

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

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In the Matter of the Interest Arbitration between

THE CITY OF MIDDLETOWN,  
Public Employer,

- And -

CITY OF MIDDLETOWN POLICE BENEVOLENT  
ASSOCIATION, INC.,  
Employee Organization.

PERB Case No.: IA2006-040; M2006-215

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**OPINION**

**AND**

**AWARD**

OCT 07 2008  
**CONCILIATION**

BEFORE: Jeffrey M. Selchick, Esq.  
Public Panel Member and Chairman

Anthony V. Solfaro, President, NYS Union of Police Associations, Inc.  
Employee Organization Panel Member

Alex Smith, Esq., Corporation Counsel  
Employer Panel Member

APPEARANCES:

For the City of Middletown  
Kornfeld, Rew, Newman & Simeone  
Frank T. Simeone, Esq., of Counsel

For the City of Middletown Police Benevolent Associations, Inc.  
NYS Union of Police Associations, Inc.  
John K. Grant, Esq., of Counsel

## **BACKGROUND**

Pursuant to the provisions of Section 209.4 of the Civil Service Law and in accordance with the Rules of the Public Employment Relations Board, an interest Arbitration Panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the City of Middletown, New York ("City") and the City of Middletown Police Benevolent Association, Inc. ("PBA").

The Panel notes that the City is located in Orange County, New York in the Hudson Valley Region. The City lies along the northern boundary of the New York Metropolitan area, which can be seen as a line that runs from the City of Newburgh, the City, and Port Jervis. The City, Newburgh, and Port Jervis are all located in Orange County. There are also 11 villages 13 towns, 3 cities and a Sheriff's Office in Orange County with organized PBA's (see PBA Exhibit 23).

The PBA is the certified bargaining agent for all Police Officers, Sergeants, Lieutenants, and Detectives of all ranks. (See Panel Exhibit 6, p. 1). The specific composition of the bargaining unit at the time of the hearing was 7 Lieutenants, 8 Sergeants, 8 Detectives, and 51 Police Officers. (See PBA Exhibit 48).

The current Collective Bargaining Agreement between the parties covered the period from January 1, 2004 through December 31, 2006. With negotiations for a successor Agreement having been unsuccessful, the PBA filed the Petition for the instant proceeding on February 20, 2007. (Panel Exhibit 2). The City filed its Response on March 7, 2007 (Panel Exhibit 3), as well as an Improper Practice Charge (Panel Exhibit 5). The Improper Practice Charge, which was amended on March 27, 2007, (Id.), claimed that the PBA had submitted

non-mandatory items of negotiations to the Panel and had bargained in bad faith. (Id.). The City identified four (4) different PBA demands in its Petition: Demand #8 (Health Plans - health insurance on retirement); Demand #11 (Proposed new article Bill of Rights); Demand #12 (Proposed new article Disciplinary Procedure); and Demand #13 (Proposed new article General Municipal Law Section 207-c proceedings). (Id.) (PERB Case No.: U-27423 – See Panel Exhibit 5).

The Amended Charge claiming bad faith bargaining was found untimely by PERB Administrative Law Judge M. Lynn Fitzgerald, but the initial Charge that the four (4) listed demands were "non-mandatory" remained pending at the time of the hearing. The City later withdrew its objections to Demand #8 related to health insurance on retirement.

The parties convened before the Panel on November 5, 2007, to present their positions on their respective demands, including those subject of the Improper Practice Charge. At the hearing, both the parties were represented by counsel and by other representatives. The parties submitted numerous and extensive exhibits, documentation and sworn witnesses. Both parties presented extensive arguments on their respective positions through post-hearing briefs filed with the Panel. The hearing had a transcribed record, which was the official record.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by both parties. After significant discussion and deliberations at the executive session, telephone calls, as well as additional study and review by the Panel Chair thereafter, the Panel reached a unanimous agreement on the terms and conditions of the Interest Arbitration Award herein.

This Award is unanimous, based on the issues addressed. Those demands not specifically addressed in this Award are rejected. Accordingly, all references to "the Panel" in this Award shall mean the entire Panel. At the request of the parties, a Summary of Award, attached hereto as Appendix "A," was issued on June 9, 2008, with the understanding that this Opinion would follow. This Opinion is set out herein, along with the final Award.

The positions originally taken by the parties are quite adequately specified in the Petition and the Response as set forth herein, applying numerous hearing exhibits, testimony and the parties' post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purpose of this Opinion and Award.

The following represents the PBA's demands as submitted in its Petition (see Panel Exhibit 3).

1. **HOUSEKEEPING:**

- Delete dates mutually agreed upon that no longer apply.

2. **ARTICLE 3 – BASE WAGE AND LONGEVITY:** (p. 1 and Addendum "A" pp. 17-18)

- Amend the Base Wage schedule and dates to reflect the following increases (p. 18) as follows:

<u>1/1/07</u>	<u>1/1/08</u>
8.0%	8.0%

3. Insert the following percentages and date for longevity as follows (p. 17):

	<u>1/1/07</u>
Police Officers	- 4.0%
Detectives	- 4.0%
Sergeants	- 3.75%
Lieutenants	- 3.5%

5. Insert "seven percent (7%)" where "five percent (5%)" appears, and add "and primary Identification Officer" in the second (2<sup>nd</sup>) sentence (p. 17).

3. **ARTICLE 5 – UNIFORMS:** (p. 2)

1. Amend dates and amounts as follows:

(+\$50.00)	(+\$50.00)
<u>1/1/07</u>	<u>1/1/08</u>
\$1,000.00	\$1,050.00

2. Amend dates and amounts as follows:

(+\$50.00)	(+\$50.00)
<u>1/1/07</u>	<u>1/1/08</u>
\$1,000.00	\$1,050.00

3. Amend dates and amounts as follows:

(+\$50.00)	(+\$50.00)
<u>1/1/07</u>	<u>1/1/08</u>
\$1,000.00	\$1,050.00

6. Delete in its entirety (see Proposed New Article - GML Section 207-c Procedure).

4. **ARTICLE 6 – OVERTIME** (pp. 3-4)

1. Amend to read as follows:

All police officers, detectives, sergeants and lieutenants, shall be entitled to overtime at the rate of one and one-half times (1.5X) his/her applicable rate of pay, inclusive of longevity, if applicable, for all hours worked in excess of his/her regularly scheduled tour of duty, when not scheduled to work, or in excess of the workweek.

- (a) Add the following to read as follows:

The six (6) compensatory days (i.e., 48 hours) of accumulation shall be a floating cap, in that each unit member shall be entitled to accumulate the maximum as set forth herein, and use some or all of that accumulation, with the ability to then accumulate compensatory time as long as no more than the six (6) days or forty-eight (48) hours are not exceeded.

5. **ARTICLE 8 - WORKDAY AND WORKWEEK:** (pp. 4-5)

1. Insert “seven percent (7%)” where “five percent (5%)” appears in paragraphs “4” and “5”.

Add the following to paragraph 5 to read as follows:

Effective January 1, 2007, the "C" line shall be compensated with a three and one-half percent (3.5%) evening differential. The evening differential shall be paid to the affected employee who is on vacation, sick leave, bereavement leave, military leave, personal leave or compensatory time. An employee injured in the line of duty (General Municipal Law Section 207-c), shall continue to receive the evening differential as set forth above. The evening differential paid to each employee working the "C" line shall be included in said employee's Base Wage and Longevity for the purpose of calculating the employee's rate and payment of overtime.

3. Insert "seven percent (7%)" where "five percent (5%)" appears in paragraph "4".
4. Delete the last sentence and add the following:

The "on call" Detective shall be assigned a specific time frame. During that specific time frame, the "on call" Detective shall be required to respond in order to assist and/or investigate any incident deemed necessary by the shift supervisor.

The Detective shall be paid one (1) hour of straight time for every four (4) hours while "on call".

6. **ARTICLE 10 – HOLIDAYS:** (p. 6)

**NEW 4.** A police officer, who works on any of the following Holidays, or any part thereof, shall be paid at the rate of time and one-half (1.5X) his/her applicable hourly rate, inclusive of longevity, if applicable. The Holidays are as follows:

1. Memorial Day
2. Independence Day
3. Labor Day
4. Thanksgiving Day
5. Christmas Day

7. **ARTICLE 11 - SICK LEAVE:** (pp. 6-7)

2. Insert "seventy-five percent (75%)" where "forty percent (40%)" appears.
4. Delete in its entirety (see Proposed New Article - GML Section 207-c Procedure) and renumber accordingly.
- (A) Delete in its entirety (see Proposed New Article - GML Section 207-c Procedure).

**NEW 4.** Effective January 1, 2007, a sick leave bonus shall be paid in the first (1<sup>st</sup>) pay period of the ensuing January of each year to all police officers based on the following schedule:

<u>Sick Leave Days Used</u>	<u>Amount Paid</u>
0-2	5 Days Pay
3-4	3 Days Pay
5	1 Days Pay

8. **ARTICLE 14 - HEALTH PLANS:** (pp. 8-9)

1. Add a new sentence to the end of this section to read as follows:

The City shall provide and make available at least two (2) Health Maintenance Organizations (HMO) options.

3. Amend the dates and amounts as follows:

(+\$50.00)	(+\$50.00)
<u>1/1/07</u>	<u>1/1/08</u>
\$825.00	\$875.00

6. Amend to read as follows:

Effective January 1, 2007 and upon retirement, the City shall pay one hundred percent (100%) of the premium or cost for the police officer and/or eligible dependent(s) in the same health insurance plan or HMO, if selected by the retiree, as provided above to the bargaining unit.

9. **ARTICLE 20 – FUNERAL EXPENSES:** (p. 14)

- Insert “ten thousand dollars (\$10,000.00)” where “seven thousand five hundred dollars (\$7,500.00)” appears.

10. **ARTICLE 27 - TERM OF AGREEMENT:** (p. 16)

- Insert "2007" and "2008" where "2004" and "2006" appear respectively.

11. **PROPOSED NEW ARTICLE**

**BILL OF RIGHTS**

**Section 1.** The following provisions, which shall be known as a Bill of Rights, are hereby established for the unit members covered by this collective bargaining agreement when interrogated by any individual of the City in connection with an official investigation, which may lead to any type of charges.

- A. Unit members hold a unique status as public officers in that the nature of their office and employment involves the exercise of a portion of the power of the municipality.
- B. The security of the community depends to a great extent on the manner in which police officers perform their duties. Their employment is thus in the nature of a public trust.
- C. The cognizance and control of the government administration, disposition and discipline of the Department is the responsibility of the City and Chief of Police. In administering the Department, the law empowers the City to appoint numerous superiors to exercise various powers to command over subordinates. In addition, they have promulgated various rules and procedures to guide members in the performance of their duties.
- D. The wide-ranging powers and duties given to the Department and its unit members involve them in all manner of contacts and relationships with the public. From these contacts come many questions concerning the actions of unit members. These questions often require immediate investigation by superior officers. In an effort to ensure that these investigations are conducted in a manner, which is conducive to good order and discipline, the following guidelines are promulgated:
  - 1. The interrogation of a unit member shall preferably be held when the unit member is on duty, unless the exigencies of the investigation dictate otherwise. When practical, interrogations should be scheduled for the daytime and should not interfere with Department operations.
  - 2. The interrogation shall take place at a location designated by the investigating officer.
  - 3. The unit member shall be informed of the rank and name of the interrogating officer in charge of the investigation and all personnel present during the interrogation. If a unit member is directed to leave his/her post or assignment and report for interrogation to another post or assignment, his/her superior shall be promptly notified of his/her whereabouts by the affected unit member.
  - 4. The unit member shall be informed of the nature of the investigation before interrogation commences. If it is known that the unit member being interrogated is a witness only, he/she should be so informed at the initial contact.
  - 5. The questioning shall not be overly long. Reasonable respites shall be allowed. Time shall be also provided for personal necessities, meals, telephone calls and rest periods as are reasonably necessary.

6. The complete interrogation of the unit member shall be recorded by audiocassette or by a stenographer, with a copy provided to the unit member within a reasonable time after the conclusion of the interrogation.
7. If at any time prior to or during the questioning of a unit member, the individual conducting the interview becomes or should be aware that the unit member being questioned may be or may become the subject of a criminal investigation, that unit member shall be provided with all his/her constitutional rights. Thereafter, the unit member shall not be required to provide a voluntary statement. However, if the unit member is then ordered by the Chief of Police or his designee to answer the question(s) put forth to him/her, the unit member shall answer and is entitled to immunity from criminal prosecution based upon the answer(s) or information derived from the answer(s) given by him/her during such questioning.
8. The aforementioned guidelines shall be observed by the City in conducting investigations of alleged actions of any unit member who is the subject of a disciplinary matter.

12. **PROPOSED NEW ARTICLE:**

**DISCIPLINARY PROCEDURE**

**Command Discipline - Informal Stage**

In the event the Employer determines that a formal procedure is not required due to the relatively minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or police departments adopted Rules and Regulations, the affected employee(s) shall be afforded the opportunity to resolve the matter, with representation, through a written Stipulation of Settlement, setting forth the terms agreed upon between the parties.

The Employer shall initiate Command Discipline by advising the employee(s) of the minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or police departments adopted Rules and Regulations and the proposed penalty. In the event the employee(s) does not agree with the proposed penalty, or in the event a settlement cannot be agreed upon, or rejects Command Discipline, the Employer may then file written charge(s) against the employee(s) as prescribed herein.

The maximum penalty that may be imposed at this level by the Chief of Police is as follows:

1. A written reprimand to be placed in the employee's personnel file, which shall not exceed six (6) months; and/or
2. A reduction in vacation accruals which shall not exceed three (3) work days.

### **Procedure Rights - Formal Stage**

In the event the Employer determines that a written charge(s) is required, the Disciplinary Procedure prescribed herein shall be available to all employees with at least six (6) months of service with the Employer, unless otherwise available pursuant to law. In the event the Employer seeks to impose a written reprimand, suspension without pay for up to thirty (30) calendar days, or a fine not to exceed one hundred (\$100.00) dollars, the Disciplinary Procedure shall be Section 75 and/or 76 of the Civil Service Law. In the event the Employer seeks to impose a suspension of more than thirty (30) calendar days or more, reduction in grade (demotion), or dismissal from service (termination), the employee shall have the right to choose either Section 75 and/or 76 of the Civil Service Law, or arbitration as described herein, but not both alternative procedures to grieve such disciplinary action.

### **Notice of Discipline - Formal Stage**

In the event the Employer sees fit to impose a written reprimand, suspension without pay, a fine, reduction in grade or dismissal from service, notice of such disciplinary decision shall be made in writing and served upon the employee. The disciplinary measure shall be imposed only for incompetence or misconduct. The specific act(s) that warrants disciplinary action and the proposed sanction(s) shall be specifically contained in the Notice of Discipline.

The PBA shall be provided a copy of the Notice of Discipline at the same time as the affected employee(s).

The Notice of Discipline shall be accompanied by a written statement that:

"An employee served with a Notice of Discipline has the right to object by filing a response within ten (10) calendar days by exercising his/her rights as set forth above, which shall be fully set forth in the Notice of Discipline served on the employee."

### **Procedure Selection - Formal Stage**

In the event the employee does object, then he/she shall file a written notice of their choice of procedure, subject to the provisions stated above with the Employer and PBA no later than ten (10) calendar days after receiving the Notice of Discipline.

The alternative disciplinary procedure to Section 75 and/or 76 provides for a hearing by an independent Arbitrator at its final stage.

The employee has the right to be represented by the PBA, an attorney, or other representative of their choice, at every stage of the proceeding.

## **Suspension**

In no event however, shall an employee who has been served with a Notice of Discipline be suspended without pay for a period not to exceed thirty (30) calendar days.

## **Grieving a Notice of Discipline**

An employee may grieve a Notice of Discipline at Step 3 of the Grievance Procedure prescribed in Article 17 hereof no later than ten (10) calendar days after receiving the Notice of Discipline.

## **Filing for Arbitration**

The independent Arbitrator shall be selected in accordance with the procedures set forth in Article 17 - Grievance Procedure.

The independent Arbitrator shall hold a hearing at a mutually agreed upon date(s) and time(s) to all parties' representatives. The affected employee may be represented at the arbitration by the individual(s) of his/her choosing and shall be entitled to present witnesses on his/her behalf. The Arbitrator shall render a written decision no later than thirty (30) calendar days after the hearing has been declared closed.

The Arbitrator shall confine himself/herself to the precise issue(s) submitted for arbitration and shall have no authority to determine any other issue(s) not so submitted to him/her nor shall he/she submit observations or declarations of opinion which are not essential in reaching the determination. The Arbitrator's decision with respect to guilt or innocence and penalty, if any, shall be final and binding on the parties and he/she may approve, disapprove or take any other appropriate action warranted under the circumstances, including, but not limited to, ordering reinstatement and back pay for all or part of the period of suspension, if any.

## **Settlement**

The disciplinary may be settled at any stage of the proceeding. The terms of the settlement agreed to shall be reduced to writing and signed by the appropriate parties.

## **Fees and Expenses**

All fees and expenses of the Arbitrator, if any, shall be paid by the Employer. In the event demotion or termination is sought by the Employer, the hearing shall have a transcribed record provided at no cost to the employee or PBA.

13. **PROPOSED NEW ARTICLE:**

**GENERAL MUNICIPAL LAW SECTION 207-c PROCEDURE**

**Section 1. Applicability**

Section 207-c of the General Municipal Law provides that any Police Officer of the Police Department of the City of Middletown.

"who is injured in the performance of his duties or who is taken sick as a result of the performance of his duties so as to necessitate medical or other lawful or remedial treatment shall be paid by the municipality by which he is employed the full amount of his regular salary or wages until his disability arising therefrom has ceased and, in addition, such municipality shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness."

The following procedures shall regulate the application and benefit award process for 207-c benefits.

**Section 2. Definitions**

- (A) **City:** The City of Middletown
- (B) **Chief:** The Chief of Police of the City of Middletown
- (C) **Claimant:** Any police officer of the City of Middletown who is injured in the performance of his/her duties or who is taken sick as a result of the performance of his/her duties pursuant to General Municipal Law Section 207-c.
- (D) **Recipient:** Any Police Officer of the City of Middletown who has been granted General Municipal Law Section 207-c benefits.
- (E) **Claims Manager:** The individual designated by the City who is charged with the responsibility of administering the procedures herein.
- (F) **Section 207-c Benefits:** Payment of regular salary or wages (Base Wage and Longevity) and medical treatment and hospital care mandated under Section 207-c. In addition to receiving his/her regular salary or wages and payment of medical treatment and hospital care, an employee receiving Section 207-c benefits shall be entitled to:
  - (1) Health insurance in the same manner in which and to the same extent as the employee was receiving health insurance when working;

- (2) Accumulated sick leave;
- (3) Payment of Night Shift Differential;
- (4) Payment of Health Insurance Buy-out;
- (5) Payment of Welfare Fund contribution;
- (6) Payment of Life Insurance premium;
- (7) Payment of Educational Incentive;
- (8) Payment of Holiday Pay;
- (9) Payment of Uniform Allowance, which shall be pro-rated in the next payment based on the actual time out of work (e.g., paid full amount on 1/1/07 of \$1,000.00, and is then out on §207-c for the period of February 1, 2006 through July 31, 2006, the January 1, 2007 payment shall be \$525.00 instead of \$1,050.00);
- (10) Contributions to the Police and Fire Retirement System;
- (11) Vacation and Personal Leave – In the event the employee is out of work more than ninety (90) consecutive work days in any calendar year, his/her vacation, and personal leave shall be pro-rated. Upon return to work, that employee shall continue to accrue or be credited with their respective vacation and personal leave.

### **Section 3. Application for Benefits**

1. Department Incident Reports:
  - (A) Any Claimant who is injured in the performance of his/her duties, or is taken sick as a result of the performance of his/her duties, shall file a written department incident report with the Chief and Claims Manager within fifteen (15) calendar days after the injury or illness, or within fifteen (15) calendar days after the Claimant should have become aware of the injury or illness, whichever is later. Upon good cause shown, an application for Section 207-c benefits may be entertained in the discretion of the Claims Manager, notwithstanding the failure to file the necessary incident report within the filing period set forth herein.

- (B) The department incident report shall include the following information as available to the Claimant:
  - (i) the time, date and place of the incident;
  - (ii) a statement of the facts surrounding the incident;
  - (iii) the nature and extent of the Claimant's injury or illness; and
  - (iv) the name of any possible witnesses to the incident.

2. Application for benefits:

- (A) Any Claimant who is injured in the performance of his/her duties, or is taken sick as a result of the performance of his/her duties shall file an application for benefits with the Claims Manager within fifteen (15) calendar days after the incident giving rise to the injury or sickness, or within fifteen (15) calendar days after the Claimant should have become aware of the injury or illness, whichever is later. Upon good cause shown an application for Section 207-c benefits may be entertained in the discretion of the Claims Manager, notwithstanding the failure to file the necessary application within the required fifteen (15) calendar days.
- (B) The Claimant shall be permitted to file documentation to supplement the original application for benefits under the following circumstances:
  - (i) after filing the application, but before the determination of the Claims Manager and
  - (ii) as set forth in Section 11.
- (C) All applications for Section 207-c benefits shall be in writing, using official application form(s), which shall include the following:
  - (i) the time, date and place where the injury or illness producing incident occurred;
  - (ii) a detailed statement of the particulars of the incident;
  - (iii) the nature and extent of the Claimant's injury or illness;
  - (iv) the Claimant's mailing address;
  - (v) the names of any potential witnesses; and
  - (vi) the name and address of all of the Claimant's treating physicians.

3. A department incident report and application for Section 207-c benefits may be filed by either the Claimant or by some other person on behalf of the Claimant where the Claimant's injury or illness prevents him/her from filing the department incident report or Section 207-c benefits application.

**Section 4. Authority and Duties of Claims Manager**

1. The Claims Manager shall have the sole and exclusive authority to determine whether a Claimant is entitled to Section 207-c benefits. In making the determination, the Claims Manager shall examine the facts and circumstances giving rise to the application for such benefits.
2. The Claim Manager's authority shall include, but not be limited, to the following:
  - (i) employ experts and specialists to assist in the rendering of the determination of eligibility;
  - (ii) require the production of any book, document or other record that pertains to the application, injury, or illness;
  - (iii) require the Claimant to submit to one (1) or more medical examinations related to the illness or injury;
  - (iv) require the Claimant to sign forms for the release of medical information that bears upon the application;
  - (v) require the attendance of the Claimant and all other witnesses for testimony upon reasonable notice; and
  - (vi) do all that is necessary or reasonable in the processing of said application.
3. On an initial determination investigation, a Claimant must cooperate with the City and provide all necessary information, reports and documentation. A determination of initial eligibility by the Claims Manager shall be made within fifteen (15) calendar days of the date of the application, based upon the investigation without holding a hearing.

The Claims Manager shall mail a written copy of his/her decision to the Claimant, and the Chief within fifteen (15) calendar days of his/her determination. The written determination shall set forth the reasons for the Claims Manager's decision.

A written request for a hearing to appeal from an initial determination of the Claims Manager must be filed with the Claims Manager within fifteen (15) calendar days after

mailing of the determination of Claimant. The Claims Manager shall arrange for an arbitration hearing to be held pursuant to Section 11 of this procedure.

#### **Section 5. Time Off Pending Initial Determination**

1. Pending the initial determination of benefit eligibility, any time off taken by the Claimant that he/she claims is the result of the injury or illness giving rise to the application shall be charged to the Claimant's sick leave time. In the event there is insufficient sick leave time and/or it becomes exhausted, the Claimant shall use paid leave in the following order:
  - (A) Compensatory Time
  - (B) Vacation

If the Claimant is granted Section 207-c benefits, the leave time used will be credited back to Claimant.

#### **Section 6. Medical Examinations and Treatment**

1. Claimant – Medical Examination(s): After the filing of an application, the Claims Manager may require a Claimant to submit to such medical examination(s) as may be directed, including examination(s) necessary to render an initial or final determination of eligibility. Any Section 207-c Claimant who refuses to be examined shall be deemed to have waived his/her rights for consideration of Section 207-c benefits after such refusal and no hearing shall be required.
2. Recipient – Medical Examination(s) and Treatment: The Claims Manager may require a Recipient to submit to such medical examination(s) and treatment as may be directed. Such treatment may include, but is not limited to, medical and/or surgical techniques deemed necessary by the appointed physician(s). The Recipient shall cooperate in scheduling of the examination(s) and/or treatment, provide medical records regarding the injury or illness to the City's medical examiner and in answering questions relating to the injury or illness. Any Section 207-c Recipient who refuses to accept such medical examination(s) and/or treatment may be terminated from Section 207-c status after such refusal. The Claims Manager shall provide written notice to the Recipient that his/her benefits are being terminated pursuant to Section 10 of this Procedure, on the basis of the refusal.
2. **Medical Reports.** All physicians, specialists and consultants treating a Claimant/Recipient of Section 207-c benefits shall be required to file a copy of any and all reports with the Claims Manager. The Claimant/Recipient shall execute all necessary releases and shall be responsible for the filing of said reports. The Claimant/Recipient shall

receive a copy of the medical reports filed with the Claims Manager. The medical reports, which are filed, shall remain confidential and only released for purposes of administering the procedures herein.

3. **Payment for Medical and Related Services.** A Claimant approved to receive Section 207-c benefits must notify the Claims Manager of expenses for medical services, hospitalization, or other treatment alleged to be related to the injury or illness giving rise to the claim. Unless in an emergency, notice shall be made prior to the incurring of the expense.
4. Any claim for surgical operations or physiotherapeutic procedures (i.e. chiropractic care or physical therapy) must be pre-approved by the Claims Manager unless it was required in an emergency. Determinations of the Claims Manager under this paragraph shall be based upon medical documentation.
5. Bills for medical services, drugs, appliances or other supplies will require filing a copy of the medical bill and/or prescription by a doctor with the Claims Manager for the particular items billed, stating thereon that the items were incurred as a consequence of the injury or illness upon which claim for benefits is based. The City reserves the right to arrange for alternate methods for the Claimant to receive prescriptions, appliances and supplies (prescription drug card, for example).

#### **Section 7. Perform Regular or Specific Light Duty Assignments**

1. Any Recipient may be examined by physicians chosen by the Claims Manager to determine the Recipient's ability to perform his/her regular or specific light duty. Any Recipient deemed able to perform his/her regular or specific light duty detailed by the Claims Manager, based upon medical documentation, may be ordered by the Chief to report and perform his/her regular or such specified light duty as is consistent with the employee's status as a police officer. The order to report for duty shall specify a date not less than fifteen (15) calendar days from the mailing of the order.
2. A Recipient who disagrees with the order to report and perform his/her regular or specific light duty and has conflicting medical documentation that he/she is unable to perform or undertake the specific light duty determined by the Claims Manager, based on medical documentation, shall submit the medical documentation to the Claims Manager within fifteen (15) calendar days of mailing of the order to report and perform his/her regular or specified light duty, setting forth the regular or specific light duty that cannot be performed. The Claims Manager shall review said medical evidence and within fifteen (15) calendar days of its receipt shall issue to the Chief and Recipient a decision as to whether the order to return to perform his/her regular or specified light duty shall be confirmed,

modified or withdrawn. If the Recipient is dissatisfied with the decision he/she may, in writing, notify the Claims Manager of the need for a third (3<sup>rd</sup>) independent medical examination to be conducted pursuant to Section 11(2) of this procedure.

3. Payment of full Section 207-c benefits shall be continued with respect to a Recipient who submits medical documentation conflicting with the order to report and perform his/her regular or specified light duty, until it is determined whether the Recipient is capable of performing his/her regular or specific light duty determined by the Claims Manager, based on medical documentation, pursuant to Section 11(2) of this procedure. Where a determination has been made by the third (3<sup>rd</sup>) independent physician that the employee can report to and perform his/her regular or specific light duty, and that individual fails or refuses to perform light duty that employee's Section 207-c benefits may be terminated.

#### **Section 8. Changes in Condition of Recipient**

1. Every Section 207-c Recipient shall be required to notify the Claims Manager of any change in his or her condition, which may enable the Recipient to return to normal duties or be classified as eligible for light duty. This notice shall be made in writing within forty-eight (48) hours of any such change. Failure to notify the Claims Manager as set forth herein may result in the termination of Section 207-c benefits.

#### **Section 9. Right of Perpetual Review and Examination**

1. The Claims Manager shall have the right to review the eligibility of every Section 207-c Recipient throughout the period during which benefits are received. This right shall include, but shall not be limited to:
  - (i) requiring Recipient to undergo medical examination(s) and treatment by physician or medical providers chosen by the Claims Manager;
  - (ii) requiring Recipient to apprise the Claims Manager as to their current condition; and
  - (iii) requiring Recipients or any other involved parties to provide any documentation, books or records that bear on the Recipient's case.

#### **Section 10. Denial or Termination of Benefits**

1. A Claimant contesting the denial of Section 207-c benefits must make a written request to the Claims Manager within fifteen (15) calendar days after mailing of the denial notice that he/she is appealing the determination,

and requesting a hearing before a neutral arbitrator pursuant to Section 11(1) of this procedure. The Claims Manager shall arrange for a hearing before a neutral arbitrator.

2. If, for any lawful reason, including but not limited to, all those reasons specified in these procedures, the Claims Manager determines that a Recipient is no longer or was never eligible for benefits, the Claims Manager shall notify the Recipient in writing of the termination and reason for the termination. Notice of such termination and the reasons therefore shall be served by mail upon the Recipient and the Chief. A Recipient contesting the termination must make a written request to the Claims Manager within fifteen (15) calendar days after mailing of the denial or termination notice that he/she is appealing the determination. If the termination is based on failing to cooperate in scheduling of the examination(s) and/or treatment, the Claims Manager shall arrange for a hearing before a neutral arbitrator pursuant to Section 11(1) of this procedure. If the termination of Section 207-c benefits is based on conflicting medical documentation to perform his/her regular or specified light duty, the parties agree that their respective doctor's shall designate a third (3<sup>rd</sup>) doctor, in the field of medical specialty regarding the injury or illness to be examined pursuant to Section 11(2) of this procedure.

If the Recipient requests a hearing pursuant to Section 11 of this procedure, pending a determination by the neutral Arbitrator with respect to the Recipient's eligibility, the Recipient shall continue to receive Section 207-c benefits. The individual may be required to reimburse the City for any monies paid for the period the employee was determined that he/she was no longer or was never eligible for §207-c benefits and was paid accordingly.

## **Section 11. Hearing Procedures**

### **1. Initial Eligibility Determinations of Section 207-c Benefits**

All hearings under the provisions of this procedure relating to a denial of a Claimant's initial eligibility for Section 207-c benefits shall be conducted by a neutral Arbitrator related to the issue(s) to be determined. The parties shall attempt to agree on a mutually acceptable Arbitrator. In the event the parties cannot agree, the Arbitrator shall be selected pursuant to Article 19 – Grievance Procedure, Level Three.

The review of the Arbitrator shall be limited to the record before the Claims Manager in making the determination under review. No new evidence, in medical reports or otherwise shall be allowed to be presented by either party. However, testimony of the person(s) whose report(s) were reviewed by the Claims Manager shall be permitted.

After requesting a hearing, the Claimant shall be permitted to submit additional information to the Claims Manager so long as said submission is made no later than thirty (30) calendar days prior to the date of the scheduled hearing. The Claims Manager shall review the documentation and inform the Claimant in writing within seven (7) calendar days of the submission, as to whether the determination that is the subject of the hearing will be modified. So long as the Claimant meets the time requirements in this provision, should the Claims Manager's determination remain unchanged, the record before the Arbitrator may include the additional submission of Claimant.

The scope of review of the Arbitrator shall be whether the Claims Manager had a reasonable basis for his/her determination.

Each party may be represented by a designated representative and may subpoena witnesses. Each party shall be responsible for all fees and expenses incurred in their representation. The hearing shall have a transcribed record, which shall be the official record of the proceeding. The Arbitrator shall render and submit to the City, with a copy to the Claimant's representative, his/her written Final and Binding Opinion and Award within thirty (30) calendar days after the close of the hearing. Any such determination of the Arbitrator shall be reviewable pursuant to the provisions of Article 75 of the Civil Practice Law and Rules. The fees and expenses of the Arbitrator and transcribed record shall be paid equally by the City and Claimant. If the Claimant is represented by the PBA, the PBA shall be responsible for the equal share of the Arbitrator's fees and expenses and transcribed records. In the event the Claimant is not represented by the PBA, the Claimant shall be responsible for his/her share of the Arbitrator's fees and expenses and transcribed record.

2. Conflicting Medical Documentation of Recipient's Ability to Perform His/Her Regular or Specific Light Duty

In the event there is a medical dispute between a Recipient's doctor and the City's doctor as to whether the Recipient is unable to perform his/her regular or specific light duties, as detailed by the Claims Manager, the parties agree that the parties respective doctor's shall designate a third (3<sup>rd</sup>) doctor, in the field of medical specialty regarding the injury or illness, to be examined. The third (3<sup>rd</sup>) doctor's written opinion, regarding the injury or illness, and whether or not the Recipient can report back to and perform his/her regular or specified light duties shall be binding on the parties. The opinion shall be provided, in writing, within fifteen (15) calendar days after the examination to the Claims Manager. The Claims Manager shall provide a copy to the Recipient by personal service or mail. In the event it is determined that the Recipient can return and perform his/her regular or specific light duty, he/she shall report to work on his/her next regularly

scheduled tour of duty after service or receipt of the notice to return to work from the Claims Manager. Where a determination has been made by the third (3<sup>rd</sup>) doctor that the employee can report to and perform his/her regular or specific light duty, and that individual fails or refuses to report to perform his/her regular or specified light duty as determined, that employee's Section 207-c benefits may be terminated.

### 3. Termination of Benefits

All hearings under the provisions of this procedure relating to the termination of a Recipient's Section 207-c benefits, where there is no medical dispute between a Recipient's and the City's doctors, as set forth in section 2 above and shall be conducted by a neutral Arbitrator related to the issue(s) to be determined. The parties shall attempt to agree on a mutually acceptable Arbitrator. In the event the parties cannot agree, the Arbitrator shall be selected pursuant to Article 19 – Grievance Procedure, Level Three.

The review of the Arbitrator shall be limited to the record before the Claims Manager in making the determination under review. No new evidence, in medical reports or otherwise shall be allowed to be presented by either party. However, testimony of the person(s) whose report(s) were reviewed by the Claims Manager shall be permitted.

After requesting a hearing, the Recipient shall be permitted to submit additional information to the Claims Manager so long as said submission is made no later than thirty (30) calendar days prior to the date of the scheduled hearing. The Claims Manager shall review the documentation and inform the Recipient in writing within seven (7) calendar days of the submission, as to whether the determination that is the subject of the hearing will be modified. So long as the Recipient meets the time requirements in this provision, should the Claims Manager's determination remain unchanged, the record before the Arbitrator may include the additional submission of the Recipient.

The scope of review of the Arbitrator shall be whether the Claims Manager had a reasonable basis for his/her determination.

Each party may be represented by a designated representative and may subpoena witnesses. Each party shall be responsible for all fees and expenses incurred in their representation. The hearing shall have a transcribed record, which shall be the official record of the proceeding. The Arbitrator shall render and submit to the City, with a copy to the Recipient's representative, his/her written Final and Binding Opinion and Award within thirty (30) calendar days after the close of the hearing. Any such determination of the Arbitrator shall be reviewable pursuant to the

provisions of Article 75 of the Civil Practice Law and Rules. The fees and expenses of the Arbitrator and transcribed record shall be paid equally by the City and Claimant. If the Recipient is represented by the PBA, the PBA shall be responsible for the equal share of the Arbitrator's fees and expenses and transcribed records. In the event the Recipient is not represented by the PBA, the Recipient shall be responsible for his/her share of the Arbitrator's fees and expenses and transcribed record.

**Section 12. Coordination with Workers' Compensation Benefits**

1. Upon payment of 207-c benefits, any wage or salary benefits awarded by the Workers' Compensation Board shall be payable to the City for periods during which a Recipient received 207-c benefits. If the Recipient shall have received any Workers' Compensation benefits hereunder which were required to be paid to the City, the Recipient shall repay such benefits received to the City, or such amounts due may be offset from any Section 207-c benefits thereafter. Upon termination of 207-c benefits, any continuing Worker's Compensation benefits shall be payable to the Recipient. The parties shall not be bound by a determination of the Worker's Compensation Board.

**Section 13. Discontinuation of Salary and Wage Benefits Upon Disability Retirement**

1. Payment of Section 207-c benefits shall be discontinued with respect to any Recipient who is granted a disability retirement pension as provided by law.

**Section 14. Miscellaneous**

1. A Recipient who is receiving medical treatment shall make every effort to schedule such medical examinations or treatment during non-work hours.
2. This procedure is intended to be in conformity with General Municipal Law Section 207-c.
3. The parties agree that any disputes relating to the administration of the provisions of this procedure shall be resolved through the hearing procedure contained in Section 11 herein.
4. The Recipient shall cooperate in the processing of an application for ordinary, performance of duty, and/or accidental disability retirement.

**APPENDIX “ ”  
CITY OF MIDDLETOWN**

**GENERAL MUNICIPAL LAW SECTION 207-c**

**APPLICATION**

1. \_\_\_\_\_  
Name of Officer
  
2. \_\_\_\_\_  
Address to which correspondence concerning application should be directed.
  
3. \_\_\_\_\_ 4. \_\_\_\_\_  
Telephone Number Age
  
5. \_\_\_\_\_  
Name of Supervisor
  
6. \_\_\_\_\_  
Current Job Title
  
7. \_\_\_\_\_  
Occupation at Time of Injury/Illness
  
8. \_\_\_\_\_  
Length of Employment
  
9. \_\_\_\_\_ 10. \_\_\_\_\_ 11. \_\_\_\_\_  
Date of Incident Day of Week Time
  
12. (a) \_\_\_\_\_  
Name of witness(es) and address(es) (if available)
  
- (b) \_\_\_\_\_
  
- (c) \_\_\_\_\_
  
13. (a) \_\_\_\_\_  
Name of co-employees at the incident site.
  
- (b) \_\_\_\_\_
  
- (c) \_\_\_\_\_

14. Describe what the officer was doing when the incident occurred. (Provide as many details as possible. Use additional sheets if necessary.)

\_\_\_\_\_

15. Where did the incident occur? Specify.

\_\_\_\_\_

16. How was the claimed injury or illness sustained? (Describe fully, stating whether injured person slipped, fell, was struck, etc., and what factors led up to or contributed. Use additional sheets if necessary.)

\_\_\_\_\_

17. When was the incident first reported?

To Whom? \_\_\_\_\_ Time \_\_\_\_\_

Witness(es) (if any) \_\_\_\_\_

18. Was first aid or medical treatment authorized?

By Whom? \_\_\_\_\_ Time \_\_\_\_\_

19. Name and address of attending physician

\_\_\_\_\_

20. Name of Hospital

21. State name and address of any other treating physician(s)

22. State nature of injury and part or parts of body affected

\_\_\_\_\_

23. The name and address of my representative to whom a copy of any decision concerning the application should be sent:

\_\_\_\_\_

I SUBMIT THIS APPLICATION PURSUANT TO THE POLICY AND PROCEDURE GOVERNING THE APPLICATION FOR AND THE AWARD OF BENEFITS UNDER SECTION 207-c OF THE GENERAL MUNICIPAL LAW. THE STATEMENTS CONTAINED IN THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, ACCURATE AND TRUE.

\_\_\_\_\_  
(Signature of Applicant if other than Injured Officer)

\_\_\_\_\_  
(Date)

Application Received By:

\_\_\_\_\_  
Signature of Person Authorized to Receive Application)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Date of Report

\_\_\_\_\_, New York

\_\_\_\_\_  
Signature of Injured Officer



7. **RIGHT TO REVOKE:** I understand that I have the right to revoke this authorization at any time by notifying in writing the party listed in Section (3) of this authorization and the party listed in Section (1) of this authorization.
8. I understand that any use or disclosure made prior to the revocation of this authorization will not be affected by a revocation.
9. I understand that I am entitled to receive a copy of this authorization.
10. I understand that this authorization will expire twelve (12) months after the date of my, or my personal representative's, execution of this authorization.
11. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan or eligibility for health insurance benefits will not be conditioned upon my authorization of this disclosure.

\_\_\_\_\_  
Signature of Individual  
or individual's personal representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name of individual  
or individual's personal representative

If a Personal Representative executes this form, that Representative warrants that he or she has authority to sign the form on the basis of:

\_\_\_\_\_



The following represents the **City of Middletown's Demands** in its Response (see Panel Exhibit 4).

The numbers correspond to those of the current contract. This proposal presupposes a 3-year contract.

1. No change.
2. No change.
3. 3.00% salary increase each year (2006, 2007, 2008).  
Longevity (3.25% each year) – no change.
4. No change.
5. (1) No change.  
(2) No change.  
(3) Cleaning will be awarded by public bid to the lowest responsible bidder.  
(4) No change.  
(5) No change.  
(6) No change.  
(7) No change.
6. No change.
7. No change.
8. Add the following new paragraph to the end of Section 1:

Officers assigned to staff the "A" line shall not be permitted to work in excess of three (3) consecutive years on the "A" line shift. Nothing in this Section shall prohibit an officer from re-bidding for the "A-line" after coming off for a year.

9. No change.
10. Replace Section 2 as follows:

Police officers who have served in the United States military and who have received an Honorable Discharge shall be entitled to an additional one (1) day off per year. In addition, if said veterans are scheduled to work Memorial Day and/or Veteran's Day, they may request an alternate additional day off in lieu of said holiday actually worked.

11. Replace Section 4 as follows:

Employees on leave pursuant to Section 207-c of the General Municipal Law shall have their sick time, personal leave time, vacation time, holiday time and any other accrued time cease when in excess of 365 consecutive calendar days. There shall be no pro-rata reduction of benefits for Section 207-c injuries less than 90 consecutive work days.

Add a new Section 5 to read as follows:

Any officer who has accumulated more than 6 sick incidents within any calendar year will be required to obtain a doctor's note for each additional sick incident within that calendar year. The Chief of Police, or his or her designee, will be responsible for notifying the employee that a doctor's note will be required. Failure to provide a doctor's note upon returning to work will result in the employee not being paid for said absences.

Officers who use less than 8 hours of sick time in a calendar year shall receive a stipend of \$500.00. Officers who use 8 hours up to and including 24 hours of sick time in a calendar year shall receive a stipend of \$250.00. Said money will be paid no later than the second pay period of the following January and will not count towards overtime rates of pay.

12. No change.

13. No change.

14. (1) Replace Section 1 as follows:

The City shall provide at no cost to the Police Officer and eligible dependents full health insurance in the New York State Insurance Plan (Core Plus Medical and Psychiatric Enhancements), except those hired on or after January 1, 1995. For those hired on or after January 1, 1995 and before December 31, 2006, the City shall pay 85% of the health insurance premium cost for the first 5 years of employment and 90% for the 6<sup>th</sup> year of employment; thereafter, the City shall pay 100% of the health insurance premium cost for such employees. For those hired on or after January 1, 2007, the City shall pay 85% of the health insurance premium cost for so long as such employee remains with the Middletown Police Department.

(2) No change.

(3) Insert the sum of \$775.00 for each year, 2006, 2007 and 2008; otherwise, no change.

15. No change.

16. No change.

17. No change.

18. (1) No change.

(2) No change.

(3) Replace Section 3 as follows:

(A) Commitment to an Effective Drug Interdiction Program.

The City and the Association agree that officers may be called upon in hazardous situations without warning, and that it is imperative to the interest of the officers and the public to ensure that officers are not substance impaired. In order to further their joint interest in protecting officers and the public, the City and the Association agree to mandatory drug testing as provided in this Section. This drug testing policy is designed and shall be administered to result in disciplinary action only against those officers who violate the Police Department's rules, regulations, policies and procedures.

(B) Definition of Drug Testing.

For the purposes of this Section, Drug Testing shall be defined as:

- (i) The compulsory production and submission of a urine sample by an officer for chemical analysis to detect the presence of prohibited drug usage, in connection with the random testing set forth in this Section; or
- (ii) The compulsory production and submission of urine, blood, or hair sample for a required test based upon the reasonable suspicion standards set forth in this Section.

(C) Random Testing.

All officers shall be subject to mandatory random testing for illegal drugs and controlled substances during each calendar year on a fair and impartial statistical basis at the City's expense. The fair and impartial statistical basis (in which each officer has an equal chance of being selected during a calendar year) shall be implemented by a non-discriminatory computerized program operated and certified as non-discriminatory by an independent firm hired by the City. Only those officers selected by the computer shall be random tested.

(D) Assurance of Accurate Results.

Drug testing shall consist of a two-step procedure: (i) Initial screening test, and (ii) Confirmation test. Should a confirmation test be required, the test procedure will be technologically different and more accurate than the initial screening test. Officers shall be provided with a notice of the result, and may obtain a copy of the actual laboratory result upon request to the Lieutenant assigned responsibility as Drug Testing Coordinator.

Officers shall have the right to request that their urine sample be stored in case of legal disputes. The urine sample will be submitted to the designated testing facility where a sample will be maintained for the period of one year. Officers may, at their own expense, request to have a test administered at an approved physician's office, accompanied by the testing personnel, provided such testing is administered within 8 hours after notification to the officer of the mandatory random test.

The City and the Association agree that only an appropriately certified laboratory should conduct drug testing. The laboratory selected shall be experienced and capable of quality control documentation, chain of custody, have a demonstrated technical expertise and proficiency in urine analysis, and shall comply with all requirements imposed upon an appropriately certified laboratory. The City shall require any laboratory selected for collecting samples to conduct a background investigation on those laboratory personnel involved in the collecting or handling of an unsealed sample. In addition, the City shall require any laboratory involved in collecting samples to use only employees who have not (i) been arrested by officers of the Middletown Police Department, or (ii) been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs to be involved in collecting or handling of an unsealed sample collected from an officer. In the event the laboratory that collects the initial samples is not the same laboratory that conducts the actual testing of those samples, only the laboratory that collects the initial samples must comply with the background and criminal history provision set forth in this Section. Test results shall be inadmissible in any administrative disciplinary hearing if it is determined that the laboratory collecting samples failed to conduct a background investigation on the laboratory personnel involved in collecting or handling the unsealed sample which resulted in a positive test result.

All records pertaining to the Department-required drug tests shall remain confidential except to the extent used in a disciplinary appeal. Drug test results and records shall be stored in a locked file under the control of the Lieutenant assigned responsibility as Drug Testing Coordinator. No access to these files shall be allowed without written approval from the Chief of Police.

(E) Testing on Reasonable Suspicion.

Nothing in this Section shall be construed to prohibit the Chief of Police from conducting a drug test on an officer, or a search of any areas in which the officer does not have a personal privacy expectation, based upon reasonable suspicion in accordance with the guidelines as set forth in Department policy for such actions. Such actions may be taken upon the agreement of any two supervisors that there is a reasonable basis for a suspicion that:

- (i) An officer is presently using or under the influence of illegal drugs or inhalants; or
- (ii) An officer has possession of illegal drugs or inhalants; or
- (iii) An officer has been associated with or involved with other persons who were using or under the influence of illegal drugs or inhalants, or who were in possession of same, which association or involvement was not authorized or required in connection with any law enforcement duty, under circumstances which reasonably indicate participation or complicity with, or protection of such other individuals; or
- (iv) Any conduct or situation described in i-iii immediately above involving alcohol, while on duty, or which results in on-duty impairment.

- (4) No change.
- (5) No change.
- (6) No change.
- (7) No change.
- (8) No change.
- (9) Delete.
- (10) No change.

19. (1) Replace the first sentence as follows:

The City shall make available to employees \$6,500 per year to pay the cost of tuition and books incurred by an employee for college courses which are completed with a grade of "C" or better and which lead to an Associate, B.S. or Master's degree in Police Science, Criminal Justice, Public Administration or Spanish courses pursuant to the limitations set forth in Paragraph 3 of this Article.

- (2) Delete last sentence.
- (3) No change.

20. Increase maximum payment to \$10,000.00.

21. No change.

22. No change.

23. No change.

24. Add the following 2 paragraphs:

Off-duty employment: Off-duty employment will be conducted in accordance with the General Municipal Law and the General Orders adopted by the Board of Police Commissioners. Hours worked in an off-duty occupation shall not exceed 20 hours in a calendar week. Officers must provide proof of hours worked upon request by a supervisor. Failure to provide said information within 10 days of such a request from a supervisor shall result in suspension of the officer's off-duty work permit.

Mutual swaps: The Chief of Police has the authority to approve, disapprove, and otherwise manage mutual swaps. Mutual swaps occur when one officer works in place of another officer as approved by a supervisor so designated by the Chief of Police to approve said mutuals. In an effort to ensure more adequate supervision, squad cohesion, and accountability, no officer shall be entitled to swap more than 5 times in a calendar month.

25. No change.

26. No change.

27. Add new Article 27 as follows:

#### RETENTION

Officers who resign, transfer out of, or otherwise voluntarily leave the City of Middletown Police Department shall be required to compensate the City for training and equipment as follows:

Within first year: \$3,000.00.

After first year, but before third year is completed: \$1,500.00.

Said payment shall be taken from last payroll check, separation payments, etc. Unpaid balance will be billed to the separated employee if not paid within 30 days of separation.

28. Add new Article 28 as follows:

#### TERM OF AGREEMENT

This agreement shall become effective January 1, 2007 and shall expire on December 31, 2009.

Accordingly, set out herein is the **Panel's Award** as to what constitutes a just and reasonable determination for the period January 1, 2007 through December 31, 2008.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service Law:

a) comparison of the wages, hours and conditions of employment of the employee 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 interest 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.

## **SUMMARY POSITION OF THE PBA**

The PBA, by way of the general statutory criteria, argues that the "comparable communities" that should be taken into account are the municipalities in Orange County with police departments, consisting of the three (3) cities, thirteen (13) towns, and eleven (11) villages, as well as the County's Sheriff's Office. According to the PBA, its proposed comparables afford the Panel the greatest view of wages and working conditions for police officers working in the same geographic market, and who compete for the same pool of individuals, which is Orange County. In setting forth its position on comparables, the PBA acknowledges that various of the proposed comparables can be considered "truly comparable" while others can fairly be considered "less appropriate for direct comparison." The PBA asserts that the City has conceded that the PBA's proposed comparables are "proper".

Regarding the City's "ability to pay", the PBA alleges that the City presented no evidence that refuted in any meaningful way the testimony and exhibit (see PBA Exhibit 50) of its financial expert, Kevin Decker, as to his analysis of the City's finances. The PBA claims that Mr. Decker, a qualified municipal financial expert, offered the credible evidence and opinion that the City's financial condition is substantially good and that the City possesses the ability to fund an Award that would be consistent with the PBA's proposed wage and benefit package. The PBA specifically identifies Mr. Decker's analysis that the City's "property tax is doing well" and that "property values have increased significantly in the City." Further, the PBA relies on Mr. Decker's observation that the "City shares in a very healthy Orange County sales tax" and has "very, very health fund balances in the general fund."

The testimony of the City's financial witness, the City Clerk and Treasurer, Dawn Gobeo, reflected, the PBA maintains, only "limited objections" to the opinion of Mr. Decker,

which related to future projections of sales and mortgage tax generation. The PBA emphasizes Mr. Decker's observation that the "trend" in the City toward taxable full value of real property is one of the largest indicators of the City's financial health since it reflects a "continued appreciation of real property values in the City." Moreover, the PBA notes Mr. Decker's observation that the full value tax rate has declined by 3.7% annually since 1997 in the City, which must be considered "highly significant" as it "reflects the ability of the public employer to expect to generate real property tax revenue." Further, the PBA points to Mr. Decker's testimony that the sales tax revenue, based on projections provided by the State Comptroller, can be expected to exceed 8 million dollars, given the continued rise in taxable sales and purchases. A substantial increase in unrestricted mortgage tax revenues and State aid, the PBA notes, also were identified by Mr. Decker.

The PBA also points out the Mr. Decker's analysis "on the expenditure side" revealed that the City had accumulated a 2.8 million dollar fund balance in 2001 that increased to 6.5 million in fiscal year 2006. The "unreserved portion" of this balance, the PBA notes, was more than 5.8 million dollars, with an "unreserved balance" amounting to 21.8% of total expenditures. Thus, the PBA notes, the City's unreserved fund balance is double the amount considered acceptable by bond rating agencies and the State Comptroller. The PBA observes the City Treasurer confirmed that the final 2007 budget and the prepared 2008 budget incorporated a 5% increase for all police personnel costs for 2007 and a "roll up" for 2008 of 5%, with an additional increase of 4% for the total 2007 police personnel expenditures. There can be no question, according to the PBA, of the City's ability to fund the demands that the PBA has sought.

As to the interest and welfare of the public, the PBA claims that the City's excellent financial condition allows it to fund an Award that will maintain the quality of the Police Department. Given its characterization that the police profession is "unique", the PBA proffers that no valid comparison could be made with other non-law enforcement employee organizations. Concerning the terms of past collective bargaining agreements and the parties' bargaining history, the PBA claims that the City is seeking to take back negotiated benefits from the PBA to include differential pay that has been provided to Detectives, Sergeants, and Lieutenants. In addition, the PBA points to the acknowledgment of the City's counsel at the commencement of the hearing that the parties' inability to resolve their differences through the collective bargaining process for the current contract period was due to the salary "grid" that the parties have utilized since the 1993-1994 agreement, which incorporates a salary schedule with longevity, which for the first (1<sup>st</sup>) time was expressed as in a percentage (2%) for each level, which included a compression in the years of service, as well as rank differentials. The PBA observes that the Panel has no authority to undo the "grid," since the City never submitted a demand in its Response.

As to base wages and longevity, the PBA notes that it seeks to adjust the basic wage schedule on January 1, of each year by 8%, along with an increase in the Detective and Lieutenant differentials from 5% to 7% above grade. It also notes that it proposes a January 1, 2007 longevity increase for Police Officers (4%), Detectives (4%), Sergeants (3.75%), and Lieutenants (3.5%).

The PBA identifies the City's demand in its Response of a 3% across the board base wage adjustment with a continuation of the existing 3.25% longevity benefit tied to the wage schedule, and points out that in the 2007 and 2008 budgets, and City's financial witness

substantiated that the City has incorporated funds for an Award of a 5% across the board increase in personnel expenditures for 2007 and an additional 4% increase in 2008. Even with such increases budgeted, the City, the PBA contends, continues to accumulate substantial fund balances without any particular residential real property tax pressure.

The PBA claims that its base wage and longevity proposals are further justified when seen through the prism of the comparables. It further claims that a wage adjustment as offered by the City will find City Police Officers losing additional ground to officers in comparable departments in Orange County. The PBA maintains, that in order for the City to competitively recruit and retain experienced officers, the City must also be able to fund meaningful base and longevity increases.

In setting forth its position on base wages and longevity, the PBA also identifies a historical differential benefit for Detectives, Sergeants, Unit Commanders, Lieutenants, and Bureau Commanders. This differential pay, according to the PBA, seeks to compensate individuals in these positions for increased responsibility and to recognize their expertise. The City, the PBA maintains, must continue to be ranked in the top half to top third among the comparables. It emphasizes that its demands are entirely in accord with the City's ability to pay and are justified. The PBA also argues that the increase in longevity payments to the end of the proposed steps cannot be seen to "dramatically impact the overall wage package but establishes a method for ensuring that longevity payments will continually bear a relationship to base wage." Furthermore, the PBA asserts, similar longevity programs are in place for many of the comparables in Orange County.

As to its demand regarding uniform allowance, the PBA asserts that the increases it seeks are "nominal." According to the PBA, the City lags behind a number of the comparables

in this area. Under the current economic climate, the PBA contends, the cost of uniform purchases and cleaning can be seen to be increasing and Officers must be compensated accordingly.

As to its demand on workday and workweek, the PBA notes that it seeks to increase the current "A" line night differential from 5% to 7% and implement a new "C" line differential of 3.5% for Officers who are working the evening shift. According to the PBA, the improved night differential would have the purpose of creating an incentive for Officers to volunteer to work the steady midnight shift as well as provide them with additional compensation for what is reasonably considered to be the least desirable shift.

The PBA claims that the City's demand to limit Officers volunteering to work the "A" line to three (3) years and then require the Officers to return to the "B" and "C" rotation, must be understood in light of the Chief's acknowledgment that only 4 of the 15 Officers working midnights volunteered for the duty. The Chief also acknowledged, the PBA points out, that he would expect there would be more volunteers if the differential was higher. In addition, the PBA observes that the Chief, despite his professed concern that Officers staying on midnights would have little contact with administration, has made no attempt to reallocate supervisory personnel to work some midnights to bridge any "possible gap\_ " Nor did the City present any evidence, according to the PBA, that would show any lack of productivity on the steady "A" line tour of duty.

Regarding its holiday demand, the PBA notes that Officers currently receive 13 holidays, whether worked or not, and are able, as compensation, to take 10 additional days off, with the remaining three days paid in cash. Its demand before the Panel, the PBA observes, is one that only seeks to have Officers compensated at the rate of time and one half for hours worked on

the five major holidays and not on all 13 holidays identified in the parties' Agreement. The PBA claims that the holiday pay provision in the parties' Agreement is inferior to almost all of the comparables.

Concerning its sick leave demand, the PBA notes that it seeks to have Officers compensated at 75% of the Officer's final two (2) years of employment average from the existing 40%. Further, the PBA seeks to implement a sick leave incentive bonus that would be paid to Officers in the first (1<sup>st</sup>) pay period of the year following the Officer's use of limited sick leave. The PBA claims that most Departments in Orange County pay Officers upon separation at the rate in effect at the time of their separation, as opposed to the 40% of average salary over the final two (2) years that PBA Officers receive. This payment, the PBA claims, provides little incentive for Officer not to use sick leave. An annual sick leave incentive bonus, the PBA notes, is consistent to some extent with the City's acknowledgment that a bonus would be appropriate. The PBA claims its proposal is the one that should be Awarded, since it avoids the use of a flat dollar bonus as proposed by the City. Its proposal, therefore, the PBA argues, will not require "constant revisiting."

The PBA identifies the City's demand that Officers provide a physician's note for all absences after day five (5) if the Officer has been absent on six (6) occasions in any given calendar year as a negative, when viewed with its demand on a sick leave incentive bonus. The PBA asserts that the City provided no factual justification for the demand, nor any evidence of sick leave abuse by Officers. In addition, the PBA claims that a financial penalty is implicit in the City's demand because Officers would have to incur the expense of visiting a physician for an illness that might otherwise not require medical attention.

As to health insurance, the PBA's demand is that effective January 1, 2007 and upon retirement, all retired Officers have the City paying 100% of the family premium or costs, and to provide the same health insurance plan, or HMO, if selected by the retiree, as provided to the bargaining unit. The current retiree health insurance premium payment requires the City to pay 100% of the individual premium and an additional 50% of the difference between the individual and the family or dependent premium or cost.

A review of the comparables, according to the PBA, establishes that the prevailing benefit overwhelmingly in Orange County is the 100% family premium paid, as sought by the PBA, and that retirees in the City currently have one of the worst benefit situations among comparables in the County. The PBA points to the evidence offered by his financial expert, Kevin Decker, as justifying its demand.

With regard to active officers, hired on or after January 1, 1995, the current health insurance premium or cost is paid with the City contributing 85% and the officer 15% for the first five (5) years of employment, and the City contributing 90% and the officer 10% during the sixth year. Thereafter, the City pays 100% of the premium or cost. The City's demand is that officers hired on or after January 1, 2007 would have the City paying 85% of the health insurance premium cost for their entire active career. The PBA asserts that an Award of the City's demand would provide a windfall to the City with regard to the economics of the existing collective bargaining agreement and the Award, which would be unfair and inconsistent with the statutory criteria and should be denied.

The PBA also maintains that viewed in their entirety, the City's demands must be considered "offensive" and reflecting a lack of regard for the officer's represented by the PBA. The City's wage and benefit package, according to the PBA, does not reflect a proper

ranking with large and medium departments in Orange County. It emphasizes that the City does not have a demand before the Panel for undoing the longevity "grid." The City's demand for an adoption of a random and suspicion based drug testing procedure, the PBA argues, is defective because it has inadequate procedural safeguards. The City has also offered no basis to justify why the procedure needs to be awarded in the current form, according to the PBA. None of the City's demands, the PBA concludes, have any support sufficient to satisfy the statutory criteria to be awarded.

### **SUMMARY POSITION OF THE CITY**

The City claims that the "true comparability" can only be seen to exist with "other small cities in the Hudson River Valley region ... Newburgh, Port Jervis, Kingston and Poughkeepsie."<sup>1</sup> The PBA's submission of data regarding every Police Department in Orange County, according to the City, must be viewed in light of the concession of the PBA's representative that not all such municipalities offer a basis for a "direct comparison." Moreover, the City claims the towns and villages cannot provide a sound basis for comparability because of the significant differences that exist between cities, towns and villages, including financing and working conditions.

The City believes it to be a primary importance that the Panel consider the longevity "grid" when it considers all monetary issues before it. The City observes that the "grid" yearly compounds longevity increases, as opposed to providing add-ons to salary levels each year. Identifying the testimony of City Clerk and Treasurer, Dawn Gobeo, the City observes that for the period 1996 to 2006, the salary of a ten (10) year Officer, by virtue of the "grid," has increased by more than 50% despite an annual average wage increase of 4.55% over the ten

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<sup>1</sup> NOTE: The City did not include the City of Beacon, in Dutchess County of the Hudson Valley, with its other comparables.

(10) year period. A salary increase of over 65.43% for an nineteen (19) year Lieutenant and Bureau Commander over the same ten (10) year period can be seen, the City notes, despite an annual wage increase of 5.59%. The City contrasts the "grid" with the benefit in the City of Newburgh where longevity consists of a separate payment that does not affect the base pay, hourly rate, or overtime rate. Thus, the City claims that viewing Newburgh, Poughkeepsie, Port Jervis and Kingston with the City, one finds substantial disparities. According to the City, "true comparability" cannot be achieved until the compounding of longevity increases by virtue of the "grid" can be addressed.

Concerning ability to pay, the City claims that the opinion of PBA witness Kevin Decker includes his acknowledgment that the City's tax levy has increased at an annual rate of 4.36% for the period 1997 to 2007 and that the tax rate can be viewed as declining only if one takes into account "burgeoning taxable full value, due entirely to market factors." Mr. Decker also acknowledged, the City notes, that a downturn can occur concerning the sales and use tax portion of the City's general fund and that sales tax revenues are sensitive to disposable income. Its witness, Dawn Gobeo, the City observes, testified that the actual sales tax receipts by Orange County municipalities would indicate a leveling off in 2007 and that the City's revenue from mortgage taxes would show the "prevailing downturn in real estate sales statewide and nationwide." The continued "economic malaise" in the recent economy, the City argues, must be taken into account to balance Mr. Decker's "optimism." Given what it believes to be a continuing downward turn in mortgage tax payments, the City questions its ability to pay substantial increases and the additional costs the PBA seeks in this proceeding. The City notes it has raised its tax rate nearly 6% in 2007 and that it has raised it an annual average rate of 4.36% in the period 1997 to 2007. If one uses 2006 as the base year, which was

the last year of the negotiated collective bargaining agreement between the parties, a 9.65% increase in tax levies can be shown, the City claims, which places the City at the higher end of municipalities in Orange County.

Concerning the PBA's demand for salary increases, the City emphasizes its position that increases cannot seriously be discussed unless the "grid" is modified. The 8% yearly increases put forth by the PBA, the City claims, must be considered "well beyond" its ability to pay and entirely inconsistent with recent settlements and Awards. The longevity increases sought by the PBA, the City contends, must be considered highly unrealistic when viewed within the context of comparable communities and what the City describes as the "unique nature of the grid compounding."

The City rejects the PBA's uniform allowance demand, claiming that it has not been justified by any evidence or analysis that would demonstrate that it is reasonable. The City also observes that it opposes the demand of the PBA to add Sergeants and Lieutenants to overtime entitlements on the grounds that the demands are not realistic and have not been shown to be necessary. Concerning the PBA's demand to increase the "A" shift differential and add a differential for the evening or "C" line shift, the City observes that this demand must be considered unreasonable and unjustified. The demand includes, the City notes, an attempt to "fold the shift differential into the grid", and this component underscores the unreasonableness of the demand.

The City rejects the PBA's demand to add a new category of five (5) holidays for which Officers, inclusive of longevity, will be paid time and a half (1.5X) as having been justified. Nor, the City claims, has the PBA justified its demand to increase the 40% payment of Officers upon separation of accumulated sick leave. The City also notes its opposition to the PBA's

demand to modify Article 14, health insurance on retirement, as being without justification.

Turning to its demands, the City asserts that the 3% salary increase must be considered "more than reasonable" and is justified based on the effects of the "grid" as well as a consideration of comparables. The "A" shift limitation sought by the City, it notes, was supported by the testimony of Police Chief Byrne. It notes the Chief's testimony reflects that the demand seeks to protect Officers by limiting the period of time they can be worked on the "A" shift. The demand, the City notes, again relying on the Chief's testimony, will also assist the Department if awarded because it will "develop a more well-rounded officer."

The City identifies its other demands and claims, consistent with the ones previously identified herein, that they reflect "a bargaining stance entirely consistent with the criteria provided by the statute and the policies endorsed therein." The City urges the Panel to take into account that it is faced with an "uncertain financial climate" and that, in light of this factor, together with the statutory criteria, its demands must be considered reasonable.

#### **PANEL ANALYSIS OF COMPARABILITY**

Section 209.4 of the Civil Service Law requires that in order to make a proper determination of wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment and comparable communities."

The PBA has submitted that only police officers in Orange County municipalities with Police Departments who have contracts with their respective municipalities are the universe, and has presented evidence citing all such communities as comparables. This includes the Orange County Sheriff's Office, the three (3) cities, thirteen (13) towns, and eleven (11)

villages. It is noted, however, that the PBA offers the candid acknowledgment that although it seeks to afford the Panel the "broadest possible view of working conditions and wages" from the same geographical and socio-economic area, with some of the proffered comparables not as "appropriate for direct comparison." The City puts forth that the "true comparability" can be found only with "other small cities in the Hudson River Valley Region, to wit: Newburgh, Port Jervis, Kingston, and Poughkeepsie."

### **Panel Determination**

The Panel would observe that its need to take comparables into account when issuing its Award cannot, by its nature, result in a strict quantitative process. The Panel Chairman would offer his observation that based on a number of years of experience in presiding over interest arbitration proceedings, some of the strongest arguments raised concerning the question of comparables are those raised by a party in opposition to the comparables proffered by another party. Often, in the same proceeding, the opposing party offers equally strong arguments against the comparables offered by the first party. Stated differently, it may well be that it is easier to criticize a proffered list of comparables than make a cogent argument as to why another proffered universe of comparables should be accepted.

Perhaps a saving grace in a Panel's conscientious efforts to follow the statutory mandate to take comparables into account is the trend that the Panel Chairman has observed by which various interest arbitration panels ascribe greater weight, lesser weight, or no weight at all to the comparables offered by both parties in connection with a particular proposal under consideration. This approach favors inclusivity over exclusivity and allows for a consideration of the proposals before the Panel that is not as result-orientated of an approach as would occur if exclusivity were to prevail by rejecting comparables.

The Panel also notes however that in addition to comparables, there are a wide variety of other factors and statutory criteria that the Panel is required to consider when issuing its Award. In this proceeding, the Panel would simply offer its determination that, on the question of comparables, it has not excluded the comparables offered by either party, however, those in Orange County are viewed as the most comparable, though not necessarily giving the same weight to all comparables on any particular issue under consideration.

**PANEL ANALYSIS OF WAGES AND ABILITY TO PAY**

The parties' agreement on wages is set forth as Addendum "A" to their 2004-2006 Agreement. (Panel Exhibit 6). In Addendum "A", the parties state that Officers "shall be entitled to annual Longevity payments based on years of service according to the attached Base Wage and Longevity Schedule." This "Base Wage and Longevity Schedule" is referred to by the City as the "grid." In the 2004-2006 Agreement, in referring to the "Base Wage and Longevity Schedule" that was attached for the period of the Agreement, the parties noted that "[e]ach Longevity step reflects a percentage increase over the previous salary step as follows:

<u>1/1/04</u>	<u>1/1/05</u>	<u>1/1/06</u>
3.25%	3.25%	3.25%

In addition, the parties' agreement on wages for the period 2004-2006 included for Detectives a differential of 5% "over and above the wage of a Police Officer at equal steps as set forth in the Base Wage and Longevity Schedule"; for Unit Commanders, the parties agreed to a differential of 5% "over and above the wage of a Sergeant at equal steps as set forth in the Base Wage and Longevity Schedule"; and for Bureau Commanders, the parties agreed to a 5% differential "over and above the wage of a Lieutenant at equal at equal steps as set forth in the Base Wage and Longevity Schedule".

The PBA's demand seeks an 8% upward adjustment to the base wage schedule for each year of the Award; and increase the differential from 5% to 7% for those titles set forth herein, and longevity increases for Police Officers and Detectives to 4%; for Sergeants to 3.75%, and for Lieutenants to 3.5%. The City's demand is a 3% increase in base wages for each of the two (2) years of the Award and for the longevity "grid" to remain at 3.25% over the previous salary step.

The record shows the parties' positions on ability to pay set forth their rather substantial differences in their competing wage and longevity demands. The PBA, relying on the evidence introduced through its expert witness, Kevin Decker, claims that the City has the financial ability to fund all demands sought by the PBA. The City contends that the PBA has painted far too optimistic of a picture concerning the City's financial ability to pay. Furthermore, the City claims that the "grid" reflecting base wage and longevity distorts the salary structure such that the proposals of the PBA would represent very substantial increases in wages and longevity that can fairly be considered to be beyond the City's ability to pay. It can be noted that each party finds its proposals to be essentially justified by that party's view of comparables.

### **Panel Determination**

As set forth in the Summary of Award attached hereto, the Panel has awarded that the base wage schedule to reflect a 4% increase on January 1<sup>st</sup> for each of the two (2) years of the Award. In determining its Award on wages, longevity, and differentials, the Panel carefully reviewed and considered all of the statutory criteria. The Panel concludes that the City clearly has the ability to pay a reasonable increase consistent with the universe of comparables put before the Panel by the parties. The Panel notes that in the City's negotiated agreement with the PBA, the City's asserts dissatisfaction with the salary "grid," which was not set forth in any

demand before this Panel, [REDACTED]  
[REDACTED] The Panel reviewed and considered many factors  
in arriving at its Award, including Base Wage increases.

ANS  
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AS  
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Accordingly, and after consideration of the extensive exhibits, documentation and testimony presented herein, and after due consideration of the criteria specified in §209.4 of the Civil Service Law, the Panel makes the following:

**Award on Base Wage and Longevity**

**ARTICLE 3 - BASE WAGE AND LONGEVITY:**

Amend the Base Wage schedule and dates to reflect the following increases (p. 18) as follows:

<u>1/1/07</u>	<u>1/1/08</u>
4.0%	4.0%

**PANEL ANALYSIS OF UNIFORM ALLOWANCE**

In their 2004-2006 Agreement, the parties have set forth their uniform allowances in Article 5. The uniform allowance itself is set forth in Sections "1" and "2" of Article 5. In an Officer's first (1<sup>st</sup>) year of service, the uniform allowance is to be used for the "purchase of uniforms" and is: \$900.00 (1/1/04); \$925.00 (1/1/05); and \$950.00 (1/1/06). Thereafter, the "annual uniform allowance" is listed in the same amounts for the same time periods as in Section "1". Additionally, Officers receive an annual "cleaning allowance" in the same amounts for the same time periods as set forth in Section "3". It is also noted that, in paragraph "6" of Article 5, employees on 207-c leave for "more than thirty (30) consecutive workdays" in a calendar year receive "pro-rated" allowances.

The PBA has sought to increase the amounts currently provided for in paragraphs "1" through "3" to \$1,000.00, effective January 1, 2007 and \$1,050.00, effective January 1, 2008. Moreover, the PBA seeks to delete the "pro-rated" allowances for Officers on GML §207-c leave. The City rejects the PBA's demands on uniform and cleaning allowances, claiming that they lack justification.

**Panel Determination**

The Summary of Award sets forth that the Panel has agreed to increase the amounts of uniform purchase, allowance, and cleaning by \$50.00 in the second (2<sup>nd</sup>) year of the Award. It is clear to the Panel that when all statutory factors are taken into account, the very modest increase in these three (3) categories is consistent with the statutory criteria, including comparables. The Panel finds that the City has the ability to fund the \$50.00 increase in each category and the Panel would also take note of the obvious increase in costs visited on Officers in fulfilling their financial obligations regarding initial uniform purchase, allowance, and cleaning.

Accordingly, and after consideration of the extensive exhibits, documentation, testimony presented herein; and after due consideration of the criteria specified in §209.4 of the Civil Service Law, the Panel makes the following:

**Award on Uniform Allowance**

**ARTICLE 5 - UNIFORMS:**

1. Amend dates and amounts as follows: (REFERS TO 1<sup>ST</sup> YEAR P.O. FOR PURCHASE OF UNIFORMS)

(N/C)	(+\$50.00)
<u>1/1/07</u>	<u>1/1/08</u>
\$950.00	\$1,000.00

2. Amend dates and amounts as follows: (REFERS TO ANNUAL UNIFORM ALLOWANCE)

(N/C)	(+\$50.00)
<u>1/1/07</u>	<u>1/1/08</u>
\$950.00	\$1,000.00

3. Amend dates and amounts as follows: (REFERS TO ANNUAL CLEANING ALLOWANCE)

(N/C)	(+\$50.00)
<u>1/1/07</u>	<u>1/1/08</u>
\$950.00	\$1,000.00

### **PANEL ANALYSIS OF OVERTIME**

The PBA's demands include amending Article 6(1)(a) of the overtime provision to allow for a "floating cap," on the accumulation of compensatory days, such that an Officer could use "some or all" of the accumulated six (6) compensatory days, subject to the cap of six (6) compensatory days. The parties' present contractual language requires that "compensatory time shall be used by January 31" of the year following accrual" and "unused time ... shall be converted to sick leave." It is also noted that the present language in the Agreement concerning overtime states an Officer is allowed to accumulate up to "four (4) compensatory days" but then uses "48 hours" as the amount of compensatory time that can be accumulated. The City acknowledges that six (6) compensatory days accurately reflects the actual amount that can be accumulated. Hence, there is a need to convert the four (4) compensatory days to six (6) compensatory days to account for the "48 hours."

### **Panel's Determination**

The Panel Awards that the "floating cap" demand by the PBA, while it benefits Officers by increasing their range of choice as to compensatory time, imposes no measurable costs on the City. The Panel also notes the need to clean up the language in Article 6(1)(a) to account for the fact that six (6) rather than four (4) compensatory days can be accumulated by an Officer is warranted.

Accordingly, and after consideration of the statutory criteria and all evidence in the record, the Panel makes the following:

#### **Award on Overtime**

- (a) Insert "six (6)" where "four (4)" appears on the first (1<sup>st</sup>) line. (Cosmetic change to reflect actual accumulation of forty-eight [48] hours.)

Add the following to read as follows:

The six (6) compensatory days (i.e., 48 hours) of accumulation shall be a floating cap, in that each unit member shall be entitled to accumulate the maximum as set forth herein, and use some or all of that accumulation, with the ability to then accumulate compensatory time as long as no more than the six (6) days or forty-eight (48) hours are not exceeded.

### **PANEL ANALYSIS OF HEALTH INSURANCE AND WELFARE FUND**

As it now reads, Article 14(1) obligates the City to provide "full health insurance in the New York State Insurance Plan (Core Plus Medical and Psychiatric Enhancements)" to Officers at "no cost" to the Officer and "eligible dependents" for Officers hired before January 1, 1995. For those hired on or after January 1, 1995, the City, during the first five (5) years of employment, is obligated to pay 85% of the premium costs, and 90% of the cost for the sixth (6<sup>th</sup>) year. After the sixth year, the City is obligated to pay 100% of the health insurance premium costs.

The PBA seeks to amend Section "1" of Article 14 by adding to it language that would require the City to "make available at least two (2) health maintenance (HMO) options." The City seeks to amend Section "1" such that its obligations presently in existence would remain, but expand the contribution for Officers hired "on or after January 1, 2007." For those falling within this group, the City's demand is that it pay 85% of the health insurance for the entire period of the Officer's employment.

Section "3" of Article 14 requires the City to pay "per Police Officer" an annual amount of \$775.00 for a contribution to the "Welfare Fund." The PBA seeks to raise this amount of contribution, effective January 1, 2007 to \$825.00 per Officer and, effective January 1, 2008, to \$875.00 annually per Officer. The City seeks to keep the contribution to \$775.00 annually for the period covered by the Award.

Section "6" of Article 14 addresses health insurance for retirees. As it now reads, the City has an obligation to pay 100% of the "premium or cost" of health insurance for "the individual Police Officer" and "an additional fifty percent (50%) of the difference between the individual premium or cost and family or dependent premium or cost ...". The PBA demand is to increase the City's contribution "[e]ffective January 1, 2007 and upon retirement" to an amount of 100% of the premium or cost for the police officer and/or eligible dependent(s) in the same health insurance plan, or HMO, if selected by the retiree, as provided above to the bargaining unit."

As seen in the statement of their positions, the parties offer different rationales for their demands. The PBA claims that its demand for 100% coverage is in line with the comparables in Orange County. It claims that retirees have one of the highest health insurance contribution rates among the comparables in Orange County. The City's ability to pay, according to the

PBA, extends to the ability of the City to fund the PBA's health insurance on retirement demand. The City rejects the PBA's demand. According to the City, the PBA did not offer sufficient evidence that would demonstrate a change to the existing benefit, or that adding HMOs are needed. In essence, the City contends its demands are justified regarding an officer paying for health insurance for those hired on or after January 1, 2007 during their entire employment in order to keep its financial position secure.

**Panel Determination**

The existing language in Section "1" of Article 14 as to the health insurance and contributions required for existing Officers, the Panel finds, should remain unchanged. The City has offered no persuasive evidence to the Panel that would justify a change, nor the PBA to provide HMO options. The Panel does agree with the PBA, viewing the comparables, that retiree health insurance does not measure up when viewed within the universe of comparables. Further, the Panel finds that the City has the financial ability to address an improvement in retiree health insurance. Accordingly, the Panel Awards the PBA demand that effective January 1, 2007 and on retirement, to pay 100% of the premium or cost for the Police Officer and/or eligible dependents in the same insurance plan that is provided to the members of the bargaining unit. Finally, the Panel is persuaded, particularly in light of the City's financial ability to pay, that a modest increase of \$50.00 per Officer annually in the second (2<sup>nd</sup>) year of this Award is justified regarding the City's contribution to the Welfare Fund in Section "3" of Article 14.

Accordingly, and after consideration of the evidence in the record and the criteria set forth in Section 209.4 of the Civil Service Law, the Panel makes the following:

**Award on Health Insurance and Welfare Fund**

3. Amend the dates and amounts as follows: (REFERS TO WELFARE FUND CONTRIBUTION)

6. Amend to read as follows:

Effective January 1, 2007 and upon retirement, the City shall pay one hundred percent (100%) of the individual and/or family/dependent health insurance premium cost.

**PANEL ANALYSIS ON CITY'S DEMAND FOR SUBSTANCE AND ALCOHOL ABUSE POLICY AND TESTING PROCEDURES**

Presently, Article 18, Section "3" provides that an Officer cannot be required "to submit to a blood test, a breathalyzer test, or any other test to determine the percentage of alcohol in the blood for any reason whatsoever, except as may be provided by law or by the written request of the Police Officer," Section "9" allows the City "the right to order a Police Officer to submit to narcotics testing where the City has reasonable suspicion to believe that the Police Officer is currently under the influence of illegal narcotics." This section also states that any evidence of any "substance other than illegal narcotics revealed in a test of any Police Officer cannot be used in any other type of proceeding for any other purpose."

The City seeks an Award that would delete the two (2) above provisions and in their place add a substance abuse policy and testing procedure, which the City labels as an "Effective Drug Interdiction Program." The City's plan, according to the PBA, has "virtually no specifics or safeguards", Thus, the City's demand is opposed by the PBA.

**Panel Determination**

The parties have reached an agreement that reflects a comprehensive understanding of a procedure regarding the use of alcohol and drugs in the workplace and about providing

rehabilitation and treatment to employees who recognize and seek assistance for alcohol and substance abuse problems. The Award on this subject matter in no way implies that the police officers of the City are in need of a procedure because of any abuse, but rather it provides a uniformed application in all phases of procedure by providing needed details and procedural safeguards, as well as a referral, evaluation, and treatment process. The Panel Chair is of the view that the parties' agreement on a comprehensive drug and alcohol testing policy, including an approach to treatment and containing important safeguards, represents cooperative labor-management relations at its best and will serve the taxpayers of the City well.

Accordingly, and after consideration of the record evidence and after due consideration of the criteria set forth in Section 209.4 of the Civil Service Law, the Panel makes the following:

**Award on Substance & Alcohol Abuse Policy & Testing Procedures**  
**Effective July 9, 2008**

Effective June 30, 2008, delete in its entirety (see New Article Substance and Alcohol Abuse Policy and Testing Procedures to be effective July 1, 2008).

Effective June 30, 2008, delete in its entirety (see New Article - Substance and Alcohol Abuse Policy and Testing Procedures to be effective July 1, 2008) Contained in Summary of Award, Appendix A

## **PANEL ANALYSIS OF EDUCATION PROPOSAL**

Article 19 of the parties' Agreement addresses education and the City's contribution to Officers pursuing specified courses "leading to an Associate, B.S. or Master's degree in Police Science, Criminal Justice, Public Administration or Spanish courses ..." (Article 19, Section 1). Further Article 19 addresses the City's payment of annual stipends to Officers who have earned either an Associate's degree or a Bachelor's degree. The City has proposed to amend Section "1" of Article 19 by conditioning its contribution toward tuition and books by requiring the Officer to obtain the grade of "C" or better and to delete that language in Section "2" that renders Officers hired on or after June 15, 2001, ineligible to receive the annual stipends set forth in Section 2. The PBA does not object to the City's demands.

### **Panel Determination**

The Panel agrees that the City's demands are fair and reasonable.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the criteria set forth in Section 209.4, makes the following:

#### **Award on Education**

1. Add the following to read as follows: All courses shall be required to receive a grade of "C" or better, or in the event of "pass" or "fail" is used, the Police Officer must "pass."
2. Delete the last sentence in its entirety. (Refers to a police officer hired on or after June 15, 2001 not being paid the annual stipends set forth herein).

## **PANEL ANALYSIS OF FUNERAL EXPENSES**

Presently, Article 20 obligates the City to pay 100% of funeral expenses for an Officer who has died in the performance of duties up to a maximum of \$7,500.00. The PBA demand is to increase this amount to \$10,000.00. The City does not object to the PBA's demand.

### **Panel Determination**

Needless to say, the PBA's demand is acceptable to the parties, and the Panel will Award it, finding that it is consistent with the record evidence and the criteria set forth in Section 209.4 of the Civil Service Law.

### **Award on Funeral Expenses**

Insert "ten thousand dollars (\$10,000.00)" where "seven thousand five hundred dollars (\$7,500.00)" appears.

## **RETROACTIVITY AND IMPLEMENTATION**

Given the fact that the Award has not been issued until well into the two year period of the Award, the Panel has needed to address retroactivity and implementation. Its Award therefore includes the following:

The Panel Awards retroactivity back to January 1, 2007 to any individual who worked during the period of the expired collective bargaining agreement. The retroactivity shall be paid to each individual no later than thirty (30) calendar days following receipt of the fully executed Award by the City. Each individual shall be provided with a worksheet setting forth how the calculation(s) were made and what it represents. The terms of this Award shall be implemented no later than two (2) full pay periods following receipt of the fully executed Award by the City. The Panel retains jurisdiction until the payment of retroactivity and the implementation of this Award is completed as set forth herein.

## **REMAINING ISSUES**

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of said demands. The fact that these demands have not all been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on those demands submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

### **Award On Remaining Issues**

Except for those demands previously awarded unanimously by the Panel, the demands not specifically addressed by this Award are hereby rejected.

## **DURATION OF THE AWARD**

The Panel, per the provisions of the Civil Service Law, renders its Award for a two (2) year period, to be retroactively effective from January 1, 2007 through December 31, 2008.

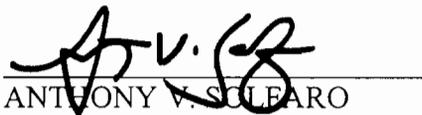
## **RETENTION OF JURISDICTION**

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award. The Panel shall retain jurisdiction to those demands that are subject to arbitrability and currently provided for a unanimous Award before the New York State Public Relations Board (PERB) regarding the Improper Practice Charge against the PBA (Case No.: U-27423) to render an Award at a time when the matter is finally adjudicated by the PERB allowing a determination as set forth in the Summary Award attached.

The signatures below provide for a unanimous Award.

  
JEFFREY M. SELCHICK, ESQ. 10/4/08  
Public Panel Member and Chairman Date

  
ALEX SMITH, ESQ. 9/30/08  
Public Employer Panel Member Date

  
ANTHONY V. SCLEARO 9/30/08  
Employee Organization Panel Member Date

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss.:

On this 4<sup>th</sup> day of October, 2008 before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Lauren Selchick  
Notary Public

Lauren A. Selchick  
Notary Public #02SE6162336  
Qualified in Albany County  
My commission expires 03/12/2011

STATE OF NEW YORK )  
COUNTY OF Orange ) ss.:

On this 30<sup>th</sup> day of September, 2008 before me personally came and appeared Anthony V. Solfaro, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.



DEBORAH A. LUBKERT  
Notary Public  
State of New York  
#01LU6020001  
Qualified in Orange County  
Commission Exp. February 22, 2011

Deborah A. Lubkert (Lubkert)  
Notary Public

STATE OF NEW YORK )  
COUNTY OF Orange ) ss.:

On this 30<sup>th</sup> day of September, 2008 before me personally came and appeared Alex Smith, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.



DEBORAH A. LUBKERT  
Notary Public  
State of New York  
#01LU6020001  
Qualified in Orange County  
Commission Exp. February 22, 2011

Deborah A. Lubkert (Lubkert)  
Notary Public