

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. IA 90-17; M-90-246

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

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In the Matter of the Compulsory
Interest Arbitration

between

THE NEW YORK STATE FEDERATION OF
POLICE, INC. ON BEHALF OF THE TOWN
OF WALKILL PBA,

and

THE TOWN OF WALKILL
-----*
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DETERMINATION

AND

AWARD OF

ARBITRATION

PANEL

BEFORE:

Public Arbitration Panel:

Public Member and Chair:	Carol Wittenberg
Employer Member:	Michael Hitsman, Esquire
Employee Organization Member:	Anthony Solfaro

APPEARANCES:

For the Association: John P. Henry, Vice President,
Federation of Police

For the Town: John O'Reilly, Esquire of Hitsman,
Hoffman and O'Reilly

The New York State Public Employment Relations Board, having determined that a dispute existed in negotiations between the Town of Walkill and the Walkill Police Benevolent Association (hereinafter the "Town" and the "Association"), and further that the dispute came under the provisions of Section 209.4 of the Civil Service Law, designated the above Public Arbitration Panel to make a just and reasonable determination of the dispute.

Hearings were held before the Panel on June 14, 1991, October 9, 1991, October 28, 1991, January 14, 1992 and January 20, 1992. The parties had a full opportunity to examine and cross-examine witnesses, to submit documentation and to make oral argument in support of their respective positions. A transcript of the proceedings was recorded and the parties filed post-hearing briefs, after which the Panel met in executive session on March 2, 1992 and March 25, 1992.

BACKGROUND

The collective bargaining agreement between the Town and the Association expired on December 31, 1989. Until December, 1989, the Wallkill Police Department consisted entirely of part-time police officers. The Town made the decision to move towards a full-time department some time in 1988. Police Chief Hansen was hired by the Town in June, 1989 to accomplish the transition.

The first eight full-time officers were appointed in December, 1989, but did not start work until January 5, 1990; eight more officers were hired between November, 1990 and February, 1991, three on November 16, 1990, one on January 4, 1991 and four on February 23, 1991. From December, 1989 until late 1991, the

Police Department changed from one employing approximately 30 part-time officers to one employing 16 full-time officers in addition to two part-timers added to the Department in late 1991 to supplement coverage.

Police Officers were hired at a starting salary of \$19,600. Chief Hansen testified that he arrived at this starting salary by averaging the starting salaries of 17 Orange County Police Departments, dropping the lowest and highest rates, and adding \$200 to the average. Officers were provided the same fringe benefits as other employees of the Town. Police Officers worked a four week cycle of 5/2, 5/2, 5/2 and 5/3. The 5/3 schedule is in lieu of holidays. Of the 16 full-time officers hired by the Town, nine required mandatory training in order to obtain certification by attending a 16-week MPTC basic training course.

In its demands to the Town, dated May 21, 1991, as modified by PERB, the Association submitted demands in the form of a collective bargaining agreement covering 37 separate issues. The Town also made proposals which are before this Panel.

The Panel, in accordance with its obligations pursuant to Civil Service Law, Section 209.4, has considered, in addition to other relevant factors, the following:

- comparison of the wages, hours and conditions of employment of the employees involved in the 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;
- the interests and welfare of the public and the financial ability of the public employer to pay;
- comparison 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;
- 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 retirement benefits, medical and hospitalization benefits, paid time off and job security.

The parties' arguments, including those concerning comparability and ability to pay are summarized below:

COMPARABILITY

The Association contends that the Town should be compared with other full-time Police Departments in Orange County. It notes that all of these departments, with the exception of Walkill, utilize an increment system of annual wage increases in addition to an annual increment. The incremental system of graduated increases in salary is based upon years of service. The Association contends that a comparison of the salary and benefits of Police Officers in Walkill

with other Police Officers in Orange County reveals that these employees earn substantially less than comparable employees within the County.

The Town contends that none of the jurisdictions in Orange County, upon which the Association relies, is comparable to Walkill, and relies upon comparisons with other jurisdictions within New York State. It argues that only the Walkill Police Department, of organized police departments in Orange County, is in its infancy. Therefore, the type of work performed by bargaining unit employees is not comparable to the type of work performed by officers in more experienced organized departments.

ABILITY TO PAY

There is no dispute that the Town of Walkill has financial problems. The Association contends that the Town's financial difficulties are the result of fiscal mismanagement by the prior administration. The Town asserts that its current financial position results from a number of factors including a reduction in State funds, decline in economic growth, an underfunded cumulative deficit among other reasons.

The Association asserts, nevertheless, that the Town is able to tax to cover any increases necessary to fund this package. It argues that the Town's total taxes, including town, county and school are within range for all jurisdictions in Orange County.

The Association points out that a 1 % increase for Police Officers in 1990 would cost the Town .12 % of all expenses in the general fund. Therefore, a 10% increase in wages would have the effect of a 1.2% increase on the general fund.

The Town contends that it is in a desperate financial position. It began 1990 with a fund balance deficit of \$1 million. Its 1992 budget is out of balance by approximately \$809,000. When compared with other large towns in Orange County, including Blooming Grove, Monroe, Newburgh, New Windsor and Warwick, only Walkill has an underfunded cumulative deficit. Walkill's taxes, assessments and charges as a percentage of full value assessment of property is higher than other comparable towns with the exception of New Windsor. Furthermore, only Walkill has a bond rating of Baal, lower than any of the other comparable towns. The Town's debt load represents 30.43% of its expenditures.

The Town notes that taxpayers in Walkill have experienced a 21% increase in the Town property tax, school and county taxes since 1989. The Town argues that the Association's money demands

constitute a 22.8% increase in 1990 and a 26.6% increase in 1991, exorbitant compared with other public sector settlements in New York State, police interest arbitration awards as well as increases for other Town employees. Specifically, the Town notes that public sector settlements in New York State averaged 5.5% in 1990 and 5% in 1991. Police interest arbitration awards averaged 5.4% and 5.9% during the same period. Furthermore, Town employees received 6% increases in both 1990 and 1991.

The Association contends that these Police Officers deserve substantial increases in salary and other terms and conditions of employment in order to make them comparable to others in Orange County. The Association argues that the Town failed to budget properly for the transition from a part-time to a full-time department in 1989. It notes that in addition to the 6% increases Town employees received in 1990 and 1991, organized employees of the Town also received applicable increments and longevity increases in accordance with their collective bargaining agreement. The Association argues that neither the Town's failure to fund a full-time police department nor its financial condition can be used to deny Police Officers acceptable wages and benefits.

OPINION

The following is the Panel's discussion of the proposals of both the Association and the Town as well as the Panel's findings and decision on each of the proposals. The term Panel, as used here, reflects the opinion on the Public Member, whose judgments herein do not necessarily reflect the opinions of either the Employer or Employee Member of this Interest Arbitration Panel, regardless of their concurrence or dissent from the award.

The Panel is required by Section 209.4 of the Civil Service Law to consider certain factors in determining the wages and benefits to be awarded to employees. All of the factors set forth in the law are important and must be considered. No single factor is controlling. They must be balanced in order to lead to a fair result. The Panel has weighed each of these factors in reaching its decision on each of the issues before it.

SALARIES

The Association proposes the following salaries for 1990 and 1991:

	<u>1990</u>	<u>1991</u>
5th Grade Patrolman	\$ 23,274	\$ 24,438
4th Grade Patrolman	24,605	25,835
3rd Grade Patrolman	25,937	27,234
2nd Grade Patrolman	28,367	29,785
1st Grade Patrolman	31,167	32,725
Detective	33,505	35,179
Sergeant	35,842	36,634
Lieutenant	41,218	43,279

This proposal represents an 18.75% increase in year one for first year officers, based upon an initial rate of \$19,600. It represents a 5% increase in year two. The Association's proposal also includes a 7.5% differential between 1st Grade Patrolman and Detective, a 15% differential between Sergeant and 1st Grade Patrolman, and a 15% differential between Sergeant and Lieutenant.

The Association also proposes a schedule of longevity pay for both full-time and part-time Police Officers who have completed at least six years of service, in three-year increment beginning with year seven.

The Town proposes annual salaries for employees appointed before January 1, 1990 as follows: \$19,600 effective 1/1/90; and \$20,384 effective 1/1/91. This constitutes a 0% increase the

first year and 4% in year two of the contract. The Town also proposes a \$300 additional salary during the first year of service following certification as a Police Officer.

The Town's proposal for part-time officers is as follows: \$6.24 for probationary officers effective 1/1/90; \$6.49 effective 1/1/91; \$8.77 for patrolmen effective 1/1/90; and \$9.12 for patrolmen effective 1/1/91. The Town opposes any longevity increases, noting that there are no members of the Department who have completed six years of service.

The 1988-1989 contract contains a schedule of pay for part-time Police Officers only. Probationary employees earn \$6.00 per hour, permanent Police Officers earn \$8.43 per hour and Sergeants earn \$9.61 per hour. All full-time officers are currently paid \$19,600, the rate at which they were hired in 1990 and 1991.

In this case, the Panel is persuaded that the appropriate comparison is between the Town of Walkill and the towns of Blooming Grove, Newburgh, New Windsor and Warwick. These are the municipalities that the Town presented for comparison when it presented its ability to pay arguments to the Panel. Furthermore, the testimony of Chief Hansen indicates that he relied upon the salaries paid to Police Officers in organized departments within Orange County when determining an appropriate starting salary for Walkill Police Officers.

The Panel also considered the range of interest arbitration awards in New York State, issued in 1990 and 1991 as well as the average increases for public sector employees in New York State over the same two year period. We have also weighed the salary increases of other Town employees who received increases of 6% in both 1990 and 1991.

Comparability is not the controlling factor. The Panel also weighed and considered the ability to pay arguments put forth by the Town in reaching its decision concerning salaries. On the basis of the record, the Panel is persuaded that the Town's financial health is precarious. Walkill alone among comparable towns has a significant underfunded cumulative deficit. Only Walkill has a bond rating of Baal which is significantly lower than other towns.

Furthermore, in light of the special circumstances facing the Town, combined with the poor fiscal condition of the State, the Panel does not anticipate any resurgence of economic growth that might turn around the Town's financial condition in the near future. Moreover, taxpayers in Walkill experienced a 21% increase in taxes since 1989.

In awarding these increases, the Panel has considered the increases granted to other Town employees over the same period, as

well as the awards of other interest arbitration panels throughout New York State covering 1990 and 1991. We note that where police interest arbitration panels granted increases in excess of 5% and 6% per year, that there was no persuasive proof that the local jurisdiction had a legitimate ability to pay argument similar to the proofs presented in this case.

In light of the above, the Panel awards a two-step salary schedule with the following salaries over a two year period, from January 1, 1990 through December 31, 1991 for full-time Police Officers:

	<u>Existing Salary</u>	<u>1/1/90</u>	<u>1/1/91</u>
Starting Salary Patrolman	\$19,600	\$20,776	\$21,815
Patrolman (after 1 year of service)			\$22,230

These salaries represent a 6% increase in 1990 above the existing rate, and a 5% increase in the base rate in the second year, with an additional increment on the first anniversary date of employment. Additionally, in establishing a second step, the salary plan allows the parties an opportunity to negotiate additional steps that follow the progression of Police Officers hired by the Town since January 1, 1990.

The Panel also awards the following increases to hourly employees:

	<u>Existing Rate</u>	<u>1/1/90</u>	<u>1/1/91</u>
Probationary Officer	\$6.00	\$6.36	\$6.81
Police Officer	\$8.43	\$8.94	\$9.57
Sergeant	\$9.61	\$10.19	\$10.80

These represent a 6% increase in year one of the contract and a 7% increase in the second year of the contract.

RECOGNITION

The Association proposes adding three new sections to the current recognition clause which recognizes the PBA as the sole bargaining agent for all titles contained in the PERB certification order. The Association asks that the recognition clause include all Police Officers, Sergeants and Lieutenants. Other proposed changes include a no strike clause, as well as an agreement not to cause or sanction a strike, stoppage or slowdown, and an agreement to notify employees to cease and desist from such actions.

The Town proposes that the Association be recognized to represent employees holding the rank of Police Officer. It proposes no other changes in the recognition clause.

The Panel determines that one new section shall be added to the recognition clause; namely that the clause recognize the Association's right to represent all Police Officers, Sergeants and Lieutenants, and that the certification from PERB be included in the provision.

RIGHTS OF EMPLOYEES

The Association proposes allowing employees who are to be interrogated to be given up to 24 hours in order to obtain representation from an attorney and/or a Union representative. The Town proposes changes in the disciplinary procedure, detailed at page 26 of this report.

The Panel awards no changes either in the rights of employees as requested by the Association or in the disciplinary procedure as proposed by the Town. The interests of the parties are best served by negotiating such provisions.

DUES CHECKOFF AND AGENCY FEE DEDUCTION

The Association proposes an Agency Shop fee deduction in accordance with Section 208.3 of the Civil Service Law, as well as

a clause indemnifying the Town against any and all claims of liability arising out of the Town's compliance with this article. The Town concurs in the indemnification part of the clause proposed by the Association, but opposes the proposal for an Agency Shop.

The 1988-1989 contract provides for dues deductions by the Employer, but does not provide for an Agency Shop. The Panel awards the indemnification language proposed by the Association. However, there shall be no inclusion of an agency shop provision.

UNION BUSINESS

The Association proposes time off with pay for the Union President or designee to attend negotiations, grievances, disciplinaries and labor-management meetings between the parties. The Town opposes the proposal.

The Panel determines that there shall be no change in this clause.

UNIFORMS

The Association proposes that the Town provide all required uniforms, shoes and equipment, including ammunition, and provide

for cleaning of all clothing. For officers in plain clothes, the Association proposes that the Town pay to clean outer clothing or provide an allowance for cleaning of \$500 per annum.

The Town proposes no change. The current uniform allowance under the 1988-1989 contract provides \$35 per month as an allowance.

The Panel is not persuaded that the current allowance of \$420 per year for uniforms should be increased. Therefore, no change is awarded in the uniform allowance.

VACATION

The Association proposes earning of vacation credits after completion of four months of service at the rate of one day per month for eight months. Thereafter, the Association proposes the following:

10 work days	2 to 3 years of service
15 work days	4 to 6 years of service
20 work days	7 to 10 years of service
25 work days	11 to 15 years of service
30 work days	16+ years of service

The Town proposes the following vacation schedule:

5 work days	after one year of service
10 work days	2 to 10 years of service
15 work days	11 to 15 years of service
20 work days	16+ years of service

The Panel awards the Town's proposed vacation schedule and notes that the 10 work days of vacation commence with the second year of employment.

HOLIDAYS

The Association proposes 13 holidays with pay plus time and one-half for holidays worked plus an additional day off. Part-time employees who work the holiday are to be compensated at the rate of double time for the day. The Town proposes no change.

The Panel awards 13 holidays per year, 12 incorporated in the work schedule with one floating day available for employee use. Employees working on a holiday shall be paid at the rate of time and one-half for all hours worked.

PERSONAL LEAVE

The Association proposes four days per year for full-time employees and half of the benefit for part-time employees. Part-

time employees shall be entitled to one-half the entitlement by working an average of 520 hours per year.

The Panel awards four days of personal leave for full-time employees after six months of continuous service.

BEREAVEMENT LEAVE

The Association proposes four work days for a death in the immediate family. Immediate family is defined as mother, father, child, spouse, grandparents, brother and sister. The Association also proposes two days on the occasion of the death of a mother-in-law, father-in-law, grandparent-in-law, brother-in-law or sister-in-law. Part-time employees, scheduled for work, shall be entitled to one half of the entitlement by working an average of 520 hours per year.

The Panel awards five days of bereavement leave for a death in the immediate family (father, mother, spouse, brother, sister, child, mother-in-law, and father-in law). We award three days for the death of a grandparent.

SICK LEAVE

The Association proposes 13 days per year or four hours per completed payroll for sick leave, and proportionate benefits for part-time employees. It proposes that sick leave benefits accumulate to a maximum of 2000 hours or 250 days, and that Police Officers be entitled to one half of the accumulated sick leave in terminal leave upon retirement, or full accumulation upon termination.

The Association also proposes that employees not be required to present a doctor's note until after being out sick for three consecutive work days. It also proposes a family sick leave benefit plan.

The Town proposes one day per month after completion of six months of continuous service with a requirement that employees call in four hours prior to the start of the tour in order to receive sick pay. The Town also proposes having the right to request a doctor's note after an employee is on sick leave for 48 hours. It also proposes that an Officer be placed on sick leave monitoring for six months after a third undocumented sick day within a three-month period.

The Panel awards one day of sick leave for each month of full-time service. All other details of the sick leave plan are remanded to the parties for negotiation.

OVERTIME

The Association proposes that hours in excess of eight be compensated for at the rate of time and one half or compensatory time off at the overtime rate. Police Officers would receive a \$6.00 meal allowance for every four hours of overtime worked.

The Association also proposes a guaranteed minimum of four hours pay at the rate of time and one half for employees who are called back to work. Stand by pay shall be at the rate of one hour at the regular hourly rate for every two hours on stand-by.

The Town proposes overtime compensation as established under the Fair Labor Standards Act with part-time employees continuing to receive overtime in accordance with the provisions of the 1988-1989 contract.

On call pay for full-time officers would be as follows: eight hours of compensatory time for each seven day period. This amount would be prorated for part-time officers. Part-time officers would

continue to be compensated in accordance with the 1988-1989 contract except that the rate for 1990 shall be \$72.50 per week and \$75.00 per week for 1991.

The Panel determines that the overtime provisions of the 1988-1989 contract shall be continued with regard to overtime pay and on-call pay.

INSURANCE

The Association proposes that employees be eligible for membership in the State Insurance Plan and that the Town pay 100% of the health insurance premiums for employees and their families. The Association also proposes 100% employee coverage for dental and optical coverage as well as professional liability coverage in the amount of \$500 per employee, \$1 million per occurrence and \$3 million aggregate. The Town proposes no change in the current health, dental, optical and liability insurance programs.

The Panel awards no change in the current insurance coverage provided by the Town which includes the following: (1) medical and hospital coverage under the Empire Plan, Core Plus Enhancements to be fully paid for by the Town and provided after 90 days of full-time employment; (2) dental coverage under GHI Spectrum, fully

paid for by the Town and available after six months full-time employment; and (3) optical reimbursement plan up to \$160 within a two-year period.

GRIEVANCE PROCEDURE

The Association proposes a three step grievance procedure ending in final and binding arbitration. It proposes adding a definition section to the clause. Other proposed changes include: changing the number of days in which to file a grievance from 30 to 60 days; defining who can file a grievance; and enumerating that the consequences of the Town's failure to met the time requirements shall result in the grievance being granted. The Association also proposes that the Town be required to reply to a grievance within 10 days instead of the current 15, that the Police Commission be required to hold a hearing within 10 days and respond to the grievance in writing within 10 days of the hearing.

The Town proposes a four-step grievance procedure ending in arbitration with specific time limits at each step. The Town also proposes a procedure by which the Town may file a grievance against the Association.

The Panel determines that there should be no change in the grievance procedure. This matter is best left to the parties for negotiation.

TRAINING/EDUCATION INCENTIVE

The Association proposes that firearms training be held when employees are scheduled for duty or, if off duty, that the employee be paid at the overtime rate of pay for such training. It also requests \$15.00 per day for the costs of meals while attending training and 100% tuition reimbursement for educational courses leading to a degree. The Town proposes no change in training or education.

The Panel is persuaded that there should be no change in the current provisions for training and education. Therefore, Police Officers shall continue to be reimbursed for school where the Police Officer received prior approval of the Police Commission to take the course(s). As for training, Police Officers shall continue to get firearms training twice a year, scheduled at the discretion of the Chief, with the Town supplying ammunition, in addition to training in deadly physical force as required by Section 2.30 of the Criminal Procedures Law.

COURT APPEARANCES

The Association proposes pay of time and one half for all required court appearances outside the officer's regularly scheduled work day, including travel time. The Association also proposes reimbursement for travel expenses if the officer uses his personal vehicle.

The Panel determines that the current provision for payment at the regular hourly straight time rate for time spent in court while off duty shall continue. Part-time Police Officers shall continue to be compensated for court time in accordance with the 1988-1989 contract. All Police Officers shall be guaranteed three hours of pay per court appearance.

WORK SCHEDULE

The Association proposes a 243 day work schedule of four days on and two days off a well as rotating shifts of 12:00 to 8:00 a.m., 8:00 to 4:00 p.m., and 4:00 to 12:00 midnight.

The Town proposes that the full-time work schedule consist of 28 consecutive days, with five days on and two days off, with shift

times as established by the Chief of Police who can change an employee's schedule to meet the operational needs and efficiency of the Department. The Town also proposes that the part-time work schedule continue to be established by the Chief.

The Panel finds that there shall be no change in the current work schedule. This matter is best left to the parties for negotiation.

LEAVE WITHOUT PAY

The Association proposes a leave of absence without pay for a period of up to one year upon request. The current contract provides leaves for a period not to exceed one year, granted upon request.

The Panel determines that the current leave provisions shall continue.

RETIREMENT

The Association proposes a 20 year retirement plan as provided for by the New York State Police Retirement and Social Security

Law. The Town proposes no change in its current plan covered under Section 375-C of the Retirement and Social Security Law.

The Panel determines that there shall be no change in the current retirement plan.

SENIORITY

The Association proposes that seniority be defined as the accumulated length of continuous service with the Walkill Police Department as a full-time officer from date of hire in the Police Department.

The Town makes no proposal concerning seniority. Seniority is currently defined as continuous employment with the Town from the last date of hire.

The Panel determines that seniority shall be defined as the accumulated length of continuous service with the Walkill Police Department as a full-time officer from date of hire in the Police Department.

GENERAL PROVISIONS

The Association proposes the following: reimbursement for personal property lost or damaged while in the line of duty; and a statement that employees will not be held accountable for any new rule or regulation until posted or verbally advised of the rule or regulation.

The Panel does not award any of the general provisions proposed by the Association.

The following is a brief description of the proposals submitted by the Town of Walkill and argued at the hearings:

EMPLOYEE WELLNESS AND FITNESS

The Town proposes that officers be required to be physically fit and meet Department fitness standards, including fitness testing and medical examinations. The Town proposes progressive discipline for employees who fail to meet physical fitness standards which include: strength; flexibility; and running.

The Panel does not grant this proposal.

OUTSIDE EMPLOYMENT

The Town proposes that there be restrictions on outside employment which could: (1) create a conflict of interest; (2) result in work for the Town; (3) create a conflict during an employee's workshift; (4) require use of Town equipment or supplies; (5) result in more than 20 hours of work per week; and (6) infringe on the employee's ability to do his job. The Town proposes that all Police Officers apply annually for permission to engage in outside employment from the Police Commission.

The Panel rejects the Town's proposal.

REVISED DISCIPLINARY PROCEDURE

The Town proposes a bifurcated procedure; one for termination under Section 75 of Civil Service Law, and another for matters where the Town seeks a penalty other than termination, where a penalty may be imposed prior to decision. The Town also proposes the establishment of an Accident Review Board.

The Panel rejects the Town's proposal.

RESIDENCY

The Town proposes that Police Officers be required to be a resident of the Town of Walkill as a condition of continued employment with the Town.

The Panel rejects the Town's proposal.

REGULATION OF SOLICITATION

The Town proposes a clause in recognition of its concern over the propriety, extent and nature of solicitation by individuals on behalf of the Association. It proposes restrictions on solicitations by Police Officers and the Walkill PBA, including the following: no promise of any special service to a donor; no solicitation outside the Town; and prior approval for solicitation.

The Panel rejects the Town's proposal.

AWARD

The Panel awards the following, effective January 1, 1990 through December 31, 1991:

- That full-time Police Officers receive a starting salary of \$20,776 effective January 1, 1990 and a starting salary of \$21,815 effective January 1, 1991. In addition, that upon a Police Officer's anniversary date, effective January 1, 1991, he/she shall receive a salary of \$22,230.
- That part-time Police Officers receive the following hourly rates: Probationary Officers shall receive \$6.36 effective January 1, 1990 and \$6.81 effective January 1, 1991; and that Police Officers shall receive \$8.94 as of January 1, 1990 and \$9.57 as of January 1, 1991.
- That Sergeants shall be paid an hourly rate of \$10.19 effective January 1, 1990 and \$10.80 effective January 1, 1991.
- That the Recognition Clause be amended to recognize the Association's right to represent all Police Officers, Sergeants and Lieutenants, and that the certification from PERB be incorporated into this provision.
- That the indemnification language proposed by the Association be awarded.
- That the following vacation schedule be awarded:

5 work days	after one year of service
10 work days	2 to 10 years of service
15 work days	11 to 15 years of service
20 work days	16+ years of service
- That 13 holidays be granted, 12 of which shall be incorporated into the work schedule with one floating day, and that holidays be paid at the rate of time and one-half for all hours worked.

- That four personal days be granted which employees may receive after six months of continuous service.
- That five days of bereavement leave be awarded for a death in the immediate family (father, mother, spouse, brother, sister, child, mother-in-law, father-in-law), and that three days be awarded for the death of a grandparent.
- That sick leave in the amount of one day for each month full-time service be granted.
- That the current provisions applying to overtime and on-call pay be continued.
- That no changes be awarded in the current insurance coverage provided by the Town which includes: medical and hospital coverage under the Empire Plan, Core Plus Enhancements to be fully paid for by the Town and provided after 90 days of full-time employment; dental coverage under GHI Spectrum, fully paid for by the Town and available after six months of full-time employment; and optical reimbursement plan up to \$160 within a two-year period.
- That the current provision for payment of time spent in court while off duty be continued. Part-time Officers shall be compensated for court time in accordance with the provisions of the 1988-1989 contract. In addition, all Officers shall be guaranteed three hours of pay per court appearance.
- That the leave provisions in the 1988-1989 contract be continued.
- That seniority shall be defined as accumulated length of continuous service with the Wallkill Police Department as a full-time officer from date of hire in the Police Department.
- That all other proposals are rejected by the Panel.

Date:

Carol Wittenberg

Carol Wittenberg
Public Member and Chair

Appeared before me this ^{May} 4 th day of ~~April~~, 1992, CAROL WITTENBERG, to me known and known to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

JOHN J. LaGUMINA
NOTARY PUBLIC, State of New York
No. 03-4946531
Qualified in Bronx County
Commission Expires 2-6-93

J. J. LaGumina

Date:

Michael Hitsman

Michael Hitsman
Public Employer Member
(concur)
(dissent)

Appeared before me this ^{May} 6 th day of ~~April~~, 1992, MICHAEL HITSMAN, to me known and known to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

JOHN J. LaGUMINA
NOTARY PUBLIC, State of New York
No. 03-4946531
Qualified in Bronx County
Commission Expires 2-6-93

J. J. LaGumina

Date: 5/29/92

Anthony Solfaro

Anthony Solfaro
Public Employee Member
(concur)
(dissent)

Appeared before me this ^{MAY} 29 th day of ~~April~~, 1992, ANTHONY SOLFARO, to me known and known to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Jean M. Homan

JEAN M. HOMAN
Notary Public of New York State
Dutchess County # 4843808
Commission Expires October 31, 1993

STATE OF NEW YORK:
PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter Of The Interest
Arbitration

Between

The Town Of Wallkill

And

The New York State Federation Of Police
Inc. For The Town Of Wallkill PBA

Separate Opinion
And Award
By The Employee
Panel Member

I write this separate opinion in order to dissent from the entire award as determined by the Chairman and Employer Panel Member, which denies the The New York State Federation Of Police, Inc. For The Town Of Wallkill PBA, proposals which clearly met the statutory provisions applicable to the compulsory interest arbitration pursuant to Civil Service Law, Section 209.4 and as amended.

The Chairman and Employer Panel Member simply determined that the initial starting wage rate and benefit package established by the "Town" is to remain in tact, save an increase to the artificially low starting wage rate, after extensive hearings and executive sessions, only to be instructed that the "interests of the parties are best served by negotiating such provisions".

The prior administrations failed miserably in its responsibility to the full time police officers they hired, by failing to recognize and budget for the implementation of a full time police department. The "Town" hired an individual for Chief of Police who had no experience in establishing, organizing or implementing a full time department. However, the "Town" compensated their selection for Chief as if the requirements cited herein existed. It is interesting to note that the "Towns" position throughout the entire process was that the police officers hired were inexperienced, and therefore should not receive wages and benefits comparable to other police officer's within Orange County. The "Towns" arrogance is further seen, in that they retained a law firm to represent their interests in its labor relations with the police, while they claim the inability to pay comparable wages and benefits to the police officers they hired. Again, with great forethought, the "Town" determined that it was more prudent to pay a law firm significant amounts of money in order to insure that their autocratic rule would be maintained concerning its police officers. In fact, through September 5, 1991, the

law firm has billed the "Town" over \$70,000.00. This amount doesn't include any and all work to billed from September 5th to date. However, according to the description as contained within the determination and award, the "Towns" financial health is precarious. According to who?

The award as determined by the Chairman and Employer Panel member does nothing more than encourage a continued pattern of disdain. The "Town" will continue its demeanor of treating the police bargaining unit as an inferior entity who should be seen and not heard, instead of an equal partner in the collective bargaining process, until its required to do so.

It is the opinion of this panel member, that the remaining panel members abdicated their responsibility by ignoring the evidence submitted through extensive hearings and holding executive sessions only to allocate the award primarily to wages. Thereafter, they affirmed the "Towns" benefit package as set forth in "Town" exhibit number 16, save for vacation, in which the "Town" proposal was adopted. Again, the award states that the "interests of the parties are best served by negotiating such provisions". According to who?

For the record, "Town" exhibit number 16 was created only after John P. Henry of the "Federation" requested it from the "Town" in order for it to be submitted into evidence during the hearings. The individual vested with the responsibility of establishing a full time police department, the Chief of Police, wasn't specifically aware of the benefits, nor did he deem it appropriate to find out what they were! The "Towns" air was evident from the beginning and has not changed to date.

The police officers of this bargaining unit are the only ones who did not benefit from this fiasco. If they were deemed to be inexperienced when this process began, they have become very experienced after it.

I have dissented on the entire determination and award as set forth on the signature page (32), however, I shall only address specific topics attached hereto and made a part of my dissent.

Salaries:

In this area, specifically for the full time police officer, implementation of a wage and longevity structure similar to what is prevailing in the other unionized departments within Orange County, was basic.

The entire premise of developing any incremental wage structure is predicated on a competitive and realistic starting rate. The initial rate implemented by the "Town" of \$19,600.00 was neither. In fact, the individual responsible for setting that rate, the Chief of Police, had no documentation that he could produce supporting just how the initial rate came into being. In fact, all he could state was that he used 17 departments, without being able to identify them, eliminating the high and low starting salary, again without being able to identify them or why he did not use those figures in determining a starting rate, and claims that the average was \$19,400.00. He added an additional \$200.00 to the "average", again without any logic concerning why \$200.00 and not \$500.00, other than he wanted his first year full time police officers to be the highest paid.

In fact, PBA exhibit #25 addresses the 1990 annual salary for first (1st) to fifth (5th) year police officers based upon contracts with their respective municipalities. An examination of this document as well as the "Towns" comments to this and other PBA exhibits in a cover letter dated February 7, 1992 to Mr. Henry from Mr. O'Reilly, and copied to the arbitration panel, clearly shows that the starting rate, even basing it upon the formula applied by the Chief of Police, discarding the high and the low starting salary, but not adding any artificial dollar amount to the "average", the starting salary as of January 1, 1990 should be \$21,463.00, not the \$20,776.00 awarded.

The starting salary for 1991, using PBA #26 as well as the "Towns" comments as set forth above, should be \$23,154.00, not the \$21,815.00 awarded.

The second (2nd) "step" for 1991, using PBA #26 as well as the "Towns" comments as set forth herein, should be \$25,521.00, not the \$22,230.00 awarded.

Even though the incremental step and longevity structure as proposed by the PBA was not incorporated, the two (2) step schedule awarded is off the mark, by any standard or formula.

It is therefore incomprehensible to grasp the rationale concerning this portion of the award.

Dues Checkoff And Agency Fee Deduction:

Simply stated, this proposal has absolutely no economic impact concerning an Agency Shop Fee. It is interesting to note that the proposal was to indemnify the "Town" against any and all claims of liability arising out of compliance with the proposal in return for granting an Agency Shop Fee. Where's the logic in awarding such an imbalance?

Vacation:

The awarding of this proposal, even though I was advised that there would be change in the benefit, defies logic. The "Towns" position is that any benefit should be linked to your years of service and that the affected police officer is required to "wait" until they achieve that standing. Here, the "Town" proffers a proposal in direct contradiction to there "claimed" philosophy, and what do see, an award of the "Towns" proposal.

Why wasn't the salary portion of the award provided the same degree of acceptance?

Overtime And Court Appearance:

These two (2) provisions are linked together. The award pertaining to Overtime is that the 1988-1989 contract be continued, even though there were no full time police officers in existence during that time in which the original language was predicated upon. It is pathetic that the proposals of the PBA were not incorporated in the award to codify how the full time police officer is already being paid overtime.

The Court Appearance provision also existed when there were no full time police officers. The award doesn't speak to the full time police officer and how they already being compensated by Overtime (1.5X times their hourly rate of pay). Did anyone remember that the unit composition has changed from 100% part-time to nearly 100% full time police officer?

Work Schedule:

The work schedule of every full time police officer is a very important benefit. It is in direct correlation to their salary. Here, the full time police officer is being severely underpaid and is being required to work an onerous amount of scheduled workdays. As seen in PBA exhibit #31A, the overwhelming work schedule days per year is 243.3.

In the event two (2) police officers are being paid the same salary, and one (1) officer is scheduled to work ten (10) more days per year, the officer with less scheduled work days is being compensated more. Here, the full time police officer is scheduled to work more days than their counterparts while also being compensated with an inferior salary. Nothing more needs to be said.

Retirement:

Of all the retirement plans available, the "Town" chose the least beneficial one to adopt. Even with the conversion to a full time police department, this "Town" continues to provide the least desirable benefit package, so why should the retirement plan be any different or this award provide any relief?


JEAN M. HOMAN
Notary Public of New York State
Dutchess County # 4843808
Commission Expires October 31, 1993


Anthony V. Solfaro
Employee Panel Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. IA 90-17; M-90-246

-----X

In the Matter of the Compulsory
Interest Arbitration

between

THE NEW YORK STATE FEDERATION OF
POLICE, INC., ON BEHALF OF THE TOWN
OF WALLKILL PBA,

and

THE TOWN OF WALLKILL

-----X

Separate
Concurring Opinion
By The Public
Employer Member

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

JUN 22 1992

CONCILIATION

I write this separate opinion in order to further express my support for the opinion and award of the Public Member and Chair, dated May 4, 1992, as well as to express my surprise and opposition to the separate dissenting opinion written by the Employee Panel Member, Mr. Anthony V. Solfaro. I write this concurrence at this time because Mr. Solfaro chose to submit a dissenting opinion approximately four weeks after I signed the Panel's Determination and Award, and since I was not given the opportunity to review Mr. Solfaro's dissent before it was issued.

Although I intend to briefly address some of Mr. Solfaro's specific points of contention regarding the provisions of the award, I am first compelled to respond with indignation to the tone of his dissent and the personal attacks aimed at the Town of Wallkill Chief of Police Jon Hansen and at Carol Wittenberg, Public Member and Chair.

Throughout his dissent, Mr. Solfaro questions Chief Hansen's credentials to hold his position as chief, as well as his authority to act on behalf of the Town (for reasons not stated in his opinion, Mr. Solfaro repeatedly refers to the actions of the "Town" in quotation marks). Further, he accuses Chief Hansen of maintaining an "air" at the proceedings "...which was evident from the beginning and has not changed to date". According to Mr. Solfaro, this alleged "air" manifests itself by virtue of the Town's purported "great forethought" "arrogance" and "autocratic rule" in hiring a law firm to protect its interests in these proceedings. As detailed in the uncontroverted record of these proceedings, Chief Hansen has an impressive background in law enforcement which speaks for itself and needs no defense here. Suffice it to say that in my view, Mr. Solfaro's comments concerning the Chief are unfounded, unwarranted, specious and, indeed, outrageous.

Even more outrageous is Mr. Solfaro's wholly unwarranted attack on the professional integrity of Ms. Wittenberg as Public Member and Chair in these proceedings. In his retort to the specific findings set forth in the opinion, Mr. Solfaro regularly responds with complete disdain for the twenty-nine (29) page opinion written by Ms. Wittenberg by asking the question "According to who?" Ms. Wittenberg is a top professional in her field. She was designated by the New York State Public Employment Relations Board as the Public Member and Chair, vested with the

authority to hear the evidence presented by both sides in this matter and to make a determination and award based on the criteria stated in Section 209.4 of the Civil Service Law and on information provided to the Panel by the parties. Her determination and award was made after presiding fairly and even-handedly over these proceedings. Each side was given a full and complete opportunity to present testimony and documentary evidence in support of its position over the course of proceedings which lasted five days. The evidence presented is fully documented in the 795 pages of transcript produced by the stenographer ("the record") and reference to and reliance on this evidence is apparent throughout Ms. Wittenberg's opinion. Unlike the opinion of the panel majority, Mr. Solfaro's dissent is replete with references to matters which are speculative, not presented to the panel at the hearings or contained in the record herein, and which bear no relevance to the statutory criteria.

Frankly, as a panel member and a representative of the Town of Wallkill and its citizens, I feel compelled to apologize to Ms. Wittenberg for the wholly unprofessional tenor and substance of Mr. Solfaro's dissent.

With regard to specific points referenced in his dissent, I offer the following brief responses:

(1) Despite Mr. Solfaro's contention that prior administrations "failed miserably" and did not budget for the implementation of a full time police department, the facts in this matter, as fully documented in the record,

establish that the administration did budget for the implementation of the full time police department, and based the officer's starting salaries on a consideration of that budget, as well as on other factors. Moreover, there was never any dispute during these proceedings that each officer voluntarily accepted his position after being fully apprised of the salary being offered. The fact that these same officers decided at a later date that they were no longer satisfied with the agreed upon salary does not refute the fact that the Town had provided adequate funds for its police department.

(2) The allegations regarding the Town's lack of prudence in its retention of legal counsel to represent its interests in these proceedings and the amounts allegedly paid to the firm for these services are particularly egregious. In his ad hominem attack, Mr. Solfaro cites no authority for the allegations made and which were obviously not presented in the record of these proceedings nor raised by Mr. Solfaro during the executive sessions of the panel. In point of fact, the claims made in the dissent are completely false and represent a fabrication, after the hearings and after the majority decision was signed, of how the parties came to engage in what Mr. Solfaro terms to be a "fiasco".

The fact is that the Town hired a law firm for representation in these negotiations only after the Federation of Police brought an attorney to the first

bargaining session between the parties (at which Mr. Solfaro was present) after the Town had first hired full time police officers. The Federation's attorney at this first session submitted to the Town officials a contract for their signature, stating that this was the way that police negotiations are "normally" done with full time police officers. The Town officials were appropriately concerned about contractually binding the Town as a result of being told by an attorney, not their own, that this was normal in a process about which they had little familiarity. They accordingly sought professional legal advice. The negotiation process, which spanned approximately 18 months, was unduly prolonged causing great expense to both parties as a result of the fact that there were two wholesale changes in the Union's negotiating team. This was marked by the disappearance and subsequent reappearance (after a year's time) of Mr. Solfaro, and with complete shifts in Union (Federation?) proposals and stated priorities on each occasion. Even more telling is the fact that the dissent does not mention that the award of the arbitration panel is almost identical to the last offer made by the Town and rejected by the Federation throughout the negotiations and throughout the arbitration process itself. The Federation of Police insisted on pursuing its agenda to compulsory interest arbitration despite the fact that the information available to the parties and later to the arbitration panel overwhelmingly supported the Town's position.

Further, it should be noted that since 1990 the Town has been forced by the Federation of Police to incur needless expense of time and money not only in this interest arbitration, but in numerous other matters which were unnecessarily litigated by the Federation of Police. Many demands for grievance arbitration have been filed by the Federation which have either been barred by the courts or subsequently abandoned by the Union. In several cases, the Federation has invoked the jurisdiction of PERB only to drop their improper practice charges after the Town was forced to answer. Likewise, the history of this proceeding shows that the Federation included in its petition for compulsory interest arbitration fifty-one proposals which the Federation withdrew from its petition only after refusing the Town's initial demand that it withdraw same and only after putting the Town through the expense of commencing an improper practice proceeding challenging the legality of those fifty-one proposals. Even after the Federation withdrew the fifty-one proposals, the Town was forced to litigate and obtain from the Public Employment Relations Board a ruling that two of the remaining Federation proposals presented to the panel also violated the Taylor Law. Further, the record of this interest arbitration proceeding shows that two days of hearing were needlessly wasted, with concomitant costs to both parties, when a Federation witness failed to appear as scheduled.

A review of the Federation's conduct over the past two

years and in this proceeding supports the conclusion that it had adopted a policy with respect to its dealings with the Town to engage in unnecessary litigation in an effort to force the Town to accede to what proved to be meritless demands or to incur legal expenses in defending those inanities. This kind of despicable tactic has been dealt with in the federal and State court systems by the adoption of rules providing for the imposition of costs and financial sanctions against a party and/or its counsel for engaging in frivolous litigation. The Federation's dealings with the Town of Wallkill present a strong case for the legislature or PERB to consider like provisions for practice under its statute and rules so as to avoid the waste of its time and resources, and ultimately the resources of the taxpayer.

(3) Mr. Solfaro contends that Town Exhibit "16" (Current Terms and Conditions of Employment) was created only after being requested by John Henry of the Federation. In truth, there was never any dispute over the production of this document. There is no evidence in the record to indicate any such dispute. The Town intended to produce this document during the normal course of the presentation of its case, along with its other documentary evidence. However, when Mr. Henry requested that it be produced it was in fact produced, in advance and out of order, with absolutely no argument by the Town. The reason for choosing to make this allegation "for the record" is simply beyond the comprehension of this panel member.

(4) Mr. Solfaro's dissent states that the Chief offered no documentation to support the manner in which the initial police officer salary came into being. The fact is that Chief Hansen testified in plain English and under oath regarding the manner in which the Town determined the starting salary for full time police officers. There was never any contention by the Town that the salary was something other than what was presented during these proceedings.

(5) Finally, with regard to Mr. Solfaro's statement that it is "incomprehensible to grasp the rationale" concerning the portion of the award pertaining to salaries, he might do well to read the opinion explaining this determination. Without any reference to the five days of testimony and the voluminous record produced, Mr. Solfaro expresses his own opinion about what the salaries "should" have been. This position is yet a further expression of Mr. Solfaro's contempt for the professional integrity of the Public Chair and Member and/or ignorance of the statutory criteria. The award is based in part on the findings and determination of the Arbitrator as set forth at page 11 of the opinion that "[c]omparability is not the controlling factor". Consistent with the remainder of his dissent, Mr. Solfaro simply chooses to ignore the facts as they were developed and the findings of the Arbitrator. Mr. Solfaro's dissent, without more, could leave one with the impression that no evidence was ever presented or testimony ever heard

regarding any of the disputed matters.

It is unfortunate that after many days of extensive hearings Mr. Solfaro should chose to completely disregard the facts set forth in the record in this matter. It is particularly troubling that Mr. Solfaro would use the opportunity in a dissent published well after the panel completed its deliberations and the majority decision was signed to attack the credibility and personal and professional integrity of just about everyone involved who took a position other than his own. I take particular offense to the accusation that I, as a panel member, together with the Public Member and Chair, have in any way "abdicated" from my responsibilities in these proceedings. As the record speaks for itself, I will not attempt here to give any credence to such an attack by offering an unwarranted defense of my participation in these proceedings.

DATED: Elmsford, New York
June 18, 1992


Michael R. Hiltman

Sworn to before me on
this 18th day of June, 1992


Notary Public

JOHN F. O'REILLY
Notary Public, State of New York
No. 41-4966921
Qualified in Queens County 94
Commission Expires May 21, 1994