

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory
Arbitration

- between -

NORTH TARRYTOWN POLICE BENEVOLENT
ASSOCIATION

- and -

THE VILLAGE OF NORTH TARRYTOWN

AWARD OF PUBLIC
ARBITRATION PANEL

Case No.: CA - 0064:
M 75-584

N. Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
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CONCILIATION

ARBITRATION PANEL

Nicholas S. Falcone, Esq., Neutral Chairman
John Henry, Employee Panel Member
James Timmings, Employer Panel Member

APPEARANCES:

For the Village

William McBride, Trustee
Philip Zegarelli, Trustee
Arthur S. Olick, Esq., Counsel

For the Association

Lieutenant John Pankovic, Negotiator
James Lawlor, Negotiator
Carmel DeFalco, Negotiator
John R. Harold, Esq., Counsel



This is a proceeding pursuant to Section 209.4 (c) of Article 14 of the New York Civil Service Law. A hearing in this matter was held in the Village of North Tarrytown, New York on April 27, 1976, before the undersigned members of the Public Arbitration Panel who were designated in accordance with the compulsory interest arbitration procedures of the N. Y. State Public Relations Board. At this hearing, the parties were provided full opportunity to present evidence, testimony and witnesses in support of their respective positions. The exhibits introduced weigh at least twenty (20) pounds. The parties requested an opportunity to file post-hearing briefs due May 17th and reply briefs due on May 24th. The post-hearing briefs were not filed until June 14th and reply briefs were received about July 28th.

The parties agreed to the following stipulation:

Both parties stipulated that the record will constitute the documentary exhibits, the materials contained in the post-hearing principal and reply briefs submitted by both sides and such factual data as may be contained in the decision or decisions of the arbitrators.

Following the close of the hearing, and after all briefs were filed with the arbitrators, the Panel met in executive session on August 20th, 1976, to consider all the evidence and to render an award.

The Issues

Wages
Term of Agreement
Wage differentials
Cost of living clause
Longevity
Night Shift Pay
Out-of-title Pay
Stand-by Time
Pay beyond overtime
Triple time for holidays worked
Vacations and choice of vacation
Paid Holidays

The Issues (Continued)

Personal leave days
Welfare Fund
Uniform Allowance
Educational privileges
Re-opening negotiations
Extending authority of arbitrator

In addition, the Village raised the following issues:

Salaries to be paid bi-monthly
The work-week shall comprise 40 hours
New agreement shall cover a two year period
Uniform allowance
Restriction of Personal Leave
Wage increase of not more than 5% for each of the two years, effective immediately and not retroactively.
(In its post-hearing brief, the Village modified this wage offer and requested that the police receive "A modest salary increase of some 3% for each of two years"xxx.)

BACKGROUND

The Police have been working under the terms of a collective bargaining agreement which expired on May 31, 1975. Following a declared impasse in negotiations leading to a successor agreement, a Fact-Finder appointed by PERB, issued his report and recommendations under date of January 13, 1976. This report was unacceptable and the Association petitioned PERB, requesting that the impasse be submitted to a public arbitration panel. Under date of April 7, 1976, PERB designated a public arbitration panel for the purpose of making a just and reasonable determination of the dispute herein.

In reaching its determination, this Public Arbitration Panel gave serious consideration to the report and recommendations of Mr. William J. Curtis, Fact-Finder. In addition, the Panel examined comparison of wages, hours and working conditions of the North Tarrytown police with those in comparable areas; the interests and welfare of the public and the finan-

cial ability of the Village; and the working conditions which are unique to those engaged in public police activities.

In his report dated January 13, 1976, the Fact-Finder addressed himself to 22 Association proposals and 6 Village proposals and offered affirmative recommendations only concerning wages and uniform allowance. The remaining 26 or more proposals were either denied or ignored. Both the Association and the Village however regard each of the items as open before this Arbitration Panel which, complying with the relevant statute, has therefore considered each of the items submitted by the parties herein.

AWARD

1. Prior Practice Clause

The Village seeks to eliminate this contract provision on the ground that "it is an invitation to grievances".

This provision is grounded on conditions of employment not specifically mentioned in the agreement. It would be unwise for this Panel to plow this minefield and, therefore suggests that such practices be first defined and then become a topic for discussion during future contract negotiations. Denied.

2. Cost of Living Clause

The contract to be recommended by this Panel will expire on May 31, 1977 and therefore the protective features inherent in such a clause would be absent because of the relatively brief period remaining between the date of this award and the termination of the new agreement. The Panel rejects this Association proposal

3. Continuation of Expired Contract Except as Amended

Except for any changes made in this award, the provisions appearing in the expired agreement between the parties herein shall be incorporated in the agreement expiring on May 31, 1977.

4. Longevity

An examination of the data submitted by the parties shows clearly that the Village, on a 5 year basis, ranks near the top of Westchester villages. Association demand denied.

5. Personal Days

Out of 18 Westchester villages providing this benefit, North Tarrytown ranks in the middle of this group. Comparable villages provide from 3 to 6 personal days. We feel some improvement is warranted in this area, and therefore award an additional day, retroactive to June 1, 1976. The Village proposal to condition this benefit is denied on the ground that the grievance procedure is available to it in the event abuses follow.

6. Costs of Arbitration

The Association has sought an amendment to the grievance procedure requiring the losing party in an arbitration proceeding to absorb the entire costs of such proceeding. This is, in our judgment, a procedural rather than a substantive issue exclusively within the province of the parties and this Panel chooses not to intervene. Denied.

7. Uniform Allowance

Data submitted herein shows that the present uniform allowance of \$175.00 places the Village 13th from the top of all 21 Westchester Villages. The Fact-Finder recommended that this allowance be increased to \$200.00, presumably recognizing the consistent increase in the price.

of clothing. This Panel accepts the increase to \$200.00. However, in an attempt to strive for uniformity of police dress, a committee shall be appointed consisting of the Chief of Police, Chairman of the Police Committee and a member of the Police bargaining team, which committee shall, effective January, 1977, establish rules pertaining to the expenditure of the clothing allowance.

8. Re-Opening Provision

In view of the relatively brief period during which the new agreement will be operative, we feel a contract reopening clause would be inappropriate. Denied.

9. Welfare Benefits

The Association has proposed that the Village contribute the sum of \$300.00, per employee, to a union administered welfare plan incorporating dental and other health benefits. Examining the evidence, we find no village police department in Westchester receiving this benefit. Furthermore, the cost inherent in adopting this benefit would not be warranted at this time. Denied.

10. Out of Title Pay

This Panel believes that existing State law affords sufficient protection for those officers working in a higher classification. In the event the Village attempts to circumvent the relevant statute, grievance machinery will, in our judgment, constitute an appropriate procedure for seeking relief. Denied.

11. Delayed Salary and Benefits Payment

No evidence was submitted to support any contention that the Village was chronically slow in meeting its payroll and benefit responsibilities. Denied.

12. Stand-By Time

The Panel has not been convinced that this proposal was predicated upon any real abuse by the Village. Denied.

13. Meal Compensation

This proposal was based upon speculation. No evidence was offered to support the allegation of hardship. Denied.

14. Educational Allowance

Although this proposal has great merit, the Panel feels the expense involved ought not to be assumed at this time. Denied.

15. Pay For Work Before and After Regular Tours Beyond Overtime

The cost inherent in this proposal should not be assumed at this time. Denied.

16, 17, 18 and 19. Shift Differentials; Salary Differentials; Pay For Work on Days off Beyond Overtime; Triple Time For Holiday Work

These proposals all entail increased appropriations which the Panel considers burdensome at present. Denied.

20. Term of Agreement

In its original proposals, the Association sought a one year agreement, to wit, June 1, 1975 to May 31, 1976. On the other hand, the Village proposed a two year contract. In its post-hearing brief, the Association suggested salary increases covering a two year period. It is the judgment of the Panel that the new agreement shall cover the period June 1, 1975 to May 31, 1977.

21. Vacations

The Association has proposed 30 working days off per year for vacation. The Village opposed on the ground that its police enjoy a m generous vacation plan than most of its neighbors. The Village's position

is well supported by evidence which shows that North Tarrytown, Bronxville, Hastings, Irvington and Tarrytown equally rank second out of 31 reported villages, providing 15 working days vacation after one year of service.

Denied.

22. Bill of Rights

The Association seeks to structure a Bill of Rights and suggested that the matter be returned to the parties for action and, in the event this matter is unresolved, the Panel, at some future date, would re-enter and make an award. The Panel agrees that the parties should attempt to settle this issue but, in no event, does it choose to intervene. Denied.

23. Paid Holidays Increased to 15

At present the Village police receive 12 paid holidays. Only 4 villages out of 31 offer 13 paid holidays and none provide 15. North Tarrytown, Elmsford, Tuckahoe and Tarrytown provide 12 paid holidays. On comparability, we observe that the Village is among the leaders in providing 12 paid holidays. Denied.

24. Severance Pay

This proposal, if granted, might well constitute a substantial cost item which we feel the Village ought not to be burdened during this contract period.

25. Vacation Seniority Pick

The Association proposed that vacations be picked on the basis of service seniority in the entire police department and that it be exercised on a rank basis. This is a pervasive practice in contracts affecting a large part of the private sector. While we recognize the uniqueness of manpower requirements in a police department, we do believe such seniority pick is the most equitable procedure for determining vacation preferences.

We therefore accept vacation seniority pick only on condition that its exercise does not affect adversely manpower requirements in each rank of the Village police department.

The Village has proposed specific changes to be incorporated in the 1975-77 agreement. With the exception of two proposals which will be considered now, the other four (4) proposals have been covered elsewhere in this arbitration award.

1. Pay Day Shall Be Twice Monthly

Police officers are now paid on a weekly basis. Presumably the change sought herein may be predicated on some anticipation that a saving may result. If this is the motivation--no evidence was submitted in support of this proposal--any savings could at best be minimal in a 22 member bargaining unit. Denied.

2. All Police Shall Work a 40 Hour Week

Again, it must be pointed out that this proposal has been introduced without any supporting evidence. Furthermore, this is an extremely sensitive area which would be best left for negotiations between the parties rather than for intervention by arbitrators. Denied.

The final proposal to be considered concerns salaries to be paid to members of the bargaining unit. The Village proposed an across the board increase of no more than five (5) percent for each of two years. This wage proposal was introduced at the Fact-Finding hearing. During this arbitration proceeding the Village modified its salary offer and seeks to grant "a modest salary increase of some 3% for each of two years." The Association asks us to "look to what it costs to live." It suggested

that \$13,966.00, the present salary, is far short of the \$20,000 which the Association seeks as a matter of "justice". Its final demand comprised "four \$900.00 increases each six months over two years producing 6/1/75 \$14,866.00, 12/1/75 \$15,766.00, 6/1/76 \$16,666.00, 12/1/76 \$17,566.00."

Mr. Curtis, the Fact-Finder, in his report dated January 13, 1976, recommended a one year agreement in which salaries would be increased 5% as of June 1, 1975 and an additional increase of 4% would follow on December 1, 1975. Since both parties sought a one year agreement, Mr. Curtis restricted his recommendations to a one year term.

The Association, in support of its proposal for an increase of \$3,600.00 in base pay over a two year period, advanced the following arguments:

1. By reason of the nature of their specialized training, experience and risk factors which are part of police work, they should be elevated above the middle income group which receives \$17,676.00. In addition, those at the top grade of patrolman should receive above \$20,000.00.

2. A large segment of workers in private industry have received wage increases averaging 11%.

3. The average change in cost of living over the period July, 1973 to June 1975 was 9.96%. This erosion in purchasing power should be restored.

4. Teacher salary increases as of July, 1975 were at about 10%, including increment.

5. Blue collar workers in Westchester secured increases of \$500.00 each six months while those in higher grades received \$600.00 raises each six months.

6. Comparing existing salaries of the Village police with other Westchester villages, Ardsley is paying its police as of 1/1/76 \$16,275.00, Bedford had a rate of \$16,000.00 as of 7/1/75; Briarcliff provides two six month increases of \$800.00, Bronxville established a rate of \$15,300.00 as of 6/1/75, Irvington brought its rate up to \$15,123.00 as of 6/1/73, Mt. Kisco went to \$15,748.00 on 6/1/75 and Pelham Manor established a new rate of \$15,100 as of 6/1/75.

The Association argued that upon the evidence submitted, the base rate for a police officer in North Tarrytown should be established at \$17,566.00 as of 12/1/76.

The Village, on the other hand, seeking to justify its offer of 3% salary increase for each contract year, advanced the following arguments:

1. The Fact-Finder's report is grossly inadequate when it recommends inflationary, excessive and totally unjustified salary increases.
2. The Village has kept its police substantially ahead of inflation.
3. The Village does not have the ability to grant substantial wage and fringe benefit increases for the following reasons:
 - a. Of the 21 Westchester County villages, North Tarrytown ranks eighth in population; sixteenth in total assessed valuation. It ranks eleventh in the size of its police department but has the seventh highest tax rate among Westchester villages; its assessed valuations have increased 2% over the past 7 years while its tax rate has, over the same period, increased 65%; assessed valuation of its taxable realty was down \$322,255.00 for 1975-76.

b. North Tarrytown is spending itself into bankruptcy. It is very close to its 2% constitutional tax limitation.

4. A computerized analysis demonstrates conclusively that North Tarrytown is in parity with its Westchester neighbors and that a 2% wage increase is all that is necessary to place the Village squarely at a prevailing norm.

5. Municipal government simply cannot indemnify its employees against losses in purchasing power resulting from inflation.

6. North Tarrytown police salaries and fringe benefits for 1974-75 compared with the 20 other Westchester villages, while not the highest, are not out of line. For patrolman first class and for sergeants, the Village ranked ninth.

7. The average patrolman I salary rate as of May, 1976, in 11 villages was \$15,269.00, some 9% over North Tarrytown's rate.

Examining the data furnished by the parties exclusively, we note the following:

The Village has diminishing ability to pay salary increases comparable to those paid in previous years.

Non pay benefits provided by this Village are, in most areas, favorable with those benefits existing in comparable geographical areas, and, we have noted that its vacation benefits, after one year of service, are close to the top paid by 21 villages. We have observed particularly that this Village alone has a three (3) step plan leading to patrolman first class while the majority of the 21 Westchester villages adhere to a five (5) step plan.

The Panel has considered the Village arguments claiming that its

reduced financial ability requires that it offer no more than a three percent salary increase in each of the two year contract.

The Panel is cognizant that this Village, like many Westchester communities, is pressed with some financial difficulties made more burdensome due to a relatively small tax base. We must, on the other hand, recognize that the police are faced with financial problems due largely to the erosion of the wage dollar over the 1974-77 period. The C.P.I. increase during the period April, 1974-April, 1975 was 8.5%; during the period, May, 1975-May, 1976, the increase was 6.5%. Admittedly risky, a projection of the C.P.I. increase for the period May, 1976-May, 1977, based upon the best information available at this time, indicates that the cost of living will rise between 6 and 7%. Therefore, it seems to us that this loss of purchasing power must be considered in establishing new salary rates. We believe that demands for continued effective police work and the advantages flowing therefrom must be contingent upon the willingness of the Village taxpayers to make some effort at stabilizing the purchasing power of its public servants.

We wish to emphasize here that the criteria recognized in this arbitration proceeding makes financial ability one consideration but not the controlling factor. Loss of purchasing power resulting from inflation, another factor, has already been discussed hereinabove. Some difficulty was encountered when we considered the comparability criterion. First, the parties were not in agreement on which villages were comparable to North Tarrytown. Then, very few relevant wage rates have been reported for the 1975-76 period, primarily because most police impasses, as the one before us, are now before arbitration panels. The only rates cov

ing 1975-76 and reported by the Village are those relating to four villages where the police wage rates (first grade patrolman) run from \$15,400./\$16,000. in Pleasantville, to \$16,773. in Larchmont. The Association called attention to Bronxville where a rate of \$15,500. was established as of June 1, 1976. In addition, the Association presented data relating to several Fact-Finding reports offered to Westchester Villages attempting to resolve policy salary impasses covering the 1975-76 period. No evidence was offered showing that any of these recommendations had been implemented. On all the evidence submitted by the parties, this Panel awards to the members of the bargaining unit herein, an across the board wage increase of seven (7) percent for the period, June 1, 1975 to May 31, 1976, payment to be made retroactive to June 1, 1975. For the contract year beginning on June 1, 1976, and terminating on May 31st, 1977, we award the members of the bargaining unit an across the board increase of four (4) percent retroactive to June 1, 1976, and an additional across the board increase of two and one-half (2½) percent to be paid on February 1, 1977. The retroactive pay award made herein shall be paid within a period not to exceed ten (10) days from the receipt of this award.

To ignore reality and to provide these police officers with a nominal increase in salary, as suggested by the Village, would, in the Chairman's judgment, run the risk of a serious morale problem, in which event, a concededly necessary and important municipal service might deteriorate to the great disadvantage of all the Village taxpayers.

August 30, 1976

Nicholas S. Falcone
NICHOLAS S. FALCONE, CHAIRMAN

JOHN HENRY, Panel Member

James J. Timmings
JAMES J. TIMMINGS, Panel Member

STATE, CITY AND COUNTY OF NEW YORK: SS:

On this 30th day of August, 1976, before me personally came and appeared NICHOLAS S. FALCONE, 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.

E. Joseph Picarello

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

E. JOSEPH PICARELLO
Notary Public, State of New York
No. 60-3925190
Qualified in Westchester County
Certificate filed in Westchester County
Commission Expires March 30, 1977

On this day of , 1976, before me personally came and appeared JOHN HENRY, 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.

Concur with separate
opinion (attached)

John P. Henry

JOHN HENRY, Panel Member

JAMES TIMMINGS, Panel Member

STATE, CITY AND COUNTY OF NEW YORK: SS:

On this 30th day of August, 1976, before me personally came and appeared NICHOLAS S. FALCONE, 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.

[Signature]

Notary Public
Qualified in the County of Westchester
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

On this 13 day of Sept., 1976, before me personally came and appeared JOHN HENRY, 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.

Brian M. Lucyk

BRIAN M. LUCYK
Notary Public, State of New York
No. 01-1617037
Certificate Filed in Westchester County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

On this 7th day of *Sept.*, 1976, before me personally came and appeared JAMES TIMMINGS, 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.

Filomena A. Fallacaro

FILOMENA A. FALLACARO
Notary Public, State of New York
No. 60-1155725
Qualified in Westchester County
Commission Expires March 30, 1977

PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory
Arbitration

- between -

NORTH TARRYTOWN POLICE BENEVOLENT
ASSOCIATION

Case No.: CA - 0064:
M 75-584

- and -

THE VILLAGE OF NORTH TARRYTOWN
-----x

The Concurring Opinion of
Arbitrator John Henry

The Village presented much evidence in the Arbitration Panel Hearing in support of their claim that they could not afford to pay the salary increase recommended by the Fact-Finder.

However, at the Arbitration Panel closed meeting, the Village representative abandoned that concept and presented to the Arbitrators a graph which went into great depth to explain the impact of the cost of living on salaries.

This Panel member objects to the introduction of this graph at that stage of the Arbitration. Had the Village or its Panel representative intended to use the graph, then the graph should have been properly introduced as an exhibit at the Arbitration Hearings.

The evidence submitted by the Village to the Arbitration Panel, for the most part, dealt with the inability of the Village to

pay. Thus, both the City's Affirmative and Reply Brief dealt with the matters presented to them. This new, unique application of the Cost of Living Index was not referred to by the Village in their Initial or Reply Brief. Thus, for a second reason, this new theory was out of order. Furthermore, the new graph presented was most inaccurate and misleading and yet the representatives of the police at the Panel Hearings were given no opportunity to see it or rebut it. The undersigned thoroughly believe that the graph was in grievous error but then again he was surprised to see it there and not under obligation to be prepared to rebut it since he came ready to argue on the matter already submitted to the Panel.

In addition, the undersigned is sorely disappointed in the Arbitrator's variance from the Fact-Finder's Award rendering a 7% increase in salary rather than a 9% rendered by the Fact-Finder. And this to policemen already below the police going rate in Westchester County. Certainly the Village did not show adequate reason why the Arbitrator should have ignored the Fact-Finder's considered recommendation. And again this is not only so because of the Fact-Finder's recommendation but because of the obvious weight the Arbitrator gave to the erroneous new graph.

Nevertheless, unfortunately, after this long delay, the police are no longer economically able to wait any further and must recognize the obvious and accept even this most unjustified Award.

Accordingly, while the undersigned voices strong objection of the tactics of the Village's representative and strong objection to the conclusions of the neutral Arbitrator, he is compelled because of the needs of the police to concur in a neutral Arbitrator's Award, so that there will be at least a two to one decision necessary to support a final and binding award, which will effectively conclude the matter.

The police obviously are most anxious to immediately receive the meager increase now found to be due them.

Thus, the undersigned concurs in the Award.



John Henry
Arbitrator

VILLAGE OF NORTH TARRYTOWN, NEW YORK

28 BEEKMAN AVENUE

JAMES F. GALGANO, MAYOR

PHILIP E. ZEGARELLI, CHAIRMAN
POLICE & LIGHT COMM., HOUSING COMM.

JAMES J. TIMMINGS, JR., CHAIRMAN
FINANCE & REAL ESTATE, FIRE COMM.

JOHN MALANDRINO, CHAIRMAN
PUBLIC WORKS, SENIOR CITIZENS COMM.

EMILIE SPAULDING, CHAIRMAN
ADMINISTRATION COMM. & DRUG

WILLIAM MCBRIDE, CHAIRMAN
WATER COMMITTEE

THOMAS CAVALIERI, CHAIRMAN
RECREATION COMMITTEE



INCORPORATED 1874

JAMES J. TIMMINGS, JR.
DEPUTY MAYOR

MISS FILOMENA FALLACARO
VILLAGE CLERK

DAVID J. WHELAN
VILLAGE COUNSEL

MRS. IRENE AMATO
TREASURER

8 September 1976

Mr. Falcone:

This minority opinion will address to several failures of the Arbitration Panel in the subject case.

Foremost, to be equitable to both the Public Employee and the taxpayer there is a necessity to define the job that the salary is being set for. American Industry recognizes this need to fairly evaluate jobs such that the scientist, designer, production worker, salesman, legal staff, medical staff and others are paid in relation to their contribution to a successful organization. To compare these diverse talents it is necessary to evaluate each position by 1). The knowledge required to perform the job. 2). The use of ingenuity required by this job. 3). The Administrative Responsibilities. 4). The Operating Responsibilities that the job entails. It also follows that when a measurement criteria of this nature is installed the Village would be able to provide equitable salary treatment to all of its employees.

The test of the success of a Salary Plan, that is at least equitable, is the ability to attract and retain qualified employees. A guide for checking that the salary for a position is equitable can be to determine what a similar job pays in a comparable location.

In all of the data submitted by the Village and the Association (including a multitude of Village, Town, City and County Police contracts) is there is no effort to define a Patrolman's job. Consequently, the first step is to evaluate the job by Private Sector Methods.

I. Knowledge is defined in the contract between North Tarrytown and its Police as requiring a four year high school education.

In addition the job of Patrolman (I) requires two years of training or prior experience. (II) Ingenuity. This factor measures the extent to which creativeness, resourcefulness of inventiveness are elements of the job. It considers the degree of original and independent thinking required. It should be recognized that Ingenuity is a definite requisite of the position, but usually applies to assigned, moderately complex tasks or programs which may extend beyond own activities. This requires frequent original and independent thinking. (III) Administrative Responsibilities measures the requirement for organizing, training, guiding, planning for, coordinating, controlling, supervising and directing personnel. A Patrolman I job involves complex functional control responsibilities with moderate responsibility for follow up, or includes limited functional control responsibilities outside of the Department. (IV) Operating Responsibilities measures the extent to which the responsibility for making decisions and taking actions affecting operations is an element in the position. A Patrolman I requires frequent operating decisions and actions of moderate difficulty, and some difficult decisions and actions. The Patrolman may assist in formulating recommendations on difficult and important problems. Decisions and actions are very difficult to check; any inadequacies would cause considerable inconvenience or expense. Effect of inadequacies may extend outside of the Village. The position of Patrolman I, as defined, can be equated to a salary base in Private Industry for a 40 hour week as follows:

Date	40 hour week	35.5 hour week	N.T. Police Award
6/1/75	14,198	12,589	14,944
6/1/76	15,330	13,592	15,543

This tabulation shows that the award of the panel is clearly excessive in each of the two years and further that the Village has every right to expect a 40 hour work week for the salaries paid to its Police.

Assuming that there is no just comparing of Police and Industrial salaries we have examined the Consumer Price Index (New York-New Jersey Metropolitan Area) for the period 1967-1976 (plus panel projections), as compared to North Tarrytown Police Salaries (contracts submitted cover the period June 1, 1969 thru May 31, 1975 and we have added the salary award recommended by this panel) in addition, because of information furnished by the P.B.A. we have looked at the salary policy of one of New York States major industrial employers for the period of 1969 thru the present. To make this data more meaningful we have plotted it on the attached curve sheet. What it shows is a clear trend of Public Salaries outpacing private Industry. Further it shows, with the assumption that the June 1969 agreement brought Police

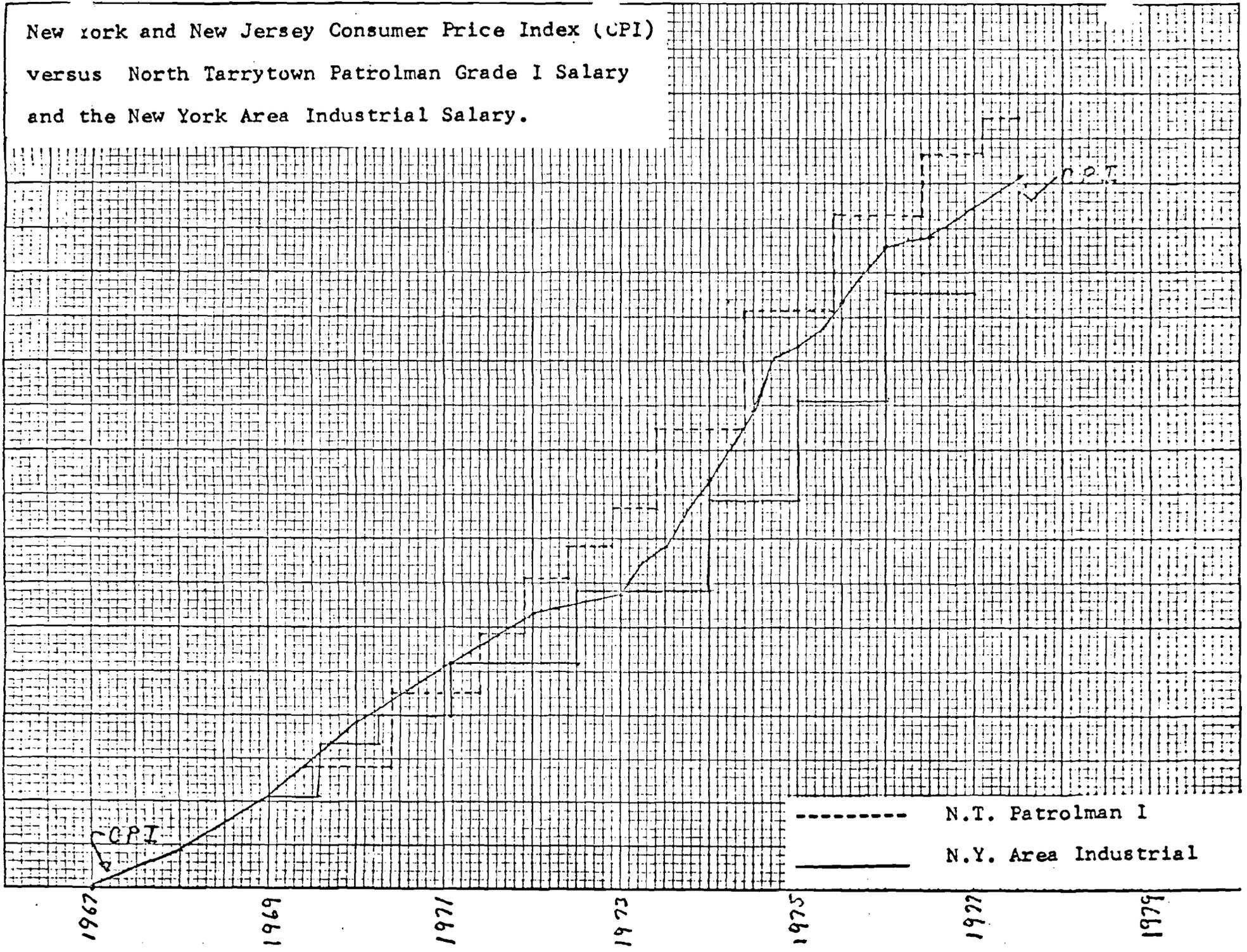
New York and New Jersey Consumer Price Index (CPI)
versus North Tarrytown Patrolman Grade I Salary
and the New York Area Industrial Salary.

175

150

125

100



----- N.T. Patrolman I
———— N.Y. Area Industrial

CPI

CPI



salaries equal to the C.P.I. rather than in front of it as has been the case with each contract since then, that in June of 1975 Police salary was equal to C.P.I. Therefore, with the C.P.I. increase between May 1975 and May 1976 being 6.5% a just increase would be 3.25%. With the projected increase from May 1976 to May 1977 being between 6 and 7 percent a just increase would be 6.25% or translating to actual dollars the Patrolman I salary should be increased to \$14,420 effective June 1, 1975 and to \$15,321 effective June 1, 1976 thru May 31, 1977.

It should be noted that figures used for police salary are absolute dollars and are not adjusted for an approximately 3% reduction in work hours negotiated effective June 1, 1970. To justify the 3.25% increase effective June 1, 1975 it is only necessary to think that food, clothing and materials that cost \$100 at that time could be expected to cost \$106.50 on May 31, 1976. Further, it is assumed that the rate of inflation is growing constantly. Therefore, to increase salaries to \$103.25 on June 1 allows \$3.25 to be put in savings in June. By September only \$1.62 is being saved and by December all of the increase is spent to overcome inflation. During the second half of the year savings are used to make up for the continuing inflation and by May 31 the principal of the savings is used up. (The Patrolman is still ahead by any interest that principal generated). For the second year it is necessary to add \$3.25 to the salary plus 1/2 of the inflation rate for the year.

It must also be noted that apparel, transportation and medical care are major contributors to C.P.I. and that the Village pays the total cost of medical insurance, has increased the clothing allowance by 100% since June of 1973 and exhibits a policy of hiring local residents. Therefore, something less than full C.P.I. should be allotted to salary increases.

Briefly, it must be documented that North Tarrytown Police Salary meets and probably exceeds the test of attracting and retaining qualified people. During negotiations 9 members of the 24 man force were eligible to retire but they chose to continue working. Recently one officer died and there are now 8 potential retirees in a 23 man force. In addition, men who are high on the County Civil Service list and consequently at the top of the local list are seeking out Village Officials in an attempt to be placed on the force. No better proof exists that North Tarrytown salaries are at least fair.

What does this job pay in a comparable community? First it must be pointed out that there is clear discrimination against Villages (as compared to cities and towns) in the State Aid Formula used by the State of New York. As a result Villages must raise a greater percentage of their operating revenue from Real Property tax than do other levels of government. Therefore, all of the

contractual data submitted could have been reduced to contracts with the 21 Villages in Westchester. The Computer analysis submitted by the Village studied 14 important variables and also the consideration given to the position of each Village to determine its maximum taxing ability as contained in State of New York, Legislative Document #97 "Special Report on Municipal Affairs by the State Comptroller". There is clear evidence that there are NO truly comparable Villages and forced comparisons are at best a crude guideline. In this area there is also evidence of the poor management of New York City reflecting into the suburban communities. Before leaving this subject area it must be mentioned that the computer possesses the ability to analyze more variable data than hand calculations and its suggestion, that based on data available in early 1976, that \$14,258 is the just salary for a Patrolman I is undoubtedly the most valid criteria, outside of defining the job to be done.

Ability to pay. It is interesting to note that with all of the multitude of contracts submitted and the resulting discussion in the P.B.A. Principal Brief there are only four that are termed good, all of the others are either poor or communities attempting to catch up. The four good contracts and comments on the government financial condition follow:

Nassau County - In the spring of 1976 Moody's lowered the County's Bond Rating, a sign of fiscal trouble.

New York City - In default - Under the control of a State Financial Control Board. Taxing at 96.5% of maximum ability,

City of Yonkers - In default - Under the control of a State Financial Control Board. Taxing at 99.91% of maximum ability.

Village of Ossining - Taxing at 99.18% of maximum ability. Worst fiscal position of Westchester's Villages.

Why is Police Salary so related to the Village fiscal position? In the Village of North Tarrytown's 1975-1976 Fiscal year a total of \$1,936,190.57 was spent from General Fund and Federal Revenue Sharing. Included in this sum is \$470,438.47 in the Police Budget, \$165,558 for Police in the employee benefit budget and \$8,540 for Police in the Debt Service Budget or 33.29% of the total expenditure is Police Related and salary and benefits account for 86.6% of the Police Budget. Also to be considered is the Village submissions of the graph which shows the actual 2% tax limit and future projections as well as the actual tax levy and projections. According to this submission the Village will reach its 2% limit in 1980 Fiscal year. However, this same curve indicates a tax levy for the present fiscal year of \$1,660,000. The adopted Budget shows a tax levy of \$1,714,101 or in other words the Village is losing its battle to control its financial destiny. To further substantiate

ability to pay is the Village computer study which identifies True Tax, True Value, Median Family Income and Village as the four most important variable in the study. All of these items have a direct relationship on ability to pay.

We have also seen the Financial Control Board clamp wage freezes on the Police in New York City and Yonkers. It is also well publicized that there have been substantial force reductions required in New York City. It can only be concluded that Taylor Law Panels must stop their excessive awards before all levels of government are forced into default.

The following Tabulation is presented to compare salary from all of its major aspects:

Date	Private Sector		C.P.I. data	Computer Panel Award actual	Award
	35.5 hr. wk.	40 hr. wk.			
6/1/75	12,589	14,198	14,420	14,258	14,944
6/1/76	13,592	15,330	15,321	----	15,543

In conclusion of the salary issue it is recognized that because of the tax situation New York State is least attractive of the 48 continental States to industry. In addition to the salary, industry has managed to maintain its Benefit Package to 20% of Payroll, yet in 1975-1976 the North Tarrytown Police package amounted to 42.14%. Therefore, New York's ability to attract and retain tax paying industry is further diminished because the most desirable segment of the work force would be attracted to superior salary and benefit employers.

The next great injustice was accomplished by the treatment of Personal Business Days. For many pages in its principal brief the P.B.A. details the problems associated with shift type work. However, one of the areas where Police shift work is superior to the standard work day is in the area of Personal Business. Sixty seven (67) percent of Police work time is outside of the normal workday. Because Police work includes Saturdays and Sundays their days off are frequently during the normal work week. Police have vacation time in excess of Private Sector employees. With some scheduling most Personal Business can be accomplished without additional time off. It is probable that some Personal Business cannot be deferred and P.B. Time is necessary, but there is no convincing argument that it should be increased. The position of the Panel majority is that if other localities make a mistake North Tarrytown should also. It should be recognized that the present Police Contract allows for 0.86% of payroll for Personal time. In fiscal year 1975-1976 the North Tarrytown Police used 0.63% of Payroll for Personal Business. It is totally inconceivable that the Police require more than 73% of the Personal Business time. Without clear definition of what is Personal Business the Village is without power to control this abuse and the error of the Panel majority in effect will further reduce Police protection

in North Tarrytown.

The panel did not probe the Village request for twice monthly pay days. It is a fact that 3 days per week are spent in the Village Treasurer's Office to take care of payroll details. It is anticipated that reduction in pay days would allow free time to establish a Central Purchasing Operation without addition to the staff in the Village Office. As a further aid to establishing Central Purchasing the auditor is investigating a computer payroll. Since costs are based on the number of checks issued; therefore, twice monthly pay days would reduce the cost of preparing the payroll by more than half. The end result of these two steps is an appreciable savings to be realized by the Village.

Other areas in the Panel Award can be defined as having from lukewarm to wholehearted concurrence.

James J. Timmings, Jr.
James J. Timmings, Jr.

PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Compulsory Arbitration :
: Between :
: NORTH TARRYTOWN POLICE BENEFIT ASSOCIATION :
: and :
: THE VILLAGE OF NORTH TARRYTOWN :
-----X

AMENDED AWARD OF
PUBLIC ARBITRATION PANEL
Case No. CA - 0064
M 75 - 584

ARBITRATION PANEL

Nicholas S. Falcone, Esq., Neutral Chairman
John Henry, Employee Panel Member
James Timmings, Employer Panel Member

N.Y.S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED
DEC 7 - 1975

APPEARANCES:

For the Village

Arthur S. Olick, Esq., Counsel

CONCILIATION

For the Association

John R. Harold, Esq., Counsel

On or about August 30, 1976, this Arbitration Panel made individual Awards covering approximately twenty-three (23) issues in dispute between the parties herein. These Awards, made pursuant to Section 209.4(c) of Article 14 of the New York Civil Service Law, were forwarded to all interested parties.

Following receipt of the arbitration Award on or about September 22, 1976, the parties herein disagreed over the interpretation and applicability of one of the 23 disputed items covered by the Award. This item was Triple Time Pay for Holidays Worked.

When the parties were unable to resolve this dispute, the Association, citing Section 7509 of the Civil Practice Law and Rules, on October 8, 1976, made application to this Panel seeking to modify the award of August 30, 1976. Accordingly, all members of the Panel convened on November 4, 1976 at the Village Hall, North Tarrytown, New York, and heard argument on this application. Both parties were given full opportunity to present oral argument, introduce exhibits and file briefs. Counsel for both parties, having expressed no desire to file post-hearing briefs, the Panel met in executive session immediately following the close of the November 4th hearing. Members of the Panel discussed the issues raised at the hearing and proceeded to render a decision on the application. The dissenting opinion of Panelist Timmings is attached hereto.

CONTENTIONS OF THE ASSOCIATION

The Association maintained that pursuant to the contractual agreement between the Association and the Village which expired on May 31, 1976, Article VII, Section 3 thereof, provided that "Officers required to work on their paid holidays shall be paid additional straight time for the

hours worked." Pursuant to this agreement, the practice has been to pay such police officers for such work at the rate of three (3) times their normal rate of pay. In its contractual demands made following the expiration of the aforesaid agreement on May 31, 1976, the Association requested that the Village practice of payment of triple time for holidays worked be incorporated in the written successor agreement.

Continuing with its presentation, the Association noted that the Panel, in its August 30, 1976 Award, had ruled that the prior practice clause in the agreement expiring on May 31, 1975 be continued in the successor agreement, except as may be amended by the Panel.

Interpreting the August 30, 1976 Award, the Association believes that the Panel only denied the Association's request for the inclusion of triple time for holidays worked in the successor agreement covering the period, June 1, 1975 to May 31, 1977. The Association argued that when the Panel denied the request to include a triple time for holidays worked provision in the written successor agreement dated June 1, 1975, such denial did not call for the elimination of the practice per se. The Association emphasized that in its original demands it did not ask for triple time for holidays worked. It took for granted that this prior practice would be continued by the Village, a practice which had been established by mutual consent several years ago.

The Association request that the Award of this Panel dated August 30, 1976 be modified to clearly indicate that the prior practice of triple time for holidays worked adopted by the Village several years ago be continued throughout the term of the 1975-1977 agreement between the parties herein.

POSITION OF THE VILLAGE

The Village, opposing the Association's application for the modification of the Panel's Award dated August 30, 1976, advanced the following arguments:

1. The proceeding held herein is illegal.
2. The Association did not discuss the matter of triple time pay for holidays worked in its post-hearing brief or in its post-hearing reply brief.
3. The Award made by this Panel dated August 30, 1976 changes the prior practice of paying triple time for such holidays by denying such payment.
4. Arbitration is final. A party who is dissatisfied with an award ought not to be allowed a second bite.
5. In the event the Panel erred in making the Award relating to triple time for holidays worked, such error was made on the merits of the dispute between the parties and, under the Statute cited as authority for the modification application filed herein, no remedy exists for amending or correcting the mistake, if one had occurred.

OPINION

On Page 6 of the Panel Award bearing date of August 30, 1976, the following language appears:

16, 17, 18 and 19. Shift Differentials; Salary Differentials;
Pay for Work on Days Off Beyond Overtime;
Triple Time for Holiday Work

"These proposals all entail increased appropriations which the Panel considers burdensome at present. Denied."

This is the language in dispute and the subject for the application herein. Disregarding other relevant language in the Panel Award, one

might reasonably conclude that the language set forth hereinabove denies triple time for holiday work. However, we should recognize the following additional language appearing on Page 4 of the Panel Award:

"Except for any changes made in this award, the provisions appearing in the expired agreement between the parties herein shall be incorporated in the agreement expiring on May 31, 1977."

Moreover, the Award numbered 1, appearing on Page 3 of the Panel Award, is also relevant to the issue herein, and reads:

Prior Practice Clause

"The Village seeks to eliminate this contract provision on the ground that 'it is an invitation to grievances.'

This provision is grounded on conditions of employment not specifically mentioned in the agreement. It would be unwise for this Panel to plow this minefield and, therefore suggests that such practices be first defined and then become a topic for discussion during future contract negotiations. Denied."

In a letter dated October 13, 1976 addressed by the Village counsel to the members of this Panel the following statement appears:

"An examination of the evidence presented before you and a review of the various memoranda submitted by the parties establishes clearly and conclusively that the issue of triple time for holiday work was presented fully, completely and at length. If there was any misunderstanding with respect to this issue it was on the part of the Union and certainly not on the part of the arbitrators, although it is impossible to delve into the subconscious thoughts of each of you. The fact is that, as a matter of practice resulting from an ancient oversight on the part of a Village treasurer, North Tarrytown police have been receiving triple time for holiday work. The Village demanded the elimination of triple time and the Union chose to demand that it be included in the collective bargaining agreement. The arbitration award, in which the Union representative concurred, clearly and unequivocally denies triple time."

The Panel wishes to make some comments concerning the aforementioned letter.

1. Triple time for holiday work has been paid by the Village resting from "an ancient oversight on the part of the Village Treasurer xx." Admittedly, a prior practice had been established over a period of years calling for the payment of triple time for worked holidays.
2. The Association claim that it merely sought to include a triple time provision in the new agreement appears to have support in counsel's letter which states, "xx the Union chose to demand that it be included in the collective bargaining agreement."
3. During oral argument on November 4, 1976, the Village counsel asserted that the Association did not discuss the matter of triple time pay for holidays worked in either its post-hearing brief or its post-hearing reply brief. Yet, counsel, in his letter of October 13, 1976, reported that "an examination of the evidence presented before you and a review of the various memoranda submitted by the parties establishes clearly and conclusively that the issue of triple time for holiday work was presented fully, completely and at length." The fact is that the only reference to the practice of payment of triple time for holidays worked appears in the Village's post-hearing brief on Page 38 thereof wherein the Village sought "to eliminate the totally unjustified practice of paying triple time for holiday work." The Association made no reference to this disputed item during the arbitration hearing nor did it refer to it in either of its two briefs. In its original demands submitted to the Village which we would guess occurred early in 1975, the Association

sought only to have this past practice made part of the written proposed new agreement to bear date of June 1, 1976.

The Panel, in making the specific award relating to triple time pay for holiday work denied it in the belief that it would entail increased appropriations considered burdensome to the Village. Since the triple time benefit was conceded by the Village to constitute a prior Village practice extending over several years, we believe it cannot be maintained that a continuation of this prior practice would "entail increased appropriations." In its Award, the Panel sought to deny the Association innovative benefits requiring new and substantial Village expenditures covering the period of the new agreement.

Assuming arguendo that the Award did deny triple time pay as contended by the Village, such denial would obviously be in conflict with another Panel award providing for the continuance of all prior practices existing between the parties. Such conflict, assuming it exists in the August 30, 1976 award, may not stand in the opinion of the Panel.

The arbitration Panel, in its Award dated August 30, 1976, never intended to abrogate an Association benefit which had been established by mutual consent of the parties herein as a past practice existing for some years. To repeat, the Panel, in denying the Village request to eliminate the prior practice clause which admittedly covered triple time for holiday work stated; "it would be unwise for this Panel to plow this minefield and, therefore suggests that such practices be first defined and then become a topic for discussion during future negotiations." We therefore believe that the attitude expressed by the Panel on the subject of prior practice clearly indicates that this Panel had no intention to

disturb or change in any way any prior practice existing between the parties, including of course, the past practice of the Village under which police officers were paid triple time for holidays worked.

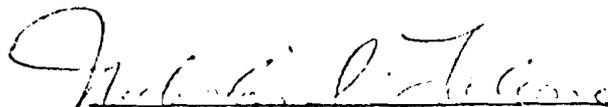
Finally, we wish to comment on the contention advanced by the Village at the oral argument on November 4, 1976 that this proceeding was illegal. It argued that Section 7509 of the Civil Practice Law and Rules under which the application herein was made, does not allow modification of the Panel arbitration award dated August 30, 1976 since the modification sought is directed to the merits of the said award. No supportive law was offered to support this Village contention. By reason of the existing dispute between the parties herein relating to the interpretation of the Panel Award on the item of triple time pay for holiday work, the Panel feels it has a duty to clarify its intention existing at the time the said Award was made. We believe further that the Panel intention as expressed herein has clarified the Award of August 30, 1976 in the matter of form, not affecting the merits of the controversy.

Upon all the evidence submitted herein, the Panel, clarifying its August 30, 1976 Award, directs that the Village continue to adhere to its prior practice of paying its police officers for holiday work at the rate of triple time.

A W A R D

The Panel directs the Village to adhere to its prior practice of paying its police officers for holiday work at the rate of triple time.

Dated: New York, N. Y.
November 16, 1976


Nicholas S. Falcone, Chairman

John P. Henry
John Henry, Panel Member

I agree with Award

James J. Timmings
James J. Timmings, Panel Member

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

On this 16 day of November, 1976, before me personally came and appeared NICHOLAS S. FALCONE, 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.

Sidney Roth
Notary Public
No. 41-8374000
Term Expires March 30, 1977

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

On this 29 day of November, 1976, before me personally came and appeared JOHN HENRY, 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.

John Martin Purdy
Notary Public
Qualified in Westchester County
No. 41-8374000
Term Expires March 30, 1977

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

On this 26th day of November, 1976, before me personally came and appeared JAMES J. TIMMINGS, 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.

Filomena A. Ballacaro
Notary Public
FILOMENA A. BALLACARO
Notary Public, State of New York
No. 40-1155725
Qualified in Westchester County
Commission Expires March 30, 1977

PUBLIC EMPLOYMENT RELATIONS BOARD

----- X
In the Matter of the Compulsory Arbitration :
 :
Between : AMENDED AWARD OF
 : PUBLIC ARBITRATION PANEL
NORTH TARRYTOWN POLICE BENEFIT ASSOCIATION :
 : Case No. CA - 0064
and : M 75 - 584
 :
THE VILLAGE OF NORTH TARRYTOWN :
----- X

ARBITRATION PANEL

Nicholas S. Falcone, Esq., Neutral Chairman
John Henry, Employee Panel Member
James Timmings, Employer Panel Member

This minority opinion will address to the unprofessional conduct and decision of the majority of the panel. In addition, it will register my negative vote.

On the merits of the award, the majority has failed to recognize that they establish what they considered to be a fair salary for Police work in North Tarrytown. This award, while inflationary, had to recognize that Police protection is required twenty-four (24) hours a day, 365 days a year which obviously includes the twelve (12) holidays in question. Since in setting annual rates of compensation, the panel majority concluded Police were entitled to a day's pay for holidays off and double time for holidays worked, their sudden reversal and award of double time for a day off and triple time for a day worked without a corresponding increase in productivity, is absolutely inflationary.

The statement in the majority report (pg 2, next to the last paragraph) "The Association emphasized that in its original demands, it did not ask for triple time for holidays worked. It took for granted that this prior practice would be continued by the Village, ----" is untrue for the following reasons:

1. Exhibit dated March 13, 1975 - NTPBA 1975-76 Contract Proposals. Item 3.4 "Double time plus holiday pay for work on holiday."

2. Joint exhibit 2 "Report and Recommendations of William J. Curtis, Fact-Finder," pg 2, item 13 "triple time for holiday work" and pg 5, section 3 - Recommended - No change.

In addition, there can be no misunderstanding of the Village position such as principle brief pg 7, item 6 "That holiday work be paid for at double time and not at triple time as at present." and pg 38, second paragraph "Triple Time Holiday Pay is Totally Unjustified." Lastly, the members of the panel recognize that in executive session, I raised the question

of whether or not we had covered the triple time for holiday issue.

It is absolutely clear that the Village recognized that the subject of triple time for holidays was covered by "prior practice" and could only be changed by collective bargaining or arbitration. It is equally clear that the Arbitration Panel was unanimous in rejecting triple time for Holiday Work.

The need to conduct this special hearing is undoubtedly due to the dictatorial leadership of the panel by the State appointed chairman. The chairman drafted his award, read it to the two members of the panel, allowed some time for discussion of items that were in contention, announced that he would consider Village objections and then posted his award. He is fortunate that the labor member of the panel belatedly voted to confirm his action. More outrageous is the State Arbitrator's statement at the clarifying hearing that it is obvious that he made a mistake, he would never take a benefit away from the police, but would only see what additional they were entitled to. This display of prejudice is unbecoming at best, but may explain my lack of success in trying to argue this entire award on its merit.

J. J. Timmins