

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Arbitration

Between

THE TOWN OF GREENBURGH

And

GREENBURGH POLICE BENEVOLENT ASS'N.

Case No. CA-0083 M 74-780

N. Y. S. PUBLIC EMPLOYMENT
RELATIONS BOARD
RECEIVED

NOV 17 1976

ARBITRATION PANEL

CONCILIATION

Nicholas S. Falcone, Neutral Chairman
Rolon Reed, Esq., Panel Member
Ralph Purdy, Panel Member

APPEARANCES:

For the Town

Donald Singer, Chief of Police
Carmine Marasco, Police Commissioner
Albert Schnall, Commissioner, Adm. Mgmt. Services
Arthur Olick, Esq., Counsel

For the Association

John Madry, Negotiator
Carmine Tirella, Negotiator
Joseph Wanderlingh, Negotiator
John Kapica, Negotiator
John R. Harold, Esq., Counsel

This is a proceeding held pursuant to Section 209.4(c) of Article 14 of the New York State Civil Service Law. A hearing on this matter was held at the Town Hall, Greenburgh, New York, on August 24, 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 Employment Relations Board. The parties were provided full opportunity to present evidence, testimony and witnesses in support of their respective positions. Numerous exhibits were introduced. The parties requested an opportunity to file post-hearing briefs on or before September 13, 1976 and reply briefs to be submitted on September 27, 1976. Such briefs were received in October, 1976.

The attorneys for the parties submitted Joint Exhibit #1, stating:

"It is hereby agreed by and between parties that the record of this hearing shall be constituted solely of the exhibits, testimony, briefs, reply briefs, and addenda supplied by the parties, and that the parties further agree that they do not wish a transcript of the hearings."

At the hearing, counsel for the Association asserted that the Fact-Finder, acting in this matter, had "hedged" on some of the issues submitted before him, and, in addition, had avoided offering recommendations on certain disputed items, sending them back to the parties for further negotiation. Continuing, this counsel recommended that wherever lack of clarity existed in any part of the Fact-Finder's report, this Panel should assume responsibility to set forth clear and concrete contract language. Although the Town counsel conceded that some inadequacies did appear in the Fact-Finder's report, he cautioned against any attempt by this Panel to assume authority to write contract language, a function he contended, should be reserved exclusively for the parties herein.

Following the close of the hearing and after all briefs were filed with each of the Panel members, and after a long study of all the evidence submitted herein, the arbitration Panel met in executive session on November 5, 1976. Each item in dispute was the subject of its discussion and was separately voted upon. During this meeting, specific attention was given to the recommendations offered by I. Leonard Seiler, Esq., the Fact-Finder who served during the impasse herein. The task undertaken by Mr. Seiler was no easy one, and, in the judgment of this Panel chairman, his report and recommendations show clearly that he made a valiant effort to resolve this dispute. The written dissent of Panelist Reed is made a part of this total award and is attached hereto.

In his Report and Recommendations dated April 15, 1976, Mr. Seiler, Fact-Finder, directed his attention to 64 Association demands and to 30 Town proposals. Inasmuch as this Panel is required under the statute to "hold hearings on all matters related to the dispute," it considered all proposals submitted by the parties. This statute, Section 209 of the Civil Service Law, provides also that the Panel "may, but shall not be bound to adopt any recommendation made by the Fact-Finder. . ."

BACKGROUND

The Police of the Town of Greenburgh, comprising a bargaining unit of approximately 107 officers, have been employed under the terms of an agreement which expired on December 31st, 1974. Following a declared impasse in negotiations leading to a successor agreement, a Fact-Finder appointed by the Public Employment Relations Board of the State of New York, issued his report and recommendations under date of April 15, 1976.

When this report failed to receive acceptance of both parties herein, PERB, upon petition, designated this public arbitration Panel on June 28, 1976 to make a just and reasonable determination of the dispute.

In arriving at its determination, this Panel gave serious consideration to Fact-Finder Seiler's report and recommendation. Moreover, the Panel examined comparison of wages, hours and working conditions of the Town of Greenburgh police with those in comparable geographical areas. It considered also the interests and welfare of the public and the financial ability of the Town, and, finally, the working conditions which are unique to those engaged in public police activities were studied.

Term of Agreement

In its original proposal, the Association sought a one (1) year agreement. However, in its post-hearing brief, the Association stated, "the Panel should refer to the Fact-Finder's recommendation of ratification of a two-year contract." The Town urged a two year agreement which would expire on December 31, 1976. For very obvious reasons, the Panel, in a unanimous decision, directs the parties to enter into a two year contract covering the period, January 1, 1975 to December 31, 1976. This two year agreement will expire in less than two (2) months following the issuance of the award herein. Unanimous decision.

Escalator Clause

The Association argued that this cost of living clause, adjusted quarterly was necessary to stabilize purchasing power of the wage dollar throughout the contract period. The Town objected on the ground that

"a municipality cannot bind itself to the vagaries of the cost of living."

Since the alleged protective features inherent in such a clause would be absent because of the brief period remaining between the date of this award and the termination date of the 1975-76 agreement, the Panel, unanimously, denies this Association proposal.

Salary Differentials

Sergeants earn 15% more than first class patrolmen, lieutenants are paid 30% more than such patrolmen while detectives receive 10% more than patrolmen. The Association wants these differentials maintained. The Town, on the other hand, proposed a "flat dollar increase per man equal at each rank." The Town stated that "a 7% increase in a patrolman's pay coupled with fixed percentage differentials for other ranks creates a total salary package far in excess of 7%, which is unwarranted." These percentage wage differentials have been provided for in each agreement since November, 1968. We find the Town's argument lacking in persuasiveness and therefore make the award that such differentials be continued in the new agreement. Panelist Reed dissents.

Longevity

The Town provides longevity payments of \$50. after 7 years of service; \$100. after 10 years; \$300. after 15 years; and \$600. after 19 years. It contended that these payments compare favorably with its neighbors and that no change be made. Citing longevity payments offered by several neighboring towns and villages, the Association asserted that the "current longevity salary in Greenburgh is much too low and that substantial improvement is warranted." We do not feel, after examining

the comparability data submitted by the parties, that the Town's longevity payments are too low." Association demand is denied. Panelist Purdy dissents.

Shift Differentials

The Association, pointing out that a man's home life is totally unnatural when working around the clock, proposed that a shift differential should be made for those who, of necessity, are assigned to the less favorable hours of employment. The Town stated that no police contract in Westchester County provides for a shift differential and, since this is an entirely new benefit, it should be denied. This proposal, requiring additional appropriations, is not warranted at this time. Denied.

Panelist Purdy dissents.

Out of Title Pay

The Association offered the argument that "when one renders to the Town the work of the rank, the Town owes that person by the day the worth of the job performance." Rebutting this position, the Town called attention to Civil Service Law, Section 61 (2) providing that an employee assigned to work in a job classification beyond his regular assignment must be given the compensation for the higher classification where such assignment is on a regular basis or for other than emergency situations. Therefore, the Town insisted that no new contractual provision is required. Although we tend to accept the position that State law affords some protection to employees working out of title, we recognize the difficulty which might arise in interpreting the word "emergency". Therefore, we shall provide that whenever a member of this bargaining unit is called

upon to perform services in a higher rank for a period of more than two (2) consecutive weeks in any single quarter of the year, he shall receive the higher rank pay retroactively to the initial day he assumed higher rank duties, even though he was not given the higher rank title.

Unanimous decision.

Triple Time for Holidays Worked

The Association maintained that under its agreement with the Town employees receive straight time pay for working on a holiday and those not working also receive straight time for the day. Logically, it argued, officers should receive triple time pay for work performed on family holidays such as Thanksgiving Day, Christmas, New Year Day and Easter. The Town advanced the position that "it is the nature of police work that there are no holidays." "Premium pay, it continued, is unjustified." Admittedly, there would appear some merit to this Association demand, yet, this would constitute a new monetary disbursement which we feel should not be assumed by the Town at this time.

Although we reject triple time pay for holidays work, we reject also the Town proposal which would allow it to provide, at its option, compensatory time off for all holidays worked. The Panelists were in agreement in denying triple time pay for holidays worked. However Panelist Reed dissented from that part of the award rejecting the Town's proposal regarding compensatory time for all holidays worked.

Time and One-Half for Work on Days Off

The Association contended that when an officer is required to work on his free day he should receive time and one-half pay plus a guarantee of

not less than eight (8) hours of service for that day. The Town responded that premium pay cannot be justified because it would otherwise be a non-working day. We recognize the uniqueness of police work which, because of public safety or other good reasons, may involve a staffing problem requiring the employee to give up a planned pleasurable family day and report for duty. Yet, we feel that in such event, the Town shall, when an officer is recalled on his free day, guarantee him a minimum of eight (8) hours at his regular pay rate. Unanimous decision.

Holidays -- Unused Holidays to be Paid in Cash
in First Pay Period of December

The Association, seeking to increase the number of holidays to 15, stated that currently the police enjoy four (4) paid holidays in cash and six (6) holidays which must be taken as compensatory time and for which cash cannot be received. The Association seeks to allow the employee to exercise the option of receiving cash or compensatory time. According to the Association, its survey showed that 36 out of 39 Westchester municipalities have 11 or more paid holidays and, of that number, 9 adhere to 12 paid holidays, 3 provide 13 paid holidays, and 2 grant 14 paid holidays. The Town responded that the police are paid in cash and receive double time for worked holidays. Greenburgh's holidays per year, it contended, is Westchester's most generous allowance. The Panel feels that the Association has adequately supported with evidence its demand for increased holidays. We therefore award one (1) additional paid holiday, effective January 1, 1976, and increase from four (4) to five (5) the number of holidays the police will be allowed to submit for pay each year, which pay shall be provided during the first pay period of December. Panelist

Reed dissents.

Welfare Plan

The Association seeks a Town contribution of \$100. per employee into a P.B.A. administered welfare plan. It maintained that this program has become quite commonplace and it particularly pointed to a contract existing between the Town and Local 456, Teamsters, providing for such a welfare plan. This plan the Association stated, has been incorporated in the County Parkway Police contract in Westchester. The Town replied that no police union in Westchester enjoys this benefit and there is no justification for Greenburgh to break new ground in this area. The Fact-Finder's recommendation, based upon the evidence submitted, appears justified and, therefore we adopt it, holding that the Town shall make the contribution of \$100. for each employee to the P.B.A. administered welfare plan retroactively to January 1, 1976. Panelist Reed dissents.

Life Insurance

Currently, the Town provides for the cost of \$5,000. life insurance on each of its police officers. The Association seeks to increase this paid coverage to \$20,000. Evidence submitted by the Association revealed that only eight (8) Westchester municipalities provide \$5,000. coverage while seventeen (17) provide a higher coverage. It cited Ardsley, Bronxville, Hastings, Ossining, Tuckahoe and Yorktown where \$20,000. paid coverage exists. The Town, opposing this demand, stated that "a ten-fold increase in life insurance is unwarranted especially since the police already enjoy a death benefit through the State Retirement System." Upon the evidence provided, we believe the existing paid coverage should be

increased to \$10,000., premiums to be paid by the Town and such increased insurance coverage shall become effective five (5) days following receipt of this complete award by the Town counsel appearing herein. Panelist Reed dissents.

Improved Town Maintained Health Plan

Currently, members of this bargaining unit are the beneficiaries of Blue Cross, Blue Shield, Major Medical and a Dental Plan. The Association seeks to "simply upgrade the coverage in accordance with that which is now supplied by the State." The Town argued that the position advanced by the Association was "vague and indefinite." We agree. Denied. Unanimous decision.

Recall and Court Time

The Association seeks to increase the existing provision of three (3) hours straight time to eight (8) hours. It stated that a study of several police contracts now provide for four (4) hours at time and one-half pay. The Town replied that this is a demand for more pay for less work or for unnecessary work. We do not feel the expense associated with this demand should be assumed by the Town at this time. Panelist Purdy dissents.

Vacation and Vacation Pay

The Association seeks to increase the police vacation period to 20 days for those in the 10th year of service and to 25 days for those completing 15 years of service. In its rebuttal, the Town expressed the opinion that it now provides a generous vacation allowance ranking near the top among Westchester communities. Data introduced showed that

approximately 25 Westchester villages and/or Towns provide from 15 to 30 vacation days to police after 10 and 15 years of service respectively. We believe some improvement should be made and therefore award 22 days of paid vacation to those officers who enter the 20th year of service, and award further that vacation pay be given before the vacation period commences. Unanimous decision.

Salary

The Town of Greenburgh has offered its police a salary increase of seven (7) percent of base salaries for each of the two year agreement. A similar offer was made by the Town and accepted by members of two other Greenburgh bargaining units. Under its offer, each police officer, first grade, would receive an increase of \$1,084.26 for each of the two years, raising the base pay for Patrolman, first grade, from \$14,700. to \$15,784. for 1974-75, and to \$16,868. for the 1975-76 contract year. This new scale, stated the Town, would continue to reflect the highest wages paid to police in Westchester County. The offer made herein, according to the Town, is predicated on restoration of its rights over staffing, manning and assignments, the elimination of the "onerous past practice clause and the establishment of a clearly defined sick leave policy."

On the comparability criteria, the Town provided the following data:

1. In 1974, Villages located within the Town of Greenburgh reported salaries for first grade patrolmen ranging from \$13,658. to \$14,400.
2. The Town of Bedford increased its base rate for such Patrolmen in July, 1976 to \$17,000. Harrison's rate went from \$14,730. in 1975 to \$16,730. by January, 1977.

3. The 1975 increases in the Town of Rye, Mount Vernon and Rye City are below Greenburgh's 1974 rate.

The Town advanced a lengthy argument seeking to establish that public salaries for police have outstripped private salaries by a significant margin.

Discussing the C.P.I., the Town asserted that for the period 1969 through the present, police salary increases have consistently exceeded the increases in the C.P.I. Projecting the C.P.I. through 1976, the 1974 Patrolman I salary need be raised only eight (8) percent by January 1, 1977 to maintain purchasing power stabilization throughout the 1974-76 period.

Finally, the Town pointed out that apparel, transportation and medical care are major contributors to C.P.I. and that the Town pays the total cost of medical insurance and has increased the clothing allowance. Therefore, it contends, that something less than full C.P.I. should be allotted to salary increases.

The Association expressed the opinion that the police of Greenburgh should earn about \$20,000. or better. Seeking to support a higher wage scale, the Association advanced the following arguments:

1. Private industry has agreed upon an eleven (11) percent wage increase for 1.3 million employees.

2. Police salaries in Greenburgh have eroded eleven (11) per cent during the period, January 1, 1975--December 31, 1975. Therefore, an established salary of \$15,762. as of January 1, 1975 is required to correct the erosion. Additional increase in C.P.I. during the period 1975-76 having taken place, the resulting erosion for this period should be recognized and an appropriate wage adjustment should be made to correct

this latest loss of purchasing power. It was suggested that a base salary of \$17,433. would maintain real purchasing power. An escalator clause would be the most effective instrument for stabilizing purchasing power during the contract period. (We have heretofore rejected the escalator clause.)

3. In lieu of an escalator clause, four \$1,000. increases in six months over two years, would produce, 6/1/75--\$15,900., 7/1/75--\$16,700., 1/1/76--\$17,700. and 7/7/76--\$18,700.

The Panel is cognizant that some Westchester communities are faced with financial difficulties requiring some sacrifices from their public employees. The Town of Greenburgh however refused to cry poverty. In its brief, the Town maintained that its proposed salary increase of seven (7) percent for each of the two years, 1974-1976, would bring the police to \$16,868. Continuing, the Town claimed this new salary scale would reflect the highest rate paid to police in Westchester County. Yet, in this same document, the Town, reporting comparable wages paid in neighboring communities, revealed that a Patrolman, First Grade, employed by the Town of Bedford, receives \$17,000. as of July, 1976.

Examining other criteria for wage determination, the Town reported an increase of eleven (11) percent in the cost of living for the period, January, 1974--December, 1974, for the New York, Northeastern New Jersey area. The Association agreed with this reported C.P.I. increase. For the year 1975-76, the Town reported an eight (8) percent increase in the C.P.I. The Association, offering no C.P.I. data for 1975-76, stated, in its brief that "the change in the cost of living during the current fiscal year can reflect what change should be added from January 1, 1975." For the year

1976, the Town projected a six (6) percent increase in the C.P.I.

The record is clear that the police have received no additional salary since December 31, 1974, termination date of the last agreement. Supportive data establishes that the police have suffered a substantial loss of purchasing power during the 1974-76 period and this loss must be considered in awarding new salary rates. We believe that demands for continued effective police work and the recognized advantages flowing therefrom must be contingent upon the willingness of Town taxpayers to make sufficient effort at stabilizing the wage dollar of these public servants. Comparability has been considered and we have noted repeated references by the Town that Greenburgh police are the "best paid in Westchester," and the Town offered no expression indicating that it is adverse to the maintenance of this status.

In its brief, the Association, in discussing salaries, stated: "In the final analysis, Greenburgh, if the Fact-Finder's recommendations are awarded, will maintain at best a status quo in terms of the real dollar worth of its past contract."

Considering the salary proposals made herein, we have recognized the monetary value of medical costs and clothing allowances provided at Town expense exclusively and the cushioning effect these benefits have on erosion of worker purchasing power. Moreover, in this modestly austere economic climate, we feel the police of Greenburgh might assume a modest amount of the cost of inflation, thus affording the taxpayer some relief. Therefore, upon 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 and three-quarters (7.75) percent for the period,

January 1, 1975--December 31, 1975, payment to be made by the Town retroactive to January 1, 1975. For the contract year beginning on January 1, 1976 and terminating on December 31, 1976, we award to these same members an increase of \$600.00 as of January 1, 1976, and an additional increase of \$600.00 as of July 1, 1976. We direct that all these retroactive wage payments be made by the Town not later than ten (10) calendar days from the date this award is received by the Town counsel appearing herein.

Panelist Reed dissents.

Sick Leave

The Town asserted that presently the police have unlimited sick leave which costs Greenburgh more than \$50,000. annually. In view of this high cost, the Town proposed a sick leave policy under which one day of sick leave would accrue for each month of service, cumulative up to 160 days. The Association contended that unlimited sick leave is a product of the nature of police work. In 1974, the Association reported, a total of 947.5 man days were lost due to personal illness, disability or injury, and of this total, 183 days were attributable to job related injuries for which the Town had a legal right to recoup a major portion of disbursements made by filing claims under its workmen's compensation insurance policy.

Admittedly, the age structure of the Town police force is unfavorable from the point of view of illness and perhaps injury claims. Yet, the arguments advanced by the Association were sufficiently persuasive to merit the continuance of unlimited sick leave for all members of the bargaining unit. As part of this award, the Town may, at its cost, select a physician of its own choosing to evaluate extended illness and injury absences. Panelist Reed dissents.

Clothing Allowance

Currently the police receive upon initial hiring a uniform allowance of \$300., plus \$150. per year for replacement and maintenance. The Association contends that steady increases in clothing and cleaning costs far exceed the present \$150. allowance which was described as one of the lowest in Westchester County. The Town asserted that few, if any, municipalities provide a separate clothing maintenance allowance. The Fact-Finder recommended that this replacement and maintenance allowance be increased to \$250., effective January 1, 1976. We adopt this recommendation and so award. Unanimous decision.

Tuition

The Association's position on this demand possesses great merit. However, an increase in tuition allowance constitutes a new cost item which the Panel feels should not be assumed by the Town at this time. Denied. Panelist Purdy dissents.

Cost of Discipline

The Association demanded "an employee attending his own disciplinary proceedings shall receive overtime because of hours directly or indirectly involved therein." The Town replied that this Association demand is unprecedented. No supporting evidence was introduced to justify this demand. Denied. Panelist Purdy dissents.

Right to Leave House While on Sick Leave

The Association does not feel that "it is right to force an officer who is, by virtue of an injury disabled, to become a prisoner in his own home. The Town's rejoinder is "that no police officer has been disciplined

for abuse of sick leave and the Union's demand is anticipatory rather than a response to an existing problem." Denied. Panelist Purdy dissents.

Adequate Facilities; More time off for Association Negotiators; Compensation to Negotiators; More time off for Association President; Time off for officials of Westchester County Police Conference.

After studying the data seeking to support these demands, the Panel found the arguments advanced by the Association lacking in persuasiveness. Denied. Panelist Purdy dissents.

Out-of-Town Work

The Town's position on this demand was expressed as follows: "So long as a police officer is on official duty under the direction of the Department and not off on a lark of his own and is performing during a regular tour or during specified overtime hours, he is entitled to compensation." We find the Town's position reasonable and therefore feel no Panel intervention is required. Denied. Decision unanimous.

Death Leave; Expanded Bereavement Leave and Personal Leave

At present, the police receive four (4) days of death leave and ask for five (5) days on the ground that "current complications revolving around death, its legal problems and its family problems, five days is not an unreasonable period of time to ask for and it is the extension of only one extra day." The Town responded that the Town is highly competitive with other municipalities in Westchester County. The Town contended that expansion of bereavement leave is unsupportable. With regard to Personal Leave, the Town alleged that the police had abused this privilege

and were using this as additional vacation time. The Town failed to support its charge of abuse. Demands of both parties denied. Decision unanimous.

Police Funeral Leave--Two members off to Attend Police Officer's Funeral

Current practice under the expired agreement permitted one day off for a member of the board of officers of the PBA and a Town police car for his use. The Association requests that this leave be provided two men on the ground that "the need to travel great distances reasonably warrants the extra man." The Town feels that the taxpayers ought not to be required to pay the expenses covering a second officer. No real need for adding a second officer was established by the Association. Denied. Decision unanimous.

Additional Holiday When Granted to Other Town Employees

The Association here seeks to reinstate a 1971-72 provision which gave the police an additional holiday when declared by the Town. This provision did not appear in the 1972-74 agreement. The Town objected to this demand on the ground that there "may be occasions when Town Hall is closed and special holidays are given to non-essential employees. However, police work is sui generis and there are never occasions when police are not required." Failing to adequately support this demand, the Panel denies it. Panelist Purdy dissents.

Meals

The Association maintained that the present one half hour meal period is too short a period of time for the relaxation and food so necessary in

the arduous duties of the policeman, therefore a one hour meal period is justified. Furthermore, it seeks an increase in the \$1.25 meal allowance granted when overtime duty is performed, a sum established in 1971. The Town took no position on these demands. It should be obvious to all that the cost of food has increased substantially since 1971 and therefore an upward adjustment would be appropriate. We award that the meal allowance be increased to \$2.50, effective January 1, 1976. However, we have not been convinced that the meal time period should be increased. On the demand that whenever two officers are sharing the same car they be permitted to share eating period together, we feel that while this demand has some merit, we are reluctant to make an affirmative award. Denied. Panelist Purdy dissents.

Annuity and Private Hospital Room

The Association, in introducing this demand, conceded that an annuity plan is not common in Westchester. The purpose of this plan, it stated, is to build supplemental income. The presentation was too vague for serious consideration by the Panel and therefore is denied unanimously.

The Association maintained that under rather unusual circumstances, an injured police officer requiring hospitalization might require protection against a possible irate citizen and that a private hospital room would afford such protection. The Panel unanimously denies this demand, believing that the Town would, if necessary, take every precaution to protect its officers without a mandate from this Panel.

Prior Practice

The Town demands deletion of the broad "prior practice" clause appearing in the last agreement. It contends that this is a catch-all which invites grievances. The Town suggests that "at the very least the arbitrators should direct that a Committee be formed to list those prior practices which deserve inclusion in a collective bargaining agreement so that the general clause may be eliminated in the next contract." Although the Association contributed no argument in its briefs for retention of this clause, the Panel chairman is not disposed to comply with the Town request. I might add that elimination of this clause by award might well result in opening a Pandora's box causing a real nightmare. As I stated when confronted with the same demand made by a neighboring village in Westchester, "it would be unwise for this Panel to plow this minefield and, therefore suggest that such practices be first defined and then become a topic for discussion during future contract negotiations." Denied. Panelist Reed dissents.

Alleged Management Prerogatives

Among the 94 proposals made by the parties herein, twenty or more covered areas of activity which the Town argued were non-mandatory subjects for collective bargaining and/or were issues upon which the Town maintained were beyond its authority to implement, if granted. These contested proposals included:

1. Seniority as the basis for all assignments of police officers.
2. Tenure for detectives.
3. Working schedules to be approved by the Association.

4. Minimum manpower for each tour of duty.
5. Minimum number of men on patrol duty during specified hours.
6. Vacancies to be filled within 30 days.
7. Furnishing Association of any and all data it requests.
8. Prohibition of the use of the polygraph in investigation of police corruption.
9. Destruction of records of citizen complaints concerning police officers.
10. Punitive damages for contract violations.
11. Prohibition of Tac-o-graphs in police vehicles.
12. Destruction of departmental disciplinary records.
13. Payment by Town of employee's contribution to Social Security.
14. Establishment of a terminal leave program.
15. Prohibition against disciplining a police officer within the time prescribed by statute in the event criminal charges are pending against him arising out of the same facts.
16. Satisfaction of fines resulting from disciplinary proceedings by means of compensatory time in the officer's discretion.
17. Imposition of fines for contract violations as determined under grievance procedures.
18. Minimum number of detective positions.
19. Prohibition against evaluations of police officers.
20. Anonymous calls.
21. Personnel folders.

The Association argued that the Town had willingly bargained at length and in depth about all items raised. Therefore, it contended that

it was much too late for the Town to take refuge under the non-mandatory subject doctrine. The Town directed Panel attention to Appendices "A" and "B", attached to the Town Reply Brief. Appendix "A" purports to be a charge filed with PERB by the Town against the Association. In substance, this charge alleges that "Said respondent is demanding compulsory interest arbitration respecting staff size, staffing and assignments of police personnel" and thereafter lists about 19 alleged non-mandatory subjects for collecting bargaining upon which the Town has refused to bargain. Also listed on this petition are issues which the Town alleged were beyond its legal authority to grant.

Appendix "B" is a letter dated July 13, 1976 addressed to the Town counsel by the Assistant to the director of conciliation for PERB. This letter, in part, reads:

"In response to your letter questioning whether the arbitration panel should move forward in light of improper practice charges filed by the Town of Greenburgh, I draw your attention to Part 205.6 (c) of our Rules which reads "The Public arbitration panel shall not make any award on issues, the arbitrability of which is the subject of an improper practice charge, until final determination thereof by the Board or withdrawal of the charge: the panel may make an award on other issues." x x x

A copy of the aforementioned letter was addressed to each member of this arbitration Panel.

Since the evidence submitted during this arbitration proceeding does not cover any disposition of the alleged improper practice charges hereinabove filed by the Town against the Association, we must conclude that such charges continue to be before the Public Employment Relations Board.

STATE, CITY AND COUNTY OF NEW YORK: SS:

On this 15th day of November, 1976, before me personally came and appeared ROLON REED, 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.



Notary Public

PATRICIA M. ARNOW
Notary Public, State of New York
No. 31-0003025
Qualified in New York County
Commission Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

On this 10th day of November, 1976, before me personally came and appeared RALPH PURDY, 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.



Notary Public

ANNETTE P. PURDY
Notary Public, State of New York
No. 60-21011-0
Qualified in Westchester County
Term Expires March 30, 1977

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----x

In the Matter of :
Compulsory Interest Arbitration :
Between: :
POLICE ASSOCIATION OF THE TOWN OF :
GREENBURGH, INC., :

PERB CASE #CA-0083-M-74-780

-and- :
THE TOWN OF GREENBURGH :

-----x

DISSENTING OPINION OF
ROLON W. REED, ARBITRATOR

Compulsory arbitration for impasses in police pay disputes was added to the Taylor Law in 1974 as a three-year experiment. It has been recognized as a serious deprivation of the normal rights of both parties by every Court and every commentator dealing with it to date.

The State legislature felt obliged to insist in Section 209 of the Civil Service Law that "the public arbitration panel shall make a just and reasonable determination of the matters in dispute," and required that the panel consider, among other things, "the interests and welfare of the public and the financial ability of the public employer to pay."

Unhappily for the people of Greenburgh, my brethren failed to do so in the areas of salary, welfare plan, unlimited sick leave and holidays.

It is undisputed on the record before us that all other employees of the Town, after collective bargaining, accepted a 7% across-the-board increase in base salaries for each of the calendar years here in question with no significant increases in fringe benefits. These other settlements were based on a general recognition of several sad but true facts of life in Greenburgh. First, the Town is as much a victim of inflation as any individual resident or employee. Second, during the 1970s local taxes in Greenburgh have increased far faster than the average family income. Third, the inevitable result of a municipality ignoring its financial limitations is mutual misery for employees and employers. Yonkers and New York are vivid local reminders.

Against this background, it seems to me that the Town's offer to the police and all other employees fairly deserved the presumption, rebuttable, of course, by countervailing evidence, that it represented the limit of the Town's ability to pay more money for the same services. No evidence was offered by the Association in this proceeding to overcome this presumption, none was cited by either of my brethren during the sole occasion when the merits of this dispute were discussed by the panel on November 5, and none is cited in the majority opinion of November 10, 1976.

Instead, on November 5 my brethren refused to consider evidence from the Town's Receiver of Taxes that unpaid taxes owed

to the Town increased from \$563,588 in 1972 to \$974,856 in 1976 and the representation by the Town's Labor Counsel that the Town has "over \$400,000 less in cash receipts for the current year to meet its expenses."

This further indication of the Town's inability to pay more than it had offered all Town employees was rejected because, in the words of Mr. Falcone, it was "far too late", even though received by all members of the panel before there was any discussion among the three of us on the merits of this proceeding. Mr. Falcone's rejection was perhaps influenced by the fact that he came to our November 5 session with a detailed opinion comprising some 40 pages of handwriting on legal-size yellow note paper completely disposing of all issues before the panel, but it was, nevertheless, prejudicial error in my view.

Instead of focusing on the welfare of the public and the financial ability of the Town to pay, the majority's decision on salaries was explicitly stated orally on November 5 to have been reached by the following reasoning process which is substantially reflected in the opinion of November 10. To counter the Association's argument that it was entitled to the same percentage increase that a number of neighboring communities had granted to their police, the Town in its briefs noted several times that the Greenburgh police are indisputably the highest paid force in Westchester County and

urged that neighboring percentage raises were irrelevant.

Seizing upon these statements, the majority leaped to the conclusion that the Town was thereby conceding that its police were entitled to continue as the highest paid force in the County, noted that the Town of Bedford has raised its first grade patrolmen to \$17,000 per annum as of July 1, 1976, and concluded that the salary increments awarded by the fact-finder are reasonable and proper because necessary to keep the Greenburgh police ahead of the Bedford police.

Such reasoning, in my view, is no justification for adopting the raises granted by the fact-finder and a sorry substitute for the exercise of the independent collective judgment of the panel.

The Association's demand for annual contributions by the Town of \$100 per policeman to a so-called welfare fund was granted by my brethren as casually as a famous millionaire is reputed to have distributed dimes to children on public streets. Unfortunately for the taxpayers of Greenburgh, here we are not talking about dimes, but rather \$10,700 per annum.

The record is clear that no police contract in Westchester County provides such a benefit. While the Town recently agreed to contribute to an established welfare fund to be administered by the Teamsters' union for its public works employees, at the same time those employees relinquished certain other fringe benefits of significant cost in return. Here, however, the police have relinquished nothing, and no evidence has been offered by the Association to justify

or explain or even project the ultimate cost of such a welfare plan.

Indeed, my review of the record before us failed to disclose the existence of any plan or even any specific proposal by the Association as to how it would use this money. At the close of our discussion on November 5, Mr. Falcone said, "I just looked at the briefs." In my mind, the vague and conclusory statements about a welfare plan in the two Association briefs are woefully insufficient to justify any award under this demand.

For reasons which appear to be primarily anachronistic, the Greenburgh police presently have unlimited sick leave. They insisted it be continued. The Town sought to impose limits.

In disregard of the December 1975 report on the Greenburgh Police Department prepared by the Bureau of Municipal Police, Division of Criminal Justice Services of the State of New York (Exhibit T-57), which strongly recommended the institution of a limited sick leave policy, and against the weight of the evidence submitted by the Town that unlimited sick leave is costing it in excess of \$52,000 per annum (Exhibits T-6, T-7), the majority insisted on leaving unlimited sick leave undisturbed. In my view this inaction completely disregards the interests and welfare of the public, as well as ignoring our statutory obligation to consider ability to pay.

The Association's demands for one additional holiday and an increase from four to five in the number of holidays police can submit for pay was granted just as casually as was the demand for the welfare plan. The Town request for the option to grant compensatory time off in lieu of extra pay for work on holidays was denied without

any consideration given to the fact that this option would have enabled the Town to schedule its tours of duty in a manner most economical to the taxpayers. The Association's objection to compensatory time should have alerted my brethren to the fact that the demand for an extra holiday actually sought more money rather than more time off from work.

Police work is a difficult and demanding occupation. Effective and just law enforcement is essential to a free society. My admiration and respect for the members of the Greenburgh Police Department are equalled only by a similar regard for the Town's elected officials.

Nevertheless, all three arbitrators were obliged to decide the matters in dispute in a just and reasonable manner and in accordance with the law of this State. In the areas of salary, welfare plan, unlimited sick leave and holidays those obligations, in my view, were not met.



Rolon W. Reed
Arbitrator

Dated: New York, N. Y.
November 15, 1976