

In the Matter of the

INTEREST ARBITRATION
PROCEEDING

between

UNITED FEDERATION OF POLICE
OFFICERS, INC.

Petitioner

and

VILLAGE OF WAPPINGERS FALLS

Respondent

OPINION AND AWARD

PERB Case #IA91-032;
M91-199

EMPLOYEE RELATIONS BOARD
RECEIVED

APR 22 1993

CONCILIATION

Before: The Public Arbitration Panel

Jim Bain, Employer Member
Anthony Solfaro, Employee Organization Member
Jerome Thier, Public Member and Chairman

APPEARANCES

On behalf of the United Federation of Police Officers, Inc.
(UFP):

Wilson and Franzblau, Esqs. by Kenneth J. Franzblau, Esq.

On behalf of the Village of Wappingers Falls:

Louis J. Viglotti, Esq., Village Attorney

THE PROCEEDING

The UFP is the representative of a unit of employees of the Village consisting of all full and part-time police officers, except for the Police Commissioner¹. Upon a petition duly filed

¹The Police Commissioner was referred to as the Chief of Police in PERB's certification order, dated July 10, 1991 and bearing Case No. C-3752. There is no Chief of Police in the Village of Wappingers Falls.

by the UFP, pursuant to Section 209.4 of the Civil Service Law and Section 205.4 of the Rules of Procedure of the New York State Public Employment Relations Board (PERB), this Public Arbitration Panel was duly designated by PERB to make a just and reasonable determination of the dispute in negotiations between the UFP and the Village. A hearing was held on August 20, 1992, at which both parties were afforded a full opportunity to present evidence and arguments.²

The Panel met to deliberate on September 21, October 19, and December 7, 1992. This determination is based upon these deliberations. In arriving at it, the Panel has reviewed the evidence presented to it and taken into consideration the criteria contained in Section 209.4 of the Civil Service Law.

BACKGROUND

The Village, which has a land area of approximately a little over a square mile and a population of slightly over 4600, lies in the Town of Poughkeepsie and the County of Dutchess. Its police force consists of a part-time Police Commissioner, one full-time Lieutenant, one full-time Sergeant, two full-time police officers, and approximately 14 part-time police officers. In addition to having its own Police Department, the Village is serviced by the Town of Poughkeepsie Police Department and the

²A stenographic record was not made of the hearing, neither party requesting pursuant to Civil Service Law §209.4 (iii), that one be kept.

Dutchess County Sheriff's Department.

The impasse in negotiations that culminated in this arbitration proceeding arose in negotiations between the parties for a successor to a three-year contract between the Village and a predecessor employee organization, that expired on May 31, 1991. In those negotiations, the UFP sought a substantial increase in salaries and improvements and a host of other benefits, all of which will be more fully detailed further on in this Opinion and Award. With respect to the UFP's principal demand, that is, its demand for a salary increase, the Village took the position throughout negotiations that it lacked the financial ability to provide any increase in wages. The parties having engaged in package bargaining, the UFP's petition for arbitration contains all of its proposals. The Village's response contains its reply to each of the proposals but contains no proposals by the Village for changes in the prior contract.

The Village's claim that it does not have the ability to pay any increase in wages will be dealt with first because if it is supported by the record, any increase in wages will be foreclosed.

1. ABILITY TO PAY

At the hearing, the Village presented evidence of its inability to pay through the testimony of its Treasurer, Kathleen Masterson, and a document (Village Exhibit 6) setting forth financial data. The evidence shows a decrease of \$129,120.00 in

the Village's tax base in the 1992-93 fiscal year, to \$16,398,297; a decrease in State Aid to \$29,899 (while the document shows a substantial decrease, it does not show over what period); a 10 percent decrease in population during the period 1980 through 1990; a large senior citizen population which it claims to be living on fixed incomes, and many of whom it claims will be applying for senior citizen exemptions from real estate taxes³; little likelihood of an expansion in the tax base because of the current economy and wet land concerns; a median income only \$1,800 above the U.S. HUD average income threshold for being designated a distressed area, the HUD eligibility guideline being a population of 51 percent having a low/moderate income and the Village having approximately 49 percent⁴; decreased tax collections for the 1990-91, 1991-92 fiscal years of between 11 and 12 percent, partly due to bankruptcies of 3 commercial taxpayers; increased costs due to State mandates, such as for the closing of landfills, providing access for the handicapped to municipal facilities and certain other items⁵; the deferral of many planned expenditures, such as for the replacement of police cars and police car radios, road repaving, payments into a reserve fund for fire apparatus, purchase of a

³No evidence of any increased applications for such tax exemptions was presented.

⁴Until 1988 or 1989, the Village was rated by HUD as a distressed area.

⁵No specifics were given by the Village.

highway dump truck, relocation of Village offices and raises to non-union employees; and that the Mayor, who is a part-time employee, took a 30 percent decrease in pay in the last year.

The UFP presented evidence on the Village's ability to pay through the testimony of Edward J. Fennell of Edward J. Fennell Associates, Municipal Finance Consultants, and through a document prepared by him (PBA Exhibit 23)⁶. This evidence shows that although the Village's overall tax rate, when combined with County and School taxes, is the highest of the Villages in the County, the tax rates do not paint a true picture⁷. This evidence further shows that the Village is at approximately 58 percent of its tax limit for the fiscal year 1992-93; that it has exhausted 10 percent of its debt limit as of the end of its 1991 fiscal year; that it had a fund balance of \$144,416⁸.00 at the end of its 1991 fiscal year, of which \$133,270.00 was an unappropriated surplus consisting of approximately \$70,000.00 in cash and the balance in receivables; that so long as it stays within its debt limit, a Village can borrow an amount not to

⁶Although the UFP is the certified representative, its exhibits were designated as "PBA" exhibits.

⁷Not all Villages provide the same services and not all services are paid for through property taxes. For example, the Village of Tivoli, which has the next lowest tax rate, \$29.77 per one thousand of full value, compared to Wappingers Falls \$31.77 per one thousand dollars of full value for fiscal year 1991, does not provide Police service. Wappingers Falls is the only Village in the County that has a user fee for garbage collection. Furthermore, Villages are in different school districts.

⁸Masterson testified that only \$70,000 of this is in cash.

exceed 5 percent of its annual budget, which was slightly over \$2 million for the Village for 1992-93, for expenditures for which insufficient allowances were made in an annual budget; that there is a contingency fund of \$79,742 in the 1992-93 budget; that the Village has actually been drawing down or reducing its fund balance because of complaints by the State Comptroller that it is too high; that its tax margin, that is the amount of taxes that it can raise before being at its tax limit of \$2,118,042, is \$884,502, this amount being 43.3 percent of the Village's general fund budget of \$2,044,399; that each 1 percent increase in salaries represents an increase of .18 percent of the tax levy for 1992-93 (assuming other funds are not available to pay the increase) and a .15 percent increase in the general fund budget.

After carefully considering the evidence presented by both parties, the Panel concludes that the Village does have the ability to pay the reasonable monetary increases that the Panel is going to award. If the increases cannot be paid from the contingency fund, the unappropriated surplus and the savings achieved through a reduction in force during the last fiscal year,⁹ the most that will be required is a minimal increase in taxes. The fiscal situation of the Village is not such that it warrants depriving its police officers of a reasonable increase

⁹Sometime prior to the hearing in this matter on August 20, 1992, a police officer who was on the third step left the Department and was replaced by two part-time officers whose wages and benefits are substantially lower. They receive no health insurance, vacation, sick leave or overtime compensation.

in wages and other benefits that are otherwise justified under the criteria set forth in Section 209.4 of the Civil Service Law.

2. WAGES

The salary structure for full-time police officers, as set forth in their contract, contains a 7 step schedule which provides the following salaries as of June 1, 1990, the start of the last fiscal year covered by the agreement:

Probationary	\$18,370.00
After 6 months	\$19,288.00
Entering 2nd year	\$20,452.00
Entering 3rd year	\$22,045.00
Entering 4th year	\$23,882.00
Entering 5th year	\$26,454.00
Entering 10th year	\$32,455.00

In addition, after completion of 5 years and through the completion of 10 years of service, a longevity increment of \$500.00 is paid each year. After 10 years and until the completion of 15 years it goes to \$1,000.00. Thereafter, it goes to \$1,500.00. These payments, which are not cumulative, are made in two annual installments, the first on the employee's anniversary date and the second 6 months thereafter. A Sergeant is paid \$2,000.00 over his current step and a Lieutenant is paid up to \$3,000.00 over his current step.

The current wages for part-time police officers is as follows:

Starts to 5 years	\$8.68
5 years to 10 years	\$9.13
After 10 years	\$9.62

The Lieutenant has been with the Department for more than 19 years, the Sergeant has entered his 3rd year, one police officer has entered his 6th year and the other one has entered his 4th year. Ten of the part-time police officers are within the first 5 years of their employment, 3 are within the first 10 years and 1 is beyond 10 years.

The record evidence relating to wages consists of the following: agreements for the police units of various villages, cities and towns within Dutchess County, the agreement for the Dutchess County Sheriff's Department bargaining unit, the Village of Wappingers Falls' agreement for its Blue Collar Unit and, of course, the expired agreement for the Police Unit, all of which were introduced by the UFP; crime statistics introduced by the UFP; certain salary charts for comparison purposes; the Village's response to the petition, which contains arguments on the subject; the Village's abstract of UFP's proposal; a table showing the increases received from 1990 to date by the Village's full and part-time police officers; the contract increments proposed for each of the full-time police officers by the UFP; the salaries of police officers in other villages in Dutchess

County and one in Putnam County; and the documents containing financial data which have already been discussed in relation to the Village's ability to pay.

A. FULL-TIME POLICE OFFICERS

The UFP proposes an increase for the 1991-92 fiscal year of approximately 33 percent for all ranks except the Lieutenant. For the Lieutenant it proposes an increase of approximately 44 percent. For the 1992-93 fiscal year, it proposes an increase of 6 percent for all ranks. The UFP asserts that the first year increase is necessary to bring the salaries of the Village police officers in line with those of the higher paying Departments in the County, which are the Town of Poughkeepsie, Dutchess County Sheriff's Department, City of Poughkeepsie and City of Beacon.

The UFP also proposes that all wages of police officers be computed by dividing the annual salary by 2080 hours and making all payments on the basis of the hourly rate.

The Village argues that its police officers' salaries are in line with those of other villages. Furthermore, it asserts, the step increments and longevity payments made under the expired agreement, have provided the police officers with substantial increases.

Turning to the position of the UFP, the Panel notes that the UFP has presented no evidence or analysis to show that the Village's police officers, who work in a small geographic area with a small population, are entitled to salaries comparable to

those received by the police officers of the larger departments.

Examination of the data submitted by the Village with respect to salaries paid by other villages shows that of the six villages for which data was submitted, three employ only part-time police officers and, as pointed out by the Village, all pay relatively low salaries. With respect to its assertions concerning the increases received through step increments and longevity increments, the Panel notes that the increments and longevity payments are in line with those of other police departments in the County.

After considering the arguments of both parties, the Panel has decided that the most reasonable basis upon which to view the salaries of the Village's full-time police officers is by relating them to those of the police officers of the Town of Poughkeepsie and the Deputy Sheriffs of Dutchess County. The reason for this is that these police officers work in conjunction with each other and a salary relationship has developed over the years, which it is reasonable to assume has been reflected in the prior contracts entered into by the Village for its police officers. The contract for the Dutchess County Sheriff's Department, entered into in July 1991, provides for a 5.85 percent increase in 1991 and a 6 percent increase in 1992. The salaries of the police officers of the Town of Poughkeepsie, in a 2½ year contract running from January 1, 1991 through June 30, 1993, were increased 4 percent on January 1, 1991, 5 percent on

January 1, 1992 and 5 percent on January 1, 1993.¹⁰ The Panel is of the view that while absent any evidence or analysis that would warrant moving the salaries of the Village's police officers closer to those of the Town of Poughkeepsie and Dutchess County Sheriff's Departments, there should not be an erosion of the relationship of the Village to these two Departments. The Village's fiscal situation does not warrant it and if the Village is to maintain a police force whose morale is not to be destroyed, an increase comparable to those received by the bargaining units of the Town of Poughkeepsie and the Dutchess County Deputy Sheriff's Department, should be received by the Villages's police officers.

In light of all of these factors, the Panel finds that an increase of 2.5 percent effective June 1, 1991, 3 percent effective December 1, 1991, 3 percent effective June 1, 1992, and 3 percent effective December 1, 1992, is warranted.

The panel also finds that the method of computing wages requested by the UFP is not uncommon and assures payment of wages on the basis of the expected annual rate. This request of the

¹⁰The 1992 salary schedule for the Dutchess County Sheriff's Department contains 5 steps for each grade. Deputy Sheriffs range from a starting salary of \$28,745 to a maximum of \$35,697, Sergeants range from \$33,700 to \$42,008 and Lieutenants range from \$36,212 to \$45,144. The Poughkeepsie contract has a 6 step schedule. As of January 1, 1993, the salary of a police officer started at \$24,720 and ended at \$43,399, that of a Sergeant ranged from \$43,390 to \$47,837 and that of a Lieutenant from \$47,043 to \$51,865.

UFP is therefore granted.

AWARD

Article II B¹¹

The wages of the full-time police officers of all ranks in the Police Department of the Village of Wappingers Falls are increased by 2.5 percent effective June 1, 1991, 3 percent effective December 1, 1991, 3 percent effective June 1, 1992, and 3 percent effective December 1, 1991. They shall be paid the hourly rates set forth in the following salary schedule, arrived at by dividing the annual rates (which are illustrative only) by 2080.

<u>Effective Date</u>	<u>6/1/91</u>	<u>12/1/91</u>	<u>6/1/92</u>	<u>12/1/92</u>
Probationary	\$18,829.00 ¹² \$9.05 ¹³	\$19,394.00 \$9.32	\$19,976.00 \$9.60	\$20,575.00 \$9.89
After 6 Months	19,770.00 9.51	20,363.00 9.79	20,974.00 10.08	21,603.00 10.39
Entering 2nd year	20,963.00 10.08	21,592.00 10.38	22,240.00 10.69	22,907.00 11.01
Entering 3rd year	22,596.00 10.86	23,274.00 11.19	23,972.00 11.53	24,691.00 11.87
Entering 4th year	24,479.00 11.77	25,213.00 12.12	25,970.00 12.49	26,749.00 12.86
Entering 5th year	27,115.00 13.04	27,929.00 13.43	28,767.00 13.83	29,630.00 14.25
Entering 10th year	33,266.00 15.99	34,264.00 16.47	35,292.00 16.97	36,351.00 17.48

Prospective payments on the basis of above salary schedule

¹¹The Articles are those in the expired agreement.

¹²Annual

¹³Hourly

shall be made beginning with the first payroll period after the issuance of this award. Retroactive payments shall be made no later than 60 calendar days after the issuance of this award.

B. PART-TIME POLICE OFFICERS

For part-time police officers, the UFP proposes a 6 step schedule, the 5th step coming at the beginning of the 5th year and the 6th step upon entering the 10th year. The proposed steps effective June 1, 1991 are:

Probationary	\$11.78
After six months	\$12.37
Entering 2nd year	\$13.11
Entering 3rd year	\$14.14
Entering 4th year	\$15.31
Entering 5th year	\$16.96
Entering 10th year	\$20.81

The proposed steps for 1991 represent an increase of approximately 36 percent in the starting salary, 85 percent for police officers entering the 5th year and 116 percent for police officers entering the 10th year. An increase of approximately 6 percent over the 1991 steps is proposed for June 1, 1992.

The Village's position with respect to part-time police officers is the same as its principal one with respect to full-time police officers, that is, that its budget deficit created by uncollected taxes and loss of revenue sharing necessitates a zero growth budget.

The UFP's position is that the comparability evidence submitted by it shows that the increases are warranted.

Examination by the Panel of the evidence submitted by the UFP shows that the claimed increases are not justified. What is justified, based upon a study of the amounts received by part-time police officers in other departments in the County, the relationship that exists between the Village's full and part-time police officers, and consideration of the public interest, including the interest of the affected employees, are the same percentage increases granted to the full-time police officers.

AWARD

ARTICLE II C

The hourly rates of the part-time police officers of the Village of Wappingers Falls are increased by 2.5 percent effective June 1, 1991, 3 percent effective December 1, 1991, 3 percent effective June 1, 1992 and 3 percent effective December 1, 1992. They shall be paid the hourly rates set forth in the following salary schedule:

<u>Effective Date</u>	<u>6/1/91</u>	<u>12/1/91</u>	<u>6/1/92</u>	<u>12/1/92</u>
Start to 5 years	\$8.90	\$ 9.16	\$ 9.44	\$ 9.72
5 to 10 years	9.36	9.64	9.93	10.23
After 10 years	9.86	10.16	10.46	10.78

Prospective payments on the basis of the above salary schedule shall be made beginning with the first payroll period after the issuance of this award. Retroactive payments shall be made no later than 60 calendar days after the issuance of this award.

C. PERMANENT, ACTING OR TEMPORARY TITLES

The UFP proposes to make several changes to Article IV of the parties' expired agreement, which already provides additional compensation for police officers appointed to the position of Sergeant or Lieutenant by the Village Board. The UFP proposes additional compensation for any police officer required to perform in the capacity of Detective, Youth Officer, full-time Sergeant or Lieutenant, without specifying how the requirement comes about. The additional compensation proposed is 7.5 percent above the 5th step for Detective and Youth Officer, 15 percent above the 5th step for Sergeant and 15 percent above the Sergeant step for Lieutenant.

In addition to its principal responses, i.e., that it cannot afford any increases and that the amounts it pays are in line with those paid by other villages, the Village's position with respect to Detective and Youth Officer work, is that it does not require any such work of its police officers. It states that police officers have volunteered to do such work in the past, but if by this proposal, they are indicating that they will no longer volunteer for such work, it shall be turned over to the Dutchess County Sheriff's Department, where such duties were originally performed before they volunteered to do them.

The Panel notes that a differential is normally paid for detective work, and there is no reason that one should not be paid for such work by the Village if it wants it performed.

Accordingly, the Panel deems it appropriate to provide for such a differential when the work is actually required by the Village. A differential of \$.72 per hour, not to exceed \$1,500 in a fiscal year, is not unreasonable, particularly whereas here, the Village maintains absolute control over the work and, in fact, has insisted that it will not require any to be performed.

As already noted, under the expired agreement, the Sergeant is paid \$2,000.00 above his own step as a police officer and the Lieutenant is paid \$3,000.00 above his step as a police officer. These amounts are unusually low in comparison to what is paid by other departments, be it on a monetary or percentage basis. Other departments pay at least 10 percent above top step for Sergeant and at least 5 percent above Sergeant's pay for a Lieutenant. The Panel is not prepared to require the Village to pay an amount above the top step to the Sergeant, who has entered his 3rd year of employment, nor it is prepared to move to the percentages above top step that are typically paid. Practical considerations require restraint. In light of all of the circumstances, the Panel believes that effective June 1, 1991, the differential paid for the rank of Sergeant should be increased to \$2,250.00 and the differential paid for the rank of Lieutenant should be increased to \$3,250.00 above step, and effective June 1, 1992, such differentials should be increased to \$2,500.00 and \$3,500.00 above step respectively.

AWARD

ARTICLE IV

Section A of Article IV of the parties' agreement shall be amended as follows:

The first paragraph shall be amended to provide for a differential payment to Sergeants of \$2,250 effective June 1, 1991, and \$2,500 effective June 1, 1992.

The second paragraph shall be amended to provide for a differential payment to Lieutenants of \$3,250 effective June 1, 1991, and \$3,500 effective June 1, 1992.¹⁴

The paragraph designated "2." in Article IV A shall be amended by adding the phrase "as a Sergeant or Lieutenant" after the word "compensation".

A new paragraph B shall be added to Article IV, effective one week after the date of this Award, which shall read as follows:

B. In the event a police officer is assigned by the Police Commissioner to perform detective duties, he or she shall receive an additional \$.72 per hour, not to exceed \$1,500 in the fiscal year. Detective duties are defined as work assigned to a police officer for follow-up investigation on a case other than one in which he or she has been initially involved.

¹⁴The differentials shall be divided by 2080 and the results added to the hourly rates of pay.

D. LONGEVITY PAYMENTS

The UFP proposes an increase in the amounts of longevity payments from \$500, \$1,000 and \$1,500 to \$520, \$1,040 and \$1,560. It also proposes that these payments, which are now made in two equal installments, one on the employee's anniversary date and one six months thereafter, be paid in equal installments as part of the base pay. This latter request was based upon the UFP's understanding that the Fair Labor Standards Act requires that longevity payments be included in base pay. At the UFP's request, the Panel Chairman made inquiry of the U.S. Labor Department and was advised that these payments must be included in the base pay.

The Village's position with respect to an increase in the amounts of longevity payments is the same as already noted with respect to other increases.

Examination by the Panel of the longevity payments made by the other Departments whose schedules are in evidence, reveals substantial variances among the Departments as to the amount and year in which first paid. It further reveals that payments made by the Village, while not the highest, are among the better ones. Accordingly, no increases are warranted. A change in the method of payment is necessary, however, to comply with the FLSA.

AWARD

ARTICLE II E

The request for increases in the amounts of longevity

payments is denied.

The last paragraph of Article II E shall be replaced by the following, effective with the second pay period following the date of this Award:

All longevity payments not previously paid in a lump sum shall be paid by dividing the annual amounts by 2,080 hours and adding the results to the hourly rates of pay.

3. AGENCY SHOP

The Village has agreed to the UFP's proposal to amend the recognition clause of the contract to include an Agency Shop provision. The amended provision is contained in a letter dated February 2, 1993, sent by Panel Member Solfaro to the other Panel Members.

AWARD

ARTICLE I

The agency shop provision contained in the letter dated February 2, 1993, sent by Panel Member Solfaro to the other Panel Members, shall be incorporated into the parties' agreement, effective with the first payroll period after the signing of this award.

4. OVERTIME

The UFP proposes to amend the overtime provision of the contract to provide for selection for overtime by seniority; to increase the present 2 hour minimum payment for overtime to 4

hours; and to change the present provision authorizing overtime only by the Police Commissioner, Police Committee Chairman or persons designated by him or her, to a provision authorizing overtime by the senior full-time officer on duty.

The Village's response to this demand in arbitration is that it had never been brought up in negotiations and, therefore, the Village has no position on it.

Since the record indicates that these proposals were made in negotiations, the Panel will consider them.

Considering the other benefits granted, the UFP has not justified the increase sought in the minimum hours of overtime, nor has it shown any necessity to lessen management's control over overtime by enabling it to be authorized by other than those who presently may authorize it.

The UFP's request for utilization of seniority as the basis for selection for overtime work is a reasonable one. Unless there is a demonstrated need for other criteria, seniority is a fair and equitable basis for distribution. In providing for it, however, the Panel wants to make it clear that it is not intending the use of full-time police officers through overtime where part-time police officers are presently used.

AWARD

ARTICLE III

The UFP's requests for an increase in the minimum payment for overtime and as to who may authorize overtime, are denied.

A new Section G shall be added to Article III, effective as of the first pay period after the issuance of this Award:

G. Overtime for full-time police officers shall be by seniority on an equitable, rotating basis for coverage of a succeeding shift, from those who are off duty first, for which an overtime roster shall be maintained by the Commissioner, and then from those on the shift coming off duty, provided there is at least one hour's notice. In the event there is less than one hour's notice, the preceding shift shall be canvassed first. Overtime for full-time police officers on their regular days off (weekends) shall be by seniority from a master roster based upon full-time date of hire, equitably rotated. This clause is not intended to alter the Village's present use of part-timers.

5. PAID HOLIDAYS

Under the parties' expired agreement, only full-time employees are entitled to overtime pay for working on legal holidays. The UFP seeks overtime pay for part-time police officers who work on legal holidays. The response of the Village is that part-time police officers are utilized during times when full-time police officers may not be expected to work, such as legal holidays, and should not receive overtime pay for this work.

The Panel agrees with the Village and rejects this proposal.

AWARD

ARTICLE V

The UFP's request for overtime pay for part-time police officers is denied.

6. UNIFORM ALLOWANCE

The UFP seeks to add a long list of clothing and equipment to that which is already issued initially under the contract. It also seeks to increase the annual uniform allowances, which are \$600.00 for full-time employees and \$375.00 for part-time employees, by \$25.00 for all employees as of June 1, 1991, and \$50.00 for full-time employees and \$70.00 for part-time employees as of June 1, 1992. The UFP also proposes to eliminate a provision calling for lump sum payment of the uniform allowance, which appears to be inconsistent with another contract provision providing for allocation of the allowance on a voucher system. Finally, the UFP proposes to amend present Section D of Article VI to clarify the Uniform Allowance Entitlement on completion of probation.

The Village's response to the request is that the uniform allowances for its police officers is one of the higher ones in the region.

The record reveals that the present clothing allowances received by the Village's police officers are, as stated by the Village, among the higher allowances in the region, and compensate for any additional clothing or equipment initially

issued by some of the other departments. The request for a greater initial issue and an increased allowances are therefore denied. The UFP's request for deletion of paragraph C, which provides for a lump sum payment of the uniform allowance, is granted. So, too, is its request to amend paragraph D of said Article to read as set forth in the award.

AWARD

ARTICLE VI

The UFP'S request for an increase in uniform allowance is denied.

Section C of Article VI of the parties' agreement is hereby deleted and the sections that follow are relettered accordingly.

Former Section D of Article VI of the parties' agreement, which shall become Section C with the issuance of this Award, is amended to read as follows, effective with the issuance of this Award:

After six months of completed service, a Unit member shall be entitled to a pro-rated amount of one of the allowances set forth above.

8. SICK LEAVE

The UFP proposes cash payment for a maximum of up to 120 days of sick leave upon retirement or other termination from employment.

The Village's position is that the present benefit of utilization of accumulated sick leave for payment for medical

benefits is sufficient.

While some of the larger departments do provide for a payout for sick leave upon retirement, it is believed by the Panel, in light of the other increases already given and the Village's fiscal situation, that this is an item that should best be left for future negotiations. The request is therefore denied.

AWARD

ARTICLE VIII

The UFP's request for cash payment upon retirement or other termination from employment for unused sick leave is denied.

8. WELFARE FUND

The Village has been paying \$200 per year for each full-time employee into an Association Welfare Fund since June 1, 1987, there having been no increases in payment during the period of the expired agreement. The UFP seeks an increase to \$350 per year for each full-time employee as of June 1, 1991 and \$400 per year as of June 1, 1992. The Village opposes the increase on grounds of inability to pay.

It is not feasible to compare this benefit with what may be considered benefits of a like nature received by members of other departments because the benefits are too varied - dental, optical, life insurance and combinations. None have payments into a union fund.

What the Panel considers to be appropriate for consideration is that even though there has been no increase in payments to the

fund, the cost of living has continuously risen since 1987. This merits some increase in the payment. Taking into consideration the Village's financial situation and balancing it against the need for an increase, the Panel concludes that an increase of \$25.00 to \$225.00 per year, effective June 1, 1992, is warranted, said increase to be paid no later than June 15 of each year.

AWARD

ARTICLE XII

Article XII of the parties' agreement is hereby amended to provide that commencing with the fiscal year that begins on June 1, 1992, the Village shall pay to the Association Welfare Fund no later than June 15 of each year, \$225 per full-time employee. The additional money due and owing from June 1, 1992, shall be paid no later than 60 calendar days from the issuance of this award.

9. WORK SCHEDULE

The UFP proposes that all full-time unit members bid their shifts by seniority and that three shifts, an 8:00 a.m. to 4:00 p.m., 4:00 p.m. to 12:00 midnight and 12:00 midnight to 8:00 a.m. shift be established. The Village's response is that scheduling is a managerial function.

Absent a demonstrated need for some other basis for assignment to shift, seniority is a fair and equitable basis that avoids any perception of favoritism. That is why the Panel will grant a request for police officers but not for the Sergeant or

Lieutenant. The Panel notes that it is for the Village to decide when the supervisory staff should be on duty, particularly in the event both supervisors should be senior personnel and there be openings for two officers on the same shift.

With respect to what shifts should be established to provide coverage, the UFP has not presented sufficient information for the Panel to make an award..

AWARD

ARTICLE XV

A new Section B is hereby added to Article XV, effective with the first pay period after the issuance of this Award, to read as follows:

B. All full-time police officers shall bid their shifts annually by seniority (date of full-time hire by the Village). However, the Village may assign the Lieutenant and Sergeant to their respective shifts. The rest of the request is denied.

10. RETIREMENT PLAN

The UFP proposes an improvement in the retirement plan for police officers, which the Village maintains it cannot respond to because it is unclear.

The Panel finds that the proposed increase is a very costly item which is clearly beyond the present means of the Village. It must therefore be rejected.

AWARD

ARTICLE XVI

The UFP's proposal for an improved retirement plan is rejected.

11. DISPUTES

The UFP seeks to amend the parties' dispute resolution procedure by requiring a written response from the Commissioner of Police or Officer in charge within five days of presentation of a grievance, elimination of the second step, which calls for presentation of the dispute to the Police Committee of the Village Board if it has not been resolved within fifteen days from presentation to the Police Commissioner, a written response by the Mayor (the present third step) within five business days of presentation of the grievance to him or her, and clarification of the fourth step so that there be no question that the arbitration presently provided for is binding,¹⁵ a provision to make it clear that each party is responsible for the cost of preparing its own case, and a requirement that the Village process the arbitration application. The Village's response to the UFP's proposal is that the present provision of fifteen working days for response by the Police Committee is needed given

¹⁵The expired contract provides for arbitration. Under normal rules of contract construction, unless there is a provision that the arbitration is advisory, it is universally construed to be binding. However, it cannot hurt, to avoid any questions by those not familiar with the field, to include the word binding in an agreement.

the part-time nature of Village government.

After considering all of the UFP's proposals with respect to the dispute resolution process, the Panel is of the opinion that some changes are warranted in the present procedure. There should be a time limit set for the Mayor's response so that there could be no question concerning when the matter may proceed to arbitration, if necessary. Also, as already indicated in the footnote, it may be of some value to make it clear in the contract that the arbitration is binding and that each party is responsible for the cost of preparing its own case. Accordingly, these items will be awarded, but with a more reasonable fifteen business day response time by the Mayor instead of the five days requested by the UFP.

AWARD

ARTICLE XVII

The following sentence is hereby added at the end of Article XVII A.3 of the parties' agreement, effective with the issuance of this Award.

The Mayor shall respond in writing within fifteen business days of presentation.

Article XVII A.4 is hereby amended by adding the word "binding" before the word "arbitration", effective with the issuance of this Award.

APPENDIX "A"

The following sentence is hereby added to Article XVII A.5, effective with the issuance of this Award:

Each party shall be responsible for the cost of preparing its respective case.

12. FEDERATION LEAVE

The UFP proposes that Unit members be allowed to attend Union meetings while on duty, provided they remain within the Village limits, and that the local PBA President or his designee be permitted to attend to PBA or UFP business, with pay and without charge to any accumulated leave credits. The Village responds that these are managerial prerogatives.

While the Panel does not agree with the Village that leave with pay for Union business cannot be provided for in an agreement or interest arbitration award, the Panel believes that the size of the Village's police force is such that to grant any such leave would cause an undue hardship upon the Village. This proposal is therefore rejected.

AWARD

PROPOSED NEW ARTICLE

The UFP's proposals for the right to attend Union meetings and for the President or his designee to engage in Union business and be paid by the Village, are denied.

13. DISCIPLINARY PROCEDURE

The UFP's final request is for a disciplinary procedure which results in arbitration as the final step.

The Village opposes this proposal on the ground that discipline is a management function.

Inasmuch as the representatives of neither party can recall a disciplinary penalty ever having been imposed against any police officer, there is no need to give consideration to this proposal as this time. What can be of benefit to the parties, however, is a contractual reminder that the disciplinary procedure set forth in Section 75 of the Civil Service Law is applicable to some of the Unit members. The award will reflect this.

AWARD

PROPOSED NEW ARTICLE

The UFP's proposal for a disciplinary procedure ending in binding arbitration is denied. A new Article, designated XVIII, is hereby added to the parties' contract, to provide as follows, effective with the issuance of this Award:¹⁶

XVIII. The parties recognize that Section 75 of the Civil Service Law is available to all Unit members eligible thereunder.

The awards set forth herein shall cover the period from June 1, 1991 through May 31, 1993, and the provisions shall be retroactive to the date of its inception, except as otherwise provided in the awards.¹⁷

¹⁶Succeeding Articles are renumbered accordingly.

¹⁷The parties have agreed to this provision.

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

Pursuant to CPLR Section 7507, I hereby affirm that the foregoing awards are mine.

Dated:

Jerome Thier
Public Member and Chairman

State of New York)
) ss:
County of Dutchess)

Pursuant to CPLR Section 7507, I hereby affirm that the foregoing awards, with the dissents indicated below, are mine.
Dissents as to items

Dated:

Jim Bain
Employer Member

State of New York)
)
County of ORANGE)

Pursuant to CPLR Section 7507, I hereby affirm that the foregoing awards, with the dissents indicated below, are mine.
Dissents as to items DEVELOP.

ARTICLE II E - LONGEVITY PAYMENTS

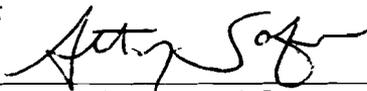
ARTICLE III - MAXIMUM OVERTIME PAYMENT

ARTICLE V - HOLIDAY OVERTIME PAYMENTS FOR PART TIME OFFICERS

ARTICLE VIII - PAYMENT FOR SICK LEAVE

Dated: UPON RETIREMENT OR SEPARATION

4/12/93



Anthony Solfaro
Employee Organization Member

ARTICLE XVI - RETIREMENT

NON ARTICLE - FEDERATION LEAVE

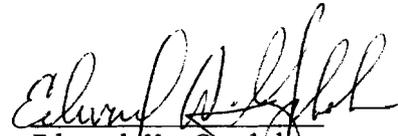
NON ARTICLE - DISCIPLINARY PROCEDURE - PROCEDURE ENDING IN BINDING ARBITRATION



Concur ✓

Dissent _____

Dated: February 18, 1994


Edward W. Guzdek
Union Panel Member

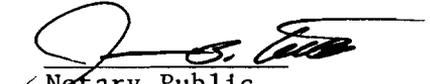
STATE OF NEW YORK)

ss:

COUNTY OF

Sworn before me this

day of February 1994.


Notary Public

JAMES B. TUTTLE
Notary Public
State of New York
No. 0011266
Cattaraugus County
Expires April 19, 1995

