

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE ARBITRATION : PERB CASE NO. IA 82-16;
BETWEEN : M82-155
VILLAGE OF CROTON-ON-HUDSON :
AND : FEB 21 1984
CROTON POLICE ASSOCIATION : CONCILIATION

ARBITRATION PANEL:

DR. JOAN WEITZMAN, PUBLIC MEMBER AND CHAIRPERSON
ROBERT D. BRADY, ESQ., EMPLOYEE ORGANIZATION MEMBER
TERENCE M. O'NEIL, ESQ., EMPLOYER MEMBER

APPEARANCES:

FOR THE UNION:

CORCORAN AND BRADY, P.C.
BY: DENNIS CROWLEY, ESQ.

FOR THE EMPLOYER:

RAINS & POGREBIN, P.C.
BY: ERNEST STOLZER, ESQ.

OPINION AND AWARD

The instant arbitration arose out of Petition for Compulsory Interest Arbitration filed by the Village of Croton-on-Hudson (hereinafter "the Village") pursuant to Section 209.4 of the New York Civil Service Law. An arbitration hearing was conducted by

the undersigned members of the Arbitration Panel on March 22, 1983. At that time, both parties were afforded full opportunity to submit evidence, examine and cross-examine witnesses, and present argument in support of their respective positions. On June 6, 1983, the Panel members convened in executive session, at which time there was a full discussion of all of the evidence submitted and the arguments advanced.

BACKGROUND:

The police of the Village of Croton-on-Hudson, comprising a bargaining unit of approximately fifteen officers, have been employed under the terms of a Collective Bargaining Agreement that expired on May 31, 1982. Following an impasse in negotiations directed toward a successor Agreement, the Village, on July 26, 1982, petitioned the New York Public Employment Relations Board ("PERB"), requesting that the dispute be submitted to a Public Arbitration Panel. Simultaneously, it filed charges against the Croton Police Association (hereinafter "the Association") relating to alleged non-mandatory subjects of bargaining. On October 20, 1982, PERB designated this Panel to hear the dispute and thereafter to make a just and reasonable determination. On November 5, 1982, a PERB hearing officer issued his findings with respect to the pending improper practice charges filed by the Village. The Village filed exceptions on November 29, 1982, and the Association filed a response on December 10, 1982. On January 28, 1983, PERB issued its

determination on the Village's exceptions to the Hearing Officer's decision.

One of the items at issue in the improper practice case was the continuation of a dental plan that was part of the expired Agreement. In his decision of November 5, 1982, the PERB hearing officer noted that the Association had withdrawn its demand on the Dental Plan. He also found that an Association manning proposal was non-mandatory.

By letter dated November 19, 1982, the Association notified the Village that it had modified its manning proposal, submitting it as a Joint Safety Policy Committee demand, and it alerted the Village that a new Dental Plan proposal would be forthcoming. The Village objected to the additional proposals by letter of November 23, 1982.

On March 11, 1983, the Association advised the Impartial Arbitrator that the

. . . Association intends to arbitrate all of the issues as well as an issue requesting the formation of a Safety Committee and the institution of a Dental Plan.

On March 22, 1983, the Village charged that the Association violated §209-a.2(b) of the Civil Service Law by submitting the Safety Policy Committee and Dental Plan demands to arbitration. By decision dated July 12, 1983, a PERB hearing officer upheld the charges and ordered the Association to withdraw the two contested proposals from arbitration.

In determining those issues that were submitted to arbitration, the Panel considered the criteria set forth in the arbitration statute:

1. Comparisons of wages, hours and conditions of employment involved in this arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

2. The interests and welfare of the public and the financial ability of the public employer to pay.

3. Comparisons of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

4. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to the provisions for salary, insurance and hospitalization benefits, paid time-off and job security.

The Panel based its decision, not on any single criterion, but on all of the factors, which were weighed and balanced in order to reach a reasonable result.

Before proceeding to the merits of the dispute, an introductory comment is in order.

The resolution of this dispute is long overdue. The Agreement expired on May 31, 1982, and the parties reached an impasse in the summer of 1982. Over a year has been spent in litigating issues stemming from this bargaining dispute. Given these facts, it is appropriate to make an effort to expedite the issuance of this Award. Toward that end, the Panel is taking the liberty of focusing its Opinion and Award on those issues which it believes are the critical areas in dispute. In addition, it will not set forth in detail the parties' respective arguments on each issue. The arguments were detailed during the hearing and are part of the Record. Suffice it to say that the Panel has carefully analyzed the parties' respective positions and exhibits.

THE ASSOCIATION'S DEMANDS:

The Association submitted the following demands to arbitration:

"1. Length of Agreement: A one-year contract, expiring May 31, 1983.

2. Wage Rates: The wage rates set forth in Paragraph '4' of the present agreement will be increased by twenty (20%) per cent across the board.

3. Night Differential:
The 4:00 to 12:00 shift is to receive a twenty (20%) per cent differential;
The 12:00 to 8:00 shift is to receive a twenty-five (25%) per cent differential.

4. Longevity: The longevity increments under Paragraph '6' of the present agreement will be increased by One hundred (\$100) dollars in each classification.

5. Overtime: Paragraph '7' will be amended by providing for four (4) hours pay at time and one-half of all employees called in for court appearance. In the event that there is a cancellation of the

trial for which the officer has been called to testify, and no notice of the cancellation is given to the officer at least twenty-four (24) hours before such cancellations, then the officer will be paid four (4) hours pay at time and one-half.

6. Sick Leave: Sick leave provisions under Paragraph '9' will be amended to provide for an accumulation of sick leave for a maximum of three hundred (300) days, to be accumulated at a rate of two (2) days per month.

7. Personal Leave: Paragraph '10' will be amended to provide for the entitlement of eight (8) days personal leave during any contract year.

8. Vacation: Each classification for vacation benefit would be increased by one week.

9. Holidays: Memorial Day and Independence Day will be added to Paragraph '13.1' and an employee shall be paid an additional two (2) days pay for these days above the ordinary pay for that day.

10. Uniforms:
The uniform increment will be increased to Three hundred twenty-five (\$325) dollars for each increment.
Each officer shall be entitled to a dry cleaning allowance of Two hundred fifty (\$250) dollars per year.

11. School Tuition: Paragraph '16.1, Graduate Study Program' will be amended to remove the limitation of baccalaureate program.

12. Police Cars: The present Seventy-dollar (\$70) limitation for installation of AM/FM radios shall be increased to One hundred fifty (\$150) dollars.

13. Retroactive Pay: All benefit increase shall be retroactive to June 1, 1982.

THE VILLAGE'S DEMAND:

The Village submitted the following demands to arbitration:

- "1. Three (3) year agreement: June 1, 1982 to May 31, 1985.
2. Article 1. Recognition. Amended to read as follows:

The Village recognizes the Association as the sole and exclusive bargaining agent and/or representative of all members of the Village Police Department, with the exception of the Chief of Police and Lieutenants.

3. Article 3. Management Rights. Amended to read as follows:

The Association recognizes that the management of the Village, the control of its properties and the maintenance of efficiency, law and order are solely the responsibility of the Vilalge. The manner and means by which such services are to be rendered and the extent thereof; the administrative practices and procedures for conducting police work and departmental operations are the sole prerogative of the executive body of Village government.

The Association further recognizes that management rights include, but are not limited to, the right of the Chief of Police, through the orders of the Village Manager, to direct the work force, to make all assignments, and to make decisions as to discipline.

The Association specifically recognizes the Village's right to alter existing 'terms and conditions of employment' not specifically covered by this Agreement after prior discussion with the Union.

4. Article 4.1. Detectives. Amended to delete the word appointed and add the word assigned.

5. Article 5. Pension. Amend to read as follows: The Village will provide the pension plan as enumerated in Section 384-d of the New York State Retirement and Social Security Law.
6. Article 6. Longevity. Amended to read as follows:
 - a) At the end of ten (10) years of service, members shall receive \$150.00 longevity pay, paid by separate check in June.
 - b) At the end of fifteen (15) years of service, members shall receive \$200.00 longevity pay, paid by separate check in June.
7. Article 7. Overtime. Amended to read as follows:
 - a) Overtime work performed beyond the normal schedule tours will be paid for at time-and-one-half.
 - b) For all employees who are called into work other than scheduled tour of duty, and cases where the time runs into or after a scheduled tour of duty, a minimum of three (3) hours' pay at time and one-half will be paid.
8. Article 9. Sick Leave. Amended to read as follows:

Add: For employees hired prior to June 1, 1982 at beginning of first paragraph to be numbered 1.

Delete: Last sentence.

Add: New paragraph. 2 to read: For employees hired subsequent to June 1, 1982 will be allowed sick leave at the rate of twelve (12) working days per year, or, if unused, accumulative up to a maximum of one hundred eighty (180) days.

9. Article 9.1. Deleted. Non-mandatory*. Section 207-c of the GML will be administered by law.
10. Article 9.2. Deleted.
11. Article 9.3. Deleted.
12. Article 10. Personal Leave. Amended to read as follows:
 - a) Employees shall be entitled to up to three (3) days' personal leave per year.
 - b) Personal leave is leave with pay for personal business which cannot be taken care of by an Employee at times other than during his working day. It is intended to be available for use for the following purposes: for religious observances, for attendance at funerals other than for those enumerated as Bereavement Time, necessary absence due to extraordinary weather conditions, attendance at conventions other than on Village business, personal or family business appointments, including medical and dental appointments and examinations.
 - c) Personal leave shall be requested at least seventy-two (72) hours in advance, except in cases of emergency, and each request shall be accompanied by the reason therefor. Personal leave may not be taken without prior approval of the department head. When the operation of the department head may be adversely affected, the request may be denied at the discretion of the department head. However, permission shall not be unreasonably withheld.
 - d) Unused personal leave may not be accumulated from year to year, nor is it intended for use in conjunction with vacation or other permitted time off.

13. Article 10.1 Deleted.
14. Article 11. Funeral Leave. Amended to read three (3) days, provided the employee attends the services, if any, for the deceased. Delete the last sentence which reads, 'Other family funeral leave will be limited to two (2) days.'
15. Article 12. Vacations. Amended as follows:

Delete paragraph which starts 'In accordance with . . . and ends on Sunday.'
16. Article 13. Holidays. Delete (except as additional holidays for an employee may be mandated by law.)
17. Article 13.1 Delete second sentence which starts 'For employees who work Thanksgiving . . . without regard to the holiday.'
18. Article 13.2 Deleted.
19. Article 14. Uniforms. Amended to reflect \$200. instead of \$225.
20. Article 14.1 Deleted.
21. Article 16. School Tuition. Amended to read as follows:

School tuition, registration fees, books and examination costs of police courses, approved by the Chief of Police and Village Manager, shall be paid by the Village. In the case of mandatory courses, the employee's actual expenses, such as transportation and meals, shall be paid by the Village with transportation expenses calculated between the Municipal Building and the school.

Participation, for non-mandatory courses, shall be on the officer's own time. In the event that any employee starts a course which he or she does not complete, the employee shall reimburse the Village for the entire cost of the course.

22. Article 16.3 Deleted.

23. Article 21. Grievances.

Section 1 Any dispute arising concerning the interpretation of the express terms of this Agreement shall be the subject of a grievance and shall be processed in accordance with the following procedure.

Section 2 A grievance of an Employee or Employees shall be presented in writing by the employee to designated supervisory personnel within ten (10) days from the occurrence of the cause giving rise to the complaint or of actual or constructive notice thereof. The time limitations may be suspended by mutual agreement during discussions by Liaison Committee.

Section 3 In the event such grievance is not satisfactorily adjusted at the preceding step of the grievance procedure within five (5) working days, then the Association and the grievant may present the same in writing to the Village Manager, or his designee, for settlement.

Section 4 In the event that such grievance is not disposed of under Section 3, the Employer, or the Association, not later than twenty (20) days after presentation under Section 21.3, shall have the right to submit the issue to advisory arbitration before an impartial arbitrator. The submission shall include a brief statement setting forth precisely the express provision of this Agreement to be interpreted by the arbitrator. The arbitrator shall issue his advisory decision not later than thirty (30) days from the date of the closing of the hearings or, of oral hearings have been waived, then from the date of transmitting the file, statements and proofs to

the arbitrator. The decision shall be in writing and shall set forth the arbitrator's interpretation of the express provision of this Agreement submitted. The arbitrator shall limit his decision to the interpretation of the express provisions of this Agreement submitted to him. The decision of the arbitrator shall be advisory on the Employer, Employee or the Association.

Section 5 In the event the parties are unable to agree upon an impartial arbitrator within ten (10) days after request for arbitration as hereinabove provided, then the Voluntary Labor Arbitration Rules of the American Arbitration Association shall be applied to the proceeding for the purpose of selecting an arbitrator and the arbitrator shall be selected as therein provided. The arbitrator's fee and filing fees will be shared equally by the parties to the dispute.

24. Article 23. Accumulated Sick Time on Retirement. Deleted.
25. Article 26. Duration: This agreement shall be in effect from June 1, 1982 to to May 31, 1985.
26. Article 27. Retroactive Pay. Deleted.
27. Article 31. Agency Shop. Deleted.
28. Article 8. Health, Hospital, Surgical Plan. Amended to read as follows: After last sentence, add: New employees hired subsequent to June 1, 1982, shall pay 50% of the cost of the selected family health insurance plan or 25% of the selected individual health insurance plan.

It is agreed that a comparable plan may be substituted with equal or better benefits

in place of the State Health Insurance Plan or GIII, with a cap of \$1,000. per employee.

29. Salaries: a 5% across-the-board increase in each of two years.

CONTENTIONS OF THE VILLAGE:

The Village contends that its salary offer, coupled with existing benefits, would provide the police with an excellent salary and benefits package. The Village points out that gross pay for its police officers in 1982 averaged 20.81% above salary, with the average unit member earning \$29,056.00. Furthermore, a comparison of first patrolman salaries among Westchester County villages as of 12/31/81 showed that Croton-on-Hudson police ranked fourth with a salary of \$23,570. Were the Arbitrator to award the Village's proposed 5% salary increase, a Croton-on-Hudson first patrolman would earn \$24,748 as of 6/1/82. This would rank Croton-on-Hudson eleventh out of twenty-one Westchester villages.

The Village argues that salary increases granted to Croton-on-Hudson police since 1970 exceed the percentage increase in the cost of living for comparable years. According to the Village, the cost of living during 1983 has been increasing at an annual rate of 5%. Therefore, its salary proposal would enable the police to keep up with the current annual rate of inflation. The Village also notes that, according to a bulletin prepared by the Bureau of Labor Statistics, first-year pay increases in major settlements negotiated in the United States in 1982 averaged only 3.8%.

The Village further asserts that it is making a genuine effort to fairly compensate its police and that it lacks the ability to meet the Association's economic demands. In support of its position, it emphasizes that its 1982-83 tax rate per thousand was \$68.80. This represents a 7.5% increase over the preceding year. Moreover, the tax rate in the Village has increased by 91% during the past ten years. A comparison of Westchester County village tax rates for 1982-83 shows that Croton-on-Hudson has the 7th highest tax rate out of the 21 villages.

The Village further contends that it allocates a significant portion of its budget to the police department. During fiscal year 1981-82, total Village expenditures were \$3,005,761. Total expenditures on police (including salaries, retirement, social security, workmen's compensation, unemployment insurance, and health and dental insurance) amounted to \$827,799, or 27.34% of total Village expenditures.

With respect to its proposals for economic "give-backs", the Village argues that it can no longer afford or justify the liberal benefits it has been providing in the areas of sick leave, personal leave, vacations, holidays, tuition reimbursement, accumulated sick leave on retirement, and health insurance. In almost all of these areas, Croton-on-Hudson police enjoy more generous benefits than do the police of comparable Westchester villages. For example, Croton-on-Hudson police currently are entitled to 18

paid sick days per year. According to the Village, no other village in the County gives 18 sick days per year, except for Irvington, which provides 18 sick days to police with over five years of service. (Those Irvington police who have less than five years of service receive 15 sick days per year.) The Village also contends that only twelve Westchester County Villages provide payment for unused sick leave upon retirement. Of those twelve, Croton-on-Hudson has the most liberal contract provision in that retiring police are paid 50% of accumulated sick days in cash and 50% in compensatory time prior to retirement, with a maximum accumulation of 250 days. The Village maintains that this fringe benefit is enormously expensive.

Personal leave also represents an area where the Village argues strenuously for some change. Croton-on-Hudson police currently have a maximum entitlement of six personal leave days per year. The Village claims that its police, in fact, are using almost all of these days, particularly in conjunction with weekends. This usage pattern has created staffing problems and increased costs inasmuch as coverage often must be provided at overtime rates. The Village also argues that the Agreement should be changed to require police to present reasons for their use of personal leave days.

No useful purpose would be served in reciting all of the Village's contentions in support of its proposals for economic

concessions from the Association. Suffice it to say that the Village seeks to bring its collective bargaining Agreement with the police "into line" with those of other comparable Westchester communities. It believes that it is unable to maintain the current high level of fringe benefits, particularly if it is also expected to pay salary increases commensurate with those of other County villages. The Village also emphasizes that it has negotiated several economic "give-backs" with Local 860 of the CSEA, most notably in the area of hospitalization insurance.¹ It argues, therefore, that it is not seeking sacrifices from the police alone, but is attempting to be fair in its efforts to keep labor costs from skyrocketing out of control.

CONTENTIONS OF THE ASSOCIATION:

The Association acknowledges that with respect to salary, Croton-on-Hudson currently ranks fourth among Westchester villages. If the Village's 5% proposal is awarded, Croton police in 1982 will drop to eleventh and probably to a lower ranking in 1983. The Association contends that such a loss in salary status is completely unwarranted. It points out that it achieved its current comparative standing through years of negotiations. The Village should not now be permitted to eradicate past gains won through collective bargaining simply because it does not want to be a salary leader

¹The labor contract between the Village of Croton and CSEA, effective 6/1/81-5/31/83, provides that "all employees hired subsequent to the signing date of this agreement must pay 25% of the family health insurance plan; the village will continue to pay 100% of the individual health insurance plan."

in the County. Moreover, according to the Association, the department's work load in recent years has been increasing, thereby justifying substantial salary increases rather than "give-backs" by the police. The Association further contends that the Village's 5% salary proposal is far below the level of salary increases currently being negotiated and/or awarded by arbitrators in Westchester County. While the Village claims that salary settlements exceeding 8% are virtually non-existent in current rounds of collective bargaining, the Association asserts that such salary settlements for 1982 and 1983 are not uncommon. In support of this contention, the Association cites a recent arbitration award involving Westchester County police (8.5% retroactive to 1/1/81 and 10% retroactive to 4/1/82) and the Buchanan police contract, which provides for three 10% wage increases through 1982.

The Association maintains that, contrary to the Village's representations, it is not leading the County in most fringe benefit areas. With respect to longevity, for example, the Association is seeking a \$100 increase in each classification because currently the Village ranks roughly in the middle when compared to other Westchester villages. According to the Village's own exhibits, at almost each interval of service, there are at least eight other villages providing a higher longevity payment.

In regard to sick leave, the Association seeks to increase the maximum accumulation to 300 days and to increase the number

of sick days to two per month. In support of this proposal, the Association argues that although only one other village provides 18 days per year, nine Westchester County villages have no contract limit on sick days. Furthermore, by increasing the maximum accumulation, the Village will provide an incentive for employees to report to work. The proposal, according to the Association is cost effective because it will lower the Village's expenditures for substitute coverage. Under the present system, once an employee accumulates 250 days, he is motivated to use his annual sick leave entitlement. The Association proposal, if accepted, will have the opposite effect.

In support of its proposal to increase the number of personal days per year, the Association contends that additional leave time is warranted because police officers have very little free weekend time. In fact, they get a weekend off only once every five weeks, and they cannot take vacation time on weekends. That is why so many of the officers use their personal days on the weekends. The Association also opposes the Village's demand to change the Agreement so as to require reasons to be given in support of personal leave requests. In the past, Croton police officers felt that the Chief was arbitrary in denying personal leave requests. Therefore, the Association negotiated the current Contract language, which does not require that any statement of reasons be given. The Association argues that many Westchester villages give their police personal

days without reasons, and therefore the current contractual language should not be changed.

The Association also argues vigorously in support of its proposal to improve the uniform allowance. The current \$500 stipend for the initial issue, according to the Association, is grossly inadequate. Furthermore, most villages in the County supply their police officers with the initial issue of clothing. Also insufficient is the current \$50 per year for dry cleaning. According to Association representatives, their cleaning costs total several hundred dollars per year.

DISCUSSION AND FINDINGS:

The Panel Chairperson has carefully considered each issue in dispute and the parties' arguments in support of their respective proposals. In accordance with the statutory mandate, all of the evidence, data, and testimony in the Record were reviewed in the context of the statutory criteria. While the Association was ably represented by its counsel, the Chairperson is persuaded that several of the benefits currently enjoyed by the Croton police, particularly in the area of sick leave, personal leave, holidays, tuition reimbursement, and payment for accumulated sick leave, are no longer justified when measured against the criteria set forth in the arbitration statute. Furthermore, it is impossible for the Chairperson to be responsive to the Association's legitimate interest in maintaining salary superiority while simultaneously turning a deaf ear to the Village's equally legitimate concerns about runaway

labor costs. In these times of economic retrenchment, arbitrators are increasingly aware that collective bargaining is a two-way street. "Give-backs" are not uncommon; in fact, one can hardly pick up a newspaper or magazine without reading an article about the current nationwide trend of "give-backs" and low settlements. The collective bargaining reality of the 1980's, which is being acknowledged in the public as well as in the private sector, is that high salary settlements come at a cost. Continued improvement in the area of wages will be achieved only if the unions are willing to trade off inefficient work rules, liberal leave provisions, and expensive health and welfare fringes in exchange for salary dollars.

Bearing this reality in mind and having carefully reviewed the evidence presented, the Chairperson has concluded that contractual changes in the following areas are appropriate.

1. Sick Leave

Croton-on-Hudson has a liberal sick leave provision, which entitles police officers to 18 sick days per year with a maximum accumulation of 250 days. While some Westchester village police contracts set no specific limit on annual sick leave, those that establish a yearly entitlement generally provide 12 or 15 days. While the Chairperson is not inclined to reduce the sick leave entitlement of those employees currently on the police force, she awards that new employees hired after January 1, 1984 should have a maximum yearly entitlement of 15 sick days per year. This modification of the Agreement will not adversely affect any current

member of the bargaining unit but will yield a small savings to the Village in the future.

2. Payment for Unused Sick Leave Upon Retirement

The evidence convincingly demonstrates that the Croton-on-Hudson police have the most generous provision in the County with respect to payment for unused sick leave upon retirement. The Village contends that this item is very costly and will be increasingly expensive in the future. It has proposed, therefore, that Article 9.3 of the Agreement be deleted. While the Chairperson does not believe that this benefit should be eliminated, she finds that some modification is appropriate inasmuch as the average daily pay rate for Croton police is almost \$100 and the Agreement, as it is currently written, permits a maximum accumulation of 250 sick days.

Therefore, the following change in Article 9.3 shall be effectuated, except that it shall not apply to the two officers who have already accumulated 250 sick days, Perez and Pezanowski.

The Chairperson awards

that with the exception of Perez and Pezanowski, retiring officers shall be paid for 50% of their accumulated days in cash. The maximum accumulation shall remain at 250 days. There shall be no payment in compensatory time for the remaining accumulated days.

The purpose of this change is to effectuate a cost savings, eliminate the staffing problem that results when a retiring employee is using compensatory time, and, at the same time, still leave the Croton police with a generous fringe benefit.

3. Personal Leave

The evidence indicates that personal days are being used as holidays and in such a way as to extend a day off. The evidence also shows that in 1981-82, officers used 87 of a possible 90 personal days, for a usage rate of 96.67%. The original intent of the personal leave concept was to give employees a few days per year on which they could attend compelling personal matters that could not be handled except during their work day. It is clear that personal days are not being used in accordance with this intent. Moreover, the cost of personal days to the Village is very high. The unrefuted evidence from the Village was that from 12/1/81 to 6/1/82, 65.66% of the personal days were taken on weekends, which required overtime.

Therefore, the Chairperson is persuaded to reduce the number of personal leave days per officer to five (5), except for the first year of employment, during which period the number of personal leave days shall be four (4). The Chairperson, therefore, awards that Article 10 be changed to read as follows:

"Employees shall be entitled to up to five (5) days personal leave during any contract year for personal business, except that employees hired on or after June 1, 1980 shall receive a maximum of four (4) personal days during their first year of employment."

Article 10 shall also be amended to include the following paragraph, and the Chairperson so awards:

"Personal leave is leave with pay for personal business which cannot

be taken care of by an Employee at times other than during his working day. It is intended to be available for use for the following purposes: for religious observances, for attendance at funerals other than for those enumerated as Bereavement Time, necessary absence due to extraordinary weather conditions, attendance at conventions other than on Village business, personal or family business appointments, including medical and dental appointments and examinations.

While the Chairperson rejects the Village's proposal that personal leave be taken only at the discretion of the department head and based on written reasons, she believes that the modifications awarded herein will result in a savings to the employer and reaffirm the basic intent of personal leave. Any other contract changes should be negotiated by the parties themselves.

4. Vacations

The Association's proposal to increase by one week the vacation benefit of each classification is unjustified. Croton-on-Hudson police have more vacation time than most other departments in the County. For example, after 12 years of employment, Croton police receive a vacation of 25 work days. In 17 other Westchester village police departments, a 25-day vacation is not granted until an employee has been employed for a longer period, usually at least 15 years. Croton police also become entitled to a 20-day vacation earlier than most other village police in the County.

The Village seeks to eliminate the contract provision which entitles officers to take cash in lieu of vacation and in individual

days off. While the Chairperson rejects the Village's proposal to completely eliminate this section of the Agreement, she agrees that the current language is unworkable and virtually unheard of. To remediate the existing situation, the Chairperson awards as follows:

1. Any and all vacation time in excess of three (3) weeks may, at the employee's option, be taken in cash in lieu of time off. Vacation time not taken in cash may be taken in individual days off, with the permission of the department head, provided that (a) the employee gives the Village as much advance notice as possible (but in no event less ~~than~~ one (1) calendar week) or in case of emergency, as much notice as possible and (b) no such individual work day shall be between the hours of 4 p.m. on Friday and 8 a.m. on Sunday.

5. Holidays

The Association seeks to add two additional "super holidays" under Article 13.1, while the Village proposes to eliminate the entire concept of super holiday pay. In effect, an officer receives triple pay if he works a super holiday (Thanksgiving, Christmas, and Easter Sunday). This concept exists in fewer than half of the police contracts in Westchester County villages, and there is little justification for it, given what police work is all about.

Therefore, the Chairperson awards as follows:

- a) the number of holidays shall be increased from 12 to 13 by adding Martin Luther King Day.
- b) Under Article 13.1, employees who work Thanksgiving Day, Christmas Day, and Easter Sunday shall be paid an additional one (1) day's pay for these days above the ordinary pay for that day computed

without regard to the holiday.

- c) The modifications to Article 13 shall be effective prospectively from the date of this Award, October 3, 1983.

6. School Tuition

Article 16 is an extremely liberal provision in which the Village commits itself to pay, not only tuition, but virtually all educational expenses attached to taking police courses. The Article, as it currently reads, also provides that if an officer has an invalid reason for failing to complete a course, he shall reimburse the Village one-half (1/2) the cost of the course.

This provision, as the Village contends, is unreasonable. It is also offensive to the Village's taxpayers who should not be compelled to pay any tuition costs if an employee fails to complete a course, except in the most unusual circumstances. To pay an employee's tuition and expenses for a course he subsequently drops may also border on making an unconstitutional gift of public funds.

For this reason, the last sentence of the first paragraph of Article 16 shall be changed to read as follows and the Chairperson so awards:

"If the reasons are not considered valid, the employee shall reimburse the Village for the entire cost of the course."

The Village has further proposed to delete Article 16.3. While the Chairperson sees no valid purpose for eliminating the

the provision, she believes it appropriate to change the language to read as follows and she so awards:

"When courses required by the Village take place on an employee's day off, the employee may be paid for such day, or he will receive compensatory time off at such times as are mutually agreed to with the Chief."

7. Uniform Allowance

The Association has argued very vigorously for improving the clothing allowance, particularly in the area of maintenance. The Village, on the other hand, has sought to reduce the yearly allowance. The Chairperson finds the employer's position to be without merit. While she agrees with the Village that the yearly allowance for new uniforms should not be increased beyond \$450 at this time, she finds merit in the Association's claim that a \$50 annual laundering and cleaning stipend is insufficient. The police demonstrated at the hearing that most of the clothing articles which they wear must be dry cleaned. The Chairperson takes judicial notice of the fact that dry cleaning is very expensive. An annual entitlement of \$50 cannot begin to cover maintenance costs. Therefore, effective June 1, 1983, each unit employee shall be entitled to a dry cleaning allowance of \$75 per contract year. This represents an increase of \$25.00.

8. Salary and Duration of Contract

The Association seeks a 20% increase per year. The Village proposes a 5% across-the-board increase per year. Both positions are untenable. The Chairperson awards as follows:

- a. A two-year Agreement, effective June 1, 1982 through May 31, 1984;
- b. Effective June 1, 1982, an across-the-board increase of 7%;
- c. Effective June 1, 1983, an across-the-board increase of 10%.

Undisputedly, Croton-on-Hudson police officers are among the highest paid police in Westchester County. That position, however, has not immunized them from the effects of inflation, particularly in 1980 and 1981, when the Consumer Price Index in the New York-New Jersey Metropolitan Area increased by more than 10% each year. Moreover, when one looks at the Croton police annual salaries, one realizes that even though they are comparatively high among County village police, in absolute dollars they are not high. In 1983, in Westchester County, a salary of \$25,000 barely enables even a small family to maintain a middle-class standard of living. The Chairperson also concurs with the Association that the fact that Croton-on-Hudson ranks near the top of the County in salary is no reason to award an unfairly low settlement in this Agreement. There is nothing intrinsically wrong in paying the police force well as long as the employer has the ability to pay and the employees are properly fulfilling their duties.

The Chairperson has considered the fact that Croton-on-Hudson has experienced significant tax increases in recent years. The Village has failed to prove, however, that it lacks the financial

ability to pay salary increases in excess of 5% per year. Although there were vague allegations during the hearing about possible layoffs and cutbacks in service, nothing conclusive was demonstrated. Furthermore, the Village's Contract with the CSEA, which the employer submitted into evidence, shows that effective June 1, 1982, that unit was given a salary increase of 8.5%. While the Chairperson is aware that the CSEA local union made certain concessions in order to achieve an 8.5% increase, it is clear that the Village was financially able to make a substantial improvement in the wages of its CSEA unit members.

Arbitrators are also guided by current settlements in comparable communities. Both parties to this dispute have been lax in providing the Chairperson with reliable information about police salary settlements for 1982 and 1983. However, based upon the Chairperson's own experience and observation, she believes that recent salary settlements in comparable communities have ranged between 7% and 10%, depending on what concessions the employees have been willing to make and the employer's ability to pay. Therefore, the Chairperson believes that her salary award in this case is well within "the going rate."

Finally, the salary determination herein has been formulated in recognition of the various "givebacks" that have also been awarded. The Village argued persuasively that in order for it to afford a reasonable salary settlement, it had to have several

concessions from the Association. The Chairperson has been responsive to some of the Village's proposals and urges that her salary award be viewed, not in isolation, but in conjunction with the "givebacks" that she has also awarded.

As to the Association's proposal, suffice it to say that it was unrealistically high. The Chairperson has attempted to award salary increases that were unfair and sufficiently generous to preserve the position of the Croton police as one of the best paid forces in Westchester County. The Chairperson must also note that were it not for some of the "givebacks" she awarded, her salary determination would not have been nearly as liberal.

9. Health Insurance and Dental Insurance

The Village has argued vigorously for a change in the Agreement's health insurance language. It contends that the annual cost of maintaining a fully paid hospitalization and surgical insurance program for employees and their dependents has been increasing dramatically. Evidence submitted by the Village indicates that from January 1, 1980 to January 1, 1983, the cost of health insurance has increased by 114.8%. Furthermore, many public employers in New York, including the State itself, have negotiated provisions in their labor contracts under which employees will be responsible for paying some portion of their health insurance premiums.

In the most recent round of negotiations with the Croton CSEA local union, the Village succeeded in modifying the existing

health insurance provision. The labor contract between the Village and the CSEA, effective June 1, 1981 through May 31, 1983, provides that new employees will pay 25% of the family health plan. The Chairperson believes that this change is fair and should be applied to the police contract, too. Therefore, she awards that the second sentence of Article 8 be changed to read as follows:

"All employees hired after January 1, 1984 must pay 25% of the cost of the family health insurance plan; The Village will continue to pay 100% of the premium for the individual employee and for each retired employee."

During the pendency of this arbitration, there was a serious dispute concerning the continuation of the Contract's dental insurance provision. Although PERB found the existing provision to be a non-mandatory subject of bargaining on the basis of the particular wording of Article 8.1, during the arbitration hearing, the Village indicated that it did not seek to strip the Croton police of their dental insurance coverage. It is undisputed that dental insurance is an important benefit, the denial of which would impose a substantial hardship on the police unit. Moreover, the Village has continued to provide dental coverage during the pendency of this arbitration. At this point, little purpose would be served by withdrawing the existing dental plan. Additionally, as a matter of equity, it would be unfair to impose new health insurance costs on the police unit while simultaneously eliminating their dental insurance. For these reasons, the

Chairperson awards that:

In exchange for the health insurance "give-back" awarded herein, the Village shall continue to provide the Croton police with the dental plan which has been in effect.

NON-ECONOMIC ISSUES

1. Management Rights

The Village has proposed several changes to Article 3. The Chairperson rejects most of these except that the second paragraph of Article 3 shall be changed to read as follows and it is so awarded that:

"The Association further recognizes that management rights include, but are not limited to, the right to direct the work force, to make all assignments (subject, however, to any limitations which may appear elsewhere in this Agreement, or in applicable State Statute), to make decisions as to discipline (subject, nevertheless, to all rights as to grievances, judicial and/or administrative review as provided by law and by the collective bargaining agreement) and all other rights normally inherent in the powers of the Chief of Police and Village Manager, except as limited by law and by the terms of this Agreement, and the failure to assert any such rights shall not be deemed a waiver thereof."

2. Wording of Article 4.1

The Village seeks to delete the word "appointed" and substitute the word "assigned" in Article 4.1 inasmuch as patrolmen are never appointed as detectives, but rather, may only be assigned to that title.

The Chairperson finds merit in this proposed language change and hereby awards that the word "appointed" in Article 4.1 shall be deleted and replaced with the word "assigned."

3. Grievance Procedure

The Village has proposed numerous modifications to the grievance procedure. The Chairperson has carefully reviewed these proposed changes and the employer's arguments in support thereof. While she is not personally opposed to many of the changes suggested by the Village, she firmly believes that most of the modifications sought by the employer could and should be worked out with the Association in direct negotiations. For this reason, she shall limit herself to awarding just two changes, which are reasonable and helpful.

The Village argues persuasively that the current grievance procedure contains no definition of a grievance. It speaks only of "grievances arising out of or relating to this Agreement." This language needs clarification. Therefore, the Chairperson awards as follows:

Article 21 shall be amended to define a grievance as "any complaint alleging a violation, misinterpretation, or misapplication of a provision(s) of this Agreement."

The Village has further proposed that in the event a grievance remains unresolved, it be submitted to binding arbitration in accordance with the rules of the American Arbitration Association. The Association seeks to keep the existing language of the Agreement, which provides that the parties will use the services of the Public Employment Relations Board or the New York State Mediation Board.

The Chairperson is very familiar with the rules and procedures of all of these agencies and finds each organization quite satisfactory. However, inasmuch as the parties have a dispute as to which arbitration agency to use, it seems that the most sensible resolution is to require the parties to use the agency that has been statutorily created to administer the Taylor Law and public sector relations in New York, namely, the Public Employment Relations Board. Its rules are fair and workable, and it maintains a roster of arbitrators who are very familiar with public sector labor relations. For these reasons, the Chairperson awards as follows:

Article 21 shall be amended to state that: "If the grievance is not satisfactorily adjusted or resolved by majority vote of such committee, then the employer or the Association may have the grievance submitted to final and binding arbitration by an arbitrator selected by mutual agreement, by the New York State Public Employment Relations Board in accordance with normal procedures. The cost of the arbitration shall be borne equally by the parties."

The Chairperson has carefully considered all of the remaining proposals made by both parties. For the reasons set forth below, however, the Chairperson has decided to deny any additional proposals

made by either party. First, based upon the hearing and Executive Session, the Chairperson has concluded that the major issues in this dispute have concerned salaries, payment for unused sick leave, personal leave, vacations, holidays, and the grievance procedure. Each of these issues has been treated in this Opinion and Award, along with several other small items.

The Chairperson has not awarded favorably upon many of the Association's economic demands because she believes that all available monies should be applied toward making meaningful improvement in salary. Further, the Chairperson has concluded that present conditions do not necessitate improvements in the areas of longevity, vacations, call-in pay, etc., inasmuch as the Croton police already enjoy very liberal benefits in these areas.

As to the Village's remaining proposals requiring further economic concessions from the Association, it is the Chairperson's decision that her Award will provide sufficient savings to the Village for this contract period. Any further economic concessions from the Association would render the salary increase inadequate. Further, in the interest of labor relations stability, the Chairperson cannot destroy the integrity of the prior contract by awarding a wholesale elimination of prior benefits won by the Association in collective negotiations. Should the Village believe that additional givebacks are necessary, it

will have ample opportunity to pursue its objective in future rounds of face-to-face bargaining.

Respectfully submitted,

Joan Weitzman
JOAN WEITZMAN
CHAIRPERSON OF THE ARBITRATION
PANEL

October 3, 1983

STATE OF NEW JERSEY)
COUNTY OF MIDDLESEX)

ss.:

On this *12th* day of *December*, 19 *83*, before me personally came and appeared JOAN WEITZMAN, Chairperson of the Arbitration Panel, to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Dorothy Friedman

DOROTHY FRIEDMAN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires February 19, 1987

T. M. O'Neil

TERENCE M. O'NEIL
EMPLOYER MEMBER

On this 12th day of December, 1983, before me personally came and appeared TERENCE M. O'NEIL, Employer Member of the Arbitration Panel, 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.

Robert D. Brady

ROBERT D. BRADY
EMPLOYEE ORGANIZATION MEMBER

Leila Krin

LEILA KRIN
Notary Public, State of New York
No. 30-4729622
Qualified in Nassau County
Commission Expires March 30, 1984

On this 9th day of Dec. 1983 before me personally came and appeared ROBERT D. BRADY, Employee Organization Member of the Arbitration Panel, 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
NOTARY PUBLIC

Notary Public, State of New York
No. 31-4332233
Qualified in New York County
Commission Expires March 30, 1985