

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration
between

PERB Case Nos.
IA 201-036; M201-207

VILLAGE OF LARCHMONT,
Public Employer,
and

JS Case No. 2977

**LARCHMONT POLICE BENEVOLENT
ASSOCIATION, INC.,**
Employee Representative,

**OPINION
AND
AWARD**

Re: Impasse commencing June 1, 2001.

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED**

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Before the Public Arbitration Panel:

JUN 25 2003

**JOHN E. SANDS, Public Member and Chair
ANTHONY V. SOLFARO, PBA-Appointed Arbitrator
VINCENT TOOMEY, Village-Appointed Arbitrator**

CONCILIATION

OPINION OF THE CHAIR

I. Background.

On April 16, 2002, Richard A. Curreri, Director of Conciliation of New York Public Employment Relations Board, ("PERB"), confirmed the parties' designation of me as Public Member and Chair of the Public Arbitration Panel in this case to conduct hearings and make a just and reasonable determination pursuant to New York State Civil Service Law ("CSL"), Section 209.4. In that same letter he also confirmed the parties' designations of Vincent Toomey as

Village-Appointed Arbitrator and Anthony V. Solfaro as PBA-Appointed Arbitrator.

Pursuant to our statutory authority, we conducted a hearing in Larchmont, New York on August 22, 2002. Both parties appeared by counsel and had full opportunity to adduce evidence, to cross examine each other's witnesses, and to make argument in support of their respective positions. Each has submitted a post-hearing brief, and neither has raised any objection to the fairness of this proceeding.

The hearings produced a record that includes the testimony of three witnesses, 42 PBA exhibits, and 49 Village exhibits, all comprising thousands of pages of documents. We have reviewed that record carefully and have considered the parties' proofs in light of these factors that CSL Section 209.4(c) mandates control our determination:

(v) [T]he public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Public Employer is the Village of Larchmont (“Village”). The Employee Representative is the Larchmont Police Benevolent Association, Inc. (“PBA”). The bargaining unit comprises all Police Officers employed by the Village, except the Chief of Police. The unsettled issues subject to determination in this proceeding appear in the PBA’s Petition For Compulsory Interest Arbitration and the Village’s Response to the Petition For Interest Arbitration, both in evidence as PBA Exhibit 1 and Employer Exhibit 1.

II. Parties’ Contract Proposals.

A. PBA’s Demands: (PBA Exhibit 1)

1. Eliminate the Department’s ability under Article 8, Section 2 to require an officer who is called in for overtime and completes his overtime assignments within the minimum 4 hour pay period to perform other duties for the balance of the overtime period.

2. Amend Article 8, Sections 5(a) & (b) to require the Department to record all overtime in the "overtime record book" and utilize the seniority overtime list for all overtime opportunities.
3. Increase the number of holidays in Article 9 from 13 to 14.
4. Add New Year's Day and July 4th as "Super Holidays" and pay officers two times (2X) their regular rate of pay if they work a Super Holiday.
5. Increase the number of vacation days in Article 10 for officers completing 10 full years of service from 23 days to 25 days.
6. Amend Article 11 to provide unlimited sick leave for non-line of duty illnesses.
7. Modify longevity payments provided in Article 12 to read,

5 years	1.0% of base
10 years	1.5% of base
15 years	2.0% of base
20 years	2.5% of base
25+ years	3.0% of base.
8. In Article 14, increase funeral leave days from 3 to 5. Amend definition of "immediate family" to include grandparents, brother and sister-in law and nieces and nephews. Increase funeral expense to \$15,000.
9. Increase uniform allowances in Article 16 to \$550 for patrolmen and \$800 for detectives.
10. Amend Article 17 to provide,
 - 100% paid medical coverage upon retirement;
 - Increase insurance buy out to \$2,000 for family

- \$1,200 for individual;
 - Dental
 - \$1,000 - 2001
 - \$1,150 - 2002
 - \$1,300 - 2003;
 - Increase life insurance to \$50,000.
11. Change the Personal Leave language at Article 21 from “may” to “must.”
 12. Increase base wages at Article 24 by seven (7%) percent in each year of a two (2) year contract. Detectives to receive seven (7%) above base wage of 1st grade patrolman.

[PBA Exhibit 1.]

B. Village of Larchmont Proposals.

1. Delete Article 8 section 1(b). Amend Article 8 section 3 to provide,
 - An employee required to be on standby for more than two times per month shall be compensated at the rate of one hour of overtime for every two hours of standby time.
2. Eliminate “Super Holidays” provided in Article 9, Section 4.
3. Amend Article 10 to provide that unused vacation days not be subject to payout upon retirement.
4. Modify Article 21, Personal Leave, to limit each bargaining unit member to three days personal leave per annum. Personal leave days may not be accumulated and are not subject to payout.
5. Delete Article 23, Section 2, the continuing rights provision.

[Employer Exhibit 2.]

III. Parties' Positions on Their Proposals.

A. PBA Proposals.

Focusing on the statutory criterion of comparability, the PBA includes those villages within the southern half of Westchester County as the scope of the comparable universe. Those comparables would include: Village of Ardsley, Village of Bronxville, Village of Dobbs Ferry, Town of Eastchester, Town/Village of Harrison, Village of Hastings-on-Hudson, Village of Irvington, Village of Larchmont, Village of Mamaroneck, Village of Pelham, Village of Pelham Manor, Town/Village of Scarsdale and Village of Tuckahoe. The Village of Larchmont is located in the Town of Mamaroneck.

The PBA argues those municipalities are similar in economic, social and fiscal environments. [See PBA Exhibit 37.] Further, their housing, employment opportunities, average family income and tax rates are comparable. Thus, it contends, Larchmont is more comparable to those municipalities than to Greenburgh, Mount Vernon, New Rochelle, White Plains and Yonkers which have significantly more sworn officers than Larchmont (106, 253, 183, 241 and 613 respectively, compared to Larchmont's 27) and vastly different geographic, social,

political and financial considerations. The PBA cites Benjamin Falcigno's interest arbitration award in Village of Bronxville (IA95-001) in support of its position:

The statutory criteria of "comparable communities" in the statute has been interpreted by arbitration panels to mean those similar communities in close geographic proximity (*i.e.* municipalities in the same county) and that is what this panel will consider.

[Award p. 5.]

The second criterion the PBA addresses is the Village's ability to pay.

Based upon the testimony of municipal finance expert Edward Fennell and his report (see PBA Exhibit 41), the Village has the financial ability to fund the increases it seeks. The PBA indicates the following: (1) the Village had a total general fund balance of \$2,565,431 and an unreserved fund balance of \$2,374,151 entering fiscal year 2002; (2) the unreserved fund balance is approximately 25% of the total general fund budget of \$10,489,920 compared to the 5% surplus recommended by bond agencies and the comptroller's office; (3) the Village's real property tax increases of 1.73% in 2001 and 1.9% in 2002 are extremely low and have averaged only 2.47% over the past six years; and, (4) although the Village recently increased its debt for capital projects to \$3.3 million it exhausted only 5.42% of its permissible constitutional debt limitation.

PBA argues that each 1% increase will cost the Village only \$20,281 and, therefore, that the Village can easily fund PBA's demands.

The third criterion the PBA addresses is the interest and welfare of the public. According to the PBA, there is no dispute the Village is best served by staffing professional, experienced, well-trained police officers. The Village must provide its officers with realistic, affordable incentives to improve their abilities and remain in the Village.

The last criterion the PBA addresses is the peculiarities of the profession. The PBA contends there is no dispute, and the Panel must recognize, that police officers possess unique qualifications, training and skills.

The PBA supports its proposals with the following additional evidence and arguments:

1. Overtime.

The PBA provided a comparative analysis of the call-out and call-in procedures for its "comparable" jurisdictions in southern Westchester County. According to the PBA, none of the officers for those jurisdictions is contractually required to remain on duty beyond completion of their assigned tasks. (See PBA Exhibit 27). The PBA contends that a requirement to remain on duty diminishes the officers' compensation.

Additionally, the PBA seeks a requirement to record all overtime in the “overtime record book” and to utilize the seniority overtime list for all overtime opportunities. The PBA contends its demand has no financial impact and will eliminate arbitrary determinations for overtime assignments.

The Village opposes the PBA’s proposal. The Village argues it would interfere with the Chief of Police’s discretion to direct police officers who are called in to work overtime. Further, the PBA has failed to propose alternative language for Article 8, Section 5 (a) and (b). The PBA did demonstrate a need for the changes.

2. Holidays.

The PBA seeks to increase the number of holidays from 13 to 14 and add New Year’s Day and Independence Day as “Super Holidays,” days for which officers would be paid two times the regular rate of pay if actually worked. PBA provided a comparative analysis for its “comparables”. PBA refers to the following municipalities as having superior holiday benefits (see PBA Exhibit 30): Bronxville (15 paid holidays/5 are Super Holidays); Harrison (14 paid holidays); Mamaroneck (Town and Village), Pelham, Pelham Manor, Scarsdale and Tuckahoe (13 paid holidays of which 5 or more are Super Holidays).

The Village opposes the demand and argues the PBA has failed to demonstrate a need to increase the number of paid holidays above the County-wide average of 12 to 13 days. It contends “Super Holidays” should be eliminated. Village notes PBA demanded two additional “Super Holidays” in the last interest arbitration; the panel rejected the offer, and PBA has failed to offer evidence of a change of circumstances.

3. Vacations.

PBA seeks to increase vacation leave for officers completing 10 full years of service from 23 to 25 days. According to the PBA, Larchmont officers’ benefits are “at or near the bottom” of its “comparables” notwithstanding the Village’s extremely strong financial condition and the apparent relative wealth found in its taxpayer community. PBA indicates that increase, even if awarded, would still leave its officers lagging behind virtually all of the comparables in terms of total vacation days accrued and accessible during a career. It points to the following vacation entitlements in comparable communities:

Ardasley:	Officers receive an additional vacation day above 20 for each year of service.
Bronxville:	25 days commencing in year 10.
Eastchester:	10 or more years of service - 25 days.
Town and Village of	

Harrison:	Commencing in 4 th year of service - 25 days.
Irvington	22 days commencing year 10 and increased to 24 at year 15.
Town of Mamaroneck:	30 working days commencing in year 7.
Village of Mamaroneck:	After 10 years of service - 10 days.

(PBA Exhibit 34.)

The Village opposes this demand and argues the PBA has failed to demonstrate a need for it.

4. Sick Leave.

The PBA seeks unlimited sick time for non-line of duty injuries. The PBA claims 13 sick leave days per year with unlimited accumulation is grossly inadequate because officers are required to work in inclement weather on varying shifts and regularly interact with the sick and infirm. PBA points out that 9 of its 13 comparable municipalities have unlimited sick leave policies with additional sick leave incentive. As for other comparables, Irvington provides officers with 15 to 18 sick leave days per year with bonuses for unused days; and Scarsdale provides 15 sick leave days per year and sick leave incentive.

According to the PBA, the Court of Appeals in *Balcerak v. County of Nassau*, 94 N.Y.2d 253 (1999), has limited police officers' General Municipal

Law Section 207-c entitlement to full pay while absent from duty for duty-related injuries or illnesses but not “line of duty” because not involving the special hazards of police work. Officers must therefore use sick leave time for such absences. The PBA also contends its demand is necessary because the Village’s retirees, unlike retirees of its comparable communities, are responsible for 50% of the cost of individual health insurance coverage and 65% of the additional cost for their families, amounts that they must make up from accumulated sick leave. As a result of *Balcerak*, that resource will be greatly reduced. PBA points out that Larchmont officers historically have not abused sick leave time and have accumulated reasonable sick leave banks that are now threatened.

The Village opposes the demand and argues the PBA has failed to demonstrate a need for it. It notes the Village “has, over the years, been plagued by sick leave abuse by some of its members.”

5. Longevity.

The PBA seeks an increase in longevity payments, which now are the following:

Current Benefit

<u>Years of Service</u>	<u>Amount</u>
After 5 – 10	\$380.00
After 10 – 15	\$730.00

After 15 – 20	\$830.00
After 20 or more	\$980.00

PBA contends its compensation package is among the lowest of its comparables. It refers to its longevity benefits comparisons provided in PBA Exhibits 22-25. The PBA seeks a percentage of base rather than a fixed dollar amount in order to permit “the longevity payment to continue to maintain its relative value without reliance on continual adjustment.”

The Village opposes the demand and argues that longevity benefits are comparable to those received by other Larchmont employees and police officers in other Westchester County villages. The Village points out that no other County village provides a 25-year longevity increment. According to the Village, the rank differential already provides compensation for those police officers achieving promotions and thus longevity should not be used as a subterfuge for providing additional compensation.

6. Funeral Leave.

The PBA seeks (1) to increase funeral leave from 3 to 5 days, (2) to expand the definition of “immediate family” to include grandparents, brothers-in-law and sisters-in-law, nieces and nephews, and (3) to increase the funeral expense

benefit to \$15,000. PBA claims its benefit is limited compared to its comparables. (See PBA Exhibit 26.)

The Village opposes this demand and argues the current benefit is within County-wide range for villages. It contends the expansion of “immediate family” would encompass extended family members and would vastly increase the Village’s obligation to provide paid leave. Further, Larchmont already provides the highest funeral benefit for death of a member in the line of duty among all County villages.

7. Uniforms.

The PBA seeks to increase the uniform allowance for patrolmen from \$450 per year to \$550 and detectives’ clothing allowance from \$725 per year to \$800. PBA’s comparability analysis indicates their uniform benefit ranks last. (See PBA Exhibit 33.) The PBA points out that most comparables provide for initial uniform and equipment issuance, together with a cleaning allowance, or do not require officers to purchase or maintain their uniforms.

The Village opposes the demand and argues the current benefit is sufficient and comparable to those in other Westchester County villages. (See PBA Exhibit 33.) It notes Village firefighters receive a benefit of \$475, which members of this unit should not exceed.

8. Insurance and Pensions.

The PBA seeks several changes to insurance and pension benefits. First, it seeks 100% paid medical coverage upon retirement. Second, it seeks an increase in the insurance buy-out for employees who decline or withdraw from the Village insurance plan from \$800 to \$1,200 for individual coverage and from \$1,200 to \$2,000 for family coverage. Third, the PBA seeks to increase dental benefits to \$1,000 in 2001 and \$1,150 in 2002. Finally, it seeks to increase paid life insurance from \$25,000 to \$50,000.

PBA complains of the “minimum” health care coverage provided to currently retiring employees of the Village. Pursuant to CSL Section 167-a(5), they receive continued health care coverage under the Empire Plan with the employer obligated to pay 50% of the cost of individual coverage and 35% of the additional cost of family coverage. That benefit is known as the “50/35 plan.” It means that, for family coverage, currently retiring employees pay a total of about 57.5% of the required premiums.

Pursuant to CSL Section 167-a(5) and Article 11(2) of the parties’ collective bargaining agreement, police officers may apply two-thirds of their unused accumulated sick leave against the cost of their retiree health insurance coverage. By contrast, Village fire fighters are permitted to apply 75%; and ~~non-~~

union employees in other Larchmont bargaining units can apply 100%. Long-time Village Treasurer Carmine DeLuca testified that, historically, the Village has permitted retiring employees to apply 100% of their accumulated sick time toward cost of health insurance premiums. That arrangement benefits both parties by eliminating tax consequences for both employer and employee. As noted, PBA seeks to require the Village to pay 100% of retiring employees' cost of medical coverage.

The PBA presented a comparative analysis of its comparables. (See PBA Exhibit 29.) The PBA claims the Village's 50/35 plan provides officers "with a benefit far less valuable than that provided to police officers in all of Westchester County, regardless of proximity to the Village of Larchmont, municipal financial condition, community wealth or governmental structure or size." According to the PBA, the Village provides "the worst sick leave and health care insurance coverage programs in the entire county." PBA contends its demand, if awarded, would have no dramatic financial impact upon the Village.

Addressing the insurance buy-out, dental coverage and life insurance benefits, PBA asserts these three claims: (1) Its members are entitled to share a greater proportion of the Village's savings. PBA asserts that officers in most comparable communities receive better buy-outs. (See PBA Exhibit 29.) (2) The

cost of dental premium coverage has increased so that the existing dental benefit of \$805 as of the year 2000 is no longer adequate. (3) The current amount of paid life insurance, \$25,000, has not changed since 1996 and cannot sustain the family of a deceased officer.

The Village opposes the PBA's demand and argues, as more fully discussed in the Village's proposals, under the Government Accounting Standards Board's anticipated rules requiring current accounting for the present value of vested entitlement to future health insurance premium payments, Larchmont's current contribution rate will cause it to incur an accumulated post-retirement benefit obligation as of June 1, 2002 of \$6,621,108 for its police officers alone. The Village refers to other municipalities, such as Hastings and Tarrytown that require employees to contribute to their health insurance costs. It also points to municipalities such as Bronxville, Mount Kisco, Pleasantville, Tuckahoe and Croton that do not contribute 100% towards retiree health coverage. It indicates the parties' current health care cost arrangement resulted from the parties' last interest arbitration proceeding. (Employer Exhibit 41.) A subsequent interest arbitration proceeding imposed that arrangement for Village firefighters. (Employer Exhibit 14.)

The Village opposes PBA's demands for increased insurance buy-out, dental coverage and life insurance, arguing that the PBA has failed to present supporting evidence.

9. Leave Days.

The PBA seeks to change the language of Article 21 - Personal Leave. The collective bargaining agreement's current language provides, "Personal days off with pay *may* be taken off upon request." [emphasis added.] The PBA seeks to change that language to read, "Personal leave days off with pay *must* be taken off upon request." The PBA's purpose is to eliminate the Chief's discretion arbitrarily deny officers use of personal leave they have earned. PBA contends the vast majority of comparable jurisdictions provide minor limitations on such use. (See PBA Exhibit 31.)

The Village opposes this demand and argues it would interfere with the Department's "ability to ensure proper staffing."

10. Salary.

The PBA seeks 7% increases effective June 1, 2001 and June 1, 2002, respectively, and demands that detectives receive 7% above the 1st grade patrolman's salary. PBA contends it has one of the lowest bases wage scales among its comparables. It refers to Village Exhibits 20 through 26 as additional

support of its position. According to the PBA, Larchmont ranked 13th of the 19 Westchester Villages having contracts in place for 2000. PBA notes that those ranking lower than Larchmont in the Village's Top Grade Pay analysis have adopted substantial wage increases for 2001 and 2002. (See Employer Exhibit 26.) It specifically cites Pleasantville - 4% for 2001, 4.5% for 2002 with an additional \$400.00 lump sum adjustment; Port Chester (ranked 16 in the comparability analysis) - 5.2 % annually for 2001 and 2002; Elmsford - 4.2 % for 2001, no current contract in place. PBA calculated the following average base wage adjustments:

County villages - 3.9% for 2001, 3.86% for 2002

PBA's comparables - 3.95% for 2001, 3.97 % for 2002

"Sound Shore" - 3.88% for 2001; 3.92% for 2002

PBA urges us to award wage adjustments in excess of those average increases in order to correct what it calls the Village's grossly deficient wage and benefits package.

The Village opposes the demand and argues it would place the Department among the most highly paid in the County. The Village contends that PBA is attempting to "catapult" the Department to the top of comparable charts rather to maintain its relative standing. According to the Village, "[s]uch leap-

frogging undermines stable collective bargaining;” and it argues that arbitrators do not view interest arbitration as the appropriate forum for such deviations. The Village insists that, over the past two contracts, it has maintained its relative position among County villages, the Sound Shore communities, and all County municipalities. The Village asserts that PBA has not presented sufficient evidence in terms of such factors as financial hardship and inability to attract or retain officers to support these demands and refers us to these increases received by other Village employees for the years covered by this proceeding:

<u>Unit</u>	<u>6/1/01-5/30/02</u>	<u>6/1/02-5/30/03</u>
Three Civilian Units	3.3%	3.3%
Firefighters	3.75%	3.75%

Based on all the above, the Village claims 3.75% per year is appropriate because it is at the County-wide average, will keep the officers in the same relative position, and will maintain the existing pay differential between its officers and firefighters.

1. Village of Larchmont Proposals.

Focusing on the statutory criterion of comparability, the Village urges the Panel to follow precedent established by the parties’ prior interest arbitration. According to the Village, the panel in that matter concluded that the comparable

universe comprised of all Westchester County villages and, to a lesser extent, the other municipalities on the Sound Shore. (See Employer Exhibit 9.) The Village claims that award provides guidance on the issue and following it would help stabilize the parties' bargaining relationship. The Village indicates PBA's comparable universe in that interest arbitration proceeding comprised the villages of Ardsley, Briarcliff, Bronxville, Croton, Dobbs Ferry, Elmford, Hastings, Irvington, Larchmont, Mamoroneck, Rye Brook, Tarrytown and Tuckahoe but now has changed. PBA has replaced Briarcliff, Croton, Elmford, Rye Brook and Tarrytown with others. The Village opposes PBA's newly-proposed universe for several reasons. First, PBA has omitted comparable villages of Tarrytown, Elmsford, Rye Brook and Port Chester from its proposed universe, despite the fact they are located no further north than its comparables. Second, PBA's new comparables include towns notwithstanding that towns have different fiscal concerns and State law limitations and are subject to different authority in administering police departments. Third, the towns of Greenburgh and Harrison are larger than certain Westchester County cities. The Village contends that, if towns are to be included in the comparable universe, we must include the southern Westchester cities of Rye, Peekskill, New Rochelle, Mount Vernon, White Plains and Yonkers. For all these reasons, the Village charges PBA with having "cherry

picked” a limited group of highly compensated police departments rather than proposing a universe of truly comparable municipalities.

Notwithstanding the above, the Village argues that the most comparable community is Larchmont itself. It urges the Panel to consider the wages, benefits and bargaining patterns of its other unionized employees as well as the benefits that apply to all Village employees. According to the Village, its firefighters, who negotiated a collective bargaining agreement for June 1, 2001 through May 31, 2004, are particularly relevant and comparable. The panel in the most recent interest arbitration for firefighters (chaired by arbitrator Sumner Shapiro) required firefighters hired after January 1, 1999 to contribute 10% to the cost of an individual plan and 25% to a family plan upon reaching the top step firefighter pay. The Village points out that panel recognized this provision to be consistent with the plan in effect for the Village’s police officers. (See Employer Exhibit 14, p. 6-7.) Similarly, the panel in the last PBA interest arbitration reviewed the negotiated wage increases negotiated for Village firefighters during the relevant time period. The Village points out that panel awarded the police similar increases even though it imposed greater givebacks on the police than firefighters had assumed. (See Employer Exhibit 14, p. 18-19.)

The second criterion the Village addresses is interests and welfare of the public and its ability to pay. The Village urges that we rationally consider Larchmont's economic factors and the interests of its constituency when determining what can reasonably be afforded. According to the Village, the Panel must consider the impact our award will have on other Village employees and on Larchmont's ability to provide fair increases in future negotiations.

The Village refers to testimony of PBA expert witness Edward Fennell, who presented his analysis of Larchmont's financial condition. According to the Village, Fennel implied that increases could be accomplished through borrowing "which," the Village asserts, "is akin to, and as wise as, using a high-limit credit card to accomplish a lifestyle beyond one's means." The Village claims it has appropriately used its borrowing power on capital projects and would be foolish to assume debt to pay wages. The Village points to Fennel's testimony regarding the Village's general fund balances and his analysis of its tax rates and revenues from real property taxes from 1996 to 2002. The Village indicates its average property tax rate increase of 2.47% per year is the approximate amount of the average, 2.397% annual increase in the CPI over the same time period. (See Employer Exhibit 19.) According to the Village, Fennell admitted he had not compared Larchmont's property tax rate to other Westchester County villages. In

addition, Fennel failed to address current or anticipated costs for and impact of providing retiree health insurance under PBA's proposal. The Village acknowledges it has a fund balance, but it points out that even Fennel noted the year-end fund balance decreased from 2000 to 2001. The Village also indicates that, in order to balance its budgets, it appropriated \$191,280 from its fund balances for fiscal year ending May 2002 and \$277,945 for the fiscal year ending May 2003. According to the Village, excessive expenditures would require the Village to decrease its fund balance or increase its indebtedness or liabilities and would adversely affect its current Moody's bond rating of "Aa1".

The Village refers to its witness Robert Abzug, an Enrolled Actuary with qualified pension experience who has served as consultant to another municipality regarding valuation of post-retirement medical benefits. According to Abzug, in the last quarter of 2003 the Government Accounting Standards Board ("GASB") will be promulgating new accounting standards for government entities, including municipalities like Larchmont,. Those new standards will be similar to those for private companies, requiring governmental bodies "to accrue and account for their entire liability for post-retirement insurance benefits for current employees and retirees on a cash basis" Abzug analyzed the Village's post-retirement health benefits liability based upon the new standard, the Village's

current contribution rates and other relevant information including, but not limited to, plan descriptions, premium rates, and how accumulation and conversion of unused sick days offset costs to retirees. His report is in evidence as Employer Exhibit 5. The Village notes the new accounting standards will not change its ultimate liability; however, it “will simply require the Village to account for its full obligation, either immediately or on an amortized basis, even if the premium payments for that year are different than the amount which must be appropriated. . .” According to Abzug, as of June 1, 2002 the Village would be required to account for \$17,036,656, exclusive of interest and service costs, of which \$6,621,108 is attributable to the police officers. The Village argues that, even assuming it is permitted to amortize its obligation over 20 years, it would still be required to account for \$2,914,747 for fiscal year 2002-2003, with more than a third of that amount, \$1,030,122, attributable to police officers. The Village has no doubt the new accounting standards will affect its ability to pay.

The final issue the Village addresses is the duration of the award, which Civil Service Law limits to two years.

The Village argues that its own proposals are reasonable in light of its fiscal circumstances and justified when compared to comparable workforces. It supports its proposals with the following additional evidence and arguments:

1. Overtime.

The Village proposes to eliminate overtime pay for all work performed in excess of a regularly scheduled work day and thus revert back to payment of overtime in accordance with the Fair Labor Standards Act ("FLSA"). According to the Village, officers on the current work schedule rarely exceed 171 work hours in any 28-day work period. Nevertheless, they receive overtime pay for work beyond their regular work day regardless of whether they work a full week because of absences for vacation, personal, and sick leave. The Village asserts its overtime costs in fiscal year 2000-2001 exceeded its overtime budget of \$110,072 by more than \$55,000. It therefore increased its overtime budgets for fiscal years 2001-2002 (\$119,935) and 2002-2003 (\$120,102). (Employer Exhibits 2 & 3.) By contrast, overtime for firefighters is determined over a six-month period.

The Village also proposes to amend Article 8, Section 3, which currently provides that an officer required to be on stand-by alert more than twice a month be paid time and one-half pay for subsequent stand-by periods, time which is not compensable under the FLSA. The Village proposes to compensate officers with one hour of overtime for every two on-call hours once required to be on stand-by a third time. Officers actually called in are paid in accordance with

the agreement's call-back provisions. The Village notes stand-by pay is extremely rare for officers in the County. Of the villages and Sound Shore communities in Westchester County, only five –Irvington, Village of Mamaroneck, Village of Pelham, Tarrytown and Tuckahoe– provide additional compensation for stand-by time; and some of those restrict on-call officers' activities more than Larchmont does.

2. Holidays.

The Village proposes deleting Article 9, Section 4 regarding "Super Holidays." The Village indicates officers receive holiday pay for 13 days regardless of whether they work the holiday. If they work the holiday, they also receive their regular rate of pay and thus are paid twice. According to the Village, officers working "Super Holidays" receive double pay for working in addition to the annual holiday pay they receive. The Village contends that is excessive. The Village points out that "Super Holiday" benefits are neither uniform nor universal among other village police departments in the County. For example, Bronxville reduced the number of super holidays from five to three for post-May 1996 hires; Ardsley provides only three days. Mamaroneck Village, Pelham and Briarcliff Manor provide pay at time and one-half overtime; Briarcliff Manor pays at time

and one-half. Scarsdale has one "Super Holiday" and only pays a \$100 stipend, and Irvington, Elmsford, Pleasantville and Rye Brook have none.

3. Vacations.

The Village seeks to eliminate Article 10, Section 5's payout for unused vacation leave upon retirement. Officers hired before March 1, 1984 can bank up to 50 days, and those hired on or after March 1, 1984 can bank up to 40 days at the rate of pay in effect at retirement. According to the Village, this provision is contrary to the purpose of using vacation, to improve morale and to avoid employee burnout. The Village claims its benefit is uncommonly generous compared to other County municipalities:

<u>Municipality</u>	<u>Vacation Payout Benefit</u>
Ardley	No right to bank.
Briarcliff Manor	Carry-over limited to 2 weeks.
Bronxville	Cash in lieu of time off during the year vacation earned.
Buchanan	Carry-over limited to 10 days.
Elmsford	Vacation time due during calendar year.
Hastings	Carry-over to subsequent year limited to 5 vacation days, subject to approval and Department needs.
Pelham Manor	No accumulation.

Sleepy Hollow

Unused vacation may not be lost; carry over subject employer permission.

The Village's other employees do not receive the same generous benefit as do police. According to the Village, only its library employees are permitted to carry over vacation; and they are limited to five days subject to Village permission.

4. Personal Leave.

The Village proposes to reduce the number of Article 21's personal leave to three, without accumulation and payout on retirement. The Village points out that officers hired before December 1, 1999 currently receive six paid personal days per year, and those hired on or after that date receive five. Officers can bank three unused personal days per year to be credited for payment upon retirement. The limit is 50 days for police officers hired before December 1, 1999, and up to 25 days for those hired later.

The Village contends, as it does with its vacation leave proposal, that the contract's personal leave provision is not only inconsistent with the purpose of providing personal leave; it is excessive. The Village points out many County villages do not permit carry-over at all. It refers to Ardsley, Bronxville, Mamaroneck, Pelham Manor and Scarsdale, as well as Briarcliff Manor, Croton,

Pleasantville and Port Chester. Where accrual of unused personal days is permitted, it is usually limited to a few days. For example, Hastings allows carry-over of two personal leave days; and Irvington permits conversion to sick leave recoverable upon retirement. The Village indicates officers are permitted to accrue sick days and personal leave days separately, unlike Irvington, where once sick time accrual caps are reached, no additional payment is made for personal leave.

The Village indicates its other employees receive 3 personal days per year except for firefighters, who receive two. According to the Village, none of its other employees are permitted to carry over unused personal days into the subsequent year or receive payment for any unused personal days upon retirement. The Village accordingly claims its proposal is reasonable.

5. Continuing Rights.

The Village seeks to delete the continuing rights clause provided in Article 23, Section 2. The Village contends the provision is vague and subject to abuse. According to the Village, had the parties intended to protect a benefit, they would have specified the benefit in the agreement.

IV. DECISION.

On the entire record before me, including my assessments of witnesses' credibility and the probative value of evidence, I have determined that the relevant statutory criteria require the Public Arbitration Panel to issue an Award requiring the following changes:

1. Annual Salaries.

Annual Salaries for all steps of bargaining unit employees shall be increased as follows:

Effective June 1, 2001:	3.75%
Effective June 1, 2002:	3.75%

2. Sick Leave.

Article 11 ("Sick Leave") shall be amended in the following respects:

(a) To add a new paragraph providing a sick leave benefit equivalent to that provided in GML Section 207-c for bargaining unit employees who suffer injury or illness incurred while on duty performing police service.

(b) To increase the portion of unused accumulated sick leave that a retiring bargaining unit employee shall be eligible to have applied against the cost of his Health Insurance in accordance with CSL Section 167-5 from sixty-six and two-thirds (66-2/3%) percent to one hundred (100%) percent.

(c) To add the necessary language enabling conversion, at bargaining unit employees' option, of accumulated and unused personal leave and vacation time at the time of retirement to sick leave time so that the same may be available for application toward the retiree Health Insurance contribution.

3. Uniform Allowance.

Article 16 ("Uniforms and Clothing") shall be amended to increase uniform maintenance and clothing allowances by \$25 effective June 1, 2001 and by \$25 effective June 1, 2002.

4. Dental Program.

Article 17 ("Insurance and Pensions"), Section 4 shall be amended to increase the lump sum annual payment by \$25 effective June 1, 2001 and by \$25 effective June 1, 2002.

5. Duration.

Article 25 ("Duration"), Section 1 shall be amended to provide an effective term of June 1, 2001 through may 31, 2003.

I reach those conclusions for the following reasons, having given due consideration to the Taylor Law criteria in CSL Section 209.4.

The “comparability” criterion:

“a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities. . . .”

These parties have a negotiating and interest arbitration history that supports stable labor-management relations and cannot lightly be abandoned. In their most recent interest arbitration proceeding, the panel, chaired by Dr. Theodore Lang, determined that the relevant universe of comparable communities was limited to all Westchester County villages plus, to a lesser extent, the Long Island Sound Shore communities. I find that judgment remains a valid one, for it takes into account both the special fiscal concerns, taxing powers, and operating standards of village police departments as well as regional considerations. I accordingly reject the PBA’s effort to substitute a new universe of comparables as an unjustified “cherry-picking” exercise.

With respect to that established universe, I find this bargaining unit’s total package of compensation, hours, and working conditions is within a supportable range. The “comparability” criterion does not mandate that a unit occupy a particular rank within the universe of comparable communities. It is

sufficient that the package, taken as a whole, bear a rational relationship to that of similar employees in comparable communities. And in that universe, Larchmont police appear to have maintained a consistent position within that range, slightly below the average for annual salaries, not only for Sound Shore communities and Westchester County villages, but for all Westchester County municipalities. (See Employer Exhibits 21-25.) On the other hand, Larchmont is the only Westchester County village that has no cap on accrual of unused sick days and pays 100% of accrued sick days on retirement. (Employer Exhibit 27.)

Larchmont's police have also enjoyed a history of comparability with its firefighters that nothing in the record justifies changing. We shall accordingly grant the same annual salary increases for this unit that the Village negotiated with its firefighters for the first two years of that contract, 3.75%. Those numbers are also consistent with percentage increases in top grade police officer pay for all Westchester County municipalities. (Employer Exhibit 26.) Similarly, to remain in step with Larchmont's firefighter unit, we shall direct similar increases of \$25 each year in dental benefits and uniform/clothing allowances.

The “public interest/ability to pay” criterion:

“b. the interests and welfare of the public and the financial ability of the public employer to pay. . . .”

The interests and welfare of the public require police personnel of high morale, which influences their commitment to the public weal. When the other Taylor Law criteria are met, no one can doubt the importance of a well-paid, well-maintained police force of high morale. Morale depends in large part on perception of appreciation for one's services, and terms and conditions of employment express that appreciation most concretely.

This criterion also requires consideration of the Village's ability to pay. Happily, there is no question that Larchmont, by reason of conservative budgeting, a history of respectable fund balances, and reasonable debt levels, enjoys a Aa1 Moody's bond rating and has the financial ability to pay the reasonable increases required by this Award. Ability to pay does not, however, operate to require imposition of a higher award than the other Taylor Law criteria justify. The public's interest and ability to pay criterion has been applied and balanced based on the evidence and testimony submitted by both parties in this proceeding regarding this Award.

In this case, Larchmont is subject to a situation of fiscal uncertainty resulting from the impact of new GASB standards that will require municipalities either immediately or over time to account for the present value of anticipated retiree health insurance premiums. Although the Village's actual payments on this

account will not change, amortizing that obligation over a twenty-year period will result in a new obligation of \$2.9 million for the 2002-03 fiscal year, about \$1.0 million of which is attributable to police personnel.

The Village will have to fund the likely resulting deficit, but it does have resources available to do so:

- an unused tax margin of 61%,
- 94.58% of its constitutional debt limit, and
- an unreserved general fund balance of nearly \$2.4 million.

At this point the precise details of GASB's new rule are not set, but we take notice that its draft proposal tracks the current private sector financial accounting standard. How the Village will choose to address this situation will necessarily affect its fiscal circumstances and the public interest. Under these circumstances, we believe that it would not be consistent with prudent exercise of this Public Arbitration Panel's extraordinary powers to complicate this emerging situation by granting PBA's effort to increase the Village's obligation to underwrite the cost of retiree health benefits.

The "comparison of peculiarities" criterion:

"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”

This criterion has very much to do with the uniqueness of police service. Other jobs simply do not involve the same combination of potentially lethal hazards, emotional stress, physical, mental, and educational qualifications, job training, and skills. Police officers routinely face risks of death and serious injury and must daily make instantaneous judgments involving life and death consequences. Accordingly, as we have found, by far the most relevant comparisons are to other police and not to non-police employees of this or any other employer. Accordingly, the Village’s effort to compare police officers to its non-police employees is not compelling.

The “past collective agreements” criterion:

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.

As noted above, these parties have a well-established history of collectively-bargained contracts and interest arbitration awards that establish certain principles from which they may not lightly depart. Among those has been substantial parity of this unit’s terms and conditions of employment with those of

the Village's firefighters. That consideration supported our determination on the salary increase issue. It also affects our decision to deny PBA's most pressing bargaining demand, that for full payment by the Village of retirees' health insurance premiums. At present, Larchmont's firefighters are about to enter the final year of their three-year collective bargaining agreement, the retiree health insurance premiums of which are identical to those of PBA's unit. This is an important issue that the parties must have a full opportunity to address in bargaining before a Public Arbitration Panel should undertake to consider.

For reasons that are irrelevant here, the Village and PBA have not engaged in productive bargaining on this important issue.

The parties are now at the end of the term of what will be their new contract imposed by this Award. Negotiations for a successor contract will begin shortly. I am simply not comfortable awarding a key provision such as this without the parties' having made a good faith effort to solve these problems in the give and take of collective bargaining. The PBA is now represented by negotiators who did not enter the process until after impasse had been reached. I am confident their competent professionalism will ensure thorough exploration of these thorny issues in collective bargaining and full opportunity for the parties to discuss and address them in the context of the mutual interests that they affect.

With respect to the parties' remaining demands, there is insufficient evidence in the record to justify any change of the status quo.

By reason of the foregoing, we issue the following

AWARD

1. Annual Salaries.

Annual Salaries for all steps of bargaining unit employees shall be increased as follows:

Effective June 1, 2001:	3.75%
Effective June 1, 2002:	3.75%

2. Sick Leave.

Article 11 ("Sick Leave") shall be amended in the following respects:

(a) To add a new paragraph providing a sick leave benefit equivalent to that provided in GML Section 207-c for bargaining unit employees who suffer injury or illness incurred while on duty performing police service.

(b) To increase the portion of unused accumulated sick leave that a retiring bargaining unit employee shall be eligible to have applied against the cost of his Health Insurance in accordance with CSL Section 167-a(5) from sixty-six and two-thirds (66-2/3%) percent to one hundred (100%) percent.

(c) To add the necessary language enabling conversion, at bargaining unit employees' option, of accumulated and unused personal leave and vacation time at the time of retirement to sick leave time so that the same may be available for application toward the retiree Health Insurance contribution.

3. Uniform Allowance.

Article 16 ("Uniforms and Clothing") shall be amended to increase uniform maintenance and clothing allowances by \$25 effective June 1, 2001 and by \$25 effective June 1, 2002.

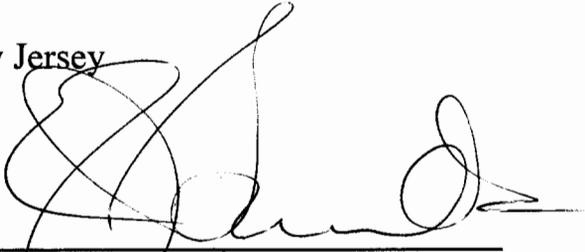
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Article 17 ("Insurance and Pensions"), Section 4 shall be amended to increase the lump sum annual payment by \$25 effective June 1, 2001 and by \$25 effective June 1, 2002.

5. Duration.

Article 25 ("Duration"), Section 1 shall be amended to provide an effective term of June 1, 2001 through May 31, 2003.

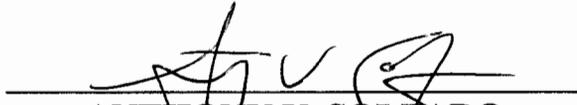
Dated: May 19, 2003
West Orange, New Jersey



JOHN E. SANDS
Public Member and Panel Chair

I ~~concur with~~ / dissent from the above Award.

^{JUNE}
Dated: ~~May~~ 19, 2003
Newburgh, New York



ANTHONY V. SOLFARO
PBA-Appointed Arbitrator

I concur with/ dissent from the above Award.

Dated: May 26, 2003

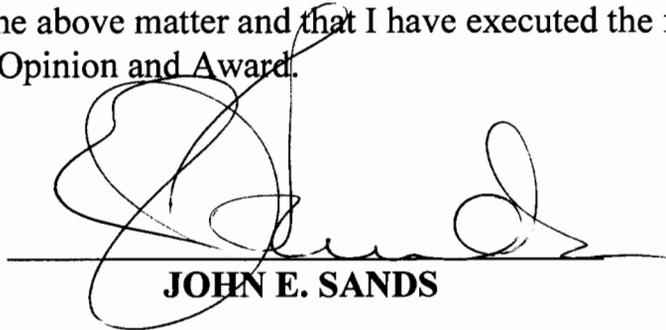
Lake Success, New York



VINCENT TOOMEY
Village-Appointed Arbitrator

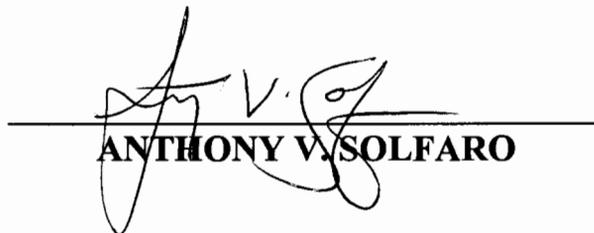
AFFIRMATIONS

Pursuant to CPLR 7507, I hereby affirm that I am the Impartial Arbitrator in the above matter and that I have executed the foregoing as and for my Opinion and Award.



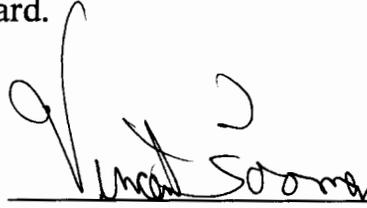
JOHN E. SANDS

Pursuant to CPLR 7507, I hereby affirm that I am the PBA-Appointed Arbitrator in the above matter and that I have executed the foregoing Award.



ANTHONY V. SOLFARO

Pursuant to CPLR 7507, I hereby affirm that I am the City-Appointed Arbitrator in the above matter and that I have executed the foregoing Award.



VINCENT TOOMEY

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

-----X
In the Matter of Compulsory Interest Arbitration

- between -

LARCHMONT POLICE BENEVOLENT ASSOCIATION, INC.

Employee Organization/Petitioner,

**PERB Case No.:
IA201-036; M201-207**

- and -

VILLAGE OF LARCHMONT,

Employer.
-----X

ANTHONY V. SOLFARO

EMPLOYEE ORGANIZATION PANEL MEMBER

DISSENTING OPINION

I dissent because the panel majority, in reaching its Opinion and Award, failed for several different reasons to make a just and reasonable determination based on this record.

First, the panel majority erred in its finding concerning the comparable communities by misconstruing an interest arbitration award covering these police officers that was issued in September of 1993 for the period of June 1, 1991 through May 31, 1993. That award states that the comparables proposed by the PBA were the Villages of Ardsley, Briarcliff Manor, Bronxville, Croton-on-Hudson, Dobbs Ferry, Elmsford, Hastings-on-Hudson, Irvington, Mamaroneck, Rye Brook, Tarrytown and Tuckahoe. The Village at that time used as its proposed comparables the cities, villages and towns in Westchester County, with an emphasis on the Sound Shore communities, defined as the Cities of Rye and New Rochelle; the Town of Mamaroneck; and the Villages of Port Chester, Mamaroneck, Pelham and Pelham Manor. The 1993 Award within the Discussion section states, "Both sets of comparables offered by the parties are relevant, but the panel finds the comparison with comparable villages the more persuasive, since village police departments and financial abilities will be most equivalent to Larchmont." (Village Exhibit 9, p.18.) The foregoing is an exact quote and there is no other reference to comparable communities in the 1993 Award. That 1993 Award does not state or suggest anywhere that the panel majority concluded that the relevant universe of comparable communities is all Westchester County villages, plus to a lesser extent, the Long Island Sound communities as stated in this award.

Additionally, it is preposterous to find "that judgement remains a valid one, for it takes into account both the special fiscal concerns, taxing powers, and operating standards of village police departments as well as regional consideration." There was no "judgement" to begin with. Moreover, what does "as well as regional consideration" mean? That phrase is not defined or explained by the panel majority. The PBA placed into evidence municipal profiles for each of its comparables communities which included such data as population, income and land area in square miles. No such data was submitted by the Village in support of its proposed comparables. Its interesting that on one hand the Village argues during the hearing, through its exhibits, that the comparable universe is all Westchester County communities consisting of cities, towns and villages, including other Larchmont organized labor groups. Then, in the proposed Findings of Fact and Conclusion of Law it submitted after the hearing, the Village asserts that "The panel should find that the "universe" for purposes of determining comparability...is comprised of all Westchester County villages, and to a less extent, the other municipalities on the Sound Shore", and then in a separate paragraph go on to assert that, "the most comparable of all communities is the Village of Larchmont itself." (p. 7)

The Village's comparables are as fluid as mercury and just as difficult to grasp. First, the Village claims the comparable universe is all the cities, villages and towns in Westchester County. Then, when it suits the Village's convenience, it relies on a ten (10) year old award to reaffirm what the Village rewrites it to say. When that award becomes inconvenient and does not serve the Village's purpose, it has the Panel Chairman look at only the Village of Larchmont itself with all of its other labor groups and settlements.

It is obvious to this panel member that the conclusion of the panel majority is focused on the false premise that if you say something long enough and loud enough, it becomes a fact and then a precedent. If the "universe" is all Westchester County villages, and to a lesser extent, the Sound Shore communities as the panel majority appears to conclude, then how does the panel majority award only 3.75% to the base wages in each year of the award when Village Exhibit 26 shows base wage increases of over 4% for each year (4.12% for 2001 and 4.31% for 2002) for those same communities?

The panel majority compounds its error by comparing these police officers to the Village's firefighters. The 1993 Award makes only an observation about the firefighters' wage increases during the 1991-1993 time period and notes that those increases were awarded without the type of personal leave or health insurance concessions that are contained in this award. In fact, the wages awarded to the police officers for 1991-1993 were higher than those of the firefighters for the same period of time in its award. The firefighters did not contribute to their health insurance premiums until approximately five and one-half (5 ½) years later. The 1993 police Interest Arbitration Award does not hold or support a conclusion that police officers are appropriately compared with firefighters.

The panel majority again totally disregards the "comparable universe" and does a "one-eighty" and in conclusion states the police have a history of comparability with Village firefighters and grants the police the same annual increases (i.e., 3.75%). What exhibit(s) or testimony of the two (2) Village witnesses demonstrates that police officers are properly compared to firefighters? It is not contained in the police Interest Arbitration Award of 1993. There is absolutely no factual basis in this record to conclude that there is any bargaining relationship between the Village's police officers and firefighters. So what then is the basis for this conclusion?

It is laughable to rely on "facts" that are not truly facts and precedent that is not precedent for anything of relevance. If the panel majority is correct, why should the police negotiate with the Village? Why not just wait until the firefighters settle and go - oh well? It is a slap in the face to these police officers and police officers across the state when the system gets corrupted, as has apparently occurred it was in this proceeding.

In regard to uniform/clothing and dental payments, it is obvious to this panel member that the panel majority did not adequately examine the exhibits provided by the PBA. The Village submitted no exhibits, except collective bargaining agreements. A review of those agreements also reflects that the Larchmont police officer pales in comparison in these benefit areas. Again, the Village distorts the facts in its proposed Findings of Fact and Conclusions of Law through a cursory statement about how the police are within the range of other villages, and - oh, by the way - if awarded any increase(s), it should not exceed the Village's firefighters. Again, where is the evidence? The Panel Chairman clearly has a responsibility to read the exhibits, instead of just relying on inaccurate summaries of the record that are then accepted as fact.

How does the PBA develop a record of comparability with other police officers, if this Panel Chairman ignores the existing record and simply makes an award to increase wages, uniform/clothing and dental payment to mirror the firefighters?

With regard to health insurance on retirement, the Panel Chairman states, "I am not comfortable awarding a key provision such as this without the parties having made a good faith effort to solve these problems in the give and take of collective bargaining." The Village argues convenient and conflicting positions on this matter as well. During negotiations the Village refused to address this matter. Then when the PBA uses the interest arbitration process, the only remedy available to it to seek redress, the Village argues the opposite by presenting testimony and an exhibit of an actuarial valuation for a post retirement medical plan for all Village employees to paint a picture that the "sky is falling". If that does not sell, they again incorporate a misleading statement into their proposed Findings of Fact and Conclusion of Law brief by stating, "Nor is a 100% employer contribution toward retiree health insurance universal in the County." (p. 35) Then the Village goes on to state that, "It is exceedingly rare for interest arbitration panels to even address the subject of retiree health insurance benefits." (p. 37).

I have addressed the first assertion by incorporating a chart on pages 7 and 8 herein of the actual retiree health insurance benefits received by all the villages and the South Shore communities. The chart speaks volumes and refutes the Village's statement.

With regard to the Village's second statement, it becomes obvious that the Village will not negotiate a change in retiree health insurance, which is the major reason for the PBA proceeding to interest arbitration. In interest arbitration, the Village, which first refused to bargain a change, takes the contrary position that this panel should not address this matter because it should be negotiated between the parties. But when the PBA tried to negotiate a change, the Village states that it is not interested. The PBA then proceeded to arbitration where the Village argued that the panel should not make a change. Round and round we go to no productive end and no way, except capitulating, to get off the carousel.

In denying a change in retiree health insurance, the panel majority took notice of the Government Account Standards Board (GASB) standards for the private sector. There is no such requirement or law for the public sector to adopt and/or implement the proposed GASB standards. The proposed revision to the GASB standards should not be considered to deny improvement on retiree health insurance based on the foregoing, as well as the arguments that rest on those standards which are also flawed on several counts.

An analysis of the testimony and report of the Enrolled Actuary regarding the valuation of retirement health insurance and the use of GASB's proposed standards were used to provide nothing more than many actuarial assumptions, that do not bear any relationship to reality. First, all of the assumptions provided were based on employee data received from the Village, which underlying documentation was never provided to the PBA's representative or the panel members for verification and response. Secondly, it is based on an assumption that if the Village "went out of business today" the full amount of funds needed to pay the health insurance on retirement benefits has to be incorporated into their budgets and available today, and carried over from year to year, thereby creating a perception of debt that is not actual, but might be incurred and spread out as retirement occurs over many years. Applying the assumption that if the Village "went out of business today", why hasn't any of the Village's other obligations been "funded" and carried over year-to-year? Because its not how a municipal employer prepares for and administers its annual budgets.

Another faulty assumption is the methodology for considering the cost of the health insurance premium. It is based on the proposed GASB standard of what should be the true cost of the premium, which is according to age, rather than the actual premium costs in place. By applying that actuarial assumption, based on the employee data received from the Village, it provides a cost obligation that is totally distorted. No health insurance premium is based on that assumption. Most disturbing is that the assumption did not consider and specifically excluded the actual "Empire Plan" premium cost to municipal employers, its rate history or apply any range of projected increases (i.e., 5%, 10%, 15%, 20%). Why wasn't the actual plan cost applied with a range of rate projections? Because it does not support the Village's desired conclusion which is to present a grossly distorted view of the potential cost of retiree health insurance.

Misleading arguments are like cancer, and like cancer, they should be removed with surgical precision. However, the Panel Chairman failed to do that regarding the GASB proposed standards. He declined to take sufficient time to dissect the misleading assertions of the Village in its proposed Findings of Fact and Conclusions of Law in order to determine the employees' actual benefit regarding sick leave and the relationship of sick leave to retiree health insurance premium cost. The Village wrongly identifies the sick leave payout as "an unparalleled benefit...with other villages in the county, as no other village provides...100% of their unused sick days upon retirement." (p. 27).

What the Village conveniently ignores in Exhibit 27 is that none of the police officers in other villages who have accumulated sick leave have to return that unused sick leave for retiree health insurance premium coverage. To suggest that allowing such conversation is preferred to having no cost retiree coverage is ludicrous. In Larchmont, the two-thirds (2/3) of sick leave that can be returned is converted to the equivalent dollar value at that time, and applied towards payment of the employee's share of premium until that dollar amount runs out, then the retiree must make up the payment difference to receive 100% coverage from their half (1/2) pay that is received in retirement that is not covered by the "Empire Plan's" required minimum of 50/35% contribution.

Additionally, the Village's own exhibit demonstrates that over 45% of the village police officers in the comparable village universe receive "unlimited" sick leave. Conveniently, the Village omits the Town/Village of Harrison or Scarsdale, which both have unlimited sick leave as well, which brings the unlimited sick leave benefit up to 50%, but uses both of those municipalities, as well as the South Shore communities, in its other exhibits. On top of that, the retirees in those villages and the South Shore communities receive health insurance on retirement as follows, without purchasing additional premium cost by exchanging any sick leave:

- | | | |
|----|------------------|---|
| 1. | Ardsley | 100% individual and family |
| 2. | Briarcliff Manor | 100% individual and family |
| 3. | Bronxville | 100% individual and family (hired on or before 5/31/79)
65% individual and family (hired on or after 6/1/79) |
| 4. | Buchanan | 100% individual and family |
| 5. | Croton | 100% individual and family (hired on or before 5/31/00) |

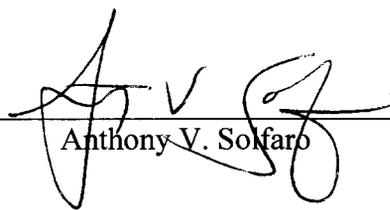
- 100% individual only (hired on or after 6/1/00)
6. Dobbs Ferry 100% individual and family
 7. Elmsford 100% individual and family (hired on or before 2/13/94)
100% individual and family (hired on or after 2/14/94 - must complete 10 years of service)
 8. Hastings 100% individual and family
 9. Harrison 100% individual and family
 10. Irvington 100% individual and family
 11. Larchmont 50% individual plus 35% of the difference from the individual premium cost for family.
 12. Mamaroneck/Town 100% individual and family
 13. Mamaroneck 100% individual and family
 14. Mt. Kisco 75% individual and family (hired on or before 6/1/89 prior to age 50 or 25 years of service and receives 100% individual and family at age 50.
100% individual and 75% family (hired on or after 6/2/89)
(Note: Mt. Kisco is also Town/Village)
 15. New Rochelle/City 100% individual and family
 16. Ossining 100% individual and family at age 50
50% individual and family prior to age 50
 17. Pelham 100% individual and family (hired on or before 5/31/76)
75% individual and family (hired on or after 6/1/76)*
(*Note: this benefit was improved by an interest arbitration award (PBA Exhibit 12A) for the period 6/99-5/01 in that the Village had 3 tiers of health insurance on retirement levels (i.e., 1) 100% individual and family, 2) 50% individual/50% family and 3) 25% individual and family paid by the Village.)
 18. Pelham Manor 100% individual and family
 19. Pleasantville 100% individual and family (hired on or before 5/31/80)
100% individual and 50% family (hired on or after 6/1/80)
 20. Port Chester 100% individual and family (hired on or before 3/31/80)
100% individual and family at age 55 (hired on or after 4/1/80)
 21. Rye/City 100% individual and family
 22. Rye Brook 100% individual and family
 23. Scarsdale 100% individual and family less \$20.50 every 2 weeks
 24. Sleepy Hollow 100% individual and family
 25. Tarrytown 100% individual and family
 26. Tuckahoe 100% individual and family (hired on or before 5/31/90)
100% individual plus 50% of the difference from the individual premium cost for family (hired on or after 6/1/90)

The Panel Chairman in his June 3, 2003 two (2) page letter to the panel members expressed that he intended in his discussion of the "public interest/ability to pay" criterion of the Opinion and Award regarding the GASB that "I made those observations fully anticipating, in your future negotiations and interest arbitration proceedings, you will reargue the issue in light of then - current facts and that future arbitrators will make their own findings of fact based on the records you adduce in those cases." Putting off an issue as vital as retiree health insurance is not an acceptable conclusion when this record fully supported an improvement in the existing benefit. From this Opinion and Award, the police officers are not entitled to their own record or true comparability, with other police officers.

In closing, this panel member requested an additional Executive Session be conducted via telephone or in person, to respond to the Chair's Draft Opinion and Award to address the very concerns set forth herein and others, prior to a Final Draft being circulated. I was not afforded that right, which I should have been, and that denial has lead to an Opinion and Award that is wrong on the record.

The panel majority abdicated its responsibility in rendering this Opinion and Award claiming to convert the draft award into a final award without the input, either positive or negative, of this member of a tri-partite panel. The Panel Chairman in allowing the employer panel member to execute and distribute the "draft" award without incorporation of this panel member's views is contrary to law and threatens the integrity of the interest arbitration process itself.

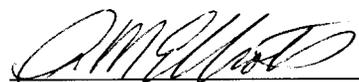
For all of the reasons set forth herein, I dissent.



Anthony V. Solfaro
6/19/03

Dated

Sworn to before this
19th day of June 2003



NOTARY PUBLIC

ANN M. ELLIOTT
Notary Public, State of New York
Qualified in Orange County
Reg. No. 01EL6031699
Commission Expires October 12, 2005