

State of New York
Public Employment Relations Board

In the Matter of the Interest Arbitration

Between

Town of Warwick

-and-

United Federation of Police, Inc.

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Case No. IA 85-21,
m85-150

Public Arbitration Panel

Vincent Brown, Jr., Supervisor
Employer Panel Member

Kenneth J. Franzblau, Esq.
Employee Organization Panel Member

Jeffrey B. Tener, Chairman
Public Panel Member

Appearances

For the Town:

Daniel Rizzi, Esq.

For the United Federation of Police, Inc.

John P. Henry, Director of Labor Relations,
Tri-County Federation of Police, Inc.

Opinion and Award

Background and Procedural History

Until the end of 1984, the employees now represented by the United Federation of Police, Inc. ("Federation") were included in a bargaining unit represented by Local 836 of the

Civil Service Employees Association. The police officers now are in a separate bargaining unit.

The parties met on eight occasions between December 1984 and May 1985. No agreement was reached and the Federation filed a declaration of impasse with P.E.R.B. on June 13, 1985. The chairman of this panel was assigned as the mediator and met with the parties on August 9 and October 2, 1985. When no agreement could be reached, the Federation filed a petition for interest arbitration dated October 16, 1985. On January 9, 1986, PERB designated the members of this panel.

A hearing was held on March 21, 1986 at which the parties were given a full opportunity to present evidence and to examine and cross-examine witnesses. The parties at that time agreed to waive a written transcript of the proceeding and that the chairman's notes and the exhibits would constitute the record.

The members of the panel met in executive session on April 8 and 15, 1986 in the Town's offices.

There were numerous open issues presented by the two parties. During the executive sessions, the panel succeeded in reaching a concensus on all issues except the size of the salary increase. This should not be understood to mean that the Town would not have preferred less and that the Federation would not have preferred more; nevertheless, we did reach a general understanding as to the disposition of all items except the magnitude of the salary increase. We also agreed on the basic salary structure.

In reaching our decision, we have considered the statutory criteria:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills ...
- b. the interest 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. such other factors which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

Joint Exhibit 2 is a draft agreement which includes items tentatively agreed upon by the parties as well as some open issues. Other open issues are set forth in PBA Exhibit 1. Items listed as "TA" in Joint Exhibit 2 were agreed to by the parties and will be included in the new agreement. Only the open items will be discussed herein. Joint Exhibit 2 and PBA Exhibit 1 are used as the base documents for this discussion.

Open Issues

Article 2, Recognition, was agreed to by the parties. However, the employer and employee organization panelists, both of whom participated in the negotiations, agreed to add the words "and dispatchers" at line 6 of paragraph one after the word "Police." This specifically excludes dispatchers from this unit.

The Town proposed the elimination of the agency shop provision from the prior Town-CSEA agreement. It argued that the union should attract members by virtue of its service and performance as a representative. The Federation, on the other hand, took the position that the provision should be continued. The provision does not impose membership but it does compel payment by the recipients of the union's benefits of the costs of that representation.

The panel has agreed that the benefit should be continued as it has been for the CSEA although the Town initially sought its removal from that unit also. This provision will become paragraph 3 with paragraph 3 becoming paragraph 4.

Article 5, Hours of Work, has been agreed except for section 1 which is a general statement as to applicability. Although the Town sought a more limiting statement, the subsequent sections give the Town the flexibility necessary. Accordingly, the general language proposed by the Federation is adequate:

This Article is intended to define the normal hours of the workday and workweek and to provide the basis for the calculation of overtime payments.

Article 6, Premium Pay, has several open sections. The Town seeks to eliminate overtime after eight hours, a benefit currently enjoyed by the officers. The Federation opposes this change. Again, the Town sought this change with the CSEA unit and did not get it; there is no reason to grant it for this unit.

The second paragraph of that section covers the distribution of overtime. Both party panelists agreed that there has not been a problem and that the detailed proposal of the Town is unnecessary at this time. The current practice will be continued.

Section 2 deals with call-back pay. The Federation seeks to expand it to cover call-in pay as well. Being called in early is as disruptive to one's schedule and life as is being held over. This is not something which occurs often. The proposal is a reasonable one and will be granted.

Article 7, Seniority, paragraph 1, contains a definition of seniority urged by the Town. In our deliberations, the panel agreed that an elaborate definition was unnecessary and could have unintended effects. We agreed upon a general statement recognizing Civil Service Law and Rules and we will consider seniority specifically regarding vacation picks.

Article 8, Compensation, is a lengthy proposal of the Town. Several of its sections are unnecessary now that the police officers are in a separate bargaining unit. Sections 1, 3, 4 and 6 fall into this category and the panel agreed that they are unnecessary. Section 2 merely refers to the appropriate salary schedules and will be included with adjustments to reflect the term of the new agreement. Section 5-Increments, is very similar to a section in the prior agreement and will be retained. The Town proposed an increment review system but the panel agreed that the management rights article recognizes

the items of importance to the Town in this area.

The Town sought to place certain limits on the qualification for holiday pay including proof of the reasons for absences on certain days. The panel agreed that the items addressed here are more appropriately included elsewhere, if at all. Paragraph 1 (b) will not be included.

Article 10, Vacation Leave, paragraph 3 deals with vacation picks. It is here that seniority needs to be considered. The panelists agreed that vacation picks should be based upon seniority as measured from the date of appointment to the department.

Paragraph 4 of that article deals with accrued vacation. Both parties, for different reasons, recognize that the current practice needs to be tightened up. The panelists agreed to require vacations to be taken in the year earned unless precluded by scheduling conflicts with either a cash payment or a one-year carry-over at the employee's option.

Article 11 concerns Sick Leave. The Federation is seeking increases in sick leave benefits; the Town is seeking a reduction of these benefits. Neither party presented a compelling argument; the Town-CSEA agreement did not change this benefit. We shall continue the language of the prior agreement with a new paragraph permitting the Town to require a doctor's certificate when an absence exceeds three days.

Article 12 covers Personal Leave. The Federation asked for more; the Town proposed less. We shall continue the status

quo. This is what the Town and CSEA did.

Article 13, Bereavement Leave, was another one in which the Town proposed a reduction and other limitations. Again, we agreed to retain the status quo in the absence of a strong reason for a change. The Town did not change the number of bereavement leave days with the CSEA.

Article 16 covers Medical Benefits. Section 1 provides for hospitalization and was agreed by the parties. The Federation accepted the Town's proposal regarding off-the-job disability. This is essentially the status quo and appears as section 2. The Federation submitted a proposal for an improved dental program as well as for a \$100,00 life insurance policy for each officer. In 1984, the Town contributed \$84.00 per employee per year for employee only dental coverage.

The panel agreed that the Town, beginning in 1986, would contribute \$210 per employee per year to a Federation welfare fund. The fund can be used to provide benefits to the unit such as, for example, dental insurance. The Federation will be responsible for deciding the benefit(s) to be purchased.

Article 17 covers Retirement. The present plan permits retirement at age 55 after 25 years of service. The Federation proposed a 20 year and out plan. The Town balked at the high expense of such a plan. The evidence indicates that all other towns in the county have the 25 year and out plan. Obviously, on a comparative basis, a move to the 25 and out plan would be justified and the cost of that plan, while significant, would

not be prohibitive. The panelists agreed, however, given the priorities of the unit members, that pensions were less important than salaries for this relatively junior force. Accordingly, we agreed not to change the present plan.

Article 18, Uniforms and Equipment, provides for \$300 annually for uniform purchase and maintenance. The Federation proposed an increase to \$600. A review of the size of this benefit elsewhere in the county convinces us that increases of \$50 in 1985 and of another \$50 in 1986 are justified.

Article 26, Duration, will provide for a two-year agreement covering 1985 and 1986.

The Federation indicated a willingness to withdraw proposals regarding officer safety, hazardous duty pay, detective/youth officer differential, discipline, police station cleaning, park, and definitions. Also, the panel determined to deny the Federation's "continuation" proposal as being too open-ended and as being something not previously enjoyed. (See PBA Exhibit 1 for a description of each of these items.)

Prior to this time, part-time employees have been treated separately by the Town. There are now four officers in the Police Department who work between eight and 20 hours per week. The contract shall specify their hourly rate: \$6.25 as of January 1, 1985 and \$6.50 as of January 1, 1986. Additionally, those officers will receive a \$50 allowance for uniforms and maintenance in 1985 and a \$100 allowance for this purpose in 1986.

The remaining issues are salary issues: the structure of the schedule, longevity, and the magnitude of the increase.

In the prior agreement, patrolmen were on pay grade 11 and sergeants were on pay grade 13 with probationary officers being on pay grade 8. Each pay grade consisted of a range with five annual steps and subsequent longevity steps at years 8, 12, 17, 22 and 27.

The panel agreed to retain that basic structure for patrolmen: five annual steps with longevity steps at the beginning of years eight, 12, 17, 22 and 27. We also agreed to retain the existing percentage differentials between steps as follows: 4.6% between the top step and the fourth step, 4.5% between the fourth and the third steps, 4.4% between the third and the second steps, 4.4% between the second and the first steps, and 13.7% between the first step and the trainee step. The existing differential between the first step and the trainee step is 13.7%. What emerges from this is a five-step schedule plus a trainee step plus longevity. Five steps is very common although some communities in the county have three steps and others have more than five. We also agreed that sergeants should receive 10% more than a top patrolman (plus any longevity to which they are otherwise entitled). Finally, we agreed upon longevity steps of 4.7% and again this represents the existing situation.

The only remaining issue -- and on this the panel was not able to agree -- is the size of the salary increase. The Town proposed salary increases of 4% plus increments each of the two

years. The Federation's salary proposal would place the Town of Warwick's top rate for a patrolman at the average of the other towns in the county each year. The figures provided put the 1985 average at \$22,534 and the 1986 average at \$23,278. To reach those levels, the 1985 increase would have to be 15.9% and the 1986 increase would have to be 3.3% above that or 19.7% over the two years.

It is the Town's position that its proposed increase is sufficient in light of various economic factors. It emphasizes particularly its inability to pay more than the amounts proposed.

The Town presented data showing that the first year increases for state and local government employees averaged 4.8% in 1984 and 4.6% in 1985. The Consumer Price Index increased by only 3.8% during 1985, marking the fourth consecutive year with increases of four percent or less.

In the private sector, first year increases averaged only 2.3%, even lower than 1984's 2.4%. Over the life of contracts settled in 1985, the average annual increase was 2.7%. Furthermore, 25% of the agreements negotiated in 1985 provided for wage freezes or cuts.

The Town introduced evidence which shows that the number of offenses reported in the county under the uniform crime reporting system declined from 1984 to 1985, thus suggesting that no increase in workload could be cited to support a wage increase.

The Town also noted that its hospitalization costs increased by \$400 per employee to \$2,400 in 1985 and asserts that this

increase must be considered in assessing the cost of the package.

The police officers are coming off a 1984 increase of 7% plus increments. This indicates that there is no need for a large increase to make up for a prior small increase.

The Town settled with the CSEA for increases of 5% in 1985 and 1986. Any increase beyond those numbers is said to be totally unjustified.

The Town submitted budget summaries from 1983 to 1986. These show an increase in appropriations from \$2.8 million to \$3.8 million or 35%. During that same period, revenues increased only from \$680,000 to \$749,000 or about 10%. The amounts to be raised by taxes had to be increased, going from \$1.97 million to \$2.5 million.

Another major problem is the increased costs of liability insurance. The increases have been almost unbelievable, going from \$72,000 in 1985 to an estimated \$120,000 - \$150,000 in 1986.

The Town must create a new master plan and zoning ordinance at an estimated cost of \$35,000. The water districts need to be revamped and this will cost the taxpayers some \$250,000, although this will be chargeable in the special districts. Nevertheless, the money must be raised.

The Town also asserts that the economic picture painted by the Federation is misleading because the territory which comprises the Town of Warwick excludes three villages and it is the villages which are the hubs of economic activity. What is left

is a relatively poor, largely agricultural area whose residents simply are unable to continue to pay higher taxes.

The Federation provided data showing salary increases throughout the county. Typical increases were in the 7% to 8% range, some of which were split raises, thus increasing the base salaries further. In several of the communities, there was an improved pension plan or a reduction in the number of steps in addition to salary increases.

As stated above, the Federation placed the average top patrolman salary for the six other towns in the county at \$22,534 in 1985 and at \$23,278 in 1986. The 1986 increases in the four towns which have settled for 1984 were 5%, 8%, 4.3% and 6.9%.^{*}

In considering the Town's ability to pay and its economic situation, the Federation's analysis, according to its expert witness, Edward Fennell, a self-employed government financial consultant, indicates that the Town has been prudently administered with a consistent overstatement of expenses and understatement of revenues and with a healthy surplus. The overall taxes (town, county, village) are slightly below the county average. Its debt is 1% of its debt limit. There is an unappropriated cash surplus of \$71,897 in the general fund part-Town. The Town increased its salary and wage account of the Police Department by 25.6% or over \$59,000 in 1986 and estimated revenues other

* The reason that the overall increase needed to reach the average salary in 1986 is listed as 3.3% stems from the fact that the towns which have settled for 1986 have lower salaries than the ones which have not settled for 1986.

than taxes to be \$72,432 less in 1986 than in 1985. Furthermore, the Town projected increased expenditures of \$104,136, a sizeable increase when one considers the magnitude of the expenditures.

In deciding on the appropriate salary increase, the panel considered the evidence and the arguments of the parties in light of the statutory criteria.

Several things are clear. The police officers in the Town rank near the bottom in the county. Also, their pension plan is the only one among the towns in the county not to provide for retirement after 25 years. At the same time, the Town clearly is not among the more affluent and its ability to pay is limited. It is also true that the cost of health insurance increased considerably in 1985, although this experience is not unique to the Town. The same may be said of liability insurance cost increases.

We believe that increases of 3½% on January 1, 1985 and another 3½% on July 1, 1985 along with an increase of 4% on January 1, 1986 and another 4% on July 1, 1986 will best balance the needs and interests of the parties and the public. The salary base will increase by 15% over the term of the agreement. That is an amount which is slightly above the average, thus permitting the officers to make some modest movement toward reducing their differential from the average. At the same time, the 1985 cost of this award will be 5¼%, an amount very close to

the cost of the Town's settlement with the CSEA and an amount which it almost certainly had projected for 1985. The 1986 cost, of course, is greater, totaling 7 3/4%. Additionally, there will be a 2% carry-over into 1987 as a result of the split raise in 1986. This is a relatively inexpensive way of raising the rates without costing the Town more than it could easily afford.

Our review of the financial data convinces us that the above increases can be paid without having a major effect either on the level of services or the tax rate or the Town's current sound position.

Obviously, few people like to pay taxes and salaries is an area where the employer has some control. Most other things have fixed prices and the choices are to pay the price or forego the item. The fact that labor costs can be controlled somewhat, however, does not justify paying appreciably less than the going rate. Such a practice, over time, will lead to turnover and added training costs, lower morale, a less qualified and productive work force, and other negatives. We do not believe that it is in the interests of anyone to permit that to occur.

AWARD

1. The term of the agreement shall be from January 1, 1985 through December 31, 1986.
2. All items indicated as "tentative agreements" on Joint Exhibit 2 are incorporated herein and made a part of this award.

Items not listed as tentative agreements in Joint Exhibit 2 will be treated in this award.

3. Article 2, paragraph 1 shall be changed by adding the words "and dispatchers" at line 6 after the word "Police."

4. Article 4 shall be changed by adding a new paragraph 3 and renumbering paragraph 3 as paragraph 4. Paragraph 3 shall read as follows:

The TOWN shall recognize an Agency Shop and shall deduct an Agency Fee equal to regular UNION membership dues from all non-UNION members in the bargaining unit. Membership Agency Shop Fee deductions shall be required from all non-UNION members thirty (30) days after the signing of this contract or thirty (30) days after the date of employment, whichever is later.

5. Article 5, section 1 shall read as follows

Section 1 - Application of this Article

This Article is intended to define the normal hours of the workday and workweek and to provide the basis for the calculation of overtime payments.

6. Article 6, section 1, paragraph 1 is to have the words "of eight (8) hours per day or" added at the end of the first line. Paragraph 2 is to read as follows:

Current overtime distribution practices shall be continued.

Section 2 shall read as follows:

Section 2 - Call-Back/Call-In Pay

Employees called to work before or after their normal work schedule or on a day off shall be paid for a minimum of three (3) hours pay at the applicable overtime rate.

Section 3 shall be as proposed by the Town.

7. Article 7, paragraph 1 shall read as follows:

Seniority shall be governed by Civil Service
Law and Rules and Regulations

8. Article 8 shall be changed by eliminating sections 1,
3, 4, and 6. Section 2 shall become section 1 and shall read
as follows:

Effective January 1, 1985, all employees
covered by this Agreement will be placed on
the appropriate step on the salary schedule
annexed hereto as Appendix A-1.

Effective July 1, 1985, all employees
covered by this Agreement will be placed
on the appropriate step on the salary schedule
annexed hereto as Appendix A-2.

Effective January 1, 1986, all employees
covered by this Agreement will be placed on
the appropriate step on the salary schedule
annexed hereto as Appendix B-1.

Effective July 1, 1986, all employees
covered by this Agreement will be placed
on the appropriate step on the salary schedule
annexed hereto as Appendix B-2.

Rates of pay prescribed in the compensation
plan represent rates for full-time employment.

Section 5 - Increments shall be retained as section 2.

9. Article 9, paragraph 1 (b) shall be eliminated.

10. Article 10, paragraph 3 shall replace the words "(as
defined in Article Seven)" on lines eight and nine with the words
"as measured from the date of appointment to the Town of Warwick
Police Department."

Paragraph 4 shall read as follows:

All accrued vacation leave credit must be
used by an employee by the end of the year

in which it was accrued. However, employees who are precluded from taking vacation leave time due to conflicts in scheduling may carry over and use their unused vacation leave credit in the year immediately following the year in which the vacation leave was accrued, or such Employee may elect to receive cash payment for the unused vacation. Such payment shall be at the rate due the Employees on December 31 of the year of entitlement.

11. Article 11, Sick Leave, shall include as its first three paragraphs what appears as paragraphs A, B and C of Article VI, Section 1 of the prior Town-CSEA agreement. Paragraph 4 shall have added the words "when the employee's absence exceeds three (3) days." at the end of the first sentence. The second sentence shall be eliminated.

12. Article 12, paragraph 1 shall provide for three (3) days of personal leave per year and paragraph 3 shall be eliminated. Paragraph 2 shall be as proposed by the Town.

13. Article 13 shall provide for up to five (5) days paid bereavement leave and the last sentence of the first paragraph shall be eliminated.

14. Article 16, section 2 shall be as proposed by the Town. Section 3 shall be renamed "Welfare Fund" and will provide for a contribution by the Town of \$210 per calendar year, pro-rated for employees who are not employed the full calendar year, beginning January 1, 1986.

15. Article 17 shall be as proposed by the Town at paragraphs 1 and 2 but with the deletion of paragraph 3.

16. Article 18, Section 1 shall be amended to provide for an annual reimbursement allowance of \$350.00 in 1985 and of

\$400.00 in 1986. Additionally, it shall provide for an allowance of \$50.00 for part-time officers in 1985 and of \$100.00 for part-time officers in 1986. Section 2 shall be as proposed by the Town.

17. Article 26, paragraph 1 shall provide for effective dates of January 1, 1985 through December 31, 1986.

18. The salary schedules shall be as follows:

Appendix A - 1985 Salary Schedules

<u>A-1: January 1, 1985</u>		<u>A-2: July 1, 1985</u>	
<u>Step</u>	<u>Amount</u>	<u>Step</u>	<u>Amount</u>
Trainee	\$14,856	Trainee	\$15,376
One	16,891	One	17,482
Two	17,634	Two	18,252
Three	18,410	Three	19,055
Four	19,239	Four	19,912
Five	20,124	Five	20,828
Sergeant	22,136	Sergeant	22,911

In addition to these amounts, all officers shall receive longevity increments equal to 4.7% of their base salaries at the beginning of their 8th, 12th, 17th, 22nd and 27th years of service.

Part-time employees shall be compensated at the rate of \$6.25 per hour in 1985.

Appendix B - 1986 Salary Schedules

<u>B-1: January 1, 1986</u>		<u>B-2: July 1, 1986</u>	
<u>Step</u>	<u>Amount</u>	<u>Step</u>	<u>Amount</u>
Trainee	\$15,991	Trainee	\$16,630
One	18,181	One	18,909
Two	18,981	Two	19,741
Three	19,817	Three	20,610
Four	20,708	Four	21,537
Five	21,661	Five	22,527
Sergeant	23,827	Sergeant	24,780

In addition to these amounts, all officers shall receive longevity increments equal to 4.7% of their base salaries at the beginning of their 8th, 12th, 17th, 22nd and 27th years of service.

Part-time employees shall be compensated at the rate of \$6.50 in 1986.

19. Except as otherwise specified herein, any changes from practices in effect in 1984 are to be prospective from May 14, 1986.

Dated: May 14, 1986
Princeton, NJ

Jeffrey B. Tener
Jeffrey B. Tener
Chairman

State of New Jersey) ss.:
County of Middlesex)

On this 14th day of May, 19 86, before me personally came and appeared JEFFREY B. TENER 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.

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

Dorothy Friedman

Kenneth J. Franzblau
Kenneth J. Franzblau, Concur
Employee Organization Panel Member

State of NEW YORK) ss.:
County of WESTCHESTER)

On this 3rd day of JUNE, 19 86, before me personally came and appeared KENNETH J. FRANZBLAU 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.

Daniel Braccio

DANIEL BRACCIO
Notary Public, State of New York
No. 69-3330510
Qualified in Westchester County
Term Expires March 30, 1987

Vincent Brown Jr.
Vincent Brown, Jr., Dissent
Employer Panel Member

State of New York)
County of Orange) ss.:

On this 23 day of May, 1986, before me personally came and appeared VINCENT BROWN, JR. 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.

Meredith L. Stewart

Notary Public
aug 1 1986