

U.S. PUBLIC EMPLOYERS
RELATIONS BOARD
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SEP 2 - 1980

CONCILIATION

TOWN OF POUGHKEEPSIE, NEW YORK, :
: Petitioner :
: against :
TOWN OF POUGHKEEPSIE PATROLMAN'S :
BENEVOLENT ASSOCIATION :
: Respondent :

PERB CASE IA-153; M79-462

I. INTRODUCTION

The present proceeding is an Interest Arbitration invoked under the provisions of New York State Civil Service Law, Section 209.4, and subject further to the controlling administrative procedures set forth in Part 205 of the Rules and Procedures of the Public Employment Relations Board.

The parties at impasse are the Town of Poughkeepsie, New York (hereinafter referred to as the "Town," or the "Employer"), and the Town of Poughkeepsie Patrolman's Benevolent Association (hereinafter referred to as the "Association," the "Patrolmen," the "Employees," or the "PBA").

The petitioner is the Town of Poughkeepsie which initiated its petition on February 29, 1980, over the signature of its attorney, Gary M. Sobo, Esquire. The response, submitted by the PRA on April 12, 1980, was over the signature of its

Counsel, Peter L. Maroulis, Esquire.

On April 24, 1980, the Chairman of the Public Employment Relations Board, Mr. Harold Newman, designated a Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute. The Panel composition was as follows:

Public Panel Member and Chairman	Sumner Shapiro 64 Darroch Road Delmar, NY 12054
Employer Panel Member	James Ritterskamp, Jr. c/o Vassar College Poughkeepsie, NY 12603
Employee Organization Panel Member	Al Sgaglione 14 Roland Drive Albany, NY 12208

Hearings were held at the Poughkeepsie Town Hall on May 15, 1980, and on June 7, 1980, with the parties being afforded full opportunity to develop their respective positions and rebuttals to adversary positions through testimony and cross-examination and submission of relevant exhibits. Two weeks were allowed within which to submit post-hearing briefs following conclusion of the June 7 hearing. By agreement between the parties, filing time for the PBA was extended from June 21 to July 1, and post-hearing briefs were timely filed.

Appearances were as follows:

For the Petitioner	Gary M. Sobo, Esq., Attorney for the Petitioner
	George L. Lochner, Chief of Police, Village of Poughkeepsie, New York
	Carol J. Garrity, Councilman, First Ward, Town of Poughkeepsie, New York

For the Respondent

James E. Coombs, Esq.,
Attorney for the PBA

Peter L. Maroulis, Esq.,
Attorney for the PBA

Joseph Toohey, President, PBA

Chris T. Davies, Corresponding
Secretary, PBA

John J. Eckert, Jr., Secretary,
PBA

Malcolm O. Kilmer, Negotiating
Committee Member, PBA

Edward J. Fennel, Municipal Finance
Consultant- 44 Reservoir Street,
Cohoes, NY 12047

The respective positions of the parties have been extensively developed in exhibits and briefs, and a restatement herein is deemed by the Panel to be unproductively redundant. Each facet of every position was, however, extensively scrutinized and weighed in executive session and certain of these will be identified in summarizing the Panel's analyses where so doing hopefully will contribute further to clarification.

II. SUMMARY OF ISSUES, POSITIONS OF PARTIES AND OPINION OF PANEL

A. Recognition and Certification, Article II (2) (d)

In a presentation of their respective positions relating to this issue before the Panel, the parties clarified differences and achieved accord. The orally-stipulated language states as follows:

"Article II (2) (d): All terms and conditions governing release time for Association business shall continue as presently in effect (on 31, December, 1979),

except that two (2) officers of the Association may attend the annual Association Conference and be allowed, on a unit-wide basis, 80 hours of paid leave for absence from scheduled work."

B. Article III, Terms and Conditions of Employment

A number of issues involving the provisions of Article III were resolved by the parties at the hearings. The Panel's award will incorporate the orally-stipulated agreements in the contract as follows:

1. Article III (1) (a), Terms and Conditions

All terms and conditions shall remain as they existed on December 31, 1979.

2. Article III (1) (a) 2, Terms and Conditions

The normal workweek for non-shift employees is a regularly-scheduled eight (8) consecutive hours per day, forty (40) hours per week, over five (5) consecutive days inclusive, on a paid basis of a ___ minute meal and two (2) ___ minute "break" periods, each tour of duty with the timing thereof continuing on its present basis.^{1/}

3. Article III (1) (a) 3, Terms and Conditions (New Clause)

The normal workweek for shift employees is a regularly-scheduled eight (8) consecutive hours per shift, commencing on five (5) consecutive days for forty (40) hours per

^{1/}The duration of the meal and break periods constituted an unresolved issue remanded to the Panel which treats with same at a subsequent juncture.

week, inclusive on a paid basis of a 2/_{minute} meal and two (2) 3/_{minute} break periods, each tour of duty with the timing thereof continuing on its present basis.

4. Article III (1) (a) 4, Terms and Conditions (New Clause)

All employees will be required to work the schedule set forth in Appendix A. Overtime will not be optional with the employee, but the Town may amend the schedule to eliminate overtime.

5. Article III (1) (a) 2 & 3, Duration of Lunch Period and Each of Two "Breaks"

The established practice has been to provide a half-hour paid lunch period and two ten-minute breaks per duty tour. The Association demanded an increase of 30 minutes in the lunch period and the addition of 5 minutes to each of the two breaks, arguing that both the Town and employees would benefit as employees who reside outside the Town, and many of those residing within the Town, eat lunch within or near their post and are, as a result, required to obtain and eat same in an inordinately short span of time.

The Employer feels implementation of the proposal would, in fact, subtract forty (40) work minutes per day from the existing 430 minutes of work (50 minutes are already

2/ & 3/ The duration of the meal and break periods constituted an unresolved issue remanded to the Panel which treats with same at a subsequent juncture.

allowed for mealtime breaks), thereby reducing the workday by 10.75%. This, the Employer asserts would have a deleterious effect upon the quality of services. In both cases, on both sides of the issue, the arguments are somewhat at variance with the opinions expressed and testimony adduced at the hearings. Firstly, whether one eats at home or the work post, the lunch break timing commences with the individual's arrival at the eating location. Comments by Association spokespeople confirm the understanding that the meal period is properly an "on-the-job lunch period," rather than a formal epicurean dinner period. A half-hour, it was tacitly agreed, is a reasonable period within which such a repast should be consumable without undue haste or resorting to an alternative spelling of "relief" attributable to the time parameter. It was similarly conceded by the Employer witness that no measurable degradation in the quality of the service likely inheres in a 15-minute "break."

The Panel, relying to a substantial extent on intuition, personal experience and this informed testimony, is inclined to concur in these views and it has, therefore, awarded retention of the half-hour meal period and expansion of the two break periods from the existing 10-minute duration to 15-minute durations. All timing procedures will continue on the established basis.

6. Article III (1) (k), Line-up Time

The Association has proposed that each squad employee report for duty 15 minutes prior to the commencement of his or her duty tour, with the employee being compensated for such "line-up" time at the overtime rate of pay. The Employer concedes this would be beneficial from the point of view of service to the community in that additional work time would result. However, the Town also protests that this would increase its payroll cost by 2.03%. Thus, the Employer is agreeable to adopting the arrangement, provided the 2.03% cost is included within the 7% total package cost to which the Employer is amenable.

The Employer further cites Association reliance upon the Unconsolidated Law, Section 971, on which it relies in another context, which provides that tours of duty shall not exceed eight (8) consecutive hours. No patrolman shall be assigned to more than 40 hours of duty during any consecutive five-day period, except during an emergency or for the purpose of changing tours of duty. This argument militates against adoption of the Line-up proposal, in the Employer's view, in that it would extend each scheduled tour from the current eight (8) hours to a proposed eight-and-one-quarter (8-1/4) hours, thereby exceeding the 8-hour statutory limitation.

The Union argues the undesirability of the present arrangement.

wherein there is a lag in street patrols since one shift has come off duty - while the successor shift is still in the station house "lining-up." With the proposed arrangement, the patrolman would be coming on duty and be on the street precisely at the time the on-duty patrolman of the off-going shift is returning to the station house.

We are persuaded that management must, in the end, bear responsibility for the quality of service resulting from trade-offs between cost and coverage. Consequently, the Line-up Time demand is denied.

C. Members' Rights (New Provision)

In summary, the Association has demanded a Members' Rights clause to shield the Policeman from abusive treatment putatively without in any way impairing the legitimate exercise of power vested in superior officers. The Employer raises no objection to certain requirements for providing the Policeman with a copy of derogatory or other materials entered into his file, and affording said person the right to a written response which would similarly become part of the file. The Employer believes the balance of the proposal constitutes a threat to departmental effectiveness in that the right freely to pursue routine inquiries could be curtailed by an individual Patrolman's refusal to cooperate or respond pending arrival of his Counsel and/or Union representative.

Implicit in the Employer's argument is recognition of the fact that employees may reasonably be expected to be apprehensive about possible exercises of power which may unjustly impose severe

penalties, including loss of employment, upon them. There is, it should be noted, no claim of abusive treatment by the Department's superior officers or others. The Employer asserts he is willing to go beyond the limits of law which establishes the Policeman's entitlement to Counsel only at the formal hearing stage by permitting review of all derogatory information and inclusion of a written response in the file. The Town believes the PBA proposal, which provides that any member shall be entitled to representation by his Association or Counsel of his choice at any conference where he is a "target of departmental investigation," could readily be interpreted to bar a superior officer from asking that there be any kind of investigation. The Town contends it is frequently impossible to determine the point at which a routine inquiry evolves into an investigation.

The Panel is sensitive to the apprehensions of advocates on both sides of this issue. A quasi military organization faces a challenge to its operational effectiveness if the acquisition and dissemination of information throughout its chain of command is inhibited. The obverse, to which the Panel is equally sensitive, inheres in the nature of the Policeman's activities. While he is first and foremost a servant and guardian of the public, the execution of his duties will not infrequently thrust him into confrontation with members of society who have cause to resent his devotion to duty. That accusations against Policemen may readily spawn in such circumstances hardly runs counter to expectation. It may similarly be expected that members will seek some explicit

contractual safeguards. The Panel views this as a mutually advantageous provision as the assurance of protection and due process will reinforce the level of confidence with which the officer will be armed as he deals with problems. However, we reiterate our appreciation of the vital importance of preserving unimpaired the existing administrative vehicles. In balancing these concerns, we have thoroughly reviewed copies of Agreements placed in evidence at the hearing in an effort to deduce the approaches fashioned in other jurisdictions in adapting these clauses to the instant situation. We believe the needs of the parties can and will be met by the language we have adopted, and we perceive no impairment of the routine exercise of authority by superior officers in the day-to-day operation of the department. The language adopted is intended to reflect accommodation to the interests of both parties - to articulate roles and responsibilities - to insure against paralysis or even impairment of administrative mechanisms - and, yet, to provide an accused with Counsel when such accusations become a fact (3-g). The provision follows:

- "1. Members of the force hold a unique status as Public Officers in that the nature of their office and employment involves the exercise of a portion of the Police power of the jurisdiction.

2. The security of the community depends to a great extent on the manner in which Police Officers perform their duty. Their employment is thus in the nature of a public trust.

3. The wide ranging powers and duties given to the Department and its members involve them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of the members of the Force. These questions may require investigation by superior officers, Boards, Commissions or individuals designated by the Village. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

(a) The interrogation of a member of the Police Department shall be at a reasonable hour, preferably when the member of the Department is on duty, unless the exigencies of the investigation dictate otherwise.

(b) The interrogation shall take place at a location designated by the Chief of Police - ordinarily at Police Headquarters or a location having a reasonable relationship to the incident alleged.

(c) The member of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the member of the allegations shall be provided. If it is known that the member of the Department is being interrogated as a witness only, he should be so informed at the initial contact.

(d) The questioning shall be reasonable in length. Reasonable respites shall be allowed. Time shall be also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.

(e) All members of the Department shall be obligated to answer any questions concerning

their conduct as it relates to their employment, except those which violate their constitutional, legal or contractual rights.

(f) The member of the Department shall not be subjected to the use of offensive language by the investigating officer nor shall he be threatened with transfer or disciplinary action unless he refuses to answer proper questions as defined in section (c). The foregoing prohibition against threats shall not be construed to prohibit the investigating officer from advising the member of the character of the discipline the Department intends to impose, nor from advising the member that if he refuses to answer proper questions, as above, he may be subject to additional charges.

The individual's consent to disciplinary action shall not be binding in less than 24 hours after he is advised of the nature of such disciplinary action or its alternatives, except in circumstances where there is danger to the public. This will not preclude the Chief's authority to suspend in accordance with the Civil Service Law.

(g) Upon advisement of charges being preferred, the complete interrogation of the member of the Department shall be recorded mechanically, electronically or by a Department stenographer. There will be no 'off-the-record' questions, except by mutual consent of both parties.

All recesses called during the questioning shall be recorded.

(h) If a member of the Department is under arrest or is likely to be or if he is a suspect or the target of a criminal investigation, he shall be given his rights pursuant to the current decisions in the United States Supreme Court.

(i) Upon advisement of charges being preferred in non-criminal cases where infractions are nevertheless of a serious character, the individual shall have reasonable time to consult with his legal Counsel and/or

Association representative, if he so requests, before being questioned. In no event, however, shall such questioning be postponed or delayed by the individual past 10 a.m. of the day following the notification of interrogation by reason of the individual's failure to consult with his Counsel and/or Association representative. This clause is not to be interpreted in such a manner as to prevent questioning of individuals by superiors with respect to their conduct in the normal course of business. No representative provided by the Association shall act in such capacity while on duty.

It is understood that the rights herein granted will not be used unduly to delay the expeditious disposition of investigation of conduct.

(j) Any disciplinary action taken against a member of the bargaining unit by the Department shall be subject to review in accordance with applicable statutes and Departmental rules and regulations.

4. If, as a result of departmental action, a member should receive official documented warnings, admonishments or other disciplinary action that may be detrimental to the member, that member shall be afforded the opportunity of responding in writing to such charges and such response shall be made part of the member's file. A member's right of appeal to higher authority shall not be impaired. The member shall be entitled to representation by the Association or Counsel of his choice in pursuit of any such appeal."

D. Non-Discrimination (New Clause)

The Association has demanded incorporation of a non-discrimination clause which states:

"Non-discrimination: The Town shall so administer its obligation under this contract in a manner which will be fair and impartial to all employees and shall not discriminate against any employee by reason of sex, nationality, race, creed or marital status."

The motivation for this demand is discontent with the allocation of sanitary facilities at Police headquarters. The Employer's opposition is based on the view that the contract provision is wholly unnecessary in that the protection sought is already provided under New York State executive law 296.1. The inclusion of the proposed clause into the agreement would reiterate what is, in fact, State law.

The Panel recognizes that inclusion of the proposed provision in the agreement would, in principle, restate provisions of State law. However, the impact conceivably might be broadened by inclusion in the agreement in that citation might then enter into negotiation and resolution of grievances. The Panel demurs from associating itself or this clause with the merits or demerits of the parties' positions relating to sanitary facilities. We gratuitously urge the parties objectively and cooperatively to approach this question from a problem-solving posture within a relevant framework. In our view, there exists a substantial question of linkage between the problems cited by the PBA and the prevalence of discrimination. However, society, long ago

rendered unlawful discriminatory practices which it had previously generally condemned as evil, but nonetheless tolerated. In the Panel's view, it must consider the proposal on the basis of what is certainly the clearly expressed public policy of our time and, on this basis, has determined that the non-discrimination clause demand must be sustained. While adhering to the proposal in principle, the Panel has exercised some editorial license from which the proposed clause emerges as follows:

"The Town shall not discriminate against any employee by reason of age, sex, nationality, race, creed or marital status."

E. Article III (1) (i) 3, Accrued Vacation and Personal Leave upon Retirement

The PBA has proposed that employees be paid the salary equivalent of accumulated unused vacation and personal leave upon retirement. Such an arrangement pre-existed this proposal in the event of death. Current procedure at time of retirement is for the individual to exhaust vacation and personal leave time immediately prior to retirement. The proposal would permit the individual to receive the monetary value of these periods (at then current salary levels) upon retirement and immediately commence drawing retirement pay. In effect, the retiree would commence drawing retirement pay up to five weeks sooner than is the case under existing practice. Since this pay would be forthcoming from the retirement fund, rather than from the Town's resources, the Union argues that adoption of this provision represents no increase in the Town's costs. The Town argues that the demanded

provision might have a potentially harmful effect upon the Department's operations in that it would deprive the Employer of its right to influence the employees to take vacations. Vacations, it is argued, are tendered in part because periodic rest is deemed to be beneficial to the employee's job performance. The proposal before the Panel, if adopted, would, in the Employer's view, provide incentive to the employee to accumulate as much vacation time as possible. Such a practice would, it is held, be undesirable in that both employee and the Employer would be deprived of the benefits of vacations.

The Panel does not share the Employer's view with respect to the final vacation period involved here. Actually the employee's job performance is unaffected whether he leaves the Department specifically to go on vacation with the full knowledge that he will not return, but will officially commence retirement some weeks later, or whether the individual goes on retirement immediately. As we perceive the proposal, it, in no way, alters the existing vacation schedules and planning or procedures. However, we believe the Employer's apprehensions may and should be addressed by confining such treatments to unused vacation and personal leave accrued in the last year preceding the retirement date only. We support this proposal because the practice of paying salary equivalent of vacation and personal leave time under special circumstances may, at the very least, be described as not uncommon in other jurisdictions. Retirement can occur only once in a member's career and we believe it reasonable to view this as a

special circumstance. We have, therefore, awarded inclusion of the following in the agreement:

An employee, upon retirement, shall be paid for all accumulated unused vacation and personal leave time earned in the course of the final year of employment. Payment shall be on the basis of the salary schedule prevailing at the time of retirement.

F. Payment for "11 to 7" Shift Changes

This proposal relates to a classification described as "squad" employees. The Department employs four such squads, three of whom are on duty at any one time, providing eight (8) hours of coverage per squad, for a total of 24 hours of coverage per day. A typical squad pattern would be to work from 7 a.m. to 3 p.m. for five (5) consecutive days, take two (2) days off, and then report to work on the 11 p.m. to 7 a.m. shift for five (5) duty tours. This would be followed by only a single day off before reporting for work on the 3 p.m. to 11 p.m. shift for five (5) tours of duty at the conclusion of which a two-day respite ensues with the duty cycle again reverting to the 7 a.m. to 3 p.m. shift.

The problem dividing the parties arises because the Patrolmen, in going from the 11 p.m. to 7 a.m. shift to the 3 p.m. to 11 p.m. shift, receive only one day off between two five-day working intervals. Obviously, in a conventional 40-hour week position, the worker would enjoy two non-work days between any two five-day work stints.

The PBA argues that the four squads are working an average of 168 hours per week; whereas, on a 40-hour-per-week

basis, they would be expected to work only 160 hours. Consequently, eight (8) hours of overtime are being assigned and should be compensated at time-and-one-half.

The Town argues the arrangement is one of long-standing and that premium compensation beyond compensatory time off on a day-per-day basis for any extra time worked has, in fact, traditionally been built into the Patrolman's salary structure. In seeking compensation as presently proposed, the Association is, in the Town's view, seeking duplicate payment and at a premium compensation rate to boot. In its brief, the Town states it has been giving one compensatory time-off or pass day of eight (8) hours duration in compensation for the each 11 to 7 shift period which results in only a one-day, duty-free hiatus between two five-day work periods. This time is taken by the individual employee as per request, subject to the operational constraints of the Department and, in some cases, time has been accumulated and added to vacation periods or personal time. However, in the testimony of Chief Lochner, the Town introduced Exhibit E-2, which sets forth the squad scheduling for all four squads for 1980. This exhibit showed squads would work a total of 51 so-called 11 to 7 shifts and that they would receive a total of 72 compensatory days off, a ratio which falls only 4.5 compensatory days per year short of full time-and-one-half. The PBA's calculation concludes each squad works 17 "extra" days, for a total of 68 per year, on which basis one would conclude compensatory time off was being granted at substantially straight time equivalents.

The Panel perceives the mathematical challenge to be amenable to resolution. Basically, four shifts working 40 hours would, as the PBA maintains, work a total of 160 hours per week. Moreover, in a 7-day period of 24 hours each, 168 hours of coverage is required and this indisputably somehow requires one squad, if it alone is to fill the gap, to provide eight (8) hours of coverage beyond the 40 previously presumed to constitute the normal work period duration for that week. Since there are nominally 52 weeks in a year, there must be 52 squad shifts worked per annum in this manner. Finally, since there are four squads among whom the 52 shifts are divided, the number of such shifts per squad must average to 13. This number is, of course, in general agreement with the number shown in Exhibit E-2, and claimed in Chief Lochner's testimony. The Panel deduces that if compensatory time off, at a time-and-one-half ratio, is considered the equivalent of time-and-one-half pay, the past practice of the Town does, in fact, approximate compliance with the Union demand.

We dissent from the view that the salary of squad workers somehow reflects a commitment to straight-time pay, or its equivalent in compensatory time off for over time, if only because this would be at odds with the arrangement respecting non-squad members of the bargaining unit who receive comparable salaries. We think the practice and commitment to time-and-one-half payment for work performed in excess of forty (40) hours per week is the established and envisioned practice, even on a most parochial basis. Moreover, both parties have cited and placed in the record portions of Section 971

of the Unconsolidated Laws which clearly enunciate public policy in this regard. Hence, in consideration of all the relevant facts made known to us, we conclude squad employees should be compensated for the so-called "11 to 7 shift changeovers" which result in an extra day being worked, with compensatory time in a ratio of 1.5 days for each day worked, or the salary equivalent thereof at the Employer's discretion. Scheduling of the compensatory time off shall continue on the previously established basis.

G. Economic Issues

There are two compensation issues before the Panel; namely, longevity increments and salary increases for each of the two years, 1980 and 1981, respectively.

With respect to salaries, the Union has proposed as its final bargaining position salary increases of 9% across-the-board for 1980, and an additional 9.5% for the year 1981. The Employer has offered a total of 7% in each of the two years, which is to be inclusive of the cost equivalent of all other additional benefits provided.

With respect to longevity increments, the PBA's final proposal was as follows:

- \$100 increment at 9 years
- \$300 increment at 15 years
- \$500 increment at 20 years

The Town is opposed to the introduction of longevity increments which have not previously been present in the agreement

on the thesis that other jurisdictions with longevity increments generally provide lower salary structures than does Poughkeepsie.

The parties have most thoroughly developed their respective positions pursuant to the economic issues. They have focused incisively upon ability to pay and comparable practice. Fundamentally, the disagreements focus on assumptions of comparability. In the main, we find the Town to exhibit reasonably sound economic health and the PBA to have commanded essential salary parity with like communities elsewhere in the past. We agree with the Employer that the Town of Poughkeepsie is not in the Metropolitan New York or adjoining Westchester County labor market. On the other hand, we are constrained to adopt the Union view to the effect that the Employer's ability to pay is somewhat superior to a number of the other jurisdictions cited by the Town.

While the Panel has explored and debated these points at length, a recitation of its sometimes internally-diverse views, and a recounting of the laborious process by which a consensus ultimately evolved would little serve our needs at this juncture. The differences separating the parties' final first-year proposals were only a relatively few hundred dollars for most job positions. Their second-year positions were separated by a somewhat wider gap, based in the main upon their relative optimism or pessimism respecting the likelihood and degree of continuing inflation. In wrestling with these judgments, the Panel has developed a heightened degree of empathy

for the frustrations and anguish besetting the economic policy makers of our time.

We have considered comparable practice recognizing the inexact fit among "comparables." Further guidance was derived from the dicta of the Council on Wage & Price Stability Guidelines for the Private Sector. Our award reflects the fact that the case at hand involves a public sector service type activity wherein opportunities for productivity enhancement are limited. Moreover, our evaluation was influenced by the quality and extent of fringe improvements and the apparently emerging easing in the rate of rise of the Consumer Price Index trend line.

After considering the references provided by the parties, including the PERB summaries, the Panel concurred on the implementation of an increase of 7.5% uniformly to be applied to each position in each of the two years.

In reviewing the longevity increment proposal, we find payment of such increments to be relatively common practice in other jurisdictions, and that the increments proposed compare favorably with prevailing practice. Moreover, in an occupation with a necessarily limited promotional ladder, the addition of three longevity increments covering the span between completion of the fifth year and retirement seems not unreasonable. Finally, an individual retiring after 20 years would receive the last increment for only one year immediately prior to retirement. However, in deference to the Employer's budgetary constraints, we defer implementation of the longevity increment provision

until July 1, 1981. The longevity increment schedule to be applied at that time is as follows:

<u>LONGEVITY INCREMENT</u>	
9 through 14	\$100.00/annum
15 through 19	\$300.00/annum
20 plus	<u>\$500.00/annum</u>
Total Max. Increment	\$900.00

H. Termination Clause

The expired agreement contained as Article V (1) a termination clause which provided that the contract remain in effect for two years - from the first day of January, 1978, through the 31st day of December, 1979, with automatic renewal from year to year, except where either party served written notice on the other of a desire for change. In the face of such notice, the clause provided for the existing contract to remain in effect after its normal expiration until a new contract was signed, at which time the provisions of the new contract were to become effective. In the course of negotiating the present agreement, this language was up-dated to cover the period from January, 1980, to the 31st day of December, 1981, and the Union contends the parties' agreement to the up-dating and re-inclusion of this clause is so signified by their initialing of the revised clause. The Employer maintains the parties understood they were bargaining on a package basis, and that the signature indicated nothing more than a tentative agreement, with the Employer reserving the right to bring the matter up once again.

With respect to the present arbitration proceeding, the Employer maintains the Panel would exceed its powers were it to impose such a clause since Section 204.4-c of the Civil Service Law limits the Panel to a decision and award the life of which, in no event, may exceed a two-year period commencing with the termination date of a previous collective bargaining agreement. An award of the contested termination clause by this Panel could, in the Employer's view, compel one or both parties to be bound by a contractual provision imposed by the Panel for a period extending beyond the two-year limitation, without enjoyment of the option to renegotiate or attempt to renegotiate same.

The Union argues the parties were not and are not engaged in packaged negotiations, and that the initialing by each of the parties indicates they bargained about, and agreed to, the clause. In the Union's view, the clause, having been previously agreed to, has not been submitted to arbitration and is, therefore, appropriate, viable and legally binding.

The Panel turns first to the Union argument which asserts the matter is not in arbitration. Obviously, if this is the case, the Panel is without authority to rule. The Employer's position, on the other hand, is also that the Panel is without authority to rule, though the reasons cited differ. The parties concur that resolution of this issue falls without the Panel's purview. The present Panel perceives itself to be an Interest Arbitration Panel unendowed with either the power or skills to treat with questions of the propriety of the parties'

practices. We join the parties in the view that Interest Arbitration does not provide the proper avenue for pursuit of this question and the Panel, therefore, declines jurisdiction over the question of the termination clause.

III. AWARD

The undersigned, having been designated to constitute a Panel, pursuant to the provisions of New York State Civil Service Law, Section 209.4, for the purpose of rendering a just and reasonable determination of the dispute between the Town of Poughkeepsie, New York, and the Town of Poughkeepsie Patrolmen's Benevolent Association, which dispute is designated as Public Employment Relations Board Case IA-153; M79-462, award as follows:

1. Article II (2) (d), Recognition and Certification

"Article II (2) (d): All terms and conditions governing release time for Association business shall continue as presently in effect (on 31, December, 1979), except that two (2) officers of the Association may attend the annual Association Conference and be allowed, on a unit-wide basis, 80 hours of paid leave for absence from scheduled work."

2. Article III (1) (a), Terms and Conditions of Employment

"All terms and conditions shall remain as they existed on December 31, 1979."

3. Article III (1) (a) 2, Terms and Conditions of Employment

"The normal workweek for non-shift employees is a regularly-scheduled eight (8) consecutive hours per day, forty (40) hours per week over five (5) consecutive days, inclusive on a paid basis of a thirty (30) minute meal and two (2) fifteen (15)

minute "break" periods each tour of duty, with the timing thereof continuing on its present basis."

4. Article III (1) (a) 3, Terms and Conditions of Employment (New Clause)

"The normal workweek for shift employees is a regularly-scheduled eight (8) consecutive hours per shift commencing on five (5) consecutive days for forty (40) hours per week, inclusive, on a paid basis, of a thirty (30) minute meal and two (2) fifteen (15) minute "break" periods each tour of duty, with the timing thereof continuing on its present basis."

5. Article III (1) (a) 4, Terms and Conditions of Employment (New Clause)

"All employees will be required to work the schedule set forth in Appendix A. Overtime will not be optional with the employee, but the Town may amend the schedule to eliminate overtime.

6. Members' Rights (New Provision)

"1. Members of the force hold a unique status as Public Officers in that the nature of their office and employment involves the exercise of a portion of the Police power of the municipality.

2. The security of the community depends to a great extent on the manner in which Police Officers perform their duty. Their employment is thus in the nature of a public trust.

3. The wide ranging powers and duties given to the Department and its members involve them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of the members of the Force. These questions may require investigation by superior officers, Boards, Commissions or individuals designated by the Village. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

(a) The interrogation of a member of the Police Department shall be at a reasonable hour, preferably when the

member of the Department is on duty, unless the exigencies of the investigation dictate otherwise.

(b) The interrogation shall take place at a location designated by the Chief of Police - ordinarily at Police Headquarters or a location having a reasonable relationship to the incident alleged.

(c) The member of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the member of the allegations shall be provided. If it is known that the member of the Department is being interrogated as a witness only, he should be so informed at the initial contact.

(d) The questioning shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.

(e) All members of the Department shall be obligated to answer any questions concerning their conduct as it relates to their employment, except those which violate their constitutional, legal or contractual rights.

(f) The member of the Department shall not be subjected to the use of offensive language by the investigating officer, nor shall he be threatened with transfer or disciplinary action unless he refuses to answer proper questions as defined in section (e). The foregoing prohibition against threats shall not be construed to prohibit the investigating officer from advising the member of the character of the discipline the Department intends to impose, nor from advising the member that if he refuses to answer proper questions, as above, he may be subject to additional charges.

The individual's consent to disciplinary action shall not be binding in less than 24 hours after he is advised of the nature of such disciplinary action or its alternatives, except in circumstances where

there is danger to the public. This will not preclude the Chief's authority to suspend in accordance with the Civil Service Law.

(g) Upon advisement of charges being preferred, the complete interrogation of the member of the Department shall be recorded mechanically, electronically or by a Department stenographer. There will be no 'off-the-record' questions, except by mutual consent of both parties.

All recesses called during the questioning shall be recorded.

(h) If a member of the Department is under arrest or is likely to be, or if he is a suspect or the target of a criminal investigation, he shall be given his rights pursuant to the current decisions in the United States Supreme Court.

(i) Upon advisement of charges being preferred in non-criminal cases where infractions are nevertheless of a serious character, the individual shall have reasonable time to consult with his legal counsel and/or Association representative, if he so requests, before being questioned. In no event, however, shall such questioning be postponed or delayed by the individual past 10 a.m. of the day following the notification of interrogation by reason of the individual's failure to consult with his counsel and/or Association representative. This clause is not to be interpreted in such a manner as to prevent questioning of individuals by superiors with respect to their conduct in the normal course of business. No representative provided by the Association shall act in such capacity while on duty.

It is understood that the rights herein granted will not be used unduly to delay the expeditious disposition of investigation of conduct.

(j) Any disciplinary action taken against a member of the bargaining unit by the Department shall be subject to review in

accordance with applicable statutes and Departmental rules and regulations.

4. If, as a result of departmental action, a member should receive official documented warnings, admonishments or other disciplinary action that may be detrimental to the member, that member shall be afforded the opportunity of responding in writing to such charges and such response shall be made part of the member's file. A member's right of appeal to higher authority shall not be impaired.

The member shall be entitled to representation by the Association or Counsel of his choice in pursuit of any such appeal."

7. Non-Discrimination (New Provision)

This clause should read:

"Non-discrimination: The Town shall not discriminate against any employee by reason of age, sex, nationality, race, creed or marital status."

8. Article III (1) (i) 4, Accrued Vacation and Personal Leave Time (New Provision)

"An employee, upon retirement, shall be paid for all accumulated unused vacation and personal leave time earned in the course of the final year of employment. Payment shall be on the basis of the salary schedule prevailing at the time of retirement."

9. Payment for "11 to 7" Days (New Clause)

"Employees who are deprived of an otherwise due second consecutive day off as the result of an 11 to 7 shift changeover, shall be granted compensatory time off in the ratio of 1.5 days off for each extra day worked, or to compensation at time-and-one-half, at the Employer's discretion. Scheduling of compensatory time off shall be consistent with past practice."



10. Salary Adjustment

Effective retroactively to the first day of January, 1980, the salary schedule for the respondent bargaining unit shall be uniformly increased by 7.5%.

Effective the first day of January, 1981, the salary schedule for the respondent bargaining unit shall be increased by an additional 7.5% covering the second year of the Agreement.

11. Longevity Increments

Effective July 1, 1981, the Employer shall institute longevity increments as follows:

<u>Service Years</u>	<u>Longevity Increment</u>
9 through 14	\$100.00
15 through 19	\$300.00
20 years or more	\$500.00

The total maximum longevity increment payable under the schedule shall be \$900.00 per annum effective with the 20th year of service.

12. Termination Clause

The Panel declines jurisdiction over the impasse involving the proposed up-date of Article V (1), Termination.

13. Retained Jurisdiction

In view of the ambiguous designation of certain clauses and provisions in the various documents submitted, the Panel will retain jurisdiction for the sole and limited purpose of clarifying any questions which may arise relating thereto.

The award provisions set forth immediately above are inclusive of all impasse items submitted to the Panel for resolution.

Respectfully submitted,

Summer Shapiro
Summer Shapiro
Public Panel Member and Chairman
64 Darroch Road
Delmar, NY 12054

Date: Aug 29, 1980

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

On the 29 day of August, 1980, before me came Summer Shapiro, to me known to be the individual who executed the foregoing instrument and acknowledged that he executed same.

Charles Kapner
Notary Public

CHARLES KAPNER, JR.
Notary Public - State of New York
Residing in Albany County
My Commission expires March 10, 1982
Certificate filed in Albany County

CONCURRING:
James Ritterskamp, Jr.
James Ritterskamp, Jr.
Employer Panel Member
c/o Vassar College
Poughkeepsie, NY 12603
Date Aug. 22, 1980

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

On the 22 day of August, 1980, before me came James J. Ritterskamp, to me known to be the individual who executed the foregoing instrument and acknowledged that he executed same.

Greta D. Buck
Notary Public

CONCURRING:
Al Scaglione
Al Scaglione
Employee Organization Panel Member
14 Roland Drive
Albany, NY 12208
Date Aug, 25, 1980

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

On the 25 day of August, 1980, before me came Al Scaglione, to me known to be the individual who executed the foregoing instrument and acknowledged that he executed same.

William J. Hwang
Notary Public
Albany, NY 12208
My Commission expires March 10, 1982