

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration
Between: The Town of Clarkstown

-and-

FINAL AND BINDING OPINION AND AWARD
OF TRIPARTITE ARBITRATION PANEL

Clarkstown Police Benevolent Association
Case No: IA 2008-026
M 2008-208

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The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN:	Joel M. Douglas, Ph.D.
PUBLIC EMPLOYEE PANEL MEMBER:	Bunyan & Baumgartner By; Richard P. Bunyan, Esq.
PUBLIC EMPLOYER PANEL MEMBER:	Ronald A. Longo, Esq. Office of the Town Attorney

Appearances:

For the Town of Clarkstown	Amy Mele, Esq. Town Attorney
For the Clarkstown PBA:	Joseph Baumgartner, Esq. PBA Counsel
Date	June 23, 2011

1. 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 Town of Clarkstown ("Town") and the Police Benevolent Association of the Town of Clarkstown ("PBA" or "Association")¹ Hearings were held in Clarkstown, New York, on April 19, May 10, and July 7, 2010. during which time both parties were represented by the aforementioned parties and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs.
2. Two executive sessions were held in White Plains, NY on September 13, 2010 and March 15, 2011 at which time the Panel deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. The results of those deliberations are contained in the AWARD that constitutes the Panel's best judgment as to a just and reasonable solution of the impasse.
3. Those issues presented by the parties that are not specifically addressed in this AWARD were

¹ See Designation of a Public Interest Arbitration Panel (JX #1)

also carefully considered by the Public Arbitration Panel, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted; however, the language is the sole responsibility of the Chairman.

4. In arriving at this Award, the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

In arriving at its determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

5. The Town of Clarkstown is located approximately 25 miles north west of New York City and is situated in Rockland County. New City is the seat of the Town of Clarkstown's government as well as that of the County of Rockland. The Town contains approximately 41 square miles and includes the following communities: Bardonia, Central Nyack, Congers, Nanuet, New City, Rockland Lake, Valley College, West Nyack, Upper Nyack, and selected portions of Nyack and Spring Valley. There are approximately 300 miles of road in the town. Clarkstown does not have a paid fire department.
6. The Town has an assessed evaluation of \$11.1 billion, a Standard and Poors AAA rating, a Moody's Investment Aa3 rating, and in terms of public safety, a survey by Morgan Quitno Press of 300 American communities with populations in excess of 75,000 persons ranks the Town of Clarkstown as the second safest community in the United States of America. (See PBA

Opening Statement)² The Town of Clarkstown Police Department consists of 170 members: 117 sworn officers, 21 detectives, 21 sergeants, eight lieutenants, two captains and one Chief of Police. (PBA X#34) The bargaining unit contains 164 members including Lieutenants but not Captains. The previous CBA expired on December 31, 2008.

7. Rockland County Police Departments are unique to the extent that unlike most NYS counties, there exists a Rockland County Police Act [1936]. The Rockland County Police Academy is run by the Rockland County Chiefs of Police. All new recruits with the nine police departments are trained at the Rockland County Police Department. The Rockland County Police Act preempts all general legislation to the contrary when dealing with statewide police officers. The Act is still valid and addresses certain elements of the operations of the nine Rockland County police departments.
8. The PBA further notes that the vast majority of their members live within the Town of Clarkstown thereby offering great protection and also furthering the local economy. The record documents that 123 officers live within the Town with another 18 residing within Rockland County. (PBA X #38)
9. In terms of the budgetary process Supervisor Gromack noted that the goal for the 2010 FY [January 1 - December 31] budget was a reduction of 5% from the prior year. Thus, was to be effectuated in spite of the rising costs associated with compensation, insurance, health care premiums, retirement, and a decline in revenue from the mortgage and county sales tax. Gromack noted that \$1,000,000 = 1% of the budget gaps and that in the face of increasing budget gaps there are no longer any budget cushions. Concerning the fund balance the Supervisor noted that 20% of the general fund to be maintained in the fund balance. (See TX #123 for fund balance policy statement) The issue of the sale of the Transfer Station and its sale to Rockland County Solid Waste was also discussed. Since the Town could not longer control the product flow the Supervisor believed it was best to divest itself of the asset. It was the position of the town that all of these issues affected their bond ratings and the rate at which they borrow money. [Note bond rating was recently increased from AA to AAA]
10. Town Assessor Cathy Conklin testified and noted that the Resident Assessment ratio = 28.4 % and that constitutes an inverse relationship.³ She noted the increases in the use of the tax grievance mechanisms and that tax certiorari have become "a cottage industry" and that within the Town that most of the "high end" homes have lost considerable value. Clarkstown is the retail hub of Rockland county and Conklin stated that even the Palisades Mall has filed for tax relief. The total assessed value of the Town in FY 2008 was some 4.2 billion dollars and that certiorari and other challenges removed some 3.9 million dollars and even though that was less than 1% of total value it had s significant impact.⁴
11. Gerri Levy, Executive Director of the Rockland Housing Action Coalition testified on behalf of the town.⁵ She noted that the purpose of her agency was to provide assistance and funding for foreclosure prevention counseling and relief on mortgage payments and that within the past

2 In another study the Supervisor noted that Clarkstown, when measured in communities of 75,000, was the 3rd safest while the Town of Ramapo ranked number one.

3 Conklin acknowledged that her annual salary was between \$125,000 to \$130,000.

4 Conklin testified that the reduction in the Towns tax collections for FY 2010 was \$7 million.

5 Levy's annual salary is \$84,000.00.

three years there has been a dramatic increase in homeowners seeking financial assistance. Due in part to the problems associated with sub prime loans, the Town of Clarkstown has also been affected and, "is fairing just as well or as poor as the rest of the county." At present some 26% of request for assistance comes from Clarkstown where initially the requests were primarily limited to Spring Valley and Haverstraw and that there is now approximately one foreclosure per month within the Town. (See TX #29, #30, #32 and #33.)

ISSUES AT IMPASSE

12. At the hearing the parties agreed to submit the following issues for evaluation and decision by the Panel.⁶ The major issues at impasse revolve around salary, health insurance, and related compensation. Where viable, the aforementioned demands and subsequent recommendations have been consolidated to address the needs of both parties. The issues at impasse submitted to the Panel for an Opinion and Award included:
 1. Health Insurance:
 - . Employee Contribution for Health Insurance at Fifteen Percent of Applicable Premium for All Bargaining Unit Members Hired after January 1, 2009.
 - . Add Buy out Provisions with Employee/eligible Retirees and Town to Split Fifty Percent of the Net Cost of Premium.
 - . Add Twenty Year Service Requirement for Retiree Health Insurance.
 2. Cap Life Insurance Provision at \$400,000.
 3. Amend Longevity Provisions to Indicate That New Employees Hired after January 1, 2009 Are Only Eligible for Longevity after Fifteen Years of Service in the Town.
 4. Cap 480 Day Cash-In at No More than \$75,000.00.
 5. New Vacation Schedule.
 6. Personal Leave Limitations.
 7. Amend Salary Schedule to Provide for Minimum of Two Years in Grade Before an Officer Can Move to the next Highest Salary Grade. [demand w/d by Town in full settlement of IP Charge # 28951] (JX #4)
 8. Amend Medical Waiver Form for 207 C to Be Consistent with the OCA Medical
13. TOWN PROPOSALS:

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At the outset of the hearing the PBA withdrew several of their original proposals including the demand for ten per cent evening shift differential and modifications in longevity payments. (See TX #3 for list of proposals) The proposed withdrawals were accepted.

14. PBA PROPOSALS:

9. Term of the Award: Three Year CBA. [demand w/d by PBA in full settlement of IP Charge U # 28989] (JX #5)
10. Basic Annual Salary: Five and One Half Percent Annual Salary and Wage Increase.
11. Ten Percent Evening Shift (3-11 / 4/12) Differential Pay. [demand w/d by PBA in full settlement of IP Charge U # 28989] (JX #5)
12. Remove Limits on Longevity Increments and Based upon Actual Salary. [demand w/d by PBA in full settlement of IP Charge U # 28989] (JX #5)
13. Equipment Allowance - Increased to \$1,500.00.
14. Detective Call - in Policy/one Hour Overtime per Tour Stand by Pay.
15. SIU/ Plainclothes Units - 7 ½ Percent Pay Increase.
16. Personal Leave - Ten Days after Fifteen Years to Be Converted to Equal Compensation Hours.
17. PBA President to Receive Additional Twelve Release Days per Calendar Year.
18. Rockland County PBA Members to Receive Five Release Days per Calendar Year.
19. Payment of Accumulated Time upon Death or Resignation.
20. All Vacation Days May be Taken as Individual Vacation Days:
21. Overtime Pay for All Twelve Designated Holidays. (JX #3)

ISSUE NUMBER ONE (9) TERM OF THE AWARD
DISCUSSION AND AWARD

15. The instant OPINION and AWARD concern a successor Agreement to the previous Collective Bargaining Agreement which covered the period January 1, 2005 - December 31, 2008. Unless agreed to by the parties and Awarded by the Panel, the instant Award would cover the period January 1, 2009 thru December 31, 2010. ⁸
16. In its determination the Panel was guided by the appropriate statutory criteria:
 - (vi) *the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any*

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The Town submitted the PETITION FOR INTEREST ARBITRATION.(See JX #1) The PBA response was entered into the record as JX #4.

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See TX #41 for the 2005-2008 Clarkstown Police Department CBA.

previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

17. As I have noted on numerous prior occasions, the arguments in favor of an extended Award are well known to the parties and were set forth by the undersigned in executive session. An extended Award is not possible without the written permission of the parties; however, although strongly recommended by the Panel Chair, no authorization was obtained from either party. Based on the record the following is awarded.

1. The term of this Award is from January 1, 2009 to December 31, 2010.

ISSUE NUMBER TWO (10) BASIC ANNUAL SALARY
DISCUSSION AND AWARD

18. In the instant matter, the Town argued that the increases sought by the PBA are not sustainable and are against the public interest. While acknowledging and praising the work performance of the Police Department, they argued that the Panel cannot "just go with comparability" but instead must place heavy reliance on the "public interest criteria." The PBA was seeking annual wage increases of 5% per year for each year of the successor contract and adjustments in the night shift differential and longevity. The Town is seeking to stop what they consider to be excessive salaries and while there is much that can be said in their defense, it is very difficult for an arbitration panel to discontinue what many perceive as an economic flow when the record documents that the Town possesses the ability to fund the increases awarded herein. Should the parties want to revamp their compensation structure and come up with a new design pursuant to which Clarkstown Police officers are to be paid that is well within their prerogative. However to expect an arbitration panel to Award what the county describes as "zero increases," in light of their financial health of the Town as adequately demonstrated by the PBA, is unwarranted.
19. Town Supervisor Alexander J. Gromack testified as to the financial condition of the Town and testified that the expenses associated with the daily running of the Town government has significantly increased and that there have been talks of consolidation and merger [insurance and purchasing] and that although his predecessor always filled jobs, there now are instances where positions have been eliminated. For example, the sale of the transfer station, the reduction in the police force from 173 to 166, the retirement of the head of the court system and the continued vacancies in the position of court deputy. In sum, the Supervisor testified that the Town has attempted to "bring down costs thru personnel" and although the work load has remained the same that there are now 52 fewer employees performing those duties. [Total Town work force estimated at n+ 503][1% =s one million] According to the Supervisor the Town has spent the last four to five years by "management thru retirement."
20. Gromack noted that the budget gaps were increasing and that the Town is required to keep some 20% of the General Fund as a fund balance.⁹ In terms of percentages, the stated that \$1,000,000.00 =s 1% of the budget gap and there no longer any "budget cushions." (TX #13) In terms, of specifics that have created the budget gaps Gromack noted increased pension costs

and a decrease in revenue collected from the Mortgage and the County sales tax.¹⁰ In terms of bond ratings the supervisor acknowledged that there had been an increase from AAA to AA thereby by reducing the rate at which they can borrow money but that he did not want to dip into that area for expenses since it could affect their overall credit and bond ratings.

21. Gromack placed a heavy reliance on the "public interest" and referenced numerous meetings held at civic and community associations. At these meetings there was a demand that not only should police salaries stop their annual growth and be reduced to smaller increases, but that these adjustments must altogether stop. He estimated that he spoke with three to five thousand Town residents who were opposed to any raises. Other issues cited by the Supervisor included increased attendance at foreclosure seminars, petitions for tax reductions, and dissatisfaction from the senior community. In sum he noted that some tax payers favored the elimination of the police department and have either the Office of the Sheriff or the Division of State Police assume the police function.
22. The Supervisor noted that his annual salary is \$153,500 and that in 2010 the entire Town Board, the Office of the Town Attorney, and the two police captains accepted a wage freeze. In that same year the CSEA unit received an increase of 3.7% while other elected Town officials received one half of the CSEA increase or 1.8%. The Supervisor noted that in 2010 the average salary for a police officer, excluding the Chief, Captains, and Lieutenants, was \$142,000. (See TX #6 for Chief's contract) The Chief's salary is set at 15% higher than the Captain and reflects a 2008-2009 reduction of \$3,000.00 and a 2010 wage freeze.
23. Director of Finance, Amy Vargas, Esq., testified for the Town. She described the process whereby certain police officers [12-15] are on some form of medical leave including 5-6 who are out on long term care. She stated that the Town was seeking a "broader" reporting form which would provide pre-existing medical history that is not reported on the existing form and will be compliance with the OCA form. (See TX #63 for old form, TX#64 for OCA form and TX #65 for proposed new form.) She noted that the Town of Haverstraw uses the OCA form and that the primary problem with the existing form is that there is a problem in knowing if the specific injury occurred while on duty. In sum, she stated that the present form exacerbates the injury report process.
24. Town building inspector Peter Beary testified to the decline in new building permits and related revenue. Due to the fact that new home construction has dropped significantly there has been a steady reduction in permit fees. He added that there has been virtually no new commercial renovation or building.
25. The Panel has considered all the cited statutory criteria and first addresses the comparability standard. Geographical proximity is a critical element of comparability. The Panel has considered local settlements and county-area comparables and notes that wage settlements and Awards in Rockland County for full-time salaried police departments have ranged in the area of the recommended 3.4 percent set forth herein.
26. The PBA has strongly argued for the continuation of existing comparability while the Town seeks to extend comparability to neighboring communities and counties. The record documents there are nine police departments within Rockland County: Town of Clarkstown, Village of Piermont, Town of Orangetown, South Nyack - Grandview, Town of Ramapo, Village of

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Since the Town could not longer control the flow at the solid Waste plant they decided to sell it to the Rockland County Solid Waste Company thereby gaining certain fees but losing others. Gromack believed that it was in the best interest of the Town to divest itself of the asset

Spring Valley, Town of Stony Point, Town of Haverstraw and Village of Suffern.¹¹ Although the issue of comparability has been widely argued, it appears that the persuasive dicta may be found in an Interest Arbitration Award which I authored in the 1997 Town of Haverstraw Award. (PBA X#13) As I previously noted:

The comparability position articulated by the PBA is persuasive in this matter. Rockland County Police Departments by custom and longstanding practice have utilized county comparability as a measure of comparison and have not looked to Westchester, Putnam or Orange County. Due to its geographical limitations as one of the smallest of counties within New York State the county is relatively homogenous and compact. Should the parties wish to alter their comparability understanding they are free to so negotiate but for the arbitrator to upset over 25 years of bargain history to an interest arbitration award and unilaterally revise comparability standards is unwarranted at this time.

27. Although this comparability analysis was written more than twelve years ago, there is nothing in the record that would warrant the panel from revising the aforementioned comparability standards. Indeed virtually every other Interest Arbitration panel that has addressed the comparability question has relied, in part, on the aforementioned language. Therefore, in terms of comparability, the panel has remained within Rockland County.

28. This comparability analysis has been reinforced by virtually every interest Arbitrator to have issued Awards within Rockland County. (See Awards issued by Prosper, Edelman, Simmelkjaer, and Scheinman; See Town of Haverstraw Award, IA-2005-023) Prosper wrote;

Arbitrator Douglas held that 'Rockland County police departments by custom and longstanding practice have utilized County comparability as a measure of comparison and have not looked to Westchester, Putnam or Orange County . . . for the arbitrator to upset over twenty-five years of bargaining history through an interest arbitration award and unilaterally revise comparability standards is unwarranted at this time. In reference to Arbitrator Douglas' statement, Arbitrator Edelman stated that he did not suggest that such a finding may never be modified, but that to upset such a longstanding practice requires new evidence warranting a change. The record before me does not contain such evidence.

29. By every indication Clarkstown Police officers are among the highest paid in the nation. When one calculates the Daily Rate of Pay for Clarkstown Police Officers, including the various time off and leave provisions, these numbers become appreciable. [See TX #40 for a complete listing of individual officers and their pay and benefit packages.] Although the PBA initial arbitration demands might not be considered unreasonable by traditional standards, when viewed within the context of their present pay scale they are not justifiable. Although the overall demeanor of the PBA in terms of their arbitration expectations and demands were reasonable, based on the record evidence to Award them that which they seek is not supported by the statutory criteria and are thus unwarranted.

30. In terms of comparability the record documents the following recent Rockland County salary adjustments. They do not include settlements or Awards reached after the closing of the instant

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At the conclusion of the hearings and prior to the issuance of the instant Award, the Town sought to introduce into the record Awards and settlements from municipal Police Departments located in Rockland and Westchester counties that were concluded subsequent to the 2009-2010 time period covered by this Award. Over the strenuous objections by the Town, the Panel rejected their inclusion since at the time the record was closed, these contracts or Awards had not yet been completed.

record.

ROCKLAND COUNTY POLICE SALARY ADJUSTMENTS

<u>Jurisdiction</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Clarkstown	3.8%	3.8	3.5	expired					
Haverstraw	3	3.6	3.6	exp					
Orangetown	4	4	3.75	3.75	3.75	exp			
Piermont	4.5	4.5	exp						
Ramapo	3.5	4	4	4	4	4	4	4	4
South Nyack	3.75	3.5	3.5	4	4	exp			
Spring Valley	3.25	3.75	4.75	exp					
Stony Point	4	4	exp						
Suffern	4	4	3.5	3.5	3.5	3.5	exp	(See PBA X #37)	

ROCKLAND COUNTY FIRST GRADE POLICE OFFICER SALARY

<u>Jurisdiction</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Clarkstown	\$103,176	exp				
Haverstraw	\$ 97,428	exp				
Orangetown	\$ 98,335	\$102,203				
Piermont	\$ 97,022	exp				
Ramapo	\$102,924	\$107,041	\$111,323	\$115,776	\$120,407	\$125,223
South Nyack	\$105,029	\$105,029	\$106,141	\$110,387	exp	
Spring Valley	\$93,875	\$93,875	\$95,387	exp		
Stony Point	\$97,691	exp				
Suffern	\$99,983	\$99,983	\$103,482	\$110,583	(See PBA X# 29) ¹²	

31. Clearly there is a definite County pattern and there is no reason why Clarkstown should deviate significantly from this model. Of note is that the major comparables all received increases greater than those awarded here for the period 2009-2010. The record documents that:

¹²

Similar data was introduced for salaries for second, third, fourth, and fifth grade Police Officers. (See PBA X#31-33)

- A. Ramapo police received negotiated increases of 4 percent for the period covering 2009-2014.
- B. Orangetown increases for the period 2009-2010 were 3.75 per year.
- C. In two smaller police departments, South Nyack and Suffern the 2009-2010 increases were 4 per cent per year in South Nyack and Suffern 3.5 per year.¹³

32. Both parties relied upon the testimony of expert financial witnesses to support their position. The testimony of PBA witness Kevin Decker [government finance consultant] was admitted into the record. His report detailed the financial condition of the Town and was utilized in the formulation of the instant *Opinion and Award*. [See PBA X#1]¹⁴ Decker concentrated on the Town's duly adopted budget, tax margin statements, payroll records, data bases, reports submitted to the Office of the NYS Comptroller, and related audits.
33. Decker testified that from a financial perspective that the Town was "healthy" and although he acknowledged some impact from the recession, he pointed to the Town's high bond ratings. He also notes that the Town was well positioned to move ahead once the "recovery kicks in." Decker acknowledged that he only examined the statutory criteria of "ability to pay" and in all of his years of consulting he never found an example whereby the employer completely lacked the wherewithal to pay some increase. Decker also analyzed the differences between unreserved and unappropriated monies and indicated that an increase of 4% was legitimate. Decker believed that funding the salary increase was feasible from within the 17% of the Town's reserves and that the 4% each year was obtainable from the fund balance. If a 4% Award were to be issued, he noted that \$6 million was necessary to make the payment retroactive to January 1, 2009 and that thru FY 2011 it would require some \$11 million.
34. As I have often written in the past, although wage and salary determination is far from an exact science; however, the undersigned was guided by the criteria set forth in the Taylor Law. Among other factors these included the:

... comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with employees generally in public and private employment in comparable communities. Section 209.4 of the Act:

Additional criteria included:

... (b) the interests and welfare of the public and the financial ability of the public employer to pay. (Section 209.4 of the Act)

¹³

Care must be reading this section in the year 2011 and accept the fact that date and comparisons used were a matter of record for 2010-2011. Indeed the Town attempted to introduce into the record Awards and settlements reached after the closing of the instant record but before this Award was finalized. The Panel, over the strenuous objections of the Town, rejected this data and considered only the economic statistics for the two year contract period.

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The parties stipulated that Decker was qualified as an expert witness in municipal finance.

35. As is so frequently the case, negotiated benefits obtained at the bargaining table by either party were afforded presumptive preservation.

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security. (Section 209.4 of the Act)

36. The Panel further considered the role that CPI has played in Interest Arbitration. Since the 1990's the parties have either negotiated or been the recipient of salary adjustments greater than the CPI. In the instant Award, the awarded raises were greater or in the range of the CPI for the referenced period. The trend in most Interest Arbitration awards has been that the CPI has been less than salary increases and has reflected a trend whereby the wage increase exceeded the CPI. For the time period reflected in the Award, the CPI was less than the awarded 3.4 % increases.

37. The members of the Interest Arbitration Panel have extensively discussed the issue of salary and based on the record and the statutory criteria, including the Town's ability to pay, it is the opinion of the Panel that the salary AWARD herein is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following salary adjustments.

- A) For the period January 1, 2009 through December 31, 2009 the current police officers' salary schedule shall be increased by 3.4 percent retroactive to January 1, 2009.
- B) For the period January 1, 2010 through December 31, 2010 the current police officers' salary schedule shall be increased by 3.4 percent retroactive to January 1, 2010.

ISSUE NUMBER THREE (1) HEALTH INSURANCE PREMIUMS
DISCUSSION AND AWARD

38. The PBA is seeking the preservation of the status quo while the Town is seeking contributions from new hires.¹⁵ The Association rejects this demand and proposes that the present system remain unchanged. The record documents that the nine police departments in Rockland County all receive fully paid employer medical insurance. This includes Clarkstown, Haverstraw, Orangetown, Piermont, Ramapo, South Nyack, Spring Valley, Stony Point and Suffern. (PBA X#35) There is no reason in the record to now reduce the current employer's health insurance premium contribution. In full view of the record, the Town demands for financial contributions in Health Insurance premiums are hereby rejected.

39. However, the Town's proposal for the elimination of dual coverage is viable. This plan, found in numerous municipalities, provides that if a married or otherwise legally recognized couple both have health insurance, it is cost effective for the employer of one of the pair, with the consent of the employee, to eliminate coverage for said employee while at the same time offering

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Gromack referenced the 2007-2011 CSEA CBA and stated that it had been voted down twice before final ratification. In that Agreement new employees contribute ten percent for their health care for a period of ten years and that in most other County units there is some sort of contribution plan.

the affected employee a financial incentive to opt out of the program. The Town's proposal to split the premium savings with the employee is such a plan.

40. The members of the Interest Arbitration Panel have extensively discussed the issue of health insurance and based on the record and the statutory criteria, including the Town's ability to pay, it is the opinion of the Panel that present premium contribution system is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following adjustments. Thus, the Panel Awards the following:
1. The proposals for Employee Contributions for Health Insurance at Fifteen Percent of Applicable Premium for All Bargaining Unit Members Hired after January 1, 2009 and the addition of a Twenty-Year Service Requirement for Retiree Health Insurance are rejected.
 2. The Town proposal for a Buy Out Provision with Employee/eligible Retirees and Town to Split Fifty Percent of the Net Cost of Premium is so awarded.

ISSUE NUMBER FOUR (2) CAP LIFE INSURANCE CAP AT \$400,000.00
DISCUSSION AND AWARD

41. Robert Berdi, Town of Clarkstown Insurance and Claims Manager testified as to the Town's insurance programs. He noted that life insurance is now set at two times salary plus \$14,000 and that the prior cap was set at \$200,000.00. He noted the difficulties in obtaining a carrier to fund an amount in excess of \$400,000.00 and that the Town is seeking a cap in that amount.
42. The record documents that one officer died during the past 26 years which necessitated a payment of the life insurance benefit. Berdi testified that if the Town is unable to obtain the aforementioned cap they would have to pay that amount out of their reserve funds.
43. The members of the Interest Arbitration Panel have extensively discussed the issue of a life insurance cap. Based on the record and the statutory criteria, including the Town's ability to pay, it is the opinion of the Panel that the Town's proposal is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following adjustments.
1. There shall be set forth a \$400,000.00 cap placed on the present life insurance system.

ISSUE NUMBER FIVE (14) DETECTIVE CALL - IN POLICY/ONE HOUR OVERTIME PER
TOUR STAND BY PAY.
DISCUSSION AND AWARD

44. Detective Steve Cole-Hatchard testified as to the "Detective On-Call Policy" and why the PBA seeks a change from the present system. At present detectives work Monday to Saturday and call in on Sunday. Cole-Hatchard testified that the present system leaves nine uncovered shifts per week and that these usually occur on the midnight tour. Since a crime can occur at any time, when a detective is needed on an uncovered shift it usually, even if available, involves the use of overtime. In addition, since there might not be an immediate response, there is a high probability of the crime scene being destroyed. Cole - Hatchard has been on the job for some 21 plus years and noted that the present system does not work and that if the changes were implemented it would be beneficial to the Town.

45. Lt. Glen Dietrich testified as to his duties as a Shift Commander and the difficulties that he encountered when there are no detectives on duty.¹⁶ He noted that there is no formalized call-back procedure and that mainly the Shift Commander employs a random call around. He testified in support of the PBA demand for an assigned on-call detective and claims that it would be advantageous to the Department. The stand by detective would be compensated at a rate of one hour of overtime for the tour and it would only be applicable to the midnight tour for a total not to exceed nine tours. He acknowledged that if granted, the question of "tethering" would have to be discussed.
46. Town of Clarkstown Chief of Police Peter Noonan described his career in the Department and explained the workings of the various squads and shifts.¹⁷ Chief Noonan testified as to the PBA proposal for "standby detectives" and noted that it had some merit but it was unclear who would actually be the one on standby.
47. The members of the Interest Arbitration Panel have extensively discussed the issue of a detective call in stand-by pay and rejects said proposal.

1. The PBA Proposal for Detective Call - in Policy/one Hour Overtime per Tour Stand by Pay Is Rejected.

ISSUE NUMBER SIX (20) VACATION DAYS MAY BE TAKEN AS INDIVIDUAL DAYS
DISCUSSION AND AWARD

48. The PBA presented a proposal whereby a new system would be implemented for the picking and selection of vacation days. The demand appears to be related to the requirement for minimum staffing and the right to pick individual vacation days. At present five individual days may be chosen with the rest restricted to block usage. While no precise cost figure was attributed to this demand, it appears that if thirty days [the demand] were to be granted and if all of them used the potential to greatly increase the need for vacation coverage and resultant overtime appears significant.
49. While the PBA posits that there is no additional cost associated with this item, based on the need for minimum staffing significant overtime [Town position] would result. The Union further argued that if the Town feared an increase in overtime they could simply deny each single day vacation request. The record further documents that the present vacation system is based on selection by seniority and that the new "individual day system" would be based on "first come first served."
50. The Town strenuously opposed this proposed new methodology and argued that it was nothing more than an attempt to increase overtime. They contend that the requirement for minimum staffing would lead to more overtime and that the present seven personal leave days were more than sufficient to cover any unexpected problems or emergencies.¹⁸ Although the PBA

¹⁶ Lt. Dietrich has been employed by the Town of Clarkstown for some 27 years and has served five years as a Shift Commander.

¹⁷ See UX #40 for Chief of Police compensation package.

¹⁸ The Town also suggested that this proposal was related to individual officers having private businesses "on-the-side" and they were using this proposal to facilitate that end.

contends that bloc vacations would come first, the Town cites the five vacation days that can be used individually and the contractual holidays that can be used at any time. The record does not document any problems with the present system that would warrant the awarding of this significant change in the vacation selection procedure.

51. Chief Noonan commented on the various PBA proposals as to make seniority the factor in tour selection and certain vacation days and noted that the present vacation system works and to now convert the entire allocation to individual days was unnecessary. Clarkstown police officers receive the following vacation allowances: 15 days after one year, 20 days after three, 30 days after four, and 35 days for those after five. At present individual officers can select up to five single vacation days and if all were converted to individual days he asked how could one administer that policy? The same arguments applied to the selection of "elective" days. The Chief testified that the present vacation policy was similar in application to those found other Rockland County Police Departments and that no change was necessary. He supported the Town proposal for a decrease from fifteen days to seven in vacation time for new hires, urged assistance in filling staffing obligations, and a reduction in overtime.
52. Vacation modifications do not appear warranted. The present system is as generous as any in the County and structural changes could lead to increased overtime costs. Furthermore, the Panel Chairman has never seen any law enforcement personnel vacation schedule, whether they are police or correction officers, where the vacation schedule is not set forth in bloc form. The issue raised by the Town that the proposal would benefit those officers who have second jobs is also noted. The members of the Interest Arbitration Panel have extensively discussed the issue of a Vacation Leave and rejects said proposal [s].

1. The PBA proposal for modifications in Vacation Leave is rejected.

SUMMARY

53. In recapitulation, in reaching our findings above, we have carefully considered and weighed all of the relevant statutory criteria and standards traditionally relied upon in interest arbitration. Both parties have also presented to the Panel a variety of what may be described as "minor issues" for which they seek an Award. These tend to vary from more time off for PBA officers to increased benefits for plainclothes officers. Many of these demands, in a more traditional-interest arbitration setting, might have been warranted; however, in terms of the overall Clarkstown compensation they have been expressly rejected.
54. In our view, this Award balances the rights of bargaining unit members to improvements in their terms and conditions of employment with the recognition of the Town's attempt to judiciously apportion its economic resources. The benefits provided in this Award shall be

deemed retroactive. Furthermore, all provisions and language contained in the prior Agreements are hereby continued, except as specifically modified in this Award.

****** THOSE ISSUES PRESENTED BY THE PARTIES THAT ARE NOT SPECIFICALLY ADDRESSED IN THIS AWARD WERE ALSO CAREFULLY CONSIDERED BY THE PUBLIC ARBITRATION PANEL, BUT REJECTED IN THEIR ENTIRETY.***

A-W-A-R-D

1. TERM OF THE AWARD

The term of this Award is from January 1, 2009 to December 31, 2010.

CONCUR RB DISSENT _____
CONCUR RB DISSENT _____

2. BASIC ANNUAL SALARY

For the period January 1, 2009 through December 31, 2009 the current police officers' salary schedule shall be increased by 3.4 percent retroactive to January 1, 2009.

For the period January 1, 2010 through December 31, 2010 the current police officers' salary schedule shall be increased by 3.4 percent retroactive to January 1, 2010.

CONCUR RB DISSENT _____
CONCUR _____ DISSENT RB

3. HEALTH INSURANCE

The Town proposal for a Health Insurance Premium Buy Out Provision with Employee/eligible Retirees and Town to Split Fifty Percent of the Net Cost of Premium is so awarded.

CONCUR RB DISSENT _____
CONCUR RB DISSENT _____

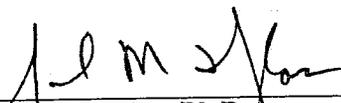
4. CAP LIFE INSURANCE CAP AT \$400,000.00

There shall be set forth a \$400,000.00 cap placed on the present life insurance system.

CONCUR RB DISSENT _____
CONCUR RB DISSENT _____

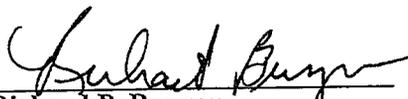
AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Joel M. Douglas, Ph.D.
Public Panel Member and Chairman
Dated: 6-28-11

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Richard P. Bunyan
Employee Panel Member
Dated: 6-28-2011

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Ronald A. Longo
Employer Panel Member
Dated: 6-30-2011

AWARD AFFIRMATION

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this ^{18th} day of June 2011 before me personally came Joel M. Douglas to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Stephanie M Roebuck

STEPHANIE M. ROEBUCK
Notary Public, State of New York
No. 02RO6164393
Qualified in Westchester County
Commission Expires 04/16/2015

STATE OF NEW YORK
COUNTY OF ROCKLAND

On this ^{21st} day of June 2011 before me personally came Richard P. Bunyan to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Stephanie M Roebuck

STEPHANIE M. ROEBUCK
Notary Public, State of New York
No. 02RO6164393
Qualified in Westchester County
Commission Expires 04/16/2015

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this ^{23rd} day of June 2011 before me personally came Ronald A. Longo to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Patricia Engels

PATRICIA A. ENGELS
Notary Public, State of New York
No. 01EN6138621
Qualified in Westchester County
Commission Expires 12/27/2015

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

----- X

In the Matter of the Interest Arbitration between

Town of Clarkstown,

Public Employer,

-and-

Rockland County PBA, Inc.,

Employee Organization.

DISSENTING OPINION OF
PUBLIC EMPLOYER
MEMBER
REGARDING AWARD OF
INTEREST ARBITRATION
PANEL

PERB Case No.: IA2008-026; M2208-208

----- X

The following constitutes the dissenting opinion of the duly appointed Public Employer Panel Member in the above-captioned matter.

The Award as rendered by the majority of the Panel reflects the following economic changes: (1) an increase in salary of 3.4% for each of the two (2) years of the award (2009 and 2010) and; (2) salary increases caused by changes in grade. In so doing, the undersigned feels strongly that the Award, as issued by the majority of the Panel, does not properly apply that portion of the Taylor Law which requires consideration of: (1) the interest and welfare of the public and (2) the financial ability of the public employer to pay. See Civil Service Law §209 subdivision 4(v)(b).¹

This Panel justifies its position as to comparable communities by citing old Awards, some from decades ago, that limit consideration of communities to solely those in Rockland County. The Panel in the recent Award issued in October, 2009 in Town of Haverstraw/Haverstraw PBA (PERB Case No. IA2008-009), a copy of which is in the Record (Town Ex. 2d), did not simply rely upon such comparables but rather included consideration of jurisdictions outside of Rockland County. It

¹ While there are some minor inaccuracies in the Award they will not be noted as they do not affect the Award.

is respectfully submitted that the majority of the Panel misses the point. Instead of relying upon old decisions like those cited in the Award, arbitrators should realize that two of the most relevant factors in terms of what tax payers can afford are median home value and family income. See Town Ex. 2d p. 6. Similarities in these areas justify consideration of non-Rockland Towns. See Town Ex. 2d p. 7 and Town Ex. 58 and 59. The Haverstraw Award recognizes that just because there is a bridge between Westchester and Rockland does not mean that municipalities such as the Town of Greenburgh, which are strikingly similar to Clarkstown, should be totally ignored when determining comparability. The Panel cited the Rockland County Police Act as unique and a reason why Rockland communities are the only ones considered. This argument ignores the parallel Statute found in the Westchester County Police Act. With all due respect to the majority, to continually follow the same argument without any more justification than "that's the way we always done it" is not giving proper recognition to a new economy that is reflected amply in the Record.

It is the opinion of the undersigned that the determination by the Panel Chair to reject the request of the Town that the Panel consider settlements reached after the close of the Record is misguided and again not in the public interest. It is believed that this determination was contrary to the spirit of the Statute. One of the issues raised was the stale nature of a number of the settlements which were relied upon in reaching a decision herein for 2009 and 2010. Many of the Agreements relied upon in the Award were entered into prior to the advent of the "new economy". Also there are only two Towns settled for 2009 and 2010 and two Villages for the same period. The Town asked to have the recent settlements in the Towns of Stoney Point and Haverstraw considered before rendering an Award so as to provide a broader base from which to make a decision. In prior Awards the Panel Chair found both Towns to be comparables for Clarkstown. See Town Ex. 2b. The Panel Chair denied consideration of two settlements that were timely in nature but simply took

place after the close of the Record. It is submitted that by doing so the Panel was not prepared to look at the totality of the evidence. While the majority points out that the 3.4% increases awarded are the lowest in the County this may very well not be the case if all settlements were considered.

While the majority opinion gives lip service to significant increases in pension and health insurance costs and substantial decreases in revenue in the form of mortgage tax and sales tax it imposes a salary increase with corresponding payroll costs for pension and social security in the neighborhood of seven (7%) percent. The majority bases its Award on increases granted by other Rockland municipalities. However as noted above, those decisions were made, for the most part, at a different time in this Country's economic history.

It is submitted that the public employer's ability to pay is not simply a function of the amount of money in the bank. No good business is run without the ability to deal with such things as the ebb and flow of cash flow, the uncertainties caused by increases in operating expenses (i.e. significant increases in pension cost) and the need to be able to meet constituent's needs which may change from time to time. Ability to pay also involves the ability of the tax payer to carry the entire load that is imposed by this Award. The Town submitted significant data with regard to the change in position of Clarkstown tax payer. One example is the significant data put forward, without rebuttal, relating to the significant increase in foreclosures on residential property in the Town. The people whose houses were foreclosed upon were the individuals who, in the past, paid the taxes that allowed the salaries to get to where they were in the expired collective bargaining agreement. Yet, this Panel, like some others, looks solely to what police officers in other departments get in the way of an increases and patterns the Award around the same. I do not believe that was the intent of the Statute. If it is, the Statute needs to be changed. Increases like these are not sustainable, especially in light of the Tax Cap.

With regard to health insurance, based upon the analysis used in the Award, there is probably nothing anyone can say that would result in police officers in Rockland County paying any portion of the increasing cost of health insurance, notwithstanding the fact that police officers in every other County in this State pay for health insurance. The Town put forth evidence that showed an increase of 126% in health insurance costs over the course of the last ten (10) years totally born by the Town. Yet, since the officers in the other Rockland County departments don't pay then no public employer will ever be able to get health insurance contribution from a police officer in Rockland County with Awards like this one. The Town only asked for contribution from new employee's. Comparability is not the only factor in the Statute. The Statute also requires comparison of terms and conditions of employees generally in public or private employment in comparable communities. See Sec 209.4(v)(a). The Town showed that every other employee group in the Town, including elected officials, if hired after a certain date, pay for health insurance. Yet using the limited approach of the majority, it will be impossible for any Town in Rockland to obtain a fair sharing of costs through arbitration which does not bode well for the future.

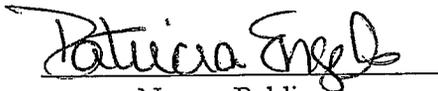
Finally, I agree with the minimal changes allowing officers to opt out of health insurance, which is a "win win", and capping the life insurance. I note, however, that these changes are minimal in nature and in no way balance an outcome that will not, in my opinion, serve the parties in the long run.

Based upon the above I respectfully decern from that portion of the Award entitled "BASIC ANNUAL SALARY".



Ronald A. Longo
Public Employer Panel Member

Sworn to before me this
30th day of June, 2011



Notary Public

PATRICIA A. ENGELS
Notary Public, State of New York
No. 01EN6138621
Qualified in Westchester County
Commission Expires 12/27/20 13