

STATE OF NEW YORK  
PUBLIC EMPLOYEE RELATIONS BOARD

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In the Matter of the Interest  
Arbitration :

- Between -

: Case No.

IA-2005-021

TOWN OF NEW CASTLE

: M-2004-381

OPINION and AWARD

"Town" or "Employer" :

- and -

:

POLICE ASSOCIATION OF NEW CASTLE

:

"PBA" or "Association" :

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**APPEARANCES**

**For the Town**

LITTLER MENDELSON, P.C.

Bruce R. Millman Esq., Counsel

Gennaro J. Faiella, Town Administrator

Louise Barbaro, New Castle Town Clerk

**For the PBA**

THOMAS J. TROETTI, Esq., Counsel

Thomas J. Troetti, Esq.

Steve Heady, President, New Castle Police Association

James Carroll, Vice President New Castle Police  
Association

BEFORE: HOWARD C. EDELMAN, ESQ., NEUTRAL PANEL MEMBER  
CRAIG R. BENSON, ESQ., EMPLOYER PANEL MEMBER  
EDWARD W. GUZDEK, EMPLOYEE ORGANIZATION PANEL MEMBER

## **BACKGROUND**

The parties have negotiated a series of Collective Bargaining Agreements over a period of many years. The current Agreement expired on December 31, 2004. Negotiations for a new Agreement proved unsuccessful. So did mediation efforts. As a result the procedures set forth in Section 209.4 of the Civil Service Law ("Taylor Law") were invoked. Consequently, the undersigned Panel was constituted in accordance with the rules and regulations of the Public Employment Relations Board ("PERB"). Hearings were held before the Panel on May 17, 2006 and January 9, 2007. In addition the Panel met in executive session on January 17, 2007.

After the hearings were concluded, each of the parties authorized the Panel to render an Award covering a five (5) year period commencing on January 1, 2005 and ending December 31, 2009. Based upon that authorization these findings follow.

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

### **PBA**

The Association contends that its objective in

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<sup>1</sup>To expedite this Opinion and Award, I have summarized the parties' positions.

negotiations is to obtain the "going rate" of salary increases for Police Officers in the nearby towns and municipalities. It argues that the "going rate" is a five percent (5%) increase in pay annually. In addition, it requests an increase of eighteen percent (18%) in the salary differential between Sergeant and that of Police Officer Grade 1; and thirty-three percent (33%) in the salary differential between Lieutenant and that of Police Officer Grade 1.

Further, the PBA proposes increases in the longevity allowance. The contractual longevity payments in the current contract are in whole dollar amounts which rise as officers' length of service increases. The new proposal would base the payments on a percentage of salary for First Grade Police Officer.

In addition, the Association's proposals call for a new salary benefit - a shift differential of seven percent (7%) for hours worked between 1445 and 2310 hours and ten percent (10%) for hours worked between 2245 and 0710 hours.

It is the PBA's opinion that the Town can well afford its salary and longevity proposals. Association witness Edward Fennel testified that the Town had a General Fund balance of more than seven million dollars

in 2004, which he contends is "very high". PBA Exhibit 42, shows that on December 31, 2005, the end of its fiscal year, the Town's total fund balance was \$8,636,609.

Another exhibit offered by the PBA (PBA Exhibit 21) is a copy of a March 7, 2005 newspaper article stating that Westchester County property tax rates for New Castle Town declined by five and 4/10 percent (5.4%) from 2004 to 2005 as a result of changes in property values and tax burdens throughout the County.

Another news article introduced by the PBA (PBA Exhibit 19) is from the "New Castle News", a publication of the Town Board of New Castle, dated April 2005, which declares that the town's Bond rating by Moody's Investor Service is Aaa. The article includes the following paragraph:

In its announcement, Moody's stated, "This rating was based on the town's consistently sound financial operations supported by ample levels of fund equity, and affluent, suburban tax base and a low debt burden." The median family income of New Castle is \$174,579.

Thus, the Association avers that the Town is wealthy, that it has a very low debt ratio, a very high collection rate of property taxes, as well as a diverse tax-paying base. In short, the PBA believes the Town

has the ability to pay its salary and longevity requests. Moreover, it asserts that its proposals are reasonable and in line with increases granted to Police Officers in other nearby Towns and Villages.

Concerning leaves, the Association makes a series of proposals to increase the number of leave days. These proposals would:

- a) increase paid holidays by two (2) days;
- b) increase vacations for employees with ten (10) or more years of service by six (6) days;
- c) increase personal leave by two (2) days;
- d) increase bereavement leave by three (3) days;
- and,
- e) create a child care leave benefit of 5 days for the birth or adoption of a child.

In addition, the PBA seeks to increase the number of vacation days for which an Officer may receive cash payment; to delete from the contract the provision which prohibits vacation leave from being carried over to the following year; and to add a new provision to allow an Officer to work up to eight (8) days at straight time, in lieu of vacation. Furthermore, the Association calls for a change in procedure for approving employee requests for personal leave.

On the issue of bereavement leave, the PBA seeks to expand the definition of the term "immediate family" to include specified in-laws. Concerning payments to Officers who use few or no sick days in any year, the Association proposes to change the payments from flat dollar amounts to percentages of the Officer's annual salary; and, also, to increase the number of sick days that may be taken without losing eligibility for payment. With respect to "Sick Leave Buyback" the Association requested a reimbursement rate of 100% of the Officer's daily rate of pay.

The PBA contends that its leave proposals are comparable with leave levels and practices in surrounding towns and communities.

Regarding the Health and Welfare Fund benefits, the Association requests an increase in the Employer's contribution from 1.4% to 3% of "Police Officer Grade 1 pay" each year to the Welfare Fund.

With respect to the Educational Program, the Association suggests a change in the first sentence of Article XVII, Section 1 which deals with the method of paying the cost of tuition and books incurred by Officers who were hired before December 31, 1976. The change would:

a) remove the restriction that section 1 only apply to employees hired before December 31, 1976;

b) remove the restriction that the Employer is only liable for tuition and book costs for courses that are contained in a curricular for a degree in Police Science; and

c) would require the Employer to pay the cost of tuition and books incurred by employees for courses taken by those employees that are related to the performance of daily Police Department functions.

As to the death benefits detailed in Article XXIII, Section 15, the PBA seeks to make all employees eligible for those benefits while they are employed by the Town. Currently the benefits are only paid if the employee dies as a result of:

injuries incurred while in the performance of his or her duties as a member of the New Castle Police Department, or incurred while acting as a police officer whether on duty or off duty...

In addition, the Association proposes adding a new section to Article XXIII, which would create an EMT stipend in the amount of twelve hundred fifty (\$1250) dollars, and an EMT-D stipend in the amount of two thousand (\$2000) dollars.

Finally, the PBA asserts the need for a new article

to the contract to define past practices.

In sum, the PBA contends that its proposals are reasonable and supported by the record adduced at the hearings. Accordingly, it asks that they be awarded as presented.

### **The Town**

The Town acknowledges it has the ability to pay reasonable increases. However, it submits, it cannot afford the improvements sought by the PBA.

The Town contends that its fiscal condition is not as favorable as the PBA suggests. For example, it notes that health insurance costs have been increasing at a high rate for several years. Moreover, it argues that the PBA bargaining demands, if granted, would result in salaries and benefits for New Castle Police Officers which are out-of-line with the surrounding Towns.

Regarding "comp time" carryover, the Town proposes eliminating the carryover from year to year. Instead of carrying "comp time" over to the next year the Officer would be required to cash it in or use it by year end, according to the Town.

The Town's position on unlimited overtime accrual is also to eliminate it. Officers should be required to cash in overtime at the end of the year, it insists.

Article IV, Section 3 specifies that Police Officers will be assigned three additional eight (8) hour training days per year and three additional eight hour and twenty-five minute (8:25) plug-in days per year. The Employer seeks to increase training and plug-in days by 6 days per year, for a total of 12 per year. The Town contends that the current 6 plug-in and training days are not enough days to provide for all its training needs. It points out that a Police Officer actually works 190 days per year after accounting for vacation days, personal days and an average of 6 sick days taken per year. Town Exhibit 31. It further argues that while Police Officers in New Castle work a longer work day, they have the shortest work schedule of all the towns in the surrounding area.

Concerning pay for working on holidays, the Employer proposes a reduction in the number of days for which triple time is paid. According to the Town, Officers in New Castle have thirteen (13) Holidays which require triple time pay for working. The Town would reduce that to five days and would pay all other holidays at double time. The Town avers that the none of the other Towns in the area pay triple time for more than 5 holidays. Town Exhibit 7.

With respect to employee contributions for Health Insurance, the Town seeks to have Police Officers pay 15% of the premium. The Employer points out that the Town employees who are represented by the CSEA currently pay 15% of the premium cost.

Town Exhibit 9 indicates the Employer's premium rates, per employee, since 1995 for Alt. Family Plan. The cumulative increase in premium since 1995 is 159.77%, the Town notes. In 2001 the premium rate was \$630.00, in 2006 the rate was \$1,158.56, a dollar increase in rates of \$528.56, it points out. The Employer contends that Health Insurance premiums are expected go up by 11% or more in the future according to a study by the Kaiser Family Foundation. Town Exhibit 8.

Moreover, the Town notes that Police Officers in Scarsdale, Larchmont, Mamaroneck, Bronxville, Rye City and Pelham Manor contribute to the cost of their health care. Town Exhibit 16. At the hearing the Town asserted that the trend across the country is for employees to contribute towards the cost of their health insurance and, further, that sixteen percent (16%) of employees contribute towards individual coverage and twenty-five percent (25%) contribute towards family coverage.

As to benefits to Police Officers under Section

207[c] of the General Municipal Law, the Town seeks to reduce accruals to the levels required by said provision.

The Employer argues that Article XXIII Section 1, Section 5, Section 12, Section 13 and Section 14 should all be removed from the Collective Bargaining Agreement because, in the Employer's view, they are non-mandatory subjects of negotiations.

Finally, the Town requests the removal of Article VI, Section 1 B in the Collective Bargaining Agreement. This section requires the employer to pay premium pay to employees who work a sixth (6<sup>th</sup>) day in any six day work period.

In sum, the Town asserts its proposals properly balance the needs of Police Officers with its rights and obligations. Accordingly, it asks that they be awarded as indicated above.

#### **DISCUSSION AND FINDINGS**

Several introductory comments are appropriate. As the parties are aware, the Panel derives its authority from Section 209.4 of the Civil Service Law of the State of New York ("Taylor Law"). That provision sets forth the criteria the Panel must apply in rendering a just and

proper determination. These 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 interest 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 the 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

Accordingly, and based solely on these criteria and the evidence adduced at the hearings, the Panel makes the following findings.

#### **1. Term of the Award**

The Taylor Law prohibits an Award exceeding two years, absent the agreement of the parties. In the instant case, each of the parties has authorized the Arbitration Panel to render an award covering a five (5) year period, i.e. January 1, 2005 through December 31,

2009. Moreover, this finding makes labor relations sense, especially since the prior Collective Bargaining Agreement expired some two and on-half years ago. Accordingly, the term of this Award is from January 1, 2005 through December 31, 2009.

## **2. Wages**

Wages are the most significant economic factor in the Panel's findings. They represent the largest cost item to the Employer. They are the basic term and condition of employment for bargaining unit members.

There is no doubt that the Town has the ability to pay reasonable wage increases. As the testimony and supporting documentation submitted by the PBA demonstrates, tax rates in the Town are moderate. Moreover, in 2005 Westchester County property tax rates for New Castle Town declined by five and 4/10 percent (5.4%) from 2004 to 2005 as a result of changes in property values and tax burdens throughout the County. PBA Exhibit 21.

The Town submitted a comparison of itself with nine (9) other communities in Westchester County, which showed that New Castle's per capita income was \$73,888, versus the average of \$71,127; while New Castle's Median Family

income was \$179,778 versus an average of \$159,465 whereas the median house value in new Castle was \$665, 184 compared to an average of \$665,184. Town Exhibit 2.

Among all the Towns in Westchester County, the town of New Castle ranks #1 in Median Household income, #1 in Median Family Income and #2 in Per Capita Income. PBA Exhibit 15f. Clearly the Town has above average wealth.

Also, the Town appears to be fiscally sound and its budgets reflect prudent financial management. Witness Fennell testified that the Town has had a General Fund surplus of between six million dollars (\$6,000,000) and seven and eight/tenths million dollars (\$7,800,000) for several years.

In the 2004 year, the Town had a General Fund surplus of approximately 48% according to the PBA. Manifestly, this was a substantial surplus.

The Town noted that \$1,355,000 of the 2005 total fund balance of \$8,636,609 was designated to be used in the 2006 fiscal year.

In 2005 the Town received a Bond rating, from Moody's Investor Service, of Aaa. PBA Exhibit 19.

Based upon this record, the Panel concludes that the Town has the ability to pay the award herein and further,

there is no evidence that the interests and welfare of the public will be jeopardized by this Award.

The Employer argued that its health insurance costs have been rising significantly over time. It introduced evidence demonstrating that Health Insurance premiums are expected to go up by 11% or more in the future, according to a study by the Kaiser Family foundation. Exhibit Town 8.

While it is true that its health insurance costs have been rising, it is also true that health insurance costs for all the other communities in the area have been increasing at the same rate. Consequently, the increase in medical costs is not a basis to grant salary increases below those received in surrounding communities. Moreover, the Panel addresses the Town's proposal concerning medical insurance in Section 3, below.

The Association contended that its objective in negotiations is to obtain the "going rate" of salary increases for Police Officers in the nearby towns and municipalities. It proposed five percent (5%) annual raises in salary for all employees. In addition to salary increases, the PBA proposed raises in the salary differential between Sergeant and Police Officer Grade 1; and between Lieutenant and Police Officer Grade 1;

improvements in the longevity allowance and the creation of shift differentials for hours worked between 1445 and 2310 hours; and between 2245 and 0710 hours, of seven (7%) and ten (10%) respectively.

As to the PBA's salary proposals, it contended that five per cent (5%) annual increases are needed to remain competitive with surrounding communities.

The Employer argued that the PBA's salary package is excessive; it believed the "going rate" is considerably less than five percent (5%). Moreover the Town contended that any salary increase is contingent on an accommodation, by the Association, on the number of working days and by contributions from Officers toward health insurance.

Both the Employer and the PBA submitted copious evidence concerning salaries for Police Officers in the surrounding towns and villages. They disagreed as to which of those communities New Castle should be compared. The Town advocated a comparison to a larger number of communities than did the PBA. While both agreed that the towns and villages were appropriate for comparison; they disagreed about whether or not to include the cities of New Rochelle and Rye.

The Panel need not address the issue of whether the

cities of New Rochelle and Rye should be removed from our consideration. This is so because removing the two cities from the comparison changes the overall average salary computation by a very small percentage, and thus, has no impact on the calculation of the median salary increases.

The Town submitted two exhibits (numbers 32 and 33) which provided comparisons for nineteen (19) communities in 2005 and twenty (20) in 2006. In 2005, three communities, Harrison, Rye (city) and Mt. Pleasant negotiated so-called "split" salary increases. That is, the salary increase came in two parts, an initial raise in January, followed by another increase in June or July.

For example, the Police Officers in Mt. Pleasant received a two percent (2%) salary increase in January 2005 and a further two percent (2%) increase in July 2005. For the entire year, the employees received a four percent increase in their rate of pay; however, each employee only received a three percent (3%) increase in his/her salary income for the year 2005. Moreover, the employer would have only experienced a three percent (3%) increase in salary costs for the 2005 calendar year.

However, the employer's cost saving was short lived. In 2006 the employer would pay the full cost of the 2005

increase, as well as the four percent (4%) increase that it negotiated for the 2006 year.

Town Exhibits 32 and 33 make an attempt to account for the employers' savings by averaging the two "split" increases. While the short term cost savings are very real, they only take place in the year the split occurs. Moreover, they do not reduce the employees' salary rates.

Therefore, the Panel has made comparisons using both the "average" as computed by the Town in Exhibits 32 and 33 and also by using the "nominal" increase for the Police Officers in Harrison, and Mt. Pleasant in 2005 and for the Officers in Scarsdale in 2006.<sup>2</sup> The "Nominal" increase is the sum of the two "split" increases. The table on the page 17 shows the difference between the Town's "split" methodology (labeled, "Town Average" in the Table) and the "nominal" increase for each municipality that bargained for split increases in either 2005 or 2006. The table omits New Rochelle and Rye because they are not included in the Panel's comparisons, herein.

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<sup>2</sup>Rye City, which negotiated "split" increases in 2005 and 2006 were included in the Town's calculations, but are omitted here as the Panel decided to omit the two cities from its consideration in this proceeding, as noted above.

| Nominal Salary Increase Compared to Split Increase |       |       |       |       |         |         |
|--|-------|-------|-------|-------|---------|---------|
|  |       |       |       |       | Town    | Nominal |
| MUNICIPALITY                                       | JAN   | JUN   | JUL   | DEC   | Average | Average |
| 2005 Increase                                      |       |       |       |       |         |         |
| Harrison   | 3.75% |       | 0.25% |       | 3.88%   | 4.00%   |
| Mt. Pleasant                                       | 2.00% |       | 2.00% |       | 3.00%   | 4.00%   |
| 2006 Increase                                      |       |       |       |       |         |         |
| Scarsdale  |       | 2.25% |       | 2.25% | 3.40%   | 4.50%   |

In calculating overall average increases for Police Officers in each of the communities listed in Exhibit 32 and 33, covering 2005 and 2006, respectively, the Town concluded that the average salary increases for Police Officers were as follows:

|            | <u>2005</u> | <u>2006</u> |
|------------|-------------|-------------|
| City/Town: | 3.62%       | 3.84%       |
| Village:   | 3.91%       | 3.82%       |
| Overall:   | 3.77%       | 3.83%       |

The PBA, using its preferred methodology, concluded the Police Officer average salary increases were:

|                | <u>2005</u> | <u>2006</u> |
|----------------|-------------|-------------|
| Towns          | 3.78%       | 3.99%       |
| Towns/Villages | 3.86%       | 4.00%       |

The Panel calculated average increases and median salary increase using the "nominal" increase methodology, as explained above. In addition, as noted, the Panel

omitted the cities of New Rochelle and Rye from its computations. Thus, the Panel's computations included all the communities included in Town Exhibits 32 and 33, except the cities of New Rochelle and Rye; to wit: Ossining, Mamaroneck, Greenburgh, Eastchester, Harrison, Yorktown, North Castle, Bedford, Mt. Pleasant, Scarsdale, Irvington, Mount Kisco, Ardsley, Hastings, Port Chester, Larchmont, Rye Brook, Bronxville, Tarrytown, and Croton.

The results of the Panel's calculation for 2005 are summarized below:

| <b>Average and Median Increases</b>    |             |             |  |
|--|-------------|-------------|--|
| <b>Calculated by Arbitration Panel</b> |             |             |  |
|  |             |             |  |
|  | <b>2005</b> | <b>2006</b> |  |
| <b>Average Increase</b>                | 3.87%       | 3.94%       |  |
| <b>Median Increase</b>                 | 3.90%       | 3.95%       |  |

Neither the Association nor the Employer calculated median increases. The Panel did so, because the median shows the actual middle, or mid-point, of a range of data. In this case, the difference between the mean or average and the median is extremely small, which indicates that the data range is not skewed either towards the high end nor the low end.

As to 2007 and 2008, the PBA submitted several Collective Bargaining Agreements and Memorandums of Agreement, listing salary increases in some of the

surrounding communities for these years which are summarized in the table below. Note that all five of these communities are included on Employer Exhibits 32 and 33.

| <b>Percentage Increases</b>               |             |             |  |
|---|-------------|-------------|--|
| <b>Police Officer Salaries</b>            |             |             |  |
|   |             |             |  |
| <b>MUNICIPALITY</b>                       | <b>2007</b> | <b>2008</b> |  |
| Eastchester                               | 3.90%       |             |  |
| North Castle                              | 4.25%       | 4.25%       |  |
| Bedford                                   | 3.75%       | 3.75%       |  |
| Mt. Pleasant                              | 4.00%       |             |  |
| Hastings                                  | 4.00%       |             |  |
|   |             |             |  |
|   |             |             |  |
| Average                                   | 3.98%       | 4.00%       |  |
| Median                                    | 4.00%       | 4.00%       |  |
|   |             |             |  |
| The information in this table is based on |             |             |  |
| PBA Exhibits 23, 25a, 27, 28c, and 34     |             |             |  |

Using the information in Town Exhibits 32 and 33 and in PBA exhibits 23, 25a, 27, 28c and 34, and using the "nominal" methodology for years 2006 and 2007, as detailed in previous pages, the Panel constructed the table below, showing increases in Police Officer salaries for 2005, 2006, 2007 and 2008. While there is limited data for 2007 and only two (2) data points for 2008, those increases appear to be in line with the more extensive data for 2005 and 2006.

| <b>Average and Median Increases</b>    |             |             |             |             |
|--|-------------|-------------|-------------|-------------|
| <b>Calculated by Arbitration Panel</b> |             |             |             |             |
|  | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> |
| <b>Average Increase</b>                | 3.87%       | 3.94%       | 3.98%       | 4.00%       |
| <b>Median Increase</b>                 | 3.90%       | 3.95%       | 4.00%       | 4.00%       |

Based on all the information submitted to the panel, as summarized above, increases for Police Officers in the various communities in the surrounding areas of Westchester fell within a narrow range in each of the years for which data was submitted. In 2005, the average increase was 3.77% using the Town's method or 3.85% using the Panel's method (which omits the cities of New Rochelle and Rye, and adjusts for "split" increases as detailed above) and 3.86% using the PBA's approach. The median increase as computed by the Panel for 2005 was 3.90%. In 2006, the average increase, as calculated by the Town was 3.83%; it was 3.94% as computed by the Panel, and 4.00% as the PBA figured it. The median in 2006 was 3.95%. There were no "split" increases in 2007. Consequently the average increase was 3.98% and the median increase was 4.00%. While there were only two (2) settlements submitted into evidence in this proceeding for 2008, those two settlements had both an average and median increase of 4.00%

No matter which method is used to compare the data,

the PBA's proposal for a five per cent (5%) increase is well above the "going rate" in the surrounding communities. Moreover, the Association's proposal is well above any salary increase listed in the data submitted to the Panel in this proceeding. Furthermore, there is no evidence before the Panel to warrant awarding salary increases above the average or median increases in comparable jurisdictions.

Therefore, based on all of the evidence presented to us, the Panel concludes that the increases in salary specified below are fair and equitable to both the Town and to the Police Officers, are very close to the midpoint of increases granted to Police Officers in comparable jurisdictions in the surrounding area, and comply with the criteria listed in Section 209.4(V) of the Civil Service Law.

Accordingly, we award salary increases as follows:

|                           |       |
|---------------------------|-------|
| Effective January 1, 2005 | 3.90% |
| Effective January 1, 2006 | 3.90% |
| Effective January 1, 2007 | 3.95% |
| Effective January 1, 2008 | 3.95% |
| Effective January 1, 2009 | 3.95% |

Concerning other items, the PBA sought to create a specified percentage differential between Sergeants and Police Officers, grade 1, of eighteen percent (18%) and

a differential of thirty-three percent (33%) between Lieutenants and Police Officers, Grade 1. Based on the 2003 Salary schedule, the actual percentage differences, as calculated by the Panel, between Sergeants and Police Officers, grade 1, is 12% and the actual percentage differential, as calculated by the Panel, between Lieutenants and Police Officers, Grade 1, is 25%.

PBA exhibit 40 is a listing of differentials of "Sergeant over PO" in 10 towns and 22 villages and of "Lieutenant over PO" in 7 towns and 13 villages. Using the PBA's numbers, the Panel computed an average and a median differential for each grouping, combining towns and villages. The average differential for "Sergeants over PO", in the 32 Towns and Villages listed is 13.7% and the median is 14%. The average differential for "Lieutenants over PO", in the 20 Towns and Villages listed is 27.25% and the median is 28. Thus, the differential for Sergeants and Lieutenants in New Castle is somewhat below both the average and the median for the surrounding area.

The Panel notes, however, that both Sergeants and Lieutenants will receive a percentage increase in their salaries in each year of the Agreement, as described below. As a result, the percentage differential between Sergeants and Police Officers, or, Lieutenants and Police

Officers, will remain constant, while the dollar differential will escalate each year. Therefore, the Panel concludes that the disparity between New Castle's differentials for Sergeants and Lieutenants and those differentials in the surrounding area is not so large as to justify granting the Association's request. Consequently, the PBA's proposal on Sergeant and Lieutenant differentials is rejected.

Concerning longevity payments, the evidence submitted shows that the longevity payments to the Police Officers are in line with longevity payments to Officers in comparable communities. PBA Exhibit 39 is a listing of Longevity Payments in the surrounding towns and villages. Based on "twenty year totals", New Castle officers rank number six (#6) among the ten (10) towns listed. Compared to the villages listed on PBA 39, only, three (3) out of twenty-two (22) have a higher "twenty year total" than New Castle. Thus, the Panel concludes, longevity rates here are not as out-of-line with other comparable jurisdictions as to justify an increase. Accordingly, the proposals dealing with Longevity Payments are denied.

As for the proposed shift differentials, virtually no evidence was submitted to the Panel on this subject. The other available data does not warrant the creation of

shift differentials at this time.

### **3. Health Insurance**

Currently the Town pays all health insurance premiums for bargaining unit members and their eligible dependents and for retired Employees and their eligible dependents. The Town sought a contribution of 15% from all Police Officers.

The Town asserted that its employees who are represented by the CSEA and its unrepresented employees pay 15% of their health insurance premium. Employer Exhibits 17, 18 & 19. Employees in the CSEA Bargaining Unit who were hired prior to March 11, 1996, do not pay any Health Insurance premium.

Furthermore, the Employer averred that Police Officers in several communities in the surrounding area make payments towards their Health Insurance premiums. Those communities are: Scarsdale, Larchmont, Mamaroneck, Bronxville, and Pelham Manor. Employer Exhibit 16.

In addition, the Town pointed out there is a nation-wide trend of ever-increasing numbers of employees contributing to the cost of their Health Insurance. Currently, according to the Employer, sixteen percent (16%) of employees contribute towards individual coverage and twenty-five percent (25%) contribute to family coverage, nationwide.

Finally the Town argued that its health insurance costs have been climbing steeply for years. Town Exhibit 9 shows the employer's premium rates, per employee, since 1995 for Alt. Family Plan. The cumulative increase in premium since 1995 is 159.77%. In 2001 the premium rate was \$630.00; in 2006 the rate was \$1,158.56, a dollar increase in rates of \$528.56.

There is no doubt the Employer's health insurance costs have increased substantially over the past several years. In addition, the Employer contributes to a Health and Welfare Benefit plan pursuant to Article XVI, Section 2 of the Collective Bargaining Agreement. PBA Exhibit 9.

In light of the Employer's escalating health costs, which have increased significantly since 2001, the Panel is convinced that some redress is justified, and further, that such redress must result in some sharing of the Health Care cost burden.

The record reveals that Police Officers in five (5) other communities in Westchester County make payments towards their health care costs, or will make such payment in the not too distant future. In Bronxville, all members of the bargaining unit will contribute fifteen percent (15%) towards their health insurance premiums, effective June 1, 2010. Moreover, current

employees, who retire on or after the ratification of the current agreement (6/1/2005 to 5/31/2008) will pay 25% of the retiree health insurance premium. Town Exhibit 20.

In the other four communities, only some employees, generally those who were hired after a specified date, make contributions to their health insurance premiums. Thus, while the specifics of who contributes and how much they pay varies from community to community, the evidence before the Panel makes clear that Police Officers in Westchester are now sharing in the costs of health insurance and will continue to share in those costs in greater numbers in the future.

The PBA argued that Bronxville is an anomaly, as it is the only Police Department in the surrounding area where all employees will be required to pay part of the premium. In the PBA's view, no employee should be required to contribute, and, certainly not current employees.

The Panel endeavored to strike a balance between the Employer's desire to reduce its Health Care cost increases, and the PBA's desire to prevent erosion of its members' terms and conditions of employment. The Panel concludes that it can meet the Employer's need for relief on Health Care costs without requiring current employees to share those costs. This can be accomplished by

requiring newly hired Police Officers to pay a reasonable percentage of health insurance premiums. In our view that percentage should be twelve (12) per cent. However, since new Officers begin their employment at the bottom of the pay scale, they are the ones who can least afford to pay. Therefore, while new hires will be required to contribute, such contribution will be deferred until the new employee advances to Police Officer Grade 1.

Accordingly, a new section 1C shall be added to Article XVI, "Health and Welfare" of the collective Bargaining Agreement as follows:

All employees hired on or after June 1, 2007 shall contribute twelve percent (12%) of the premium costs or the premium equivalent of the Municipal Employees Benefit Consortium (MEBCO Alternative Plan) administered by POMCO. Said contributions will commence in the month when the individual reaches the Police Officer Grade 1, pay grade, and will continue throughout the employee's employment and continue into the employee's retirement.

#### **4. Training Days/Plug-in days**

Article IV, Section 3, specifies that Police Officers will be assigned three additional eight (8) hour training days per year and three additional eight hour and twenty-five minute (8:25) plug-in days per year. The Employer asked for an increase in training and plug-in days, by 6 days per year, for a total of 12 per year.

The Town contended that the current 6 plug-in and training days are not enough days to provide for all its

needs. For example, the Employer argued that it needed two (2) or three (3) days just for firearms training. It also pointed out that a Police Officer actually works 190 days per year after accounting for vacation days, personal days and, an average of six (6) sick days taken per year. Town Exhibit 31. It further argued that while Police Officers in New Castle work a longer work day, they have the shortest work schedule of all the towns in the surrounding area.

Town Exhibit 3 contains the number of work days per year in ten (10) communities in the surrounding area, one of which is New Castle. All the other nine (9) have more scheduled work days than New Castle. New Castle does, however, have a longer work day; specifically 8 hours and 25 minutes or 8.42 hours.<sup>3</sup> Eight (8) of the other nine (9) Police Departments have eight (8) hour days and, one, Pelham Manor, has 7.64 hour work day.

Not only do Police Officers in New Castle have a work schedule with the fewest scheduled days per year, they also work fewer hours per year, even though their work day is longer than the other nine (9) communities in the comparison. Town Exhibit 4, shows that of the ten

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<sup>3</sup> Article IV of the CBA, PBA Exhibit 9, specifies that New Castle Police Officers will work an 8 hour and 25 minute work day. Twenty-five (25) minutes is forty-two hundredths (0.42) of an hour.

(10) communities listed in Exhibit 3, New Castle has both the fewest scheduled hours per year and the fewest scheduled days per year.

New Castle Officers are scheduled for 1,894.5 hours per year. Scarsdale Officers, who have the most scheduled hours per year, are designated for 2,037.6 hours. The average is 1,942.08 hours and the median, as computed by the Panel, is 1,934 hours. Thus, even though the New Castle Police Officers work a longer work day, their number of scheduled days per year is low enough that it offsets their longer day, in terms total of hours scheduled. Consequently, we believe the Employer's request for some additional training days and plug-in days is warranted.

With respect to training days, we shall increase the number of training days in calendar year 2007 by one-half to three and one-half (3.5) days. This change will give the Town the opportunity to provide more training to Police Officers. However, since additional training on a given topic is not necessarily required each year except for firearms retraining, in 2008 and subsequent years the number of training days will revert to three (3) days per calendar year.

As to plug-in days, the data above reveals that Police Officers work fewer hours and a shorter work year

than most of their counterparts in comparable communities. As such, the Panel finds some relief to the Town is warranted. In our view, a reasonable result is to award an increase in the number of plug-in days for all employees to four(4) per years effective January 1, 2008.

Accordingly, the Panel concludes:

The number of eight (8) hour training days for the calendar year 2007 shall be increased to three and one-half (3.5) days per employee per year. Effective January 1, 2008, and each year thereafter, the number of eight (8) hour training days shall be three (3) days per employee per year.

Effective January 1, 2008, and each year thereafter, employees shall be assigned four (4)eight hour and twenty-five minute (8:25) plug-in days per employee per year.

##### **5. Paid Leave**

The Association submitted nine (9) proposals dealing with various types of paid leaves<sup>4</sup>. Generally these proposals would increase the number of paid leave days per year for Police Officers.

In Section 4 above, we granted the Employer's request for more work days per year. Granting the Association's proposals concerning paid leave would, in effect, reduce the number of working days per year and thus obviate our award concerning training days and plug-

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<sup>4</sup> For the details of these proposals refer to page 5 of this opinion.

in days. As we stated in section 4 above, not only do the Police Officers in New Castle have a work schedule with the fewest days per year, they also work fewer hours per year, even though their work day is longer than the other nine communities in the comparison.

Consequently, we conclude there is no basis for granting any of the Association's proposals for changes in paid leaves. Accordingly, all of PBA's proposals dealing with paid leave are denied.

#### **6. Compensatory Time Carry Over - Overtime Accrual**

The Employer sought to require Employees to cash in or use "comp time" by the end of the year and to cash in overtime by year end. The Panel finds no basis to change this practice. Consequently we reject the Town's proposal in this regard.

#### **7. Death Benefits**

The PBA contended that all employees should be eligible for the Death Benefits detailed in Article XXIII, Section 15, while they are employed by the Town. Currently the benefits are only paid if the employee dies as a result of:

injuries incurred while in the performance of his or her duties as a member of the New Castle Police Department, or incurred while acting as a police officer whether on duty or off duty...

The available data does not support such a change.

Consequently, this proposal is rejected.

#### **8. Premium Pay for working on Holidays**

Concerning pay for working on holidays, the Employer proposed a reduction in the number of days for which triple time is paid. According to the Town, Officers in New Castle have thirteen (13) Holidays which require triple time pay for working. The Town would reduce that to five days and would pay all other holidays at double time. The Town averred that the none of other Towns in the area pay triple time for more than 5 holidays. Town Exhibit 7.

The Employer did, however, acknowledge that on average, Police Officers work only seven (7) holidays.

On the whole, the Panel does not find the disparity between the number of days worked at triple time and the number of days in other communities to be so great as to warrant the change requested. Accordingly, the proposal is denied.

#### **9. EMT Stipend**

The Association asked for an EMT stipend and an EMT-D stipend. The relevant data does not support such an increase, especially in light of the relatively high wages Police Officers enjoy. Therefore this proposal is not awarded.

**10. Benefits Under Section 207(c) of General Municipal Law**

The Town sought a reduction in accruals that Officers enjoy to those levels mandated by Section 207(c). Evidence produced at the hearing was, in the Panel's opinion, inconclusive concerning the specific differences in benefits to the employees of the various communities listed in Town Exhibit 25. Consequently, the Panel finds no basis for granting this change. Accordingly the proposal is not awarded.

**11. Past Practice**

The PBA maintained that a Past Practice clause should be added to the Agreement. Little evidence was adduced at the hearing to demonstrate the need for such an addition. Thus, this proposal is rejected.

**12. Delete Article XXIII, Sections 1, 5, 12, 13 and 14**

The Employer contended that Sections 1, 5, 12, 13 and 14 of Article XXIII of the Agreement are non-mandatory subjects of negotiations and thus should be removed from the Collective Bargaining Agreement. The Panel concludes that a Compulsory Interest Arbitration proceeding, pursuant to CSL, Section 209.4, is not the appropriate forum for determining whether or not a provision of an existing Collective Bargaining Agreement is a mandatory subject of negotiations. As such, the

Panel cannot grant this proposal.

**13. Health and Welfare Benefits**

The PBA insisted there was a need to increase the Employer's contribution to the Health and Welfare Fund to three percent (3%) per year from the current one and four-tenths (1.4%) per year. Insufficient evidence was adduced at the hearing to justify such an increase and it is not awarded.

**14. Delete Article VI, Section 1B**

The Town asked for the deletion of Article VI, Section 1B from the Agreement. This provision requires the employer to pay premium pay to employees who work a sixth day in a six day work period. Little evidence was produced at the hearing concerning the need for this proposal. Accordingly, the proposal is denied.

**15. Cost of Books and Tuition Reimbursement**

Concerning the Educational Program, the PBA contended that several changes should be made in procedures and reimbursements for tuition and book costs. These requested changes would remove the restriction that section 1 only apply to employees hired before December 31, 1976; would remove the restriction that the employer is only liable for tuition and book costs for courses that are contained in a curricular for a degree in Police Science; and would require the employer to pay the cost

of tuition and books incurred by employees for courses that are related to the performance of daily police department functions.

The Panel concluded that no evidence was adduced at the hearing to justify the requested change. Accordingly, the request is denied.

#### **16. Other Proposals**

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

In sum, the Panel finds that the terms of our Award fairly balance the needs of Police Officers against the obligations of the Town and the interests of the citizenry. Accordingly, they awarded as indicated herein.

**AWARD**

**1 Term of Award**

The term of this Award shall be from January 1, 2005 through December 31, 2009.

**2. Salaries**

Salaries shall be increased as follows:

|                           |       |
|---------------------------|-------|
| Effective January 1, 2005 | 3.90% |
| Effective January 1, 2006 | 3.90% |
| Effective January 1, 2007 | 3.95% |
| Effective January 1, 2008 | 3.95% |
| Effective January 1, 2009 | 3.95% |

**3. Health Insurance**

A new section 1C shall be added to Article XVI, as follows:

All bargaining unit members hired on or after June 1, 2007 shall contribute twelve percent(12%) of the premium costs or the premium equivalent of the Municipal Employees Benefit Consortium (MEBCO Alternative Plan)administered by POMCO. Said contributions will commence in the month when the individual reaches the Police Officer Grade 1, pay grade, and will continue throughout the employee's employment and continue into the employee's retirement.

**4. Training Days and Plug-in days**

Article IV, Section 3 shall be amended as follows:

The number of eight (8) hour training days for the calendar year 2007 shall be increased to three and one-half (3.5) days per employee per year, effective with the issuance of this Award. Effective January 1, 2008, and each

year thereafter, the number of eight (8) hour training days shall be three (3) days per employee per year.

Effective January 1, 2008, and each year thereafter, employees shall be assigned four (4) eight hour and twenty-five minute (8:25) plug-in days per employee per year.

**5. Other Proposals**

All other proposals of the parties, whether or not addressed

in this Opinion are rejected.

DATED: August 23, 2007

Howard C. Edelman  
HOWARD C. EDELMAN ESQ.  
NEUTRAL PANEL MEMBER AND  
CHAIRMAN

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

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

DATED: August 23, 2007

Howard C. Edelman  
HOWARD C. EDELMAN ESQ.,  
ARBITRATOR

Concur

Dissent

DATED: 8/15/07



CRAIG R. BENSON, ESQ.  
PUBLIC EMPLOYER PANEL MEMBER  
Concur

STATE OF NEW YORK )  
COUNTY OF )

S. :  
Dissent

I, Craig R. Benson, do hereby affirm upon my oath as Public Employer Panel Member, that I am the individual described in and who executed this instrument, which is my Award.

CRAIG R. BENSON, ESQ.  
PUBLIC EMPLOYER PANEL MEMBER

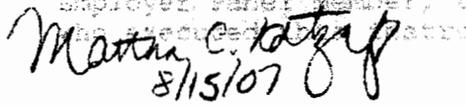
DATED:



CRAIG R. BENSON, ESQ.  
PUBLIC EMPLOYER PANEL MEMBER

STATE OF NEW YORK )  
COUNTY OF )

I, Craig R. Benson, do hereby affirm upon my oath as Public Employer Panel Member, that I am the individual described in and who executed this instrument, which is my Award.

  
8/15/07  
MARTHA C. KATZEFF  
Notary Public, State of New York  
NOTARY No. 5002453  
Qualified in Bronx County  
Commission Expires 12/30/2010



CRAIG R. BENSON, ESQ.  
PUBLIC EMPLOYER PANEL MEMBER

X  
Concur

X ON ENTIRE ARTICLE 3  
Dissent OF AWARD - HEALTH INSURANCE

DATED: Aug. 2, 2007

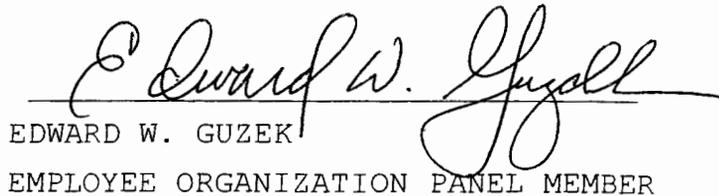


EDWARD W. GUZEK  
EMPLOYEE ORGANIZATION PANEL MEMBER

STATE OF NEW YORK     )  
                                  ) S. :  
COUNTY OF *ERIE*     )

I, Edward W. Guzek, do hereby affirm upon my oath as Employee Organization Panel Member, that I am the individual described in and who executed this instrument, which is my Award.

DATED: Aug. 2, 2007

  
EDWARD W. GUZEK  
EMPLOYEE ORGANIZATION PANEL MEMBER