

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between
Old Brookville Policeman's Benevolent Association, Inc.
and
Village of Old Brookville

PERB Case No.: 1A96-005
M 95-361

Opinion of Chairman
Award of Panel

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

Public Arbitration Panel:

Maurice C. Benewitz, Impartial Chairperson

Richard H. Smith, For the PBA

Peter L. Shea, For the Village

Appearances:

For the PBA: Michael C. Axelrod, Esq., Attorney

For the Village: Thomas M. Lamberti, Esq., Attorney

Pursuant to the provisions of the Civil Service Law, Section 209.4, the Public Employment Relations Board appointed the above named panel of arbitrators to hear and resolve a dispute concerning an impasse in negotiations between the Village of Old Brookville and the Old Brookville Policeman's Benevolent Association, Inc. The panel is charged with "making a just and reasonable resolution of this dispute."

Three hearings were held on September 13, September 16, and October 7, 1996. Thereafter, two executive sessions convened on November 22 and December 3, 1996.

The proceedings were transcribed. Subsequent to the final hearing, the parties submitted briefs to the members of the panel.

This opinion is that of the impartial chairman. The award issues from the members of the panel who have signed as concurring in it.

The Statutory Criteria

Section 209.4 (c) (v) of the Civil Service Law sets forth the following definitions of the duties of the public arbitration panel and of the criteria which the panel must apply:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into 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 the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

Background Information

This controversy concerns the terms of an agreement between the parties which is to replace the contract that expired on May 31, 1995. The Police Department services six adjacent villages: Brookville, Matinecock, Muttontown, Old Brookville, Upper Brookville, and Mill Neck. C. W. Post College is also serviced by the department.

Though the size of the Department may vary by one or two members, depending on retirements, appointments and the like, at the time of the proceedings, it consisted of 38 sworn officers and 11 civilians. There are four sergeants and four detectives included with the PBA unit. In addition, the Department contains a chief and two lieutenants.

Employer has stipulated that it has the ability to pay for any award which falls within the area of settlements which have arisen in Long Island bargaining units. But the Department submits that in coming to a determination, the panel should consider the other statutory criteria as well, and further submits that the proper employee unit comparisons should include not only police departments, but also other public employee and private sector organized units.

Statement of the Chairman

The undersigned impartial chairman served in the same role for these parties in a proceeding which culminated in a December 7, 1988 award. In the accompanying opinion, the chairman set forth a view of the public employment proceedings which he still holds. While the instant arbitration reflected elements different from those in 1988, the chairman repeats (in edited form to recognize the differences) what he then wrote.

"No arbitrated contract settlement can meet the joint needs of the parties as faithfully as a negotiated settlement. The trade-offs which arise in bargaining are made by parties who fully understand the importance and impact of each term and condition of employment on their relationship. An arbitration panel, in deciding to accept some demands, modify others, and reject still others totally can only imperfectly approximate the result which an agreed settlement would bring. Furthermore, arbitration may free one party or the other from making the difficult but necessary decisions which arise out of the complex of forces determining reasonable outcomes.

"Therefore, the chairman believes that the award, within the guidelines set by Section 209, will best meet the 'interest and welfare of the public' if it is 'centrist' and 'minimalist.' That means for the most part that the economic terms ordered should maintain the parties in the same relative position vis-a-vis other similar bargains as they were in at the end of the expired contract...In Old Brookville, the market forces, other than ability to pay, which have shaped settlements elsewhere should operate here.

"For non economic items, this philosophy dictates that items granted should be normal and ordinary. And those items should appear in the contracts of a preponderance of comparable units.

"Extraordinary changes in either economic or non-economic items, except where bringing the parties closer to the norm found in other contracts, are not imposed appropriately by arbitrators. And the norms followed in 'centrist' awards are shaped by the median - i.e. the middle point in a distribution of the item as found in other contracts -, rather than by the average - i.e. the arithmetic result found by summing the values in all the contracts and dividing that sum by the number of contracts containing the item...

"An exception to this general principle ruling out unusual upward grants exists where the employee group lacks a benefit which others in similar circumstances possess. 'Catch-up' awards bringing the unit closer to the median or centrist position meet the intent of Section 209, in the opinion of the chairman. By the same token, employees may possess some benefits so unusual as to justify, even in a minimalist award, the removal of that item."

The Petitions

The PBA declared a negotiation impasse on February 5, 1996, entered into mediation and then, on April 23, 1996 petitioned for the appointment of an arbitration panel. The PBA petition listed 23 demands (and identified two items agreed upon in negotiation).

It became clear during the hearings and in the executive session discussions that the PBA had modified its position on some of these demands and had withdrawn others. The demands which remained and which have been considered concerned:

- 1) changes in the discipline, grievance and arbitration provisions of the contract
- 2) Disability coverage for job-related disabilities
- 3) Compensation for retired members recalled for court or departmental business
- 4) Increase in personal time
- 5) Change in the hourly rate for the calculation of overtime
- 6) Change in the daily rate for calculation of termination pay, of holiday pay, and of the value of unused sick leave
- 7) First in-first out determination of value of accrued time

- 8) Increase in detective paid overtime
- 9) Increase in detective clothing allowance
- 10) Increase in Village dental insurance contribution
- 11) Across-the-board wage increases
- 12) Increases in longevity pay.
- 13) Implementation of 12 hour tours
- 14) Length of contract
- 15) Inclusion of the two items previously agreed upon:
 - a) chargeability of sick leave for an officer leaving work in the course of a work day
 - b) Village responsibility to clean work clothing of uniformed and non-uniformed members.

On May 10, 1996, the Department filed a response. This document listed 13 items. Many of the items also were modified or withdrawn during the hearings and/or executive sessions. The items remaining were:

- 1) Starting salary, steps, longevity
- 2) Work year for new hires
- 3) Computation of Night Differential
- 4) Grievance procedure
- 5) Length of contract

Length of Contract

Both parties have proposed a four year agreement, a term which the panel could not have imposed under the law. But the parties have the power to adopt such a contract term and have agreed that the chairman direct and the panel award such a duration. This award shall set a contract life of four years with an effective date of June 1, 1995 and a termination date of May 31, 1999.

In the opinion of the chairman, this decision of the parties is highly desirable. Absent such a duration, this award would be limited to a contract terminating on May 31, 1997. Thus the parties would have had to commence bargaining immediately for the successor agreement. Indeed, they probably would have had to begin such negotiations during the pendency of the present award.

By adopting a four year duration, the PBA and the Department will have time to resume their relationship free of the conditions which bargaining would have placed upon both of them. They also will be able to experiment with the year-to-year 12 hour tour arrangement which will be awarded here on a trial basis. The four year term also allows the adoption over a more extended period of some of the economic items awarded.

The chairman has observed a relationship which, while it has differences, is free of acrimony. Thus there will be an opportunity for a good will evaluation of the major changes, especially in tours and in starting pay and tours for newly hired officers.

The chairman shall recommend a four year term for the duration of this agreement.

The Final Positions of the Parties

The chairman shall recommend a major improvement for the employing unit. For reasons discussed below, he shall recommend a lower starting salary for officers while they are in the academy and an increase in tours worked during the first three years of employment. These changes will afford measurable economic and training benefits to the Department. Such a significant change realistically could not have been directed unless the PBA unit received equally significant improvements.

In the executive sessions, the chairman made it clear to both parties that only a more limited contract (and a shorter duration) would have been ordered if a strictly "minimalist" decision was to be rendered. The gain to the Department and significant monetary and non-economic benefits to the PBA became possible when, at the urging of the chairman, each side agreed to cede to the other items which were of importance and which went beyond the limited gains that otherwise would have resulted.

Beginning Salary and New Officer Work Year

A review of Department Exhibit 30 shows that of 14 Nassau County departments other than Old Brookville, in 1995 four had no special rate for officers in the police academy, two had rates above \$28,000, one had a rate of \$28,000 and six had rates below \$28,000. Thus \$28,000 was the median rate.

Officers in the academy are members of the department, but they are not regularly available for any necessary departmental duty. The chairman finds that during the period in which officers are in academy training, it is reasonable that that should receive the median of salaries paid to such training officers throughout the county. On the other hand, once the officers leave the academy and become available for normal departmental duties, there is no reason why they should be paid below the starting rate of the salary schedule.

Therefore, the chairman shall recommend that the panel award to Old Brookville department members while in the academy an annual salary of \$28,000. Upon leaving the academy (and while in their first year of employment), these officers shall be paid at step 1 of the salary schedule and shall move to step 2 on their first anniversary date.

In addition, in a number of departments, new employees work a greater number of tours per year than is established for the Department as a whole (Ex. D-26, T. 403). The chairman shall recommend that all new employees shall work 249 eight-hour work days during the first three years of employment. (The parties have come to an agreement establishing 12 hour tours in a year-by-year trial basis. That agreement is included as Appendix A of this award. The figure of 249 eight-hour tours will be modified consistent with that agreement, but the chairman will not include the computations here. He takes this position because Paragraph 11 of the twelve hour tour agreement provides for reversion to the 232 eight hour day tours if the trial agreement is not extended.)

The Previously Agreed Items

Two terms of employment were agreed upon during the negotiations. Those items shall be included in the new agreement. The chairman sets them forth in the language contained in the PBA petition for appointment of the panel. He notes, however, that the wording of the first item is based upon continuance of the eight hour tours. This recommended language should enter the contract as written because the twelve hour tour has been adopted on a year-by-year trial basis. The twelve hour tour agreement contains wording meant to confer, in the context of a twelve hour tour, the benefits of item 1 herein. The chairman recommends the inclusion of the following jointly negotiated items:

1. Members who report to work and then leave due to illness after completion of four hours, shall not be charged a sick day for that tour of duty. If a member leaves prior to completing four hours of the tour, the member shall be charged one-half sick day.
2. The current language providing the Village with an option to either pay a uniform cleaning allowance or clean the uniform, shall be eliminated. The Village shall have the responsibility to clean a member's work clothes for both uniformed and non-uniformed members.

Compensation of Retired Members Recalled on Official Court or
Departmental Business

At the hearings and during the executive sessions, the panel unanimously agreed that retired members recalled on court or official business should be compensated for time utilized at rates currently in effect. The panel awards inclusion of the following item in the agreement:

Current members who retire and who are subpoenaed to appear in court or handle other Department business shall be paid at the then current top pay rate.

Compensation for call-backs is provided in Article III for current members.

Personal Days

PBA Proposal 16 read:

- a. Personal days shall be increased to five per year, which can be carried over for one (1) year. If not used, the member shall be paid for the unused personal days at the then prevailing rate.
- b. A member shall have the right to use two personal days, not requiring advanced notification or approval for emergencies.

Testimony at the hearing indicated that officers on midnight tour are not allowed to take personal days. Nor can they take such days when another tour member calls in sick. Unit members whose wives were giving birth were unable to obtain time off unless they could find a replacement for the tour. The same occurred when a death arose of a family member not specifically identified in the bereavement leave section.

The union seeks two additional personal days per year and the right to use two days without advance notification. Furthermore, payment is requested for unused days as the demand above indicates.

The testimony indicated (T. 191, 401) that 15 of 18 Nassau departments receive five personal days per year. The Department submits that since officers taking personal days usually must be replaced at premium rates, each personal day has an economic impact of 0.5 per cent (T. 407).

The chairman finds that the number of personal days provided to officers is far below that afforded to members of other departments. Some improvement is necessary. But while "catch-up" is appropriate, the entire gap cannot be closed in one negotiation. A prospective improvement of one day, to become effective on January 1, 1997, will be recommended.

The department should be prepared to bear the cost of this common benefit. On the other hand, in a small department, officers cannot be allowed to receive days for which they provide no advance notice. At present, the Department must receive application and can plan for replacements (or for allowing the positions to remain unfilled). Article IV, Section VII requiring approval by the chief also should not be changed.

This benefit increases compensated unworked time. While members should enjoy the benefit when they need it, there is no logical reason to pay at the end of the year for personal days which have not been used. That would amount to a pay increase for a benefit which is unrelated to Department business. The chairman shall not recommend payment for unused days; nor shall he recommend that unused days be carried over into the next year.

Recommendation: a fourth annually allowed personal day to become available effective January 1, 1997.

Detective Overtime

PBA Proposal 18(c) requests an increase in the allowed paid overtime accumulation for detectives to 80 hours.

Article III Section II B. presently provides that annually detectives will be paid in cash at time and one-half their hourly rate for up to 40 hours of overtime and that remaining overtime shall be covered by compensatory leave. PBA Exhibit 32 shows that there are no restrictions on cash reimbursement of detective overtime in either the Nassau County or the Port Washington Departments. The testimony of Detective Christopher Sweeney went further than the exhibit to indicate that no other department limits the cash overtime payments to detectives (T. 222).

This is an area where Old Brookville employees are severely limited as compared to detectives in other Nassau County departments. The chairman will recommend a substantial improvement but not one so great as to allow payment for an unlimited amount of overtime. A catch-up that great should be negotiated rather than being imposed at arbitration.

Recommendation: Effective June 1, 1996, detectives will be permitted to receive 60 hours of paid overtime annually.

Detective Clothing Allowance

Pursuant to Article XII, Section 8, detectives are paid a \$400 annual clothing allowance. PBA Proposal 18 (c) requests an increase of \$150 per year. PBA Exhibit 32 shows that Nassau County provides an annual clothing allowance of \$1,150 and that Port Washington provides an annual clothing allowance of \$1,050.

The chairman believes a modest increase in this benefit is justified. He shall recommend an increase of \$100 in the detective clothing allowance effective June 1, 1997 and a further increase of \$100 in the detective clothing allowance effective June 1, 1998.

Calculation of Overtime

Article III, Section II, D. provides that the hourly rate for overtime payments shall be one-eighth of 1/261st (2088 hours) of an employee's base salary. PBA Proposal 10 a. requests that the rate be 1/1856th of annual base salary.

Officers in this department (except detectives) work 232 days per year, i.e. 1856 hours. The PBA request asks that overtime be computed on the basis of the time most members of the department actually work.

The Department submits in its brief

Historically, the daily and hourly rate has been calculated on the basis of 261 days even though police officers worked 261 days, 255 days, 249 days, 238 days, or 232 days a year. The hourly and daily rate bear no relation to the number of days which police officers work each year.

The Department notes that its exhibit, D-21, shows that of 14 departments other than Old Brookville, in 1995, five computed overtime on the basis of 1856 hours and nine used annual hours ranging from 2040 to 2088 as the basis. In 1996, the exhibit shows, seven departments were using 1856 as the basis. The Department further notes that PBA Exhibit 38 showed that 13 of 20 listed jurisdictions did not use 1856 hours as the basis for calculation of the hourly rate and that seven (7) jurisdictions did use 1856.

Allegedly, the Old Brookville rate is "not so far from the norm as to require a change from the current situation" (quoting the chairman's words in the prior award.) The increase in the hourly rate even without a wage increase would increase the cost of overtime by .75 percent of gross payroll, it is contended.

The fact that the hourly rate did not change as the number of hours in the work year decreased amounted to a negotiated condition which saved the district monies. But the calculation has no rational basis except bargaining expediency. It is reasonable that the overtime rate paid to officers should be based on the time they actually work as a percentage of their annual salaries. The chairman believes that the relationship should be rationalized unless it can be shown that officers have received some other unusual benefit in this proceeding justifying maintenance of a computation not based on the work facts.

The chairman recommends that the hourly rate for overtime compensation, effective June 1, 1997, shall be 1/1856 of the officers' base salary.

Calculation of the Daily Rate

PBA Demand 10 b. proposes that the daily rate for calculation of termination pay, holiday pay and the value of unused sick leave shall be 1/232nd of a member's salary. Article I, Section I. E. of the expired contract sets the daily rate at 1/261st of a member's annual salary.

The present rate was established when the basic work year was 261 days. It has fallen to 232 days as noted above. The PBA demand requests that the daily rate recognize and be founded upon the present work year.

The Department notes that if termination and accrued sick leave were paid at 1/232 of annual salary for each day, severance pay would increase by \$8000.

Department Exhibit 24 shows that in 1996 five (5) of 14 districts used a basis of calculation higher than 232 (in the majority of cases 260 or 261).

In the opinion of the arbitrator, the use of a year different than that actually worked in order to compute the daily rate is a further bargaining convention which should continue to exist only if the PBA were shown to have received some other significant benefit instead. In this award no such highly significant other benefit will be ordered. The new hourly rate computation cannot be cited as such a PBA gain since both the decision on the hourly rate and the decision on the daily rate arise from the same conclusion: that what officers are paid should have a logical computational relationship to the time that they work.

However, since the change in the hourly and in the daily rate are both costly, they should not both be imposed in the same year. Therefore, the chairman shall recommend that the daily rate become 1/232 of the member's annual salary and that this rate become effective June 1, 1998.

Valuation of Accrued Leave Time

Officers are contractually allowed to accumulate leave at the rate of 26 unused sick leave days per annum. Pursuant to Article IV, Section VII. A., upon retirement, the officer, his beneficiary or his estate may receive a cash payment at per diem rates for up to half such accumulated leave with a maximum of 200 days. These are earned days which should not become less valuable over time. Even though the maximum which can be compensated is 200 days, the half eligible for compensation should be the days earned last at the highest salary rates.

The chairman recommends that language be adopted to allow officers to replace any paid sick leave earned prior to June 1, 1998 with paid sick leave time earned on or after June 1, 1998.

Dental Insurance Contribution

Article IV, Section IV. B. of the expired agreement provides for an annual Village contribution to the PBA of \$250 (in two installments) per member for a dental plan. PBA Proposal 7 asks that this contribution be increased to \$500 per year per member.

Detective Sweeney testified (T. 203ff) that this contribution is credited to the PBA Dental Fund. The \$250 is not sufficient to provide needed coverage for officers and their families, the witness stated. Under a proposal from Chubb Health of Chubb Colonial Life Insurance Company (Ex. PBA 31), a plan with a \$50 annual deductible for individuals and a \$100 annual deductible per family would have a monthly premium cost of \$102 effective September 1996. An increase in the Village contribution to \$500 per member still would not cover the costs of the plan.

On cross examination, Detective Sweeney further explained the operation of the fund. The claim and the check paid to cover the billing is submitted to the fund administrator. Sergeant Smith stated on the record that the officer receives 100 per cent reimbursement up to a maximum of \$750 annually (T. 287).

The PBA represented as follows (T. 291):

The village puts in \$250 per individual, the union puts in \$500 per individual. The person will max out and then let's say if they've expended the 750, they don't put in the fund or they don't put in the request if there's dental services that are required within the year. If it's possible, they'll wait until the next year.

The Department presented an exhibit concerning the dental coverages or contributions provided by 14 other Nassau departments and Old Brookville (Ex. D-28). Five departments provided dental plans whose costs were not known to this employer (T. 412). Six other departments contributed between \$425 and \$690 per employee. One department provided no plan or contribution. Of the seven departments contributing between \$0 and \$690, the 1996 median was \$500. Two departments made contributions combining dental with other coverages so that the cost of the dental coverage could not be determined from the data available.

Any increase in the Village dental payment to the PBA becomes a part of the total cost of the contract. But this is true for all of the other departments providing either a plan or a contribution toward dental coverage. As will be seen, all of the departments also agreed upon salary increases (as well as upon other cost items). Cost, therefore, is not a viable objection to increasing the Village contribution, at least insofar as comparisons to other units is a criterion under Section 209 of the Civil Service Law.

The chairman shall recommend that over the two remaining years of the four year contract to be awarded, the Village contribution should be increased to the 1996 median for the seven departments which make monetary payments to a dental plan.

The chairman recommends that the Village contribution to the PBA Dental Plan be raised by \$100 (i.e. to \$350) per member effective June 1, 1997 and by an additional \$150 (i.e. to \$500) per member effective June 1, 1998.

Twelve Hour Tours

In the course of this arbitration proceeding, the parties came to an agreement on the implementation of a twelve hour tour plan. That agreement is included as Appendix A of the instant award. The plan became effective on January 1, 1997 under the agreement. This twelve hour tour schedule must be renewed prior to November 1 of each year. If the plan has not been reviewed by November 1, the prior 232 work day schedule is to be restored in the next calendar year. (See Paragraph 11 of the Appendix A.)

Although this twelve hour tour plan represents a side agreement of the parties, the chairman, nevertheless, recommends its inclusion in the contract.

Wage Increase

In its demands based upon a two year contract duration, the PBA proposed two (2) annual six (6) percent increases.

Substantial statistical evidence was adduced to support and to oppose this demand.

PBA Exhibit 34 shows that in the last full contract year of this agreement, of 15 departments, four (4) had higher annual salaries. One of these had a lower hourly rate. The same exhibit shows that 11 departments had contracts setting a 1995 salary; nine (9) had contracts establishing a 1996 salary; two (2) had 1997 and 1998 salary rates; and one (1) had a 1999 established salary.

PBA Exhibit 38 shows that in 1994, of 20 departments with an average top step salary of \$57,439, Old Brookville was slightly above the average. Its salary was \$57,702.

Thirteen (13) departments of 15 in the array had 1995 negotiated or arbitrated percentage increases; nine (9) had 1996 rates; two (2) had 1997 rates; and one (1) had rates for 1998 and 1999 (PBA Ex. 35). Nine (9) of the 1995 increases, according to this exhibit, were at 4.5% or above, and the median increase was 4.5%. Six (6) of the 1996 increases were 4.5% or higher. No statistical inference can be drawn from the few increases established for the years after 1996, but all except one were 4.5% or greater.

A second part of PBA Exhibit 38 sets forth another tabulation of 1995 percentage increases for 14 departments. By that spread, the 1995 median was 4.90%.

The union contends that whereas Old Brookville was one of the highest paid departments as recently as 1991, it "has now dramatically fallen behind." (The union argues that to attain its former position, the unit has to receive not only significant salary increases but also increases in a number of benefits.)

In its brief, the Department argues that a 4% increase for each year of a two year agreement would place an Old Brookville top grade officer at the median for 14 districts with a 1995 established salary. The Old Brookville salary would be \$60,011 (Ex. D-18). (The chairman notes that on this exhibit, a 4.5% increase also would be a median for 1995.)

The Department further argues that if the total compensation of the top grade officer were considered - base pay, night differential, and holiday pay -, it still would be true that the 4% increase would maintain an Old Brookville officer at the median. In 1994/95, a member's total compensation was \$63,623 (Ex. D-19), and it would become \$66,168 (Ex. D-20) with a 4% increase for 1995/96.

Because the top grade officer would remain at the median with a 4% increase, no catch-up is necessary, the Department contended at the hearings (T. 364-365). In this argument it was conceded that a 4.5% increase was median for the years in question, but it was contended that a 4% increase for this department would maintain the dollar median position (T. 365).

The parties seem to be agreed that officers in this department have remained at or near the median of Nassau County comparable units. A 6% increase would be significantly above the established median increases for the years for which data exists in the array of departments appearing on the exhibits. While a 4% increase might maintain an officer near the median in absolute dollars, 4% is a settlement below the percentage median on all the exhibits presented, including the exhibit of the district for 1995 (Ex. D-18).

Negotiators and public interest panels have long established that the appropriate wage comparisons for police departments are wages in comparable departments. This does not mean that other public sector and private sector employees do not perform work of value to the community. What the continued comparisons to police departments does demonstrate is that both bargainers and arbitrators have concluded the work of police officers is unique and not easily compared to the effort and accomplishment of persons performing other useful duties. Therefore, the standard of comparison which has prevailed is the wages and conditions achieved by other police units.

The chairman cannot foretell what the future bargains in police departments will yield either in Nassau County or elsewhere. He does find that a clear median percentage settlement has arisen for the time periods involved here in the Nassau County departments cited by the parties. That percentage is 4.5%.

It is interesting that 4.5% in 1995 and 1996 might have put the top grade officer slightly above the dollar median for top grade officers in comparable departments. But the difference from the median would not be large and there seems to be no good reason why this unit should not receive the median percentage increase. This is especially true since no one can predict what the increases will be for the vast majority of units which have not yet negotiated for 1997/98 and 1998/99. The most conservative estimate should be that the past trends will continue.

Therefore the chairman shall recommend across the board increases of 4.5% for the contract years beginning June 1, 1995, June 1, 1996, June 1, 1997 and June 1, 1998.

Longevity

The longevity schedule established in Article IV Section II. A. of the contract provides as follows:

At End of Year	Total Amount of Longevity Added to Base
5	\$500
10	\$950
15	\$1800
16	\$1600
17	\$1700
18	\$1800
19	\$1900
20	\$2000
21	\$2050

and \$50 per year of service thereafter

Information on longevity payments, department by department, is a part of the data set forth in PBA Exhibit 37. It is difficult to summarize this information in tabular form but the chairman agrees with the union contention that most other departments provide greater longevity benefits than does Old Brookville.

To the extent that longevity payments both reward continued service and discourage early retirement, such payments both increase the level of experience in the force and reduce training expenses necessary when replacements are hired for officers leaving.

The data show that it is appropriate to increase longevity as follows:

1) Effective June 1, 1996, \$100 shall be added to the first step (after 5 years), \$100 shall be added to the second step (after 10 years) and \$50 shall be added at each step after 15 years. The schedule of payments at the appropriate steps therefore will read

\$600/\$1150/\$1700 - \$100 per year thereafter.

2) Effective June 1, 1997, \$100 shall be added in the first step and \$100 to the second step so that the schedule of payments will read

\$700/\$1350/\$1900 - \$100 per year thereafter.

3) Effective January 1, 1998 \$150 shall be added both to the second and the third steps so that the schedule will read

\$700/\$1500/\$2200 - \$100 per year thereafter.

The chairman recommends the adoption of these schedules.

Grievance and Discipline

The parties, by negotiation, have reached agreements on grievance procedures, disciplinary procedures, and arbitration. They are headed Articles X, XI and XII and are presented here as Appendix B. The chairman recommends the inclusion of these agreed items.

Final Statement of Chairman

All demands of the parties have been considered. Those not discussed above either were withdrawn during hearings and in executive session or were dismissed because the data presented did not justify their adoption.

Award Panel

The chairman and the members of the arbitration panel signing as concurring Award the following for the successor 1995 to 1999 contract of the Old Brookville Policeman's Benevolent Association, Inc. and Village of Old Brookville:

- 1) The contract shall have a four year duration effective June 1, 1995 through May 31, 1999.
- 2) Police Officers while in the academy shall be paid at an annual rate of \$28,000, increasing to step 1 of the salary schedule for the remainder of the first year of employment, and moving to step 2 of the salary schedule on the officer's first anniversary date.
- 3) All new employees shall work 249 eight hour tours during the first three years of employment (or a modified number as required by the agreement on 12 hour tours.)
- 4) The following previously agreed items shall be included in the revised contract:
 1. Members who report to work and then leave due to illness after completion of four hours, shall not be charged a sick day for that tour of duty. If a member leaves prior to completing four hours of the tour, the member shall be charged one-half sick day.
 2. The current language providing the Village with an option to either pay a uniform cleaning allowance or clean the uniform, shall be eliminated. The Village shall have the responsibility to clean a member's work clothes for both uniformed and non-uniformed members.

- 5) The following language shall be added to the agreement on compensation of retirees recalled on department business:

Current members who retire and who are subpoenaed to appear in court or handle other Department business shall be paid at the then current top pay rate.

- 6) A fourth personal day annually effective January 1, 1997 shall become available under the agreement.
- 7) Effective June 1, 1996, detectives shall be permitted to receive 60 hours of paid overtime annually.
- 8) The clothing allowance for detectives shall increase by \$100 annually (to \$500) effective June 1, 1997; and this allowance shall be increased by another \$100 annually (to \$600) effective June 1, 1998.
- 9) The hourly rate for overtime compensation shall be 1/1856 of an officer's base salary effective June 1, 1997.
- 10) The daily rate shall be 1/232 of an officer's annual salary effective June 1, 1998.
- 11) Contract language shall be adopted which allows officers to replace any paid sick leave (accrued) earned prior to June 1, 1998 with paid sick leave earned on or after June 1, 1998.
- 12) The Village contribution per employee to the PBA Dental Plan shall be raised by \$100 to \$350 annually effective June 1, 1997 and shall further be raised by another \$150 to \$500 annually effective June 1, 1998.
- 13) The twelve hour tour agreement negotiated by the parties and included herein as Appendix A shall be adopted as part of the agreement.
- 14) The grievance procedure, disciplinary procedure and arbitration provisions negotiated by the parties and included herein as Appendix B shall be adopted as Articles X, XI and XII of the agreement.

15) Changes in the longevity pay schedules shall be as follows:

1) Effective June 1, 1996, \$100 shall be added to the first step (after 5 years), \$100 shall be added to the second step (after 10 years) and \$50 shall be added at each step after 15 years. The schedule of payments at the appropriate steps therefore will read

\$600/\$1150/\$1700 - \$100 per year thereafter.

2) Effective June 1, 1997, \$100 shall be added in the first step and \$100 to the second step so that the schedule of payments will read

\$700/\$1350/\$1900 - \$100 per year thereafter.

3) Effective January 1, 1998, \$150 shall be added both to the second and the third steps so that the schedule will read

\$700/\$1500/\$2200 - \$100 per year thereafter.

16) Salary schedules shall be increased across-the-board by 4.5 per cent effective in each year, i.e. on June 1, 1995, June 1, 1996, June 1, 1997, and June 1, 1998.

APPENDIX A

Agreement made this first day of January, 1997 by and between THE VILLAGE OF OLD BROOKVILLE, (the "Village") and the OLD BROOKVILLE POLICEMAN'S BENEVOLENT ASSOCIATION, INC., ("ASSOCIATION").

WHEREAS, the Village and Association have entered into a collective bargaining agreement covering the period June 1, 1995 through May 31, 1999, and

WHEREAS, both the Village and Association desire to amend Article V of the agreement, on a trial basis, to provide for twelve hour tours of duty effective January 1, 1997, and

WHEREAS, the Village and Association have reached the following agreement to amend the work schedule

NOW, in mutual consideration of the promises below, it is agreed:

1. Work Schedule: The monthly work schedule for all employees who work rotating tours of duty shall be two (2) days on duty and three (3) days off duty. A tour of duty shall be twelve hours, from 7:20 a.m. to 7:20 p.m. (day tour) or 7:20 p.m. to 7:20 a.m. (night tour), except for sergeants whose tours of duty are from 6:50 a.m. to 6:50 p.m. (day tour) or 6:50 p.m. to 6:50 a.m. (night tour). Once every sixty (60) days an employee shall work a supplemental third (3rd) twelve hour tour, except that in the discretion of the Chief of Police at the beginning of the year, the employee may be charged with six (6) twelve (12) hour vacation days in lieu of working this supplemental schedule. Tours will rotate every four (4) months, i.e., days to nights or nights to days. All of the above tours shall be scheduled into an Annual Duty Chart.
2. Training
 - (a) Every employee assigned to the twelve (12) hour tour schedule will attend training or other specific assignment thirty-six (36) hours a year in addition to the duty chart tours at no additional cost to the Village.
 - (b) Training or other specified assignments may not be scheduled when an employee has scheduled only

two (2) days off or during an employees vacation period.

- (c) Should an employee not be scheduled during the calendar year, for the thirty-six (36) hours, or any portion thereof, the unused time shall not be carried over to the following year.

3. Tours. Employees shall not work consecutive tours. Employees shall not work more than three (3) tours on three consecutive days. Tours switches may only be made subject to the approval of the Chief of Police or designee. There will be a minimum of eight (8) hours off between scheduled tours. If overtime results in a scheduled tour beginning less than eight (8) hours after a prior tour, the employee shall be granted the necessary hours off from the beginning of the scheduled tour.

4. Meals: Employees working a twelve (12) hour tour will be entitled to one forty-five (45) minute meal and one twenty-five (25) minute meal.

5. Personals Employees working a twelve (12) hour tour shall be entitled to one fifteen (15) minute break.

6. Sick Leave
- (a) Sick Leave accumulated prior to January 1, 1997, shall be converted into hours on the basis of eight hours per accumulated day.
 - (b) Sick Leave shall be changed from twenty-six (26) days per calendar year to two hundred eight (208) hours.
 - (c) The maximum cash payment for accumulated and unused sick leave pursuant to Article IV Section VII of the agreement shall not exceed 1600 hours.
 - (d) If an employee reports to duty and leaves during his scheduled tour, only the amount of hours that the employee is sick shall be charged against his sick leave.

7. Vacation Time: Employees shall receive vacation as follows:

After 1 year of service	80 hours
After 2 years of service	120 hours
After 4 years of service	160 hours
After 5 years of service	200 hours
After 8 years of service	216 hours

New hires who have attended an accredited police academy shall receive forty (40) hours of vacation during their first year of service and shall not have these days charged against their vacation in the second year of service.

8. Personal Leave: Personal leave shall be changed from 3 days to 24 hours per year. Effective June 1, 1997 employees shall receive 32 hours personal leave per year.

9. Death Leave: Death leave shall be changed from 4 days to 32 hours.

10. Terminal Pay: Terminal pay shall be changed from five (5) days to forty (40) hours for the employees first twenty (20) years, and shall be changed from four (4) days to thirty-two (32) hours for each year beyond twenty (20).

11. P.B.A. Leave: P.B.A. Leave shall be changed from fourteen (14) days to one hundred twelve (112) hours. Nassau Police Conference leave shall be changed from seven (7) days to fifty-six (56) hours.

12. Outside Employment: Outside employment shall require annual written approval by the Chief of Police.

13. Except as modified by this agreement, the terms of the current collective bargaining agreement between the parties shall continue in full force and effect.

14. The Village shall adopt a twenty-eight (28) day work period in accordance with Section 7 (k) of the Fair Labor Standards Act (29 U.S.C.A. 207 (k)).

15. It is the intention and understanding of the parties that this agreement supersedes and modifies the hour limitations set forth in Section 971 of the unconsolidated laws of New York.

16. IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS

IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

17. This agreement shall expire on December 31, 1997, and the parties shall return to the procedures in effect under the current collective bargaining agreement unless the Twelve Hour Tour Agreement is extended by written agreement of the parties by November 1, 1997. In the event of scheduling problems the Village reserves the right to cancel this agreement on thirty (30 days' notice to the Association)

Dated: January 11, 1997

OLD BROOKVILLE BOARD OF
POLICE COMMISSIONERS

By: Kandolph Harrison
Chairman

OLD BROOKVILLE POLICEMAN'S
BENEVOLENT ASSOCIATION, INC.

By: Richard H. Hill
President

APPENDIX B

ARTICLE X Grievance Procedures

A. DEFINITION:

For the purpose of this agreement the term grievance shall mean:

1) Any dispute between a member of the PBA and the Employer with respect only to the meaning or interpretation of a provision of this agreement.

2) A claimed violation, misinterpretation or misapplication of the rules, and regulations or procedures of the Employer affecting terms and conditions of employment.

B. TIME LIMITATION:

No grievance shall be permitted if not initiated (at Step 1) within fourteen (14) calendar days after the employee becomes aware, or should have become aware (whichever is earlier), of the act or omission or other circumstances claimed to give rise to the grievance. Authorized leave shall toll this period during which said leave is actually being utilized.

C. GRIEVANCE PROCEDURE

Every member of the PBA shall have the right to present his grievance in accordance with the procedures described herein, free from interference, coercion, restraint, discrimination or reprisal. All parties have the right to representation by a duly designated representative of the PBA of their own choice at all stages of the grievance procedure. The PBA shall have the right to be present and state its views at all levels of the grievance procedure. The aggrieved employee or employees must be present at all stages of the grievance procedure or the grievance shall be deemed waived and not subject to further appeal.

STEP 1: A member of the PBA who feels that he has been aggrieved shall present his grievance in writing, specifying the name or names of the aggrieved Employee(s), the particular article(s) and subdivision(s) thereof at issue, the events alleged to have given rise to the grievance, and the specific relief sought. The grievance shall be presented to the immediate supervisor within the time limit allowed by subdivision "B" above. The supervisor shall render a written decision within fourteen (14) calendar days of the presentation of the grievance.

STEP 2: If not settled at Step 1, within fourteen (14) calendar days of the supervisor's decision, a meeting shall be arranged by the aggrieved

between a representative of the PBA and a representative of the Chief of Police. Within fourteen (14) calendar days of said meeting, the Chief of Police shall render a written decision on the grievance.

STEP 3: A grievance which has not been resolved within fourteen (14) calendar days after completion of Step 2 of the grievance procedure, may be referred to arbitration by the aggrieved employee(s) as provided in Article XII.

All time limits shall be strictly adhered to. Failure to proceed in strict accordance with all time limits by the Employer shall permit the aggrieved employee(s) to proceed to the next step. Failure to proceed in strict accordance with all time limits by the aggrieved employee shall be deemed a waiver of the grievance, and it shall not be subject to further appeal.

Grievances shall be processed during non-working hours provided that they shall be conducted at a time and place which would afford a fair opportunity to those entitled to be present.

ARTICLE XI Disciplinary Procedures

The Employer has the right to discipline employees for just cause by reprimand, fines, loss of vacation or personal days, suspension without pay, demotion or dismissal except that employees who have not completed probation may be disciplined or discharged by the Employer in its sole discretion without recourse to the grievance and arbitration provisions of this agreement.

A. A disciplinary action shall commence within sixty (60) days after a violation is discovered or within forty-five (45) days after the completion of the investigation of the violation.

B. In instances where the Employer conducts an internal investigation, the employee under investigation shall have the right to have present during the period of interrogation, a PBA representative. The employee shall be given a reasonable opportunity to notify a PBA representative. The PBA representative, while having the right to be present during the period of interrogation, shall not be permitted to interfere with or interrupt the interrogation. The PBA representative, however, shall have the right to confer with and advise the employee only before and after interrogation.

C. A disciplinary action shall commence by the serving of written charges and specifications on the employee.

D. The Chief of Police may make the determination of guilt or innocence, and the penalty, if any, to be imposed. The employee may accept the determination and penalty, and, if so, the matter will not be subject to any further appeal or arbitration.

E. If a determination of guilt is made, the Employer shall give a written notice of discipline to the employee specifying the penalty for the violation. If the employee does not accept the discipline, upon request of the employee, the Employer shall provide a copy of the notice of discipline to the PBA.

F. The PBA may file a demand for disciplinary arbitration within fourteen (14) calendar days of receipt of the notice of discipline as provided in Article XII.

G. An employee who is suspended, with or without pay, shall continue to be entitled to all other benefits provided by this agreement. An employee suspended without pay may be paid from accumulated compensatory time. If an employee pleads guilty, or is found guilty of a violation, and is

fined one or more days pay as a punishment, he may choose to work the day(s) or have an equivalent charge made against accumulated compensatory or vacation time, at the Employer's option.

ARTICLE XII Arbitration

Section 1. The arbitration shall be conducted by the American Arbitration Association under its voluntary labor arbitration rules.

Section 2. The expenses of the American Arbitration Association and the arbitrator shall be borne equally by the parties.

Section 3. The award of the arbitrator shall be final and binding upon the Employer, the PBA and the employee(s).

Section 4. The arbitrator shall have jurisdiction only over disputes arising out of grievances and discipline.

Section 5. The arbitrator shall have no power to add to, subtract from or modify in any way any terms of this agreement.

Section 6. The arbitrator in any disciplinary arbitration has the power to sustain the finding of guilt and penalty or restore to the employee any

fine, pay or benefit taken away, reinstate any discharged employee with back pay or remove any written reprimand in the event he finds the discipline imposed was not for just cause.

Section 7. Any disposition of a grievance or discipline which is not referred to arbitration within the time limit specified shall be deemed barred.

Section 8. This grievance and arbitration procedure shall take the place of the grievance procedure provided under Article XVI of the General Municipal Law and the disciplinary procedures provided in Section 75 of the Civil Service Law or in any other law.