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*Law Offices*

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April 16, 1996

Mr. Lucas Altman, Representative  
Avalon Beach Patrol Lifeguard Association  
175 Prospect Avenue  
Princeton, NJ 08540

Re: Borough of Avalon  
and  
Avalon Beach Patrol Lifeguard Association

Dear Mr. Altman:

The Borough of Avalon ("Borough") and the Avalon Beach Patrol Lifeguard Association (the "Association") engaged in negotiations for initial contract between the parties. Those negotiations reached an impasse and pursuant to the Rules and Regulations of the State of New Jersey Public Employment Relations Commission, a Fact Finder was appointed to serve as a Fact Finder in an effort to resolve the impasse involving the parties and to issue a report. Hearings were held by the P.E.R.C. Fact Finder, under the subject impasse on September 6, 1995 and on September 22, 1995 at the Avalon Municipal Building. At the hearing the parties were given adequate opportunity of giving testimony and presenting both orally and in written form, documentation and data to substantiate their respective positions.

The Public Employment Relations Commission Fact Finder issued his Fact Finder's Report and Recommendations on October 16, 1995.

On November 16, 1995 the Borough informed the Association that the Borough was prepared to accept the Terms of Employment set out in the Fact Finder's Report and Recommendations.

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**GRUCCIO, PEPPER**  
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April 16, 1996

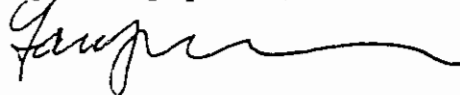
The Borough has repeatedly requested that the Association provide the Borough with its position regarding the Fact Finder's Report. The Borough has given the Association the opportunity to accept, reject or suggest modifications to the Fact Finder's Report. The Association has not stated a position and has done nothing to end the impasse.

Under New Jersey law, a public employer that has negotiated in good faith and has reached a post fact-finding impasse may unilaterally implement its last best offer.

Therefore, the Borough has deemed that an impasse continues and accordingly on April 10, 1996, the Borough Council of the Borough of Avalon adopted Resolution No. 78-96 entitled "A Resolution Declaring an Impasse in the Collective Bargaining Negotiations between the Borough of Avalon Beach Patrol Lifeguard Association and Implementing Recommendation of the State of New Jersey Public Employment Relations Commission Fact Finder."

Therefore, enclosed please find a copy of Resolution No. 78-96 together with a "Draft Agreement" which now constitutes the Terms and Conditions of Employment which apply to employees represented by the Avalon Beach Patrol Lifeguard Association.

Very truly yours,



Lawrence Pepper, Jr.

LP/mj  
enc:

cc: Administrator Bednarek  
Police Chief Louis Taylor  
Assistant Comptroller Sharon McCullough  
Borough Clerk Amy Kleuskens

BOROUGH OF AVALON  
CAPE MAY COUNTY  
NEW JERSEY

RESOLUTION NO. 78-96

**SUBJECT:** A RESOLUTION DECLARING AN IMPASSE IN THE COLLECTIVE BARGAINING NEGOTIATIONS BETWEEN THE BOROUGH OF AVALON AND THE AVALON BEACH PATROL LIFEGUARD ASSOCIATION AND IMPLEMENTING RECOMMENDATIONS OF THE STATE OF NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION FACT FINDER

**WHEREAS,** the Public Employment Relations Commission issued a Certification of Representative under its Docket No. R0-95-2 to the Avalon Beach Patrol Lifeguard Association to represent all lifeguards employed by the Borough of Avalon, excluding managerial executives, supervisors within the meaning of the act, confidential employees, police employees, craft employees and all other employees; and

**WHEREAS,** the Borough of Avalon (Borough) and the Avalon Beach Patrol Lifeguards Association (the Association) engaged in negotiations for an initial contract between the parties but those negotiations reached an impasse; and

**WHEREAS,** pursuant to the Rules and Regulations of the State of New Jersey Public Employment Relations Commission, a Fact Finder was duly appointed to serve as a Fact Finder in an effort to resolve the impasse involving the parties and to issue a report; and

**WHEREAS,** hearing were held by the Fact Finder under the subject impasse on September 6, 1995 and on September 22, 1995 at the Avalon Municipal Building; and

**WHEREAS,** at such hearings the parties were given adequate opportunity of giving testimony and presenting both orally and in written form, documentation and data to substantiate their respective positions; and

**WHEREAS,** the Public Employment Relations Commission Fact Finder issued his Fact Finder's Report and Recommendation on October 16, 1995; and

**WHEREAS,** the Borough informed the Association on November 16, 1995 and repeatedly thereafter that the Borough is prepared to accept the Terms of Employment set out in the Fact Finder's Report and Recommendations; and

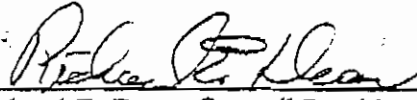
**WHEREAS**, the Association has not stated its agreement nor has it suggested any changes to the Fact Finder's Report and Recommendations notwithstanding Borough's efforts to solicit such statements over a period in excess of five (5) months; and

**WHEREAS**, the Borough deems that an impasse does therefore exist between the Borough and the Association and desires to implement without further negotiations the Terms of Employment contained in the Fact Finder's Report and Recommendations, together with those Terms and Conditions of Employment agreed to between the Borough and the Association during negotiations.

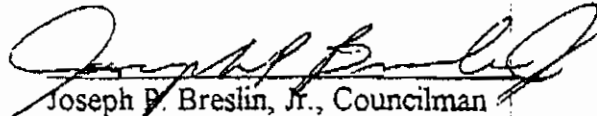
**NOW, THEREFORE BE IT RESOLVED** by the Borough Council of the Borough of Avalon as follows:

1. That the Borough of Avalon does hereby declare an impasse in its collective bargaining negotiations between the Borough and the Avalon Beach Patrol Lifeguard Association; and
2. That the Terms and Conditions of Employment included in the Report and Recommendations of the Public Employment Relations Fact Finder together with those tentative agreements reached between the parties during collective bargaining negotiations, be and they are hereby determined to be the Terms and Conditions of Employment which are to apply to all lifeguards employed by the Borough of Avalon represented by the Avalon Beach Patrol Lifeguard Association; and
3. That such Terms and Conditions of Employment which are to apply to Lifeguard employees of the Borough represented by the Avalon Beach Patrol Lifeguard Association are as set forth on the "draft agreement" attached hereto and made a part hereof by reference.

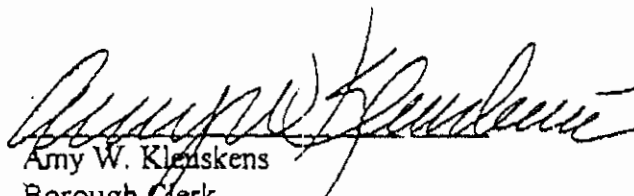
Motion: Councilman Breslin

  
Richard E. Dean, Council President

Seconded: Council President Dean

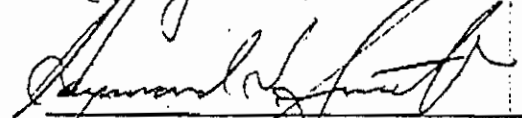
  
Joseph P. Breslin, Jr., Councilman

Dated: April 10, 1996

  
Amy W. Klenskens  
Borough Clerk

  
Charles P. Covington, Councilman

  
Nancy M. Hudanich, Councilman

  
Raymond C. Smith, Councilman

**ROLL CALL VOTE:**

AYES-----	Breslin, Covington, Dean, Hudanich, Smith
NAYES-----	None
ABSTAINING-----	None
ABSENT-----	None

This "DRAFT AGREEMENT" constitutes the Terms of Employment applicable to all Lifeguards represented by the Avalon Beach Patrol Lifeguard Association. These Terms of Employment were implemented pursuant to Resolution No. 78-96 of the Borough Council of the City of Avalon, adopted on April 10, 1996 entitled "A Resolution Declaring an Impasse in the Collective Bargaining Negotiations between the Borough of Avalon Beach Patrol Lifeguard Association and Implementing Recommendation of the State of New Jersey Public Employment Relations Commission Fact Finder."

THIS AGREEMENT entered into this \_\_\_ day of \_\_\_\_\_,

1995 by and between the BOROUGH OF AVALON, in the County of Cape May, a Municipal Corporation of the State of New Jersey, hereinafter called the "Borough" and The AVALON BEACH PATROL LIFEGUARDS ASSOCIATION, hereinafter called the "Association".

#### PREAMBLE

This Agreement is entered into pursuant to the provisions of Chapter 123, Laws of 1974 (N.J.S.A. 34:12A-5.1, et seq) of the State of New Jersey to promote and ensure harmonious relations, cooperation and understanding between the Borough and Employees; to prescribe the rights and duties of the Borough and Employees; to provide for the resolution of legitimate grievances, all in order that the public service shall be expedited and effectuated in the best interests of the people of the Borough of Avalon.

#### ARTICLE ONE

##### RECOGNITION

A. In accordance with the Public Employment Relations Commission Certification of Representation dated August 25, 1994, under Docket No. RO-95-2, the Borough hereby recognizes the Avalon Beach Patrol Lifeguards Association as the exclusive representative pursuant to NJSA 34:13A-1 et. seq. for all seasonal employees within the category of

Lifeguard employed by the Borough of Avalon Beach Patrol. All other employees of the Borough of Avalon not within the seasonal category set forth above are hereby excluded from this bargaining unit. Specifically excluded are the Lifeguard Lieutenants and the Captain of the Lifeguards.

B. The terms "lifeguard", "officers" and "employee" shall be used interchangeably and shall be defined to include the plural as well as the singular. Reference to the male gender shall include the female gender in any reference herein.

## ARTICLE TWO

### NON DISCRIMINATION

The Borough and the Association agree that neither of them will discriminate or cause discrimination against any employee covered by this labor agreement because of race, color, creed, age, sex, handicap, national origin, political affiliation, Association membership, or Association activity.

All references to employees in this Agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.

ARTICLE THREE

CHECK OFF

A. The Borough agrees to deduct from the salaries of its employees, subject to this Agreement, dues for Avalon Beach Patrol Lifeguards Association. Such deductions shall be made in compliance with Chapter 123, Public Laws of 1974, N.J.C.S.A. (R.S.) 52:14-15, 94 as amended, and members shall be eligible to withdraw such authority during July of each year.

B. A Check Off shall commence for each employee who signs a properly dated authorization card supplied by the Association and verified by an officer of the Association during the month following the filing of such card with the Borough.

C. The Association shall inform the Borough in writing of the rate of membership dues. This official notification shall be submitted on the letterhead of the Association and signed by the President of the Association advising of the amount of the dues deduction.

D. If during the life of this agreement there shall be any change in the rate of membership dues, the Local Association shall furnish the Borough written notice thirty (30) days prior to the effective date of such change and shall furnish to the Borough the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction.

E. The Association will provide the necessary "Check-Off Authorization" form and the Association will secure the signatures of its



members on the forms and deliver the signed forms to the Borough treasurer.

F. The Association shall indemnify, defend and save the Borough harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of any action taken in making deductions and remitting same to the Association pursuant to this Article.

#### ARTICLE FOUR

##### MANAGEMENT RIGHTS

A. It is recognized that the management of the Borough, the control of its properties and the maintenance of order and efficiency, is a right and responsibility of the Borough of Avalon.

Accordingly, the Borough hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the Laws and Constitution of the State of New Jersey and of the United States, including, but without limiting the generality of the foregoing, the following rights:

1. the executive management and administrative control of the municipal government and its properties and facilities and the determination of the methods of operation to be offered by its employees and to direct the activities of its employees;

2. the determination of the standards of selection of employment and the hiring of all employees and, subject to the

provisions of law, the determination of their qualifications and conditions for continued employment as well as the assignment, promotion and transfer of employees;

3. the reprimand, suspension, demotion or discharge of employees or other disciplinary action;

4. the transfer, assignment, reassignment, layoff and/or recall of employees to work;

5. the determination of the number of employees and of the duties to be performed and the relief of its employees from duty because of a lack of work or lack of funding or other legitimate reason;

6. the maintenance of the efficiency of its operations and employees as well as the establishment, expansion, reduction, alteration, combination, consolidation or abolition of any job or job classification, department operation or service;

7. the determination of staffing patterns and areas worked, the control and regulation of the use of facilities, supplies, equipment, materials and other property to the employer;

8. the determination of the number, location and operation of divisions, departments, units and all other work groups of the employer, the assignment of work, the qualifications required, the performance standards and the size and composition of the work force;

9. the determination of the amount of overtime to be worked;

10. the determination of the methods, means and personnel by

which its operations are to be conducted;

11. the determination of the content of work assignments;
12. the exercise of complete control and discretion over its organization and the technology of the performance of its work; and
13. the making, maintenance and amendments of such operating rules and regulations as it may from time to time deem best for the purposes of maintaining order, safety and/or the effective and efficient operation of the work of the Borough, which shall become effective upon written notice to the employees.

B. In exercise of the foregoing rights, powers, authorities, duties and responsibilities of the Borough, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgement and discretion in connection with the implementation thereof, shall be limited only by the specific and express written terms of this Agreement and by law, and then only to the extent such specific and express terms are in conformance with the Constitution and laws of the State of New Jersey and of the United States.

C. Notwithstanding anything which may be contained in this agreement to the contrary, nothing contained herein shall be construed to deny or restrict the Borough of its rights and responsibilities under NJSA 40A, the municipal laws of the State of New Jersey, or any other national, state, county or local law or regulation as such may pertain to operation of the Beach Patrol or of the municipal government generally.

ARTICLE FIVE  
ASSOCIATION RIGHTS

A. Information to Association.

Upon request by the President of the Association in writing, the Borough agrees to make known to the representatives of the Association, when and where the Association may obtain documents that the Borough is required by law to release. The material shall be provided within a reasonable amount of time and location.

B. Bulletin Boards.

The Borough shall permit the Association the use of a Bulletin Board to be supplied by the Association for its exclusive use. Such Bulletin Board shall be located in the headquarters building. This Bulletin Board may be utilized by the Association for the purpose of posting official Association announcements and other information related to the official business of the Association which is of a non-controversial nature. The Association agrees that it will not post material which may be profane, derogatory to any individual, or constitute election campaign or political material of any kind. The Borough may have removed from the Bulletin Board any material which does not conform to the intent and provisions of this Article.

ARTICLE SIX  
GRIEVANCE PROCEDURE

A. Purpose.

1. The Purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may arise affecting the terms and conditions of employment. The parties agree that this procedure will be kept as informal as may be appropriate.

2. Nothing herein contained shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Borough, and having the grievance adjusted without the intervention of the Association.

B. Definitions.

The term "grievance" shall mean an allegation that there has been:

1. A misinterpretation or misapplication of the terms of this Agreement which is subject to the grievance procedure outlined herein shall hereinafter be referred to as a "contractual grievance"; or

2. Inequitable, improper, unjust application or misinterpretation of rules or regulations, existing policy, or orders applicable to the Borough and its Beach Patrol, which shall be processed up to and including the Director of Public Safety, and shall hereinafter be referred to as a "non-contractual grievance".

3. The term "grievance" shall not include any disciplinary matters. The Borough maintains the right to discipline employees

and such disciplinary actions shall be subject to the terms of Article SEVEN.

C. Procedure.

1. Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort shall be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

2. LEVEL ONE - Captain of the Beach Patrol.

A grievance to be considered under this procedure shall be initiated by the grievant within ten (10) calendar days of its occurrence and submitted in writing, to the Captain of the Beach Patrol with a copy to the Director of Public Safety. A decision shall be made in writing by the Captain of the Beach Patrol within ten (10) calendar days after the receipt of the grievance at this level.

3. LEVEL TWO - Director of Public Safety.

Within five (5) calendar days of receipt of the determination at LEVEL ONE, or ten (10) calendar days after submission of the grievance to LEVEL ONE if no decision has been rendered, the grievance may be filed in writing with the Director of Public Safety through the office of the Borough Clerk. The Director of Public Safety shall render a decision in writing, within ten (10) calendar days after the submission of the grievance at this Level. The decision of the Director of Public Safety on all grievances

regarding non-contractual grievances shall be final and binding.

4. LEVEL THREE - Arbitration

A "contractual grievance" regarding the express terms and conditions of this Agreement may be submitted to non-binding arbitration within ten (10) calendar days after the Director of Public Safety's determination, or within fifteen (15) days of submission of the grievance to LEVEL TWO if no decision is rendered.

D. Authority of the Arbitrator.

1. If the grievant is dissatisfied with the decision of the Director of Public Safety regarding a "contractual grievance", and the Association finds the grievance to be meritorious, the Association may request the appointment of an arbitrator in accordance with the rules and procedures of the New Jersey Public Employment Relations Commission.

2. The arbitrator shall function in accordance with the rules and procedures of the New Jersey Public Employment Relations Commission.

3. The arbitrator shall limit himself to the issue before him and consider nothing else. He shall have no power to add to, subtract or modify the Agreement between the parties.

4. The arbitrator shall set forth in writing his findings of fact and conclusions of law upon which his decision is based. The decision of the arbitrator shall be advisory and shall not be binding upon the parties.

5. The arbitrator shall be bound by decisions of the New Jersey Public Employment Relations Commission, the decisions of the Courts of New Jersey, and all New Jersey Statutes and Federal Laws.

E. Costs

The cost for services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost of the hearing room shall be borne equally by the Borough and the Association. Any other expenses incurred shall be paid by party incurring same.

F. Representation.

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or at his option, by a representative selected or approved by the Association. When an employee is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

ARTICLE SEVEN

DISCIPLINARY ACTION

A. Borough's Right to Discipline. The Borough maintains the right to discipline its lifeguards. The following provisions constitute the sole and exclusive method for the imposition and appeal of discipline.

B. Probationary Employees. The first two (2) seasons of employment of any employee shall be considered probationary. During the probationary period, any employee may be (1) disciplined or (2)



terminated in the sole discretion of the employer and there shall be no right to appeal.

C. Disciplinary Action. The Borough acknowledges the principal of progressive discipline. Depending on the magnitude of the offense, the discipline issued by the Borough may be in any of the following forms:

- a. Verbal reprimand;
- b. Written reprimand;
- c. Suspension without pay;
- d. Demotion (reduction in hourly rate of pay)
- e. Dismissal.

D. Causes for Disciplinary Action.

The causes for which disciplinary action may be taken include, but are not limited to, the following:

- a. Neglect of duty.
- b. Absence without leave or failure to report after authorized leave has expired or after such leave has been disapproved or revoked.
- c. Incompetency or inefficiency due to mental or physical disability.
- d. Insubordination or serious breach of discipline.
- e. Intoxication while on duty.
- f. Commission of a criminal act.
- g. Disobedience of a rule or regulation of the Borough.
- h. Conduct unbecoming a public employee.
- i. Chronic or excessive absenteeism.

- j. Negligence of or willful damage to public property or waste of public supplies.
- k. Abuse or misuse of sick leave.
- l. Tardiness.
- m. Use or possession of controlled dangerous substances during work hours or at any time.

E. Disciplinary Hearing.

An employee who is disciplined under the provisions of this Article shall, upon written request to the Business Administrator, be granted an Administrative Hearing, where the penalty sought is dismissal or a suspension without pay exceeding ten (10) days. Request must be made within five (5) days of the filing of written charges. Said hearing shall be conducted by the Business Administrator not less than ten (10) days, nor more than twenty (20) days, from the filing of charges unless another date is agreed to by both parties. The Business Administrator shall render a decision within thirty (30) days of the hearing. When necessary to maintain order or efficiency in the delivery of services or whenever it is in the public interest, an employee may be suspended prior to the date of the hearing. Except as provided for herein, no other disciplinary actions shall be subject to appeal.

ARTICLE EIGHT

EMPLOYMENT PROCEDURES

A. Ability to Perform.

All applicants for employment shall be required prior to the commencement of employment to take and pass an examination demonstrating the appropriate skills and physical abilities to perform the duties of the task. Further, mindful of its public safety responsibilities, the Borough may, at any time and from time to time, require such Certification or other examinations or tests as it may deem appropriate in connection with the rehire or continued employment of any employee, including such Certifications required to meet the Bathing Code set by the State of New Jersey (NJAC 8:18-1 et. seq.) and the guidelines established by the United States Lifesaving Association. Further, employees are required as a condition of employment to hold and maintain a CPR Certification. The Borough shall provide CPR instruction through its designated instructors. Employees must attend and successfully pass the CPR instruction course and pay the Red Cross certification fee.

B. Medical Examinations and Certifications.

All new applicants for employment and returning guards shall be required to provide a medical certification of fitness from their own physician certifying that they are free of any physical defect or disability which would preclude their providing full and complete service of their duties. Such certification shall be acquired at the sole expense of the prospective employee. Any employee shall disclose any medical or psychological condition which may affect their job

performance. The Borough reserves the right to require at any time that the employee be examined by a physician designated by the Borough to verify fitness for duty at the Borough's cost.

C. Returning Guards.

Guards who wish to return for their second year and beyond will be considered for employment along with new applicants. The Borough shall have the right to select those individuals for employment whom the Borough determines to be most qualified, irrespective of whether the selected individual is a returning guard or a new applicant.

Guards who wish to return for their second year and beyond must meet established criteria to be rehired each season. The returning guard must have received a satisfactory year-end evaluation and be recommended for rehiring by the Captain of the Beach Patrol. The guard must also demonstrate he/she has maintained the physical capabilities for employment by passing such medical examinations and athletic tests as the Borough may deem appropriate. Each returning guard must present a Doctor's Certificate, at the cost of the employee, certifying that the employee is physically fit to perform the duties of a Lifeguard.

D. Layoffs.

If there is a reduction in force, the Borough shall determine which employees shall be laid off. In making that determination, the Borough shall consider the employee's past performance, his/her disciplinary record, and attendance record. When all of these items are reasonably equal, then seniority shall be the determining factor and employees with the greater amount of seniority shall be retained.

ARTICLE NINE

WORK RULES

The Association acknowledges and agrees that the Borough has the right to promulgate such work rules and regulations or Standard Operating Procedures governing the operation of the Beach Patrol as it may desire, including but not limited to:

1. Table of Organization
2. Job Descriptions
3. Duties and Responsibilities of Employees
4. Disciplinary Standards

ARTICLE TEN

WORK SCHEDULE

A. Work Year

1. The Borough specifically reserves unto itself the right to establish by Resolution of the Borough Council the length of the beach season.

2. The work season for employees shall normally extend from the beginning of the Memorial Day weekend through and including the Sunday following Labor Day. This is not to preclude a modified work year for employees based upon their availability, with prior notice to and acceptance by the Borough. Further, this shall not preclude the Borough from initiating Beach Patrol related tasks earlier than the season aforesaid with employees who are available and willing to work, nor to extend the beach season beyond said date on the same basis.

B. Work Week.

All employees shall be expected, if the Borough deems it necessary, to work a minimum of six (6) days per week on a schedule established by the Captain of the Beach Patrol, unless because of age they are prohibited by law or regulation from working more than forty (40) hours per work week. Employees may at their option, and if requested to do so, work a seventh (7) consecutive day within any work week.

C. Work Day.

Employees shall be compensated for the hours which they are actually on duty. Employees shall normally be scheduled to work six (6) days per week or a total of forty-eight (48) hours per week which shall be scheduled by the Borough. The Borough shall establish reporting procedures in its rules and regulations which the employees agree must be strictly followed. The starting and ending times of each shift shall be determined by the Borough and set forth in the rules and regulations. During inclement weather, employees released from duty shall be paid for a four hour period during which they are subject to recall. If an employee is not recalled to duty after the four hour call-in period, then he/she shall not receive any further compensation for the day. Additionally, at the direction of the Captain, all employees shall be required to attend a once weekly unpaid meeting for no more than one (1) hour as a condition of their employment. The work schedule as aforesaid shall pertain during normal service at the beach. However, during emergencies, said schedule may be altered in order to accomplish the

tasks of preservation of lives and property on the beach. Further, the Borough reserves the right to establish such work schedules as it deems efficient and appropriate and shall have the right to assign employees to such work schedules as it deems appropriate.

D. Overtime

Overtime shall be paid for all hours worked beyond those set forth in the regularly scheduled work period as set forth in the preceding paragraph. The rate of pay shall be at straight time. All overtime shall be paid at the straight time rate.

E. Exchange of Days off.

Employees shall be permitted to exchange days off so long as adequate notice is given and prior approval is acquired from the Captain of the Beach Patrol, and that such exchange does not result in the payment to either employee of any overtime remuneration.

F. Races and Contests

Employees who compete in swimming, rowing and running races and/or competitions in the name of the Borough of Avalon, or who perform work in the set up of the South Jersey Lifeguard Races or any other Lifeguard competitions shall not receive overtime or other additional compensation of any kind.

G. Off-Season Court Overtime

In the event an employee is required to appear in Avalon Municipal Court or in another administrative proceeding during the off-

season, the employee shall be compensated at straight time for any travel and for time in attendance at the Court hearing or other administrative proceeding.

## ARTICLE ELEVEN

### UNIFORMS

1. The Borough shall provide each employee with an appropriate uniform for the performance of their duties. The uniform shall consist of such items as the Borough deems necessary and appropriate.

2. Employees who wish to purchase additional items of the uniform may do so with the permission of the Captain of the Beach Patrol.

3. In the event that any part of the employee's uniform is damaged, destroyed, stolen or lost, the Captain of the Beach Patrol has the discretion to make replacements at the expense of the Borough, provided the appropriate evidence is established that the damage or loss of the uniform was beyond the control of the individual employee and directly related to services performed on behalf of the Borough and not due to the employee's negligence.

4. In the consideration of the supply of such uniforms by the Borough, all employees shall keep such uniforms cleaned and in good condition and shall wear the appropriate uniform as directed by the Captain of the Beach Patrol for the entire tour of duty. Failure to wear such uniform shall subject an employee to discipline. Such uniforms may not be worn during the season when off duty, except when participating in the races outlined in Article Nine, or while commuting.



ARTICLE TWELVE

LEAVES OF ABSENCE

An employee may apply for an unpaid leave of absence for up to two (2) seasons. The Borough may in its sole discretion grant or deny such leave. In the event such leave is granted, the employee will retain his seniority rights pursuant to Article Seven. The request shall be made by May 1st preceding the season the leave is requested. The Borough will inform the employee of its decision within two weeks of receipt of the request.

ARTICLE THIRTEEN

COMPENSATION

A. Wages.

The pay scale for Lifeguards employed by the Borough of Avalon Beach Patrol shall be as follows:

<u>YEARS OF EMPLOYMENT</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
1st year	\$ 6.25	6.25	6.25
2nd year	6.75	6.75	6.75
3rd year	7.00	7.05	7.10
4th year	7.25	7.35	7.40
5th year	7.55	7.60	7.70
6th year	7.85	7.90	7.95
7th year	8.15	8.20	8.25
8th year	8.45	8.50	8.60
9th year	8.75	8.80	8.90
10th year	9.05	9.10	9.15

For an employee to receive credit for advancement on the salary scale, he must have worked at least forty-two (42) days during a

season. A first year guard must have worked at least thirty (30) days during a season.

B. Incentive Pay.

An employee shall be entitled to receive incentive pay of an additional Three (\$3.00) Dollars per day for all day worked in a season provided the employee has met the following conditions:

(i) The employee must commence work the week before or on July 4th, and must work to and including Labor Day of the same season and must complete fifty (50) full days of work of said season; and

(ii) The employee cannot accumulate more than three (3) unexcused absences during the summer season. Sickness verified by a doctor's note will constitute an excused absence. To receive credit for a doctor's note, the note must be received by the payroll clerk no later than three (3) days after the guard returns to work.

Payments for Incentive Pay shall be paid with the employee's final pay of the season.

C. Court Time.

If an employee is required to appear in Court on behalf of the Borough on Borough related business or for any reason arising out of his employment as a lifeguard, he shall suffer no loss of pay.

D. Adjustments to Compensation.

Nothing contained herein shall prevent the Borough from moving an employee to a higher hourly rate on the wage structure as a reward for outstanding achievement, or withholding an increment or reducing an employee's hourly rate as a disciplinary measure.

ARTICLE FOURTEEN

NO STRIKE PLEDGE

A. The Association covenants and agrees that during the term of this Agreement, neither the Association nor any person acting in its behalf, will cause, authorize, or support nor will any of its members take part in any strike (i.e. the concerted failure to report to duty, or willful absence of any employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment), work stoppage, slowdown, walkout or other action which interferes with the full and complete normal operation of the Beach Patrol. The Association agrees that such action would constitute a material breach of this Agreement.

B. In the event of a strike, slowdown, or walkout as set forth above, it is covenanted and agreed that participation in any such activity by an employee covered under the terms of this Agreement shall be deemed grounds for termination of employment of such employee or employees and cessation of check-off rights to the Association.

C. The Association will actively discourage and will take whatever affirmative steps are necessary to prevent or terminate any strike, work stoppage, slowdown, walkout or other action which interferes with the full and complete normal operation of the Beach Patrol.

D. Nothing contained in this Agreement shall be construed to limit or restrict the Borough in its right to seek and obtain such judicial relief as it may be entitled to have in law or in equity for injunction

for damages or both in the event of any such breach by the Association or its members.

## ARTICLE FIFTEEN

### DRUG-FREE WORKPLACE

A drug-free workplace, free from use of non-medically prescribed controlled substances, is vital to the Borough, to the safety of our work place, to the productivity of our employees, and to the interests of the general public. For these reasons, the Borough has implemented a drug policy and practices oriented toward maintaining a drug-free work environment.

The use, possession, sale or distribution of non-medically prescribed controlled substances on Borough premises (including parking lots and recreation areas or in any Borough work environment) is prohibited. "Work environment" includes situations where an employee is representing the Borough whether on a citizen related call or participating in a business meeting off-premises. A violation of this provision of the Borough's drug policy is not considered a medical issue and normally results in dismissal from the Borough. The Borough's drug policy also prohibits employees affected by any non-medically prescribed controlled substances from Borough premises or other work environments. Consideration is given to the safety of any employee asked to leave our premises due to an impairment (e.g. ability to drive, etc.).

The Borough reviews employees off-the-job drug-related incidents such as arrests for use, possession, sale or distribution of drugs to

make a determination if the incident could result in an adverse or potentially adverse impact to the Borough and/or to our employees. The results of the review will determine the appropriate course of action for the Borough to take including dismissal, rehabilitation or other actions.

In appropriate circumstances, the Borough may require employees suspected of being under the influence of drugs to submit to drug testing. Drug testing will only be required and administered in accordance with the provisions of Federal and State law. The Borough Administrator will consult with the Union Shop Steward prior to the Borough requiring an employee to submit to drug testing unless emergency circumstances exist which do not permit adequate time for such consultation.

#### ARTICLE SIXTEEN

##### FULLY BARGAINED PROVISIONS

The parties acknowledge that this Agreement represents and incorporates the complete and final understanding and settlement of the parties on all bargainable issues which were or could have been subject to negotiations, and that all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement. Unless otherwise provided in this Agreement, no prior administrative procedure, practice or past practice shall be interpreted or applied so as to enlarge or otherwise conflict with the express terms of this Agreement.

During the term of this Agreement, neither party will be required to negotiate with respect to any such matters, whether or not covered by this Agreement and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

This document constitutes the sole and complete agreement between the parties and embodies all of the terms and conditions governing the employment of employees in the Association.

The parties acknowledge that they have had the opportunity to present and discuss proposals on any subject, without prejudice, which is (or may be) subject to collective bargaining.

ARTICLE SEVENTEEN

SEPARABILITY AND SAVINGS

Each and every clause of this Agreement shall be deemed separable from each and every other clause of this Agreement to the extent that in the event any clause or clauses shall be finally determined to be in violation of any Federal or State Law, then in such event, such clause or clauses, only to the extent that any may be so in violation shall be deemed of no force and effect and unenforceable without impairing the validity and enforceability of the rest of the Agreement, including any and all provisions on the remainder of any clause, sentence or paragraph in which offending language may appear.

ARTICLE EIGHTEEN

NOTICES

Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provisions of this Agreement, either party shall do so by certified mail at the following addresses:

1. If by the Association, to the Borough at the Borough's Municipal Police Building, c/o Director of Public Safety.
2. If by the Borough, to the Association President at his/her home address.

ARTICLE NINETEEN

DURATION AND TERMINATION

A. This agreement shall remain in full force and effect from the first day of January, 1995 until midnight of December 31, 1997.

B. Thereafter, it shall automatically be renewed from year to year, unless either party hereto shall notify the other, in writing, ninety (90) days prior to the expiration date, that it desires to modify said agreement.

IN WITNESS WHEREOF, the BOROUGH OF AVALON has caused these presents to be signed by its Mayor and its Director of Public Safety, attested to by its Borough Clerk and its Corporate Seal to be hereto affixed, and the AVALON BEACH PATROL LIFEGUARDS ASSOCIATION, has caused these presents to be signed by its duly designated Bargaining Representatives and its Corporate Seal to be hereto affixed, the day and year first above written.

BOROUGH OF AVALON

AVALON BEACH PATROL LIFEGUARDS ASSOCIATION

By

Mayor

By

Bargaining Representative

Director of Public Safety

Bargaining Representative

Attest:

Borough Clerk

avalon\beachpat.agr  
12/5/95