



after referred to as "the Panel," consisting of the Chairman and the Employee Organization Member make the following findings and conclusions:

The contract sought by PBA is for a two year term -- March 1, 1983 through February 28, 1985. The demands of PBA are: increases in salary, night differential, longevity pay, cleaning and equipment allowance; increased time off for PBA President and representatives; and binding arbitration for contract and disciplinary grievances. On the part of the Village, the demands are: a "cap" on hospitalization insurance costs; for new hires after the date of the agreement -- reductions in sick leave conversion and termination pay on separation from the force and reduction in vacation pay; and supervision by superiors relative to officers on sick leave. Certain other demands were withdrawn by each party. Others were agreed upon -- deferred compensation annuity with no contribution by the Village; and the establishment of a joint management and union health and safety committee.

#### Salary Increase

PBA seeks an 8% and 8% salary increase across the board for each of the two years. The Village officially proposes a 4% salary increase for a one year contract.

#### Comparability

The passage of time has witnessed a change in positions of PBA and the Village with regard to the reference to be employed

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in assessing comparability of salary, hours and conditions of employment. In earlier years of collective negotiations PBA employed the Nassau County settlements as the criterion in view of the higher economic level attained by the County police force and the results substantially reflected "parity" except for the time lag in the effective dates of the budgets and contracts between the two jurisdictions.

In recent years, however, PBA has favored comparisons with Village police in the localities having separate departments, this being a reflection of the dip in County salary levels as well as the judicial proscription against automatic "parity." The Village, on the other hand, has gone from local to Nassau County as the appropriate standard while also drawing upon New York City economic levels, a declining area of increase. The Village uses Suffolk County police salaries and conditions as well, massing the three largest entities on a theory that predominance of numbers should dictate the outcome herein with preference given to Nassau County as the belwether for the Village.\* It should be noted that PBA is not reluctant to using Nassau County but as the salary adjustment to stay ahead of while comparing the leading Suffolk County as the salary and working conditions level to be aspired to.

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\*Through the expert testimony of James Baker, a Nassau County research analyst, the Village produced a survey of economic terms and conditions in the various villages as well as Nassau, Suffolk and New York City.

In truth gone are the halcyon days when Nassau County provided the touchstone for "parity" and many of the local police forces followed. The realities of the salary and economic adjustments for police in contemporary circumstances dictate that the search for "comparable communities" under the statute bring into focus local as well as the two County adjustments and levels so that the prevailing currents of existing economic tugs and pulls be accounted for in reasonable fashion. This does not mean reaching out for New York City which has become sui generis owing to a rather exceedingly straitened fiscal plight in recent years, a circumstance reflected in the relative falling off in salary levels vis a vis earlier upward movement. Nor does it mean pointing to small village forces, as the Village does, which resemble in their policing duties the constabularies of yesteryear or enjoy an exceedingly large police department in relation to the population served such as affluent Old Brookville, pointed to by PBA, where for every police officer there are 31 in the population (50/1,562) as compared with 500 in the population served by each Freeport police officer.

"Comparable communities" must also relate not only to size of department in relation to population but also to such factors as number of crimes reported, geographical area covered, and ranking by total overall full value range of tax rate. The contract years of economic adjustments sought herein encompass, as heretofore

noted, March 1, 1983-February 28, 1985. This circumstance mandates that for the purpose of meaningfully consistent economic comparisons, the movement in adjustments be taken from the 1982 terminal levels as the base from which to measure the overall changes excluding increases effective wholly in 1985 or into 1986 as well as those not yet negotiated into 1985 or beyond. Therefore the adjustments referred to hereinafter reflect an effort to be proximately coterminous with the prospective two year period of the Village contract whether or not this period be the whole term of the adjustments in all the communities compared as well as for Nassau and Suffolk Counties. So self-limiting, the community profiles present --

	Current No. of Police Officers	Ratio Police Officers to Population	* '82 Criminal	'83 Offenses	Popu- lation	Sq. Miles	Total 1982 Overall Full Value Range
<u>Freeport</u>	76	500	1,763	1,525	38,000	4.6	\$49.08-55.09
Hempstead	86	470	2,536	2,150	40,404	3.8	44.73-52.77
Long Beach	80	419	1,277	780	33,549	2.5	58.16
Pt Washington	56	337	n.a.	n.a.	18,861	10.8	33.07**
Glen Cove	50	492	622	489	24,618	6.8	41.80
Floral Park	34	494	289	275	16,805	1.4	42.59-44.73

\*As reported to NY State Division of Criminal Justice Services through September 1983.

\*\*Port Washington North

Five of the six villages above (including Freeport) with their own police force whose salary movement lends itself to a two year

comparison with that of Freeport, are relatively close in terms of size of force in ratio to population with Port Washington at a lower ratio but with a larger geographical area to cover. Five of these villages (including Freeport) represent high full value overall tax rate in 1982 with Long Beach at the top of the County followed by Freeport and Hempstead. Four of these villages (including Freeport) show a high incidence of crimes and consequently, it is fair to assume, a high degree of police activity.

The table on the following page 7 surveys the negotiated top patrolman yearly and daily salary rates from the final 1982 rate to the 1984 or the 1984 into 1985 annual salary rate for the five villages as well as for Nassau and Suffolk Counties.

While Floral Park on p. 7 shows the highest contract rate for the terminal period, it also has the lowest daily rate, a product of the 249 basic work year compared with the 232 tours of the other governmental entities. Therefore Floral Park will show the highest contract rate to offset the longer tours and keep proportionately abreast relative to the proportionately advancing daily rates among the 232 tour governmental entities except for the lowest rates exhibited by Glen Cove even though on 232. Similarly Floral Park will show the highest dollar payout in order to maintain its relative position with respect to the other entities. For the Panel majority comparability dictates the preservation of relative standing rather than an absolute standard, the latter presenting the un-

Movement in Salary and Daily Rates -- Top Patrolman\*

	<u>Contract Salary Rate End '82</u>	<u>For the Period Indicated Negotiated Salary Rate % Increase**</u>	<u>Contract Salary Rate End '84 or into '85</u>	<u>% Salary Rate Increase</u>	<u>Daily Rate End '82***</u>	<u>Daily Rate End '84 or into '85</u>
Floral Park basic 249 tours	\$29,419	6/1/83-5/31/84--8% 6/1/84-5/31/85--8%	\$34,314	16.6	\$118.15	\$137.81
Long Beach basic 232 tours	29,187	7/1/83-6/30/84--7% 7/1/84-12/31/84--6%	33,104	13.4	125.81	142.69
Suffolk basic 232 tours	28,522	1/1/83-12/31/83--7.75% 1/1/84-12/31/84--8%	33,191	16.4	122.93	143.06
<u>Freeport</u> basic 232 tours	28,465				122.69	
Pt Washington basic 232 tours	28,371	1/1/83-12/31/83--9.5% 1/1/84-12/31/84--5.3%	32,716	15.3	122.29	141.01
Hempstead basic 232 tours	28,009	6/1/83-5/31/84--8% 6/1/84-5/31/85--8%	32,669	16.6	120.73	140.82
Nassau basic 232 tours 249 hired on or after 1/1/84	27,400	1/83-6/30/83--4.56% 7/1/83-12/31/83--4.36% 1/84-6/30/84--5% 7/1/84-12/31/84--3%	32,337	18	118.10	139.38
Glen Cove basic 232 tours	26,756	1/1/83-6/30/83--4% 7/1/83-12/31/83--5% 1/1/84-6/30/84--4% 7/1/84-12/31/84--5%	31,906	19.2	115.33	137.53

\*Reached after four years except Floral Park after five years, Nassau after five years (1/1/84), Suffolk after six years.

\*\*Obtained by dividing base salary by basic tours which may be greater than the daily or hourly rate used for longevity, overtime or holiday purposes.

\*\*\*The above does not reflect the full contract percentage increases where 1985 or 1982-83 were part of the negotiated whole term.

realistic question -- where does a single salary standard enter, i.e., at the lowest daily rate of Floral Park or at the highest daily rate at the end of the period exhibited by Suffolk County? In short, governmental entities with 232 tours must look to those with 249 tours just as 249 must look to 232 tours in order to maintain their relative standing.

The following table pursues the salary increase survey over the period utilized herein with regard to dollar payout, a more meaningful and determinative consideration than percentage increase on contract rates which is deceptive in terms of actual results both to the employees and to the governmental entity bent upon knowing the dollars on hand and the dollars to be expended.\*

	<u>Dollar Payout Increase</u> <u>End 1982-84 or into 1985</u>	<u>Percentage Payout Increase</u> <u>End 1982-84 or into 1985</u>
Floral Park	\$7,248	12.3
Pt Washington	7,040	12.4
Hempstead	6,901	12.3
Suffolk	6,879	12.1
<u>Freeport</u>	<u>/6,718/</u>	<u>/11.8/</u>
Nassau	6,342	11.6
Glen Cove	6,156	11.5
Long Beach	5,960	10.0
Average Dollar Payout Increase = \$6,647 Excluding Freeport		Average Percentage Payout Increase Excluding Freeport = 11.74

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\*Data with regard to the dollar values of the supplemental payments -- longevity, clothing and equipment, night shift differential, holidays -- are not available over the period in question in any comprehensive and reliable fashion. And so the Panel makes do with what it has at its disposal.

Fitting the Village into the average increase in dollar payout requires that the increase come to 7.5% and 8% which yields \$6,718 over the life of the two year contract or \$71 above the average. The percent payout increase would be 11.8 or approximately .06% above the average payout increase. The 8% and 8% sought by the PBA would exceed the average by \$384. Combinations of 7% and 8%, 7½% and 8% and 7½% and 7½% would fall below the average. The Village's official one year offer of 4% is not in the running. At \$6,718, the Village would rank in fifth place in dollar payout over the two years.

An increase of 7.5% and 8% results in the following annual contract salary rates:

	<u>1983 or '83 into '84</u>	<u>1984 or '84 into '85</u>	<u>End 1982</u>	<u>Percentage Increase in Contract Rates, 1982-'84 into '85</u>
Floral Park	\$31,772	34,314	29,419	16.6
Suffolk	30,732	33,191	28,522	16.4
Long Beach	31,230	33,104	29,187	13.4
<u>Freeport</u>	<u>30,600</u>	<u>33,048</u>	<u>28,465</u>	<u>16.1</u>
Pt Washington	31,066	32,716	28,371	15.3
Hempstead	30,250	32,669	28,009	16.6
Nassau	29,900	32,337	27,400	18.0
Glen Cove	29,217	31,906	26,756	19.2

A 7.5% and 8% increase in salary rate would drop Freeport to fifth place in 1983-84 from fourth at the end of 1982 while moving back up to fourth place in 1984-85 thus keeping the Village at relatively the same ranking over the two years under consideration. The average increase in percentage contract rates over the

two years excluding Freeport comes to 16.5 compared with a Freeport increase of 16.1% at 7.5% and 8%.

#### Night Shift Differential

PBA requests a 10% of hours worked formula which it estimates would yield \$2,000. The Village officially opposes any change.

The mode of compensating for night shift differential among the six villages including Freeport is to provide a flat dollar amount which, in the Village, is \$1,500. Nassau and Suffolk employ a percentage of base pay with a formula varying from one to the other but which, in either County, results in more dollars notably in Suffolk than that received by police officers in any of the six villages including Freeport. The two year changes in this item in the five villages shows that Hempstead stood still at \$1,000 (at maximum); Glen Cove remained the same at \$1,600; Long Beach increased in two \$100 installments to \$1,600; Port Washington increased by \$350 to \$1,850 in installments of \$250 and \$100; and Floral Park went up \$150 to \$1,550. In the light of this pattern of relatively minimal changes, the Panel believes that \$50 and an additional \$100 in the second year of the contract would be appropriate.

#### Longevity, Cleaning and Equipment Allowance

PBA seeks \$110 for each year of service. The Village officially opposes any change. Inasmuch as the present provision compares favorably with longevity arrangements in the other communi-

ties, no change appears to be warranted. Relative to cleaning and equipment allowance, PBA would increase the present sum of \$475 by \$50 in each year of the contract. The Village officially opposes. Comparative data does not demonstrate a deficiency in this regard.

#### Paid Leave of Absence for PBA Business

PBA demands a total of 36 days a year under this heading. The Village opposes any change. The contract provides that "the President of the PBA or his representative" is entitled to 15 days off with pay for the performance of his PBA duties. It further provides 15 days off with pay for elected officers members of PBA for the performance of their duties as officers of the Nassau County Police Conference. Additional time is allowable at the discretion of the Village Board of Trustees.

Agreements covering a range of police departments, approach released time in various ways: grants of stated number of days for PBA business stipulating negotiations and the related process; legislative work; grievance handling -- some of these days not being subject to departmental requirements with additional days, if at all, at administrative discretion. Other agreements simply provide the permissible purposes but taken entirely within administrative discretion. Still other agreements are unlimited in time, allowing the objective to set the time off; others stipulate the maximum number of days for all union business. A small

number are completely silent.

It appears that difficulties have been encountered in the implementation of the agreement relative to negotiations and the ability of the PBA President to successfully designate a fellow officer as his representative to assist in related activities. A restructuring of the existing provision by clarifying this aspect at the same time pooling all the currently available days for PBA business will, in our judgment, facilitate proper usage of paid released time. The Panel determines upon the following changes only:

1. A pooled total of 30 days paid leave in each contract year for PBA business shall be allowed to the PBA President or his representative. PBA business shall be inclusive of the Nassau Police Conference.
2. The President and up to four representatives designated by him shall be allowed paid leave to be taken separately or jointly as determined by the PBA President solely for the purpose of preparing for and participating in collective negotiations and related process.
3. In the exercise of 2, above, the time off shall be drawn from the total of 30 days each officer's time to be counted against the aggregate of 30 days.

#### Arbitration

PBA proposes binding arbitration of contract grievances and disciplinary matters. The Village would stay with the present arrangement which is advisory as to the former and departmental as to the latter. The Arbitrator notes that while binding arbitration is not locally without example in the area of discipline,

notably in Suffolk, there is certainly no compelling reason for its adoption in terms of prevalence. Moreover, the Village is not the locale for shorning the administration of its authority in this regard.

At present the grievance procedure calls for a third step three member ad hoc grievance board consisting of one member from PBA, one from the Board of Commissioners of Police, and a third mutually agreed to by the sides. The determination of the Board is advisory, final decision resting with the Mayor and the Board of Trustees of the Village. PBA testimony is to the effect that experience with this procedure has left it frustrated in that the Village has let it be known that it would finally side with the initial departmental response. The Village denies the accusation and points to a judicial decision ordering exhaustion of the grievance procedure. In any case, the Panel believes advisory arbitration to be a device tantamount to an exercise in futility. This is so because of its circularity -- here the Chief of Police entertaining the grievance at the second step and the deciding governing body of the Village are within the same official family and so would unavoidably tend to uphold the action grieved even if the advice of the arbitration board should be to the contrary. Moreover, assuming the deciding governing body would always approach the grievance without bias, the process will always be suspect in the eyes of the police officer because of the mere appearance of built-in predetermination.

A substantial number of police jurisdictions show contracts providing for binding arbitration of grievances. Interestingly enough during earlier years, apparently 1972-76, the PBA contract with the Village contained a provision for binding arbitration of contract grievances. The reason for abandonment was not disclosed. It is important that aggrieved police officers be assured that they will be treated fairly and impartially in the disposition of complaints. Binding arbitration by a neutral, third party satisfies this basic element of due process otherwise lacking in the advisory arbitration of the PBA-Village contract. Restoration of the article "TWELFTH" in the December 2, 1974 contract containing binding arbitration of contract grievances is found to be appropriate with the clarification that in the event the parties are unable to agree on the selection of an arbitrator, selection shall be made under the rules of PERB.

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#### Hospitalization Insurance "Cap"

The proposal of the Village is to place a cap on hospitalization insurance costs effective with the earliest feasible timing during the life of the contract. PBA opposes.

While the data submitted by the Village demonstrates an alarming advance in the Village's health insurance payments which it funds in their entirety, the problem, the Panel believes, must be addressed outside the contract. Apart from the CSEA agreement

covering NY State employees, no local contracts relative to police have embraced the cap device as the mode of relief. And this despite the fact that a prior Nassau County police agreement set the matter up for negotiations, a proposition abandoned in the current agreement. We do not believe that the Village police should be singled out for invidious treatment.

Reductions in Particular Entitlements -- New Hires

The Village proposes that existing entitlements in three areas -- credited years for termination pay upon separation from the service after 20 years, now reaching a maximum of 30 years of employment at five days for each year, be reduced to a maximum of 25 years; conversion of accumulated and unused sick days upon separation, now not to exceed 200 days at 50%, be reduced to a maximum of 100 days at 50%; and that vacation pay, now reaching an annual maximum of 30 days for over ten years of service, be reduced to an annual maximum of 25 days following the commencement of six years of service. These reductions would only affect employees newly hired subsequent to the effective date of the agreement. The foregoing proposals are predicated on economy and a "quid pro quo in negotiations." The Village refers to certain of the jurisdictions included in the agreements submitted by PBA including that of Nassau County which contain examples of separate treatment relative to new hires. PBA opposes any separate treatment of new hires.

A review of the contract materials shows examples of lowered entitlements to new hires in various aspects of working conditions apparently the product of "give backs" but on a selective and limited basis.\* There is, however, no pronounced trend in this direction among the governmental entities and this is understandable lest there develop within the bargaining unit, a pervasive two tier system which would serve to unstabilize the bargaining relationship were separate entitlements within a contract to become the rule rather than the exception. Any cost savings which would accrue to the Village were the proposals it makes in this connection to be adopted, would not see the light of day for a considerable time to come. However, the Panel is of the view that given the rather favorable terms and conditions of employment now enjoyed by the police force of the Village, terms not by any means undermined by the determinations made in this proceeding, that a measure of recognition be afforded the Village's position that bargaining is a two way street, the so-called "quid pro quo." Accordingly, the Panel shall adopt the Village's proposal to the extent of a top of 25 years as to new hires with regard to termination pay upon separation from service which would not be unlike in its own way, selective separate entitlements now prevailing in a limited number of jurisdictions.

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\*See, for example, the contracts of Lynbrook, Garden City, Old Brookville, Glen Cove and Nassau County.

Supervision of Officers on Sick Leave

The Village would have a clause permitting visits by superiors to the homes of officers on sick leave in order to curb abuse. In the works of Counsel for the Village: "...the only reason why we want this, is because every once in a while we get a character who rides a sick book...." The Village would adopt the Nassau County provision in this connection. PBA denies that there has been abuse of sick leave and questions the legality of the restrictions proposed.

Contract provisions designed to inhibit abuse of sick leave are found in several of the Village agreements submitted by PBA as well as in the Nassau and Suffolk agreements. If there is a real question concerning their legality, and that is not indicated by the locally pertinent decision, a reasonable control would serve to put a damper on sick leave abuse. For comparison purposes the Nassau, Suffolk and Hempstead clauses are set forth:

Nassau: "An employee on sick leave is only required to remain in his residence between the hours 9:00 a.m. and 5:00 p.m. on a day he was regularly scheduled to have a tour of duty. The employee may be visited by a supervising officer at any time during the hours of 9:00 a.m. and 5:00 p.m. In any event, however, if the Commissioner of Police in his discretion identifies an employee as a sick leave abuser, the employee, upon the personal direction of the Commissioner of Police, may be required to remain in his residence and be visited beyond the hours prescribed above."

Suffolk: "An Employee, who is on sick or injury leave may leave his residence or place of confinement at any time unless the Commissioner of Police, in individual cases for good cause, directs otherwise."

Hempstead: "An Employee on sick leave may not leave his residence or place of confinement unless he has first notified the COMMISSIONER or CHIEF or the Desk Officer that he is reporting off sick leave, or requests permission to leave his residence or place of confinement for purposes which are thereupon approved by the Department. This approval will not be unreasonably withheld provided the request relates either to an emergency, to the Employee's obtaining treatment for his illness or injury or for such other reason as may be approved by the COMMISSIONER, CHIEF or Desk Officer. Any Employee on sick leave may be visited or telephoned by a supervising officer at any reasonable time."

In our judgment the Nassau provision is too restrictive in its confinement to the home or elsewhere without relief. The Suffolk clause lacks procedural aspects in order to assure an officer that he may permissibly leave -- in effect, he is always under a cloud of restraint. The Hempstead agreement, on the other hand, delineates the procedure by which an employee may obtain permission to leave his residence or place of confinement and the reasons therefor with latitude or "other reason" and the overall caveat that approval to leave "...will not be unreasonably withheld...." Bearing in my mind that sick leave is for attending to the needs of the individual seeking to recover and return to work rather than to exploit the time for inconsistent purposes and recognizing that there may very well be legitimate

reasons for an employee leaving his residence or place of confinement, the Panel views the Hempstead clause as striking a fair balance between the two underlying considerations of proper use and abuse.

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Public Interest and Ability to Pay

Barbara Patton, Assemblywoman representing part of Freeport among other communities, testified in support of the PBA's case. She referred to Hempstead, Roosevelt and Freeport as being high in the incidence of crime in the County in that order. In her experience both personal and in contacts with community groups, she found the police of the Village to be responsible, effective and community conscious in dealing with local problems. The Freeport police, Patton stated, have functioned with public rapport as an integrated force in an integrated community.

The Village agrees that the police officers have performed well and in the public interest. Its concern is with the number two position Freeport occupies in the equalized "effective tax rate" in both Counties, i.e., comprising the County, Town and school districts as well as the Village tax. It views this rate as presenting a serious hardship for the residents particularly in the future tax rate for the future 1985-86 budget in terms of having to fund, as it believes will be the case, at least part of the increase which may be awarded herein out of that

budget. The Village further stresses that it is nearing exhaustion of its legal authority to tax.

PBA put in its case for ability to pay through a local government finance expert, Edward Fennell, who reviewed and analyzed in depth the fiscal condition of the Village based on the 1983-84 and 1984-85 budgets and related municipal financial practice and legal requirements.

Fennell, after completing his analysis, stated that the economic demands of PBA, excluding longevity for which he was not furnished the data, would entail increases for 1983-84 of about \$385,000 or 9.8% including "roll up" costs; and for 1984-85 of about \$323,000 or 8% including "roll up" costs. The total amounts of increase based on the PBA items considered in this proceeding and to the extent herein set forth (subject to ability to pay), would be meaningfully below the aforementioned estimated costs of the original demands. In conclusion, Fennell expressed the view --

"I would conclude that from looking at the way they put the budget together, especially in three primary areas /--/cash surplus, large contingency account and conservative stating of revenues/--/, that despite the fact that there isn't any money in the salary and wage account for the police department that comes even close to the demand, the flexibility that they have in terms of surplus cash of almost 1.1 million at the end of '83, a contingency

appropriation of \$674,000 this year /as of December 31, 1983/, of \$1.2 million /contingency appropriation/ in '84-'85, and the practice of understating or underestimating or conservatively estimating the special State aid of \$744,000 /actually \$745,798 in 1983-84/\*, they would have no problem paying the demand as stated by PBA."

Fennell further testified that funding of an award could be accomplished by the local legislative authority having reserved some of the amount of that liability in anticipation of an award under the 1983-84 budget using the contingency appropriation for that year or by taking a "double shot" out of the \$1.2 million contingency appropriation for 1984-85. The tax rates for the two years of the new contract have been fixed. As for 1985-86, Fennell saw no need to increase the tax rate then to offset the cost of an award for 1984-85.

In the course of questioning by Employer Member Bee, Fennell was asked:

"MR. BEE: Since you've explained why tax rates could not be changed for '84-85, if we assume no reduction in services and we assumed no additional borrowing, is it your opinion that the P.B.A. proposals could be funded from

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\*And reasonably expected to approximate this amount in 1984-85.

your projected surplus fund?

THE WITNESS: Well, I think I pointed out a number of areas, that we're talking about basically an increased cost of \$380,000 and we're looking at two sizeable contingency funds, a track record of conservatively estimating revenues and expenses,\* the margins and that in those margins, in those appropriations, there is enough to fit that \$380,000."

The Panel, in agreement with the PBA expert, concludes that there are and will be funds available to defray the cost of the Award for 1983-84 and 1984-85 set forth hereinafter modifying the PBA demands without a rise in the Village tax rate consequent upon that Award whatever the Village may nevertheless choose to do in 1985-86 as a matter of policy. The Panel further concludes on the basis of the statutory criteria of comparability and public interest and ability to pay that a just and reasonable determination of the dispute herein justifies the following:

AWARD

1. Contract Term: two years -- March 1, 1983-February 29, 1984, inclusive; March 1, 1984-February 28, 1985, inclusive;

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\*i.e., underestimating revenues and overestimating expenditures.

2. Salary: an increase to each police officer including superiors in the bargaining unit of 7.5% retroactive to March 1, 1983; a further increase of 8% retroactive to March 1, 1984;
3. Night Shift Differential: an increase in the existing differential of \$50 in the first year of the agreement retroactive to March 1, 1983; an additional increase of \$100 in the second year of the agreement retroactive to March 1, 1984;
4. Paid Leave of Absence for PBA Business: the present contract provision shall be modified in accordance with the changes heretofore indicated and otherwise remain the same effective the second year of the contract;
5. Arbitration: binding arbitration of contract grievances as heretofore indicated; disciplinary matters to remain the same;
6. Longevity; Cleaning and Equipment Allowances: to remain the same.

\* \* \*

1. Hospitalization Insurance Cap: denied;
2. Reduced Particular Entitlements for New Hires: Paragraph 10th of the contract shall be amended at the fourth sentence thereof to read: "In computing ter-

mination pay pursuant to this Section no police officer hired after the effective date of this agreement shall receive credit for more than twenty-five years of employment with the Village."

Reduced maximum of accumulated sick days -- denied;

Reduced maximum number of vacation days -- denied;

- 3. Supervision of Officers on Sick Leave: beginning with the date of entering upon the new contract, the Hempstead clause shall be included and become effective.

*Jonas Silver*  
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 Jonas Silver, Chairman, Public Member

*Harry Hersh*  
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 Harry Hersh, Employee Organization Member

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

On this *5th* day of April 1984, before me personally appeared JONAS SILVER, to me known and known to me to be the person who executed the above DECISION AND AWARD and he duly acknowledged to me that he executed the same.

*Henry Arnett*  
 HENRY ARNOTT  
 NOTARY PUBLIC, State of New York  
 No. 30-0098315  
 Qualified in Nassau County  
 Commission Expires March 30, 19*85*

STATE OF NEW YORK )  
 COUNTY OF SUFFOLK ) ss.:

On this *6th* day of April 1984, before me personally appeared HARRY HERSH, to me known and known to me to be the person who executed the above DECISION AND AWARD and he duly acknowledged to me that he executed the same.

*Gail A. White*

GAIL A. WHITE  
 NOTARY PUBLIC, State of NY  
 #52-4732276, Suff. Cty  
 Term Exp. March 30, 19*86*

PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF NEW YORK

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In the Matter of the  
INTEREST ARBITRATION BETWEEN

Case No. IA 83-84  
M 83-459

FREEPORT POLICE BENEVOLENT ASSOCIATION

DISSENT

- and -

INCORPORATED VILLAGE OF FREEPORT

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I respectfully dissent.

I do so most vigorously, from experience, from  
conscience, and based upon the record before us.

However (and to borrow a phrase from earlier historical  
dissenters), I feel "a decent respect for the opinions of  
mankind" requires that I should "declare the causes which  
impel [me] to the separation"<sup>1</sup> from my fellow Panel members.

Background

The prior Collective Bargaining Agreement between the  
Village of Freeport and the Freeport P.B.A. covered the period  
March 1, 1981 until and including February 28, 1983.<sup>2</sup>  
Negotiations for a successor agreement took place between the  
parties in formal meetings on February 15, 22; March 10, 29;  
April 8, 25, 26; September 8, 12, 13, 15, 16, 19 and 26, 1983.<sup>3</sup>  
A declaration of impasse pursuant to the Civil Service Law,  
Section 209.4 was filed on consent of both parties on  
September 30, 1983.<sup>4</sup> Mediation sessions with PERB Mediator Smith

were conducted on October 27, 1983 and November 1, 1983.

A joint Petition for Compulsory Interest Arbitration was thereafter filed pursuant to law. The undersigned was subsequently appointed as the Employer Panel Member by letter from the N.Y.S. PERB, dated February 10, 1984.

Hearings were held on February 10, 11 and 16, 1984 and a transcript was made of the hearings. Deliberations amongst the Panel members were thereafter conducted in private. At the conclusion of deliberations, it was evident that the undersigned would not be able to join with Public Arbitrator Silver and P.B.A. Arbitrator Hersh in a unanimous opinion, and it was agreed that a majority and minority opinion would issue instead.

#### Issues In Dispute

At a Pre-Hearing Conference prior to the appointment of the undersigned, but reconfirmed on February 10, 1984 at the first day of Hearings,<sup>5</sup> the parties agreed upon a statement of the issues varying somewhat from the original Petition for Arbitration:

For the P.B.A.:

1. Increase in cleaning/equipment allowance
2. Binding Arbitration of disciplinary charges
3. Binding Arbitration of contract grievances
4. Increase in time off for union president  
and vice-president
5. Increase in longevity pay

6. Increase in night shift differential pay

7. Increase in base wages

For the Village;

1. Reduced termination pay

2. Reduced hospitalization costs

3. Reduced payment for sick time at termination

4. Visitation by superior officers to officers  
out on sick leave

5. Reduction of vacation for new hirees

#### Discussion

The majority Award correctly denies the P.B.A. demand for binding arbitration of disciplinary proceedings, increased cleaning/equipment allowance, and increased longevity. In each case, the Record as a whole simply fails to establish any scintilla of evidence which would have justified a different conclusion. In the absence of such evidence, the Panel properly makes no change in the parties' employment relationship.

Unfortunately, it is my opinion that the Record is similarly barren with respect to other P.B.A. demands which were granted. Indeed, while the law directs the Panel to "make a just and reasonable determination", it wisely requires this Panel to "specify the basis for its findings" and to take into consideration a variety of specific factors.<sup>6</sup> I conclude that the majority Award is on balance neither just nor reasonable,

and lacks any substantial basis in the Record for its findings.

I do applaud two aspects of Mr. Silver's majority Opinion - the reduction in maximum termination pay for new employees, and the increased controls for sick leave. Unfortunately, I believe they will prove for the Village to be "too little, too late".

The other Village proposals (denied by the majority Panel) for reduction of vacation for new employees, reduced payment for unused sick leave at termination, and a "cap" on hospitalization costs, should all have been granted. They would have affected no present salaries, but would represent sound fiscal planning for future economics.

The Panel's grant of the P.B.A. demands is even more dramatically in error and even less defensible. For if the Panel felt the Village evidence was insufficient to prove its management proposals, the Record was even more barren for the grant of the union demands.

Curiously, I do not dispute many of the facts used by the majority.

Indeed, a review of the Record of this Arbitration discloses that my dissent stems less from a dispute over "what are the facts?" than "what do the facts mean?".

What then, was the evidence in the Record relevant to the various P.B.A. proposals granted?

1. Arbitration of Contract Grievances

The majority Award grants "binding arbitration" of contract grievances. Preliminarily, I note that as a matter of law there is substantial doubt that a "contract grievance" will or can ever arise under this Panel's Award. An Award is not a contract, and there is no reason to speculate that the parties will incorporate the Award into an agreement. The law instead provides that for matters determined by the Panel, a party may seek judicial enforcement by way of CPLR Article 75.

Even assuming that the Panel has the authority to order arbitration of disputes over the interpretation of its own Award, there is even greater doubt about its ability to order arbitration of disputes over the interpretation of the many, many expired contract clauses apparently intended by both parties to continue on. To even presume that the Panel would feel qualified to select the manner of dispute resolution for contract clauses not presented to it is unjustified. No evidence whatsoever was presented to the Panel about any history of abuse of the method of dispute resolution previously agreed upon between the parties and contained in the expired agreement.<sup>7</sup>

Instead, the P.B.A. Counsel admitted that the present system of advisory grievance arbitration was an agreed-upon change from earlier binding arbitration,<sup>8</sup> and baldly left to

his own argument the broad allegation that "[e]very aspect of the Police Department is completely and politically controlled by the Mayor, which is the reason why we have to go back to binding arbitration."<sup>9</sup>

Notably, the Panel's initial inquiry about any claimed abuse by the Village of the present system never met with any response by the P.B.A.<sup>10</sup> Instead, the P.B.A. President testified that he has filed and settled numerous contract grievances under the present arrangement,<sup>11</sup> and has voiced objection to the results in only two cases.<sup>12</sup> The P.B.A. President's claim that he could not effectively utilize his advisory arbitration option was thus based on vague and conclusory allegations.<sup>13</sup>

The Panel majority, therefore, have made a potentially illegal change in the format of dispute resolution. They have done so without hearing any record of abuse in the present system. They have concluded that advisory arbitration is inherently useless, and have made this conclusion despite their knowledge that over 2000 police officers operating under the Nassau County P.B.A. Agreement use the advisory arbitration system.<sup>14</sup>

## 2. P.B.A. Time Off

The whole of the evidence for more P.B.A. "time off" was contained in the testimony of Mr. Kilbride.<sup>15</sup>

That testimony was nothing more than a complaint that the Village was mis-interpreting the present contract language granting time off, and that the P.B.A. Court Case to remedy its complaint was not successful.

The majority Award is simply a disguised resolution of the same P.B.A. complaint. It does not address the true merits of "time off"; it merely grants the P.B.A. contract grievance without benefit of the grievance process.

### 3. Base Wages and Night Differential Pay

I treat these two items together. They are both a form of pay; they are paid by the same taxpayer to the same police officers; and calling "pay" by two different names does not make it "pay" any less.

In making its compensation Award, the majority Opinion purports to rely heavily on statutorily required evidence of the Village's "ability to pay", and on wages in "comparable communities".

Let us examine the evidence of the P.B.A. on the "financial ability of the public employer to pay". P.B.A. witness Ed Fannell is a self-described "government finance consultant" whose occupation is "analyzing government budgets, finance reports, any statute, constitutional limits that affect the funding of municipal services."<sup>16</sup>

Under oath, Mr. Fannell proceeded to testify that he had "an opportunity to analyze old and new budgets with respect to the Village of Freeport"<sup>17</sup> and that this included the 1983-84 budget.<sup>18</sup> Only the 1983-84 and 1984-85 budgets were introduced into evidence,<sup>19</sup> but subsequently testimony revealed that the range of "primary documents ... reviewed" was somewhat broader.<sup>20</sup>

In my opinion, Mr. Fannell's testimony was (on balance) extremely probative of the Village's contention that its financial picture was not bright, and that the "public interest" permitted only modest salary increases! Specifically, Mr. Fannell pointed out that the 1983-84 rate of the Village of Freeport was already at 94.1% of its legal maximum,<sup>21</sup> and that this represented an increase from 88.8% in 1982-83.<sup>22</sup> This compared with an average margin for Hempstead Town Villages of 43.6%. In other words, Freeport's 1983-84 tax rate was more than double that of the average Village, and is mere few percentage points from the State constitutional limit.

As was stated at the Hearing by the Public Panel Member (in connection with legal tax limits): "Freeport is getting there."<sup>23</sup>

When Mr. Fannell stated that the "Village does have the ability to use its borrowing power",<sup>24</sup> he took pains to point out that borrowing for employee salaries was probably not intended by the municipal finance laws, and he would not want the Panel to

infer that he was suggesting it as a finance device to fund the Panel's Award.<sup>25</sup>

Why then, does the majority Award provide such a substantial raise for Village police? It appears that the majority "reaches" for the suggestion that Village budget practices have been somehow overly conservative, and inevitably produce substantial surplusses. It is true that Mr. Fannell pointed to a \$1.9 million general fund surplus in 1982-83,<sup>26</sup> however, he also pointed out that the same general fund, "loaned" its "surplus" to the Capital Fund to pay for capital improvements which would otherwise have required long-term bonds.<sup>27</sup> The majority Award would, by implication, have the Village issue long-term debt, "repay" the "loan" of general funds, and thus re-create the surplus funds with which to pay police salaries!<sup>28</sup>

In my opinion, this would constitute an implicit arrogation of Village officials' power to budget, and improperly dictate to Village residents that they spend all current cash on salaries and fund capital improvements only through debt. I do not believe this should be the function of an unelected panel.

This same improper arrogation exists in the P.B.A.'s suggestion that the Village under-estimates State Aid,<sup>29</sup> or over-budgets its Contingency Fund.<sup>30</sup> The proper role for the Panel is closer to Mr. Fannell's view of himself - that he "came to this hearing basically to speak to ability to pay, [and] the issue becomes, has there been money set aside for the payment

of a raise, and in effect, where might it be found, if it can be found at all?"<sup>31</sup>

Mr. Fannell admitted that money has not been set aside in the Village Budget's Police Wage Account<sup>32</sup> and he did not know and did not inquire of the Village if "extra" money is in the Village Contingency Fund.<sup>33</sup> Although Mr. Fannell mentioned the ability to raise money through borrowing, he stated "that is usually never recommended."<sup>34</sup> Thus, the only means by which Mr. Fannell proposed to justify substantial raises is by a return to the arrogation of budgetary authority, and to proclaim an under-estimation of State Aid or other revenues.<sup>35</sup> Only by doing this could Mr. Fannell generously predict the Village "would have no problem paying the [P.B.A.] demand".<sup>36</sup>

Moreover, it is my view that Mr. Fannell's limited focus on a claimed "financial ability of the public employer to pay" is insufficient. Subdivision (b) of Civil Service Law §209.4(c)(v) is more comprehensive, and in its entirety, commands this Panel to consider "the interests and welfare of the public and the financial ability of the public employer to pay". (Emphasis added.) This language is understood by me to require that the Panel look not merely to the legal authority of Freeport to raise taxes or borrow money; instead, it directs the Panel to consider the impact on the taxpayer, and the degree to which justice and reason require that Village taxpayers pay more for police services! This Mr. Fannell failed to do:

Q. And you have not formed an opinion regarding the relative ability of a Freeport taxpayer to pay increased taxes versus the ability of taxpayers in all Villages on Long Island to pay increased taxes?

A. That's correct." (Record at 99)

Thus, Mr. Fannell's added admission that "the people in the Village of Freeport are the highest taxed community"<sup>37</sup> should have been a signal to this Panel that police raises must be demonstrably required, and not simply legally possible; they should be proportionate to the taxpayers' ability to pay, and not simply the Village's ability to tax.

The Panel's decision to do otherwise, even in the face of the P.B.A. admission about Freeport's "high level of poverty",<sup>38</sup> is contrary to law and good sense.

Just as "ability to pay" was improperly analyzed by the majority, so was the evidence on the issue of "comparability".

The Record before us contained Collective Bargaining Agreements for virtually all of the P.B.A.'s in Nassau County,<sup>39</sup> and a variety of "charts" comparing local police salaries and benefits.<sup>40</sup>

I draw markedly different conclusions from this evidence than does the majority of the Panel.

Initially, I reject usage of P.B.A. Exhibits 39 and 40, which were patently erroneous "summaries" of contracts in

evidence, and admitted by the P.B.A. to be replete with inaccuracies and omissions.<sup>41</sup>

Instead, I believe the more reasonable course is to rely upon the actual P.B.A. Contracts (in evidence as Exhibits), and upon the testimony of James Baker. Mr. Baker's qualifications were superior, and his information went essentially unchallenged.

To begin with, Mr. Baker properly included New York City police salaries on charts which also included Suffolk salaries.<sup>42</sup> While some reasonable argument might be made that only police salaries within Nassau County should take primacy, it is intellectually dishonest to look east to Suffolk's 2000 officers and then fail to look equidistantly west to New York City's 20,000.<sup>43</sup> Despite the Panel's presumption of a "unique" situation in New York City, no reason to ignore the City salaries was presented in the Record.

Furthermore, Mr. Baker's reasoned presentation of total police wages and benefits is a more useful guide than the P.B.A.'s more limited base salary approach.<sup>44</sup> I also accepted the Village's position on wages and benefits as being more consistent with the requirements of law and logic:

"The Village believes that its police officers deserve a pay increase, but not the pay increase that is demanded. It believes it is entitled to those benefits that are paid to the majority of

police officers in Nassau County; not a scattered Village here, or two, not a benefit that is picked out of a separate contract, but the average of those that are paid in the County..."<sup>45</sup>

This position was entirely consistent with the unchallenged testimony of Village Attorney Sweeney in describing the "pattern relationship" which had historically existed between the Village and County police forces.<sup>46</sup>

It is interesting to note that the P.B.A. opening position in the Arbitration recognized the historical pattern. P.B.A. Counsel assured the Panel he would ...

"get into the issues of the history of negotiations ... which showed the bargaining history and an early-on parity of relationships existing between County organization and Village organization coming up through several years where municipality [sic] argued against a parity relationship and that that relationship should not exist, eventually reaching a point in time where parity no longer existed and that the Village broke parity with the County, at one point in time surpassed the County --- there was a role reversal."<sup>47</sup>

The actual information put in evidence, however, compels a slightly different interpretation.

Specifically, the P.B.A. put into evidence copies of all prior collective bargaining agreements between it and the Village.<sup>48</sup> P.B.A. Counsel correctly pointed out the historical pattern (1969-1979) of virtual parity between Freeport officers' base wages, and the County officers' base wages.<sup>49</sup>

A review of actual top step base salary figures for 12 month periods in each jurisdiction is illuminating:

<u>Year</u>	<u>Freeport (3/1)</u>	<u>Nassau County (1/1)</u>
1969	\$ 9,912	\$ 9,912
1970	11,073	11,073
1971	12,290	12,290
1972	13,273	13,273
1973	14,335	14,335
1974	15,410	15,410
1975	16,874	16,874
1976	18,055	17,924
1977	19,319	19,324
1978	20,691	20,687
1979	22,470	22,600
	<u>\$173,702</u>	<u>\$173,702</u>

Interestingly, I note that while individual 12 month salaries varied by up to \$130, the total eleven year actual salaries are identical to the dollar!

Contrary to the P.B.A. view, however, parity was not "broken" in 1980. It was simply re-arranged when the County decided to "split" its raise (between base wages and night shift pay), and the Village kept the entire raise in base pay.

As the Freeport P.B.A. Counsel himself stated:

"We now come to the contract before this past one where the variance between the Village and the County changed slightly, primarily in two areas. I believe the wages at one point in time for the Village Police Officers increased about \$400 over that of the County, depending on what time period you're talking about."

(Emphasis added.)

...

"However, the County at that time negotiated a 10 percent night differential of hours worked, which gave them a substnationally higher night differential allowance than that awarded to the ... afforded Village Police Officers. They are close to a balance effect..." (Emphasis added.)<sup>50</sup>

In other words, the P.B.A. admitted a pattern of "County parity" through to the contract just preceding the now expired one.

Did something so dramatic happen in the last Freeport contract that it justifies breaking such a history? The P.B.A. urged that parity was "broken". The facts do not bear this out.

The Freeport Agreement shows that for the 12 month period 3/1/82 - 2/28/83, the Freeport base salary was \$28,465. That Agreement was signed on May 6, 1981.<sup>51</sup> The County Agreement was delayed in its execution until October 1982,<sup>52</sup> and while it provided for a salary of \$26,775 for 1982, it moved the County salary to \$28,650 effective January 1, 1983.

Thus, the reasonable inference is drawn that the Village proved a remarkably good "forecaster" of the County salary, but put it into effect nine months too soon (3/1/82 instead of 1/1/83). By the date of Freeport's contract expiration, however, the Freeport salary was a mere \$185 apart from the County! I do not see a pattern "broken".

Moreover, as of March 1983 (the commencement date of this Award), Village police salaries were shown to be:<sup>53</sup>

Floral Park	\$29,419
Long Beach	29,191
Malverne	28,950
Lake Success	28,325
Hempstead	28,009
Lynbrook	27,460
Garden City	27,090
Glen Cove	27,826
Nassau County	28,650

Each one of the above salaries was in effect on March 1, 1983. Incredibly, the Panel - for that same date - now starts Freeport at \$30,600!

For its second raise (3/1/84), the Panel has produced this result:<sup>54</sup>

Floral Park	\$31,773
Long Beach	31,233
Malverne	31,300
Lake Success	31,000
Old Westbury	30,700
Hempstead	30,250
Lynbrook	29,656
Garden City	28,987
Glen Cove	30,386
Nassau County	31,395
- - -	- - -
Freeport	33,048!

Moreover, the jurisdictions of

Floral Park  
Lynbrook  
Garden City  
Old Westbury  
Rockville Centre

all work more "tours" than do the Freeport officers,<sup>55</sup> as do newly hired Nassau County officers!<sup>56</sup> In other words, less money for more work.

I do not accept the majority's theories about Freeport's "rank". They are, in my opinion, a shell game of statistical mumbo-jumbo. By juxtaposing commencement dates, "split rates", average salaries, and "cash-in-the-pocket" figures, the majority seeks to elude the simple fact that they have made the highest taxed Village the home of the highest paid police.

Conclusion

In view of the evidence, I conclude that the majority Award is inappropriate. It is excessive, unsupportive, and indefensible.

The Record is there for all to read. It shows that Freeport is one of the highest taxed communities; that surrounding Villages' officers will be less highly paid; that many surrounding Village officers work more tours of duty; and that this Award is a quantum leap away from historical patterns between the Village and the County police salaries.

The Record does not show uniquely hazardous working conditions; nor that the cost of living has risen suddenly; nor that under any of the statutory criteria, the Freeport P.B.A. has justified this substantial raise.

I can only hope that the Freeport police officer will somehow reflect in voluntary productivity what he has received involuntarily from the Village.

I dissent.

  
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Peter A. Bee, Esq.



## Footnotes

1. Preamble to the Declaration of Independence
2. P.B.A. Exhibit 19, paragraph FIRST
3. P.B.A. Exhibit 4, paragraph 1
4. P.B.A. Exhibit 4, paragraph 1
5. Record 5-7
6. Civil Service Law §209.4(c)(v)
7. P.B.A. Exhibit 19
8. Record 117-118
9. Record 136
10. Record 201
11. Record 263 and 353
12. Record 252; 257-259
13. Record 254-257
14. Record 273-274; P.B.A. Exhibits 34 and 34A
15. Record 264-266; 277-281
16. Record 13-14; P.B.A. Exhibit 7(1)
17. Record 33-34
18. Record 34
19. Record 35; P.B.A. Exhibits 5 and 6
20. Record 36; P.B.A. Exhibit 7(2)
21. Record 41; P.B.A. Exhibit 7(4)
22. Record 41; P.B.A. Exhibit 7(5)
23. Record 92
24. Record 45
25. Record 46
26. Record 49
27. Record 50-51
28. Record 51; P.B.A. Exhibit 7(8) (p.3)
29. Record 52; P.B.A. Exhibit 7(9)
30. Record 54
31. Record 55
32. Record 59; P.B.A. Exhibit 7(10)
33. Record 61; P.B.A. Exhibit 7(11)
34. Record 63
35. Record 51; P.B.A. Exhibit 7(8) (p. 3)
36. Record 66
37. Record 94
38. Record 139
39. P.B.A. Exhibits 22, 23, 24, 25, 26, 27, 28,  
30, 31, 32, 33
40. P.B.A. Exhibits 39, 40; Village Exhibits 2, 3, 4, 5, 6
41. Record 314
42. Village Exhibits 2, 3
43. Record 353
44. Village Exhibit 6

45. Record 379-380
46. Record 450-461
47. Record 8-9
48. P.B.A. Exhibits 8, 9, 10, 11, 12, 13, 14,  
15, 16, 17, 18, 19
49. Record 103-105; and P.B.A. Exhibit 10;  
Record 106 and P.B.A. Exhibit 11; Record 107-108 and  
P.B.A. Exhibit 12 and 12A; Record 109-110 and  
P.B.A. Exhibits 13, 14, and 15; Record 120 and  
P.B.A. Exhibit 16
50. Record 122-123
51. P.B.A. Exhibit 19
52. P.B.A. Exhibit 34
53. Successively P.B.A. Exhibits 23, 31, 28, 27, 22,  
25, 32, 26, 34
54. Village Exhibit 6
55. Village Exhibit 6
56. Village Exhibit 6