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In the Matter of the Compulsory  
Interest Arbitration

Between

Town of Orchard Park,

and

Orchard Park Police  
Benevolent Association

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OPINION AND  
AWARD

PERB Case No.  
IA 91-013  
M90-459

Before: Stuart M. Pohl, Esq. - Neutral Chairperson  
Anthony DeMarie, Esq. - Employee Organization Panel  
Member  
Norman J. Stocker - Public Employer Panel Member

Appearances:

For the Town

Kevin Stocker, Esq. - Attorney for Town  
John Malloy - CPA - Partner, Deloitte &  
Touche  
Robert C. Henning - Chief of Police

For the PBA

Charles Sherry, Jr. - PBA President  
Michael Sherry - PBA Vice President  
Andrew Benz  
Charles Jarocha

This interest arbitration arises under the provisions of Section 209.4 of the New York Civil Service Law. By letter dated October 9, 1991, from Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board (PERB), this Panel was advised it had been designated as the panel members of this Compulsory Interest Arbitration Panel and that

Stuart M. Pohl would serve as the Chairperson of the Panel. The function of the Panel was to make a just and reasonable determination of the parties' bargaining impasse between the Town of Orchard Park (hereinafter referred to as the "Town") and the Orchard Park Police Benevolent Association (hereinafter referred to as the "Association" or the "PBA").

Pursuant to our statutory authority, the Panel conducted a hearing at Police Headquarters in Orchard Park, New York, on December 20, 1991. At that time, the Town was represented by Kevin Stocker, Esq., and the PBA was represented by its President, Charles Sherry, Jr. At the hearing, the parties were given full opportunity to call witnesses and to cross-examine each others witnesses, as well as to present documentary evidence in support of their positions.

At the beginning of the proceeding, the parties submitted written presentations with supporting documentation. Neither side objected to the fairness of the proceeding.

The Panel met in executive session in Tonawanda, New York, on the 20th day of March, 1992, and for a second session at Mr. DeMarie's office on March 31, 1992. We have exhaustively studied all the parties' evidence and arguments and taken into consideration the express criteria of Section 209.4 (c) (v) which provides:

"...In arriving at such a determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. comparison of wages, hours and conditions of employment of the employees involved in the

arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the 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 bargaining 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."

#### DECISION

Prior to reaching its decision, the Panel carefully studied the voluminous financial data, reports and written arguments which had been skillfully prepared and presented by the parties. We gave particular attention to the results of a comparison of the wages, hours and working conditions of a Town of Orchard Park police officer (as well as detectives and lieutenants) with those of police officers in comparable areas; the public interest and welfare; the working conditions which are unique to police officers; and the financial ability of the Town of Orchard Park to pay for the economic provisions contained herein.

After due consideration, a majority of this Panel has arrived at the following relevant conclusions concerning the

impasse and its resolution:

COMPARABLE COMMUNITIES ISSUE

While both parties have strenuously and ably argued that the Panel should consider various Western New York municipalities "comparable" for purposes of evaluating the various proposals which are the subject of this interest arbitration proceeding, it is clear that they have been quite selective when it came to applying the provisions of a particular community's police contract to a particular issue.

There is a degree of commonality, as well as divergence, found in the communities selected by the parties as being "comparable." The Town's criteria for deciding which communities are "comparable" include those which are typically used by interest arbitrators and fact finders. For instance, factors such as the community's taxable assessment; its police services budget; its population and the number of employees in the unit can be compared to those in Orchard Park and a conclusion can be drawn therefrom as to whether or not those communities are "comparable." The PBA, on the other hand, argues that the Panel must also look to such things as the land area served; the climate; the cost per resident for police services and the ratio of residents to police officers to arrive at a fair comparison. Applying all of these factors to the municipalities submitted by the parties, it appears that all are relatively comparable. The difficulty here, however, is that if the Panel were to evaluate each municipality's

contract on an item-by-item basis with the expired Orchard Park/PBA agreement, there would be a real possibility that the resulting comparisons would probably be at variance with the true area-wide practice. That is to say, as the parties argued their respective positions on a category-by-category basis, it became obvious that each was relying, in many instances, upon extremes which masked the true point at which comparability of the contracts lay. The Panel has dealt with this problem by evaluating each proposal on its own merit, taking into consideration the Town's ability to pay; any existing practices covering the subject both in the Town and in those communities which the parties agree are comparable; as well as the other statutorily required considerations, as noted previously herein.

#### TOWN'S ABILITY TO PAY

Although considerable testimony, argumentation and data were submitted on this issue, the Panel has little doubt that the Town has the ability to pay for the economic improvements awarded herein. Thus, while there is no doubt various costs, particularly the costs of providing health insurance, continue to rise at a rate in excess of the rate of inflation, the data and other information submitted by the PBA and the Town demonstrate that the Town is on sound financial ground, notwithstanding any projected shortfalls in State funding. It was able to adopt a budget for 1992 which reflects a surplus of over one million dollars. Moreover, in 1991, unlike 1989 and 1990 when it floated bonds to build the new court house and

police headquarters building, it issues no bonds. Further, new construction, both residential and commercial, continues to expand, notwithstanding the recent recession (See, e.g., PBA Exhibit 11). Thus, while the Town is correct in pointing out that other municipalities have had difficulty dealing with the State budget crisis and the resulting cut-backs in State funding, the Panel is satisfied that these generalized problems have not resulted in the Town being unable to afford the economic improvements awarded herein.

#### Indemnification

##### 1. Positions of the Parties.

The PBA has proposed that Article IV, Section 4-3 be amended to indicate that the Town will provide to all police officers all indemnification provided for in General Municipal Law Section 50-J. More precisely, it asks that the Town provide its police officers with protection against punitive damage claims. It contends police officers are in need of this additional protection so that they can continue to act in a reasonable manner, to effectuate arrests and to protect the public, without fear that he/she will have to use his/her life savings should a punitive damage claim be awarded against him/her. It points out that such a benefit is already enjoyed by officers in Cheektowaga, the Towns of Lancaster and Amherst, and the Villages of West Seneca and Lancaster (although it concedes that the Towns of Hamburg and Tonawanda and the Village of Hamburg do not provide this protection).

The Town is opposed to this modification for two reasons: (1) the cost of providing such protection would be borne by the taxpayers of the Town because no insurance carrier will quote the cost of providing such protection because of the high degree of risk involved (See, Town Exhibit 9) and (2) providing such protection would send a message to the public and the police that malicious and willful conduct are condoned. It cites the much publicized Rodney King/Los Angeles Police case to illustrate this point.

## 2. Opinion and Award

No one can doubt that we live in a very litigious society. Anyone can commence a lawsuit, often without legal representation and notwithstanding that the claim is on solid legal and factual ground or is lacking in merit. Although the Panel appreciates the Town's concern for sending out the wrong message to the public by providing indemnification for all claims, including those for punitive damages, it also recognizes the concern expressed by the police officers during this proceeding. Further, while the Town has taken the position, during this proceeding, that it is unwise to provide this type of indemnification, evidence submitted by the PBA appears to contradict this stated opposition. Specifically, the PBA provided the Panel with a Resolution of the Town Board, dated February 1, 1989, which specifically states, in pertinent part:

"RESOLVED that Section 23-9 Subd. A and C [of the Town's Personnel Rules] are hereby amended as follows:

The Town shall shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court or in the amount of any settlement of a claim, including punitive or exemplary damages, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his public employment or duties; provided, further, that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the settlement amount by the governing body of the town..." (emphasis added)

There is nothing in the record from which to conclude that this resolution has been repealed or amended to eliminate this coverage. Thus, the Panel has concluded that, in light of the existing resolution, there is no justification or need to also place such language in the parties' agreement. Hence, the Panel will award as follows:

**There shall be no change in the existing language of Section 4-3 at this time.**

**Salaries. (Article VI, Section 6-1)**

1. Positions of the Parties.

The Association has proposed the following salary increases:

- a. a 7% increase in police officer salaries based upon 1990 salaries, effective January 1, 1991, and an increase of 7% effective January 1, 1992, based on the 1991 salary.
- b. the salary of police Lieutenants be established at 13% above the salary of senior patrol officer.
- c. officers who are assigned as a detective be paid a salary equal to that of senior patrol officer, plus \$1,400.00 each year.

The Association contends the Panel should limit its analysis of wages, hours and conditions of employment solely to police

officers in "comparable communities", and not to any other municipal workers elsewhere or in the Town. It believes the Town has the ability to pay these increases and that it should be required to do so since, according to its statistical analysis, Town police are paid an average hourly rate which is less than the hourly rate of police officers, detectives and Lieutenants in Cheektowaga, Hamburg (Town), Hamburg (Village), Lancaster (Village), Lancaster (Town), Amherst, Tonawanda (Town) and West Seneca - communities it alleges to be comparable to the Town of Orchard Park.

The Town contends that, compared to what it submitted as the wages of employees in comparable communities, its police force has one of the highest salary schedules in Western New York. According to its statistical analysis, the comparable communities include Tonawanda (Town), West Seneca (Town), Hamburg (Town), Tonawanda (City), Depew (Village), Evans (Town), Hamburg (Village), Lancaster (Town), Kenmore (Village), Lancaster (Village) and East Aurora (Village). It argues that a 4% raise in 1991 and a 4% raise in 1992 would be sufficient for its police force to maintain its position as the highest paid public safety employee force in any comparable community in Western New York, particularly in light of the Association's other economic demands. It also asserts that anticipated state aid losses would make it imprudent to agree to salary increases beyond the 4% - 4% it now suggests.

## 2. Opinion and Award.

The Town's position rests principally on three factors; its ability to pay; the current levels of salary and economic benefits enjoyed by members of its police force, and the salary increases agreed to in comparable communities. Indeed the Association's position rests on essentially the same factors, although the parties strongly disagree on the conclusions the Panel should draw regarding these factors as noted above.

During the hearing and in its various written arguments and documentation, the Association sought to convince this Panel (1) that the comparisons made with regard to the wages of other employees in comparable communities demonstrated that its 7% - 7% salary increase proposal for police officers, and additional amounts for detectives and lieutenants, is fair and necessary, and (2) that the Town's Comprehensive Annual Financial Report (Union Exhibit 2 , hereinafter referred to as the "CAFR") and other financial and demographic data demonstrates the Town has the ability to pay for the salary (and other economic) increases proposed.

The Town has, with equal fervor, denounced the Association's entire economic package as "absolutely ridiculous." Through written argument and documentation, as well as through the testimony of John Malloy, a CPA and partner from the accounting firm of Deloitte & Touche, the Town attempted to demonstrate it lacked the ability to pay increases in salary and economic benefits beyond those it proposed.

Notwithstanding the Town's contention that anticipated cuts

in state aid will adversely impact on its ability to pay for increases in salary and other economic benefits for its police force, it is clear the Town is not impoverished or likely to become so in the near future. Rather, as the financial data submitted by the Association indicates, the Town has experienced a substantial increase in new building values, total revenues and fines and forfeitures. Moreover, its real property tax rate ceiling has not been reached. While the State and Federal financial aid question remains somewhat imprecise, it appears the Town does have a fund surplus at present and could afford certain salary and other economic improvements for its police force which would not put the Town into financial peril. On the other hand, the Panel recognizes that the amount of economic improvements the Town can afford to make are presently more limited due to factors such as the State and Federal budget deficits, the recession and related factors which are beyond its immediate control. As a result, the Panel believes the salary increases awarded herein, coupled with certain other economic improvements to the contract give recognition to the competing interests of the police officers to maintain their standard of living, and for the Town to adequately budget for potential any potential shortfall or surplus for the term of this agreement. As a result, the Panel awards as follows:

- a) **Retroactive to January 1, 1991, each employee shall receive a salary increase of 5% for the first year of the Agreement and an additional 5% for the second year of the Agreement.**
- b) **Retroactive to January 1, 1991, Section 6-1(c)**

will be amended to reflect that detectives will receive additional compensation of \$1,400 for each of the two (2) years of this Agreement.

- c) Retroactive to January 1, 1991, Section 6-1(b) shall be amended to reflect that the salary of a police lieutenant will be 12% greater than the salary of a senior patrol officer.

### Longevity

#### 1. Positions of the Parties.

In this proposal, the PBA urges the Panel to amend Section 7-1 of the expired agreement by increasing the amount of longevity pay by \$50.00 in each longevity increment, effective January 1, 1991 and by an additional \$50.00 per increment, effective January 1, 1992. It contends that longevity pay for the Town's police officers, especially in the first step, is considerably below the average paid to police officers in comparable communities in Western New York. While conceding that longevity pay for the Town's police officers eventually exceeds that average, it maintains that the longevity pay received in the officer's career is below the average longevity pay. The Association contends that currently, longevity pay is \$250.00 after four years and an additional \$200.00 for every additional four years of service. It concludes that, even if the proposed increases are granted, the Town's police officers will still be below what it claims to be the first step average of \$603.00. At the twenty-fifth year that payment would reach \$1,800.00 (assuming \$300.00 at first step).

The Town strenuously opposes this proposal. It argues that

(1) the cost of the proposal in the first year would be .3% and in the second year, .75%, and (2) such an expense is unwarranted here since, in its view, its police officers are already among the highest paid of any police officers in Western New York. Granting the longevity increases requested would place them far above the level of longevity payment enjoyed by police officers in other, comparable communities. It suggests that the Panel compare the level of longevity payments on a thirty-two year career basis. If one takes that view of the data, it submits, the Town, even under the current schedule, ranks the highest at \$28,000.00, even after considering the 1991 and 1992 schedules in the other municipalities.

## 2. Opinion and Award.

The Panel has carefully analyzed the data submitted by both the Town and the PBA concerning this proposal. Having carefully considered the arguments of the parties in support of and against this proposal, the Panel has concluded that a modest increase of \$50.00 in each increment, effective January 1, 1991 is sufficient to bring the officers of Orchard Park somewhat closer to the first increment average of approximately \$603.00. In granting this increase, the Panel is cognizant of Town's contentions as to the added cost of providing any improvement in the longevity area, as well as of the fact that the salaries of the Town's police officers do compare favorably with many of the municipalities cited by the parties in this proceeding. Nonetheless, the Panel believes

this modest increase is affordable and takes into consideration the fact that the longevity payment is quite low in the Town when compared to the level of payment provided in other municipalities that the Town submits as being comparable (e.g., Towns of Hamburg, Lancaster, West Seneca and the Village of Lancaster). While the Town may well be correct in its assertion that many municipalities will fall behind Orchard Park when the total longevity payments over a thirty-two year career are considered, the Panel is not convinced that the entire career of an officer is the correct standard against which to compare the longevity payments in comparable communities.

Therefore, the Panel awards as follows:

**The longevity payment called for in Section 7-1 shall be increased by \$50.00 in each longevity step effective January 1, 1991.**

#### Court Pay and Compensatory Time Proposals

1. Positions of the Parties.

a) **PBA Proposal - Compensatory time - Accumulation rate (Section 9-4)**

In this proposal, the PBA seeks to bring the contract language into conformity with what the PBA contends to be a long-standing past practice. Specifically, it contends that, although the contract language calls for accumulating, at a straight time rate, compensatory time off for overtime work performed, practice for at least the past ten years has been to accumulate at a time and one-half rate.

The Town opposes this proposal claiming that many

comparable communities do not allow compensatory time off at all, let alone at a rate of time and one-half. Moreover, the Chief of Police has expressed a generalized problem with overtime, particularly in connection with policing the Buffalo Bills football games at Rich Stadium.

### Opinion

The Panel has carefully reviewed the arguments and evidence submitted in support of this issue. There appears to be no dispute that, notwithstanding the contract language calling for accumulation at the straight time rate, and notwithstanding comparable community data, there has been a long-standing practice of calculating the accumulation at the rate of time and one-half. Further, while there may be some cause for concern by the Chief of Police if police officers were allowed to accumulate an unlimited amount of compensatory time, the language of Section 9-4, which the PBA does not propose be changed, places a thirty-two (32) hour ceiling on the amount of compensatory time a police officer can accumulate. The Panel has concluded that this limitation adequately addresses the Chief's concern for effective cost containment, whether the compensatory time is accumulated at a straight time or time and one-half rate. There is no adequate justification for not bringing the contract language into conformity with the past practice regarding this issue. Therefore, the Panel will award the modification sought by the PBA.

Award

The Panel awards that Section 9-4 be amended to reflect that earned compensatory time off will be accumulated at the rate of time and one-half.

b) **Town Proposal - Compensatory time - Limitations (Section 9-4)**

The Town's proposal would amend that portion of Section 9-4 that states: "In lieu of overtime pay, a Police Officer shall have the option of receiving earned compensatory time off at straight time rates." Said language would be replaced by the following:

"In lieu of overtime pay, a Police Officer shall have the option of receiving earned compensatory time off at straight time rates only for hours worked when he is held over on a particular shift or if he is called in early on a particular shift. Earned compensatory time off will not be granted for hours worked that are not contiguous to a regularly scheduled tour of duty."

The Town seeks this modification in order to control labor costs by minimizing the amount of time police officers spend on compensatory time off. According to the Town, additional overtime pay expenditures must be made each time police officers use compensatory time, since other officers must then be scheduled to work overtime to cover for the off-duty officers. Thus, it seeks to limit the earning of compensatory time to hours worked which are contiguous to the regularly scheduled tour of duty (i.e., those occasions when the officer comes to work early or stays later than his scheduled shift). Under this proposal, police officers would not be allowed to earn compensatory time off for overtime work they perform on a

voluntary basis (e.g., Buffalo Bills games or concerts at Rich Stadium).

The PBA opposes this proposal because it would materially change the compensatory time off system which has been in place for years. Moreover, it contends the system actually has the potential to control labor costs since there are occasions when an officer chooses to take compensatory time off rather than overtime pay and is not replaced by another officer.

#### Opinion

As noted in the previous subsection, the parties have worked under the existing compensatory time off system for many years. Particularly because the amount of compensatory time a police officer can accumulate is limited to thirty-two (32) hours, the Panel can find no justification for awarding the significant modification sought by the Town. Moreover, a review of the contracts in comparable communities reflects no conclusive evidence on this issue. Treatment of this issue in those contracts submitted by the parties ranges from no compensatory time option to compensatory time off at time and one-half, sometimes subject to the discretion of the police chief.

#### Award

**The Panel awards that Section 9-4 not be changed in the manner sought by the Town.**

c) **Town Proposal 4 - Call-in Pay**

Town Proposal 4 seeks to delete the last paragraph of Section 6-3 of the expired agreement. The paragraph to be deleted reads:

In lieu of call-in pay, a Police Officer shall have the option of receiving earned compensatory time off at straight time rates for the hours actually worked.

The Town asserts this modification is necessary "to eliminate the over accumulation of compensatory time off from work." It will provide it with a means of gaining fiscal control over its budget. It also notes that Section 9-4 allows an officer to take compensatory time off and that he could use that time off option in situations where a call-in creates a situation of the type defined in that section. Finally, it argues that where an officer is called into work for something like an emergency, he would still be compensated at time and one-half for the hours he actually works with a minimum of two hours.

The PBA opposes any change in Section 6-3, relying upon essentially the same reasons asserted above, in opposition to the other Town proposals which address the subject of compensatory time.

## **2. Opinion and Award.**

The Panel has reviewed this proposal and the rationale submitted in support of the modification sought by the Town. It appears that the principal reason for seeking this modification of an existing condition of employment is to prevent police officers from accumulating an inordinate amount of compensatory time, the use of which would

significantly disrupt the operation of the police department. The difficulty with the proposal lies in the fact that the parties already have in place a mechanism for such control. Specifically, Section 9-4 of the expired agreement provides that "...in no event shall accumulated compensatory time ever exceed thirty-two (32) hours." As a result, the Panel, having found no other demonstrated justification for changing the existing call-in/compensatory time system, will award that this proposal be denied.

Therefore, the Panel awards as follows:

**The Town's Proposal No. 4 is denied for the reasons stated above.**

d) **PBA Proposal - Court Pay (Section 8-1)**

In this proposal, the PBA urges that Section 8-1 be modified to allow police officers the option of receiving their court pay (four hours or time spent, whichever is greater) or receiving compensatory time off at the same rate. It notes that police officers in the Town of Tonawanda and in the Village of Hamburg are given this option.

The Town argues that it can not afford any further expansion of the amount of compensatory time off available to its police officers. It has submitted data from some comparable communities which, it contends, reflects that its police officers' court pay benefit is already the highest and does not need this additional improvement. As a result, it sees no need or justification for changing this portion of the benefit.

### Opinion

Here, the PBA seeks to expand in an area the Town seeks to better control; i.e., the accumulation and use of compensatory time off. The Panel has carefully considered this matter and, for essentially the same reasons noted in the previous subsections, does not believe the awarding of the modification sought by the PBA will have the detrimental consequences suggested by the Town. First, irrespective of how much compensatory time a police officer would like to accumulate, in lieu of the court pay to which he would be entitled under Section 8-1, the maximum amount he can accumulate is, as noted previously, limited to thirty-two (32) hours. Furthermore, the extent to which the police officers can use compensatory time pursuant to Section 9-4, is subject to the discretion of the Chief of Police or his designee. Finally, a modification of the court pay provision in the way sought by the PBA will, to some extent, have the potential for reducing the amount of overtime pay the Town will have to provide to its police officers. For these reasons, the Panel will award the modification sought by the PBA.

### Award

The Panel awards that Section 8-1 be amended to provide the police officer with the option of receiving court pay or accumulating time off for court appearances at the overtime rate. The accumulation is subject to the thirty-two hour ceiling found in Section 9-4, and its use subject to the discretion of the Chief of Police as provided in Section 9-4.

e) **Town Proposal - Court Pay (Section 8-1)**

The Town seeks to amend Section 8-1 so that a police officer would not be paid the four hours of court pay even if he was not notified of a cancellation or adjournment within eight hours of the scheduled appearance. Essentially, the Town contends that there are many occasions when court is cancelled through no fault of the Town. Any slight inconvenience sustained by the police officer should be borne by him as a part of his job as a professional. Moreover, it notes that no municipalities, except the Village of Depew and the Town of Evans, provide their police officers with this guaranteed court pay.

The PBA opposes this proposal arguing that the present benefit was originally agreed to in recognition of the inconvenience and disruption of a police officer's non-work time which can be caused by last minute cancellations and adjournments of scheduled court appearances. It suggests that many courts currently refuse to adjourn cases because they are aware of this contractual benefit. If the benefit were eliminated, there might be, it speculates, an increase in cancellations and adjournments which would be to the detriment of police officers who appeared for those scheduled appearances.

**Opinion**

The Panel has considered the Town's arguments in support of this proposal, but has not been convinced that the

modification sought is warranted. While it may well be the case that court dates get cancelled or adjourned through no fault of the Town, it is certainly equally true that said cancellations are usually not the fault of the police officer either. Thus, while the Town now contends that the minor inconveniences suffered by police officers in these circumstances should be endured by the officers, without the receipt of the additional pay set forth in Section 8-1, the Panel cannot agree. The additional pay for insufficient cancellation notice has been in place for a number of years. It appears that having previously agreed to such provision, and having allowed police officers to work under said system for years, the Town has sent a message to its police officers that it recognizes the inconvenience and private life disruption that last minute cancellations can cause. To eliminate this benefit, which does not appear to be a significant cost item, would, in the Panel's opinion, do more harm to the morale of the force than good. For these reasons, the Panel will award that this benefit not be deleted.

#### **Award**

**The Panel awards that this proposal not be granted.**

#### **Vacations**

Positions of the Parties.

a) **Town Proposal 7**

This proposal seeks to amend Article X, Section 10-2, by changing the start and end dates of the yearly vacation

period from January 1st through December 31st of the same calendar year, to the first Monday in January and for the next 52 weeks thereafter. The PBA opposes this change because it would, potentially, eliminate the right of a police officer to select a vacation which carries over into the next calendar year. According to the PBA, the proposal also, potentially, deprives a police officer of the opportunity to take vacation during the first week of January, since, in most years, the first week of January does not begin on a Monday.

#### Opinion

Having carefully reviewed the contentions of the parties and the documentation submitted in support thereof, it is the Panel's opinion that the Town has submitted insufficient justification for a change in the contract of the type sought herein. Thus, the Panel will award that there be no such change.

#### Award

**The Panel awards that there be no change in the contract language concerning this issue.**

#### **b) PBA Proposal - 5 weeks after 15 years**

Here, the PBA seeks to modify the existing vacation entitlements of Section 10-1 to lower the number of years of employment necessary to receive 5 weeks of vacation from the current "after 18 years of employment" to "after 15 years of employment." It contends police officers in comparable communities in Western New York, such as, the Town and the Village of Hamburg, Amherst, Cheektowaga, the Village

of Lancaster and the Town of Tonawanda, receive at least 5 weeks of vacation after 15 years of employment. It argues that the Town's police officers' should, therefore, receive the requested improvement.

The Town is opposed to changing the vacation entitlement schedule for several reasons. First, it submitted data that shows that, while several of the communities cited by the PBA do provide 5 weeks of vacations after 15 years of employment, many others, such as the City of Tonawanda, the Town of West Seneca, the Town of Lancaster, Depew and East Aurora do not do so. It also contends the PBA previously withdrew this proposal at the May 23, 1991 negotiation session between the parties.

#### Opinion

The Panel has reviewed the data submitted concerning this proposal. That data does not conclusively support either the Town's or PBA's position regarding this issue. The Panel finds insufficient justification for this proposal and will award no change in this area of the contract.

#### Award

The Panel awards no change in this area.

#### Vacation Leave

Positions of the Parties.

##### a) PBA Proposal - Single day supplements

The PBA seeks to amend Article X by adding thereto a new Section 10-11, which would allow two (2) weeks of vacation

time in single day supplements. This use would be subject to prior approval of the Chief of Police or his designee. The Town's principal reason for opposing this item is the fact that the officers already receive seventeen days they can take at anytime during the year. Adding additional single days would, it claims, make it most difficult to create a schedule for properly patrolling the Town. Further, it would result in expenditures and compensatory time off, which would place an undue financial burden on the Town.

#### Opinion

The Panel has reviewed the arguments and proof submitted in support of and in opposition to this proposal. It has concluded that the PBA has submitted sufficient justification for a modification of Article X, sought herein, including some evidence that such an entitlement exists in some of the comparable communities in Western New York. Most important, however, is the fact that, contrary to the Town's contention that police officers currently enjoy 17 days which they can take off **at any time**, it appears only the 4 personal leave days can be scheduled in this manner. Thus, there appears to be little reason for not allowing police officers the possibility of using some of their vacation days in single day supplements. To the extent the Town is concerned about possible abuses, inconvenience or expense, the PBA's proposal deals with those concerns by leaving with the Chief of Police the sole discretion to grant or deny a request to use

vacation time in the manner proposed. For these reasons, the Panel will award that Article X be amended in the manner proposed by the PBA.

**Award**

The Panel awards that Article X of the agreement be amended to include a new Section 10-11 to read as follows:

A police officer will be allowed to use up to two (2) weeks of vacation leave in single day supplements, subject to prior approval by the Chief of Police or his designee.

b) **Town Proposal 8**

In this proposal, the Town seeks to amend Article X, Section 10-6 concerning vacation leave by adding language which would limit the number of officers, lieutenants and detectives who could be on vacation leave during the week of the annual convention of the Police Conference of the State of New York. After some discussion, the Panel concluded that the language of this proposal, as modified, was acceptable to both the Town and the PBA. Therefore, the Panel will award that a modification in the language of Article X, Section 10-6 occur.

**Award**

The Panel awards that Article X of the agreement be amended by adding language to Section 10-6 so that it reads as follows:

Where two (2) or more requests for the same week are submitted, seniority shall determine the selection of police officers to that vacation period.

During the week in which the annual convention of the Police Conference of the State of New York

is held, not more than two officers shall be allowed vacation leave. The two officers who are allowed to be on vacation during the convention week may be a combination of a Lieutenant and a Detective, a Lieutenant and a Police Officer, a Detective and a Police Officer, or two Police Officers. This selection shall be determined by overall departmental seniority.

### Health Insurance.

#### 1. Positions of the Parties.

The Town's Proposal No. 10 seeks to control the rising cost of health care by increasing the co-pay for prescription drugs from \$2.00 to \$5.00 and the deductible for the Major Medical Rider from \$50.00 to \$100.00. It also sought to modify the contract language to relieve itself of the obligation of providing a police officer with health insurance coverage where the employee has "similar" coverage elsewhere. Finally, it seeks to add a provision which would allow it to negotiate with the PBA over the impact of increased premium costs where the monthly premium rates increase more than 10% during the life of the Agreement. The PBA is opposed to any changes in the Agreement, except if it is to add a vision plan, as discussed below.

The PBA's proposal seeks to modify Section 12.4 of the Agreement by providing employees with Blue Shield's Vision Care Plan, at the highest level of benefit offered. It cites contract provisions in Amherst, the Town of Hamburg, the Village of Lancaster and West Seneca. In the case of West Seneca, vision care benefits, apparently, are provided indirectly through a union administered health and welfare

fund which is contributed to by West Seneca. The Town opposes this modification on the basis that it is too costly and is not provided in many of the comparable communities in the western New York area.

## 2. Opinion and Award

Both parties have presented logical rationale for the proposed modifications each advocates. The Panel agrees that health care costs continue to rise throughout the nation and that their control is a concern of all parties concerned. It is understandable that the PBA has strenuously opposed any contract modification which would impose a greater cost on unit members than is already present. Moreover, the Town has a right to be concerned with the considerable rise in insurance premiums which it must continue to fund. While the Panel saw some degree of merit in the Town's proposal to re-open negotiation's to discuss with the PBA premium increases which rise above a certain level, it has concluded that to modify the Agreement to include such a provision at the present time would be unwise. This type of provision appears to be the exception rather than the rule in contracts in comparable communities. Moreover, the employees appear to be far less able to bear these additional costs than does the Town. However, it is of benefit to the employees to assist, where possible, with attempts to control the health insurance benefits funded by the Town to reduce or postpone the likelihood of the Town, again, seeking to have its employees share in the premium costs of the health insurance benefits.

The Panel believes the following will serve as an equitable resolution of this complex and important issue. As to the PBA's request for a vision care plan, although the rationale for such a plan has considerable merit, the Panel believes the additional cost to the Town for providing such a benefit is too costly under present economic conditions. Therefore, the Panel awards as follows:

- a) The drug rider co-pay provision of Section 12-1 will be modified to reflect a three dollar (\$3.00) co-pay, effective January 1, 1992.
- b) The Major Medical Rider deductible provision of Section 12-1 will be modified to reflect a one hundred dollar (\$100.00) deductible, effective January 1, 1992.
- c) The Panel finds insufficient merit for such a vision care benefit at the present time and must deny this request.
- d) All other provisions in Article XII shall remain unchanged.

### Redemption of Sick Leave

#### 1. Positions of the Parties.

In this proposal, the PBA seeks to amend Article XV of the expired agreement by adding thereto a provision which would read as follows:

Upon termination of employment a police officer to be paid the value of all unused accumulated sick days, standing to the officer's credit, in a sum equal to 50% of the daily rate prevailing at the time of redemption and if the officer is deceased said sum to be paid to the officer's estate.

According to the PBA, this proposal was made because some incentive is needed to discourage the possible abuse of sick

leave. It believes the current Town policy, which allows an officer who retires and lives beyond sixty-five years (or his surviving spouse) to apply the value of unused sick leave to the payment of health insurance premiums, has created an inequity that needs to be redressed. Specifically, it points out that there is not currently a benefit for a surviving spouse when the officer dies before retirement. In that situation, all accumulated sick leave is lost. The same is true if an officer dies without a surviving spouse. The PBA notes that, although the percentages vary, the municipalities of Amherst, Cheektowaga, Hamburg Town, Hamburg Village, Lancaster Town, Lancaster Village and the Town of West Seneca provide their officers with a percentage of their accumulated sick leave upon retirement or upon termination of employment. It asks that this benefit be extended to the Town's police officers.

The Town is adamant in its opposition to this proposal. As far as it is concerned, (1) such a policy is repugnant to the notion of professionalism since the PBA's anti-abuse rationale seems to suggest that police officers will, if this modification is denied, abuse sick leave since they may lose the accumulation any way; (2) sick time is a benefit negotiated and agreed to, to protect officers from a loss of income when they are too sick to work. It is repulsive, says the Town, to grant police officers significant sums of money at retirement simply because the officer did not take unwarranted sick leave during his/her career with the Town (See, Town Brief, Exhibit F

and G - news articles re: sick leave cash-in); (3) the Town's salary package is already the highest among comparable communities; (4) its current policy referred to above is extremely generous, given the ever-increasing rise in health insurance costs; and (5) the cost of such a proposal is extremely high; costing \$78,781.00, even with no pay increase (Town Brief, Exhibit H). It submits that Town taxpayers should not have to bear the costs of providing such a benefit.

## 2. Opinion and Award.

There is little doubt that this issue was one of the more hotly contested items throughout negotiations and this proceeding. Indeed, both sides have presented compelling reasons for why the benefit should be provided or denied. From the PBA's perspective, many other municipalities in Western New York already provide such a benefit to their police officers; a fact recognized in the news articles submitted by the Town in opposition to this item (See, Town Brief, Exhibits G and F). From the Town's perspective, it already provides a meaningful sick leave/health insurance exchange policy which rewards police officers (and surviving spouses) when the police officer retires. Moreover, the cost of the requested benefit, as shown in its Brief, Exhibit H, potentially is excessive and unaffordable.

The Panel has carefully considered the respective positions of the parties and concludes that, although there appears to be some merit in the PBA's position, there is also considerable

merit in the Town's argument that sick leave credits are intended to provide a form of income interruption insurance when police officers are too sick to come to work, and not to reward police officers for being honest. The Panel has also considered the potential economic impact this proposal could have on the Town, coupled with the uncertain economic times in which all municipalities, including the Town, must operate. As a result, the Panel finds that, although the benefit improvement sought by the PBA is presently enjoyed by police officers in some other municipalities in Western New York, it is not convinced that an additional incentive is necessary to encourage police officers to not abuse sick leave. There is nothing in the record to suggest that sick leave abuse is a problem in Orchard Park. This could be the result of the police officers' professionalism and dedication; the presence of the current sick leave/health insurance upon retirement benefit, or other factors not readily apparent. For this reason, as well as the high cost, in the first year alone, the Panel will award that this proposal be denied and that the provisions of the expired agreement providing for use of sick leave credits upon retirement or death continue in the successor agreement.

Therefore, the Panel awards as follows:

**This proposal is denied. The policy set forth in Section 12-3 of the expired agreement concerning the use of unused sick leave days shall continue in the successor agreement.**

#### Personal Leave

1. Positions of the Parties.

The PBA proposes that Section 16-1 of the expired agreement be amended by increasing by one (1) day, the number of non-cumulative personal days to which a police officer will be entitled annually. It suggests that the average personal leave provision in some of the communities it deems to be comparable to Orchard Park is 4.5 days. Moreover, it contends, without mentioning specifics, that most communities allow the police officer to convert unused personal days to sick leave or vacation leave, or to redeem it at the daily rate. While the PBA does not propose including any of these permutations, it mentions them to bolster its request for the one day increase.

The Town opposes this item noting that in most municipalities in Western New York, the number of personal days granted to police officers is four (4). In the few localities where a greater number is given, there are restrictions placed on their use (e.g., Village of Kenmore and Town of Tonawanda).

2. Opinion and Award.

The Panel has reviewed the various collective bargaining agreements submitted by the PBA and the Town and has concluded that most do provide for four (4) personal leave days per year. While there are a few which provide for more, the Panel was not persuaded that they represented the practice in Western New York concerning this item. Furthermore, it was clarified in executive session, that the Town does add unused personal days to the police officer's sick leave. Under these

circumstances, the Panel finds insufficient justification for granting the modification sought by the PBA.

Therefore, the Panel awards as follows:

**This proposal is denied. The provisions of Section 16-1 of the expired agreement will be continued, without modification, in the successor agreement.**

### In-service

#### 1. Positions of the Parties.

The PBA proposes that Section 22-1 of the agreement be amended to accurately reflect the current practice of compensating police officers at the rate of time and one-half when they are required to attend in-service training during their off-duty hours. The proposal would not disturb the manner in which the Town compensates its police officers for attending in service training during their regularly scheduled tours of duty (i.e., at the straight time rate).

After further discussions, it appears the Town is not opposed to this proposal so long as the on-duty in-service is compensated at the traditional, straight time rate.

#### 2. Award

The Panel awards that Section 22-1 be amended to reflect that police officers who are required to attend in-service training under the direction of Town of Orchard Park Police Department be compensated for such time at the straight time rate, if the training takes place during the regularly scheduled tour of duty, and at the rate of time and one-half, if the in-service training takes place during the officer's off-duty hours.

### Uniform Allowance

#### 1. Positions of the Parties.

This PBA proposal aspires to modify Section 23-3 of the agreement by increasing from \$350.00 to \$400.00 in 1991 and \$450.00 in 1992, the supplemental uniform allowance provided for therein. It contends that the present amount is insufficient to cover the costs police officers incur annually to purchase additional items of uniforms or equipment or for dry cleaning. It submitted data from the Towns of Amherst, Cheektowaga, Hamburg, Lancaster, West Seneca and Tonawanda, and from the Villages of Hamburg and Lancaster to prove that police officers in those communities receive larger uniform allowances than do police officers in Orchard Park.

The Town opposes this proposal because it believes the present \$350.00 allowance is more than adequate to cover any cost incurred by the officers to clean their uniforms. Furthermore, it argues that its police officers are provided with free uniforms and free replacements of uniforms which are damaged, destroyed or worn out. Finally, it points out that about fifty percent of the police officers clothing is wash and wear and does not need to be dry-cleaned.

## 2. Opinion and Award

The Panel has reviewed the evidence of record regarding the uniform allowance issue. In so doing, it has noted that, of the eight communities relied upon by the PBA in support of this proposal, while several do appear to allocate a larger annual allowance to maintain uniforms than does Orchard Park (e.g., the Towns of Tonawanda and West Seneca), others,

including contracts of municipalities submitted by the Town and the PBA, reflect much smaller allowances to maintain (as distinguished from the purchasing of) uniforms (e.g., Villages of East Aurora, Hamburg and the Town of Hamburg). Moreover, while there was some discussion as to various pieces of equipment and the uniform which are not paid for by the Town, the Panel is not convinced that the parties intended the uniform allowance to be used for anything other than uniform related expenses (i.e., purchases of portions of the uniform not otherwise supplied by the Town and the cost of cleaning and maintaining the uniform). In summary, the evidence does not persuade the Panel that an increase in the present uniform allowance is necessary or warranted. The Union's request will be denied.

Therefore, the Panel awards as follows:

**This proposal is denied and Section 23-3 of the expired agreement will be retained without modification.**

### Education Incentive Pay

#### 1. Positions of the Parties.

PBA Proposal 13 asks that Article XXV of the expired agreement be amended by adding to it a new Section 25-3.4. The new provision would provide that police officers who attend an institution of higher learning and pursue a study in the criminal justice field be reimbursed the cost of tuition and books reasonable and necessary for such study. The request would be submitted to the Town for its approval prior to

commencement of the study and payment would only be made if the officer completed the course with a passing grade. The provision would not apply to liberal arts courses even if they were related to the pursuit of a criminal justice degree or certificate.

The PBA contends that other communities in Western New York have recognized the added value an educated police officer provides to the community he or she serves, by paying those officers an additional dollar amount for completion of education beyond the high school level. It contends further that the incentive it seeks would be less costly than those incentives provided in comparable communities, without setting forth its rationale for such assertion.

The Town has not agreed to this proposal because of its belief that (1) the officer could unilaterally decide to attend any school, irrespective of the cost of tuition and (2) that Section 25-1 of the expired agreement adequately addresses the PBA's concern for higher education opportunities for the Town's police officers.

## **2. Opinion and Award.**

First, the Town is correct in stating that Section 25-1 of the expired agreement does provide for tuition, book and fees reimbursement for officers who attend schools or seminars relating to police service courses. Moreover, the Panel has found no evidence that the Chief of Police has ever denied an officer's request to attend said courses or to be reimbursed for the full cost of attending said courses. The

only ambiguity in the language of the expired agreement appears to be whether the "schools or seminars relating to police service courses" encompasses degree or certificate granting programs in criminal justice in institutions of higher learning. Again, there appears to be nothing in the record to suggest that courses of such obvious relevance to the work performed by the Town's police officers would not be covered under Section 25-1.

Thus, in the absence of any demonstrated need to add to the educational benefit already provided for in the expired agreement, the Panel will and does award as follows:

**This proposal is denied and the language of Section 25-1 and 25-2 of the expired agreement will be retained without modification in the successor agreement.**

### Past Practice

The PBA's Proposal 14 seeks to amend Article XXVIII of the Agreement by adding to it a new Section 28-6. The new clause would essentially provide that provisions of the Agreement would supercede any conflicting rules regulations or practices, but not other past practices not in conflict with the Agreement. This "zipper clause" is, according to the PBA, present in many contracts throughout western New York, including the Town of Lancaster, the Town of Tonawanda, the Village of Lancaster, the Village of Depew, and the Town of West Seneca.

The Town opposes this proposal because of its concern that including the clause in the Agreement may lead to absurd

results. Specifically, it is concerned that numerous grievances could be filed over matters which are not covered by the collective bargaining agreement. It argues that the parties should negotiate over matters which they believe to be representative of an existing past practice; include said matter in the collective bargaining agreement and then administer the contract which includes those provisions.

## 2. Opinion and Award

The Panel has carefully reviewed the various collective bargaining agreements offered by the parties and has observed that many of the other communities in western New York have, has noted by the PBA, included a zipper clause in their collective bargaining agreement. If the inclusion of such a clause in those communities has created a hardship for the community, that information was not presented to the Panel in this case. In addition, while it is true that a grievance can be filed over virtually any form of conduct or inaction, said filing clearly does not mean that said grievance has merit or will be pursued to arbitration. Rather, when and if the PBA does pursue a "past practice" grievance, it will have the burden of proving the existence of a past practice which is binding upon the Town. If it cannot do so, the grievance will, no doubt, be denied by the Town and by an arbitrator, should the matter proceed that far. Finally, as a practical matter, it appears a bit unrealistic to require the parties, in preparation for negotiations, to assemble a list of all conduct

which may have risen to the level of a binding past practice, at the risk of abandoning a beneficial past practice which has been omitted from that list.

For these reasons, the Panel will award as follows:

- a) **Article XXVIII shall be amended by adding thereto a new Section 28-6 to read as follows:**

**This Agreement will supercede conflicting rules, regulations or past practices, heretofore existing. Established past practices not specifically covered herein shall continue in full force and effect.**

### Duration of Agreement

In view of the fact that both parties have indicated they are not opposed to entering into a two year agreement, the Panel will award as follows:

**The new agreement will be effective from January 1, 1991 through December 31, 1992.**

### Grievance Procedure

1. Positions of the Parties.

Town Proposal 1 seeks to amend Article III, Section 3-1 by defining a grievance as "any claim over the application, meaning or interpretation of this Agreement." The Association opposes such a narrow definition of "grievance" and notes that other area contracts use a broader definition of that term, similar to that which appears in the expired Agreement between the parties.

2. Opinion and Award.

The Panel understands the Town's justification for this amendment to essentially be a concern over its need to maintain

and establish rules or regulations relating to the police department's welfare as well as the welfare of the community. While its written argument states that it would not be opposed to language that states that any rules and regulations established will not be in conflict with the collective bargaining agreement, the remedy for such a conflict, to the extent that it did involve a past practice, under its proposed definition of a grievance, would lie outside the contractual grievance and arbitration provisions. Moreover, the Town's right to maintain current rules or regulations and to promulgate new ones appears to be covered by the provisions of Section 1-4 of the Agreement. The Town cites no compelling evidence to support the need for the amendment it seeks in this proposal.

Therefore, the Panel will award as follows:

- a) **The Panel sees no justification for granting this proposal and, therefore, denies this request.**

### **Detective's Hourly Rate**

#### 1. Positions of the Parties.

Town Proposal 2 seeks to amend Article VI of the Agreement by modifying Section 6-1(c) to include language to be used in calculating the detective's hourly rate of pay. The Association has indicated to the Panel that it is not opposed to this proposal. Therefore, the Panel will award as follows:

#### 2. **Award**

- a) **Article VI, Section 6-1(c) is amended to include the following language after that language already appearing in said section:**

A detective's hourly rate of pay shall be determined by adding the additional salary which is paid to a detective to the officer's annually salary and then dividing by 2080 hours.

### Shift Differential

#### 1. Positions of the Parties.

Town Proposal 3 would amend Section 6-2 of the expired agreement by adding a phrase at the end of the last sentence thereof which would read "for the hours worked." The proposal would also add a new sentence at the end of that subsection to provide that detectives shall not receive the shift differential payments provided for therein. The Town seeks to justify the elimination of detectives from this benefit upon two grounds: (1) they already receive additional salary by virtue of serving as detectives. Therefore, they are already receiving a shift differential built into that higher salary. (2) The detectives shifts are adjustable/flexible at the Detective's and Chief's discretion.

The PBA has indicated, in executive session, that it does not oppose modifying Section 6-2 to include the words "for the hours worked." As for the detective issue, the PBA opposes that modification because the provision is needed to compensate all members of the force for the inconvenience of working on the less desirable night shifts. The fact that an officer is assigned as a detective does not make the night shift any more desirable.

#### 2. Opinion and Award.

Because the PBA does not oppose the modification of

Section 6-2 to include the words "for the hours worked", the Panel will award that that portion of the Town's proposal be granted. However, as for addition of a new sentence which would eliminate detectives from the coverage of the shift differential provision, the Panel is not convinced that such a change is justified. It is clear that shift differential payments, traditionally, have been provided to soften the inconvenience of having to work on a less desirable night shift. While the Town contends that a detective's additional salary adequately compensates him for those occasions when he works one of the night shifts, there is no evidence in the record to support this self-serving conclusion. It is equally likely that the additional compensation provided to an officer who is serving as a detective is paid in recognition of the additional responsibilities undertaken by detectives. Therefore, the Panel will award that this portion of the proposal be denied.

The Panel, therefore, awards as follows:

**That portion of Town Proposal 3 which seeks to add a new sentence to Section 6-2 expressly excluding detectives from receiving the shift differential is denied.**

**That portion of Town Proposal 3 which seeks to modify Section 6-2 by adding the words "for the hours worked" at the end of that subsection is granted.**

#### Call-in Pay (Section 6-3)

This issue has been discussed and awarded upon, above, at page 17, et. seq.

**Court Pay (Section 8-1)**

This issue has been discussed and awarded upon, above, at page 19, et. seq.

**Compensatory Time - Limitations (Section 9-4)**

This issue has been discussed and awarded upon, above, at page 16, et. seq.

**Vacation Leave (Section 10-6)**

This issue has been discussed and awarded upon, above, at page 26, et. seq.

**Holidays (Section 11-2)**

1. Positions of the Parties.

Town Proposal 9 seeks to amend Section 11-2 of the expired agreement by providing that:

Members of the Association shall notify the Chief of Police during the first week in December if they request reimbursement for any unused holiday credits provided in 11-1.

2. **Opinion and Award.**

After further discussion during the executive sessions held in this matter, the PBA and Town indicated they were in agreement that the proposed amendment was acceptable, if the proposed "first week in December" were changed to "December 15."

Therefore, the Panel will award as follows:

**Section 11-2 of the expired agreement will be modified to read as follows:**

**Members of the Association shall notify the**

Chief of Police by December 15 if they request reimbursement for any unused holiday credits provided in Section 11-1.

### Health Insurance (Section 12-1)

This issue has been discussed and awarded upon, above, at page 27, et. seq.

### Equipment Allowance

#### 1. Positions of the Parties.

Town Proposal 11 seeks to delete from Section 24-1, subdivision (J) which lists "100 rounds of reload ammo per man per month" among the various pieces of police officer equipment which shall be purchased, provided and replaced by the Town. The Town contends that providing such ammo can potentially cost the Town between \$10,000.00 and \$15,000.00 per year. Furthermore, the Town is concerned with the potential for liability claims which may be brought against it because the ammunition can be used in an unsupervised manner by its officers. While the Town is not opposed to giving officers extra rounds for practice shooting in a structured and supervised forum, it can no longer support simply passing out 100 rounds of extra ammunition each month with no control over where and how it is used. It contends that no other municipality dispenses extra ammunition in this fashion.

The PBA argues that the Town has always provided police officers with reload ammo for practice purposes and should continue to do so. It speculates that the absence of such an item of equipment could result in police officers not

practicing; a consequence that would be detrimental to the police officer, the Town and the public those officers protect.

## 2. Opinion and Award.

Whether or not other municipalities provide their police officers with reload ammunition to practice with, it is clear the Town has agreed to do so for a number of years. The Panel understands the Town's main concern to be the potential use of the ammunition for non-police force purposes or for practicing in an unsupervised and uncontrolled area which could result in injuries and possible legal liability. It is also clear that the language of the expired contract requires the Town to purchase, provide and replace the listed equipment when deemed necessary by the Chief of Police. The Panel is of the opinion that the control of the extra ammunition is of paramount concern. Thus, while the Panel does not question the professionalism of the Town's police officers, there does exist, under the current system, the potential for harm should the extra rounds of ammunition be used in an uncontrolled or unsupervised manner. Therefore, the Panel has attempted to craft a modification of subsection (J) which would continue the existing benefit, but also address the Town's concern for safety and control. In light of the above, the Panel awards as follows:

**Section 24-1 (J) of the expired agreement will be amended to read as follows:**

**"100 rounds of reload ammo per man per month.  
Said ammo will be distributed, on an as needed**

basis, up to the maximum 100 round per month limit, so long as the police officer signs out said reload rounds and agrees to use them for shooting practice purposes at a professionally supervised firing range (e.g., Elma Rod and Gun Club, Orchard Park approved firing range, etc.).

#### Miscellaneous (Section 28-4)

##### 1. Positions of the Parties.

The Town's Proposal 12 seeks to amend Section 28-4 to read as follows:

"Upon posting of the work schedule by the Chief of Police, any days off which have been granted under the provisions of the Collective Bargaining Agreement cannot be cancelled by the Chief of Police. Also, said days off cannot be cancelled by the requesting Officer unless forty-eight (48) hours notice is given. The days off shall be posted at the time of posting of the shift schedule."

The Town originally contended that this amendment, which deletes the word "scheduled" from the existing language, was a simple clarification intended to include within Section 28-4, all the days police officers are entitled to use under this policy.

The PBA opposes this proposal because, in its view, the change urged by the Town is substantive and not merely a clarification of language.

##### 2. Opinion and Award

Although the Town originally maintained that this proposal sought to make a cosmetic change in the language of Section 28-4, it was subsequently determined by the Panel that the proposed change is one of substance for which no rationale or justification has been provided.

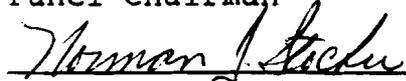
For this reason, the Panel awards as follows:

**There will be no change made in this area.**

DATED: *MAY 26*, 1992



Stuart M. Pohl  
Arbitrator  
Panel Chairman



Norman J. Stocker  
Town Panel Member

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Anthony DeMarie, Esq.  
PBA Panel Member

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory  
Interest Arbitration

Between

Town of Orchard Park,

and

Orchard Park Police  
Benevolent Association

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DISSENT FROM  
OPINION AND  
AWARD

PERB Case No.  
1A 91-013  
M90-459

The undersigned Anthony J. DeMarie, the Employee Organization Panel Member in the above entitled interest arbitration strongly dissents from the Opinion and Award which is undated but which was disseminated by Neutral Chairperson, Stuart M. Phol, Esq. on April 20, 1992.

The Majority acknowledged the obligation pursuant to Civil Service Law §209.4(c) to compare wages, hours and conditions of employment of Orchard Park Police Officers with like benefits of employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment. However the Panel failed to realistically make such comparison. The Majority declared a comparison was too complicated and, instead, the Panel claims it dealt with this problem by evaluating each proposal on its own merit taking into consideration the Town's ability to pay and any existing

practices covering the subject both in the Town and in those communities which the parties agree are comparable. In fact, the parties were not able to agree regarding comparability and, as the Majority pointed out the Town's ability to pay was not in issue.

In fact, after the hearing was concluded it came to the attention of the Panel that the Town's ability to pay was enhanced by an unexpected State grant.

The documents submitted by both parties clearly indicated that the salaries, earnings and other benefits provided to Orchard Park Police Officers, when compared to the same benefits provided to Officers in surrounding communities is inadequate and substantially lacking.

Additionally, the Majority Opinion and Award creates more problems than it resolves. For instance the Panel has directed a complete change from the present authorization which allowed Police Officers to obtain practice ammunition in order to remain proficient in the use of firearms. The Majority has now directed that this right be abolished and that officers be limited to shooting practice at a "professionally supervised firing range" - which the Town of Orchard Park does not possess - and which must be approved by the Town of Orchard Park. The Majority suggests use of the private "Elma Rod and Gun Club" knowing well that private facilities are not available for Police Officers and that supervised practice is not available on more than two

occasions each calendar year.

Likewise, the Panel concluded that a Police Officer may use two weeks of annual vacation leave in single day supplements, subject to prior approval by the Chief of Police. However this award is ambiguous since the Panel has not explained whether it was its intention to provide that an Officer may use two weeks of vacation leave in single day supplements but only if the Chief of Police agreed or whether an Officer had the right to use two weeks of vacation leave in single day supplements but that the days upon which leave is to be granted must be approved.

The Panel reduced medical insurance benefits, retroactively and it is difficult, if possible at all, to understand how the Town will be able to obtain a retroactive reduction in medical insurance coverage which is provided by an outside insurer. At the same time, the Majority decided that the co-pay provision of prescription coverage is, likewise, to be reduced retroactively effective January 1, 1992 but the Majority has failed to indicate whether this will require Police Officers to send payment checks to prescription providers for prescriptions which were purchased between January 1, 1992 and the time this reduction finally takes place.

The Majority award regarding salary is wholly inadequate and the Majority decision to refuse to grant some form of compensation for unused, accumulated sick leave, upon

retirement was without foundation. In this regard the Panel denied this request because, it claimed, there was no apparent abuse of sick leave in this department and because it contended that in the first year the cost of this provision would be high. Both conclusion were without foundation, evidence or basis.

Lastly, the PBA requested the Panel reconvene in order that it might attempt to eliminate the ambiguous portions of the Award but the Majority refused to meet.

For these matters I respectfully dissent from the entire Opinion and Award.

DATED; Buffalo, New York  
May 26, 1992

  
Anthony J. DeMarie  
PBA Panel Member