

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,
by ELIOT SPITZER, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiff,

01-CIV-0364 (CM)

-against-

THE TOWN OF WALLKILL,

Defendant.

-----X

FIRST REPORT OF THE MONITOR

January, 2002

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Monitor

Police Assessment Resource Center
Staff to the Monitor

Monitor and Staff

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FIRST REPORT OF THE MONITOR

Introduction

This is the First Report of Dean Esserman (the Monitor) and the Police Assessment Resource Center (PARC) on implementation of the Consent Decree agreed to by the Town of Wallkill and the New York State Attorney General concerning the functioning of the Town of Wallkill Police Department. United States District Judge Colleen McMahon, of the Southern District of New York, approved and entered the Consent Decree on April 5, 2001, and in June, the Court selected then-Stamford, Connecticut Police Chief Dean Esserman to audit compliance with the Consent Decree. The Court appointed PARC to assist Chief Esserman.

During the last seven months, the parties to the litigation resolved their differences concerning the content of the Best Practices Guidelines, and the Wallkill PD has begun to put them into practice. The Police Department initiated new procedures, installed videocameras in the police cars, and began in earnest to come to grips with the Consent Decree and the monitoring required by it. After a period of turmoil, an exodus

of personnel, and nationwide bad publicity, the Wallkill PD enjoyed several months of relative calm under a well-chosen Acting Chief. The ugly allegations that prompted the Attorney General's investigation and the necessity for a Consent Decree have not been heard afresh. The complaints from other local law enforcement agencies about the lack of professionalism and cooperation by Wallkill have abated. One has the sense that the Wallkill PD hit bottom and in the last seven months has begun the upward climb.

As a result, over the past seven months, of a wide range of interviews and consultation with persons in the Wallkill area, the review of hundreds of documents and many hours of videotapes, ride-alongs with Wallkill police officers, conferences with Orange County law enforcement officials, meetings with Wallkill governmental leaders and police officials, and the substantial time we have spent in the Town, we are cautiously optimistic in these respects:

- In the last seven months, no new complaints have surfaced raising the troubling and serious allegations of police misconduct and abuse of authority that precipitated the Attorney General's lawsuit in the first instance. Any doubts and criticisms of the progress made by the Department and the Town must be measured against the heartening news that fresh allegations of serious abuse have not been made.
- The Wallkill PD has forged a healthier working relationship with the Orange County District Attorney's office and is referring felony and investigative matters to the State Police in accordance with the Consent Decree.
- Under Acting Chief John Beirsto, who resigned at the end of 2001, the Wallkill PD had competent leadership. We acknowledge his good work

during the greater part of his stewardship of the Wallkill Police Department. Acting Chief Beairsto was quick to establish an open and constructive relationship with the Monitor and PARC.

- Town Supervisor John Ward commenced his term at the beginning of this year. Although he has been in office less than one month at the time this Report is being drafted, he has impressed the Monitor and PARC with his skill, diligence, and vision for Wallkill and its Police Department. He understands that the Consent Decree and the Monitor are here to stay. But more importantly, he appears to share the aspirations expressed in the Consent Decree and by the Monitor for professionalizing the Wallkill PD. We have begun a fruitful and constructive relationship with Supervisor Ward and hope that a similarly fruitful and constructive relationship with the new Town Board is forthcoming.

At the same time as we have these reasons for optimism, we must also acknowledge substantial cause for concern. Considerably more work needs to be done before the Wallkill PD becomes the highly professional, well-trained, and skillful law enforcement agency mandated by the Consent Decree and the Best Practice Guidelines. Moreover, as will be demonstrated herein, the pace and extent of reform have been slower than we had hoped. In part, the limited progress reflects that the Department has had only temporary, acting leadership for the past 20 months. In part, it reflects an absence of forceful leadership, wise guidance, or zest for reform by the prior Town Board. In part, it is a reflection of the difficulty of bringing change to an institution, even one as small as the Wallkill PD. Every organization has its culture and its history. The

Consent Decree and the Monitor must step in midstream. Longstanding alliances and friendships, long-nurtured resentments and grievances, time-honored ways of doing things, and the unique mix and interaction of different personalities give each police department its individual stamp and make it more or less difficult to change or reform. Internal division, palpable tension, and strongly-held opinions, along with unresolved conflicts, grudges, and resentments, were all hallmarks of the Wallkill PD as we first found it.

As a result of all the foregoing factors, the future of the Wallkill PD still has many challenges to overcome:

- There is little prospect that the Consent Decree can be implemented without a labor contract that provides substantial and meaningful raises across the board at all levels within the Wallkill PD. Recruitment, hiring, and retention of good officers, as required by the Consent Decree and the Best Practice Guidelines incorporated therein, are goals that cannot be met otherwise. It is shameful that the Town pays paltry salaries to those responsible for public safety, putting Wallkill at the very bottom compared to other towns and cities in Orange County. By voluntarily entering into the Consent Decree, the Town necessarily committed itself upon penalty of contempt to the expenditure of substantial resources to professionalize the Wallkill Police Department. Although the prior Town Board was generally unwilling to shoulder that burden, it did approve a 2002 budget for the Police Department that is more realistic. We are encouraged in general by the new Town Supervisor's early focus and activity regarding

the Wallkill PD's problems. We are hopeful that the new Town Board will recognize that it is in Wallkill's best interests to professionalize the Police Department by implementing the Consent Decree, even though that will require substantially increased expenditures. But should our expectations and hopes in this regard not be met, and should adequate resources not flow, the Monitor will not hesitate to exercise his authority to certify to the Court that the Town is not in compliance with the Decree.

- There is little prospect that the Consent Decree can be implemented without an expansion of the Wallkill Police Department's staff. Two additional sergeants were appointed in October, but only after the Court explicitly directed the Town to do so. There is too much work for the Chief who needs an executive officer or lieutenant to assist him. The Consent Decree and Best Practice Guidelines require excellence and consistency in supervision, rigor in oversight, substantial training and re-training of officers, regularization and standardization of procedures, and rapid professionalizing of the Police Department. The Town has thus far not provided the staffing to do so. Moreover, and equally troubling, the number of officers currently employed by the Wallkill PD is only half the Department's authorized strength. The thin ranks mean that the few officers on duty must perform substantial amounts of overtime, a practice that leads to fatigue and increases the risk of things going awry. The situation must be rectified.

- The Wallkill Police Department has not been led by a permanent Chief since May, 2000. It is imperative that a highly-qualified and highly-energized successor be quickly appointed. Due to the cooperative relationship that has been formed with the new Town Supervisor, the Monitor has played an advisory role in the selection of a new Chief. The Monitor will follow with interest whether the new Chief is given a free hand to hire additional staff, and spend the necessary money to bring the Department into compliance with the demands of the Consent Decree and Best Practice Guidelines. Perhaps the most difficult challenge facing the new Chief will be to knit together and give a sense of shared purpose to a dispirited and depleted force that has not had supportive, highly professional, and competent permanent leadership and supervision for many years. Strong leadership and supervision will demonstrate how well-trained and well-supported police officers can enforce the law, serve the community, adhere to the highest ethical and professional standards, honor the Constitution, and get the job done in a way that does not unnecessarily compromise their safety or those with whom they come into contact.
- There is also little prospect that the Wallkill Police Department can begin raising the level of its professionalism until it gets an adequate police station. From its size, to its layout, to its furnishings, the current police station demonstrates a serious lack of commitment by the Town to a professional police force. The Department's current officers repeatedly

cite their embarrassing facilities as an indication that the Town fails to recognize the importance of an effective police force or to respect those charged with protecting the safety of the public. They are correct in this regard. The new Town Supervisor has pledged to greatly improve the Department's facilities in the near future. Delivering on that pledge *this year* is essential.

- Although the Police Department has turned over its felony arrests and investigations to the State Police as required, a smoother and on-occasion more timely transfer process needs to be worked out. Eliminating ambiguity and uncertainty concerning such transfers is particularly important because the members of the Department have expressed significant unhappiness concerning the requirement to turn over all felony matters to the State Police.

The Report that follows will amplify on the positives and negatives reflected above. First, however, it is useful to recount briefly how the Town of Wallkill and its Police Department found itself in legal difficulty to begin with.

I. Historical and Factual Background

Wallkill forms a horseshoe around the city of Middletown, an older town of 25,000 packed into four square miles in New York's Orange County. Wallkill also has a population of approximately 25,000 and is growing. Wallkill is 64 square miles of diminishing rural farm land, growing suburban shopping malls and strip shopping centers, light industry, and expanding residential neighborhoods, ranging from a small

pocket of low income housing to substantial working class and middle class single family neighborhoods characterized by detached housing and townhouse complexes. Wallkill serves increasingly as a bedroom community for people working in New York City, including police officers and firefighters.

The Wallkill town government is housed in a modern, reasonably well-appointed, single story building with a large, school-auditorium-like courtroom for traffic and criminal cases, a conference room for the Town Board, and suites of offices for the Town Supervisor and other Town officials. The Wallkill PD also has its offices in the Town Hall.

Police headquarters are hidden in the back of the Town Hall in three tiny, cluttered, uninviting, out-of-the-way rooms with worn-out furniture. The lock-up is small and cramped. The Chief's office is not even in headquarters but rather is in another part of Town Hall. The Wallkill Police Department locker room, in the building's basement, has trash cans that are rarely emptied and floors that are rarely, if ever, swept. When it rains hard, the floor floods.

The Wallkill PD was formed in the 1980's and remained a part-time constabulary until 1989. As a semi-rural community, Wallkill for years was able to police itself adequately with part-timers, leaving serious crime for the State Police. As the town grew and attracted industry, commerce, and residents, its needs changed and it went to an essentially full-time police department.

As epitomized by the shabby and neglected police headquarters, the Town of Wallkill, however, has failed to invest resources in its Police Department or to set and enforce standards of accountability and professionalism for the force. Its lack of interest

and oversight permitted the Wallkill PD to degrade in quality. As noted above, the Wallkill PD is the lowest-paid police force in Orange County. Patrol officers currently start out at about \$27,000; by contrast, Middletown pays \$37,000. Sergeants in Wallkill start at approximately \$39,000, while sergeants in adjacent Middletown start at \$57,000. Middletown has more than 60 sworn police officers, while Wallkill, with an equivalent population, has many fewer officers: it has an authorized strength of 28 but currently has only 14 full-time officers, three part-timers, and 5 sergeants, including one who is currently in charge in the absence of a chief or an acting chief. The lack of adequate patrol staff means that those who are there must work unhealthy amounts of overtime. The Wallkill PD, by its own lights, is fairly busy: it responded to 15,444 calls in 2001 (down from more than 18,000 calls the prior year).

The investigation conducted by the New York Attorney General, confirmed by our own observations, concluded that the Wallkill PD has been under-trained, under-supervised, and unprofessional in its policing. At least part of the merchant community seems still to hold that view: although the Galleria, the main regional shopping mall, is within Wallkill's town boundaries, a majority of Galleria merchants call the state troopers when there is a need for police at the mall. The state troopers and the Wallkill PD have had a historically difficult working relationship for years, largely due to the Wallkill PD's failure to follow protocols that required Wallkill to involve the State Police in the investigations of serious crimes. At times, the Wallkill PD apparently barred the State Police from crime scenes if the Wallkill PD arrived first. No problems approaching this magnitude have recurred with the State Police.

A series of troubling allegations against the Wallkill PD triggered the investigation by Eliot Spitzer, the Attorney General of the State of New York, and his staff. The investigation culminated in a Complaint filed by the Attorney General in the United States District Court for the Southern District of New York on January 18, 2001, seeking cessation of the unconstitutional and illegal practices alleged by the Attorney General and appointment of a monitor. The Attorney General's investigation and supporting documentation provide a convincing factual predicate for the Complaint's allegations that:

- Members of the Wallkill PD repeatedly subjected women motorists to illegal stops and sexually harassing behavior.
- Members of the Wallkill PD retaliated against and attempted to intimidate the Town's Police Commission after the Commission had issued a report sharply critical of members of the Wallkill PD.
- In apparent retaliation for critical stories about the Wallkill PD, drivers for the Middletown newspaper were stopped and subjected to mass ticketing by the Wallkill PD. All of the tickets issued were ultimately dismissed by a local judge.
- The then-Chief of the Wallkill PD and others responsible for the police force failed to supervise, monitor, and discipline officers who had engaged in the alleged misconduct described above.

The month after the Attorney General filed suit, the Town agreed to enter into a Consent Decree. Among other things, the Town agreed to end the alleged illegal and unconstitutional practices of the Wallkill PD, adopt and enforce a series of best practices

to govern the police force, overhaul and improve the law enforcement agency's procedures for the receipt and investigation of citizen complaints, and improve internal investigations. The Town agreed that it would impose appropriate discipline on errant officers.

Significantly, the Town agreed to submit to the ongoing supervision of the federal court and an independent monitor with far-reaching authority. The Decree gives the Monitor plenary power to collect and review any and all documents of the Wallkill Police Department necessary to determine the Town's compliance with the Decree. Consent Decree, ¶¶61, 62. If the Monitor needs additional documentation or information, the Town has a strict four-day time limit to produce it or deliver a sworn statement that the information does not exist. *Id.* at ¶62. Should the Monitor determine that it is necessary to interview a member of the Wallkill PD, the individual must be made available immediately, if on duty, or at the start of the next tour if the person is not on duty. *Id.* at ¶63. The Monitor has "unrestricted access" to any Wallkill PD documents or databases and "immediate access" to all Wallkill PD staff and facilities as necessary. *Id.* at ¶64. The Monitor must be provided with private workspace and access to a photocopier. He is empowered to perform proactive tests and evaluations. *Id.* at ¶65. The Monitor may consult in confidence with other law enforcement entities, including the New York State Police and the Orange County District Attorney's Office. *Id.* at ¶64.

The Monitor is obliged to issue reports semiannually during the first year of the Decree and at least annually thereafter for the three remaining years of the Decree. The reports must determine whether the Town is complying with the Decree and, if necessary, recommend steps for remedying violations. *Id.* at ¶66.

The consequences of a finding by the Monitor that the Town is not in compliance are strict. Upon service of the Monitor’s Notice of Non-Compliance, the Town has ten days to correct or cease the violations and implement the corrective steps set forth in the Monitor’s Notice. *Id.* at ¶69. The Monitor’s reports and Notice of Non-Compliance, as well as any other submissions or testimony by the Monitor, are *per se* admissible in evidence, are deemed to make out a *prima facie* case of violation of the Decree, fully satisfy the Attorney General’s burden of production on those issues, and create a presumption in favor of violation of the Decree. *Id.* at ¶70.

The Court retains jurisdiction and the Monitor remains in place for four years, and for up to two years longer if the Court makes a finding that the Town has engaged in a pattern and practice of violating the Decree. The four years can be reduced to three if the Police Department receives accreditation from the New York State Law Enforcement Accreditation Program. *Id.* at ¶72. The Court retains “all equitable powers necessary to enforce the terms of [the] Decree, including but not limited to, the power to impose fines and to hold [the Town] in contempt.” *Id.* at ¶73.

II. Best Practices Guidelines

The Consent Decree required that, within 95 days of its entry, the Town adopt a set of “Best Practices Guidelines” that would serve as the “rules, regulations and procedures governing behavior and practice” of the Department. *Id.* at ¶¶7, 77. Once adopted, the Guidelines—which were to cover a variety of specific topics raised by the Attorney General’s allegations, as well as general rules of good police procedure—were to be incorporated by reference into the terms of the Decree. *Id.* at ¶¶7-50. Violation of

the Guidelines was to have the same effect as the violation of the Decree itself and was to be subject to same enforcement provisions. *Id.* at ¶¶7, 50.

From May through August, 2001, the Attorney General and the Town exchanged drafts of the Guidelines and comments and suggestions concerning those drafts. The Police Benevolent Association, which also provided comments, was somewhat involved in the process—in the main, dealing with the Town. With the active encouragement of the Monitor, the parties narrowed their disagreements until only 11 provisions remained in dispute. On August 28, the Monitor resolved those disputes—sometimes adopting the position of the Attorney General, sometimes adopting the position of the Town, and sometimes choosing the middle ground.

At a status conference held on September 5, 2001 before Judge McMahon, the Best Practices Guidelines were submitted to and accepted by the Court as Exhibit A of the Consent Decree. By terms of the Decree they immediately became binding on the Town and the Department. *Id.* at ¶53. A week later, the Town Board, as required, adopted the Guidelines by Board Resolution. *Id.* at ¶53. By September 22, the Guidelines were supposed to have been distributed to all members of the Department, who were to sign a receipt acknowledging that failure to follow the Guidelines might result in disciplinary action. *Id.* at ¶54. In fact, the distribution of the Guidelines occurred from late September through late October, and the requisite receipts were not executed until mid-November,¹ and only then after prodding from the Monitor and the

¹ One veteran officer added a long addendum to the prepared receipt, stating in part: “I have not completely read nor fully understand the guidelines [*sic*].”

Attorney General. Sergeants conducted training concerning the Guidelines for the patrol officers in late November, but again only after significant prodding from the Monitor.²

III. Staffing

Chief. Throughout his 11 months with the Department—ending December 31, 2001—John Beirsto was Acting Chief. His service as Acting Chief was prolonged, and the search for a new Chief was consequently delayed, because of ongoing disciplinary proceedings against the former Chief, James Coscette, who was suspended by the Wallkill Police Commission in May, 2000. The decision of the hearing officer recommending dismissal was not issued until October 26, 2001, and the Town Board did not vote to dismiss Mr. Coscette until December 20. Due to his health and other personal considerations, Chief Beirsto had decided months before, and had informed Town officials that he would not stay beyond the end of the year. In the last few months of his tenure, Chief Beirsto's health deteriorated, thereby making it very difficult for him to perform his duties as he would have wanted. Upon taking office on January 1, 2002, the new Town Supervisor, John Ward, designated Sgt. Steven Walsh as Member in Charge while a search was conducted for a new Chief.³

Knowing that the position would be vacant, Mr. Ward had begun looking for a new Chief in December, even before Mr. Ward himself officially took office. Not only has he been diligent in seeking to fill the position promptly, but he has also involved the

² The Monitor and PARC asked to be included and permitted to attend one of the training sessions. But despite PARC and the Monitor's having given adequate notice that they would be in Wallkill twice in late November and would like to see a training on either of those occasions, the Wallkill PD conducted the training on days other than those scheduled visits.

³ "Member in Charge" is different from "Acting Chief" and connotes somewhat less authority.

Monitor and the Orange County District Attorney in the interview and selection process. The Monitor, of course, is central to the selection process. The Consent Decree mandates that the Town search for and select “a Chief who is qualified to implement this Decree and its objectives.” *Id.* at ¶17. The Town may not hire or retain a Chief who fails to meet those and other qualifications set forth in the Decree without the written consent of the Monitor. *Id.*

Executive Officer/Lieutenant. Chief Beirsto determined that the Chief needed a second in command to effectively run the Department. He unsuccessfully sought authorization to create such a position—that could be entitled “executive officer” or “lieutenant”—from the old Town Board. While creation of this position is not a priority in the next month or two, we believe that the new Chief will likely identify the same need for command support that Chief Beirsto recognized. If that eventuality does occur, the Monitor will expect the present Town Board to be more receptive to meeting this need than its predecessor was.

Sergeants. Central to the theory of the Attorney General’s complaint was that many of the Wallkill PD’s abuses of the public occurred as a result of lack of proper supervision. As a result, Rule 17.1(b) of the Guidelines requires that a sergeant be assigned to each shift and oversee the officers assigned to that shift. The Town resisted this provision because it required funding two new sergeant positions in order to bring the total number of sergeants to five, the number required for coverage of all shifts 365 days a year. The Monitor, however, took strong exception to the Town’s position and so informed the Court.

Accordingly, at the September 5 status conference, the Court ordered the Town to hire two new sergeants within 45 days. On the recommendation of Chief Beairsto, the Town promoted Officers Thomas Badendyck and Brian Quinn to sergeant, effective October 27. Since that time at least one of the five sergeants has generally been assigned to every shift. The sergeants have reported more reasonable workloads and a greater ability to supervise as a result of the increase in their numbers.

Unexpected absences and Sergeant Walsh's duties as Member in Charge have resulted in some shifts not being supervised by a sergeant, particularly during January, 2002. The failure to have each and every shift covered by at least one sergeant is of significant concern to, and will be closely watched, by the Monitor. Insofar as this problem is a byproduct of the vacancy in the Chief's position, this makes the speedy choice of a Chief all the more imperative. The past abuses by the Wallkill PD stemmed in significant part from the lack of supervision. Recognizing that, the Monitor recommended to the Court that the number of sergeants be increased. Now that that positive step has occurred, the Monitor expects each shift to be supervised by a sergeant, even if it requires overtime.

Officers. With the promotion of two officers to sergeant, the Department's complement of officers has shrunk to 14 full-timers and three part-timers—approximately half the number of officers the Department fielded two years ago. That number includes one lateral hire Chief Beairsto made last fall, one officer who recently returned from a parental leave, and one officer who is on extended post-September 11 military duty (and thus will not be available to the Department for many more months). As a result, the Department usually has only three or four (and sometimes two) officers on patrol during

a shift, when it used to field five or six. Very little patrolling occurs in the least busy of the Town's four sectors. Despite the small number of officers per shift, this degree of coverage is maintained only through large amounts of voluntary overtime. Many of the officers report tremendous fatigue from working multiple double shifts week after week.

Most discouraging has been the inability to hire new officers for the Department. This fall, the Department canvassed numerous candidates from the civil service list, with the intent of bringing them on board in time to attend a six-month training academy in Rockland County starting in February. Sergeant Walsh interviewed numerous candidates who had expressed interest and selected a number for background checks. In the end, all the candidates in whom the Town was interested withdrew from consideration, principally because of the low salary or because they had accepted a higher paying police position elsewhere in the county. Being the lowest paid police agency in the county has many negative consequences—not the least of which is extreme difficulty in hiring. In this case, despite earnest efforts, hiring was impossible. Since the next Rockland County training academy does not start for six more months, the new Chief will have to explore other options for getting new hires trained. A new contract with competitive salaries will also increase the likelihood that certified officers from other jurisdictions, who do not need to attend the training academy, will become interested in lateral transfers to the Wallkill PD.

* * *

In sum, the Wallkill PD does not have a Chief, only recently hired enough sergeants to cover all shifts (though it has failed to achieve universal coverage), and is down to approximately half of its authorized strength. There still is inadequate staff for

the training, supervision, and oversight of Wallkill police officers required by the Consent Decree and the Best Practice Guidelines. Important tasks to ensure the quality of service—such as frequent, critical, and thorough review of videotapes of officers—are not being performed in a timely or satisfactory manner. The Town has been unable to hire entry-level officers at the paltry salary it currently offers. The Monitor will carefully track whether the situation improves.

The Monitor has put the Town Board and the Town Supervisor on notice, and does so once again by this Report, that the Town must supply the necessary funding to increase the command staff and the number of rank-and-file officers. It must pay all of them at a rate that will quickly fill vacant positions and attract worthy applicants. The Town has been put repeatedly on notice, and therefore knows that the Monitor expects and requires speedy action. Lest there be any misunderstanding, the Town's failure to act in these circumstances may very well constitute knowing and willful disregard of its obligations under the Consent Decree. The Town cannot defeat the Consent Decree by withholding the funds necessary to implement it. In the next section of this Report, we look more closely at those budgetary and salary issues.

IV. Contract, Budget and Facility

Contract. The last labor agreement covering the officer-sergeant bargaining group expired in 1998, and even at that time, Wallkill officers were extremely poorly paid. The intervening years have caused the Department to sink even deeper into its status as the poorest-paid police agency in the county. This past summer the attorney negotiators were hopeful that they had reached agreement, but in the end the Town Board

decided that the proposed agreement was too expensive. This misstep by the Town Board caused the already low morale of the sergeants and officers to sink still lower.

Following rejection of the proposed agreement, bargaining failed to resume because of a dispute arising out the Consent Decree. The Decree provided that the discipline would be imposed “consistent with all legal and contractual obligations.” *Id.* at ¶41. Rule 10 of the Guidelines, which dealt with discipline, is silent, however, as to whether the right to arbitrate disciplinary decisions of the Town Supervisor, provided for by the expired collective bargaining agreement, continues to exist. The PBA worried that a court or arbitrator might interpret the Guidelines’ failure to mention the right to arbitrate as precluding the exercise of that important contractual right. The union announced this fall that it would not further bargain with the Town, even on the question of salary, until the purportedly lost right to arbitrate had been explicitly confirmed or, if it had indeed been eliminated, explicitly restored. Subsequently, the PBA filed a grievance with the State Public Employment Relations Board (PERB), raising several issues arising out of the Guidelines, with the right to arbitrate being by far the most important issue to the union.

In light of the Town’s apparent inability to resolve the issue, and recognizing that the Department could never become more professional without a new union contract that provided a competitive wage scale, the Monitor took initiative to break the impasse. PARC confirmed through conversations with each that neither the Attorney General nor the Town had intended through the Consent Decree or the Guidelines to abrogate the union’s right to arbitrate. The Attorney General enunciated his position on the continued availability of the right to arbitrate in a letter to PERB. The union believed, however,

that it was still vulnerable to a contrary interpretation by a court or arbitrator unless the Guidelines explicitly affirmed the continuing vitality of the right to arbitrate. Again, the union declared that it would not bargain until the Guidelines had been amended. While making it clear to the union and the Town that neither the Attorney General nor the Monitor would permit or encourage piecemeal amendment of the Consent Decree, the Monitor prevailed upon the Attorney General to agree to an amendment on this narrow point.

Despite agreement by the Attorney General, the Town and the PBA that right to arbitrate continues unchanged, it took a month of shuttle diplomacy by PARC to resolve disagreements between the Attorney General and the union as to the wording of the amendment. Since the Town has also accepted that language, it is expected that in the near future that amendment to the Guidelines will be presented to the Court for approval.

Budget. Pursuant to Chief Beairsto's request, the prior Town Board adopted a Police Department budget for 2002 of \$2 million—an increase of 28 percent over the prior year's budget.⁴ The budget assumes realistic salary increases and the hiring of ten additional officers. After years of parsimony, the Town's adoption of an increased budget was a sign of realization that, to a significant extent, one gets the police force one pays for. But passing a budget is not tantamount to spending the money or agreeing with the union to pay reasonable salaries. As noted earlier, the Monitor will continue to carefully note whether the Town follows through to fund the Department adequately or conversely impedes implementation of the Decree by starving it of funds.

⁴ The biggest increases are for salaries, uniform allowances, training and seminars, background checks and equipment maintenance.

Facility. In October the now-replaced Town Board voted by a slim majority to build a new Town Hall, including within it a new 9,000-plus-square-foot police station. Such a facility would not only have met the Department’s short-term needs, but also its projected needs for quite a few years to come. The following month, however, the Board had a change of heart when it came to authorizing the expenditures needed to build the new Town Hall.⁵ Despite knowing that a new facility was imperative, and despite having formally voted for one, when it came to spending the money, the old Town Board—as it had done to the Police Department’s detriment time and again—balked at “putting its money where its mouth was.”

Mr. Ward, the new Supervisor, who was not a member of the prior governing body, has been outspoken in recognizing the need for a decent police station not only in the long term but in the near future. He has proposed, among other ideas, moving various Town offices from the present Town Hall to rented quarters and greatly expanding the Police Department’s space in the present building. Since he so clearly articulates the Department’s space needs, there is reason for cautious optimism that a majority of the Town Board will concur and that positive action will follow. The Monitor has reiterated to the Town on numerous occasions that he considers an appropriate facility in the near future essential to the Town’s compliance with the Consent Decree. Just as with staffing, the Town’s failure to provide the necessary resources to accomplish the ends of the Consent Decree may well be determined to violate the Decree.

⁵ A bonding resolution requires a super majority of four of the five Town Board members. But the Board no longer could muster even the three votes by which it had voted for the new Town Hall the prior month.

V. Discipline

The Decree required that the Monitor, within 60 days of assuming office, review any evidence collected by the Attorney General regarding allegedly illegal conduct by members of the Wallkill Police Department. The Monitor is empowered to issue a special Notice of Non-Compliance requiring disciplinary action against certain officers. *Id.* at ¶68. Pursuant to those provisions, the Monitor made a timely demand upon the Attorney General and, on or about July 16, 2001, the Monitor received a letter from the Attorney General along with a notebook and other materials containing the evidence collected during that office's investigation. On August 2, 2001, the Monitor transmitted the Attorney General's July 16 letter and the enclosed investigative records to Francis D. Phillips II, the District Attorney for Orange County, for determination of whether criminal misconduct had occurred and should be prosecuted.

At the same time as he transmitted the materials to the District Attorney, the Monitor requested permission from the Attorney General to make the same documents available to Chief Beirsto and Doug Solomon, the Town's counsel on disciplinary matters. The Attorney General objected and asked for an opportunity to negotiate limitations on the use of those materials by the Town. The negotiations reached an impasse. The Monitor tendered the issue to the Court for resolution at the September 5 status hearing. On September 6, the Court issued a Confidentiality Order requiring that the Attorney General turn over the investigative records by September 12 and imposing specified limitations and restrictions on the use of the information contained therein. The Attorney General complied with the Court's Order in a timely fashion.⁶

⁶ The records were provided to Mr. Solomon on or about September 11.

Although the Town has continued to pursue disciplinary proceedings which were commenced prior to the Consent Decree against former Chief Coscette and other Wallkill officers, any decision by the Town to commence new disciplinary proceedings against Wallkill police officers for conduct disclosed in the Attorney General's investigative materials has been held in abeyance pending the District Attorney's determination as to whether to proceed criminally.

The new Chief and the Town's labor counsel will ultimately be required to investigate allegations meriting discipline and determine whether to proceed administratively against Wallkill officers for conduct disclosed in the Attorney General's materials. Upon completion of those investigations, which the Monitor will insist be performed with great dispatch, the Monitor will confer and consult with the Town's counsel on disciplinary matters and the Chief regarding their determinations to proceed or not to proceed administratively. Should the Monitor disagree with them, he reserves the option provided in the Consent Decree to issue a special Notice of Non-Compliance.

With respect to the pending administrative proceedings against Wallkill officers that antedated the Consent Decree, the following has occurred. As mentioned earlier, on October 26, 2001, a hearing officer published his decision upholding administrative charges against former Chief James Coscette and recommending dismissal. The Town Board accepted the recommendation and voted on December 20 to dismiss Mr. Coscette. Administrative proceedings remain pending against two other Wallkill officers who were suspended in 2000 for alleged misconduct. Arbitration decisions in those matters are expected in the near future. The underlying allegations in one of those matters, if true, contributed in part to the necessity for the Consent Decree in the first place. Another

administrative proceeding against an officer for pre-Consent Decree misconduct was settled by the officer's agreement to resign from a second job that was inconsistent with his work as a police officer. Charges—all of which predate the Consent Decree—against four others were resolved, after arbitration, in the officers' favor.⁷

VI. Oversight Activities

Complaints. Key allegations in the Attorney General's suit concerned the absence of an effective method for the public to file a complaint of officer misconduct with the Wallkill Police Department and, if such a complaint were accepted, the absence of any mechanism for a diligent, unbiased investigation. The Consent Decree created access for civilian complaints and a mechanism for investigating and resolving them. *Id.* at ¶¶33-42. Even before the Decree was adopted, Chief Beairsto had issued a memo that met much of the spirit of the Decree's provisions but lacked some of its documentation requirements and other specific procedures.

When the Monitor and PARC reviewed the handling of complaints that had been received by the Wallkill PD between the start of 2001 and November of that year, they found multiple defects in procedures and a total failure by the Chief to make initial determinations of the validity of the complaints. These defects and failures, although serious in themselves, did not, however, cause significant harm. This is because the allegations of the complaints, even if true, did not describe serious misconduct. Of the eight complaints received in 2001 after the provisions of the Consent Decree went into effect in July, none involved the sort of serious allegations that had led to the Police Commission report and the Attorney General's lawsuit. Other law enforcement officials

⁷ One of the four had probationary status and was denied a permanent position with the Department.

in Orange County, when queried, have recently informed us that they have heard of no recurrences of the lawless behavior for which the Wallkill Police Department became known several years ago. The further good news is that there is no evidence that any complaints have been turned away by Departmental personnel.

The problems with processing the complaints fell into the following categories:

- Failure to classify a complaint as a complaint. Both Chief Beairsto and some of the sergeants involved had difficulty in accepting that a complaint that they knew, or thought they knew, was false, or a complaint that did not fit into a neat pigeonhole of police misconduct, was nonetheless still a complaint under the broad definition of Rule 9.1(a) of the Guidelines and needed to be recorded and treated as such. The Monitor has emphasized that anything that can be perceived as an “allegation of misconduct” must be treated as a complaint. The Monitor has also pointed out that the failure to treat a matter as a complaint will be deemed non-compliance with the Consent Decree even if investigation shows that the complaint has no merit. The Department has treated all matters that have come to our attention that involve allegations of misconduct (broadly defined) as complaints when directed to do so, but some supervisory personnel still have a difficult time in recognizing implied misconduct claims. The Monitor will continue to address this problem and will work closely with the new Chief to try to ensure that all complaints are treated as such.
- The Guidelines require various written notifications to both the complainants and to the Town Board concerning the initiation and

resolution of complaints. Such notifications are easily accomplished (and easily monitored), but they were not being done until we reviewed the processing of complaints.

- Logbook entries and other documentation of complaints are required by the Guidelines. This is straightforward, but was not being done initially. It appears that the Department now understands its responsibility in this area.
- The Chief is required either to conduct or supervise an investigation into a complaint and initially determine the disposition of the complaint as “substantiated,” “unsubstantiated,” or “unfounded,” or “exonerated.” Consent Decree, ¶¶39, 40; Rule 9.6 *et seq.* If the Chief determines a complaint is substantiated, the Chief is required to recommend appropriate discipline. Consent Decree, ¶41; Rule 9.7. Since Sergeant Walsh assumed the responsibilities of Member in Charge, he has been diligent in fulfilling the Chief’s responsibilities in this regard.
- The manner in which some of the investigations were documented suggested less-than-total objectivity in consideration of complaints. In none of these instances, involving complaints filed after the effective date of the Consent Decree, did the Monitor find that the facts merited a different conclusion than the one reached by the Police Department. Nonetheless, we strongly advised the Department to employ a more neutral and balanced perspective in the future to increase the public’s confidence in both the investigations and the resolutions of complaints.

Once we had identified these problems, we tried to work with Chief Beirsto to fulfill the requirements of the Guidelines. We documented both our requests to Chief Beirsto and his assurances that, despite his health problems, he would resolve the fully investigated complaints that had been received during his administration. Unfortunately, none of the outstanding complaints was resolved by December 31. We were thus forced to file a Notice of Non-Compliance against the Town on Mr. Ward's and Sergeant Walsh's first workday in their new capacities. As required by the Consent Decree, the Town was given ten days to cure its non-compliance. Forced by circumstances outside his control into a difficult position, Sergeant Walsh effectively cured the non-compliance. We have thus been able to avoid formally advising the Court of the non-compliance, which is the required next step when the Town fails to promptly cure non-compliance. In the future, however, we expect the Department—and particularly its Chief—to follow the requirements of the Guidelines without the need for the Monitor to compel compliance.

Stops. Other key allegations in the Attorney General's lawsuit involved vehicle stops for improper purposes and without constitutional justification. The Consent Decree adopted two remedial measures to try to prevent a recurrence of unlawful stops: first, the documentation of officer activity through daily activity logs and stop reports, and second, the videotaping of all vehicle stops through the installation and use of video cameras and microphones in each patrol car. *Id.* at ¶¶10-13, 29. Chief Beirsto extended the video and audio taping requirements to all investigative stops and “calls for suspected criminal activity,” not just vehicle stops. Memo to Department, October 15, 2001.

Videotaping in all Department patrol cars commenced on October 15, 2001. The Monitor and PARC have reviewed 25 percent of the videotapes made during the first

month of videotaping, along with the daily activity logs and stop reports that correspond to the incidents being videotaped. Our review revealed the following types of problems:

- Persistent failure to activate, or to maintain the activation of, the microphone during incidents.
- Occasional failure to activate the video camera, or to continue recording until the end of the incident.
- Two instances where the recording mechanisms apparently malfunctioned and briefly recorded events out of sequence.
- Virtually universal failures to record all required information in stop reports, and an occasional failure to make any written record of a stop. (A newly-designed stop report—that the Department started to use in late January—should encourage much better compliance with these requirements.)
- Significant instances of sloppy paperwork in daily activity logs—e.g., recording wrong days of the month, wrong months of the year, or wrong patrol car numbers—as well as significant underreporting of patrol activity.
- One instance of a woman who was stopped being listed as a man, and two instances of stops of persons who apparently are Black which were not reflected on stop reports. In addition, the old stop report did not call for the identification of Hispanics (the only categories were white, Black and other), leading most Hispanics to be classified as white. (The new stop form calls for the identification of Hispanics as such.)

- Several instances of apparently inappropriate remarks.
- A number of incidents that require explanation because they suggest that political or personal factors influenced police activity, or that records were intentionally kept inaccurately, or that an officer suggested inappropriate further non-police-duty contact with a person involved in a stop.
- The failure of the sergeants to document their reviews of videotapes, and their failure, when reviewing the tapes, to observe most of the above-listed problems.

Because these matters were first brought to the Town's and the Department's attention on January 14, we have not had the requisite time to work with the Department to rectify many of these issues. We will thus report in detail on the remedial steps the Department has, or has not, taken in our next report. We do credit Sergeant Walsh, however, for issuing a January 17, 2002 memo to the Department reminding the members that:

“[t]he in car camera must be activated on all vehicle stops, investigative stops and prior to arriving at calls for suspected criminal activity. It is also imperative that the wireless microphone be activated for the entire stop and/or incident.”

That memorandum is a positive first step in addressing the identified issues. Also, the sergeants have begun to document their reviews of the tapes and any corrective action taken as a result of those reviews.

Our contacts with members of the Department and our review of the videotapes lead us to conclude that, notwithstanding the many issues listed above, the officers are less resistant to this innovation required by the Consent Decree than might be expected. Many of the officers recognize that, if they conduct themselves as they should, they have

nothing to fear from having their stops and other activities recorded. Indeed, two of the six citizen complaints that have been filed since the videotaping began in October have been quickly and conclusively demonstrated to be unfounded based on the videotapes.

In the first instance a driver accused the officer who stopped her of abusive language. A review of the tape showed that the officer had said something that sounded similar to what the complainant had alleged, but in fact was appropriate and respectful. In the second instance, the tape showed that the person taken into custody on an outstanding bench warrant had been lying apparently intoxicated in a pitch-black roadway, rather than having been seized on his grandmother's porch, as the complaint alleged. The officers' conduct not only was appropriate, but may have saved the young man from being run over and killed by a passing car.

In addition, our review of the tapes shows that on one occasion an officer used the videocamera to record the absence of any improper contact between himself and a female domestic violence victim whom he was transporting in the rear seat of his patrol car. The officer realized that the camera could document that he neither did nor said anything improper while he was alone in the patrol car with a woman.

The videotaping and the paperwork concerning stops and other patrol activities need considerable improvement in their implementation, but they seem to have already had the salutary effect of deterring a recurrence of the improper enforcement behavior that led to the Consent Decree.

Early Warning System. The Consent Decree requires the creation of a computerized information system that will track Department and member activity concerning arrests, stops, searches, pursuits, complaints, commendations, training,

discipline, counseling, civil suits, findings of misconduct, criminal charges against officers, and evidence handling. Consent Decree at ¶44; see also Rule 33.6. The Chief and the Town Board are required on a quarterly and cumulative basis to use the information from the computerized information system, together with reports filled out by the officers, videotapes and complaints filed, to try to identify employee problems before they result in discipline. Consent Decree, at ¶44(d),(e); Rule 12.1. Members whose conduct does not conform to the Guidelines, or whose evaluations show the need for improvement, are to be referred to early intervention services, consisting of specified training and counseling. Rules 7.1(i); 12.1-12.2.

As of last fall the Town had contracted to upgrade its police information software from a system called ALECS to a new system called IMPACT. Chief Beairsto represented that IMPACT was capable of all the data collection and analysis required by the Consent Decree and the Guidelines. IMPACT could not be installed, however, until another vendor removed a virus from the Department's server. We recently learned that the de-bugging of the server never occurred last fall, as we had been told it would, and, as a result, IMPACT has never been installed. Sergeant Walsh has undertaken to get these two steps accomplished in the near future. Once IMPACT has been installed, the Chief or his designee must ensure that it is tracking all the categories set forth in the Consent Decree and the Guidelines, and that the information concerning complaints, civil suits, judicial findings of misconduct and criminal charges—going back to 1990—is entered into the system. See Rule 33.6(c).

While the early warning system is not totally dependent on the existence and use of a computerized information system, we have been informed that the early warning

system has not been put into place, except insofar as some aspects of that system are considered in the Department's twice-yearly evaluation process.⁸ Not only is such a system required by the Consent Decree, but it benefits both the Town and the officers. The system gives the Town an effective risk management system that decreases the likelihood of conduct that results in lawsuits and liability. The system is also set up to try to aid officers to change problematic behavior before it results in serious discipline. The Town is put on notice that the Monitor will be carefully scrutinizing whether the Town has fully and effectively employed the early warning system at the close of the current calendar quarter, as provided in the Guidelines.

VII. Relations with Other Law Enforcement Agencies

One of the clear signs of the Wallkill PD's prior problems was the complaints from other law enforcement agencies about its lack of cooperativeness and its unprofessionalism. The two agencies that had the most contact with the Wallkill Department—the New York State Police and the Orange County District Attorney—were prominent among those who were gravely concerned with the conduct of the Department. Today, the District Attorney's office has a productive and relatively problem-free working relationship with the Wallkill PD. The lion's share of the credit for that significant turnaround is given to Chief Beairsto. The relationship with the State Police has improved, but is a work in progress. We are not aware of complaints from any other law enforcement agencies.

⁸ The Department is providing in-service training at the Rockland County training academy to all members. Some have already attended and the remainder will attend later this year. The four-day training includes one day each on civil liability, constitutional law, counter-terrorism, and simulations.

The Consent Decree requires the Wallkill PD to contact the State Police concerning all incidents that may involve felonies to determine with the State Police whether the matter should be turned over to them. Homicides must be referred to the State Police, and sex crimes involving victims under the age of 19 must be referred to a specialized task force. Consent Decree at ¶26.

Chief Beairsto and commanders from Troop F of the State Police jointly drew up a broad list of crimes, including virtually all felonies, that would be automatically turned over to the State Police. The hope was that the list and a short protocol of procedures relating to notification and division of responsibilities would be memorialized in a formal memorandum of understanding between the Wallkill PD and the State Police. Counsel for the State Police, however, was reluctant to authorize a formal understanding, but had no objection to a written, but informal, agreement between the Chief of the Wallkill PD and the Troop Commander. Particularly because most of the work had already been done and because Chief Beairsto had such an effective working relationship with the local State Police troop, we asked him to try to conclude the informal agreement with the State Police. He was not able to do so, however.

The Wallkill officers are extremely unhappy with having to turn over to the State Police low-level felonies that require no investigation. Secondhand reports also suggest that some members of the State Police may not be pleased to receive all such cases because they perceive the referrals of low-level felonies requiring no investigation as placing an unnecessary burden on their already stretched resources. Sometimes the State Police cannot report promptly to the scene of an incident which exacerbates the irritation

and embarrassment of the Wallkill officers at having to wait for the State Police and then to turn the case over to them.

Despite the unhappiness of the Wallkill officers with this arrangement, they are turning over felony arrests and investigations in accordance with the Consent Decree—132 such cases from July, 2001 through January, 2002. The State Police are taking those cases, but the investigative bureau suspects that not all felony cases are being turned over. They also have some criticism concerning the level of cooperation from some Wallkill officers and the timeliness of some of the referrals. On the other hand, the District Attorney's office has not brought to our attention any cases that were hampered because responsibility for the case was not transferred from the Wallkill PD to the State Police.⁹

We first learned of these concerns as we were completing this Report, and thus have not had a chance to fully investigate them. Preliminary indications are that the State Police Bureau of Criminal Investigation's belief that not all felonies were being referred stemmed from the fact that that bureau was not fully aware that the majority of Wallkill referrals were being sent to the uniformed troopers without BCI becoming involved. Among other things, this apparent misunderstanding reinforces the need to reduce the agreements between the Wallkill PD and the State Police to a written document available to all those involved in implementing them.

The District Attorney's office noted a significant improvement in cooperation and attitude of the Wallkill officers as a group once Chief Beairsto took charge.¹⁰ Paperwork

⁹ One officer, however, was reported to have been less than cooperative with the District Attorney and before the grand jury because he was angry that the case had been transferred to the State Police. The State Police were also severely critical of the fact that the Wallkill PD had rebuffed several attempts on their part to get involved immediately in the same matter, which became a vehicular homicide case after one of the accident victims died.

¹⁰ While cooperation from the officers increased, the same was not said about the Department's dispatchers.

improved, and officers were less likely to beg off accomplishing a task because they did not want to deal with another officer in the Department who belonged to another faction. The handling of physical evidence, however, was reported to need a great deal of improvement. The District Attorney's office has not heard complaints of policing abuses since the Consent Decree was entered.

Conclusion

During the past seven months, the Town of Wallkill began in earnest to come to grips with the Consent Decree and its heavy obligations and responsibilities, including difficult political, fiscal, and legal issues. At first, the Town seemed to have been lulled into a false and dangerous sense that the Consent Decree was merely a piece of paper to be signed and filed away in a drawer and that its mandates and requirements could be sidestepped, temporized, negotiated away, trivialized, or honored in letter but not in spirit. The Town seemed complacent in the erroneous belief that some pain, sacrifice, and significant expenditure of money to implement the Decree could be avoided or the buck passed to others. The Court and Monitor quickly disabused the Town of any such notions.

The Town has new leadership. The Wallkill PD will soon have new leadership. The slate, if not wiped clean, at least has room to be written on again. The Town's thorough involvement of the Monitor in the process to select the Chief helps to ensure that the new Chief will fully appreciate the Department's responsibilities under the Consent Decree and the need for an effective partnership with the Monitor. The new

leadership of the Town appears realistic about the Consent Decree and committed to a constructive relationship with the Monitor.

The next six months, then, will be interesting ones where much progress is possible, although by no means assured. The Monitor's expectations of the Town and the Department in the next six months are:

- Speedy hiring of an excellent new Chief.
- The creation and filling of an executive officer or lieutenant position.
- Ensuring that a sergeant is assigned to each shift and that sergeants effectively supervise.
- A greatly increased number of officers.
- A new union contract with competitive salaries for both officers and sergeants.
- An expanded and reputable police station.
- Improved processing, investigation, and disposition of civilian complaints.
- A firm but fair disciplinary system that identifies and deals with misconduct with dispatch.
- A written protocol with the State Police concerning the types of cases to be turned over to the State Police, and the procedures to be followed in doing so, as well as full compliance with the terms of that protocol.
- Full compliance with the procedures for video- and audiotaping of stops and other activities, including adequate review and oversight by supervisors.

- Fully and carefully prepared documentation of officers' activities, and effective supervisory review of all paperwork.
- Implementation of an early warning system.
- Implementation of the Consent Decree's requirements regarding training.