IN THE ROYAL COURT OF THE ISLAND OF JERSEY (SAMEDI DIVISION)

Before: P.L. Crill, C.B.E. Deputy Bailiff.
Jurat H. Perree.
Jurat M.G. Lucas.

BETWEEN Kevin John Crowhurst
David Albinson Bolton
William Eric Keywood
Bernard Lennard Queree
Mervyn Ernest Le Marquand
Derek Horsfall
Rodney Danzil Marett
Alexander Ballantyne Little
Robert Stanley Roscouet — Plaintiffs

AND The Defence Committee — Defendant

Advocate J. Clyde-Smith for the Plaintiffs
Advocate R.J. Michel for the Defendant

The plaintiffs in this case are Police Officers, members of the States of Jersey Police Force, with the exception of one member who has now retired. All nine were members of the Force who, in 1968 when the States introduced a Contributory Pension Scheme, opted to remain out of it. Until then the only pension available to Police Officers was a non-contributory one, payable in accordance with the provisions of Regulations made under the Paid Police Force (Jersey) Law, 1951. So far as the plaintiffs are concerned their entitlement to a pension still derives from that Law and those Regulations. A member of the Force who joined the Scheme was obliged to contribute 6% of his salary towards the Fund set up under the Public Employees (Contributory Retirement Scheme) (Jersey) Regulations 1967. The Scheme came into force on the 1st January, 1968.

To offset this 6% deduction a contributor to the Scheme received a 5% increase in his salary. This agreement as such does not appear to have been recorded in writing or, if it was, the written document was not produced to us. Also we heard no oral evidence and the parties relied on documents and correspondence. Of course there were two scales of pay enshrined in Regulations, for example R & O 5108. The 5% increase in salary was given to all members of the Force, whether contributory or not but 4.75% was then deducted from the increased pay of the non-contributory officers. This being the appropriate reduction from ~~1.05~~ 1.05/- to achieve the differential between them and the contributing officers.

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The additional 1% over and above that of 5% making the total deduction of 6% from the pay of contributing officers was to cover a number of particular benefits not available to those who would receive a non-contributory pension, for example a pension to the contributing officers' widows. The effect of such an arrangement was to establish two rates of pay: one for non-contributing officers (and those officers under 20 who were excluded from the contributory pension scheme by the Regulations) and one for contributing officers.

We shall refer later to what happened subsequently which is set out in an Opinion of the Crown Officers prepared for the Defence Committee in July, 1980. It suffices to say now that the plaintiffs remained satisfied with the arrangements which in their view reflected a proper "rate for the job" payable to both themselves and to the contributing officers and was roughly equal and, moreover, until 1976 the pay structure followed very closely that of the United Kingdom police forces. From 1st April, 1978, the amount of remuneration to be paid to all Police Officers was in dispute. After prolonged negotiations the Defence Committee and the States of Jersey Police Association referred the matter to arbitration. This was possible because under the Police Force (Jersey) Law, 1974, which came into force on 1st January, 1975, the Defence Committee was enabled, after consultation with the Establishment Committee, to determine the pay of members of the States of Jersey Police Force, and after that Law came into force, subordinate legislation was not required for the purpose of determining the officers' salaries. Even when this was so the fixing of officers' salaries was governed by the law of contract. That position was not altered by the 1974 Law. The Arbitration Board was asked to determine two aspects only of the contract between officers of the Force and the Defence Committee. They are set out in the award.

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The Panel sat on 29th January, 1979. Its report is as follows:-

"Before:

Sir Robert Le Masurier
Mr. Rene Liron.
Mr. Peter G. Blampied.

1. The question which we have been asked to settle arises out of a disagreement between the States of Jersey Police Association and the Defence Committee over Police pay.

The Association was represented by Mr. L. Knowles, and the Committee by Mr. M. Maher, and we are indebted to them both for the skill and for the way with and in which they presented their respective cases so greatly contributing to our understanding of the question raised and to the cordial and informal atmosphere in which it was debated.

2. Both sides indicated that they would be content with an answer to two questions -

FIRST What, on April 1st, 1978 would have been the appropriate remuneration of a Police Constable upon appointment, based on a 40 hour week?

and SECOND Whether rank differentials should be measured by percentage or fixed sums of money?

Upon consideration of the issues raised, we came to the conclusion that one of the more important facts is that until 1976 the scales of pay of the Jersey Force were linked to the scales of pay of the United Kingdom force.

The fact enables and entitles us to examine authoratative views expressed in the United Kingdom on the importance of the Police to Society and the finalcial reward appropriate to that importance.

Those views found expression in the Reports of the Royal Commission which sat in 1960 and of a Committee of Enquiry under the Chairmanship of the Rt. Hon. Lord Edmund Davies which sat in 1978.

Furthermore /

Furthermore, in 1975, there was an extensive review of Police Pay and the structure of that pay.

4. It is unnecessary to repeat what was said about the importance of the Police to Society. It is sufficient for us to say that we whole-heartedly agree with the views expressed in both reports and to add, perhaps in words borrowed from Thomas Hobbes that without the Leviathan of which the Police are part

> "there would be no place for industry; no arts, no letters, no society and, which is worst of all, continual fear of danger of violent death: and the life of man solitary, poor, nasty, brutish and short."

There is also this to be considered that an all too human official to whom for three out of four days of his working life the squalid scene of pornography, prostitution, fraud, pimpery, drugs and every other known vice is a commonplace requires somewhat special consideration, more particularly as he is expected to remain uncorrupted by the corruption so frequently encountered by him and, if he fails to measure up to that expectation, to suffer a penalty which is likely to be severe, for, not only does he commit an offence, but also he betrays his profession.

5. The further importance of both reports to which we have referred lies in the fact that in coming to their respective conclusions as touching pay, account was had to all the disadvantages and dangers of a life of service in the Police including the denial of a right to strike and to join a Trade Union.

6. It is convenient here to say, although we admit a lack of authority to say it, not being a Court of Law, that, in our opinion, which for the purposes of our decision we have assumed to be correct, the Members of the States of Jersey Police do not have the right to strike.

A Centenier, when sworn to office, is no longer answerable to those who elected him. He is answerable to his office in the terms of his oath and we have little doubt that were he to refuse to do his duty he would be summarily dismissed by the Royal Court. The analogy is not inept.

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It is often forgotten that the States of this Island are not a sovereign body and it is the Sovereign in Council acting through the Secretary of State for the Home Department who is ultimately responsible for the maintenance of the Queen's peace in the Islands.

7. In its endeavour to determine the appropriate financial reward to which a Police Constable was entitled having regard to all the circumstances of his professional life the Royal Commission examined the pay scales then ruling in a number of occupations which, in the opinion of the Commissioners, had some relevance. The result of that examination they took as a standard which they set at £543 a year and called it "Factor A". To that figure they added an "economic supplement" of 45 per cent which they called "Factor B" to compensate for the liability to work in shifts and other like disadvantages. They then added a further supplement of 25 per cent of Factors A and B to take account of a Constable's value to the community, his exposure to danger, subjection to discipline, and his degree of social segregation.

From the figure thus calculated the Commissioners deducted £74 which they said fairly represented the rent allowance which was already being received.

8. The Committee in 1978 took the 1960 report as a starting point, then went on to consider the degree to which the work of a Police Constable had become more onerous as a result of the marked increase in social unrest and crime, particularly violent crime, but then went on to say -

> "We have considered carefully whether it is possible to equate the work of the Police Force with that of any other group of workers for pay purposes but, like other Committees and Commissions before us, we have concluded that the unique nature of the police service and the work they do makes this impossible
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> The only satisfactory way to proceed seems to us to be to review all the relevant factors and then make the best judgment we can".

9. In the event, the recommendation made was that a Police Constable in a Provincial Force, upon his appointment at the age of 18½ should, on September 1st, 1978, receive £3,600 a year exclusive of rent allowance and that, if on his appointment he was aged 22 or over his starting pay should be £4,300 again exclusive of rent allowance.

In fact for reasons of policy the United Kingdom Government declined to give full effect to the Committee's recommendations until September this year, 1979. That fact is not the Island's affair because in so far as we know no such policy has been adopted.

10. The present rate of pay and its structure within the force is governed by an agreement which expired on March 1st, 1978. For a working week of 42 hours a Police Constable received, on appointment, the annual sum of £3,930 which excludes £24 for the now compulsory first aid certificate.

11. In their Evidence paper the Association, while agreeing earlier that it had little relevance to the Police situation (but was nevertheless used by the Royal Commission) took £1.98 per hour as the arithmetic mean of pay in the general levels of pay within the civil service grades. To that, in the light of all the comments and considerations made and taken into account in the Edmund Davies Report, they added 10.50 per cent thus giving a rate appropriate for a Police Constable of £2.11 per hour which would give him according to our calculation £4,388 a year based on a 40 hour week or with his first aid certificate £4,412. The Association's figure if £4,401.

To that figure the Association seeks to add -

(a) 5 per cent as compensation for the pension arrangements now in force;

(b) 5 per cent for the inability to strike and to join a Trade Union; and

(c) 7 per cent for added responsibilities.

12. In our opinion the Association in claiming those percentages overlook the facts -

FIRST /

FIRST that when the contributory pension scheme was introduced, those who opted for it, (it is now compulsory for those who then made the option and for entrants to the force since that date) suffered a deduction from their pay of 6 per cent but were, nevertheless, compensated by a 5 per cent increase in pay;

SECOND that throughout the history of pay negotiations in the United Kingdom to which the Association has had much regard all the special circumstances affecting the Police Force and its importance to the fabric of Society were taken into account;

and THIRD that Members of the Police Force enjoy security of employment whereas those employed in the private sector do not.

13. It appears to us that the approach of estimating a base figure which may itself be wrong and then adding to that base percentage increases which must be a matter of judgment and which could themselves also be wrong distorts the eventual calculated figure. This, of course, applies to the approach made by both the Association and the Defence Committee.

14. The Defence Committee invited us to agree that an appropriate starting point could be the findings of the Police Council in 1975 which would have produced a starting annual salary for a Police Constable on appointment in that year of £2,532.

To that figure they were prepared to add 53.75 per cent in the light of the Edmund Davies recommendations and a further 5.9 per cent to compensate for what it is convenient to call the Jersey differential. Then the Defence Committee by a process of reasoning and a series of calculations, which we found it difficult to understand, produced a figure of £3,941 as being the proper remuneration for a Police Constable on appointment on April 1st, 1978, to which must be added the first aid certificate allowance of £24 making a total of £3,965.

The corresponding figure for a Constable after two years' service would be £4,580 as opposed to the Edmund Davies Report figure of £4,300 as at September, 1978.

We were also asked by the Defence Committee to have regard to the medical benefits enjoyed by the Police, the value of which the Committee put at £50 a year and the early retirement benefit which was put at 7.9 per cent of basic pay.

15. One recommendation in the Edmund Davies Report appears to have been ignored. It is contained in paragraph 119 of page 31 where it says -

> " in addition he will be provided either with free quarters or a rent allowance in lieu. If he is single and draws a rent allowance he gets a flat rate and the current average of this for all forces in the United Kingdom is £440 a year effectively tax free. If he is married and is not provided with free quarters he gets a rent allowance which varies with the rental value of his house up to the maximum limit in his force.
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> ..... The current average maximum limit of all forces in the United Kingdom is £880 a year effectively tax free."

In paragraph 249 at page 61, the Edmund Davies Committee said -

> "In practice the selected house in most forces is a modern semi-detached three-bedroom house with central heating and a garage."

16. The possession of a secure home is important to every family and the best security is obtained by the ownership of a dwelling and we make no apology for saying that in our opinion, for all the reasons to which we have made reference, that that observation applies with particular force to the Police.

It is notorious that the housing situation in the Island is difficult with the inevitable result that prices are high. Furthermore, the economic situation is generally such that interest rates are also high.

17. If the rent allowance to which the Edmund Davies Report refers is taken into account, it will be seen that the Constable on appointment would effectively receive £4,040 a year and if he marries at say the age of 24 he could receive, according to where he lives, between £5730 and £5880 a year.

18. We are very well aware that it can be argued that both reports which we have cited viewed the Police as being somewhat of an 'elite' and that our decision could, moreover, very well have repercussions in other spheres of employment.

In our experience many of those who exhibit an egalitarian distaste for 'elites' are the first to claim that status for themselves by demanding 'differential' treatment and to those who would complain that the Police have been unduly favoured we would say that their lot is in no way comparable.

19. Like the Members of the Edmund Davies Committee "making the best judgement we can" we have come to the following conclusions

(a) that the working week should be one of forty hours;

(b) that the appropriate salary of a Police Constable on appointment on April 1st, 1978 should have been the sum of Four Thousand Five Hundred Pounds a year;

and (c) that increments determined by length of service should be by way of fixed amounts and not be percentages.

Signed. R.H. Le Masurier.
P.G. Blampied.
R.H. Liron. "

Some time after the award the Defence Committee, through the Personnel and Management Services, an organisation which is the Executive arm of the Establishment Committee, started to reduce the award to the plaintiffs by 4.75% per annum. In a letter of the 15th October, 1979, to the Secretary of the Police Association it justified the Defence Committee's decision. The relevant part of the letter reads:

"The over-riding factor in all areas of the Public Service where Officers opted not to participate in the new pension scheme is that their salaries should be reduced by 4.75% and

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no arbitration tribunal, as it affects the Civil Service, Fire Service or Police Force, can influence this basic fact."

The Police Association took the matter up with the Defence Committee without success.

The plaintiffs have now sued the Committee asking for the repayment of monies deducted from their salaries and also for a declaration that the Defence Committee is not entitled to make such deductions in the absence of an agreement between them and the plaintiffs. The defendant Committee denies that it has made any deductions as such at all. It says that the payment to the plaintiffs of a reduced salary after the award followed from an implied term in their contracts of employment before the Arbitration to accept a lower rate of pay than that of the contributing officers and that agreement was unaffected by the award. Further, the defendant Committee pleaded that the award was made on the basis that the recipients of the award were members of the Contributory Pension Scheme.

At the hearing of the action the defendant Committee was given leave to add the following paragraph to its Answer:

"3. That in the alternative the dispute be remitted to the Arbitration Tribunal with such instructions as the Court shall decide."

If the Court were able to do what that paragraph asks, then it might not have to decide for itself the issued raised in the pleadings. Accordingly the Court had to ask itself whether it had the power to remit matters of this sort to a Board of Arbitrators after the publication of its award. In Le Gros v The Housing Committee (Jersey Judgments) Vol. II at page 77, the Royal Court found that it had. At page 86, however, it set out the extent of that power. It said:

> "The first issue raised before us was whether the Court has the power to interfere with an arbitration award and, in our opinion it undoubtedly has such a power if, for example, the arbitrators exceed their authority, are wrong in law, deny the parties justice, and reach a conclusion devoid of reason. In all such cases the Court has an inherent jurisdiction to have put right that which is wrong. What the Court cannot do is to interfere with an award which has been regularly made. A power of discretion properly exercised by a person or a body having the legal authority to exercise it is generally unassailable."

The wording of this extract from the judgment suggests that the Court had regard to English law as set out in Halsbury's Laws 3rd Edition, Vol. II, at page 56, which was cited to us by Mr. Michel for the defendant Committee. The same principles may be found on page 350 of Russell on Arbitration (18th Edition). However they are no more than a general guide to assist the Courts in the exercise of their discretion. It is equally clear that the Royal Court was relying on its inherent jurisdiction whereas in England, apart from statute or an agreement between the parties, there is no power at common law for a Court to remit an award to the Arbitration Tribunal concerned. In the Le Gros case the Royal Court remitted the matter to the original Board of Arbitrators because there was an error on the face of the record. Looking at the award in this case we cannot find that there is any irregularity whatsoever and, accordingly, adopting the principles enunciated by the Royal Court in Le Gros v The Housing Committee, we are satisfied that the award of the Board indicates that its discretion was properly exercised and, therefore, in our opinion is unassailable in this Court.

Mr. Michel suggested that because the arbitrators did not distinguish in their award between the salaries payable to contributing officers and those payable to non-contributing officers, that omission gave rise to an ambiguity. Was the Board, he said, intending

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to lay down a salary which included a sum to compensate for the deductions made from the salary of contributing officers or was it a basic salary, in which case nothing should be taken from it in respect of a non-contributing officer but 5% added to it before the contributing officers should have that added salary reduced by 6%?. Had such a distinction been specifically referred to in the terms of reference to the arbitrators there might have been some substance in his argument. In any case the defendant's pleadings say specifically that the award was restricted to contributing members. Because we have found the award is good on the face of the record no objection can therefore be taken to the decision of the Board in law or in fact. Furthermore, in order to invalidate an award for not dealing with a particular question (in this present case, it is said, the two sets of salaries) the point must have been specifically raised in the Board's terms of reference, (see Rees v Waters (1897) 16 MW 263), although the question of the two salaries was canvassed by the Police Association in its submissions to the Board. Also the question of pension rights was in the minds of the Board at some stage as appears from the terms of the award. It is equally clear that the Board knew that, at whatever rate it fixed the remuneration of a Police Officer as at 1st April, 1968, each officer in the Contributory Pension Scheme would have to suffer an annual statutory deduction of 6%. Even if it could be argued that the use of the word "remuneration" in the arbitrators' reference implied something more than "salary", the question of pension rights as such was not referred to the Board and we think that the word "remuneration" was used as a synonym for "salary". The approach of estimating a base figure and adding a percentage increase was specifically rejected by the Board as appears in paragraph 13 of the award.

The plaintiffs' main submissions are that from the moment the dispute was referred to arbitration the amount of Police Officers' pay fell to be decided afresh; any former deductions from their salaries were made for administrative reasons only and since there was no implied contract for two levels of basic salary they are entitled to the award in full. It is clear that if the plaintiffs succeed they will have a greater "take home pay" than the contributing officers and, it may be said, to some extent they will be better off. We

say to some extent, because it appears to us that the value of a non-contributory pension may be not as high as that of a contributory one. However, we are not called upon to decide that point.

The history of the Police Officers' pensions together with the various Laws and Regulations are set out fully in the Opinion of the Law Officers prepared for the Defence Committee in July, 1980, to which we referred earlier. The Opinion is worth quoting in full and it is as follows:-

> "It would be useful, first, to trace the history of police pay and pensions from the coming into force of the Police Force (Jersey) Law, 1951.
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> Article 13 of the Law of 1951 enabled the States, by Regulations, to prescribe the rates of pay of police officers and to make provision for their retirement.
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> The first Regulations made in pursuance of Article 13 were the Police Force (General Provisions)(Jersey) Regulations, 1952 (R & O 3105) which prescribed one scale of pay (Regulation 22) and made provision for a non-contributory pension (Regulation 24).
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> This state of affairs continued until 31st December, 1967. On the 1st January, 1968, the Public Employees (Contributory Retirement Scheme)(Jersey) Regulations, 1967, (R & O 5010) came into force, introducing a contributory pension scheme. The scheme applied to all members of the Force who joined the Force on or after the 1st January, 1968, but existing members of the Force were given the choice of participating in the scheme. The non-contributory pension provisions of Regulation 24 of the 1952 Regulations continued to apply to those existing members of the Force who chose not to join the scheme.

Also / ...

Also coming into force on the 1st January, 1968, the Police Force (General Provisions)(Amendment No.17) (Jersey) Regulations, 1968, (R. & O. 5028) introduced two separate scales of pay, one for officers to whom the contributory pension provisions of the 1967 Regulations applied, and a lower scale for officers to whom the non-contributory pension provisions of Regulation 24 of the 1952 Regulations continued to apply.

A different pay formula was introduced on the 1st January, 1969, by the Police Force (General Provisions) (Amendment No.19) (Jersey) Regulations, 1969, (R & O 5268) which reverted to one scale but provided that the annual salary of a member of the Force to whom the non-contributory pension provisions of Regulation 24 of the 1952 Regulations applied should be in accordance with that scale less 5 per cent.

The formula was changed again by the Police Force (General Provisions)(Amendment No. 22) (Jersey) Regulations, 1970, (R & O 5376) which continued to apply one scale of pay but provided that the annual salary of a member of the Force to whom Regulation 24 of the 1952 Regulations applied should be in accordance with that scale less such percentage as the Establishment Committee might from time to time determine.

This formula was repeated by the Police Force (General Provisions) (Amendment No. 23) (Jersey) Regulations, 1971 (R & O 5588) and was effective immediately before the coming into force of the Police Force (Jersey) Law, 1974, on the 1st January, 1975.

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On the 1st January, 1975, the Police Force (General Provisions)(Jersey) Order, 1974, (R & O 6095) came into force, and Article 10 of that Order repeated the pension provisions of Regulation 24 of the 1952 Regulations for the benefit of those members of the Force who were in the Force before the 1st January, 1968, and did not join the contributory pension scheme.

In relation to pay, however, instead of providing, as the 1951 Law did, that rates of pay should be prescribed by Regulations, the 1974 Law (Article 8(2)) enables the Defence Committee, after consultation with the Establishment Committee, to determine informally the pay of members of the Force and does not require the enactment of subordinate legislation.

That the policy of paying slightly lower salaries for members of the Force not in the contributory pension scheme, established before 1975 by Regulations, was continued thereafter under the informal arrangements of the 1974 Law and accepted by the Police Association up to the decision to refer the question of police pay to arbitration, is clearly indicated in the Police Association's letter to the Defence Committee dated 25th October, 1978.

The only question which remains to be answered is what effect, if any, did the tribunal's decision have on this policy. Of the two questions which it was agreed the tribunal was required to answer, set out in paragraph 2 of the tribunal's written decision, the first did not raise the issue - because a Constable appointed on or after April 1st, 1978, must be a member of the contributory pension scheme; and the second is clearly irrelevant. The only references to pension arrangements appear on page 5 of the tribunal's decision where it is recorded that the Association was seeking an additional 5 per

cent / ...

> cent as compensation for the pension arrangements in force i.e. as the tribunal explains in paragraph 12, compensation for those required to pay contributions under the contributory pension scheme; and the tribunal concludes the matter by simply dismissing the claim for the additional 5 per cent on the ground that the pay of those members of the force who paid pension contributions had already been increased by 5 per cent.
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> It is submitted that it is very clear from the tribunal's written decision that the members of the tribunal did not address their minds to the point in issue for the simple reason that they were not asked to do so, and that, therefore, the policy in force before the arbitration of recognising in the payment of salaries that some members of the Force pay pension contributions whereas others do not remains unaffected".

A number of points in the Opinion need emphasising. First no mention is made of the increase of salaries of 5% of all States employees who joined the Pension Scheme although that may be inferred from the reference to the two scales of pay mentioned in paragraph 6. Second, the figure of 5% deduction in paragraph 7 although mentioned in the Regulations was wrong and had to be corrected subsequently to 4.75%. Third, the letter of the 25th October, 1978, referred to in paragraph 12 accepts a lower figure for non-contributing officers pay but, looking at that letter, it is clear that that deduction is related to the contributing officers' pay increased by 5%. Fourth, paragraph 13 omits to mention the exclusion of officers under 20 from the contributing scheme. And fifth, throughout the letter the Law Officers refer to a "policy". However, what was, and is at issue, is the contract between the Defence Committee and the plaintiffs, and not just a matter of Committee policy which cannot override the legal rights of persons who have a contract with the Committee.

That said we are sure that it was not the intention of the Committee to do other than honour its legal obligations. What we have to decide is whether in fact it has done so.

It will be convenient first to consider the terms of the contract between the plaintiffs and the defendant at the time of the arbitration. As might be expected all the correspondence and other documents produced to us emanating from the Police Association refer to what is called a "basic salary"; the deduction of 4.75% being made only after that salary had itself been increased by 5%. Examples are found on page 4 of the Association's Submission to the Board and in the Summary of its Submissions on page 23. On the other hand, pensions are not included on page 3 of the Submission among the four matters that remained to be settled. However, on page 7, there is a specific reference to the fact that, in the United Kingdom, there is no abatement of pay to compensate for the value of the pension. That matter, however, really refers to the capitalisation of a pension which was rejected in Lord Edmund Davies' report. However, also on page 23, the Federation makes it clear that 5% was to be added to the basic rate "to compensate for the pension arrangements".

What documents and correspondence from the Defence Committee, or the Establishment Committee, support the plaintiffs' Submission that 5% addition to the basic salary was to be made before deducting 4.75%? We add here that the term "basic salary" arose first during the discussions between the Defence Committee and the Police Association leading up to the Arbitration. It has no particular significance in itself but is a convenient description for the purposes of the argument.

First, in the Committee's reply sent to the Association with a letter of the 30th October, 1978, signed by the then President of the Defence Committee, and containing a review of the Police pay from 1961 to 1976, pension arrangements are not mentioned except on page 4. There, in referring to the scale of pay for 1971, the Committee said this:

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"The Jersey rates were the same as the UK but enhanced by 43/40 for the addition of two hours worked plus 5% for the Contributory Pension."

Moreover, on page 6, it adopted the approach of part of Lord Edmund Davies' Report where that Report referred to "basic pay". In a Report dated, simply, April, 1978 and entitled "Reply to case submitted by the States of Jersey Police Association for an improvement in their rates of pay", the Defence Committee compares the pay of the Police in Jersey with that in the United Kingdom. The relevant paragraph is on page 5 and reads:

"Until September, 1976, the basic rates of pay for the Jersey Police were linked to those of the U.K. Police. The Jersey Police however, do not receive the U.K. rent allowance, ranging between about £12.00 and £20.00 per week, tax free, but they have for many years received a 5% pension supplement, despite the fact that both the U.K. and Jersey Forces are on contributory pension schemes."

In Paragraph 6.1. of Chapter 6 of the Committee's papers which deals with its recommended method of establishing new pay scales, the Committee accepted that Lord Edmund Davies recommendations should be used to assess new pay rates. It then makes a detailed comparison with certain Civil Service scales of pay which are not relevant to this argument, but in paragraph 6.13 it says this:

"It must be remembered that the comparison against the U.K. Civil Service is in pay terms only, i.e. taken in terms of basic salary for basic salary only, and ignores such counter balancing factors as Police Rent Allowance and differential retirement ages, along with different conditions of service."

No mention is made there of any deduction from the basic pay.

When we look at the Minutes or records of the Establishment Committee itself, the question of the 5% supplement is dealt with very clearly. For example Minute No. 23 of the 28th January, 1970, is as follows:

"The Committee /

"23. The Committee considered a request for authority to amend the legislation with regard to the abatement of salary scales in respect of officers who were not members of the Contributory Retirement Scheme. It appeared that an abatement of 5 per cent as specified in Rule 3 of the relevant Rules, was slightly too high and that an appropriate figure would be 4.75 per cent.

The Committee noted that certain legal difficulties might arise if the wording of the Rules was amended in such a way as to authorise the excess abatements to be refunded, and decided to investigate the possibility of obtaining the agreement of the Treasurer of the States, in consultation with the States' Auditors, to deal with such cases administratively.

The Establishment Officer was directed to take the necessary action in the matter. "

That Minute we think stems from a report to the Committee by the Establishment Department (sic) dated January, 1970. The relevant paragraphs read:

"Abatement of salary scales in respect of officers who are not members of the Contributory Retirement Scheme.

1. Since the CRS came into operation on 1st January, 1968, there have been two scales of pay. One for staff who are contributors to the Scheme and one for staff who opted not to join the Scheme.

When the Scheme was introduced, pay scales were increased by 5 per cent because staff had not previously paid contributions and the policy had been to keep salaries down to a certain level because the pension was non-contributory.

The new pensionable scales of pay have been abated by 5 per cent for those officers who opted not to join the new scheme, and thereby chose not to pay contributors, (sic) and this is the percentage specified in Rule 3 of the current

That position at least as far as the Establishment Committee was concerned, appeared to continue for a number of years, because at its Meeting of the 27th August 1975, it passed the following Minute:

> "9. The Committee, having received a report from the Personnel and Management Services Department dated 19th August, 1975, accepted the following recommendations, as approved by the Defence Committee on 14th August, 1975, and accepted by the Police Association, in relation to the claim of the States of Jersey Police Force, put forward by the Police Association, following the award recently made to the United Kingdon police -
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> (1) an increase in basic rates in line with the United Kingdom award, abated to reflect the United Kingdom/Jersey tax differential and enhanced by the two additional hours at time and a half and the 5 per cent pension supplement. The increase in basic rates locally would be between 23.7 and 47.31 per cent."

That Minute did not say that non-contributory officers would not receive the 5% supplement. On the contrary a year previously in August, 1974, Personnel and Management Services had prepared a note for the Establishment Committee and that note is in the following form:

> "Revised Pay Scales.
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> Currently Jersey Police pay is based on comparable U.K. scales, enhanced by forty three fortieths to reflect the longer working week, and grossed up by 5 per cent. The grossing up reflects the fact that, prior to the introduction of the Contributory Pension Scheme, the local force enjoyed parity of pay with the U.K. and in addition, a non-contributory pension scheme.
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> There seems no valid reason for varying this policy, and we have accordingly calculated revised scales of pay which we set out at Appendix B."

Thus / ...

Thus both before the coming into force of the 1974 Police Force (Jersey-Law and soon afterwards, the Establishment Committee, and by inference the Defence Committee, accepted a supplement of 5% on top of a basic salary. The extent to which the Establishment Committee is involved in fixing the rates of pay of members of the Force is limited. Paragraph (2) of Article 8 of the Police Force (Jersey) Law, 1974, provides that:

> "(2) The Committee shall determine the ranks in the Force, the number of persons of each rank which is to constitute the establishment of the Force and, after consultation with the Establishment Committee, the appropriate scale of pay for each rank."

The ultimate responsibility for fixing the rates of pay thus rests with the Defence Committee. Since we have not been able to find any disparity, let alone disagreement between the two Committees from the documents and correspondence shown to us, we have assumed that the views expressed in the Establishment Committee's papers reflect those also of the defendant. It is of course true that in a letter from the then head of Personnel and Management Services, Mr. James Shaw, to the States Treasurer, of the 10th January, 1973, he says this:

> "2. In 1968, when the Pension Scheme was introduced permanent allowances qualified for an increase of 5% and at that time two rates were established (in respect of all pensionable emoluments including basic rates) one for members of the Scheme and one for non-members. That increase was once and for all and was not intended to be applied when those allowances were later improved as part of annual pay awards.
>
> 3. The pensionable and non-pensionable rates were subsequently discontinued and one rate was established which was subject to a reduction of 4.75% where the employee had opted not to join the Scheme (see also this office letter dated 8th May, 1972)."

But he does not say whether the rate included the 5% supplement. Moreover, he erred in saying that the 5% was a once for all payment as is shown by the extract from the Minutes of the Establishment Committee

which /

which we have quoted of the 27th August, 1975.

Shortly before the arbitration in a letter to the Police Association of the 26th September, 1978, the Defence Committee set out its case for a restructuring of Police pay and included its comments on the Association's submissions to it. In commenting on the Association's claim of January, 1979, which said that to assess the proper salary one should first assess a basic salary and then add 5%, the Committee, on page 6 Step (iv) commented as follows:

> "Step (iv) How this can be applied when one considers that some of the Police Association's samples (including the States), already enjoy an enhancement for their "contributory pensions."".

By that time, however, both sides were preparing for the arbitration.

Looking at all the above extracts we are drawn to the inescapable inference that right through the negotiations between the plaintiffs, represented by the States of Jersey Police Association, and the Defence Committee, nowhere does there appear a clear statement by the Committee that there was to be a deduction of 4.75% from what has been called the basic salary of the plaintiffs. On the contrary, all the evidence indicates that, before the deduction of 4.75% was made the plaintiffs pay was grossed up by 5%. The burden of proving the allegation in the pleadings that there was an implied contract for a deduction from the basic salary lies upon the Defendant Committee and we are not satisfied that it has discharged it. One must bear in mind that originally the 5% was given as a compensation to the contributing officers for having 6% deducted towards their pensions. For example, supposing the contributing officers pay had been increased by 5%, as it was, but the non-contributing officers pay had not, then assuming a 4.75% deduction from the latter's salary, there would have been a difference between their "take home pay" and those of their contributing colleagues of something like 3.75%. That was never the case and we think would not have been tolerated. The two pay scales before being merged into one showed a small differential

of such "take home pay" in favour of the non-contributing officers as is to be expected since their pension cover was not so comprehensive. It is clear from the award itself that in fixing the scale of pay for Police Officers the Board, although it had its attention directed to the 5% supplement, disregarded it. Its award therefore did not include a supplement. That was confirmed, by inference at any rate, at a meeting with representatives of the Defence Committee and the Police Association and the Establishment Committee, together with the Chairman of the Board held on 8th March, 197X, to clarify several matters. Neither pensions nor supplementary payments were mentioned at that meeting. That omission strengthens our view that the Board awarded a flat rate of pay for all Policemen as it had been requested to do. As we have found that there was no implied contract for a deduction from their pay before 5% had been added to it, we award the plaintiffs the sums so deducted by the Committee since the Board's decision with interest thereon at 10% and we make the declaration asked for. We realize that our judgment may cause a number of administrative difficulties for the Defence Committee and the Establishment Committee but we have given it according to what we believe to be the legal principles involved.