

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board, to make a just and reasonable determination of a dispute between the Town of Orangetown("Town") and the Town of Orangetown Policemen's Benevolent Association ("PBA").

The Town of Orangetown is located in the southeastern portion of Rockland County, approximately 20 miles north of New York City and encompasses about 25 square miles. It includes the incorporated villages of Grandview, Nyack, Piermont and South Nyack. The Town has a population of approximately 48,500 and the Town is primarily residential in character, consisting mostly of single family, two family and apartment houses. There is some commercial development which includes International Business Machines, a Hilton International Hotel and Conference Center, and the facilities of Lederle Laboratories, a pharmaceutical maker and the Town's largest employer.

The PBA is the certified bargaining agent for all Police Officers, Sergeants, Lieutenants and Detectives employed by the Town, exclusive of the Chief of Police, the Captain and one Administrative Lieutenant. There are approximately 100 sworn Department members in the bargaining unit.

The last collective bargaining agreement between the parties covered the period which commenced January 1, 1995 and ended December 31, 1997 ("Agreement"; Joint Exhibit 5). Prior to the expiration of the 1995-97 Agreement, the parties began negotiations for a successor contract, but such negotiations were unsuccessful, and thereafter, the parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and on November 16, 1998, the PBA filed a Petition for Interest Arbitration, pursuant to Section 209.4 of the Civil Service Law (see Petition, Joint Exhibit 1). Said Petition included the PBA proposals to be submitted to interest arbitration.

The Town filed a Response to said Petition on December 7, 1998 (see Response, Joint Exhibit 2), which Response included the Town's proposals to be submitted to interest arbitration.

On January 21, 1999, the Public Employment Relations Board, acting pursuant to Section 209.4 of the NYS Civil Service Law, designated a Public Arbitration Panel (Joint Exhibit 3), which included the undersigned Chairman. Thereafter, by Amended Designation dated April 9, 1999, the undersigned Panel was designated (Joint Exhibit 4).

Hearings were conducted before the undersigned Panel at Town Hall in Orangetown on April 13 and 27, 1999. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented argument on their respective positions. After the hearing process was completed, both parties submitted additional exhibits and post-hearing briefs to the Panel.

Thereafter, the undersigned Panel met and engaged in discussions in several Executive Sessions, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Sessions, this Panel reached overall agreement on this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period January 1, 1998 through December 31, 1999.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4 of the Civil Service Law:

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.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "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."

The Orangetown Police Department is located in Rockland County, and is about 20-25 miles from mid-town Manhattan. Orangetown is considered a suburb and is within the New York City metropolitan area. Together with Westchester, Nassau and Suffolk counties, Rockland is viewed by PERB as part of the "downstate" area for comparison purposes.

Rockland County has five (5) Town police departments: Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point. There are also five (5) full time Village police departments: Haverstraw Village, Piermont, Spring Valley, Suffern and South Nyack-Grandview.

Geographically, Orangetown is adjoined on the west by the Town of Ramapo and on the north by the Town of Clarkstown. These three Towns have police departments which are among the largest Town police forces in New York State. All three departments have a similar rank structure. Orangetown and Ramapo have police

departments of approximately 100 sworn members while Clarkstown is larger with approximately 160 sworn members.

The PBA has argued that the most appropriate comparables for Orangetown are Clarkstown and Ramapo and have offered their recent collective bargaining agreements into evidence in this interest arbitration (Union Exhibits 9 and 11). The PBA has also offered, for additional comparison purposes, the current collective bargaining agreements for the other Town and Village police departments in Rockland County. All have similar grades of police officers since all Rockland County police departments are subject to the Rockland County Police Acts, as amended (Joint Exhibits 6A and 6B). The Rockland County Police Act, as applicable to Town and Village police departments within the County, sets forth the length of time required for each grade as well as other provisions applicable to Rockland County police. The PBA also notes that Rockland County implemented a County-wide 911 system in 1993 which provides a further linkage of all of Rockland County's police departments.

The Town argues that the proper comparables should not be limited to Clarkstown and Ramapo and for that matter should not be limited to Rockland County. The Town maintains that in addition to Rockland County police departments, and the Rockland County Sheriff's Department, the Panel should also consider selected comparable towns and villages in Westchester County, such as Bedford, Eastchester, Scarsdale and Yorktown. These Westchester

communities are comparable in terms of financial position and overall economic conditions. Many residents of Orangetown commute to work in Westchester County and parts of New York City. Further, along with Rockland County, PERB has designated Westchester County as part of the "downstate" area for comparison purposes. The Town has submitted the current collective bargaining agreements of the Rockland County Sheriff's Department (Town Exhibit 10) and the other cited Westchester County communities (Town Exhibits 11, 12, 13 and 14) for consideration by the Panel.

Panel Determination

The Panel finds that the natural comparison to be made with the Clarkstown and Ramapo police departments has been a matter of long standing tradition in Orangetown police negotiations. In the Interest Arbitration Award for the term which commenced January 1, 1993 and continued through December 31, 1994 [see Joint Exhibit 9: *Town of Orangetown and Orangetown Policemen's Benevolent Association*, IA92-053, Interest Arbitration Award, 7/22/94; Ellenburg, Panel Chair] the Panel noted that the parties acknowledged that they traditionally compared Orangetown to Clarkstown and Ramapo. The Panel then found that:

"...the most meaningful comparisons, based on the evidence and exhibits, would appear to continue to be with the Clarkstown and Ramapo Police. For at least the last decade, these communities have paid their police personnel at a generally comparable level, which is also clearly among the most favorable in the County." [Ibid at p. 9]

The appropriate comparison of Orangetown with Clarkstown and Ramapo was accepted by the Interest Arbitration Panel for the term which commenced January 1, 1991 and continued through December 31, 1992 [see Joint Exhibit 8: *Town of Orangetown and Orangetown Policemen's Benevolent Association*, IA91-001, Interest Arbitration Award, 12/24/91; Shapiro, Panel Chair] and was also accepted by the Interest Arbitration Panel for the term which commenced January 1, 1987 and continued through December 31, 1988 [see Joint Exhibit 7: *Town of Orangetown and Orangetown Policemen's Benevolent Association*, IA87-010, Interest Arbitration Award, 8/15/88; Simmelkjaer, Panel Chair].

Accordingly, based on the long standing history which exists, and the similarities which are numerous, the Panel finds that the most appropriate comparables for Orangetown is in fact the towns of Clarkstown and Ramapo. That historical tradition shall remain undisturbed by this Panel's determination herein.

ABILITY TO PAY

PBA Position

The PBA maintains that the Town clearly has the financial ability to pay for fair and equitable increases, which it has requested in the nature of a 9% salary increase for each of the two (2) years to be covered by this Interest Arbitration Award. The PBA contends that the evidence presented at the arbitration clearly establishes that the Town is in excellent financial health and in fact has attained a Aaa bond rating from Moodys (see Joint Exhibit 11).

The PBA asserts that the Town itself has recognized that it enjoys an excellent financial situation, and in the Town's Comprehensive Annual Financial Report for the fiscal year ended December 31, 1997, it indicated that:

"Overall, fiscal year 1997 was an extremely successful year. Revenues for the General, Special Revenue and Debt Service funds exceeded budget estimates by \$1.854 million (\$800,000 of that from an insurance settlement). Effective budget controls and spending resulted in General Fund operations exceeding anticipated results by \$1.1 million. This produced a year-end unreserved fund balance of \$1.58 million in the General Fund. The total unreserved fund balance at December 31, 1997 for all governmental fund types was approximately \$6.763 million (or 18% of the Town Budget), up from \$4.6 million at the end of 1996. The fund balance in the governmental funds allowed a 1998 property tax rate decrease of 1.9%." (Joint Exhibit 11 at p.vi of Town's Comprehensive Annual Financial Report)

The PBA argues that this clear ability to pay on the part of the Town is further supported by the testimony of Gregg R. Pavitt, the Director of Finance for the Town. Pavitt testified that the Town had budgeted for 2.5% for each of the two (2) years covered by this Interest Arbitration Award and had set aside \$680,000 in the budget to fund any costs for salary and other terms and conditions of employment provided by the Award. The PBA contends that the amount set aside in the budget is actually \$800,000 (see Town Exhibit 1, 1999 Town budget, p.71). As each 1% of salary increase costs the Town approximately \$86,000 it is clear that there is sufficient money already budgeted to fund the salary increases sought by the PBA.

Town Position

The Town first indicates that since the period of time to be covered by this Interest Arbitration Award is 1998 and 1999, the economic impact for any retroactive consideration must take into account the fact that 1998 salary increases, as a result of a compounding effect, will impact salaries in 1999 as well as 1998, and thus will further increase the cost to the Town of such retroactive salary increases. This compounding effect greatly increases the cost to the Town of the 1998 salary increases which may be provided by this Award.

The Town maintains that it has budgeted \$680,000 in the 1999 Budget to pay for any retroactive salary increases for police in 1998 and 1999. According to Director of Finance Pavitt, that would properly fund a 2.5% increase for the bargaining unit for each of the two (2) years covered by this Award. The \$800,000 figure suggested by the PBA is incorrect, and includes \$120,000 which is earmarked for Parks and Recreation for that portion of the Town outside the villages. This is the other department, besides the Police Department, which services that portion of the Town outside of the villages.

The Town asserts that it cannot use money budgeted into other funds to pay for salary increases for police. In addition to the budgeted amount of \$680,000 the Town has \$314,000 in the Police Fund which is unreserved. This is a reserve fund to deal with cash flow problems and other unanticipated emergencies. Historically, the Town has needed monies in this fund to pay the annual overage in overtime costs for the Police Department, which are high and continue to increase. In 1998, while the Town budgeted \$515,000 in overtime for police, the actual expenditure was \$867,902, which represents a significant difference of \$352,902. The Police Department continues to have increased overtime expenses, and the Town argues that if it spends the unreserved fund balance in the Police Fund on retroactive salary increases for police, it will of necessity have to borrow in order to meet increased overtime costs.

The Town also indicates that since 1994, the Town's percentage tax increase has totaled 19.3% while the consumer price index for the same period has increased only 11.2% (Town Exhibit 4). In 1999, the Town increased taxes by 6.1%, while the CPI has remained at about 2% for the past few years. The Town argues that it will continue to have an increased tax burden due to tax certiorari proceedings. Specifically, the Town stands to lose significant income due to a recent tax certiorari proceeding involving Lederle, a large commercial employer located within the Town. As the Lederle property represents 10% of the total tax base for the Town, it has a major impact upon the Town's ability to pay beyond the amount budgeted for police salary increases (see Town Exhibit 6).

Additionally, the Town expects to be negatively impacted by a certiorari proceeding involving the Blue Hill property, which it expects will result in a reduced assessment on the property of \$25 million for the years 1993-96. The repayment of back taxes due to the over assessment of this property will cost the Town \$164,819 annually for the years 1993 through 1996. The Town is further projecting a repayment obligation for 1997 and 1998 of an additional \$73,829 (see Town Exhibit 6). As a result of all tax certiorari proceedings, the Town is projecting a decrease in the tax rolls of \$1,392,648 for next year. Nor does the Town project any increase through new construction. New building permits issues in 1998 were less than those issued in 1997 (Town Exhibit 5).

In summary, the Town maintains that it has a limited ability to pay, based on the fact that it must control tax increases to remain competitive with other communities in Rockland County and the surrounding area in attracting residents and business. Nor does the Town believe that the excessive wage increases sought by the PBA are warranted when compared with the salaries of other police in comparable communities, including Clarkstown and Ramapo. The Town further maintains that a total increase of 2.5% per year, inclusive of wages and benefits, is fair and is supported by the Town's limited ability to pay.

Panel Determination

In reaching the salary and other economic determinations herein, the Panel has considered the current state of the Town's economic situation, the economic situation of the surrounding Rockland County area, the overall rate of inflation, raises and salaries received by police in comparable jurisdictions within Rockland County (particularly Clarkstown and Ramapo), the population of the Town, the status of business within the Town, as well as revenues from State aid, sales tax and mortgage taxes.

The Panel has also reviewed the Town's budgets for 1998 and 1999 (Town Exhibit 1), as well as other financial data submitted by the Town (Town Exhibits 2,3,4 and 5). The Panel has also reviewed the Official Statement which accompanied the issuance by the Town

of \$2.04 million dollars of General Obligation Serial Bonds in July 1998 (Joint Exhibit 11).

The official statement for the General Obligation Serial Bond issuance in July 1998 is particularly relevant. That document indicates *inter alia* that: the Town's population increased by 3.9% since 1990; the median household income in 1990 was \$51,493 and per capital income was \$21,325, both well above the State income levels; the unemployment level is significantly below State levels; the bonds, with insurance, were rated Aaa, the highest Moody's rating; and that the Town enjoys an overall positive financial situation and is in excellent financial health.

Further, the Panel is aware that the Town has budgeted approximately 2.5% for each of the two years covered by this Award. With the additional benefit of having had such funds for the past two years, the Town has reaped some interest benefit by the delay in resolving the instant dispute. Such earned interest can also help offset the financial impact of this Award.

In terms of ability to pay, the Panel has carefully reviewed all of the financial documents presented herein, as well as the testimony of Town Director of Finance Pavitt, and concludes that there are ample funds within the Town budget to pay the salary increases and other economic items determined as appropriate by this Award.

Simply stated, it is the finding of this Panel that the Town has the ability to pay, as that term is used in the Taylor Law, the salary increases and other economic items awarded herein.

SALARY

PBA Position

The paramount issue as articulated by the PBA is the award of an appropriate wage increase so that Orangetown police may maintain their relative position in comparison with police officers in the greater downstate area, and in particular, with police in Clarkstown and Ramapo. The PBA is seeking a 9% salary increase for each of the two years to be covered by this Award.

The PBA argues that for many years the Orangetown Police were the highest paid police in Rockland County, specifically in 1988-90 and later in 1991-92. Orangetown has fallen below Clarkstown and Ramapo in recent years, with Ramapo now being the highest paid department. According to the PBA, there is no justification for Orangetown Police to receive less pay than Clarkstown or Ramapo police. The PBA maintains that Orangetown Police should once again be the highest paid in Rockland County, particularly since the Town has the ability to pay such increases.

Town Position on Salary

The Town has offered the Orangetown police a 2.5% wage increase for each year of a 2 year contract. According to the Town, a 2.5% salary increase in 1998 and another in 1999 would continue to place Orangetown police at or near the top of all comparable jurisdictions, which must include more than just Clarkstown and Ramapo police. Such increases would maintain comparability with other Town employees as well. The average compensation for Town employees, calculated since 1987, shows that the police have been the highest paid Town employees, even when such compensation has been adjusted for inflation (Town Exhibit 2).

The Town further maintains that the police are not entitled to salary increases beyond what other comparable police departments have received in 1998 and 1999. No other police department has received a 9% salary increase in either year. Since 1992, Orangetown police have received annual salary increases in excess of the increase in the CPI; resulting in a real gain of 1.7% on average each year (see Town Exhibit 3).

The Town also indicates that tax increases for Town residents have averaged 4.6% over the same period (Town Exhibit 4) and Town residents should not have to shoulder an additional tax burden to provide Orangetown police with excessive salary increases. The Town maintains that based on existing taxes, it could not now raise taxes to fund police salary increases.

Panel Determination

In determining the appropriate salary increases for Orangetown police, the Panel has carefully reviewed salaries and other terms and conditions of employment for police officers working in other Towns and Villages within Rockland County. However, as previously stated *supra* in this Award, the Panel finds that the historical comparables of Clarkstown and Ramapo remain the most appropriate comparable jurisdictions under the statutory criteria.

At the expiration of the Orangetown police contract on 12/31/97, a First Grade Police Officer in Orangetown had a base salary of \$68,513, compared with \$68,588 for a First Grade Police officer in Clarkstown, and \$68,323 for a First Grade Police Officer in Ramapo.¹

For 1998, Clarkstown police received a 3.5% general salary increase, bringing the salary of a First Grade Police Officer to \$70,989 effective 1/98 (see Union Exhibit 9). For 1998, Ramapo police received a 4% general salary increase, bringing the salary of a First Grade Police Officer to \$71,056 effective 1/98 (see Union Exhibit 11). However, it is important to note that Ramapo police made significant changes in health insurance coverage to help fund the 4% salary increase in 1998.

¹ The parties agree that the proper comparison is among First Grade Police Officers, as all are governed by the Rockland County Police Act (Joint Exhibits 6A and 6B).

Further, a review of the salary increases provided in 1998 to other police in Towns and Villages within Rockland County indicates that they range from a low of 3% (Stony Point) to a high of 4% (Ramapo) and a split 4% (Piermont and South Nyack). (Union Exhibit 15).

Based on the overall package provided in this Award, further aspects which are detailed *infra*, the Panel finds that the appropriate salary increase for Orangetown police for 1998 is a 3.5% increase. This will bring the base salary of a First Grade Police Officer in Orangetown to \$70,911 effective 1/1/98. That places the Orangetown First Grade Police Officer almost equal to his/her counterpart in Clarkstown (at \$70,989) and only slightly behind the Ramapo First Grade Police Officer (at \$71,056). As to 1998, the Panel finds that a 3.5% increase for Orangetown police, effective 1/1/98 and fully retroactive to that date, is fair and appropriate, and is within the Town's ability to pay.

For 1999, Clarkstown police received a 3.5% general salary increase, bringing the salary of a First Grade Police Officer to \$73,474 effective 1/99 (see Union Exhibit 9). For 1999, Ramapo police received a 3.5% general salary increase, bringing the salary of a First Grade Police Officer to \$73,543 effective 1/99 (see Union Exhibit 11). There are insufficient agreements in the Towns and Villages of Rockland County for 1999 to make any further comparisons.

Again, based on the overall package provided in this Award, further aspects which are detailed *infra*, the Panel finds that the appropriate salary increase for Orangetown police for 1999 is a 3.5% increase. This will bring the base salary of a First Grade Police Officer in Orangetown to \$73,393 effective 1/1/99. That places the Orangetown First Grade Police Officer almost equal to his/her counterpart in Clarkstown (at \$73,474) and only slightly behind the Ramapo First Grade Police Officer (at \$73,543). As to 1999, the Panel finds that a 3.5% increase for Orangetown police, effective 1/1/99 and fully retroactive to that date, is fair and appropriate, and is within the Town's ability to pay.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON SALARY

1. Effective 1/1/98, and fully retroactive to that date, salaries shall be increased by 3.5%.
2. Effective 1/1/99, and fully retroactive to that date, salaries shall be increased by 3.5%.

3. The 1998 and 1999 salary increases are specifically intended to be retroactive, with such retroactive payment to be made to eligible members of the unit in a lump sum payment check, to be issued within sixty (60) days of the date of this Award.

DETECTIVE DIFFERENTIALS

Background

Under the expired 1995-97 collective bargaining agreement, Detectives and Youth Officers receive the cash equivalent of a 8.5% differential above First Grade Police Officer, in excess of rank. This provision results in a Detective and Youth Officer receiving an additional 8.5% over a First Grade Police Officer. A Detective Sergeant or Lieutenant only receives an additional 8.5% over a First Grade Police Officer.

This method of providing additional compensation to Detectives is different than that provided to Detectives in Clarkstown and Ramapo, which have been previously determined to be the appropriate comparables to Orangetown police. Clarkstown Detectives receive 10% more than the base salary of a First Grade Police Officer (see Union Exhibit 9) while Ramapo Detectives receive 14% above the base salary of a First Grade Police Officer (see Union Exhibit 11).

The PBA seeks an increase in the additional compensation provided to Detectives, Youth Officers, Detective Sergeants and Detective Lieutenants, to be 10% above their respective ranks.

Panel Determination

Upon review, the Panel finds that an adjustment in the Detective differential is warranted, based on that being provided to Clarkstown and Ramapo detectives (also see Town Exhibit 25).

Accordingly, effective 1/1/99, Detectives and Youth Officers shall receive the cash equivalent of a 10% differential above the base salary of a First Grade Police Officer, and Detective Sergeants and Lieutenants shall receive the cash equivalent of a 10% differential above the base salary of their respective ranks.

AWARD ON DETECTIVE DIFFERENTIALS

1. Effective 1/1/99, and retroactive to that date, all unit members serving in the positions of Detectives and Youth Officers shall receive the cash equivalent of a 10% differential above the base salary of a First Grade Police Officer.

2. Effective 1/1/99, and retroactive to that date, all unit members serving in the positions of Detective Sergeant and Detective Lieutenant shall receive the cash equivalent of a 10% differential above the base salary of their respective ranks.

TIME AND ATTENDANCE DISCIPLINARY ACTIONS

Background

Article 15 of the expired 1995-97 collective bargaining agreement provides for a detailed disciplinary procedure. That procedure, which may result in the dismissal of a member of the unit, provides for notice of charges, a review process in order to discuss voluntary resolutions, and then, subject to the employee's election, either the procedure contained in Section 75 of the Civil Service Law or final and binding arbitration before an agreed upon panel of arbitrators.

Civil Service Law Section 75(4) provides that:

"Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges..."

While Article 15 incorporates the statutory Section 75 procedure into the contract,² the provision does not indicate the period of time for which an employee may be subject to disciplinary charges.

The Town indicates that in reviewing time and attendance records, it is difficult to detect a chronic pattern of problem absenteeism or tardiness in less than eighteen months. Accordingly, the Town desires to expressly adopt the eighteen month limitation on bringing charges against members charged with time

² Subject to the election of final and binding arbitration in place of the Section 75 proceeding.

and attendance abuse. In this manner, the Town asserts, it may more effectively control time and attendance violations and in turn, reduce the high overtime costs incurred annually to provide coverage upon the absence of scheduled officers.

Panel Determination

The Panel notes the high overtime costs incurred by the Town during the past several years in order to maintain required staffing. Overtime expenditures for the Police Department has gone from \$477,706 in 1993 to \$867,902 in 1998 (Town Exhibit 20). As Orangetown Police Chief Kevin Nulty testified, a large amount of the annual overtime cost can be attributed to high absenteeism.

A majority of the Panel is of the view that if the Town believes it can more efficiently control attendance abuse and thus reduce overtime costs by the adoption of an 18 month statute of limitations to charge officers with time and attendance abuse, it should be allowed to do so. Such 18 month statute of limitation is consistent with the provisions of Section 75 of the Civil Service Law and is expressly adopted into Article 15 for all charges brought against an officer relating to time and attendance.

AWARD ON TIME AND ATTENDANCE DISCIPLINE

1. Effective on the Date of this Award, Article 15 shall be amended to provide that charges relating to time and attendance shall be brought within eighteen (18) months of the occurrence.

VACATION SCHEDULING

Background

Currently, under the expired 1995-97 collective bargaining agreement, employees may earn up to 35 days of annual vacation dependent on the continuous years of service completed. An officer can now take single days off and is not required to schedule with sufficient time in advance the days when he/she desires to be off. The result is that the Department further incurs high overtime costs in providing necessary staffing and coverage.

The Town seeks to require that an employee's vacation schedule be set by January 1 of each year, to allow the Department to properly manage and schedule for proper staffing and coverage without the unnecessary use of overtime.

Panel Determination

The Panel has previously noted the high overtime costs incurred by the Department to provide proper staffing and coverage. Clearly, the advance scheduling of all or part of an employee's use of annual vacation time would be helpful to the management of the Department in reducing overtime costs. Balanced against the desire for such managerial tool must be the inconvenience to the employee of having to elect when he/she will use all or any of his vacation days long in advance of such date. Circumstances relating to families and vacation do change, and it might be burdensome on unit employees to have to select all vacation usage by January 1 of each year.

However, the Panel finds that it would not be overly burdensome on unit employees to schedule one-half (1/2) of all earned vacation days by a date certain of each year. Such advance scheduling would provide the Department with some ability to reduce overtime costs through advance shift scheduling while at the same time reserve to the unit member a fair number of vacation days to be utilized at the employee's choice and as circumstances require.

AWARD ON VACATION SCHEDULING

1. Effective on the date of this Award, all unit employees shall schedule one-half (1/2) of all vacation days to be utilized in the next calendar year, said scheduling to occur by December 31 of each year. The Department shall develop an appropriate procedure to accomplish such advance vacation scheduling.

WORK SCHEDULE

Background

Currently, Orangetown police work a schedule of 242 chart days per year. Subtracted from the 242 chart days are the 12 holidays and the 7 personal leave days provided to all members of the unit. The Orangetown schedule of 242 chart days is one (1) less day worked than either Clarkstown or Ramapo, which both work 243 chart days. In fact, all other Police Departments in Rockland County are scheduled to work 243 chart days per year (Town Exhibit 22).

This anomaly for Orangetown police is the result of a grievance arbitration Award issued on 2/12/99 by Arbitrator Randall Kelly (see *Orangetown Policemen's Benevolent Association and Town of Orangetown*, PERB Case No. A94-577, Award dated 2/12/99, Arb. Kelly). Without going into the substantive arguments, it can be simply said that in that Award, Arbitrator Kelly found that Patrol Officers were wrongly working more hours per year than Detectives, and ordered that all Patrol Officers receive one (1) Additional Day Off (ADO) for 1997 and forward therefrom.

The Town now seeks five (5) additional training days to be worked by all unit members without compensation, and bases such proposal on the fact that Orangetown police currently work less scheduled days than any other police department in Rockland County.

Panel Determination

The Panel has determined *supra* that the proper comparables for Orangetown police are the Clarkstown and Ramapo police. In doing so, the Panel has awarded the Orangetown police substantially the same salaries as those enjoyed by the Clarkstown and Ramapo police. It is logical to further provide that Orangetown police should work as much as their comparable counterparts, particularly if they enjoy substantially similar terms and conditions of employment. Without commenting on the appropriateness of the Kelly Award, a majority of the Panel is of the view that there is no rational basis to support the continuation of a 242 chart day schedule, when all other Rockland County police departments, including Clarkstown and Ramapo, work 243 chart days.

Accordingly, the Panel finds that the Additional Day Off awarded by Arbitrator Kelly in 1999 shall be restored to the work schedule effective on the Date of this Award. This shall result in a work schedule of 243 days for calendar year 1999 and continuing thereafter. Due to the date upon which this Award is being issued, it is clearly impractical to change work schedules for calendar year 1999, and therefore, the restoration of the ADO for calendar year 1999 shall be accomplished by the loss of one (1) day of either an ADO, compensatory day, personal leave day or vacation day by each member.

The intent of this change is to provide that all unit members are now on a 243 day work schedule, and shall be actually scheduled to work 243 chart days commencing calendar year 2000 and thereafter.

In order to minimize disruption to all parties, the ADO which must be restored for calendar year 1999 shall be satisfied by each unit member through the loss of an accrued ADO, compensatory day, personal leave day or vacation day. Each unit member shall notify the Chief or his designee no later than 11/1/99, on a form to be created by the Department, his/her election as to the specific leave to be utilized to satisfy the restoration of the ADO for 1999. In the event a unit member does not desire to satisfy the additional ADO for 1999 through loss of accrued time, he/she may elect to work an additional day during 1999 on any regular day off. Such election must be indicated on the aforesaid form.

AWARD ON WORK SCHEDULE

1. All unit members shall be scheduled to work 243 chart days during calendar year 1999 and thereafter. As more fully discussed *supra*, in order to satisfy the restoration of an ADO for calendar year 1999, each unit member may either lose one (1) day of ADO, compensatory time, personal leave time, or vacation time or may elect to work a regular day off before 12/31/99. Such election must be made in writing no later than 11/1/99.

LIFE INSURANCE

Background

Currently, under the expired 1995-97 collective bargaining agreement, Article 14.5 provides that the Town provides life insurance in the amount of \$110,000 for all unit members.

The PBA is seeking an increase in such life insurance provided without cost to Union members, in an amount of two (2) times an employee's annual base salary, with a minimum benefit of \$110,000.

Panel Determination

The Panel notes that Clarkstown provides its police with life insurance in an amount equal to twice the annual salary of each member, plus a payment of \$14,000, without cost to the member (Union Exhibit 9). Ramapo provides its officers with three (3) times the annual salary of each member, with a maximum benefit of \$200,000 (see Union Exhibit 22). The families of Orangetown police are entitled to be protected and provided for in a comparable manner. In view of the continuing rising expenses inherent and attendant to the death of anyone, the Panel agrees that the life insurance provided by the Town should be increased as requested by the PBA. Recognizing that the Town must arrange for the increase in life insurance coverage with its insurance carrier, the Panel directs that such increased benefit apply within 30 days of the Date of this Award.

AWARD ON LIFE INSURANCE

1. Effective within 30 days of the Date of this Award, the life insurance benefit provided by Article 14.5 shall be increased to two (2) times the employee's annual base salary, with a minimum benefit of \$110,000.

VISION CARE

Background

Currently, under the expired 1995-97 collective bargaining agreement, Article 14.6 provides for the reimbursement for the cost of eyeglasses or contact lenses subject to a maximum of \$120 per pair.

The PBA seeks an increase in such benefit to \$175 per pair and requests that the benefit be extended to the unit member's family.

Panel Determination

The Panel notes that there are a variety of benefits provided to Rockland County police regarding vision care (see Union Exhibit 23). Most relevant for purposes herein is Clarkstown, which reimburses unit members for the cost of eyeglasses or contact lenses up to a limit of \$150 per year. A majority of the Panel believes that a comparable increase should be made for Orangetown police.

AWARD ON VISION CARE

1. Effective within 30 days of the Date of this Award, the eyeglass and contact lense reimbursement benefit provided by Article 14.6 shall be increased to a maximum of one hundred fifty dollars (\$150.00) per pair.

DISCIPLINE AND GRIEVANCE PROCEDURES

Background

Currently, under the expired 1995-97 collective bargaining agreement, Article 15 provides for the Disciplinary Procedure and Article 16 provides for the Grievance Procedure. Article 15 currently provides for arbitration of disciplinary grievances before a panel of three (3) arbitrators previously agreed upon. Article 16 provides for a three (3) step grievance procedure, with the grievance being heard at Step 1 by the Captain of Police, at Step 2 by the Chief of Police and at Step 3 before an Arbitrator named through the PERB selection procedure.

The parties have significant experience with the existing procedure, and have discussed modifications in such procedures which will result in the more expeditious processing of grievances, and will provide a more thorough review of the grievance before arbitration. Further, the changes in the arbitration selection process should result in a less expensive and less time consuming arbitration step in both procedures.

Panel Determination

In an effort to create a more efficient and timely grievance procedure, the Panel agrees that modifications to Article 16 should be made. The three step grievance procedure shall be reduced to two steps to provide a more efficient process. Specifically, Step 1 of the Article 16 grievance procedure will now be heard by the Chief of Police or his designee. At Step 1, an informal hearing shall be held before the Chief of Police or his designee. The employee and/or the Union shall appear at this informal hearing and must present all relevant arguments and evidence, so that a full and thorough review of the grievance may occur. All other aspects of the Step 1 procedure shall continue unchanged.

The current Step 2 procedure shall be deleted, and the Step 3 procedure, providing for arbitration, shall now become Step 2 of the grievance procedure.

If appealed, the grievance shall be heard by an Arbitrator at Step 2 of the procedure, who shall be appointed from a three (3) person rotating panel. The Arbitrators shall be agreed upon by the parties within 30 days of the Date of this Award, and shall serve on said panel unless removed by the mutual agreement of the parties. Appointment of an Arbitrator to a specific grievance shall be by rotation, initially determined alphabetically by last name. However, the parties may mutually agree upon a specific Arbitrator to hear and decide a specific case.

Further, the three (3) person panel of Arbitrators, and the procedure of appointment to hear individual grievances as discussed supra, shall also apply to Step 2 of the Article 15 Disciplinary Procedure. That is, the same panel of Arbitrators shall be utilized to hear and decide disciplinary cases.

The parties shall draft and agree upon appropriate contract language to effectuate the above discussed changes in Article 15 and 16 of the expired 1995-97 collective bargaining agreement.

AWARD ON DISCIPLINE AND GRIEVANCE PROCEDURES

1. The above discussed changed to Article 15, Disciplinary Procedure, and Article 16, Grievance Procedure, shall be effective on the Date of this Award.

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

REMAINING ISSUESDiscussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Any proposals and/or items other than those specifically modified by this Award are hereby rejected.

DURATION OF AWARD

This Interest Arbitration Award covers the period commencing 1/1/98 and continuing through 12/31/99, as provided by the Taylor Law in Section 209.4(c)(vi).



JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

10/7/99
Date
of Award

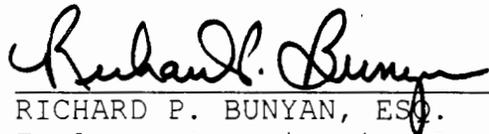
(Concur)
(Dissent)



RONALD A. LONGO, ESQ.
Employer Panel Member

10/7/99
Date

(Concur)
(Dissent)

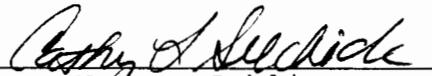


RICHARD P. BUNYAN, ESQ.
Employee Organization Panel Member

10/7/99
Date

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this 7TH day of October, 1999, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.


Notary Public

CATHY L. SELCHICK
NOTARY PUBLIC STATE OF NEW YORK
NO. 4830518
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES NOVEMBER 30 1999

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

On this 7TH day of October, 1999, before me personally came and appeared Ronald A. Longo, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.


Notary Public

JEFFREY M. SELCHICK
Notary Public, State of New York
Registration No. 4643951
Qualified in Albany County
Commission Expires March 30, 2001

STATE OF NEW YORK)
COUNTY OF ROCKLAND) ss.:

On this 7TH day of October, 1999, before me personally came and appeared Richard P. Bunyan, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.


Notary Public

JEFFREY M. SELCHICK
Notary Public, State of New York
Registration No. 4643951
Qualified in Albany County
Commission Expires March 30, 2001