

7-1194-034-1199-10.9

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR  
Interest Arbitration Panel

In the Matter of the Arbitration

-between-

Haverstraw Village Police  
Benevolent Association

-and-

Village of Haverstraw

OPINION AND AWARD

Case No. IA97-034 PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

In accordance with Section 209.4 of the Civil Service Law of the State of New York, the Undersigned were designated as a Public Arbitration Panel to make a just and reasonable determination of the dispute that continues in the negotiations between the parties over a successor agreement to the agreement that expired on May 31, 1997. Although the parties had negotiated over a successor agreement, an impasse occurred. As a result, the Union filed a Petition for Compulsory Interest Arbitration, dated December 4, 1997. In accordance with the authority of the Public Employment Relations Board, Robert L. Douglas was designated as the Public Panel Member and Chairperson of the Panel; Ronald A. Longo was designated as the Public Employer Panel Member; and Richard P. Bunyan was designated as the Employee Organization Panel Member.

Hearings were held before the Public Interest Arbitration Panel at the offices of the Employer on October 20, 1998 and January 29, 1999 at which time the representatives of the parties appeared. All concerned were afforded a full opportunity to

offer evidence and argument and to examine and cross-examine witnesses. The parties introduced evidence and argument concerning the applicable statutory provisions. The Arbitrator's Oath was waived. The Public Arbitration Panel thereafter met in Executive Session.

PERTINENT STATUTORY PROVISIONS

Civil Service Law, Section 209.4

(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 wages, hours, and conditions 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other

municipal authority.

#### BACKGROUND

The Employer is a public employer located in Rockland County on the western bank of the Hudson River. Rockland County has five village police forces in the following jurisdictions:

Village of Haverstraw, Village of South Nyack-Grand View, Village of Piermont, Village of Spring Valley, and Village of Suffern.

Rockland Country also has five town police forces in the following jurisdictions: Town of Clarkstown, Town of Haverstraw, Town of Orangetown, Town of Ramapo, and Town of Stony Point.

(Union Exhibit 12.) The Employer's jurisdiction covers approximately 2.0 square miles and contains an estimated population of 9438 based on the 1990 census. (Union Exhibit 13.)

The Union is an employee organization that represents a unit of approximately 22 police officers, sergeants, and detectives employed by the Employer. (Compare Union Exhibit 11 with Employer Exhibit 1.)

The Petition for Compulsory Interest Arbitration filed by the Union, the Response to Petition for Compulsory Interest Arbitration filed by the Employer, the exhibits submitted by the parties during the hearing, and the closing statements of the parties set forth in great detail the positions of the parties in the present proceeding. The Opinion and Award contains a summary of the positions of the parties, however, the official record of the proceeding includes all of the information provided by the parties.

### CONTENTIONS OF THE UNION

The Union asserts that the parties failed to resolve any terms and conditions of employment in connection with the negotiations about the collective bargaining agreement, which contains an expiration date of May 31, 1997. The Union maintains that the proposals advanced by the Union should be granted as set forth below. It is the position of the Union that the appropriate comparable departments only include the departments located in Rockland County. The Union opposes including any departments in Orange County as comparable departments and notes that prior interest arbitration awards limit comparables to the police departments located in Rockland County.

The Union argues that the municipality has a sufficient financial ability to fund the demands of the Union. Citing extensive documentary evidence contained in the record, the Union submits that the Award should incorporate the Union's proposals, which are consistent with the applicable statutory standards.

### CONTENTIONS OF THE EMPLOYER

The Employer asserts that the Police Department functions well and employs a talented workforce. The Employer maintains, however, that the municipality lacks the financial resources to compensate the Police Officers at the level that other police departments in Rockland County historically pay such employees. It is the position of the Employer that the comparison of compensation should include the police departments in Rockland County and in Orange County. The Employer stresses that the

other communities in Rockland County have greater wealth than the Village of Haverstraw as reflected in the property assessments, the median income of the inhabitants, and other indicia. The Employer explains that many of the other departments employ larger number of police personnel. The Employer observes that the close geographic locations of the Village of Haverstraw and Orange County constitute another reason to include Orange County in the comparison used to identify an appropriate level of compensation.

The Employer reveals that the Village of Haverstraw experienced significant economic deterioration starting in the 1970's as reflected by the closing of certain factories, an exodus of young adults, the loss of a number of industries, vacancies along the waterfront area, and the loss of many jobs. The Employer describes that the taxes for residential properties have become disproportionately high when compared to the taxes of residential properties in other communities. As a consequence, the Employer reasons that persons contemplating purchasing such properties in the Village of Haverstraw ultimately decide that other communities offer better values for the same purchase price of comparable homes.

Under these circumstances the Employer contends that the Village of Haverstraw lacks an ability to pay the types of changes sought by the Union. The Employer requests that the Employer's position be sustained in accordance with the positions set forth below on each of the disputed issues.

## OPINION

### I. Introduction

The Public Arbitration Panel exists pursuant to a carefully drafted statutory scheme that reflects the policy of the State of New York to provide a mechanism to resolve certain impasses that arise during the collective bargaining process in public employment. The Panel is mindful of the important responsibility for the Panel to develop a just and reasonable determination of the matters in dispute. The Panel developed the determinations set forth below after carefully considering all of the relevant statutory factors. In doing so, the Panel understands that the statute omits any language or direction for the Panel to consider a particular factor to be controlling. As a result, the Panel evaluated all of the statutory factors to identify a just and reasonable determination of the matters in dispute.

In accordance with the statutory scheme that limits the duration of such an Award to two years and in accordance with the agreement between the parties, the Opinion and Award covers the period from June 1, 1997 to May 31, 1999.

### II. General Observations

Section 209.4 of the Civil Service Law sets forth the relevant factors for the Panel to consider, in addition to any other relevant factors, in making a reasonable determination concerning the disputed issues. In reviewing the record developed by the parties, the Panel considered the following factors.

### A. Comparative Data

A careful review of the record indicates that substantial evidence exists concerning the wages, hours, and conditions of employment of employees in police departments in other communities. The parties disagree about some of the specific departments that the Panel should include in the analysis. The Union stresses that only the communities with police departments in Rockland County should be considered. In addition to such communities in Rockland County, the Employer requests that the communities with police departments in Orange County also should be considered pursuant to the relevant statutory criteria.

The Panel underscores that the statute does not require that the comparison involve similar employees in "identical" communities. On the contrary, the statute directs the Panel to consider the treatment of similar employees in "comparable" communities. Although the record reflects that the Village of Haverstraw has a unique mix of characteristics, a careful analysis of the available data indicates that each municipality also has a unique mix of such characteristics. The statutory scheme recognizes this reality by providing appropriate latitude and discretion to the Panel by incorporating the "comparable community" standard rather than an "identical community" standard.

Arbitrator Joel Douglas previously addressed this issue in a recent interest arbitration concerning the neighboring jurisdiction of the Town of Haverstraw and the Town of Haverstraw

Police Benevolent Association:

Rockland County police departments by custom and long standing practice have utilized County comparability as a measure of comparison and have not looked to Westchester, Putnam or Orange County. Due to its geographical limitations as one of the smallest counties within New York State the County is relatively homogeneous and compact. Should the parties wish to alter their comparability understandings they are free to so negotiate but for the arbitrator to upset over twenty five years of bargaining history through an interest arbitration award and unilaterally revise comparability standards is unwarranted at this time.

(Interest Arbitration Award (January 18, 1997) (Douglas, J., Arb.) (Union Exhibit 3(B) at 7.)) The record omits sufficient evidence to persuade the Panel that the longstanding practice described by Arbitrator Joel Douglas and confirmed in the present record as well should be changed during the present interest arbitration proceeding.

The Panel is sensitive to the economic concerns credibly articulated by the Employer during this proceeding as the underlying basis for the Employer's effort to include certain police departments in Orange County in the mix of comparable municipalities. As set forth below, the Panel's sensitivity to the economic concerns of the Employer offsets and supersedes any potential adjustment, allowance, or modification that the Employer arguably would have achieved by expanding the scope of the comparable communities to include the municipalities in Orange County.

Specifically, the Panel finds that the documentary evidence

submitted by the parties concerning the jurisdictions of the riverfront communities in Rockland County proves that only the communities in Rockland County constitute comparable communities. Under the totality of the circumstances reflected in the record, the Panel finds that the following municipalities in Rockland County constitute the appropriate comparable communities because of their similar characteristics with the Village of Haverstraw such as proximity, suburban and residential characteristics, types of services provided to the residents, labor market location, the form of government, the income levels of the residents, the number of housing units, the number of reported crimes, the property values in the jurisdiction, the size of the department, the size of the jurisdiction, the size of the population, the tax rates (to the extent the parties furnished such information), and the other socio-economic information set forth in the record: Village of South Nyack-Grand View, Village of Piermont, Village of Spring Valley, Village of Suffern, Town of Clarkstown, Town of Haverstraw, Town of Orangetown, Town of Ramapo, and Town of Stony Point.

B. The Public Interest and the Employer's Financial Ability

A careful review of the record indicates that the interests and welfare of the public affected by the present proceeding include a compelling need to have essential police services provided by competent personnel. The delivery of police services in an appropriate, efficient, and financially responsible manner requires--among other things--the presence of trained

professionals. To attract and to retain such individuals in a department of government that must have an unquestioned reputation for integrity, the public interest requires that such personnel receive an appropriate level of compensation.

The record proves that the voters within the Village of Haverstraw defeated a proposition in 1996 to abolish the Police Department by a vote of 1418 to 629. (Union Exhibit 16(C).) Such a determination clearly expressed the public interest to maintain an independent police force for the Village of Haverstraw. This expression of the public will perforce committed the taxpayers within the Village of Haverstraw to provide just and reasonable wages, hours, and conditions of employment for the members of the bargaining unit. The Panel has considered these factors involving the public interest in reaching a just and reasonable determination of the dispute.

In doing so, the Panel bears an important responsibility to consider--as one factor in the overall determination--the financial ability of the Employer to pay the costs that arise in connection with such wages, hours, and conditions of employment. The record indicates that the Employer confronts ongoing financial pressures to balance the costs of operating a municipality with the ability of the taxpayers to meet their financial obligations to local government while also preserving their financial ability to live within the jurisdiction of the Employer.

The Panel is acutely aware of the information generated from

the 1990 census, which the Employer introduced into the record. Although such information is somewhat dated, the data indicates that the Village of Haverstraw has the second lowest median home value in Rockland County and the second lowest median family income in Rockland County. The Village of Haverstraw also has 10.7% of its families fall below the poverty line whereas only 4% of the families of Rockland County fall below the poverty line. (Employer Exhibit 2.)

The Panel notes that the taxable assessed value for the years from 1991 to 1998 has declined by 4.36% in the Village of Haverstraw. This downward trend heightens the burden on property owners, who must fund any increases in taxes on a decreasing tax base. (Employer Exhibit 3.) The Panel recognizes that additional valid concerns exist because of pending real estate tax certiorari claims. (Employer Exhibit 4.) The record substantiates that the tax rates have increased 57.97% in the Village of Haverstraw from 1991/1992 to 1997/1998. (Employer Exhibit 5.) The record proves that these developments have caused taxpayers in the Village of Haverstraw to bear a higher tax burden than certain property owners of property with similar prices in other municipalities. (Employer Exhibit 6 and Employer Exhibit 7.) The record evidence therefore proves to the Panel that any adjustments to the present level of wages, hours, and conditions of employment for the members of the bargaining unit must recognize in a just and reasonable way the limitations on the financial ability of the Employer to pay for such

adjustments.

At the same time, the record indicates that the Employer possesses the ability to generate revenue through the continuing exercise of the governmental power to levy taxes, through the receipt of revenue generated by local sales taxes, and through the receipt of certain state aid. In developing a just and reasonable determination of the matters in dispute, the Panel also has considered these circumstances.

C. Comparison of Job Characteristics

A careful review of the record in the present case indicates that the combination of the hazards of employment, physical qualifications, educational qualifications, mental qualifications, and job training and skills of police personnel collectively require especially talented individuals when compared to the positions that exist in other trades or professions. Unlike many other positions that require either physical qualifications and skills or mental qualifications and skills, the members of the bargaining unit must possess all of these attributes to perform their police functions in a proper manner. As a result, the treatment of employees who perform other municipal functions lacks the same degree of relevance as the treatment of police personnel. In developing a just and reasonable determination of the matters in dispute, the Panel has considered these factors.

D. Past Negotiated Agreements Between the Parties

A careful review of the record indicates that the parties

have succeeded in negotiating collective bargaining agreements for many years. The parties had to resort to interest arbitration to end their impasse for the period from June 1, 1986 through May 31, 1988 (Union Exhibit 2(B)) and in the present context. The substantive provisions of the June 1, 1995 to May 31, 1997 collective bargaining agreement therefore reflect the results of the longstanding history of the bilateral negotiations between the parties.

An interest arbitration panel must consider the public policy that favors collective bargaining and therefore must act with prudence before disturbing the decisions that the parties have made over an extended period of time during the collective bargaining process to fix the compensation and fringe benefits for the members of the bargaining unit. Similarly, an interest arbitration panel must respect the determinations by the parties with respect to provisions that affect the terms and conditions of employment of the members of the bargaining unit. The record omits any evidence that the public policy of the State of New York prefers interest arbitration as a permanent replacement for the collective bargaining process. An interest arbitration panel therefore must exercise considerable restraint before altering, changing, or disturbing the results of the actual agreements between the parties during successive rounds of successful collective bargaining.

### III. The Union Proposals

#### A. Duration

The introductory paragraph of the collective bargaining agreement sets forth the duration of the collective bargaining agreement. The parties agree that the Award shall cover the period from June 1, 1997 to May 31, 1999. In the absence of an agreement between the parties to extend the period for the Award to cover, the period from June 1, 1997 to May 31, 1999 constitutes the maximum period of time authorized by the statute for the interest arbitration award in the present matter. The Award shall so provide.

#### B. Salaries and Wage Increases

The Union seeks a 9% salary increase effective June 1, 1997 and a 9% salary increase effective June 1, 1998 to the base wages of the members of the bargaining unit. The Union also proposes to increase longevity payments from \$475 to \$750 per pay annum; to remove the limit of seven increments (Union Exhibit 19) or to change the limit of seven increments to a limit of ten increments (Joint Exhibit 1); to change the detective differential from 5% above the salary of a top grade Police Officer to 7.5% above the salary of a top grade Police Officer; to change the Sergeant differential from 12% above the salary of a top grade Police Officer to 15% above the salary of a top grade Police Officer; and to add a new provision to authorize employees to take any unused vacation days, personal leave days, or time due in cash rather than as time off with pay at the end of each fiscal year.

Except for certain aspects of the proposal to take accumulated time in cash rather than as time off with pay at the end of each fiscal year, the Employer opposes all of the Union proposals that have economic implications as being unaffordable. The Employer further claims that any increases will have an adverse economic impact on the municipality.

The record indicates that the current base wages for the members of the bargaining unit are:

Police Officer Grade 1	\$62,342
Police Officer 2	\$55,063
Police Officer 3	\$49,963
Police Officer 4	\$43,910
Police Officer 5	\$33,000 (certified)
	\$30,000 (non-certified)
Detective	\$65,769
Sergeant	\$70,445
Administrative Sergeant	\$77,489

(Union Exhibit 2(A) at 19.)

Providing police services constitutes arguably the most essential function the government of the Village of Haverstraw performs for its residents. The voters within the Village of Haverstraw recently voted in convincing and resounding numbers to retain the Police Department. Having done so, the voters have made a commitment to pay for the reasonable costs of providing such police services. As a consequence, concerns about the financial ability of the Employer to pay for any reasonable and just changes to the existing provisions of the collective bargaining agreement fail to justify placing a disproportionate burden on the members of the police bargaining unit to forego appropriate adjustments to their base wages and their overall

compensation.

A municipal employer acts at its peril in failing to engage in strategic planning to anticipate the distinct and predictable possibility that an interest arbitration panel may conclude that the members of a police bargaining unit should receive an adjustment to the base wage rate. The record indicates that an unexplained increase of an additional \$100,000 appeared in the 1998/99 adopted budget of the Employer in the Contingent Account (A1990.4). (Union Exhibit 17.) This entry appears on its face to constitute budgeted funds for an interest arbitration award that would provide an increase to the base wage rates of the members of the bargaining unit. The Employer failed to rebut this assertion by the Union. The record also includes probative evidence that the Employer's annual contribution to the New York State and Local Police and Fire Retirement System for the fiscal year ending on March 31, 1999 amounted to \$87,486 whereas the contribution for the fiscal year ending on March 31, 1998 amounted to \$168,425. (Compare Union Exhibit 18(A) with Union Exhibit 18(B).) Insofar as the Employer had budgeted \$151,275 for the police/fire retirement contribution for the 1998/99 fiscal year, the record indicates that the excess amount of \$63,789 (the difference between \$151,275 and \$87,486) remained in the budget. The Employer failed to rebut this conclusion. Thus the record contains some indications that the Employer may have the ability to transfer funds from different existing accounts under the ultimate control of the Employer to fund the costs of

adjustments to the base wage rates of the members of the bargaining unit.

The record further substantiates that the Employer elected to maintain the level of services provided to the residents within the Village while also reducing the tax rate for the 1997/98 fiscal year by 2.5%. This effort to stabilize the effect of taxes on the taxpayers occurred after the Employer had raised taxes during the 1996/97 fiscal year by 26.56%. (Employer Exhibit 5.)

The effort by the Union to obtain wage increases for the members of the bargaining unit exists against this backdrop. The Union points to the range of increases that members of the police departments in the jurisdictions in Rockland County have received. Such increases have included the following:

<u>Municipality</u>	<u>1997</u>	<u>1998</u>
Piermont	4% (2%+2%)	4% (2%+2%)
Spring Valley	3.5%	3.5%
Clarkstown	4% (2%+2%)	3.5%
Haverstraw (Town)	3.75%	
Orangetown	4.25% (2.25%+2%)	
Ramapo	4.25% (2.25%+2%)	
Stony Point	3%	3%

The Employer failed to dispute such increases and, instead, reiterated the inability of the Employer to pay any increases to the members of the bargaining unit.

The Panel is sensitive to the genuine concerns of the parties. In applying the statutory factors to identify a just and reasonable determination, the Panel finds that the Employer lacks an ability to pay a wage increase that reflects all of the

increases that have occurred in other comparable jurisdictions. Based on all of the available economic data contained in the record, however, the Panel finds that a sufficient ability to pay exists to provide for measured, modest, and responsible wage adjustments that will enable the members of the bargaining unit to remain competitive with police personnel in other comparable departments while not unjustly or unreasonably burdening the taxpayers, who ultimately must fund such limited increases. The Panel also notes that the Employer's final budget for the June 1, 1998 to May 31, 1999 fiscal year reflects a 7% increase in compensation over two years for the Police Justice, a 70% increase in compensation over two years for the Mayor, a 7% increase in compensation over two years for the Treasurer, and a 7% increase in compensation over two years for the Clerk even though the cost of living for 1997 increased only 2.6% and the cost of living for 1998 (November to November) increased only 1.6%. (Compare Union Exhibit 17 with Employer Exhibit 9.)

The Employer must recognize that providing police services to the taxpayers and members of the community unavoidably involves a major cost item for the Employer. Under the statutory factors the ability of the Employer to pay does not constitute the controlling factor to determine a proper resolution of the dispute. The needs of the bargaining unit members also must receive appropriate consideration. As a result, the adjustment to base wages must occur within the context of all of the required statutory factors within the Panel's limited authority.

to develop an award that covers a maximum of two years.

Under all of these special circumstances, the Panel finds that the base wages for the members of the bargaining unit shall be increased as follows: a 1.90% retroactive increase to the base wages in effect on June 1, 1997; a 1.95% retroactive increase to the base wages in effect on December 1, 1997; a 2.00% retroactive increase to the base wages in effect on June 1, 1998; and a 2.05% retroactive increase to the base wages in effect on December 1, 1998. The members of the bargaining unit who worked at any time during the period covered by this Award shall be eligible for the retroactive payments for the time that they worked.

The carefully staggered timing and the specific percentages of these adjustments provide significant and appropriate recognition of the Employer's financial pressures by substantially reducing--but not eliminating--the actual costs to the Employer during the years covered by the Award. Within the confines and restrictions of the limited jurisdiction of the interest arbitration Panel to render an award that covers a maximum of two years, this approach reduces the immediate costs to the Employer on a temporary basis without unduly penalizing the employees in the future. In addition, the Union's requests to increase longevity payments from \$475 to \$750 per pay annum; to remove the limit of seven increments (Union Exhibit 19) or to change the limit of seven increments to a limit of ten increments (Joint Exhibit 1); to change the detective differential from 5%

above the salary of a top grade Police Officer to 7.5% above the salary of a top grade Police Officer; and to change the Sergeant differential from 12% above the salary of a top grade Police Officer to 15% above the salary of a top grade Police Officer are denied as being beyond the ability of the Employer to pay at the present time and therefore inappropriate within the overall context of the statutory requirements.

The Union also proposes to add a new provision to authorize employees to take any unused vacation days, personal leave days, or time due in cash rather than as time off with pay at the end of each fiscal year. The Employer indicated a willingness to permit employees to take any unused vacation days and personal leave days in cash rather than as time off with pay at the end of each fiscal year. The Employer opposed extending this option to any other days or time due. The Panel finds that the following language shall be added to the end of Article 7 of the collective bargaining agreement:

7.6 All bargaining unit members shall have an option to take any unused vacation days and/or personal leave days in cash rather than as time off with pay at the end of each fiscal year.

The Award shall reflect all of these conclusions.

### C. Uniforms

Article 6 of the collective bargaining agreement contains certain provisions concerning uniforms. The Union proposes to increase the annual uniform and cleaning allowance from \$950 to \$1350 and to conform the payment schedule to reflect the

increased allowance. The Employer opposes any modification as being unaffordable. On the basis of the Employer's financial condition and within the overall context of the statutory requirements, the Panel finds that Article 6 shall remain unchanged. The Award shall so indicate.

D. Vacation and Holiday

Article 7 of the collective bargaining agreement contains certain provisions concerning vacations and holidays. Article 7.1 currently contains the following vacation schedule:

<u>Years of Service</u>	<u>Work Days Vacation</u>
After 1 year	14
After 3 years	17
After 5 years	23
After 8 years	26
After 10 years	27
After 13 years	30

The Union proposes to amend the vacation schedule as follows:

<u>Years of Service</u>	<u>Work Days Vacation</u>
0-1 year	0
After 1 year	17
After 3 years	19
After 5 years	23
After 10 years	30

The Union further proposes to add Martin Luther King, Jr. Day as a thirteenth holiday; to increase the present five days of personal leave per year to seven days per year, to eliminate the discretion of the Chief of Police or his designate in approving personal leave, and to eliminate the restriction that personal leave shall not be granted to increase vacation time. The Employer opposes any modification as being unaffordable. On the basis of the Employer's financial condition and within the overall context of the statutory requirements, the Panel finds

that Article 7 shall remain unchanged. The Award shall so indicate.

E. Overtime

Article 8 of the collective bargaining agreement contains certain provisions concerning overtime. The Union proposes to increase the minimum recall provision from 2 hours to 4 hours. The Union contends that the members of the bargaining unit receive the lowest minimum recall of any Police Department in Rockland County. (Union Exhibit 27.) The Employer opposes any modification as being unaffordable. In the context of the overall record and particularly based on the Employer's financial condition, the Panel finds that Article 8 shall remain unchanged. The Award shall so indicate.

F. Sick Leave

Article 11 of the collective bargaining agreement contains certain provisions concerning sick leave. The Union proposes to change Article 11.4, which provides:

Upon retirement, a police officer shall be entitled to a cash payment of 12.5% of 130 sick days, at pay rate in effect at time of retirement; provided the officer has reached 130 sick days. Additional accumulated sick days in excess of 130 days shall be paid to the retiring officer in cash at retirement, at pay rate in effect at time of retirement.

The Union seeks the following amendment:

Upon retirement or death of a police officer, or in the event the Police Department is abolished, a police officer shall be entitled to a cash payment of 100% of their accumulated sick days at the pay rate in effect at the time of retirement, death or abolishment.

The Employer opposes any modification as too costly. Based on the Employer's financial condition and within the overall context of the statutory requirements, the Panel finds that Article 11 shall remain unchanged. The Award shall so indicate.

#### G. Dental Plan

Article 13 contains a dental plan benefit. The Union proposes that the Employer pay the entire annual contribution of \$835 for a married employee and \$351 for a single employee. The Employer pays \$500 for a married employee and \$250 for a single employee and opposes any change as too costly. Based on the Employer's fiscal condition and the other statutory requirements, the Panel finds that effective June 1, 1998 the Employer's annual contribution shall be \$700 for a married employee and \$350 for a single employee. The Award shall so indicate.

#### H. College Credit Reimbursement

Article 17 of the collective bargaining agreement provides for a maximum total tuition reimbursement in any one year of \$1200 for the entire bargaining unit. The Union proposes to increase the maximum amount for tuition reimbursement in any one year to \$1200 per employee. The Employer opposes any modification as being unaffordable. The record lacks any evidence that the members of the bargaining unit have incurred tuition expenses beyond \$1200 for the entire bargaining unit. In the absence of such probative evidence and on the basis of the Employer's financial condition, the Panel finds that Article 17 shall remain unchanged. The Award shall so indicate.

I. Work Schedule and Conditions

Article 24 of the collective bargaining agreement contains certain provisions concerning the work schedule and conditions.

The Union proposes to add the following new provision:

All police officers who work between 1600 and 2400, and 2400 and 0800, shall be entitled to a ten percent (10%) pay differential for such hours worked.

The Employer opposes such a pay differential as being unaffordable. On the basis of the Employer's financial condition and within the overall context of the statutory requirements, the Panel finds that Article 24 shall remain unchanged. The Award shall so indicate.

J. Officer-in-Charge Compensation

The Union proposes to add the following new article:

Any police officer, designated officer in charge, when no one of the rank of sergeant or higher is also assigned and working on the full shift and in radio contact with headquarters, shall be paid at the sergeant's rate. If a sergeant or higher-ranked individual cannot work the entire shift because of illness or injury during that shift, or provided that such sergeant or higher-ranked individuals elects to take authorized leave for part of that shift, then, the officer working the desk or designated officer in charge shall be paid at the sergeant's rate for time actually worked on that shift.

The Employer opposes the addition of this provision as being too costly. The record, however, includes a Judgment of the Special Term of the Supreme Court for the County of Rockland in the State

of New York by Justice Robert R. Meehan in which the court enjoined the Chief of Police and the Village Board of the Village of Spring Valley "from requiring patrolmen to serve in the out-of-title position of officers-in-charge in non-emergency situations . . . ." (Union Exhibit 32.) The Panel finds that fundamental fairness requires that bargaining unit members who actually assume responsibilities at a higher level because of the absence of a higher-ranked officer in a position of supervision shall receive appropriate compensation at the sergeant rate of pay. As a consequence, the Award shall provide on a retroactive basis for a new article as follows:

Any police officer, designated Officer-in-Charge in the discretion of the Chief of Police or his designee, when no one of the rank of sergeant or higher is also assigned and working on the full shift, shall be paid at the sergeant's rate. If a sergeant or higher-ranked individual cannot work the entire shift because of illness or injury during that shift, or provided that such sergeant or higher-ranked individual elects to take authorized leave for part of that shift, then, the officer working the desk or designated Officer-in-Charge in the discretion of the Chief of Police or his designee shall be paid at the sergeant's rate for time actually worked on that shift.

K. Maternity/Child Care Leave

The Union proposes to add the following new provision:

Any police officer, male or female, shall be entitled to six months paid leave for the preparation of the birth of a child or the

adoption of a child. This six month period shall also include child care after the birth or adoption of such child.

The Employer opposes this new provision as being unaffordable. The record reflects that only one other jurisdiction within Rockland County (Town of Clarkstown) has a maternity/child care benefit. (Employer Exhibit 22.) On the basis of the Employer's financial condition and within the overall context of the statutory requirements, the Panel finds that the new article shall not be added. The Award shall so indicate.

#### L. Union Released Time

The Union proposes to add the following new provision:

The President and Vice-President of the Haverstraw Village Police Benevolent Association shall be entitled to eighty (80) hours of release time each for attendance at union related business including, but not limited to, local, county and state association meetings and conventions.

The Employer opposes this new provision as being unaffordable. On the basis of the Employer's financial condition and within the overall context of the statutory requirements, the Panel finds that the new article shall not be added. The Award shall so indicate.

### IV. The Employer Proposals

#### A. Length of Contract

In its Response to Petition for Interest Arbitration, the Employer proposed that the duration of the contract should be for three years subject to cancellation if the department is consolidated or abolished. The Union opposes the proposal. As

previously discussed, in the absence of a joint agreement, the Panel lacks the right to render an Award for a period longer than two years. As the Award will be retroactive, the Employer proposal about a possible consolidation or abolishment of the department is moot. The Award shall so indicate.

B. Salaries and Wage Increases

As previously discussed, the Employer opposes any increases to the salaries of the members of the bargaining unit. The Employer further opposes any longevity for new hires, any change in the number of increments, and any changes in the Sergeant and Detective differentials. The Employer's demands are granted with respect to any changes in the Sergeant and Detective differentials; the longevity provisions shall remain unchanged; and the salary shall be changed consistent with the prior discussion under the Union Proposal titled "B. Salaries and Wage Increases." The Award shall so provide.

The Employer accepts that all officers should have the option to take all unused vacation days and personal leave days in cash at the end of each year, but not for any other days or time due. The Award shall so provide.

C. Uniforms

The Employer seeks to reduce the uniform allowance in Article 6 to \$375 every six months. The Union opposes this proposal. As previously discussed, this provision shall remain unchanged. The Award shall so indicate.

D. Vacation and Holiday

The Employer proposes to change the vacation provision in Article 7 for new hires as follows:

<u>Years of Service</u>	<u>Work Days Vacation</u>
0-1	0
After 1 year	12
After 3 years	15
After 5 years	20
After 10 years	25
After 15 years	30

The Employer specifies that no vacation or holiday changes should occur for existing officers; Martin Luther King, Jr. Day should be added while Washington's Birthday and Lincoln's Birthday should be combined to one President's Day; personal leave shall remain as 5 days per year; bereavement days should be reduced from four days to three days upon the death of a spouse, child or children, brother, sister, mother, father or grandparents; and all holidays and personal leave shall be taken in the year incurred or paid in cash with no carryover. As previously discussed, the existing provisions shall remain unchanged. The Award shall so indicate.

E. Overtime

The Employer proposes to change Article 8 by removing priority for full-time civil service Police Officers for overtime pay over provisional or part-time employees. The Employer contends that the minimum recall pay shall remain at 2 hours. The Union opposes the change to the overtime priority provision and, as previously discussed, seeks to increase the minimum recall pay to 4 hours. (Union Exhibit 27.) No justification

exists to change Article 8. The Award shall so indicate.

F. Hospitalization and Medical Plan

The Employer proposes to have all new employees pay 20% of the total cost of all medical benefits for the first five years; the Employer shall pay 100% of such costs thereafter; and no new provision shall be added concerning continuation of medical benefits for families of deceased officers. The Union opposes these changes as inappropriate. No justification exists to treat new employees differently than current employees in this regard or to change Article 9.1 in any way. The Award shall so indicate.

G. Sick Leave

The Employer proposes to amend Article 11 to provide one sick day each month; to permit each officer to accumulate up to 160 sick days which will then be added to each officer's service time for pension purposes at the time of retirement; to reduce sick days for family members from 10 days to 5 days; to change the existing provision in Article 11.4 so that at retirement any unused sick days up to 160 may be added to the officer's time of service for pension purposes; and to delete additional money for Police Officer's not being sick in Article 11.5 and in Article 11.6. The Union opposes these changes. The record lacks any justification for these changes at the present time. The Award shall so indicate.

H. Other Proposals

The Employer proposes the following: to reduce the

Employer's contribution for the eye glass plan to \$100 per Police Officer per year; to retain the present dental plan provision; to place one new police vehicle in service every 18 months instead of the current requirement in Article 14 to place one new police sedan in service each fiscal year; to discuss language for a vehicle maintenance agreement including for Police Officers to pay for damages for breakdowns caused by abuse; to have Police Officers receive straight time for firearms training; to retain the present provision for college tuition reimbursement; to retain the present provision concerning retirement; to eliminate Article 22.1 and Article 22.2 that restrict the Employer's ability to reduce full-time Police Officers while retaining part-time Police Officers; and to change the work schedule from 1944 hours to 2088 hours by changing to a 5-2 schedule. The Employer opposes any new provision in Article 24 concerning a 10% pay differential; six months off for birth preparations; any increase in salaries; any released time for Union business; and any new hand gun provision. The Employer is willing to discuss the present policy concerning Officer-in-Charge compensation. Consistent with the previous discussions, no other changes to the existing provisions nor the addition of any other new provisions are warranted under the present circumstances.

With respect to the Employer's proposal concerning a reduction of full-time Police Officers, the November 1996 Administrative Study Final Report concerning the Village of Haverstraw Police Department prepared by the New York State

Division of Criminal Justices Services Office of Public Safety-  
Bureau for Municipal Police Law Enforcement Services Unit  
specifically found that the Employer should add 9 new Police  
Officers and 1 new Lieutenant. Based on this study the record  
omits any justification to change any provision of the collective  
bargaining agreement that may potentially reduce the full-time  
staffing level within the Police Department. (Union Exhibit  
36(A).)

#### V. Conclusion

The Public Arbitration Panel has considered the relevant  
statutory factors set forth in the Civil Service Law to develop a  
just and reasonable Award based on the precise record in the  
present matter with appropriate restraint, detachment, and  
impartiality. In doing so, the Panel carefully evaluated and  
followed the relevant statutory factors with a sensitivity to the  
concerns of the members of the bargaining unit about their terms  
and conditions of employment; with a sensitivity to the concerns  
of the Employer to operate a municipality; and with a particular  
sensitivity to the taxpayers, who ultimately provide the economic  
wherewithal to fund a collective bargaining agreement. The Panel  
also recognizes that a collective bargaining agreement generates  
an overall economic cost to the Employer and provides an overall  
economic value to the members of the bargaining unit. The Award  
therefore reflects the judgment of the Panel with respect to all  
of the provisions of the collective bargaining agreement taken as  
a whole. The rights of the parties are expressly reserved to

address all of the issues arising during this proceeding during future collective bargaining negotiations.

The Public Arbitration Panel specifically rejects any proposal by either party that the Opinion and Award fails to address. All terms and conditions of employment set forth in the expired collective bargaining agreement that the Opinion and Award do not affect shall remain unchanged. The Public Panel Member prepared this Opinion.

Accordingly, the Undersigned, duly designated as the Public Interest Arbitration Panel and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

1. The duration of the interest arbitration award shall be from June 1, 1997 to May 31, 1999.

Concur

RB AB

Dissent

2. The base wages for the members of the bargaining unit shall be increased as follows: a 1.90% retroactive increase to the base wages in effect on June 1, 1997; a 1.95% retroactive increase to the base wages in effect on December 1, 1997; a 2.00% retroactive increase to the base wages in effect on June 1, 1998; and a 2.05% retroactive increase to the base wages in effect on December 1, 1998. The members of the bargaining unit who worked at any time during the period covered by this Award shall be eligible for the retroactive payments for the time that they worked.

Concur

RB

Dissent

AB

3. With respect to the Union's requests to

increase longevity payments from \$475 to \$750 per pay annum; to change the number of increments; to change the detective differential from 5% above the salary of a top grade Police Officer to 7.5% above the salary of a top grade Police Officer; and to change the Sergeant differential from 12% above the salary of a top grade Police Officer to 15% above the salary of a top grade Police Officer, no changes shall occur.

Concur RB

Dissent RB

4. With respect to the Union proposal concerning Article 6 relating to uniforms, no changes shall occur.

Concur RB

Dissent RB

5. With respect to the Union proposal concerning Article 7 relating to vacations and holidays, no changes shall occur except that Article 7 shall include the following new provision:

7.6 All bargaining unit members shall have an option to take any unused vacation days and/or personal leave days in cash rather than as time off with pay at the end of each fiscal year.

Concur RB RB

Dissent \_\_\_\_\_

6. With respect to the Union proposal concerning Article 8 relating to overtime, no changes shall occur.

Concur RB

Dissent RB



illness or injury during that shift, or provided that such sergeant or higher-ranked individuals elects to take authorized leave for part of that shift, then, the officer working the desk or designated Officer-in-Charge in the discretion of the Chief of Police or his designee shall be paid at the sergeant's rate for time actually worked on that shift.

The Panel shall retain jurisdiction regarding any disputes that may arise concerning the implementation of this provision on a retroactive basis.

Concur RB

Dissent ZAS

12. With respect to the Union proposal to add a new provision concerning Child Care Leave or Maternity Leave, no changes shall occur.

Concur ZAS

Dissent RB

13. With respect to the Union proposal to add a new provision concerning Union released time, no changes shall occur.

Concur ZAS

Dissent RB

14. With respect to the Employer's proposals concerning salaries, longevity, increments, Sergeant and Detective differentials, and the option to take certain unused time in cash at the end of each year, no changes shall occur except to the extent previously discussed and provided for in the context of the relevant Union proposals set forth above.

Concur RB

Dissent ZAS

15. With respect to the Employer's proposal concerning Article 6 relating to uniforms, no changes shall occur.

Concur RB

Dissent 

16. With respect to the Employer's proposals concerning Article 7 relating to vacations and holidays, no changes shall occur.

Concur RB

Dissent 

17. With respect to the Employer's proposal concerning Article 8 relating to overtime, no changes shall occur.

Concur RB

Dissent 

18. With respect to the Employer's proposal concerning Article 9 relating to hospitalization and the medical plan, no changes shall occur.

Concur RB

Dissent 

19. With respect to the Employer's proposal concerning Article 11 relating to sick leave, no changes shall occur.

Concur RB

Dissent 

20. With respect to the Employer's proposals to reduce the Employer's contribution for the eye glass plan to \$100 per Police Officer per year; to place one new police vehicle in service every 18 months; to have Police Officers receive straight time for firearms training; to eliminate Article 22.1 and Article 22.2 (which restricts the Employer's ability to reduce full-time Police Officers while retaining part-time Police Officers); and to change the work schedule from 1944

hours to 2088 hours by changing to a 5-2 schedule, no changes shall occur.

Concur RB

Dissent [Signature]

21. With respect to the Employer's proposal opposing any new hand gun, no changes shall occur.

Concur RB

Dissent [Signature]

[Signature]  
Robert L. Douglas  
Public Panel Member

DATED: ~~August~~ <sup>September</sup> 22, 1999  
STATE of New York)ss:  
COUNTY of NASSAU )

On this 22 day of ~~August~~ <sup>September</sup> 1999, before me personally came and appeared Robert L. Douglas, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

[Signature]  
SHARON BARRY  
Notary Public, State of New York  
No. 019A8083214  
Qualified in Nassau County  
Commission Expires Sept. 15, 2001

[Signature]  
Ronald A. Longo  
Public Employer Panel Member

DATED: August , 1999  
STATE of New York)ss:  
COUNTY of West. ) <sup>sept.</sup>

On this 0 day of ~~August~~ 1999, before me personally came and appeared Ronald A. Longo, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

[Signature]  
PATRICIA A. BAER  
Notary Public, State of New York  
No. 01BA5054122  
Qualified in Westchester County  
Commission Expires January 8, 1998  
2000

*Richard P. Bunyan*

Richard P. Bunyan  
Employee Organization Panel Member

DATED: August , 1999  
STATE of New York)ss:  
COUNTY of Rockland )

On this 25 day of August 1999, before me personally came and appeared Richard P. Bunyan, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

*Lorraine Vara*

01V6022680  
LORRAINE VARA  
NOTARY PUBLIC STATE OF NEW YORK  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES APRIL 3, 2001

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X  
In the Matter of the Arbitration between

The Haverstraw Village Police Benevolent Association

-and-

The Village of Haverstraw  
-----X

Concurring Opinion of  
Public Employee Panel Member  
Case No. IA97-034

As the Public Employee's representative on the Interest Arbitration Panel in this matter, I hereby concur in the award and respectfully submit this separate opinion in order to further illustrate that the majority opinion in this matter is sound and consistent with the statutory criteria contained in §209 of the Act. For purposes of this concurring opinion I would like to concentrate on those portions of the award which deal with comparable communities, salary increases, dental insurance, out-of-title pay, and jurisdiction.

*Comparable Communities*

The majority of the panel recognizes that the purposes of determining comparable jurisdictions, the Village of Haverstraw should be compared to other police departments in Rockland County. The Union's argument was based upon a theory that since the inception of collective bargaining, the police departments in Rockland County have traditionally considered the other police departments in the County to be appropriate comparables. In fact, the Chairman referred to Union Exhibit 3B wherein Arbitrator Joel Douglas, when writing the Interest Arbitration Award for the Town of Haverstraw P.B.A. dated January 18, 1997, indicated that "Rockland County police departments by custom and longstanding practice have utilized County comparability as a measure of comparison and have not looked to Westchester, Putnam or Orange County". Indeed, Arbitrator Joel Douglas stated that the parties could alter their comparability understandings

circumstances. This is supported by the fact that the Village of Piermont received a 4% increase split with a 2% increase effective 6/1/97 and a 2% increase effective 12/1/97. In 1998 they received an additional 4% raise in 1998 which was split as follows: 2% on 6/1/98 and 2% effective 12/1/98. The Village of Spring Valley received 3.5% on 6/1/97 and 3.5% on 6/1/98. The Town of Clarkstown received a 4% increase in 1997 split as follows: 1/1/97 2%, 7/1/97 2%. For 1998 the Town of Clarkstown received a 3.5% increase. In Haverstraw Town, for 1997 those police officers received a 3.75% increase. As of the close of the record no data was available for 1998. The Town of Orangetown received a 4.25% increase for 1997 which was split as follows: 2.25% on 1/1/97 and an additional 2% effective 7/1/97. As of the close of the record there was no information available for 1998. The Town of Ramapo police department received a 4.25% increase in 1997 split as follows: 2.25% increase effective 1/1/97 and a 2% increase effective 7/1/97. No data was available for 1998. Stony Point police officers received a 3% increase on 1/1/97 and an additional 3% increase on 1/1/98. Therefore, awarding salary increases as the majority did in this matter, is clearly consistent with those salary increases awarded to other police departments in the County of Rockland. To say that there is no support in the record to award these salary increases, is simply baseless.

### *Dental Insurance*

The panel majority awarded an increase for family dental insurance coverage from the current \$500.00 per year to \$700.00 per year. In addition, the panel majority increased the employer's obligation with regard to individual employees from \$250.00 to \$350.00 per year. The Union presented evidence at the hearing, which indicated that members of the bargaining unit who had family coverage paid \$29.35 per month for dental insurance. Similarly, single members of the bargaining unit had to pay \$9.25 per month. Thus, although we would have preferred to have the

majority transfer the entire burden for dental premiums to the employer, we once again believe that this is a fair settlement to the issue of dental insurance premiums.

### *Out-Of-Title Pay*

The majority included in the award a provision which requires that a police officer who is designated officer-in-charge when no one of the rank of sergeant or higher is assigned to that shift, be paid at the sergeants rate of pay for the time they actually worked on that shift. The adoption of this proposal is, as the Chairman indicated, an issue of fundamental fairness. It is simply unjustifiable to run a tour of duty in a police department, with all its attendant possible liabilities, without supervision. However, the employer in this case has decided to do so. Therefore, quite logically the Union has decided to request additional compensation for an officer on each tour of duty that was not started with a superior officer. It just makes sense to compensate a civil servant when that individual is required to perform duties, which are normally performed by someone of a superior rank or title.

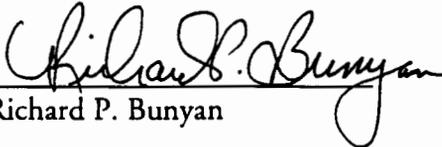
Although the Village would have you believe that there is no evidence in the record to support such an award, in fact there is evidence in the record which establishes that this should be done because a comparable community, specifically the Town of Haverstraw has such a provision.(See Union Exhibit 3A p.2). Therefore, if you look at the record as a whole and acknowledge that the Town of Haverstraw has an out-of-title provision, as well as the Village of South Nyack/Grandview, and combine that with a common sense approach that no civil servant should work in a higher grade without the commensurate compensation, then the determination in this matter was just.

### Jurisdiction

The employer panel member in this case has raised the issue of jurisdiction with respect to the majority's opinion, which contained the provision, which states "The panel shall retain jurisdiction regarding any disputes that may arise concerning the implementation of this provision on a retro-active basis". The panel specifically limited their retention of jurisdiction in order to facilitate the process of settling any disputes regarding who should receive the out-of-title pay and under what circumstances it should be paid. Since there is obviously a required task which will result from this award necessitating the employer and the union to verify dates and shifts which were not covered by supervisors, in order to determine the retro-active application of this provision, and since this panel has heard and reviewed the arguments in this case, judicial economy and comity dictate that this retention of jurisdiction is appropriate. It is my belief that not only does this make sense, but it is also consistent with law under the Triboro Doctrine. While the Village may object and argue that this panel only has jurisdiction for a two (2) year period, the parties can take notice that this award is fully retroactive and in the terms of which will have already expired on May 31, 1999. However, under the Triboro Doctrine all terms and conditions contained in prior agreements and awards, must be maintained until such time a successor agreement is entered into. Therefore, rather than have a grievance arbitrator decide these issues *de novo* no one can argue that any disputes concerning the interpretation or implementation of this provision should go back to the panel who in fact imposed this contract language.

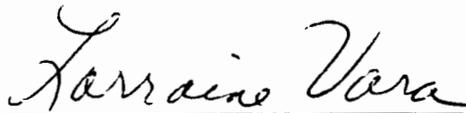
Conclusion

Although the Union in this case was hoping to accomplish more than a majority of this panel awarded, based upon the totality of the facts and circumstances in this case, the undersigned hereby concurs with the panel chairman.

  
Richard P. Bunyan

Dated: Blauvelt, New York  
September 15, 1999

On this 16<sup>th</sup> day of September, 1999 before me, the undersigned, personally appeared Richard P. Bunyan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person on behalf of which the individual acted, executed the instrument.

  
Notary Public

**01VAG022000**  
**LORRAINE VARA**  
NOTARY PUBLIC STATE OF NEW YORK  
QUALIFIED IN ROCKLAND COUNTY  
COMMISSION EXPIRES APRIL 5, 2001

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X  
In the Matter of the Arbitration between  
The Haverstraw Village Police Benevolent  
Association

-and-

The Village of Haverstraw  
-----X

**DISSENTING OPINION OF  
PUBLIC EMPLOYER PANEL  
MEMBER**

Case No. IA97-034

The undersigned was designated as the Public Employer Panel Member in accordance with §209.4 of the Civil Service Law with regard to the above captioned matter. I attended both arbitration sessions as well as the executive session of the panel held on March 11, 1999. Upon review of the opinion and award of the panel as authored by its chairperson, as well as a further review of record, I am constrained to issue this dissenting opinion with regard to a portion of the findings and award of the majority of panel received by me on August 23, 1999. Specifically, I dissent as to that portion of the opinion and award which pertains to base wages as set forth in paragraph 2 of the award, that portion of the award which deals with the Union's proposal to change the dental insurance provisions of the PBA contract found in paragraph 8 of the award and to add a new article relating to Officer-in-Charge Compensation found in paragraph 11 of the award. Accordingly, as to the panel's award on these issues, and, additionally, its finding, as set forth in Section II(A) of the opinion, as to what municipalities constitute "comparable" communities pursuant to §209.4(v)(a) of the Act, the undersigned respectfully dissents based upon the following opinion.

I. Comparable Communities

As noted in the majority opinion (Section I, p.6), the panel exists pursuant to a carefully drafted statutory scheme which sets forth particular factors established by the State Legislature

which form the basis for an interest arbitration award. The parties differ with regard to which municipalities should be considered “comparable communities” within the meaning of the Taylor Law. The Union posited the position that municipalities within the County of Rockland should be the only municipalities considered for purpose of determining “comparables”. The Employer put forth significant data with regard to communities within Rockland County, but also communities within southern Orange County, referencing their close geographic proximity to the Village of Haverstraw. It argued that the artificial county line should not act as a barrier to the consideration of such communities when analyzing terms and conditions for police officers. The Union’s argument was based solely upon a theory that could be best summed up as “this is the way we always do it”. The Panel ultimately subscribed to this theory, quoting the opinion of Dr. Joel Douglas in a recent arbitration award in the Town of Haverstraw. While the panel suggests that the Record omits sufficient evidence to persuade it that this theory should be followed, this finding is not only inconsistent with the record but also inconsistent with law.

The portion of Dr. Douglas’s award cited by the panel indicates that the parties are free to “negotiate” a different understanding of “comparability”. This panel has, by citing that section of the award, adopted this rationale to support its finding which is crucial to the substantive determinations made by it. Respectfully, this approach is faulty and inconsistent with the Statute. The Statute lays it upon the panel to determine comparability when the negotiation process does not result in a contract. By taking the approach that the majority takes, it has not met its obligation under the statute. Further, there is absolutely no evidence in the record before this panel of any “longstanding bargaining history” of twenty-five (25) years that would reflect that Rockland County is the only standard that the parties have ever used.

While the majority of the panel suggests that the record lacks sufficient evidence to persuade it that Orange County communities are “comparable”, a reading of the record would suggest otherwise. A perfect example is the Orange County municipality of Port Jervis. Employer Exhibit “8” reflects that the population of both the Village of Haverstraw and Port Jervis are almost identical. Employer Exhibit “25” reflects that Port Jervis has twenty-seven (27) full time police officers, whereas the Village of Haverstraw has twenty-three (23). Further, Union Exhibit “14” reflects that the record of detentions in 1997 in Port Jervis was roughly twice as high as the detentions in the Village of Haverstraw. Yet, with this information, the panel finds that the fact that a police officer in Port Jervis makes \$39,532 at maximum step, approximately 60% less than his/her counterpart in the Village of Haverstraw, is irrelevant. If these facts in the record do not support a finding that municipalities such as Port Jervis are comparable, it is then difficult to understand the panel’s thinking as to why Piermont and South Nyack, roughly the same geographic distance away from Haverstraw as Port Jervis, are comparable when these departments only have six police officers and do not even have a lock-up.

It is interesting to note that the dollars of assessed value per capita for the Village of Haverstraw and Port Jervis are quite similar (Employer Exhibit “8”). Conversely, the same cannot be said with regard to any municipality in Rockland County other than possibly Spring Valley. Yet, the Town of Clarkstown with a population of 80,000 and an assessed value per capita two and one-half times that of Haverstraw is found to be comparable. It is respectfully submitted that while the panel’s determination may be the easy one, it is wrong as it is not supported by the record or the Statute.

## II. Base Salary

The panel makes the following findings and award with regard to base salary for the term in question:

- 1.90% retroactive increase to June 1, 1997.
- 1.95% retroactive increase to December 1, 1997.
- 2.0% retroactive increase to June 1, 1998.
- 2.05% retroactive increase to December 1, 1998.

As the term of the award has expired as of the issuance of the majority of opinion, the effective increase on the salary schedule is 3.89% compounded for 1997-98 and 4.1% compounded for 1998-99. The award results in a increase in the base salary of 8.14% as of the issuance of the award during a period when the cost of living increased approximately 4.5%. Simply stated, there is no basis to support the increases awarded by the panel.

The panel's award with regard to 1998 would, by its own admission, generate the highest percentage increase among the jurisdictions that it deems comparable. (See page 17 of the majority opinion). The panel has discounted the employer's argument with regard to ability to pay and has awarded the highest salary schedule increase in Rockland County by reference to a one shot savings resulting from a decrease in contributions to the New York State Retirement System. Such a finding is not only unsound, since the impact of the award will affect the Village for decades to come, but is also inconsistent as the panel has ignored increased premiums in other areas as a basis for change (i.e., health insurance – See Employer Exhibit "12").

Most troubling though, is the unwillingness of the panel to do what the record indicates must be done -- to recognize the Village's relative standing within comparable communities that the panel suggests is the appropriate universe for the purposes of this award. While the panel indicates that the employer failed to dispute the increases obtained in such places as Clarkstown,

Orangetown and Piermont ( which it could not dispute as they were factual), the Union failed in any way to dispute that the ability of the Village of Haverstraw to pay is not the same as Piermont, Clarkstown, Orangetown, Ramapo or Stony Point. The record reflects, without contradiction, that the average assembles per capita in Rockland County is \$61,314. The record also reflects, without contradiction, that the assessables per capita in the Village of Haverstraw is the lowest in Rockland County, at \$29,999. The employer presented evidence comparing the tax impact on the residents of the immediately surrounding communities including the Town of Stony Point, the Town of Haverstraw and the Village of West Haverstraw, as compared to the Village of Haverstraw. See Employer Exhibit "6". The tax burden on the tax payers in the Village of Haverstraw is significantly higher. More concretely, the value of houses in the Village of Haverstraw are significantly lower than those in surrounding communities as proved by the unrebutted evidence provided by the Village in Employer Exhibit 7. For example, while the highest priced home sold in the Village during the period in question was \$196,000, the properties in the surrounding communities were routinely 50% to 100% higher. The assessed value for the year in question, 1997-98, actually went down (see Employer Exhibit 3). While it is true that the tax rate was decreased by 2.5% for 1998-99, even the panel could not ignore the fact that there was a 26% increase the year before.

To suggest that the increase in the police salary schedule should be, percentage wise, the highest of any municipality in a community where the median home value is the second lowest in the County, the median family income is the second lowest in the County and the number of families below the poverty line is two and one-half times higher than the average in the County is not justifiable. The increases represented on page 17 of the majority opinion averaged 3.8% in 1997 discounting the impact of the split increases, appropriate in that the panel is suggesting split

increases. The panel's award of 3.85% in 1997, while essentially equal to the average increase in Rockland County, suggests that the Village of Haverstraw's economic condition is average which is not supported anywhere by the record. Compounding the panel's finding is its award for 1998. The average increase in that year was 3.5%. Yet, amazingly, the panel increased the salary schedule by over half a percent higher, that being 4.05%. How can, on the one hand, the panel find that the employer lacks an ability to pay a wage increase that reflects "all of the increases that have occurred in other comparable jurisdictions" and, on the other hand, increase the salary schedule higher than any other salary schedule in Rockland County?

While the panel would most likely respond by indicating that the percentages were split, so were the increases in a majority of the jurisdictions in 1997 including Orangetown and Ramapo, two large Towns with assessables far in excess of the Village of Haverstraw. It is also interesting to note that the primary justification for the panel's contention that the employer has an ability to pay is the savings from the retirement system contributions which is one time in nature and which all jurisdictions reaped, wealthy or less wealthy. Yet the burden placed upon the Village by the salary increases will exist in perpetuity.

It is blatantly inconsistent to find that the increases in Stony Point (3%), Clarkstown (3.5%), Spring Valley (3.5%) and Piermont, a Village with six officers (4%), support and provide a "backdrop" for an award in 1998-99 of 4.05%, especially since there is absolutely no evidence contradicting the employer's myriad of statistics showing that, comparability wise, the Village of Haverstraw, is among the lowest in Rockland County, if not the lowest, in ability to pay, by any indicia or measure. In the face of a record which demands a base salary schedule increase below the average, the panel has awarded unjustifiable percentages which provide

additional support from the growing number of so many municipalities and municipal organizations calling for an end to interest arbitration as we know it.

### III. Dental Insurance

In its award, the majority of the panel increases the employer's liability for dental insurance for a family premium from \$500.00 to \$700.00, an increase of 40%. It also increases the employer's obligation with regard to single employees from \$250.00 to \$350.00 per year, again a 40% increase. The panel ignores the fact that dental premium for other employees in the Town is roughly equivalent to that paid for police dental premiums and that premiums for such coverage as optical the police premiums are higher than other Village employees. (Employer Exhibit "11"). It also ignores that fact that over the past decade, individual premiums for health insurance have increased 49% and family premiums have increased 37%. Further, individual premiums for health insurance have increased over the course of the term covered by the award 14% while family premiums have increased 6%. (Employer Exhibit "12").

Despite the fact that no showing was made to justify increase in premium by the Union, the panel awards a 40% increased cost to the Village in one year. The undersigned has taken the time to review the other contracts in evidence to determine if there is any evidence as to the cost paid by other communities for dental insurance.

The Clarkstown contract does not reference same. (Union Exhibit "1"). The Town of Haverstraw contract references an individual premium not to exceed \$22.00 per month and family coverage not to exceed \$65.00 per month. (Union Exhibit "3A"). The Orangetown contract does not reference an amount paid. (Union Exhibit "4"). The Village of Piermont contract also does not indicate the dollar amount paid by the Village but does indicate that if an employee chooses dependent coverage, the employee is obligated to pay 50% of the additional

cost for such coverage. (Union Exhibit "5"). The Town of Ramapo contract does not reference figures. (Union Exhibit "6"). The Village of South Nyack/Grandview contract does not reference an amount. (Union Exhibit "7"). The Village of Spring Valley contract does not reference an amount. (Union Exhibit "8"). The Town of Stony Point contract does not reference the amount the Town is obligated to pay. (Union Exhibit "9"). The Village of Suffern contract does not reference a particular amount that the Village is obligated to pay. (Union Exhibit "10"). Accordingly, there is no evidence in the record that indicates that the amounts referenced in the Village of Haverstraw contract are not comparable nor is there any suggestion that there is a circumstance which would justify a 40% increase in premiums. In fact, the cost of living for 1998 was 1.6%. Further, the additional new cost to the employer equates to approximately one quarter of one percent of base payroll per year. Again, the panel has totally ignored the Village's ability to pay and has been inconsistent in its treatment of the employer's insurance issues.

#### IV. Out-of-Title Pay

The panel finds that fundamental fairness requires that bargaining unit members who actually assume responsibilities at a higher level because of the absence of a higher rank of officer in a position of supervision should receive appropriate compensation at the sergeant rate of pay. It therefore imposes, retroactively, a new article. This finding is made notwithstanding the initial finding by the panel that it must exercise "considerable restraint before altering, changing or disturbing the results of actual agreements between the parties during successive rounds of successful collective bargaining". (See page 13 of the opinion and award). The record is beyond sparse with regard to this topic. The only evidence put forth by the Union in support of its position is a decision of the Supreme Court, Rockland County (Union Exhibit "32") prohibiting the Village of Spring Valley from requiring patrolmen to serve in the out-of-title

position of "officer in charge" in non-emergency situations. Other than argument of a very limited nature (which is not in evidence), no testimony or evidence was put forth by the Union that there even was one situation during the course of the two years covered by the term where an officer was required to undertake the full duties of a sergeant. There was no evidence presented as to what an officer-in-charge does, unlike the trial that was held in the Spring Valley matter. There was no evidence presented as to how often during the course of a shift an officer-in-charge has to make a supervisory determination, if at all. There was no evidence provided as to how long any such officer-in-charge designation lasted. There was no evidence of what the cost implications are. Simply put, there was no evidence!

The undersigned has taken the time to review the contracts submitted by the Union for those jurisdictions it believed and the panel found to be comparable. The contract of the Town of Clarkstown (Union Exhibit "1") has no such provision. The contract for the Town of Haverstraw (Union Exhibit "3 A" and "B") has no such provision. The contract for the Town of Orangetown (Union Exhibit "4") has no such provision. The contract covering the Town of Ramapo (Union Exhibit "6") has no such provision. The contract covering the Village of Spring Valley (Union Exhibit "8") has no such provision. The contract covering the Town of Stony Point (Union Exhibit "9") has no such provision. The contract covering the Village of Suffern (Union Exhibit "10") has no such provision. The contract covering the Village of South Nyack/Grandview does have a provision found on page 7 thereof. It states as follows:

"If a full time officer performs the work of a rank superior to his own for a period of more than thirty (30) consecutive days, he shall, commencing on the thirty-first (31<sup>st</sup>) day, be entitled to receive the wages of such higher rank, for as long as he shall continue to perform such duties."

Only one “comparable” municipality has a clause on this subject. And even that clause is substantially less than what the panel has awarded. First of all, it indicates categorically that the officer in question must “perform the work of a rank superior to his own”. The panel’s award speaks to a designation, not to the work performed. Further, the South Nyack/Grandview language acknowledges what the undersigned believes to be the obvious, and that is that superior officers are paid higher amounts of money for their abilities, knowledge and performance over the course of the year. To be designated for a day (or an hour as the award would have it) as an officer-in-charge and be paid the same amount as a sergeant who is responsible for the full duties of a sergeant 365 days a year is, with all due respect, inequitable. However, the panel’s award would do just that. Lastly, as a matter of law, I do not believe that the panel has the authority to continue jurisdiction as to the interpretation or implementation of its own award. As there is no evidence in the record to support the panels’ position, and as it is inconsistent with the statutory requirements in every respect, I must respectfully dissent with regard to this issue as well.

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For the foregoing reasons, the undersigned hereby dissents with regard to paragraphs 2, 8 and 11 of the award of the panel in the above captioned matter as well as its finding as to comparable communities.

  
Ronald A. Longo

Dated: White Plains, New York  
September 2, 1999

On this 2nd day of September, 1999 before me, the undersigned, personally appeared Ronald A. Longo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person on behalf of which the individual acted, executed the instrument.

  
Notary Public

PATRICIA A. BAER  
Notary Public, State of New York  
No. 01BA5054122  
Qualified in Westchester County  
Commission Expires January 8, 1998  
