

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration	:
- Between -	:
TOWN OF EAST HAMPTON	:
"Town" or "Employer"	:
- and -	:
EAST HAMPTON TOWN POLICE	:
BENEVOLENT ASSOCIATION	:
"PBA"	:

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APPEARANCES

For the Town  
Thomas J. Marcoline, Esq., Attorney

For the PBA  
Reynold A. Mauro, Esq., Attorney  
Tracy Griffiths, President, PBA

PUBLIC EMPLOYMENT RELATIONS BOARD  
**RECEIVED**

APR 05 2004

**CONCILIATION**

BEFORE:   HOWARD C. EDELMAN, ESQ., NEUTRAL PANEL CHAIR  
          VINCENT TOOMEY, ESQ., PUBLIC EMPLOYER PANEL MEMBER  
          WILLIAM TRICARICO, PUBLIC EMPLOYEE PANEL MEMBER

## **BACKGROUND**

On or about December 15, 2003, the undersigned Interest Arbitration Panel issued an Interest Arbitration Award covering terms and conditions of employment for Police Officers employed by the Town of East Hampton for the period January 1, 2002 through December 31, 2003. In order to expedite that Award, the Panel rendered it without an Opinion. Consequently, at this time the Panel reissues the Award with a full Opinion.

## **POSITIONS OF THE PARTIES<sup>1</sup>**

### **PBA**

The PBA seeks a two year Award with annual raises of 4.5 per cent. It submits that these increases are justified by the relevant data. Specifically, the PBA asserts, East End communities have given their uniformed personnel raises at or above four per cent for the period 2001-2004, with the sole exception being a 3.75 per cent raise in Sag Harbor for 2001. Also, the PBA maintains, to retain its historical relationship with the Village of East Hampton, the Panel should award raises exceeding 4.0 per cent for the period in question.

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<sup>1</sup>In order to expedite this Opinion, I have summarized the parties' positions.

As to the Town's ability to pay, the PBA argues that the Town enjoys a favorable tax rate when compared with the rest of Suffolk County. It also insists that East Hampton Town has the highest bond rating of any municipality on Long Island. See Newsday article of June 18, 2003. Therefore, the PBA concludes, the Town enjoys good fiscal management and is well able to pay the raises sought.<sup>2</sup>

Concerning night differential, the PBA maintains that Police Officers here receive lower amounts than their counterparts in seven other East End jurisdictions. Thus, it seeks a \$1,000 increase per year to redress this perceived inequity.

As to longevity, the PBA argues that its members are paid less than in all other comparable jurisdictions. For example, it notes, the Village of East Hampton provides payments as of 2003 of \$250 per year after six years of service. That figure rises to \$300 per year, the PBA points out. See PBA Exhibits 21, 23. By contrast, it alleges, Police Officers here receive a maximum of \$2,900 after fifteen years of service. Therefore, it asserts, a substantial increase in

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<sup>2</sup>The PBA offers the testimony and report of Financial Consultant Edward Fennell in support of this conclusion. PBA Exhibit 2.

longevity payments is due its members.

The PBA contends that of major importance is the payment of health insurance premiums to its members who retire. It alleges that all but two other East End communities pay 100% of individual and family premiums upon retirement for medical insurance, while this Employer pays only \$242.00 per month for family coverage. Consequently, the PBA avers, equity demands that the Town pay the full cost of medical insurance for bargaining unit members who retire.

The PBA also alleges that reasonable increases are justified for clothing and cleaning allowances. In its view, a fair improvement in these benefits is \$100 per year for each item.

Regarding Detective stand-by pay, the PBA notes that Detectives in other jurisdictions receive anywhere from 1.0 to 2.0 hours' pay for each eight hours of stand-by. Here, Detectives receive no such pay, though they are compensated with an additional five days off, the PBA acknowledges. In its view, 2.0 hours pay for each eight hours of stand-by more fairly reflects the burden placed on Detectives. Thus, it asks the Panel to grant this demand.

Concerning sick and personal leave, the PBA asks for

an increase to 440 days' accumulation. It also maintains that, in line with benefits received by Suffolk County, Officers should be paid one day for two days of accumulation upon their retirement.

Finally, the PBA notes the Town's proposal for a modification of the duty chart. In its view, this demand is not justified and only serves to increase the number of nights Senior Officers will be required to work. Moreover, the PBA suggests, the only value to the Town is financial, not operational. Consequently, it asks the Panel to reject this demand.

In sum, the PBA maintains that its proposals are reasonable and supported by the record evidence. Therefore, it asks the Panel to award them as presented and to reject the Town's demands.

**Town**

The Town maintains, generally, that the PBA's proposals are excessive and ought not be granted. While acknowledging its sound fiscal condition, the Town contends that, for example, year end balances should not pay for recurring expenses such as wages, since such payments will rise each year, thereby depleting year end balances. Also, it argues, it has exhausted 13.5 per cent of its Constitutional debt limit, not 7.0 per cent

as the PBA suggests. Given these and related economic factors, the Town addresses the PBA's proposals and makes its own demands, as follows.

Concerning wages, the Town sees no reason why the PBA should be granted annual increases of 4.5 per cent. Instead, it suggests, raises which approximate those given its non-uniformed personnel are appropriate. These increases, the Town notes, are 2.25 per cent for 2002, 3.0 per cent for 2003 and 2004 and 2.25 per cent for 2005. These improvements, the Town maintains, are reasonable, especially in light of modest rises in the Consumer Price Index ("CPI") and its overall ability to pay.

Concerning health insurance, the Town maintains that the trend in payments is to require greater contribution by employees, rather than less, as the PBA proposed for its retirees. Also, it notes, it is self-insured and provides better benefits at greater cost than the Statewide plan. Yet, it points out, only retirees electing dependent coverage are required to contribute to the premium cost.

Given these factors the Town proposes the following changes with respect to Health Insurance:

1. Effective January 1, 2002, employees hired to bargaining unit titles shall be

required to pay 15% of the cost of their health insurance. The contribution shall be based upon the COBRA rate.

2. In addition to its right to provide benefits under the Empire Plan, the Town may opt to continue to provide benefits under its self-insured plan. The benefits provided shall be comparable to those provided currently (as determined on an annual basis) by the Empire Plan.

Regarding sick and personal leave, the Town contends that the PBA's demand is excessive and unwarranted. Instead, it avers, the current sick leave entitlement should be reduced from 22 days to 15 days, since the average allotment among East End communities is 19.1 days. Also, it seeks a reduction in the maximum sick leave accrual from 360 days to 300 days. Furthermore, it asks to delete the provision which grants Officers with thirty accrued days one-half of full pay for six months if they exhaust their accumulated leave. These proposals, the Town insists, will help reduce windfalls to employees which are very costly.

With respect to termination pay, the Town makes the following demand:

The Town proposes amending Section 7(A) of the agreement as follows:

Effective January 1, 2002, sick leave days earned on or after that date shall not be subject to any payment upon termination or retirement. Sick leave days earned prior to that date shall be

paid at the rate of one (1) day for every three (3) days accumulated to a maximum of one hundred (100) days' pay.

As with sick leave, the Town maintains that this proposal will moderate large cash payouts for retirees and is comparable to similar provisions in East Hampton Village, Sag Harbor and the Town of Shelter Island.

As to vacation leave and schedules, the Town submits that its Officers receive more paid vacation time than anywhere else in the East End. Consequently, it asks that vacation entitlement be revised to provide 7 working days for the first year of employment, 14 working days for the second through tenth year of employment and 21 working days from the eleventh year of employment on. Also, the Town maintains, in light of its proposed work chart,<sup>3</sup> elimination of this provision will improve coverage during the active summer months. Similarly, the Town insists, the new work chart eliminates the need for Section 45 which grants Police Officers regular days off by scheduling employees for the actual number of days they are expected to work.

The Town also proposes to modify the number of days' notice the Chief must give an Officer in the event of a tour change from twenty to five. As the Town sees it, it

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<sup>3</sup>See discussion of this issue below.

is often difficult to anticipate coverage shortages three weeks in advance. Therefore, it submits, this proposal is necessary to properly staff its tours.

The Town contends that the current work chart should be modified. In its view this demand is of great importance since it will improve staffing and result in better and more regular coverage on each tour. According to Police Chief Todd Sarris, the proposed schedule is in effect in the Town of Riverhead and East Hampton Village. He contends that the work schedule in those communities allows for better, more efficient scheduling and also benefits Officers because most will work four consecutive midnights under this chart while they now work five consecutive ones.

Also, the Town maintains, it has repeatedly tried to engage the PBA in meaningful dialogue concerning the new work schedule, but to no avail. Consequently, it has turned to this Panel for relief.

Concerning night differential, the Town asks that it be paid only to Officers who work at least 100 hours between 3:15 p.m. and 7:15 a.m. or on other tours designated as afternoon or night tours.<sup>4</sup> In its view, the current language grants an excessive benefit for

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<sup>4</sup>Currently, Officers are paid after 50 hours of such work.

those working relatively few nights and, therefore, should be reduced substantially.

Concerning the PBA's proposal on night differential, the Town maintains that the current amount of \$3,550 based on a three-tour schedule is above the East End average of \$3,475 for 2001 as well as the East Hampton Village payment of \$3,450. Therefore, it asks that the PBA's proposal be rejected or substantially modified.

The Town sees no need to change the method of longevity payments, as the PBA proposed. That proposal, it suggests, grants Senior Officers an unnecessary windfall and should not be awarded.

As to uniform and cleaning allowance, the Town notes that the PBA received a substantial increase in this benefit in the 2000-2001 Memorandum of Agreement. Thus, it urges, current payments are fair and should not be increased.

Finally, the Town sees no reason to implement the PBA's proposal regarding Detective stand-by. It notes that Detectives receive a differential of about 7.7 per cent for this title. They also get an additional five days off, the Town points out. Therefore, it reasons, any other emolument is unwarranted.

In sum, the Town contends that its proposals reflect

the proper balance between its interests and those of Police Officers. Therefore, the Town asks that they be adopted as presented.

### **DISCUSSION AND FINDINGS**

Several introductory comments are appropriate. The Panel derives its authority from Section 209.4 of the Civil Service Law of the State of New York ("Taylor Law"). That statute sets forth the criteria we must use in reaching our findings. Those criteria are:

- a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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 the 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.

Section 209.4(V) of the CSL.

With these criteria in mind and based solely on the evidence adduced at the hearings and the parties' arguments, we make these findings.

1. Length of Agreement

The Taylor Law prohibits the issuance of an Award which exceeds two years, except by agreement of the parties. Their failure to do so in this case means that the Award we rendered results in bargaining almost immediately. Nonetheless, we are constrained by the statute and relevant case law in this regard. Consequently, the duration of the Award shall be from January 1, 2002 through December 31, 2003.

2. Wages

As all are aware, the wage determination is the most significant economic component of any Interest Arbitration Award. It directly affects the ability of Officers to provide for themselves and their families. It has the greatest economic impact on the Town for police wages constitute a significant portion of the Town's budget. Thus, the wage determination must carefully balance and reflect both parties' interests in light of the criteria set forth above.

Criterion (a) requires the Panel to compare the wages and benefits of Police Officers here to those in "comparable communities." The issue of "comparable communities" has been addressed in the past.

In an Award issued on January 31, 2000, involving the Village of Southampton and the Southampton PBA (PERB Case No. IA98-029), I made the following observation:

In our view, other similarly situated communities include the towns and villages of Long Island's East End. Though not segregated from the rest of Long Island by any political denomination, they are geographically and economically related. They are most often referred to when analyses of comparative data are made which involve unions and employees in this region. Thus, the Panel finds, the Police settlements in these communities are entitled to substantial weight (p. 14).

That Award determined terms and conditions of employment for the Village of Southampton, an East End community like the Town of East Hampton. While the two jurisdictions are different, they both fall within the same geographical area with similar qualities; i.e., a relatively small, non-summer population that vastly multiplies in size during the vacation season. Also, while that Award was issued four years ago, there is no evidence of intervening factors which would justify a different base of "comparable communities." Thus, the Panel concludes, the relevant comparators are East End

jurisdictions.

The data for these jurisdictions reveal wage increases as follows:

**2002**

<b><u>Jurisdiction</u></b>	<b><u>Percentage Increase</u></b>
East Hampton Village	4.10
Riverhead	4.00
Quogue	4.60
Sag Harbor	4.00
Southampton Village	4.10
Southold	4.25
Shelter Island	<u>3.5 (based on CPI)</u>
<b>Average</b>	<b>4.10 per cent</b>

**2003**

East Hampton Village	4.25
Riverhead	4.00
Quogue	4.60
Sag Harbor	4.00
Southampton Village	4.10
Shelter Island	3.50
<b>Average</b>	<b>4.10 per cent</b>

The wages in East Hampton Town are neither at the top nor the bottom of the wages in the jurisdictions listed above. While "lock-step" increases need not necessarily be awarded, the percentage raises in those areas offer strong evidence as to what should be awarded here.

The Panel notes the Town's presentation of its ability to pay [Criterion (b)]. Witnesses presented by

the Town<sup>5</sup> depicted a Town which prudently and responsibly plans and implements budgets. It has a reasonable surplus (20 per cent) to avoid a downgrade in its credit rating. It also anticipates that pursuant to standards which are or will be promulgated by the Financial Accounting Standards Board (FASB), retiree health costs require public employers to fully account for these future costs rather than listing them on a pay-as-you-go system.

These data reveal that the Town is not a "cash cow" able to pay any increase the Panel would award, no matter how large. On the other hand, we are convinced, the Town is well able to pay the increases we have awarded, without unduly burdening taxpayers or threatening its economic well being.

Under these circumstances, the Panel concludes that increases of 4.0 per cent for 2002 and 2003 are fair. They are in line with the figures awarded elsewhere in comparable East End communities. They are also reasonable in light of other economic benefits granted below.

It is true, as the Town noted, that increases of

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<sup>5</sup>See testimony of Town Budget Officer Leonard Bernard and Actuary Robert Abzug.

this magnitude exceed current trends in the Consumer Price Index (now increasing at or about 3.0 per cent per year), as well as private sector wage improvements. However, public sector improvements generally and uniformed personnel wages specifically rise faster than the CPI in times of low inflation. Also, while private sector rates need be considered, Police Officers' roles are unique. They protect the public and they place themselves in harm's way as they do so. Few private sector jobs contain the same degree of risk. Thus, while changes in private sector employment wage rates are relevant, they do not warrant increases of less than four per cent, we are convinced. Accordingly, and for the foregoing reasons, we direct that Police Officers' salaries be increased by 4.00 per cent for 2002 and 2003.

On the other hand, the Panel is convinced that some adjustment in the starting pay of Police Officers is warranted. A lower starting rate, which exists in some other East End jurisdictions, saves the Town money, yet it does not impact upon current Police Officers. Also, if implemented at the end of the term of this Award, it will not adversely affect Officers who may be hired during its term. Consequently, we shall direct that, effective December 31, 2003, an Academy Step of \$35,697

shall be added to the salary schedule. Such a figure represents a reduction below Step 1 roughly equivalent to the difference between Step 1 and Step 2 of the schedule. As such, the new step is fair and is to be implemented as awarded.

### 3. Longevity

The PBA has convinced the Panel that longevity stipends should be raised. Currently, Police Officers receive \$1,650 after five years of service; \$2,400 after ten years of service; and \$2,900 after fifteen years of service. These figures are lower than the majority of other East End communities, particularly after fifteen years of service. Of nine other jurisdictions, the Town's payment of \$2,900 is exceeded by all but one (Shelter Island), the record reveals. This inequity must be addressed and we shall do so by awarding increases of \$150 in each of the two years covered by this Award.

### 4. Health Insurance

This issue was a source of substantial controversy during the course of these proceedings. In essence, the Town asked Officers to pay a portion of the health insurance premiums<sup>6</sup> while the PBA asked the Town to pay

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<sup>6</sup>Since the Town has a self insurance program, there are no "premiums," per se. However, the figures utilized by the Town are based upon the annualized cost of providing health

the entire cost of health insurance for retirees' families. Also, the Town asked that its drug program be amended, as indicated below.

It is true that health insurance costs are rising substantially and that new benefits are often not awarded as a result (See New Rochelle Firefighters, as cited by the Town). However, this does not mean that insurance improvements should not be awarded even if compelling circumstances justify granting them. Those circumstances exist here, we are convinced.

Of the twelve East End communities cited, only the Town of East Hampton and Sag Harbor pays less than full health insurance premiums for retirees' families. This represents a substantial inequity which needs to be addressed. Nor is the Town so financially strapped as to be unable to afford this increase.

Requiring the Town to increase its contribution for family retiree insurance from 50% (the current figure) to 100% will have an impact, of course. However, that impact will be reduced if future increases in this coverage are shared equally between the Town and the retiree. Also, we note that the Town's proposal concerning drug benefits has previously been implemented

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insurance and they are referred to as "premiums" herein.

for other Town employees. We see no reason why they should not apply to Police Officers, as well. In fact, these changes will help reduce the impact of the increase in retiree health insurance premiums, awarded above. Therefore, we shall direct that the Agreement's Health Insurance provisions be modified as follows:

Health Insurance - Section 15 shall be modified to provide that effective January 1, 2002, the Town shall pay the full health insurance premium for any Police Officer who retires after that date. Such payment shall be at the rate in effect as of December 31, 2003.

Increases in the family premium which are implemented after December 31, 2003 shall be shared equally by the retiree and the Town.

In addition, a new provision shall be added, as follows:

Prescription Drugs: The existing co-pay for prescription drugs shall remain the same. Generic drugs shall be mandatory where available. Where generic drugs are available and the employee decides to use a name brand drug the employee shall pay the difference between the price of the brand name drug and the generic drug, unless the employee's physician determines that the name brand drug is medically necessary and states the reasons why the generic drug is not medically indicated.

Maintenance Drugs: All maintenance drugs shall be purchased by mail order. Where maintenance drugs are available by mail order and an employee does not purchase said drugs by mail order, the employee shall pay the difference between the price paid and the

price of the drug if purchased by mail order, in addition to the existing co-pay for the drug.

5. Cleaning Allowance

The current stipend is in need of improvement, we find. Therefore, we shall direct that the allowance be increased by \$75 in each of the years covered by this Award.

6. Regular Hours of Work

Substantial testimony was elicited on this topic. Police Chief Sarris testified that a new work chart was necessary to improve the efficiency of the Department and the deployment of its Officers. The PBA vigorously disputed this contention, asserting that the only purpose for the proposal was to effectuate savings.

The Panel has reviewed these competing claims. While it may well be that awarding this proposal will reduce overtime costs, that is not a valid reason for rejecting it. Indeed, Chief Sarris's testimony and the fact that the work chart has been implemented in several other East End communities convinces us that it should be implemented here. Also, to the extent this yields savings in overtime costs, those savings will help reduce the impact of the increase in retiree health insurance premiums awarded above. Consequently, we shall

grant the Town the authority to implement its proposal, effective December 31, 2003 for all divisions except the Detective division. All provisions of the Agreement inconsistent with the new work chart shall be deleted when it is implemented.

#### 7. Night Differential

As of the end of 2001, the night differential for Police Officers ranked fifth of eleven East End jurisdictions. Increasing the night differential by \$150 in 2002 and 2003 will likely retain that ranking since, for example, Quogue, the community just above East Hampton Town paid \$3,850 for night differential in 2001 and the increase will result in \$3,850 effective January 2003. Thus, the increases we have awarded are fair in light of circumstances elsewhere.

#### 8. Other Proposals

Both parties made a substantial number of other proposals. For example, the Town sought reductions in sick leave, vacations, holidays, etc. The PBA asked for detective stand-by pay, increased sick leave accumulation, etc.

The Panel has carefully reviewed these proposals. They must be rejected, we conclude. The comparative data did not warrant the improvements the PBA asked for or the

reductions the Town sought. For example, while Detective stand-by pay exists elsewhere, other jurisdictions do not provide for a shorter work chart for Detectives, as exists here. Also, we note that other substantial modifications have been awarded. The Town's work chart has been implemented as has the PBA's proposal on retiree health insurance. Even if inequities exist elsewhere, it is unrealistic to expect that all will be addressed during the course of two years, given that they arose over many. For these reasons, all other proposals of the parties are rejected.

In sum, the Panel concludes that the needs of the PBA and the interests of the Town are best met by the Award issued on December 15, 2003. Accordingly, that Award is affirmed and re-issued for the reasons set forth in this Opinion. It is so ordered.

AWARD

1. The term of this Award shall be from January 1, 2002 through December 31, 2003.

2. Wages shall be increased as follows:

Effective January 1, 2002 - Four per cent

Effective January 1, 2003 - Four per cent

Effective December 31, 2003 - an Academy Step of \$35,697 shall be added to the salary schedule.

3. Longevity Stipends shall be paid as follows:

Effective January 1, 2002, longevity shall be increased by \$150 at each step of the longevity schedule to yield payments of:

\$1,800 upon completion of five (5) years of service  
\$2,550 upon completion of ten (10) years of service  
\$3,050 upon completion of fifteen (15) years of service.

Effective January 1, 2003 longevity shall be increased by \$150 at each step of the longevity schedule to yield payments of:

\$1,950 upon completion of five (5) years of service  
\$2,700 upon completion of ten (10) years of service  
\$3,200 upon completion of fifteen (15) years of service.

4. Health Insurance - Section 15 shall be modified to provide that effective January 1, 2002, the Town shall pay the full health insurance premium for any Police Officer who retires after that date. Such payment shall be at the rate in effect as of December 31, 2003.

Increases in the family premium which are implemented after December 31, 2003 shall be shared equally by the retiree and the Town.

In addition, a new provision shall be added, as follows:

Prescription Drugs: The existing co-pay for prescription drugs shall remain the same. Generic drugs shall be mandatory where available. Where generic drugs are available and the employee decides to use a name brand drug the employee shall pay the difference between the price of the brand name drug and the generic drug, in addition to the existing co-pay for the drug, unless the employee's physician determines that the name brand drug is medically necessary and states the reasons why the generic drug is not medically indicated.

Maintenance Drugs: All maintenance drugs shall be purchased by mail order. Where maintenance drugs are available by mail order and an employee does not purchase said drugs by mail order, the employee shall pay the difference between the price paid and the price of the drug if purchased by mail order, in addition to the existing co-pay for the drug.

5. Cleaning Allowance - Section 18 shall be modified as follows:

Effective January 1, 2002, the cleaning allowance shall be increased by seventy-five dollars (\$75).

Effective January 1, 2003, the cleaning allowance shall be increased by an additional seventy-five dollars (\$75).

6. Regular Hours of Work - Section 26

Effective December 31, 2003, the Town shall be permitted to implement its proposed new work chart consisting of five (5) squads of Police Officers rotating on a three (3) platoon system. At the time the new charge is implemented, the training day shall be eliminated. The chart shall be implemented for all Divisions except the Detective Division.

All sections of the Agreement inconsistent with this provision shall be deleted at the time the new chart is implemented.

7. Night Differential - Section 27

Effective January 1, 2002, night differential shall be increased by one hundred fifty dollars (\$150).

Effective January 1, 2003, night differential shall be increased by an additional one hundred fifty dollars (\$150).

8. Regular Days Off - Section 45

Paragraph 45(a) shall be deleted effective upon the implementation of the work chart pursuant to (6) above.

9. The undersigned Panel shall retain jurisdiction in the event a dispute arises as to the implementation of this Award.

10. All other proposals of the parties, whether or not addressed herein, are rejected.

DATED: March 29, 2004 Howard C. Edelman  
HOWARD C. EDELMAN, ESQ.  
Public Member of the Interest  
Arbitration Panel

STATE OF NEW YORK     )  
                                  ) S.:  
COUNTY OF NASSAU     )

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Public Member of the Interest Arbitration Panel that I am the individual described in and who executed this instrument, which is my Award.

DATED: March 29, 2004 Howard C. Edelman  
HOWARD C. EDELMAN, ESQ.  
Public Member of the Interest  
Arbitration Panel



