

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
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CONCILIATION

In the Matter of the Interest
Arbitration between the

TOWN OF NISKAYUNA

and

NISKAYUNA POLICE BENEVOLENT
ASSOCIATION

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Case No. IA81-3; M80-523

On June 23, 1981 the New York State Public Employment Relations Board, pursuant to Section 209.4 of the Public Employees' Fair Employment Act, appointed a Public Arbitration Panel for the purpose of making a just and reasonable determination of the contract negotiation dispute between the Town of Niskayuna, hereinafter referred to as the "Town" and the Niskayuna Police Benevolent Association, hereinafter referred to as the "Association".

The Public Arbitration Panel members so designated are:

Dale S. Beach, Public Panel Member and Chairman
Margaret B. Moore, Employer Panel Member
Michael R. Ferraro, Employee Organization Panel Member

The arbitration hearing was held in two sessions, July 21 and July 28, 1981, in the Niskayuna Town Hall. At the hearing both parties were afforded full opportunity to present testimony, exhibits, and arguments in support of their positions and to cross-examine opposing witnesses. Witnesses were sworn. Transcripts were made of both hearing sessions by shorthand reporters. Both the Town and the Association submitted post-hearing briefs on September 8, 1981.

APPEARANCES

For the Town

Paul L. Ryan, Esq., Town Attorney
Robert A. Schlansker, Esq., Deputy Town Attorney

For the Association

Martin Cirincione, Esq., Attorney for PBA
Daniel Pasquariello, Chief Negotiator
Edward Kelly, President of PBA
Kathleen Oliver, Secretary of PBA
Joseph Capra, Police Officer
Donale LuBrant, Former Police Officer
George Brown, Former Police Officer
Paul Bethka, Former Police Officer
James Callagher, Former Police Officer
William Zilberman, Former Police Officer

There are 21 persons in the bargaining unit. Niskayuna has a population of about 18,000.

One of the issues at impasse (Issue #7 in this report) concerns permanent versus rotating work shifts and the right to bid for one's shift assignment on the basis of seniority. The Town had filed an Improper Practice Charge with PERB over this issue claiming that the matter was not a mandatory subject for negotiation. The Hearing Officer ruled that it was a mandatory subject. The Town then appealed this decision to the Board itself. On September 16, 1981 the Public Employment Relations Board rendered Board Decision and Order - Case No. U-5403. It affirmed the decision of the Hearing Officer that the bargaining demand by the Association, both as originally worded and as amended, is a mandatory subject of negotiation. It thus dismissed the Improper Practice charge of the Town.

The Panel took testimony and evidence on this bargaining demand at the arbitration hearing. It has deferred its final deliberations and decisions on the issues at impasse until after the issuance of PERB's decision and order on this matter of shift assignments.

The Panel met in executive session on September 8 and 29, 1981 at the Niskayuna Town Hall. A total of 13 issues have been presented by the parties to this arbitration panel for decisions. The decisions of this Panel are unanimous on all issues and in total.

The last collective agreement between the parties covered the period January 1, 1979 through December 31, 1980.

STATUTORY CRITERIA

In analyzing the issues and making its determinations this Panel has given consideration to the criteria stated in Section 209.4(v) of the Public Employees' Fair Employment Act. This consideration, of course, has been conditioned by the information made available to it by the Association and the Town. In substance Section 209.4(v) states that in addition to other relevant factors the panel shall take into consideration 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 in public and private employment in comparable communities;
- b. interests and welfare of the public and financial ability of the employer to pay;
- c. comparisons of peculiarities in regard to other trades or professions including hazards; physical, educational, and mental qualifications; and job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past.

FINANCIAL CONDITION OF NISKAYUNA

The Town provided certain information, via testimony and Town Exhibit 8, regarding its financial condition. In 1980 the Town's bonds were rated A-1 by Moody's. In 1980 the Town's total debt was \$6,468,380. The constitutional debt limit was \$24,113,579. Hence the Town's total borrowing represented 27% of its borrowing ceiling. The tax rate in 1980 was essentially unchanged from 1979. The rate of \$35.52 per thousand in 1981 is 10.0% higher than the 1980 rate. The Town testified that it has allocated funds in the 1981 budget to pay for a 7.0% salary increase for the PBA bargaining unit.

THE ISSUES

1. Salary

The base pay scale as of January 1, 1980 (Article IV, Annex B)

shows that a Patrolman (Recruit) is paid \$12,955.20 per year. Patrolman (1st Grade) is paid \$16,915.82 and Sergeant is paid \$18,415.82.

The Association wants a two-year agreement providing a salary schedule increase of 8.5% for 1981 and 8.5% for 1982. Its Exhibit 2 shows the percentage salary increases for 1981 for a great many of the police departments (plus a few sheriff and other units) in the capital district area. In addition to pay comparability the Association notes that the Town has a residency law for its employees. Housing is very expensive in Niskayuna.

The Town proposes a 6.0% salary increase. It shows that the Water and Sewer Unit (CSEA) and the Highway Unit (AFSCME) contracts both provide a 7.0% pay increase for 1981. Town Exhibit 5 gives salary survey data for 1981 for 13 area municipalities. The Town is quite competitive with area rates.

Discussion

Let us first examine comparative salaries for the top patrolman rate in area municipalities for 1981. The tabulation below is derived from Town Exhibit 11 and testimony at the hearing.

Albany	\$16,789 (to 6/24/81)
Albany	\$18,468 (to 6/23/82)
Cohoes	\$15,377
East Greenbush	\$14,472
Bethlehem	\$18,340
Rotterdam	\$19,721
Scotia	\$16,153
Watervliet	\$18,348
Rensselaer	\$15,950
Schenectady	\$18,550

If a raise of 7.0% were applied to Niskayuna's current top rate for patrolman of \$16,915.82, then the figure would compare very favorably with those of area municipalities.

Next, let us review the percentage pay increases for police for 1981 (over 1980) for area municipalities. This data is taken from Association Exhibit 2.

	<u>%</u>
Bethlehem	8.0
State Capital	7.5
East Greenbush	8.0
Cohoes	7.0

Rotterdam	8.0
Mechanicville	9.5
Scotia	7.0
Schenectady	6.0
Rensselaer	7.0
Watervliet	9.5
Green Island	8.0
Ballston Spa	7.5
Saratoga Springs	6.0
Average	7.6

Also the Niskayuna Fire Fighters are receiving an 8% increase for 1981 and another 8% for 1982. Schenectady Fire Fighters are receiving a 9% increase for 1982.

The Consumer Price Index, U.S. City Average, has been showing annual increases ranging from 9.6% to 10.9% over the past several months.

Award

Increase the salary schedule for 1981 7.0% over the schedule for 1980 retroactive to January 1, 1981. For the period January 1 through December 31, 1981 Patrolman (Recruit) shall be \$13,862.06; Patrolman (1st Grade) shall be \$18,099.93; and Sergeant shall be \$19,704.93.

For 1982, the second year of a two-year contract, increase the salary schedule 8.0% over the schedule for 1981. Thus for the period January 1 through December 31, 1982 Patrolman (Recruit) shall be \$14,971.02; Patrolman (1st Grade) shall be \$19,547.92 and Sergeant shall be \$21,281.32.

2. Longevity Pay

Currently the longevity rate is \$75.00 per year for each year from the beginning of the person's 6th year continuing through his 20th year. The maximum longevity pay is \$1125.

The Association advocates raising the longevity rate to \$100 per year and wants to continue paying this higher rate through the 25th year of employment. It notes that the \$75 figure has been in effect since 1976. Inflation has been in excess of 50% over this time span.

The Town wants no change from the present \$75 per year. This is the same amount paid to the employees in the Highway Unit, the Water and Sewer Unit, and the non-union employees of the Town.

Discussion

Town Exhibit 6 gives longevity pay practices of area towns. Also PERB's First 1981 Report of Salaries for Police contains longevity rates of many area municipalities. Selected data from these documents are as follows:

Cohoes	\$ 650 maximum
Colonie	70/yr. - \$1050 maximum
East Greenbush	1200 maximum
Bethlehem	2000 maximum
Glenville	60/yr. starting at 5th year
Guilderland	200/yr. after 5 years
Rotterdam	400 at 4, 8, 12, 16, 20, 24 years
Saratoga Springs	1000 maximum
Scotia	40/yr. starting at 6th year
Troy	766 maximum
Watervliet	400 maximum

From an analysis of the above data, the Panel concludes that the present longevity rate of \$75 from the 6th through the 20th years is competitive with other area communities and there is no need to increase the rate at this time.

Award

The proposal of the Association to increase longevity pay from \$75 to \$100 is denied. Make no change in the present longevity pay schedule.

3. Time When Longevity Payments Are To Be Made

Currently longevity is paid on a pro-rata basis throughout the year.

The Association claims that the full amount of longevity is due and owing at the first of each calendar year. If a police officer leaves employment before the end of the calendar year he is entitled to his full longevity payment for the entire year. Thus, if a person leaves the employ of Niskayuna for whatever reason, on say, April 1, that individual will have received a pro-rata longevity payment in

each pay check up to April 1. Upon termination he should receive a lump sum for the balance due him for the remainder of the calendar year. The Association cites Article IV, 6-b, of the Agreement which says "Longevity to be paid any member who is entitled to same as of the first day of January for any year that it is due."

The Town is opposed to the Association's proposal. Longevity should continue to be paid on a pro-rata basis in each pay check throughout the year. This is the general practice for all town employees.

Discussion

As an accomodation and reward for those who have given long years of service to the Town, the Panel holds that for the 20th year of service and beyond the longevity stipend shall be paid in one lump sum on January 1st in a separate check. For all other employees and situations there shall be no change from the present practice of paying the earned longevity stipend on a pro-rata basis throughout the year.

Award

Retain the current practice of paying longevity stipends on a pro-rata basis throughout the year. However, for all those unit members who are in their 20th year of service and for all years thereafter longevity shall be paid in total on January 1st in a separate check.

4. Shift Differential

Unit members currently work rotating shifts.

The Association advocates the payment of a 10% shift differential for those working the 3:00-11:00 p.m. and the 11:00p.m.-7:00 a.m. shifts. For justification it mentions the strain upon the officers who are working on these night shifts.

The Town is adverse to paying a premium for working on the night shifts. It says the proposal is just another way of getting a salary increase. It submitted survey data of the area municipalities of Cohoes, Colonie, Bethlehem, Rotterdam, and Glenville. None of these pay shift differentials.

Discussion

The Panel does not believe that a sufficient case has been made by the Association to support the adoption of a night shift differential.

Award

The request by the Association for a 10% pay differential for work on the 3:00-11:00 p.m. and 11:00 p.m.-7:00 a.m. shifts is denied.

5. Weekend Differential

The Association wants work on a Saturday and on a Sunday to be compensated at a rate of time and one-half.. It cites a hardship on the officers who must work several weekends in a row.

The Town opposes any weekend differential.

Discussion

Inadequate justification for a weekend pay differential was offered by the Association. The Panel is not persuaded that there is real merit to this proposal.

Award

The proposal of the Association to compensate work performed on a Saturday and on a Sunday at time and one-half is denied.

6. Basic Work Week

The present work schedule is as follows:

Work 5 days - off 2 days; then
work 5 days - off 2 days; then
work 5 days - off 3 days.

The Association proposes a 7 - 4, 7 - 3 work schedule. This means the police officers work 7 days and are off 4 days; then work 7 days and are off 3 days. From the early 1960's until about 1977 the Department worked the 7 - 4, 7 - 3 schedule. Testimony by several present and former Niskayuna police officers showed that these people liked the 7 - 4, 7 - 3 schedule. It allowed them to enjoy some weekends or parts of weekends off on a regular basis.

The Town is adverse to the 7 - 4, 7 - 3 work schedule. It would increase the number of days off per year. Also the 7 - 4, 7 - 3 work schedule violates the 40-hour work week law (Section 971 of the Unconsolidated Laws). PERB has stated that the Town and the Association can negotiate a work week other than a 5 - 2, 5 - 2, but the Arbitration Panel cannot impose a work week that would violate Section 971.

Discussion

The Town abandoned the 7 - 4, 7 - 3 schedule in order to comply with the 40-hour law and for other reasons. The Panel is also persuaded by the argument of the Town regarding the inability of an arbitration panel to impose a work schedule that would not conform to the requirements of Section 971 of the Unconsolidated Laws.

Award

The proposal of the Association to adopt a 7 - 4, 7 - 3 work schedule is denied. The Panel determines that the 5 - 2, 5 - 2, 5 - 3 schedule should be retained.

7. Permanent versus Rotating Shifts

Presently police officers work rotating shifts in a pattern of alternating from day shift to evening shift every other week for ten weeks. Then officers must work five straight weeks of the night shift.

The Association advocates permanent shifts instead of the present rotating shifts. The police officers would bid for their preferred shift on the basis of their seniority.

Nine men out of a police force of 21 have quit within the past two years. Several Association witnesses who had resigned testified that it was difficult to live a normal family life when working a rotating shift schedule. They could not enroll in college courses and could not be available at home to babysit so that their wives could hold jobs.

The Town claims that the scheduling of shifts is a management prerogative and thus is not a mandatory subject for negotiation. Also the Town asserts that rotating shifts afford each officer a broader and more diversified experience with events and problems than would permanent shifts. If permanent shifts were adopted, the 11:00 p.m. - 7:00 a.m. shift would be populated mostly with inexperienced police

officers because of their low seniority. When hired, each officer was told he must work rotating shifts.

Discussion

As stated earlier in this report, the Public Employment Relations Board on September 16, 1981, declared that this issue is a mandatory subject for negotiation. Hence this Arbitration Panel is empowered to make a determination on the matter.

Five former police officers testified in favor of either a 7 - 4, 7 - 3 work schedule or permanent shifts or both. Also two current police officers testified in favor of permanent shifts.

Association Exhibit 2 reveals that all area police departments except Guilderland and Niskayuna work permanent shifts with shift choice governed by seniority. Among area municipalities having permanent shifts are Albany, Bethlehem, Colonie, East Greenbush, Glenville, Rotterdam, Scotia, Schenectady, Rensselaer, and Watervliet.

This Panel is persuaded that the police officers strongly desire to work permanent shifts. Rotating shifts tend to be difficult for both the individual and his family.

Because nearly all area municipalities operate their police departments on permanent shifts there must be reasonable satisfaction with such an arrangement. No firm evidence was submitted by the Town to show that efficiency would suffer under permanent shifts.

The Panel determines that the parties should adopt a system of permanent shifts, on a 5 - 2, 5 - 2, 5 - 3 work week basis, with the officers selecting shifts in accordance with the seniority provisions of the Civil Service Seniority list.

Award

Adopt a system of permanent work shifts (on a 5 - 2, 5 - 2, 5 - 3 work week basis) with police officers selecting shifts in accordance with the Civil Service Seniority list.

This permanent shift schedule shall take effect on November 1, 1981. Furthermore, the provisions for administering this plan shall be in accordance with those contained in the Appendix to PERB's Board Decision and Order U-5403, dated September 16, 1981. This Appendix (attached to this Award) contains the language of the Association's

counterproposal of February 18, 1981 plus its amendment which is underscored.

8. Overtime Rate of Pay

Currently overtime is compensated at the rate of time and one-quarter.

The Association proposes increasing the rate to time and one-half. It contends that all other police departments in the area get time and one-half for overtime, as do the other bargaining units in Niskayuna.

The Town opposes any liberalization of the overtime rate. Although the other units in the Town do receive time and one-half, the PBA has in the past negotiated for other benefits that are greater than those received by the other units.

Discussion

The 1980 Report on Fringe Benefits and Related Practices Affecting Policemen published by PERB (Town Exhibit #12) indicates that nearly all of the 50 municipalities listed pay time and one-half for overtime.

Award

Change Article VI - Recall, Overtime Duty, Section 2, of the Agreement so that overtime shall be paid at the rate of time and one-half of the hourly rate. This becomes effective as of October 1, 1981.

9. Compensatory Time Off

The present Agreement states that recall or overtime work may be recompensated by compensatory time off at straight time at the request of the member involved at the discretion of the Chief of Police.

The Association wants the compensatory time-off rate increased from straight time to make it the same as the cash overtime rate. Because of the small amount of overtime worked per year the cost to the Town would be small.

The Town wants no change in the compensatory time-off rate. It needs people to staff its shifts and to increase the compensatory rate would result in fewer people on the job at various times.

Discussion

The Panel is sympathetic to the Town's expressed concern about adequate staffing. Furthermore we have awarded an increase in the cash overtime rate to time and one-half.

Award

The Association's proposal to increase the compensatory time-off rate expressed in Article VI, Section 7 of the present contract is denied.

10. Vacations

The current vacation policy is as follows:

Hired before June 30	- 5 working days
1 - 5 years	- 10 working days
after 5 - through 10 years	- 15 working days
after 10 - through 15 years	- 20 working days
after 15 years	- 25 working days

The Association proposes the addition of 2 vacation days to each of the above categories.

The Town is averse to any improvement in the vacation schedule. It asserts that the present PBA schedule is better than those of the other Town units.

Discussion

Reference to the 1980 PERB Fringe Benefit survey mentioned before reveals that the current vacation schedule is very competitive with those of other municipalities in New York State.

Award

The proposal of the Association to improve the vacation schedule by 2 days in each category is denied. Make no change from the schedule shown in the 1979-80 contract.

11. Personal Leave

Currently personal leave is authorized at the discretion of the Chief of Police. The contract does not specify a certain number of allowable days per year.

The Association wants a sliding scale for personal leave as follows:

- a) One day after one year of service
- b) Two days after two years of service
- c) Three days after three years of service
- d) Four days after four years of service
- e) Five days after five years of service

Its objectives are to reward those with greater seniority and to make personal leave a matter of right.

The Town opposes any change in the personal leave policy. The nature of police work schedules permits them to handle personal business on off-hours and days-off during the week.

Discussion

The current personal leave policy does not have a limit on the number of days per year that can be granted. Presumably the Chief can grant any reasonable number of days for good reason. This Arbitration Panel is under the impression that the present policy has worked well in recent years. People having good reasons have not been denied personal leave.

Award

The proposal of the Association to change the current personal leave policy from that shown in Article X of the Agreement is denied.

12. Clothing Allowance for Detectives

Those police officers who must perform their full-time duties in civilian clothing now receive a clothing allowance of \$200.00 per year. Two officers must wear civilian clothing.

The Association wants the allowance raised to \$300.00 per year.

The Town claims that \$200.00 per year is adequate.

Discussion

The PERB 1980 Fringe Benefit survey lists clothing allowances for plainclothesmen or detectives as follows:

Albany	\$850	Troy	\$150
Glens Falls	250	Watervliet	200
Rensselaer	250	Schenectady	250

Award

Increase the annual clothing allowance for those who must perform their full-time duties in civilian clothes from \$200.00 to \$250.00.

13. Term of the Contract

The Association proposes that the period covered by this award be for two years. It notes that most of 1981 has elapsed and it is already late to begin negotiations for 1982.

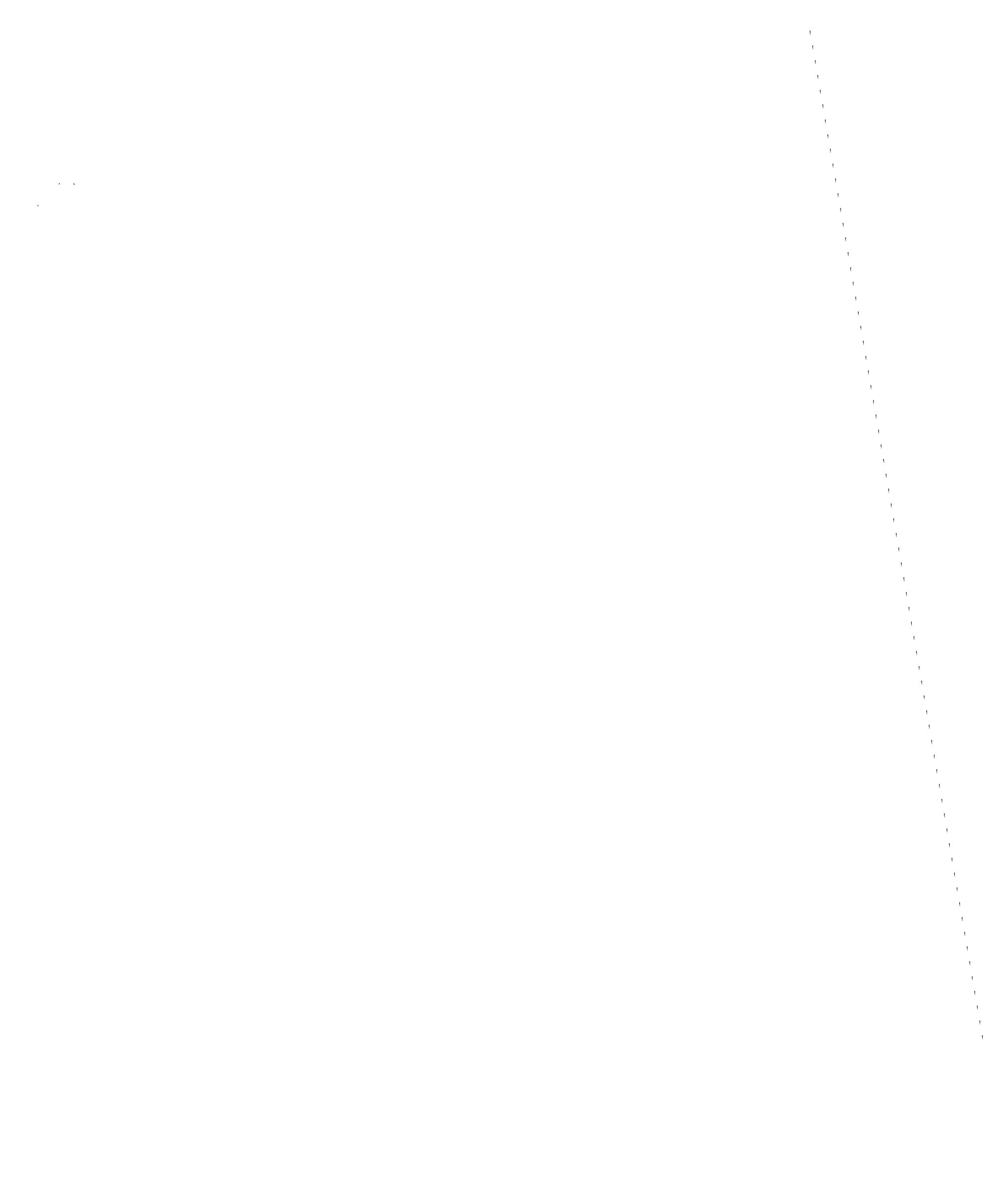
The Town wants only a one-year contract. It states that the documents submitted to PERB in connection with this impasse expressed a desire for a one-year agreement covering 1981 only.

Discussion

The Panel believes that the salaries and other terms of employment which it has awarded are fair to both the Town and the Association and they should apply for a two-year period. Negotiations began over a year and one-half ago for this contract. A two-year contract will allow the parties to carry out their normal business without the pressures of contract negotiations intruding upon them.

Award

The term of the agreement (contract) shall be two years covering the period January 1, 1981 through December 31, 1982.



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Dale S. Beach
Dale S. Beach, Chairman
and Public Panel Member
Concurring

STATE OF NEW YORK)
COUNTY OF Schenectady) ss.:

On this 20 day of November, 19 81, before me personally came and appeared Dale S. Beach to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

*sworn to before me this
20 day of November, 1981
Alice T. Wagner*

ALICE T. WAGNER
Notary Public, State of New York
Qualified in Schenectady County
My Commission Expires March 30, 1983

Michael R. Ferraro
Michael R. Ferraro, Employee
Organization Panel Member
Concurring

STATE OF NEW YORK)
COUNTY OF Schenectady) ss.:

On this 20 day of November 19 81, before me personally came and appeared Michael R. Ferraro to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

*sworn to before me this
20 day of November, 1981
Alice T. Wagner*

ALICE T. WAGNER
Notary Public, State of New York
Qualified in Schenectady County
My Commission Expires March 30, 1983

Margaret B. Moore
Margaret B. Moore, Employer
Organization Panel Member
Concurring

STATE OF NEW YORK
COUNTY OF *Schenectady* ss.:

On this *2nd* day of *November*, 1981, before me personally came and appeared Margaret B. Moore to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.

Sworn to before me this
2nd day November 1981
Alice T. Wagner

ALICE T. WAGNER
Notary Public, State of New York
Qualified in Schenectady County
My Commission Expires March 30, 19____

APPENDIX

5. Uniform Police Officer (excluding Detectives & Probationary/Temporary Police Officers) shall have the right of choosing permanent tours of duty within rank, by order of seniority as outlined in Article XIV of this agreement, and with the explicit understanding that it is hereby recognized that the Town of Hiskayuna has the exclusive right, whenever it may deem it necessary to change the work schedule in order to determine the number of police officers it must have on duty at any time or to replace absent police officers in order to maintain the desired complement to provide public service to the Town.

a. The Chief of Police shall be responsible to prepare and post the Department work schedule and/or any revised work schedule for uniform police officers in a manner that he deems appropriate to provide public service to the community. These work schedules shall include manning positions (tours of duty) with scheduled days off and days worked for each manning position (tour of duty).

b. The Department work schedule for uniformed police officers shall become effective on the 1st day of the calendar year and remain in effect until the last day of the calendar year or until such time during that period that the Chief of Police deems it necessary to change the work schedule, whichever occurs first, so as to alter the number of police officers that would be on duty at any time or to replace absent police officers in order to maintain the desired complement to provide public service to the community in a manner that he deems appropriate.

c. After the Department work schedule or any revised work schedule thereafter is prepared and posted by the Chief of Police, each uniformed Police Officer (excluding Detectives and Probationary/Temporary Police Officers) shall then examine said schedule and sign their names, within rank, by order of seniority to the manning position (tours of duty) of their choice.

d. In cases of emergency conditions as defined by this agreement, the Chief of Police may suspend the work schedule for the duration of the emergency and assign police officers at his discretion to any tour of duty that he deems appropriate to maintain the desired complement to provide public service to the community during the emergency.

e. Any police officer whose status is temporary or probationary shall not be covered by the seniority mandates of this section and the Chief of Police may assign this police officer to any manning position (tour of duty) that he deems appropriate. However, upon attaining permanent status the police officer shall then fall under the mandates of this section.

f. Whenever a manning position (tour of duty) becomes vacant for a temporary duration due to uniform police officers attending in-service training, schools, seminars or being ill or injured for a period of thirty (30) days or less, or who are on authorized vacations, compensatory days off or personal days off, the Chief of Police whichever he deems appropriate may:

(1) revise the work schedule as outlined in Section 5b above, or

(2) leave the manning position (tour of duty) vacant until the police officer who vacated it returns, or

(3) without revising the work schedule, take from the other tours of duty that police officer within rank with the least amount of seniority and assign that police officer to fill the temporary vacated manning position (tour of duty) until such time as the police officer who vacated the manning position returns, or

(4) utilize the overtime procedures as outlined in Article VI, paragraph 9 of this agreement.

g. The purpose of each of these subparagraphs is not to limit or restrict in any way the power or the freedom of the Town or chief, but to provide a number of alternatives for utilization in maintaining the desired complement of officers in order to provide public service to the community.