

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between
PLATTEKILL POLICE BENEVOLENT ASSOCIATION

AND

THE TOWN OF PLATTEKILL, NEW YORK

PERB Case No. IA98-027; M98-032

FINAL AND BINDING OPINION AND AWARD OF TRIPARTITE ARBITRATION PANEL

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRMAN:

Peter A. Prosper
Barney Square
214 Liberty Street, Suite 446
Schenectady, New York 12305

PUBLIC EMPLOYER PANEL MEMBER:

William M. Wallens, Esq.
Roemer, Wallens & Mineaux, LLP
13 Columbia Circle
Albany, New York 12203

EMPLOYEE ORGANIZATION PANEL MEMBER:

Anthony V. Solfaro, President
New York State Union of
Police Associations, Inc.
1 Spring Square Business Park
Newburgh, NY 12550

APPEARANCES:

For the Police Benevolent Association

John K. Grant, Esq.
New York State Union of
Police Associations, Inc.
1 Spring Square Business Park
Newburgh, NY 12550

For the Town of Plattekill

Jeffrey S. Hartnett, Esq.
Roemer, Wallens & Mineaux, LLP
13 Columbia Circle
Albany, New York 12203

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

JAN 26 2000

CONCILIATION

Pursuant to the provisions of Civil Service Law, Section 209.4, Richard A. Curreri, Esq., Director of Conciliation, New York State Public Employment Relations Board, designated the undersigned on April 19, 1999, as the Public Arbitration Panel. The Panel was charged by Section 209.4 to consider the following statutory guidelines:

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors the following:
 - a. comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding 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 providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.
- (vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

The Town of Plattekill (hereinafter called the "Town") is located in Ulster County, and has a population of approximately 9,200. The Town employs sixty-nine persons to provide basic services to its residents. Of the sixty-nine employees, seventeen are full-time, and twelve of the seventeen are employees in the Town's Highway Department. Forty-four employees are part-time and eight are seasonal employees.

The Plattekill Police Benevolent Association (hereinafter called the "Association" or PBA") represents a bargaining unit consisting of twelve part-time officers, excluding the part-time Police Chief. The Town and the Association entered into negotiations for a successor agreement to their Collective Bargaining Agreement whose term was from January 1, 1994 through December 31, 1997, and when the parties could not resolve all their differences, impasse was declared. The Association filed a petition for compulsory interest arbitration on September 30, 1998, and the Town responded to that petition in October 1998. The New York State Public Employment Relations Board appointed the Public Member and Chairman of the Interest Arbitration Panel on April 19, 1999. The Association designated Anthony V. Solfaro, President of the New York State Union of Police Associations as its Panel Member; the Town designated William M. Wallens, Esquire, as its Panel Member. Hearings were held on August 26, 1999, at which each party was represented by counsel in making its presentation to the Panel. The Town was represented by Jeffrey S. Hartnett, Esq., and the Association was represented by John K. Grant, Esq. The parties were afforded full opportunity to present evidence, witnesses and argument in support of their respective contentions on the outstanding issues. The Town presented testimony from Judith Mayle, Town Supervisor. The Association presented exhibits documenting their arguments and evidence. It presented no witnesses to provide oral testimony. The parties submitted two joint exhibits, the Town submitted 11 exhibits, and the Association submitted 23. The parties filed post-hearing briefs, which were received in a timely manner. The Panel met in executive session on November 2, 1999, and deliberated on each of the outstanding issues, carefully and fully considering all the data, exhibits

and testimony received from both parties. The results of those deliberations are contained in the *AWARD*, which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. It addresses each of the issues on which the parties have been unable to reach agreement. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion.

Although several issues in negotiations were withdrawn by each party at the beginning of the hearing, the following issues were placed before the Panel for evaluation and determination: Collection of Dues and Agency Shop Fee Deduction; Overtime and Call-In Pay; Holidays; Uniforms and Equipment; Retirement; Hourly Rate of Pay; PBA Time; Work Schedule; Shift Assignment; Uniforms; Personal Property; Seniority; Disciplinary Procedure; Zipper Clause; Outside Employment; Duration.

SALARY

The current schedule for members of the bargaining unit are as follows:

Beginning of employment through six years of service:	\$10.23 per hour
Seven years or more of service:	\$10.46 per hour

The Association proposes the following schedule:

<u>Years of Service</u>	<u>Beginning January 1, 1998</u>	<u>Beginning January 1, 1999</u>
Starting through 2 years	\$11.00	\$11.50
3 through 4 years	\$11.50	\$12.00
5 through 6 years	\$12.00	\$12.50
7 years and above	\$12.50	\$13.00

The Town's' proposal is as follows:

<u>Years of Service</u>	<u>Beginning January 1, 1998</u>	<u>Beginning January 1, 1999</u>
Starting through 6 years	\$10.33	\$10.43
7 years and above	\$10.57	\$10.68

Position of the Parties

The Association supports its salary proposal by arguing that the Town is financially strong, has a history of prudent management and conservative budgeting. The Association asserts that its proposed wage increase can be achieved with no tax increase.

In comparing the Town of Plattekill with neighboring and comparable communities, the Town's police force ranks near last in salaries. While the Association's proposal does not completely correct the disparity, it does begin the process of correction with limited impact on the Town and its taxpayers. If the Town's proposal is accepted, the PBA would rank last among all departments at all levels. The ten cents per hour offered by the Town is less than one percent increase. As such, it would lead to more officers leaving the department, less professional candidates applying and most important, diminished morale.

The Town argues that there are no comparable jurisdictions to Plattekill's Police Department even though the PBA has listed nine jurisdictions as comparable. The reason none are comparable is because all of the municipalities cited by the PBA are significantly wealthier than the Town of Plattekill. For example, Woodstock's per capita income is \$8,625 higher than that of Plattekill. Its median household income is \$4,055 higher, and its median family income is \$13,564 higher. Comparable figures can be cited for the other "comparable" communities cited by the PBA.

Clearly, states the Town, it would be unfair to expect Plattekill to be able to provide its part-time police officers with the same level of wages and benefits as municipalities which are significantly wealthier and have less poverty.

It is well known that towns and villages are fundamentally different and therefore cannot be considered comparable to each other. Cities and villages have a constitutional taxing limit, towns do not. A town or village is governed by a Mayor or Council, while a town is governed by its Town Board. In addition, the Town of Plattekill's police department consisted entirely of part-time officers, a feature that makes it unique. Those other municipalities offer a greater level of police services and require a greater commitment from their officers.

Discussion

We considered the differences in finances among towns and villages near the Town of Plattekill, as well as Plattekill's own financial position. We find that the Town of Plattekill, which cannot be termed a prosperous unit, is not poverty stricken. We acknowledge the fact that a substantial number of taxpayers are living in mobile homes, and that those units do not appreciate in value as do other homes. We also recognize that industries in which inhabitants of the Town worked have down-sized, leaving some citizens either unemployed or in jobs with reduced earnings and benefits.

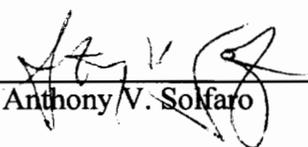
At the same time, we recognized that Town of Plattekill police officers are in the bottom ten percent in pay relative to other police units around the Town and in the County. We believe that some adjustment must be made to ameliorate their situation. The *AWARD* below considers these and other factors relative to financial considerations, and also considers the pay rate as part of a complete package of benefits – to the Town as well as to the Association.

In reaching the Award for Salaries below, the following factors were taken into account: (1) Comparisons (2) Financial Condition of the Town (3) Special Considerations.

Taking into account all the above factors, arguments and considerations, the following Salary adjustment is **AWARDED**

<u>Years of Service</u>	<u>Beginning January 1, 1998</u>	<u>Beginning January 1, 1999</u>
Starting through 6 years	\$10.67	\$11.13
7 years and above	\$10.91	\$11.38

Date: 1/11/00 I (agree) (~~dissent~~) 
 William M. Wallens, Esq.

Date: 1/12/00 I (agree) (~~dissent~~) 
 Anthony V. Solfaro

COLLECTION OF DUES AND AGENCY SHOP FEES DEDUCTION

The Association seeks to add new sections to Article 3 as follows:

Section 3.1

In the event that there is insufficient payroll from which to deduct dues, that amount shall be deducted from continuous payrolls until such time that all dues and any arrearages are paid in full.

Section 3.2

In the event there is insufficient payroll from which to deduct Agency Shop Fees, that amount shall be deducted from continuous payrolls until such time that all Agency Shop Fees and any arrearages are paid in full.

The Town also presents a proposal for Article 3, adding the following sentence:

Written authorization is to be submitted in the form approved by the Town.

Discussion

The Town argues that it does not wish to be put in the position of collector. It states that it deducts dues and agency fees when the officer works and has sufficient pay to make the deductions. The Town argues that the Union proposal would force it to keep track of each employee and how much was deducted and keep deducting until the employee has caught up in his payments. The Town argues that it just doesn't have sufficient clerk time to do all the bookkeeping necessary. It should be the Union's responsibility to keep track of those in arrears. The current system has worked well up to this point, so there is no reason to change.

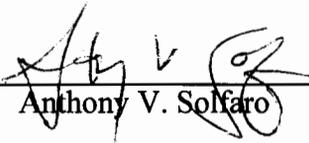
The Union argues that the Agreement provides for the collection of dues and Agency Fee through payroll deduction, and its proposal insures that all monies due the Union through the Article shall be collected.

Regarding the Town's proposal to have approval for the authorization form, the Town has stated that it has no problem with the current form, but "in the event that the Union changes the form," it wants approval.

The Panel believes that the current content of Article 3 is appropriate, and that if either party wishes to change any portion of that Article, it should do so through the negotiation process.

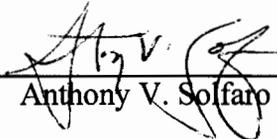
Therefore, the proposals by the Union regarding Article 3 are DENIED.

Date: 1/18/00 I (agree) (~~dissent~~) 
William M. Wallens, Esq.

Date: 1/12/00 I (~~agree~~) (dissent) 
Anthony V. Solfaro

The proposal by the Town regarding Article 3 is denied.

Date: 1/18/00 I (~~agree~~) (dissent) 
William M. Wallens, Esq.

Date: 1/12/00 I (agree) (~~dissent~~) 
Anthony V. Solfaro

OVERTIME AND CALL-IN PAY

The Union proposes to amend Article 6.1 as follows:

Work in excess of an officer's scheduled work day or in excess of forty (40) hours in any work week shall be considered overtime.

The current Article provides overtime for any work in excess of forty (40) hours in any work week.

Position of the Parties

The Union states that among its cited comparable communities, four of the nine provide for such payments. It argues that if officers are paid overtime it would provide substantial incentive for them to remain at work during those periods when additional officers are needed as determined by the Chief of Police.

The Town opposes the proposal because it would result in increased costs for the Town. It states that officers' workday ranges from four to six hours, and there is no reason why an officer should get overtime for working more than four or six hours.

Discussion

The Panel has carefully considered the arguments of both parties and the impact this proposal would have on its total financial Award.

The Panel DENIES the Association's proposal.

Date: 1/18/00

I (agree) (~~dissent~~)

William M. Wallens
William M. Wallens, Esq.

Date: 1/12/00

I (~~agree~~) (dissent)

Anthony V. Solfraro
Anthony V. Solfraro

CALL-IN PAY

The Association proposes increasing the current one hour minimum call-in pay to three hours minimum. The Town opposes any change.

Discussion

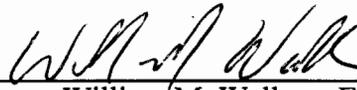
Several surrounding communities have provision for four-hour minimum call-in pay; others have a three-hour minimum and two municipalities have a two-hour provision.

In an attempt to make terms and conditions relatively comparable among similar jurisdictions, yet mindful of the financial impact, the Panel makes the following **AWARD**:

Any officer who is called in and reports to work when not regularly scheduled to work, shall be guaranteed a minimum of two (2) hours pay to be compensated at the regular rate of pay.

Date: 1/18/00

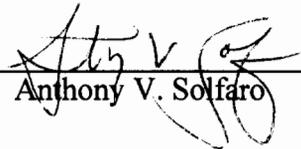
I (agree) (~~disagree~~)



William M. Wallens, Esq.

Date: 1/12/00

I (agree) (~~disagree~~)



Anthony V. Solfaro

HOLIDAY PAY

The PBA seeks to increase the payment for holidays at an overtime rate of time and-a-half from three holidays per year to twelve holidays per year. Currently officers receive overtime pay on Independence Day, Christmas and Memorial Day. The PBA seeks to add New Year's Day, Martin Luther King Day, Lincoln's Birthday, Washington's Birthday, Labor Day, Columbus Day, Election Day, Veterans' Day and Thanksgiving Day. The PBA proposes that six of the twelve holidays be compensated at a rate of double time and-a-half. The other six would be compensated at a rate of time and-a-half.

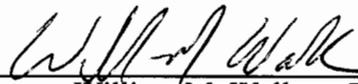
Discussion

The Police Officers of the Town of Plattekill are part-time employees. Some have full-time jobs. Those with full-time jobs are usually compensated by their employer for various holidays. That does not mean that if they work for the Town on those holidays that they should receive no pay. They receive pay at the regular rate, except for the three holidays in which they receive time and-a-half, if they work. The proposal of the PBA is not only excessive, but would create financial chaos for the Town. The Panel believes that a slight increase is in order, and therefore makes the following

AWARD:

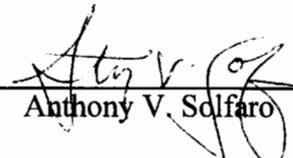
The Town shall, in addition to the already-designated three holidays, add Thanksgiving Day as a holiday, payable at a rate of time and-a-half, effective January 1, 1998. The Town shall also add New Year's Day as a holiday, payable at a rate of time and-a-half, effective January 1, 1999.

Date: 1/12/00I (~~agree~~) (dissent)



 William M. Wallens, Esq.

Date: 1/12/00I (agree) (~~dissent~~)



 Anthony V. Solfaro

UNIFORMS AND EQUIPMENT

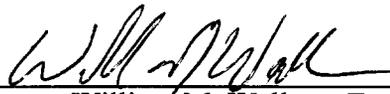
The Association seeks to increase the uniform allowance for maintenance and replacement of uniforms from \$125.00 to \$200.00 for 1998 and to \$250.00 for January 1999. It also seeks to have the Town replace all uniforms and equipment that are damaged in the line of duty and to replace uniforms and equipment on a normal wear and tear basis.

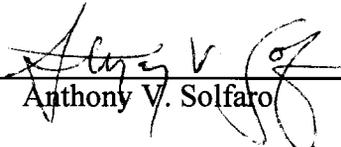
Discussion

The PBA argues that neighboring municipalities provide greater amounts than does the Town of Plattekill. The Town argues that the current clothing allowance is for replacing worn out uniforms and that the PBA has not offered sufficient justification for its proposal.

The Panel believes that some funds should be provided for uniform allowance, not only for replacement for wear and tear, but for cleaning when necessary. It is noted that the current amount stated in the Agreement has not been increased for a number of years, yet the cost of cleaning has risen. Therefore, the following **AWARD** is made:

The Town of Plattekill shall increase the annual reimbursement for maintenance and replacement of uniforms by twenty-five (\$25.00) dollars as of January 1, 1998, and by an additional twenty-five (\$25.00) dollars as of January 1, 1999.

Date: 1/18/00 I (agree) (~~dissent~~) 
William M. Wallens, Esq.

Date: 1/13/00 I (agree) (~~dissent~~) 
Anthony V. Solfaro

WORK SCHEDULE

The Town of Plattekill seeks to modify Section 5.3 of the Collective Bargaining Agreement by adding the following paragraph:

Officers shall work in accordance with the posted schedule. The Town reserves the right to cancel assignments to shifts forty-eight (48) hours in advance of the scheduled shift or less in the case of unforeseen circumstances.

In addition, the Town seeks to increase the time that an officer shall notify the Department if he is unable to report to work. Currently, an officer shall notify the Department in no less than one (1) hour prior to their scheduled shift.

Discussion

The Town has had difficulty in the past in filling weekend and holiday shifts, among others. It also states that as a result of the requirements under Section 5.3, some officers work only eleven to twenty hours per month, while other officers work eighty or more hours per month. The Town seeks to require officers to work a minimum of thirty-six hours per month.

The Panel is sympathetic with the Town's problems of ensuring adequate staffing for all shifts at all times. However, the Panel is also aware of the problems facing part-time officers. Some have other jobs, others have different kinds of obligations. Some officers are available only on specific days of the week, and offer those days to the Department but are not needed. It is apparent that the two parties must sit together to work out the problems inherent in attempting to staff shifts with part-time employees who have alternative obligations. The AWARD below is a first step in assisting the Town to mitigate its problems and at the same time consider the special obligations of its police officers.

The following is **AWARDED**:

Effective December 31, 1999, Article 5.3, Paragraph 2, shall be amended as follows:

An officer shall not be required to provide a minimum number of hours but only their availability of a minimum of thirty-six (36) hours per month, within the department's hours of coverage.

Date: 1/18/00

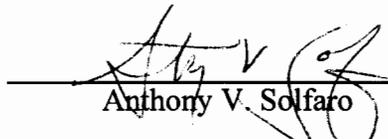
I (agree) (~~dissent~~)



William M. Wallens, Esq.

Date: 1/2/00

I (~~agree~~) (dissent)



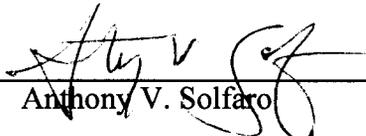
Anthony V. Solfaro

The following is also **AWARDED**:

Effective December 31, 1999, Article 5.3, Paragraph 3, shall be amended as follows:

In the event an officer is unable to report for work, the officer shall notify the Department as soon as possible, but in no event less than twenty-four (24) hours prior to their scheduled shift, except for events which shall include but not limited to primary employment, family illness, and other similar circumstances which may be required to be documented by the Department.

Date: 1/18/00 I (agree) (~~dissent~~) 
William M. Wallens, Esq.

Date: 1/13/00 I (~~agree~~) (dissent) 
Anthony V. Solfaro

RETIREMENT

The current provision for retirement for Police Officers is a non-contributory retirement plan under Section 375-c of the New York State Policemen’s and Firemen’s Retirement System. The Association seeks to change to plan 384-D of the New York State Retirement System.

Discussion

The Association argues that all other comparable jurisdictions have granted coverage under this plan, and there is no compelling reason to continue such disparate treatment. The Town opposes.

No justification by the Association was presented for this proposal except that “all others” have been granted such coverage. The Association presents no cost information, that is, what the increased costs to the Town would be. In the absence of compelling reasons for its adoption, plus the unknown costs of the proposal, the following is **AWARDED**:

The proposal of the Association regarding retirement is DENIED.

Date: 1/11/00

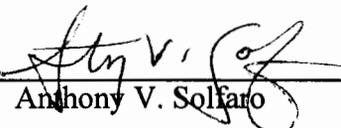
I (agree) (~~dissent~~)



 William M. Wallens, Esq.

Date: 1/12/00

I (~~agree~~) (dissent)



 Anthony V. Solfaro

OTHER PROPOSALS

The Panel has examined and thoroughly evaluated all proposals presented to it by both parties. The following proposals were denied by the Panel because either the proposing party did not provide sufficient documentation and/or argument for it, the proposal was considered to be without merit, or the Panel believed that it was an inappropriate forum for discussion of those issues, and that they be addressed in negotiations by the parties:

Uniform and Equipment – one pair of police style boots/shoes; PBA Time; Shift Assignment; Personal Property; Seniority; Disciplinary Procedure; Zipper Clause; Outside Employment.

DURATION

As various AWARDS indicate above, the Panel makes a two-year AWARD with concurrence from both parties as of January 1, 1998, except as otherwise indicated.

Date: 1/18/00

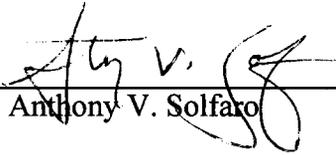
I (agree) (~~disagree~~)



William M. Wallens, Esq.

Date: 1/12/00

I (agree) (~~disagree~~)



Anthony V. Solfaro

The above constitute all the items placed before this Panel for evaluation and AWARD.

Respectfully submitted,



Date:

Peter A. Prosper
Public Panel Member and Chairman

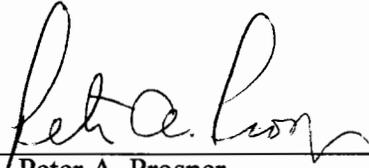
AFFIRMATION

STATE OF NEW YORK)

COUNTY OF SCHENECTADY) SS:

We, Peter A. Prosper, William M Wallens, Esq., and Anthony V. Solfaro, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our AWARD.

Date:



Peter A. Prosper
Public Panel Member and Chairman

Date:

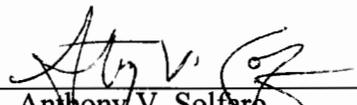
1/18/02



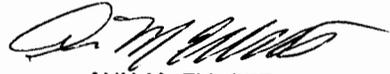
William M. Wallens, Esq.
Employer Panel Member

Date:

1/12/00



Anthony V. Solfaro
Employee Organization Panel Member



ANN M. ELLIOTT
Notary Public, State of New York
Qualified in Orange County
Reg. No. 01EL6031699

Commission Expires October 12, 2001