

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

CONCILIATION

In the Matter of Compulsory Interest Arbitration)	AWARD
)	OF
)	INTEREST
Between)	ARBITRATION
)	PANEL
Village of Ossining)	Case No.
and)	IA-92-015
Ossining PBA, Inc.)	
-----)	

Before the Public Arbitration Panel

Terence M. O'Neil, Esq.	Employer Panel Member
Raymond G. Kruse, Esq.	Employee Organization Panel Member
I. Leonard Seiler, Esq.	Public Panel Member and Chairman

APPEARANCES

For the Village:

Craig R. Benson, Esq.	Attorney for the Village
Gennaro J. Faiella	Village Manager
Thomas G. Barnes	Village Attorney
Linda D. Abels	Administrative Assistant
Ray Gannon	Employee Benefits Consultant (KBM/D&E)

For the Union:

Bob A. Kramer, Esq.	Presentor
Alice T. Wenz	Legal Assistant
Daniel J. Slater	OPBA President

On October 27, 1992, the New York Public Employment Relations Board having determined that a dispute continued to exist in negotiations between the Village of Ossining (hereinafter referred to as the "Village") and the Ossining PBA, Inc. (hereinafter referred to as the "Union") 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 this 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.

Upon notice duly given hearings were held on January 21, and February 17, 1993 in the Community Center, 95 Broadway, Ossining, New York. Both parties were present and represented by counsel throughout these proceedings as shown in the above List of Appearances. The Parties were afforded full and equal opportunity to be heard and present statements of fact, supporting witnesses and other evidence and arguments, both oral and written, in support of their respective positions regarding the issues in dispute. The Public Interest

Arbitration Panel admitted into evidence twenty-one (21) Union exhibits, forty-two (42) Village exhibits and three (3) Joint exhibits.

Sometime after the hearing on February 17, 1993, the PBA submitted a post-hearing brief to which the Village responded.

At the close of the hearings, the Panel met in Executive Sessions on April 22, 1993 and May 11, 1993. After these executive sessions, the Panel chairman submitted a draft of the Award to his fellow Panel members which was discussed in conference calls on July 1 and August 2, 1993.

After due and deliberate consideration of all of the evidence, facts, exhibits and documents submitted and in accordance with the applicable criteria, the Panel arrived at the findings and Award which follows. The Panel in arriving at such determination based its findings on the mandated statutory criteria which follow: New York Civil Service Law, Section 209.4 (v)

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 interest 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.

The Panel carefully considered each of the outstanding issues and at the urging of the Chairman sought to reach unanimous consensus on each of them. The Chairman commends Messrs. Kruse and O'Neil for the time and effort they devoted to the process and their sincere attempts to resolve each of the issues submitted to the Panel in accordance with the above stated criteria.

Unanimity, unfortunately, was not reached with respect to the total Award. Therefore, the Chairman has issued this Award as a package and has requested his fellow Panel members to join him and/or dissent on those issues where they may feel it to be necessary, in accordance with our mandate.

IN GENERAL:

1. The dispute involves the continued impasse between the Village and the Union over the terms and conditions of a new contract to be effective as of January 1, 1992, the last two-year contract of the parties having expired on December 31, 1991.

2. The Union represents 44 members.

3. Prior to the request for the appointment of this Arbitration Panel the parties engaged in six (6) negotiating sessions and one (1) mediation session with a PERB appointed mediator.

4. The parties at the start of the Arbitration Hearing, in writing, waived their right to a full and complete record of the Public

Arbitration Panel Hearing as set forth in Section 209.4 (iii) of the New York State Civil Service Law.

5. The Parties agreed that the demands that are the subject of an Improper Practice Charge filed on August 28, 1992, with P.E.R.B. would not be submitted to the Panel for resolution.

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

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

Issues:

A. Union

1. Wages (Article IV)
2. Overtime Minimum (Article VI)
3. Shift Differential (Article VII)
4. Vacation (Article VIII)
5. Holidays (Article IX)
6. Clothing Allowance (Article XII)
 - a. Dry Cleaning
 - b. New Member Outfitting
7. Schooling (Article XV)
8. Longevity (Article XVI)
9. Personal Property Damage (Article XXIV)
10. Funeral Expenses (Article XXVII)
11. Residency (Article XXXI)

B. Village

1. Recognition Clause (Article II)
 - a) Amend to Exclude Acting Chief of Police and Captain
 - b) Agency fee language
 - c) PBA contributes 25% of annual premium for police false arrest liability insurance
2. Reciprocal Rights (Article III)
 - a) Amend Section I wording on Administration of Respective Responsibilities
 - b) Marked Departmental Cars for Slain Police Officer's Funeral
3. Wage Schedule (Article IV)
 - a) Delete Prior to May 13, 1988
 - b) Pay for Canine Officers
4. Shift Differential (Article VII)
5. Holidays (Article IX)
6. Bereavement, Sick Leave and Maternity Leave (Article X)
 - a) Bereavement Leave Revision
 - b) Dr.'s Certificate
 - c) Delete Pregnancy Conditions Requiring Light Duty
7. Clothing Allowance (Article XII)
 - a) New Member Uniform
 - b) Plainclothes Officer
8. Welfare Benefits (Article XIII)
 - a) Health Plan
 - b) Dental Plan
 - c) New Provision on Duplicate Coverage
 - d) Sick Leave Incentive
9. Schooling (Article XV)
10. Indemnification (Article XVII)
11. Working Conditions and Safety Committee (Article XX) Reasonable Suspicion Drug Testing
12. Job Description (Article XXII)

13. Disputes (Article XXXIV)

Background:

The Village of Ossining in Westchester County maintains a fully paid Police Department. It has a population of 20,298 (excluding the population of the prison) and a land area of approximately 3.33 square miles (Village ex.16 & Union ex.2). It is located midway between New York City and Putnam County and borders the Hudson River. The Village is the 2nd largest village in Westchester County (Union ex. 2).

The vast majority of Union exhibits consisted of comparisons with other Westchester Police Departments while most of the Village's exhibits were devoted to the financial position of the Village, the favorable fringe benefits it was providing, C.P.I. and wage settlements in general.

COMPARABLE COMMUNITIES

The Parties were in disagreement as to which criteria should be employed to determine comparable communities in Westchester County and, therefore, did not agree on the communities to use for the purposes of comparing salaries, fringe benefits, etc.

The Union offered comparisons with Westchester County and/or Westchester Village averages (ex. 5). It noted that patrol officers in Westchester County are hired off one county-wide exam list...perform similar duties, the tendency has been to treat all police departments in the County, for comparison purposes...". Whereas, the Village argued that Ossining was most comparable to Peekskill and Port Chester.

This was because of their similarities in area, population number of police, size of police budgets, and wealth of the communities based on income figures of their residents, racial distribution and equalized tax rates (ex. 16).

The vast majority of the Union exhibits consisted of comparisons with other police contracts in Westchester County while most of the Village's exhibits were devoted to the Village's financial position and the favorable fringe benefits it provided unit members.

The Panel, therefore, at the urging of the Chairman used a combination of the two positions.

ABILITY TO PAY

Village contended that since its citizens had amongst the lowest take home pay in the County, it had a lesser ability to pay for police wages than most communities in Westchester County. It noted that because market value has declined but assessed value has remained the same, there have been successful certiorari challenges which have further weakened the Village's ability to grant salaries offered by other communities (exs.5-8).

Union disputed the inability of the Village to pay the same as comparable communities stating that "Municipal expenses are supported , in the main, by real estate taxes." It dismissed the Village's claim of decreased real estate values. It maintained that real estate pays taxes and not Village residents' earnings. Union noted that the Village's expenditures for the fiscal year ending 1991 of \$184/person was significantly lower than the village average of \$236 or all Westchester average of \$220 (ex. 19).

C.P.I.

Recognition is generally given to the concept of basing new contract wages on increases and projected increases in the C.P.I. so as to protect the employee's real wage against inflationary erosions.

Village reported that in the Village "the C.P.I. has always been outdistanced by either PBA increases or tax increases". From 1987 through 1991, "the C.P.I. increase during that period was 25.25%; the cumulative PBA increase was 4.95% higher than the cumulative C.P.I. increases; the cumulative tax increase was 8.05% higher than the C.P.I. increase".

The C.P.I. in 1991 was 4.23%, in 1992 it was 3.41% and in 1993 it was 3.6% (Village ex. 10).

Village claimed that health care costs represented 0.5% of the C.P.I. calculation, and they were paid in full by the Village.

AWARD OF THE PUBLIC ARBITRATION PANEL

The current Collective Bargaining Agreement except as mutually altered, contested in the Improper Practice Charge of 8/28/92 and as amended as follows, shall be carried forward for two (2) years; covering the period of January 1, 1992 to December 31, 1993. All provisions are to be retroactive, where possible, to January 1, 1992, except where otherwise mutually agreed to in negotiations and as otherwise indicated in this Award.

A1 Wages (Article IV)

Union Demand : If one year 9% increase
if two year 8% increase each year

Village Demand:

- a) Delete section on those hired prior to May 13, 1988
- b) Pay for canine officers

a) Salaries

Union alleged that the average County increase for 1992 was 5.81% and for 1993 it was 5.66% (ex. 7). It alleged that the per person police expenditure in the Village was low compared to other Westchester Communities and the Village had the taxing capacity to provide meaningful increases.

It noted that the Village's real property values "between the years 1987 and 1991, the full valuation increased 148% and then, between the years 1991 and 1993 the full valuation figures decreased " slightly, hardly a "doom and gloom" financial situation.

Additionally, it pointed out that in communities as poor as the Village alleges it is, there is generally a greater crime problem which puts more pressure on police officers.

Union raised all the arguments appearing in "Comparable Communities" and "Ability to Pay" and said "it was not looking to get ahead of the pack or make an extraordinary gain."

Union offered ex. 5 which it said showed that as of 12/31/91, Ossining was \$1,157 or 2.0% less than all municipalities and \$1,563 or 3.7% less than all Villages in Westchester County.

Village responded that the total package of salaries and fringe benefits it offered its police force is better than most despite the fact that it is one of the poorest Westchester Communities with a median earnings level of its residents that places it 8th lowest of 44 communities and 4th lowest of 22 county villages (exs. 2&4).

Additionally, it noted that the Village's equalized tax rate is now the 5th highest in the county and as noted previously its residents cannot afford to pay higher taxes (exs. 3&4). Furthermore, two of its three

largest employers have shut down which has had a negative impact on other Village businesses (ex. 8).

It noted that the country is in a down economy and private industry settlements have reflected this with average 1st year settlements in "contracts negotiated in 1992 was 3.4 percent compared with 3.9% for 1991 - the second year in a row that the median was lower than reported the year earlier...the second-and-third medians under contracts negotiated in 1992 were each 3 percent, down from 3.5% and 3.2% percent, respectively, in 1991 " (ex. 13). "Settlements in the third biweekly period of 1993 produced a first-year median increase 2.5 percent...compared with 3.5 percent...in the second biweekly period" (ex. 14).

Village offered that the County average increase of 5.81% for 1992 and 5.66% for 1993 submitted by the Union, was inflated by settlements of second and third years of contracts negotiated in better economic times.

It offered the comparison of the Village's top grade patrolman salaries for 3/91 to 20 other Westchester Communities (ex. 15) and it showed that a 3% increase would put it in line for 3/92.

Village also submitted police salary comparisons for what it deemed to be comparable communities-Peekskill and Port Chester- which showed that the Village's first grade patrolman's salaries in effect at 12/31/91 exceeded that of the other two (ex. 16) Port Chester by \$100. and Peekskill by \$1,631. It said that when the comparison is made to the actual gross pay, the various members of the Ossining Department (patrolman, detectives, sergeants and lieutenants) far exceeds Peekskill and Port Chester in each category (ex. 18).

Village estimated that Union demands on salary alone would cost the Village \$346,413 (ex. 38).

Discussion:

The Panel's objective is to arrive at an equitable and reasonable Award which logically considers the statutory criteria previously cited in this Award.

It is evident from the oral and written testimony submitted to the Panel in this impasse that the Village is amongst the least affluent communities in Westchester County. The Village has and wishes to continue to manage its financial affairs in a prudent and conservative manner. However, in evaluating the fiscal affairs of the Village, based on the information submitted by the Parties, we find that the Village has the "ability to pay" a wage and benefit settlement that is reasonable and in accordance with the mandated criteria of law previously cited.

The Panel has also taken cognizance of today's economic times which has resulted in lower salary settlements during 1992 and 1993 in both the private and public sectors than were previously negotiated. Citizens have reacted to the economic downturn by resisting tax increases.

The Union's demand for 8% in each of two (2) years cannot be justified in today's times and under the statutory criteria. An increase which substantially exceeds those granted in other Westchester County Police Departments would not be in the "interest and welfare of the public and the financial ability of the public employer to pay".

Note was also taken by the Panel of the Village's argument that when salary comparisons take into account all aspects of what constitutes take home salary and benefits, the Village police officers compare favorably with other Westchester Communities particularly those it seeks to compare itself to.

The Award on base wages which follows exceeds the recent increases in the cost-of-living and, therefore, insures the police officers a real increase in income.

After considerable discussion and keeping all of the foregoing in mind, the Panel has awarded a wage adjustment which it feels conforms with its mandate. The salary award must be viewed as part of a total package concept including its relationship to the impasse items which follow, particularly the significant increase in longevity.

Award:

1. Effective January 1, 1992 a 4 1/2% increase
- 2, Effective January 1, 1993 a 4% increase

b. Delete Hired Prior to 5/13/88

Discussion:

Apparently there is agreement that it is not applicable to any present employees.

Award:

The Village's request is granted.

c, Canine Officers

Village demand: Those officers assigned to provide canine services, will be compensated at the minimum wage as amended from time to time for the home care, maintenance and feeding of said canine. The annual hours per week shall not exceed 7.56 hours and should be pro-rated on a weekly basis depending upon the amount of overtime worked in that work period. Pay shall not be provided on weeks when the officers assigned to canine detail are not working a minimum of forty hours in a seven day period.

Positions of the Parties:

Village stated that this must be included because the U.S. Department of Labor conducted an investigation under the Fair Labor Standards Act. As a result, it claimed that the Village owed two employees for their off-duty home care of the dogs some \$17,566.67 in back wages (ex.33). It justified the \$850. it was offering by comparing it to the \$300. Dobbs Ferry was paying effective June 1,1990 and the \$850 Tarrytown was paying for the fiscal year 1991 (exs.33 & 34)

Additionally, it showed the estimated time the two officers felt they spent in off-duty time caring for their dogs (ex. 33).

Union did not dispute the fairness of the Village's proposal.

Award:

The current practice is to be continued in compliance with the Fair Labor Standards Act.

A2 Overtime Minimum (Article VI)

Union Demand: Court time minimum of four (4)

hours @ time and one-half.

Positions of the Parties:

Union pointed out that ex. 8 indicated that Village lagged other Westchester Communities in this area in that 28 Departments out of 39 offer more than two (2) hour minimums.

Village answered that though it might not measure up in this particular provision it was better in so many other contract provisions that it was unnecessary to adjust this one.

Discussion:

The Village is definitely behind almost all other Westchester Communities where almost half, 13 of the 28 Departments, offer 4 hrs. at 1 1/2 times, 7 offer 3 hrs at 1 1/2 times, 2 offer 2.66 hrs at 1 1/2 times and 6, including Ossining, offer 2 hrs at 1 1/2 times.

Award:

Effective July, 1, 1993, Court time minimum be increased to three (3) hours at time and one-half.

A3/B4 Shift Differential (Article VII)

Union Demand: 3 Shift Rotation increase to \$1000/yr
from present \$400/yr
2 Shift Rotation increase to \$500/yr
from present \$200/yr

Village Demand: Delete Article VII (Sections 1 & 2)

Positions of the Parties:

Union stated that shift differentials were an essential part of wages and needed improvement as shown in ex. 15.

The Village indicated that it was no longer applicable as the Parties had agreed, during the period of negotiations, to fixed shifts and besides only Buchanan in Westchester County offers a shift differential.

Discussion:

The elimination of rotating shifts in 1992, by mutual consent, removes the need to address this demand other than to decide what should happen to the money that was paid in the past.

Award:

Despite the current provision referring to rotating shifts, the current Department arrangement on shifts and payment shall continue for the period covered by this Award.

A4 Vacations (Article VIII)

Union Demand: Change vacation schedule as follows:

To:
1st yr 6 days (1/2 Day/Mo.
service)

2nd-3rd yrs 10 days

From:
10 Days (4 days after 6 mos
and 6 days after 10
mos)
2nd-4th yrs. 10 days (1 day/
mo, 1st 10 mos)

4th-8th yrs	15 days	5th-9th yrs	15 days (1 1/2 days/mo., 1st 10 mos.)
9th-14th yrs	20 days	10th-15th yrs	20 days (2 days/mo., 1st 10 mos.)
15th-20th yrs	25 days	16th + yrs	25 days (2.5 days/mo., 1st 10 mos.,)
21 + yrs	30 days		

Positions of the Parties:

Union stated that the County average (ex. 10) was 20+ days whereas, Ossining was only 17+ days and, therefore, should be increased.

Village's rejoinder was that the average was skewed by Towns and Mt. Vernon. But even more important is the fact that police in Ossining only work a 240 day schedule compared to the County average of 245 (ex. 17).

Discussion:

The shorter work year for Ossining police officers more than offsets their shorter vacation schedule as compared to other Westchester Communities.

Award:

Union request be denied.

A5/B5 Holidays (Article IX)

Union Demand: Add Martin Luther King Day and Easter Sunday

Village Demand: Eliminate Memorial Day from Double Time plus Holiday status

Positions of the Parties:

Union alleged that implementing the additional holidays known as Martin Luther King Day and Easter Sunday is in keeping with other Westchester Communities. It claimed that the average number of holidays granted in Westchester County was 12.8, whereas Ossining only granted 12 (ex. 9).

Village responded that it had no objection to substituting Martin Luther King Day for another holiday but saw no reason to increase the number of holidays. It said that the proposed holidays would cost the Village \$17,268. (ex, 38).

It demanded that another holiday such as Labor Day be substituted for Memorial Day as one of the super holidays because Memorial Day severely impacts the Village in that it requires a lot of overtime due to the traditional Memorial Day Parades.

Union rejected the idea of removing Memorial Day from the list of super holidays for it represented a significant loss of wages for the men.

Discussion:

The only dispute on adding Martin Luther King Day to the existing list of holidays is whether it be an additional day or substitute for a currently listed holiday. However, in examining Union ex. 9, it can be seen that 13 holidays is most prevalent with 19 communities granting it.

The cost of super holidays should not be compounded for the Village by excessive overtime.

Award:

Union request for the addition of Martin Luther King to the list of holidays is granted.

Village's request to substitute Labor Day for Memorial Day as a super holiday is likewise granted.

Neither will be effective for 1992 or 1993.

A6 Clothing Allowance (Article XII)

- Union Demands:
- a) Increase Cleaning to \$400/yr from \$200/yr
 - b) New members fully outfitted rather than \$600 maximum
 - c) Increase plainclothes to \$1,000/yr from \$825/yr

- Village Demands:
- a) New members receive the uniform prescribed by the Chief of Police
 - b) \$825 plainclothes allowance be only for those officers assigned to the detective division

Positions of the Parties:

Union claimed that cleaning costs have risen and so should the cleaning allowance (exs. 11 & 12) which is presently inadequate. It said that increased costs also warranted an increase in plainclothes allowance.

Village contended that its uniform & maintenance allowance as well as plainclothes allowance was more than in other Westchester Communities and the Village was not obligated to subsidize everything police officers do. It noted that it doesn't clean other Village employees' clothing. The Village said the Union demand would cost an additional \$18,850. (ex.38).

Village demanded that plainclothes allowance be restricted to those permanently assigned to the Detective Division and not to those temporarily transferred to plainclothes assignments.

Discussion:

It is apparent that the Parties are in agreement that newly appointed members in the Village Police Department will receive the uniforms prescribed by the Chief instead of the present allowance.

Some increase in cleaning and plainclothes allowance is warranted due to the increased cost of cleaning and replacement.

Those on temporary assignment to plainclothes need not receive the allowance.

Award:

1. All newly appointed police officers will be given the uniforms prescribed by the Chief of Police rather than an allowance effective July 1, 1993.

2.. Only those assigned to plainclothes duty for more than six consecutive months shall receive a plainclothes allowance of \$900 per year effective July 1, 1993, which is to be pro-rated for the time actually so assigned between six (6) months and a full year.

3. Those assigned to the Detective Bureau will receive a plainclothes allowance of \$900. per year effective January 1, 1993.

4. The annual cleaning allowance be increased from \$200. to \$250. effective January 1, 1993.

A7/B9 Schooling (Article XV)

Union Demand: Change to read \$10/yr/credit to max of masters degree in anything (or equivalent credits from \$10/yr/credit to max of 50 credits for courses in political science or administration taken after 1/1/71 for all members employed as of 1/1/75

Village Demand: a. Reduce Village contribution to 50% of the cost of tuition, books for successfully completed police science related courses with prior approval by the Board of Trustees.
b. A cap on amount to be paid each year per employee or for the unit

Positions of the Parties:

Union said it was even more important nowadays to have a well trained and educated police force. Therefore, to encourage officers to seek additional education, payments for schooling should be increased. It offered ex. 14 in support of its contention that educational reimbursement needed to be increased.

Village answered it did not mind paying for additional schooling, but there had to be limits. It pointed out that at present, it was paying for tuition and then \$10/credit forever, a double whammy. The costs of the present provision was \$13,00-14,000/year for four (4) Village officers hired before 1975. Village argued that in today's difficult times, there must be some sharing of these exorbitant costs benefiting so few officers (ex.31). Village maintained that available resources must be spent more judiciously and the courses to be paid for must be police science related and approved by the Village Trustees.

Union responded that there are various course requirements for a police science degree.

Discussion:

Communities have demonstrated an interest in encouraging and rewarding individual police officers in their efforts at self-improvement and acquiring additional education which will help them in their chosen field of work,

However, Westchester Communities have seen fit to put some limitations such as: (Union ex. 14)

1. Individual yearly maximums:

Ardsley (V), Briarcliff Manor (V), Bronxville (V), Croton-On-Hudson (V), Hastings-On-Hudson (V), Larchmont (V) (number of courses), Mamaroneck (T) (maximum number of courses), Peekskill (C), Pleasantville (V), Rye (C), Scarsdale (V) (maximum of 18 credits per year) and Tarrytown (V) (number of courses)

2. Unit yearly maximums:

Croton-On-Hudson (V), Greenburgh (T), Hastings-On-Hudson (V), New Castle (T), New Rochelle (C), Rye (C), Westchester (C) and White Plains (C),

It is thus evident that the Village of Ossining program is one of the most generous in the County. The provisions for education reimbursement for Westchester Communities shows tremendous variation but

most do specify that it be for Police Science, Criminal Justice or Police Related Courses. (Union ex.14)

Award:

1. All those hired before 1/1/75 continued to be reimbursed as before.
2. All other Department officers shall be limited to a yearly maximum of \$1,500 effective July 1, 1993.
3. Courses subject to reimbursement shall be for Police Science, Criminal Justice or required courses in the foregoing two (2) degrees and Police Related Courses, the latter to be approved by the Village Trustees.

A8 Longevity

Union Demand: Change longevity as follows:

To:	From:
After 5 yrs \$500	After 5 yrs \$290
After 10 yrs \$800	After 10 yrs \$490
After 15 yrs \$1500	After 15 yrs \$590
After 20 yrs \$2000	

Positions of the Parties:

Union maintained that an increase was warranted in that the Village's longevity schedule was particularly weak when compared to other Westchester Communities (ex. 13) In fact, it was almost 50% behind, \$9,800 vs. \$14,478 for villages and \$14,891 for all Westchester Communities. Union indicated that if it received a \$200 increment increase it would still be \$33 behind any other community, i.e. divide \$4,678 by 20 years and you get \$233.

Village maintained that it was not merely a case of adding and dividing, but comparing the Village's total package of benefits to all others. It is better in many areas and surely the Union would not want to reduce to the average in other areas of the contract.

Village said if it is truly low, then add something but the proposed increase of 100% or more in today's difficult economy was unacceptable (ex. 39). It noted that the Union's demand would cost the Village an additional \$41,960. (ex. 38)

Discussion:

The Union has demonstrated the substantial longevity deficit existing in the Village as compared to other Westchester County police departments (Union ex. 13). It even significantly trails Peekskill (C) after 25 years at \$15,750. and Port Chester (V) \$11,700, two of the communities it seeks to compare itself to.

Award:

Effective January 1, 1993:

Revise Article XVI to read as follows:

After 5 years	\$400
After 10 years	\$700
After 15 years	\$1,000

A9 Personal Property Damage (Article XXIV)

Union Demand: Increase to \$200 Max/incident for clothing or personal property for uniformed officers from \$100 max/incident

Positions of the Parties:

Union requested an increase to keep up with the rising costs of replacement.

Village said that its limited funds should be spent more judiciously.

Discussion:

Insufficient information was submitted to the Panel of what the present provision has cost the Village or how often claims have been made to justify any action by the Panel.

Award:

Union demand be denied.

A10 Funeral Expenses (Article XXVII)

Union Demand: Increase to \$15,000 max from \$5000 max if killed in line of duty.

Positions of the Parties:

Union stated that funeral costs have gone up so an increase was justified.

Village answered that its funds were limited and should be utilized where it was most needed.

Discussion:

Panel recognizing that the present economic conditions are difficult, feels that available monies should be expended where it will affect the most police officers.

Award:

Union request be rejected.

A11 Residency (Article XXXI)

Union Demand: Change to max permitted by law from present 20 miles

Positions of the Parties:

Union felt that there was no need to make residency requirements more stringent than those required by law (ex. 16).

Village replied that it saw no need to change the present provision which provides quicker response time in an emergency.

Discussion:

It is the Panel's decision that unless sufficient evidence is submitted to demonstrate a need to revise the present provision, then no change should be made.

Award:

Award:

Union demand be denied.

B1 Recognition Clause (Article II)

- Village Demand:
- a) Amend to exclude Acting Chief of Police and Captain
 - b) Substitute new language on Agency Fee
 - c) PBA contribute 25% of annual premium for police false arrest liability insurance

Positions of the Parties:

a) Village argues that an Acting Chief and Captain being supervisory personnel should be excluded from the bargaining unit and should negotiate their own salary and benefits. Though the Village admitted it had no Captain now, if it did, he/she would be Acting Chief when the Chief is away. It noted that a new Chief is usually hired at a lesser rate than the outgoing Chief.

Village claimed, that at present, if a Lieutenant, serves as Acting Chief when the Chief is on vacation, etc., he/she receives the Chief's rate of pay plus overtime which it feels is not right since the Chief collects no overtime.

Union countered that what the Village is asking is that when a bargaining unit member is standing-in for some period of time he should no longer be considered as a member of the bargaining unit. This would place the individual in a poor bargaining position if he were hoping to be appointed to a permanent position. There would be no equity. The present procedure does not burden the Village for the law is clear that replacements for Chief can be done in an expeditious manner. The Village can act quickly either promoting from within or going outside the department for a replacement.

Discussion:

Equity would dictate that if any employee were to be paid the Chief's rate that it be on the same basis the Chief is paid, i.e. without overtime.

Award:

Effective with the signing of this contract:

1. A replacement for up to ten consecutive working days, should receive the Chief's rate, but not less than what the officer is presently paid including customary overtime.

2. Long term replacement, i.e. of more than ten consecutive working days, should get Chief's rate without any overtime

3. Permanent replacement will negotiate his/her own salary and benefits.

b. Substitute New Language on Agency Fee

Discussion:

What has been proposed is language commonly found in collective bargaining agreements.

Award:

Village's demand is granted

c, Contribution of PBA of 25% of annual premium for police false arrest and liability insurance.

Discussion:

The Panel is not convinced that any part of this burden should be shifted to the police officers nor was it shown that this provision can be found in a majority of Westchester County police contracts.

Award:

Village demand be denied.

B2 Reciprocal Rights (Article III)

Village Demands:

- a) Amend section 1 wording on administration of reporting responsibilities
- b) Marked departmental car for slain police officer's funeral

a) Insufficient information was furnished to the Panel to determine the need for a change in this provision.

b) Marked Departmental Car

Positions of the Parties:

Village explained that there are times when a marked car might not be available and in those instances it would supply an unmarked car.

Union said it was the practice of police officers when attending the funeral of fellow slain officers to do so in Department marked cars.

Discussion:

The Union is correct that it is the practice for Police Departments to provide marked Departmental Cars for police officers' funerals. It is also true, that if they are not available on a particular day because of breakdowns, etc., it may not be possible for departments to make available marked police cars.

Award:

Add to present provision, the words "if available". Also, add: If a marked car is not available, then an unmarked car will be provided.

B6 Bereavement, Sick Leave and Maternity Leave (Article X)

Village Demands:

- b) Revise provision on doctor's certificate
- c) Delete pregnancy conditions requiring light duty

b) Dr.'s certificate

Position of the Parties:

Village pointed out that police officers enjoy unlimited sick leave, so if the Village believes there is abuse it should not be handicapped in its attempts to correct it. It said that the Union always has the right to grieve the Village's actions in this matter.

Union said it would have no objection to requests for Dr.'s certification if they will not be unreasonably requested.

Discussion:

Sick leave abuse need not be tolerated and the Village should have available reasonable means for stopping it.

Award:

Revise the present provision to enable the Village to request Dr.'s certification whenever it has reason to believe that sick time is being abused.

c) Pregnancy Conditions

Positions of the Parties:

Village contended that the present provision is probably illegal as being discriminatory for it creates a separate set of disability conditions for women vs. men, so it is best to delete it and just abide by statutes covering pregnancy.

Discussion:

The Panel had no objection to permitting the statutes to determine pregnancy issues.

Award:

Grant Village's demand to delete this provision.

B8 Welfare Benefits (Article XIII)

- Village Demands:
- a) Health Plan - 50% contribution from new employees
 - b) Dental plan contribution
 - c) New provision on duplicate coverage
 - d) Sick Leave Incentive

a) Health Plan Contribution

Positions of the Parties:

Village stated that its health plan offered the best coverage of any plan in the county. (ex. 25) Village argued, however, that the costs of health insurance have been rising faster than the C.P.I. and the trend was to have employees contribute to their coverage. (exs. 20-24) It said its proposal would not affect present bargaining unit members, only new members, so the Union should not object. The Village further noted that some 50% of Westchester Communities require some type of contribution to medical/dental benefits (ex. 24).

Union replied that it agreed to the present insurance plan because the Village said it would lower its costs and the Union wanted those savings used to purchase more benefits and did not want new officers to share any costs of their health coverage.

Discussion:

It is a recognized fact that the costs of health insurance have been rising at a much greater rate than that of inflation and everyone is striving to keep these costs down particularly in today's weak economy. One of the major demands by employers is for controlling costs of health coverage by either employee contributions, higher deductibles, limiting dependent coverage, managed choice rather than traditional choice coverage, etc. or combination of these.

The Village's request for contribution from new employees is not unreasonable but 50% is. From the expanded comparison offered by the Village in ex. 24, it would appear that of the 51% of Westchester Communities that do require employee contributions medical/dental that most limit it to five years or reaching top patrolman grade and the amounts vary.

Award:

Effective July, 1, 1993, new department employees shall contribute to Family Coverage as shown in the table below:

First year	\$40 per month
Second year	\$50 per month
Third year	\$80 per month

After reaching the rank of First Grade Patrolman, the employee's family coverage shall be fully paid by the Village.

b) Dental Plan Contribution

Positions of the Parties:

Village claimed that its dental contribution was already one of the highest and needed to be capped because costs have been rising since 1989 except for the one year 1991 and projected costs increases are very steep. (exs. 26 & 27). This is supported by a letter from Home Life Group Benefits & Services to the Village dated February 10, 1993, which states: "...dental care costs and insurance rates are skyrocketing throughout the United States and especially in the tri-state area" (ex. 28).

Discussion:

See above under Health Care Contribution.

Award:

Effective 23:59 December 31, 1993, all employees covered by this Agreement will assume 10% of any increase in dental insurance premiums.

d) Sick Leave Incentive

Village asked that the present provision as to payment be changed because it cannot be budgeted for. It suggested that it be paid in the first payroll in February when the Village will know who gets it, how much and can budget for it.

Union said as long as unit members are properly compensated it had no objections.

Award:

Village demand is granted.

Village Demand: Replace with Section 2-2 of Ossining Code

Positions of the Parties:

The Village offered a great deal of testimony on this issue but the Union expressed strong reservations.

Village contended that if an officer is found guilty, it presently has no way to recover its expenses of legal representation,

Discussion:

This is the type of issue that is best left for the bargaining table to be resolved by the Parties in negotiations.

Award:

The Parties are directed to try to resolve this issue by themselves through meaningful discussions in their next round of negotiations.

B11 Working Conditions (Article XX)

Village Demand: Additional Section 5: At the discretion of the Chief of Police, members of the Ossining PBA are subject to reasonable suspicion drug testing

Positions of the Parties:

There was mutual recognition that provisions for reasonable suspicion drug testing are included in other police contracts. There was also acknowledgment that the provisions for reasonable suspicion drug testing had been pretty well negotiated by the Parties.

Award:

The Reasonable Suspicion Drug Testing language negotiated by the Parties be incorporated in Article IX of the Parties' collective bargaining agreement.

B12 Job Description (Article XXII)

Village Demand: Add to first sentence in Section 1: between "higher classification" and "for more than five (5)" the words "within a bargaining unit". Also add a second sentence to read: "This clause does not apply to those members assigned to perform the duties of these titles not covered by the terms of this contract."

Discussion:

No testimony was offered on this issue.

B13 Disputes (Article XXXIV)

Village Demand: Add time limits

- a) Presentation to Village Board of Trustees within twenty (20) working days if not resolved in preceding step.
- b) If not resolved by Village Board of Trustees then can be referred to P.E.R.B. within thirty (30) days

Discussion:

Time limits are usually found in Grievance and Arbitration provisions of collective bargaining contracts.

Award:

Village demand is granted.

It is noted that there are certain proposals for the modification and change of the last contract which have been vigorously and intelligently presented, and sought, by one or the other party during these negotiations and jointly before the Panel which have not been included in this Award. Without regard to their equity, and certainly without prejudice, each and every such proposal has been carefully evaluated and for numerous and varying reasons were not addressed in this Award.

Respectfully submitted,

Concurring/Dissenting

Concurring as to Issues Nos. A1b; A1c; A2; A3/B4; A5 (Add MLK holiday); A6(1)-(4); A7/B9(1); A8; B1c; B2a; B2b; B11; B12.

Dissenting as to Issues Nos. A1a; A7; B5 (substitute Labor Day for Memorial Day); A7/B9(2) & (3); A9; A10; A11; B1a(1), (2) & (3); B1b; B6b; B6c; B7b; B8d; B13; B8a.

Raymond G. Kruse
Raymond G. Kruse, Esq.
(Employee Organization Panel Member)

Concurring/Dissenting

Concurring as to Issues Nos. All issues except as noted in dissent

Dissenting as to Issues Nos. A-2 (Court Time); A-5 (Add Holiday); A-6 (3) (Cleaning) A-6 (4) (Detective's Clothing); A-8 (Longevity); B-1 (c) (False Arrest Inv.)

T. M. O'Neil
Terrence M. O'Neil, Esq.
Employer Panel Member

Concurring Dissenting

Concurring as to Issues Nos. All Issues

Dissenting as to Issues Nos. _____

I. Leonard Seiler
I. Leonard Seiler
Panel Chairman

STATE OF NEW JERSEY)
) SS:
COUNTY OF BERGEN)

On this ¹⁴ day of August, 1993, before me personally appeared I. Leonard Seiler, Esq., known to me and to me known to be the Chairman of the Panel who executed the foregoing Determination and AWARD, and he duly acknowledged to me that he executed the same.

[Signature]

Notary Public
My Commission Expires Feb. 3, 1997

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

On this ¹⁰ ~~10~~ ^{September} day of ~~August~~, 1993, before me personally appeared Raymond G. Kruse, Esq., known to me and to me known to be the Employee Organization Panel Member who executed the foregoing Determination and Award, and he duly acknowledged to me that he executed the same.

[Signature]

Notary Public
ALICE T. WENZ
Notary Public, State of New York
4847162
Certified in Rockland County
Commission Expires Feb. 28, 1994

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

On this day of August, 1993, before me personally appeared Terence M. O'Neil, Esq., known to me and to me known to be the Public Employer Panel Member who executed the foregoing Determination and Award, and he duly acknowledged to me that he executed the same.

Notary Public

"APPENDIX B"
SCHEDULE B-1

Drug and Alcohol Policy

1. The use of illegal controlled substances or alcohol by employees adversely affects the Village's ability to safely deliver services, impairs the efficiency of the work force, endangers the safety of employees and the public, and undermines public trust. The Village and the Union, therefore, agree that the use, sale, distribution, or possession of illegal controlled substances or alcohol by any employee while on duty is prohibited. The Village and the Union also agree that employees are prohibited from being under the influence of illegal controlled substances or alcohol while on duty. Employees in violation of this policy are subject to disciplinary action, up to and including discharge.

2. Unless otherwise noted, all discipline under this policy shall be in accordance with applicable provisions of the collective bargaining agreement or Civil Service Law.

3. Based on reasonable suspicion, members of the bargaining unit shall be subject to urinalysis testing for illegal controlled substance use or breathalyzer testing for alcohol use. Any employee who refuses to submit to testing or who refuses to cooperate with the testing procedures may be subject to discipline, including discharge. Attempts to alter or substitute the testing specimen will be deemed a refusal to take the test.

(a) The order to submit to testing must be justified by a reasonable suspicion that the employee is or may be under the influence of illegal controlled substances or alcohol while on duty, or is engaging in the use, sale, distribution, or possession of illegal controlled substances or alcohol while on duty.

(b) While the "reasonable suspicion" standard does not lend itself to precise definition or mechanical application, vague or unparticularized or unspecified or rudimentary hunches or intuitive feelings do not meet the standard.

(c) Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from those facts.

(d) Reasonable suspicion may be based, among other things, on the following:

1. Observable phenomena, such as direct observation of drug or alcohol use or possession and/or physical symptoms of being under the influence of drugs or alcohol; or
2. A pattern of unusual or abnormal conduct or erratic behavior (e.g. unexplained excessive absenteeism, lateness, or early leaves).
3. Arrest or conviction for a drug-related offense, or the identification by law enforcement personnel of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking; or
4. Information provided by a reliable and credible source; or
5. Newly discovered evidence that the employee has tampered with a previous drug or alcohol test.

(e) Disputes concerning the matter of reasonable suspicion to order a test shall be subject to review by way of the contract grievance procedure. Such dispute shall be incorporated with any grievance filed concerning discipline resulting from such testing.

Chief of Police after consultation with the Village Manager and the Mayor.
(f) The decision to test an employee shall be made by the Village Manager, ~~the Personnel Administrator~~ or, in their ^{his} absence, ~~their~~ designees, in accordance with the standards discussed above.

(g) It is intended that where a decision is made to test, the employee will be given a direct order to submit to the test and advised of his/her right to have a Union representative present for such testing, but the test shall not be delayed more than one (1) hour to accommodate the presence of a Union official, and the Union shall be notified of such order. The test shall be conducted immediately thereafter. The employee shall be given a brief verbal statement of the basis for reasonable suspicion.

(h) For purposes of reasonable suspicion only, where reasonable suspicion is based on information provided by a confidential informant, defined as an employee or agent of a governmental law enforcement agency or the employee's department, the identity of the source need not be disclosed at the time of the test, except for the name of the governmental law enforcement agency involved, if any.

4. Insofar as practical, the sample collection process shall be confidential with due regard for the dignity and privacy of the employee. There shall be no direct observation of giving of urine specimens, unless there is reason to believe that the specimen may be tampered with, in which event direct observation shall be made by a person of the same gender as the employee giving the specimen. The employee shall cooperate with requests for information concerning use of medications and acknowledgment of giving the specimen.

5. Specimens shall be collected under the supervision of a monitor designated by the ~~Village~~. The sample shall be divided into two (2) aliquots. The employee shall provide a sufficient amount of the sample to allow for an initial screening, a confirmatory test, and for later testing if requested by the employee. In the event an insufficient sample is produced, the employee's ability to have a second test performed may be adversely impacted. The monitor shall mark and seal the specimen to preserve its chain of custody. Thereafter, the specimen shall be transported to the testing laboratory in a manner which shall insure its integrity and chain of custody. The laboratory selected to perform testing shall be certified by the National Institute on Drug Abuse (NIDA) of the Department of Health and Human Services. One sample shall be used for purposes of testing by the laboratory and the second sample shall be maintained by the laboratory in accordance with recognized procedures for purposes hereinafter described.

6. For drug testing, initial urinalysis testing shall be conducted by means of an enzyme multiplied immunoassay test (EMIT). All specimens identified as positive on the initial test shall be confirmed using a gas chromatography/mass spectrometry test (GC/MS). For those drugs for which NIDA standards exist, a test shall be deemed positive for the presence of drugs in accordance with such NIDA standards. The laboratory shall report as negative all specimens which are negative on either the initial test or the confirmatory test. Only specimens which test positive on both the initial test and the confirmatory test shall be reported as positive. All tests conducted pursuant to this procedure will be paid for by the Village.

7. For alcohol testing, the employee shall submit to a breathalyzer test to be administered by an agent designated by the ~~Village~~ ^{Ch of Police}. Such test results shall be given the same weight as provided under applicable provisions of the New York State Vehicle and Traffic Law.

8. Drug test results shall be forwarded from the testing laboratory to a Medical Review Officer (MRO) or the staff of the MRO. The MRO shall be designated by the Village and must be a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret

and evaluate test results.

9. The MRO shall analyze the test results. If the MRO receives a positive test result, he shall interview the individual in question, review the individual's medical history, and review other relevant biomedical information. The MRO will evaluate these factors to determine whether a justification exists for the positive test result. Evidence to justify a positive test result may include, but is not limited to, a valid prescription or verification from the individual's physician verifying a valid prescription. If the MRO determines that justification exists, the test result will be treated as a negative test result and may not be released for purposes of identifying illegal drug use. The MRO shall then forward all test results to the Village ~~Manager~~.
Chief of Police, the Village Manager, the Mayor

10. Urine samples shall be maintained by the Village's designated laboratory in accordance with appropriate procedures for a period of six (6) months following the test.

11. After an ^{*Ch. of Pol.*} employee receives notice from the Village of a positive test result, the employee may make a written request to the ~~Village's Personnel Administrator~~ within fourteen (14) calendar days to have the second sample tested at a different laboratory duly licensed by NIDA. The employee shall be responsible for all costs related to transportation and testing and for preservation of the chain of custody. The test results shall be delivered by the laboratory to the employee and the ~~Personnel Administrator~~. Testing and positive results) will be in accordance with paragraph 6 above.
Chief of Police, the Village Manager and the Mayor

12. In the event the test procedures reveal the presence of illegal controlled substances or their metabolites or alcohol, such employee may be subject to discipline, including discharge. However, in the first instance of such positive drug or alcohol test, any disciplinary charges may be suspended in the Village's sole discretion if the employee agrees in writing to complete counseling and treatment on his/her own time for such illegal controlled substance use or alcohol use in a program jointly agreed to by the Village and the Union. The employee shall agree, as a condition to the suspension of the disciplinary charges, that if he or she fails to attend or complete the program, he or she shall be deemed to have resigned from employment. The employee shall also agree, as a condition to the suspension of the disciplinary charges or penalty, that for a period of one (1) year following the completion of treatment, he or she shall be subject to periodic random testing for illegal controlled substances and/or alcohol, and that if he or she completes counseling and treatment but tests positive for illegal controlled substances or alcohol during such one year period, the Village may reinstitute the suspended charges, in

addition to preferring new charges. Upon completion of treatment, as outlined above, and the one year period, the original disciplinary charges or penalty shall be considered resolved. The record of such charges and their resolution (the charges, the answer, and the stipulation) shall remain in the employee's file unless the parties otherwise agree.