

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
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In the Matter of the Interest Arbitration

-between-

SHELTER ISLAND POLICE BENEVOLENT
ASSOCIATION, INC.

“Petitioner or PBA”

-and-

TOWN OF SHELTER ISLAND

“Respondent or Town”

X-----X

BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
TERRENCE LEGRADY, PETITIONER MEMBER
RICHARD K. ZUCKERMAN, RESPONDENT MEMBER

APPEARANCES:

FOR THE PETITIONER:

O’ROURKE & HANSEN, PLLC by JAMES O’ROURKE, ESQ.

FOR THE RESPONDENT:

LAMB & BARNOSKY, LLP by MICHAEL KRAUTHAMER
& CHUMI DIAMOND, ESQS.

BACKGROUND

The parties are signatories to the collective bargaining agreement between the Town of Shelter Island (Respondent) and the Shelter Island Police Benevolent Association (Petitioner or PBA) that expired on December 31, 2008. Negotiations for a successor agreement commenced and proved to be unsuccessful. Accordingly, a Joint Declaration of Impasse was filed with New York State Public Employment Relations Board (PERB).

Compulsory Interest Arbitration

PERB Case No. IA. 2009-022
M 208-319

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

The dispute was submitted to mediation. PERB appointed Philip Maier, Esq., as the mediator. Mediation sessions were held on June 23 and July 30, 2009. Despite the mediator's best efforts, the mediation failed to resolve the matter.

Consequently, and pursuant to §209.4 of the New York State Civil Service Law (*The Taylor Law*), Interest Arbitration procedures were invoked. In that connection, on October 1, 2009 the parties jointly filed a Petition for Compulsory Interest Arbitration with PERB.

On November 24, 2009, PERB designated me to serve as the neutral Chair of the Panel. The PBA selected Terrence Legrady to serve as the Petitioner's Panelist and the Town chose Richard K. Zuckerman, Esq. to serve as the Respondent's Panelist. The arbitration panel was established to hear and finally decide all relevant issues

Hearings on this matter were held on August 9 and November 11, 2010. The parties were directed to submit rebuttal documents on or about December 17, 2010. The parties were represented by counsel and had a full and fair opportunity to present testimonial and documentary evidence in support of their respective positions.

The parties agreed to submit post-hearing briefs by February 15, 2010. I received the briefs in a timely manner. The Panel met in executive session on August 9, 2011.

THE UNRESOLVED PROPOSALS

The following is a listing of each party's unresolved proposals:

SIPBA

1. **Wages:**

Increase salary by 10.4% in 2009 and 10% in 2010.

2. Longevity:

Add 1 % to each step

3. Night Differential:

Increase from \$4,050 to \$5,040

4. Sick Leaves and Retirement Payout:

Increase days to be paid upon retirement from 115 to 200

5. Unused Sick Leave Payout:

Increase unused days payments after 200 days from 15% to 50% on any earned but not used sick days each year.

6. Duty Chart:

Reduce from 232 to 228 days

7. Administrative Leave Bank:

Create a bank of 25 days per year for use of PBA for negotiation, PBA business, PBA events. (Funeral services, Memorial services, award ceremony, etc.)

8. Vacation Days:

1 year increase to 7 days, 2-5 years increase to 10 days, 6-9 years increase to 20 days and 10 + years increase to 26 days

9. Personal Days:

Increase from 4 to 5

10. Cleaning Allowance:

Increase from \$250 to \$450

11. Uniform Allowance:

Increase to \$900

12. Dental/Optical Plan:

Establish \$2,000 per month per year for Dental/Optical Plan

13. Detective Stipend:

\$6,000.00 for Detective

14. "Pay Back" days for Training Only:

Change from discretion of Chief

15. Phone Allowances:

Increase to \$700.00 from \$120.00

16. Vacation Sell Back Days:

Increase from 5 days to 10 days

17. Premium Pay:

Additional \$1,000 for special assignments as listed

18. Life Insurance:

Provide Life Insurance face amount \$300,000 for each unit member

19. Funeral Allowances:

Increase Allowance from \$5,000 to \$10,000

20. Sick Leave:

Increase from 22 days to 30 days per year

21. Tour Changes:

Time and half for all Tour Changes

22. Holiday Pay:

Time and half for holidays actually worked

23. Personnel Files:

Negative reports removed after one year

24. Sergeant Compensation:

Increase to 14% above top P.O. Pay

25. Sergeant On Call Pay:

For every 8 hours on call, 2 hours pay

26. Sergeant Longevity:

The unit requests an increase of 1% for each step 1-7 of Police Officer's Longevity Steps.

27. Sergeant Seniority:

Determine first by rank, second by continuous service in rank, third by the date of appointment to the department

28. Sergeant Tour Change Pay:

Time and half for Tour Change

29. Sergeant Deferred Compensation:

Town to make payment up to \$5,000.00 in matching funds to deferred compensation account.

TOWN OF SHELTER ISLAND

1. Article II, Section 4 (Night Differential). Revise to provide that night differential shall be prorated and paid only for hours actually worked between 6 p.m. and 6 a.m.

2. Article II, Section 5 (Overtime). Revise to read that, "Notwithstanding any inconsistent provision or practice to the contrary, employees shall be entitled to overtime as follows: at time and one half for all hours worked after actually working the maximum number of hours covered by the applicable FLSA Section 207(k) work cycle as designated by the Town."

3. Article III, Section 1(A) (Work Chart). For current employees, change 232 to 238 and provide for the 10 tours of duty per year to be outside of the new 238 day chart. All new hires will work a 261 day chart. Also, revise to provide that the Chief shall have the discretion to amend the Chart(s) following notice to the PBA.

4. Article III, Section 2 (Sick Leave). Replace "22" with so-called unlimited sick leave modeled upon the Suffolk County Sheriff's Office's Rules and eliminate payouts for future unused sick leave upon implementation of this change.

5. Article IV, Section 5 (Health Insurance). Revise to provide for a 15% employee/prospective retiree premium contribution.

6. Article IV, Section 5 (Health Insurance). Add: "If two persons are currently receiving (or are eligible to receive) family health coverage benefits through the Town, only one will be permitted to continue to receive family level coverage. In this event, the person whose coverage changes from family to individual coverage will not be entitled to the health insurance buyout. Should that person choose to decline to receive individual coverage, then that person will be eligible for the buyout of the individual coverage."

7. Article V, Section 1 (Management Rights). Add: "The Town shall have, in addition to its current rights based upon existing practice, the additional discretion to utilize non-bargaining unit police and peace officers to supplement the work performed by bargaining unit members."

8. Article VI, Section 3 (Bill of Rights). Delete (illegal).

9. General Municipal Law Section 207-c Procedure (NEW). The attached procedure shall be implemented upon the complete ratification and approval of the new Agreement.

10. Article II, Section 1(A) (Compensation): Effective January 1, 2009 and January 1, 2010, steps 1-5 on the salary schedule shall be increased by 2%.

POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

The PBA argued as follows:

Its proposals are just and reasonable and should be granted in their entirety. The County's proposals are neither just nor reasonable and should be denied in their entirety.

New York State Civil Service Law §209(4) (C) (v) establishes the criteria to be considered in compulsory interest arbitration proceedings. A review of these standards will lead

the Panel to conclude that the PBA's proposals should be granted in their entirety. The Town's proposals are unreasonable and should therefore be denied.

Relevant case law supports its position. The Court of Appeals, in *City of Buffalo v. Rinaldo*, 41 N.Y.2d 764, 396 N.Y.S.2d 152 (1977), stated that all of the statutory criteria must be considered and that *the ability to pay* is only one of the criteria and is not dispositive.

The *Buffalo* Court concluded that the fiscal condition of the City of Buffalo must be *weighted against the services performed by a police officer* and that the police officers should *not bear the full burden of the City's fiscal problems*. The opinion of the Court in terms of the Town's denial of all of the PBA proposals is significant in this case.

These directives from the Court are significant in the instant matter where it appears that the Town's argument for denying all PBA proposals, as well as support for its own proposals, is predicated predominantly upon cost and the current fiscal climate. However, the Town is not experiencing the problems affecting the City of Buffalo as described in the cited decision. The Town is simply unwilling to fairly compensate its police officers. This Panel has the jurisdiction and authority to award the reasonable increases sought by the PBA.

Section 209(4)(C)(v) of the Civil Service Law, subdivision (a), directs the panel to compare wages, hours and conditions of employment of the members of the PBA to two groups of employees: 1) employees who perform similar work; and 2) employees generally in public and private employment in comparable communities.

There are no public or private sector employees, outside of law enforcement, whose work compares to the work performed by PBA bargaining unit members. However, the wages, hours and conditions of employment of the law enforcement units in the nine East End of Suffolk

County municipalities are comparable. In this regard, there are numerous interest arbitration awards involving various East End jurisdictions that stand for this premise.

The PBA exhibits clearly show that its salary schedule is less than the other police units and that the gap is increasing with the passage of time. Its proposals are not designed to move it into first place. It simply seeks to address the growing disparity.

The interest and welfare of the public is greatly impacted by this proceeding in two distinct ways. First, a fair wage and benefit package fosters high morale of PBA members, which in turn maintains the extraordinarily high quality of service residents of Shelter Island have come to expect. Second, it permits the Town to continue to recruit the cream of the crop in law enforcement. This provides the County with a distinct opportunity to select the best, most experienced and highly skilled police officers. Therefore, the interests and welfare of the public are best served by a just and reasonable increase in wages and benefits.

The Panel must first determine whether the Town has the ability to pay for the PBA's proposed just and reasonable increases in wages and benefits. Kevin Decker, the PBA's expert in municipal budget analysis, reviewed the Town's finances and the PBA's proposals and concluded that the Town has the ability to pay for the PBA proposals.

The Town's presentation was limited to numerous news articles that described the national and regional economy. It did not produce an economist to interpret local data. The panel should rely on Kevin Decker's assessment rather than the news articles submitted by the Town.

Section 209(4)(C)(v) of the Civil Service Law, subdivision (c), directs the panel to compare the peculiarities of law enforcement with other trades or professions, including the (1)

hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

There are no public or private employees, outside of law enforcement, who perform similar work to the members of the PBA. Therefore, it is not feasible to compare the peculiarities of other employment with their work. Law enforcement has its own unique hazards, physical, mental and educational requirements and job training and skills. In addition, PBA members face health risks, including the potential of exposure to hepatitis, TB and other diseases when coming in close contact with suspects and prisoners.

PBA representative James Cronin pointed out that there may be only one police officer assigned per patrol. The unavailability of back up creates a realistic potential danger.

Finally, the job training and skills of PBA members are significant and admirable. Shelter Island employs one of the most qualified departments on the East End.

There are simply no other jobs or professions with comparable hazards; physical, educational and mental qualifications; and job training and skills. The Town appears to be in agreement with this conclusion having offered no contradictory argument or evidence nor any attempt to use other trades or professions as part of a comparability analysis. The Panel should find that no other trade or profession is comparable to law enforcement.

Based on the evidence and testimony, the PBA's 28 just and reasonable proposals should be granted in their entirety. Additionally, the Town's 10 proposals are unreasonable and inequitable. Therefore, the Town's proposals should be denied.

CONTENTIONS OF THE TOWN

The Town argued as follows:

The Town is facing unprecedented economic conditions. Its ability to pay is being driven by forces outside of its control; e.g., frozen credit markets, low interest rates on investments, a shattered housing market, flat retail sales (JX16). To counter these forces, the Town has taken substantive steps, such as maintaining control over expenditures, utilizing reserve fund monies and forgoing vital yet discretionary projects and grants that required matching Town funds in an effort to maintain stability for its taxpayers. The PBA demands, if granted, will destroy the Town's ability to survive the current economic crisis.

The Town's expenses have escalated at record-setting pace due to increases in the cost of health insurance, payroll taxes and pension/retirement costs. Continued escalation of these expenses will result in catastrophic consequences.

It has become the norm in labor relations to recognize that the norm is unsustainable and that life, as all have known it, must change. This trend is evident in recent interest arbitration awards as well as in current memoranda of agreement involving East End towns that provided for greater savings and less onerous wage and benefits improvements.

A new PBA contract must be awarded on Shelter Island. The Town's financial health over the next few years will be shaped by its contents.

Civil Service Law § 209 recognizes the fundamental differences between public sector and private sector employees. The Supreme Court of the United States has also recognized that private employers and public employers are uniquely different.

As this Panel is well aware, public employers have limited resources with which to provide services. It is self-evident that the residents of Shelter Island, much like residents throughout the country, require the services of their police officers. It is equally self-evident that these services do not come for free.

It is within this context that the Civil Service Law requires that this Panel's decision be based upon the statute's well established criteria, "in addition to any other relevant factors."

The two most significant issues in this case concern the Town's ability to pay for the PBA's demands and comparability. It is the Town's position that the increases sought by the PBA are not only excessive relative to unit members' already generous wage and benefit package, but are completely out of touch with the Town's ability to pay.

The Town should not be required to pay for the increases sought by the SIPBA. In the light of current economic conditions, parties in public sector labor relations have finally recognized the employers' lack of ability to pay for excessive demands.

The days of rich interest arbitration awards are over. The focus must be on savings. The Panel should focus on the taxpayers who are losing their jobs and their homes in record numbers and not on the average police officer who earns \$146,506 per year. The panel must reject the PBA demands. They are, at best, unreasonable and, at worst, indefensible.

The panel's award must consider the Town's limited ability to pay for the PBA's demands. The Town's budget cannot accommodate the increase in expenditures sought by the PBA.

Nearly all of the Town's revenue is derived from homeowners. The Town has a fixed elderly population and a lack of economic development. Almost 30% of the Town's residents are 65 or older. There is almost no industrial or commercial tax base in the Town.

99.4% of the Town's tax base is residential. Thus, there is a direct correlation between tax increases and increases in homeowner taxes. There is no way that the Town can fund the PBA demands without adversely affecting the lives of people living on limited incomes.

The Town has received certain funds from the State and the County. These funds decreased by almost 50% between 2008 and 2009.

The Town projects unparalleled decreases in revenue and increases in expenses. The decreases in revenue cannot be ignored and have dramatically impacted the Town's financial health and its ability to find increases in the funds paid to its workforce.

The increases in expenses have been unprecedented. Two such increases have been in the area of the MTA Tax and pension costs. In the light of these increases, it is patently unfair for the PBA to argue that it is entitled to more money from the Town.

Civil Service Law § 209(4) (c) (v) (a) states, in relevant part, that the Panel's decision shall be based upon:

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 work conditions and with other employees generally in public and private employment in comparable communities (JX1).

In this proceeding, there is one pattern which the Panel must consider: the comparison of the Town with other East End towns, i.e. Southold, Riverhead, Southampton and East Hampton. In this regard, it cites Arbitrators Lang and Aiges.

The PBA argues that the East end villages are most comparable, i.e. Sag Harbor, Westhampton Beach, Quogue and East Hampton. There is little or no support for this argument.

The PBA argument is flawed. The Panel should reaffirm that the East End towns are the greatest comparators to Shelter Island.

The Town recognizes the remarkable work done by its police officers. However; they are already more than adequately compensated.

The PBA demand of an annual 11% wage increase is not even in the realm of the *going rate* of wage increases in comparable jurisdictions. This demand cannot be justified based on increases in the cost of living. The cost of the PBA wage demand is \$181,737. This cost cannot be justified in any economic climate. It is unwarranted and should be denied.

The remaining PBA demands are unjustified and excessive. The PBA produced no evidence to justify its demands.

The PBA enjoys the shortest work chart of any of the East End towns and villages. Further, Shelter Island is unique in that the average work day of police officers is quiet. There is little serious crime and, in 2008 and 2009, no violent crime.

The average number of arrests per police officer in 2009 was 10. There is no evidence of the traditional justifications for increasing compensation. There has been no increase in workload, heightened safety considerations or inability to retain a police force.

The total cost of the PBA proposals, if granted, would be \$755,081, or a 102.69% wage increase. These demands are patently unreasonable and should be rejected in their entirety.

By contrast, the Town's proposals are more rational. They will improve productivity and efficiency.

The Town proposed wage increases of 2% in each of the years of this award. Such increases are consistent with the Town's ability to pay as well as with increases in the cost of living.

As to the rest of the Town's proposals, they are all reasonable and just. They should be awarded in their entirety.

OPINION

§209 of the New York State Civil Service Law (*Taylor Law*) sets forth the parameters which an Interest Arbitrator must utilize in deciding terms and conditions of employment. These criteria are as follows:

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

With these criteria in mind, I turn to the specific issues before me. The first such matter is the initial criterion.

The parties differed relative to the appropriate comparators. The PBA argued that the East End Villages and Towns (Villages of Sag Harbor, Westhampton Beach, Southampton, Quogue and East Hampton and Towns of Southold, Southampton, Riverhead and East Hampton) are the best comparators to Shelter Island. The Town, for its part, asserted that only the East End Towns are, for purposes of this proceeding, most comparable.

There are a significant number of interest arbitration decisions which bear on this standard. As far back as the 1995-96 interest arbitration concerning these parties written by Arbitrator Lang, the comparable jurisdictions have been the East End Towns. Moreover, a subsequent interest arbitration award written by Arbitration Aiges relied on the Lang panel award in reaching the same conclusion.

I add that the PBA cited interest arbitration awards written by Arbitrators Sands, Marx and Doner in which the East End Towns and Villages were referenced. However, those awards were issued in connection with East End jurisdictions other than the Town of Shelter Island.

I conclude that interest arbitration awards written specifically in connection with proceedings involving these parties are more persuasive than ones involving other jurisdictions. Therefore, the best comparators to Shelter Island are the East End Towns.

Criterion (b) concerns the interests and welfare of the public and the financial ability of the public employer to pay for the costs associated with increases in wages and improvements in benefits. I will first address the interests and welfare of the public.

It is unquestioned that the needs of the public are met by a well paid and well maintained police force that operates safely and efficiently. It is also clear that good morale within these units is essential. Positive morale results in higher productivity and a flow of high quality candidates for the positions available.

The issue of the Town's ability to pay requires a different kind of analysis. I must first acknowledge the quality of the presentations made by the representatives of the SIPBA and the Town.

Kevin Decker, the PBA's expert on municipal cost analysis, concluded that the Town had the ability to pay for the PBA proposals that he was able to cost out. He based his conclusions on the growing real property tax base, moderate increases in real property tax levies, healthy balances in the Town's general fund and an ability to generate a favorable budget variance by collecting more revenue and spending less than originally budgeted.

The Town did not produce an economist in support of its economic position. It merely produced a series of articles and the statement of its supervisor. The PBA opined that the panel should rely on the presentation of Kevin Decker.

The Town painted a very different picture of its fiscal health. It stressed that the Town has an elderly population and a lack of economic development. It noted that 99% of the property tax base is residential and that there is direct correlation between tax increases and homeowner tax increases.

It pointed to a significant decrease in revenues derived from the State and Suffolk County. It added that there is no commercial or industrial tax base in the Town. Thus, any tax increases are borne by the people who can least afford them.

The Town projects decreases in revenue and increases in expenses. For example, mortgage tax revenue is down and the combination of the MTA Tax and increases in pension and health care costs are up.

Having thoroughly reviewed the arguments and data concerning the Town's ability to pay for the SIPBA proposals, I conclude that the Town is unable to meet the SIPBA demands. I credit the Town's arguments about its economic conditions. I am persuaded that the Town is facing a serious fiscal crisis at this time. I am further convinced that there have been no significant economic improvements since and there are no firm indicators at this time that suggest that the myriad of financial problems and unemployment rates will be resolved anytime soon. Unemployment remains unacceptably high, the numbers of elderly homeowners living on, at best, fixed incomes and depressed tax revenues are insufficient to pay for the kinds of increases in wages and other benefits demanded by the SIPBA.

However, the ability to pay is not measured in absolute terms. In short, it is not necessarily true that the inability to pay for the PBA proposals connotes that the Town is unable to fund more modest improvements in wages and benefits.

Despite the severity of the economic recession, I am persuaded that the Town does have the ability to pay for smaller increases in salaries and benefits. I recognize the seriousness and the scope of the economic downturn that has transpired since the fall of 2008. That being said, I conclude that the Town has the ability to pay for reasonable improvements in the wages and benefits of SIPBA members.

Criterion (c) is based upon a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically

hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. It is clear that police personnel are faced with serious and unique hazards. Law enforcement personnel, in general, and, in this case, police officers, risk death and serious injuries regularly. There is a strong similarity between police officers and other law enforcement units relative to the specific considerations in this criterion. Law enforcement is unique and those employed in this field can only be compared with others in that field.

The final statutory criterion, statutory criterion (d), requires a consideration of past collective bargaining agreements between the parties with respect to compensation and fringe benefits. This criterion mandates that the instant proceeding not be viewed in a vacuum, but rather in the context of prior negotiations and awards between the SIPBA and the Town. The record is replete with prior interest arbitration awards. These awards were given appropriate consideration.

Having discussed the relevant statutory criteria, I now turn to the parties' specific proposals.

TERM OF THE AWARD

Absent an agreement of the parties, the panel is limited to issuing a two year award. There is no such agreement in this case. Thus, this award is a two year award that covers the period January 1, 2009-December 31, 2010.

WAGES- PBA PROPOSAL 1, TOWN PROPOSAL 10

The parties had significant differences over the matter of salary increases. The SIPBA proposed wage increases of 10.4% in the first year of this award and 10% in the second year. It

posited that the Town could pay for such increases without raising taxes or, if necessary, by raising fees, fines or taxes in a proportionate way.

The PBA noted that its wage scale is about 20% below the highest wage scale on the East End. It added that 4.25% increases in both years of the award would still leave the PBA about \$5800 below the average on the East End.

The Town indicated that the increases demanded are not within the realm of the *going rate* of wage increases in comparable jurisdictions. It proposed increases of 2% for Steps 1-5 of the salary schedule in each year of this award.

While I recognize the high regard in which the Town's police force is held and the relative position of the Shelter Island wage schedule in comparison to that of comparable jurisdictions, the Town's inability to pay for the demanded wage increases must trump the PBA's arguments. 10-11% annual wage increases would be difficult to contemplate in good times and cannot be considered or justified at this time.

However, I am persuaded that the Town has the ability to pay for annual wage increases that are in excess of 2%. In the context of a complete award, I conclude that the Town has the ability to pay for a 3% increase on January 1, 2009 and a 3% increase on January 1, 2010.

The cost of such an increase may be calculated based on the *1% number* as of December 31, 2008, the last day of the predecessor agreement. The *1% number* is 1% of the base salary. In this case, the 1% number is \$7,353.

The uncompounded cost of two 3% increases is \$22,059 per year or \$44,059. However, the compounded cost is clearly more than \$44,059. Thus, the 3% annual increases are fair and

reasonable and are effective as of January 1, 2009. See Appendix A for a chart setting for the wage scale as January 1, 2009 and January 1, 2010.

I have not discussed offsetting concessions that will help to fund these increases. That discussion will be reflected in the analysis of the Town's proposals.

LONGEVITY PAYMENTS- PBA PROPOSAL 2

The thrust of the SIPBA proposal was to add 1% to each of the current longevity payments. Currently, PBA members get a 3% longevity payment for the 8th, 9th and 10th years of service, 4% for the 11th, 12th and 13th years of service, 5% for the 14th, 15th and 16th years of service and 6% for the 17th year of service and every year thereafter.

The Town rejected this proposal as being too expensive. It calculated the cost of this proposal as being \$11,272 or the equivalent of a 1.53% wage increase.

When longevity payments are a percentage of salary, as is the case here, the longevity payments increase simply by virtue of increases in wages. Thus, the longevity payments will increase as result of two 3% wage increases.

However, the longevity payments received by the SIPBA rank at or near the bottom of the list of comparable jurisdictions. In order to narrow the gap somewhat, I award the PBA a ½ % increase in the steps of the extant longevity payments. This increase is the equivalent of .75% of the 1% number used for calculating a wage increase and is effective as of December 31, 2010. See Appendix B for a chart setting forth the schedule of longevity payments as of December 31, 2010. As was true of the wage increases, there will be offsetting concessions required of the PBA.

NIGHT DIFFERENTIAL- PBA PROPOSAL 3, TOWN PROPOSAL 1

The PBA sought a \$990 increase in night differential money. It demanded an increase from \$4050 to \$5040. It based its demand on the disruptive effect on the health and family life of officers working nights.

The Town argues that all PBA unit members receive night differential regardless of when they work, and that the current payment is similar to that given in the comparable jurisdictions. The PBA noted that the Town did not consider the East End Villages in this regard.

Two comments are required. First, I have previously indicated that the comparators to Shelter Island are the East End Towns, not the Villages. Therefore, the Town's omission of any discussion of the villages was appropriate.

Second, the increase sought by the PBA is about 20%. That is an extremely ambitious goal at this time. An increase of the magnitude sought by the PBA would be the equivalent of more than a 2% wage increase.

The combination of the comparison with the other East End Towns and the amount of the increase sought must result in the denial of this proposal.

For its part, while urging the rejection of the PBA proposal, the Town sought to have the night differential prorated such that employees would be paid only for hours worked between 6pm and 6am. The PBA asserted that it would be difficult to manage the granting of this Town's proposal in combination with those on tour changes and payback days.

I conclude that the Town's proposal regarding night differential should be denied.

**SICK LEAVE AND RETIREMENT PAYOUT- PBA PROPOSAL 4,
TOWN PROPOSAL 4**

The PBA proposed an increase in the payout for unused sick leave at retirement from 115 days to 200 days. It noted that the other East End departments have a greater benefit in this area.

The Town objected to this proposal on the grounds that it creates a greater liability in the future. It observed that the current cost of this proposal is \$35,381. It added that this cost would increase over time as wage increases come into play.

I cannot award this benefit at a time of great economic uncertainty. The cost of deferred benefits is coming under closer scrutiny at a time when public entities are experiencing greater and greater financial problems. Is it possible that at some point in the future this kind of proposal might be considered? Maybe. However, it is not viable in the current climate. Thus, this proposal is denied.

By contrast to the PBA proposal, the Town proposed the replacement of current sick leave regulations with unlimited sick leave and the elimination of payouts for unused sick leave. While there may be certain savings that would be accrued from the elimination of payouts for unused sick leave and a rational basis for the Town's proposal, there is limited evidence that comparable police departments have adopted procedures similar to those set forth in the Town's proposal. Therefore, Town proposal 4 is denied.

UNUSED SICK LEAVE PAY- PBA PROPOSAL 5, TOWN PROPOSAL 4

The PBA proposed an increase in the sick leave bonus for unused sick leave in excess of 200 days from 15% to 50%. It posited that this would cut down on overtime costs.

The Town pointed out the PBA already receives more of a benefit in this connection than do its comparators. It added that the cost of this proposal based on the current wage scale would be the equivalent of a 1.26% increase in wages.

It is impossible to justify granting such a proposal when the cost is high and the need is dubious. Therefore, this proposal is denied.

Town Proposal 4 concerned payouts for unused sick leave. This proposal was addressed in the section devoted to PBA Proposal 4.

DUTY CHART- PBA PROPOSAL 6, TOWN PROPOSAL 3

The PBA proposed a reduction of the number of chart days from 232 to 228. It explained that this would compensate to some extent for the difference in wages between Shelter Island and other East End jurisdictions.

The Shelter Island police force is comprised of eight officers. Reducing the number of chart days will inevitably lead to administrative and staffing problems. Moreover, it is clear that the current chart reflects the fewest number of work days per year of all of the East End departments.

The cost of this proposal is unjustified. Further the consequences of awarding this proposal go far beyond the economic costs. Thus, this proposal is denied.

The Town proposed significant changes to the *Work Chart* such that current employees and new hires would work more than 232 days. The PBA urged the denial of this proposal based on a lack of equitable compensation for new hires and as being adverse to efforts to recruit and retain police officers.

A review of the record does not convince me that this is the right time to change the *status quo* with regard to the duty chart. Thus, this proposal must be denied.

CREATE AN ADMINISTRATIVE LEAVE BANK- PBA PROPOSAL 7

The PBA proposed the establishment of a 25 day administrative leave bank. It indicated that the days would be used for negotiations, PBA business and events such as funerals, memorial services and awards ceremonies.

The Town noted that a 25 day bank breaks down to 3 ½ days per member per year. It suggested that it is inconceivable that such a bank is needed. It noted that larger bargaining units within the Town have no administrative leave bank.

The Town pointed out that the awarding of a 25 day bank will lead to the replacement of those using those days with others on overtime. It calculated the two year cost of such a benefit as almost \$32,000 or 4.3% (at current wage rates).

This proposal requires a significant allocation of funds at a time of lean budgets due to intractable economic difficulties. Such an expenditure is difficult to justify at this time. Thus, this proposal must be denied.

INCREASING VACATION DAYS- PBA PROPOSAL 8

The PBA proposed increases in the number of vacation days. It stressed that the proposed increases are justified. The Town objected on the grounds that the increases would result in PBA members with 10 years of service having more vacation days than their counterparts of other towns. It also noted the financial impact as well as the time lost in a police department that already has the lowest work chart.

There is little evidence to suggest a need for additional vacation days. The cost of the increase is high, the impact of such an increase is significant and the current benefit is comparable to other police departments that are significantly larger. Therefore, this proposal is denied.

INCREASING THE NUMBER OF PERSONAL DAYS- PBA PROPOSAL 9

The PBA proposed increasing the number of personal days from four to five. It opined that this increase is reasonable.

The Town argued that this increase is not justified. It articulated many of the same arguments made in connection with the proposed increase in the number of vacation days.

There is nothing in the record to suggest the need for such an increase. The scheduling and budgetary impacts outweigh the need for the awarding this proposal. Thus, this proposal is denied.

INCREASING CLEANING AND UNIFORM ALLOWANCE- PBA PROPOSALS 10 & 11

The PBA proposed increasing the uniform cleaning allowance from \$250 to \$450 per year and the uniform allowance from \$650 to \$900 per year. It posited that other police departments have higher allowances in these areas than does the SIPBA.

The Town urged the rejection of these proposals. It argued that there is no justification for these increases.

I take arbitral notice that there have been modest increases in the cost of living in the past several years. Thus, it is appropriate to award increases in these areas. However, the increases proposed by the PBA are excessive. Therefore, I award a \$25 increase in the uniform cleaning

allowance per year (a 10% increase) and a \$25 annual increase in the uniform allowance (a 4% increase). These increases become effective on December 31, 2010.

ESTABLISH A DENTAL/OPTICAL PLAN- PBA PROPOSAL 12

The PBA asserted that it is the only police force on the East End without such a plan. It proposed the creation of such a plan.

The Town noted that the cost of this proposal would be the equivalent of a 4.35% wage increase for a two year award. It observed that the Town cannot afford such a proposal.

As is frequently the case, there are merits to both sides of this matter. However, at a time when the cost of providing non-contributory health insurance to public sector employees by public sector employers is a significant issue, adding to the Town's liability in the health care area is inconsistent with the general economic climate and the Town's current inability to pay for such a benefit. Therefore, this proposal is denied.

DETECTIVE STIPEND- PBA PROPOSAL 13

The PBA proposed a \$6000 stipend for detectives. It asserted that the Town should appoint a detective at an increased stipend of \$6,000. It noted that this detective would assist the lone Detective/Sergeant to deal with a backlog of cases.

The Town observed that there is no evidence showing the need for a detective. It noted the absence of violent crime in 2008 and 2009 and far fewer property crimes than in other jurisdictions.

The PBA produced no data relative to the presence of crime on Shelter Island that would justify such an increase in expense. Thus, this proposal is denied.

PAY BACK DAYS FOR TRAINING ONLY- PBA PROPOSAL 14

The PBA proposed the use of *pay back* days only for training purposes. It observed that currently these days are used in order to avoid paying for overtime.

The Town opposed this proposal lacking evidentiary support for its need. It argued that the use of these days should remain within the discretion of the Town.

The PBA did not provide evidence to show the need for the proposed change. It appears that this proposal is related to the PBA's proposal to reduce the number of chart days from 232 to 228.

232 chart days is the smallest number of such days among all police departments with which I am familiar. Under the circumstances there is no basis to reduce the number of chart days either by a direct reduction or an indirect one as reflected by this proposal. I find no basis for concluding that there has been an abuse of discretion by the Chief in the use of *pay back* days. Therefore, this proposal is denied.

PHONE ALLOWANCE- PBA PROPOSAL 15

The PBA proposed an increase in the cell phone allowance from \$120 per annum to \$700. It claimed that \$700 does not cover the cell phone cost of officers.

The Town suggested that the PBA provided no evidence to show a need for the proposed increase. It posited that the proposal should be rejected.

The PBA proposed more than a quadrupling of the phone allowance. It produced no evidence to show an increase in rates charged for cell phones. Nor did it demonstrate an increase in the official use of cell phones by police officers.

In the absence of such evidence, I cannot conclude that the current allowance is inadequate. Therefore this proposal must be denied.

VACATION SELL BACK DAYS- PBA PROPOSAL 16

The PBA proposed an increase in *vacation sell back* days from five to ten days. It stressed that the Town would benefit from this proposal since it would reduce the amount of overtime paid to replace officers on vacation days.

The Town proposed the rejection of this proposal. It claimed that the cost of this proposal would be too great.

I find little in the record that suggests that five *vacation sell back* days are insufficient. Put another way, there is little evidence to show the need for the granting of this proposal. Thus, this proposal is denied.

PREMIUM PAY FOR SPECIAL ASSIGNMENTS- PBA PROPSAL 17

The PBA proposed an additional \$1,000 for special assignments. It posited that these assignments require additional training and expertise. It concluded that the proposed increase is justified.

The Town asserted that it is not clear what constitutes a *special assignment* and the need for same. It observed that such an increase in cost to the Town is unacceptable.

This proposal is too vague for it to be awarded. The alluded to *special assignments* are not identified. That being said, it is not evident if such assignments are needed or advisable. The PBA would have to provide greater detail for this proposal to be given serious consideration. In short, this proposal is denied.

LIFE INSURANCE- PBA PROPOSAL 18

The PBA proposed that the Town provide a \$300,000 life insurance policy for each police officer. It noted that law enforcement is a dangerous profession and that such a benefit is justified. It observed that other East End Villages and Towns provide this benefit.

The Town responded by indicating that no police officer has ever lost his life in the line of duty on Shelter Island. It stated that this fact reflects the nature of the job of police officers on Shelter Island. It added that the cost of this proposal would be \$40,000 per year, the equivalent of an almost 11% increase in wages.

When balancing cost against need, this proposal is prohibitively expensive. There is little evidence to suggest that current death benefits are inadequate. This proposal is denied.

FUNERAL ALLOWANCE- PBA PROPOSAL 19

The PBA proposed a doubling of this benefit, from \$5,000 to \$10,000. It maintained that funerals have become more expensive and that the increase is justified.

The Town argued that this benefit is not provided in any other jurisdiction and that the existing \$5,000 benefit is appropriate and that no evidence was provided to support this proposed increase.

It is un rebutted that the \$5,000 benefit is unique among police departments. That, in combination with a lack of evidence to suggest that the existing benefit is inadequate, must lead to a denial of the proposal.

SICK LEAVE- PBA PROPOSAL 20

The PBA proposed an increase in sick leave days from 22 to 30. It posited that 22 sick leave days are quickly used up in the event of a serious injury.

The Town indicated that 22 sick leave days is in line with comparable jurisdictions. It noted that the increase is unjustified and would be excessively costly.

The PBA asserted that 22 sick leave days are quickly exhausted in the event of injuries. However, injuries in the performance of duties are subject to coverage under GML §207-c. In the presence of this statute, there has been no showing that 22 sick leave days are not sufficient.

This proposal is denied.

TOUR CHANGES- PBA PROPOSAL 21

The PBA proposed *hazardous duty* pay when tour changes are made. It argued that tour changes create havoc relative to the health and home life of officers. It added that the current system is simply a means to avoid paying overtime.

The Town averred that there is no evidence supporting this demand. It calculated the cost of this demand as being the equivalent of a 2.83% wage increase.

I find no basis to conclude that tour changes should be equated with hazardous duty. As to the effect on the health and home life of the officers, I remain unpersuaded of the merits of this argument. Therefore, this proposal is denied.

HOLIDAY PAY- PBA PROPOSAL 22

The PBA proposed that officers be paid time and one-half for holidays actually worked. The Town posited that there is no evidence to support this proposal. It added that the cost of this proposal would be the equivalent of a 2.9% wage increase.

I have no way of evaluating the cost of this proposal. The PBA offered no data as to the number of officers assigned to work on each of the holidays listed in the CBA. The cost of this

proposal would be a 50% increase over the straight time payroll for each of the holidays. In the absence of the relevant data, I must deny this proposal.

PERSONNEL FILES- PBA PROPOSAL 23

The PBA proposed that negative letters be removed from personnel files after one year. It stressed that retaining such letters in personnel files is unnecessary in a small department.

The Town urged the denial of this proposal on the grounds that there was no evidence showing the need for it. It also pointed out that there is no such hard and fast rule in comparable towns.

The PBA did not produce any evidence to suggest that the current approach is burdensome or unfair. Moreover, one year is a shorter time frame than is set forth as the statute of limitations in Civil Service Law §75. There is no indication that there is a problem in the manner in which the Town disciplines police officers. That being said, I conclude that this is a proposal in search of a problem requiring a remedy. Thus, this proposal is denied.

PROPOSALS RELATED TO THE COMPENSATION OF SERGEANTS- PBA PROPOSALS 24-26, 28, 29

In this group of proposals the PBA asserted that the current stipend paid to sergeants is inadequate. It posited that there needs to be an increase in the longevity payments made to sergeants. It stressed that sergeants should be paid for two hours for every eight hours of being *on call*. It proposed that sergeants be paid time and one-half for four changes and requested that the Town make payments of up to \$5,000 in matching funds to a deferred compensation fund for sergeants.

The Town objected to all of these proposals. It insisted that they reflect costs that are beyond its financial means.

With respect to Proposal 24, sergeants currently receive a stipend of \$8,500. In very small police departments, sergeants assume an extraordinary number of duties that are needed for the department to operate effectively and efficiently. I also note that the stipend received by Shelter Island sergeants is lower than their counterparts in other East End towns.

Sergeants currently earn \$8,500 above top step salary. The PBA proposed increasing the stipend from \$8,500 to 14% of top step salary. For its part, the Town urged the denial of this proposal.

Given the duties assumed by sergeants and the stipends received in comparable departments, I conclude that the sergeant's stipend is to be increased to 10% of top salary schedule. Thus, Proposal 24, as set forth above is granted effective December 31, 2010.

The cost of this increase is as follows: As of December 31, 2008, there were two sergeants on the Shelter Island police force. (Town Exhibit [TX] 53). Top salary as of December 31, 2008 was \$91,104.86 (TX 107). Base on the awarding of two 3% increases, the top salary on January 1, 2010 was \$96,653.14.

Thus, effective December 31, 2010, the stipend will be increased from \$8,500 to 10% of top pay for police officers. This represents an increase of \$1,165 for each of two sergeants or a total of \$2,330. In terms of the 1% number of \$7,353, this represents an increase of about .32%.

As to Proposal 25, there is no data in the record to support the need for the PBA proposal concerning *on call* pay. Thus, Proposal 25 is denied.

As to the PBA proposal (number 26) regarding longevity payments for sergeants, I have previously awarded a ½% increase in longevity payments. It would be unjustifiable to award an additional 1% to sergeants. PBA Proposal 26 is denied.

With regard to tour change pay (Proposal 28), I have previously denied such pay for other members of the PBA. If such payments are unjustified for the balance of the eight person unit, they cannot be awarded to sergeants. PBA Proposal 28 is denied.

In Proposal 29, the PBA proposed payments to a deferred compensation fund for sergeants. This proposal is an expensive one particularly at a time of great economic distress. Therefore, PBA Proposal 29 is denied.

SERGEANT SENIORITY- PBA PROPOSAL 27

The PBA proposed that seniority be determined first by rank, second by continuous service in rank and third by date of appointment. It failed to demonstrate the inadequacy of the current system. In the absence of a clearly spelled out rationale for such a change in an extremely small department, this proposal must be denied.

I now turn to the Town proposals not referenced in connection with the PBA proposals.

NIGHT DIFFERENTIAL- TOWN PROPOSAL 1 - See discussion of PBA Proposal 3

USE OF FLSA STANDARDS IN CONNECTION WITH OVERTIME – TOWN PROPOSAL 2

The Town proposed a change in the manner in which overtime is given. This proposal called for the use of the provisions of the Fair Labor Standards Act (FLSA). It noted that these provisions would grant overtime pay for hours worked after a statutory period rather than after

the hours worked on a given day. It calculated that the granting of this proposal would result in a savings to the Town of \$3,660 or .49%.

The PBA pointed out that the FLSA provisions are suitable for units on duty for 24 hour periods such as those on *strikeouts*. It added that the use of FLSA overlooks aspects of the statute that are favorable to employees. It concluded that this proposal should be denied.

I am persuaded that, to date, there has been limited abuse of overtime such that a change in overtime procedures needs to be instituted. This proposal is denied with the understanding that this matter can be raised again if overtime abuse becomes a problem.

WORK CHART- TOWN PROPOSAL 3- See discussion of PBA Proposal 6.

SICK LEAVE- TOWN PROPOSAL 4- See discussion of PBA Proposal 4.

HEALTH INSURANCE- TOWN PROPOSALS 5 AND 6

The Town proposed a change to the CBA that would require current employees and prospective retirees to contribute 15% of the cost of their health insurance. The PBA objected to this proposal on the grounds that no East End towns or villages have a provision calling for employee contributions for health insurance.

There is little doubt that health insurance costs have risen dramatically over the past several years. There is also no dispute about the financial drain imposed on Towns by ever increasing health insurance costs.

There is probably little question that the time will soon come when police officers contribute to the cost of their health insurance. That being said, the inception of such a provision will have to come in a significantly larger police department. Therefore, the SIPBA will not be

the first police department in which its officers pay for part of their health insurance. Thus, Town Proposal 5 is denied.

Not so with Town Proposal 6. This proposal would eliminate dual family medical coverage for two family members working for the Town. It would also eliminate the health insurance buy-out for people who change their family coverage to individual coverage. The PBA urged the rejection of this proposal.

This proposal is sensible and does not decrease the health insurance benefits of two Town employees who are both receiving family coverage. It simply helps to control the cost of health insurance.

Furthermore, the Town is appropriately attempting to contain costs by eliminating the health insurance buy-out for one of the two family member Town employees who switches from family coverage to individual coverage.

This overall proposal does nothing to negatively affect the Town employees' health insurance. It simply reins in the overall cost of health insurance at a time when health insurance premiums are skyrocketing. Town Proposal 6 is granted, effective December 31, 2010.

ADD TO MANAGEMENT RIGHTS- TOWN PROPOSAL 7

The Town proposed a modification to the Management Rights provision in the CBA such that it would be permitted to use non-bargaining unit personnel to supplement the work performed by bargaining unit members. It posited that it would be useful to have this authority in that it would generate savings especially during the summer months.

The PBA asserted that the Town does not have the right to use non-unit personnel. It maintains that this proposal should be rejected.

Shelter Island is a vacation destination for many people. There is a significant number of people who own vacation homes there. Accordingly, there is a substantial increase in population during the summer months.

As previously noted, the Town's police force is comprised of eight people. Substantial increases in population result in increased traffic and congestion. This increased workload is in addition to the ongoing duties of the extant personnel resources.

It is clearly impractical for the Town to hire additional bargaining unit members as full time police officers when the need for more personnel exists from Memorial Day to Labor Day. Therefore, the solution to this problem lies in permitting the Town to hire temporary personnel when the vacationing population is greatest.

With this in mind, the Management Rights clause of the CBA is expanded such that it is granted the discretion to hire non-unit personnel to augment the bargaining unit police force. However, this expansion is limited to the period covered by Memorial Day to Labor Day. Therefore, effective December 31, 2010, Town Proposal 7 is granted as limited above.

DELETION OF ARTICLE V SECTION 3 FROM THE CBA- TOWN PROPOSAL 8

The cited provision is referred to as the *Bill of Rights*. The Town proposed its deletion as an infringement on its managerial prerogatives to investigate police misconduct.

The PBA objected to this proposal. It asserted that the Town would not even discuss this issue.

There is no evidence in the record to suggest that the inclusion of the *Bill of Rights* in the CBA has been problematical. Therefore, I find no reason to delete language from the CBA that has posed a problem. Thus, Town Proposal 8 is denied.

GENERAL MUNICIPAL LAW §207-C PROCEDURES- TOWN PROPOSAL 9

The Town proposed the addition of procedures to be followed relative to injuries sustained while police officers are engaged in the performance of their duties. It stressed that all comparable jurisdictions have a GML § 207-c procedure in place. It posited that there is no set of procedures in place and that the establishment of same would create a uniform system for handling and monitoring of job-related injuries.

The PBA objected to this proposal as being one-sided and overly restrictive. It stressed that a failure to comply with the procedures results in the denial of the claim. It observed that the time lines set forth in the procedures is too restrictive. It maintained that the proposal should be denied.

GML §207-c is a very generous statutory provision. It is designed to provide benefits for officers who are injured in the performance of their duties.

With that in mind, an established set of procedures is helpful to all. Officers will be aware of the requirements placed on them while the Town will also recognize the limitations placed on it. The implementation of this proposal will remove many of the questions that may exist at this time and will result in a fairer and more uniform approach to the application for benefits under this statute. Therefore, Town Proposal 9 is awarded as of December 31, 2010.

COMPENSATION- TOWN PROPOSAL 10 - See PBA Proposal 1

CONCLUSION

These are exceedingly difficult times. This award is reflective of the need to balance the needs of employees who render valuable and quality service against the financial pressures

experienced by the Town and the requirement for the Town to operate its police force in an efficient and appropriate manner. With that in mind, I have calculated the cost of this award.

The costs are: two 3% wage increases that are retroactive to January 1, 2009, a ½% increase in longevity payments, effective December 31, 2010, a \$25 increase in each of the uniform allowance and the uniform cleaning allowance, effective December 31, 2010, and an increase in the sergeants' stipend to 10% of top pay for police officers, effective December 31, 2010.

In the course of the discussion of the parties' proposals, I indicated that the costs of the award would be offset by certain concessions awarded to the Town. The concessions are: the elimination of dual medical coverage for two members of a family employed by the Town, the expansion of the Town's Management's Rights such that it will be permitted to hire non-unit personnel to perform certain duties between Memorial Day and Labor Day and the establishment of a policy relative to the implementation of General Municipal Law §207-c.

In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent prior interest arbitration awards in arriving at my findings. I believe that this Award properly balances the rights of the members of the PBA to improved wages and benefits with the Town's obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests. Thus, based on the above, I make the following:

AWARD

1. **TERM** - This Award shall cover the period January 1, 2009 through December 31, 2010.

2. **WAGES** - Amend the base salary for PBA members contained in Article II ¶1 (A) of the CBA such that the 2008 salary schedules will be increased by the following percentages:

As of January 1, 2009- 3%
As of January 1, 2010- 3%
See Appendix A (attached).

3. **LONGEVITY PAYMENTS** - Amend the longevity payments now set forth in Article II ¶1 (B) of the CBA such that they will be increased as follows:

Effective December 31, 2010 at 11:59:59 p.m., increase the scheduled longevity payments by .5% over the 2008 schedule of longevity payments.

The increases in longevity payments become effective on December 31, 2010 at 11:59:59 p.m.
See Appendix B (attached).

4. **CLEANING ALLOWANCE** - Amend Article II ¶2 of the CBA as follows:

As of January 1, 2009, increase the cleaning allowance by \$25.
As of January 1, 2010, increase the cleaning allowance by \$25.
The increase in cleaning allowance is effective December 31, 2010 at 11:59:59 p.m.

5. **UNIFORM ALLOWANCE** - Amend Article II ¶2 of the CBA as follows:

As of January 1, 2009, increase the uniform allowance by \$25.
As of January 1, 2010, increase the uniform allowance by \$25.
The increase in cleaning allowance is effective December 31, 2010 at 11:59:59 p.m.

6. **SERGEANT'S COMPENSATION** - Amend Article II ¶1 (A) of the CBA as follows:

Effective December 31, 2010 at 11:59:59 p.m. increase the sergeant's stipend to 10% of the top salary set forth in the salary schedule of January 1, 2010.

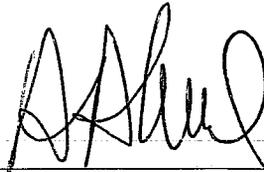
7. **DUAL MEDICAL COVERAGE** - Amend Article VI (5) as follows: Effective December 31, 2010 at 11:59:59 p.m. eliminate dual medical insurance coverage for two family members employed by the Town, as proposed by the Town.

8. **MANAGEMENT'S RIGHTS** - Amend Article V (1) as follows: Effective December 31, 2010 at 11:59:59 p.m., expand Management's Rights as proposed by the Town such that it will be permitted to hire non-unit personnel to perform certain duties between Memorial Day and Labor Day.

9. **GENERAL MUNICIPAL LAW §207-c** - Add a new provision as proposed by the Town to the collective bargaining agreement which incorporates the attached procedures concerning the implementation of this statute. See Appendix C.

10. **OTHER PROPOSALS** - All other proposals of the parties, irrespective of whether they were discussed, are denied.

Dated: August 14, 2011
Hewlett Harbor, NY



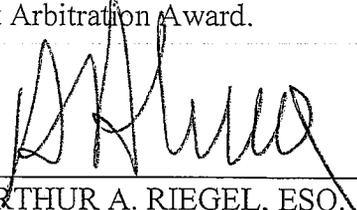
ARTHUR A. RIEGEL
CHAIR, INTEREST ARBITRATION
PANEL

AFFIRMATION

STATE OF NEW YORK)

COUNTY OF NASSAU)

I, Arthur A. Riegel, Esq., affirm that I am the individual describe in and who executed the foregoing instrument which is my Opinion and Interest Arbitration Award.



ARTHUR A. RIEGEL, ESQ.

EMPLOYEE PANELIST

I, Terrence LeGrady, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|---------------|--------|---------|
| 1. Item # 1 | Concur | Dissent |
| 2. Item # 2 | Concur | Dissent |
| 3. Item # 3 | Concur | Dissent |
| 4. Item # 4 | Concur | Dissent |
| 5. Item # 5 | Concur | Dissent |
| 6. Item # 6 | Concur | Dissent |
| 7. Item # 7 | Concur | Dissent |
| 8. Item # 8 | Concur | Dissent |
| 9. Item # 9 | Concur | Dissent |
| 10. Item # 10 | Concur | Dissent |


TERRENCE LEGRADY.
EMPLOYEE PANELIST

EMPLOYER PANELIST

I, Richard K. Zuckerman, Esq., Employer member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|---------------|--------|---------|
| 1. Item # 1 | Concur | Dissent |
| 2. Item # 2 | Concur | Dissent |
| 3. Item # 3 | Concur | Dissent |
| 4. Item # 4 | Concur | Dissent |
| 5. Item # 5 | Concur | Dissent |
| 6. Item # 6 | Concur | Dissent |
| 7. Item # 7 | Concur | Dissent |
| 8. Item # 8 | Concur | Dissent |
| 9. Item # 9 | Concur | Dissent |
| 10. Item # 10 | Concur | Dissent |



RICHARD K. ZUCKERMAN, ESQ.
EMPLOYER PANELIST

APPENDIX A
SALARY CHARTS

<u>Steps</u>	<u>1/1/08</u>	<u>1/1/09</u>	<u>1/1/10</u>
1	\$49,157.31	\$50,632.03	\$52,151.00
2	\$59,691.14	\$61,481.87	\$63,326.33
3	\$70,216.51	\$72,323.00	\$74,492.69
4	\$80,753.73	\$83,176.34	\$85,671.63
5	\$91,104.86	\$93,838.00	\$96,653.14

APPENDIX B

LONGEVITY PAYMENT

<u>Years</u>	<u>12/31/08</u>	<u>12/31/10</u>
8, 9, 10	3%	3.5%
11, 12, 13	4%	4.5%
14, 15, 16	5%	5.5%
17 and thereafter	6%	6.5%

APPENDIX C

GENERAL MUNICIPAL LAW § 207-c Procedure (NEW).

This procedure is intended to regulate the application for, and the award and/or termination of, benefits under Section 207-c of the General Municipal Law ("GML 207-c"). It shall operate as a waiver of any other procedural rights the Town or the Association and/or its employees may have pursuant to GML 207-c regarding the application for, and the award and/or termination of, benefits under GML 207-c; including the right to utilize any other forum to seek redress regarding the subject matter set forth herein. Nothing contained herein, though, should be construed as limiting the power of a party to challenge a decision, as provided herein, pursuant to C.P.L.R. Article 78. Any future changes enacted by the State in the provisions of GML 207-c that conflict with an explicit provision of this procedure shall supersede the preexisting provision of this procedure.

I. APPLICATION FOR BENEFITS

1. Employees shall, within 48 hours of the occurrence, or within 48 hours of when the employee should reasonably have known of the occurrence, report to the Chief or senior ranking officer on duty any injury or sickness ("injury") to themselves, no matter how slight. The notification ("application") shall be made on the Department's existing employee injury report form.

2. An application shall be deemed "untimely" unless it is filed on a timely basis in accordance with this procedure. Except as set forth in the next sentence, an employee's failure to comply with these reporting obligations shall result in the denial of an application for benefits under this procedure. In the event these requirements cannot be met due to (i) the employee's physical or mental incapacity; (ii) an unforeseeable emergency; or (iii) any other situation which the Chief, in his/her sole discretion, finds acceptable, these requirements shall be met within 96 hours of the Employee's ability to do so, or such other time as is set by the Chief in his/her sole discretion. In these circumstances, the Association or a member of the employee's immediate family may file the application on the employee's behalf, provided same is accomplished on a timely basis.

3. In addition, an injury report shall be completed by the Chief or highest ranking officer on duty and filed in the Chief's Office by the end of the next regular business day following the occurrence.

II. INITIAL APPLICATION FOR GML 207-c BENEFITS

1. The Chief or designee ("the Chief") shall have exclusive authority to initially determine the employee's eligibility for benefits under GML 207-c. The Chief shall have the authority to conduct a full investigation of the facts concerning the application.

2. After filing the application, the employee shall submit to one or more medical examinations or inspections ("examinations") as provided by law. The employee shall cooperate fully with the designated physician. This shall include, but not be limited to, promptly forwarding to the Chief and the Town Attorney's Office and designated physician all reports, data, records and other information related to the employee's injury. Failure to cooperate may result in information being disregarded or excluded by the Town.

3. The employee shall, along with the application for GML 207-c benefits complete, sign and submit to the Town any medical release forms requested by the Town, utilizing the existing Department form.

4. The Employee shall fully cooperate with the Town's designated physician. This shall include, but not be limited to, forwarding to the Town's designated physician all reports, data, records and other information related to the employee's injury.

5. Any reports submitted by either the Town's designated or the employee's doctor/other health care provider ("health care provider(s)") shall include the following information: (a) the exact date(s) that the health care provider examined the employee regarding the injury; (b) an explanation of what the examination consisted; (c) diagnosis; (d) causation, and the basis for that belief; (e) treatment modalities; (f) what duties, if any, the employee cannot perform, and for how long; and (g) whether any or all of the duties the employee cannot perform could be performed with an accommodation(s) and, if so, what the accommodation(s) is (are). The failure to provide information as specified in this paragraph may result in the health provider's report being disregarded or excluded by the Town.

6. The Town shall render a written decision on the application for benefits within 60 calendar days after receipt of the application. A copy of the decision will be mailed to the employee by regular and certified mail, return receipt requested, at the address specified in the application. A copy shall also be delivered to the Supervisor's and Town Attorney's Offices. The failure to issue a decision in accordance with this time limit shall result in the employee being placed on GML 207-c status.

7. While a final decision as set forth in this GML 207-c procedure is pending, time off alleged to be attributable to the injury giving rise to the claim for GML 207-c benefits shall be charged based on the Department's initial determination. Regardless of whether the employee is in a paid (utilizing his/her accrued time) leave or no-pay status, the only benefit the employee shall receive during the pendency of the process is holiday compensation.

8. If the decision is that the employee is eligible for GML 207-c benefits, then the employee shall be so categorized and any time off taken due to the injury or sickness shall be charged to GML 207-c leave, subject to the provisions of Section V below. The employee's GML 207-c benefits shall continue as long as the employee remains eligible.

9. In the event the employee is not satisfied with the Town's decision and wishes to appeal it, the employee shall file with the Town within five calendar days of receipt of the decision a written demand for a hearing on the GML 207-c claim before the Town Board or its designee. The Employee shall be deemed to have forfeited GML Section 207-c benefits if the Employee fails to do so in a timely manner. The parties to the hearing shall be the Town and the employee. All costs shall be paid by the party incurring them; e.g., witnesses, exhibits, transcripts, etc.

10. The Town Board or designee shall have the authority to decide, whether the Town's denial of the claim of entitlement to GML 207-c benefits was arbitrary and capricious. He or she or it shall have authority to consider and decide all allegations and defenses made with regard to the GML 207-c claim. In the event of a dispute between the parties as to the nature of the proceeding, the Town Board or designee shall first decide whether the proceeding represents an issue of an applicant's initial entitlement to GML 207-c benefits or whether the proceeding presents a different issue that should be decided in a different proceeding, as outlined below. The burdens of production, and proof by a preponderance of the evidence, shall be upon the employee, except for hearings involving Section IV, where the burdens of production and proof shall be upon the Town.

11. The Town Board or designee shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this procedure, the Collective Bargaining Agreement and the rules. The Town Board or designee shall have no authority to make a decision on any issue not submitted or raised by the parties. Should the Town Board or designee find in favor of the employee, then all leave entitlements utilized from his/her accrued leave bank shall be restored. This shall also include holiday and night shift differential if the employee is eligible to receive same.

12. The decision and award of the Town Board or designee shall be final and binding on the parties.

III. ALLEGED RECURRENCE OR AGGRAVATION OF PRIOR INJURY

1. In the event that the employee or the Department alleges that an injury is a recurrence or aggravation of a prior injury, the procedures set forth in Section II shall be implemented.

2. The employee shall submit to the Town Attorney's Office and Supervisor's Office any previously unsubmitted health care provider(s) report(s) upon which the employee intends to rely at the hearing immediately upon receiving same from the care provider. If a

direct causal relationship is found between the alleged recurrence or aggravation of a prior injury, and the prior injury which was designated by the Town as a GML 207-c injury, then the application shall be granted, provided the Town otherwise finds the employee entitled to GML 207-c benefits as set forth in Section II. If no such relationship is found, then the claim shall be treated as an initial injury and the matter shall be processed pursuant to Section II.

IV. TERMINATION OF BENEFITS/RETURN TO DUTY

1. The Town may review cases of employees receiving GML 207-c benefits for the purpose of determining whether the employee continues to be entitled to those benefits and in furtherance thereof may take action as is appropriate under the law.

2. Any employee who is receiving benefits under GML 207-c continues to be subject to rules and regulations of the Department.

3. Upon receipt of a certification from the Town-designated physician that an employee is able to perform some or all of the duties of his or her position, or upon receiving information wherein the Department asserts that the employee is no longer eligible for 207-c benefits, the Town shall notify the employee of same, by serving a written notice of proposed termination, setting forth the effective date thereof and a copy of the physician's certification, upon the employee by regular mail and certified mail, return receipt requested. The effective date may be no sooner than 48 hours after notification. A copy shall also be delivered to the Supervisor's Office and the Town Attorney.

4. If the employee disagrees with the Town's determination, he or she shall commence an appeal pursuant to the procedures outlined in Section II (10). While pending, the employee shall remain on GML 207-c status. However, if more than 60 calendar days elapse from the effective date of the Town's notification to the employee and the final resolution of the dispute, any time in excess of the 60 day period shall be charged against the employee's accrued leave time; except that, if the employee in good faith indicates that he/she is ready, willing and able to go forward on a day or days agreed upon by the arbitrator and counsel for the employee and Town and, in fact, goes forward and presents his/her case within that 60 day period, or a scheduled hearing is adjourned at the request of the Town or the Town Board, then the 60 day period shall be extended to 90 days. Regardless of whether the employee is in a paid leave or no-pay status, the employee shall receive no fringe benefits other than, if applicable, the continuation of insurance benefits, during the pendency of the hearing process. In the event that the employee's GML 207-c status is confirmed when the matter is finally resolved, any leave time used as a result of the operation of this provision shall be recredited to the employee.

5. The Town Board must agree to hear the case within 30 days of the date of selection and render an opinion within 30 days thereafter.

V. OTHER PROVISIONS

1. In the event that any portion of this procedure is invalidated by a decision of a tribunal of competent jurisdiction, then that portion shall be of no force and effect, but the remainder of this procedure shall continue in full force and effect. In this event, either the Association or the Town shall have the right immediately to reopen negotiations with respect to a substitute for the invalidated portion.

2. An employee may have an attorney of his or her choice or an employee of the Department as his or her representative at any stage of this procedure, provided there is no unreasonable delay.

3. Evidence pertaining to an employee's application for benefits pursuant to the Workers' Compensation Law, including whether the application was controverted, granted or denied, shall not be given any preclusive effect in any stage of this procedure, but shall be admissible as evidence to be given the weight deemed appropriate by the Town.

4. This procedure shall take effect on December 31, 2010 at 11:59:59 p.m. and shall apply to any claim of entitlement to or use of GML 207-c benefits made after that date and which had not been submitted to the Chief as of the date of the 2009-2010 Award. After the filing of the application form, the claim for utilization of GML 207-c shall be decided in accordance with Section III.