

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

DEC 05 1985

In the Matter of Compulsory Interest Arbitration  
Between  
TOWN OF ORANGETOWN  
and  
ORANGETOWN P.B.A.

AWARD  
of  
ARBITRATION  
PANEL  
Case No.  
IA-84-36;  
M84-356

Before the Public Arbitration Panel

Anthony V. Solfaro	Employer Panel Member
John P. Henry	Employee Organization Panel Member
I. Leonard Seiler, Esq.	Public Panel Member and Chairman

APPEARANCES

For the Employer:

Arthur J. Ferraro, Esq.	Attorney
David Stuart	Director of Finance
Homer Wanamaker	Captain of Police

For the P.B.A.:

Reynold A. Mauro, Esq.	Attorney
Raymond R. Liberati	PBA President
John Berchielli	PBA Negotiating Committee
Roger Bresnahan	PBA Negotiating Committee
John McAndrew	PBA Negotiating Committee
Michael Seidel	PBA Negotiating Committee
Tim Sheridan	PBA Negotiating Committee
Edward Fennell	Municipal Finance Consultant

On March 6, 1985, the New York Public Employment Relations Board having determined that a dispute continued to exist in negotiations between the Town of Orangetown (hereinafter referred to as the "Town") and the Orangetown Police Benevolent Association (hereinafter referred to as the "PBA") designated the undersigned Public Arbitration Panel (hereinafter referred to as the "Panel") pursuant to Section 209.4 of the New York Civil Service Law for the purpose of making a just and reasonable determination of the matters in their dispute. The panel then proceeded under the applicable statutes, rules and regulations to inquire into the

causes and circumstances of this continued dispute and at the conclusion of its inquiry made the findings and Award which follows.

Hearings were held on April 23, June 20 and July 11, 1985, in the Town Hall and the offices of Ferraro, Rogers, Dranoff, Greenbaum, Cody, Goldstein & Miller, P.C. in Pearl River, at which time the parties, who were represented by counsel, were given ample opportunity to present oral and written statements of fact, other evidence, supporting witnesses, right to cross-examine witnesses and were provided with the opportunity to argue their respective positions regarding this dispute.

The parties mutually agreed on July 11, 1985, that they would postmark their post-hearing briefs by August 9, 1985. Subsequently, a few days delay was agreed to. Following their receipt, on August 23, 1985, the Panel officially declared the hearings closed.

Executive sessions were held on August 29, September 9, October 1 and November 18, 1985. After due and deliberate consideration of all of the evidence, facts, exhibits and documents submitted and in accordance with the applicable criteria arrived at the majority Award which follows. The Panel in arriving at such determination based its findings on the mandated statutory criteria which follow: New York State Civil Service Law, Section 209.4 (V); a,b,c and d:

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 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.

IN GENERAL:

1. The dispute involves the continued impasse between the Town and the PBA over the terms and conditions of a new contract to be effective as of January 1, 1985, the last two-year contract of the parties having expired on December 31, 1984.

2. Prior to the request for the appointment of this Arbitration Panel the parties engaged in nine (9) negotiating sessions, the first seven (7) on their own and the last two (2) with the assistance of a PERB appointed mediator.

3. The parties at the start of the Arbitration Hearings, in writing, waived their right to a full and complete record as set forth in Section 209.4 (iii) of the New York State Civil Service Law.

4. The PBA represents fifty-four (54) Police Officers, Five (5) Detectives, twelve (12) uniform and one (1) detective Sergeants and four (4) uniform and one (1) detective Lieutenants.

5. The "position" of the parties and the Panel's "discussion" are only a summary and are not intended to be all inclusive.

6. The following issues were submitted at the arbitration hearing for determination and Award by the Panel:

Issues:

A. Joint

1. Wages
2. Longevity
3. Night Differential
4. Vacations
5. Paid Holidays
6. Sick Leave
7. Union Business

B. P.B.A.

1. Standby Pay
2. Duty Chart
3. Terminal Leave

4. Welfare Fund
5. Agency Shop
6. Loss of Personal Items
7. Compensation Out-of-Town Assignments
8. Miscellaneous Equipment Allowance
9. Detective Clothing Allowance
10. Full Retroactivity to January 1, 1985
11. Eliminate Restrictions on Line of Duty Injuries

C. Town

1. Improve Format and Language of Contract
2. Personal Leave
3. Bereavement Leave
4. Overtime
5. Insurances
6. Grievance Procedure
7. Buy-out "Frozen" Accumulated Sick Leave
8. Past Practice

Each of the above issues were carefully considered and the Panel's determination on each issue is as indicated. Hearings, analysis of the testimony, evidence, the post-hearing briefs filed by the parties, research and study of the issues in dispute have now been concluded and the Panel after due deliberation, consideration and evaluation makes its Findings and Award in the matters in dispute, which were the only issues submitted to the Panel. As to those provisions agreed to by the Parties during negotiations, they are to be incorporated in the new contract.

The new contract shall also incorporate the prior contract provisions except where they have been amended or deleted by the parties in their negotiations or revised or deleted by the Panel in this Award.

Background:

The Town of Orangetown, with a population of approximately 36,700 and a land area of approximately 22 square miles (t. ex.9),

is the most southerly Town in Rockland County bordering Bergen County in New Jersey. It is the third largest of the five (5) Rockland County Towns of Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point.

The Town offered to grant the first grade patrolmen, a majority of the PBA unit, a significant wage increase which would put them at the top level in the County, but only if the Town could obtain concessions in fringe benefits and paid leave. To keep some costs from continually compounding with each salary increase granted, the Town proposed changing percentage increases to flat dollar amounts in the areas of Sergeant and Lieutenant differentials, longevity, night shift differential, etc. The Town asserted that its proposed "salary and wage plan" coupled with its revisions in "paid leave" and "fringe benefits" created the balanced package necessary for both parties to remain healthy.

Additionally, the Town sought to clarify contract language and create more logical contract articles. It maintained that many provisions in the expired contract were not clear as to their meaning and a great many articles contained unrelated topic areas.

The PBA welcomed the Town's offer to bring the basic unit members, first grade patrolmen pay to Clarkstown standards, but objected to the proposed reduction in "fringe benefits" and "paid leave." Additionally, it objected to the pay offer to Sergeants and Lieutenants which was considerably less than that paid in Clarkstown and which represented serious reduction in increment paid to them in the expired contract. Fact is, the PBA sought improvements in the "fringe benefit" area.

The vast majority of PBA exhibits consisted of an analysis of the Town's finances and police contracts for the Towns and Villages in Rockland County. The Rockland contracts were the supporting documents for PBA exhibit 13 which compared the various Orangetown Police Contract provisions with those in other Rockland County communities.

Most of the Town exhibits were devoted to the impasse provisions of their proposed Orangetown Police Contract including financial information.

A 1 Wages

a) 1st Grade Patrolmen

Demands of the Parties:

PBA: 12% increase in each of two years

Town: Salary increase which would equalize those officers to the highest salaried patrolmen in Rockland County for 1985, and an increase for 1986

Position of the Parties:

The PBA argued "That the Town of Orangetown is well equipped to meet any reasonable award that may be issued by the current panel." It further alleged "That there are substantial surpluses in the Town budget and substantial allocations made within the budget to meet any award that this panel may issue." The PBA noted that the Town's proposal to the Panel totaled "almost 19% over two years in rate" and indicated "The Town's willingness to be compared with the Town of Clarkstown, a neighboring police community with regard to the level of compensation to be received by Police Officers." The PBA stated that it did not quarrel with bringing "The basic unit members at top level police officer pay to Clarkstown standards."

Town said its offer to the first grade patrolmen was part of an entire proposal. One that would equalize "those officers to the highest salaried patrolmen in Rockland County for 1985" but required as a sine qua non, a reduction in specific paid leave and fringe benefits in order to achieve the balance necessary for the warranting of such a significant wage proposal."

The Town offered that its philosophy was that a fair and competitive "base wage" is what an employee is to live on. But, when one has the competitive "base wage" that is necessary to sustain oneself, then such benefits, (as exist in the expired contract) i.e. longevity, night differential, overtime (doubletime), amounts of personal leave, and sick leave, including its excessive

application, cannot remain if a reasonable balance is to be achieved."

b) Sergeants and Lieutenants

Demands of the Parties:

PBA: Maintain present 15% salary differential

Town: Eliminate % differential and substitute dollar differentials as follows:

	1/1/85	7/1/85	1/1/86
Sergeant (above 1st grade)	\$3,500	\$3,500	\$4,000
Lieutenant (above sergeant)	\$3,500	\$3,500	\$4,000

Position of the Parties:

PBA stated that it did not quarrel with Town's proposal to equalize 1st grade patrolman's pay scale with that of the Town of Clarkstown, but could not countenance doing so at the expense of other employees in the Unit. The Town's proposal "would freeze lieutenants at their initial level of pay and give them extremely low salary increases for the periods January 1, 1985 and July 1, 1985 and January 1, 1986 not only eliminating the 15% differential, but also bringing the lieutenants far below the levels currently received in the Town of Orangetown. A similar problem exists with sergeants who are given a small initial raise and who continue to receive raises at rates considerably lower than that of the balance of the unit. Once again, the Town's desire appears to be to eliminate the 15% differential."

The Town argued that "The positions of sergeant and lieutenant are supervisory." The Town's philosophy is that those positions should not be treated any differently in the salary schedule than those of patrolmen. The supervisor has a role to perform and with that function comes a differential salary. The current differential is fifteen percent (15%) for the sergeant above the 1st grade patrolmen and fifteen percent (15%) for the lieutenant above the sergeant. These percentages continue to distort what should be a specific salary for the role of a supervisor. It should not continue to grow geometrically by using percentages. The following illustration clearly demonstrates the problem:

(Actual) <u>1984</u>	(Proposed) <u>1/85</u>	(Proposed) <u>7/85</u>	(Proposed) <u>1/86</u>
1st grade=30,986	33,590	35,018	36,769

(Actual) <u>1984</u>	(Proposed) <u>1/85</u>	(Proposed) <u>7/85</u>	(Proposed) <u>1/86</u>
Current 15% above 1st grade Sergeant=35,624 (+4648 differential)	If 15% Applied 38,629 (+5039 differential)	If 15% Applied 40,271 (+5253 differential)	If 15% Applied 42,284 (+5515 differential)
Current 15% above Sergeant Lieutenant=40,968 (+5344 differential)	If 15% Applied 44,423 (+5794 differential)	If 15% Applied 46,312 (+6041 differential)	If 15% Applied 48,627 (+6343 differential)

In using the fifteen percent (15%) differential, from the actual schedule (1984) and the Town's proposal for 1985 and 1986 for the 1st grade patrolman, the sergeant realizes an annual growth increase by 1986 of an additional EIGHT HUNDRED SIXTY SEVEN (\$867.00) DOLLARS over the original dollar differential in 1984 (+4648). The lieutenant realizes an annual growth increase by 1986 of an additional NINE HUNDRED NINETY-NINE (\$999.00) DOLLARS over the original differential in 1984 (+5344).

Since there is no additional range of responsibility within the scope of either supervisor, then why is there this projected increase over and above the 1984 dollar differential? The only reason for the additional increased growth is due to applying an unwarranted percentage. The Town feels that the sergeants' and lieutenants' salary schedules should be fixed at the proposed dollar differential. In comparison, the patrolmen grades are assigned a specific salary from probationary through 1st grade.

They do not have percentages differentiating the various steps. The Town's proposal applies a specific dollar amount in growth to their salaries and feels very strongly that this concept be applied as well to the sergeants and lieutenants. "

Discussion:

It is evident from the oral and written testimony submitted to the Panel in this impasse that the Town has and wishes to continue to manage its financial affairs in a prudent, conservative manner with as little debt load as possible. In evaluating the fiscal affairs of the Town, based on the information submitted by the Parties, we find that the Town has the "ability to pay" a wage and benefit settlement that is reasonable and in accordance with the other mandated criteria of law. These criteria were previously cited in this Award.

The Town's proposal predicated on specific dollar increases equalizes the pay rate of the 1st grade patrolmen with the highest paid in Rockland County (PBA ex. 13). The percentage increase of almost 19% over two (2) years, (13% during the first year) is also significantly higher than that granted so far to police officers by any other town or village in Rockland County (PBA ex. 26).

The P.B.A.'s demand for an across-the board salary increase of 12% per year in each of two years cannot be justified under the required statutory criteria. For an increase that substantially exceeds those granted by other Rockland County Police Departments would not be in the "interests and welfare of the public and financial ability of the public employer to pay." In addition, when considering the "comparison of wages, hours and conditions of employment of the employees involved in the arbitration," the Town's proposal for 1st grade patrolman, a majority of the unit, puts them at the top level in the County.

The Panel recognizes that paying 52 of the 77 man unit represented by the PBA (1st grade patrolmen) an almost 19% pay increase in base wage is very costly to the Town. For, in addition

to this actual significant increase must be added the additional increased costs of fringe benefits such as pay upon retirement, overtime, paid leaves etc, dealt with later in this Award. The Town sought to minimize this cost impact by "a reduction in specific paid leave and fringe benefits." Additionally, it sought to limit salary increases of sergeants and lieutenants to fixed dollar differentials rather than let them continue to escalate "geometrically by using percentages." There is merit in the Town's argument that the increased responsibilities of supervision have not and do not increase significantly over the years and so the costs thereof should not geometrically increase.

The Panel mindful of its duty sought to "make a just and reasonable determination" of this wage dispute which appears to be confined to sergeants' and lieutenants' base wage rates.

The Panel, cognizant of the parties' past contractual practice of paying sergeants 15% more than 1st grade patrolman and lieutenants 15% more than sergeants, recognized that in time, as the Town maintained, the differentials for their extra responsibilities would become so costly that the Town would be unable to grant 1st grade patrolmen reasonable increases. It would certainly not be able to grant significant increases, (almost 19%) as it has now proposed to bring 1st grade patrolmen (the majority of the PBA unit) to the top level in the county. However, the Town did not satisfactorily justify to the Panel offering sergeants and lieutenants far less than the top level in the county while proposing the top level for the 1st grade patrolmen. Concurrently, the panel from the PBA's presentation could not find support to warrant paying sergeants and lieutenants salaries greater than the top level in the County. See comparison that follows: (Town post-hearing brief, PBA ex. 22)

Sergeants:	1/1/85	7/1/85	1/1/86
Town proposal	\$37,090	\$38,518	\$40,749
If 15% were applied	38,629	40,271	42,284
Top County Level	37,956	39,569	
Lieutenants:			
Town proposal	40,590	42,018	44,759
If 15% were applied	44,423	46,312	48,627
Top County Level	42,891	44,714	

The Town also proposed that "Those employees encumbering the position of Lieutenant who exceed the January 1, 1985 salary will remain at such salary until July 1, 1985", in fact, a "freeze in salary". No satisfactory rationale was offered to the Panel for such a position.

The Award on base wages which follows exceeds the recent increases in the cost-of-living and, therefore, the PBA members should enjoy a real increase in income.

Keeping all of the foregoing in mind, the Panel has awarded a wage adjustment which it feels is in conformance with the statutory criteria of Section 209 (4) of the New York State Civil Service Law. The salary award must be viewed as part of a total package concept including its relationship to the fringe benefit package determined later in this Award.

Award:

Effective January 1, 1985, and thereafter, the base salaries of the patrolmen and officers shall be increased to the rates applicable for their designated rank as set forth in the base salary schedule set forth below:

	<u>1/1/85</u>	<u>7/1/85</u>	<u>1/1/86</u>
Probationary	19,216	19,346	20,313
4th Grade	26,599	26,859	28,202
3rd Grade	28,434	38,824	30,265
2nd Grade	30,160	30,680	32,214
1st Grade	33,590	35,018	36,769
Sergeant	37,590	39,518	41,269
Lieutenant	42,090	44,518	46,269
Detective	2,000 above access of annual rate of pay per grade and rank.		

A 2 Longevity

Demands of the Parties:

PBA: Increase from \$450 to \$550 and then reduce to a percentage. It also asked that longevity be equalized for all employees to commence after three (3) years of service and continue on an annual basis until the next longevity step.

Town: Increase from \$450 to \$475 for all but cap at Level V ( 5 longevity steps). Eliminate the additional increment granted a patrolman or a detective patrolman, who had attained fifteen (15) years of service in the rank without being promoted to sergeant, so long as he continues in rank and is not promoted to sergeant.

Position of the Parties:

PBA maintained that an increase was warranted in that "there has been no substantial increases in longevity in anyone's recent memory." Once it has been converted to a percentage of salary there will be no need to ask for increases as it will automatically be raised as base wages increase.

PBA pointed out that unit members doing the same work have different longevity depending on when they were hired and the PBA felt this was bad for morale.

Town said longevity "is a recognition not only of length of service but also of knowledge gained and applied to one's job... But, with nineteen (19) years of service (level V) as proposed, the seniority and additional knowledge that one can bring to his employment is at its optimum. It becomes fruitless and economically unsound to continue to reward an employee forever for years of service. All wage schedules eventually have everyone 'maxing' out. That concept is prevalent in the patrolmen's graded system."

The extra increment should be eliminated for not every patrolman is going to make sergeant."

Discussion:

Examination of PBA ex. 13 indicates that other than Stony Point, towns in Rockland County grant longevity payments of \$400

or \$450 with the Rockland County villages paying even less. Therefore, \$475 is more than reasonable. As to capping, Ramapo caps at the 22nd year as do the Villages of Haverstraw and South Nyack. There being in the department at present, only thirteen (13) sergeants and fifty-four (54) patrolmen and five (5) detectives, it stands to reason that not all patrolmen and detectives are going to be promoted to sergeant. In fact, quite a few will not and, in view of the substantial wage offer awarded as well as increased benefits, the additional longevity should no longer be granted.

Award:

6.2 All employees hired on or after January 1, 1985, will earn longevity in accordance with the following schedule:

<u>Level</u>	<u>Years of Service (Beginning)</u>	<u>Amount</u>
I	7th	475
II	10th	475
III	13th	475
IV	16th	475
V	19th	475
VI	22nd	475

There will be no longevity paid to any employee after attaining Level VI. Those employees who have passed any of the proposed Levels, before December 31, 1984 will maintain their longevity earned and receive the additional TWENTY-FIVE (\$25.00) DOLLAR differential proposed beyond each three (3) year level above the proposed years of Service.

Any increment or longevity increase awarded shall be effective on the employee's original appointment (anniversary date) to the Department.

Eliminate the additional longevity for patrolman and detective patrolman who after fifteen (15) years of service in rank do not make sergeant prior to the date of this Award. In the event any employee, after the date of this Award, attains the rank of sergeant said employee shall no longer be entitled to said additional longevity.

A 3 Night Shift Differential

Demands of the Parties:

PBA: Increase percentage from present 6% to 10% and extend it to apply for all hours worked between 4p.m. and 8 a.m.

Town: It should be on a fixed monetary amount and not percentage. Effective January 1, 1985, fix it at seventy-five cents (75¢) per hour for those employees who are regularly scheduled to work between the hours of 2300 and 0800.

Employees shall receive it when they are off on any official paid leave. However, the night shift differential shall not be included in the "base wage" in the computation of overtime.

Position of the Parties:

PBA while recognizing that night shift differential as to police officers "has not been a widely accepted benefit within the County of Rockland...this benefit has reached into most municipal areas and in fact the Town of Orangetown has an existing program." It felt that the four to midnight shift was a less desirable working shift and so the differential should be extended to this shift in addition to the shift that starts at midnight.

Town noted that "Night differential is a fairly new phenomenon in police contracts because of the traditional rotation of officers around the clock. The Town of Orangetown feels it was progressive in agreeing to the night differential concept" i.e. "compensation to employees for the inconvenience of working those designated hours." However, since all employees are equally inconvenienced they should all get a fixed rate and not a percentage which yields a different differential dependent upon rank. Additionally, since the inconvenience does not change the amount should not geometrically increase as you get with percentages.

As part of its offer, the Town proposed to pay the differential when the officer is on any official leave and not only when he/she actually works that differential shift (the present practice). Furthermore, it offers to pay that employee every payroll period vs. current quarterly payment. It maintained that its proposal guaranteed an annual increase of \$1,560. to the regularly scheduled night shift.

Town also argued that since the night shift differential is a separate and distinct benefit for "working nights", it was not a part of the "base wage" and so should not be included in the computation of overtime.

Town felt there was no justification for "expanding the night shift differential to include any other time period, i.e. either the four-to-midnight or any other time period."

Discussion:

In choosing between fixed amounts and percentages, it is

axiomatic that in budgeting it is far easier to plan for fixed amounts than for percentages.

Night shift differential is not a benefit usually or commonly found in police contracts and the PBA has not been convincing in its attempt to extend it beyond its present application.

Award:

Effective as of the date of this Award: If the Fair Labor Standards Act requires that night shift differential be included in base pay rate for overtime computations, then the night shift differential shall be sixty (60¢) cents. However, if it is not part of the overtime computation, then it shall be seventy-five (75¢) cents per hour. It shall be paid to those employees who are regularly scheduled to work between the hours of 2300 and 0800. The night shift differential will be paid to those regularly scheduled employees, including shifts where employees are off on any official paid leave (i.e. sick leave, vacation leave, personal leave, etc. and workers compensation up to one (1) year).

A 4 Vacations

Demands of the Parties:

PBA: Asked that the following schedule be implemented:

1-3 years of service	15 working days per year
4-9 years of service	30 working days per year
10-20 years of service	35 working days per year
21 or more years of service	40 working days per year

Town: Sought the following modifications to the vacation clause in the expired contract:

1. "Any vacation credits not utilized by the end of any calendar year due to employee(s) cancellation, non re-scheduling or non-request, shall be deemed cancelled and non-payable...If the credits are not utilized because of the Town's inability to grant the request, the employee will be compensated for the day(s) in question at the rate of pay in effect as of December 31st of that calendar for that employee."

Position of the Parties:

In support of its demand, PBA notes that "the Town of Orange-town's vacation schedule ranks low when compared with other Towns and in fact with other municipalities in Rockland County."

Town maintained that "If an employee is permitted to carry over additional vacation credits into a new year, the problem only compounds itself. If an employee cannot use all his vacation credits in one (1) year how can he be expected to use the carry-over plus the regular credits for the next year..Compounding this, is the fact that such employee will be paid a higher salary rate of pay (assuming a salary increase occurs for the next year) for credits previously earned at a lower rate of pay and not used. Additionally, the Department is further strained by attempting to accommodate what could not be accomplished in the previous year."

Town saw no need to increase the vacation schedule.

Discussion:

The present vacation schedule does not compare unfavorably with police contracts of other Rockland County communities which appear to have no discernible pattern (PBA ex. 13). While Orangetown police officers are granted 1 day of vacation for each of the next ensuing eight (8) months after their first four (4) months of employment, the Towns of Clarkstown, Haverstraw and Ramapo grant none. After the completion of one (1) year, Orangetown grants 12 days, Haverstraw 10 days while Clarkstown and Ramapo 15 days. Haverstraw and Orangetown both grant 25 days after ten (10) years.

In view of other monetary recommendations (such as significant salary increases) and today's hard pressed taxpayers' demands for the prudent expenditure of their tax monies, no improvement is warranted.

Unless vacation days are taken in the year they are granted, their costs to the town are increased and their scheduling becomes more difficult.

Award:

8.2 shall read as follows:

All employees are obligated to take their entire vacation entitlement in the year credited, except as set forth below:

However, with the permission of the Employer the Employee may rollover to the following year those days of vacation entitlement he/she was unable to utilize because of the Town's inability to grant his or her request.

8.3 Same as the last paragraph page 6 of the expired contract.

8.7 There be no change in vacation entitlement and the Town's proposed 8.7 be deleted and the Town's 8.8. be renumbered 8.7.

A 5 Paid Holidays

Demands of the Parties:

PBA: Add Martin Luther King Day

Town: Add Martin Luther King Day in 1986 and pay for any holiday not taken off be compensated in the pay period in which the holiday occurs.

Position of the Parties:

PBA argued that implementing "an additional holiday known as Martin Luther King Day...is nothing more than adding the holiday that has already been statutorily defined on Federal and State levels."

Town pointed out that "all of the states and any municipality therein including the Town of Orangetown are free to give this holiday (Martin Luther King) or not as they see fit", and the Town indicated its willingness to grant it in 1986.

Town stated that its reason for proposing that any holiday not taken in time off be compensated in the pay period in which holiday occurs was to avoid the practice of paying for holidays in advance to employee before that day is celebrated and to pay it at pay rate in effect at the time of the holiday.

Discussion:

The only dispute on adding Martin Luther King Day to the existing list of holidays is whether or not it is mandatory by law. Since both parties have agreed to include it in 1986, the Panel need take no further action.

The sole determination to be made by the Panel, was when payment was to be made to employees for holidays not taken off. Town requested that payment be made in the pay period in which the holiday occurs and that there be no carry over of holiday time into the next fiscal year.

PBA said its members preferred to receive payment for unused holidays in blocks of holidays.

Award:

9.1 Effective January 1, 1986, add Martin Luther King Day to the list of holidays.

9.2 The parties agreed to 9.3 be renumbered as 9.2

9.3 Town's proposed 9.4 in their post-hearing brief be re-numbered 9.3 and after the first sentence which ends "time the holiday occurs." insert the following:

Payment of the unused holidays that occurred in the first six (6) months of the year will be paid during the first pay period in July. Those that occur during the second six (6) months of the year, will be paid during the last pay period of December. However, any employee who is separated from service prior to any of the above pay periods shall be compensated for those holidays that occurred and were not taken in time-off.

9.4 The parties agreed to 9.5 be renumbered as 9.4.

A 6 Sick Leave

Demands of the Parties:

PBA: Increase the existing 24 days to 30 days per year without maximum accumulation and the payment of same to a maximum of one year's pay upon retirement or separation.

Town: As part of its total package providing significant wage increases, wished to restore the sick leave provisions of the contract to their intended original purpose of meeting the needs of employees only when they become sick and are unable to perform their duties. Provisions such as "family sick emergency", "catastrophic illness", etc. should thus be eliminated and the number of sick days granted annually be reduced from 24 to 18 days in two (2) steps.

a) Family Sick Emergency

Town: demanded it be eliminated

PBA: objected and said it had pending grievances with reference to this provision.

Position of the Parties:

The provision in the expired contract read in part as follows:

In the event of a serious health emergency with regard to any member of the immediate family of an officer of the Department, which emergency requires the presence of said officer and will prevent his or her attendance at work, such officer may be permitted up to three (3) days of leave not chargeable against vacation, sick leave or personal leave..."

Town said its understanding of this benefit was that it was discretionary with the Town, i.e. requests may be denied or granted." However, that did not seem to be the view of the PBA which filed several grievances concerning this benefit.

Town contended that this supposed benefit defied logic, was of no benefit to the Town and should, therefore, be eliminated.

Town suggested that "The Employee has sufficient paid leaves to use to cover this or any other possible contingency. The Town proposes that the several grievances filed and conferenced be granted if the benefit is deleted from the contract."

PBA asked that it be retained.

Discussion:

If both parties in collective bargaining insisted on keeping what it had, there could be no negotiations. Negotiations involve the trade off of some provisions for others. The Town has stated its willingness to provide a significant wage increase if it can obtain some relief on this and other costly provisions.

This is an unusual and potentially costly benefit which is difficult to justify under the commonly accepted concept of sick leave, i.e. the protection of the earnings of an employee who, through no fault of his own, is unable to work because of illness.

Award:

Those grievances which have been filed and conferenced be granted without delay and said "Family Sick Emergency" be deleted.

b) Catastrophic Illness For A Non-Service Connected Disability

Town:demanded it be eliminated

PBA: Wished to retain it.

Position of the Parties:

Town maintained that since it was inserted to permit the usage of "frozen accumulated sick leave" and it had proposed to eliminate "frozen accumulated sick leave" by buying it out, there was no longer a need for this provision and so it should be eliminated too.

PBA stated it should at least be applicable until the buy-out took effect.

Discussion:

There seemed to be no dispute as to the fact that the "Catastrophic Illness" provision was tied to the "frozen accumulated sick leave" provision and so if the latter were eliminated by its

buy-out, then the former no longer has a basis for existence.

Award:

Add the following sentence to paragraph III f on page 10 of the expired contract:

This provision shall no longer be applicable upon payment of the remainder of the "frozen accumulated sick leave".

c) Payment of Unused Sick Leave Upon Retirement

PBA: Demanded payment of unused sick time upon retirement to a maximum of 260 days paid (a day for a day).

Town: Objected and asked that it be denied.

Position of the Parties:

PBA claimed that it had once enjoyed this benefit but it was subsequently deleted from the contract. It asked that it be returned.

Town argued that granting sick leave was a benefit to be used in time of need and not a right to time-off which should be paid for if it is not used because of sickness.

Discussion:

To eliminate a similar provision in the past, the parties agreed to a sick leave buy-out plan, with 25% of accumulated sick leave paid on January 1, 1983, an additional 50% to be paid on January 1, 1986 and the balance on January 1, 1989. Later, in this Award, C 7 Buy-out "Frozen Accumulated Sick Leave", is dropped from the contract with the buy-out of the entire remaining balance of 75% "frozen accumulated sick leave" at a very substantial cost to the Town. In view of this history, this benefit should not be reinstated.

Award:

Demand be denied.

d) Town proposed the following:

Section 12.1: Effective January 1, 1985, each employee shall accrue sick leave at the rate of one and three-fourths (1.75) days per completed calendar month, which equals twenty-one (21) days per year. Effective January 1, 1986, each employee shall accrue sick leave at the rate of one and one-half (1.50) days per completed calendar month, which equals eighteen (18) days per year.

PBA: responded increase the twenty-four (24) days per year to 30 days per year.

Discussion:

At the time this Award is issued, some ten (10) months of 1985, have expired and it would be unfair to change sick leave cre-

dits.

A review of PBA ex. 13 reveals that most police contracts in Rockland County provide 24 days, so there is no basis for increasing it to 30 days as the PBA requested. Town, however, predicated its substantial wage offer on obtaining some relief in the sick leave area. The Award on salary is even more generous than the Town's offer so some relief should be granted but eighteen (18) days is too drastic a reduction.

Award:

Section 12.1: Effective January 1, 1986, each employee shall accrue sick leave at the rate of thirteen (13) hours per completed calendar month, which equals nineteen point five (19.5) days per year. An employee absent due to an illness or other physical disability or for medical treatment or examination which cannot be scheduled outside of working hours, shall continue to be paid to the extent of his/her unused accruals. This section shall not apply to an employee who is absent due to a disability defined in Section 207-C of the General Municipal Law, as the rights and entitlement of such employee shall be regulated and limited by that law.

Effective January 1, 1986, any employee entering the Department shall be entitled to an advance credit of nineteen and one-half (19.5) days (156 total cumulative hours) upon which to draw sick leave for said employee's own illness that prevents the said employee from reporting for said employee's regularly assigned tour of duty. As said employee earns accrued sick leave in accordance with this section, the earned sick leave shall be deducted from said advance credit.

e) Town proposed the following:

Section 12.2: The rights and entitlement of any employee who is absent due to a disability defined in Section 207-C of the General Municipal Law shall be regulated and limited by that law. No employee shall earn sick leave credits during any period when receiving benefits under the provisions of Section 207-C of the General Municipal Law, except as may be permitted in the future under Section 207-C of the General Municipal Law.

Award:

Granted as to the second sentence. The first sentence has already been incorporated into Section 12.1 above.

f) Town proposed the following:

Section 12.3: In the event an employee is unable to report to duty, it is essential that the employee notify the Department within two ( 2 ) hours before the beginning of the work day. In the event an employee neither reports for duty nor informs the Department as herein provided, the absence shall be deemed unpaid leave.

Award:

Section 12.3 In the event an employee is unable to report to duty, it is essential that the employee notify the Department within two (2) hours before the beginning of the work day. This two (2) hour requirement may be waived by the Department Head for cause. In the event an employee neither reports for duty nor informs the Department as herein provided, the absence may result in disciplinary action.

g) Town proposed the following:

Section 12.4: Sick leave taken for three (3) or more work days shall be supported by a written statement or certificate from a physician attesting that the illness warranted absence from work. The Department Head may require a doctor's certificate for any absence in the event there appears to be evidence of an abnormal use of sick leave. The Department Head may also require the employee to be examined at the expense of the Employer by physicians designated by the appointing authority.

Award:

Section 12.4: Sick leave taken for three (3) or more consecutive work days shall be supported by a written statement or certificate from a physician attesting that the illness warranted absence from work. The Department Head may require a doctor's cer-

tificate for any absence in the event sick leave appears to indicate evidence of an abnormal use of sick leave. The Department Head may also require the employee to be examined at the expense of the Employer by physicians designated by the appointing authority.

h) Town proposed the following:

Section 12.5: Failure to provide proper notification, failure to submit such proof of illness or disability as may be required, unsatisfactory evidence of illness or evidence indicating that the physical condition of the employee was not such as to justify absence from work, failure to submit to physical examinations, or any other abuse of sick leave, may be cause for disciplinary action at the discretion of the Department Head.

Award:

Section 12.5: As proposed by the Town except strike-out the last few words after "disciplinary action", i.e. "at the discretion of the Department Head.

i) Town proposed the following:

Section 12.6: The Department Head may require an employee who has been absent on an extended personal illness or a work related disability prior to and as a condition of the employee's return to work, to be examined at the expense of the Employer by physicians designated by the appointing authority to establish that the employee is not disabled from the performance of his/ her normal duties and that the return to work will not jeopardize the employee's own health and safety or that of

other employees.

Award:

Granted (it has the same meaning as Section III e on page 10 of the expired contract).

j) Town proposed the following:

Section 12.9: An employee who is out on sick leave with one-half ( $\frac{1}{2}$ ) pay will be provided with health insurance benefits at the Employer's expense up to fifty percent (50%) of the premium rate paid by the Employer.

An employee who is out on extended absence without pay, (up to one (1) year), shall not have his/her health insurance benefits paid by the Employer. However, an employee who desires to maintain his/her health insurance benefits shall pay the Employer's premium rate for that month directly to the Employer.

Award:

Granted except that in the first paragraph everything after Employer's expense" be deleted, i.e. "up to fifty percent (50%) of the premium rate paid by the Employer".

k) Sick Leave Credits on Transfer Within Town

Award:

Section 12.10 (new) This is a revision of Section III h page 10 of the expired contract.

When an Employee is transferred within Town service his/her accumulated sick leave credits shall be transferred with him/her. The Department is responsible for notifying, in writing, the new Department of the amount of such transferred credits.

A 7 Union Business

Demands of the Parties:

PBA: Requested that the present twelve (12) days off from work for the PBA president be increased to thirty-six (36) days per year and that these may be designated by the PBA president.

Town: Maintained that "It should not be the practice (benefit) to have Union members attending monthly meetings on Town time or having a President assigning his responsibility to others for time off from work, creating a bookkeeping and economic concern for the Employer."

It also argued that the Town should not be required to pay PBA members who take on responsibility of being part of the Union negotiating team. Town submitted that those officers should use their holiday and vacation credits.

Position of the Parties:

PBA claimed that more time was needed to attend to Union business and that the PBA president was not always available to attend to it and so should be able to delegate.

Town stated that it is its intention "to keep an open door of communication through meetings to diffuse any problems that may arise concerning the administration of the agreement on any matters and to improve the overall operation of the Department. No specific amount of time is contemplated."

As to the negotiating team, Town said "the Town should not be included with the Union's obligation concerning it's collective bargaining duties. Instead of the Town paying them their salaries as well as the possible replacement factor, those officers should use their holiday and vacation credits."

Discussion:

PBA presidents usually receive paid time-off to administer the contract. The Villages of Nyack, Spring Valley and Suffern as well as the Towns of Clarkstown, Ramapo and Stony Point make such provision in their police contracts (PBA ex. 13). Additionally, it is not unusual, because there are times when he/she is unavailable, that the president is able to designate others to administer the union contract.

No information was made available to the Panel as to the practice in other Rockland County police departments on the handling of time-off for scheduled union meetings and/or scheduled negotiating sessions with management.

Award:

5.2 Subject to the needs of the Employer and on prior written request (3 business days) and approval of the Department Head or designee, the Union President or his designee will be granted a maximum of ninety-six (96) hours ( 12 days ) per year with pay, to attend to Union related business.

5.3 Subject to the needs of the employer and on prior written request (3 business days) and approval of the Department Head or designee, any member or committee member of the Union who is on duty, will be permitted to attend the regularly scheduled monthly Union meeting. Any approved attendance shall not exceed one(1) hour of duty time per said monthly meeting.

5.4 Subject to the needs of the Employer and on prior written request (3 business days) and approval of the Department Head or Designee, two (2) representatives of the negotiating team, who are on duty, will be permitted to attend the scheduled negotiations between the Employer and the Union. This sub-section shall mean that if the Union President attends such negotiations, he shall either be one (1) of the two (2) representatives or he shall have his Union time (96 hours) reduced accordingly when on duty.

Renumber all subsequent sections beginning with agreed to provision 5.4 in the Original Sign Off Copy (PBA ex. 1).

#### B 1 Standby Pay

Demand: PBA sought additional remuneration, a 10% differential above 1st grade patrolman, for detectives when they are required to "remain ready and available to report to work on a recall basis upon immediate notice."

#### Position of the Parties:

PBA argued that since "Detectives are exposed to the possibility of disciplinary sanctions" if they are not available for immediate recall; "they should be "entitled to a higher remuneration for periods of time that they are subject to the direction of the employer." The PBA felt its position was supported by the recent arbitration decision in the Town of Haverstraw and the Supreme Court of the United States decision that the Fair Labor Standards Act is now applicable to municipalities.

Town responded that nobody has ever been disciplined for failing to be available on stand-by and in cross-examination of Detective Liberati it was ascertained that if the first detective to be called on the duty chart is not available then the practice has been to call someone else. Detective Liberati also testified that detectives have been receiving an extra \$2000 per year and no standby compensation for serving as detectives.

Discussion:

The possibility of being recalled is an element of public service associated with the job of detective for public safety requires, as determined by the Town, that an investigation or surveillance be conducted at once.

The Town's testimony as to it's practice of not disciplining standy-by detectives who are not available when called and their just calling someone else in his/her place, was not disputed by the PBA.

Award:

Demand be denied.

B 2 Duty Chart

Demand: PBA asked that the present 244 day duty chart be reduced to a 232 day chart for all employees.

Position of the Parties:

PBA alleged that 244 days was more than that of other Rock-land communities.

Town responded that the present work schedule was developed by the police officers three (3) years ago and agreed to by the Chief of Police. There have been no problems and to their knowledge everyone seems happy with it.

Discussion:

Requests which require additional funding must be carefully weighed one against another. A reduction from a 244 to a 232 day chart is very costly. This demand from the testimony presented compares less favorably with other pressing needs of the PBA. The other requested improvements, such as salary, had priority claim on what funds were available.

Award:

Demand be denied.

B 3 Terminal Leave

Demand: PBA requested that "Employees be granted the right to take accumulated sick leave as terminal leave in lieu of lump sum payment without additional accrual of time off benefits during terminal leave.

Position of the Parties:

Town's response was that this request was costly and should be rejected.

Discussion:

This Award provides for substantial salary increases and additional limited funds have been utilized to pay for other increases granted in the Award that have immediate benefit to larger numbers of employees.

Award:

Demand be denied.

B 4 Welfare Fund

Demand: PBA demanded the establishment of a jointly administered Welfare Fund to provide life insurance, dental plan, optical plan and pre-paid legal plan at a maximum cost of \$900 per employee per year.

Position of the Parties:

Town refused stating that all Town employees, including the PBA members, were enrolled in group dental, health and life insurance plans and breaking out anyone group would raise the cost of coverage for the remaining employees significantly.

Discussion:

The Town already provides dental and life insurance.

A review of the comparisons of the various Rockland County village and town police departments (PBA ex. 13) shows that none of them have a Welfare Fund.

Award:

Demand be denied.

B 5 Agency Shop

Demand: PBA demanded an Agency Shop

Position of the Parties:

PBA said State Law permits it and they would like it.

Town refused the demand.

Discussion:

Though the law permits an Agency Shop, it is known that the best and most loyal supporters are those who join the Union voluntarily.

Award:

Demand be denied.

B 6 Loss of Personal Items

Demand: PBA sought that "Any and all personal items lost in the course of duty be paid for by the Town."

Position of the Parties:

PBA alleged that in the course of making an arrest, work in the line-of-duty, watches and eyeglasses are sometimes broken and the employee should not have to assume the cost of replacement.

Presently, the PBA said, such losses are handled on a case by case basis, with some being reimbursed and others not. Therefore, the PBA wanted a contractual provision assuring every member that they will be reimbursed.

Town maintained that costs are minimal and the Town did reimburse legitimate losses. Town said that when working PBA members should not wear expensive watches.

Discussion:

No convincing arguments were offered by the PBA to change the present practice for handling this matter.

Award:

Demand be denied and past practice be continued.

B 7 Compensation of Out-of-Town Assignments

Demand: PBA asked that "employees be compensated for duty out of the jurisdiction for meals, lodging and gasoline and other traveling expenses incurred."

Position of the Parties:

PBA said there was nothing presently in the contract to cover these situations. Therefore, it is handled on a case by case basis by assignment and the employees involved may get meal, lodging but no mileage.

Town objected and said each assignment should be determined on its own merits.

Discussion:

Assignments can vary in nature and no convincing arguments were offered by the PBA to change the present practice for the handling of this item.

Award:

Demand be denied and present practice be continued.

B 8 Miscellaneous Equipment Allowance

Demand: PBA requested that employees receive a \$500 annual Miscellaneous Equipment Allowance.

Position of the Parties:

PBA said it was a reasonable request to be compensated for miscellaneous items such as pens, boards, socks and the like specifically required to be possessed or likely to be required.

Town felt this was an unnecessary item and the package it had offered was already taxing the Town's finances.

Discussion:

In the present fiscal climate, requests for new fringe benefits must be carefully weighed against the cost of present or increased funding of existing fringe benefits and providing salary increases. This demand compares less favorably with other pressing needs of the PBA.

Award:

Demand be denied.

B 9 Detective Clothing Allowance

Demand: PBA sought a Detective Clothing Annual Allowance of \$520.

Position of the Parties:

Detective Liberati testified that detectives receive nothing in the way of a clothing allowance although they need a variety of clothing in their surveillance work as detectives, such as suits, casual clothing, dungarees, shoes, sneakers, etc. For court appearances they require suits and ties.

Town responded that in most situations detectives wore what they already had in their wardrobes and they were paid \$2,000 additional salary per year to serve as detectives.

Discussion:

The Panel has decided to employ limited available funds in

those areas, such as salaries, which benefit all the members of the PBA and in other areas that have more pressing needs at this time.

Award:

Demand be denied.

B 10 Full Retroactivity to January 1, 1985

Demand: PBA demanded that all terms of the successor agreement shall be retroactive to January 1, 1985.

Discussion:

The Panel has kept this demand in mind in making it's determinations on the various contract provisions it was asked to resolve and has indicated when various provisions become effective, e.g. salaries are retroactive to January 1, 1985, night shift differential as of the date of this Award and holiday effective as of January 1, 1986.

Award:

Each contract provision was individually determined.

B 11 Eliminate Restrictions on Line of Duty Injuries

Demand: PBA wanted the elimination of the existing regulation requiring police officers to remain in residence when disabled due to line of duty injuries or be compensated at overtime rate for all times restricted beyond normal duty tours.

Position of the Parties:

PBA said its request followed the recent arbitrator's decision in the Town of Haverstraw.

Discussion:

This is an area which has been arbitrated in a nearby Rockland community and the parties should be cognizant of it.

Award:

Parties abide by what the law prescribes.

C. 1 Improve Format and Language of Contract

Demand: Town wished to improve format and language for clarity and to avoid unnecessary grievances.

Position of the Parties:

The Town made these demands because it wanted to improve

upon and clarify the expired contract language so as to minimize the possibility of grievances through ambiguous language as well as detail both principals' rights and obligations." It claimed that its revisions "Have the appropriate topic areas by Article and only those related subject areas are placed within that specific Article." Town maintained that Union was "cognizant of the Town's concern in two areas of format and language in that it signed off on the majority of modifications in the Town's proposed agreement."

The PBA was not in opposition to the Town's objectives so long as the new wording did not diminish its rights under the old contract language.

Discussion:

On the following provisions there had been a dispute as to whether the Town's proposed language did diminish the PBA's rights, so they have been submitted to the Panel for determination.

The parties in drafting a new agreement to succeed a prior agreement should carefully consider each provision to ascertain that it clearly, accurately and completely, as possible, expresses their intent. It is axiomatic that doing so prevents misunderstandings,

In making its determination on each of the issues the Panel sought uniformity and clarity without changing the meaning and intent of the various provisions.

Award:

For uniformity and clarity, references to parties in all provisions of this contract shall conform to those found in the new recognition clause (Article 1) agreed to during negotiations i.e. Town would be referred to as the "Employer" and PBA as the "Union."

ARTICLE TWO: RIGHTS AND RESPONSIBILITIES OF THE EMPLOYER

Section 2.1 as revised in PBA ex 1, Original sign-off copy page 2. Renumber agreed to 2.5 page.3, 2.2

ARTICLE THREE: RIGHTS OF EMPLOYEES

Article 12 Sections f and i on pages 14 & 15 of the expired contract to be renumbered as Article Three Sections f and i on pages 5 & 6 in Original Sign Off Copy (PBA ex. 1) except for the following substitutions: "employee of Department" for "member of Force", "employee" for "officer or individual" and "said

employee(s)" in place of "he or his" wherever they appear.

ARTICLE FIFTEEN: DISCIPLINARY PROCEDURE

Article 13 of expired contract to be renumbered Article fifteen.

ARTICLE EIGHTEEN: SAVINGS CLAUSE

Old Article 15

ARTICLE TWENTY: DURATION

20.1 This agreement shall be effective as of January 1, 1985, except as amended, and shall remain in effect through December 31, 1986.

20.2 Either party to this agreement may notify the other on or before May 31st, prior to the date this agreement expires, that it wishes to negotiate on any or all items contained herein and any items it wishes to propose.

ARTICLE TWENTY-ONE: GENERAL PROVISIONS

Add to it the following from the expired contract:

- 14.1 Tuition for Job Related Schooling
- 18.3 Physical Examination
- 18.4 Appointments and Promotions - include second paragraph only and retitile Appointment of Detective.
- 18.7 Education
- 18.9 Service Revolver

C. 2 Personal Leave

Town Demand: Reduce from 7 days to 6 days in 1985 and to 5 days in 1986 and any unused personal leave at end of a calendar year shall be credited to the employee's sick leave.

Position of the Parties:

In support of its proposal, Town contended "that five (5) days, i.e. are (1) week, of personal leave per year, is quite sufficient to attend to personal needs in a given year. If, in fact, additional time is needed in extraordinary circumstances in a given year, the employee can request to use a vacation or holiday to accomplish those needs."

Furthermore, to avert the potential abuse of personal leave the Town proposes to credit any unused personal leave at the end of a calendar year to the employee's sick leave to augment his sick leave accruals.

PBA objected to any reduction in personal leave.

Discussion:

The purpose of Personal Leave Days is to provide an employee with paid time off to conduct urgent personal business such as mortgage closings, bank loans, religious observances, which could not be done at any other time. These personal business happenings are normally scheduled during the hours of 9 A.M. and 5 P.M. Since the members of this unit have rotating shifts assignments or on permanent night shift assignment, they are better able than other working people to schedule personal business on their time off.

The majority of police departments, towns and villages, in Rockland County (PBA Ex. 13) grant their employees six (6) days of personal leave. However, in the majority, any unused personal leave at the end of the year is lost.

The Town, while offering less days than the norm in Rockland County Police Departments, has offered unit members the rare privilege of adding unused personal leave days to sick leave accrual. The PBA rather not give up any days even though the norm is 6 days.

Award:

10.1 Personal Leave is leave with pay for personal business, including religious observance.

10.2 Effective January 1, 1986, each employee will be credited with six (6) days.

10.3 Add in to second sentence after "calendar year" 1986 on page 15 of PBA Ex. 1 original sign-off copy.

## C.3 Bereavement Leave

Town Demand: In its Post-hearing brief the Town asked that bereavement leave language and benefit be the same as in the expired contract but be set out in a separate article.

Position of the Parties:

Town's original proposal was to separate present language (Art. 7 Sec. 7.3 VI) into two separate paragraphs for clarity and to reduce the number of days from four (4) to three (3) days

as well as to remove it from catch-all Article entitled Vacations and Holidays.

PBA objected because of reduction in days.

Award:

Granted: Bereavement Leave Provision Article 7 Subsection 7.3 VI of the expired contract be set out in separate Article eleven.

C. 4 Overtime

Town Demand included following:

1. Addresses when it shall begin.
2. Use of seniority to attempt to balance distribution of overtime.
3. Authorization and requirement to work overtime.
4. Elimination of double time provision.
5. Clarify benefits for those employees who work ten' (10) hours per day four (4) days per week.
6. Compensatory time off.
7. Reduction in stand-by compensation.

Position of the Parties:

Town maintained that the provisions in the expired contract do not: 1) address when overtime shall begin and 2) authorization and requirement to work overtime. Town noted that there were employees who work ten (10) hour days for only four (4) days per week and their overtime should commence after forty (40) hours.

Furthermore, it sought to address compensatory time off (dependent on the Fair Labor Standards Act and any exemptions that may occur in the near future) in lieu of cash payments.

Town wanted to reduce stand-by compensation from two (2) to one (1) hours of his/her hourly rate for up to eight (8) hours of required stand-by time.

Town was also adamant that the provision 8.2 Extended Overtime in the expired contract concerning double time was excessive and comprised thirty-five (35%) per cent of all overtime paid and, therefore, must be deleted. It claimed that the double time compensation was causing an economic strain on the Town's budget and the Town's significant salary and wage proposal warranted the de-

letion of this benefit.

PBA wanted no diminution of benefits.

Discussion:

The concept of overtime, where an employee works additional hours beyond his regular schedule to fill in for a fellow employee who is unable to work his regular shift because of illness, personal leave, holiday, vacation, etc. is very costly to the Town as it requires premium payment. It is incumbent on the Town to manage efficiently so as to keep overtime costs to a minimum-but, even the most competent management cannot eliminate overtime.

In trying to keep costs at a minimum it is important that all parties understand when overtime applies, begins and how and at what rate it will be paid.

There is a reasonable limit to how much compensation should be paid to an employee who is asked to work additional hours to those scheduled in his/her regular work schedule. The customary premium is time and one-half ( $1\frac{1}{2}$ ) the regular rate of pay. Double time is not the customary compensation and is extremely costly.

In view of the monies expended in other contract areas, including significant salary increases, the Town's request for some relief in the area of overtime compensation is warranted.

Award:

- 13.1 Add to first paragraph of Article 8 Section 8.1 of expired contract page 11 the following:

Overtime must be authorized in advance by the Department Head or those so designated. Assignment of overtime shall be on a rotating basis from those employees having the skills and ability required for the work and who volunteer for such assignment and then from among other such employees on the basis of the inverse order of seniority.

- 13.2 Required and authorized hours of work in excess of (40) hours in the employees normal work schedule, shall thus be compensated at the rate of one and one-half ( $1\frac{1}{2}$ ) times the regular hourly base rate of the employee concerned. The employee, however, may elect to receive compensatory time off at the overtime rate instead of cash payment, but the employee must request and take the compensatory

time off within the calendar quarter earned. If the compensatory time off is not taken, then the employee will be paid in cash at the rate of pay in effect for that employee on the date the overtime was earned.

Effective as of the date of this Award, Extended Overtime, 8.2 in the expired contract shall be eliminated.

13.3 Any employee who is called back to work or other required appearance for the department, during his/her time off, shall be entitled to a minimum guarantee of four (4) hours pay at the rate of one and one-half (1½) times the regular hourly base rate of the employee concerned. This minimum guarantee shall not apply to work which runs into or immediately follows a normal work day or shift.

13.4 Shall be 8.4 of expired contract page 12.

13.5 Employees shall be furnished a meal allowance of Four Dollars (\$4.00) after four (4) or more hours of overtime.

#### C. 5 Insurances

Town Demand: It sought to incorporate clearer language as to what coverage was being offered.

Town also wishes to retain "The right to substitute insurance carriers, to self-insure or a combination of the two (2), provided that the schedule of benefits are to be substantially the same as the plan currently in effect."

PBA Demand: PBA requested that "Any employee who retires during or after the effective period of this agreement shall be entitled to be carried on all insurance programs at Town cost both individually and in any family plan that may exist."

#### Position of the Parties:

Town stated it was not seeking to diminish coverage or reduce its contribution, but wished to make provisions clearer.

PBA was concerned that there might be some be some diminution of its benefits under the proposed provision.

Discussion:

What ultimately governs the relationship of the parties is the "good intent" on both sides to make their's a harmonious relationship. Insurance benefits are very important to employees and they should be easily understood. Town's intent is to accomplish greater understanding of insurances provided without any loss of benefits for the employees. It also wants to be able to furnish the same coverage from any carrier or itself as long as it is substantially the same particularly if can reduce its costs.

Insurance carriers enter and leave the market for various types of insurance and/or seek business or discourage it by the rates they charge. Therefore, the Town should not be tied to any particular insurance carrier as long as it provides substantially the same coverage and Union can have some recourse if it feels the coverage is not substantially the same.

Award:

14.1 Add to p. 20 of PBA 1 original sign-off copy the following:

All employees shall be eligible for membership in the State Insurance Plan; however, the Employer reserves the right to substitute insurance carriers, to self insure or a combination of the two, provided that the schedule of benefits are to be substantially the same as the State Plan.

Before the Employer effectuates such a change, it will submit said anticipated plan or plans to a Union Insurance Committee who will ascertain whether they think the obligations under this Section have been fulfilled. In the event a dispute arises as to the fulfillment of the obligations under this Section

the matter shall be submitted to binding arbitration pursuant to the arbitration clause of this Agreement. However, it is understood the Employer may substitute the new carrier or self-insurance program, or a combination of the two, prior to any such arbitration decision, if the Employer decides to proceed despite the pending arbitration. This shall not preclude the Arbitrator from awarding retroactive compensation to the employee and/or Union.

14.2 The Employer shall contribute one hundred (100%) percent of the health insurance premiums of a family plan for employees and dependents and/or for an individual employee(s).

14.3 The Employer shall contribute one hundred (100%) percent of the Dental Insurance premiums of a family plan for employees and dependents and/or for an individual employee(s). The Employer reserves the right to substitute insurance carriers, to self insure or a combination of the two (2), provided the schedule of benefits are to be substantially the same as the plan currently in effect.

Before the Employer effectuates such a change, it will submit said anticipated plan or plans to a Union Insurance Committee who will ascertain whether they think the obligations under this Section have been fulfilled. In the event a dispute arises as to the fulfillment of the obligations under this Section the matter shall be submitted to binding arbitration pursuant to the arbitration clause of this Agreement. However, it is understood the Employer may substitute the new carrier or self-insurance program, or a combination of the two, prior to any such arbitration decision, if the Employer decides to proceed despite the pending arbitration. This shall not preclude the Arbitrator from awarding retroactive compensation to the employee and/or Union.

14.4 An employee who is eligible to retire and who does retire during the life of this Agreement, together with retired employees, shall, if insurable, be entitled to have the Employer continue to pay the cost of his present health insurance benefit levels with the appropriate health insurance provided, for so long as the individual does not receive duplicating coverage by virtue

of other employment, state legislation or otherwise. The State Health Insurance Program will not duplicate benefits which are primarily available to a retiree through enrollment under another group plan. The individual shall provide such attestations and information as the Employer may require to implement this section. This provision shall be effective as of January 1, 1986.

14.5 Group Life Insurance

Renumber Article 10 Section 10.1 on page 13 of the expired contract as 14.5 and change the second word "Town" to "Employer"..

C 6 Grievance Procedure

Town demand: Town sought to clarify the language of this provision.

Position of the Parties:

The parties were able to sign-off during negotiations on most of the clauses in this Article of the contract, but a few were submitted to the Panel for determination.

Discussion:

In making it's determination on each of the clauses in this Article, the Panel sought clarity without changing the meaning the parties intended.

Award:

In Section 1 of Article Sixteen change "working days" to "business days" i.e. Monday through Friday and then change "working" to "business" wherever in appears in this Article.

In Section II 3 and 6 between "thirty (30) and "days" insert the word "business".

C 7 Buy-Out "Frozen" Accumulated Sick Leave

Town demand: In the month of January 1986, all concerned employees shall be paid in full for their remaining balance of "frozen" accumulated sick leave at the salary level proposed in the January 1, 1985 rate of pay, per the current pay-out practice. All concerned employees shall be named in an appendix to the contract stating the exact amount due each such employee or beneficiary.

Position of the Parties:

Town stated it must eliminate this outstanding liability now to prevent it's continuing escalating cost.

PBA appeared to raise no objection.

Award:

Demand be granted.

C 8 Past Practice

Demand: Town requested that the PBA present all Past Practices not specifically provided for in the parties' expired contract to the Town for consideration; thereafter, no contract provision entitled "Past Practices" would be included in the contract.

Position of the Parties:

Town argued it could not be bound to the unknown.

PBA indicated it was willing to meet on this with the Town.

Discussion:

It is the Panel's understanding that to-date, the parties have not discussed what these Past Practices may be.

Joint efforts by the parties constitute mature and constructive collective bargaining and can be mutually beneficial. Inasmuch as collective bargaining is a continuous process, it is recommended that discussions of what Past Practices may exist be carried on by the parties until resolved.

Award:

The Panel directs the parties, as soon as possible, to list, discuss and determine what are considered to be unlisted Past Practices.

Additional Provisions

Section 12.11 (is old III (c) on page 9 of the expired contract revised).

12.11 Accumulated Sick Leave: An employ e may, at his/her request, in any six (6) month period, trade in a maximum of four (4) days of sick leave for two (2) days of annual leave, provided that such annual leave is used in the same six (6) month period in which it was traded.

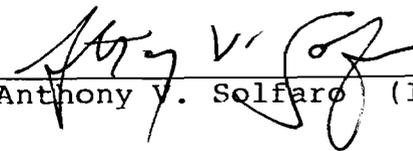
Section 12.12 (is old III (i) on page 11 of the expired contract revised).

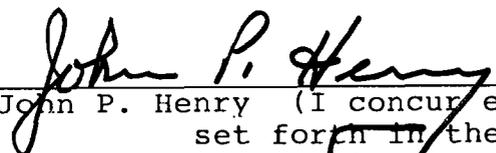
12.12 Add the following sentence to the end of the paragraph:

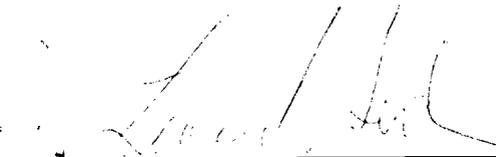
This provision shall no longer be applicable upon payment of the "frozen" sick leave accumulated prior to January 1, 1981.

Dated: *December 2*, 1985.

Respectfully submitted,

  
\_\_\_\_\_  
Anthony V. Solfaro (I concur)

  
\_\_\_\_\_  
John P. Henry (I concur except as  
set forth in the attached  
Dissent.)

  
\_\_\_\_\_  
I. Leonard Seiler, Chairman

STATE OF NEW YORK )  
COUNTY OF Rockland ) ss:

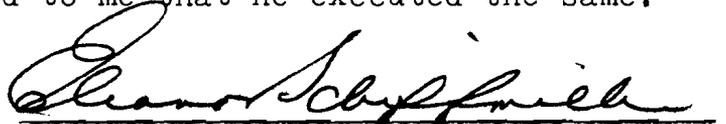
On this 2 day of December 1985, before me personally came and appeared Anthony V. Solfaro to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



ELEANOR SCHIFFMILLER  
NOTARY PUBLIC, State of New York  
No. 01SC4763125  
Qualified in Rockland  
Commission Expires March 30, 1986

STATE OF NEW YORK )  
COUNTY OF Rockland ) ss:

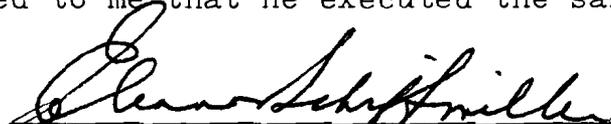
On this 2 day of December 1985, before me personally came and appeared John P. Henry to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



ELEANOR SCHIFFMILLER  
NOTARY PUBLIC, State of New York  
No. 01SC4763125  
Qualified in Rockland  
Commission Expires March 30, 1986

STATE OF NEW YORK )  
COUNTY OF Rockland ) ss:

On this 2 day of December, 1985, before me personally came and appeared I. Leonard Seiler to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



ELEANOR SCHIFFMILLER  
NOTARY PUBLIC, State of New York  
No. 01SC4763125  
Qualified in Rockland  
Commission Expires March 30, 1986

Dissenting Opinion

John P. Henry, Employee Panel Member

P.E.R.B. Case Number: IA 84-36; M 84-356

In the opinion of the Employee Panel Member, the award of the Public Arbitrator Panel in this matter is not based on the mandated criteria set forth in Section 209,4,(iii), (iv), (v) of the Public Employee's Fair Employment Act, which reads as follows:

" (iii) the public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or written as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties;

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into considera-

Dissenting Opinion

P.E.R.B. Case Number: IA 84-36; M 84-356

(v) tion, 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.

Dissenting Opinion

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

During the hearings the Orangetown P.B.A. presented substantial evidence to establish the terms and conditions of employment which were being enjoyed by other Police bargaining units in Rockland County and declared that in past negotiations, mediation and arbitrations, the Orangetown P.B.A. bargaining unit was compared with other Rockland County Town Police Departments. The town did not, through evidence or testimony, controvert the position of the P.B.A. that past agreements were based on comparison with other Rockland County Town Police Departments, in fact the only Town exhibits on comparability (Town #8 and #9) were based upon the other Rockland County Town Police Departments. 

The position of the Town during the arbitration hearings and in their post-hearing brief was that the Town was willing to provide a substantial increase in the annual salary of Police Officers which would be "interdependent and contingent upon the total package." (Page 2 of Town's Post-Hearing Brief).

In the opinion of the Employee Panel Member, the question now raised is "what constitutes a fair and equitable total package" based on the criteria set forth in the Public Employee's Fair Employment Act? The award of the majority of the Panel in this case, does not meet the

Dissenting Opinion

P.E.R.B. Case Number: IA 84-36; M 84-356

fair and equitable test when one takes into consideration wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions in other Rockland County Towns.

The P.B.A. in the Arbitration Hearings presented numerous exhibits to establish that the Arbitration Panel should consider other Town Police Departments in Rockland County as comparable employees within the criteria set forth in the Public Employee's Fair Employment Act. The Town, through their exhibits (Town #8 and #9) agreed with the P.B.A. that other Town Police Departments in Rockland County should be used as comparable as mandated by the Public Employee's Fair Employment Act.

Based on the exhibits and testimony of the parties at the Arbitration Hearings and taking into consideration the wages, hours and conditions of employment in comparable communities, the Employee Member of the Panel believes that on the issues of annual salary for a police officer at top pay, personal leave and pay-off of accumulated sick leave earned prior to December 31, 1981 is justified. The issues of annual salary for a police officer at top salary and pay-off of accumulated sick leave earned prior to December 31, 1981, is identical to the Town's demand submitted to binding arbitration. When a comparison is made with the contracts submitted at the Arbitration Hearings by the P.B.A., annual personal leave entitlement as set forth in the Award is justified.

When writing the Award, the Chairman of the Panel listed the issues submitted by the Town, the P.B.A. and those determined by him as Joint issues (see Page 2 and 3 of the Award). The P.B.A. at the Arbitration Hearings, presented to the Panel the most current contracts of Rockland County Town Police Departments to inform the Panel as to the wages, hours and conditions of employment for all Town Police Departments in Rockland County. The P.B.A. also submitted the most current contracts of Village Police Departments in Rockland County to provide a broader scope of the issues. Exhibit 13 consisted of a series of charts illustrating the most current benefits being enjoyed by Police Officers in other Towns and Village Police

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Departments in Rockland County. The charts covered annual salary of Police Officers at top pay, longevity, paid holidays, overtime, personal leave, uniform allowance, vacation, sick leave, welfare benefits, educational benefits and other miscellaneous benefits.

At the Arbitration Hearings the Town did not present any argument concerning the P.B.A.'s position that other Rockland County Town Police Departments should not be used as comparable. The Town, in its post-hearing brief, argued for a reduction in current benefits as part of a package Arbitration Award. In their brief, however, no justifiable reason for reduction of benefit was cited, except for the wishes of the Town to reduce the benefit.

The benefits reduced by this Arbitration Award include:

Longevity	(Town Demand)
Night Differential	(Town Demand)
Sick Leave	(Town Demand)
Union Business	(Town Demand)
Personal Leave	(Town Demand)
Overtime	(Town Demand)
Insurances	(Town Demand)
Past Practice	(Town Demand)

Increased benefits reflected in the Award include:

Wages	(Joine Demand)
Paid Holidays	(Joint Demand)

Those demands denied by the Award include:

Vacations	(Joint Demand)
Standby Pay	(P.B.A. Demand)
Duty Chart	(P.B.A. Demand)
Terminal Leave	(P.B.A. Demand)
Welfare Fund	(P.B.A. Demand)
Agency Shop	(P.B.A. Demand)
Loss of Personal Items	(P.B.A. Demand)

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Dissenting Opinion

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Those demands denied by the Award: (continued)

- Compensation Out Of Town Assignments (P.B.A. Demand)
- Miscellaneous Equipment Allowance (P.B.A. Demand)
- Detective Clothing Allowance (P.B.A. Demand)

It should also be noted that although wages were increased, the prior contract called for a fifteen (15) percent wage differential for Sergeants over Police Officers at top pay and a fifteen (15) percent wage differential for Lieutenants over Sergeants. The Arbitration Award as set forth reduces those differentials to approximately twelve and one half (12½) percent.

The Employee Panel Member takes strong exception to the Award of the majority of the Public Interest Arbitration Panel (see attached). The Award as rendered, does not reflect a just and reasonable determination based on the mandated criteria set forth in the Public Employee's Fair Employment Act.

*John P. Henry*

John P. Henry, Employee Panel Member

Date: December 6, 1985

*3 copies to Britton Mu*  
*12/10/85*  
*R. J. [Signature]*

Qualified in [unclear] State  
 Term Expires March 30, 19 [unclear] FD