

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration Between:
Town of Niskayuna

-and-

FINAL AND BINDING OPINION AND AWARD
OF TRIPARTITE ARBITRATION PANEL

The Niskayuna Police Benevolent Association

Case No: IA 2003 - 002
M 2002 - 199

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The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN: Joel M. Douglas, Ph.D.

PUBLIC EMPLOYEE PANEL MEMBER: Paul Davenport, Esq.
Lombardi, Reinhard, Walsh & Harrison, PC

PUBLIC EMPLOYER PANEL MEMBER: Stephen Beditz
University at Albany (SUNY)

Appearances:

For the Town of Niskayuna: Eric Dickson, Esq.
Niskayuna Town Counsel

For the Niskayuna PBA: Dick Walsh, Esq.
Lombardi, Reinhard, Walsh & Harrison, PC

Date March 18, 2004

Pursuant to the provisions of Section 209.4 of the Civil Service Law, and in accordance with the rules of the Public Employment Relations Board, an Interest Arbitration panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the Town of Niskayuna ("Town") and the Police Benevolent Association

of the Town of Niskayuna ("PBA" or "Association")

Hearings were held Niskayuna, New York on September 30 and October 1, 2003 and during which time both parties were represented 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.

An executive session was held in Albany, NY on December 18, 2003 during which time the Panel deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. The results of those deliberations are contained in the AWARD that constitutes the Panel's best judgment as to a just and reasonable solution of the impasse.

Those issues presented by the parties that are not specifically addressed in this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

In arriving at this Award, the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

In arriving at its 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 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 Niskayuna, located in Schenectady County, NY, is a suburban bedroom community and operates a Police Department 24 hours /seven days per week. The Police Department consists of twenty-seven officers and four superior officers including the Chief of Police.¹ The Town's land area is 14.1 square miles and contains a population of 20,295. The Town population grew by 2.3% between 2002-2003. The assessed valuation of the Town is

¹The parties have apparently agreed that Lieutenants are not included in the bargaining unit and will confirm same with an exchange of letters.

approximately 1.2 billion dollars with 75% encompassed in residential property.

The median family income of residents from the 2000 census was \$79,539.00 while the per capita taxable property wealth for 2002 was \$67,835.00. The median value of owner occupied housing according to the 2000 census was \$141,000.00. One percent of salary adjustments is projected at \$16,000.00. The Town also negotiates with other bargaining units.

ISSUES AT IMPASSE

At the hearing the parties agreed to submit the following issues for evaluation and decision by the Panel. Several proposals had numerous components; however, for the sake of succinctness, they have been consolidated into their major categories. Where viable, the aforementioned demands and subsequent recommendations have been consolidated to address the needs of both parties. The Opinion constitutes the findings of the Panel, however, the language contained herein is the sole responsibility of the Chairman.

The issues at impasse and submitted to the Panel for an Opinion and Award included:

1. **TERM OF THE AWARD**
2. **BASIC ANNUAL SALARY**
3. **PERSONAL LEAVE**
4. **COMPENSATORY TIME RESTRICTIONS USAGE**
5. **COMPENSATORY TIME CASH OUT**
6. **DETECTIVE WORK CHART**
7. **ANNUAL PERMANENT SHIFT**
8. **PAST PRACTICE CLAUSE**

9. SERGEANT LANGUAGE AS AGREED UPON

10. DISABILITY FOR SICK LEAVE

**ISSUE NUMBER ONE
TERM OF THE AWARD
DISCUSSION AND AWARD**

1) **TERM OF THE AWARD**

The instant **OPINION** and **AWARD** concern a successor Agreement to the previous Collective Bargaining Agreement which covered the period January 1, 2000 thru December 31, 2002. The instant Award covers the period January 1, 2003 thru December 31, 2004. (JX

#1) In its determination the Panel was guided by the appropriate statutory criteria:

- (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.

The arguments in favor of an extended Award are well known to the parties and were set forth by the undersigned in the executive session. An extended Award is not possible without the written permission of the parties; however, since such authorization was not obtained the following is awarded.

Due to the length of time that has elapsed from the expiration date of the previous

Collective Bargaining Agreement, it is suggested by the Panel Chair that the parties use this Award as the infrastructure to fashion and negotiate a multi-year successor Agreement.

Based on the record the following is awarded.

1. The term of this Award is from January 1, 2003 to December 31, 2004.

**ISSUE NUMBER TWO
BASIC ANNUAL SALARY
DISCUSSION AND AWARD**

At the crux of this impasse is the question of salary and compensation and how it relates to overall police department staffing and management. The PBA is seeking wage increases of 4.75 percent per year for each of two years of the successor contract. The PBA submits that their retirement benefits are the lowest in the area and that since they have dropped their demand for §384 E benefits they are entitled to their economic package.

The PBA originally proposed the addition of Section 384-e of the NYS Retirement Plan and in exchange for that provision was willing to accept a 2.5% annual salary increase.² When the Town argued that the retirement plan additions were not feasible, the PBA withdrew that demand and instead sought a wage increase of 4.75%.

The Town submitted that:

... participation in this pension enhancement is (a) prohibited subject matter for interest arbitration. (Retirement and Social Security Law Section 384-e(c)). The panel should not countenance a “back door” analysis of the Town’s pension elections, which would not be permitted

² The estimated cost of the 384-e Retirement Plan was estimated at \$480,000.00.

directly.³

The Town also notes that while it retains certain ability to pay rational and balanced salary increases, and is not arguing an inability to pay, that recent increases to retirement system contributions along with increases in health care premiums mandates a more cautious approach. Town Labor Relations Consultant and negotiator John Galligan testified as to the CPI and the fact that the raises, if any, be linked to that number (2.5%).⁴

The PBA argues that as evidenced by an increased Town revenue stream, an excellent school system, the newly refurbished Mohawk Mall, increased research facilities and property values, there is a sufficient ability to fund their proposals.

The record documents that Town unrepresented management confidential employees received increases of three percent per year for this time period. The AFSCME (Council 66) Highway is in the last year of a four-year Agreement which provided for four annual raises of three percent. (See also UX #10 chart which documents raises given to other Town employees who earn in FY 2003 earned in excess of \$40,000.00 per year.)

The Town submits that they are fiscally sound and can pay reasonable increases. However, they note that based on the recent modest increases in the CPI, the PBA demands are unreasonable.

With respect to bargaining history the record notes that:

- a. the prior agreement provided for increases in the salary schedule of 3%

³ See, Town post hearing brief @ p.2.

⁴ The Town officially has proposed increases of between one and one half percent to two percent per year.

for each of three years and the inclusion of a new top step. (JX #1)

- b. the 1996-1999 CBA provided for four annual increases of 3.5% per year. (TX #1)
- c. The 1992-1995 CBA provided for four annual increases of 2/2.5%, 3/5%, 2.5/2.5%, and 2%. (TX #2)

As has been often said, wage and salary determination is far from an exact science; however, the undersigned was guided by the criteria set forth in the Taylor Law. Among other factors these included the:

... 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 employees generally in public and private employment in comparable communities. Section 209.4 of the Act:

Additional criteria included:

... (b) the interests and welfare of the public and the financial ability of the public employer to pay. (Section 209.4 of the Act)

As is so frequently the case, negotiated benefits obtained at the bargaining table by either party were afforded presumptive preservation.

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. (Section 209.4 of the Act)

The Panel has considered all the cited statutory criteria and first addresses the comparability standard. The parties were unable to agree to area comparables with the Town arguing that

a wider net must be cast to include the entire regional area. The PBA seeks comparability with the following jurisdictions: Town of Rotterdam, Guilderland, Bethlehem, Glenville, and Colonie.⁵ Furthermore the PBA argued that bargaining history, past practices and custom has always dictated that comparability was traditionally limited to larger area Townships including Colonie. The Town has offered the following comparables: Schenectady County municipalities which hire off the same Civil Service list, the City of Schenectady, the Village of Scotia. They further submit that the appropriate comparables are Schenectady County and not those in Albany County.

With respect to the comparability argument between the Town of Niskayuna and the City of Schenectady, a position articulated by the employer, the arguments presented by the PBA in opposition to this comparability factor were credited. The record documents that Niskayuna is not subject to a constitutional tax limit while in 2003 the City of Schenectady is at 70.1% of its tax limit. The Niskayuna general fund balance at the end of FY 2002 was 24.3% of budget and has an A 1 Moody bond rating. For the same period Schenectady City has an Ba 1 Moody rating. Additionally, the City of Schenectady is economically depressed and under federal supervision. The PBA arguments are persuasive in this area.

Concerning the comparability between Town of Niskayuna and the Village of Scotia, the PBA notes that Scotia has a 9:00 A.M. to 5:00 P.M. eleven man (plus a chief) force which is supplemented by a non paid auxiliary complement. Additionally, Scotia is one square mile

⁵ Guilderland, Bethlehem, Colonie are located in the adjacent county of Albany. The Town of Colonie, according to Town of Niskayuna records is the largest town (area) in NYS, has a much larger department and services a far larger population. The town of Niskayuna has a significant residential tax base while others in the area (Guilderland and Colonie) have a more commercial base.

in area and has a different mission than Niskayuna. The evidence documents that the police forces of Niskayuna and Scotia are not comparable.

The testimony of economist Kevin R. Decker was instructive as to comparability.⁶ He argued for the PBA approach to comparability and noted that all Towns have police agencies. However, he stated that the Town of Niskayuna does not have a constitutional tax limitation and in contrast with other area Cities and Villages does not provide fire services.⁷ Thus while no agreement was reached, it appears that the larger Towns with full service police departments were considered comparable to the Town of Niskayuna.⁸

Geographical proximity is a critical element of comparability. The Panel has considered county-area comparables and notes that with respect to wages, settlements and Awards in Schenectady County for full-time salaried police departments have ranged in the area of three plus percent. The following raises are noted: Bethlehem 5/06% for 2003 and 5/06% for 2004. This reflects two split raises of three percent in January and July of each two-year period. Colonie received 2.0% raises in 2003 and 2004 plus certain retirement benefits. Glenville received a 3.0% in 2003 and 4.0% in 2004. Guilderland received 4.04% increases in 2003 and 2004 while Rotterdam received a 3.0% in 2003.

The record also reflects that the general fund tax rate per thousand on a \$141,000.00 median value home was approximately \$205.00 in 2003. (TX #7) This reflects an increase in

⁶He is an economist with Deseve Economics and has testified in numerous proceedings including 12-15 Interest Arbitrations.

⁷ Fire service is provided through a "special district."

⁸ It is suggested that the parties revisit the issue of comparability in the next round of negotiations and that the comments provided herein that the Village of Scotia, the City of Schenectady and the Town of Colonie are not comparable prove instructive.

virtually every since 1992 when the rate was \$150.00.

Town Comptroller Paul Sebesta testified as to the costs associated with the PBA CBA. He noted that the Town fiscal year is the calendar year and that in the past year there has been a 4.9 % increase in retirement costs and raises in health insurance. (See, TX #6) He disagreed with the Union cost totals and argued that the Town unappropriated and unreserved fund balance must include a “back out” for a cumulative surplus, legally mandated reserves and other encumbrances.

Sebesta added that he must make a commitment to the following year and although the Union claims he is appropriating unnecessarily large amounts to the following year, he notes that you must also calculate and add a new column for the unreserved and unappropriated fund balance. He noted that the Town 2004 budget included an estimated 2.5 % for salary adjustments and that this amount included the elimination of a Deputy Chief position estimated at \$85,000.00. However, as a partial offset, the 2004 budget also provided for the hiring of two additional officers.

There was much discussion between the “expert witnesses” as to what constitutes a prudent fund balance. The PBA notes that the present balance was approximately 24% of budget and said percentage far exceeds Moody standards of five to ten %.

Of all operating fund expenditures for FY 2002, service to the debt fund was 11.3%. (UX #20) With respect to measures of debt service, Niskayuna is at 7.4% of its constitutional debt with a per capita outstanding debt of \$347.00. The outstanding debt as a percent of full value Niskayuna is at 0.61 % of full value. (UX #30)

The PBA notes that the debt service could be declared a capital item that could be

bonded yet the Town chooses not to do so. That matter is within the Town's prerogative and this panel will not recommend otherwise.

The Panel Chairman further considered the role that CPI has played in interest arbitration. Since 1990 the parties have either negotiated or been the recipient of salary adjustments higher than the CPI. In the instant Award, the awarded raises are greater than the CPI for the referenced period.

Reference was also made to the issue of "lifetime earnings" and how it impacts on pension costs. For purposes of retirement the entire bargaining unit is now Tier II or later having been hired after the July 31, 1973 cut off date. Although both parties referenced this issue, there was no consensus or definitive point on which concurrence could be reached. Additionally, lifetime earnings could not be equated with other alternative employment opportunities. (See, UX #13-#18)

The record documents that the Town is able to sustain the awarded increases. As noted in the record, the fund balance as a percent of general fund expenses was approximately 25.00%. The taxing limit was not reached and the Town described itself as healthy. The Town's general FY 203 fund budget included a contingency account of \$65,000.00.

There is no demonstrated inability of the Town to pay the awarded increases. Based on the record and the statutory criteria, including the Town's ability to pay, it is the opinion of the Panel that the salary AWARD herein is fair and equitable.⁹ In full consideration of the evidence and arguments presented, the Panel awards the following salary adjustments: January 1, 2003 to December 31, 2004.

⁹ This increase must be viewed in light of the present six- step schedule.

- a) For the period January 1, 2003 through December 31, 2003 the current police officers' salary schedule shall be increased by 3.75 percent retroactive to January 1, 2003.
- b) For the period January 1, 2004 through December 31, 2004 the current police officers' salary schedule shall be increased by 3.75 percent retroactive to January 1, 2004.

**ISSUE NUMBER THREE
PERSONAL LEAVE (PL)
DISCUSSION AND AWARD**

The PBA seeks the inclusion of four days of personal leave (hereinafter "PL") into the successor Agreement. No other Town in either group of comparables appears to have the type of PL restriction found in Niskayuna. The present PL system requires the permission of the Chief of Police and is viewed by the PBA as the antitheses of "Personal." Furthermore, the PBA asserts that the present PL system is used as a control mechanism and as a means of rewarding favorites.

Police Officer Gary Brown, PBA President, testified as to the time and scheduling issues. With respect to personal leave, he noted that the practice is to demand explanations. He also alleged favoritism in the granting of time off and the use of compensatory time. He noted that the PBA is seeking four days to be classified as "automatics" and referenced the fact that other Town employees, including the non-represented and highway personnel, receive personal leave days.

With respect to other police jurisdictions he noted that Rotterdam permits five days per year with a ten-day accumulation. Additionally days can be rolled over or cashed in for

money. Guilderland permits four days per year without reason and said days may be rolled over. Glenville permits seven days per year however no more than three may be consecutive. Bethlehem permits four days per year with no rollover or financial cash out. Colonie incorporates such time in a twenty- six days per year personal service time.

The Town has opposed this proposal claiming that scheduling problems in a small department mandate these types of restrictions.

The record documents that when allowing for paid leave, officers in the following jurisdictions work as follows:

Glenville	219.2 days	13 holidays
Rotterdam	221.4 days	13 holidays
Colonie	222.6 days	12 holidays
Bethlehem	223.6 days	13 holidays
Guilderland	224.0 days	13 pass days

The PBA notes that those Niskayuna officers electing to be paid in cash for holidays work 226.4 days while those choosing compensatory time for holidays work 218.4 days. With respect to holiday pay, Niskayuna recognizes twelve holidays with the proviso that officers receive one compensatory day time if not working.

The record documents that PL is warranted. However, such system in a small Police Department must be structured in a certain manner so as to minimize any potential staffing problems. In full consideration of the evidence and arguments presented, and based on the record, the Panel awards the PBA structural provisions for the new PL system:

1. Two Personal Leave days on a “use it or lose it” basis per unit member are awarded.

2. Days may not be accumulated or carried over from year to year.
 3. No reason need be given for a PL day to be granted.
 4. PL cannot be denied if it creates overtime but no officer of the same rank can take a PL day at the same time.
 5. Four hours advance notice is to be given for PL usage.
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**ISSUE NUMBER FOUR
COMPENSATORY/CHART TIME RESTRICTIONS USAGE
DISCUSSION AND AWARD**

The PBA seeks to end the compensatory time usage restrictions currently placed on them by the Town. This proposal is not geared to an increase in time off but instead seeks to relax the conditions currently imposed whereby a unit member may use his/her own earned time accruals. At present there is a ten-day notice period before an officer may be allowed to use earned compensatory time and a similar waiting period imposed upon detectives for use of their earned chart time.

The PBA seeks a reduction in this notification time period from the present ten days to one day. They acknowledge that said time is not to be used if it causes overtime or if another unit member of the same rank has received permission to take the same time off. The Town has opposed this proposal claiming that scheduling problems in a small department mandate these restrictions.

Detective Mary Ann Lavalley testified as to compensatory time restrictions placed upon her. She noted that on January 21, 2002, at 9:43 a.m., she requested the day off for January 30, 2002. She acknowledged that she was 43 minutes late in submitting her request but noted at the time of her rejection she was a Union officer and that contract negotiations were

ongoing and difficult. Part of the compensatory time restrictions, as viewed by Lavallee, were related to one particular lieutenant who constantly refused such requests.¹⁰

Chief Mark S Sollohub testified that there are significant time allocation and staffing issues in the Niskayuna Police Department. With respect to the issue of granting compensatory time he noted that no such request was ever denied. His major problem with the use of compensatory and personal leave time is tied to his ability to plan for such allocation and usage. The impact on the work schedule is his primary concern as these issues factors into scheduling. He added that bereavement leave, FMLA usage and active military and National Guard time are all factors in chart manpower scheduling.

Critical to the analysis presented by the Chief is the assertion by the PBA that the “job” has grown and that additional manpower is needed. The Union asserted that the reasons for the extraordinary delays and advance time off requests are in essence tied to manpower shortages. This apparently been recognized as plans are underway to hire two additional officers. The Chief noted that the younger officers want additional time off while the more senior officers do not. The Chief agreed that more officers are needed and submits that the awarding of time off, whether it is compensatory or personal leave, is not used for disciplinary purposes. The Chief noted his scheduling problems and asserted that there exists a liberal work policy.¹¹ Yet, without more staff and increased weekend coverage, he believes that the “job” cannot be proactive.

¹⁰ Also see testimony of Police Officer John Serotta.

¹¹The Chief noted that in the prior CBA a new step was added after the 5th year.

The Chief advocated the inception of the 5/2, 5/2, 5/3 detective work schedule in order to provide enhanced weekend coverage and to assist in overall manpower planning. This Award recognizes the staffing and time issues necessary to balance the PBA demands for more flexibility in the use of their accruals, and the granting of personal leave, awarded the change in the detective work chart. The testimony of the Chief that weekend detective coverage was necessary was credited. This modification should reflect greater coverage without adding to the cost component.

The record documents that a restructuring of compensatory and chart time usage is warranted. However such system in a small Police Department must be structured in a certain manner so as to minimize potential staffing problems. In full consideration of the evidence and arguments presented, and based on the record, the Panel awards the PBA changes in the structural provisions for compensatory/chart time usage:

1. Seventy two hours advance notice is to be given for compensatory/chart time usage.
2. Compensatory/chart time usage may be denied if it creates overtime.
3. Compensatory/chart time usage may be denied if another officer of the same rank has received permission to takes compensatory/chart time off at the same time.

**ISSUE NUMBER FIVE
COMPENSATORY TIME CASH OUT
DISCUSSION AND AWARD**

The PBA seeks to change the present compensatory time cash out program. The present model provides for an ability to accumulate up to 480 hours of compensatory time with

both parties having the discretion to cash out compensatory time annually.

The Town seeks to maintain the status quo. The PBA seeks the ability to bank any hour of compensatory time instead of receiving payment or being given time off. Therefore, they could utilize the 480 hours as a “bank” to be used for either time off or cash at a time of their own choosing. Furthermore, the member could access his/her bank for time off or pay as long as said request did not breach any other CBA provision.

The record does not support the PBA proposal that compensatory accumulations should be used as a traditional bank. The Town has argued that no deficits be carried forward and that if necessary the bank must be drawn down in an annual basis.

While several of the PBA’s arguments are theoretically correct, the record does not document that a problem exists with the present system. Absent any documented issues with the present system, or a compelling reason to modify same, no such recommendation is forthcoming. In full view of the consideration given the PBA demands for fewer time usage restrictions, this proposal is rejected.

Thus, the Panel Awards the following:

1. The PBA proposal to Compensatory Time cash out procedure is rejected.

**ISSUE NUMBER SIX
DETECTIVE WORK CHART
DISCUSSION AND AWARD**

The Town seeks a modification in the detectives work week by adoption of the standard work chart. At present detectives work a Monday thru Friday schedule with weekends off.

The current practice allows detectives an additional twelve days off per year. The Town argues that the detective work chart should be modified to reflect the same chart as other officers - - - a 5-2, 5-2, 5-3 schedule. The PBA maintains that the present chart should not be changed and that when all time is considered that detectives are not afforded any special benefits

Chart alteration is one of most significant structural changes that the parties to a labor agreement can negotiate. Absent a compelling reason, the Panel is reluctant to make such a recommendation. However, in the instant case such a persuasive argument was made. There is no reason in the record for detectives to be afforded this special advantage. Additionally, the benefits afforded the Union in this proceeding must be considered an offset to this change. Effective thirty days from the date of the execution of this Award the 5-2, 5-2, 5-3 detective work schedule shall be implemented.

Thus, the Panel Awards the following:

1. The Town's proposal to change the detectives work chart to a 5-2, 5-2, 5-3 work schedule is granted

**ISSUE NUMBER SEVEN
ANNUAL PERMANENT SHIFT
DISCUSSION AND AWARD**

The PBA is seeking a proviso which would provide annual permanent shifts. The provision would mandate that employee shifts shall not be changed during the year unless an unforeseen emergency condition arises. Additionally, the PBA seeks language which would

permit: “probationary employees who become permanent employees after one (1) year, shall have a right to bid and go on a permanent shift at the end of one (1) year’s service.”

Annual permanent shift support the stability concept and are so awarded. By particularizing shifts both the PBA and management will be aware of individual needs and can plan accordingly. In the event of “unforeseen emergencies” shifts may be altered.

With respect to new PBA members this proposal is granted in part. While probationary employees who become permanent shall also have the right to a permanent annual shift, such right will not commence at the completion of their probationary period. To award the PBA proposal in this manner might result in constant shift changes for other officers. Therefore, the probationary who becomes permanent shall wait until the next round of annual shift bidding before he/she can be awarded their permanent shift.

Thus, the Panel Awards the following:

- a. Employee shifts shall not be changed during the year unless an unforeseen emergency condition arises.
- b. Probationary employees who becomes permanent shall wait until the next round of annual shift bidding before he/she can be awarded a permanent shift.

**ISSUE NUMBER EIGHT
PAST PRACTICE CLAUSE
DISCUSSION AND AWARD**

The PBA proposes the inclusion of a past practice clause in the CBA. The Town opposes this proposal and argues that the record does not support such an addition. In its assertion the Town is correct.

Absent a compelling reason, the Panel Chair is reluctant to make such a recommendation. While several of the PBA's arguments are theoretically correct, the record does not document that there is a past practice problem contained in the present system. The Panel does not award the past practice demand.

Thus, the Panel Awards the following:

1. The PBA proposal for the inclusion of a past practice clause into the Agreement is rejected.

**ISSUE NUMBER NINE
SERGEANT LANGUAGE AS AGREED UPON
DISCUSSION AND AWARD**

The present CBA is silent with respect to a rotational call in overtime list for uniform sergeants. The PBA submits that the parties have agreed to a procedure providing for their understanding of this issue and seek to codify same into the CBA. The Town apparently does not oppose this demand.

Set forth below are the provisions of said Memorandum of Understanding:

MEMORANDUM

TO: ALL PERSONNEL

FROM: Sgt. Thomas P. Constantine

DATE: NOVEMBER 03, 1998

SUBJECT: UNIFORM SERGEANTS OVERTIME - ROTATIONAL CALL IN LIST

**UNIFORM SERGEANTS WILL BE CONTACTED ON A
ROTATIONAL BASIS.**

A DECLINATION/ACCEPTANCE OF THE OVERTIME WILL ROTATE THE RESPECTIVE UNIFORM SERGEANT TO THE BOTTOM OF THE LIST.

A NON-RESPONSE TO A TELEPHONE ANSWERING MACHINE (15 MINUTES) WILL ROTATE THE RESPECTIVE UNIFORM SERGEANT TO THE BOTTOM OF THE LIST.

CALLERS ARE TO INITIAL WITH DATE & TIME OF ACCEPTANCE OR DECLINATION, OR NO ANSWER.

Thus, the Panel Awards the following:

- 1. Based on the understanding between the parties the items contained in the aforementioned November 3, 1998 memorandum entitled "Uniform Sergeants Overtime - Rotational Call In List" shall be incorporated into the successor 2003-2004 successor CBA.**

**ISSUE NUMBER TEN
DISABILITY FOR SICK LEAVE ¹²
DISCUSSION AND AWARD**

The Town has proposed that officer out on sick leave for a period of one week or more (continuous) file for disability benefits. The Town asserts that if granted this proposal would enable the town to recover some of the costs associated with officers out of work on a non-work related disability or an extended illness with full pay.

The CBA provides that officers have unlimited sick leave. The PBA does not oppose this proposal if it can be implemented at no cost to the unit member.

¹² There appears to have been an additional Health Insurance issue related to the Town proposal to have retirees pay into and assume some of the costs of their medical coverage. While discussions were held on this topic throughout the course of collective bargaining, during the Interest Arbitration the evidence presented did not support the Town position. Reference is made to this item as an example of an issue presented by the parties that was not specifically addressed in this AWARD but was considered by the Public Arbitration Panel, but rejected in its entirety.

This proposal is essentially one of first impression. There is no reason in the record to reject said proposal; however, the burden is placed upon the town to design and implement said policy. The Town shall submit language to the PBA within sixty days from the execution of this Award.

Thus, the Panel Awards the following:

- a. The Town proposal on disability benefits whereby a unit member out sick continuously for one week must file for disability benefits is granted with the provision that no cost shall be incurred by said unit member. Within sixty days from the execution of the instant Award, the Town shall design and submit said plan to the PBA for its implementation.**

SUMMARY

Additionally, the benefits provided in this Award shall be deemed retroactive and shall apply to all officers currently on payroll. As for the aforementioned period, all officers on the payroll effective January 1, 2003, but not on payroll as of the date of this Award, shall receive retroactive prorated salary and benefits. Furthermore, all provisions and language contained in the prior Agreements are hereby continued, except as specifically modified in this Award.

In recapitulation we have carefully considered and weighed all of the relevant statutory criteria, as well as the types of standards traditionally evaluated in interest arbitrations of this kind, in reaching our findings above. In our view, they balance the rights of the members of the bargaining unit to fair improvements in their terms and conditions of employment with the legitimate needs of the Town to judiciously apportion its economic resources.

A-W-A-R-D

1. TERM and RETROACTIVITY

The term of this Award is from January 1, 2003 to December 31, 2004. All officers on the payroll effective January 1, 2003 through December 31, 2004 shall receive the full salary and benefits contained herein. Those on the payroll as of January 1, 2003, but who left prior to the date of this Award, shall receive prorated salary adjustments and benefits.

CONCUR  DISSENT _____
CONCUR  DISSENT _____

2. SALARY AND COMPENSATION

- a) For the period January 1, 2003 through December 31, 2003 the current police officers' salary schedule shall be increased by 3.75 percent retroactive to January 1, 2003.
- b) For the period January 1, 2004 through December 31, 2004 the current police officers' salary schedule shall be increased by 3.75 percent retroactive to January 1, 2004.

CONCUR  DISSENT 
CONCUR _____ DISSENT _____

3. PERSONAL LEAVE (PL)

- a. Two Personal Leave days on a "use it or lose it" basis per unit member are awarded.
- b. Days may not be accumulated or carried over from year to year.

- c. No reason need be given for a PL day to be granted.
- d. PL cannot be denied if it creates overtime but no officer of the same rank can take a PL day at the same time.
- e. Four hours advance notice is to be given for PL usage.

CONCUR  DISSENT 
CONCUR _____ DISSENT _____

4. COMPENSATORY/CHART TIME RESTRICTIONS USAGE

- a. Seventy two hours advance notice is to be given for compensatory/chart time usage.
- b. Compensatory/chart time usage may be denied if it creates overtime.
- c. Compensatory/chart time usage may be denied if another officer of the same rank has received permission to takes compensatory/chart time off at the same time.

CONCUR  DISSENT 
CONCUR _____ DISSENT _____

5. COMPENSATORY TIME CASH OUT

- a. The PBA proposal to Compensatory Time cash out procedure is rejected.

CONCUR  DISSENT 
CONCUR _____ DISSENT _____

6. DETECTIVE WORK CHART

- a. The Town proposal to change the detectives work chart to a 5-2, 5-2, 5-3 work schedule is granted. Effective thirty days from the date of the execution of this Award the 5-2, 5-2, 5-3 detective work schedule shall be implemented.

CONCUR  DISSENT 
CONCUR _____ DISSENT _____

7. ANNUAL PERMANENT SHIFT

- a. Employee shifts shall not be changed during the year unless an unforeseen emergency condition arises.
- b. Probationary employees who becomes permanent shall wait until the next round of annual shift bidding before he/she can be awarded a permanent shift.

CONCUR  DISSENT _____
CONCUR  DISSENT _____

8. PAST PRACTICE CLAUSE

- a. The PBA proposal for the inclusion of a past practice clause into the Agreement is rejected.

CONCUR  DISSENT 
CONCUR _____ DISSENT _____

9. SERGEANT OVERTIME LANGUAGE

- a. The items contained in the aforementioned November 3, 1998

memorandum entitled "Uniform Sergeants Overtime - Rotational Call In List" shall be incorporated into the successor 2003-2004 successor CBA.

CONCUR  DISSENT _____
CONCUR  DISSENT _____

10. **DISABILITY FOR SICK LEAVE**

- a The Town proposal on disability benefits whereby a unit member out sick continuously for one week must file for disability benefits is granted with the provision that no cost shall be incurred by said unit member. Within sixty days from the execution of the instant Award, the Town shall design and submit said plan to the PBA for its implementation.

CONCUR  DISSENT 
CONCUR _____ DISSENT _____

THOSE ISSUES PRESENTED BY THE PARTIES THAT ARE NOT SPECIFICALLY ADDRESSED IN THIS AWARD WERE ALSO CAREFULLY CONSIDERED BY THE PUBLIC ARBITRATION PANEL, BUT REJECTED IN THEIR ENTIRETY.

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Joel M. Douglas, Ph.D.
Public Panel Member and Chairman
Dated: 3/27/07

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Paul Davenport
Employee Panel Member
Dated: 3/26/07

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Stephen Beditz
Employer Panel Member
Dated: March 26, 2007

STATE OF NEW YORK
COUNTY OF WESTCHESTER
Albany

On this ²⁶th day of *March* 2004 before me personally came Joel M. Douglas to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

DONNA W. PILARSKI
Notary Public, State of New York
Qualified in Schoenectady County
My Commission Expires *5/3/06*

Donna W. Pilarski

STATE OF NEW YORK
COUNTY OF
Albany

JANICE A. GREEN
Notary Public, State of New York
Qualified in Saratoga County
No. 01GR5071762
Commission Expires Jan. 21, 2007

Janice A. Green

On this ²⁶th day of *March* 2004 before me personally came Paul Davenport to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

STATE OF NEW YORK
COUNTY OF *Albany*

JANICE A. GREEN
Notary Public, State of New York
Qualified in Saratoga County
No. 01GR5071762
Commission Expires Jan. 21, 2007

Janice A. Green

On this ²⁶th day of *March* 2004 before me personally came Stephen Beditz to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same: