

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of the Compulsory Interest Arbitration between

**BALDWINSVILLE POLICE BENEVOLENT
ASSOCIATION,**

Employee Organization,

-and-

VILLAGE OF BALDWINSVILLE,

Public Employer.

**OPINION AND AWARD
OF PUBLIC ARBITRATION
PANEL FOR THE PERIOD
MARCH 1, 2009, THROUGH
FEBRUARY 28, 2011**

PERB Case No.: IA2009-015; M2009-063

BEFORE: Louis J. Patack, Esq.
Public Panel Member and Chairperson

Anthony V. Solfaro
Employee Organization Member

John F. Corcoran, Esq.
Public Employer Member

APPEARANCES:

For the Baldwinsville Police Benevolent Association,
an affiliate of the New York State Union of Police Associations:
John M. Crotty, Esq., Retained Counsel

For the Village of Baldwinsville:
Hancock Estabrook, LLP
Melinda B. Bowe, Esq., of Counsel

BACKGROUND

The Village of Baldwinsville ("Village") and the Baldwinsville Police Benevolent Association ("PBA") are parties to a collective bargaining agreement ("Agreement") that

covered the period March 1, 2007 through February 28, 2009. The parties entered into negotiations for a successor agreement, and after they reached impasse and still could not arrive at a settlement, the PBA, on September 1, 2009, filed a Petition for Compulsory Interest Arbitration with the New York State Public Employment Relations Board ("PERB") (Panel Exhibit 1). The Village filed a timely response (Panel Exhibit 2), and on October 8, 2009, Richard A. Curreri, PERB's Director of Conciliation, designated the undersigned chairperson, together with Anthony V. Solfaro, employee organization member, and John F. Corcoran, public employer member, to serve as the public arbitration panel to resolve the dispute.¹

The arbitration panel conducted a hearing on March 24 and May 25, 2010, at the Village offices. At the hearing the parties offered evidence through witnesses and documents, and made arguments in support of their positions. A stenographic record of the hearing was made, and that record constitutes the official record of this proceeding.

Following the hearing, the parties submitted briefs, and the panel members then met in executive session on September 10 and November 16, 2010. The members have also engaged in numerous telephone conversations since our second meeting.

The panel members have reviewed and seriously considered all the proposals offered by the parties that are properly before the panel, the evidence produced at the hearing, and the arguments made by the parties' counsel at the hearing and in their post-hearing briefs.

¹ Both parties filed improper practice charges with PERB challenging the arbitrability of certain of the other party's proposals. On October 14, 2010, an Administrative Law Judge issued a decision on the charges, and on September 26, 2011, the Board issued a decision on exceptions taken by both parties to the ALJ's decision. It is not necessary to address these decisions, however, since none of the proposals on which awards are made were the subject of the charges.

In considering the proposals the panel members, as required, have been guided by, and applied, the criteria set forth in Section 209.4(c)(v) of the Taylor Law (New York Civil Service Law, Article 14). These are as follows:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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.

When the panel met in executive session the Village and PBA panel members, at the urging of the chairperson, agreed to prioritize issues and concentrate the panel's efforts on what each party considered its most important proposals, leaving others for subsequent negotiations. Although the panel members strongly advocated for their respective parties, both party members made serious efforts to resolve this matter. Ultimately, however, and as reflected in the awards below, consensus could not be reached on all items.

What follows, then, are a brief summary of the parties' proposals, discussion of the evidence and the arguments made in relation to the statutory criteria and to the proposals on which awards are made, and the awards.

SUMMARY OF PARTIES' PROPOSALS

The PBA submitted an extensive set of proposals regarding many areas of the Agreement, and new provisions covering areas on which the Agreement is silent. Two of the latter would add comprehensive articles addressing scheduling (including hours of work, tours of duty, and work schedules) and modifying General Municipal Law § 207-C procedures contained in the police department rules and regulations. The Village's far shorter set of proposals seek to amend certain provisions of the Agreement, and to delete language providing for double time for officers working overtime at Village Park special events.

COMPARABILITY

In making its awards CSL § 209.4(c)(v)(a) requires the panel to compare the wages, hours and working conditions of the employees to those of police department employees in comparable communities. In this proceeding the PBA would have the panel consider as comparables all Onondaga County municipalities, whether they be villages or towns. The Village would limit this group to just villages.

PBA POSITION

The PBA argues that in choosing what should be considered comparable communities the panel must avoid confusing comparability with ability to pay, and that the Village, in suggesting that the panel consider only other Onondaga County villages, is mistakenly inserting its view of those villages' ability to pay into the equation. The PBA claims that the panel should be looking at only geographic proximity and the nature of the employment and services rendered by the various police department employees.

The PBA contends that Onondaga County is the marketplace within which all county police departments compete for employees, and that officers commonly interact with their counterparts throughout the County.

The PBA's argument is that while it is certainly appropriate to consider the other four county villages, the panel obtains a complete picture of the terms and conditions of employees performing similar work within the same geographic area only if it also considers the towns.

The union points out that in a 2010 interest arbitration award involving the Town of De Witt the panel considered both towns and villages as comparables (Panel Exhibit 53).

VILLAGE POSITION

The Village argues that the PBA offered no convincing evidence to support its position that towns should be included as comparables, and that the testimony of its mayor, and various exhibits it offered into evidence at the hearing, strongly support the conclusion that only villages are appropriate to consider.

The Village contends that the populations of the Onondaga County villages share similar demographics, including median and per capita income and poverty levels. It also argues that although officers in both towns and villages perform essentially the same services job duties alone do not define comparability.

Countering the PBA's argument that villages and towns are comparable because they recruit employees from the same County market, the Village responds that it does not compete for employees with the towns since it has far more applicants than vacancies to fill.

Finally, the Village points to an interest arbitration involving the Village of Herkimer, in which this arbitrator served as the panel chairperson.² The Village notes that in the Herkimer award the chairperson wrote that “villages all face the same unique financial constraints.”

DISCUSSION

Beginning with the Herkimer award, the union there was using cities as comparables, and the village’s argument was that the comparison was not valid since villages receive less state aid than cities. Here, the PBA’s financial expert, Kevin Decker, testified that towns are not better situated than villages in terms of the state aid they receive (Transcript (“Tr.”), p.85). It should also be noted that the Herkimer panel did not find that the cities suggested by the union as comparables would be given no consideration, and a fair reading of the award shows that they were taken into account. Finally in this regard, the Village did not offer any particulars as to the differences in aid received, or any evidence that towns in the County are in better overall financial health than villages.

It makes sense that all local governments within Onondaga County should be considered. While the Village presented evidence as to why the other villages in the county should be taken into account it did not demonstrate that the towns had different demographics. It simply seems reasonable to be more inclusive than less when considering comparables, and to have more evidence, not less, to use in formulating what the panel considers fair awards. The chairperson would also comment that the fact that officers in a certain town, or even village, might enjoy higher wages or some greater benefits than the Village’s officers does not compel a finding that the officers here should be receiving the same wages or benefits.

² *Village of Herkimer and Charles W. Soule PBA*, PERB Case Nos.: IA2008-05, M2007-244 (January, 2009).

ABILITY TO PAY

Civil Service Law § 209.4(c)(v)(b) requires the panel, in fashioning its awards, to consider the Village's ability to pay. As might be expected the PBA claims that the Village can well afford to meet its demands, while the Village contends otherwise.

PBA POSITION

The PBA bases its argument on the testimony of Mr. Decker, and the exhibits he prepared (PBA Exhibit 50 A-R).

The PBA acknowledges that there are economic problems still facing the country, state and many local governments, but maintains that the Village is in sound financial shape.

According to Mr. Decker the Village is fortunate to be in a position of having an increasing tax base at the same time it has a decreasing tax rate. Mr. Decker noted that many municipalities in the state have experienced decreasing tax bases in recent years (Tr., p. 38).

The PBA also notes that although the Village has increased the tax levy in recent years, as have most municipalities, the increases for the fiscal years 2005 through 2010 averaged 3%, the seventh lowest among the County's towns and villages (PBA Exhibit 50 F).

At the hearing both parties acknowledged that the agreement on sales taxes that the Village, and apparently other Onondaga County local governments, had with the County would expire at the end of 2010. That agreement guaranteed that a certain amount of sales taxes received by the County would be returned to the Village. The Village has argued that under the new arrangement, not yet finalized at the time of the hearing, but now in place, the Village loses over \$500,000 annually. The PBA, however, points out that its understanding of the new arrangement with the County is that the Village will now be guaranteed to receive \$540,000 a year for the next ten years. The PBA also argues that even if the Village will be receiving less in

the way of sales taxes, the reduction will not take place until well within the period of the award, and the Village will simply have to manage this increased cost of doing business.

Police department employees are paid out of the Village's general fund, and the PBA points to the fact that the Village has enjoyed operating surpluses in this fund in the 2004 through 2008 fiscal years (PBA Exhibit 50 M). Mr. Decker testified that the Village has also maintained a very healthy fund balance, one far in excess of that recommended by the State Comptroller (Tr., p. 57).

As another indicator that the Village can afford reasonable wage and benefit increases, the PBA notes that the budgeted fund balance for the 2010 fiscal year included an \$80,000 contingency account, money that can be spent for any purpose (PBA Exhibit 50 Q).

The PBA acknowledges that the Village projected budget deficits for fiscal years 2010 and 2011, but argues that, as explained by Mr. Decker, such deficits are commonly used planning tools (Tr., 52-57). The PBA notes that for the five-year period 2005 through 2009, the Village projected deficits, but at the end of each year ended up with a surplus (PBA Exhibit 50 N). The PBA acknowledges recent decreases in the surplus, but argues that these do not indicate any problems with the Village's financial situation because, as noted above, a municipality cannot maintain too high a fund balance, and the only way to reduce it is to run a deficit (Tr. 65-66).

As another sign of the Village's financial health, the PBA points to the fact that the Village, among the County's towns and villages, has the second lowest outstanding per capita debt (PBA Exhibit 50 O).

The PBA argues that the panel should give no weight to the Village's claim that the increased costs of pension and health insurance translate into a decreased ability to pay. The

PBA contends that under CSL § 209.4(c)(v)(b) it is only ability to pay, and not cost, that can be factored into awards on wages and benefits. According to the union increased costs are irrelevant as long as the Village can afford to pay.

Also on the matter of costs the PBA takes issue with the testimony of Village witness Damon Hacker, a healthcare actuary. Mr. Hacker testified about a requirement of the Governmental Accounting Standards Board, commonly referred to as GASB 45. GASB 45 requires a governmental entity such as the Village to include in its financial reports the present value of providing post-employment benefits. Mr. Hacker prepared a report showing the present value of funding the PBA's retiree health insurance proposal (Village Exhibit 39). Making several assumptions Mr. Hacker concluded that the Village would have to set aside \$4 million now to cover the costs of the proposal (Tr., 161-167).

The PBA argues that GASB 45 is irrelevant to the panel's deliberations since there is no requirement that the Village, or other state or local governments, are required to fund in the present for post-employment benefits. The PBA refers to a statement to this effect made by the panel chairperson in a fact-finding report he wrote in an impasse involving the Saratoga Springs City School District and its administrators.³

Finally, the PBA argues that, even assuming the decrease in sales tax revenues, the record does not support a finding that "an award consistent with the PBA's demands would require any increase in taxes let alone a sizeable increase" (PBA Brief, p. 13).

VILLAGE POSITION

The Village maintains that CSL § 209.4(c)(v)(b) requires the panel to consider not only its ability to pay, but also the interests and welfare of the public.

³ PERB Case No.: 2009-170 (May 11, 2010).

The Village urges the panel to take into account the fact that its general fund, from which PBA employees are paid, is funded almost entirely by real property taxes and sales tax revenues, and that with the termination of the County sales tax agreement at the end of 2010, the Village lost over \$500,000 in sales taxes. Mayor Joseph Saraceni testified that the only options available to make up for the loss of the sales tax revenues are raising property taxes, finding operational savings, or cutting services (Tr., p. 206).

While the PBA argues that the Village has a large unreserved fund balance Mayor Saraceni testified that one of the reasons the fund balance was allowed to grow was as a hedge against exactly what occurred – the loss of the sales tax revenues (Tr., p. 207).

The Village argues that the only way it can fund the PBA's demands is by either invading its general fund balance, which it believes is fiscally imprudent, raising taxes or cutting police and other services.

In addition to the loss of the sales tax revenues, the Village points out that its cash flow has been negatively affected by slowdowns in state aid reimbursements and mortgage tax revenues (Village Exhibits 16 and 17).

The Village points to the fact that it has one of the highest real property tax burdens in the country (Village Exhibit 15), and maintains that its taxpayers should not be asked to pay more to fund the PBA's demands.

The Village urges the panel to take into account the fact that its pension and health insurance costs have escalated dramatically in recent years, and will continue to increase in this fashion.

As to the fact that the Village allocated \$80,000 to a contingency fund in its 2010 budget, it argues that this amount does not come close to meeting the loss in sales tax revenues it has suffered.

The Village points to the fact that upstate communities, including the Village, have not seen any appreciable population increases in recent years, and that the Village, without new residents, has not seen any improvements in its real property tax base or its overall economic health.

In summary, the Village contends that its revenues have been decreasing and likely will continue to decrease, especially given the heavy loss of sales tax revenue, and that it will have enough trouble funding current employee costs without having to meet the PBA's demands.

DISCUSSION

On balance the Village in recent years appears to have fared as well as or better than other Onondaga County municipalities, whether they be villages or towns. But, even without the expiration of the sales tax agreement, the best that can be said is that the Village's financial situation has remained rather stable during difficult economic times. The Village has built up a large unreserved fund balance, and budgeted an \$80,000 contingency fund for its last fiscal year, but the fact remains that effective at the start of this calendar year, it is losing half a million dollars annually in sales tax revenues. That number represents about one-eighth of the general fund, the fund out of which police department employees are paid, and it is a significant figure.

The PBA argues that the sales tax loss did not start to take effect until two months short of this award's expiration, and, therefore, should have little effect on the award. It is equally the case, however, that whatever salary and benefit increases are awarded, they will continue beyond the end date of the award.

While the loss of the sales tax revenues cannot be ignored, the fact remains that the Village has carefully managed its finances, and is in a position to fund the awards made herein, which, it is worth noting, are far short of the amounts contained in the PBA's demands.

The panel believes that the awards made below also reflect the interests and welfare of Village residents. No one disputes that the police provide an essential service to the community, and it makes sense that they remain fairly compensated for performing their inherently dangerous jobs.

OTHER RELEVANT STATUTORY CRITERIA

Sections 209.4(c)(v)(c) and (d) of the Civil Service Law require the panel to consider respectively, in addition to comparables and ability to pay, the peculiarities of the police profession, and terms and conditions of the parties' past collective bargaining agreements.

There is no need for extensive discussion here. Mention has already been made of the hazardous nature of police work.

As to the parties' past agreements, it is sufficient to note that the panel has taken their provisions into account in fashioning the awards made below.

AWARDS

1. BASE SALARIES
 - a. PBA Position

The PBA proposes consolidating the police officer and sergeant⁴ salary schedules into one schedule, and increasing the police officer base wage by 4% in each of the two years of the

⁴ The Agreement refers to the title of "police agent," but it is understood by the parties to be a sergeant position.

award. The proposal would also incorporate a starting rate for an uncertified employee attending the police academy for a specific time period, a starting rate for the uncertified employee to move to after that time period, and a provision that a starting employee who is certified be paid at the certified rate.

The PBA also proposes establishing a fixed percentage differential above the top step police officer for the detective/investigator assignment, and a fixed percentage differential above the detective/investigator assignment for sergeants based on years of service as a sergeant.

Finally, the PBA would have the Village credit prior service with another police agency for the purpose of placing a new hire on the salary schedule. The PBA notes that the Village has done this on occasion, but not consistently.

The PBA acknowledges that its members do not appear to be underpaid relative to their counterparts in other County municipalities, but argues that the Village officers have sacrificed other economic benefits over the years to obtain somewhat higher salaries. The PBA emphasizes one area in particular, that of health insurance. The union points out that its active employees contribute 25% toward their health insurance premiums, while officers elsewhere in the County pay far less. There are only two towns or villages where they pay even 20%, and in the rest they pay 15% or less.

As important, the PBA points to the fact that the Village police department is one of only two in the County that does not provide its officers with any retiree health insurance.⁵

Turning back to the active officers, in its brief the PBA has constructed charts showing how its 25% health insurance contributions would dilute by almost a whole percentage point any salary increase its officers receive.

⁵ The PBA acknowledges that retirees can obtain Village coverage, but only if they pay the entire cost of the premiums.

The PBA argues that in considering the Village's ability to pay, the panel must take into consideration the fact that in recent years the Village has downsized the department, and either not filled vacant positions or, in one instance, replaced a senior officer with an officer still in the police academy at the time of the arbitration hearing. The argument here is that PBA members are entitled to share in the savings realized by the Village not filling vacancies or filling them with lower-paid hires because the remaining officers continue to perform their hazardous work with fewer colleagues to assist them.

The PBA argues that the Village's 1% wage proposal is so small as not to warrant serious discussion, and that there is no merit to the Village's position that step movement on the salary schedule and longevity payments should be considered as adding to whatever wage increase is awarded by the panel. Simply stated, the PBA does not view either as a wage increase.

b. Village Position

The Village proposal is to increase base pay by 1% effective March 1, 2009, the start of the two-year term of the award.

The Village does make the point, as suggested above, that without the panel awarding any salary increase, there are costs involved in officers moving from one step to another on the salary schedule, and in longevity payments. The Village claims that the combined cost of steps and longevity is 1.3% of payroll, and, therefore, that its 1% proposal in effect results in a 2.3% increase in each of the two years of the award.

The Village makes several arguments justifying its salary proposal and its opposition to the PBA's proposal.

The Village points to the fact that the parties' contract for the two-year period preceding this award provided what it considers very generous annual increases of 3.75%, and that these percentages do not take into account either step movement or longevity payments.

Before turning to salary increases in comparable police departments, the Village urges the panel to take into consideration in making its award on wages that the contract for its only other unionized employees, those in its public works department, provided for only 3.5% increases in 2007, 2008, and 2009, and that the new agreement for these employees contains 2.5% increases for 2010 and 2011.⁶

As to increases received by police officers in comparable communities, the Village makes comparisons to only the four villages it identifies as comparables, and argues that its proposed increase will maintain the competitive advantage its officers enjoy among the police departments in these villages. In fact the Village maintains that even using the municipalities the PBA urges the panel to consider as comparables, a 1% increase would still keep the Village officers among the highest paid in terms of overall compensation.

The Village argues that the panel should take into account the troubled current economy and the fact that there have recently been only modest increases in the cost of living, as measured by consumer price indices. It follows, according to the Village, that its taxpayers, whether employed in the public or private sectors, are not seeing wage increases anywhere close to those the PBA is proposing.

The Village notes that it has no problems either recruiting or retaining officers, and that there is no need for it to dramatically increase police department compensation.

⁶ In fairness, it should be pointed out that the new public works contract covers a three-year period, with the last year, 2012, containing a 3% raise.

As for providing a differential for a detective or investigator, the Village observes that none of its comparable communities provides this benefit in its police contracts. The Village also points out that it has no civil service title for either position, and that, historically, all its officers have simply performed either detective or investigator duties, as warranted.

Finally, the Village would have the panel take into account, as required, the parties' bargaining history. The Village argues that the PBA is asking the panel to ignore the fact that both parties have made compromises over the years to achieve their goals, and that, at least in terms of compensation, a primary goal for both has been to increase actual salaries, rather than longevities, differentials or stipends. The Village maintains that now that the PBA has achieved enviable base salaries there is little need to increase them by anywhere close to what the PBA is suggesting.

c. Discussion

Both parties make fair and serious arguments here. While the PBA freely acknowledges that its members are well paid in comparison to their counterparts in other County municipalities, the PBA makes a legitimate point that they also make significantly higher health insurance contributions than officers in other departments. Also, almost alone among officers throughout the County, those in the Village currently receive no retiree health insurance benefit. There were no figures provided comparing the salaries of Village officers to those of their colleagues in other County towns and villages net health insurance contributions, but it is obvious that the standing of the Village officers when it comes to wages suffers, at least to some degree, because they make the highest percentage contributions.

Even with its higher premium contributions, however, PBA members still are well positioned in terms of salaries when compared to officers in comparable jurisdictions, whether they are those identified by the Village or the PBA.

Among the arguments made by the Village the most convincing is that we still have a very weak economy at all levels of government. While the PBA economist, Mr. Decker, established through his testimony and exhibits that the Village has prudently managed its finances, the evidence he offered does not establish that the Village has enjoyed any significant economic growth, but only that it has not suffered any marked decline.

In making its award on salaries there are two factors that deserve special attention. One is that the Village, starting in 2011, has lost over \$500,000 annually in sales tax revenues that it previously received under its expired agreement with the County. The PBA argues that the Village did not sustain this loss of income until almost the end of the two-year period of the award. But increases in salaries and benefits are ongoing liabilities, and, therefore, it is appropriate to consider this serious loss of revenue in making the award on wages.

The other factor to be considered is that this award provides officers, for the first time, a retiree health insurance benefit. And although most of the cost here will come in subsequent years, it does cover recent retirees, and is a significant new economic benefit.

Taking all the factors discussed above, including the statutory criteria, and the parties' arguments, into consideration the increases proposed by the PBA for each of the two years of the award cannot be justified, especially when taking into consideration the new retiree health insurance. It is also not appropriate, however, to limit the salary increase to the 1% total increase the Village proposes.

The panel believes that the award should be limited only to an increase in the base salary, and that the increase, applied to each step of the salary schedule, should be 2.5% effective March 1, 2009, and 2% effective March 1, 2010.

AWARD

The base salary schedule referred to in Article 12 and Appendix A of the parties' 2007-2009 Agreement shall be adjusted as follows to reflect a 2.5% increase, to be paid retroactively, the period March 1, 2009 through February 28, 2010, and a 2.0% increase, to be paid retroactively, for the period March 1, 2010 through February 28, 2011. Retroactive payments as required to be paid herein are limited to those employees who are employed by the Village as of the date the Award is executed by the chairperson, and to those retirees who worked during the period covered by the Award.

	<u>Police Officer</u>	
	(2.5%) <u>3/1/09</u>	(2.0%) <u>3/1/10</u>
STEP 1	\$42,984	\$43,844
1B	\$44,273	\$45,158
2	\$46,817	\$47,753
3	\$49,503	\$50,493
4	\$52,348	\$53,395
5	\$55,354	\$56,461
6	\$58,533	\$59,704

	<u>Police Agent (Sergeant)</u>	
	(2.5%) <u>3/1/09</u>	(2.0%) <u>3/1/10</u>
STEP 1	\$59,670	\$60,863
2	\$61,054	\$62,275
3	\$64,195	\$65,479

 X
Concur

Dissent

John F. Corcoran 12/28/11
John F. Corcoran Date
Employer Panel Member

Concur

X
Dissent

Anthony V. Solfaro 12/22/11
Date
Employee Panel Member

2. LONGEVITY INCREMENTS

Under the parties' current agreement Village officers and sergeants receive longevity payments on different anniversaries and in different amounts depending upon when they began employment with the Village. Officers hired prior to March 1, 1999, receive \$450 after five years, and an additional \$550 and \$250 after ten and fifteen years respectively. Those hired after March 1, 1999, receive just two increments, \$600 after ten, and an additional \$600 after fifteen, years. Sergeants hired prior to the 1999 date receive the same amounts as officers, but after four, seven and twelve years with the Village.

All PBA members, whether officers or sergeant, hired after March 1, 1999, receive \$600 annual longevity payments after ten, and an additional \$600 after fifteen, years with the Village.

The PBA proposal is to create a single five-step longevity schedule for all members, with increments based on a percentage of base salary. The steps would begin upon the completion of the seventh year, and advancement would be in four-year increments, meaning, for example, that an officer receiving an increment after five years would receive another after nine. The percentages would start at 1.5 % of base salary for the first year of the award and 2% for the second, and increase by .5% for each step.

The proposal would also create different dates for receiving payments depending on whether the member was hired before or after March 1, 1997, and credit prior service with another employer for the purpose of determining placement on the new schedule.

The PBA argues that the current longevity provision is inadequate in several respects. Among the PBA's complaints is that the present schedule unfairly distinguishes between

different ranks and dates for receiving the payments, and that the payments are very low, and have not been increased in twenty years. The PBA further maintains that longevity payments should be based upon salaries, meaning that they should be a percentage of a member's pay. The PBA says that the schedule it has proposed pays officers for the knowledge and experience they have gained over their careers in law enforcement.

The Village objects to any increase in longevity, and makes several arguments to support its position. Among these it points out that the PBA proposal would increase the cost of longevity payments in the first year of the award by about 79%, a figure it maintains is excessive by any measure. The Village also argues that the record evidence establishes that PBA members rank very high in overall compensation, which takes into account base and longevity pay, in comparison to officers in what it considers comparable communities.

The panel has carefully considered all the arguments the parties have made here. While the PBA certainly makes a valid point that longevity payments have seen no increase in many years, it remains true that the members, even taking into account their high health insurance contributions, fare well in comparison to officers in other County towns and villages.

Based upon the same economic factors considered in making its award on base salaries the panel believes that although it is not appropriate at this time to make any structural changes in the longevity schedules, some monetary improvement is warranted. The award will reflect a \$50 increase at all levels in the first year, and an additional \$25 in the second year.

AWARD

Effective March 1, 2009, and paid retroactively, each longevity payment referred to in Article 9.1 Sub. A and Sub. B of the parties' 2007-2008 Agreement shall be increased by \$50. Effective March 1, 2010, and paid retroactively, each of these longevity payments, as already increased by \$50, shall be increased by an additional \$25. All other language in Article 9 remains the same as in the 2007-2008 Agreement. Retroactivity payments shall be in accordance with the retroactivity criteria and language contained in the base salaries award.

 X
Concur
Dissent

John F. Corcoran 12/28/11
John F. Corcoran Date
Employer Panel Member

Concur X
Dissent

Anthony V. Solfaro 12/22/11
Anthony V. Solfaro Date
Employee Panel Member

3. UNIFORMS AND EQUIPMENT

There are two contract provisions relating to uniforms and equipment. Article 8 provides for a cleaning allowance, and Article 11 for the issuance of uniforms, equipment and footwear. The PBA proposes consolidating these provisions, and enhancing their benefits.

The PBA's rationale for increasing the benefits under Article 11 is that currently officers have to replace uniforms and equipment as they wear out, and that this expense should be borne by the Village.⁷

⁷ The Village's improper practice charge challenges the arbitrability of a portion of the PBA proposal to amend Article 11. (The parties' improper practice charges are discussed in footnote 1.) The charge, however, does not concern the proposal to increase the footwear allowance, the only item addressed by the award.

The Village objects to any increase in the benefits provided under Articles 8 and 11. It argues, however, that if there is to be any increase in the annual payments now provided, it should be conditioned on a change to a system of reimbursement.

The panel, again based upon the rationale discussed above in connection with salaries and longevities, is unwilling to approve the increases sought by the PBA except in the area of footwear. Although the panel declines to make the structural changes sought by the parties, it awards an increase of \$25 in the annual footwear allowance.

AWARD

Effective March 1, 2009, and retroactive to that date, the annual footwear allowance provided for in Article 11.2 of the Agreement shall be increased from \$200 to \$225.

X
Concur

Dissent

John F. Corcoran 12/28/11
John F. Corcoran Date
Employer Panel Member

X
Concur

Dissent

Anthony V. Solfaro 12/22/11
Anthony V. Solfaro Date
Employee Panel Member

4. RETIREE HEALTH INSURANCE

The PBA proposes, in summary, that effective March 1, 2009, the Village shall provide a fully paid health, dental and optical plan for all officers with at least twenty years of service with either the Village, or, combined, with the Village and any other law enforcement agency in the state. The plan would offer the same benefits received by active officers.

The PBA's rationale is simple. It first notes that, with the exception of the Village of Liverpool, Baldwinsville is the only municipality in the County that does not offer its retired police officers, under a collective bargaining agreement, some form of paid retiree health

insurance.⁸ It argues that the Village should be required to provide this coverage to employees who spend a career protecting its citizens, or who become disabled in the performance of their duties.

For its part the Village argues that it is wrong for the PBA, in the current economy, and especially given the loss of half-a-million dollars in sales tax revenues, to be requesting fully paid retiree insurance. It notes the dramatically increasing costs of providing insurance for its active officers. The Village points out that police officers most often retire at a relatively young age, and, therefore, that there is an increased cost to providing health insurance during a retirement that lasts longer than it does for most people. The Village also asks the panel to take into consideration the fact that even for those municipalities in the County that do offer retiree health insurance few if any offer the level of benefits the PBA is seeking.

Finally, the Village points to the testimony of Mr. Hacker, the healthcare actuary, who testified that the Village would have to set aside \$4 million to currently fund the retiree health insurance plan the PBA proposes.

While the panel is certainly cognizant of the current financial pressures on all levels of government, it is almost unheard of for police officers not to receive an employer-paid health insurance benefit in retirement. It is true, as the Village argues, that, on average, officers retire at a relatively young age, but given the number of years they have left to work it is often difficult for them to find new employment that will afford the necessary health insurance they will require in retirement.

⁸ The PBA points out that the Liverpool contract is silent as to retiree health insurance.

The fully paid retiree health insurance the PBA seeks is not being awarded. The panel believes, however, that as part of an overall award which balances the interests of both parties the Village can, even at this time, begin to provide this critical benefit.

An issue that sometimes arises when a new benefit is provided in interest arbitration is whether it should be retroactive. Here we have that issue because there were retirements during the period covered by the award. The panel is of the opinion that these retirees should be covered. There is no question but that the retirees were valued employees, and that the award covers the period during which they worked and retired. Again, the retirees' inclusion here has been taken into account in the fashioning of the entire award.

For the reasons just given, the panel awards the following retiree health insurance benefit.

AWARD

Each full-time employee employed as of March 1, 2009, or thereafter who has completed at least fifteen years of full-time service with the Village, and who retires directly into or under, or pursuant to the rules and regulations of, the New York State Police and Fire Retirement System, shall be offered a one-time election at the time of retirement to continue participation in the Village's health insurance program as a retiree. Those retirees who worked during the period of the award shall have ninety calendar days from the signature of the panel chairperson to this award to elect whether to participate in the program.

The Village shall pay an amount equivalent to sixty-five percent of the premium cost of individual coverage toward any form of coverage elected, whether it be individual, two-person (if available) or family. The retiree shall be responsible for the balance of the premium cost for the form of coverage the retiree elects. A retiree may change the form of coverage pursuant to

the rules and regulations of the health insurance program, but the obligation of the Village will remain at sixty-five percent of the premium cost of individual coverage.

Eligibility for retiree coverage through the Village will end when the retiree becomes eligible for Medicare.

Dental and optical plan coverage will be terminated upon an employee's retirement.

The above fifteen-year service requirement is waived if the employee is granted a performance of duty or accidental disability pension through the Retirement System.

 X
Concur Dissent

John F. Corcoran 12/28/11
John F. Corcoran Date
Employer Panel Member

 X
Concur Dissent

Anthony V. Solfaro 12/22/11
Anthony V. Solfaro Date
Employee Panel Member

5. COMPENSATION FOR VILLAGE PARK DETAILS

Article 10.7 of the Agreement provides that a member working an overtime detail at a Village Park special event between June 1 and September 1 receives double time.

The Village proposes eliminating the double time pay. It argues that it is the only municipality among its comparables to provide this benefit, and that employees will continue to receive regular overtime when they work beyond their four-two work schedule.

The PBA strenuously opposes doing away with double time. While the PBA acknowledges that it is not a common benefit, it maintains that it has become part of its members' overall compensation package. The PBA points out that eliminating the double time decreases the base salary increases awarded here.

Given that the award is providing a significant new benefit in terms of retiree health insurance, and that the difference between double and regular overtime, considering that it is paid for only limited hours during the summer, is minimal in terms of actual dollars earned, the panel believes that the double time should be discontinued. Since the members have already worked their overtime for the period covered by the award, however, the award will not take away pay already earned.

AWARD

Effective with the signing of the opinion and award by the panel chairperson Article 10.7

(Compensation for Village Park Details) is deleted from the Agreement.

<u>X</u>	<u> </u>	<u>John F. Corcoran</u>	<u>12/28/11</u>
Concur	Dissent	John F. Corcoran	Date
		Employer Panel Member	

<u> </u>	<u>X</u>	<u>Anthony V. Solfaro</u>	<u>12/22/11</u>
Concur	Dissent	Anthony V. Solfaro	Date
		Employee Panel Member	

6. REMAINING PBA PROPOSALS

All PBA proposals other than those addressed and awarded upon herein are denied.

<u>X</u>	<u> </u>	<u>John F. Corcoran</u>	<u>12/28/11</u>
Concur	Dissent	John F. Corcoran	Date
		Employer Panel Member	

<u> </u>	<u>X</u>	<u>Anthony V. Solfaro</u>	<u>12/22/11</u>
Concur	Dissent	Anthony V. Solfaro	Date
		Employee Panel Member	

7. REMAINING VILLAGE PROPOSALS

All Village proposals other than those addressed and awarded upon herein are denied.

<u> </u>	<u> X </u>	<u>John F. Corcoran</u>	<u>12/28/11</u>
Concur	Dissent	John F. Corcoran	Date
		Employer Panel Member	

<u> X </u>	<u> </u>	<u>Anthony V. Solfaro</u>	<u>12/22/11</u>
Concur	Dissent	Anthony V. Solfaro	Date
		Employee Panel Member	

8. RETROACTIVE PAYMENTS AND RETENTION OF JURISDICTION

All retroactive payments awarded herein shall be made as soon as practicable, but no later than sixty days following execution of the award by the chairperson. The panel chairperson retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

<u> X </u>	<u> </u>	<u>John F. Corcoran</u>	<u>12/28/11</u>
Concur	Dissent	John F. Corcoran	Date
		Employer Panel Member	

<u> </u>	<u> X </u>	<u>Anthony V. Solfaro</u>	<u>12/22/11</u>
Concur	Dissent	Anthony V. Solfaro	Date
		Employee Panel Member	

9. DURATION OF AWARD

AWARD

Pursuant to the parties' agreement and the provisions of CSL § 209.4(c)(vi) the duration of this Opinion and Award shall be March 1, 2009 through February 28, 2011.

<u> X </u>	<u> </u>	<u>John F. Corcoran</u>	<u>12/28/11</u>
Concur	Dissent	John F. Corcoran	Date
		Employer Panel Member	

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

On this 22nd day of December, 2011, before me personally came and appeared Anthony V. Solfaro, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Debra A Harris

Notary Public
DEBRA A. HARRIS
Notary Public, State of New York
No. 4972228
Resident of Orange County
Commission Expires 9/24/2014

STATE OF NEW YORK)
COUNTY OF *Onondaga*) ss.:

On this 28th day of December, 2011, before me personally came and appeared John F. Corcoran, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

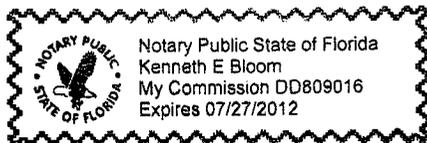
KRISTI L. SEELEY
Notary Public State of New York
No. 01SE6003849
Qualified in Onondaga County
My Commission Expires 9/24/2014

Kristi Seeley

Notary Public

~~STATE OF NEW YORK~~)
COUNTY OF *Lee*) ss.:

On this 29 day of Dec, 2011, before me personally came and appeared Louis J. Patack, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.



KEB

Notary Public

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**
-----X
In the Matter of Interest Arbitration

**PERB Case No.
IA 2008-020; M2008-172**

- between -

**BALDWINSVILLE POLICE BENEVOLENT
ASSOCIATION,**

**Concurring and
Dissenting Opinion**

Petitioner,

- and -

VILLAGE OF BALDWINSVILLE,

Employer.
-----X

As the PBA's designee to the Panel, I write separately to explain my concurrence as to the retiree health insurance benefit and my dissent as to certain terms that were awarded by the Panel majority and to certain PBA demands that were not awarded.

The award correctly recognizes that to have left these police officers without any retiree health care benefits would have been manifestly unfair and indefensible. I believe, however, that the record before this Panel warranted a retiree health insurance benefit somewhat greater than what has been awarded. Employees pay 25% of the health insurance premium during employment that is the highest paid by any police officers in the comparable market. The same contribution is required during employment for the cost of dental and vision benefits. That same percentage should have been the health insurance contribution required of employees upon retirement based upon the record facts and the statutory criteria this Panel must apply. Moreover, these officers should have been awarded a right to continue dental and vision coverage during retirement upon the same terms as health insurance. The Village's dissent upon

this issue has forced my concurrence because a majority is needed for an award upon. I would otherwise have dissented.

I have dissented to the award upon base wages and to the award upon certain economic fringe benefits because, once again, the facts and the law warranted a somewhat better determination for employees upon those issues than has been made.

~~Several of the PBA's non-economic demands (e.g., work schedule; GML §207-c disability procedure; grievance and disciplinary procedures) should have been analyzed and awarded. The record establishes an objective need for the changes to existing terms and conditions that were proposed by the PBA and the reasonableness of the PBA's demands. The increasing reluctance of interest arbitration panels to address non-economic issues is a disservice to the parties, the arbitration process and the public.~~

The Panel majority reduces the overtime pay rate for summer park details from double time (2x) to time-and-one-half (1.5x). The erosion of a longstanding benefit reduces what in my opinion is already too low a wage award and that concession cannot be justified by the grant of a modest retiree health insurance benefit. Employees should not be required to finance the benefits they have earned and deserve when those benefits have been unfairly denied them.

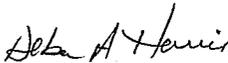
I believe for the reasons stated above, and the record before this Panel, this award should have been more comprehensive and beneficial to these police officers.

Dated: December 22, 2011



Anthony V. Solfaro
Employee Organization Panel Member

Sworn to before me, this
22nd day of December, 2011



NOTARY PUBLIC

DEBRA A. HARRIS
Notary Public, State of New York
No. 4972228
Resident of Orange County
Commission Expires 9/21/2014

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of the Compulsory Interest Arbitration between

**BALDWINSVILLE POLICE BENEVOLENT
ASSOCIATION,**

Employee Organization,

**DISSENTING
OPINION**

-and-

VILLAGE OF BALDWINSVILLE,

Public Employer.

PERB Case No.: IA2009-015; M2009

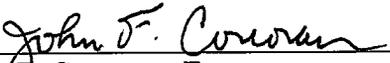
I write as the Village of Baldwinsville's Panel Member to explain briefly my dissent to the Panel majority's award of a new retiree health insurance benefit. The economy continues to struggle and this is simply not the time to award any new post-employment benefit let alone a retiree health insurance benefit which as here, and as the Village's health care actuary testified, will saddle the Village with a future liability amounting to millions of dollars. And this is at a time when the Village has lost a considerable percentage of its annual revenue by virtue of the redistribution of sales tax receipts within Onondaga County. The additional costs for retiree health insurance will no doubt burden the Village's taxpayers in future years thereby placing further strain on the Village's ability to offer police services in a cost effective manner.

In the interest of economy, I have opted to refrain from addressing at length the statements made by the PBA's Panel Member in his Concurring and Dissenting Opinion. That should not be viewed, however, as any acquiescence on my part to those points. Quite the contrary. The Panel majority's awards on the economic items are fair and reasonable, if not generous. Furthermore, the rejection of the voluminous non-economic demands of the PBA was

correct. To do otherwise would have been in derogation of the parties' bargaining history and would have in effect rewritten the parties' collective bargaining agreement – an exercise that should occur, if at all, only at the bargaining table.

Finally, nothing contained in the award, or my dissent, should be viewed as a lack of respect for the Village's police officers, the administration of the Police Department, or the parties' representatives involved with the bargaining process. However, when everyone is being called upon to make personal and financial sacrifices as we cope with these times of economic distress, moderation must be the byword when it comes to the interest arbitration process.

Dated: December 28, 2011



John F. Corcoran, Esq.
Employer Panel Member