is ordered to, though some - not all - police officers would prefer not to carry a weapon while off-duty.

The Association's contention that carrying a gun at all times cannot be considered an inherent part of being a police officer, and that not all Police Departments insist on such a requirement, is noted by the Panel. However, the absence of any comparative basis upon which to make a determination handicaps the Panel in its evaluation of the merits leaving it to consider the philosophical content only concerning the job of a police officer and whether the 24 hour carrying of a weapon is an inherent aspect of the job.

Accordingly, based upon the evidence in its entirety, it is the JUST AND REASONABLE DETERMINATION of the Panel that the Association's demand for additional compensation for carrying a weapon off duty be DENIED.

15. Discipline:

A. The Association's Demand:

The Association's demand deals with a change in the Town's present employee disciplinary procedures which are administered under the Westchester County Police Act. One branch

of the demand would prohibit the suspension of a police officer, without pay, pending determination of the charges against him. (See: In the Matter of Police Benevolent Association of the City of White Plains, Inc., 12 PERB, Par. 3046, p. 3082, Case No. U-2804, 1979). Under the existing applicable procedure the police officer may be suspended, without pay, pending the trial of charges, for an indeterminate period of time. (See page 83 of Association's brief). The other branch of the demand would provide the police officer facing disciplinary charges with the option of having the charges heard by a hearing officer (Arbitrator) appointed by the American Arbitration Association under the rules of that Association and whose award shall be binding on both sides, except that the penalty imposed shall be in conformance with those provided under the Civil Service Law. (See: Police Association of New Rochelle, New York, Inc. and City of New Rochelle, 13 PERB Par. 3082, p. 3129, and Auburn Police Local 195 v. Helsby, 62 App. Div. 2d 12, 11 PERB Par. 7003 (3rd Dept., 1978), aff'd. 46 N.Y. 2d 1034, 12 PERB Par.7006, 1979). Under the existing applicable procedure charges against a police officer are heard and determined by members of the Town Board.

B. Positions of the Parties:

1. The Association: The Association contends that a substantive and procedural change in the administration of

disciplinary procedure is essential in order to assure impartiality and an objective measure of due process. In this connection the Association points to several factors in support of its position. Fairly summarized, those factors are:

(a) The experience involving Sergeant Kapica who was suspended for five months without pay pending the decision by the Town Board on Charges levelled against him and the concomitant burdensom financial loss of income, though he was still carried as a member on the rolls of the police force subject to its regulations.

(b) Section 75, Subd. 3, of the Civil Service Law prescribes a limit of 30 days suspension without pay which may be imposed upon an employee facing charges. The purpose of the limitation is to assure a reasonably prompt disposition of charges; alternatively, the charged employee may continue to receive pay after the expiration of the 30 day period pending a determination of the Charges. The Greenburgh police officer, by comparison, may have to wait months until a determination is made in his case and in the interim, not receive any pay; and, possibly, be subject to restriction as to outside employment.

(c) Available to the Greenburgh police officer, in lieu of the statutory procedure, is an administrative disposition of Charges within the Department. However, the police

officer must consent in writing to an administrative disposition and thus waive the statutory procedure. The administrative dispositions may include the forfeiture of ten days pay "which is not unusual punishment" in addition to which the police officer must report for duty which, in effect, doubles the penalty.

(d) Administrative penalties, though excessive, are accepted by the police officers since the experience with Town Board proceedings are protracted and expensive. Further, the police officers have the feeling that they will not receive fair and impartial treatment by the Town Board which is "reinforced by the fact, that the present board has never acquitted anyone who appeared before it on a disciplinary matter".

2. The Town: The Town's opposition to the Association's demand is set forth in its brief on page 45 and is as follows:

(a) The Association's demands are violative of State law which prescribe and proscribe the rights and duties of the parties.

(b) No evidence has been offered to support the demand which is designed to make it more difficult and costly to rid the Department of the occasional incompetent.

(c) Disciplinary proceedings are rare in Greenburgh and thus no change in the existing procedures is required.

(d) The Panel would be illadvised to substitute its judgment for that of the State Legislature, assuming, arguendo, that the collective bargaining process could limit the Town's right to discipline its police.

C. The Panel's Analysis and Findings:

Having analyzed the record and the respective contentions of the parties with respect thereto, the Panel's findings are:

1. With respect to the legal point raised by the Town (i.e. the illegality of the demand), the Panel's view is that the Town is in error. The cases cited above clearly and unequivocally support each branch of the Association's demand as a mandatory item of bargaining and, therefore, are properly before this Panel for determination. In fact, a prior contrary PERB determination was overruled by the Courts (Auburn Police Local 195 v. Helsby, supra). Since then the PERB has had occasion to rule favorably on the kind of a demand as now submitted before this Panel (Police Association of New Rochelle, New York, Inc. and City of New Rochelle, supra). Thus, the Town's objection, in point of law, is without merit.

2. There is sufficient evidence in the record to support the demand. The matter involving Sergeant Kapica is

a fact of which the Panel may take cognizance. In itself, the five month lag between the service of charges and a determination by the Town Board on the charges, during which the chargee received no compensation, justifies a change in the existing disciplinary procedures.

In Police Association of New Rochelle, New York, Inc. and City of New Rochelle, 13 PERB Par. 3082, page 3129, the Public Employment Relations Board held:

> "By its terms, Civil Service Law, Section 75, is no more exclusive in determining who should hear disciplinary charges than it is in the other procedural particulars that were at issue in Auburn."

Further, PERB pointed to the holding in Auburn that "matters of employee discipline could be submitted to arbitration."

3. The statement in the Town's brief that disciplinary proceedings are rare in the Town of Greenburgh is equivocal. If the reference is to disciplinary proceedings before the Town Board, then the Association's reference to the reason why police force members opt for administrative disciplinary proceedings, rather than Town Board disciplinary proceedings, accounts for the "rareness". Actually, it does not appear that disciplinary matters are that rare as to warrant a sufficient reason or ground for no change. In any event the Panel

finds merit to the demand as offering an expeditious and objective procedure to the resolution of disciplinary matters.

4. By granting the Association's demand, the Panel is not limiting the Town's right to discipline members of the police force or substituting its judgment in disciplinary matters. The Panel is acutely aware of the Town's need to exert discipline, particularly where it involves the operation of a para-military organization. However, even members of a para-military organization are entitled to a procedure which affords its members an impartial hearing and determination, is consistent with procedures adopted in many jurisdictions throughout the State, and, as previously demonstrated, permissible under State law. The State Legislature allows precisely that which the Town contends the Legislature does not allow. To the extent that the Legislature and the courts dealt with Section 75 of the Civil Service Law and the instant disciplinary procedures relate to County law, the Panel holds there is no distinction since the principle involved is sufficiently broad to encompass both statutes. The point in either instance is that the Taylor Law mandates bargaining with respect to disciplinary procedures and the mandate includes not only the modification or supplementing of Section 75, but also its replacement. (See: Auburn, supra). In addition, the authority of the certified organization may be exercised so as to waive employee rights to the statutory

procedure. (See: Auburn, supra). However, the Panel notes that the Association's demand does not include this latter factor. Rather, the Association's demand leaves it to the individual police officer to choose either the statutory procedure or the arbitral procedure. Having chosen one the employee is bound by his choice. (Matter of Huntington Board of Education, 30 N.Y. 2d 122).

D. The Panel's Determination:

Accordingly, based upon the evidence in its entirety, it is the JUST AND REASONABLE DETERMINATION of the Panel that the police officers of the Town of Greenburgh be GRANTED a disciplinary procedure whereby they may:

1. Select either the Westchester County Police Act or binding arbitration, including a hearing by an arbitrator designated by the American Arbitration Association, under the rules of that Association, whenever a disciplinary charge is served upon the police officer and, accordingly, to notify the Town of such selection.

2. That the Arbitrator shall, with respect to the imposition of a penalty, be authorized to impose a penalty, if warranted, which is authorized under the Westchester County Police Act only.

3. That pending the determination of the charges the police officer charged may be suspended without pay for a period not to exceed 30 days following the service of charges and to be compensated his regular pay beyond that time until the charges are determined.

4. The foregoing shall go into effect and be applicable to all future disciplinary matters after November 1, 1981.

The Panel is aware that implementing language is necessary to flesh out the basic outlines set forth in the above determination which is consistent with the Association's demands. The task is one for the parties and to exercise good faith in carrying out the basic outlines as determined.

16. Joint Safety Committee:

A. The Association's Demand and Positions of the Parties:

The prior Panel (1979-1980) granted the Association's demand to the extent of determining the establishment of a joint safety committee but denying so much of the demand which would subject impasses to binding arbitration.

Since then the Association contends that the partisan composition of the Committee accomplishes nothing more than assurance of its lack of efficacy. Thus, the Association proposes binding arbitration as a solution to the effective opera-

tion of the Joint Safety Committee.

The Town opposes the demand contending that there is no demonstrated need for such a Committee and that to subject matters of safety to an arbitrator would, in effect, "take normally legislative and management decisions out of the Town's hands and put them into the hands of those who are not responsible to the electors".

B. The Panel's Analysis, Findings and Determination:

The Panel is of the view that the continuity of a Joint Safety Committee could function so as to benefit both the Town and the police officers. The Panel, however, believes that an experiential period is necessary in order to conclude that binding arbitration is an appropriate vehicle. Therefore, it proposes that ADVISORY ARBITRATION be resorted to whenever the Committee is at an impasse and that the Arbitrator's Award, in the form of a recommendation, be submitted to the Town Supervisor for his consideration and final determination.

Accordingly, based upon the record in its entirety, particularly the need for a Joint Safety Committee and an appropriate vehicle to recommend a solution whenever the Committee is at an impasse, it is the JUST AND REASONABLE DETERMINATION of the Panel that, effective November 1, 1981, the

provision for the establishment of a Joint Safety Committee, as presently constituted, contain an additional provision for Advisory Arbitration whenever the Joint Safety Committee is at an impasse, and that an Arbitrator be appointed from the panel of Arbitrators maintained by the American Arbitration Association or the New York Public Employment Relations Board to the end that such an Arbitrator, after hearing, may make recommendations to the Town Supervisor for his consideration and final determination.

THE PAST PRACTICE DISPUTE

I

Preliminary Statement

The dispute between the parties concerning "past practices" is rather hoary with age stemming from an ambiguity in Article XX, labelled "Past Practice Clause", of the collective agreement expiring December 31, 1974, and which since has escalated winding its way through two Public Arbitration Panels and court litigation without disposition. At the request of the parties, and as an accommodation to help resolve a perennial irritant between them, the Panel agreed to accept submission of the dispute for final and binding disposition. Accordingly, the Association has agreed to withdraw the pending

court proceeding to stay arbitration of the dispute sought by the Town and the matter now vests with this Panel for a final and binding determination. (Tr. pps. 9-14, 5/5/81).

II

The Facts

The facts, fairly summarized, are as follows:

In an effort to resolve the "past practice" dispute, stemming from the expired agreement, the parties agreed to a new "Previous Practice" clause in Article XXXII of the successor agreement effective for a four year term, commencing January 1, 1975 and ending December 31, 1978. According to paragraph 3 of Article XXXII, the Association was to specify, in writing, before December 31, 1977, each benefit, right or privilege which it regards as included in this agreement by reason of paragraphs 1 and 2 of this Article to the end that all 'past practices' be reduced to writing and incorporation by reference be eliminated effective January 1, 1978. In the event the Town shall disagree with such specification or any item contained therein, it may submit the matter to binding arbitration before a single arbitrator under the rules then obtaining of the American Arbitration Association. The Arbitrator so selected shall determine whether the disputed item

or items are properly terms and conditions of employment included in this agreement by virtue of paragraphs 1 and 2 of this Article".

In accordance with paragraph 3, the Association did submit a list of "Previous Practices" to the Town specifying 25 items of past practices one of which was item 7 which is at the center of the within dispute. Item 7 states, in pertinent part, that, "As has been the previous practice" the President of the Association "shall also be granted time off" to attend monthly business meetings of certain police organizations. (Another item - item 6 - also refers to "the previous practice" of granting 24 days a year to the President of the Association to conduct Association business).

Upon receipt of the "Previous Practices" list the Town acknowledged the validity of some of the items and disputed others. (Association Exh. 84). As to item 7 the Town Supervisor stated in his response that, "This time period is to be incorporated as a total part of item No. 6" (Letter, 1/18/78, Association Exh. 84). Subsequently, the differences between the parties were further narrowed so that eventually five items remain in dispute, including item 7. Item 6, providing 24 days per year to the Association's President was acknowledged by the Town as a past practice. (Association Exh. 84).

At the expiration of the agreement on December 31, 1978, and in preparation for the successor agreement, commencing January 1, 1979, the Association demanded that item 7, which had not been previously disputed by the Town,be included in the new agreement. The Town refused the demand and the dispute was then submitted to the Public Panel for determination in 1979. In presenting its version of the disputed item 7 before the prior Public Panel in 1979, the Town proposed that Article XXXII of the contract, which expired December 31, 1978, be continued except for the dates concerning the time within which the Association would specify its prior practices and the Town could invoke arbitration in the event it disagreed with any of the prior practices specified by the Association. The suggested dates were December 15, 1979, for the Association to specify prior practices and December 31, 1979, for the Town to invoke arbitration if it disputed any of the items. As previously stated, the prior Panel declined to entertain the dispute urging the parties to settle the matter through direct negotiations.

The award of the prior Panel was not issued until March, 1980, rendering the proposed 1979 dates academic. However, following through with the attempt to incorporate the provisions of that Panel's award in a successor collective bargaining agreement and in accordance with the suggestion to further negotiate, made by that Panel, the Town's

attorney forwarded to the Association's attorney a draft agreement on May 28, 1980, which included a past practice provision identical to the agreement that expired in 1978 except for the dates by which the Association would specify past practices and the Town would invoke arbitration in the event it disagreed with the Association as to any past practice item specified. It was not until August 6, 1980, that the Association, in submitting its demands for 1981-1982, responded. While the Association agreed with the Town's attorney to reinstate the same language of the former Article XXXII it did not agree to any extension or set back of the date requiring the Town to invoke arbitration, taking the position that the latest date to have done so was December 31, 1979, which had expired, and that the failure of the Town to invoke arbitration on or prior to that date constituted an acceptance by the Town of item 7.

Thereafter,a notice of the Town's intention to arbitrate the dispute, dated December 31, 1980, was served upon the Association whereupon the Association, in January, 1981, petitioned for a stay of arbitration. Full cycle is now made so that the dispute is submitted to this Panel for a final and binding determination.

III

Disputed Contract Language

As to the substantive issue, regarding the merits of the dispute and the interpretation and application of the language of the contract, both sides agree that Article XXXII of the agreement which expired December 31, 1978, is pertinent. Article XXXII, labelled "PREVIOUS PRACTICE", consists of three numbered paragraphs reading as follows:

> "1. Except as provided in paragraph 3 of this article, notwithstanding any provision contained in this Agreement, nothing herein shall be deemed to limit, restrict or remove any benefit, right, or other thing which members of the Bargaining Unit may now have or be entitled, pursuant to Town Board adopted Rules and Regulations or other formal departmental directions presently in effect.
>
> 2. Except as provided in paragraph 3 of this Article, no agreements or actions made by an individual or individuals shall have any binding effect hereunder and no new conditions shall be created except by the written agreement of the Town and the Association.
>
> 3. On or before December 31, 1977, the Association shall specify in writing each benefit, right or privilege which it regards as included in this agreement by reason of paragraphs 1 and 2 of this Article to the end that all 'past practices' be reduced to writing and incorporation by reference be eliminated effective January 1, 1978. In the event the Town shall disagree with such specification or any item contained therein, it may submit the matter to binding arbitration before a single arbitrator under the rules then obtaining of the American Arbitration Association. The arbitrator so selected shall determine whether the disputed item or items are properly terms and conditions of employment included in this agreement by virtue of paragraphs 1 and 2 of this Article."

IV

The Issues

There are two (2) issues before the Panel. One issue involves a challenge by the Association to the arbitrability of the dispute, i.e. timeliness with respect to invoking arbitration and, as indicated above, the second issue relates to the substance or the merits of the dispute involving the interpretation and application of contract language.

The issues are thus formulated as follows:

Issue I

Whether the Town has timely submitted the dispute concerning item 7 to arbitration and, if so:

Issue II

Whether Article XXXII of the Collective Bargaining Agreement may be interpreted and applied so as to include item 7 as a "Previous Practice". If so, what shall the remedy be?

V

Positions of the Parties

A. The Association:

1. As to timeliness: The Association contends

that there was in effect an agreement which fixed December 31, 1979 as the date by which the Town was required to invoke arbitration and its failure to do so renders its subsequent attempt on December 31, 1980 - one year later - a nullity. The Town, by its response to the Association on January 18, 1978, expressly stated that the time referred to in item 7 was to be incorporated as a total part of item 6. Thus, the Town knew then that it disagreed with item 7 as a "previous practice" and not having invoked arbitration soon thereafter, or within a reasonable time thereafter, is time barred from invoking arbitration almost one year later.

2. <u>As to the Merits</u>:

(a) Item 7 which sets forth additional time off for the Association's President as a prior practice was submitted by the Association to the Town for acceptance or rejection in accordance with Article XXXII. The failure of the Town to dispute item 7, by timely invoking arbitration, constituted an implied acceptance of item 7 which, in effect, became a contractual benefit, i.e., a term and condition of employment, binding upon the Town.

(b) A reading of paragraph 3, Article XXXII, in its entirety, compels the interpretation that it encompasses item 7 as a "benefit, right or privilege", previously afforded the Association, and, therefore, includible in the 1979-1980 collective agreement.

B. The Town:

1. As to Timeliness: The dispute concerning item 7 was ongoing and continual, never reaching a final stage from which the requirement to invoke arbitration, or be bound by item 7 as a previous practice, could be measured. In this respect Article XXXII contained no contractual time limit with respect to instituting arbitration and the Association indicated a willingness to adjust the dispute by negotiations rather than arbitration. For example, it was the Town attorney who first proposed that a date limiting its right to invoke arbitration be fixed as December 31, 1979. The proposal was advanced based upon the Town's belief that the proceedings before the prior Panel in 1979 would terminate in sufficient time to allow the partiesto adjust the matter either by agreement or by submitting disputed items to arbitration. The Town's proposal was predicated upon a time contingency which both sides had hoped would eventuate. When the contingency did not eventuate the Town's proposal could not, as the Association now attempts, be converted into an agreement with a fixed date at December 31, 1979. Thus, following the termination of the 1979-1980 interest arbitration proceedings, the Town followed through in May, 1980 with a further proposal extending the date to invoke arbitration to December 31, 1980. No reply was received until some ten weeks later in August when, for the first time, simultaneously with

submitting its demands for the 1981-1982 proposed contract, the Association took the position that the Town should have invoked arbitration no later than December 31, 1979, and that, having failed to do so, the Town is bound by item 7 and may not arbitrate its disagreement with that item.

By reason of all of the foregoing events, the Town's time to invoke arbitration was timely.

2. As to the Merits: Article XXXII is plain and unambiguous. The language concerning "past practice" relates solely to any practice covered by Town Board Rules and Regulations or other formal departmental directions presently in effect. Item 7 is not covered by a Town Board Rule or Regulation or other formal departmental directions presently in effect. The matter of days off, allotted to the Association's President is so covered by departmental policy which, as the Association acknowledges, provides for 24 days for various purposes, including the purposes mentioned in item 7, and for that reason item 6 was approved by the Town as a previous practice for inclusion in a collective agreement, but not item 7.

VI

Discussion

A. As to Timeliness of Invoking Arbitration:

The Panel is impressed with the arguments made by counsel for the Town and the Association. Persuasive to the Panel, however, is the evident preference of the parties to resolve the particular dispute through arbitration. The Panel is of the view that more is accomplished by a disposition on the merits than to leave an important basic issue in a state of limbo. Thus, in the absence of express contractual language, imposing a strict time limit requiring the Town to proceed to arbitration to test the Association's claim to a past practice benefit, and the equally clear language that failure to comply within any prescribed time limit shall be deemed a waiver or abandonment to invoke the arbitral remedy, the Panel is reluctant to frustrate a disposition on the merits. Normally, to hold that a party is not entitled to the arbitral remedy, by reason of being untimely in its pursuit, requires a finding that there has been a conscious waiver or abandonment of the remedy. Waiver or abandonment, of course, are conclusions necessarily resting upon a factual basis requiring analysis. The factual basis in this case abjures the conclusion that the Town consciously waived or abandoned the arbitral remedy. Just as the law abhors a forfeiture by the de-

nial of a remedy unless the forfeiture is clearly spelled out, so by a parity of reason: does this Panel hold that the Town has not forfeited the arbitral remedy. The facts speak against a conclusion of waiver, abandonment or forfeiture. Under all of the circumstances, the Panel finds and concludes that the dispute is arbitrable and may be disposed of on the merits.

B. <u>As to the Merits</u>:

Actually, as the Panel analyzes the dispute, the crux of the matter involves the interpretation and application of contract language with respect to an asserted "past practice".

If we were dealing with a past practice and contractual silence regarding a past practice, then it would follow that a benefit enduring over a length of time, on a sustained basis, ripens into an implied term and condition of employment which is contractually enforceable. However, in the instant case, the contract is not silent with respect to past practice. Rather, the contract expressly relates past practices to Town Board "Rules or Regulations or other formal departmental directions presently in effect". Admittedly, the language restricts a past practice to a practice allowable by a rule or regulation or other formal departmental directive so that the past practice and the rule or regulation

or directive permitting it are inseparable. The obvious intendment of Article XXXII, read in its entirety as the Association urges, was and is to protect the unit employees against any attempt on the part of the Town to take away a benefit granted outside the collective agreement by a rule, regulation or departmental directive and, further, to firm that protection by including it in the collective agreement. To obtain that protection, however, the Association was required to point to such rule, regulation or formal directive and, having done so, the Town would then be obligated to include such benefit as a contractual commitment removing any threat of its excision for the term of the contract.

The "past practice" referred to in item 7 by the Association is, concededly, not covered by any rule, regulation or formal directive. However, item 6 is so covered and, admittedly, is includible in the collective agreement. (See Town Counsel's Stipulation concerning time allotted to the Association's President; Tr. pps. 78-80, 5/28/81). The Association's attempt to fit item 7 into the language of Article XXXII is, in the Panel's view, a strained effort at language construction. Once again, lest there be any doubt, the matter of time off for the Association's President is covered by departmental policy and, as such, is identifiable as "past practice" properly includible in the collective agreement. While item 6 fits into the language of Article XXXII,

and is so conceded by the Town, item 7 does not so fit. This has been the Town's position maintained from the very time that the Association urged its inclusion in the collective agreement. (See Association's Exh. 84).

Based upon the entire record, the Panel is constrained to deny the Association's grievance on the merits.

VII

AWARD

Issue I

The Town has timely submitted the dispute concerning item 7 to arbitration.

Issue II

Article XXXII of the Collective Bargaining Agreement may not be interpreted and applied so as to include item 7 as a "Previous Practice". The Association's claim is denied.

Conclusion

In rendering the several determinations herein, the Panel has made a good faith effort to understand and weigh the fiscal posture of the Town of Greenburgh and the services

rendered by its police officers. The Panel has concluded that (a) the Town does have the ability to pay the wage increase and other benefits herein granted and (b) that such wage increases and benefits granted constitute a just and reasonable determination of all issues submitted to the Panel based upon all of the facts and circumstances, supported by a rational analysis of the evidence contained in the record. While the Police Officers may be expected to share some of the burden in considering the fiscal posture of their employer, the Town of Greenburgh, they cannot reasonably be expected to bear the full burden of such fiscal problems and that it would be inequitable to foist that burden solely, or substantially, upon the police officers. In the final analysis it is in the interest of the Town's taxpayers that the Town have a well organized and properly motivated police force whose compensation meets the objective standards of what is fair and equitable and just and reasonable.

Dated: October 23, 1981

Philip J. Ruffo

Philip J. Ruffo, Esq.
Chairman

Peter J. Reilly

Peter J. Reilly,
Employee Organization Member

Frank Reel

Frank Reel, Esq.,
Public Employer Member

ACKNOWLEDGMENTS

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

On this 23rd day of October, 1981, before me personally appeared PHILIP J. RUFFO, known to me and to me known to be the Chairman of the Panel who executed the foregoing Determination and Basis for Findings, and he duly acknowledged to me that he executed the same.

Notary Public

BENJAMIN JAFFE
Notary Public, State of New York
No. 41-7065930 - Queens County
Term Expires March 30, 1982

STATE OF NEW YORK)
) SS:
COUNTY OF Westchester)

On this 23 day of October, 1981, before me personally appeared PETER J. REILLY, known to me and to me known to be the Employee Organization Member who executed the foregoing Determination and Basis for Findings and he duly acknowledged to me that he executed the same.

Notary Public

FLORENCE E. NORTH
Notary Public, State of New York
No. 60-5067590
Qualified in Westchester County
Term Expires March 30, 1983

STATE OF NEW YORK)
COUNTY OF Westchester) SS:

On this 23 day of October, 1981, before me personally appeared FRANK REEL, known to me and to me known to be the Public Employer Member who executed the foregoing Determination and Basis for Findings and he duly acknowledged to me that he executed the same.

Florence L. North
Notary Public

FLORENCE L. NORTH
Notary Public, State of New York
No. 60-2907500
Qualified in Westchester County
Term Expires March 30, 1983