



### BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired on December 31, 1998. Negotiations for a successor agreement proved unsuccessful. So did mediation efforts. Consequently, and pursuant to Section 209.4 of the Civil Service Law of the State of New York ("Taylor Law"), Interest Arbitration procedures were invoked and the above named Panel was constituted to decide the dispute.

Hearings were held before us on October 18, 1999 and October 28, 1999, at which time the record was closed. In addition, the Panel met in executive session on November 15, 1999. At the hearing of October 18, 1999, the parties waived their right to have the proceedings transcribed. This Opinion and Award follows.

### POSITIONS OF THE PARTIES<sup>1</sup>

#### **PBA**

The PBA seeks a two year Award with annual base wage increases of seven per cent. In its view, these raises are justified by relevant economic data both within the Town and without.

As to factors within the Town, the PBA submits that the Town's economic status is excellent. It notes that

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<sup>1</sup>To expedite these findings, the parties' positions have been summarized.

taxes increased 2.7 per cent for 1998, a modest rise, in its view. PBA Exhibit 2. Also, it points out, the Town enjoyed a budget surplus of 2.8 million dollars, or fourteen per cent of the operating budget. PBA Exhibit 2. Thus, the PBA urges, the Town can well afford the raises it has proposed.

As to factors outside the Town, the PBA maintains that the wage improvements it seeks are justified. It suggests that, pursuant to an Interest Arbitration Award rendered for 1993 and 1994, relevant comparable communities include Eastchester, Harrison, Mamaroneck, Mount Pleasant, Ossining, Port Chester and Scarsdale. PBA 6. According to the PBA, a review of those jurisdictions demonstrates that as of June 1998, Yorktown Officers' top pay was \$58,225, a figure exceeded in Mamaroneck, Harrison, Eastchester and Bedford. Also, it points out, though Scarsdale's top pay was \$57,103, wages there have increased to \$59,958 for the period June 1, 1999 to May 31, 2000 and \$62,806 for the period June 1, 2000 to May 31, 2001. PBA Exhibit 27. Hence, it asserts, the raises it asks for are warranted when compared to those paid in comparable communities.

The PBA also contends that the clothing allowance should be increased from \$650 to \$1,000. It notes that this stipend has not risen since 1996. Joint Exhibit 3. Consequently, it argues, a substantial rise in the

clothing allowance is necessary.

The PBA seeks numerous changes in the extra pay, holidays and overtime provisions in the Collective Bargaining Agreement (Article IV). It asks that overtime be paid from the time an officer accepts the assignment. It also seeks compensation for any preparation required to perform an assignment and for commuting time.

It asks that all Officers be permitted, at their option, to receive compensatory time or pay for thirteen enumerated holidays, plus a lump sum payment equal to thirteen days' pay and compensation at double-time for hours worked on any holiday. The PBA also asks that the payment for approved college courses be granted to all bargaining unit members and not just those hired prior to December 31, 1979, as mandated by Article V, Section 4.

The PBA maintains that an increase in personal days from four to six is justified. It points to those communities in which more than four days are awarded in support of this proposal.

The PBA proposes major changes in health insurance benefits. It points out that the Town now pays 50% of the individual retiree premium and 35% of the family premium for retirees.<sup>2</sup> It argues that these percentage contributions are very low when compared to other towns

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<sup>2</sup>Family contribution premiums are computed by subtracting the individual rate from the family rate, computing 35 per cent of the difference and adding that to 50 percent of the individual rate.

and villages in the County. For example, the PBA notes, the Towns of Eastchester and Bedford pay 100% of health insurance premiums for retirees. PBA Exhibit 32. It sees no reason why Yorktown cannot do the same.

In addition, the PBA asks that the Town be required to pay 50 per cent of the health insurance premium for any active Officer who voluntarily withdraws from the Town's health insurance plan. It views this proposal as a benefit to both the individual and the employer. Consequently, this proposal makes good sense and ought to be adopted, according to the PBA.

As to the Welfare Fund, the PBA submits that it is in dire financial straits. It projects substantial losses resulting in decreased benefits if the Town's contributions are not raised significantly. PBA Exhibit 37. Hence, it asks that the current \$1,450 member per year contribution be raised to \$2,000.

The PBA maintains that Officers' longevity payments must be dramatically improved. In support of this contention, it points out that members of the Yorktown Superior Officers Association receive longevity payments which exceed PBA longevity payments by approximately \$3,750 after 19 years of service, \$4,200 after 22 years of service and \$4,500 after 25 years of service. PBA Exhibit 33.

In the PBA's view, there is no reason for this

disparity. It insists that length of service is as meaningful for a Patrolman as it is for a Superior Officer. Hence, it urges, its proposal for a new longevity schedule which raises longevity for Officers by up to \$5,925 is justified.

The PBA also asks for an amplification of the right of its representatives to appear at hearings affecting members. (Article XI, Section 1). In its view, the current language which limits such right to appearance at public hearings or boards of inquiry is too limiting.

The PBA also makes the following proposals:

- an increase from seven days' to three months' notice of changes in working methods or working conditions
- an increase in the transportation allowance from \$.20 a mile to the IRS rate
- excusal from work if called to jury duty
- maintenance of all current work schedules for the life of the Agreement
- maintenance of current composition of the bargaining unit by title and payment of \$1,000 per member if such composition is diminished.

In sum, the PBA asserts that its proposals are fair and reasonable in light of all relevant factors. Accordingly, it asks that they be awarded.

#### **Town**

The Town contends that the PBA's economic proposals

are not warranted. It insists that the relevant jurisdictions for comparison purposes are not only those cited by the PBA. Instead, the Town avers, the jurisdictions that are comparable to Yorktown are Cortlandt, Croton-on-Hudson, Mount Kisco, New Castle, North Castle, Ossining and Tarrytown. Town Exhibit 10. This is so, the Town urges, because the mean family income and effective tax rate in these communities are far closer to the figures in Yorktown than those cited by the PBA, and are in closer geographic proximity to Yorktown. Town Exhibit 10.

When wages and increases are analyzed in these jurisdictions and those cited by the PBA, the Town maintains that increases far less than those sought by the PBA should be awarded. Town Exhibit 12. Moreover, the Town argues, Police Officer salaries in Yorktown are already high. It contends that the average wages and longevity in the sixteen listed communities<sup>3</sup> is \$59,656, while Yorktown's compensation is \$60,602. Town Exhibit 16. Given these data and Yorktown's relatively low income, the Town argues for increases far lower than the average in the communities noted above or the county-wide average increases achieved thus far for 1999 and 2000.

As to other benefits sought by the PBA, the Town alleges that they are not justified. For example, it

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<sup>3</sup>Those cited by the Town and the PBA.

claims that longevity payments already exceed those elsewhere. So, too, do personal leave entitlements, the Town avers. Hence, it urges, there is no reason for these and other fringe benefits to be improved.

In addition to rejecting the PBA demands, the Town seeks a change in PBA contributions toward health insurance premiums. It asserts that 1999's rates have been increased by 26 per cent. Town Exhibit 24b. In the Town's view, the PBA must bear an increasing percentage of this premium. Hence, the Town proposes that all employees hired after January 1, 1999 be required to pay 25 per cent of health insurance premiums.<sup>4</sup>

As to retirees, the Town maintains that it already provides a generous payment towards health insurance premiums. Moreover, it insists, the PBA's demand exceeds levels which currently exist in virtually all of the sixteen communities cited above. Town Exhibit 24d. Hence, it sees no need to improve this benefit.

Concerning holidays, the Town asserts that the current provision is very generous. It notes that Officers hired before 1980 are entitled to compensatory time or cash for eleven holidays plus a lump sum cash payment equal to eleven days' pay.

In the Town's view, this benefit is excessive.

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<sup>4</sup>The expired Agreement requires new employees to pay a graduated percentage, up to 25 per cent, for the first four years of employment.

Hence, it proposes to eliminate the current two-tiered system for holiday pay by having all Officers receive twelve holidays, payable as a lump sum cash bonus. It also proposes that Officers may take four of these holidays off in lieu of pay and that time and one-half be paid if officers work New Year's Day, Easter, Thanksgiving and Christmas.

In addition, the Town advances the following proposals:

- the inclusion of a Family and Medical Leave Act ("FMLA") policy as previously agreed;
- the inclusion of a comprehensive non-discrimination clause, as previously agreed;
- the inclusion of a headings clause, as previously agreed.

In sum, the Town maintains that its demands are fair and equitable and are supported by a preponderance of the evidence. Consequently, it asks that they be granted as proposed.

#### **DISCUSSION AND FINDINGS**

Several introductory comments are appropriate. The Panel's determination is limited to the evidence contained in the record as developed at the hearings. We are precluded from any other factors and our findings below are based strictly on that record.

Moreover, the Panel is also limited by the criteria

set forth in Section 209 (4)(c)(v) of the New York State Civil Service Law ("Taylor Law"). Thus, we are bound to consider the standards set forth therein, as follows:

- (a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and similar services or requiring similar skills under similar working conditions and with other employees generally in public or 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;

With these principles in mind, the Panel turns to the issues in dispute.

**1. Term of Award**

As the parties are aware, the Taylor Law bars the Panel from imposing an Award in excess of two years except by mutual agreement. No such agreement exists here. Obviously a one year Award which expires in less than a month from now makes no labor relations sense. Therefore, the Panel determines that a two year Award, January 1, 1999 - December 31, 2000, is appropriate.

**2. Wages**

The heart of any agreement is the wage structure.

It is of paramount importance to members of the bargaining unit. It is the most costly item to the employer. Any determination as to the appropriate wage structure must take into account the statutory criteria listed above.

Section 209 (4)(c)(v)(a) refers to wages and benefits paid to other employees in comparable jurisdictions performing similar work. In Police jurisdictions, this criterion usually refers to wages paid other Police Officers in communities which can reasonably be compared to Yorktown.

The PBA asserted that these communities were the Towns cited in the Arbitration Award for the period January 1, 1993 to December 31, 1994. PBA Exhibit 6. The Town insisted that other towns and villages, listed above should be utilized for they manifested economic demographics and geographic proximity closer to Yorktown's.

The Panel has carefully considered these competing arguments. In our view, it matters little whether the PBA's grouping of communities or whether all fifteen communities are utilized for comparison purposes. The PBA listed communities reveal increases of 4.0 and 4.05 per cent for 1999 and 2000, (PBA Exhibit 28) respectively; while the average increases for all fifteen communities is 4.028 and 3.979 for the same years (Town

Exhibit 12). Thus, the PBA total for the two years is 8.05 per cent while the average for all the cited communities is 8.01 per cent. The difference of .04 per cent is minimal and would not have any impact upon our findings regardless of which communities are utilized.

Given these data, it is clear that the average two year increase is eight per cent for comparable communities. However, we find raises slightly below eight per cent should be awarded. This is so because the average salary of a top rank Police Officer in 1998 was slightly above the average for the other fifteen communities. As Town Exhibit 12 indicates, the corresponding figures are \$58,527 for Yorktown and \$58,299 for all communities or a difference of almost one half percent. Thus, the Panel concludes, increases slightly below four per cent per year are justified.

Also of significance are the other Taylor Law criteria. Criterion (b) relates to the community's ability to pay. That ability is generally reflected in two ways - the income of residents and the taxes they pay.

The mean family income for Yorktown for 1997 was \$73,222. This figure compares relatively unfavorably with the communities cited by the parties. Of fifteen listed jurisdictions, only three - Ossining Village, Port Chester and Mount Kisco - have a mean family income lower

than Yorktown's. Town Exhibit 10. Similarly, Yorktown's effective tax rate is higher than all but two of these entities - Croton-on-Hudson and Ossining Village. As such, the record reveals that Yorktown is a community with an ability to pay that is somewhat below the average of relevant communities.

Also, there is no doubt that increases in the Consumer Price Index ("CPI") are averaging far less than 3.5 to 4.0 per cent. This factor, too, must be considered in determining appropriate wage improvements.

Taken together, these data strongly suggest that raises slightly below 4.0 per cent per year are justified. They are generally consistent with the increases granted elsewhere. They also reflect the relative ranking of the income of the Town's residents as well as its relatively high tax rate. Moreover, increases slightly below 4.0 per cent also take into account improvements granted in fringe benefits, below.

Under these circumstances, the Panel finds that base wages should be increased by 3.75 per cent for 1999 and 3.75 per cent for 2000. Increases of this magnitude will maintain Yorktown's relative ranking in comparable jurisdictions while taking into account the economic demographics of the Town and the other economic improvements awarded. Thus, we find, they are fair and reasonable under all the criteria contained in the Taylor

Law. Accordingly, they are awarded as indicated herein.

### **3. Health Insurance**

There are three proposals of the parties concerning health insurance. One relates to retiree benefits. A second deals with contributions by new employees and a third covers opt out payments. Each will be analyzed independently.

As to the first, the Panel finds that the PBA has demonstrated a compelling need for an upward adjustment in this area. PBA Exhibit 32 reveals that in Bedford, Eastchester, Harrison and Mamaroneck, retirees receive fully paid health insurance, at least to age 65.

It is true, as the Town noted, that most of the listed jurisdictions do not pay the full benefit the PBA seeks. However, that does not mean that no increase is warranted. Indeed, the current 50/35 per cent contribution is near or at the low end of the communities cited. Given these data, an upward modification is justified.

In the Panel's view, the new contribution levels for employees who retire after the effective date of this Award should be 60 per cent for individual coverage and 50 per cent for family coverage. To avoid confusion, we offer the following example as to how these rates are to be computed.

The family premium is \$6,000 per year. The individual premium is \$2,500 per year.

Employee A retires. He has individual coverage. The Town pays \$1,500 (60 per cent of \$2,500) towards his health insurance premium.

Employee B retires. She has family coverage. The Town pays \$1,500 of her individual component (60 per cent of \$2,500) plus 50 per cent of the remaining premium (\$6,000 - \$2,500 or \$3,500) which equals \$1,750. The total Town contribution is \$3,250 (\$1,500 + \$1,750) towards health insurance premium.

This rate schedule is fair. It recognizes that increases in retiree health insurance are justified, though not to the level sought by the PBA. Thus, the Panel directs that retiree health insurance premiums be implemented effective January 1, 1999, as indicated herein.

Concerning health insurance premiums for active employees, the Town has demonstrated that costs in this areas are increasing dramatically. Surely some redress to the Town is warranted under these circumstances.

On the other hand, the Town's demand that new hires pay a portion of their health insurance premiums for their entire career is not supported by the record. Of the fifteen communities cited by both parties, five require new hires to pay a portion of their health insurance premiums for their entire careers. Moreover, of that number, one - Cortlandt - recently abolished its police force and thus, no longer affords a relevant

comparable basis. Also, the remaining four require contributions significantly less than the 25 per cent paid in Yorktown.

In the Panel's view, the current schedule of health insurance contributions should be increased by requiring those employees hired after January 1, 2000 to pay 25 per cent of their health insurance premiums during their first four years of employment. This new scale represents an increase of 7.5 per cent for their first year of work or an added savings to the Town almost \$500 per new hire. As such, the Town will be able to realize additional reasonable savings resulting from this modification.

Finally, as to health insurance, the Panel is convinced that a reasonable opt-out plan benefits both employees and the Town. Providing the employee with a 33 per cent share of the Town's savings if he or she opts out of the plan affords a sufficient incentive to promote utilization of this alternative, while achieving significant savings for the Town. Also, to ensure stability in the plan and continued coverage for employees who opt out, we shall direct that any employee who selects this option must provide a certificate of other, comparable coverage to the Town and, further, that he or she must remain out of the plan for at least one year unless such outside coverage is lost. Accordingly,

and for the foregoing reasons, the Panel awards the modifications in health insurance payments as indicated herein.

#### **4. Welfare Fund**

The PBA has demonstrated a compelling need for substantial improvements in employer contributions to the Fund. The level of payments has not increased since 1996, though, obviously, the cost of benefits has risen markedly since then. However, the PBA's proposal would add approximately one per cent to the economic cost of this Award. The Town should not bear such a heavy burden, particularly in light of other benefits awarded above.

Given these factors, the Panel finds that a \$312 increase per employee is justified. It is similar to the increases awarded in 1996. It reflects the lack of any raise for 1997 and 1998. Also, to reduce the cost impact of this item, we shall direct that the increases be implemented as follows:

Effective January 1, 1999 - \$156 increase  
per member towards Welfare Fund  
contributions.

Effective January 1, 2000 - \$156  
additional increase per member towards  
Welfare Fund contributions.

#### **6. Longevity**

The Panel understands the PBA's claim that its members should not receive substantially lower longevity

payments than Superior Officers. However, we find that this proposal cannot be granted. The PBA's longevity schedule compares favorably with the other cited communities. Furthermore, we note the increase given for retiree health insurance payments. In light of these factors, the salary increases and other benefit improvements, an increase in longevity would result in excessive costs to the Town, we find. Thus, we must reject awarding any increase in longevity payments to Police Officers.

**7. Clothing Allowance**

Keeping in mind other cost items and the data submitted, the Panel finds that a modest increase is justified. Therefore we shall direct that the Clothing Allowance be increased to \$700 effective January 1, 1999 and \$750 effective January 1, 2000.

**8. Personal Leave**

The majority of jurisdictions listed provide four or fewer days of personal leave. Thus, we do not find compelling evidence to increase the number of personal leave days beyond the current level of four. Consequently, the PBA's proposal is rejected.

**9. Holidays**

The number of holidays granted is not out of proportion to those accorded elsewhere. Yorktown provides 15 holidays plus four others at half pay for a

total of seventeen. Of nine other communities cited, only four have as many or more than Yorktown. Town Exhibit 23. Thus, the Panel concludes, the record does not demonstrate a need to reduce this number. Therefore, the Town's proposal is rejected. Similarly rejected are the PBA's proposals for changes in holiday pay.

#### **10. Jury Duty**

There is no doubt that Police Officers have the obligation to perform jury duty. However, given their unique tours of duty, problems may arise when such service falls shortly before or after a scheduled tour.

Given these circumstances, the Panel finds it appropriate to remand to the parties the issue of jury duty for them to resolve. We shall retain jurisdiction in the event no agreement is reached on this issue.

#### **10. Association Rights**

The current provision appears antiquated, restricted as it is to boards of inquiry and similar forums. Accordingly, we shall grant the PBA's proposal so as to permit attendance by a PBA representative at arbitrations, administrative hearings or other legal proceedings affecting the terms and conditions of employment of bargaining unit members.

#### **11. Mileage Rights**

The current reimbursement rate of \$.20 per mile is low. An increase to the Internal Revenue Service rate is

justified, we find.

**12. Extra Pay and Overtime**

We find no basis in the record to justify granting the PBA's proposals on these issues. They are rejected.

**13. Minimum Manning**

The PBA has not demonstrated to the Panel's satisfaction that this proposal is justified. Thus, it is denied.

**14. Work Schedules**

The PBA's demand is not supported by the record. Therefore, we reject this proposal.

**15. Other Town Proposals**

The Town proposals re:

- inclusion of an FMLA policy;
- inclusion of a comprehensive non-discriminatory clause;
- inclusion of a headings clause

have previously been agreed upon. Accordingly, they are granted.

**16. Other Proposals**

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

In sum, the Panel concludes that the modifications as indicated herein meet the legitimate needs of the PBA as well as the obligations of the Town. Accordingly, they are to be implemented in accordance with our findings herein. It is so ordered.

**AWARD**

**1. Term**

This Award shall be in effect from  
January 1, 1999 through December 30, 2000.

**2. Wages**

Base wages are to be increased as follows:  
Effective January 1, 1999 - 3.75 per cent  
Effective January 1, 2000 - 3.75 per cent

**3. Health Insurance**

**a. Retiree Health Insurance**

For employees who retire after January 1, 1999, the Town shall pay 60 per cent of the individual health insurance premium and 50 per cent of the family health insurance premium, in accordance with the example set forth in this Opinion.

**b. New Hire Health Insurance Contributions**

All bargaining unit members hired after January 1, 2000 shall pay 25 per cent of their health insurance premiums for the first four years of their employment.

**c. Withdrawal from the Health Insurance Plan**

Effective January 1, 2000 employees may elect not to be covered under the Town's Health Insurance Plan in accordance with the following conditions:

1. They provide the Town with proof of comparable coverage;
2. They remain out of the plan for at least one year. Thereafter, they may rejoin the plan provided they remain in it for at least one year;
3. Employees who decline Health Insurance shall be paid 33 per cent of the Town's savings in premiums for opting out of coverage to which they would otherwise have been entitled.

**4. Welfare Fund**

Welfare Fund contributions shall be increased as follows:

Effective January 1, 1999 - \$156 per bargaining unit member  
Effective January 1, 2000 - \$156 per bargaining unit member

**5. Clothing Allowance**

Clothing Allowance shall be increased as follows:

Effective January 1, 1999 - \$50  
Effective January 1, 2000 - \$50

**6. Jury Duty**

The issue of release for Jury Duty is remanded to the parties for resolution. The Panel shall retain jurisdiction in the event the parties are unable to resolve this issue.

**7. Association Rights**

The current provision shall be modified to permit attendance by a PBA representative at arbitrations, administrative proceedings or other legal proceedings affecting the terms and conditions of employment of bargaining unit members.

**8. Mileage Rate**

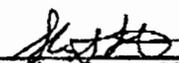
Effective January 1, 2000, the mileage reimbursement rate shall be increased to the rate prescribed by the Internal Revenue Service.



Concur   X  

Dissent   X   as to Award order's 3a and 3c.

12/14/99  
DATED

  
Stephen Sheinfeld, Esq.,  
Public Employer Panel Member

STATE OF NEW YORK    )  
                          ) s.:  
COUNTY OF NASSAU    )

I, Stephen Sheinfeld, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

12/14/99  
DATED

  
Stephen Sheinfeld, Esq.,  
Public Employer Panel Member

Concur X

Dissent \_\_\_\_\_

12/13/99  
DATED

Richard P. Bunyan  
Richard P. Bunyan, Esq.,  
Public Employee Panel Member

STATE OF NEW YORK )  
                          ) s.:  
COUNTY OF NASSAU )

I, Richard P. Bunyan, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

12/13/99  
DATED

Richard P. Bunyan  
Richard P. Bunyan, Esq.,  
Public Employee Panel Member