

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Compulsory :
Interest Arbitration between :
 : PERB #IA 94/025
THE RIVERHEAD POLICE BENEVOLENT : (M94/242)
ASSOCIATION, INC., :
 :
Petitioner, :
 :
- and - :
 :
THE TOWN OF RIVERHEAD, :
 :
Respondent. :
-----X

PERB #IA 94/025
(M94/242)

MAR 11 1996

Under date of March 8, 1995 the New York State Public Employment Relations Board determined that a dispute continued to exist in the negotiations involving the parties designated herein, and that said dispute came under the provisions of the Civil Service Law, Section 209.4.

Pursuant to the authority vested in the New York State Public Employment Relations Board under Section 209.4 of the Civil Service Law, a Public Arbitration Panel was designated for the purpose of making a just and reasonable determination of the dispute.

The Public Arbitration Panel at the time of appointment consisted of the following:-

PUBLIC PANEL MEMBER AND CHAIRMAN

Lawrence I. Hammer
148 Daniel Road North
Massapequa, New York 11758

EMPLOYEE PANEL MEMBER

Ronald J. Davis, Esq.
200 Parkway Drive South
Hauppauge, New York 11788

EMPLOYER PANEL MEMBER

Richard K. Zuckerman, Esq.
210 Old Country Road
Mineola, New York 11501

In addition to representation on the tripartite panel, each of the parties was represented throughout by Counsel, specifically:-

RAINS & POGREBIN, P.C.
(by) JOHN BAUER, ESQ.
MARK BLANCHFIELD

representing the Town of Riverhead, and

KRANZ, DAVIS & HERSH, ESQ.
(by) ALLEN M. KRANZ, ESQ.

representing the Riverhead Police Benevolent Association.

The Riverhead Police Benevolent Association was also represented by:-

MIKE FENDREY	P.B.A. President
DIXON PALMER	Vice President
FRANK HERNANDEZ III	Negotiating Team Member
KEN WOODS	Negotiating Team Member
EDWARD FENNELL	Fiscal Consultant

The Town of Riverhead was also represented by JACK HANSEN, the Town's Financial Administrator.

Hearings were held at either the office of the Town's Counsel or at the office of the P.B.A. attorneys, on May 30, June 20, July 27, September 8 and on November 2, 1995, at which times the parties were afforded a full opportunity to present testimony, offer evidence and to advance arguments, as well as to cross-examine each other.

The statutory provisions applicable to the Compulsory Interest Arbitration as set forth within Section 209.4 of the Civil Service Law, directs that the Public Arbitration Panel in arriving at a just and reasonable determination of the matters in dispute, shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:-

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

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

It should be noted that a verbatim transcript of the proceedings was taken by Pratt Reporting, Inc. (by Kathi Fedden).

It should be noted that the designees to the panel, specifically Mr. Davis, the designee of the P.B.A. and Mr. Zuckerman, the designee of the Town are closely connected with those who designated them. Mr. Davis is a partner in the Law firm representing the P.B.A. while Mr. Zuckerman is a member of the Law firm representing the Town. The only one not connected in any manner, shape or form with either the Town of Riverhead or the Riverhead P.B.A., is the Chairman, the Public Panel Member.

A quasi executive session was held following the close of the last hearing. An effort was made to bring the parties closer together and to amicably resolve the entire matter, but without success.

The following items were at impasse at the inception of the hearings. Positions, arguments and data was presented on each such item:-

1. Wages
2. Night Differentials
3. Longevity
4. Overtime
5. Vacation Time
6. Sick Leave
7. Equipment & Cleaning
8. Grievance Procedure
9. Health Insurance
10. Dental & Optical Insurances

X X X X X

BACKGROUND

The Town of Riverhead is located on the eastern end of Long Island. The Town covers an area of some 67.4 square miles, and based upon 1993 figures, has a population of 23,011 persons. There are 57 persons in the P.B.A. negotiating unit.

The last Collective Bargaining Agreement entered into by and between the parties resulted from another Compulsory Interest Arbitration Award and covered years 1992 and 1993. Thus the parties have been operating under the terms of their most recently expired contract since January 1, 1994.

The P.B.A. actually has gone longer than since the contract's expiration without receiving any wage increase. They have gone better than 3 years.

The Award covering 1992 and 1993 contained a wage freeze for 1993 following a 2% January 1, 1992 raise and a 3 3/4% September 1, 1992 increase.

While the parties had been negotiating around a two year, 1994 and 1995 contract, both apparently realizing that the results of this proceeding would be stale and outdated even before the ink was dry on the resulting contract, informally at least explored a third year.

One must shudder at the realization that the parties will be back at the negotiating table, negotiating the terms and conditions of a successor agreement to the one that results from these proceedings before the ink was dry thereon.

The parties deserve nothing less than a three year Agreement that would cover 1996 as well. Unfortunately, the Panel lacks the authority to impose a contract herein that would include 1996.

Much was made by the parties over how or with whom the panel would compare Riverhead with.

There are 16 Municipalities, including Riverhead, in Suffolk County that have their own Police Departments. Members of all Departments are selected from the same Civil Service lists, and all successful applicants go through the same Police Academy training.

Civil Service Law, Sec. 209.4 mandates that the panel compare the terms and conditions of this unit's employment with the terms and conditions of employment of those persons.

Civil Service Law, Sec. 209.4 mandates that the panel compare the wages, hours and conditions of employment of the employees involved in this Arbitration, with the wages,, hours and conditions of "employment of other employees performing similar services or requiring similar skills under similar working conditions....in comparable communities."

What is meant by "in comparable communities"?

The Town took the position that the only proper comparison was with the other towns on the East End of Long Island, specifically Southold, Southampton, East Hampton and Shelter Island.

The P.B.A. took the position that it must be compared not only at a minimum with the East End towns, but with all other Town and Village Police Departments in Suffolk County, especially since all Police Departments, except for the County Police, are financed solely through real property taxation.

The panel, at least the majority of the panel is not convinced that comparisons must be limited solely to the East End towns, though because of proximity, as well as size, both areawise and populationwise, more weight thereto is certainly warranted.

X X X X X

1. WAGES

The P.B.A. sought retroactive wage increases of 6% for each of years 1994 and 1995.

The Town of Riverhead had no official monetary offer on the table, though it indicated that an increase commensurate with the C.P.I. Cost of Living index would probably be fair.

Depending upon what months were used, the C.P.I. went up from 1993 to 1994 of between 2% January to January to 2.6% November to November. For C.P.I. changes from 1994 to 1995, the percentages ranged between 1.8% February to February up to 2.9% May to May.

The P.B.A. contended that a 6% annual wage increase was both necessary and appropriate when viewed against the background of where Riverhead stacked up against other East End departments prior to their 1993 wage freeze, and now.

In 1993 the benchmark in Riverhead was, and for that matter still is \$52,177.00 and was behind only Southampton's \$53,465.00 and ahead of East Hampton's \$51,458.00, Southold's \$51,294.00 and Shelter Island's \$47,835.00.

Of the four others, Southampton at a 1994 \$55,550.00, Southold at \$53,346.00 and East Hampton (as of October 1, 1994) at \$53,773.00 are currently ahead of Riverhead.

1995 data is available only for East Hampton, where as of July 1, 1995 the benchmark went to \$56,193.00.

With the Town having no concrete position on the table, other than a consideration for a Cost of Living raise, a means of making an actual comparison between what would be the results under one position or the other, is almost an impossibility.

With the P.B.A. sustaining a freeze during 1993, one considering a Cost of Living raise must consider how much the C.P.I. went up between 1992 and 1994.

While figures as indicated earlier herein were presented for 1993/94 and 1994/95 increases, no figures going back to 1992/93 were entered into evidence.

If one were to use pretty much the lowest month to month 1993/94 increase, and double same, a 4% increase would have to, at minimum, result. If the highest month to month increase for the same period was considered, the projection could go to 5.2%.

Thus for purpose of comparison, the panel will use the minimum 4% figure.

The quasi 4% for 1994 would raise the Riverhead benchmark to \$54,264.00, second only to the Southampton benchmark.

Another quasi 4% for 1995 would raise the benchmark in Riverhead to \$56,435.00.

The 6% sought by the P.B.A. would increase the 1994 figure to \$55,307.00 and to \$58,260.00 in 1995.

Lose ground? The difference between Southampton and Riverhead in 1993 was \$1,288.00 in 1993. A 4% increase for 1994 would make the difference \$1,285.00. A big \$3.00 difference, while the 6% being sought by the P.B.A. would cut the difference by \$1,042.00 to only \$243.00. That not maintaining. That's pure catchup.

If one was to compare benchmarks with the Suffolk County Police, there is no question but that Riverhead lost ground in their last contract. In 1992, the Riverhead benchmark of \$52,177.00 was \$2,163.00 greater, while the Counties \$55,850.00 in 1994 and \$59,539.00 in 1995 will exceed the Riverhead figure by \$1,586.00 under the quasi 4% or \$543.00 under the P.B.A.'s 6% demand for 1994. The picture would not change for 1995.

The question probably boils down to whether the County Police, in any County, should be paid more than any of the Departments within its overall area.

In fairness, for a true comparison of benchmark salaries, one must look not only at the East End towns but to the other Suffolk County Departments as well.

Wages, as of the last day of 1993, as well as in 1994 and 1995 where contract negotiations have been completed, are as follows:

	<u>1993</u>	<u>1994</u>	<u>1995</u>
Lloyd Harbor	\$54,169		
E. Hampton Village	\$53,860	\$56,065	
So. Hampton Village	\$53,843		
Quogue	\$53,472	\$55,663	\$58,339
So. Hampton Town	\$53,465	\$55,550	
W. Hampton Village	\$53,364	\$55,520	\$58,189
Amityville	\$53,267	\$55,921	\$58,575
Northport	\$53,180	\$56,693	\$60,437
Riverhead	\$52,177		
East Hampton Town	\$51,458		
Southold	\$51,294	\$53,346	
Sag Harbor	\$50,823	\$54,443	
Nissequogue	\$48,960	\$51,164	
Shelter Island	\$47,835	\$49,270	
Asharoken	N/A		

While the Riverhead Police earn some \$1,992.00 less than the highest paid Lloyd Harbor, they also earn \$4,342.00 more than their Shelter Island brothers, also an East End town.

It is most common for Compulsory Interest Arbitration panels, or fact-finders, to give considerable weight to voluntary settlements made by the governing body with its other employees.

The Town settled its 1993/95 contract with the CSEA, where wages too were frozen in 1993. Wages increased by 3.5% plus a 2.37% step increase in 1994 and by 4% plus another step increase for 1995. A step it was agreed, represented an additional 2½%.

A question! Why if the governing body could offer and settle with its CSEA employees for increases of, including increment, 6% and 6½% for 1994 and 1995 respectively, is the non-specific offer so much lower, for the same period, to its Police?

Sundry Town officials were granted 2 year wage increases in 1995 of between 8% and 13.9%. This is what the P.B.A. considers, and probably rightfully so, as a "slap in the face." It can almost be compared with the New York City situation, wherein its teachers were asked to accept a 2 year wage freeze, while the Mayor and City Council voted themselves very substantial wage increases to take effect, retroactively, immediately.

When one group of Municipal employees are granted wage increases vastly higher than that offered to another, morale has to suffer, resentment is borne, and voluntary settlement at the lower figure is impossible.

A Town's ability to pay wage increases must be governed by what a Town can reasonably afford, given its constituency, its tax base, its economic status, its failure, as well as its need to expend monies in order to maintain and provide other necessary services.

In determining wages and increases therein, one must look at the economy as a whole. The picture on Long Island is not a rosey one. Industry has been leaving Long Island. Jobs have been lost because positions no longer exist, unemployment is still high.

The Island and Riverhead in particular, has been hit, and hit hard by the closing of the Grumman facility. The amount of taxes Grumman heretofore paid is lost forever, plus the Town will have to, temporarily at least, expend large annual sums to maintain the facility.

State Aid has been dramatically cut, dropping by more than 75% over the past half dozen years, down from \$337,419.00 in 1987 to \$80,538.00 in 1994.

The Town's tax base comes from the assessed valuation of its taxable real property. For 1995 the assessed value thereof stood at \$604,782,676.00, but will decrease sharply in 1996 with the \$15,000,000.00 loss occasioned by the Grumman and Northville closings.

The Riverhead tax rate for 1995 was set at \$4.56 per \$100.00 AV., up \$1.03 over the 1994 rate.

The per capita income in Riverhead, based upon 1990 census data, of \$15,643.00 is about the lowest in the County, and is the lowest amongst the five East End towns. With 5% of its citizenry earning what is recognized as being below the poverty level, Riverhead ranks first. The median income stands at \$32,655.00.

Median family income in Riverhead (\$50,036.00) is amongst the very lowest, if not the lowest, of all 15 Long Island Towns and Cities. If only the East End towns were considered, Riverhead is dead last. The picture doesn't change even were only all 10 Suffolk County towns considered.

Consideration should be given to other settlements negotiated under currently existing financial conditions elsewhere in the County. Thus the panel will look into the more recent settlements only.

The most recent settlement involved Easthampton Town and resulted in 4½% wage increases as of October 1, 1994, July 1, 1995 and July 1, 1996.

An Interest Arbitration Panel in July, 1995 awarded to Village of Greenport Police (even though the Village's Police Department had been abolished), different sums depending upon the period worked.

Those who worked from January 1, 1993 to the date of abolishing the Department on November 17, 1994, the sum of \$2,675.00 was Awarded. For those who worked only from June 1, 1993 to abolishment of the Department, the sum of \$1,930.00 was Awarded.

Precisely how this works out percentagewise, is not at all clear.

In April 1995, an Interest Arbitration Panel awarded the Kings Point Village P.B.A. (the panel recognizes that Kings Point is over the border and is in Nassau County) 4½% on June 1 of both 1994 and 1995.

Though limited settlement data was offered into evidence, the panel will not dispute and readily recognizes that as time goes on, settlements are coming in at lower figures.

Much was made of the fact that some 16.39% was budgeted for salary or wage increases in the 1994 budget. The natural question was that if such a percentage was budgeted, which was not disputed, why couldn't the Town meet the P.B.A. 6% proposal?

The answer of the Town was simple and absolutely logical. When the 1994 budget was prepared, the Town was still waiting for the Compulsory Interest Arbitration involving the P.B.A. that would cover 1992 and 1993. The budgeted for 1994 salary account allowed for payment of monies that would pay increments for 1992-94, plus the back wages for 1992 and 1993 that would be Awarded through the Compulsory Interest Arbitration, as well as for wage increases for the civilian employees of the Police Department.

If 16+% was budgeted for 1994 wage increases alone, there is no question but that which the P.B.A.'s sought after percentage could, and probably would have been amicably paid (or settled at a bit lower figure) and thus this proceeding would have been avoided.

X X X X X

2. NIGHT DIFFERENTIALS

The P.B.A. proposed that employees be paid night differential for all hours scheduled to be worked between 4:00 p.m. and 7:00 a.m. at the rate of ten (10%) percent of the base hourly rate.

Members of the Department currently receive a flat sum of \$2,700.00 annually for night hours.

The Town vigorously opposed changing the current flat rate to a percentage because the cost of same would increase year in and year out without any further or future negotiations on the subject.

The P.B.A. proposal calls for 15 hours a day (62.5% of the 24 hour workday) to be subject to the differential. Based upon the 1993 \$52,177.00 benchmark.

The current cost of this differential for 50 Police Officers (the Department's 7 Plainclothesmen do not work a night tour) is \$140,400.00, the change to a percentage would increase same by \$25,915.08, even without a 1994 or 1995 base wage increase.

Using the 15 other Police Departments of Suffolk County, five pay such differential as a percentage of either a specific schedule or base pay, while 10 pay a set sum as does Riverhead, but in amounts between \$1,480.00 in Southampton Village to \$3,600.00 in Lloyd Harbor. Of those that pay a flat dollar, seven pay more than Riverhead's \$2,700.00, averaging \$2,815.00.

The panel majority agree that whether it uses for purposes of comparison only the East End towns as the Town prefers, or all of Suffolk, the fact remains that some improvement, even to reach the average is necessary.

The panel recognizes that future increases should not be automatic, but be the subject of new negotiations, and thus will not recommend replacing a flat sum with a percentage.

The panel, or at least a majority of the panel will direct and Award a \$100.00 increase to \$2,800.00 effective with July 1, 1995.

The panel believes that such increase properly balances the P.B.A.'s right to receive a night differential more in line with the average, so earned by Officers elsewhere in the County and East End.

X X X X X

3. LONGEVITY

Riverhead is only one of two Departments in all of Suffolk County that receives no longevity between years 6 and 10 of employment. Southold is the other.

The P.B.A. proposed creating a longevity stipend after 7 years in the Department and improvements over its current contractual entitlements.

Currently members of the Department receive 4% after 10 years, 6% after 15 years and 7% after 20 years of employment.

The figures received in Riverhead after 10 years of service (\$2,087.00) lags behind Southampton's \$2,750.00 (where \$2,250.00 is received as longevity after 5 years) and Southold's \$2,667.00.

After 15 years its \$3,130.00 is right up there with both Southampton and Southold, as is its top figure of \$3,652.00.

There exists just so much money that can be spread around in settlements. The panel's majority feels that such monies can be better utilized by raising all unit wages.

X X X X X

4. OVERTIME

The current Contract pays time and one-half for all time worked in excess of 40 hours per week or 8 hours in any day.

The Fair Labor Standards Act calls for something less, namely time and one-half for all hours worked over 43 in any week.

The Contract calls for the base hourly pay for purposes of overtime computation to include only so much of the annual "longevity" payments as was in effect back on December 31, 1978.

The Town contended that it has been including the entire current "longevity" payment in calculating remuneration for overtime hours that exceed the FLSA's 43 hours. In effect the Town argued that it incorporates the 1978 longevity rate when paying time and one-half for hours worked between 40 and 43 hours per week, but uses the current longevity rate when paying for time and one-half overtime for hours worked in excess of 43 in any one week.

The P.B.A.'s demand seeks to remove the 1978 longevity rate for overtime computation and would use the current longevity rate for calculating all overtime hours beyond 40.

The P.B.A. contended that its position is what the Law mandates.

While the panel representatives of each side herein espouses their parties position, the neutral Chairman will not endeavor to interpret the FLSA. That is something that the parties themselves must agree upon or let a Court of competent jurisdiction decide. It is most unlikely that the arguments advanced by each side is correct.

The interpretation of FLSA standards is not a proper subject to come before a Compulsory Interest Arbitration Panel.

X X X X X

5. VACATION TIME

Vacations are now currently earned and become due based upon each full year of employment. Until a full years' employment has been completed, no vacation is due.

The PBA proposed that any employee hired between January 1 and June 30 of any year, receive a full years' credit towards vacation time, while those hired between July 1 and December 30 of any year, receive no credit towards vacations.

As vacation days are earned at the rate of 6.6 hours per month, the P.B.A. proposal would have the possible effect of granting a new hiree a present of perhaps 33 hours of vacation if hired before June 30th.

The majority of the Panel does not believe that there exists any justification to the P.B.A. proposal.

X X X X X

6. SICK LEAVE

Unit members currently are entitled to 15 sick leave days annually, with unused days capable of being accumulated for future use, to 275.

The Contract also contains a provision whereby an Officer can sell back to the Town 227 accumulated days prior to retirement. If however, the Officer with any accumulation whatever dies before retirement, the days are lost and have no value to his Estate.

The P.B.A. set forth 3 proposals in connection with their sick leave entitlement. Specifically:-

1. To increase the 15 days annually, to 26 days;
2. To increase the maximum number of days that can be accumulated to 300.
3. To make any unused accumulated days payable to an Officer's Estate should he die while still in the Department.

The Township opposed each of the improvements sought, arguing Riverhead Officers (1) can already earn 2 more sick leave days for purpose of accumulation if they use no sick days during the year; (2) are paid a \$75.00 bonus for each quarter of the year in which they use no more than a single sick day; (3) that in a prior negotiation they negotiated away three such days annually, reducing their then 18 day entitlement to 15 in exchange for other sought after benefits; (4) that the additional days would cost, potentially at least, an additional \$137,000.00 based upon 1993 wages.

Within Suffolk County, most Police Officers receive between 18 days leave a year to 30 days in Shelter Island to unlimited days in Lloyd Harbor and Nissequogue.

After negotiating down ones' entitlement, it is a bit off base to argue how poorly you are treated, and as to how everyone gets more. No one told the P.B.A. to give up days. They traded it for some other benefit.

Perhaps the P.B.A. would like to reverse the trade. Give up whatever it is they had gotten in exchange for a return of the 3 days. Somehow the Panel doesn't believe that would be of interest, else it would have been proposed.

At 15 days annually, plus 2 bonus days annually, a Police Officer would have had to complete 16 + years on the Force without ever having taken a sick leave day, before he would be unable to accumulate any additional days.

Have any Riverhead Police Officers accumulated to date anywhere near 275 days? The answer had to be very few, if any, as only seven members of the unit have been in the Department since prior to 1979, a hiring date that would be necessary to have accumulated, even with perfect attendance, the 275 day maximum.

It is most interesting to note that the Town, in opposing all of the P.B.A. proposed improvements to existing sick leave benefits, pointed to the fact, as pointed out above, that Riverhead's Police are paid \$75.00 a quarter or up to \$300.00 a year if they use no more than 1 sick day a quarter. Then, after using this as a reason not to improve an already lucrative benefit, the Town proposed eliminating such \$75.00/\$300.00 benefit.

The Town also sought to eliminate the provision in the Contract that allows members of the Department to sell, before retirement, up to 227 of their sick leave accumulation. This after pointing to that very unique contractual reason as reason not to consider improving any of the sick leave benefits.

Somehow it just doesn't seem right to point in one breath to benefits that exist, as reasons not to grant improvements, and then in the next breath, propose elimination of such benefit.

The Panel, again by at least a majority of them, do not feel that the PBA proposal is worth a favorable Award thereon.

The question of having any and all accumulated sick leave days payable to the Estate of an Officer who dies while still a member of the Department is another matter entirely.

If an Officer during his lifetime, but before retirement, can be compensated for 227 days there is absolutely no rationale or reasonable excuse for not allowing the family of the Estate of an Officer who dies while still in the Department to reap the benefit of cashing in such unused days as the deceased could do if he hadn't been so unfortunate to die.

Better yet, the Cop who lives continues to earn and accumulate sick leave days, which he can use (and be paid) should he get sick. Why should the Police Officer who died rather than merely getting sick, not be able to make use of all accumulated days?

The Panel accordingly will hereafter Award herein the following change to the current Sick Leave Article:-

That the Estate of any Police Officer who dies while still a member of the Department, shall be entitled to payment for all unused accumulated sick leave days credited to the deceased at the time of death. Compensation for each such day shall be at the rate of pay earned by the deceased at the time of his death.

X X X X X

7. CLEANING & EQUIPMENT

The contract currently calls for a cleaning and equipment allowance of \$450.00. All of Suffolk Police Departments enjoy similar benefits, but for different amounts. Benefits range (except for \$200.00 in Shelter Island, \$350.00 in Sag Harbor and \$300.00 in Nissequogue) between \$450.00 (in Riverhead and in Quogue) and \$800.00 in four other Departments.

The average? \$535.00.

Pointing to an estimated cost of \$20,000.00 and that Riverhead's \$450.00 is the second highest benefit amongst East End towns, the Town opposed the P.B.A. on this.

The P.B.A. sought to increase the sum annually to \$800.00.

The Town had a proposal of its own herein.

The Town proposed to prorate the allowance for all members of the Department who do not work a full year, based upon time in the assignment of not less than 3 months.

This latter portion appears to primarily relate to the \$600.00 paid to plain clothesmen.

Why, the Town asks, should it pay a full years' allowance for an employee who works only a part of the year. It shouldn't.

Nor should it be expected to pay the full cleaning allowance to those who work only a portion of the year.

Recognizing that maintenance and purchase costs continually rise, the Panel hereby Awards a modest increase of \$50.00 effective with the 1995 fiscal year.

The Panel also will Award the pro-rata proposal herein of the Town.

X X X X X

8. GRIEVANCE PROCEDURE

If this matter could have been amicably resolved, the Panel firmly believes that the entire impasse could have been amicably taken care of.

The final step in the current Contract's grievance procedure is an appeal to the Town Grievance Board, made up of 3 Town Board Members.

The P.B.A. has been for years seeking, and continues to seek herein, a final grievance procedure step of Binding Arbitration.

The Town very seriously argued that a change in a final grievance step from the Town Board to an outside neutral arbitrator for a binding decision or an Award, should not result from a determination of a Compulsory Interest Arbitration Panel, but only through direct, face to face negotiations and agreement; that no such Panel has ever issued such an Award.

That is fine, except that the presentation before a Compulsory Interest Arbitration Panel is a step, called for by Statute, in the negotiations process. It passes to the Panel the right to make a binding determination of any item on which agreement, through lengthy negotiations, could not be reached.

There currently is no East End town that does not have a grievance procedure that does not culminate in binding arbitration, so far as alleged contractual violations are concerned.

A grievance develops when labor believes that management has not lived up to the terms and conditions of the Collective Bargaining Agreement or has acted in an arbitrary and/or capricious manner.

When the grievance is brought by labor, whether they are right or wrong, labor has the burden of going forward and convincing management that it was wrong or convincing a third party of such.

It is rather difficult for management to defend its actions, that which is being grieved, and then sit and impartially decide whether it was right or not. In such cases, management is not only the accused, it is also the defense attorney, the jury and judge. Too many hats for one person, or one entity to wear.

While the Town believes, and very honestly believes that it should not have binding arbitration forced upon it, the idea of having a Municipality be the judge and jury in determining whether it violated its own Collective Bargaining Agreement is much too repugnant. The situation does not change merely because the Board had sustained three of seven grievances, while denying to date, four.

There has been some nine recent grievances filed between April, 1993 and January, 1995 which were processed to the Grievance Board level.

Two of the seven still have not been decided. Why?

A grievance procedure is put in place so as to expeditiously resolve difference. It is simply outrageous for a decision not to have been rendered some eight, nine months after filing. We are now in the twelfth month, absent at least two decisions.

There is no way that a majority of the Panel can do anything but make an Award that calls for grievances involving the negotiated Contract to culminate in a final step of Binding Arbitration. The majority of the Panel will so Award, subject to the following limitation:

During the early stages of negotiations, the parties agreed not to specifically pursue certain non-mandatory subjects of negotiations. The Township would not delete same. The P.B.A. would not see to reinforce or improve thereon.

While the majority of the panel will recommend as indicated, a final grievance step of binding arbitration, same should not be interpreted as enuring to those portions of the contract pertaining to negotiated items which are not mandatory subjects for negotiations.

For same to become subject to arbitrations, would enhance a benefit which might not have been negotiated had the final determination thereon lie with other than the Town. If the contractual item is a non-mandatory subject for negotiations, but is nevertheless already in the contract, same should not fall under the award of arbitration, but continue under the existing grievance procedure.

In removing from the Town's province the final say on all portions of the Collective Bargaining Agreement, and placing same into the hands of a disinterested neutral, some limitations or safeguards must be set forth. Specifically:-

1. That only the Police Benevolent Association or the Town can submit an alleged grievance to arbitration.
2. That the filing for arbitration must be done by means of a written notice within fifteen full working days from the date that the decision of the Town Board is received by the P.B.A..
3. That in the event that the parties are unable to agree upon the designation of an Arbitrator, within fifteen calendar days after the decision to arbitrate is made, that an Arbitrator be appointed by the American Arbitration Association pursuant to its Voluntary Labor Arbitration Rules.
4. That the Arbitrator shall be limited to the terms and conditions set forth in the Contract, and shall have no power to add to, delete from or otherwise modify any of its terms.
5. That the fees and expenses of the American Arbitration Association and the Arbitrator shall be borne equally by the Town and the P.B.A..
6. That the election to proceed under the Contract's Grievance Procedure to Arbitration shall act as a waiver of the parties right to seek a remedy in any other forum.

X X X X X

9. HEALTH INSURANCE

In an effort to reduce its rising health insurance costs, the Town has set forth several proposals:-

1. CAP the Town's contribution at the rate that was in effect on December 31, 1993;
2. Require that all new hires enroll in an HMO during their first year of employment, with the option to join another plan during the first open enrollment period following the completion of one year of service;
3. Require new hires to wait six months before coverages commence;
4. Eliminate "double dipping" where an employee is eligible for coverage under a spouse's comparable plan, he or she will not be covered by the Town;
5. Allow the Town to change carriers or to self-insure, provided 30 days notice is given to the PBA (in writing) and provided that the new coverage is comparable to that provided by the State Empire Plan on December 31, 1993.

The PBA vehemently opposed each and every change proposed above by the Town.

Costs for full family coverages have gone up from \$3,876.00 in 1988 to \$5,363.00 in 1994.

If the Town's proposal to CAP rates was Awarded, the CAP would for 1994 require a contribution of \$247.00.

While the Town could produce no data which would indicate that any of the other Suffolk County Towns or Villages, within or outside the East End, had CAP's on its health insurance premiums, it did produce data that some 12 School Districts (out of 69 in Suffolk County) did pay less than 100% of the premiums for the individual, and that 13 paid less than 100% for family or dependent coverage.

All Town employees, according to the Town's brief hired after January 1, 1983 contribute 25% of the health insurance premium.

The Panel would probably be in accord with some of the Towns' proposals, agreeing that all employees should be treated alike; that if those Town employees covered by the CSEA, and they probably represent the vast majority of Town employees, contribute towards health premiums, so should the Police.

But it is a two way street, not a one way path.

If all should be treated alike, why not a like or even similar wage offer being made to the PBA? Why didn't the Town impose a contribution from its non-union personnel who received even healthier increases than did the CSEA, and certainly more than was offered to the PBA.

One cannot in negotiations seek to obtain from one group what it didn't seek or obtain from others.

The Panel will not under the circumstances recommend or Award any of the Town's health insurance proposals, that other employees have not been saddled with.

It should be noted that the C.S.E.A. negotiated Agreement already contains a provision allowing for the Town to change Carriers under certain conditions.

If the new Carriers benefits are comparable or better, in all respects, when compared against what benefits are currently enjoyed by the P.B.A. under existing coverage, there is no reason not to switch Carriers.

While a switch in Carriers generally equates to a lower premium, same often backfires on the Municipality, as after the honeymoon is over, premiums usually rise to an even higher figure than that which would have been charged by the Carrier who had been replaced.

X X X X X

10. DENTAL & OPTICAL INSURANCE

The Town proposed placing a CAP on its contributions for both currently provided dental and optical insurances, at the premium rate in effect on December 31, 1991, as well as requiring new hires to wait until they have completed 6 month employment for coverage to begin.

In support of its position herein, the Town reiterated the same arguments as used in its health insurance proposals.

Likewise, the PBA resisted and opposed both proposals, based upon similar data and arguments used in defending against the Town's health insurance proposals.

By the same token, the Panel must take herein the same position. Why expect the PBA to make concessions which were not even sought, no less obtained, in negotiations with other employees, especially when a far less percentage wage increase is being offered.

The Panel does not Award the modifications sought by the Town.

X X X X X

NOW THEREFORE, after considering all of the voluminous materials presented, and after considering all of the arguments offered, the following represents the

AWARD

1. That retroactive to January 1, 1994, all wages be increased by 4½%.
2. That retroactive to January 1, 1995, all wages be increased by 4½%.
3. That all persons who had not by January 1, 1994 reached the benchmark step, advance a step in each year, pursuant to the procedures in the most recently expired contract.
4. That the annual night differential be increased by \$2,800.00 as of July 1, 1995.
5. That the Estate of any Police Officer who dies while still a member of the Department, shall be entitled to payment for all unused accumulated sick leave days credited to the deceased at the time of death. Compensation for each such day shall be at the rate of pay earned by the deceased at the time of his death.
6. That the Cleaning & Equipment allowance be increased as of January 1, 1995 to \$500.00.
7. That the Cleaning & Equipment allowance be pro-rated on a quarterly basis for those who do not work a full year in the position.

AWARD (Continued)

8. That so long as the employee works in the position for at least one day in any 3 month period, he is to be entitled to a $\frac{1}{4}$ share of the annual allowance.

9. That the final step in the grievance procedure be amended so as to culminate in Binding Arbitration for those portions of the Contract pertaining to items which are mandated as negotiable subjects.

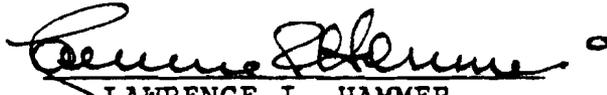
10. Those portions of the Contract pertaining to non-mandatory subjects for negotiations shall continue to be governed by the current grievance procedure.

11. That the limitations and safeguards set forth in the body of this Award at Page 17 shall be considered as being set forth again at length herein.

12. That the Contract be amended so as to indicate that the Town shall have the option to change health insurance carriers after at least 30 days prior written notice of such intention, provided (a) that a copy of the proposed replacement coverages accompany such notice, and (b) that the coverages shall be, in all respects, comparable or better than that which currently exists.

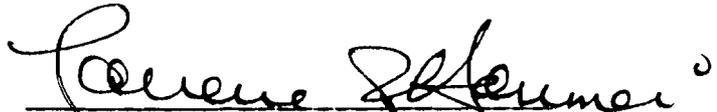
13. That all other proposals of either party, whether specifically addressed herein or not, are rejected.

Dated: Massapequa, N.Y.
January 31, 1996


LAWRENCE I. HAMMER
CHAIRMAN OF THE PANEL

I, LAWRENCE I. HAMMER, do hereby affirm upon my oath as an Attorney and as Chairman of the Panel that I am the individual described in and who executed this instrument, which is my Award.

DATED: January 31st, 1996


LAWRENCE I. HAMMER
CHAIRMAN OF THE PANEL

X X X X X

I CONCUR DISSENT, this 20 day of ~~January~~ February, 1996.

Concur: ## 3, 4, 5, 7, 8, 10, 11, 12, 13

Dissent: ## 1, 2, 6, 9


RICHARD K. ZUCKERMAN
Employer Panel Member

X X X X X

I CONCUR ~~DISSENT~~, this day of January, 1996.

RONALD J. DAVIS
Employee Panel Member

I, LAWRENCE I. HAMMER, do hereby affirm upon my oath as an Attorney and as Chairman of the Panel that I am the individual described in and who executed this instrument, which is my Award.

DATED: January 31st, 1996


LAWRENCE I. HAMMER
CHAIRMAN OF THE PANEL

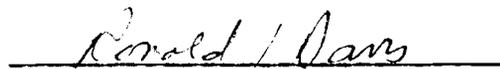
X X X X X

I CONCUR DISSENT, this day of January, 1996.

RICHARD K. ZUCKERMAN
Employer Panel Member

X X X X X

I CONCUR ~~DISSENT~~, this 27th day of January, 1996.


RONALD J. DAVIS
Employee Panel Member