

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

- between-

THE TOWN OF WEBSTER

- and -

THE WEBSTER 1000 CLUB

PERB CASE NO. 1 IA95-017; M94-435

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

PUBLIC ARBITRATION PANEL MEMBERS:

Miriam Winokur
Neutral Member and Chairperson

Ronald G. Evangelista
Union Designated Panel Member

William C. Saucke
Employer Designated Panel Member

APPEARANCES:

For the Town of Webster:

Bernard Winterman
Labor Relations Consultant
314 Willowbend Road
Rochester, NY 14618-4051

For the Webster 1000 Club :

Lawrence J. Andolina, Esq.
Harris, Beach & Wilcox
The Granite Building
130 East Main Street
Rochester, NY 14604-1687

BACKGROUND

The Town of Webster ("Town" or "Employer") and the Town of Webster 1000 Club ("Club" or "Union") began negotiations on August 23, 1994, for a successor to their Collective Bargaining Agreement ("Agreement", "Contract", or "CBA") which covered the period from January 1, 1993 to December 31, 1994. After five negotiating sessions the Club filed a declaration of impasse with the New York State Public Employment Relations Board ("PERB") on February 5, 1995. Mediation with a PERB mediator on March 22 and April 24, 1995, proved unsuccessful and the Club filed a petition for compulsory interest arbitration with PERB on or about July 17, 1995. Pursuant to the provisions of Civil Service Law, Section 209.4, on August 28, 1995, Pauline R. Kinsella, Chairperson of the New York State Public Employment Relations Board, designated a Public Arbitration Panel with Miriam Winokur as Chairperson, William C. Saucke, Employer Designated Member, and Ronald G. Evangelista, Union designated member, for the purpose of making a just and reasonable determination regarding the matters in dispute between the Town and the Union.

The Town of Webster is located in Monroe County ("County"). According to information supplied by the Union in its pre-hearing brief (pages 3-5), the community is comprised of two municipal governments - the Town of Webster and the Village of Webster ("Village") which together have a combined population of 36,000 and covers approximately 34 square miles. The Village is located within the Town but functions as a separate entity and Webster police officers have responsibility and jurisdiction in both the Town and the Village. The Town is primarily residential and much of its farmland has been developed to become the research and manufacturing facilities of the Xerox Corporation. The Thompson professional publishing company is also located in the Town as well as several hundred smaller businesses which contribute to the local economy. Webster Central School District, the County's second largest district, serves all of Webster, one-third of Penfield and limited areas in Ontario and Walworth in Wayne County. Subject to the provisions of the state constitution, it operates pursuant to town law, local finance law, and other laws generally applicable to the Town and any special laws generally applicable to the Town. The Town's legislative power is vested in the town council which consists of five members

including the supervisor who is the chief executive officer. The four other board members serve four year terms which are staggered so that two are elected every two years. Council members are elected at large and there is no limit to the number of terms each may serve.

The Webster Police 1000 Club is the bargaining representative for all police officers of the Town of Webster Police Department ("Department") with the exception of the Chief of Police. At the time of the instant hearing there were 18 officers, 2 investigators, 6 sergeants, and 3 lieutenants for a total of twenty-nine police officers in the bargaining unit. The Arbitration Panel met with the parties on September 27 and October 13, 1995, to determine which issues could be resolved between the parties and to narrow and identify those issues which would be submitted at the interest arbitration hearing. At the conclusion of the meeting on October 13, 1995, the parties indicated that they would submit pre-hearing briefs on February 2, 1995, to the Panel Members. The Hearing was held on March 19, 1995, in Rochester, New York, at which time the parties were provided with the opportunity to introduce evidence, present testimony, summon witnesses, cross-examine witnesses, and support their respective positions on the outstanding issues. Lawrence J. Andolina, Esq., represented the 1000 Club and Bernard Winterman represented the Town.

The Panel met in executive session immediately after the hearing and again on May 10 and July 22, 1996. During their executive sessions the panel members carefully deliberated on each of the outstanding issues, considering the pre-hearing briefs and all data, exhibits and oral argument received from both parties. The results of those deliberations are contained in the following Award, which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse which gave rise to these proceedings. Neither of the Panel members would accept each individual recommendation in isolation, however, the Panel Chairperson received agreement from at least one other Panel member on each of the items, thereby constituting a simple majority, as required by law. The discussion which follows presents the Panel's analysis and resulting award.

The Award consists of compromises which were induced by the Panel Chairperson and represents a complete package. In arriving at the determination contained herein, the Panel considered the following statutory guidelines with which it was charged by Section 209.4:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. 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.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. 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;

d. 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

When the hearing commenced the Town stated that there was no dispute regarding the list of agreed upon items which were included in the Town's pre-hearing Brief (pages 2-3). Mr. Andolina requested that the package of issues that were agreed on by the parties prior to the hearing be made part of the Award. Mr. Winterman responded on behalf of the Town that it would not be necessary to include the language of those items in the Award. Representatives for the Town, the Club, and the Public Arbitration Panel members retained copies of the signed-off items.

Following is a list of the proposals that were agreed to by the Town and the Club during their direct negotiations. Also included in the list are the items which were resolved during the pre-hearing meetings with the Panel on September 27 and October 13, 1995.

Article 2. Recognition

Paragraph 5

Article 3. Compensation

Section 1A - Wages - Dispatchers

Section 2 - Longevity - Dispatchers

Article 3. Compensation

Section 3 - Overtime - Dispatchers

Article 3. Compensation

Section 10 - Compensation Time - Dispatchers

Article 4. Retirement

Dispatchers - Sections 1, 2, and 3

Article 6. Vacation and Sick Leave

Paragraph 3.

Section 1A - Sick Leave - Dispatchers

Section 3A - Use of Sick Leave for Family Illness

Section 4A - Dispatchers-Leave Due to Injury or Disease in the Performance of Duty

Article 7. Work Day and Work Week

Section 2 - Dispatchers

Article 8. Educational Benefits

Paragraph 7

Article 10. Seniority

Paragraph 2 - Dispatchers

Article 12. Clothing Allowance

Paragraph 2 - Dispatchers

Article 14. Grievance Procedure for Non-Disciplinary Matters

Step C

Section 4f

Article 15. Disciplinary Procedures and Bill of Rights

Section 2M.

Section 3 - Paragraph 3

During the hearing the parties agreed that the following contract items had also been resolved:

Article 3. Compensation (Union Proposal 2)

Section 4 - Compensatory Time

Article 3. Compensation (Union Proposal 4)

Section 9 - Department Meetings

Article 14. Grievance Procedures for Non-Disciplinary Matters (Union Proposal 10)

Section 2 - Procedures

Section 3 - Grievance Steps

The remaining issues which were submitted to the Interest Arbitration Panel for their determination are: Term of Agreement, Article 3, Section 1 (Wages); Article 3, Section 7 (Rate of Compensation); Article 3, Section 11 (Shift Differential); Article 4 (Retention Incentive-Retirement; Article 5, (Holidays); Article 7, Section 1-Police Officers (Work Day-Work Week); Article 8, Education Benefits; Article 9, Health Insurance; and Article 20 (General Provisions). References to the Panel in the Award shall mean the Panel Chairperson and at least one other concurring Panel Member. Following is a statement of the parties positions regarding each issue, discussion and award:

TERM OF AGREEMENT

The successor to the Parties' Agreement which expired on December 31, 1994, shall be for a period of two years, effective January 1, 1995 through December 31, 1996.

ARTICLE 3 - COMPENSATION

Section 1: Wages - Police Officers

Position of the Club

The Club is seeking a wage increase of 4% retroactive to January 1, 1995, and 4% retroactive to January 1, 1996, resulting in the following salary schedule for all sworn personnel of the bargaining unit:

<u>Title</u>	<u>Base 95</u>	<u>Base 96</u>
Starting Patrolman	\$31,524	\$32,785
One Year Patrolman	34,647	36,033
Two Year Patrolman	38,036	39,557
Three Year Patrolman	41,402	43,058
Four Year Patrolman	44,767	46,558
Investigator	\$48,350	\$50,284
Sergeant	51,480	53,539
Lieutenant	59,204	61,572
Technician	On duty officers will be utilized	On duty officers will be utilized

For comparability purposes in determining an appropriate wage increase for the Town's police officers, the Club submits information about salaries in the Towns of Irondequoit, Greece, Brighton, Gates, East Rochester and Orchard Park, which although in Erie County, closely approximates Webster in population, size and tax base (Exhibit F). The Club suggests that these towns provide the most appropriate measure of comparability because of their similar budgeting and taxing processes and it also includes the Monroe County Sheriff's Department, because it provides police protection services within Monroe County to towns of comparable size to the Town of Webster. According to the Club, with the exception of Orchard Park, all departments are located in Monroe County, have full-time police departments, and as is the case with the Town of Webster, real property taxes are the main source of income for each town. The Club also contends that due to budgetary differences, lack of capacity for expansion, form of government, and taxing structure, Cities and Villages should not be used as

comparable communities because they do not share the same qualities as the towns it has selected for the purpose of comparison.

The Club also maintains that the Town has not disputed its ability to pay for the requested wages; that every economic indicator points to the Town's solid and prosperous financial condition; that admittedly while the fact that the Town can afford the Club's wage proposal is insufficient reason to grant it, the Club has applied the Taylor Law's statutory criteria and has developed a well-supported approach to its demand. The Club contends that the proposal is reasonable and calculated to address disparities with comparable communities and within the Town of Webster as well. The Club bases its wage proposal on the fact that White collar Town employees received this wage increase in both 1995 and 1996 and were given 4-1/2% increases in 1993 and 1994. The Union contends that the wage increases it has proposed comports for the most part with what is being awarded in comparable communities (Exhibit G). The Union points out that even with the wage increase it seeks, Webster Police Officers would lag behind their fellow officers in Greece, Brighton, Irondequoit and Gates (Exhibit H).

Position of the Town

The Town proposes that effective with the first pay period of 1995 and 1996, employees would receive a wage increase based upon the average increase of the Consumer Price Index (CPI-U)-1982-1984, during the twelve (12) month period of November 1993 to November 1994. Such wage increases in each year not less than two and three quarters percent (2.75%) and not exceeding five percent (5%).

The Town contends that the wage proposal it has made for the Club is identical to that which was agreed to between the Town and CSEA Blue Collar unit for 1995-96 and that the CSEA Blue Collar bargaining unit is the largest of the Town's three bargaining units. The Town submits that a survey of annual salaries for Patrol Officers in 1994, in 10 police jurisdictions in Monroe County, indicated that the average annual salary was \$41,741 and the Patrol Officer salary in Webster for 1994 was \$43,045, exceeding the average for salaries in those jurisdictions by 3.1% (pre-hearing Brief, page 9). The Town also submits that a survey of maximum rates for Sergeant's pay indicated that the average annual salary in

1994 was \$47,653 and the annual salary for the classification of Sergeant in Webster for 1994 was \$49,500 in Webster, thus exceeding the average of the 9 jurisdictions by 3.9% (pre-hearing Brief, pages 10-11).

The Town also contends that the CPI-U index for the average of the 12 month period between November, 1993 and November, 1994 was 2.4% and that its wage proposal for 1995 exceeds the index by 0.35%; that since 1988 the members of the bargaining unit have received basic wage increases in the amount of 29%, while the consumer price index increased by 22.6%, representing an increase in the standard of living of 6.4%; that the record of the U.S. Department of Labor shows that most employees in the United States suffered a decline in real wages over the past ten years; that Xerox Corp. the largest taxpayer in the Town of Webster, negotiated a 7 year contract with its union in 1994, based upon CPI increases only; that to be fair to the Town's employees and taxpayers, in the current economic climate, that the Town's employees not suffer a reduction in purchasing power and that the Town should not be required to grant wage increases in excess of the consumer price index.

Discussion and Award on Wages

The Town has indicated it prefers that its' police officers accept the same wage increase as was agreed to by the CSEA Blue Collar Unit. Pursuant to the previously cited sections of 209(4) the Interest Arbitration Panel is obligated to arrive at a determination of an appropriate wage increase by comparing 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; and comparison of peculiarities in regard to other trades or professions, including hazards of employment; physical, educational, and mental qualifications; and job training and skills. The Town's argument that the CSEA Blue Collar unit agreed to a 2.75% increase is insufficient justification to require its police officers to accept the same wage increase. No information was forthcoming from the Town that persuaded the Panel that comparisons with its' blue collar employees are

appropriate, or comport with the intent of Section 209(4)(a), which requires that Panel Members compare 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.

Data supplied by the Town was not helpful for the purpose of arriving at a determination as to what constituted a fair and equitable increase for officers in the bargaining unit. The Town reported that the maximum salary of its' police officers ranked highest in 1994 when compared with the Towns of Guilderland, Orchard Park, Niskayuna, and DeWitt, however, the Town did not include comparisons of 1994 salaries for Brighton, Greece, Gates, and Irondequoit. In arriving at a conclusion that Webster's Officers exceeded the maximum rate of patrol officers in 10 police jurisdictions by 3.1% in 1994 , the Town averaged the maximum rate and then compared that average with the Town's annual salary for 1994. Using an average can be misleading, since the salaries can cover a broad range and depending upon the spread of salaries, can pull the average down so that using the average is not a reliable means upon which to conclude that the Town's annual salary in 1994 exceeded all other salaries.

Analysis of the information supplied by the Town (Brief, page 9), indicates that lower maximum rates in Gates, Fairport, Ogden and particularly \$41,808 in East Rochester pulled the average down. The same holds true concerning the Town's survey of Sergeant's pay in 1994 in 10 Monroe County jurisdictions, whereby the Town arrived at an average annual salary in 1994 of \$47,653 and observed that at \$49,500, the Town's Sergeant's maximum rate exceeded the jurisdictional average by 3.9%. Review of the actual salaries for each jurisdiction indicates that Webster ranked fourth when included with those of Monroe County and City of Rochester, with Irondequoit, Greece, and Brighton having higher salaries than Webster's and Gates, Fairport, Monroe County, East Rochester, Ogden, and City of Rochester, lower.

The governance and sources of revenue differ for the state and for cities and cities and villages which do not share the same attributes as towns do not offer a sound basis for comparison. An extensive comparison of Town of Webster salaries in 1994 with jurisdictions that have full-time police departments

and which are comparable because of similar budgeting and a taxing process based on real property taxes, indicates actual salaries for patrol officers in the Greece was \$44,587, Irondequoit was \$43,813, Brighton was \$43,433, Webster was \$43,045, Gates was \$42,645, Fairport was 42,759, Brockport was 42,201, Ogden was \$41,451, East Rochester was \$40,008. According to the survey of patrol officer maximum rates in twelve police jurisdictions operating within Monroe County submitted by the Town (pre-hearing Brief, pp. 9-10) and the comparisons of salaries reflecting increases for 1995 and 1996 provided by the Club (Exhibit G), salaries in 1995 for 3rd year Patrol Officer were: Greece \$45,925, Brighton \$45,169, Irondequoit \$44,908, Gates \$43,924, Fairport 42,759, Brockport 42,201, Ogden was \$43,109, East Rochester \$41,208. Salaries in 1996 for 3rd year Patrol Officer are: Brighton \$46,976, Irondequoit \$46,256, Gates \$45,461, Ogden \$44,833, and East Rochester \$42,444.

The Town has not claimed that it is unable to fund the Union's wage proposal. The Club points out that while the Department's budget increased slightly from \$2,063,633 in 1995 to \$2,095,082 for 1996, the total amount of the budget raised by taxes reflects a decrease to taxpayers from \$2,046,643 in 1995 to \$2,034,254 in 1996. Financial figures derived from the Town's General Fund indicate an undesignated fund balance as of December 31, 1994 of \$2,294,869 which represented a significant increase over the fund balance in December 31, 1993. Financial data supplied by the Club indicates that the Town has been able to balance its budget and maintain healthy reserves which resulted in a tax cut to residents in the 1996 fiscal year, the proposed Town budget for 1996 reporting a two percent reduction in the tax rate. As noted by the Club, the Town now has less debt and more revenue than it has seen in ten years and the Town received an "A" rating on indebtedness from Moody's Investment Service as of January 1996.

The maximum salary in 1994 for 3rd year Patrol Officer in Webster was \$43,045. With the 4% increase proposed by the Club, in 1995 the maximum rate would be \$41,402 and in 1996 would be 43,058. Accordingly, when compared with those jurisdictions for which salary information was provided, Webster's 3rd year Patrol Officer's salary of \$41,402 would be located between Ogden at \$43,109, and East Rochester at \$41,208. Although fewer settlements were reported for 1996, of those available, with

the Club's proposed increase, at \$43,058 Webster's salary for 3rd Patrol would be located between Ogden at \$44,833 and East Rochester at \$42,444.

The increase proposed by the Club is reasonable since the Town's proposed wage increase would result in the salaries of the Town's police officers slipping further below those of contiguous and comparable police jurisdictions. The Panel makes the following Award for a wage increase during the two years of the Agreement :

Retroactive to January 1, 1995, a 4% increase for all steps and all ranks.

Retroactive to January 1, 1996, a 4% increase for all steps and all ranks.

ARTICLE 3 - COMPENSATION

Section 7. Rate of Compensation

Position of the Club

The Club proposes that the bi-weekly salary be determined by dividing the yearly salary by 26. The Club contends that the Town is presently utilizing an antiquated formula not commonly accepted in the law enforcement community. The Club maintains that the Town has established a calculation that results in a shortfall to police officers when there are twenty seven pay periods in a year and rather than deprive the officers of their wages, the Club is proposing that each year the department divide an officer's salary by 26 to reach the bi-weekly wage; that in years where there is an additional pay period, the officer would receive an additional check representing 1/26th of his overall salary. The Club contends that its' proposal seeks to bring the Town in line with the calculations used for hourly, daily and bi-weekly rates in comparable communities.

Position of the Town

The Town did not object to the establishment of a formula for an hourly rate if the formula was established properly. The Town objects to the Club's proposed method of calculation, indicating that it has always negotiated with the Union based upon an annual salary and if a 27th pay period occurs, then that annual salary must be divided by 27 - not 26. In a counter-proposal the Town offered that holidays shall be compensated at the rate of 8 hours and that each member shall receive a bi-weekly payment of the annual salary divided by 26 and in a calendar year in which there are 27 pay periods, each pay period would be calculated by dividing the annual salary divided by 27. The Town argues that to do otherwise would require the Town to budget an additional pay period, which amounts to an additional 3.8% in the year of the 27th pay period.

Discussion and Award on Rate of Compensation

Section 7 presently provides:

All overtime and holiday pay will be computed at salary rate when the holiday or overtime occurs. Salary rate shall be defined as the combination of all economic benefits, including, but not limited to, salary schedule, school incentive, longevity and special assignment pay.

When negotiations began, the Club submitted an initial proposal and the parties subsequently exchanged several counter-proposals regarding suggested changes in the computation of wages. As a result, the parties agreed to language under Sections A and B which specify computation of the rate of compensation for hourly rate and the hourly rate to be used for the payment of overtime. The Panel did not, therefore, consider those components of this item. Analysis of the comparability data supplied by both the Town and the Club indicates that there is diversity among the methods used in other police jurisdictions and no clear-cut method which would form the basis for a determination about which of the methods proposed by either the Town or the Club meets the test of similarity to other comparable departments. The majority of the Panel members finds compelling the Town's argument that the officers in the department are paid on the basis of an annual salary. If the Town were to agree to the Club's method of calculation, that would result in officers receiving an additional paycheck in the years in which there are 27 pay periods and the total annual salary received would exceed an officer's annual salary. After much deliberation the majority of the Panel makes the following award:

Current Article 3, Section 7 shall be changed to read:

All overtime and holiday pay will be computed at salary rate when the holiday or overtime occurs.

The annual Salary shall be defined as the combination of all economic benefits, including salary schedule, school incentive, longevity and shift differential.

- A. The parties agree that the hourly rate shall be determined by dividing the annual salary by 1946.6 hours.
- B. The hourly rate shall be used for the payment of overtime at the time and one-half rate and the payment of holiday pay at the rate of eight (8) hours at straight time.
- C. Each member shall receive a bi-weekly payment of the annual salary divided by 26. In a calendar year in which there are 27 pay periods, each pay period shall be calculated as the annual salary divided by 27.

ARTICLE 7 - WORK DAY AND WORK WEEK

1. Police Officers

Position of the Cub

The Club proposes new language concerning protection of officers in criminal and Civil proceedings and liability Protection against claims for false arrest, false imprisonment, civil rights violations and other acts. The Club contends that the proposed language is standard in law enforcement collective bargaining agreements

Position of the Town

The Town submitted a proposal for new language contending that: The department needs greater flexibility in respect to incurring burdensome overtime costs; There is no Administrative Aide; It seeks to eliminate compensatory time for Lieutenants and to pay them cash for overtime; In order to more effectively establish shifts other than 7-3, 3-11, and 11-7.

Discussion and Award on Work Day - Work Week

The language currently contained in Article 7, Section 1 was the topic of considerable discussion by the parties throughout their negotiations. The parties continued their efforts to resolve this issue during the pre-hearing meetings with the Public Arbitration Panel and through their designated arbitrator members in the executive sessions of the Panel, where they continued their efforts to arrive at mutually acceptable language and ultimately were able to resolve their differences. As a result, the Panel makes the following Award for Article 7, Section 1:

- A. A work day shall consist of eight (8) hours. A work week shall consist of 37.5 hours for all sworn personnel. Uniformed personnel shall work a 4 and 2 schedule, except Lieutenants and Community Service Officers who shall work a 5-2 with Saturday/Sunday off. Police personnel assigned to a work schedule other than a 4 and 2 schedule shall be compensated at overtime rate for any time worked in excess of eight (8) hours in a day or 37.5 hours in a week.

- B. Police Office Recruits (Regional Criminal Justice Training Academy) shall be paid base salary for the time required by the Academy. Police Officers attending in-service training shall earn overtime only in compensatory time off at the time and one-half rate.
- C. The Parties agree that the Uniform Patrol Division, except as stated above, will operate on a three (3) shift system consisting of eight (8) hour blocks and said shift each shall be deemed to total 37.5 hours per week and not require payment of overtime. At the present time, the three (3) shifts shall consist of the following hours:

11:00 P.M. to 7:00 A.M.
7:00 A.M. to 3:00 P.M.
3:00 P.M. to 11:00 P.M.

The Town has the prerogative to adjust the above required starting and quitting time for one early car, by no more than one (1) hour one time each shift during the duration of this Agreement.

- D. Except as provided in "C" above, the Town will not change the work hours or work schedules of any member to avoid the payment of overtime.
- D. Short term vacancies due to injury, illness or personnel shortage shall be filled within the ranks by seniority whenever possible.

ARTICLE 20 - GENERAL PROVISIONS

Position of the Club

The Club proposed new language in Article 20 concerning protection of officers in criminal and civil proceedings and liability. The Club maintains that the proposed language protects police officers from liability in instances where they are prosecuted criminally or sued civilly. The Club contends that the language it proposed is standard in law enforcement collective bargaining agreements and is often codified in town law and that much of what it has proposed is already required by law. The Club asserts that Section 18 of the Public Officers Law authorizes and establishes the procedure for defense and indemnification of local government officers and employees and its provisions apply upon the decision of the local governing body to confer the benefits of the section upon its employees. The Club indicates that it is unaware of any additional costs, obligation or inconvenience to the town in effectuating this request.

Position of the Town

The Town submitted a counter proposal to add a new paragraph to Article 20. The Town contends that it wants the right, upon the giving of 30 days notice to the affected employee, that there is no further justification for the employee to have the use of a Town vehicle to and from work and to remove the vehicle from his use.

Discussion and Award on Article 20

The parties continued to discuss this item during their pre-hearing meetings with the Panel and through their designated members during the Panel's three executive sessions. As a result, there was unanimous agreement by the Panel to adopt the following language, which is the Panel's Award:

SECTION 1: Protection of Officers: Criminal Proceedings

(a) If an officer is named as a defendant, or is charged or indicted in a criminal proceeding, as a direct result of activities pursued by the officer in the discharge of his lawful duties within the scope of his

authority, the Town shall pay all reasonable and necessary legal fees based upon legal community rates and court costs incurred by the officer in his defense of said actions.

(b) The obligation of the Town to reimburse an officer pursuant to Section 1(a) above shall arise only upon the dismissal of all the charges, an acquittal or upon the Grand Jury voting a no-bill. It is expressly agreed that an Adjournment in Contemplation of Dismissal shall not entitle the officer to reimbursement.

(c) An officer shall either (1) submit an itemized retainer agreement at the commencement of the action with an attorney of his choosing or (2) shall notify the Town Board before any expenditures and an attorney will be agreed upon by the officer and the Town Board or its representative. In both instances, an itemized bill and receipt shall be promptly submitted to the Town Board.

SECTION 2: Civil Proceedings

If an officer is named as a defendant in a civil action or proceeding, as a direct result of activities pursued by the officer in the discharge of his lawful duties within the scope of his authority, the Town shall pay all reasonable and necessary legal fees and court costs incurred by the officer in his defense of said actions. An itemized hourly bill and receipt shall be promptly submitted to the Town Board. The officer will notify the Town Board before any expenditures and an attorney will be chosen by the Town Board or its representative.

SECTION 3: Police Officers Liability

(a) Notwithstanding the provisions of any general, special or local law, charter or code to the contrary, the Town shall be liable for and shall assume the liability to the extent that it shall save harmless any duly appointed police officer of such municipality, authority or agency for any negligent act or tort complained of while acting in the performance of his duties and within the scope of his employment.

(b) For the purposes of this section, a police officer of the Town when within the geographical limits of his jurisdiction, although excused from official duty at the time, shall be deemed to be acting in the discharge of duty when engaged in the immediate and actual performance of a public duty imposed by law and such public duty performed was for the benefit of all the citizens of the community and the municipality, authority or agency derived no special benefit in its corporate capacity.

(c) Any officer sued for actions taken or allegedly taken as an officer in the performance of his duties shall immediately notify the Chief of Police and Town Supervisor in writing.

REMAINING ISSUES

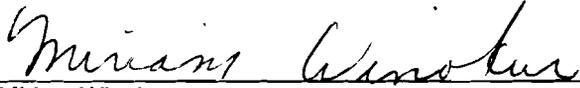
Discussion and Award on Other Open Issues

All other issues that were presented to this Panel were fully considered and evaluated and after careful review of parties positions and supporting data, the majority of the members on the Panel rejected the following proposals and their award is that the current language continues: Article 3, Section 11 - Shift Differential; Article 4, Retention Incentive (Retirement); Article 5, Holidays; Article 8, Education Benefits; and Article 9, Health Insurance.

At least a majority of the Panel has concurred with each of the items in the herein Award and the Award by the Panel is that, except as specifically modified in this Award, all other provisions and language contained in the Agreement are hereby continued unchanged.

Respectfully submitted,

Date: 10/9/96



Miriam Winokur
Public Panel Member and Chairperson

I (concur) (do not concur) with the Above Award

Date:

Ronald G. Evangelista
Employee Organization Panel Member

I (concur) (~~do not concur~~) with the Above Award

Date: 9-13-96



William C. Saucke
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF *ERIE*) SS

On this *9* day of *October*, 1996, before me personally came and appeared *MIRIAM WINOKUR* 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.

Douglas L. Winokur

DOUGLAS L. WINOKUR
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES DECEMBER 31 1996

STATE OF NEW YORK)
COUNTY OF) SS

On this _____ day of _____, 1996, before me personally came and appeared _____ 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.

STATE OF NEW YORK)
COUNTY OF) SS

STEVEN W. SAUCKE
Notary Public, State of New York
No. 5028941
Qualified in Monroe County
Commission Expires June 12, 19*98*

On this *13th* day of *September*, 1996, before me personally came and appeared _____ 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.

Steven W. Saucke

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

- between -

THE TOWN OF WEBSTER

and -

THE WEBSTER 1000 CLUB

PERB CASE NO. IA94-011; M93-241

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

DISSENTING OPINION

by Ronald G. Evangelista

PUBLIC ARBITRATION PANEL MEMBERS:

Miriam Winokur
Neutral Member and Chairperson

Ronald G. Evangelista
Union Designated Panel Member

William C. Saucke
Employer Designated Panel Member

October 2, 1996

The Town of Webster 1000 Club (herein referred to as the "union" and the Town of Webster (herein referred to as the "Town") entered into a tripartite compulsory interest arbitration process as authorized pursuant to the provisions of the Civil Service Law, Section 209.4 on or about August 28, 1995, as case #IA94-011; M93-241.

The panel consisted of Miriam Winokur, neutral member and chairperson; Ronald G. Evangelista, union designated panel member and William C. Saucke, employer designated panel member. The panel convened hearings when the parties had adequate opportunity to introduce evidence, respond to evidence submitted, call witnesses, cross-examine witnesses and submit documentation in support of their respective positions. Both parties took full advantage of these opportunities and at the conclusion of the presentations, the panel members met in executive session(s). Subsequently, an award was issued in which the majority of the members reached an agreement. Although I have voted to support the award, I must express dissent on one issue which I feel is inconsistent with comparable benefits of other police organizations which were cited in the final award and renders an unjustified burden on the employees.

Article 3 Compensation
Section 7 Rate of Compensation

Old Language:

All overtime and holiday pay will be computed at salary rate when the holiday or overtime occurs. Salary rate shall be defined as the combination of all economic benefits, including, but not limited to, salary schedule, school incentive, longevity and special assignment pay.

Language as amended by the Award

All overtime and holiday pay will be computed at salary rate when the holiday or overtime occurs.

The annual Salary shall be defined as the combination of all economic benefits, including salary schedule, school incentive, longevity and shift differential.

- A. The parties agree that the hourly rate shall be determined by dividing the annual salary by 1946.6 hours.
- B. The hourly rate shall be used for the payment of overtime at the time and one-half rate and the payment of holiday pay at the rate of eight (8) hours at straight time.
- C. Each member shall receive a bi-weekly payment of the annual salary divided by 26. In a calendar year in which there are 27 pay periods, each pay period shall be calculated as the annual salary divided by 27.

The change in this language maintains certain calculation procedures and severely changes others. The most significant issue of concern is the calculation of bi-weekly payment (as indicated in "C") which divides the annual salary by 26 or by 27 if there are 27 "pay periods" in that calendar year.

The Town argues that occasionally their payroll system makes 27 bi-weekly payments in one calendar year but there are always 26 bi-weekly periods in every year. Their argument is simply smoke and mirrors in making an attempt to make a valid argument where none could possibly exist. The Town creates its own payroll system and now complains that it is inaccurate. This argument conveniently takes away a pay raise (3.8%) because if the Town divides the annual salary by 27 instead of 26, they enjoy a 3.8% savings.

The following is illustrative:

1994	\$43,045	
1995	\$44,776 (with 4% increase)	
1994	<u>bi-weekly 26</u>	<u>27</u>
	\$1655.57	\$1594.25
1995	\$1722.15	\$1658.37

The difference between the 1994 (26) rate and the 1995 (27) rate is \$61.32 per pay period increase. The Union members have received a 4% increase in salary. Virtually all of the 4% increase was absorbed by the new calculation rate. Irrespective of the calculation method or number of pay dates as opposed to pay periods results in the diminution of that year's pay raise. The language, as awarded, suggests that when there are 27 "pay periods" in any one calendar year, a greater divisor be used. It is impossible to have 27 bi-weekly pay periods in a 52-week period.

This portion of the proposal is obviously a nesting ground for controversy for the parties to address in the future.

Consequently, as the advocate for the Union, I strongly oppose the implementation of this provision and must register my dissent.

At least a majority of the Panel has concurred with each of the items in the herein Award and the Award by the Panel is that, except as specifically modified in this Award, all other provisions and language contained in the Agreement are hereby continued unchanged.

Respectfully submitted,

Date: 10/2/96

Miriam Winokur
Public Panel Member and Chairperson

I (concur) ~~(do not concur)~~ with the Above Award
except Oct 3 & 7

Date: 10/3/96



Ronald G. Evangelista
Employee Organization Panel Member

I (concur) (do not concur) with the Above Award

Date:

William C. Saucke
Employer Panel Member

STATE OF NEW YORK)
COUNTY OF *Morroe*) SS

On this *3rd* day of *October*, 1996, before me personally came and appeared *Ronald G. Evangelista* 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.

MAURA C. SMITH
Notary Public, State of New York
No. 8014660
Qualified in *Morroe* County
Commission Expires *July 6, 1997*

R. Evangelista

Maura C. Smith

STATE OF NEW YORK)
COUNTY OF) SS

On this _____ day of _____, 1996, before me personally came and appeared _____ 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.

STATE OF NEW YORK)
COUNTY OF) SS

On this _____ day of _____, 1996, before me personally came and appeared _____ 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.
