

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

-----x  
In the Matter of the Compulsory Interest Arbitration Between

**INCORPORATED VILLAGE OF KINGS POINT,**  
Employer,

PERB Case No.  
IA-2009-011;  
M2008-325

JS Case No.  
3852

-----  
and

**KINGS POINT POLICE BENEVOLENT  
ASSOCIATION,**  
Union,

**OPINION  
AND  
AWARD**

Re: Impasse on Contract Expiring May 31, 2008.  
-----x

**Before the Public Arbitration Panel:**

**JOHN E. SANDS, Impartial Arbitrator and Panel Chair  
DAVID D. WIRTZ, Village-Appointed Arbitrator  
CHRISTOPHER ROTHEMICH, PBA-Appointed Arbitrator**

**OPINION OF THE CHAIR**

**I. Background.**

On July 15, 2009, Richard A. Curreri, Director of Conciliation of New York Public Employment Relations Board, ("PERB"), confirmed the parties' designation of me as Public Member and Chair of the arbitration panel in this case to conduct hearings and make a just and reasonable determination pursuant to New York State Civil Service Law ("CSL"), Section 209.4. In that same letter he also

confirmed the parties' designations of David M. Wirtz, Esq., as Village-appointed arbitrator and Christopher S. Rothemich, Esq., as PBA-appointed arbitrator.

Pursuant to our statutory authority, we conducted hearings on October 16, 2009 and on November 16, 2009 in the Village of Kings Point, NY. Both parties appeared by counsel and had full opportunity to adduce evidence, to cross-examine each other's witnesses, and to make argument in support of their respective positions. Each has submitted a post-hearing brief, and neither has raised any objection to the fairness of this proceeding. A subsequent delay occurred while the parties considered whether to authorize this panel to award a four-year term.

Those hearings produced a record that includes the testimony of witnesses, 16 Joint Exhibits, 153 PBA Exhibits, and 22 Village Exhibits, all comprising thousands of pages of documents. On August 17, 2010, I reopened the record to consider updated information from both the Village and PBA. On October 8, 2010, PBA submitted updated Wage, Longevity and Night Differential Charts; the Village of Freeport and Freeport Police Benevolent Association Memorandum of Agreement (March 1, 2010 to February 28, 2015); the Village of Sands Point and Sands Point Police Benevolent Association Memorandum of Agreement (June 1, 2009 to May 31, 2012); the Compulsory Interest Arbitration

Award between the Incorporated Village of Malverne and the Malverne Police Benevolent Association (June 1, 2007 to May 31, 2009), and the Collective Bargaining Agreement between the Village of Old Westbury and the Old Westbury Policemen's Benevolent Association, Inc. (June 1, 2010 to May 31, 2015). On October 12, 2010, the Village submitted its Tax Levy for Fiscal Year June 1, 2010 to May 31, 2011 and an updated Small Claims Assessment Review ("SCAR") chart.

We have reviewed that record carefully and have considered the parties' proofs in light of the factors that CSL Section 209.4(c) requires to control our determination:

(v) [T]he public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical

qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

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

The Public Employer is the Village of Kings Point. The Employee Representative is the Kings Point Patrolmen's Benevolent Association Inc. The bargaining unit comprises all police civil service employees of the Village of Kings Point Police Department excluding the Commissioner and Lieutenant. The bargaining unit currently comprises approximately 20 employees. The parties' final proposals on unsettled issues that are subject to determination in this proceeding appear in Joint Exhibits 8, 9, 12 and 13:

## **II. Parties' Contract Proposals.**

### **A. PBA Contract Proposals.**

1. **Term** The term of the agreement shall be four (4) years.
2. **Wages** Increase wages by six percent (6%) in each year of the agreement.
3. **Longevity**: (a) Longevity payments shall be four hundred fifty dollars (\$450.00) per year for each year of service, payout to commence in the sixth (6<sup>th</sup>) year at twenty seven hundred dollars (\$2,700.00).

(b) For the purpose of calculating longevity, years of service shall include all years of full-time sworn police service in New York State.

4. **Night Diff.**: Increase night differential to twelve (12%) percent of the top step pay for each rank/designation.

5. **GML §207-c:** (a) Employees absent pursuant to General Municipal Law §207-c and unfit for full or light duty shall continue to accrue sick days, vacation days, and personal days and shall continue to be paid holidays and night differential.

(b) Employees working in a light duty capacity pursuant to General Municipal Law §207-c shall be entitled to all contractual entitlements and fringe benefits provided to employees working regular duty.

(c) Denial of an initial claim for benefits pursuant to General Municipal Law §207-c may be appealed by the employee pursuant to the grievance and arbitration procedures contained in the Collective Bargaining Agreement. The arbitrator shall determine the propriety of the Village's determination based on a review of the law and the record submitted by the parties.

(d) In disputed cases where the Village believes an employee has sufficiently recovered from an injury to perform either light-duty or full-duty police work, the employee may elect to have the dispute resolved by a medical doctor mutually agreed upon by the parties. The doctor shall determine the propriety of the Village's determination after considering the medical documentation submitted by the parties. The decision of the doctor shall be final and binding on the Village, the PBA and the employee.

6. **Chart:** Amend work schedule to eliminate chart rotation and provide a steady day shift and a steady night shift.
7. **Sick Leave:** (a) Unused sick leave shall be paid for at the rate of one (1) hour of pay for every one (1) hour accumulated for the first two thousand (2,000) hours, then at the rate of one (1) hour of pay for every two (2) hours accumulated for the remainder.
8. **Vacation:** Employees shall be permitted to carry over up to two hundred and forty (240) hours of accumulated time from year to year.
9. **Officer in Charge:**  
A police officer, who is required to serve on a tour of duty as the senior officer in charge of the tour, shall, in addition to his regular compensation, receive a Sergeant's hourly rate for each full hour of supervisory work performed.
10. **Employee Representative:**  
Increase PBA days to fifteen (15) days per year.
11. **Dental:** The Village shall pay the premium for employees' dental plan.
12. **Optical:** Increase Village's contribution toward optical benefits to two hundred dollars (\$200.00) per employee per year.
13. **Life Insurance:**  
Increase Village's contribution toward life insurance benefits to five hundred dollars (\$500.00) per employee per year.

[Joint Exhibit 7.]

**B. Village of Kings Point Proposals.**

**1. Article 4 – Association Activities**

Section A(1) – Delete

Section A(2) – Delete

Section A(3) – Delete

**2. Article 5 – Basic Work Week and Tour of Duty**

Section B – Change “for disciplinary purposes or to accommodate court appearances other than Kings Point Village Court” to “when appropriate”

Delete “Seniority will be the determining factor when practical”

**3. Article 6 – Overtime**

Section E – Delete

**4. Article 7 – Wages**

Section B – Amend the 6/1/08 schedule for those who hired on or after June 1, 2008 so that it provides equal steps between Step 1 and Step 6

Section F - Delete

**5. Article 8 – Night Differential**

Section A – Change “3:00 p.m.” to “midnight.” Amend to provide that the differential shall be at an annual rate of \$7,500 for sergeants and \$6,500 for officers

Section B - Change “3:00 p.m.” to “midnight”

**6. Article 9 – Holidays**

Delete Flag Day

**7. Article 10 – Recall and Standby**

Section C - Delete the second and third sentences

Section E - Delete

**8. Article 11 – Travel Time**

Delete

**9. Article 13 – Vacation**

Section F - Delete

**10. Article 15 – Sick Leave**

Section A - Delete the second sentence

**11. Article 16 – Fringe Benefits During Periods of Disability Pursuant to §207-c**

Section B(4) - Amend to provide that an Article 78 shall be the procedure device for all reviews

Section B(5) - Amend to clarify that permission is required for expenses in excess of those covered by Worker's Compensation only

Section C(3) - Change "may" to "shall"

**12. Article 17 – Health Insurance Benefits**

Section A - Amend to provide that employees shall contribute 15% of the premium cost

Section B - Change "on or after June 1, 1995" to "on or before June 1, 2005" and amend to provide that coverage for subsequent retirees shall be limited to 75% of the individual or family premium as appropriate

**13. Article 18 – Dental Insurance**

In the last sentence, change “after June, 1997” to “on or before June 1, 2005”

**14. Article 21 – Termination Pay**

Section A - Amend to provide that termination pay shall not exceed twice the amount of a unit member’s rate of compensation as of the date of separation from service

**15. Article 23 – Leave for Death in Family**

Section C - Change “four (4)” to “two (2)” in both places it appears

**16. Article 24 – Employee Representative**

Change “ten (10)” to “five (5)”

**17. Article 29 – Performance of Duty Out of Rank of Designation**

In the first sentence, change “six or more hours during any tour of duty” to “more than twelve consecutive work hours”

In the first sentence, change “the difference between his regular rate of pay and night differential, if applicable, and that of the position to which is assigned for such tour of duty” to “\$140 if he or she works out of rank for the full tour”

**18. Article 32 – Grievance Procedure**

Section A - Delete “including matters of discipline”

Step 1 - Delete “work” in the first sentence

**19. Article 33 – Arbitration**

Section F - Delete “and the disciplinary procedures provided in Section 75 of the Civil Service Law or in any other law”

**20. Article 34 – Discipline**

Delete

[Joint Exhibit 13.]

**III. Parties’ Positions:**

**A. The Statutory Criteria:**

**1. Comparability:**

Focusing on the statutory criterion of comparability, PBA believes that the “comparable communities” are the wages, hours and conditions of employment of police officers employed by the villages and cities and police districts in Nassau County and by Nassau County itself. (PBA Brief at page 11.) Those jurisdictions are: Centre Island, Floral Park, Freeport, Garden City, Hempstead, Kensington, Lake Success, Long Beach, Lynbrook, Old Brookville, Old Westbury, Rockville Centre, Sands Point, the Port Washington Police District; Long Beach, Glen Cove, and the County of Nassau. (Id.) PBA argues that its position is supported by an interest arbitration award covering 2006-2009 involving the Port Washington PBA and the Port Washington Police District, which held “that the jurisdictions which are most comparable to the Port

Washington Police District (PWPD) are the villages and cities in Nassau County as well as Nassau County *per se*.” (Id.)

The Village, for its part, qualifies this assertion by noting that “[u]nlike nearly all other municipalities in Nassau County, the Village of Kings Point does not have any commercial tax base over which to spread the financial burden of increased property taxes. The full burden is borne by its residential taxpayers. That fact places the Village at an absolute disadvantage with other alleged comparator villages offered by the PBA, like Freeport, Garden City, Glen Cove, Hempstead, Lake Success, Long Beach, Lynbrook, Port Washington, and Rockville Centre, all of which have substantial commercial areas.” (Village Brief at page 7.)

Concerning the statutory requirement that PBA members’ wages, hours and other conditions of employment be compared with other employees generally in the public and private sectors in comparable communities, PBA maintains that only law enforcement employees be considered because no other public or private employees perform similar work. (PBA Brief at page 10.) The Village does not appear to rebut this contention but argues that the comparability criterion does not mandate that the rate of pay for its Village police force

correspond with the Village's rank among the other villages in Nassau County with respect to wealth. (Village Brief at page 6.)

## **2. Public Interest and Ability to Pay:**

With respect to the second statutory criterion, PBA notes that the Village is affluent, is in sound financial condition, has the ability to pay for the PBA's proposals, and that the interests and welfare of the public are positively affected by the fair wage and benefit package it proposes because it "fosters high morale of PBA members, which in turn maintains the extraordinarily high quality of service residents of the Village have come to expect." (PBA Brief at page 11.) In addition, PBA argues that the package enables the "Village to attract the cream of the crop in law enforcement," as evidenced by the fact that it has been able to recruit a number of experienced police officers. PBA posits that the wage freeze and reduction in benefits proposed by the Village would result in an inferior wage and benefit package that "slights the public by having police officers with low morale and reducing the pool of highly qualified and professional applicants." (PBA Brief at page 12.) PBA accordingly concludes that granting its members a just and reasonable increase in wages and benefits is in the interest and welfare of the public.

Concerning the Village's ability to pay, PBA relies on the report of Kevin Decker, an expert in municipal budget analysis. According to PBA, Decker's analysis of the Village's financial condition confirms that, even in light of the economic downturn, the Village is able to pay for PBA's proposals. Decker noted that the Village has already included money in its budget to pay for many of the PBA's proposals, including increases in wages and benefits, and that its excellent fiscal condition as reflected in Moody's "Aaa" rating for Village bonds allows the Village to pay for them. He noted that the Village spent \$3.42 million in 2008-09, for the Police Department, which represented about 25% of the general fund budget.<sup>1</sup> (Decker Report at page 5.) He noted that it has operated at a surplus in two of the last five years, and although the Village operated at a deficit for the past three years, he believed that this was a result of the Village's desire to use the deficit to draw down fund balances and did not indicate financial problems. In addition, he noted that the Village's budget included a contingency account, which municipalities often use to fund labor settlements.

Decker reported that a majority of the general operating fund from which PBA members are compensated comes from real property taxes, and that, since 1999, the annual rate of change in the taxable full value of property in the

---

<sup>1</sup> Decker noted that this amount also included non-bargaining unit employees.

Village increased each year, while at the same time, the tax rates have actually decreased. (PBA Brief at page 9; Decker Report at pages 2-3.) Decker's comparison of the Village's growth in taxable full value with the other Nassau County municipalities placed the Village in the middle. (*Id.*) He noted that a "small decline (less than 1%) in property values for FY 2009-10 in Kings Point is reflective of the drop in housing values" but noted that there is nothing to suggest that it indicates a "permanent change in the long-term growth trend of property values." (Decker Report at page 3.) Decker opined that the strength of the real property tax base is also contingent on the wealth of the residents and noted that the Village residents' average income levels and per capita property wealth are third highest among comparables. (PBA Brief at page 13; DR pg. 3.) Finally, Decker stated that the Village has the second lowest tax rate in comparison to other villages; and, except for the portion of Old Brookville within the Locust Valley school district, the lowest overall tax rate of comparable municipalities. (PBA Brief at page 13-14; DR at page 4.) Accordingly, PBA argues that "the Village's real property tax base will continue to increase and fund the general fund which arms the Village with an ability to pay the PBA." (PBA Brief at page 13.)

Moreover, Decker notes that the Village operates well below its constitutional tax limit, using only 13.5% of the tax limit, making it the second

lowest of all the village comparators, and giving it the potential to raise additional revenue. (PBA Brief at page 14; Decker Report at page 5.)

Decker concluded that the Village is in solid financial shape because it enjoys

- A large, healthy and growing real property tax base;
- Low real property tax rates;
- Comparatively moderate recent increases in the real property tax levy;
- Healthy fund balances in the Village's general fund; and
- A demonstrated ability to generate a favorable budget variance by collecting more revenue and spending less than originally budgeted.

(PBA Brief at page 16.)

In addition, Decker provided a detailed cost analysis and "concluded without pause that the Village has the ability to pay for the PBA's proposals." (PBA Brief at page 16; Decker Report at page 10.) Given these factors, PBA claims that the Village's ability to pay for its proposals is not an issue in this proceeding.

The Village, for its part, argues that "ability to pay is not an absolute inquiry" but must be evaluated along with the interests and welfare of the public. (Village Brief at page 4.) In that regard, it submits that PBA's proposals, which continue "business as usual," are unreasonable in light of the "floundering

regional economy and high unemployment” and “would lead to unfair results and an over burdening of the Village’s citizenry.” (Village Brief at pages 4-5; Village Submission on Ability to Pay at page 3.) It notes that (i) all indications are that the current recession will continue for an indefinite period; (ii) unemployment rates in New York have reached a 17-year high; and (iii) unlike PBA members, the vast majority of its residents are private sector employees in industries that have been hardest hit by the economic downturn. (Village Submission on Ability to Pay at pages 2 to 3.) Unlike the other municipalities identified by PBA as comparators, the Village has no commercial tax base. Because the majority of the General Fund used to compensate police officers is derived from real property taxes, which here are paid entirely by the Village’s residential citizens, unreasonable increases in police officer compensation and benefits would not be in the public interest. The taxes paid by its residents are already high, and it is unreasonable to expect that its residential taxpayers, who have experienced tax increases in the past few years that have exceeded the applicable Consumer Price Index, to assume the full burden of increased property taxes. (Village Submission on Ability to Pay at page 4.)

Nor, the Village argues, can it rely upon projected tax figures to ensure its ability to pay. It notes that challenges to its property tax assessments

have reached a ten-year high, and the Village has already expended considerable sums to settle complaints made in 2007 and 2008. (Id. at 5.) In addition, it faces significant GASB 45 liability and submits that it must adopt a figure on its books that reflects the true cost of retiree benefits by year ending May 31, 2010. It explains that this is not a future but a current liability, and, while the records as of May 31, 2009 may not reflect the true cost of the benefits, it is none the less, an obligation that must be addressed. (Village Submission on Ability to Pay at page 6.) “The very purpose of these accounting standards is to bring to the light of day (and the attention of a municipality’s taxpayers) the true cost of commitments that municipality has made to retirees, so that decisions about those commitments are made responsibly.” (Id. at 7.) It submits that the Village’s “pay-as-you-go” number during the 2008-2009 financial year was \$258,775, for 28 retirees but argues that number is not close to its real liability, which may be in the “tens of millions of dollars.” (Id. at 7.)

Finally, the Village notes that Decker’s report is flawed because: (i) his conclusion that the tax rate decreased from 2000 to 2008 is based upon artificially inflated home values; (ii) his statement that residents were the beneficiaries of a low tax rate throughout the 2000’s is “divorced from reality” because it is based upon the same artificially inflated values; (iii) the amount of

property taxes the residents actually paid, increased each year; (iv) any increase in the population was more probably the result of a baby boom and therefore would not as Decker concluded, result in taxpayer relief; and (v) since PBA did not submit any of the documents relied upon by Decker, his report should be considered with “a healthy dose of skepticism.” (Village Brief at pages 6 to 7.)

The Village maintains that its police force “enjoys the richest contract in Long Island” in terms of both wages and benefits, including the 1/60<sup>th</sup> pension set forth in Sections 384(f), (g), and (h) of the New York State Retirement and Social Security Law,” which the membership achieved in the last contract negotiation. (Village Brief at page 4.) It therefore argues that its ability to pay is not absolute and, when weighed against the interests and welfare of the public, the totality of the circumstances show that the Village should not be required to pay for the wage and other benefits sought by PBA.

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

As to the third statutory criterion, PBA notes that no other profession or trade is subject to the hazards of police work. Even “routine” traffic stops can present life-threatening situations for police officers. According to PBA, while crimes in Nassau County have decreased due to the excellent work of the police

forces, there is still crime; and, from 2006 to 2008, “index crimes reported in the Village increased four fold.” (PBA Brief at page 19.) In addition, the officers, who are engaged in the “hazardous duty of making arrests,” generally have only one person assigned per patrol car. (PBA Brief at page 19.) These hazards, as well as the education, training and physical and mental requirements for police officers, make it inappropriate to compare bargaining unit members’ work to any other trade or profession. PBA accordingly asserts that no other trade or profession does comparable work. The Village addresses this criterion in connection with particular PBA proposals, and its arguments will be discussed below.

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

Considering the fourth criterion, both the Village and PBA acknowledge that the parties have in the past negotiated reasonable increases in the terms and conditions of employment. PBA argues that a review of past collective bargaining agreements shows that its members have negotiated or been awarded increases in wages and benefits comparable to the police officers employed in Nassau County and that its proposals continue that pattern. The Village does not dispute this history but argues that PBA’s already generous wage and benefit package coupled with the “oppressive external forces” render PBA’s

proposals unreasonable and require it to say, "Enough!" (Village Brief at pages 4 to 5.) The Village and PBA address this criterion in connection with individual proposals, and their arguments will be discussed below.

**B. PBA Proposals:**

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

**PBA Proposal No. 1 – Term: Four Year Agreement**

*PBA's position:*

PBA proposed a four-year agreement during negotiations, which it believed would enure to the benefit of both parties. PBA recognized, however, that the Taylor Law does not permit the Panel to issue an award in excess of two years unless the parties agree. Accordingly, the Panel is constrained to a two-year time frame for a just and reasonable award.

*Village's position:*

The Village did not present a position on this proposal.

**PBA Proposal No. 2 – Wage Increase of 6% in each year of the agreement.**

*PBA's position:*

PBA proposes a 6% wage increase in each of a two-year award.

PBA argues that this is a fair increase and that the Decker report establishes that the Village has the ability to pay it. PBA claims that it does not want the Village to raise taxes to pay for its wage proposal and that the increases can be funded without raising taxes or alternatively by raising taxes in a proportionate amount as it has done in the past to pay for increases in expenses. (PBA Brief at page 22.)

PBA argues that, even in today's challenging economic times, the Village's history of sound fiscal planning provides it with various alternatives to tax increases. It posits that the Village (i) has the ability to access more of the local tax base, (ii) can float debt as demonstrated by the Village's high bond ratings, and (iii) has a yearly surplus and/or contingency moneys with which it could pay for the proposed increases. Moreover, the Village has enjoyed substantial savings by not having to pay wage increases to PBA members since 2008. (*Id.*)

PBA also argues that its wage proposal is necessary to move it once again into a position as the leader among comparables. According to PBA, the average percentage wage increases of the police districts in Nassau County and the County itself in 2007 and 2008 are 4.21% and 4.08%, respectively; spanning 3.75% to 6.5% in 2007, and 3.75% to 5.0% in 2008. (PBA Brief at pages 23 to 25;

PBA Exhibit 33.) PBA states that comparing the base wages of Kings Point police officers at top step and Sergeants at top step with those of the comparable jurisdictions shows that in 2007 Kings Point's top step wage was ranked second out of the eighteen comparable jurisdictions. (PBA Brief at page 24.)

PBA submits that Kings Point has regularly been the leader in top step wage rates. It noted, however, that, while the wage rate in 2007 was above average, it was not the leader. It argued that, "should the Panel award the PBA's proposal for a six percent (6%) increase in 2008 and 2009, Kings Point's top step police officer salary would again move into position as the leader among comparables. If the Panel decided to award average wage increases for 2007 and 2008 (4.21% and 4.08%), Kings Point would maintain its second (2<sup>nd</sup>) position in both years." (PBA Brief at page 25.) PBA explained that, if the panel granted an award of average wage increases in 2008 and 2009, the spread between the highest paid bargaining unit in Nassau County and Kings Point, would be \$1,397 and \$2,421 respectively. (PBA Brief at page 26.) PBA urged the panel to award police officers more than average wage increases so that Kings Point can once again be the leader. PBA noted that Sergeants would move into second place among the comparators whether they were awarded 6% or average wage increases.

Finally, PBA explained that, despite the Village's arguments to the contrary, awards and grants of competitive wage increases during an economic downturn is not unprecedented and provided panel awards and negotiated agreements that did so during the relevant period of time.

*Village's position:*

The Village opposes a 6% annual wage increase and argues instead that the panel should award a wage freeze. The Village explained that, if the police officers were employed in the private sector like the majority of its residents, they would be facing the risk of losing their jobs, making concessions to save their jobs, working longer hours, and contributing to the cost of their benefits. The Village argues that PBA's wage proposals ignore this reality, are "off the charts," and "far eclipse the consumer price index, private sector increases, and even those of fellow police officers in neighboring communities." (Village Brief at page 9.) In addition, a comparison to contracts covering police departments in many other villages in Nassau County is inappropriate because "the benefits provided under those other agreements are less generous on a base level, so a raise of a certain percentage or enhancements to a particular sweetener [there] may well be warranted." (Village Brief at page 9.) The Village urges the panel to consider (i) that the tax increases in the Village have exceeded the increase to the consumer

price index during the relevant time period; (ii) that there is no requirement that the membership continue to “occupy the same position in the Nassau County wage hierarchy;” (iii) that given the uncertain economic times it is unreasonable to give substantial consideration to previously negotiated agreements; (iv) that wage increases would trigger increased pension costs; (v) that, on top of the 6% annual wage increases, PBA is requesting many other changes that have significant cost to the Village; and, (vi) that its police department “retention rates are very high” so it has never had difficulty filling its rare openings with qualified applicants.

(Village Brief at pages 9-10.)

**PBA Proposal No. 3 - Longevity:**

**(a) Longevity payments shall be four hundred fifty dollars (\$450.00) per year for each year of service, payout to commence in the sixth (6<sup>th</sup>) year at twenty seven hundred dollars (\$2,700.00).**

**(b) For the purpose of calculating longevity, years of service shall include all years of full-time sworn police service in New York State.**

*PBA's position:*

PBA explains that longevity pay currently commences after the 5<sup>th</sup> year of employment with a payment of \$1,400; it increases to \$2,500 after 10 full years of service and to \$3,700 after 15 full years of service. Thereafter PBA

members receive an additional \$350 for each full year of service between years 16 and 25, a flat rate of \$7,200 for 25 full years of service, and an additional \$350 for each year of full service beyond 25. There is no cap on the member's accrual of longevity pay. (PBA Brief at page 25.) PBA seeks the adoption of the Nassau County methodology. Under this methodology, commencing in the 6<sup>th</sup> year members would receive \$450 per year for each year of service. Thereafter \$450 would be added to that \$2,700 figure for each additional year of completed service. (PBA Exhibit 4.) PBA argues that this methodology is simplified, updated, and will allow PBA to close the gap that exists between its longevity pay and that of the other comparators. PBA presented a comparative analysis that shows Kings Point is below the mean average when compared with the other bargaining units. (PBA Exhibits. 36, 37, 38 and 39.) PBA notes that after 10 years of service, it is in 9<sup>th</sup> place out of 18 and \$188.00 below the mean average. (PBA Exhibit 37). After 15 years of service, it is in 10<sup>th</sup> place out of 18 and \$400.00 below the mean average. (PBA Exhibit 38). Finally, PBA argues that it has not received an increase to its longevity schedule since 2002 and this proposal is reasonable to close the gap between it and its comparators.

*The Village's position:*

The Village opposes this proposal and argues that the increases in longevity pay that PBA are requesting will make their bonuses the top in Nassau County and, when coupled with the other requested enhancements, shows that PBA is overreaching. (Village Brief at page 9; Joint Exhibit 7; PBA Exhibits. 36-39.) It notes that PBA members currently receive payments that “rank competitively after five, ten and 15 years of service,” and that the totality of the package that the police officers receive is comprehensive and more than generous. (Village Brief at page 24.) Accordingly, other than the fact the PBA just “wants more,” the Village submits that there is no justification for this demand.

**(b) For the purpose of calculating longevity, years of service shall include all years of full-time sworn police service in New York State.**

*PBA's position:*

PBA seeks to modify the calculation for longevity payments to provide new members “global longevity” for all years of full-time sworn police service in New York State. PBA argues that, while only three comparators have this benefit, its inclusion would entice more experienced officers to the Village. (PBA Brief at page 28.) It argues that without this change the Village unfairly gets the benefit of the experience of its members’ prior New York service without having had to incur the cost of sending them to the Nassau County Police

Academy. (PBA Exhibit 41.) Finally, PBA notes that Decker's cost analysis showed that it would benefit eight members and only cost an additional \$36,535 over the term of the Award.

*Village's position:*

The Village states that longevity pay is designed to reward officers for continued service to the community and "not to society in general." (Village Brief at page 23.) In addition, only three comparators have this benefit; and one of the three limits it to a maximum of three years. Finally, it reiterates that the low turnover and high retention rates in the Village clearly show the competitiveness of the officers' compensation package, including their longevity payments.

**PBA Proposal No. 4 - Night Differential: Increase night differential compensation to twelve percent (12%) of the top step for each rank designation.**

*PBA's Position:*

PBA seeks to increase the night differential to 12% of top-step police officer's base pay, for each rank. Members are currently paid a night differential of 10% of their base pay in addition to their base pay for all hours worked between 3:00 p.m. and 7:00 a.m. PBA notes that the department operates on a 12-hour, two days on duty, three days off duty, work schedule. Half the members work days (7:00 a.m. to 7:00 p.m.) and the other half nights (7:00 p.m. to 7:00 a.m.) on a

rotating schedule. In support of its proposal PBA argues that it is well documented that working at night has a negative impact on a member's health and family life; that Kings Point members are currently ranked in the middle of its comparator group; that there are two other jurisdictions with a 12% differential rate, and that two other jurisdictions base the differential calculation on the top step pay of a police officer or sergeant. (PBA Exhibit 44.)

*Village's position:*

The Village opposes the proposed change and notes that there is no justification for expanding the payments associated with night differential. It is an exceptional benefit that currently increases automatically as a percentage of salary, and PBA's position that it should be "second to none in terms of pay" is insufficient justification to increase the benefit. (Village Brief at page 23.) The Village has proposed a change to the current calculation that will be discussed below with the Village's proposals.

**PBA Proposal No. 5 – NY General Municipal Law Section 207-c:**

**(a) Employees absent pursuant to General Municipal Law §207-c and unfit for full or light duty shall continue to accrue sick days, vacation days, and personal days and shall continue to be paid holidays and night differential.**

**(b) Employees working in a light duty capacity pursuant to General Municipal Law §207-c shall be entitled to all**

**contractual entitlements and fringe benefits provided to employees working regular duty.**

**(c) Denial of an initial claim for benefits pursuant to General Municipal Law §207-c may be appealed by the employee pursuant to the grievance and arbitration procedures contained in the Collective Bargaining Agreement. The arbitrator shall determine the propriety of the Village's determination based on a review of the law and the record submitted by the parties.**

**(d) In disputed cases where the Village believes an employee has sufficiently recovered from an injury to perform either light-duty or full-duty police work, the employee may elect to have the dispute resolved by a medical doctor mutually agreed upon by the parties. The doctor shall determine the propriety of the Village's determination after considering the medical documentation submitted by the parties. The decision of the doctor shall be final and binding on the Village, the PBA and the employee.**

*PBA's Position:*

PBA seeks to modify Section (a) and increase the benefits received by officers on a Section 207-c leave of absence. PBA proposes that, in addition to the health, dental, life and optical insurance injured officers already receive under the parties' 207-c policy, members should also accrue sick days, vacation days, and personal days for the duration of the Section 207-c injury or illness. PBA members currently accrue sick leave for the first 365 days of a Section 207-c leave. PBA is proposing to eliminate that cap and have sick leave continue for the

duration of the Section 207-c leave. In addition, PBA requests that its members continue to be paid holidays and night differential during the leave. In support of this proposal, PBA offered the testimony of PBA President Steven Mallgren, who noted that officers, who protect the community by placing themselves in hazardous situations, should not be in the position where they have to second-guess “ whether the actions they are about to take could [a]ffect themselves and their family and cause a loss of benefits if they were to get injured.” (PBA Brief at page 31.) Finally, PBA argues that injured officers who are out on Section 207-c leave forego overtime and therefore suffer an economic loss that will be mitigated by awarding this proposal.

*Village’s position:*

The Village objects to this proposal and argues that it will be in the “distinct minority among comparator villages” should it be granted. It notes that Section 207-c was designed to grant benefits to officers injured in the line of duty but that PBA’s proposals would encourage employees to stay out on leave with no repercussions while the Village struggles with increased overtime cost and diminished flexibility. (PBA Brief at page 23.)

**(b) Employees working in a light duty capacity pursuant to General Municipal Law §207-c shall be entitled to all**

**contractual entitlements and fringe benefits provided to employees working regular duty.**

*PBA's position:*

PBA requests that officers working light duty pursuant to Section 207-c be entitled to all contractual entitlements and fringe benefits of employees working regular duty. PBA believes these entitlements and fringe and benefits are required to be provided pursuant to Section 207-c and merely seeks a contractual provision which will eliminate the need for the parties to litigate this issue in the future.

*Village's position:*

The Village opposes this proposal and simply notes that there is no justification to pay “employees on light duty the contractual entitlements due to employees working regular duty.” (PBA Brief at page 24.)

**(c) Denial of an initial claim for benefits pursuant to General Municipal Law §207-c may be appealed by the employee pursuant to the grievance and arbitration procedures contained in the Collective Bargaining Agreement. The arbitrator shall determine the propriety of the Village's determination based on a review of the law and the record submitted by the parties.**

*PBA's position:*

PBA seeks to make an initial denial of an application for Section 207-c benefits subject to the grievance and arbitration procedure of the parties' collective bargaining agreement. Currently, an officer's only appeal from an initial denial is judicial review under CPLR Article 78. PBA argues that providing an alternative to an evidentiary hearing under law is cost effective, time-saving and therefore beneficial to both of parties. PBA also argues that, while it supported this proposal by showing that four comparable bargaining units have binding arbitration for an initial Section 207-c appeal and one has non-binding arbitration, the Village did not provide any evidence or testimony to support its opposition. (PBA Exhibits. 53, 54.)

*Village's position:*

The Village opposes this proposal and argues that denials of Section 207-c benefits should continue to be addressed through the mechanism provided by statute, and not through a contractual grievance and arbitration procedure.

**(d) In disputed cases where the Village believes an employee has sufficiently recovered from an injury to perform either light-duty or full-duty police work, the employee may elect to have the dispute resolved by a medical doctor mutually agreed upon by the parties. The doctor shall determine the propriety of the Village's determination after considering the medical documentation submitted by the parties. The decision of the doctor shall be final and binding on the Village, the PBA and the employee.**

*PBA's position:*

Currently, an arbitrator decides disputes concerning an officer's fitness to return to duty from a Section 207-c leave pursuant to the parties' collectively bargained arbitration process. (PBA Exhibit 57). PBA seeks to have medical doctors, who it contends are more qualified, determine these disputes.

PBA argues that this alternative to the grievance and arbitration procedure will be quicker, less expensive and will ensure that an officer's return to work will not be unduly delayed. PBA submits that this process is not unique because four other comparable units have this benefit. (PBA Exhibit 58.) Moreover, it submits that the Village did not provide any evidence or present any testimony to rebut this proposal.

*Village's position:*

The Village opposes this proposal and proposes instead that Article 78 should be the sole avenue for review of benefit denials.

**PBA Proposal No. 6 - Chart: Amend work schedule to eliminate chart rotation and provide a steady day shift and a steady night shift.**

*PBA's position:*

PBA seeks to replace the current rotation schedule of days and nights (four months days; two months nights) with a schedule of steady days and nights. To support this proposal, PBA provided documents and testimony that “flipping shifts” exacerbates health hazards; disrupts family’s child care and spousal work schedules; and, that about half the comparable bargaining units have steady tours, many of whom work 12-hour shifts. (PBA Exhibit 60, PBA Brief at page 35.)

*Village’s position:*

The Village opposes this proposal as inconsistent with the 24/7 nature of police department operations. It notes that, given the 12 hour schedule, months and possibly years could go by without certain officers ever being seen or supervised by commanding officers, who do not typically work nights. The Village argues that this lack of face-to-face contact hinders the operational efficiency of the department and makes the delivery of important messages, directives and discipline more difficult. It submits that where, as here, the department works 12-hour shifts, “awarding this change, would be disastrous.” (Village Brief at page 24.)

**Proposal No. 7 - Sick Leave: (a) Unused sick leave shall be paid for at the rate of one (1) hour of pay for every one (1) hour accumulated for the first two thousand (2,000) hours, then at the rate of one (1) hour of pay for every two (2) hours accumulated for the remainder.**

*PBA's position:*

PBA seeks to increase the amount of unused sick leave that can be paid upon retirement, noting that this benefit has not been increased in six years. Currently members are paid 50% of their unused sick hours, up to 4,000 hours.

PBA proposes to increase this payout calculation by allowing a dollar-for-dollar payout on the first 2,000 hours and then 50 cents on the dollar for the remainder of the accumulated time. It notes that this "hybrid" system has been adopted in Lake Success and argues that it will enure to the Village's ultimate benefit because it will encourage members to report to work and save their sick time for retirement.

*Village's position:*

The Village opposes this proposal and cites it as another example of PBA's overreaching and "desire to get more for the sake of more." (Village Brief at page 24.) The Village reiterates its argument that PBA members already receive the most generous type of pension, in addition to termination pay (discussed *infra*) and submits that there is no justification for this proposal.

**PBA Proposal No. 8 - Vacation: Employees shall be permitted to carry over up to two hundred and forty (240) hours of accumulated time from year to year.**

*PBA's position:*

PBA seeks to allow employees to bank and then roll over two hundred and forty (240) hours of unused vacation time from year to year. Currently employees must use their annual allotment of vacation days by the end of the year or lose it. (Joint. Exhibit 2 at 10.) PBA argues that, under the current use-it-or-lose-it policy, employees are compelled to take vacation by the end of the year that they may not otherwise need. This change may discourage them from taking the remainder of their time at the end of the year, making the need to replace them with an officer on overtime less likely. Indeed, the Village may realize a reduction in overtime during December. In support of this proposal, PBA provided comparables that demonstrated that eight of the bargaining units have a vacation rollover and accumulation benefit in their contracts. It noted that Nassau County, Centre Island, Long Beach, and Hempstead have provisions similar to the one PBA is proposing and that members of those bargaining units can all roll over more than 240 hours. (PBA Exhibit 65.)

*Village's Position:*

The Village opposes this proposal as contrary to the public interest and argues that over half of the comparable bargaining units do not permit vacation time to be rolled over from year to year. (PBA Exhibit 65.) The Village explained that, under the PBA's proposal given the current shifts, employees could

save up enough time to allow them to take three months of vacation after five years. The Village argues that, while vacation is designed to give officers time to rest, no one needs that amount of time; and the public would be rightly outraged should it agree to this proposal.

**PBA Proposal No. 9 – Officer in Charge: A police officer, who is required to serve on a tour of duty as the senior officer in charge of the tour, shall, in addition to his regular compensation,<sup>2</sup> receive a Sergeant’s hourly rate for each full hour of supervisory work performed.**

*PBA’s position:*

PBA seeks to modify the current contract provision, which pays an officer in charge at the Sergeant’s rate of pay only if he or she works six or more hours, with a differential that is computed on an hour-by-hour basis. (PBA Exhibit 66.) PBA seeks to rectify the situation where an officer does the Sergeant’s work but, because of the six-hour restriction, is not properly compensated. (PBA Exhibit 67). Finally, PBA argues that its proposal is not unprecedented because three of the comparable jurisdictions compensate their officers for working as the officer in charge and that doing so is supported by Police Department’s Rules and Regulations, which provide that, in the absence of a supervisor, the senior police officer on duty must to complete all the listed tasks. (PBA Exhibit 68).

---

<sup>2</sup>This portion of the proposal was orally deleted at the hearing on October 16, 2009.

*Village's Position:*

The Village opposes this proposal and argues that it is not justified by need or supported by the comparables. It explained that Kings Point is one of only three villages in Nassau County that pays such a differential, and the amounts awarded in the other villages are not comparable. (PBA Exhibit 67.) In Lake Success, for example, officers receive only \$25 dollars for four or more hours out of service. (Village Brief at page 25.) It counters that the Village's proposal, discussed below, reaches a far more fair result.

**Proposal No. 10 - Employee Representative: Increase PBA days to fifteen (15) days per year.**

*PBA's position:*

PBA wants to increase the number of leave days that the PBA Executive Board is collectively allowed to attend to their duties of office from 10 paid days leave per fiscal year to 15. PBA President Steven Mallgren testified that PBA days are used to attend conventions, seminars and meetings and that knowledge gained from these events is shared amongst its membership. In support of PBA's proposal, Mallgren provided an example of a situation where a meeting between the District Attorney and PBA presidents enured to the benefit of its members and the Village. PBA presented an analysis that showed that all of the

comparables except one have PBA days in their contracts and that Kings Point is tied for last place amongst those units. (PBA Exhibit 70.) It argued that the top seven comparator units either have members with full release or no limit on the number of days per year and noted that, even if PBA's proposal is granted in its entirety, Kings Point would still be below average, ranking only 13 of 18. (*Id.*)

*Village's position:*

The Village opposes this proposal and argues that any expansion to this leave is unwarranted because PBA president Mallgren could not even justify the current, ten-day allotment. In addition, the Village noted that PBA days are granted on top of leave for the President (or his designee) to attend monthly Nassau Police Conference meetings, the New York State Police Conference convention, the Metropolitan Police Conference convention, and the installation dinner of the Nassau Police Conference. Accordingly, the Village submits that, because it is a small department with few grievances and other types of hearings, there is no need for additional time. It counters that the Village's proposal, discussed below is more reasonable.

**PBA Proposal No. 11- Dental: The Village shall pay the premium for employees' dental plan.**

*PBA's position:*

PBA seeks this modification to the CBA to ensure that the Village pays the full cost of the officers' dental plan because the rates set forth in the current collective bargaining agreement no longer cover the full cost of the dental premium. (PBA Exhibit 71.) In support of its proposal, PBA argues that it has not received an increase in dental benefits since 1999 and that this change is supported by the comparative analysis, which shows that about half the Departments in Nassau County pay the full premium, some pay stipends, and others pay stipends for a group of benefits. (PBA Exhibits. 72, 73.)

*Village's position:*

The Village opposes this proposal as a non-issue and argues that PBA admitted that the Village's contribution under Article 18 is enough to cover the entire cost of the current benefits.

**Proposal No. 12 - Optical: Increase Village's contribution toward optical benefits to two hundred dollars (\$200.00) per employee per year.**

*PBA's position:*

PBA seeks to increase the annual amount that the Village pays towards the cost of PBA's Optical Plan, from \$149.51 to \$200.00 per employee. (PBA Exhibit 76.) In support of this proposal PBA argues (i) that it has not received an increase in this benefit since 2002; (ii) that the 2006-2008 billing

statement shows that the per employee cost has risen to \$193 per year; (iii) that a review of the comparators shows that about one third of the Departments in Nassau County pay for full coverage; some pay stipends for a group of benefits, and others have a set dollar amount; and (iv) that granting the proposed increase would not change King Point's overall comparative position. (PBA Exs. 77, 78, 79.)

*Village's position:*

The Village opposes this proposal and argues that it is not warranted by the comparative information that shows that other villages in Nassau County either do not provide optical insurance or lump moneys for such insurance together with other coverage. (PBA Exhibit 77.) The Village submits that it is unreasonable to increase this benefit at a time when most employees face a diminution of their health-related benefits. It noted that PBA submitted evidence that their members pay \$43.61 per year to make up the difference between the Village's contribution and the actual cost. The Village argued employee contributions are not unusual "in the rest of the world" but, if a change were warranted, it would be more reasonable to have PBA use its reserves to fund this shortfall rather than shift it back to the already overburdened Village.

**Proposal No. 13 - Life Insurance: Increase Village's contribution toward life insurance benefits to five hundred dollars (\$500.00) per employee per year.**

*PBA's position:*

PBA seeks to increase the annual amount that the Village pays toward the cost of PBA's term life insurance policy from \$350 to \$500 per employee.

(PBA Exhibit 81.) PBA argues that the increase to \$500.00 would be sufficient to cover the quoted \$450.00 premium cost of a \$350,000 benefit, which was suggested by their financial advisors as an appropriate benefit amount for its officers. In addition, PBA noted that it has not received an increase in life insurance benefits 20 years, that about one-half of the departments in Nassau County make some sort of payment towards life insurance; and that, if PBA's proposal is granted in its entirety it would still leave them in the same overall position when compared to the other departments. (PBA Exhibit 82, 83.)

*Village's position:*

The Village opposes this proposal and argues that, with the exception of two employees who exceeded their allotment by \$60 and \$160 respectively, the \$375 per member contribution has been sufficient to cover the premiums for a \$100,000 policy for all PBA members. The Village explained that the payments are made on a group basis and since the current contributions are sufficient to

cover a generous life insurance benefit for the police officers, no change is warranted. It submits that, to the extent that there may be individual differences, they are nominal and can be covered by the PBA's reserves or an individual basis. Finally, it argues that the increase in the policy amount is not supported by the comparables since PBA did not submit any evidence that other village departments in Nassau County give a greater benefit to their police officers. (PBA Exhibit 82.)

**C. Village of Kings Point Proposals:**

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

**Village Proposal No. 1: Article 4 – Association Activities**

- Section A(1) – Delete**
- Section A(2) – Delete**
- Section A(3) – Delete**

*Village's position:*

The Village is seeking to delete from Article 4 provisions dealing with prohibitions on interference, discrimination, intimidation, and coercion on the basis of union activity, which it argues are already protected by the Taylor Law. In support of its position, the Village notes that PERB has particular expertise addressing these issues, has many years of precedent to guide itself and the parties, and is therefore the appropriate body to address violations of the Taylor Law.

*PBA's position:*

PBA opposes the Village's proposal and argues that, while the Taylor Law allows it to file an improper practice charge, the inclusion of this language in the contract allows PBA to file a grievance on any one of these issues if it identifies a violation of the language. It notes that this language has been part of the collective bargaining agreement since at least 1986 and submits that the Village has failed to put forth any evidence that this language has caused hardship or detriment to the Village. (PBA Rebuttal Exhibit 3.) Moreover, PBA believes that the deletion of this language could be construed to suggest that the Village would have the right to interfere, discriminate, intimidate and coerce; and it is therefore unjust and unreasonable.

**Village Proposal No. 2 - Basic Workweek and Tour of Duty:  
Section B – Change “for disciplinary purposes or to accommodate  
court appearances other than Kings Point Village Court” to  
“when appropriate”**

**Delete “Seniority will be the determining factor when practical”**

*Village's position:*

The Village seeks this proposal to make the paragraph internally consistent. As it currently reads, the Police Commissioner retains the right to make and change tour and/or squad assignments so long as in doing so, he or she

is not acting in an arbitrary and capricious manner. The Village argues that this would continue to be the standard, but that further restrictions, which are not consistent with the arbitrary and capricious limitation, would be eliminated. As further support of its proposal the Village argues that it should be given greater opportunity to rotate tours, which it urges would better enable it to respond to the needs of the public, subject to limitations for the protection of the officers.

*PBA's position:*

PBA opposes this proposal because it believes that the language proposed is ambiguous and may be used to give the Village unfettered discretion to change its members' tour rotations. Moreover, it argues that the Village did not present any evidence or testimony to justify its proposal; had it done so, PBA could have addressed the Village's claimed need. In further opposition to this proposal, PBA submitted an exhibit that shows only 4 of 18 comparator departments have unfettered discretion to change a member's schedule, and 2 of those must give 30 days notice before doing so. (PBA Rebuttal Exhibit 5.)

PBA also argues that the second part of the Village's proposal is unnecessary because the contract requires consideration of seniority only when practical so the Village already has the discretion it seeks because no strict seniority rule applies. (PBA Rebuttal Exhibit 3.) Finally, it notes that the Village

did not articulate any problem that necessitates granting this proposal and it is not inconsistent with the provisions contained in comparable contracts. (PBA Rex. 6.)

### **Village Proposal No. 3 – Overtime: Section E - Delete**

#### *Village's position:*

The Village explains that this proposal is designed to prevent officers from cashing in time and then ramping up their compensatory time accrual back to 300 hours. It notes that, under the collective bargaining agreement, officers may bank up to 300 hours of compensatory time. It argues, however, that this additional provision creates economic uncertainty for the Village because it allows officers to cash in 80 accumulated hours upon 15 days' notice and continue their accrual.

#### *PBA's position:*

PBA opposes this proposal and argues that allowing officers to cash in a certain amount of accumulated time is not "a trick" and is permitted by more than half of the comparable CBAs. (PBA Brief at page 44; PBA Rebuttal Exhibit 10.) PBA also believes that this practice benefits the Village because it pays the accumulated time at the current rate of pay instead of a higher rate of pay upon retirement. (PBA Rebuttal Exhibit 9.)

### **Village Proposal No. 4 – Wages:**

**Section B – Amend the 6/1/08 schedule for those who hired on or after June 1, 2008 so that it provides equal steps between Step 1 and Step 6**

**Section F - Delete**

*Village's position:*

The Village seeks to have equalized steps under the wage schedule for employees hired after June 1, 2008. At the hearing the Village argued that there is a \$53,000 difference between step 1 and step 6, with increments ranging from \$16,000 to \$5,000. The Village's proposal would change these unequal sums to even increments so that the increases do not vary by step. (Transcript, November 16, 2009, at page 188.) In addition, the Village seeks to delete Section F, which requires that retroactive payments be made within 30 days after the agreement. The Village argues that this is not an appropriate provision for a collective bargaining agreement and that, as a matter of "organizational appropriateness," is best reserved for a memorandum of agreement or other external document. (Id. at 189.)

*PBA's position:*

PBA opposes the Village's proposal to amend the 6/1/08 salary schedule by equalizing the amounts between the steps. It notes that the Village

did not present any evidence or testimony to justify this proposal, nor did it provide any economic data through which a cost/benefit analysis could be made. In addition, PBA argues (i) that, if awarded, the equalization of steps will become unequal once a successor agreement with percentage increases comes into effect; (ii) that the savings of \$29,725 is relatively minor and will be unfairly assessed to current employees, and (iii) that no other comparator in Nassau County has equalized steps. (PBA Rebuttal Exhibit 13,14.)

PBA also disagrees with the Village's proposal to delete Section F, which it notes has been in the collective bargaining agreement for at least 20 years. PBA takes issue with the Village's position that it is more appropriate to have this language contained in a memorandum of agreement and argues instead that its presence in the parties' contract assures timely payment.

**Village Proposal No. 5 - Article 8 – Night Differential:**

**Section A – Change “3:00 p.m.” to “midnight”**

**Amend to provide that the differential shall be at an annual rate of \$7,500 for sergeants and \$6,500 for officers**

**Section B - Change “3:00 p.m.” to “midnight”**

*Village's position:*

The Village proposes moving the triggering time for night differential from 3:00 p.m. to midnight and paying a flat rate differential as opposed to the current percentages or those contained in PBA's proposals. The Village submits that its proposal makes economic sense; and is not inconsistent with the purposes of Night Differential as identified by PBA. It argues that "life disruption" is "a non-issue" because many Kings Point officers prefer to work at night for personal reasons and that PBA'S demand for elimination of a chart rotation in favor of steady day and night shifts supports this contention. Moreover, the Village submits that changing the differential "trigger" time from 3:00 p.m. to midnight does not run afoul of the second intended purpose, which is to compensate officers for the additional risk of harm in night duty because no evidence suggests that the risk is higher at 3:00 p.m. than 11:00 p.m. Rather, the Village argues that employees who work on the day shift (7:00 a.m. to 7:00 p.m.) receive four hours of unmerited night differential for each tour because there is no inherent harm to working in the early afternoon. Finally, the Village argues that using a percentage of salary to compute the night differential no longer makes economic sense. It submits that, since wages have risen, the current "10% figure has far outgrown the inconvenience or danger posed to employees" and that fixed differential amounts

will provide certainty in municipal budgeting and finance. (Village Brief at page 13.)

*PBA's position:*

PBA opposes the Village's proposal and argues that, contrary to the Village's position, officers' lives are disrupted as they "miss their children's school activities, sporting events, dinner with their family and the ability to go to bed with their spouse [by] having to work in the late afternoon into the early evening." (PBA Brief at page 46.) It explains that PBA's proposal to end shift rotation was made to end the practice of flipping work schedules and not because its members prefer working evenings. Finally it notes that all other Nassau County comparators pay night differential prior to midnight. (PBA Rebuttal Exhibit 17.)

PBA also opposes modifying the night differential calculation by having flat rates of \$6,500 for police officers and \$7,500 for sergeants. It argues that the Village did not submit any justification for its proposal. PBA, on the other hand, submitted evidence clearly demonstrating that, even though some comparables have a set rate for night differential, the Village's proposal would significantly cut the current night differential pay-out. (PBA Rebuttal Exhibit 18 and PBA Exhibit 43.)

## **Village Proposal No. 6 - Holidays: Delete Flag Day**

### *Village's position:*

The Village proposes eliminating Flag Day and thereby reducing the number of paid holidays that its officers receive from 14 to 13. It argues that, since its officers only work 12 or 13 days in a month, the 14 paid holidays (plus a half-hour of pay at straight time for every hour worked on the holiday) is extremely generous and that eliminating Flag Day as a paid holiday will save the village a significant amount of money without putting the officers at a competitive disadvantage. In support of its position, the Village argues Flag Day is not a major holiday, that officers are not necessarily deprived of time with their families or friends when working Flag Day, and that, since a top grade officer earns \$1,164.89 per shift, the savings are significant. Finally it submits that 13 holidays, not 14, is the norm for the comparator villages. (Village Exhibit 1.)

### *PBA's position:*

PBA opposes this proposal and notes that, while its members are contractually entitled to holiday pay for 14 holidays, they are not entitled to time off. (PBA Rebuttal Exhibit 20.) PBA argues that this proposal is unreasonable since 14 of the 18 comparable departments count Flag Day as a paid holiday, and 4 of the 18 have 14 paid holidays. (PBA Rebuttal Exhibit 21; Village Exhibit 1.)

**Village Proposal No. 7 – Recall and Standby**

**Section C - Delete the second and third sentences**

**Section E - Delete**

**Village Proposal No. 8 – Travel Time: Delete**

*Village's position:*

The Village proposes the deletion of certain parts of Article 10, Section C pertaining to guaranteed hours when an officer reports to work after a cancelled court appearance. The Village explains that, while it believes that officers provide a valuable benefit to the community, they are also highly compensated for doing so and therefore they “should only receive that generous pay for time that is actually scheduled and requested by the Village.” (Village Brief at page 14.) The Village argues that the documentation provided by PBA shows that many villages throughout Nassau County do not provide their officers with such a guarantee and that there is no justification for continuing this provision in Kings Point. (PBA Rebuttal Exhibit 24.)

The second part of the Village's Proposal 7 and its Proposal 8 seek to delete the recall mileage and travel allowance provided to officers. The Village argues that the payments should be eliminated because (i) “getting to work is not working and is certainly not worth \$97.07 per hour;” (ii) the payments are not

legally required; and, (iii) almost half of the comparator villages do not pay for that time. (Village Brief at pages 14 to 15; PBA Rebuttal Exhibit 25.)

*PBA's position:*

PBA opposes the Village's proposals in their entirety. PBA argues that Proposal 7, which seeks to eliminate recall pay and mileage allowance, should be denied because (i) the Village did not present any evidence or testimony that warrants granting this proposal; (ii) being summoned to court on a day off and having it cancelled less than 24 hours before an appearance is an inconvenience and officers should be able to come to work and receive some compensation and mileage allowance; (iii) 11 of 17 Nassau comparators pay their officers recall and mileage allowance for court cancellation, and 9 of the 11 pay recall inside 72 hours' notice; and (iv) the mileage allowance reimburses a member for the cost of fuel and wear and tear on a member's personal vehicle when he or she is recalled to duty. (PBA Rebuttal Exhibit 25.)

With respect to Proposal 8, PBA argues that travel time is meant to compensate a member for the time it takes to travel to and from work if recalled to duty and that the Village's argument that, because an employee is getting paid to work, he/she should not also get paid to travel is not logical. It submits that where, as here, its elimination may result in a loss of two (2) hours of pay per

recall and about two-thirds of Nassau County Police Departments provide this benefit for their members, it should not be eliminated. (PBA Rebuttal Exhibit 28.)

**Village Proposal No. 9 - Vacation Time: Section F - Delete**

The Village seeks to eliminate the contract provision that allows members to receive their entire yearly allotment of vacation time on January 1 of the year they retire. (PBA Rebuttal Exhibit 31). The Village cites *Lesko v. Lesko*, 184 Mich. App. 395, 407 (1990) in support of its argument that vacation is designed to give employees time off so that they may relax and then return to work rested, energized, and able to perform all the functions of their position. It argues that this provision, which pays retirees in advance and not arrears, as is the case for non-retiring officers, does not serve the underlying purposes of vacation pay and is therefore simply an “unearned windfall.” (Village Brief at page 15.) It argues that the deletion of this paragraph “would eliminate that boon, which is equal to a month and a half of compensation, and lead to substantial savings to the Village and its overtaxed residents.” (Village Brief at page 15.)

*PBA's Position:*

PBA opposes this proposal and notes that it has identified at least five comparator departments that receive a pro-rata share of vacation upon retirement. (PBA Rebuttal Exhibit 32.)

**Village Proposal No. 10 : Article 15 – Sick Leave:**

**Section A - Delete the second sentence**

*Village's position:*

The Village seeks the elimination of sick leave for the illness of an officer's family member. The Village explains that it recognizes that sick leave is an important benefit and that it is not seeking to reduce or eliminate any of the 208 hours of such leave per fiscal year that officers receive. Rather, it argues that sick leave is intended to address an individual's health issues and not those of family members. Accordingly it only seeks elimination of the provision that permits these hours to be used for those purposes. It argues that officers faced with family illnesses are not without recourse; they are granted paid vacation and personal time under the collective bargaining agreement or, in cases of covered serious health conditions, they may take unpaid time to care for their family member under the Family and Medical Leave Act.

*PBA's position:*

PBA opposes the Village's proposal is to eliminate the 48 hours of sick leave that officers receive to care for a sick member of their immediate family. They argue that the Village's position that family sick is not necessary because officers have other contractual leave time that they can use is misplaced.

PBA notes that Commissioner John Miller admitted on cross-examination that, while family sick leave can be requested less than 48 hours before the leave is taken, personal time and vacation cannot. Given these restrictions, its members may be forced to use unpaid time. Finally, PBA argues that today's multi-generational society makes the need for family sick days real, and submits that 10 of 18 Nassau comparators have family sick leave recognizing that need, some providing more than Kings Point. (PBA Rebuttal Exhibit 35.)

**Village Proposal No. 11 - Article 16 Fringe Benefits During Periods of Disability Pursuant to §207-c**

**Section B(4) - Amend to provide that an Article 78 shall be the procedure device for all reviews**

**Section B(5) - Amend to clarify that permission is required for expenses in excess of those covered by Worker's Compensation only**

**Section C(3) - Change "may" to "shall"**

*Village's position:*

The Village seeks to modify Article 16, Section B(4) of the collective bargaining agreement to provide that all appeals from decisions concerning Section 207-c, including Commissioner determinations that an employee is no longer entitled to disability benefits or that he or she is fit to return to full duty or light duty status, be determined in an Article 78 proceeding. The Village argues

that this will ensure consistency because an Article 78 proceeding is the statutory method of appeal for denial of Section 207-c benefits.

The Village argues that its proposed change to Article 16, Section B(5) is non-controversial because the modification is intended to lighten the load on employees by requiring officers to obtain permission only for those medical expenses incurred pursuant to Section 207-c beyond what is covered by workers' compensation.

Finally, the Village seeks to eliminate ambiguity by proposing a change to Article 16, Section C(3), to ensure that the language clearly states that a failure to abide by the procedures and requirements of Article 16 acts as a bar to receipt of benefits. It argues that the current ambiguity serves no one.

*PBA's position:*

PBA opposes the Village's attempt to make Article 78 the exclusive avenue for all reviews of disputed Section 207-c cases, arguing that the Village gives no justification for this proposal except the blanket assertion that many police and fire units have this already. PBA offers its Rebuttal Exhibit 39, which shows that 8 of 18 comparator departments do not have Article 78 reviews for all Section 207-c disputes.

PBA will consider agreeing to the Village's proposed modification to Article 16, Section B(5) or some version of that proposal after discussions take place in executive sessions and its concerns about the legality of the current provision are addressed.

Finally, PBA does not agree with the Village's contention that changing the word "may" to "shall" in Section C (3) serves both parties. Rather, PBA argues that, under the current contract language, a member who does not comply with the Section 207-c procedures required under the CBA "may" forfeit his or her disability rights. (PBA Rebuttal Exhibit 38.) Changing that "may" to "shall" would eliminate any possibility of discretion on the Village's part, and the Village would lose the ability to continue 207-c benefits under extenuating circumstances. This would lead to litigation of such cases as denials of an existing benefit, which PBA submits does not benefit either party.

**Village Proposal No. 12 Article 17 – Health Insurance Benefits**

**Section A - Amend to provide that employees shall contribute 15% of the premium cost**

**Section B - Change "on or after June 1, 1995" to "on or before June 1, 2005" and amend to provide that coverage for subsequent retirees shall be limited to 75% of the individual or family premium as appropriate**

*Village's position:*

Currently, PBA members do not pay for their healthcare. The Village seeks to have PBA members contribute 15% of the premium cost of their health care coverage. In support of its proposal the Village notes (i) as healthcare costs continue to increase, employers have shifted a portion of those costs to their employees (Village Exhibit 3 at p. 78); (ii) the proposed change is consistent with the experience of all Americans over the past ten years, both public and private sector, unionized and non-unionized; (Village Exhibit 3, generally, and at pp. 94-95, 99.); (iii) PBA recognizes that the day will come when police officers have to contribute to the cost of their healthcare, and (iv) the fact that no other Nassau police department currently makes its officers pay is not a justification to reject this proposal because Kings Point officers are generously compensated, can afford to pay a share of the premium cost, and should be required to do so.

The Village also proposes eliminating dental coverage and limiting its lay-out for health insurance costs for post-June 1, 2005 retirees to 75% of individual or family premiums, arguing that these changes are a necessary part of its attempt to control health insurance costs. In support of its proposal the Village notes (i) that it has limited its proposal to only those officers who retired after

2005, and not before;<sup>3</sup> (ii) the number of employers providing coverage to retirees is declining (Village Exhibit 3, p. 194 *et seq.*); (iii) public sector employees dominate the privileged few who still have a defined benefit pension plan, and (iv) PBA has admitted that retiree dental coverage is rare. (PBA Rebuttal Exhibit 48.)

*PBA's position:*

PBA opposes that portion of the Village's proposal requiring employees to contribute to the cost of their health care insurance. PBA argues that it must be denied because not only do its members not currently contribute to health insurance benefits, but in fact no police bargaining unit in Nassau County contributes to health care costs. (PBA Rebuttal Exhibit 44.) In addition, PBA argues that the Kaiser Family Foundation survey presented by the Village is insufficient support for the Village's assertion that it must act because healthcare costs are rising "at an astronomical rate." (Village Exhibit 3). Finally, PBA notes

---

<sup>3</sup> The Village stated at the hearing that its proposals on these matters were intended to cover the period after June 1, 2008, not 2005. At that time, PBA argued that these proposals are non-mandatory, and should therefore not be entertained by the Panel. The Village argues that it is clear that the proposals were intended to cover after 2008 (the year the underlying contract expired), and that the usage of 2005 was a typographical error. Moreover, the Village argues that if it had intended the proposals to read 2005 (and it did not), the PBA failed to include these proposals in its scope charge (Joint Exhibit 11.) Therefore, even if they may be non-mandatory subjects of bargaining, they are properly before the Panel. Finally, the Village maintains that the only limit that applies to the Panel's jurisdiction is temporal, and the Panel can make a retroactive award on this proposal, even if that retroactivity goes only to June 1, 2008.

that if granted, Kings Point will be the first police bargaining unit in Nassau County to be required to contribute to health insurance and “[s]uch an unprecedented giveback should only be achieved in exchange for an equally unprecedented benefit enhancement as a result of a negotiated agreement.” (PBA Brief at page 53.)

PBA believes that the portion of Village proposal that deals with discontinuing payment of the full premium for health insurance coverage for retirees since June 1, 2005<sup>4</sup> should be granted in part and denied in part. PBA submits that the portion of the proposal that attempts to take away health insurance for retirees who retired before June 1, 2008 is illegal. In support of this position PBA argues that the Panel’s jurisdiction is limited to June 1, 2008 through May 31, 2010 and that it would violate the New York State Constitution retroactively to take away a benefit from officers who retired under a prior collective bargaining agreement. PBA notes that this is not a moot issue because Commissioner Miller testified that several officers have, in fact, retired between June 1, 2005 and June 1, 2008. Should the Panel decide it has jurisdiction to rule on this proposal, however, PBA requests that it be denied because all 18 Departments in Nassau

---

<sup>4</sup> The Village attempted to orally amend the date in this proposal to “on or before June 1, 2008.” PBA objected.

County grant retiree health benefits without contribution; and a few Departments require contributions depending upon the number of years of service the officers have completed. (PBA Rebuttal Exhibit 45). Finally, PBA maintains that the portion of the proposal that would grant dental insurance to retirees who retired prior to June 1, 1997 be awarded as it is just and reasonable under the circumstances and, unlike the proposal noted above, does not run afoul of the New York State Constitution.

**Village Proposal No. 14 Article 21 – Termination Pay:**

**Section A - Amend to provide that termination pay shall not exceed twice the amount of a unit member's rate of compensation as of the date of separation from service**

*Village's position:*

The Village proposes capping termination pay at twice the amount of the officer's rate of compensation upon separation from service. The Village contends that termination pay "represents a worth a huge sum of money to senior officers upon retirement," and is on top of a lucrative 1/60<sup>th</sup> pension and a payout of accrued but unused paid time off. (Village Brief at page 18.) Accordingly, these payments represent "an embarrassment of riches" that the Village does not seek to eliminate but merely to limit. It argues that, "if comparability is to have any meaning," this limitation "is justified in light of the overall compensation

package and retirement benefits provided to PBA members,” (Village Brief at page 19.)

*PBA’s position:*

PBA opposes the Village’s proposal and disputes any suggestion that termination pay was in the collective bargaining agreement as a substitute for the 1/60<sup>th</sup> bill, which is an enhanced retirement benefit. It counters that Village Commissioner John Miller testified that termination pay is generally about \$250,000 for officers and over \$300,000 for supervisors and has been in the parties’ contract since he started working in 1978 while the 1/60<sup>th</sup> bill was not passed until 1988. (PBA Exhibit 86.) PBA argues that it received the 1/60<sup>th</sup> bill in negotiations that covering 2005 – 2007 contract in exchange for a 0% wage increase. (PBA Exhibit 33 and 3(g).) Accordingly, PBA submits that termination pay is not, and could not have been contemplated as, a substitute for the 1/60<sup>th</sup> bill, because it entered the CBA at least ten years before the 1/60<sup>th</sup> bill was enacted. As further support for its opposition PBA argues that only Nassau PBA caps termination pay, and Nassau’s cap is higher than the Village’s proposed limit. (PBA Rebuttal Exhibit 51.) Finally, PBA notes that this proposal can not be justified since the Village failed to provide evidence of what the payouts currently are and what they would have to be comparatively under its proposal.

**Village Proposal No.15. Article 23 – Leave for Death in Family**

**Section C - Change “four (4)” to “two (2)” in both places it appears**

*Village’s position:*

The Village proposes reducing leave for a death in family from four to two days, arguing that the officers’ infrequent work schedules coupled with their other allotments of paid time off make four days excessive. The Village explained that, while it can empathize with anyone who has lost a family member, the purpose of bereavement leave is to give an employee time to make funeral-related arrangements and that the Village’s proposal of two days will more than adequately cover the average officer’s need.

*PBA’s position:*

PBA argues that the Village improperly identified the section of the contract that would have to be modified to accomplish its goal of eliminating two bereavement days from the CBA. (PBA Rebuttal Exhibit 52). PBA argues that, by failing to correct their apparent mistake before interest arbitration, the Village is estopped from now making a new proposal. Should the Panel consider the proposal on its merits, PBA argues that it should be denied because, other than the Village’s statement that it is excessive in light of the other leave available to the

employees, it did not present any justification or evidence to support the change. On the other hand, PBA notes that it submitted proof that 17 of 18 comparator departments give more than two days of bereavement leave; and a majority give four or more. (PBA Rebuttal Exhibit 54.)

**Village Proposal No. 16. Article 24 – Employee Representative:  
Change “ten (10)” to “five (5)”**

*Village’s position:*

The Village proposes reducing the days granted to PBA officers from ten to five, arguing that, given the size of the department, the current amount of leave is grossly disproportionate, as fully discussed above in the Village’s response to PBA Proposal No. 10. In addition, the Village submitted evidence to support its argument that the true cost of this item –\$1,164.89 for a 12 hour shift– is both real and substantial. (Village Exhibit 2.) Finally, the Village argues that that the public should not be required to subsidize the PBA by compensating its officers to represent the membership because it bears no relationship to the Village’s needs and submits that, if PBA really believes this is important, it could compensate members out of its own funds for performing these union activities.

*PBA’s position:*

PBA opposes the Village's proposed reduction and argues that the Panel should instead approve its proposal to increase PBA days from 10 to 15. If the Village's proposal is granted, Kings Point officers would have five days less than the nearest comparator.

**Village Proposal No. 17 - Article 29: Performance of Duty Out of Rank of Designation**

**In the first sentence, change "six or more hours during any tour of duty" to "more than twelve consecutive work hours"**

**In the first sentence, change "the difference between his regular rate of pay and night differential, if applicable, and that of the position to which is assigned for such tour of duty" to "\$140 if he or she works out of rank for the full tour"**

*Village's position:*

The Village proposes increasing the number of consecutive hours that an employee has to work out of rank before receiving the differential from six to twelve and changing the differential to a flat rate of \$140. In support of this proposal the Village notes that (i) Kings Point is only one of three comparator departments that pays this differential; (ii) its proposal does not seek its elimination but only that employees earn the benefit; (iii) its proposal recognizes that currently an officer can serve out of rank for *half of his or her shift* and will

receive extra pay for *the entire tour of duty* a situation that occurs frequently on the night shift; (iv) most of the out-of-rank work is done at the beginning of the shift; and (v) the Village's proposal seeks to correct these inequities by requiring PBA members to perform that higher rank work for the entire shift to be eligible for any additional payout.

*PBA's position:*

PBA opposes this proposal and disputes the Village's contention that its officers receive a windfall when they work more than six but less than twelve hours as the officer in charge. Nevertheless, the Village can rectify this perceived wrong by staffing the tours with supervisors; and the Village should not use the interest arbitration process to rectify its problem. In addition, PBA argues that this proposal would make it virtually impossible for officers to receive officer in charge pay because they work 12-hour tours and would not be eligible for the benefit unless they worked "*more than* twelve consecutive hours." Finally, PBA notes that PBA's proposal to receive officer-in-charge pay on an hourly basis addresses the Village's concerns that its members not receive a "windfall." PBA also objects to the Village's proposal to set a fixed, \$140 amount for payment to the officer in charge. While the Village's proposed amount is very close to the

amount presently received by an officer (\$141.12), its number would not increase with wages. (PBA Rebuttal Exhibit 60).

**Village Proposal No. 18 Article 32 – Grievance Procedure:**

**Section A - Delete “including matters of discipline”**

**Step 1 - Delete “work” in the first sentence**

**Village Proposal No. 19 Article 33 – Arbitration:**

**Section F - Delete “and the disciplinary procedures provided in Section 75 of the Civil Service Law or in any other law”**

**Village Proposal No. 20 Article 34 – Discipline: Delete**

*Village’s position:*

Discipline should be subject to an Article 75 proceeding, and the Village accordingly seeks to eliminate disciplinary matters from arbitration. In addition, the Village proposal seeks to clarify the time limits for Step 1 of the process by specifying that it should be calendar, not work, days. The Village argues that the whole point of having a grievance procedure is to avoid letting disputes fester by requiring that they be raised and adjudicated quickly, and this change is necessary because officers work only 12 or 13 days in a month.

*PBA’s position:*

PBA opposes this proposal and argues that no reasonable basis or evidence was presented at the hearing to justify modification of the existing contractual provision. Conversely, PBA notes that it presented evidence that 14 of 18 departments in Nassau County have some form of arbitration, with one being advisory and one only if the penalty sought is more than 11 days. (PBA

REBUTTAL EXHIBIT. 63.) The parties agreed to discuss the second part of the Village's proposal, to change the first step time limits, at an executive session with the number of days being somewhere between 30 and 90 days.

#### **IV. DECISION**

This is a case in which both parties strove for a veritable "home run." Each raised an extraordinary number of demands, all of which would be nice to have. The record is barren, however, of persuasive evidence of need. Neither party showed a significant negative operational impact of existing terms and conditions of employment that required the changes sought. Management can always use more flexibility, but nothing suggests its current flexibility is unequal to its needs. And nothing in the record suggests that Kings Point is in economic straits that justify its being the first of comparable communities to win health insurance premium contributions by its police personnel. Similarly, the union can always use more goodies, but nothing in the record justifies sweetening this unit's

current package in the multiple ways sought, especially in view of the uncertain general economic climate.

On the entire record before me, including my assessments of witnesses' credibility and the probative value of evidence, I accordingly have determined that the relevant statutory criteria require the Public Arbitration Panel to issue an Award requiring the following changes:

**1. Term.**

The term of the agreement shall be from June 1, 2008 to May 31, 2010.

**2. Annual Salaries.**

Annual Salaries for all steps of bargaining unit employees shall be increased as follows:

Effective June 1, 2008: 3.8%

Effective June 1, 2009: 3.75%

I reach these conclusions for the following reasons, having given due consideration to the Taylor Law criteria in CSL Section 209.4.

**The "comparability" criterion:**

**"a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of the other employees performing similar services"**

**or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities. . . .”**

The parties do not significantly dispute that, for comparability purposes, the appropriate comparables for Village police officers are those employed by the villages, cities and police districts in Nassau County and by Nassau County itself. The parties have both submitted exhibits containing information from these communities, and Arbitrator Arthur Riegel persuasively so held in his *Port Washington Police District* interest arbitration award. While not disputing the general comparability of these communities, the Village argues that the Village’s lack of a substantial commercial tax base renders it less comparable to Freeport, Garden City, Glen Cove, Hempstead, Lake Success, Long Beach, Lynbrook, Washington and Rockville Centre. That may be true, but I find that, even without a substantial commercial tax base, the Village’s strong residential base and fiscal condition justifies including it in this universe of comparables. I have accordingly looked to the police departments of the village and cities of Nassau County and Nassau County itself.

With respect to those comparables, I find this bargaining unit’s total package of compensation, hours, and working conditions is within a supportable range. The “comparability” criterion does not mandate that a unit occupy a

particular rank within the universe of comparable communities. It is sufficient that the package, taken as a whole, bears a rational relationship to that of similar employees in comparable communities. And in that universe, Kings Point's police appear to have maintained a consistent and appropriate position within that range. I see no basis on this record to vary that general position in any significant respect.

**The "public interest/ability to pay" criterion:**

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

It is undisputed that the needs of the public are met by a well paid and maintained police force with high morale that operates safely and efficiently. Such a police force enhances a community's ability to attract talent, and these characteristics translate to low turnover, high productivity, and positive community relations. Kings Point has had the benefit of having such a police force.

With respect to its ability to pay, the record clearly establishes that the Village is well managed and that it is financially healthy. I recognize, as the Village has argued, that the general economic climate makes for future uncertainty although some indicators suggest a slow but steady recovery. As noted above, the number of SCARS filed in 2010 dramatically increased over 2009. There is,

however, no way to predict the final financial impact on the Village's budget. Moreover, the contract in issue covers June 2008 through May 2010 and accordingly does not significantly affect the 2010-2011 budget. Nevertheless, based upon the information we do have available, the tax refunds given by the Village in 2008 totaled \$221,248, a reduction of approximately 4% from 2007, and \$250,226 in 2009, an increase of approximately 8.4% from 2008. While the general economic environment is uncertain, I remain satisfied that the Village is currently healthy and clearly has the ability to pay the modest increases awarded.

That being said, ability to pay does not alone justify unreasonable increases in wages, benefits or other terms and conditions of employment merely because a municipality can afford them. Nor can a community justify groundbreaking give-backs without having demonstrated significant financial or operational needs. Now is not the time for enhancements to a contract that already provides a significant wage and benefit package and ranks its officers reasonably within the comparable communities. Nor is it the time for rolling back terms and conditions of employment that the parties have established over decades of bargaining. Rather, the uncertain economic climate requires that modifications to the parties' contract be cautious and measured. On the entire record before me, I find that, taken both individually and together, the increases I have granted are

reasonable and are within the Village's ability to pay. Further, these increases are consistent with the public interest in maintaining police officers' morale and the excellent police services that the Village residents have enjoyed.

**The "comparison of peculiarities" criterion:**

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

This criterion has very much to do with the uniqueness of police service. Other trades and professions simply do not involve the same combination of potentially lethal hazards, emotional stress, physical, mental, and educational qualifications, job training and skills. Police officers regularly face risks of death and serious injury and must make instantaneous decisions with life and death consequences. As PBA has noted, "even 'routine' traffic stops can present life-threatening situations for police officers." Accordingly, I have found that the most relevant comparisons by far are to other police officers and not to non-uniformed public and private sector employees.

**The "past collective agreements" criterion:**

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

As noted above, these parties have a well-established history of collectively-bargained agreements that have included reasonable increases in wages and other benefits for bargaining unit members. In some cases bargaining unit members “bought” those improvements with negotiated give-backs. This history and the agreements reached established certain principles from which the parties may not lightly depart. That being said, nothing lasts forever; and the changing economic environment may indeed signal the need at some point to depart from the past and make dramatic changes, including addressing the impact of health insurance costs. Those are best considered in the context of up-to-date economic data and new developments in comparable communities.

The two-year term of the contract covered by this Award has already expired. Negotiations for a successor contract will begin shortly, It simply makes no sense to anticipate what circumstances will prevail and drive their negotiations. It suffices to say that, with respect to all issues save salaries and contract term, there is insufficient evidence in the record to justify any change of the status quo.

By reason of the foregoing, we issue the following:

**AWARD**

**1. Term.**

The term of the agreement shall be from June 1, 2008 to May 31, 2010.

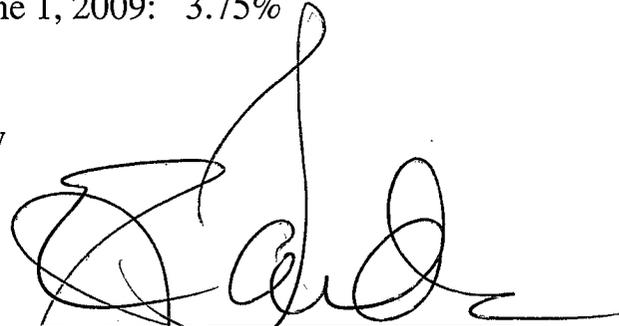
**2. Annual Salaries.**

Annual Salaries for all steps of the salary schedule shall be increased as follows:

Effective June 1, 2008: 3.8%

Effective June 1, 2009: 3.75%

Dated: March 22, 2011  
West Orange, New Jersey



---

**JOHN E. SANDS**  
Public Member and Panel Chair

I concur with / dissent from the above Award.

*April 13*  
Dated: March \_\_, 2011  
New York, NY



---

**DAVID M. WIRTZ**  
Village-Appointed Arbitrator

I concur with / dissent from the above Award.

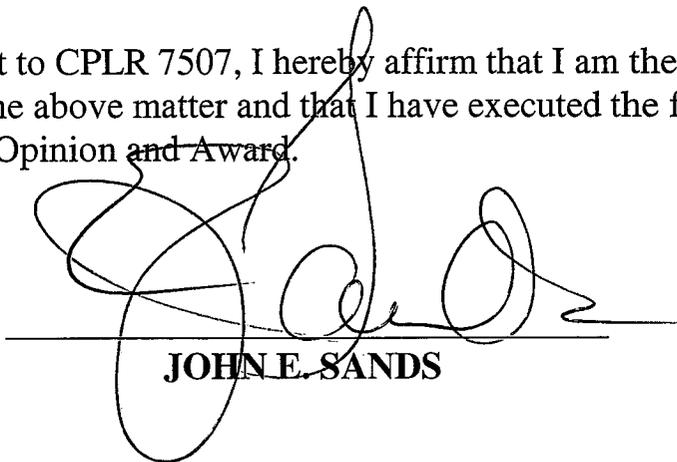
Dated: March 24, 2011  
Islandia, NY



**CHRISTOPHER ROTHEMICH,  
PBA-Appointed Arbitrator**

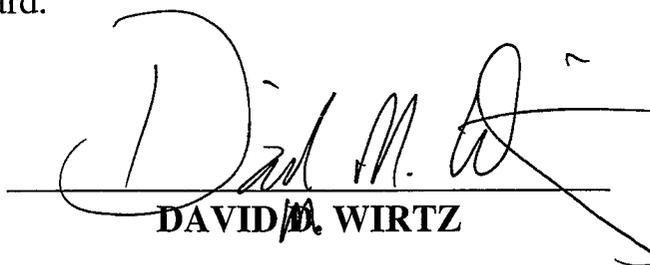
**AFFIRMATIONS**

Pursuant to CPLR 7507, I hereby affirm that I am the Impartial Arbitrator in the above matter and that I have executed the foregoing as and for my Opinion and Award.



**JOHN E. SANDS**

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



**DAVID M. WIRTZ**

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

A handwritten signature in black ink, appearing to read 'CR', written over a horizontal line.

**CHRISTOPHER ROTHEMICH**