

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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: In the Matter of the Interest :
Arbitration :
: -Between- :
: VILLAGE OF KINGS POINT, : Case No.
: "Village" : M93-193;
: IA93-035
: -and- : OPINION AND AWARD OF
: KINGS POINT POLICE BENEVOLENT : INTEREST ARBITRATION PANEL
ASSOCIATION, :
: "PBA" :
: :
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APPEARANCES

For the Village

CULLEN & DYKMAN, ESQS.
Thomas M. Lamberti, Esq., Counsel
Thomas B. Wassel, Esq., Counsel
Edward T. Hayman, Commissioner of Police

For the PBA

KRANZ, DAVIS & HERSH, ESQS.
Ronald Davis, Esq., Counsel
Michael Magee, PBA President
Daniel Donahue, PBA Secretary
George Banville, PBA Treasurer

BEFORE: HOWARD C. EDELMAN, ESQ. CHAIRPERSON & PUBLIC PANEL MEMBER
MICHAEL KALNICK, ESQ., PUBLIC EMPLOYER PANEL MEMBER
DAVID A. DAVIS, ESQ., EMPLOYEE ORGANIZATION PANEL MEMBER

BACKGROUND

The parties are signatories to a labor Agreement which expired on May 31, 1993. Negotiations for a successor contract proved fruitless, as did mediation efforts. Consequently, the undersigned panel was constituted to take evidence and testimony and to render a binding Interest Arbitration Award pursuant to Section 209.4 of the New York State Civil Service Law. Hearings in this matter were held on April 12, 1994, September 29, 1994, October 5, 1994 and December 8, 1994. The first two were confined to mediation efforts. The last two were reserved for testimony, documentary evidence and oral argument. In addition, the Panel met in executive session on February 6, 1995. This Opinion and Award follows.

POSITIONS OF THE PARTIES¹

A. PBA

1. Wages

The PBA maintains that wages should be increased by percentages similar to those granted other Nassau

¹. In the interest of expediting these findings, parties' positions are summarized.

County communities. It notes that the Village is located on the North Shore of the County in what is generally regarded as an affluent area. Also, it points out, the parties agree that the Village has the ability to pay the increases it seeks.

That comparison, it insists, demands that the Panel increase base wages by approximately five percent for the fiscal years 1993 and 1994.² This is so, it stresses, because wage patterns for that period have to warrant such raises (PBA Exhibit 7; Village Exhibit 27).

The PBA acknowledges that wage settlements are not as high as in the past. However, it asserts, other, less affluent communities have seen fit to grant an increase of the magnitude it now seeks. Consequently, it maintains, its wage proposal is fair and should be granted.

2. 232 Calculation

The PBA asks that, for overtime, holiday and related pay purposes, wages be calculated on a 232 day work chart basis. It acknowledges that for many years the divisor 261 was

². The Panel is precluded by statute from rendering an Award which covers more than two years.

utilized (10/4/94-23).³ However, it notes, in more recent times that figure has decreased. Currently, the PBA points out, Nassau and Suffolk counties are at 232, while Kings Point is at 240. Thus, the PBA argues, a similar figure is justified here.

3. Longevity

The PBA contends that longevity payments to its members are woefully inadequate. It points out that Nassau County recently incorporated the following schedule

<u>Years of Service</u>	<u>Amount</u>
6	\$ 900
10	1,500
15	2,200
+\$300 for each year thereafter (PBA Exhibit 8).	

The PBA notes that its schedule is far below Nassau's (ranging from \$600 to \$1,600 + \$100 for each year after 15). Hence, it insists a substantial increase in longevity pay is justified.

4. Fixed Tours

The PBA asks that a committee be established to evaluate the possibility of imposing fixed tours. It claims that such a schedule can work to the benefit of employer and employees, alike (10/23-30-32).

³. Numbers in parentheses refer to date of hearing and pages in the transcript, unless otherwise indicated.

5. Termination Pay

The PBA asks that bargaining unit members be permitted to be paid their termination allowance during their service with the Village, instead of retirement only. In this way, the PBA suggests, the Village will reduce the substantial payouts it must currently incur when Police Officers retire.

6. Personal Days

The PBA contends members cannot get the time off they need under the current language in the Agreement. This is particularly true, it insists, during the midnight to eight a.m. tour, when fewer Officers are on duty. In this context, the PBA suggests that if the Police Commissioner could not get an overtime replacement for the Officer seeking the leave, he could deny the request. In this way, the PBA maintains, department manning needs can be met while Officers' pressing personal needs are accommodated.

7. Holiday Pay

The PBA asks that those on vacation, personal leave, etc. be entitled to four hours extra pay if their leave coincides with a holiday.

8. PBA Excused Time

The PBA maintains it needs additional time for its Officers and President to attend to PBA business. Thus, it asks that the current allotment be raised to ten days and that the PBA President be granted additional time so long as overtime does not result.

4. Retirement

The PBA asks that the ninety day notice requirement of retirement be deleted. It maintains this is necessary, particularly in hardship cases.

10. Medical Payments

The PBA asks the Village to pay retiree medical benefits for Officers who exceed the age of 65.

B. Village

1. Wages

The Village contends, initially, that statutory criteria require the Panel to consider the wages, hours and working conditions of all employees in the public and private sectors, not

just Police Officers. Also, while the Village acknowledges that it can afford to raise taxes to pay for any award, the Village insists that it should not pay almost any increase pursuant to the statutory criteria (12/8/94-4). In this context, the Village maintains that unless wages and benefits are so non-competitive as to adversely impact public safety, the interests and welfare of the public "mandate [that Officers] be paid only what a municipality can reasonably afford (12/8/94-11)."

As to what increases are reasonable, the Village notes that many jobs have been lost on Long Island in recent years (Village Exhibit 1). Moreover, it insists, the outlook for job growth is extremely modest in this area.

Also, the Village stresses, foreclosures and tax certiorari petitions have increased dramatically in recent years. Coupled with an aging population means, in the Village's view, that residents cannot afford to pay increases that were common only three and four years ago.

In this context, the Village contends that taxes in Nassau County are among the highest in the nation. Similarly, it insists,

assessed valuations in the County and in the Village are stable, rising minimally, if at all (Village Exhibit 7). Therefore, it urges, any increase in the cost of government services will have to come from rising taxes.

Specifically, the Village asserts, from 1988 through 1994, its tax rate increased by 34%, even though the cost of living has risen by 27 per cent. As the Village sees it, this disparity cannot continue.

Moreover, the Village maintains, wages and benefits in Kings Point are already very high, particularly in light of the factors enumerated above. It contends that it ranks first in the County in Police Officer wages. Even if a wage freeze were imposed for 1993, it would retain that rank, in the Village's view. Hence, it urges, no salary improvement for that year is justified.

The Village acknowledges that other communities granted their Police Officers salary increases in excess of four per cent for 1993 and 1994. However, it urges many of these settlements were negotiated in better times. Also, the Village insists, these settlements do not take into account teacher and municipal worker contracts where wage increases range from zero to three per cent.

Also, the Village notes that the crime rate is very low, far lower say, than in New York City which is closer to Kings Point than many other Nassau County communities. In the Village's view, this difference in crime rates and in wages-New York City Police Officers early approximately \$20,000 less than their counterparts elsewhere-constitute additional compelling evidence against wage increases in Kings Point.

In addition, the Village stresses that overtime, night differential and other forms of compensation produce an average Police Officer salary of \$73,960, as of May 1993, before the prior Agreement expired. As the Village sees it, this figure and other factors cited above require the Panel to award no increase for 1993 and a maximum of 4.25% for 1994.

2. New Hire Rate

The Villages sees this rate as one which can save costs and not permanently affect bargaining unit members. As such, it asks that new hires start at \$20,800 and, after graduating from the Police Academy, \$30,336. Also, the Village seeks a seven step wage schedule for these employees.

3. Paid Holidays

The Village asks that Washington and Lincoln's Birthdays be combined into Presidents' Day. It points out that most jurisdictions in the County have fewer than fourteen days, the number in Kings Point. Hence, it argues, a reduction in this allotment is warranted.

4. Night Differential

The Village asks that the current ten per cent figure be converted to flat dollars. In the Village's view, this converted figure would still place it among the highest jurisdictions in the County.

5. Service Out-of-Rank

The Village asks that this provision be deleted from the Agreement.

6. New Hires Sick Leave

The Village asks that sick leave for those Officers hired after June 1, 1993 be reduced to fifteen days per year. It points out that this change was recently made in the Nassau County Agreement and it seeks the same modification here.

8. Dispatchers

The Village asks for the right to employ Dispatchers to perform desk duties currently assigned to Police Officers. In its view, this proposal is designed to maximize use of uniformed personnel and is not intended to reduce the work force. As such, the Village is willing to agree not to lay off current Officers should Dispatchers be hired.

The Village maintains that most villages in the County employ Dispatchers in lieu of Police Officers. It sees no reason why this change should not be instituted here.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. As the parties are aware, the role of the Panel in interest arbitration is to apply the statutory criteria to the facts of the case as contained in the record. This procedure is authorized, indeed required, by Section 209.4(c)(v) of the Civil Service Law. As such, any offers raised in negotiations or mediation are not

properly before this panel. We are constrained to reach a determination based solely upon the record and the criteria contained in that provision, as well as "any other relevant factors."

The statutory factors we must apply are as follows:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- b. the interests and welfare of the public 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.

With these factors in mind, the Panel turns to the issues before us.

1. Wages

Obviously, wages consume the greatest portion of any economic package. As such, while economic arguments by the parties apply to all cost items, they are most relevant when applied to the issue of wages.

The PBA argued, essentially, that there is no reason why wage increases in Kings Point should not mirror those accorded other Police Departments in Nassau County. It noted that as a relatively affluent area, Kings Point has the ability to pay their Police Officers what other communities pay theirs. It suggested that an examination of the data revealed average wage increases of approximately 4.75% for 1993 and 1994. It also noted that Nassau County Police Officers received these increases in addition to adjustments of approximately 1.55% granted at the end of the relevant calendar years.

If the sole factor in determining appropriate wage scales were the comparison with other Police Officers, the Panel might well

adopt increases of 4.75% for 1993 and 1994. However, that is not the case. As noted above, the interests and welfare of the public and wage improvements generally in public and private employment must be considered. Also a relevant factor, though not explicitly stated, is the rise in the cost of living index.

When these other elements are evaluated, it is clear that 4.75% for 1993 and 1994 should not be awarded. The cost of living is not rising at an annual rate approaching 4.75%. Instead, it is increasing by less than four per cent per year. Thus, this factor weighs against awarding wage improvements of 4.75%.

Also, other settlement have averaged less than 4.75% as well. As the Village correctly noted, teacher increases have averaged near 3% for similar periods (Village Exhibit 15). Private sector settlements are often lower than this figure.

In addition, while ability to pay is not an issue in this case, the "interests and welfare of the public" is. Suffice it to say, the public, including the Kings Point public, has a substantial interest in seeing to it that wage increases are moderated. Kings Point does not have an expanding tax base

(Village Exhibit 7). Since 1991 the assessed valuation has increased less than two per cent. Also, as all are aware, there is little likelihood that State and Federal aid will increase. If anything, they are likely to decrease. Thus, increases in Village budgets will come about exclusively from tax hikes. In fact, since 1991, the Village tax rate has increased by 9%. Clearly, then, any improvements in PBA wages must be borne by the taxpayers of the Village.

On the other hand, the Village's suggestion that salaries could rise by 0% in 1993 and 4.25% in 1994 is unrealistic. While raises of this magnitude might keep Kings Point No. 1, it would substantially reduce the difference between what a Kings Point Officer earns and what his/her counterpart elsewhere receives.

Moreover, the interests and welfare of the Kings Point public are not dissimilar to the interests and welfare of the citizens in other Nassau County communities. They, too, face a prospect of declining assessed valuation, loss of State and Federal aid and a flat economy. Yet, these communities granted their Officers wage improvements far above the figures suggested by the Village.

Also, it is significant that recent settlements more closely resemble the PBA's proposal than the Village's. For example, in October 1994, the Floral Park PBA settled for annual wage increases of 4.5 percent for the period June 1, 1994 through May 31, 1997 (Village Exhibit 28). While the last two years of that agreement are beyond the period covered by this Panel's finding, the Floral Park raises do suggest that wage improvements are not declining as precipitously as the Village would have this Panel believe. Furthermore, it is of some significance that the Floral Park raise for June 1, 1993 - May 30, 1994 was 5.0%. As such, the new increases do not constitute "catch-up" for inadequate ones granted earlier.

A similar result exists in Freeport. That Agreement was entered into on August 15, 1994, during the pendency of these proceedings. Wages in Freeport were increased as follows:

Effective March 1, 1994	- 2.25%
Effective September 1, 1994	- 2.25%
Effective March 1, 1995	- 4.5%
Effective March 1, 1996	- 4.75%

While the cost impact of the Freeport increase is less than in Floral Park (i.e. as a result of split and lag raises), the overall base rate rose by more than what was negotiated in Floral Park.

As noted above, the citizens of Freeport and Floral Park face economic realities at least as difficult, if not more so, than the citizens of Kings Point. Thus, wage improvements here should not be dramatically different from wage increases in those and other similarly situated communities.

The Panel notes the Village's claim that non-Police settlements are lower than Police ones. This is generally true. However, increases there are not as low as first appears. For example, as all are aware, teacher salary schedules normally include fifteen steps or more. Police guides usually have no more than seven steps, and in most cases, five or six. Thus, there exists a greater incremental cost in school systems than in Police departments. As such, a three per cent raise for teachers might well produce an overall cost of 4.5% (e.g. Village Exhibit 17), while a PBA settlement of 4.5% might yield an overall cost of 4.75%, thereby substantially narrowing the gap between seemingly disparate salary raises.

Given this analysis, it is clear that neither the suggestions of the PBA nor of the Village can be adopted. Thus the question is, "By what percentage should the PBA wage scale be improved?"

There can be no precise mathematical answer to this question. Any figure is subject to criticism as too high or too low. However, after carefully considering the data and arguments of the parties, the Panel is convinced that increases of 4.5% for 1993-94 and 4.5% for 1994-95 are reasonable. They will retain Kings Point's relative ranking for these two years. On the other hand, they will reduce, by a modest amount, the differences between the top pay accorded Patrolmen in Kings Point and elsewhere, as follows:

	<u>Effective June 1, 1993</u>	<u>Effective June 1, 1994</u>
Kings Point	59,660	62,345
Lynbrook	56,735	59,515
Lake Success	55,731	58,818
Old Brookville	54,555	57,702
Sands Point	54,555	57,283

In all these cases the percentage and dollar gap between Kings Point and the other communities will decline. While the gap between Kings Point and Lynbrook will decrease by less than \$100, the gap between Kings Point and Old Brookville will decrease by over \$450. Moreover, what took 25 years to accomplish cannot be reversed in two years. As such, these reductions in disparities between communities, though modest, are realistic.

This is not to say that any downward trend must continue in future contracts. It is difficult to prognosticate the state of the economy in future years. Also, circumstances among communities might be different so as to treat one locality substantially different from another. Nonetheless, the Panel finds that wage increases of 4.5% and 4.5% are sufficiently moderate so as to reflect the fiscal condition of the economy generally, while taking into account raises, cost-of-living and other relevant factors. Accordingly, and for the foregoing reasons, we direct that these increases be implemented.

2. 232 Calculation

It is true that a number of jurisdictions have adopted the 232 calculation for overtime, holiday pay, etc. However, of 17 jurisdictions reported, only six use the 232 figure. Also, the mean for these localities is 248, well above the Kings Point figure of 240. Consequently, the Panel concludes, the record does not warrant granting the PBA's proposal.

3. Longevity

The Panel notes the PBA's demand for major improvements in

this benefit. In our view, the record demonstrates that a major increase is warranted in this area. The current figures are as follows:

5 years - \$ 600
10 years - 1,100
15 years - 1,600
over 15 years - \$100 per year

Virtually every other jurisdiction, except Lynbrook and Rockville Centre, grant greater longevity payments to their Police Officers than does Kings Point. In some cases the disparity is great. For example, Nassau County and Great Neck Estates Police Officers receive \$2,200 after fifteen years, or \$600 more than in Kings Point.

This is not to say that longevity stipends here must exceed those paid in every other community. After all, as the Village correctly noted, base wages in Kings Point rank No. 1 by a wide margin. Thus, there is no reason why longevity here must also exceed that in every other Nassau County jurisdiction.

Given these factors, the Panel is convinced that an overall increase of \$100 per step, on a cumulative basis, is warranted.

together with a rise to \$150 for each year of service after 15. To reduce the cost impact of this benefit, half of the stipends for steps shall be implemented for the 1993-94 fiscal year and half shall be implemented for the 1994-95 fiscal year. In addition, the \$50 increase for each year after 15 shall not be implemented until June 1, 1994.

These improvements will not place Kings Point at the top of longevity rankings. For example, payments in Old Westbury, Nassau County, Freeport (in part), Glen Cove and Great Neck Estates will still exceed the new rates here. Nonetheless, they will substantially increase the longevity amounts so as to more fully reflect average stipends paid elsewhere.

In light of the foregoing, the Panel awards the following Longevity Schedule:

<u>Effective June 1, 1993</u>	<u>Effective June 1, 1994</u>
Step 6 - \$ 650	Step 6 - \$ 700
Step 10 - 1,200	Step 10 - 1,300
Step 15 - 1,750	Step 15 - 1,900
Over Step 15-\$100 per year	Over Step 15-\$150 per year

4. Fixed Tours

The Panel cannot evaluate the extent to which, if any, fixed tours may benefit Police Officers and the Department. Suffice, it to say, the parties are best able to determine if fixed tours are desirable.

In this context, the PBA's proposal makes sense. A committee composed of two individuals selected by the Commissioner and two selected by the PBA can evaluate the possibility of implementing fixed tours. The formation of the committee should not be construed as an endorsement of fixed tours by this Panel. Also, it must be clear that the report of the committee shall constitute only a recommendation to the parties. Nonetheless, the Panel finds that the PBA's proposal should be granted to this extent.

5. Terminal Pay

To the extent that the PBA sought any increase in terminal pay, its demand must be rejected. In light of the wage and longevity increases awarded, there simply is no need for other economic improvements⁴ in the package we have granted. However,

⁴. In this context, see also Factor 209C(4)(d) in the Civil Service Laws.

we believe there is some merit to the PBA's request that Officers be permitted to take terminal pay prior to the year of separation from service. This proposal, in modified form, (see below) could benefit both the Police Officer and the Village. An Officer with a pressing need for extra compensation would be free to utilize this benefit prior to the time he/she leaves the Police force. On the other hand, the benefit would be paid in a year prior to its normal utilization. Since wages are likely to rise, the Village would be granting compensation at a lower rate of pay than when the Officer retires or otherwise separates himself/herself from service. Thus, in that event, the Village's liability would be reduced.

However, the Village should be protected from a surge in requests for early payment of terminal leave. Thus, we shall direct that no Officer may receive more than 50% of his/her entitlement prior to separation from service. In addition, once payment has been made, accruals may not be re-established to their former levels. That is, the payment is to be made only once.

Thus, for example, an Officer who withdraws the dollar value of 150 sick days may only accrue another fifty days for payout purposes (See Article 20, Termination Pay). Accordingly, the PBA's proposal is granted to the extent indicated herein.

6. Personal Days

The Panel has examined this proposal of the PBA's carefully. It is true that at times it may be difficult for Police Officers to obtain personal days, particularly on the night tour. However, the existence of "swaps", whereby one Officer voluntarily exchanges his/her tour with another, reduces this difficulty. Also, to the extent that the demand of personal leave violates the Agreement, the PBA is free to grieve such action. Consequently, the Panel is not convinced that this proposal should be granted.

7. Holiday Pay

The Panel finds no basis to award this proposal of the PBA's. It is rejected.

8. PBA Excused Time

The Panel is not persuaded that necessary PBA business requires additional time beyond what the Agreement or the parties'

practice currently provides. Therefore, the PBA's demand is rejected.

9. Retirement

The Village needs reasonable notice of an Officer's impending retirement to recruit a new hire, set aside terminal pay and the like. The current ninety day requirement is fair and should not be disturbed. Thus, this proposal is not awarded.

10. Retiree Medical Benefits

The evidence does not support the PBA's demand. Consequently, it is rejected.

11. New Hire Rate

The Village sought a new hire rate of \$20,800 and a starting rate of \$30,336 after graduation from the Police Academy. It also proposed a seven step wage schedule for these Officers.

In one regard, these proposals have merit. A new hire rate make labor relations sense. It affords the Village some relief from regular Patrolmen's pay for a period of time. On the other hand, a permanent seven step schedule is not justified. It creates

two permanent schedules and promotes division among Officers. Also, a seven step schedule for new hires is not common in Nassau County. Thus, the Panel rejects this proposal but we do direct that a new hire rate of \$31,000 shall be implemented until an Officer completes his/her first year of service.

12. Paid Holidays

The Panel understands that President's Day has replaced Washington and Lincoln's Birthday as paid holidays in many jurisdictions. However, the current allotment of 14 is not excessive, though greater than in most jurisdictions (Village Exhibit 34). That is, three jurisdictions beside Kings Point have fourteen or more holidays. Thus, we do not find compelling evidence to grant the Village's proposal. Accordingly, it is rejected.

13. Night Differential

The current night differential is ten per cent of the existing schedule. While this figure is also higher than in most jurisdictions, it is not so out of line as to warrant reduction by this Panel. Thus, it is rejected.

14. Service Out of Rank

The Panel finds no basis to award this Proposal of the Village. It is not granted.

15. New Hires Sick Leave Schedule

It is true that this provision was incorporated into the Nassau County and Great Neck Estates Agreements. However, it remains uncommon in most jurisdictions. Thus, as with the 232 computation schedule sought by the PBA, it must be rejected.

16. Dispatchers

This issue is one of great contention between the parties. The Village asserted that most localities employ Dispatchers and it sees no reason why they should not be utilized here. The PBA contended that where Dispatchers are employed, they work side by side with Police Officers.

The Panel has carefully analyzed this issue. There is no doubt that many municipalities in Nassau County employ Dispatchers. According to Village Exhibit 41 and relevant testimony, twelve communities utilize their services. Of the twelve places where

dispatchers work⁵, four deploy them without a desk officer. They are Lake Success, Old Brookville, Old Westbury and Floral Park.

Based upon this evidence, the Panel believes that the Village should be permitted to employ Dispatchers in Kings Point. The record does not reveal the existence of health and safety problems caused by hiring Dispatchers, even where they have replaced Desk Officers in the smaller departments. Thus, we find, permitting the deployment of Dispatchers does not pose undue safety risks to Police Officers or the King Point Community.

On the other hand, we recognize the PBA's concern that Dispatchers will reduce the work force to unacceptable levels.(10/5/94-44,45). We note the Village has agreed that no current member of the bargaining unit will be laid off so long as Dispatchers are utilized. However, there remains the possibility that, through attrition, the Department's manning level could be severely impacted while Dispatchers are still in its employ.

This concern can be alleviated by requiring the Department to lay off Dispatchers before reducing the number of positions below

⁵. Nassau County, by virtue of its size, is excluded from these statistics.

a reasonable level. Currently, there are 21 bargaining unit positions in the department. A reasonable trigger level would be nineteen. That is, should the Village seek to reduce the work force below nineteen positions, it would have to lay off Dispatchers prior to such a reduction.

We stress that this is not a minimum manning provision. As the Village correctly noted, PERB case law precludes us from dictating the minimum number of positions in the Department. However, this provision is an "order-of-lay-off" clause. That is, it requires that Dispatchers be laid off prior to reducing the bargaining unit complement below nineteen.

In the Panel's view, this solution balances the needs of the Village and the interests of Police Officers. It permits the hiring of Dispatchers. It permits their deployment without an accompanying Desk Officer. On the other hand, it addresses the desire of the PBA to have a reasonable number of positions so long as Dispatchers are employed. Consequently, the Panel permits the deployment of Dispatchers to the extent indicated herein.

In sum, we do not suggest that our findings represent the perfect solution to the labor relations dispute between the Village and the PBA. However, we do believe that this Opinion and Award comports with the statutory criteria we are required to employ and further represents a reasonable balance between the rights of the Village and the interests of the PBA as reflected in those criteria. Accordingly, and for the foregoing reasons, we direct that the terms of the expired Agreement be modified as indicated herein. It is so ordered.

A W A R D

1. This Award shall cover the period June 1, 1993 through May 31, 1995.

2. Wages shall be increased as follows:

Effective June 1, 1993 - 4.5%
Effective June 1, 1994 - 4.5%

3. Longevity

Effective June 1, 1993:
Step 6 - \$ 650
Step 10 - 1,200
Step 15 - 1,750
Over 15 years - \$100 per year

Effective June 1, 1994:
Step 6 - \$ 700
Step 10 - 1,300
Step 15 - 1,900
Over 15 years - \$150 per year

4. Fixed Tours

The parties shall establish a committee of two individuals selected by the PBA and two individuals selected by the Village to evaluate the possibility of implementing fixed tours. The Committee shall issue recommendations to the parties by a date mutually set by them.

5. Terminal Pay

A bargaining unit member shall have the right to be paid up to fifty per cent of his/her terminal pay prior to separation from service. Such pay shall be conditioned upon timely notice to the Village in accordance with the Agreement.

6. New Hire Rate

Effective immediately, the new hire rate shall be \$31,000 for the first year of service in the Village.

7. Dispatchers

The Village shall be permitted to employ and utilize Dispatchers to work at the desk. So long as Dispatchers are employed, no current member of the bargaining unit shall be laid off. In addition, should the Village decide to reduce the number of bargaining unit positions below nineteen, dispatchers shall be laid off prior to such reduction.

8. All other proposals of the parties, whether or not addressed herein, are rejected.

DATED: *April 13, 1995*

Howard C. Edelman

HOWARD C. EDELMAN, ESQ.,
CHAIRMAN OF THE PANEL

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Interest
Arbitration

-Between-

Case No. M93-193:
IA 93-035

VILLAGE OF KINGS POINT,

DISSENTING OPINION

"Village"
-and-

By Michael Kalnick
Public Employer
Panel Member

KINGS POINT POLICE BENEVOLENT
ASSOCIATION,

"PBA"

-----X
DUTY OF THE PANEL

As the Chair correctly states "we are constrained to reach a determination based solely upon the record and the criteria contained in [Section 209.4(c)(v) of the Civil Service Law] as well as 'any other relevant factors.'" (emphasis supplied) (Award, p. 12).

Although not mentioned by the Chair the statute requires that "the public arbitration panel shall make a just and reasonable determination of the matters in dispute". Section 209.4(c)(v), Civil Service Law.

Further, we are instructed by the Courts that we must make findings with respect to each statutory criterion which the parties put in dispute, that each finding must have an evidentiary basis in the record and that the arbitrators must specify in their final determination what weight was given to each finding and why. Buffalo Police v. Buffalo, 82 AD2d 635, 638 (4th Dept. 1981); Hollenbeck v. Village of Oswego, 25 PERB ¶7540 (NY Sup. - Tioga

County 1992); City of Batavia v. Pratt, 19 PERB ¶7510 (NY Sup. - Genesee County 1986).

Applying the criteria set forth above, I dissent from the Chair's award on the following issues:

- 1. Wages
- 3. Longevity
- 5. Terminal Pay
- 12. Paid Holidays
- 13. Night Differential
- 16. Dispatchers

WAGES
Comparison with Other Police Officers

The Chair states "if the sole factor in determining appropriate wage scales were the comparisons with other Police Officers, the panel might well adopt increases of 4.75% for 1993 and 1994."¹ (Award, p. 13-14). The record does not support this statement. A comparison of police wage scales showed that the mean wage increase was 4% in 1992, 4.25% in 1993 and 4.75% in 1994. (Village Exhibit 27). Half of the departments paid less and half paid more.

To buttress his statement the Chair notes "that Nassau County police officers received these increases (4.75%) in addition to adjustments of approximately 1.55% granted at the end of the relevant calendar years." (Award, p. 13). However, this is not correct, as this additional increase was given only to police officers at the sixth step (Village Exhibit 36). More importantly

¹Period of the award is two years, June 1, 1993 to May 30, 1995.

the Chair ignores the 0% Nassau County Police received in 1992 when Kings Point police received a 5.5% increase. (Village Exhibits 27, 36). The only other police comparison the Chair made was with Floral Park and Freeport.

Floral Park police received 4.5% wage increases for 1994, 1995 and 1996. The Chair states:

"Furthermore, it is of some significance that the Floral Park raise for June 1, 1993 - May 30, 1994 was 5.0%. As such, the new increases do not constitute "catch-up" for inadequate ones granted earlier." (Award, p. 16).

On the other hand, though not part of the record, the parties were well aware that the Floral Park police received 0% in 1991 and the new increases do constitute a "catch up" for an inadequate wage increase granted earlier. (see annexed Memorandum of Agreement marked Exhibit 1). Accordingly, the record should be reopened to include this earlier settlement since the Chair did not have all the facts before him from which to draw an accurate conclusion.

The Freeport police received wage increases of 4.5% for 1994 and 1995 and 4.75% for 1996. Here again the Chair ignores the fact that the Freeport police received 4% wages increases in 1992 and 1993.

An analysis of the three departments the Chair has singled out shows the following:

% Wage Increases

	1992	1993	1994	Total
Kings Point	5.5	4.5	4.5	14.5
Nassau County	0	4.75	4.75	9.5
Freeport	4	4	4.5	12.5

	1991	1992	1993	1994	Total
Floral Park	0	5	5	4.5	14.5
Kings Point	5.5	5.5	4.5	4.5	20

(Village Exhibit 27, PBA Exhibit 5, p. 5 of 1991 contract)

There is an inherent illogic in the Chair's ignoring the lower 1991 and 1992 wage increases while using 1994, 1995 and 1996 wage increases to award Kings Point police 4.5% wage increases in 1993 and 1994. As the analysis shows the Chair's award grants Kings Point police a significantly higher wage increase (2% to 5%) than the Nassau County, Freeport and Floral Park police received over the years at issue.

Since Floral Park, Nassau County and Freeport wage increases represent catch-up for lower wage increases in early years, why isn't Kings Point entitled to give lower wage increases than 4.5% in 1993 and 1994 since in earlier years it gave higher wage increases than the other departments?

This is particularly so because the 1992 Kings Point salary of \$57,091 is the highest in the region, \$5,000 more than the mean salary, \$5,000 more than Floral Park and Freeport and \$8,000 more than Nassau County (Village Exhibit 27). As the Chair points out Kings Point salaries could rise by 0% in 1993 and 4.25% in 1994 and still be number one in the region. (Award, p. 15).

Moreover, the record shows that Kings Point had the lowest crime rate by far of all the police departments in the region. (Village Exhibits 24, 25 and 26). This is an important condition of employment which the Chair failed to consider in making his wage award. As the 4th Department pointed out in vacating an interest arbitration award, "While a salary comparison was made between police in Buffalo and those in other areas, this comparison did not extend to take into consideration the conditions of employment among police forces...." Buffalo Police v. Buffalo, 82 AD2d 635, 638, 639 (4th Dept. 1981).

Thus, the Chair's conclusion that a comparison of police wage scales warrants 4.75% wage increase in 1993 and 1994 is based on an arbitrary analysis of the record. Such a wage increase is above the mean and fails to consider the lower wage increases the other departments received in 1992 while using their 1995 settlements to give Kings Point police higher wage increases than the other departments received from 1992 to 1994.

Cost of Living

The Chair states that "the rise in the cost of living index" is a relevant factor (Award, p. 14). From June 1, 1992 to June 1, 1994, the cost of living rose at an annual rate of only 2.5% (Village Exhibit 20) (Transcript December 8, 1994, p. 59, 60). The Chair characterizes this as follows:

"The cost of living is not rising at an annual rate approaching 4.75%. Instead, it is increasing by less than four per cent per year. Thus, this factor weighs against awarding wage improvements of 4.75%." (Award, p. 14).

This characterization is clearly a distortion of the actual rise in the cost of living. Moreover his wage award of 4.5% in each year coupled with the longevity increases awarded is an annual wage improvement of 4.75%. (see pages 7-9). It is virtually double the annual rise in the cost of living.

Comparison with Other Employees
in the Public and Private Sector

The Chairman finds that wage increases for other employees in the private and public sector averaged 3% or less a year for similar periods (Award, p. 14, Village Exhibits 12, 13, 14 and 15). However, he claims that the "increases are not as low as first appears" (Award, p. 17). He points out that "teacher salary schedules normally include fifteen steps or more" while police "have no more than seven steps, and in most cases, five or six." Ibid. He then concludes:

"As such, a three per cent raise for teachers might well produce an overall cost of 4.5% (e.g. Village Exhibit 17), while a PBA settlement of 4.5% might yield an overall cost of 4.75%, thereby substantially narrowing the gap between seemingly disparate salary raises." (Award, p. 17).

Nothing in the record supports this gratuitous assumption. The only teacher salary schedule in the record is from the Garden City School District (Village Exhibit 17). This salary schedule shows a difference of about \$30,000 from Step 1 to Step 30 (20 actual steps). Each step is worth about \$1,500. On the other hand the police salary schedules have a difference of about \$25,000 from Step 1 to the top step (Village Exhibits 27, 33). Each step is worth about \$4,000.

Thus, police officers and teachers show a similar spread between their minimum and top salaries but the police rise to their top salary much faster. For example, a Kings Point police officer goes from \$35,948 to \$57,091 in five years while a Garden City school teacher with a masters degree goes from \$36,593 to \$65,901 in thirty years. After five years the Garden City school teacher would make only \$43,083 (Village Exhibit 17, PBA Exhibit 5, p. 5 1991 contract).

Without any knowledge of the numbers of teachers or police officers in what steps, it is irrational to conclude that the cost of step increases in teacher contracts is six times (1.5%) that of police contracts (1/4%).

Further the Chair is in error when he states that police contracts have no more than seven steps. Actually as he knows, police continue to receive additional step increases beyond seven based on years of service (see pages 8-10). (See p. 8).

Public Interest and Welfare

The Chair correctly finds that the interest and welfare of the public is an issue. He states that "the public, including the Kings Point public has a substantial interest in seeing to it that wage increases are moderated" (Award, page 14).

He finds that Kings Point "does not have an expanding tax base (Village Exhibit 7)," that "there is little likelihood that State and Federal aid will increase" and "if anything are likely to decrease." (Award, p. 14, 15). Thus he says "increases in Village budgets will come about exclusively from tax hikes." (Award p. 15).

From June 1, 1988 to June 1, 1994 the tax rate in the Village has risen faster than the cost of living, 34% v. 27% (Village Exhibit 7). Tax certiorari refund claims, which were nonexistent in 1990, total \$632,441 in 1994 (Village Exhibit 7).

Taxes in Nassau County are among the highest in the nation (Village Exhibits 5, 6). Long Island is in the throes of a jobless recovery (Village Exhibits 2, 4).

Police salaries and benefits constitute 50% of the budget. (Village Exhibit 11) (Transcript December 8, 1994, p. 41). The average Kings Point police officer makes \$73,960 a year before any wage increase is awarded (Village Exhibit 16). From June 1, 1988 to June 1, 1992 his salary has risen faster than the cost of living, 25% v. 21%. (Village Exhibit 20). In 1993 the cost of an average police officer with benefits was \$96,043 (Village Exhibit 18).

Yet despite this clear evidence the Chair determines that "wage increases of 4.5% and 4.5% are sufficiently moderate so as to reflect the fiscal condition of the economy generally, while taking into account raises, cost of living and other relevant factors" (Award, page 19).

However, he fails to mention the additional longevity wage increases of \$100 after six years, \$200 after ten years, \$300 after fifteen years and an additional \$50 for each year he has awarded. (Award, p. 20, 21). Since the average Kings Point police officer has fifteen years of service (Village Exhibit 29) the Chair increases police wages by another \$300, or 1/2%, 1/4% more in each

year.

Thus, his award equals the 4.75% each year he claims police might be entitled to "if the sole factor were comparisons with other Police Officers" (Award, p. 13). He has done what he said he would not do: "When these other elements are evaluated, it is clear that 4.75% for 1993 and 1994 should not be awarded." (Award, p. 14). The rise in the cost of living "weighs against awarding wage improvements of 4.75%." Ibid.

The Chair has given no consideration to the rise in the cost of living, comparisons with other employees in the public and private sector or the interest and welfare of the public. His obvious disregard of these statutory criteria which the Village put in issue renders his award arbitrary and capricious.

LONGEVITY

The Chair finds "the record demonstrates that a major increase is warranted in this area." (Award p. 20).

Again the record does not support the Chair's findings. A comparison of longevity paid by the police departments in 1993 and 1994 showed the mean longevity payments were as follows (Village Exhibit 29):

	<u>6 Years</u>	<u>10 Years</u>	<u>15 Years</u>	<u>After 15 Years</u>
1993	500	1,100	1,650	+100
1994	650	1,150	1,750	+100

Half the departments paid less and half paid more.

Kings Point

1992	600	1,100	1,600	+100
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Hence, Kings Point longevity payments are at or close to the mean.

The Chair states:

"Virtually every other jurisdiction, except Lynbrook and Rockville Centre, grant greater longevity payments to their police officers than does Kings Point. (Award, p. 20).

The Chair's statement appears to be based on PBA Exhibit 8 which the PBA attorney concedes shows the highest longevity payments which may not be until 1995 (Transcript October 5, 1994, p. 67). The Chair obviously forgot his commitment when he said at that time:

"This chart does not tell me when those longevity figures listed came into being. Obviously, they could have come into being on June 1, 1993 or '94 or June 1 of '95..."

"And I'll do this as Chairman.... I,.... can go through each of the specific interest arbitration or contracts. We obviously could discern when those longevity rates came into being, and we would be able to compare specifically apples and apples, i.e. the appropriate years to the years before us." (emphasis supplied)

(Transcript October 5, 1994, p. 71).

The Chair did not do this at all. Moreover his statement is in error because PBA Exhibit 8 shows that in addition to Lynbrook and Rockville Centre, Old Brookville, Port Washington and Hempstead have lower longevity payments than Kings Point.

The Chair further ignores his apples to apples promise when he states:

"In some cases the disparity is great. For example, Nassau County and Great Neck Estates police officers receive \$2,200 after fifteen years or \$600 more than in Kings Point." (Award, p. 20).

This does not take place until 1995, a year after the award. (Village Exhibit 36).

Though the Chair correctly notes "that the wages in Kings Point rank No. 1 by a wide margin" (Award, p. 20), he gives this no consideration in making his award on longevity.

The following analysis of the departments the Chair states have greater longevity pay than Kings Point shows that there is no need to increase the longevity pay of Kings Point police officers to keep them comparable.

1994

	<u>Base Salary</u>		<u>6 Years</u>		<u>10 Years</u>		<u>15 Years</u>
Kings Point	² 62,345	+600	62,945	+1100	64,045	+1600	65,645
Nassau County ³							
Great Neck Estates Old Westbury	55,588	+800	56,388	+1350	57,738	+1975	59,713
Glen Cove	57,991	+800	58,791	+1350	60,141	+1975	62,110

Contrary to the evidence in the record the Chair awards longevity increases of \$100 after six years, \$200 after ten years and \$300 after fifteen years, plus an additional \$50 for each year thereafter (Award, p. 20, 21).

The Chair makes no findings with regard to the other statutory criteria on this issue.

² Based on the Chair's Award.

³Nassau County, Great Neck Estates and Old Westbury all have the same base salary and longevity payments.

TERMINAL PAY

The Chair rejects any increase in terminal pay because there is no need for other economic improvements. (Award, p. 22). But the PBA did not seek any increase in terminal pay. (PBA Exhibit 3).

The Chair then grants police officers the right to be paid 50% of their terminal pay prior to separation from service. (Award, p. 23). There is nothing in the record to support this determination. None of the other police departments permit police officers to take terminal pay prior to the year of separation. Nor was any reason given by the PBA attorney as to the need to take terminal pay prior to the year of separation. (Transcript October 5, 1994, p. 32). The Village opposed the request because the purpose of terminal pay was to provide police officers with a lump sum at retirement to make the adjustment into a new life. (Transcript December 8, 1994, p. 96).

The Kings Point contract provides that police officers receive six days terminal pay for every year of service after June 1, 1991 and five days terminal pay for every year of service between June 1, 1976 and June 1, 1991. (PBA Exhibit 5, p. 17, 1991 contract). In addition police officers receive twenty six sick days a year which they may accrue and be paid for as terminal pay at the rate of 50% of their accrual to a maximum of two hundred days. (PBA Exhibit 5, P. 13, 17, 1991 contract).

The average Kings Point police officer has fifteen years of service. (Village Exhibit 29). As of June 1, 1994 he would have accrued seventy eight termination days and two hundred forty sick

days (if he saved sixteen days a year) for which he would be entitled to an additional one hundred twenty days terminal pay. Under the Chair's award the average police officer would be entitled to receive 50% of his terminal pay or ninety nine days pay. The cash payout would be \$26,532 (\$268 daily rate x 99 days). There are twenty one police officers. The current value of 50% of the department's accrued terminal pay is \$557,172. That sum would grow each year with the accrual of additional days and increased pay.

While the opinion does not require notice, the award states "Such pay shall be conditioned upon timely notice to the Village in accordance with the Agreement (Award, p. 32). What is the "Agreement" the Chair refers to? What notice in that "Agreement" does he mean? Is it the ninety days notice required prior to the fiscal year in which the police officer planned retirement?

Again the Chair makes no findings with regard to the other statutory criteria on this issue. Clearly it is not in the interest and welfare of the public to have, for no justifiable reason, a potential budget deficit of more than half a million dollars to pay out 50% of police officers accrued terminal pay.

PAID HOLIDAYS

The Village sought to have Presidents Day replace Lincoln and Washington's Birthday as a paid holiday, a reduction in paid holidays from fourteen to thirteen. The Chair finds that "the current allotment of fourteen is not excessive, though greater than in most jurisdictions." (Award, p. 26). Of the seventeen police

departments compared, eight have twelve holidays, five have thirteen holidays and only three others have fourteen or more holidays. (Village Exhibit 34). Based on this comparison the Chair did not "find compelling evidence to grant the Village's proposal." (Award, p. 26). On the other hand less compelling comparisons warranted the Chair to award 4.5% wage increases and substantial increases on longevity pay. The Chair clearly adopts a double standard in his use of the record in making his award.

Again, the Chair makes no findings with regard to the other statutory criteria on this issue.

NIGHT DIFFERENTIAL

The Village sought to convert the night differential to a flat dollar amount for the life of the contract, \$3,500 for police officers and \$4,500 for sergeants. The record shows that Kings Point police receive the highest night differential in the region, about 50% higher than the 1993 mean night differential of \$2,500 (Village Exhibit 35). In fact if the current night differential of \$3,715 was frozen for the next two years it would still be the highest in the region. Ibid. Notwithstanding this comparison the Chair states "while this figure is also higher than in most jurisdictions, it is not so out of line as to warrant reduction by this panel...." (Award p. 26). This is yet another example of the Chair's double standard.

Again, the Chair makes no findings with regard to the other statutory criteria on this issue.

DISPATCHERS

The Chair has found that the Village has the right to employ civilian dispatchers to relieve police officers from desk work to do police work. (Award, p. 28). He found that the use of civilian dispatchers does not pose safety risks to the police officers or the community. Most police departments in Nassau County employ civilian dispatchers for this purpose. (Village Exhibit 41).

Because of police officers' fears that they might be laid off by hiring civilian dispatchers the Village proposed that "no current officer(s) that are employed by the Village will be replaced..." (Village Proposal 8, PBA Exhibit 4). However, the Chairman has gone beyond the proposal which the parties put before him. He added that "should the Village decide to reduce the number of bargaining unit positions below nineteen, dispatchers shall be laid off prior to such reduction." (Award, p. 32).

The law is clear, and the Chair appears to accept it (Award, p. 29) that levels of service, staffing or manning are non-mandatory subjects of bargaining and can be changed by the employer without negotiations. Town of Orangetown v. Orangetown Policeman's Benevolent Association, 27 PERB ¶4532 (1994); Suffolk County Court Employees Association v. State of New York-Unified Court System, 25 PERB ¶3061 (1992); Town of North Salem PBA v. Town of North Salem, 24 PERB ¶4512 (1991).

However, this is exactly what his "order of layoff" clause does. It mandates the minimum manning of the department at nineteen police officers. At or above that manning level the

Village has the right to employ civilian dispatchers to do desk and other clerical work. However, if the Village determines that it does not need nineteen police officers for patrol or other police duties, then it must lay off the civilian dispatchers and return police officers to clerical work.

The Chair by his award determines the level of service to be provided and how it is to be staffed. He rules that desk work and clerical work is non-police work and may be done by civilian dispatchers. However, when police work diminishes to require less than nineteen police officers, the non-police work must be done by police officers.

But, no layoff clause was placed before the panel. The only proposal the parties put before the panel was to guarantee no layoffs of police officers currently employed by the Village.

The Chair's layoff clause arose from the closing argument of the PBA attorney who suggested that he would agree to civilian dispatchers provided "if they (Village) go below 12, 17 or 18 police officers, they have to discontinue a dispatcher." (Transcript December 8, 1994, p. 155).

The PBA attorney understood this to be a manning requirement as he stated "If you link the use of dispatchers to manning, then they lose the right to use dispatchers." (emphasis supplied) Id. p. 156. The Chair also understood this to be a manning requirement because he said "there remains the possibility through attrition, the Department's manning level could be severely impacted while dispatchers are still in its employ (emphasis supplied). (Award, p

28). The Village opposed any manning requirement and sent the Chair a letter dated December 14, 1994, a copy of which is annexed as Exhibit 2, and is part of the record. (Transcript December 8, 1994, p. 173).

The Chair then adopted the PBA attorney's suggestion, arbitrarily raised the PBA number from seventeen to nineteen and called it "an order of layoff clause" to circumvent the legal prohibition. Can there be a more disingenuous rationale?

Further, he had no jurisdiction to add this layoff clause to the proposal the parties put before him.

"An arbitrator has no jurisdiction to determine non-mandatory subjects of arbitration (i.e. minimum complement, a guarantee of no layoffs...) unless both parties consent to allow the arbitrator to determine those issues." Prue v. The City of Syracuse, 25 PERB 7538, 7539 (1992), rev. on other grounds 201 AD2d 894 (4th Dept. 1994).

Moreover there is absolutely nothing in the record to support the Chair's order of layoff clause. None of the other police contracts where civilian dispatchers are used have any restriction on the use of civilian dispatchers. The Chair is well aware of this, as the transcript shows:

The Arbitrator: "Let me ask two questions... Do these other collective bargaining agreements have statements with respect to dispatchers?"

Mr. Davis: "No, they do not."

The Arbitrator: "Do the other collective bargaining agreements where dispatchers are found have provisions with respect to dispatchers and the answer is no so far as Mr. Davis knows."

o o o o o

The Arbitrator: "Do any of the collective bargaining agreements that you've looked at that have dispatchers have provisions regarding attrition only?"

Mr. Davis: "No. I have not found anything that refers to dispatchers in any of the collective bargaining agreements I've checked."

(Transcript October 5, 1994, p. 84, 85, 86).

Further, such a clause would violate the Taylor Law rights of the civilian dispatchers. It would become part of the police contract and civilian dispatchers are not covered by this contract. The PBA does not and cannot represent civilian dispatchers. The PBA is the bargaining representative only for police officers. (PBA Exhibit 5, p. 1, 1991 contract). On the other hand civilian dispatchers, as public employees, have the right to be represented by their own union. Section 202, Civil Service Law. They have a right to negotiate with public employers in the determination of their terms and conditions of employment. Section 203, Civil Service Law. The Chair by his award has precluded civilian dispatchers from bargaining over job security which is a cornerstone of their employment rights. He has no authority to do that. Indeed the Taylor Law gives an interest arbitration panel jurisdiction only over police and firefighters. §209(4), Civil Service Law.

Again, the Chair has made no findings with regard to the other statutory criteria on this issue. Clearly the public interest and welfare is not served by his award. As even the PBA attorney recognized, the public is best served by the use of civilian dispatchers.

Mr. Davis: "But almost every other department provided dispatchers as an assist to their manpower, to handle the clerical and form work, okay. And to get more

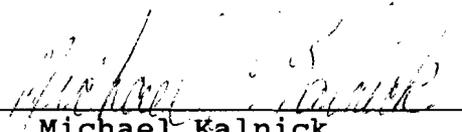
utilization out of the cops by taking the cop off the desk and putting him on the street, so the community can get the benefit of it.

(Transcript October 5, 1994, p. 44).

CONCLUSION

The award of the Interest Arbitration Panel is arbitrary, capricious, irrational and without authority with respect to wages, longevity, terminal pay, paid holidays, night differential, dispatchers and the Successor Agreement. The panel has failed in its duty to make a determination solely upon the record and the criteria contained in the statute. It has failed to make the required finding on the statutory criteria the parties put in dispute for each issue and to determine the weight that was given to each finding in arriving at its determination.

New York, New York
April 27, 1995



Michael Kalnick
Public Employer Panel Member

EXHIBIT A

Memorandum of Agreement
between
Village of Floral Park & Floral Park PBA

1 Wages

a) Effective June 1, 1992 employees will receive a 5% increase on their May 31, 1992 salaries and ^{the} salary schedules will be increased by 5% except for the first step which shall be reduced to \$27,000

b) Effective June 1, 1993 employees will receive a 5% increase on their May 31, 1993 salaries and ^{the} salary schedules will be increased by 5% except for the first step which shall remain at \$27,000

✓ 2 Life Insurance

Effective June 1, 1992 Village shall provide \$10,000 for the PBA to purchase life insurance

✓ 3 Dental Plan

Effective June 1, 1992 Village shall pay the PBA \$550 per ^{employee} ~~per~~ ~~year~~ ~~annually~~ ~~to~~ provide dental benefits for ^{employees} ~~per~~ ~~year~~

✓ 4

The Village may schedule a Swoyer sergeant ~~As the~~ in accordance with past practice which shall include ~~vacation~~ vacation, extended illness and ~~injury~~ injury on the job. The PBA will withdraw the current Arbitration on this matter

✓ 5 The contract ~~language~~ shall be Amended to allow the Village to shift ^{or} employees from one tour to another for the purpose of ^{force a calendar} training ^{for that} provided the employees shall be given ^{at least} two hours prior notice of the change of tour and further provided ^{that} no employees shall have an approved personal day canceled by ~~such~~ as a result of such a shift of tour

✓ 6 Overtime

~~Employees may accumulate up to 60 hours of overtime~~

The contract shall be Amended to provide that employees may ^{in any calendar year} accumulate a 60 hour overtime (40 hours worked at time and half) except as the Board of Trustees may otherwise permit. Employees may replenish 12 hours overtime once in any calendar year. OBA will withdraw its grievance pending on this matter

7 OBA will withdraw lawsuit in Nassau Supreme Court regarding the Village use of Police dispatches without prejudice

✓ 8 Village shall provide a 3 month unpaid child rearing leave

✓ 9. Optical Plan

Effective June 1, 1993 The covered employees shall be eliminated and the Village shall pay the PBA \$286, ^{annually} ~~per employee~~ _{member} to provide optical benefits

10 Duration shall be from June 1, 1991 to May 31, 1994

11 All conditions of the expired contract shall be continued except as modified by this Agreement

12 This Agreement is subject to the ratification of the PBA and the approval of the Board of Trustees

13 Both the PBA and Village negotiating Committee shall recommend this Agreement for ratification or approval
Floral Park NY
May 15 1992

PBA Negotiating Committee

Village Negotiating Committee

Thomas J. Leahy - President
John D. Smith - 1st V.P.
Robert C. Heck -

William S. Adams
Dennis M. Nicholson 2nd V.P.
Frank W. McManis Sec.
John J. [Signature] Treasurer

[Signature]
Harry [Signature]
Dennis M. [Signature]

EXHIBIT B

Cullen and Dykman
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Garden City, New York 11530-4850
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Thomas M. Lamberti

December 14, 1994

Direct Dial Number
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Howard Edelman
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Rockville Centre, New York 11570

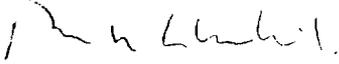
Dear Howard:

I enclose copies of the following decisions from the New York PERB Reports which hold that levels of service and staffing are not mandatory subjects of bargaining.

1. Prue v. The City of Syracuse, ¶25-7539 The Prue case was reversed on appeal but the court decision on the manning issue was not considered because it became moot by the passage of time.
2. Town of North Salem PBA v. Town of North Salem, ¶24-4512
3. Town of Orangetown v. Orangetown Policeman's Benevolent Association, ¶27-4532
4. Suffolk County Court Employees Association v. State of New York-Unified Court System, ¶25-3061

I also enclose a copy of the Town of Brookhaven agreements with the CSEA for the white collar and blue collar units and a list of Village Exhibits.

Sincerely,


Thomas M. Lamberti

TML:mr
Enclosure
cc: Mayor Michael Kalnik
David A. Davis, Esq.
Ronald Davis

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