

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
-----XXX
IN THE MATTER OF THE INTEREST ARBITRATION
BETWEEN:

The Town of Poughkeepsie
Employer

-and-

OPINION AND AWARD

Town of Poughkeepsie Police Benevolent Association
Union

PERB Case NO: IA 89 - 4 M 88 - 506
-----XXX

PUBLIC INTEREST ARBITRATION PANEL:

Ronald Dunn, Esq.	Employee Panel Member
John M. Donoghue, Esq.	Employer Panel Member
Joel M. Douglas, Ph. D.	Public Panel Member and Chairman

APPEARANCES:

For the Town of Poughkeepsie:
Plunkett and Jaffee, P.C.
Rochelle J. Auslander, Esq., of Counsel

For the Police Benevolent Association
Gleason, Dunn, Walsh & O'Shea, P.C.
Mark Walsh, Esq., of Counsel

Pursuant to Section 209.4 of the New York State Civil Service Law and in accordance with the rules and regulations of the State of New York Public Employment Relations Board (PERB) the above named Public Arbitration Panel was designated to make inquiry and determinations and issue an Award on various items submitted to impasse by the parties. A PERB appointed mediator had been assigned prior to the commencement of the arbitration process but was unsuccessful in resolving the dispute. The panel held hearings in Poughkeepsie, New York on August 17, September 20, October 3, October 20, October 25 and

November 7 1989 and subsequently met in executive session in New York City on December 21, 1989. At the arbitration hearings both parties were represented by the above appearances and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. The parties waived stenographic transcripts in this matter. At the conclusion of the hearings both parties submitted closing briefs. This Award is based on the record as thus constituted and was drafted by Chairman Joel M. Douglas who is solely responsible for the language contained herein.

In making our determinations the panel acted in accordance with and gave due consideration to the relevant statutory criteria as set forth in section 209.4 of the Taylor Law cited below:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions including specifically,
 - 1) hazards of employment
 - 2) physical qualifications
 - 3) educational qualifications
 - 4) mental qualifications
 - 5) job training and skills
- d) the terms of collective agreements negotiated between the parties in the past ...

=====

The parties submitted the following items to the panel for their consideration and Award.

- 1) Agency Fee
- 2) Credit Union
- 3) Release Time for Union Business
- 4) Fixed Schedule/ Work Day Work Week
- 5) Compensation
- 6) Out of Classification Pay
- 7) Overtime
- 8) Clothing Allowance for Promotions
- 9) Personal Leave
- 10) Payout of Sick Leave
- 11) Holidays
- 12) Premium Days
- 13) Assignments and Transfers
- 14) Past Practice
- 15) Personal Leave Limitation
- 16) Comp Time Payout
- 17) Entry Level Pay
- 18) Health Insurance Rates
- 19) Grievance and Arbitration

=====

1) AGENCY FEE:

The PBA is seeking an agency fee provision and argues that since all current unit members are also PBA members their proposal has no financial impact. The Town opposes this proposal and submits that membership in the PBA should be on a voluntary basis. No one should be required to join the Union unless they "freely wish to do so".

FINDINGS

The issue of agency fee has been litigated throughout the country. Its constitutionality has been upheld by the United States Supreme Court. (See Street, Hansen, Abood, Ellis and Hudson) The New York State legislature has mandated agency fee for certain statewide units. Although there is a mixed pattern with respect to the number of police units that do have agency shop the panel finds that the Union's proposal is warranted and so awards.

2) CREDIT UNION:

The PBA is seeking to add the IBM Employees Federal Credit Union to the existing credit union program. The Town argues in opposition citing certain administrative burdens. The parties agree that there is apparently no bar from allowing PBA members from also participating in the IBM plan.

FINDINGS

The PBA proposal enlarges the existing credit Union program by providing an additional option for employees who so choose to participate. The data provided in support for this proposal appears to be consistent with the statutory criteria set forth under Sec 209.4 (a) (c) and is so awarded.

3) RELEASE TIME FOR UNION BUSINESS:

The PBA is seeking an increase in the amount of release time the contract provides for Union business. They argue that the present 80 hours per year is insufficient and should be increased to 192 hours (24 days). The Town submits that the present allowance is excessive and should be reduced. They argue that the present 80 hour limit was negotiated when one of the PBA officials was also a statewide Union official. Since this is no longer the situation the 80 hr provision should now be substantially reduced. The contractual provisions in other jurisdictions appear to focus on either set limits or allows for "reasonable time".

The PBA further argues that, should a new grievance and arbitration procedure be awarded that this limit must also be increased to process any and all grievances.

FINDINGS

The Panel is not persuaded that the current 80 hour time limit should be increased. Nor is it convinced that any additional time, absent the grievance and arbitration issue, is warranted. (See Issue # 19 of this Award - Grievance

and Arbitration) The evidence does not support a compelling reason for changing the amount of time allowed for Union business.

4) FIXED SCHEDULES:

No one single issue was the subject of as much testimony and evidence as the question of fixed schedules. The Town proposes the continuation of the status quo whereby police officers rotate (backwards) through a three shift work chart. The Town submits that the Union's proposal, if adopted, would result in the following:

- a) inability of police management to schedule and supervise consistent with the needs of the Town.
- b) an additional 38 training days per year, clearly an unwarranted number. This is the result of all officers having to work every Friday in order to make the new chart operational. It should be further noted that the police force is well trained and not in need of such an inordinate increase in training.
- c) increased overtime based upon mandated four hour minimum recall provisions for court duty. The present chart allows officers to process tickets during their regular work day and does not require them to return on an overtime basis.

- d) a lack of experienced officers on busy and/or unpopular shifts resulting from seniority bidding.
- e) the need to obtain increased supervisors, sergeants and lieutenants, in order to staff the new chart (hereinafter the "TROY" plan).
- f) the taking from police management of its right to make work assignments and turning staffing over to the Union.

The Town further argues that the issue of fixed shifts is so unique that there presently is not one single Mid-Hudson police force, except for Kingston, with the "TROY" plan. Although there are some variations of fixed shifts in existence, none provide for the magnitude of the Union proposal.

With respect to the arguments of the Union and their expert witness, Dr. Connelly, that sleep cycles are upset due to the rotating shift and furthermore that police officers who work rotating shifts are subject to more stress; the Town argues that while this may indeed be true, the real stress factor is the job itself, coupled with an inordinate amount of "second jobs" worked by many police officers. Records and documentation as to the extent of "second jobs" were introduced and are part of the record. The Town argues that if police officers would reduce their excessive moonlighting then perhaps the stress and fatigue factors might also be alleviated.

The PBA argues that their fixed schedule proposal, the TROY plan, fits within current staffing limitations and actually provides the public with three additional work days per unit member at no extra cost. Fixed shifts do exist in

area police departments in this region and their proposal is consistent with modern trends in police management. Set forth below is a summary of the PBA's proposals and impact of fixed shifts:

- a) Fixed shifts do exist for certain members of the Town of Poughkeepsie police department (Chief of Police) and others in the non-patrol divisions.
- b) Manpower would be consolidated into three platoons instead of the present four.
- c) All police officers would work the same 260 days per year. Chart days would be eliminated and all patrol officers would work an additional three days per year.
- d) The work year for patrol and non-patrol police officers will be consistent - 260 days per year.
- e) The seniority "problem" of having only junior officers on unpopular shifts would be alleviated by allowing the Chief to assign all police officers with under one year of experience to any shift that the Chief desired.
- f) The employees' individual needs, i.e., sleep cycles, less stress and fatigue, family responsibilities and quality of their life would be vastly improved by a fixed shift.

- g) The human body Circadian cycles do not function properly when an individual works rotating schedules.

- h) Police supervision would not have to be increased from the present system, whereby the Town relies extensively on officers working out-of title as sergeants and lieutenants. (See PBA X# 72-75)

The PBA contends that the expert testimony of Dr. Connelly was not refuted and as such must be credited. The PBA also contends that the police job is changing so that relying on traditional police schedules that have been in existence for decades without willing to try and change is contrary to effective and efficient police management. They assert that the testimony of Chief Still proves that the TROY plan would allow him greater flexibility in meeting the individual needs of any of the three shifts without creating an additional need to staff all shifts in the same exact manner. In the Union's view the refusal of the Town to accept the TROY plan is based on hostility, as exhibited during the negotiations process, and not on any staffing or structural theory.

FINDINGS

The issue of fixed schedules is complex and was the subject of intense negotiations during the many months preceding the issuance of this Award. Numerous scheduling options were explored, however, the parties were unable to agree to any departure from the present rotating shifts. The PBA demanded that the fixed shift on a seniority bid system be initiated while the Town was unwilling to consider any variations from the present schedule.

The testimony of Dr. John Connelly was informative and provided the parties with a variety of ways in which fixed shifts could be implemented. The Town did not refute his testimony and appeared to be in agreement with many aspects of it. His testimony and suggestions should prove helpful to all parties should they, at some subsequent time, decide to vary the present shift systems. His testimony was credited and if one were to be starting a police department, de novo, one would have to consider his theories in formulating staffing programs.

There was no showing by the Town that the fixed shifts could not work. The testimony of Chief Still was not that he was conceptually opposed to fixed shifts but that under the present resource base and allocation that he was unable to fund it. The Town argued that fixed shifts were more expensive although the PBA refuted much of that testimony. The Town further argued that the seniority problem would result in an inexperienced police force on less desirable shifts, however that too was countermanded by the PBA. The proposal that the Chief be given certain undiminished authority to assign junior officers on an as needed basis appears to have addressed that problem.

The sum and substance of the testimony was such that there was no indication on the record that the TROY plan could not work in the Town of Poughkeepsie. It might be or might not be more expensive and while certain issues in the PBA proposal, i.e., training schedules, might need to be revised, that problem is not insurmountable. Indeed the Town's expert witness from the Kingston Police Department, Deputy Chief Ortlieb, appeared to support many aspects of the TROY plan.

The record with respect to the fatigue factors is difficult to assess. While Dr. Connelly explained the sleep cycle process he could not specifically

address the "second job" factor demonstrated by the Town. The record clearly supports the contention of the Town that members of the police department work numerous hours on second jobs and while this phenomena is not unique to Poughkeepsie, it does raise several collateral questions when measured within the frame of reference presented in the instant case.

Although the record appears supportive of the PBA's position in many ways, it falls short when measured against the required statutory criteria. The Union's proposal fails the comparability test (Sec 209.4 (a)). Although the parties were unable to agree on "comparables", by any such standard the fixed shift proposal, if granted, would place this unit among the very few in the Mid-Hudson region with such a schedule. In the entire Mid-Hudson region, which encompasses nearly one hundred police departments, there appears to be only three with some type of fixed schedules. Clarkstown and Harrison have fixed midnights while Kingston has all three shifts fixed. The Clarkstown and Harrison plans were not proposed by the PBA, thus only the Kingston plan satisfies the elements of the TROY plan and is consistent with the PBA demand. The PBA comparables were produced on a statewide basis (See PBA X# 69) and were limited to departments where the PBAs were members of the Police Conference of New York. While it was informative it could not overcome the criteria of the statute.

In sum the record appears to support the contention that the overwhelmingly majority of police departments in the State of New York have rotating and not fixed shifts. The PBA correctly points out that the present backward rotation used in the Town is rare in the Mid-Hudson region. Nevertheless this of itself does not satisfy the heavy burden required by the statute. This is not to suggest that the undersigned believes that one shift

arrangement is superior to the other. Interest arbitrators do not make value judgements on their particular likes or dislikes or on what they believe the contract should contain; they rule on the evidence and the record produced and in accordance with legislated constraints. In the instant case the PBA proposal for fixed shifts is rejected based on the statutory criteria, however, it is further recommended that a joint study committee be established to study this issue. Said committee shall consist of the Town Supervisor, or his designee, and two individuals appointed by him, and the PBA President, or his designee, and two individuals appointed by him. The committee shall total six in number, shall hold their first meeting within thirty days of the issuance of this Award and shall make known their recommendations to the parties by June 30, 1990.

5) COMPENSATION:

The PBA is seeking an increase of 7.5% in each of two years in the base pay of each officer. They are also seeking a one time salary adjustment of \$2,000 for all sergeants and lieutenants. They submit that the testimony of their expert financial witness, Edward Fennell, was largely unrefuted and must be accepted. Fennell testified that the financial condition of the Town was superlative. Absent any arguments as to the ability to pay, the PBA proposal must be awarded. The Town has a substantial cash surplus (PBA X# 32) which can readily fund the increase.

The primary financial argument offered by the Town was that they might, at some time in the future, have to either lower the tax rate or return certain unspecified tax certorari funds to IBM. Since that argument is speculative at best it cannot be deemed controlling. With respect to the Town's

argument that the police force is among the better paid in the Mid-Hudson region, the PBA submits that they work more days than almost any other force and that the pay structure accounts for that difference. (See PBA X# 44)

The Town argued that the PBA proposal is too costly and that an increase in the five percent range is the best that could be awarded. Since the Town police force is already the highest paid in the Mid-Hudson area the Town should be granted relief. The ~~is~~ is at least a \$2,000 differential from the current pay rate to the next highest police department in the area. The 1988 ~~rate~~ Town of Poughkeepsie rate of \$33,687 is already higher than the 1989 rates in the area. Among the areas suggested by the Town in terms of being granted salary relief was to establish a "break in rate" for new officers. These officers would be paid at the lower rate until they completed their initial police schooling and field training when they would revert to the starting salary. (See Issue # 18)

The testimony of Town Comptroller Gordon McKenzie supports the fact that a raise is warranted but not in the amount sought by the Union. (See Town X# 6, 7, 8) With respect to the proposed differential increases for sergeants and lieutenants the Town offers similar arguments. The officers already are compensated at a rate higher than their counterparts in other departments and this pyramiding of salary perpetuates these differences.

FINDINGS

Wage and salary compensation formulation is a demanding process. In a pure market economy earnings would be set by the forces of supply and demand. However the public policy of the State of New York has resulted in legislation which in case of collective bargaining imposes requirements which require interest arbitration and the use of certain statutory requirements in the ~~for~~ formulation of awards. In the

instant case the parties provided adequate documentation for the panel to establish its findings. The salary proposals submitted by the PBA provide for increase in base salary as well as sergeant and lieutenant differentials. With respect to the base salary increase the data warrants the awarding of an increase that is somewhat greater than that proposed by the Town and somewhat less than demanded by the Union. The following factors were considered in the formulation of the salary award.

The statutory criteria of ability to pay is well documented. The testimony of Fennel was credited. The cash surplus of \$ 4,080,866 in the General and Special Revenue accounts as of 12/21/88 documents that adequate funds are on hand to pay the awarded increase. Furthermore the cash surplus of \$994,054 in the Town Outside Village Fund which provides payment for certain enumerated police services is noted. This amounted to some 19 percent of total 1988 expenses and should assist in funding this Award.

The primary economic argument of the Town was prospective in nature and related to a tax relief problem that might or might not occur. The 1989 tax data was not available at the time of the hearings, however, the record suggests that there were no extraordinary Town expenses due in that time period that would constitute proof of an inability to pay the instant Award. This is not to suggest that the testimony of McKenzie was not credited, it was, but since much of it was directed towards a "worst case tax scenario" its relationship to this award, an award which covers mainly retroactive increases, was not dispositive.

Another factor considered by the panel was that, as of 6/17/89, the debt limit of the Town was at the 15.5 percent level. This consists primarily of revenue producing debt for water and sanitary sewer projects and not of the

general obligation type. Also noted was that the unappropriated balance for the Town as of 12/31/88 was \$1,109,725. (See PBA X# 32)

The obligation to maintain existing relationships between bargaining units was also considered by the panel. Salary increases for Unionized police departments in the Mid-Hudson region appears to be in the range of six percent per year. In the Town of Poughkeepsie that was the percentage raise awarded to the Police Chief and two Police Captains. A review of a series of Collective Bargaining exhibits introduced into the record indicates general wage adjustments in that range. (See PBA X# 49)

With respect to the issue of increases for sergeants and lieutenants the present compensation structure does not provide for adequate differentials between ranks. (See PBA X# 47) The current differential from Police Officer to Police Sergeant is approximately 6.5 per cent while the increase from Police Officer to Police Lieutenant is 15 percent. Differentials between ranks in police departments is almost universal and while there is no consensus as to what said differential should be, the PBA arguments in this area are persuasive. It should be further noted that a rank differential expressed in dollar amounts loses a certain portion of its value when the base pay against which it is measured is increased by a set percentage. The awarded increase should aid in restoring the relative value of the rank differential.

Also persuasive to the panel was the Town demand that a "break-in-rate" be established for new officers until they finish their initial police schooling and field training. Their argument that it is unwarranted to pay new unschooled police officers the same rate as those who have graduated from police training ~~the same rate~~ is credited. Immediately upon completing the probationary term or after one year after hire, whichever is first, the employee shall be advanced to

Patrolman for all purposes. The break-in-rate shall not be considered a new step and the period spent on this step shall be considered as time spent in the Department for all purposes.

The Panel also considered the issue of longevity increases and followed the long standing practice of awarding adjustments equal to the same percent as the general wage increase. Based on the record the following salary adjustments are awarded:

- a) A salary increase of six (6) percent effective January 1, 1989 for all bargaining unit employees.
- b) A salary increase of six (6) percent effective January 1, 1990 for all bargaining unit employees.
- c) An increase in the police sergeant differential of \$1500 effective January 1, 1990 added to the base after the January 1, 1990 6 % adjustment.
- d) An increase in the police lieutenant differential of \$1500 effective January 1, 1990 added to the base after the January 1, 1990 6 % adjustment.
- e) The establishment of a "break-in-rate" for new police officers who have not yet completed their initial police schooling and field training. This rate shall be 25 percent less than the entry rate and shall be in effect until the police officer completes initial police

schooling or one year of service with the Department. Said rate shall take effect the date of this award. (See Issue # 18)

- f) An increase of six percent in the longevity increment effective January 1, 1989.
- g) An increase of six percent in the longevity increment effective January 1, 1990.

6) OUT OF CLASSIFICATION PAY:

The PBA seeks a change from the present contractual provision which provides for payment at the higher classification rate after twenty days of accumulation at the higher rate. They suggest that such payments begin after the first day in the higher rate. The Town rejects this change and argues that this cost savings of a 20 day grace period is the result of years of negotiations and that no change is warranted.

FINDINGS

The evidence does not support a compelling reason for changing the method in which out of classification pay is awarded or calculated.

7) OVERTIME:

This issue is complicated by the controlling regulations of the Fair

Labor Standards Act. The PBA has proposed a new system to require certain overtime payments for work outside of the traditional work hours. The Town argues that the PBA is seeking to first increase the overtime and compensatory time authorization and then demand a new system to compensate them for it. They reject any changes in this area.

FINDINGS

The evidence does not support a compelling reason for changing the method in which overtime pay is calculated. Both the federal and state courts have addressed this issue and should compliance with external law become an issue then the parties are well versed in other available remedies and alternative forums in which to pursue their claims.

8) CLOTHING ALLOWANCE:

The parties have already reached agreement on most of the clothing allowance article. The panel has been asked to rule on the proposal to increase the clothing allowance for those officers who receive a promotion. The PBA is seeking an increase in what appears to be the traditional, if not somewhat generous, contractual clothing allowance for promotions. The Town argues that the status quo should be maintained.

FINDINGS

The evidence does not support a compelling reason for awarding an increase in the promotional uniform clothing allowances. The PBA proposal is rejected.

9) PERSONAL LEAVE:

The PBA is seeking a contract provision that would change the procedure whereby said leave was granted or rejected. The Town argues against this change fearing undue litigation over the issue of leave rejection. It argues that there has not been any showing that a problem exists in this area and rewriting this clause is unwarranted.

FINDINGS

The evidence does not support a compelling reason for changing the language whereby personal leave is granted or rejected. Absent any showing of harm the proposal must fall.

10) PAYOUT OF SICK LEAVE:

The PBA presently enjoys a procedure whereby unused sick leave is reimbursed upon retirement. They wish to extend this provision to payout for any reason including termination for cause. The Town rejects this proposal. The PBA also proposes setting up an account used to pay a retiree's health insurance premiums. The cash equivalent of the accumulated sick leave would be used to fund this account.

FINDINGS

The evidence does not support a compelling reason for changing this provision and allowing sick leave payout for reasons other than retirement.

11) HOLIDAYS:

The PBA seeks an additional holiday, Martin Luther King Jr.'s birthday. They argue that the present eleven holiday schedule is less than other departments and the going holiday norm is twelve per year. (See PBA X#45) The Town acknowledges the other holiday rates but argues that holidays must be viewed in the context of total compensation and that the higher rate of pay awarded to Town police officers is such that one less holiday is warranted.

FINDINGS

The record clearly demonstrates that twelve holidays is the norm for police officers in this region. Comparability warrants the same for this unit. The widespread acknowledgement of Dr. Martin Luther King Jr.'s birthday as a holiday on the federal and state level is noted. The PBA proposal to add this additional holiday is granted and is to take effective January 1, 1990.

12) PREMIUM DAYS:

The Union is seeking another contract premium day whereby employees actually working that day would be compensated at double time. The Town rejects this proposal.

FINDINGS

The record does not support a compelling reason for changing this provision and awarding another premium day. Furthermore, the award of an

additional holiday should be noted.

13) ASSIGNMENTS AND TRANSFERS:

The PBA is seeking protections against excessive use of transfers and out-of-title pay. They have proposed a series of economic sanctions which would preclude the Town from such reliance on out-of-title pay and what they perceive to be transfers to positions deemed less desirable. The Union also seeks payment for time spent in an "on-call-status". The Town has alleged that this subject (assignments and transfers) is not within the mandatory scope of bargaining and therefore they are not required to enter into negotiations on this topic. They furthermore reject payments for "on-call-status".

FINDINGS

Although there appears to be a substantial use of out-of-title pay and transfers to provide for supervisory coverage it does not yet rise to the level whereby the record would compel a change in the current system of assignments and transfers.

14) PAST PRACTICES:

The parties are in agreement that the existing past practices clause should be revised to reflect the current contract and existing practices. The present language appears to freeze practices as of December 31, 1986. Both parties have submitted language proposals and have asked that the undersigned to select one or the other.

FINDINGS

This issue is one of language selection. The parties are in fundamental agreement as to the meaning and value of "past practices" within the confines of the labor agreement. A review of the record finds that both proposals address the same issue however the following clause is recommended for inclusion into the new CBA.

A past practice will be any practice or rule relating to a condition of employment which is established by (1) its clarity, consistency, (2) longevity and repetition, (3) acceptability and mutuality. There will be no change in such condition without first having obtained agreement and consent of the union. Questions concerning ~~the~~ interpretation of this provision shall be determined through the ordinary contract process provided herein.

15) PERSONAL LEAVE LIMITATIONS:

The Town seeks to limit the method in which the present personal leave provisions are enforced. Those days that are used to extend vacations or for business that can be taken care of at nonduty times should not qualify for personal leave use. The Union rejects any changes in the use of personal leave and is seeking no changes in this area.

FINDINGS

Although several arguments were raised concerning the excessive use of

personal leave the record does not support a change of this provision.

However it should be noted that at the hearings the parties verbally agreed that personal leave should not be used to extend vacations or to conduct business that can be transacted during off duty hours. While these understandings are not to be incorporated into the successor agreement, they are noted for the record.

16) COMPENSATORY DAYS PAYOUT:

The Town seeks to change the present payout system for the use of compensatory days. It argues that such time be paid off after two weeks and that such payoff be either in time or cash. The PBA rejects any changes in this area.

FINDINGS

The record does not reveal a compelling reason for changing the present system by which payouts are made for compensatory time earned.

17) ENTRY LEVEL PAY:

See item # 5, compensation, for findings and recommendations in this area.

18) HEALTH INSURANCE RATES

The Town seeks some relief in the area of rising health insurance costs.

It argues that the present premium rates are excessive and that the individual employee should be required to pay some of these costs. The PBA rejects any changes in this area.

FINDINGS

The arguments raised by the Town are of concern. This issue is at the forefront of labor negotiations in the State of New York and one that by most accounts will continue to dominate in the years to come. However, the statutory requirements relied upon by this panel are such that the arguments raised by the Town do not meet those tests. It is for that reason that its proposal for relief in this area is rejected.

19) GRIEVANCE AND ARBITRATION:

During the course of negotiations the parties agreed to a new grievance and arbitration procedure. The terms of that agreement are set forth in PBA X# 22, dated and signed by both parties on 12/19/88, and are to be incorporated into this award.

FINDINGS

The only unresolved question with respect to this provision concerned the issue of appropriate released time to process grievances. With respect to that sole question the following is awarded:

The President of the Association or his/her designee shall be released from his/her regular duties without loss of pay for the time reasonably necessary to adjust grievances or participate in grievance hearings.

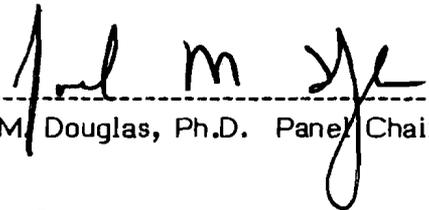
=====

AFFIRMATION

State of New York

We, John M. Donoghue, Ronald Dunn and Joel M. Douglas, do hereby affirm upon our oaths as Arbitrators that we are the individuals described in and who executed this instrument which is our Award.

Date: 3/9/90



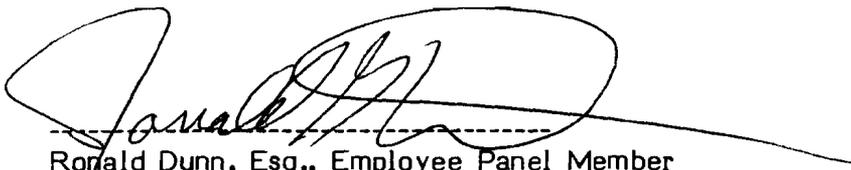
Joel M. Douglas, Ph.D. Panel Chairman

Date: 3/9/90



John M. Donoghue, Esq., Employer Panel Member

Date: 3/12/90



Ronald Dunn, Esq., Employee Panel Member

dwp

I dissent from that portion of the award insofar as it denies the PBA's proposal for fixed shifts. The award denies the PBA shift proposal based on a finding that the statutory criteria of "comparability" was not established. I disagree. The evidence before the panel demonstrated that the present backward rotation is the exception, not the rule, in the mid-Hudson region. The evidence further demonstrated that fixed shifts are prevalent in other sections of the State. The overwhelming evidence is that fixed shifts are in the public's interest and serve to improve the health and morale of the police. The overwhelming evidence also showed that the fixed shifts will actually save the Town money.

For these reasons, I respectfully dissent.

DATED: March 12, 1990

A handwritten signature in cursive script, appearing to read "Ronald G. Dunn", written over a horizontal line.

RONALD G. DUNN

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
IN THE MATTER OF THE INTEREST ARBITRATION
BETWEEN:

The Town of Poughkeepsie,
Employer,

DISSENT

-and-

Town of Poughkeepsie Police Benevolent
Association,

Union.

PERB Case No: IA 89 - 4 M 88 - 506

-----X
PUBLIC INTEREST ARBITRATION PANEL:

Ronald Dunn, Esq. Employee Panel Member
John M. Donoghue, Esq. Employer Panel Member
Joel M. Douglas, Ph.D. Public Panel Member and Chairman

APPEARANCES:

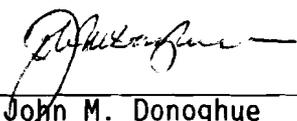
For the Town of Poughkeepsie:
Plunkett & Jaffe, P.C.
Rochelle J. Auslander, Esq., of Counsel

For the Police Benevolent Association
Gleason, Dunn, Walsh & O'Shea, P.C.
Mark Walsh, Esq., of Counsel

I am dissenting from the findings in paragraph 19 of the Opinion and Award of Chairman, Dr. Joel M. Douglas. That section gives the Union not only 80 hours of paid work time for the purpose of running its affairs, but also additional "reasonable" time for the processing of grievances. The processing of a grievance is in fact union business performed at the expense of the public's business. The more grievances, the more time lost to the employer and to the public. It is the union which decides to grieve. There is no rule against frivolous^{o's} grievances. The Chairman has opened the floodgate to unrestricted union time by his findings. What is "reasonable" time can only be tested

through the grievance process itself.

The statute requires that an Award be based on a finding of comparability. That is, sufficient data to justify a determination. The evidence submitted at this hearing contains no contract that gives such broad latitude to paid public time for the conduct of union business as that proposed in this Award. I believe that the finding of the Panel in this regard violates the statutory principle of comparability. I dissent.

 — 3/22/90

John M. Donoghue