

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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

**INCORPORATED VILLAGE OF EAST
HAMPTON,**

Public Employer,

and

**PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE VILLAGE OF EAST HAMPTON,**

Employee Representative,

Re: Impasse on Contract Expiring July 31, 2005.
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Before the Public Arbitration Panel:

**JOHN E. SANDS, Public Member and Chairperson
VINCENT TOOMEY, Public Employer Panel Member
LLOYD M. BERKO, Employee Organization Panel Member**

OPINION OF THE CHAIR

I. Background.

On February 6, 2006, 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 arbitration panel in this case to conduct hearings and make a just and reasonable determination pursuant to New

PERB Case Nos.
IA2005-040
M2005-190

JS Case No. 3509

**OPINION
AND
AWARD**

PUBLIC EMPLOYMENT RELATIONS BOARD
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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 Lloyd M. Berko as PBA-appointed arbitrator.

Pursuant to our statutory authority, we conducted hearings on September 27, 2006 in Islandia, NY and on October 11, 2006 in the Village of East Hampton, NY. 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.

Those hearings produced a record that includes the testimony of witnesses, ten Joint Exhibits, 49 PBA Exhibits, and 39 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) requires to 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 East Hampton. The Employee Representative is the Patrolmen's Benevolent Association of the Village of East Hampton. The bargaining unit comprises all police civil service employees of the Village of East Hampton Police Department excluding the Chief of Police. The bargaining unit currently comprises 24 employees. The parties' final proposals on unsettled issues that are subject to determination in this proceeding appear in Joint Exhibits 2 and 3:

II. Parties' Contract Proposals.

A. PBA Contract Proposals.

1. 207-c: ~~Binding arbitration or medical examination to resolve disputed cases of eligibility for, or discontinuation of, benefits.~~

In disputed cases where the Village believes an officer has sufficiently recovered from an injury to perform either light-duty or full-duty police work the officer may elect to have the dispute resolved, in lieu of an evidentiary hearing, by a medical doctor mutually agreed upon by both parties. The decision of the medical doctor shall be final and binding on the Village, the PBA and the officer.

The officer may elect to have all other controversies regarding the discontinuation of § 207-c benefits be decided at a hearing conducted by a neutral arbitrator selected pursuant to Section 28 III(D) of the Collective Bargaining Agreement. The neutral arbitrator may alter the employer's determination if he or she finds the determination was not based on substantial evidence or was arbitrary and capricious. The decision of the arbitrator shall be final and binding on the Village, the PBA and the officer.

2. Chart:

- a) Remove payback days.
- b) Members of the same rank shall be permitted to mutually exchange tours of duty provided both members are qualified to perform the duties of the other during the mutually exchanged tours.
- c) Delete Section 14, Paragraphs 1, 2, 7, 8, 9 and 10. The paragraph beginning with "The following restrictions ..." is paragraph #8, and the paragraphs lettered "a" and "b" are paragraphs #9 and #10, respectively.

3. Wages:

- a) Increase wages by 6.5% in each year of a two ~~three~~ year agreement.
- b) Increase base pay for Sergeant \$5,000.00 prior to general wage increases.

4. Night Diff.:

Increase differential to seven (7%) percent of base pay of a top step P.O.

5. Medical:

- a) Continue medical, dental and optical benefits for spouse and dependent children of active members who a deceased or active members who retire or retired member.
- b) Improve ~~Implement improved~~ dental plan:
 - i) Increase the reimbursement schedule by 100%; and
 - ii) Increase contribution to \$1,400 per member.
- c) Active members who retire ~~Retirees~~ shall receive same dental/optical benefits as active members.

6. Longevity:

Remove maximum accumulation calculated on twenty (20) years of service.

7. Sick:

Unused sick leave shall be paid for at the rate of one (1) day to be paid for every one (1) day accumulated for the first two hundred (200) days, then one (1) day to be paid for every two (2) days accumulated for the remainder.

8. Vacation:

Accumulate twenty eight (28) days during twelfth (12) year and thereafter.

9. Holiday:

Allow accrual or pay for more than eleven (11) holidays per year.

~~**10. Pension:**~~ Adopt §443(f) of the NYS Retirement and Social Security Law.

11. PBA:

- a) Increase PBA days to 36 days per year.
- b) Correct Section 28(IV)(C), should refer to Article 28, not Article 27.
- c) Amend Section 28(VI) to reflect that the PBA or its designated counsel shall be the exclusive representatives of the PBA and its members at all arbitration proceedings.

[Joint Exhibit 2.]

B. Village of East Hampton Proposal.

Proposal # 1. No night differential for officers in the academy.

~~**Proposal #2:** Schedule of Tours change for detectives to work either 5 days on 2 days off or a 4:00 p.m. to 12:00 a.m. tour at the Chief's discretion.~~

[Joint Exhibit 3.]

III. Parties' Positions:

A. The Statutory Criteria:

1. Comparability:

Focusing on the statutory criterion of comparability, the Village maintains that, considering such factors as “geographic size and proximity of the communities, the similarities among the populations of these communities, which increase significantly during the summer months, as well as the historical comparison among East End communities” (Village Brief at page 4-5), the “universe” for comparability purposes is all municipalities on Long Island’s East End, i.e., all towns and villages from Riverhead east. Although PBA believes that the “comparable communities” are all Suffolk County municipalities with police departments, including the County itself, it has agreed to focus on the wages and terms and conditions of employment in other East End municipalities as the “comparable communities” because wages and terms and conditions of employment are comparable throughout the County.

Concerning the statutory requirement that PBA members’ wages, hours and other conditions of employment be compared with other employees generally in the public and private sectors in comparable communities, PBA maintains that only law enforcement employees be considered because no other public or private

employees perform similar work. The Village argues that, in making such comparisons, the most comparable of all communities is the Village itself and that the Panel should accordingly place particular emphasis on other Village employees' wages, hours and conditions of employment.

2. Public Interest and Ability to Pay:

With respect to the second statutory criterion, PBA notes that the Village is "one of the wealthiest villages on Long Island, if not the nation" and that having a collective bargaining agreement in place for its police officers that is comparable to the other East End communities "will foster high morale among PBA members, and will in turn maintain the extraordinarily high quality of service residents of the Village of East Hampton have come to expect." (PBA Brief at page 7)

Concerning the Village's ability to pay, PBA relies on the testimony of Kevin Decker, an expert in municipal budget analysis. According to PBA, Decker's analysis of the Village's financial condition confirms that the Village is able to pay for its proposals. (PBA Exhibit 13.) Decker testified that the Village has already included money in its budgets to pay for many of PBA's proposals, including increases in wages and the night differential, and that the Village's excellent fiscal condition, as reflected in its Moody's "Aa3" rating for Village bonds, allows the Village to pay for all of them. Decker further testified that a majority of the general

operating fund from which employees are compensated comes from real property taxes and that, over the last ten years, Village revenues have increased while its real estate tax rates have actually decreased.

Moreover, Decker notes that the Village operates well below its constitutional tax limit, using less than 3% of its constitutional debt limit, among the lowest ratios for East End municipalities. Decker also maintains that, at the end of fiscal year 2005 , the Village had a \$2.87 million fund balance and had only used 20.82% of that balance for its expenditures. PBA also argues that Village Administrator and Treasurer Lawrence Cantwell “offered no testimony or evidence to oppose Decker’s conclusion that the Village has the ability to pay.” (PBA Brief, p. 9.) Given these factors, PBA claims that the Village’s ability to pay for its proposals is not an issue in this proceeding.

The Village argues that it is not required to prove inability to pay. “Rather, the Panel must determine, on the basis of the evidence, what is the Village’s ability to pay its employees, consistent with the interests and welfare of the public they serve.” (Village Brief at page 5.) Because the majority of the General Fund used to compensate police officers is derived from real property taxes, unreasonable increases in police officer compensation and benefits would not be in the public interest; and Village taxpayer’s would bear most of these increases.

The Village maintains that the fact that a margin remains on the constitutional debt and tax limits does not mean that increased debt or taxes it are in the public interest. Pursuant to Exhibits 5 and 7-9 of the Decker Report (PBA Exhibit 13), the Village's tax base and levy and tax rates in the Village are within the range of other communities in the East End. Further, the fact that real estate values have increased significantly has no correlation to homeowners' incomes or ability to pay increased real estate taxes. The median household income in the Village as of 2000 was \$56,607 (the middle range in the East End), not the stereotype of its wealthy summer residents.

The Village acknowledges it is well managed, having earned an Aa3 rating by Moody's. To keep this rating, the Village maintains a balance in the range of 20% of total appropriations. Failure to maintain adequate fund balances would adversely impact the Village's bond rating. Further, the Village notes that despite this fund balance, the Village had a deficit, where expenditures exceeded revenues, in two of the last five years, including 2005. (PBA Exhibit 13.) Health insurance and retirement costs have increased substantially in the last five years, far in excess of inflation. Thus, while the Village concedes its ability to pay reasonable increases, that ability is not unlimited.

3. Comparison of the Peculiarities in Regard to Other Trades or Professions:

As to the third statutory criterion, PBA notes that no other profession or trade is subject to the hazards of police work. Even “routine” traffic stops can present life-threatening situations for police officers. According to PBA, among East End communities the Village has the highest number of reported larcenies, property crimes and burglaries. These hazards, as well as the education, training and physical and mental requirements for police officers, make it inappropriate to compare bargaining unit members’ work to any other trade or profession. PBA accordingly asserts that no other trade or profession does comparable work. The Village addresses this criterion in connection with particular PBA proposals, and its arguments will be discussed below.

4. Terms of Collective Agreements Previously Negotiated by the Parties:

Considering the fourth criterion, PBA notes that the parties have “always negotiated reasonable increases in the terms and conditions of employment” (Brief at page 11) and that its proposals continue that pattern. Once again, the Village addresses this criterion in connection with PBA’s individual proposals, and its arguments will be discussed below.

B. PBA PROPOSALS:

In addition to the above general arguments regarding the statutory criteria, these are the parties' positions on PBA's individual proposals:

PBA Proposal No. 1 - NY General Municipal Law Section 207-c:

PBA's position:

This proposal seeks to create contractual processes to determine whether an officer should continue to receive benefits pursuant to NY General Municipal Law Section 207-c. The first part of PBA's proposal provides an alternative to an evidentiary hearing under the law where an employee disagrees with the Village's decision that the employee has recovered sufficiently to return to either full or light duty work. PBA proposes that the issue be determined by a medical doctor selected by the parties' mutual agreement and that the doctor's decision be final and binding on all concerned. If the employee does not elect to proceed in this manner, he or she would still be entitled to an evidentiary hearing under NY General Municipal Law Section 207-c, which leaves the decision to the Village Board or its appointee subject to judicial review under CPLR Article 78.

PBA's proposal also includes an alternative dispute resolution mechanism for disputes arising from a Village decision to discontinue benefits under NY General Municipal Law Section 207-c. Employees would have the option to

appeal the Village's decision to an impartial arbitrator, whose decision would be final and binding and not subject to Article 78 review.

PBA argues that this proposal is reasonable and just. It provides for review of Village decisions by impartial third parties –a medical doctor and an arbitrator– rather than by Village hearing officers or other Village designees. Its proposal would also save costs by eliminating judicial review. Finally, PBA notes that its proposal follows a pattern established in four other East End municipalities –Southold, Town of Southampton, Village of Southampton and Riverhead– that have agreed to alternative contractual arrangements to address Section 207-c issues.

Village's position:

The Village opposes this proposal, arguing that no evidence supports the need for a change in the policy and that the mere fact that other municipalities have chosen this path is no reason to do so here. The Village notes that the decision to bring an employee back to work is made by an Independent Medical Examiner, not by the Village. Further, interpretation of GML Section 207-c depends on judicial decisions. Eliminating judicial review could result in outcomes that are inconsistent with the parties' statutory rights as interpreted by State courts.

PBA Proposal No. 2 - Schedule of Tours:

a. Remove Payback Days:

PBA's position:

PBA seeks to remove all three “payback days” from the work chart. This proposal necessarily affects the total number of days bargaining unit members work each year. PBA argues that reducing the work chart to 239 days per officer per year will not impact safety because the Department has sufficient manpower to maintain the high level of police protection currently afforded its residents and visitors without these three extra days. In support of that contention PBA cites Chief Larsen’s testimony that the Village is now adequately protected with 24 police officers and would continue to be so with as few as 23. One less officer means 242 fewer officer-work-days per year. By contrast, removing the three payback days would reduce total annual appearances by only 72 for the entire Department.

To further support its position, PBA compares the Village and the Town of East Hampton. The Village has 15 officers per 1000 residents in a 16-square-mile area. For its part, the Town has only 2.8 officers per 1000 residents for an area of 64 square miles. Despite these differences, the Town does not use payback days, and, as noted below, its police officers work a 239-day chart, precisely what PBA seeks here.

Reducing the chart to 239 days per year would bring Village police officers in line with the other East End municipalities. Including their three payback days, bargaining unit members now work more days than any other East End

department. (PBA Exhibit 28.) Three other East End municipalities have payback days, but their police work fewer total days per year than Village police officers do. Shelter Island police work a 228-day chart; Southampton Town police work 232 days, and West Hampton Beach, 235 days. (PBA Exhibit 28.) The other East End towns do not have payback days and work fewer chart days than the 242 that Village police officers work:

1. Quogue 237 days
2. Riverhead 238 days
3. Sag Harbor 238 days
4. Town of East Hampton 239 days
5. Southampton Village 240 days

(PBA Exhibit 28.)

PBA also argues that removal of payback days will not increase overtime costs for the Village. Payback days are used to supplement manpower during crowded Summer months, not to meet minimum staffing requirements. The Village incurs overtime costs only when necessary to meet minimum staffing requirements. Reducing payback days will therefore not require the Village to schedule overtime.

Village's position:

The Village opposes removal of payback days, which it contends are essential between May and September to supplement regular shifts on weekends and at special events when the Village is crowded and the number of special events

spikes. Payback days enable the Chief to schedule additional tours during the busiest times and to target an employee with specific training when needed. “[D]ue to the seasonal nature of police work in the Village, eliminating payback days would place a dangerously unpredictable, yet foreseeable, burden on the public safety.” (Village Brief at page 16.)

The Village also disagrees that removal of payback days will not increase overtime. To the contrary, the Village argues that overtime costs would increase, noting that overtime costs have increased from 4.51% of police officer salaries for fiscal year 2001 to 9.59% for fiscal year 2006. (Village Exhibit 15.) These increases, while not the result of payback days, demonstrate an overall upward trend for overtime. The Village notes that increased overtime resulting from removing payback days is “indeterminate” and that, absent a clear understanding of the cost impact, this proposal should be denied.

Considering the parties’ prior collective bargaining agreements, the Village argues that payback days were initially negotiated in the parties’ 1989-1992 agreement in exchange for extraordinary wage increases and changes to the longevity system. These changes resulted in Village police officers’ being among the highest paid officers in the East End. The Village maintains that, to this day, over the course of an officer’s career, Village police officers (a) are among the highest paid on the

East End on a tour-for-tour basis and (b) receive greater longevity pay than any other East End municipality. (Village Exhibits 22, 23, 32-37.) To remove payback days would deny the Village the benefit of that bargain.

The Village also contends that the trend among the East End municipalities is to increase productivity and that none has reduced work days, including payback days. In fact, four towns –Riverhead, Southampton Town, Southold and Westhampton Beach– have added work days in new officers’ early years of employment, increasing total tours worked over a 20-year career. Further, while the Village has only three payback days, police officers in Sag Harbor work 18 per year. The Village maintains that “[d]ecreased productivity would impair the delivery of police services and is contrary to the public interest.” (Village Brief, p. 20.)

b. Mutual Exchanges of Tours of Duty:

PBA’s position:

PBA’s proposal would allow police officers of the same rank and qualifications to exchange tours of duty on a mutual basis. PBA President Erickson testified that a mutual exchange occurs when “officers exchange shifts without incurring overtime to the Village.” (PBA Brief , p. 21.) Allowing mutual exchanges therefore results in no increased cost to the Village. Indeed, PBA argues that, by

allowing mutual exchanges, the Village may actually save overtime costs. If an employee must be absent on personal or other leave, to meet minimum staffing requirements, the Village must replace that officer with another on overtime. If a mutual exchange were in place, the absent officer's tour would be covered without incurring overtime. Finally, PBA argues that all other East End municipalities allow mutual exchanges. (PBA Exhibit 30.)

Village's position:

The Village opposes this proposal. Although not provided in the current collective bargaining agreement, the Chief has allowed a mutual exchange with permission only if it results in the police officer's using paid leave time. He prohibits swaps that do not include a day off. Chief Larsen testified to the benefit of having regular squads, with the same Sergeant supervising the same police officers. In addition, mutual exchanges do not permit the Department to take advantage of specialization and training differences among officers, factors that guide squad assignments. Chief Larsen also testified that accounting for swaps would create an administrative burden and that, by allowing exchanges without taking time off, employees could "hoard" personal days for use in the summer, when Village manpower needs peak.

C. Alternate Work Charts:

PBA's position:

PBA seeks to delete numerous paragraphs of Section 14 that provide tour schedules that the Village has not used for many years. According to PBA President Erickson, in his 16 years with the Department, officers have not been assigned to the tour schedules set forth in paragraphs 1 and 2. This proposal also seeks to delete paragraph 1, which currently gives the Chief unilateral authority to change tour schedules. No other East End Chief enjoys that privilege. (PBA Exhibit 31.) In addition, PBA seeks to delete paragraphs 7 through 10, which provide the Chief with discretion to assign a 7:00 PM to 3:00 AM tour on 48 hours' notice. This, too, does not appear in any other East End municipality's contract. (PBA Exhibit 31.) Deleting this tour would have no economic impact, for it is rarely used and has never been used to meet minimum staffing levels.

Village's position:

The Village argues that these provisions provide management with necessary operational flexibility. The Chief has used the 7:00 PM to 3:00 AM tour to cover the busiest period of the evening when insufficient officers are available to staff other tours. In addition, while current staffing levels have eliminated the need to use the other tours, they may be necessary in the future in the event of decreased manpower or continued increase in the Department's activity level. The record is

silent that keeping these long-dormant provisions in the contract has in any way been problematic or burdensome.

PBA Proposal No. 3 - Wages:

a. Wage Increase of 6.5% in each year of a two-year Award.

PBA's position:

PBA proposes a 6.5% wage increase in each year of a two-year Award. PBA argues that this is a fair increase and that the Decker report establishes that the Village has the ability to pay it. PBA also claims that the Village has already budgeted a 4% increase in each of the two years, with contingency accounts to fund the cost of labor settlements of \$74,154 for fiscal year 2006 and \$75,000 for fiscal year 2007. (PBA Exhibit 13b.) The cost of the additional 2.5% wage increase that PBA seeks in each year is \$228,850. If the Village were to use its contingency accounts for the proposed wage increase, it would only need an additional \$79,696 for both years of the Award. PBA maintains that the Village's consistent underestimates of mortgage tax revenues in each of the last three years would more than cover this additional cost.

PBA also argues that, comparing the 2004 pay rates for top-step police officers on the East End, the Village ranked third among the top five bargaining units:

Quogue Village: \$84,161

Southampton Village:	\$84,051
East Hampton Village:	\$83,797
West Hampton Village:	\$83,608
Southampton Town:	\$83,574

(PBA Exhibit 32.) These numbers do not, however, take into account the total number of days worked. PBA argues that Village police officers, with three payback days for which they receive no additional compensation, work more days than the other top five bargaining units. As a result, when considering the total number of days worked by bargaining unit members and per diem compensation, they are in fact among the lowest paid police units on the East End.

Village's position:

The Village opposes a 6.5% increase, arguing that the increase should not exceed 4% per year. A 4% increase is consistent with wage increases in other East End municipalities, and, further, a 4% increase exceeds Consumer Price Index increases in the region. In prior negotiations, PBA obtained increases that were higher than those in other areas plus increased Village contributions towards retiree health care. Given these facts, any more than 4% is not justified at this time.

The Village points out that, in 2004, its police officers moved from fourth to third in the rankings for top grade police officers' salary, just \$400 behind the highest paid department. With a 4% increase they would remain in that position. Nothing in the

statutory criteria requires that Village police officers rank first in the East End, particularly without offsetting cost savings in another area. The Village also argues that, comparing wages, it is inappropriate to consider only the top grade police officer because Village police officers progress to the highest grade faster. As a result, over the course of a 20- or 25-year career, Village police officers are the most highly paid officers in the East End. (Village Exhibits 22 and 23.)

The Village argues that its police officers are well compensated for the services they provide and will continue to be so with a 4% increase. In this regard, the Village notes that its police officers fortunately do not have the volume of serious crime that exists in a metropolitan or commercial area, and they also receive assistance from Town and County police departments when handling serious crimes. In 2005, only 118 reportable crimes occurred in the Village, fewer than five per officer.

b. Sergeants' Differential:

PBA's position:

PBA seeks a \$5,000 increase in the base pay for Sergeants, prior to adding general wage increases. According to PBA, Village Sergeants are the sixth-lowest-paid Sergeants in the East End. (PBA Exhibit 34.) The proposed increase would address this issue, raising their ranking among East End municipalities while also compensating Sergeants for their additional duties and responsibilities as first-line supervisors. In

addition, PBA argues that, by this increase, Sergeants' wages compared to a top-step police officer would increase, thereby raising Sergeants' status. In 2004, Village Sergeants made only \$8,411 more than a top-step police officer while Sergeants from West Hampton Beach Village made \$14,058 more than top police officers there. (PBA Exhibit 35.)

Village's position:

The Village argues that its Sergeants have a lighter supervisory work load with only one Sergeant for every two police officers compared to one Sergeant for every six police officers in the Town of East Hampton. The Village also maintains that the PBA's own Exhibit 34 shows that, in 2004, Village Sergeants earned \$92,208 per year in base pay, "which is approximately the same as the East End average of \$92,470." (Village Brief at page 28.) The Village accordingly opposes any increase for Sergeants above the general wage increase.

PBA Proposal No. 4 - Night Differential:

PBA's position:

PBA seeks to increase the night differential to seven percent (7%) of top-step police officers' base pay, noting that all East End municipalities have increased the night differential. Night differential is paid in lieu of "on-call" pay to all Village police officers regardless of what tour of duty they work. In other municipalities, superior

officers and detectives receive “on-call” pay for wearing a pager and answering calls from police officers at all hours of the day. In 2004, the night differential paid to bargaining unit members was \$4,050 (Joint Exhibit 1 at 4-5), placing the Village seventh of the ten East End Departments. (PBA Exhibit 36.)

Pointing to changes in East Hampton Town and Southampton Village, PBA argues that the trend in other East End municipalities is to pay night differential as a percentage of base pay rather than as a defined dollar amount. In both municipalities, police officers receive a three-tour night differential rate of 5.5% of top-step police officer base pay. (PBA Exhibit 26.) PBA accordingly seeks a percentage-of-base-pay increase in the night differential, even if the percentage amount is not 7%. In 2004, the night differential as a percentage of base pay amounted to 4.83%. Awarding night differential of at least 5.5% of top-step base pay, as was done in East Hampton Town and Southampton Village, would provide Village police officers with an increase comparable with their counterparts in these municipalities.

PBA also argues that the Village budgeted a night differential increase of \$50, or \$4,100 per year, for fiscal year 2006, and an increase of \$400 for fiscal year 2007, or \$4,500 per year, for a total budget of \$215,000 for two years of night differential payments. PBA’s proposal of 7% of top-step officer base pay (assuming a

6.5% general wage increase) would cost the Village \$107,500 over the budget, an amount that PBA maintains the Village is financially able to pay.

Village's position:

The Village opposes this proposal noting that a percentage-based night differential is used in only two of the ten East End municipalities, and in those communities, the percentage is 5.5%, not 7%. Moreover, the Village notes that, unlike the Village, police officers in those municipalities do not all receive night differential pay. They must actually work a certain number of night tours to receive that benefit. Indeed, only one other East End municipality, Shelter Island with eight police officers, pays night differential to all police officers regardless of the tour worked. All other municipalities pay night differential only to employees who actually work nights.

The Village recognizes that some increase in night differential is warranted. Considering increases in prior negotiations between these parties and the night differential paid in other East End communities during the Award period, the Village concedes an increase of \$100 per year would be reasonable.

PBA Proposal No. 5 - Continued medical, dental and optical benefits for dependents of active members who decease or retire.

PBA's position:

At the present time, the Village provides continued medical, but not dental or optical, benefits for an active member who retires and his or her dependents. For active members who die in the line of duty, the Village provides medical, but not dental or optical, benefits to the officer's spouse and dependent children for a period equal to the number of years that the officer served on the police force. For an active member who dies other than in the line of duty, it pays the same medical benefits for a six-month period. By this proposal, PBA seeks to extend dental and optical coverage to each group of beneficiaries and to provide continuation of all benefits for the life of a spouse (unless the spouse remarries) and for dependent children of any active officer who dies, whether or not in the line of duty.

PBA argues that its proposals are "not inconsistent" with the East End pattern. Three of the nine municipalities that provide medical benefits for families of officers who die in the line of duty provide lifetime benefits for the spouse (unless he or she remarries) and for dependent children. Four of the ten East End municipalities provide continued optical and dental coverage. For active officers who die other than in the line of duty, seven of the other nine municipalities provide medical benefits for one year or more, including the Village of Sag Harbor (two years), Town of Southampton (five years) and the Village of West Hampton Beach and Town of Shelter Island (life of

spouse, absent remarriage). Three also provide for continued optical and dental benefits. (PBA Exhibit 39.)

With respect to retiree benefits, PBA argues that families of non-contract Village employees receive dental and optical care after the employee retires. (PBA Exhibit 42.) PBA's relatively small number of police officers would therefore account for a small percentage of the Village's dental and optical expenses if the same benefit were granted. PBA also notes that four of the nine other East End municipalities –Sag Harbor, Southampton Town, Southampton Village and West Hampton Village– provide dental and optical benefits to retirees. While PBA concedes the difficulty of calculating the cost of all these changes, it argues that the potential cost is minimal.

Village's position:

The Village opposes these changes. Responding to PBA's comparability arguments, the Village notes that PBA's exhibits do not reflect retiree contribution for their own and for dependent coverage in these East End municipalities: East Hampton Town (50% of any premium increase after 2003), Riverhead (50%), Sag Harbor (25% for retirees and their dependents) and Southold (50% for retirees and 65% for dependents). By contrast the Village pays 100% of the cost of full medical coverage for retirees and their dependents. Similarly, PBA's exhibits do not reflect the 25% contribution in Westhampton Beach toward health insurance for spouses or dependents

of officers who die while in active service. Moreover, dental and optical coverage for spouses of deceased or retired employees exists in only a minority of East End municipalities. (PBA Exhibit 39.)

For officers who die in the line of duty, the Village argues that it provides a better benefit for families of more senior employees than other East End communities. While the other municipalities may provide coverage for one to five years, the Village continues coverage for a period equal to the deceased officer's years of service. For a more senior officer, this could result in continued coverage for a period substantially in excess of five years.

With respect to cost, the Village argues that increases in health insurance costs have outpaced both inflation and increases in the Village's tax revenues. The Village's actual health insurance expenditures for all Village employees and covered dependents were \$1,073,743 in fiscal year 2003, \$1,198,174 in fiscal year 2004, \$1,585,910 in fiscal year 2005. Its projected insurance costs for fiscal year 2006 were \$1,357,500. (PBA Exhibit 13, Tabs C and D.) Average annual increases in the Village's health insurance costs were 9% per fiscal year from 2003 to 2006. Because health care costs are rising, the trend is toward increased cost sharing for retiree health care and other cost containment measures, none of which the Village seeks.

The Village also notes that, by August 1, 2010, it will have to comply with new financial disclosure requirements of the Government Accounting Standards Board's ("GASB's") new standard, GASB-34. That provision requires that the Village report its long term financial obligations for post-retirement health benefits rather than the current, pay-as-you-go reporting, which GASB believes fails to provide a true picture of municipalities' financial condition. The Village will accordingly have to account for its full post-retirement obligations on a present value basis, which could have a significant impact on the Village's balance sheet. For all these reasons, it is not in the public's interest, nor is it consistent with the Village's ability to pay, to increase these financial obligations by providing additional post-retirement benefits.

As to PBA's reliance on benefits provided to the Village's non-contract employees, the Village argues that these employees do not receive dental or optical coverage during retirement; nor do they receive other benefits provided to police officers if they die prior to retirement. PBA fails to consider its entire package of benefits compared to that of each of the Village's other employee groups.

b. Improve Dental Plan

PBA's position:

PBA seeks to increase the maximum annual contribution level from \$800 to \$1,400 and to increase the reimbursement schedule by 100%. PBA argues that the

dental plan is self-insured by the Village and covers all Village employees, their spouses and eligible dependents. Non-contract employees receive reimbursement for dental procedures up to a maximum of \$1,500; for PBA members, the reimbursement limit is \$800. The annual contribution has remained the same for PBA members since 1994¹ while the rate for non-contract employees has increased over time to the current \$1,500 level. Even if PBA's proposal is granted, the maximum annual payment to PBA members would still be less than that for non-contract employees. In addition, the reimbursement schedule for covered procedures has not increased since 1999; and the low reimbursement rate results in greater out-of-pocket expenses for bargaining unit members. Because the PBA bargaining unit is relatively small compared to the number of non-contract employees and because claims paid out in prior years have been low, PBA argues that the economic impact of this proposal is minimal.

Village's position:

The Village, on the other hand, maintains that the maximum annual limit for non-contract employees should not be considered and that PBA should not be allowed to "cherry pick" this one benefit without considering the overall compensation and benefits paid to non-contract employees. Comparing gross pay of PBA and non-

¹PBA notes that as of December 2005, the Village provided reimbursement of \$1,200 per year, but in January 2006, it reduced payments to the \$800 level set forth in the expired contract. (PBA Exhibits 41 and 41.)

contract employees shows that bargaining unit members “are more highly paid on average than the Village Hall employees.” (Village Brief at page 34.)

Larry Cantwell testified that, considering the claims submitted by all participants from August 1, 2005 to July 1, 2006, the current \$800 cap would have covered the average participant’s claims for dental and optical coverage. The Village contends, therefore, that no increase is needed. As to the reimbursement schedule, the Village claims that the parties agreed to increase the schedule by 50% in 2004 and that PBA has failed to show that the reasonable cost of services listed in PBA Exhibit 40 has doubled since 2004. An increase to the level PBA seeks would invite abuse by unscrupulous providers.

PBA Proposal No. 6 - Longevity:

PBA’s position:

Longevity pay currently commences after the fifth year of employment and increases \$300 annually until the employee reaches 20 years of service. Longevity pay maxes out at 20 years, \$6,000. PBA seeks to remove the cap on accrual of additional longevity pay so that bargaining unit employees would continue to accumulate an additional \$300 for each year worked until retirement.

PBA argues that continuing longevity pay beyond 20 years will provide a greater incentive to remain on the force. It maintains that the cost of this proposal

would be minimal, noting that, for fiscal year 2006, only one bargaining unit member would be eligible for continued longevity payments, receiving an additional \$1,200 for his 24 years of service. As of 2006-07, four officers will have 21 years' seniority; and one will have 25, costing the Village only an additional \$2,700 in longevity payments.

Village's position:

The Village argues that it is the only municipality in the East End to increase longevity pay for each year of service and that longevity pay in the Village accordingly increases at a faster rate during an officer's career than in other municipalities with traditional longevity benefits. This "frontloading" of longevity pay results in a Village officer's receiving more longevity pay over his or her career. At 2004 rates, a Village Officer would receive \$88,500 in longevity pay over a 25-year career, as opposed to the next highest, Quogue, at \$83,290 and nearly 30% more than the East End median of \$70,854. (Village Exhibit 33.) The Village also notes that only four East End departments have new longevity steps after 20 years of service and that only two of those have increases after 25 years. (Village Exhibit 33; PBA Exhibit 45.) The Village accordingly argues that no justification exists for additional longevity steps.

PBA Proposal No. 7 - Sick Leave:

PBA's position:

PBA seeks to increase the number of sick days that can be paid out upon retirement, arguing that only two other East End departments pay fewer unused sick days upon retirement. (PBA Exhibit 46.) Even in some East End municipalities that have reduced the number of sick days paid on retirement for new hires, police officers there receive pay for more unused sick days than bargaining unit members receive. (*Id.*) While PBA members receive pay for a maximum of 175 accumulated sick days upon retirement, seven East End municipalities pay retiring officers for 200 or more. PBA notes that, because only five officers will be eligible for retirement during fiscal year 2007, the cost will be minimal. (PBA Exhibit 13b.)

Village's position:

The Village argues that it does not have the lowest sick leave buyout on the East End. Moreover, the potential economic impact of the PBA's proposal is significant. Decker's report projects liability for the five Village officers with more than 20 years of service at 2004 rates at \$397,657, or 15% of the Village's annual budget for police salaries. Under PBA's proposal, this amount would double, to \$725,770 for the same five officers, with no cap on future accruals. (PBA Exhibit 13B.)

The Village also maintains that PBA's proposal to increase the number of sick days paid at retirement is inconsistent with the recent trend on the East End to control this liability. Southampton Town, Southold and West Hampton have reduced

the maximum accrual amounts for new hires; and Southampton Village imposed a cap on accruals for post-2006 retirees. Southampton Village and Riverhead have also implemented programs allowing employees to buy back sick days during their career, thereby reducing post-retirement liability for accrued sick leave.

Finally, the Village notes that, at 21 per year with no cap on accrual, it provides more sick days to its police officers than the other East End municipalities. The sick leave provisions are already very generous, providing a valuable benefit to Village officers that needs no improvement.

PBA Proposal No. 8- Vacation:

PBA's position:

PBA seeks to raise the number of vacation days accumulated in the 12th year and thereafter from 25 to 28. PBA argues that, while the current vacation entitlement of 25 vacation days during the 12th year of employment places its members in the top half of bargaining units in the East End in the 12th year, by the time an officer has 20 years of service, 25 days places that officer third from the bottom. Six of the ten East End bargaining units continue to accrue more vacation days as they accrue more seniority after the 12th year. (PBA Exhibit 47.) PBA contends that the cost will be minimal. It concedes, however, that no precise cost figure can be calculated because it

cannot project how many employees will use these extra days and whether overtime would be required to cover shift manning needs.

Village's position:

The Village argues that, as with longevity, Village police officers benefit from “front-loading of vacation accrual,” earning more days at earlier points of their careers. Half of the East End municipalities provide 22 days or fewer at the 12-year mark, and only Quogue provides more vacation accrual at that point. Over a 25-year career, Village police officers accrue more vacation days than in most other East End municipalities.² The Village opposes as contrary to the public interest any proposal that will reduce the number of days worked and employee productivity.

PBA Proposal No. 9 - Holiday Pay:

PBA position:

Village police officers are entitled to 13 holidays per year. They can use all 13 holidays as time off or, at their option, can receive pay for 11 of the 13 holidays, with the other two days taken as compensatory time. PBA's proposal would allow officers to be paid for all 13 holidays as all other East End departments do. (PBA Exhibit 48.)

²The Village also maintains that PBA Exhibit 47 does not reflect that East Hampton Town has reduced the number of vacation days for employees hired on or after 1992 from 28 days to 21 days. Further, in Southampton Village, the collective bargaining agreement provides that officers accrue 26 days during their 17th through 24th years of service, not 28. (PBA Exhibit 9, Article V, Sec. 3.)

Village's position:

The Village disagrees that all other East End departments allow pay for all holidays, noting that, in Sag Harbor, an employee can take all of his/her holidays in lieu of time off only by committing to take all of the holidays in pay. (PBA Exhibit 6, Sec. 14.) In Southampton, 7 of 13 holidays are paid in cash at straight time, with payment of the remaining six in cash subject to the agreement of the officer and Chief. (PBA Exhibit 9, Article V, Sec. 2.) The Village argues that no evidence of hardship to officers supports the necessity for the change sought.

PBA Proposal No. 11 - PBA:³

a. Increase PBA Leave Days

PBA's position:

PBA seeks to increase the number of PBA leave days allowed in the contract from 25 to 36. PBA President Jeff Erickson testified that the current number of leave days is insufficient and that he needs the additional days to conduct union business and to attend meetings with other PBA representatives at the County, State and national levels. PBA notes that East Hampton Town provides 40 PBA leave days and Southampton Town, 90. (PBA Exhibit 49.) PBA asserts that no cost impact will occur.

Village's position:

³PBA Proposal No. 10 was withdrawn.

The Village argues that the number of PBA leave days must bear some relationship to the bargaining unit's size. At 25 days and 27 officers, the Village is third in size only to East Hampton Town with 48 officers and Southampton Town, with 88. The Village also notes that, in a small department like the Village's, one officer's absence for any reason has a greater impact than in larger departments.

b. Amend Section 28(IV)(C) to refer to Section 28, not Section 27:

This change corrects a typographical error, and the Village agrees to it.

c. Amend Section 28(VI) to reflect that the PBA or its designated representative shall be the exclusive representative of the PBA and its members in arbitration:

PBA's position:

PBA seeks to make the PBA or its designated representative the exclusive representative of the PBA and bargaining unit members in arbitration. Because PBA alone can invoke arbitration, PBA argues that it alone should decide who will represent the organization and its members in arbitration proceedings.

Village's position:

The Village concurs, noting that this proposal will facilitate the administration of grievances for both parties and is therefore in the public interest. This is a no-cost item.

B. Village of East Hampton Proposal:⁴

Village Proposal No. 1 - Night Differential:

Village's position:

The Village's sole remaining proposal seeks to eliminate paying night differential to Department members who are attending the Police Academy. The parties' collective bargaining agreement requires payment of night differential to all police officers, whether or not they actually work or are scheduled to work night tours. The Village does not seek to change this benefit for active officers, only to eliminate it for new hires who are attending the Academy and therefore are not available to work regular night tours.

In support of this proposal the Village argues that eight of the ten East End municipalities pay the night differential only to employees who actually work specified night hours. Only one other municipality, the Town of Shelter Island, pays night differential without regard to night work. (Village Exhibit 7.) Because trainees are not available to work regular night tours while in the Academy, no rational basis exists for paying them night differential. In response to PBA's argument that this payment is necessary to keep entry rates for Village officers consistent with other East End municipalities, the Village maintains that night differential payments are not an

⁴The Village's second proposal was withdrawn.

appropriate mechanism for addressing entry rates because “the public interest disfavors misidentification of compensation items.” (Village brief at page 12.) Thus, if PBA believes that entry level pay should be increased (which the Village does not concede), it should make a proposal to do so in the next round of negotiations.

PBA’s position:

PBA opposes this proposal, arguing that the Village has failed to provide any justification for the change. It notes that the Village ‘s evidence does not address whether other municipalities pay night differential to members attending the Academy or whether these officers work at night while attending the Academy. PBA also notes that, without this payment, the Village would be in the bottom half of the East End municipalities with respect to the entry level compensation.

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. Section 207-c:

In disputed cases where (a) the Village believes an officer has sufficiently recovered from an injury to perform either light-duty or full-duty police work and (b) the officer disagrees, the officer may elect to have the dispute resolved, in lieu of an evidentiary hearing, by an impartial medical doctor mutually agreed upon by both parties. The decision of the medical doctor shall be final and binding on the Village, the PBA and the officer.

The officer may elect to have all other issues regarding the discontinuation of Sec. 207-c benefits be decided at a hearing conducted by an impartial arbitrator who is an attorney admitted to practice in New York State, to be selected pursuant to Section 28 III(D) of the Collective Bargaining Agreement. The arbitrator may alter the employer's determination if he or she finds the determination was not based on substantial evidence or was arbitrary and capricious. The decision of the arbitrator shall be final and binding on the Village, the PBA and the officer.

2. Chart:

a) Section 14 shall be amended to add the following paragraph:

Mutual exchanges of tours shall be permitted subject to the following conditions: (a) only three mutual exchanges shall be permitted per year per employee; (b) management shall be provided one week's advance notice of a proposed mutual exchange; (c) the mutual exchange shall be subject to management's approval, which shall not be arbitrarily withheld; and (d) the employees seeking the mutual exchange must occupy the same rank and be qualified to perform the duties of the other employee during the mutually-exchanged tours.

3. Wages:

- a) Effective August 1, 2005, an equitable adjustment to bargaining unit members' per diem compensation shall be made at each step of each rank's wage schedule by this method of calculation:
- i) Divide the 2004 top step annual base wage rate in Southampton Village by 240.

- ii) Multiply the result by 242.
 - iii) The result will be the adjusted annual base rate of bargaining unit members at that rank's top step going into the new contract term.
 - iv) For ranks with rates of pay below top step, the adjusted base rates shall be calculated by multiplying each step's base rate for 2004 by the percentage increase for that rank's top step rate, as calculated in iii, above.
- b) Effective August 1, 2005, bargaining unit members' annual base wage rates so adjusted will be increased by 4%.
 - c) Effective August 1, 2006, bargaining unit members' annual base wage rates will be increased by 4%.

This is an example of the required calculations for top step Police Officers:

$$\begin{aligned} \$84,051 \div 240 &= \$351 \times 242 = \$84,942 \text{ (Adjusted annual base rate)} \\ \$84,942 \times 1.04 &= \$88,340 \text{ (Base wage rate August 1, 2005)} \\ \$88,340 \times 1.04 &= \$91,873 \text{ (Base wage rate August 1, 2006)} \end{aligned}$$

This is an example of the required calculations for top step Sergeants:

$$\begin{aligned} \$96,656 \div 240 &= \$402 \times 242 = \$97,284 \text{ (Adjusted annual base rate)} \\ \$97,284 \times 1.04 &= \$100,056 \text{ (Base wage rate August 1, 2005)} \\ \$100,056 \times 1.04 &= 104,058 \text{ (Base wage rate August 1, 2006)} \end{aligned}$$

The record is silent for the 2004 top step wage rate for Lieutenants in Southampton Village. The parties should use the same calculations for bargaining unit Lieutenants.

See wage schedule attached as Appendix A.

4. Night Differential:

- a) Night differential shall not be payable to officers while in the Police Academy.

5. Medical Continuation:

- a) Medical benefits (but not dental/optical) shall be continued for the spouse and eligible dependents of an active member who dies not in the line of duty for the 18-month period of time that COBRA provides for continuation of benefits.
- b) Medical benefits (but not dental/optical) shall be continued for the spouse and eligible dependents of an active member who dies in the line of duty for a period equal to the officer's years of service, but in no event less than the 18-month period of time that COBRA provides for continuation of benefits.

6. Dental Benefits:

Dental benefits shall be improved as follows: (a) the maximum reimbursement per employee shall be increased from \$800 per year to \$1,400 per year; and (b) the reimbursement schedule for bargaining unit members shall be no less than that provided for the Village's non-represented employees.

7. Holidays:

Amend Section 19 to increase the number of holidays for which employees may choose to receive holiday pay from 11 holidays to 13 holidays per year.

8. PBA:

- a) Amend Section 28(IV)(C) to read as follows:

Third Level: Arbitration. The provisions of Section 28, paragraphs III(D), V, and VI shall be applicable.

b) Amend Section 28(VI) to read as follows:

REPRESENTATION - The PBA or its designated counsel shall be the exclusive representative of PBA members at all arbitration proceedings.

9. Duration:

The contract term shall be two years, from August 1, 2005 through July 31, 2007.

I reach those conclusions for the following reasons, having given due consideration to the criteria of 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. . . .”

The parties do not dispute that, for comparability purposes, Village police officers shall be compared to police officers on Long Island’s East End, that is, all towns and villages including and to the east of Riverhead. Arbitration awards in other East End towns and villages concur. See *Town of Southampton* (Marx, 2003) (Village Exhibit 5, p. 4); *Town of Southampton* (Sands, 1996) (PBA Exhibit 1, p. 11) (citing *Village of Sag Harbor* (Scheinman, 1994) and *Town of Riverhead* (Doner, 1994) (PBA

Exhibit 2, p. 16). I have accordingly looked to the East End municipalities' Police Departments for my comparability analysis.

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 record establishes that the Village is well managed and that it is financially healthy. While it is true that the Village's ability to pay does not justify granting unreasonable increases, the Village concedes that it is able to afford reasonable increases in wages, benefits and other terms and conditions of employment. On the entire record before me, I find that, taken both individually and together, the increases I have granted are reasonable and are within the Village's ability to pay. Further, these increases are consistent with the public interest in maintaining police officers' morale and the excellent police services that Village residents and visitors enjoy.

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 immediate judgments with life and death consequences. I have accordingly found that the most relevant comparisons by far are to other police and not to non-police employees of this or any other employer. Having said that, I have also found appropriate considering benefits provided to the Village's own non-represented employees with respect to dental benefits, because both groups of employees are covered by the same dental plan.

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.

The parties have a well-established history of collectively bargained contracts that have included reasonable increases for bargaining unit members. This history and the agreements reached establish certain principles from which they may not lightly depart. The parties cannot, however, rely indefinitely on compromises reached in the past where the justification for the compromise no longer exists and where continuation renders the agreement inconsistent with comparable East End municipalities. I have accordingly made changes that either address new circumstances

or that restore the consideration necessary to sustain the continuation of past compromises.

In addition to the above general findings, I make the following specific findings and observations:

Section 207-c: The procedures awarded provide a fair and efficient process for addressing significant issues that can very well arise in the future under General Municipal Law Section 207-c. With respect to the Village's concerns that this process can result in decisions that are inconsistent with judicial precedent, the U.S. Supreme Court has found arbitrators well qualified to handle statutory disputes. *Gilmer v Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991). In any event, I have addressed these concerns by requiring the arbitrator to be an attorney admitted to practice in New York State.

Schedule of Tours:

a) *Payback days:* This issue cannot be considered in isolation from wages. More than 15 years ago, PBA agreed to accommodate the Village's need for additional coverage during the summer months, when frequent special events occur and large crowds of temporary residents and tourists descend upon the Village. PBA's agreed to add three days to be scheduled at the Village's discretion to bargaining unit members' 239-day chart for a total of 242 annual appearances. In return for those "payback days,"

the Village granted pay increases that placed this unit's compensation at the top of comparable East End communities.

That is no longer so in many categories, and, at 242 days, Village police officers now work the highest number of tours for per diem compensation that ranks only sixth among the ten comparable East End communities. The Village's need continues, however, for the flexibility and coverage that payback days provide. Rather than grant PBA's request to eliminate payback days because consideration for them no longer exists, I shall instead restore the consideration that justified their imposition. And, having restored that consideration, I should not expect deletion of payback days to be an issue in future negotiations until such time as the unit falls from its top position.

b) *Mutual Exchanges*: By limiting to three ~~the~~ number of mutual exchanges permitted per year, the employer's concern of "hoarding" personal days for use during busy the summer months becomes moot. In addition, I have addressed the other operational concerns the Village raises by requiring that the employees involved occupy the same rank and be able to perform each other's duties and by requiring advance notice and approval.

c) I have denied the PBA's proposal to delete various paragraphs of Section 14. Although these schedules have not been used in recent years, PBA has not advanced any persuasive reason so to restrict management's flexibility.

Wages:

a) *Wage Increase:* As noted above, to justify continuing the Village's discretion to schedule three "payback days" per year, I am restoring the consideration that supported their imposition by returning this unit's compensation to the top of the schedule for comparable East End communities. To accomplish that, an equitable adjustment to bargaining unit members' compensation shall be made at each step of each rank's wage schedule to equate their per diem compensation to that of the comparable rank in Southampton Village, who work the closest, 240-day chart. That equitable adjustment will be achieved by this method of calculation:

- i) Divide the 2004 top step annual base wage rate for each rank in Southampton Village by 240.
- ii) Multiply the result by 242.
- iii) The result will be the adjusted annual base rate of bargaining unit members at that rank's top step going into the new contract term.
- iv) For ranks with rates of pay below top step, the adjusted base rates shall be calculated by multiplying each step's base rate for 2004 by the percentage increase for that rank's top step rate, as calculated in iii, above.

After that adjustment has been made, a 4% increase will be given in each year of this two-year contract. In reaching that decision, I see nothing in the record that justifies departing from the "going rate" of annual increases in comparable East End communities.

In so increasing Sergeants' wages, I have rejected the Village's argument that, because Village Sergeants supervise fewer people, they deserve no increase. In fact, as Sergeants, these employees have significant responsibility for running the tours on which they serve and for exercising command judgment when difficulties arise.

Night Differential:

I have granted the Village's proposal that no night differential be paid to officers in the Police Academy. Officers in the Academy perform no required "night" duty. Although other rationales may justify payment of night differential to all bargaining unit members on the job, no such considerations support payment of night differential to trainees in the Academy. They are not on call, and they are not available for service. The record does not indicate that any bargaining unit members have been in the Academy since the effective date of this Award, July 1, 2005. If in fact there have been, they should be "grandfathered" under the prior contract's practice; and this provision should have prospectively application only.

As to PBA's proposal for increasing the night differential, the trend in the East End has not been to use a percentage-based calculation. Although a percentage-based calculation might arguably be more efficient, it would remove from the bargaining table a significant issue that can be a useful factor in structuring global settlements. I have accordingly not converted the current provision to a percentage-

based payment. With respect to the requested increase, I note that, because all officers receive night differential payments without regard to their actual shift worked, night differential is, in effect, an element of compensation. I am satisfied that, given the substantial wage increase provided above, no improvement of night differential payments is necessary in this contract period.

Medical Benefits

a) *Continuation of Benefits*: By this Award, I intend that the Village provide continued medical benefits to the spouse and eligible dependents of deceased active members who do not die in the line of duty for the same period of time that COBRA requires continuation of medical benefits rather than the contract's current, six-month period. For active employees who die in the line of duty, there is no change, other than to assure that in no event will the continuation period be less than the 18 months COBRA provides.

Having considered benefit levels in comparable communities, the Village's significant cost increases in recent years, and GASB-34's looming impact, I see no basis to change retiree health benefits or to add dental or optical benefits to those received upon retirement or death of an active officer.

b) *Dental*: I have increased Village's maximum payment for these benefits to \$1,400. The cap on the Village's contribution for dental benefits has been the same

for 12 years. By granting this increase, the cap for bargaining unit members will still be below the cap for non-contract employees. The reimbursement schedule for bargaining unit employees shall be no less than that provided for the Village's non-represented employees, who are all covered by the same dental plan.

Sick Days: I have denied PBA's proposal to increase this number during the term of this Award. Although the number of sick days that bargaining unit personnel can accumulate for payment at retirement is low compared to other East End communities, this Award's improvements to other benefits obviate the necessity for addressing this issue now.

Holidays: I see no legitimate reason to treat payment for earned holiday entitlement differently from all other East End communities. I have therefore granted PBA's proposal on this subject. Bargaining unit employees shall accordingly have the option to take any or all of their holiday entitlement as either cash or compensatory time.

PBA: I reject as unsupported in the record PBA's proposal to increase the number of PBA leave days to 36. The remainder of the PBA's proposal for Section 28 makes sense, and the Village does not oppose it. I have therefore included it in my Award.

Duration: The parties agree that the duration of this agreement shall be two years.

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

By reason of the foregoing, I issue the following

AWARD

1. Section 207-c:

In disputed cases where (a) the Village believes an officer has sufficiently recovered from an injury to perform either light-duty or full-duty police work and (b) the officer disagrees, the officer may elect to have the dispute resolved, in lieu of an evidentiary hearing, by an impartial medical doctor mutually agreed upon by both parties. The decision of the medical doctor shall be final and binding on the Village, the PBA and the officer.

The officer may elect to have all other issues regarding the discontinuation of Sec. 207-c benefits be decided at a hearing conducted by an impartial arbitrator who is an attorney admitted to practice in New York State, to be selected pursuant to Section 28 III(D) of the Collective Bargaining Agreement. The arbitrator may alter the employer's determination if he or she finds the determination was not based on substantial evidence or was arbitrary and capricious. The decision of the arbitrator shall be final and binding on the Village, the PBA and the officer.

2. Chart:

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a proposed mutual exchange; (c) the mutual exchange shall be subject to management's approval, which shall not be arbitrarily withheld; and (d) the employees seeking the mutual exchange must occupy the same rank and be qualified to perform the duties of the other employee during the mutually-exchanged tours.

3. Wages:

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 - i) Divide the 2004 top step annual base wage rate in Southampton Village by 240.
 - ii) Multiply the result by 242.
 - iii) The result will be the adjusted annual base rate of bargaining unit members at that rank's top step going into the new contract term.
 - iv) For ranks with rates of pay below top step, the adjusted base rates shall be calculated by multiplying each step's base rate for 2004 by the percentage increase for that rank's top step rate, as calculated in iii, above.
- b) Effective August 1, 2005, bargaining unit members' annual base wage rates so adjusted will be increased by 4%.
- c) Effective August 1, 2006, bargaining unit members' annual base wage rates will be increased by 4%.

This is an example of the required calculations for top step Police Officers:

$$\begin{aligned} \$84,051 \div 240 &= \$351 \times 242 = \$84,942 \text{ (Adjusted annual base rate)} \\ \$84,942 \times 1.04 &= \$88,340 \text{ (Base wage rate August 1, 2005)} \\ \$88,340 \times 1.04 &= \$91,873 \text{ (Base wage rate August 1, 2006)} \end{aligned}$$

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$\$97,284 \times 1.04 = \$100,056$ (Base wage rate August 1, 2005)

$\$100,056 \times 1.04 = 104,058$ (Base wage rate August 1, 2006)

The record is silent for the 2004 top step wage rate for Lieutenants in Southampton Village. The parties should use the same calculations for bargaining unit Lieutenants.

See wage schedule attached as Appendix A.

4. Night Differential:

- a) Night differential shall not be payable to officers while in the Police Academy.

5. Medical Continuation:

- a) Medical benefits (but not dental/optical) shall be continued for the spouse and eligible dependents of an active member who dies not in the line of duty for the 18-month period of time that COBRA provides for continuation of benefits.
- b) Medical benefits (but not dental/optical) shall be continued for the spouse and eligible dependents of an active member who dies in the line of duty for a period equal to the officer's years of service, but in no event less than the 18-month period of time that COBRA provides for continuation of benefits.

6. Dental Benefits:

Dental benefits shall be improved as follows: (a) the maximum reimbursement per employee shall be increased from \$800 per year to \$1,400 per year; and (b) the reimbursement schedule for bargaining unit members shall be no less than that provided for the Village's non-represented employees.

7. Holidays:

Amend Section 19 to increase the number of holidays for which employees may choose to receive holiday pay from 11 holidays to 13 holidays per year.

8. PBA:

a) Amend Section 28(IV)(C) to read as follows:

Third Level: Arbitration. The provisions of Section 28, paragraphs III(D), V, and VI shall be applicable.

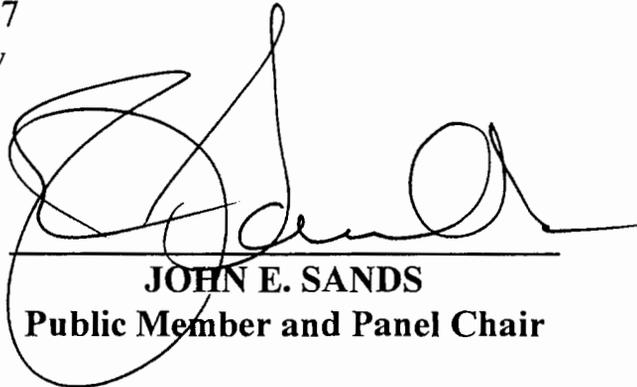
b) Amend Section 28(VI) to read as follows:

REPRESENTATION - The PBA or its designated counsel shall be the exclusive representative of PBA members at all arbitration proceedings.

9. Duration:

The contract term shall be two years, from August 1, 2005 through July 31, 2007.

Dated: September 6, 2007
West Orange, New Jersey



JOHN E. SANDS
Public Member and Panel Chair

I concur with / dissent from the above Award.

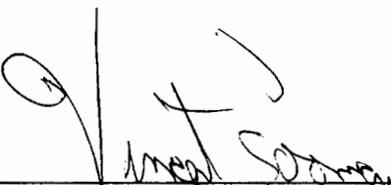
Dated: 9/26/07
Islandia, NY



LLOYD BERKO
PBA-Appointed Arbitrator

I concur with / dissent from the above Award.

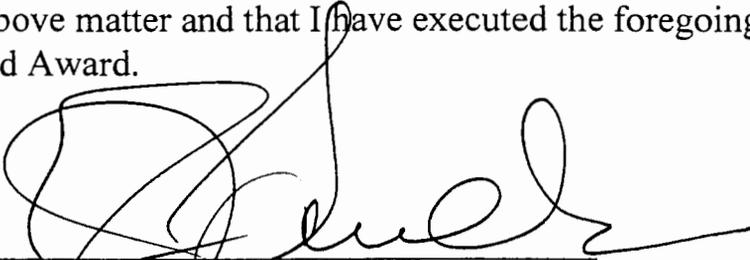
Dated: 10/8/07
Lake Success, NY



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.



LLOYD BERKO

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



VINCENT TOOMEY

WAGE SCHEDULE

RANK	EVH 8/1/2004	% Increase	Adjusted Rate [EVH'04+% incr.]	8/1/2005 4%	8/1/2006 4%
Lieutenant	\$104,832.99	3.20	\$108,185.39	\$112,512.81	\$117,013.32
Sergeant	\$ 92,208.34	5.70	\$ 97,464.32	\$101,362.89	\$105,417.41
Detective 1 st Grade	\$ 89,264.28	0.64	\$ 89,836.68	\$ 93,430.15	\$ 97,167.35
Detective 2 nd Grade	\$ 87,327.01		\$ 87,885.90	\$ 91,401.34	\$ 95,057.39
Detective 3 rd Grade	\$ 85,374.78		\$ 85,921.18	\$ 89,358.03	\$ 92,932.35
Police Officer					
Step 6	\$ 83,797.16	1.14	\$ 84,751.58	\$ 88,141.64	\$ 91,667.31
Step 5	\$ 78,650.39		\$ 79,547.00	\$ 82,728.88	\$ 86,038.04
Step 4	\$ 69,083.78		\$ 69,871.34	\$ 72,666.19	\$ 75,572.84
Step 3	\$ 60,580.63		\$ 61,271.25	\$ 63,722.10	\$ 66,270.98
Step 2	\$ 54,204.83		\$ 54,822.77	\$ 57,015.68	\$ 59,296.30
Step 1	\$ 47,826.04		\$ 48,371.26	\$ 50,306.11	\$ 52,318.35
Training Rate	\$ 37,215.13		\$ 37,639.38	\$ 39,144.96	\$ 40,710.76