

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

H. Y. S. I. ...  
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DEC 15 1975

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In the Matter of the Arbitration, : CONCILIATION  
Pursuant to Section 209 of the Civil :  
Service Law, of a Dispute Between :  
TOWN OF ORANGETOWN :  
-and- : Case Nos. CA-0035;  
ROCKLAND COUNTY PATROLMEN'S BENEVOLENT : M74-761  
ASSOCIATION, INC., ORANGETOWN UNIT :  
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AWARD OF ARBITRATORS

The undersigned arbitrators, having been designated in accord with the provisions of Section 209 of the Civil Service Law, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

1. The duration of the parties' collective bargaining agreement shall be for a two-year term, commencing January 1, 1975 and expiring December 31, 1976.

2. (a) Effective as of January 1, 1975, all positions on the salary schedule for patrolmen fourth through first grade shall be adjusted by 9%.

(b) Effective as of January 1, 1976, all positions on the salary schedule for patrolmen fourth through first grade shall be adjusted by 7%.

(c) Detectives and youth officers shall be

compensated at the annual level of \$1500 in excess of the annual rate of pay for their grade and rank after adjustment as provided in paragraphs (a) and (b) for 1975 and 1976 respectively, with no uniform or clothing allowance.

(d) All grade steps within ranks above that of patrolman are eliminated effective as of January 1, 1975.

(e) Effective as of January 1, 1975, all sergeants are to be paid at an annual rate 15% above that in effect, pursuant to paragraph (a), for first grade patrolmen:

(f) Effective as of January 1, 1975, all lieutenants are to be paid at an annual rate 15% above that in effect, pursuant to paragraph (e), for sergeants.

(g) Effective as of January 1, 1975, all captains are to be paid at an annual rate 15% above that in effect, pursuant to paragraph (f), for lieutenants.

(h) Effective as of January 1, 1975, the chief is to be paid at an annual rate 15% above that in effect, pursuant to paragraph (g), for captains.

(i) Effective January 1, 1976, sergeants, lieutenants, captains, and the chief are to be paid at annual rates to be determined by applying the appropriate differentials expressed in paragraphs (e) through (h) to the pay in effect, pursuant to paragraph (b), for first grade patrolmen.

3. The architecture and text of the parties' collective bargaining agreement effective January 1, 1975 and expiring December 31, 1976 shall be, except to the extent required to give effect to the award of the public arbitration panel, identical with that of their expired agreement.

4. There shall be no night differential.

5. The employee organization's proposal for payment upon retirement for accumulated but unused sick leave is denied.

6. The employee organization's proposal that the Town pay employees' social security contributions (in addition to those made by the employer) is denied.

7. Longevity payments shall be increased, effective January 1, 1975, to \$450.

8.-9. There shall be automatic progression, upon anniversary of employment, from grade to grade within the rank of patrolman unless the individual is found guilty of charges brought against him after a hearing in accord with the provisions of section 75 of the Civil Service Law.

10. There shall be no change in the vacation schedule.

11. All employees shall have the option of being paid overtime or receiving compensatory time off in lieu of overtime payment, provided that supervision

may, in its discretion, deny a request for compensatory time off if in its judgment granting such a request would be inconsistent with staffing requirements.

12. The parties' collective bargaining agreement shall contain the following provision:

The Employer, consistently with operating needs, will schedule the workforce for a reasonable period of time in advance in such a manner as to insure that officers' overtime opportunities will not be disregarded save for emergencies or other unusual conditions which cannot reasonably be anticipated.

13. Effective January 1, 1976, all employees in the unit represented by the employee organization shall receive dental insurance benefits identical with those provided to employees in the Town's Department of Public Works.

14. The Town's proposal for a reduction of the number of paid sick leave days is denied.

15. The Town's proposal for the elimination of an advance credit of 36 days' sick leave to new employees is denied.

16. The Town's proposal to limit extended sick leave to employees with at least ten years' service is denied.

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

On this 16th day of December, 1975, before me personally came and appeared RAYMOND LIBERATI, JOHN F. ROONEY, AND JEROME S. RUBENSTEIN, to me known and known

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration, :  
Pursuant to Section 209 of the Civil :  
Service Law, of a Dispute Between :

TOWN OF ORANGETOWN :

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ROCKLAND COUNTY PATROLMEN'S BENEVOLENT :  
ASSOCIATION, INC., ORANGETOWN UNIT :

Case Nos. CA-0035;

M74-761

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OPINION OF CHAIRMAN  
JEROME S. RUBENSTEIN

Appearances

For the Town:

Werner L. Loeb, Esq., Town Attorney  
Dr. Charles J. Ganim, Value Management  
Consultants, Inc., Buffalo, N. Y.

For the Employee Organization:

Milton M. Kase, Esq., New City, N. Y.

Preliminary Statement

Both parties to this impasse having rejected the report and recommendations of Fact-Finder Earle Warren Zaidins dated June 5, 1975, a public arbitration panel was convened, pursuant to the provisions of section 209(4)(c) of the Civil Service Law (hereinafter referred to as part of the Taylor Law), to resolve the issues in dispute. The Town designated Councilman

to me to be the individuals described in and who executed the foregoing instrument, and they acknowledged to me that they executed the same.

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John F. Rooney as its representative on the panel; the employee organization (hereinafter referred to as "PBA") designated Detective Raymond Liberati as its representative; and I was selected as the public member and chairman.

Hearings were held at the Orangetown Town Hall in Orangeburg, N. Y. on October 7-8,<sup>1</sup> 27, 29-30, and 30-31, 1975. Both parties introduced voluminous documentary evidence buttressed by the testimony of a number of witnesses. Full opportunity to examine and cross-examine was afforded both parties; and numerous questions were addressed to the parties' representatives and witnesses by the panel members. A stenographic record was made of the entire proceeding.

A question arose during the course of the hearings as to whether a New York State statute, enacted in 1936 and amended from time to time as recently as 1963, known as the "Rockland County Police Act," currently operates to bar the panel from resolution of certain impasse issues. The parties' representatives and the party-designated members of the panel having authorized me to determine that issue as sole arbitrator, I received and considered briefs on the subject and, on November 24, 1975, issued my opinion and award holding that the

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1. All hearings save that of October 27 were held at night.

Rockland County Police Act does not bar arbitral resolution of any issue at impasse between the parties.

The panel members convened in executive session on December 9, 1975, at which time there was full discussion not only of all the evidence and all the arguments, but of the substance of the fact-finder's report as well, all in the light of the criteria set forth in section 209(4)(c)(v) of the Taylor Law. Each item in the fact-finder's report was the subject of separate discussion and of separate vote by the panel members. Except where otherwise indicated, the attached award is the product of the panelists' unanimous agreement.

#### General Considerations

The public policy of the Taylor Law to promote the expeditious resolution of impasses in negotiations between local governments and the representatives of their police forces requires as an ordinary rule that great weight be given to the fact-finder's report and recommendations. A presumption of soundness attaches to such reports and recommendations, and they are not lightly to be set aside. For this reason, the disposition of the panel members was to treat each recommendation of the fact-finder as valid unless shown to be otherwise.

The following discussion will preserve the numerical arrangement of the fact-finder's report.

The Issues

1. DURATION OF CONTRACT

The fact-finder recommended execution of a one-year agreement effective as of January 1, 1975, saying:

It has been customary within Rockland County, which contains thirteen (13) separate and autonomous police departments, to enter into one (1) year contracts. The prior and expired contract between the parties herein was likewise a one (1) year contract.

This finding is clearly erroneous, for of Rockland County's five towns,<sup>2</sup> at least three had multi-year collective agreements for their police units. Among these was Orangetown, whose expired agreement ran from January 1, 1973 through December 31, 1974.

Apart from the mere error which taints the fact-finder's recommendation, another and more important consideration obtains: acceptance thereof would create a collective agreement effective only through the end of this year. To utilize the Taylor Law's elaborate procedures for the resolution of impasses to effect an accord of only a couple of weeks' duration would be an exercise in trivia.

The panel therefore rejects the fact-finder's

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2. The five towns are Clarkstown, Haverstraw, Orangetown, Ramapo, and Stony Point.

recommendation on this issue, and awards that the duration of the agreement be for a two-year term, commencing January 1, 1975 and expiring December 31, 1976.<sup>3</sup>

## 2. SALARY

In his discussion of the issue of contract duration, the fact-finder observed that the essential difference between the parties had to do with salary levels. A major factor in his decision to recommend an agreement of only one year's duration was apparently his reluctance to speculate last Spring on what the state of the economy might be today. Thus he wrote:

Not only is the present economic condition insecure and apprehensive, but the near future is even more prognostically tenuous. A two (2) year contract would put to rest differences between the parties for a longer period, but the fact-finder believes that 1976 economic [agreements] between these parties should be negotiated in the climate of that future time.

The passage of time between the fact-finding and arbitral hearings in this matter has produced a variety of new economic data; and both parties introduced evidence that could not have been made available to the

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3. Section 209(4)(c)(vi) of the Taylor Law provides that "the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement...."

fact-finder.<sup>4</sup> That alone might justify a re-thinking of the fact-finder's recommendation on the issue of salary. The panel's majority,<sup>5</sup> however, believes that a more important concern is to provide adequate consideration for the two-year contract term it is imposing upon the parties.

Since the parties agree that the current entry-level salary of \$11,206 per annum for fifth-grade patrolmen is realistic in terms of present market conditions, both the fact-finder and the members of the present panel have addressed themselves solely to the adjustment of pay scales for superior positions.

The fact-finder recommended an 8% pay increase for patrolmen fourth through first grades; annual compensation of \$1500 (with no uniform allowance) above grade and rank levels of pay as adjusted by the across-the-board increase for detectives and youth officers;

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4. The fact-finder notes that the Town, in the course of hearings before him held in March and April, contended that the increase in "the consumer price index for 1975 will be approximately 2-3%." Actually, the Town at the time projected an annual increase of 2.8% (Town's Ex. 1, p. 3). In the hearings before the present panel, the Town projected an increase of 4.8% (Town's Ex. 2, p. 5). The earlier projection was based on data for the first three months of the year, and the later on data for the first eight months.

5. Mr. Rooney dissents from the majority's determination for the first year of the agreement, as to which he would accept the fact-finder's recommendation.

and elimination of grade steps above the patrolman rank with the establishment of the following differentials:

Sergeants	15% above patrolman first grade
Lieutenants	15% above sergeants
Captain	10% above lieutenants
Chief	10% above captain

The panel's majority, based upon the more ample data which it has considered, believes the fact-finder's recommendation for a first-year increase to be inadequate consideration for the PBA's forced abandonment of the right to negotiate afresh for 1976 terms and conditions of employment. In reviewing the complex evidence adduced by both parties in the light of the statutory criteria, it believes that an appropriate figure for a 1975 across-the-board increase is 9%<sup>6</sup> rather than the 8% figure recommended by the fact-finder.

For the second year, the panel considers an across-the-board increase of 7% to be appropriate.

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6. In the period January, 1974 through January, 1975 the Consumer Price Index for the Greater New York-New Jersey area rose by 10.2%. Although, as the Town rightly points out, the CPI is not an infallible expression of the actual cost of living in a particular community, it is a valuable referent. Measured thereby, it will be seen that the awarded pay increase does not equal the erosion of purchasing power sustained by members of the Orangetown police force.

The panel accepts the fact-finder's recommendation concerning detectives and youth officers.

The panel accepts the fact-finder's recommendation that grade steps above the patrolman rank be eliminated, but perceives no justification for the discrepancy in differentials between sergeants and lieutenants on the one hand and captains and chief on the other. Taking proper account of the relative escalation of responsibility among these ranks, the panel concludes that there should be identical differentials of 15% from rank to rank.

In sum, the panel awards as follows on this issue:

(a) effective as of January 1, 1975, all positions on the salary schedule for patrolmen fourth through first grade shall be adjusted by 9%;

(b) effective as of January 1, 1976, all positions on the salary schedule for patrolmen fourth through first grade shall be adjusted by 7%;

(c) detectives and youth officers shall be compensated at the annual level of \$1500 in excess of the annual rate of pay for their grade and rank after adjustment as provided in paragraphs (a) and (b) for 1975 and 1976 respectively, with no uniform or clothing allowance;

(d) all grade steps within ranks above that of patrolman are eliminated effective as of January 1, 1975;

(e) effective as of January 1, 1975, all sergeants are to be paid at an annual rate 15% above that in effect, pursuant to paragraph (a), for first grade patrolmen;

(f) effective as of January 1, 1975, all lieutenants are to be paid at an annual rate 15% above that in effect, pursuant to paragraph (e), for sergeants;

(g) effective as of January 1, 1975, all captains are to be paid at an annual rate 15% above that in effect, pursuant to paragraph (f), for lieutenants;

(h) effective as of January 1, 1975, the chief is to be paid at an annual rate 15% above that in effect, pursuant to paragraph (g), for captains;

(i) effective January 1, 1976, sergeants, lieutenants, captains, and the chief are to be paid at annual rates to be determined by applying the appropriate differentials expressed in paragraphs (e) through (h) to the pay in effect, pursuant to paragraph (b), for first grade patrolmen.

### 3. EXISTING ITEMS IN CONTRACT

The panel affirms the substance of the fact-finder's recommendation on this issue, and awards that the architecture and text of the parties' agreement effective January 1, 1975 and expiring December 31, 1976 shall be, except to the extent required to give effect to the award of the public arbitration panel, identical

with that of their expired agreement.

#### 4. NIGHT DIFFERENTIAL

The PBA throughout the current round of negotiations sought a 10% differential in pay for time worked on the second and third shifts. The Town argued that no differential is warranted because substantially all members of the force work rotating shifts.

The fact-finder recommended a 5% differential for the third (midnight to 8:00 a.m.) shift upon this finding:

Actually, there are three (3) police departments in Rockland County with night differential pay. However, only one department is pertinently relevant herein, to wit: Ramapo. A five (5%) percent differential payment is made for all police personnel working between the hours of 11PM and 8AM and provided that at least two (2) hours per day is worked during these hours. Thus, one of the relevant and contiguous towns pays it's [sic] police officers a night differential payment, but not to the extent sought by the PBA herein.

The evidence adduced at the arbitral hearing disclosed that in addition to the Town of Ramapo the only Rockland County "police departments" that pay night differentials are those of the Village of Piermont and the County Sheriff's office--and because of the nature of duties of the Sheriff's employees who receive such a differential, it seemed questionable that their work could fairly be compared with that of traditional police officers. Piermont's full-time police complement of three officers is miniscule when compared with the

Orangetown force.

The majority of the panel<sup>7</sup> believes that evidence of practice in but one of the five Rockland towns is insufficient to support the fact-finder's recommendation on this issue and that sound employment relations considerations militate against paying a night differential to employees who, like the members of the Orangetown police force, work rotating shifts. For a police officer who will average one-third of his working time on the third shift, the recommended differential of 5% is roughly equivalent to an across-the-board increase of 1/3 of 5%, or approximately 1.67%. To tack such an increment onto the across-the-board increase awarded by the panel would be, in the view of the majority, inflationary.

The panel therefore rejects the fact-finder's recommendation on this issue and awards there shall be no night differential.

#### 5. RETIREMENT PAYMENT FOR UNUSED SICK LEAVE

The majority of the panel<sup>8</sup> affirms the fact-finder's recommendation on this issue, but dissents from his reasoning. His findings were:

Retirement payment made for unused and accumulated sick leave days is an incentive plan whereby employees (who might be tempted to remain away from work because of minor aches, pains and malady), are encouraged not

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7. Mr. Liberati dissents on this issue.  
8. Mr. Liberati dissents on this issue.

to draw upon sick leave unless absolutely necessary.

Not only is such benefit unavailable to relevant Ramapo and Clarkstown police contracts, but it is not presently bestowed in any police contract in Rockland County.

The implication of the fact-finder's assertion is that the proposed benefit is desirable from the points of view of both parties and that the sole reason for its denial is its unavailability elsewhere in Rockland County. Since the recently-executed Clarkstown agreement provides this benefit,<sup>9</sup> rejection of the fact-finder's recommendation on this issue might be appropriate if the benefit were indeed desirable from the points of view of both parties and comparison on an issue-by-issue basis of contract provisions in similar and neighboring communities were the touchstone to be applied.

The majority finds that nothing in the record necessarily impels the conclusion about this benefit described in the first quoted paragraph from the fact-finder's report. Moreover, comparison of different agreements on an issue-by-issue basis can be unsound, for collective agreements typically contain numerous provisions which affect the employer's labor cost, and an agreement which is more favorable to employees on

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<sup>9</sup>. Employee Organization's Ex. 2, Art. VII, sec. 7.6C.

one issue may well be less favorable on a number of others.

The fact-finder, in the view of the majority, reached the correct port by a tortuous and hazardous route. The panel therefore affirms his recommendation and awards that the PBA's proposal for payment upon retirement for accumulated but unused sick leave be denied.

#### 6. SOCIAL SECURITY PAYMENTS

The majority of the panel<sup>10</sup> affirms the fact-finder's recommendation on this issue. It therefore awards that the PBA's proposal that the Town pay employees' social security contributions (in addition to those made by the employer) be denied.

#### 7. LONGEVITY

The fact-finder rejected the PBA's proposal that longevity be increased from \$390 to \$450 solely upon a comparison of provisions of various Rockland County police agreements. The evidence before him showed that Clarkstown and Ramapo provided longevity payments of \$375 and \$425 respectively; but the recently executed Clarkstown agreement raises its figure to \$450.<sup>11</sup>

As noted above, comparison of agreements on an issue-by-issue basis is not considered by the panel

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10. Mr. Liberati dissents on this issue.

11. Employee Organization's Ex. 2, Art. V, sec. 2.

to be the sole criterion for the making of an award. The mere fact of the increase in longevity pay in Clarkstown, while a factor to be considered, is thus not treated as governing.

Longevity payments function both as an inducement to continue in the employer's service and as an ordinary item of direct compensation. As noted in the discussion of Issue # 2, adjustment of the fact-finder's recommendation on direct compensation was deemed necessary to reflect not only the economic data which were considered by the panel but were unavailable to the fact-finder, but also to provide adequate consideration for the PBA's forced abandonment of the right to negotiate afresh for 1976 terms and conditions of employment.

The majority of the panel<sup>12</sup> thus rejects the fact-finder's recommendation. It awards that longevity payments be increased, effective January 1, 1975, to \$450.

- 8.13 PATROLMAN HELD IN GRADE
9. PROMOTION ON ANNIVERSARY DATE

The panel accepts the substance of the fact-finder's recommendations on these issues, but differs with some of his reasoning and finds that there is in essence but one issue.

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12. Mr. Rooney dissents on this issue.

13. This issue was, as the result of an obvious typographical error, numbered 7 in the fact-finder's report.

On this issue, the panel awards that there shall be automatic progression, upon anniversary of employment, from grade to grade within the rank of patrolman unless the individual is found guilty of charges brought against him after a hearing in accord with the provisions of section 75 of the Civil Service Law.

#### 10. VACATION SCHEDULE

The fact-finder recommended a modest increase in vacation schedules primarily upon comparison with provisions of some other Rockland County agreements.

Although it is true that Clarkstown and Ramapo offer slightly more favorable vacation benefits than does Orangetown, it is noteworthy that three other Rockland County police departments considered by the fact-finder provide materially less in this regard than does Orangetown. Moreover, as stated above, comparison of different agreements on an issue-by-issue basis should not be the sole criterion to be employed in fashioning an award.

Orangetown's vacation schedule, under which twelve days per annum are granted after just one year of employment escalating to a maximum of 30 days per annum after fifteen years of employment, is certainly generous. It is far more favorable than what generally obtains in private industry, in most types of governmental

employment, and, with few exceptions, in police departments. To increase this benefit would of necessity require the Town to choose between hiring additional police officers or adding to its overtime pay burden (a cost item) and reducing police coverage (a security problem). Increase of vacation benefits would of course add nothing to employees' purchasing power.

In these times of uncertain fiscal health and mounting crime, the majority of the panel<sup>14</sup> believes it is irresponsible to confer a benefit whose cost to the Town would be either an increase in expenditure or a reduction of security and which would add nothing to employees' purchasing power.

The panel therefore rejects the fact-finder's recommendation on this issue and awards there shall be no change in the vacation schedule.

#### 11. COMPENSATORY TIME OFF

The fact-finder recommended on this issue as follows:

It is recommended that an employee having five (5) or more years of service have the option of either being paid overtime or receiving compensatory time-off. In connection therewith, the employee should give adequate notice in advance of payroll preparation in the event he elects to take time off.

Under the expired agreement, compensatory time off was allowed for employees with at least ten years of service--partly as an inducement to continue in the Town's employ and partly to maintain a significant

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<sup>14</sup>. Mr. Liberati dissents on this issue.

number of police officers (those with less than ten years' service) who lacked the option so as to insure that staffing requirements could be satisfied.

The panel finds that the evidence warrants enlargement of the class of employees who have the option to receive compensatory time off in lieu of overtime payment but that no good reason exists for restricting that benefit to employees with five years of service, particularly since the number of employees with less than that amount is insufficiently large to insure that staffing requirements will be satisfied.

The panel therefore modifies the fact-finder's recommendation and awards that all employees have the option of being paid overtime or receiving compensatory time off in lieu of overtime payment, provided that supervision may, in its discretion, deny a request for compensatory time off if in its judgment granting such a request would be inconsistent with staffing requirements.

## 12. SCHEDULING OVERTIME

At the hearing, the parties accepted my suggested text on this issue and requested that it be incorporated in the panel's award. My colleagues on the panel concur as to the desirability of the text, and the panel accordingly awards that the parties' agreement contain the following provision:

The Employer, consistently with operating needs, will schedule the workforce for a reasonable period of time in advance in such a manner as to insure that officers' overtime opportunities will not be disregarded save for emergencies or other unusual conditions which cannot reasonably be anticipated.

### 13. DENTAL PLAN

The full text of the fact-finder's recommendation on this issue follows:

It is recommended that the full cost of the current dental plan be borne by the Town. However, for the duration of the Agreement, the maximum amount of premium [to] be paid by the Town should not exceed the premium rate in existence on July 1, 1974.

At the hearing the parties first removed this issue from arbitration but then, as differences appeared concerning the effective time of the benefit, resubmitted it with the understanding that the coverage and quantum of premium payment for the police unit would be the same as recently promulgated for Department of Public Works employees.

Retroactive application of insurance benefits can be tricky, for under the expired agreement pursuant to which employees were required to pay 50% of the premium cost as well as 50% of a covered claim, procurement of coverage was optional. An employee who declined to obtain coverage under the plan described in the expired agreement might, if 100% premium payment were to be ordered retroactively, have a colorable claim against the Town for reimbursement for dental work earlier done

if the insurance carrier were to contest its liability therefor.

A majority of the panel<sup>15</sup> thus finds that the shift in coverage should be prospective, rather than retroactive. The panel therefore awards that effective January 1, 1976 all employees in the PBA unit shall receive dental insurance benefits identical with those provided to employees in the Town's Department of Public Works.

#### 14. REDUCTION OF SICK LEAVE DAYS

The panel members agree that the fact-finder's recommendation on this issue is supported by the evidence. The panel therefore affirms his recommendation and awards that the Town's proposal for a reduction of the number of paid sick leave days be denied.

#### 15. SICK LEAVE ADVANCED CREDIT

The panel members agree that the fact-finder's recommendation on this issue is supported by the evidence. The panel therefore affirms his recommendation and awards that the Town's proposal for the elimination of an advance credit of 36 days' sick leave to new employees be denied.

#### 16. EXTENDED SICK LEAVE

At the conclusion of the hearing, the Town withdrew its rejection of the fact-finder's recommendation

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15. Mr. Liberati dissents as to the effective date of the change in coverage.

on this issue. The panel therefore awards that the  
Town's proposal to limit extended sick leave to employees  
with at least ten years' service be denied.

Dated: Brewster, New York  
December 16, 1975

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Jerome S. Rubenstein, Chairman



STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration, :  
Pursuant to Section 209 of the Civil :  
Service Law, of a Dispute Between :

TOWN OF ORANGETOWN : Case Nos. CA-0035;  
 : M74-761

-and- :

ROCKLAND COUNTY PATROIMEN'S BENEVOLENT :  
ASSOCIATION, INC., ORANGETOWN UNIT :

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OPINION AND AWARD

Appearances

For the Town:

Werner L. Loeb, Esq., Town Attorney  
Dr. Charles J. Ganin, Value Management  
Consultants, Inc., Buffalo, N. Y.

For the Employee Organization:

Milton M. Kase, Esq., New City, N. Y.

Both parties to this impasse having rejected the report and recommendations of Fact-Finder Earle Warren Zaidins dated June 5, 1975, a public arbitration panel was convened, pursuant to the provisions of section 209(4)(c) of the Civil Service Law (hereinafter referred to as part of the Taylor Law), to resolve the issues in dispute. The Town designated Councilman

John F. Rooney as its representative on the panel; the employee organization (hereinafter referred to as "PEA") designated Detective Raymond Liberati as its representative; and I was selected as the public member and chairman.

In the course of the hearings, counsel for the PEA asserted that an ancient state law which he described as the "Rockland County Police Act" precluded collective negotiations on and, hence, arbitral determination of, certain aspects of police officers' pay. He contended that the most recent collective agreement between the parties violated that statute and that certain positions taken by the Town in the course of negotiations and impasse procedures would perpetuate the asserted illegality or compound it. Counsel for the Town denied that the expired collective agreement was inconsistent with the provisions of the Rockland County Police Act and asserted that the later-enacted Taylor Law, affording collective bargaining rights to public employees, rendered it inoperative.

Counsel for both parties understood that the award to be rendered by the public arbitration panel might be significantly affected by a decision one way or the other on the viability of the Rockland County Police Act, and jointly requested issuance of an interim award on the subject. The party-designated arbitrators and counsel expressly authorized me to determine this

an understanding, must incorporate it into the collective agreement unless some statutory provision circumscribes its power to do so.

"Public employers must...be presumed to possess the broad powers needed to negotiate with employees as to all terms and conditions of employment. The presumption may, of course, be rebutted by showing statutory provisions which expressly prohibit collective bargaining as to a particular term or condition..." (id. at 127, 130).

Nothing in the Rockland County Police Act expressly prohibits collective bargaining with respect to its subject matter--doubtless because its most recent amendment antedated by four years enactment of the Taylor Law. That the legislature in the three years since the Court of Appeals issued its Huntington decision made no further amendment of the Rockland County Police Act could thus be construed to indicate its intention not to establish in the towns of one county a special rule as to the scope of bargaining for a special class of employees. But even if such intention could not properly be divined, one is left with Chief Judge Fuld's clear identification of the problem; and since I am aware of no intimation by legislative enactment or case law that a statute like the Rockland County Police Act should be construed to bar collective bargaining over an otherwise mandatory subject, I must conclude that the mandate of the Taylor Law is supreme.

I therefore make the following AWARD:

The Rockland County Police Act does not bar

arbitral resolution of any issue at impasse between the parties.

Dated: Brewster, N. Y.

November 24, 1975

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Jerome S. Rubenstein, Arbitrator

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

On this 24th day of November, 1975, before me personally came and appeared Jerome S. Rubenstein, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

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SUSAN RUBENSTEIN  
Notary Public, State of New York  
No. 4003331  
Qualified in Westchester County  
Commission Expires March 30, 1977

issue as sole arbitrator, waiving all rights which might exist under the Taylor Law to have it decided by a majority of the three-member panel. In compliance with my request, counsel for both parties filed briefs on the issue, which I have duly considered.

The Rockland County Police Act, an arcane piece of legislation published only in volumes of the Session Laws,<sup>1</sup> was enacted in 1936 (c. 526) and amended in 1941 (c. 701), 1946 (c. 941), 1961 (c. 88) and 1963 (c. 371). Section 12, added by the 1946 enactment, provides that "annual salary and compensation...shall be uniform in accordance with...rank and grade" except for policemen assigned to detective duty and mandates automatic progression from grade to grade within the rank of patrolman at specified intervals.

That the subject-matter of section 12 of the Rockland County Police Act (progression within rank and thus within rate range) is ordinarily a mandatory subject of collective bargaining requires no extended discussion. The PBA does not dispute that proposition, but asserts that the absence of express legislative repeal of the Rockland County Police Act impels the conclusion that it still operates to remove this issue

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1. Appended to the Town Attorney's brief are copies of the cited enactments, which he describes as "the writer's best efforts to compile a correct up to date version of the said law which is generally referred to as the Rockland County Police Act."

from the bargaining table.

"Legislative oversight" is a problem that lawyers, for their sins, frequently confront. In a jurisdiction like New York, where only a fraction of the legislature's product appears in the familiar black volumes of the Consolidated Laws,<sup>2</sup> the chances that some long-forgotten enactment might on its face conflict with a more recent one are fairly good. For this reason, lawyerly ingenuity has devised a variety of means to evade the thrust of dead-hand legislation upon contemporary reality; but although a discussion of some of those tactics might have intellectual charm, it is unnecessary to a resolution of the present issue.

In Bd. of Ed. of U.F.S.D. No. 3 v. Associated Teachers of Huntington, 30 N. Y. 2d 122 (1972) the Court of Appeals held that the Taylor Law validated certain commitments by a public employer which before its enactment might have been held illegal. As Chief Judge Fuld put it:

"[T]he validity of a provision found in a collective agreement negotiated by a public employer turns upon whether it constitutes a term or condition of employment. If it does, then the public employer must negotiate as to such term or condition and, upon reaching

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2. Certain volumes of the Consolidated Laws are entitled, fait de mieux, "Unconsolidated Laws."