

PUBLIC EMPLOYMENT RELATIONS BOARD
STATE OF NEW YORK, CASE NO, IA2004-011

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In the Matter of the Compulsory Interest Arbitration
Between the

VILLAGE OF MOUNT KISCO POLICE
BENEVOLENT ASSOCIATION, [REDACTED]

Employee Organization,

and

VILLAGE OF MOUNT KISCO,
Public Employer,

RE: TERMS & CONDITIONS OF EMPLOYMENT
JUNE 1, 2002 THROUGH MAY 31, 2004.

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BEFORE: TRIPARTITE COMPULSORY INTEREST ARBITRATION PANEL:

DAVID N. STEIN, ESQ., PUBLIC MEMBER
TERENCE M. O'NEIL, ESQ., VILLAGE MEMBER
MR. ANTHONY V. SOLFARO, PBA MEMBER

APPEARANCES:

FOR THE POLICE BENEVOLENT ASSOCIATION, NEW YORK
UNION OF POLICE ASSOCIATIONS, INC.: JOHN K. GRANT, P.C.

FOR THE VILLAGE OF MT. KISCO: BOND, SCHOENICK & KING,
PLLC, BY: CRAIG L. OLIVIO, ESQ. & MICHEL A. BAPTISTE, ESQ.,
OF COUNSEL

TIME, DATE & PLACE OF HEARING: 10 A.M., APRIL 20 & MAY 2, 2005,
VILLAGE/ TOWN HALL, MOUNT KISCO, NEW YORK

OPINION & AWARD OF PUBLIC MEMBER

Background

This is a compulsory interest arbitration proceeding commenced by the Village
of Mount Kisco Police Benevolent Association (PBA), New York State Union of
Police Associations, pursuant to Section 209.4 of the *New York Civil Service Law* (the

For THE PERIOD
6/1/02 - 5/31/04

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Taylor Law or the Act) on behalf of a bargaining unit of police officers it represents, all of whom work for the Village of Mt. Kisco (the Employer), which is a hybrid municipality (i.e., both a town and a village) located in Northeastern Westchester County in New York State.

The most recent collective bargaining agreement (Agreement) of the parties expired on May 31, 2002. The parties have concurred that the instant Award should cover the period from June 1, 2002 through June 30, 2004. In arriving at an award, Section 209.4(c)(v) compels the panel to consider the following factors:

- (a) comparison of the 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 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 bargaining 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.

In this proceeding, both the PBA and the Employer were represented by counsel, and named their respective members of the tripartite arbitration panel, both of whom were present at the hearings and executive sessions and who participated at every stage in this statutory arbitration. In addition, each party was represented by counsel and had the opportunity to introduce documentary evidence, submit data and examine and cross-examine witnesses. A transcript was made of the proceedings in accordance

with law. Upon the record so produced, I find the following to be relevant.

Positions of the Parties

(Summarized) Proposals of the PBA

1. Agency Shop Fee
 2. Forward dues and agency fees within five (5) instead of ten (days) after the last day of the month in which dues deductions are made.
 3. Amend the language of Section 3 of the Recognition Clause per the PBA's new language.
 4. An across the board wage increase of 4.75% per year in each of two years.
 5. Increase the detectives differential from 8.3% to 10%.
 6. Amend the language of Article 4 – Overtime, Section 1 from providing daily overtime after eight (8) hours of work to employees who work in excess of eight (8) hours of their regularly tour of duty. Change the overtime rate from 1.5 X the employee's hourly rate to 1.5X the employee's hourly rate, inclusive of longevity. Change the pay from hours actually worked to "for all hours worked."
 7. Change the crediting of overtime of the four minimum for recall to pay for the four hour minimum.
 8. Provide bargaining unit members with the right to elect to accrue compensatory time *in lieu* of overtime payment up to a maximum of one hundred and twenty hours which shall not be unreasonably denied. Currently, unit members have this option only where the overtime worked need not be paid for under the FLSA, and there is a cap on accumulation of 48 hours. The comp time may not now be used if determined by the Chief not to be in the best interests of the Department, but may not be arbitrarily or capriciously withheld.
 9. Expand the number of holidays for which an employee must be paid double time from Christmas Day and Thanksgiving to include Memorial Day, Independence Day, Labor Day and Christmas Eve.
 10. Reduce the amount of sick leave earned each year to ten days, all to be credited as of the first day of each calendar year, or, in the case of new employees, as of the date of hire. Permit the unlimited accumulation of unused sick leave.
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11. Remove the cap on sick leave accumulation which is paid upon retirement. Increase the rates at which accumulated sick leave is paid to one hundred percent for all employees, thereby eliminating the current two tiered system which provides for partial payment based on accumulation. Provide for reimbursement upon any type of separation rather than limited to retirement.

12. Increase to one hundred percent the amount of sick leave an employee has accumulated the payment to be received by his beneficiary or estate upon his death.

13. Change sick leave incentive bonus from flat dollar amounts to payment based on the following schedule:

<u>Sick Leave Used/ Calendar Year</u>	<u>Amount of Payment</u>
0 - 1 day	5 days' pay
2 - 3 days	3 days' pay
4 days	1 day's pay

14. Credit five days' personal leave on the first day of the contract year. Eliminate Chief's discretion to deny leave based on schedule and clarify that employee need not disclose reason for requested leave.

15. Change the current *pro-rata* accumulation of personal day entitlement earned by new employees to the following schedule:

<u>Date of Hire</u>	<u>Number of Days</u>
6/1 - 8/31	5 days (40 hours)
9/1 - 11/30	4 days (32 hours)
12/1 - 2/28; 29	3 days (24 hours)
3/1 - 5/31	2 days (16 hours)

16. Roll up years of service for entitlement to longevity, as follows:

7 - 10 years (currently 7 -12)	\$625 non-cumulative (no change)
11 - 14 (currently 13 - 17)	\$950 non-cumulative (no change)
15 - 18 (currently 18 - 20)	\$2,175 non-cumulative (no change)
19 plus (currently 21 plus)	\$2,475 non-cumulative (no change)

17. Provide for payment of longevity on anniversary during pay period on which anniversary date occurs, and incorporate longevity into employee's hourly rate for purposes of computing overtime. (Current system does not include longevity for overtime purposes and has a schedule for when longevity is paid).
18. Uniform Allowance – Increase from the current \$850 payable on September 1 of each year to \$875 payable on the employee's anniversary date on the first year and \$900 in the second year. Uniform allowance to be paid in twelve equal installments monthly. Add a new uniform cleaning allowance of \$250 in the first year and \$275 in the second year. Require the Employer replace any uniform lost in the course of duty and to provide each officer with all additional uniforms and equipment listed in a Schedule A.
19. Provide that the Employer shall provide to employees who so elect the equivalent of fifty percent of the cost of the health care premium for waiving coverage. Currently, such payments are limited to \$1,000 for the family plan and \$500 for the individual plan.
20. Retiree health coverage – The Employer to pay one hundred percent of the premium cost for each employee and eligible dependent upon retirement
21. Provide forty hours of in-service training program.
22. If any training is scheduled during off duty hours, the employee shall be paid pursuant to the overtime provisions of the current agreement.
23. Eliminate the Village's right to discontinue health coverage for retirees whose employer offers comparable coverage if the employer contributes at least 75% of the cost.
24. Eliminate the provision which guarantees that the hospitalization coverage paid by a retiree's employer be considered his/ her primary coverage.
25. Eliminate the Employer's unilateral rate to change hospitalization coverage to coverage with overall benefits comparable to those being provided to bargaining unit members and retirees. Substitute a tripartite procedure culminating in an expedited arbitration under the rules of the A.A.A. with any change to await the final determination of the arbiter.
26. Contribute \$110 per employee per month worked (any portion of the preceding month. Contribution to be made to the PBA for its sponsored welfare fund.
27. The Employer will provide a minimum of forty hours of training for all employee.

28. If training is scheduled during an employee's off duty hours, the Employer will pay the employee at overtime rates pursuant to Article 4, Section 2.
29. Mandate that the Employer pay for all expenses incurred related to assigned training. Eliminate the modifier of "reasonable" before expenses.
30. Change grievance procedure as follows:
- a. expand the definition of grievance to include any "other term and condition of employment;"
 - b. provide grievants with protection against retaliation, coercion, etc., and guarantee employees the right to be represented by the PBA at all stages of the grievance procedure.
 - c. adjust five day periods to respond to a grievance or appeal to fifteen days.
 - d. assorted modifications in procedures and rights.
31. Substitute "President or his/ her designee" for "Association chairman" with respect to time off to participate in official PBA business.

Employer's Proposals

1. Delete the Vacation *In Lieu* of Holidays provision.
2. Implement a new Attendance Control Policy as proposed by the Employer.
3. Amend the provision which guarantees one hundred per cent Employer funded health insurance to surviving dependents and spouse to reflect the structure of any plan to which the Employer may switch in conformance with the Agreement.
4. Permit the Employer to switch health insurance to the Empire Plan and require employees to contribute 25% toward health insurance coverage.
5. Retiree Health Insurance – a. Eliminate one hundred percent health insurance coverage when an employee reaches age 50; b. Reduce from one hundred percent to 75% the amount of hospitalization the Employer provides for employees who were hired after June 1, 1989; provide the Employer the right to discontinue health insurance coverage for any retiree who becomes eligible to receive health insurance coverage of a comparable nature from any other source.
6. The Chief of Police should have the discretion to set a ceiling on the number of paid training days.

7. Add a contractual period of limitations of fifteen days to file a grievance.
8. Increase so-called plug in days from seven to fourteen.
9. Eliminate the accrual of vacation entitlement for officers on Section 207-c leave.
10. Provide that the Village Manager will make the initial determination of an officer's eligibility for Section 207-c leave.

Argument

PBA

The PBA has submitted a comparability study compiling statistics of the terms and conditions of employment of police working in what it believes to be relevant Northern Westchester communities.

The PBA points out that the Employer is both a Village and a Town, under New York Law. Its government must therefore provide services which many towns need not offer their citizens. In fact, the PBA notes, there are only three municipalities in Westchester County (the County) which carry the joint classification of a Town/Village, and two of the three, the PBA submits, are geographically remote from the Employer's jurisdiction.

Instead, the PBA asserts, it is more appropriate to compare the Employer with the communities surrounding it, such as Bedford, North Castle, New Castle and Yorktown, all of which, it points out, have full-time, full service police departments. In terms of service level and taxation levels, the PBA contends, these are more appropriate comparison communities than those suggested by the Employer. Moreover, the size of the departments of the four comparison communities is similar to the Mt. Kisco Department, the PBA concludes. It is also more appropriate to

compare the wages and benefits enjoyed by the Employer's police with those of nearby jurisdictions, the PBA maintains, as those officers most frequently work together. The resulting comparison, the PBA stresses, shows that the officers in Mt. Kisco earn as much as \$12,000 less annually.

The PBA charges that the Employer has "cherry picked" ten or so villages for comparison, solely by virtue of the fact that the officers in those communities do not enjoy particularly favorable terms and conditions of employment when compared to what officers in communities contiguous to Mt. Kisco enjoy. The PBA insists that villages which border the Bronx, Yonkers, Mt. Vernon and other urban environments bear little relevance to those of northern Westchester, which are some of the wealthiest in the world.

The PBA argues that the Employer is financially sound and is able to fund a reasonable wage increase, such as the one proposed by the PBA, as per the testimony of its expert witness, Mr. Kevin Decker, who provides analysis and testimony in both interest arbitration and tax certiorari proceedings in New York.

The PBA charges that despite protestations to the contrary, the Employer failed to present evidence of a taxpayer revolt, produce testimony of any elected official or show any objective indication of negative trends with respect to the Employer's economic health, such as a population decrease, or a decline in prices paid for purchases of real property in the community. In fact, the PBA emphasizes, its evidence reveals that the Employer's robust fiscal health is demonstrated by an increase in fair market value of property which has averaged over eight percent annually.

The PBA adds that there were no indicia of the inability of taxpayers to meet their obligations, such as a balloon in mortgage foreclosures. The PBA notes that its expert, Mr. Decker, testified that the tax burden on property tax owners has actually decreased when the percentage of the constitutional tax limit is referenced. The PBA stresses that the current percentage is less than forty percent as opposed to between forty and fifty percent a decade ago.

The PBA cites what it characterizes as an excellent bond rating by Moody's of A1 as demonstrative of the financial community's positive opinion of the Employer's financial health. The PBA submits that the Employer's sources of revenue are sound with increases in building and zoning fees, higher water and sewer rents and two million dollars of fees for fire protective services, parking fees, fines and other user fees.

The PBA continues that the Employer's revenue source of sales tax collections has been steadily increasing from \$650,000 in 1996 to a projected \$1.1 million for 2005. This, the PBA reasons, means that there is less pressure on property taxes for needed revenues. Moreover, the majority of property tax revenues in Mt. Kisco are raised from residential rental and commercial properties, rather than from residential homeowners, the PBA calculates.

The PBA emphasizes that the Employer amassed an unreserved fund balance in excess of \$2.24 million for 2004, which was 13.77% of budgeted expenditures.

The PBA insists that the Arbitration Panel (Panel) cannot ignore the parties' bargaining history, as mandated by Section 209.4(c)(v)(d) of the Act. In this regard, the PBA reasons, the Employer may not pick and choose among the wages and

benefits it has traditionally offered to its police officers, which it favors because they are relatively low, and other terms and conditions enjoyed by officers which may be relatively generous, such as the potential for paid leave, which may be relatively generous, and viewed by the Employer as less favorable. In other words, the PBA insists, the Employer should not be permitted to achieve a rollback in officers' terms and conditions of employment through comparability, while resisting a concomitant improvement by a baseless claim of fiscal hardship.

By way of introduction, the PBA points out that its members have suffered by the fact that wages and benefits have remained stagnant since 2002, when the parties' collective bargaining agreement expired. On the other hand, the PBA claims, the Employer has had use of the funds for a prolonged period which it would have otherwise expended on timely wage increases for bargaining unit members.

The PBA justifies its proposal for a 4.75% increase annually for 2003 and 2004 by the relatively poor standing of the compensation paid by the Employer to its officers when compared to the compensation awarded by the nearby municipalities of Bedford, New Castle, North Castle and Yorktown to their police officers. Merely to match the increases achieved by the officers in the comparison towns, the PBA complains, would have no impact on the discrepancy in compensation suffered by Mt. Kisco's officers.

The PBA stresses that if its demands on longevity and the collapse of the salary schedule were granted, the Mt. Kisco officers would still rank behind in compensation earned over 20 or 25 years when compared to officers employed by the four nearby municipalities. Even when compared to the

compensation enjoyed by the officers employed in the ten selected Westchester villages cited by the Employer, the compensation of Mt. Kisco's officers ranks behind all but one - Sleepy Hollow, the PBA emphasizes.

The PBA argues that the increased detective differential it has proposed (from 8.3% to about 12%) is in line with six of the nine municipalities cited by the Employer as relevant. The PBA seeks a comparable rate for the detectives in the bargaining unit it represents.

Similarly, the PBA submits that its proposals for the sergeants and lieutenants differentials are fair and reasonable. The PBA stresses that it merely seeks to memorialize the current practice of paying a sergeants differential of 15% into the contract. With respect to the lieutenants differential, the PBA maintains that increasing the differential from 14.5 to fifteen percent above the sergeants differential is in keeping with the differential paid by Bedford, as well as three of the nine municipalities cited by the Employer as relevant.

The PBA justifies its proposal on overtime as an effort to clarify the existing scheme to insure that payment of overtime at 1.5 of straight time rates after forty hours per work week is ensured. This would also guarantee that those officers whose work week is less than forty hours would receive overtime when their regular work week is exceeded the PBA adds.

The PBA's super holiday proposal is to increase the number of super holidays by four additional holidays. Officers working on the new super holidays would be compensated at double time. Similar super holidays provisions are common to municipalities, like the Employer, which do not employ a general holiday

compensation rate of time and one half for working holidays, the PBA submits. Mt. Kisco officers do not currently enjoy the time and one half provision, but receive only straight time for holiday work, the PBA points out.

The PBA justifies its proposal because, it calculates, the cost is minimal and the Provision compensates officers for missing family time when other members of the Community are off.

The PBA has outlined three proposals on sick leave. First, hired before and after 1989 treated identically. The former are currently accorded 12 days of sick leave and the latter 15 days.

The PBA complains that the prevailing benefit for illness among law enforcement in agencies in Westchester County is unlimited sick leave. It is unfair, the PBA charges to afford only 12 sick days to officers hired after 1989.

The other two items, the PBA explains are incentives to officers to refrain from using sick leave. One provides an immediate short term financial advantage, and the other a longer term solution, the PBA points out. The short term solution would provide a bonus tied to an officer's daily rate of pay if he/she utilizes three or fewer sick days per year, the PBA notes.

The second incentive is to accelerate the payment of the accumulated sick leave payout upon retirement to two weeks.

The PBA argues that the Employer needs to increase from \$1,000 to fifty percent the reimbursement to employee who waive their right to entitlement to paid health insurance. The PBA stresses that one thousand dollars offers little in the way of inducement for an employee to surrender a right to a benefit valued at fourteen or

fifteen times greater. The PBA stresses that this is a "win-win" situation as the increase in the incentive will persuade more employees to accept it, and save the employer more than half of the value of health insurance benefit which is waived.

The PBA argues that the multi-tiered system currently used by the parties to provide health insurance coverage to employees should be eliminated and replaced by a system which treats all retirees after twenty years of service equally. The PBA asserts that the current cost of health insurance is sufficiently high to deter senior employees, who are more highly compensated, from retiring by virtue of the fact that they must fund 25%, or 50% in the case of officers hired after 1989. Thus, the PBA reasons, the Employer is delayed in taking advantage of the "breakage" which results between the salary of a senior employee who retires and is replaced by a junior officer.

Instead, the PBA continues, it would be appropriate for the panel to adopt the one hundred percent employer funded health care for retired officers (with at least 20 years of service) and their dependents which is the prevailing benefit in Westchester County.

Moreover, the PBA adds, no other Westchester municipality imposes the exclusions from retiree health coverage for retirees or spouses who are employed and receive comparable health care benefits. The PBA seeks removal of the exclusions on the grounds of comparability and fairness.

Turning to the Employer's proposals, the PBA charges that many of the Employer's seventeen demands comprise an effort to diminish the compensation and benefits earned by its police officers, despite the fact that these officers

already earn less than officers working in comparable jurisdictions. The PBA insists that the Employer has failed to present any economic justification to support its efforts to gut the terms and conditions of employment memorialized in the expired collective bargaining agreement.

Likewise, the PBA submits, the Employer's request for an attendance control policy is uncalled for. The PBA maintains that there is no evidence in the record to support a conclusion that the Employer needs such a policy due to overuse or abuse of sick leave. The PBA notes that in 2003 and 2004, only five of 34 officers in the bargaining unit exceeded fifteen days of sick leave. The PBA stresses that the Employer improperly skewed its statistical analysis justifying its attendance control proposal by including use of various types of long term leaves, such as for surgery or maternity leave, which do not fall within the purview of the type of alleged abuse the Employer alleges it must control.

Finally, the PBA charges, the Employer's proposed attendance control policy is against public policy because it requires an officer who has been absent due to illness to present a physician's note once subjected to "monitoring" by it each time the Chief of Police deems the use to be "unusual" and, in addition, imposes on the employee who has been absent the obligation to explain "special circumstances." This type of program was struck down by the federal court in *Fountain v. N.Y. State Dept. of Correctional Services*, 2005 W.L. 1502146 (U.S.D.C., 2005) as violative of The Americans With Disabilities Act, the PBA contends.

The PBA insists that the Employer's proposal to expand the 25% contribution officers must make during their first four years of employment in Mt. Kisco toward

their health insurance premiums to all officers in the unit completely unjustified. Its exhibit, the PBA points out, substantiates the fact that the prevailing practice in the County is for municipalities to assume the full cost of health insurance

The PBA also rejects the Employer's proposal to switch from the current health insurance coverage to the Empire Plan. The PBA notes that the current plan was the result of the Employer's proposal in the last round of negotiations when there was a change *from* the Empire Plan. The PBA emphasizes that there is a serious dislocation in terms of physicians, deductibles and other details each time a plan is changed. It reasons that the parties need some stability in their health insurance plan, and assert that the current plan negotiated by the Employer should remain unchanged.

The PBA vehemently objects to the Employer's proposal to increase the number of plug in days from seven to fourteen without a concomitant increase in compensation as an effort to increase the work year by three percent. This would represent a further deterioration in the terms and conditions of employment of Mt. Kisco's officers who are already the lowest paid in Westchester, the PBA charges.

Adding insult to injury, the PBA claims, is the proposal that the new plug in days be used in four hour increments at the Chief's discretion. Implementation of this Employer proposal would be so disruptive to an officer's work schedule as to comprise a threat to health and safety, the PBA insists.

The PBA opposes the Employer's demand to eliminate a vacation benefit for officers on Section 207-c leave. This statute protects the full compensation

of officers injured in the line of duty. Eliminating vacation accruals would be sending the wrong message, the PBA submits – as the officers who have made a sacrifice to the public interest would, in effect, receive less in the way of compensation than those officers who had not been injured.

The PBA asks that the panel issue an award granting its proposals, denying the Employer's proposals in all respects and retaining each and every provision in the expired agreement which is not altered by this Award.

Employer

The Employer insists that its ability to fund a wage increase is limited, and that the analysis of its finances, as offered by the PBA, is inaccurate and misplaced. Moreover, the Employer stresses, the Towns of Bedford, New Castle, North Castle and Yorktown are not appropriate jurisdictions with which to compare Mt. Kisco.

For instance, the Employer points out, it has the lowest per capita income, the lowest median household income and the highest poverty rate when compared to the four municipalities relied upon by the PBA.

The Employer continues that the geographical size and population characteristics Of the four municipalities are distinct from Mt. Kisco, as well. For example, the Employer points out, its open acreage is about 3.1 square miles, while Bedford is 39.5 sq. miles, New Castle is 23.5 sq. miles, North Castle is 26.2 sq. miles and Yorktown is 39.5 sq. miles. In other words, the Employer emphasizes the four asserted comparison towns are 7-10 times larger than its.

Similarly, its population, at about 10,000, is smaller than the four towns cited by the PBA as comparable, the Employer notes with Bedford at 18,000, Yorktown

at 36,000, New Castle at 17,000 and North Castle at 11,000. The median value of homes sold in Mt. Kisco (\$260,000) is far less than in Bedford (\$519,000), New Castle (\$525,000) and North Castle (\$680,000).

Moreover, the Employer adds, the proportion of residential property which is rented in Mt. Kisco which is rented (45%) is far greater than in Bedford (25%), New Castle (8%), North Castle (13%) and Yorktown (4%). This means, the Employer reasons, that residential homeowners bear a disproportionate share of any wage increase if it leads to increased taxation.

The Employer urges, instead, that nine villages in the County are most comparable to it: Port Chester, Ossining, Elmsford, Sleepy Hollow, Buchanan, Tuckahoe, Dobbs Ferry, Mamaroneck and Tarrytown. The Employer justifies its position that these communities are more relevant because the per capita incomes and median household income of their residents are much more similar to it than are those items are to the communities of Bedford, New Castle and North Castle.

Its population size, its poverty rates and percentage of renters are also similar to those in the nine villages as opposed to the four towns cited by the PBA, the Employer submits.

Thus, the Employer suggests that it is not unreasonable for it to compensate its police officers at a rate lower than the compensation to officers in Bedford, or Scarsdale.

The Employer insists that there are practical limitations on its ability to fund the proposals of the PBA. The Employer stresses that the Court of Appeals, in *City of Buffalo v. Rinaldo* 41 N.Y. 2d 764, 768, made it clear that a public employer's

ability to pay, for purposes of compulsory interest arbitration, must be calculated exclusive of tax potential for tax increases. In this regard, the Employer attacks the testimony of the PBA's expert as either inaccurate or misleading.

The first flaw in the PBA's financial analysis, the Employer alleges, is its failure to properly account for Kisco's exposure for tax *certiorari* cases.

A tax *certiorari* case, the Employer notes, is a challenge by a commercial property owner to his/ her/ its tax assessment. Between 2002 and 2005, the Employer stresses, the number of tax *certiorari* cases initiated by commercial taxpayers increased from 36 annually to 63. When an assessment appeal is successful, the Employer explains, the assessed value of a property is reduced, and, consequently, the taxes paid on that property are likewise reduced. Since these proceedings take time, it is impossible to calculate its exposure in any given case, or group of cases, until after a case is finally determined. Nonetheless, the Employer estimates, based on a rational system of estimation, its exposure for the entire period is \$1.9 million.

The Employer continues that the PBA's analysis did not account for the burden on its taxpayers of water service, which exceeds the burden on the taxpayers in Bedford, New Castle and Yorktown, three of the four municipalities cited by the PBA as comparable. The Employer emphasizes that water rates increased by 37.7% for fiscal 2005, and 220% over the past decade.

The Employer charges that the PBA's analysis admittedly and erroneously fails to account for impact of school and County taxes on its taxpayers. The Employer insists that there was almost a 20% increase in the average taxpayer's burden from 2003 to 2004. A further increase of 7.3% was projected for 2005, the Employer

calculates. The impact of the drastically increasing tax burden faced by its taxpayers must be considered, the Employer argues.

The Employer continues that the PBA's report concerning the issue of its ability to pay was fundamentally flawed because it did not take into account the elementary fact that pension and health are steadily increasing at significant rates.

The Employer maintains that the PBA's arguments concerning the existence of an unreserved fund balance as of May 31, 2004 in the amount of \$2.2 million is both misleading and inaccurate. It notes that the PBA's expert acknowledged that approximately \$1.3 million of the fund balance was appropriated for the following year's budget. Moreover, the Employer points out, the PBA did not account for the impact of several unfunded capital projects which had an impact on the remaining fund balance available to it. The Employer submits that the true unreserved fund balance available to it for 2004-5 was about \$511,000.

The Employer stresses that its bond rating is less favorable than the ratings of other municipalities such as New Castle and North Castle which have a tripleA bond rating.

The Employer insists that the increase in property values within Mt. Kisco, while true, is not relevant to the question of its ability to pay. It points out that an increase in the value of real property is only a contingent benefit to the owner who realizes it only upon the sale of the property. Moreover, the Employer points out, the PBA did not offset the increase by the contingent liability from tax *certiorari* cases pending against it.

The Employer stresses that it has been compelled to increase the tax rate. Thus, it increased the tax rate by 4.68% in 2004 over 2003. In 2003, the Employer points out,

it had to increase property tax rates by more than eight percent. Of the 22 villages in Westchester, the Employer emphasizes, it has the fifth highest true value tax rate. The Employer concludes that its residents cannot pay increased taxes to support an Award.

The Employer asserts that its proposal to eliminate the provision in the expired Agreement which permits officers to elect to use vacation in *lieu* of holidays. The Employer argues that its proposal is fair and reasonable. The Employer points out that 13 of 32 jurisdictions in the County have a similar provisions. Most, if not all, of these jurisdictions limit the use of the election to the discretion of the chief of police or the needs of the particular municipality.

Nonetheless, the Employer insists that the provision should be completely eliminated. The Employer submits that it expended \$273,000 in overtime costs during 2004, much of it attributed by the Employer to its inability to deploy sufficient staff to cover officers on vacation, although it concedes that it does not possess precise data to prove that precise point.

The Employer notes that officers in its employ work 237 days annually which is the second fewest days in the County. With use of all vacation, personal and sick days, an officer could work as few as 199 days per year, which the Employer reasons is clearly undesirable.

The Employer asserts that it is suffering from chronic and excessive sick leave use by its police officers. In this regard, the Employer cites the fact that in 2002, 15 of its 30 officers used ten or more sick days. In 2003, it adds, eleven of 34 officers used ten or more sick days. In 2004, the figure cited by the Employer is that ten of 34

officers used ten or more sick days.

The Employer quotes a decision of the Public Employment Relations Board (PERB) in *Poughkeepsie City School District*, 19 PERB 3046 (1986), as follows:

“... when the parties agree to a restricted purpose leave, such as sick leave, the employer has an inherent right to monitor the conduct of its employee who avail themselves of such leave to ascertain that they are using it for the purposes contemplated by the contract.” Thus, the Employer reasons that it most likely could unilaterally implement its sick leave control policy. Nonetheless, in order to avoid future disputes and to provide expeditious relief for its attendance related problems, the Employer asks that its attendance control program be awarded.

The Employer asks that its proposal to amend the survivor's health benefit program to give it the discretion to make eligibility consistent with eligibility of current officers for the health benefits program, if the Employer switches programs either through this award or consistent with its current contract rights, be granted.

The Employer maintains that its proposal to modify the language of Article XIII to provide it with the flexibility to switch from the current health benefits program (MEBCO) to the Empire Plan. While the Employer claims that the contract already gives it this discretion, it asserts that an award in this case will permit it to immediately enjoy the savings predicted for the switch to Empire. Without a reduction in benefits, the Employer stresses, it will realize a savings of about \$40,000 annually. Moreover, the Employer argues, the Empire Plan actually is superior to MEBCO.

The Employer asserts that it has established a rational basis for its proposal to require each member of the bargaining unit to contribute 25% of the cost of their health

insurance premium. The Employer cites the following municipalities within the County which have successfully negotiated a contribution toward health insurance with their police officers: Yorktown (25% during first five years and ten percent subsequently); Port Chester (10%), Mamaroneck (30% for 5 years) and Elmsford (15% for seven years).

The Employer insists that it is entirely reasonable to expect its officers to contribute toward their health insurance for a period greater than the initial four years of employment, as they do currently.

The Employer claims that it has justified its proposals to modify the health benefits currently enjoyed by officers who retired with at least twenty-five years of service after reaching age fifty or older. The Employer notes that there is currently a three tier program for these former employees.

The current system, the Employer points out, differentiates between employees who retire prior to age fifty with twenty-five years of service, who must pay 25% of their hospitalization and those who become age fifty or who are fifty or greater, who do not have to pay for hospitalization. The Employer's rationale is that the retiree health benefit should conform to its proposal to reduce the same benefit for currently employed officers.

The Employer notes that the second aspect of its proposal which is to require that it can discontinue health care coverage for retirees who become employed after retirement and whose new employer pays at least 75% of the cost of coverage comparable to that provided by the Employer. This would mandate that retirees employed elsewhere would be afforded the same treatment as retirees who are otherwise entitled to coverage under the same conditions. If the retiree loses entitlement to alternate

coverage, the Employer explains, he/ she will be reinstated to its coverage as soon as possible.

The Employer points out that Sleepy Hollow, Mamaroneck, Dobbs Ferry, Tarrytown, Buchanan, Harrison, North Castle, Bedford, Briarcliff Manor, Ardsley, and New Castle do provide full health care coverage, the Employer allows. However, other than Sleepy Hollow and Buchanan, the Employer notes, all of these jurisdictions are wealthier than Mt. Kisco when it comes to *per capita* income, median household income and median family income.

The Employer stresses that there are six municipalities which pay less than one hundred percent of the health care coverage of new employees upon their retirement: Ossining, Yorktown, Pelham Manor, Bronxville, Hastings on Hudson and Scarsdale. Thus, the Employer reasons, its proposal on retiree health care is comparable to what many Westchester communities already supply to their police officers.

The Employer continues that its proposal to clarify the training provision to allow the Chief of Police (the Chief) to approve the maximum amount of training time is reasonable.

The Employer maintains that a comparison of training day provisions among the ten villages selected by it, there are four: Sleepy Hollow, Port Chester, Mamaroneck, and Buchanan which compensate their officers for training and restrict the number of training days. Additionally, the Employer points out, there are two (Tuckahoe and Dobbs Ferry) which have the discretion to require officers to attend training without pay. The Employer submits that it needs to have clear control on the amount of resources expended by it on training. This, the Employer reasons, would be a recognition of a

traditional management right.

The Employer urges the adoption of a reasonable time limit to file a grievance under the dispute resolution provisions of the expired collective bargaining agreement which does not provide for any limitation. The Employer stresses that it is unusual for a labor contract to lack a period of limitations and it prevents the parties from ridding themselves of stale disputes. The Employer cites the contracts in Ardsley, Larchmont, Mamaroneck, Port Chester and Rye Brook all contain a fifteen calendar day period of limitation and there are six municipalities which have a shorter period, the Employer emphasizes. Thus, it concludes that its proposal should be awarded.

The Employer insists that its proposal to add seven plug-in days is reasonable. The Employer points out that its police work the second fewest days and enjoy compensation at one of the highest daily rates of any village in the County. Thus, the Employer calculates, if its proposal is granted, its officers would work the same number of days as officers in Tarrytown and less than 11 of the 22 villages in the County.

The other aspect of the Employer's proposal with respect to plug-in days concerns the notice it must provide to each officer of the plug-in days which he/she must work. Currently, the Employer contends, it is unnecessarily constricted by the requirement that each officer be notified of her/ his plug-in assignment on or before January 1 of each year. The Employer seeks the right to change the days not more than thirty days before a designated plug-in day is to be used by it.

Finally, the Employer seeks the right to use all of the plug-in days in four hour increments. It justifies its position with the argument that the increase of the number of plug-in days which can be used in this manner will provide more flexibility to

management in meeting its staffing needs.

The Employer continues that it has provided substantial *rationale* to justify its proposals to eliminate the annual leave accruals for employees on Section 207-c leave, and to change the individual who makes its initial determination of eligibility for Section 207-c leave from the Chief to the Village's Manager.

The Employer charges that it is inherently unfair that an employee on a paid 207-c leave accrue the same benefit for annual leave as an officer on active duty. The Employer hypothesizes that an officer on 207-c leave could return to active duty and go on vacation for a period of four weeks by using the vacation days she/ he had accumulated while on a paid leave. The Employer points out that six of the nine villages it believes to be comparable jurisdictions do not provide for the accrual of annual leave by officers on Section 207-c leave. The Employer reasons that the courts have consistently held that Section 207-c does not apply to vacation accruals, and that the right to same originates in the applicable labor contract.

Secondly, the Employer asserts that its current use of the Chief to make the initial determination of an officer's request for Section 207-c leave must be altered due to the recent use of the benefit by the Chief himself, which creates a conflict of interest.

In addition to supplying argument in support of its own proposals, the Employer has interposed its reasons for opposing the PBA's proposals.

The Employer characterizes the PBA's proposal to contractually memorialize and increase the differential for sergeants and lieutenants as unreasonable. The Employer adds that the PBA's demand to increase the detectives' differential is likewise unjustified.

Of the nine villages it asserts are comparable, the Employer notes that the

PBA proposed salary differential for its detectives would exceed those in Mamaroneck, Sleepy Hollow, Tuckahoe, Dobbs Ferry and Tarrytown. Additionally, the Employer continues, the PBA's proposal for a lieutenants' differential would increase that payment to greater than the differential in the municipalities of Tuckahoe, Dobbs Ferry and Ossining.

The Employer claims that the PBA's proposal to add five superholidays should be rejected as unreasonable and unjustified. The Employer point ou that none of then villages deemed most comparable by it provide for as many of the superholidays (days for which officers are paid double time for working), and only Buchanan and Dobbs Ferry provide for as any as five. As the officers in its employ work the second fewest number of days in the County, the Employer reasons that this PBA demand should be denied.

The Employer urges the panel to reject the PBA's proposal to calculate overtime at premium pay rates on the basis of an officer's regularly scheduled workday or work week, rather than actual hours worked. It cites, as a practical example of the impact of the proposal, that an employee who is out ill could nevertheless earn workweek overtime because the entitlement to premium pay would be predicated on his/ her schedule. The Employer points out that only six of fifty-two municipalities have a provision as generous as that advocated by the PBA. Neither its ability to pay nor comparison to the relevant Westchester communities justify granting the PBA's overtime proposal, the Employer reasons.

Similarly, the Employer insists, the PBA has not provided sufficient information which would support its proposal to ameliorate the accumulation of sick leave. The

Employer notes that the PBA has asked to be credited ten hours of sick leave per month from the first day of employment and to accrue unused leave without any ceiling on the number of days. The parties currently have a two tiered system, one in which employees hired before June 1, 1989 earn fifteen days per year and employees hired subsequently earn twelve days.

First, the Employer argues, the current accumulation rate is consistent with municipalities such as Elmsford, North Castle, Buchanan, Dobbs Ferry, Mount Pleasant, Briarcliff Manor and Hastings on Hudson. Secondly, the PBA charges, there is already too much use of sick leave, the Employer insists, citing the data it used in support of its position that the PBA's proposal to improve the sick leave benefit be denied.

The Employer adds that the PBA's proposal to change the payment of sick leave on separation should be denied. Currently, employees who retire collect a percentage of their accumulated sick leave based on their date of hire and the number of days accumulated, with a greater percentage awarded for those who have accumulated more days. The Employer argues that the elimination of the staged cash out percentages for sick leave accumulation would likewise undermines an officer's incentive to refrain from using sick leave. The Employer adds that, under the PBA's proposal, the current provision tying advance notice of separation from service to payment of the cash out would disappear. The Employer argues that the current system permits it to engage in advance planning for officers' separation from its employ.

The Employer stresses that it is not the sole municipality in the County which pays out less than one hundred cents on the dollar for accumulated sick leave upon an

officer's separation, citing Ardsley, Briarcliff Manor, Croton-on-Hudson, Dobbs Ferry, Greenburgh, Irvington, New Castle, North Castle, Pleasantville, Mt. Pleasant, and Scarsdale.

The Employer suggests that the PBA's proposal to amend the personal leave provision of the Agreement is unreasonable and should therefore be rejected. The PBA proposal, the Employer notes, would credit each officer with forty hours of personal leave time on June first of each year and mandate that officers who provide forty-eight hours notice of a need to use leave time receive it. The PBA demand, the Employer adds, would also eliminate the requirement that the applicant for personal leave time provide the purpose for which the leave is sought.

The Employer argues that the PBA has not cited any specific denial (s) of requests to use personal leave which would warrant the elimination of providing a reason or the condition that the work schedule allow for it. The Employer reasons, therefore, that this proposal be denied.

The Employer maintains that the PBA's proposal on longevity is unreasonably expensive and should be rejected. The Employer calculates that the PBA's proposal to increase longevity would condense the years of service an officer must serve in order to qualify for longevity payments which would have the effect of accelerating longevity payments, as follows: \$625 for 7-10 years, \$950 for 11-14 years, \$2175 for 15-18 years and \$2475 for nineteen or more years.

The Employer points out that were the PBA proposal to be awarded, it would convert the second highest longevity rate among comparable communities for officers with twenty years of service to the highest longevity rate among officers in the

comparable communities and Mt. Kisco. Such a change is not warranted, the Employer insists, in light of the fact that its officers work the second to least number of days, earn one of the highest daily rates of pay and is one of the poorest communities.

Since longevity payments ultimately find their way into the calculation of overtime, the Employer reasons that there is no justification to accelerate an increase in this already expensive program.

The Employer vehemently opposes the PBA's proposals to increase its payments for uniform allowance and to the PBA Welfare Fund. The Employer emphasizes that only two villages currently pay a greater uniform allowance than it makes to its officers. Thus, it emphasizes, there is no rational to add an annual increase of \$25 and a new uniform cleaning allowance of \$250 to this benefit, as the PBA has proposed.

The Employer opposes the PBA's proposed rate increases and amendments to the welfare fund provisions of the Agreement. The proposed increases are \$120 per officer and the addition of an employer paid term life insurance in the amount of \$50,000. Currently, the Employer calculates, it already makes the third highest welfare fund payment of any of ten comparable villages identified by it. The PBA's proposals would increase the Employer's rank on this list to second, it submits. There is no justification for such an increase, the Employer asserts.

The Employer concluded its argument by arguing that the PBA did not show why the hospitalization provision should be amended to increase the health care stipend for waiving the right to family coverage from \$1,000 and for individual coverage from \$500 to fifty percent of the cost of the premium. Only two of the ten comparable villages currently provide for such a benefit. Ossining, the Employer

points out, pays substantially less than the fifty percent incentive proposed by the PBA. The Employer submits that the PBA did not present sufficient data to warrant that its proposal to increase the waiver stipend to fifty percent of the applicable premium from the current one thousand dollar level.

Discussion & Findings

In a compulsory interest arbitration arising under the Taylor Law, each of the statutory criteria must be addressed. In reviewing the Employer's position on the question of its ability to pay for a possible improvement in the compensation provided to its police officers, the Employer does not contend that it lacks the ability to underwrite *any* increase, but that it does not have the resources to match the compensation paid by the nearby municipalities of Bedford, Yorktown, New Castle and North Castle to their police officers. As such, the ability to pay issue, as it is presented by this case, reflects as much a determination which communities are comparable to the Employer as the Employer's ability to pay.

The reason that Bedford, north Castle, New Castle and Yorktown are particular issues is that the PBA has cited them as comparable and has sought improvements in terms and conditions of employment which will bring members of the bargaining unit it represents closer to those enjoyed by members of the police departments in the four communities.

Bargaining History

A statutory aspect of this case is the parties' history of negotiations. The history has resulted in lower compensation than satisfactory to the members of the PBA

while providing them with more time off than the Employer believe is acceptable.

There is also in place an employer funded health insurance plan which was implemented as a result of its own demand in the last round of negotiations over the PBA's initial objection, and which the Employer wishes to jettison in favor of the previous plan because it is allegedly less expensive. Yet, neither party has been able to muster the resources necessary to share in the gains which could be made by making the changes sought by each. Given the tripartite nature of the compulsory arbitration process, this resistance creates a barrier to achieving momentous change, such as sought by the parties.

Similarly, the Employer has shown that the police officers in its employ have the potential to use free time in a way which can reduce the number of actual days worked annually to one of the lowest in the County. Frequently, the reluctance of an employer, perhaps justifiable, to confront its public with the costs of a settlement in terms of direct compensation, results in the creation of a system which, on its face, is less costly in terms of mandated compensation, but which results in burdensome benefits in terms of time off. Ultimately, if the employer desires to replace employees on leave with current employees, the cost of lower pay or short staffing comes home to roost in overtime expense. That may be the case in Mount Kisco, or there may be other causes to the Employer's overtime expense. The information in the record is inferential, and there has been no methodology offered to cost out the savings to be achieved and the manner in which the parties can each gain something for their respective constituencies for increased productivity.

The same flaw is found in the Employer's explanation for the need for an attendance control policy. The data it presented was not categorized by occasional use

and long term use, for instance. The sick leave program urged by the Employer is designed to control occasional use.

It is simply unrealistic to expect a panel to increase the work year of a group of employees without *any* additional compensation. At the same time, it is equally unrealistic for the same employees to expect a wage increase at a level greater than the going rate without producing some concessions which result in increased rights of an employer to manage the workforce and to operate at a lower cost.

The parties' long time collective bargaining relationship offers them the opportunity to effectuate changes which can work to the advantage of each, but to which neither is entitled on the record before me. The best way is to expend the time, effort and good faith necessary to achieve voluntary solutions to these problems, such as a more stable commitment to a health insurance provider, a fair method to govern attendance problems and increased compensation and work-time. Another mode is to use the compulsory arbitration process to compromise portions of the award in a way which meets mutually identified needs. These parties have not demonstrated the existence of a relationship, at present, which allows them to pursue either model.

Ability To Pay

I conclude that the Employer has the ability to fund a wage increase at rate provided by comparable communities to their officers. Of course, the Employer does not possess the ability to fund an increase sufficient to bring its scheme of paying its police into line with the compensation paid to police in wealthier communities, such as Bedford, New Castle and North Castle. For example, the *per capita* income in those three towns is far greater than in Mt. Kisco, indicating a potential to pay more in the way

of taxation to support a highly paid police force. Indeed, the *per capita* income in Yorktown, \$32,972, is somewhat more than in Mt. Kisco. Likewise, other *indicia* of wealth, such as median household income, poverty rates and property values are far more favorable in North Castle, New Castle and Bedford than in Mt. Kisco. Therefore, as of the date of the data submitted to me in this case, the Employer did not possess the same ability to pay for wage increases as possessed by the municipalities of Bedford, North Castle and New Castle.

Moreover, as conceded in the record by the Employer's witness, all communities in Westchester are faced with increased costs for health insurance, contributions to the employees, retirement systems, and school and County taxes. The Employer did not demonstrate that it was faced with anything, other than increased revenue due to the need to raise water charges, which was not confronting its sister communities, including an increase in tax *certiorari* claims.

The Village Treasurer, although far less optimistic about the availability of an unreserved fund balance, still calculated that such a fund would be available to the Employer for 2004-5 in the amount of \$511,052. Since each one percent of increased cost for the police payroll costs \$30,000, the amount of this unreserved fund balance would more than support a reasonable wage increase.

The Employer also acknowledges that the market value of both residential and commercial real estate within its boundaries have risen sharply. Although it maintains that this increase is irrelevant to the question before the panel as a contingent asset at best (as the enhanced value is not received unless and until the asset is sold), I do not agree. Increases in the value of real property become available to a municipality upon

reassessment. The higher a property is assessed, the greater revenue is produced, assuming that tax rates remain constant. Reassessment is not a tax increase any more than the higher income tax percentages already in place amount to a tax increase on a taxpayer who earns more money. The Employer could have long ago reassessed the properties within its bounds, but has not done so in several decades, according to its Treasurer.

The property tax burden has actually lessened since the 1990s with the percentage of the constitutional tax limit being used dropping from somewhere between forty and fifty percent to less than forty percent.

Another source of increasing revenue is the Employer's share of sales tax revenue. Sales tax revenue have continued to expand at a rate of 4.5% per year. It is reasonable to project that this rate of increase will continue. Another source of the Employer's revenue is fees, such as parking fees, charges for fire protective services, intergovernmental charges, departmental income and user fees. In 2004, some two million dollars. There is no information which would lead me to conclude that this sum will cease to be available in the future.

In addition, the Employer's fifty-six percent of its property tax revenues are raised from commercial, rather than residential sources. This makes the public's reaction to taxes less sensitive, as only a minority of the tax burden is borne by individual homeowners. Moreover, commercial property tax increases may often be passed on to tenants under the terms of common commercial leases.

The Public Welfare & Interest

The public interest favors police personnel of high morale to ensure a firm

commitment to the law and community. None can gainsay the significance of a well compensated police force which carries with it a perception by each officer of the public's appreciation of his/ her service and risk.

Members of the Employer's police department (Department) must work with members of the departments of contiguous jurisdictions, as well as the County police and other law enforcement agencies. It would only engender disappointment and disquiet to refrain from providing for a reasonable improvement in the terms and conditions of employment of the Employer's police, while their colleagues in nearby communities receive them from their employers. In addition, it is reasonable to assume that the officers, like the rest of the citizens of the County and nearby counties, constantly face increases in their personal and residential costs. An increase in compensation must be implemented in order to prevent a deterioration in the officers' standard of living and the inception of a retention and recruitment problem for the Employer.

Thus, it is in the public interest and welfare for this panel to award a wage increase which comports with the Employer's ability to pay and reflects increases awarded to police by comparable communities.

Comparable Communities/Peculiarities of Profession, Etc.

The Taylor Law makes relevant to any award concerning the terms and conditions of employment of public safety employees the terms and conditions of employment and wage increases achieved by officers in other communities. In identifying the police to whom the Employer's police should be compared, the precedents instruct the panel to specify one or more communities.

The municipalities claimed by the PBA to be comparable, namely New Castle,

North Castle, Bedford and Yorktown are different in terms of area (they are several times as large), and, in the cases of New Castle, North Castle and Bedford, are more wealthy and currently have a greater ability to pay than Mt. Kisco. (A panel's findings on questions such as ability to pay and appropriate comparables should be limited to the period covered by its interest award.) Thus, I have concluded that a "catch-up" improvement in the terms and conditions of employment of the Employer's police is not currently warranted. The Employer should not be compelled to match, even approximately, the superior terms and conditions of employment of officers in the four communities the PBA has cited as comparable.

Nonetheless, there is no question that the appropriate comparison between the Employer's police and other employees must primarily turn on what police earn in some grouping of the County's communities. This is because the concerns and risks faced by police everywhere are peculiar to that profession, and, in New York State, the statutory coverage of police officers is unique in many respects.

The Employer has identified a list of nine villages in the County which it believes are comparable: Elmsford, Sleepy Hollow, Buchanan, Tuckahoe, Dobbs Ferry, Mamaroneck and Tarrytown. The *per capita* income and median household income of the residents of Mt. Kisco and these nine municipalities are similar. The poverty rates in these villages are closer to those in Mt. Kisco than to the other villages and towns in the County, and its population (9,983) falls within the range of the populations of many of the nine villages, as well as some of the other villages in the County, such as: Sleepy Hollow (9,212), Village of Rye Brook (8,602), Village of Briarcliff Manor (7,696), Village of Hastings (7,648), Village of Croton (7,606), Village of Pleasantville (7,172),

Village of Irvington (6,631), Village of Bronxville (6,543), Village of Larchmont (6,685), Village of Pelham (6,400) and Village of Tuckahoe (6,211).

While these nine municipalities are more relevant as comparables than the four identified by the PBA (New Castle, North Castle, Bedford and Yorktown), as contiguous communities, the latter group cannot be ignored. As the wealth of these increases, the wealth in Mt. Kisco should also be affected in areas such as sales tax growth, residential property values, school taxes and crime. Since the Employer's police must most frequently interact with the police in the four nearby communities, the terms and conditions of police in those communities, especially rates of increase, cannot be ignored..

Certainly, the Employer's attempt to characterize itself as 'relatively poor' when compared to other Westchester communities, is inappropriate. A more neutral term would be more appropriate, such as less prosperous or less robust. I do not find that any of the municipalities in the County, including the Employer, which were cited by either party as comparable communities, are "poor".

In comparing the wage increases negotiated or awarded in the towns and villages in the County, it is apparently not currently possible to include the net value of the increases, given the possibility that some may have been supported by increases in productivity, such as the one's sought by the Employer here. The panel will thus be impelled to use the data supplied by the parties 'as is.'

On the record before me, including the testimony, documentary exhibits and post-hearing briefs, and my application of each of the statutory criteria, I have awarded the final changes to the current terms and conditions of employment, in which

one or both of the party arbitrators have concurred, as indicated below.

A W A R D :

1. **The Employer shall increase the annual salary of each officer by 3.7% effective 6/1/02 and by 3.85% effective 6/1/03. Longevity shall be increased as follows: 6/1/02 – Level 1 \$25; Level 2 \$35; Level 3 \$95 and Level 4 \$80; 6/1/03 – Level 1 \$25; Level 2 \$40; Level 3 \$100 and Level 4 \$90.**

Rationale: The wage increases reflect those for the same or similar periods achieved in the nine most comparable communities, as well as the four contiguous communities and maintains the Employer's officers at the same relative level of compensation they possessed with respect to other communities at the outset of the hearing, after applying the statutory criteria discussed above. The longevity increases reflect the same percentages converted into dollar amounts for the parties' convenience in order that the increases received by each employee reflect the percentage of the base wage increase. The PBA arbitrator concurs with the increases in longevity awarded in this paragraph and the Employer arbitrator concurs with the increases in salary awarded in this paragraph.

2. **The Employer shall increase its contribution to the Welfare Fund effective on June 1, 2003 by one hundred dollars (\$100). The Employer shall increase the uniform allowance by one hundred dollars (\$100) effective June 1, 2003.**

Rationale: The purpose here is to protect the level of benefits currently provided by the Fund to officers against increased costs of the benefits. There has been no demonstration that a greater increase is necessary maintain benefit levels. The uniform allowance is likewise increased to reflect higher maintenance costs. This paragraph of the Award is supported unanimously.

3. **The grievance procedure shall be modified, effective September 1, 2006, as follows:**
 - a. **add a contractual period of limitations within which a grievance must be filed of thirty (30) business days of the time when the grievant knew or should have known of the alleged grievance;**
 - b. **expand the definition of a grievant to include the PBA, an officer or a group of officers;**
 - c. **provide that a grievance of the PBA or a group of police officers be filed directly with the Chief;**
 - d. **clarify that a grievance is an alleged violation, misinterpretation or**

misapplication of the Agreement; and

- e. substitute a single impartial arbitrator selected through the American Arbitration Association and its labor rules, unless the parties concur on an arbiter.**

Rationale: This will modernize and make the grievance procedure more efficient by expediting the resolution of disputes. This change is unanimously supported by the panel.

- 4. An officer on Section 207-c leave shall not earn additional vacation after 90 days. The officer shall retain whatever annual leave he has accrued, and shall resume earning leave upon return to active service from leave. The Chief shall be replaced by " a representative appointed by the Employer."**

Rationale: This is a modification of an Employer proposal to eliminate the continued accrual of vacation leave after going on Section 207-c leave. The modification would allow an officer to return from leave with some accruals for use upon return from leave. However, the right of the officer to earn more vacation indefinitely would cease as this benefit is for a use which he/ she does not require as she/he is not actively working. The need to replace the Chief as the initial adjudicator of an officer's eligibility due to possible conflicts of interest is warranted. The Employer's arbitrator concurs with these provisions of this Award.

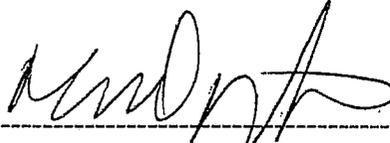
- 5. The Employer's proposal to provide the Chief with the discretion to determine the maximum amount of training time under Section 2 of Article XVI is granted.**

Rationale: The discretion to control how much, in the way of resources, should be expended on training is a traditional management function. The principle that officers should be compensated for the time expended on training remains intact. The Employer's arbitrator concurs with this provision of the Award.

- 6. The remaining proposals of the parties are denied as unreasonable at this time. Terms of the expired Agreement not altered or deleted by this Award shall remain in full force and effect, The Taylor Law does not require that all agreements among comparable jurisdictions be identical. The statute recognizes that the parties' bargaining history is an important consideration to be weighed by the panel. Despite the information submitted by both parties, I find no justification at this time for any further changes in existing terms and conditions of employment of members of the bargaining unit.**

7. The duration of the expired Agreement shall be from June 1, 2002 May 31, 2004.

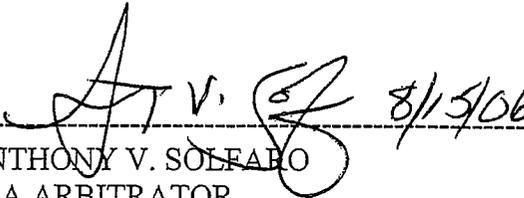
Dated: Towaco, New Jersey
August , 2006



DAVID N. STEIN, ESQ.
IMPARTIAL CHAIRMAN
PUBLIC PANEL MEMBER

AWARD OF MR. ANTHONY V. SOLFARO, CONCURRING IN PART, AND DISSENTING IN PART, AS FOLLOWS:

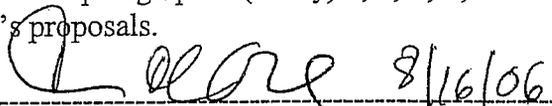
I concur with paragraphs 1 (longevity only), 2, 3, 7 and those parts of paragraph 6 as denied the Employer's proposals . I dissent from paragraphs 4 and 5 and those parts of paragraph 6 that denied the PBA proposals.



ANTHONY V. SOLFARO
PBA ARBITRATOR

**AWARD OF TERENCE M. O'NEIL, ESQ., DISSENTING, IN PART, AND
CONCURRING, IN PART:**

I dissent from paragraph 1(longevity only), and those parts of paragraph 6 that denied the Employer's proposals.I concur with paragraphs 1(salary) 2, 3, 4, 5, 7 and those parts of paragraph 6 that denied the PBA's proposals.



TERRENCE M. O'NEIL, ESQ.
EMPLOYER ARBITRATOR