

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration between

CITY OF PEEKSKILL

Public Employer,

-and-

THE POLICEMEN'S BENEVOLENT
ASSOCIATION OF THE CITY OF PEEKSKILL

Employee Organization.

PERB Case No. IA –2009-023

BEFORE: Jeffrey M. Selchick, Esq.
Panel Arbitrator

APPEARANCES:

FOR THE CITY OF PEEKSKILL
Keane & Beane, P.C.
Ronald A. Longo, Esq., of Counsel
Jaclyn G. Bernstein, Esq., of Counsel

FOR THE POLICEMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF PEEKSKILL
Harold, Salant, Strassfield & Spielberg
Christopher Harold, Esq., of Counsel

**FINAL AND
BINDING
AWARD OF
INTEREST
ARBITRATOR**

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned was designated by the Chairperson of the New York State Public Employment Relations Board (“PERB”) to make a just and reasonable determination of a dispute between the City of Peekskill (“City”) and the Policemen’s Benevolent Association of the City of Peekskill (“PBA”). (Joint Exhibit 1). The designation by PERB included, per usual, appointment of a Public Employer Panel Member and an Employee Organization Panel Member. (Id.). The parties, however, entered into a Stipulation of Agreement dated December 21, 2010 whereby they waived their rights to have appointed Panel Members and agreed that the Chairperson (hereinafter, “Arbitrator”) “as the public member” would be the sole member of the Arbitration Panel and that he would possess “all the powers and duties of a fully constituted panel as set forth in Civil Service Law §209(4)(c), including but not limited to the power to hold a hearing and issue a binding interest arbitration award.” (Joint Exhibit 3).

The City of Peekskill (“City”) is located in Westchester County. As of the 2000 census, the City had a total population of 22,441. (Joint Exhibit 16). The City is located in the northwestern portion of Westchester County. (Joint Exhibit 15). There are five other cities in the County: Yonkers, Mt. Vernon, New Rochelle, White Plains, and Rye. (Joint Exhibit 15). The City occupies a land area of 4.5 square miles and is primarily residential in nature, though it does act as a financial and commercial center for the northern portions of Westchester

County and southern Putnam County. (City Exhibit 24). The population of the City has increased in each census since 1950 save for the 1980 census. An interim 2009 census showed the population of the City at 24,724, representing a 10.1% increase from the population at the 2000 census. (Id.). The 2000 census revealed that approximately 91.2% of the City's workforce commutes to jobs away from the City. (Id.). A number of residents are employed in the County, and record evidence shows that there are a number of international and national companies located in Westchester County (Id.), though many City residents commute to jobs in New York City. The number of City residents holding professional or managerial positions in 2000, according to the 2000 census, was 29.6%. (City Exhibit 24).

The major taxpayers in the City are Consolidated Edison Company of New York and the Engelhard Corporation. (Id.). Also located in the City is the County's Resource Recovery Plant, from which the City receives payments in lieu of real property taxes (PILOT). (Id.).

The City's government is a managerial form of government, with the City Manager appointed by and serving at the pleasure of a Common Council. Legislative authority is vested in the Common Council, which consists of six members elected at large and a Mayor. (Id.). The CEO of the City is its City Manager who is responsible for daily operations of the City. The City Manager is also designated as the City's Budget Officer and is responsible for preparing the annual operating budgets for the City and its capital program. (Id.). There is also

a Comptroller, who is appointed by the City Manager, and who serves as the Chief Fiscal Officer of the City and is responsible for the collection of taxes. The Comptroller, the records shows, also coordinates the issuance of all City indebtedness. (Id.).

The record would also reflect that the City provides police, fire, sanitation and water services, together with road maintenance, library and various parks and recreational facilities. (Id.). There are two separate public school districts in the City, with the Peekskill City School District “essentially coterminous with the City”, with a “small section in the southeast corner of the City” being part of the “Hendrick Hudson School District.” (City Exhibit 24). Under New York Law, the school districts have separately elected governing bodies and also have independent taxing and debt issuance powers. The City Comptroller serves as the school tax collector for real properties within the City, and the City is required to remit 100% of the school tax levy to the school districts.

The City’s Police Department operates seven days a week on an around-the-clock basis. There are 57 full-time bargaining unit positions. The Unit consists of Police Officers and Sergeants, with other personnel in the Department excluded from the Bargaining Unit. (Joint Exhibit 4).

The City and the PBA are parties to a Collective Bargaining Agreement for the period January 1, 2006 through December 31, 2008. (Id.). The record shows also that the City and the paid Fireman’s Association of Peekskill, New York, Inc. are parties to a Collective Bargaining Agreement for the period

January 1, 2006 through December 31, 2009. (Joint Exhibit 5). That Agreement provides a 4% wage increase for the first two years of the Agreement and a 4.25% wage increase for the third year of the Agreement. (Id., 3).

The City is also a party to a Collective Bargaining Agreement with Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (White Collar employees) for the period 2006 to 2010. (Joint Exhibit 6). That Agreement provides wage increases of 3.5% for the first two years of the Agreement and 3.6% for the next two years of the Agreement, and 3.7% for the final year of the Agreement. (Id., Appendices "A-1" through "A-5").

The City also is a party to a Collective Bargaining Agreement with Local 456 as agent for Blue Collar employees for the period January 1, 2006 though December 31, 2010. (Joint Exhibit 7). That Agreement contains the same percentage of wage increases for the years of the Agreement as found in the White Collar employees Agreement. (Id., Schedule A).

Negotiations were commenced by the parties herein towards a successor agreement. Not having achieved a settlement during negotiations, a Declaration of Impasse was filed with PERB, followed by mediation. On October 8, 2009, the PBA filed its Petition for Compulsory Interest Arbitration. (Joint Exhibit 2). Hearings were held before the undersigned Arbitrator on December 21, 2010 and April 26, 2011 at City Hall. At the hearings, the parties were represented by legal counsel and other representatives. A number of exhibits and documentation were presented by the parties, and the parties have also presented extensive

arguments on their respective positions. Thereafter, the undersigned Arbitrator fully reviewed all data, evidence, arguments and issues submitted by the parties. The positions advanced by the parties have been set forth in the record and in their post-hearing presentations. Their positions, as relevant, will merely be summarized for the purposes of this Opinion and Award.

This Award covers the two year statutory period. The duration is set forth in Civil Service Law §209.4(c)(b)(i), and therefore, this Award covers the period January 1, 2009 to December 31, 2010.

Accordingly, set out herein is the Arbitrator's Award, as to what constitutes a just and reasonable determination of the terms and conditions of employment at issue for the period January 1, 2009 through December 31, 2010. In arriving at such determination, the Arbitrator has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service Law:

- a) comparison of the wages, hours and conditions of employment involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interest and welfare of the public and the financial ability of the public employer to pay;
- c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;

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

POSITION OF THE CITY

On the question of comparable communities, the City identifies the parties' agreement reached in this proceeding that the comparable communities are the afore-cited Westchester County cities except for the City of Rye. As to the parties' difference, which is whether the City of Rye should be considered a comparable, the City contends that there is no necessity for the Arbitrator to find, as argued by the PBA, that all cities in the County of Westchester should be considered when an Award is issued. According to the City, whether a community is comparable should take into account median family income, median single-family home values, population, land area, the urban nature of the community, the size of the police force, and poverty rates.

In the City's estimation, "Rye is quite different than the City of Peekskill, or any other city in Westchester County." Pointing to non-economic factors, the City puts forth that "Rye is much smaller with a population of 14,955, and [has] a much smaller police force with a size of approximately thirty-eight (38) officers, covering an area of 5.8 miles." Additionally, the City asserts that Rye "is not urban in nature and is not in fact a true city in contrast to the other cities that are comparable." Rye, the City notes, has a population density of only 2,500 people

per square mile whereas the other cities have a density of 5,000 to 7,000 people per square mile.

As to economic factors, the City observes that Rye's median family income at the 2000 Census was \$133,231 whereas the average median family income of the comparables was \$60,013 and that the City's median family income was \$52,645. Foreclosure rates also show Rye not being comparable, according to the City, since its foreclosure rate "comes in at a low 1.82%." Median single-family home value in 2007 for the City and the comparables, the City observes, ranged between \$360,000 and \$662,000 whereas the median single-family home value in Rye was "at a whopping \$1,552,500."

Regarding ability to pay, the City asserts that the record shows that it "is facing extraordinarily difficult and unprecedented financial challenges which warrant that the Arbitrator obviate, or offset with concessions, the impact of any financial Award to the PBA." It is the City's position that a wage increase for the PBA would need to be paid through increased taxes imposed on the residents of the City which the City identifies as "a burden that they simply cannot shoulder." There is also evidence in the record, according to the City, that it "will likely continue to experience a significant loss of revenue, in addition to a significant increase in expenses."

The City identifies the record evidence that it has the highest poverty rate of all cities in Westchester County, the highest foreclosure rate per capita of the Westchester County cities, and that most of the working force of the City finds

employment in the County of Westchester whereas the workforce in the central and southern parts of the County “rely heavily on New York City for employment.” The City maintains that it is evident that its residents are “amongst the poorest of all the cities in Westchester County.”

The City relies on the testimony of its City Manager that its revenues have been on a continual decline and that the City has no large employers within its boundaries. Assessed value, based on the 2000 population, the City observes, saw the City the second lowest of the Westchester cities, and that the taxable assessed value has decreased since 2007. It also has, the City observes, “one of the highest percentages of tax exempt property.” In addition, the City identifies the record evidence that there are a number of tax certiorari proceedings that are pending and there is “no reason to believe that Peekskill’s tax base was going to increase any time in the near future.”

The City identifies its rising foreclosure rates and a decrease in non-real property tax revenues. In this regard, the City observes that it does not receive its own dedicated sales tax and any attempt to achieve a dedicated sales tax “would be fruitless as there is no significant commercial base within the City which would generate sales revenues to tax.” The City thus notes it “receives a small fraction of Westchester County’s sales tax” and that the sales tax revenue it receives from the County of Westchester has been declining since 2007, increasing only slightly in 2010. The mortgage tax it collects, the City notes, has also been on the decline and state aid “has remained stagnant at 2008 levels.”

In the City's estimation, if 2006 is viewed as a base year, "it is clear that all three major non-property tax revenues, sales tax, mortgage tax and State aid, taken together, cannot even shoulder the burden of 2006 salary levels, let alone increases."

The City also relies on the testimony of its City Manager as to how its "expenses have been sharply on the rise." It claims pension costs have risen considerably as have health insurance costs. As to the latter, the City notes that its portion of the premium "has more than doubled since 2002." The Police Officers' portion of the premium, the City further notes, "has decreased since 2000 with unit members percent of the premium falling from 11.22% in 2002 to merely 5.37% in 2011."

The City also identifies what it describes as "new costs" to be incurred in 2012, which is its obligation to purchase the "Karta property." Having purchased the property at judicial direction, the City notes that the property "is now off the City's tax roll and the City is therefore no longer receiving any related property tax revenues."

The decrease in revenues and increase in expenses, the City claims, has required it to dip into its fund balance. From 2008 on, the City notes, it was required to use part of its fund balance to balance the budget and by 2010 the fund balance was back to 2005 levels. The City's slight increase in the fund balance in 2010, it claims, as explained by City Manager Finn, was "due to the City's conscious efforts to tighten its belt and spend less." Pointing to the

testimony of Comptroller Emberger, the City notes that for 2010 it avoided taking \$500,000 from the fund balance because of a one time revenue source of \$2,900,000 from its debt service account. One million dollars, the City observed, will be used from debt service in 2011 to balance the budget, which leaves approximately \$200,000 in the account. Additionally, the City claims that for the 2012 budget it “will also need to take \$1,000,000 from its fund balance to balance the budget.” It is also clear, the City claims, that there is significant portion of the fund balance that is uncollected taxes.

Notwithstanding the State Comptroller’s recommendation that municipalities maintain 20% of operating expenditures in the fund balance, the City notes that its Common Council has considered changing the policy to maintaining only 15% of operating expenditures due its need to use the additional 5% to cover costs in the budget. Its “contingency fund”, the City observes, relying on the testimony of City Manager Finn, is to be used for “unexpected emergencies”. The City also finds it significant that “every unit in the City has an expired contract.”

The City also observes that it will be required to pay for a new firehouse, causing it to bond and implement a new 1% transfer tax that came along with an increase in the property tax that was equivalent to 1% in 2011, 2% in 2012, and 3% in 2013, all of which “will continue to be levied upon the residents of Peekskill for the next twenty-five (25) years to pay for the entire bond” for the new firehouse.

The City rejects any contention by the PBA that the condition of the national and State economy cannot be considered relevant to a consideration of the issues in this proceeding. According to the City, “those economies are relevant in that they impact the residents of the City as well as the City’s ability to pay.” The City maintains that there is no basis for anyone to expect that it will obtain “significant additional revenues” from either the Federal or State governments in the foreseeable future. Any signs of recovery of the State, national or local economies, the City posits, cannot be taken as a strong signal that such a recovery, in fact, will occur. Despite the recent economic downturns in the economy, the City points out that “the [PBA] unit has been relatively untouched during this time.” Thus, “no lay-offs” and “no diminution in benefits” have occurred, the City contends, and “the public interest therefore demands that for the two (2) years in question, a balance clearly reflecting these economic realities, unlike prior times and prior awards, must be reflective of this new economic reality.”

It cannot be doubted, the City argues, that the City is confronted with a severe financial crisis, and it cannot pay any increase from cash on hand that is maintained in the fund balance, “without an adverse impact on its tax payers.”

Turning to the specific issues before the Arbitrator, the City notes that the PBA seeks a 4% increase in salary retroactive to January 1, 2009 and a 4.25% increase retroactive to January 1, 2010. The salary demand must be rejected, according to the City, since it “completely ignores the City’s current financial

situation, including the decrease in assessed values, the extraordinarily high rate of exempt properties, the lack of growing in tax base, the increase in foreclosures, the decrease of non-real property taxes, and the sky-rocketing health care and police retirement costs.” Further, the City claims, the demand for salary “ignores the salaries of other police officers in the comparable communities”. The City asserts that, “using 2006 salaries, Peekskill is better paid than each comparable community using 2007 salaries, and likewise 2008 and 2009 salaries, respectively.” This higher salary rate, the City argues, has occurred despite the fact that it has the “highest rate of poverty, the second (2nd) lowest median family income, the second (2nd) lowest median family income, the second (2nd) highest rate of vacant housing and the lowest median single-family home price.”

The City claims that its Police have “fared quite well” when salary increases are seen in the context of the consumer price index. In this regard, the City claims that, for the period 1999 to 2008, Police have received salaries that have exceeded the consumer price index each year. There is no justification, the City puts forth, for the increases sought in light of these facts.

To the extent that the Arbitrator might consider an increase warranted, the City “submits that the Arbitrator cannot look to increases in any of the comparable communities” which, the City contends, “are few in number” and “these contracts were negotiated at a time during an economic upswing.” None of the comparable communities have contracts negotiated for 2010, the City

observes, and the While Plains Interest Arbitration Award through June 30, 2010, the City notes, finds White Plains Officers at the top salary grade receiving \$82,713, and, if City Police Officers in the top grade salary are increased by only one percent over the 2008 salary, they will exceed the 2010 White Plains salary.

The City emphasizes that the tax base is not increasing, as it had increased in the past, and “in fact has decreased.” The City argues there is no justification for any increased burden to be imposed on the tax base. Other City collective bargaining agreements, moreover, should not be considered “controlling”, the City argues, “since they too were negotiated in a prior time during an economic upswing.” The Arbitrator, the City claims, should, however, take into account a recently negotiated Peekskill Teachers’ MOA “in which teachers took a 0% increase for eighteen (18) months.”

On the question of shift differentials, the City claims that the PBA’s request for an increase in the night shift differential from 3% to 8% for the 4:00 p.m. to 12:00 a.m. shift and 10% for the 12:00 a.m. to 8:00 a.m. shift cannot be considered justified. At the current rate of a 3% shift differential for both shifts, City Police Officers, the City claims, “fare better than Mt. Vernon and New Rochelle officers who do not afford their police any shift differentials” and “better than White Plains” as well. The City notes that Yonkers is the only city with a higher shift differential, at 5%, “but this differential is only paid for regularly scheduled shifts.” The City again emphasizes its financial situation, which is

another factor the City claims mandates a rejection of the PBA's demand for shift differential.

On the question of longevity, the City asks the Arbitrator to reject the PBA's demand for a decrease in the number of years needed to qualify for longevity payments and an increase in the amount of longevity. Both demands, the City asserts, are not justified. It is the City's claim that no "consistent yearly schedule for longevity payments" can be found among the comparables, but that the City can be seen as being "in the middle of the road, with years shorter than some Westchester cities and years longer than other Westchester cities." The record is devoid of any evidence, according to the City, to support the PBA's demand that the longevity years should be decreased, and, as to actual longevity payments and 20 year totals, its Police Officers, the City maintains, "earn higher longevity than all Mt. Vernon and New Rochelle [Officers], and earn less longevity than White Plains and Yonkers." As one of the "poorest Westchester cities," the City claims that its Police Officers "fare well", particularly in view of the fact that its base salary "is higher than other communities even without an increase."

The City rejects the PBA's demand for eliminating the compensatory time cap of 40 hours or replacing it with a 56 hour cap. No evidence appears in the record, according to the City, to justify an increase in the 40 hour cap, nor is justification found when looking at the comparables. In this regard, the City notes

its Police Officers “accumulate compensatory time at a rate of 1.5 times”, unlike officers in White Plains and Yonkers.

The uniform allowance demand in which the PBA seeks an increase to 1.5% of the top Police Officer’s salary in 2009 and 2% of the top grade in 2010, with a 2.5% differential for personnel on other details, should be rejected, the City argues, since there is no evidence to support any deviation from the current \$850 amount for uniform allowance. Unit members, the City notes, receive an additional leather jacket, effective 2008, and the comparables analysis reveals that the City “already provides its unit members with the highest uniform allowance when the leather jacket is included.”

Turning to health insurance, the City notes that all unit members now contribute a flat \$975 or \$500 per annum to the cost of health insurance for family and individual coverage, respectively. All the comparables, the City further observes, require Police Officers to contribute a percentage of the total health insurance premium. The City contends that it is thus “customary for police officers in the cities in Westchester County to contribute a significant percentage of the cost of health insurance premiums instead of a flat dollar amount.” Its demand that City Police Officers pay 20% of the cost of health insurance premiums, the City claims, must be considered “not only reasonable, but necessary.”

In support of its health insurance proposal, the City identifies the rising costs of health insurance over the past ten years, which has seen premiums

more than double since 2002. During this period of time, the City claims, it “has been generous in its salary increases to members of the PBA”, and “a percentage contribution covering a significant portion of the costs of health insurance is called for and supported by the Record.” The City notes that City Firefighters already pay much more than Police Officers, as do unrepresented employees.

The City also argues in support of its proposal that there be a 20 year eligibility requirement for retiree health insurance benefits for members hired after January 1, 2005. The City identifies its future obligations and unfunded liabilities concerning retiree health insurance as of January 1, 2010, which rose to \$59,500,000 from \$51,000,000 in 2008. Constant increases in health insurance costs, the City argues, mandate that Police Officers have a significant measure of service before the City “is required to expend hundreds of thousands of dollars for health insurance coverage throughout retirement.” It must be considered “reasonable”, the City emphasizes, to require a minimum of 20 years of service.

The City also claims there is justification for its proposal that retired officers pay 10% of the cost of health insurance premiums, in light of “the increased costs of retiree health insurance and the City’s current financial condition.” According to the City, its proposals are in line with “trends in the public sector throughout New York State and elsewhere.”

The City also claims there is justification for its proposal to eliminate the contractual language calling for three steady tours of duty and to replace this schedule with “rotational tours.” The City relies on the testimony of its Chief of Police regarding what the City describes as “the impracticality and impediments which the steady tours cause” and the Chief’s need for greater flexibility. Thus, the City claims that the two year pilot study tours program “was not working” and “the City returned to rotating tours of duty.” The exiting City Manager’s Agreement with the PBA to go to permanent steady tours, the City observes, was against the desires of its Chief of Police, who testified as to the “detrimental effects” of the steady tours on the Department. Included among the shortcomings of the steady tours, the City claims, is the fact that there is regularly “a disproportionate amount of rookies working on nights and weekends”, which has adverse impact on dealings with the community and training. There is no other city in Westchester County, according to the City, that uses steady tours.

The City claims that its proposal to increase the number of annual “plug-in” days from two to three is justified. These dates, the City notes, allow the Chief the discretion to schedule an Officer to work on day when the Officer is not otherwise required to work. The City relies on the testimony of Chief Tumolo that such days “are usually used for a compelling reason, such as Officer/sergeant training or extra hands during special events in the City.” The increase is needed, the City maintains, “to deal with the inflexibility of the steady tours” and will not be needed if the City could use rotating tours.

PBA'S RESPONSE TO CITY'S POSITION

The PBA focuses first on the City's health insurance proposals, noting that the City seeks to increase contribution of Officers from \$500 per year for individual coverage to 20% of the costs and from \$975 per year for family coverage to 20% of the costs. The PBA asserts that, for the two years of the Award, the "the City has contracts in place with the blue collar and white collar city employees represented by IBT Local 456 ... which provides health coverage at NO costs to the employees." (Emphasis in original). The PBA also notes that its members have contributed to health insurance since 1990, and during that time blue and white collar employees in the City have made no contributions. The PBA claims that an appropriate response would be for the Arbitrator to require the City to obtain concessions for employee health cost contributions from IBT Local 456 "before it can acquire an increase to what is required of its uniformed police force." (emphasis in original).

Insofar as the City relies on contributions from unrepresented employees, the PBA responds that "[u]nilaterally imposed conditions of employment should not provide a basis for changing identical conditions subject to collective bargaining or statutorily founded Interest Arbitration."

Regarding the City's proposal that a precondition for retiree health insurance be 20 years of service for members hired after January 1, 2005, the PBA responds that, if granted, the proposal would impact 17 members of the unit "and substantially negates their reasonable expectation regarding qualification for

retiree health coverage upon accepting employment with the City.” Further, the PBA contends that the City is not acting prudently by seeking this change since “it will induce potential transferees to remain at their current employment, or go elsewhere.”

As to the City’s proposal that retirees pay 10% of the cost of health insurance, the PBA responds there is no such requirement imposed on City Firefighters nor on retiring members from IBT Local 456.

Concerning tours of duty and plug-in days, the PBA relies on its position set forth in its hearing presentation and post-hearing presentation to the Arbitrator. In the PBA’s estimation, the Arbitrator should be “hesitant to impose major changes in the terms and conditions of employment,” and should allow that task to be completed at the negotiating table.

POSITION OF THE PBA

The PBA contends that the cities in Westchester County, including Rye, reflect the parties’ agreement as to comparables. Focusing on the statutory criteria of ability to pay, the PBA notes that its expert witness was Economist and Municipal Finance expert Kevin Decker, and argues that Mr. Decker’s qualifications allow him “to authoritatively and objectively render an opinion as to the City’s ability to fund a just and reasonable Interest Arbitration Award.” The evidence it produced through Mr. Decker, the PBA contends, demonstrates the City’s ability to pay.

According to the PBA, the Moody's March 24, 2011 Bond Rating for the City was Aa2, which "rating reflects the city's strong financial position, conservative fiscal management and reserve policy, which Moody's views as a source of stability." This rating, the PBA maintains, "also takes into account the city's sizable tax base, average socioeconomic indicators and manageable debt burden made more affordable by the city's high level of self-supporting water and sewer enterprise debt."

The PBA notes that Mr. Decker testified that the City's full value of taxable real property increased at 6.7% for fiscal years 2005-2010, which is the second highest among the Westchester cities; that for fiscal years 2006-2011, its growth in real property tax levy grew only .92%, which was the lowest among the six cities in Westchester; that its combined municipal tax levies for 2010 of 8.3% of the average household income was also the lowest among the County's six cities and that its utilization of its constitutional taxing authority declined from 2005 such that by fiscal year 2011 it was using only 17.8% of the limit, which was the second lowest among the six cities in the County. Further, the PBA observes that the sales tax revenues grew 7.6% in 2010 from the previous year and is expected to grow another 4.9% for 2011. Moreover, the PBA claims the record shows the City "maintains a health Fund Balance", which includes a large part that is unreserved and unappropriated.

As to its salary proposals, the PBA observes that its last demand for salary is a 4% increase in 2009 and a 4.25% increase in 2010. It notes the last salary

increase it members received occurred on January 1, 2008, and since that time, with no increases, the consumer price index has increased by 5.2%. This allows the PBA to assert that “to maintain the purchase power of their January 1, 2008 salary, the unit members need to be awarded a salary increase of at least 5.2%.” Viewing other bargaining units in the City and the comparables, the PBA claims that its “positions with respect to salary ... is clearly substantiated.”

The PBA seeks an increase in compensatory time accumulation from 40 to a maximum of 56 hours, and claims there is no basis in the record to deny this proposal. Its uniform allowance voucher system proposal, the PBA contends, would return to the voucher system for the uniform allowance and would cover items that were offered for sale by a police supply store or a description utilized in the parties' Agreement. The PBA asserts its desire to revert to this system because it will benefit both the City and PBA membership. According to the PBA, the uniform allowance is subject to an income tax whereas the voucher system is not.

The PBA also maintains that its proposal that the City be required to pay for any uniform or related item changes that it requires of officers should be accepted. In this regard, the PBA notes that its proposal extends to new uniform items or changes before the need for replacement on account of normal wear and tear “exceed the design and purpose of the current uniform allowance contract provision.”

As to tour changes, the PBA emphasizes that it is seeking language that will permit the City only to make tour changes when “manpower falls below minimum staffing levels ... due to job or non-job related absences due to injury or illness projected on the basis of an IME to last more than thirty (30) days from the commencement of the tour change or suspension of a bargaining unit member for less than thirty days.” According to the PBA, the need to modify the Agreement is occasioned by the “conflicting grievance arbitration awards rendered by Joel Douglas ... and the subsequent award rendered by Jacquelin F. Ducker.” The PBA claims that its proposal “is an attempt to cure the uncertainty” brought about by these two awards.

CITY’S RESPONSE TO PBA POSITION

The City claims that it never agreed that the City of Rye would be a comparable community, contrary to the PBA’s assertions before the Arbitrator. It also emphasizes that, in its estimation, the Peekskill Teachers’ Association Agreement is “also relevant” to an analysis of comparables. Regarding ability to pay, the City discounts the testimony of the PBA’s witness, Kevin Decker, given his concession on cross-examination “that he rarely, if ever, has issued an opinion that a municipality does not have the ability to pay what his client wants.” The City claims that Mr. Decker’s “testimony was a distinctly pointed view of the actual financial condition of the City.” The City emphasizes that it has the highest poverty rate in the County, the second lowest median family income, the lowest

median single-family home value, the highest foreclosure rate per capita, and the second highest vacant housing rate. Concerning any claim that it has the ability to pay because of a declining use of its constitutional taxing authority, the City responds by claiming that Mr. Decker at the hearing acknowledged “that the constitutional tax limit is an arbitrary number and gave no basis as to how the City’s use of its Constitutional Tax Limit proves its alleged ability to pay in this matter.”

The PBA’s reliance on the fact that the sales tax grew in 2010, according to the City, “is less than the complete picture”, because “the revenue that the City receives from sales tax has been on the decline since 2007, with only a slight increase in 2010.” The City claims that the sales tax revenues it received in 2010 were nearly the equivalent of what it received in 2006. As to the reliance by the PBA on the fund balance, the City also points out that the balance has been on a steady decline since 2007, with only a slight increase in the balance in 2010. The City argues that it “presented ample evidence at the hearing explaining that the shrinking fund balance is due to the City’s need to use a portion of the fund balance in order to balance the budget.” Further, the City emphasizes that about 41% of the 2010 fund balance “consisted of delinquent taxes, from which the City could obviously not use to fund a settlement.” The City maintains that the PBA did not fulfill what the City perceives to be its burden to show the City has the ability to pay.

As to the PBA's position on salary demand, the City claims that, on close analysis, the PBA's reliance on the consumer price index results in the conclusion that "the cumulative salary increase should be capped at 2.1 % for both years." The City makes this calculation by noting the increase of the consumer price index from 2009 and 2010. If the Arbitrator would to take into account the 2008 consumer price index, according to the City, he "should also take into account the 2008 PBA salary increase and cap the 2009 and 2010 cumulative salary increase at 1.75%." In fact, the City contends, officers have received salary increase of 42.5% over the ten year period of 1999 to 2010 at a time when the consumer price index increased only 31.20%. The fact that the increase in salary was greater than the increase in the consumer price index, the City contends, "negates any claim to a CPI based increase in 2009 and 2010 and thus, the City submits that the PBA should receive 0% salary increase in both 2009 and 2010." Further, the City notes that the PBA identified other bargaining salary increases. Looking at comparative data in 2007, the City maintains the unit's increase was 0.5% higher than both the white collar and blue collar units and the increase for the unit in 2008 was 0.65% higher than that of the white collar and blue collar units.

Additionally, the City observes that the 2009 and 2010 salary increases for the white collar and blue collar units and the firefighters were negotiated "many years ago, when the economy was in a much better state." The only negotiated agreement, according to the City, which should be given significant weight, is the

Peekskill Teachers' MOA, which was signed on May 18, 2010, and "which the teachers take a 0% increase for 18 months." The City then claims that the salary increase based upon this "comparative data" would be 0% for both 2009 and 2010.

Insofar as the PBA has relied on salaries in other Westchester cities, the City responds that a true understanding of the comparables discloses that the City is one of the poorest cities in Westchester but the PBA members receive the highest salaries. Thus, the City claims that "[n]ot only are Peekskill police officers at their top grade of service in 2006, 2007 and 2008 paid a higher salary than all of the police officers in comparable communities, even with the increases that the other comparable communities received in 2009, Peekskill police officers are still paid a higher salary without any increase." (Emphasis in original).

On the question of compensatory time, the City notes that the PBA made no reference to compensatory time in New Rochelle and Mt. Vernon, and, unlike both municipalities, unit members accumulate compensatory time at a rate of 1.5 times. There is no real basis in the record, the City sets forth, to increase the 40 hour cap to 56 hours.

On the question of uniform allowance and the PBA's demand for a voucher system, the City responds there is no justification offered by PBA in the record for his increase and there is no evidence, the City claims, to support the demand for City ordered uniform changes. As to tour changes and the reference to arbitration awards, the PBA, the City argues, "is trying to legislate over these

awards without providing any evidence as to the appropriate clarification.” Further, the City identifies its proposal of replacing steady tours with rotating tours, which it notes is in direct conflict with the PBA’s proposal. No other proposals made by the PBA, according to the City, finds justification in the record.

OPINION AND AWARD OF ARBITRATOR

TERM OF AWARD

The Award herein covers the two year period commencing January 1, 2009 through December 31, 2010.

Arbitrator’s Analysis of Comparability

The parties agree that the comparable universe includes the cities of Mt. Vernon, New Rochelle, White Plains, and Yonkers, all located in Westchester County. The parties present a disagreement, however, as to whether the City of Rye should also be included in this universe. The PBA seeks its inclusion, which is resisted by the City, given the City’s claim that for both economic and non-economic reasons Rye “is quite different than the City of Peekskill.”

The Arbitrator would initially note that he is aware of a trend whereby Interest Arbitration Panels in New York, rather than reject a proffered comparable, give greater weight, lesser weight, or no weight at all to a proffered comparable on any given issue before it. This type of an approach, it is submitted, favors inclusivity over exclusivity and avoids what might otherwise be

a result-oriented approach that can emerge if exclusivity was to prevail by the rejection of comparables.

The Arbitrator observes that the City of Rye has a far higher median family income than the other Westchester County Cities, the value of the median single-family home in Rye is far greater than the other Westchester County Cities, and the foreclosure rate in Rye is much lower than other Westchester County Cities. Rye seems to enjoy much greater wealth than the other Westchester County Cities, including Peekskill. When compared to the City of Peekskill, Rye also has a smaller population and a smaller police force. Rye, it can also be noted, is not as urban as the other Westchester County Cities and apparently was a Village for many years before becoming a City. Hence, the Arbitrator has taken into account data from Rye but would note that he is not been particularly influenced by the Rye data, since Rye would appear to be a community not truly comparable to the City.

Arbitrator's Analysis on Ability to Pay

As is typical in Interest Arbitration proceedings, the parties devote a large part of their positions on this point. The PBA claims the City has the ability to fund the financial aspects of the Award it seeks. The City, on the other hand, contends that the record establishes substantial limitations on its ability to fund an Award.

The PBA presented its ability to pay evidence through Economist Kevin Decker who was stipulated to be an expert in the area of municipal finances. Mr. Decker's vita and his testimony confirm this status. (See PBA Exhibit 8). Mr. Decker's ability to pay analysis was received into evidence. (PBA Exhibit 9). His testimony then tracked his analysis. A review of Mr. Decker's testimony would disclose various observations and points that were emphasized regarding the PBA's contention that the City has the ability to fund a reasonable Award.

According to Mr. Decker, the revenues that go into the City's general fund reflect a fairly diversified revenues structure, and one that does not rely solely on property and sale taxes. Property taxes, Mr. Decker noted, have increased only slightly since 2006. He also found it "remarkable" that taxes had not been raised or slightly increased.

Mr. Decker acknowledged that a flat real estate market must be taken as a "fact" but that the drop in the taxable value of property in the City in 2011 was in all likelihood due to tax certiorari cases. The City, Mr. Decker noted, was second on the list of Westchester County City's in taxable real property and the second lowest in terms of tax levies.

He also observed that the City was the second lowest in utilization of constitutional taxing limitation and the lowest if Rye is not considered. The City's fund balance, according to Mr. Decker, based on a five year history, is good and the fund balance itself was "still good at the end of 2009, with a 23% unreserved fund balance." According to Mr. Decker, the City's revenues, during the period

he analyzed, reflected that the City's revenues had exceeded the budgeted revenues every year. Mr. Decker also stated that the City has set aside in its contingency account of 1 million dollars in the 2011 budget, monies for police and fire increases. He also observed that the City's population had the largest growth rate in Westchester County.

On cross-examination, Mr. Decker allowed that the larger cities in the County have a dedicated sales tax which is a different revenue source than the City of Peekskill, which must share in the County-wide sales tax. On redirect examination, he noted that, if no wage increases were awarded for 2009 and 2010, the money set aside to address increases for those years would amount to a surplus for the City. He also noted that the City had a 30% total fund balance at the end of 2009, which he described as "very good" particularly when the Office of the State Comptroller recommends a fund balance in the neighborhood of 15 or 16%.

The City, for its ability to pay presentation, presented its City Manager, Richard Finn, and its Comptroller, Charles Emberger. A review of the testimony of these witnesses, coupled with Exhibits introduced through their testimony, as with Mr. Decker on behalf of the PBA, discloses various observations and points that were raised regarding the City's contention that it has an extremely limited ability to fund any Award.

According to Mr. Finn, the City has the highest poverty rate in the County, the second highest vacancy rate for housing in the County, and its median home sales for the period 1997 to 2007 would indicate that it was the lowest among the County's cities. As Mr. Finn put it, the real estate market in the City "has been hard hit." He also testified that the City has the highest foreclosure rate in the County.

Mr. Finn identified the services provided by the City, which include Police, Fire, Water, Sewer, Youth Bureau, Clerk, Manager, Public Works, and Streets. In terms of revenues, he noted that the City had no dedicated sales tax and shares in the County's sales tax. Thus, Mr. Finn testified, the City relies heavily on the mortgage tax, which has been "down" for the past several years.

The greatest financial impact on the City, Mr. Finn testified, has been increases in health insurance and pension costs. According to his testimony, the City might need to obtain a loan to pay pension contributions for both the Police and Fire bargaining units. The City's fund balance, according to the testimony of Mr. Finn and related exhibits, reflects that for the years 2004 to 2009 the City was "using up reserves" and that the City will need a million dollars out of its fund balance to apply toward the 2012 budget. He noted that after bonding for a fire station in June or July of 2011, the fund balance was decreasing from approximately 20% to 15%.

Mr. Finn offered his opinion that the City's position that there be 0% increases in wages for the two years of the Award is predicated on the simple fact that it cannot afford raises. Any raises, Mr. Finn proffered, would have to come out of the fund balance. He offered the opinion that the City would be required to engage in layoffs in the event it was directed to pay for salary increases.

On cross-examination, Mr. Finn acknowledged that there is a contingency fund that the City maintains, with a \$729,000 balance in 2010 and a one million dollar balance in 2011. He allowed that some of the contingency fund could be utilized to pay collective bargaining costs but that the primary purpose of the contingency fund is for "unknown expenses." He also noted that the new fire station will generate a 3% increase in property tax. Further, on redirect examination, Mr. Finn noted that the contingency fund might also be needed as a source to fund the Firefighters' contract and other contracts that the City is negotiating with other bargaining units.

It is noted that the City also called as a witness and introduced various exhibits through its Comptroller, Charles Emberger. He identified the revenue sources for the City, the assessed level of its property, and the City's debt limit. Mr. Emberger also identified the pension costs for City employees, the City's fund balance as of December 31, 2010, the City's salary costs, and the amount of delinquent taxes.

The Arbitrator observes that the City is experiencing an economic and fiscal reality that is in keeping with both the national and state economies. On this point, it could be observed that the City's poverty and foreclosure rating, both of which rank high among the Westchester County cities, would indicate that the adverse effects of the national and State economies, particularly in the past three years, have been greater on the City than perhaps on the other cities in Westchester County. Coupled with these adverse effects is the City's realization that it must take realistic steps to maintain basic economic and fiscal soundness.

The Arbitrator finds it reasonable for the City to believe that its need to economize, in light of all relevant economic and fiscal criteria, is a need felt more acutely than when its Agreements with its other labor organizations were previously negotiated. Additionally, the Arbitrator takes notice of the fact that Chapter 97 of the New York State Laws of 2011, enacted after the hearing dates in the instant case, provide for a property tax cap that establishes a limit on the annual growth of property taxes levied by local governments to 2% or the rate of inflation, whichever is less. It is noted that the cap first applies to local fiscal years beginning in 2012, and it is a restraint on whatever ability the City might otherwise have had to increase taxes at a percentage rate greater than 2%.

The Arbitrator must note, however, that the City, as can be seen in Mr. Decker's presentation, is not "broke", and does have the ability to fund modest increases in salary and other benefits. The Arbitrator must be careful, however, lest any increases awarded impose too great a strain on the City's fiscal situation

so as to harm the interests and welfare of the public. Thus, the Arbitrator has carefully taken into account ability to pay when increases in salary and benefits have been awarded.

Arbitrator's Analysis on Salary Increases

The PBA seeks 4% increase in salary for 2009 and a 4.25% increase in 2010. The City, on the other hand, maintains that there should be no increase in salaries for both years. The City's contention that there should be no salary increases, the Arbitrator would observe, is essentially based on its "ability to pay" position as well as the high relative position of unit salaries when viewed against police salaries in comparable communities. As set forth above, the Arbitrator has found that the City does have an ability to fund modest increases in salary. Accordingly, the question becomes, within the statutory criteria, what appropriate increases should be afforded PBA members for the two years of the Award.

In terms of the comparables, which for purposes of salary are the other cities in Westchester County except the City of Rye, the record shows the following comparisons for the first through fifth year Police Officer's salary. The five tables below reflect payment to the City's Officers over the course of the parties' 2006 to 2008 Agreement and also what Officers in the comparables received for 2009 and 2010.

2006

	Municipality	1 st year (starting)	2 nd year	3 rd year	4 th year	5 th year
1	Mt. Vernon City PD [^]	\$38,325	\$46,057	\$53,797	\$61,533	\$69,267
	Mt. Vernon City PD ^{^^}	\$36,851	\$40,000	\$45,000	\$50,000	\$69,267
2	New Rochelle City PD	\$41,801	\$49,130	\$56,455	\$63,778	\$71,106
3	Peekskill City PD	\$46,127	\$49,538	\$59,717	\$67,634	\$75,555
4	White Plains City PD [*]	\$47,258	\$57,356	\$64,116	\$70,874	
5	Yonkers City PD ^{**~}	\$48,933	\$55,402	\$58,473	\$69,895	\$72,749

* White Plains data 7/1/05-6/30/06

** Yonkers data 9/1/05-8/30/06

~ Starting Rate is the Hire Rate

^ hired prior to 7/1/06

^^ hired on or after 7/1/06 (City Exhibit 6A)

2007

	Municipality	1 st year (starting)	2 nd year	3 rd year	4 th year	5 th year
1	Mt. Vernon City PD [^]	\$39,858	\$47,899	\$55,319	\$63,994	\$72,038
	Mt. Vernon City PD ^{^^}	\$36,851	\$40,000	\$45,000	\$50,000	\$72,038
2	New Rochelle City PD	\$43,264	\$50,849	\$58,431	\$66,010	\$73,594
3	Peekskill City PD	\$47,972	\$51,520	\$62,105	\$70,340	\$78,577
4	White Plains City PD [*]	\$49,148	\$59,650	\$66,681	\$73,709	
5	Yonkers City PD ^{**~}	\$50,388- \$53,459 ***	\$56,857	\$59,928	\$71,350	\$74,204

* White Plains data 7/1/06-6/30/07

** Yonkers data 9/1/06-8/30/07

*** These numbers represent Hire Rate-Academy Rate

[^] hired prior to 7/1/06

^{^^} hired on or after 7/1/06 (City Exhibit 6B)

2008

	Municipality	1 st year (starting)	2 nd year	3 rd year	4 th year	5 th year
1	Mt. Vernon City PD [^] ~	\$40,755	\$48,977	\$56,566	\$65,434	\$73,659
		\$41,552	\$49,935	\$58,970	\$66,714	\$75,100
	Mt. Vernon City PD ^{^^}	\$36,851	\$40,000	\$45,000	\$50,000	\$73,569- \$75,100~
2	New Rochelle City PD [*]	\$44,562	\$52,375	\$60,183	\$67,990	\$76,560
		\$45,088	\$52,898	\$60,785	\$68,670	\$76,560
3	Peekskill City PD	\$50,011	\$53,709	\$64,745	\$73,329	\$81,917
4	White Plains City PD ^{**}	\$51,114	\$62,036	\$69,348	\$76,657	
5	Yonkers City PD ^{***} ~	\$51,873	\$58,342	\$61,413	\$72,835	\$75,689
		\$53,386	\$59,855	\$62,926	\$74,348	\$77,202

- * New Rochelle date is split starting 1/1/08 and 7/1/08
- ** White Plains data 7/1/07-6/30/08
- *** Yonkers data is split starting 9/1/07 and 3/1/08
- ~ Starting Rate is the Hire Rate
- ^ hired prior to 7/1/06
- ^^ hired on or after 7/1/06
- ~ Mt. Vernon data for hired prior 7/1/06 is split starting 1/1/08 and 7/1/08
- ~ Mt. Vernon data for hired on or after 7/1/06 is split for 5th year starting 1/1/08 and 7/1/08 (City Exhibit 6C)

2009

	Municipality	1 st year (starting)	2 nd year	3 rd year	4 th year	5 th year
1	Mt. Vernon City PD ^{^~~}	\$42,591	\$51,183	\$60,444	\$68,382	\$76,978
		\$43,422	\$52,182	\$61,624	\$69,716	\$78,480
	Mt. Vernon City PD ^{^^~~}	\$37,772	\$41,000	\$46,125	\$51,250	\$76,987
		\$38,509	\$41,800	\$47,025	\$52,250	\$78,480
2	New Rochelle City PD [*]	\$46,358	\$54,485	\$62,609	\$70,730	\$78,857
		\$46,938	\$55,166	\$63,391	\$71,614	\$79,843
3	Peekskill City PD					
4	White Plains City PD ^{***}	\$53,031	\$64,362	\$71,949	\$79,532	
5	Yonkers City PD ^{**~}	\$55,316	\$61,785	\$64,856	\$76,278	\$79,132
		\$57,295	\$63,764	\$66,835	\$78,257	\$81,111

- * New Rochelle date is split starting 1/1/09 and 7/1/09
- ** Yonkers data is split starting 9/1/08 and 3/1/09
- ~ Starting Rate is the Hire Rate
- *** White Plains data 7/1/08 -6/30/09
- ^ hired prior to 7/1/06
- ^^ hired on or after 7/1/06
- ~~ Mt. Vernon data for hired prior 7/1/06 is split starting 1/1/08 and 7/1/08 (City Exhibit 6D).

2010

	Municipality	1 st year (starting)	2 nd year	3 rd year	4 th year	5 th year
1	Mt. Vernon City PD					
2	New Rochelle City PD					
3	Peekskill City PD					
4	White Plains City PD*	\$55,152	\$66,936	\$74,827	\$82,713	
5	Yonkers City PD					

* White Plains data 7/1/09-6/30/10 (City Exhibit E)

For the Sergeant's salary the records shows:

	Municipality	2006	2007	2008	2009	2010
1	Mt. Vernon City PD~~	\$82,429	\$85,726	\$87,655	\$91,603	
				\$89,369	\$93,391	
2	New Rochelle City PD					
3	Peekskill City PD ~	\$84,545	\$87,927	\$91,633		
		\$86,889	\$90,364	\$94,205		
4	White Plains City PD*	\$83,631	\$86,977	\$90,455	\$94,643	\$98,847
5	Yonkers City PD	\$86,260**	\$87,986**	\$91,540 ****	\$96,174 ****	
			\$89,745 ***	\$93,829 ****		

* White Plains data 7/1 the previous year to 6/30

** Yonkers data 7/1 previous year to 6/30

*** Yonkers data 7/1 current year

- **** Yonkers data 1/1 current year
- ~ Peekskill has Sergeants starting and Sergeant after 1 yr
- ~~ Mt. Vernon data for hired prior 7/1/06 is split starting 1/1 and 7/1 (City Exhibit 7).

The Firefighters' Contract with the City shows the following salaries over the three year period of the 2007 to 2009 Collective Bargaining Agreement (Joint Exhibit 5, 3).

	1/1/07	1/1/08	1/1/09
Starting	\$31,286	\$32,537	\$33,920
After 1 year	\$35,117	\$36,522	\$38,074
After 2 years	\$42,883	\$44,598	\$46,493
After 3 years	\$50,647	\$52,673	\$54,911
After 4 years	\$58,407	\$60,743	\$63,325
After 5 years	\$66,175	\$68,822	\$71,747

The Arbitrator would note that, as among the comparables, based on available information, with City police salaries among the top salaries in Westchester County, when using the 2008 salary figures. A reasonable increase in salaries will allow members of the PBA to retain this position, which the Arbitrator finds to be beneficial to PBA members based on an understanding of the record that for various economic indicia the City ranks on the lower end of the comparables. Moreover, the Arbitrator finds that a reasonable increase in salaries, consistent with that given to City Firefighters, would enable the City Police to maintain their relative position when compared with the Firefighters. The Arbitrator further finds it to be a salutary goal to achieve between and maintain the relative positions of police and firefighter salaries in a given municipality.

In addition to the “ability to pay” analysis cited *supra*, in reaching a determination on the appropriate percentage increase to salary, the Arbitrator is also guided by current economic change in municipal government, which includes the recent enactment by the NYS Legislature of a 2% property tax cap. While the 2% property tax cap does not take effect until calendar year 2012, it does serve as an indication of acceptable tax increases for municipalities at present, and provides a public policy standard going forward as to what might be reasonable increases to municipal budgets as a result of public employee salary increases. In the instant case, the City's 2009-2011 budget does provide for modest salary increases for police, consistent with what is being provided generally to the accepted comparables. The Arbitrator is further guided by the understanding that retroactivity salary payments will impose a significant cash payout burden on the City for the current budget.

The Arbitrator will therefore Award across-the-board increases as follows: Effective January 1, 2009 a 2% increase; effective July 1, 2009, a 2.25% increase; and effective January 1, 2010 a 2% increase, all increases retroactive to their effective dates. The Arbitrator notes that the splitting of the increase in 2009 affords the City some relief on the payout that will be due for retroactive monies but will still add the increase to the base salary levels. Further, the splitting constitutes recognition that the City is currently experiencing a decline in revenues. The 2% increase in 2010, the Arbitrator notes, constitutes an explicit recognition of economic problems in 2010, which include loss of revenues by the

City, increased demands made on the City because of loss of state aid, the general recession conditions of the nation and State economies, the need not to impose an undue burden on the tax payers in the City, and implementation of the soon to be effective 2% property tax cap.

Accordingly, in view of all statutory criteria, and based on the Arbitrator's findings and the Arbitrator will award an increase in salary as follows:

AWARD

Effective January 1, 2009, all members of this Unit shall receive a general salary increase of 2%. Effective July 1, 2009, all members of this Unit shall receive a general salary increase of 2.25%. Effective January 1, 2010, all members of this Unit shall receive a general salary increase of 2%.

Arbitrator's Analysis on Uniform Allowance

The parties' current Agreement afforded Officers an \$850 uniform allowance in the last two years of the Agreement. (Joint Exhibit 4, Article VI, Section 1). The PBA's proposals sought an increase to 1.5% of the top grade Police Officer salary, effective January 1, 2009, and 2% of the top grade Police Officer salary, effective January 1, 2010. The City has resisted the proposal, claiming that the PBA offered no evidence as to why the \$850 annual allowance was not sufficient.

A review of the comparables, regarding uniform allowance, shows as follows (City Exhibit 14):

	Municipality	Amount
1	Mt. Vernon City PD	\$625 1 st 2 years; 1/1/03 - \$500; 1/1/04 - \$525; 1/1/05 – 12/31/09 - \$575 (City pays 60% of costs if major change in uniform/equipment.)
2	New Rochelle City PD	1/1/08 - \$25 per year; 1/1/09 - \$50 per year.
3	Peekskill City PD	\$850 per year (not including initial jacket)
4	Rye City PD	\$1,200 per year
5	White Plains City PD	\$461 per year
6	Yonkers City PD	24+ months. Service - \$800 per year

Upon analysis, the Arbitrator finds that the record permits the conclusion that the costs of equipment and the cleaning of uniforms have increased. The Arbitrator is also persuaded in awarding an increase by the fact that the Police Officers have received no more than a modest increase in salaries, and that an increase, therefore, of uniform allowance will be of financial assistance to members of the unit. The City, as noted, has the ability to fund a reasonable increase, and a reasonable increase in the uniform allowance will essentially maintain the City's position among the comparables.

Accordingly, the Arbitrator will issue an Award increasing the uniform allowance, effective December 31, 2010, to 1.5% of the top paid grade Police Officer's salary, to be paid on May 1, 2011 per the payment date set forth in Section 1 of Article VI of the parties' current Agreement. (Joint Exhibit 4, p. 6). The increase, it can be noted, will be calculated on the increase in salary awarded above. Thus, the top Officer's salary, effective December 31, 2010, will be \$87,144, and the uniform allowance will thus be \$1,307.16.

Accordingly, in view of all statutory criteria, and based on the Arbitrator's findings, the Arbitrator will award an increase on uniform allowance as follows:

AWARD

Effective December 31, 2010, the uniform allowance is increased to 1.5% of the top Officer's salary (Police Officer after 4 years), which amount is to be paid on May 1, 2011 pursuant to Article VI Section 1 of the current Agreement.

Arbitrator's Analysis on City Ordered Uniform Changes

The Union, in addition to seeking an increase in uniform allowance, has proposed that the City be required to pay for any uniform or related item changes the City requires of PBA members at the time the changes are initiated. According to the PBA, it essentially has sought the incorporation of an Interest Arbitration Award issued by Arbitrator Douglas and have it applied to uniform changes. The City claims in essence that no justification appears for this change.

A reading of the Opinion of Arbitrator Douglas (Joint Exhibit 6) discloses that his reasoning, consistent with the PBA's position before him, which he described as "an isolated one shot issue" (Id., p. 5), was in reference to a particular historical point in time. Thus, the rationale of this Award has no particular application to the question that this Arbitrator must resolve, and, for that reason, the Arbitrator finds the Award not to be persuasive, however well reasoned it may have been.

The uniform allowance awarded herein contemplates existing equipment and uniforms. Should the City mandate changes in the uniform, which Officers are required to address immediately without the ability to wait for the time for the item to be replaced when it reaches its point of normal "wear and tear" replacement, then the City will be directed by this Award to pay for the uniform changes. If the directive to PBA members for the uniform change is such that Officers do not need to make a change until the current item wears out, then the

City is under no obligation, per the Award to be made, to pay for the new uniform, which members will be obliged to pay for out of their uniform allowance.

Accordingly, in view of all statutory criteria, and based on the Arbitrator's findings, the Arbitrator will award on the City's ordered uniform changes as follows:

AWARD

Effective December 31, 2010, the City is required to pay for any uniform or related item changes it requires of bargaining unit members when the change is initiated unless the implementation of the change can await the time until the current equipment or uniform wears out, in which case it will be the obligation of PBA members to pay for the uniform or equipment change from the uniform allowance.

Arbitrator's Analysis of Compensatory Time Accumulation

The parties' current Agreement allows Officers to accumulate and maintain up to a maximum of 40 hours of unused compensatory time. (Joint Exhibit 4, Article V, Section VI[B]), p. 5). The PBA has sought to increase the maximum of accumulated hours to 56 hours. It notes that, among the comparables, Police Officers in White Plains are allowed to accumulate 48 hours, Officers in Yonkers are allowed to accumulate 180 hours, and Mt. Vernon Detectives can maintain an unlimited amount of sick time. (See PBA Exhibit 5). According to the City, there is no basis that has been offered by the PBA to award the increase.

The Arbitrator finds that there is sufficient evidence in the record, based on the statutory criteria, to award the PBA its proposal. There is no direct cost associated with this increase, which nevertheless will allow bargaining unit members the possible ability to spend more time with their families. The Arbitrator emphasizes his understanding that he finds no factually supported reason offered by the City to not award this proposal.

Accordingly, in view of all statutory criteria, and based on the Arbitrator's findings, the Arbitrator will award on compensatory time accumulation as follows:

AWARD

The compensatory time accumulation, effective the date of this Award, is increased from 40 hours to 56 hours.

Arbitrator's Analysis of Health Insurance Contributions

Currently, in Article X of their Agreement, the parties set forth a detailed manner for calculating the members' required contributions for health insurance. The parties have acknowledged that it is the last paragraph of Section 1(A) that is now controlling, which sets forth a maximum contribution per member of \$975 annually for family coverage and \$500 annually for individual coverage. (Joint Exhibit 4, Article X, Section 1[A], p. 12).

A review of the comparables discloses:

	Municipality	% paid by employer	Retirement % paid by employer
1	Mt. Vernon City PD	80% or if ee choses HMO whose premium exceeds Empire, then 80% of Empire and 0% of difference between HMO and Empire; Dies in line of duty – provides at 80% for family for 15 yrs; not in line of duty – provides at 80% for family for 5 yrs. Opt. Out. - \$1,500	20 yrs service or disability retirement due to on the job injury on or after 7/1/06 to qualify. Retired on or after 5/1/03 – 80% or if ee choses HMO whose premium exceeds Empire, then 80% of Empire and 0% of difference between HMO and Empire;
2	New Rochelle City PD	Ind. 82% Dep. 82% Opt Out - \$200 per month	Retire 1/1/72 – 100% of hospitalization, surgical/major medical insurance if under 65 yrs old or not under another plan
3	Peekskill City PD	Ind. 83% max \$500 /yr Dep. 83% max	Retire 1/1/00 or after – 100%

		\$975/yr Opt Out - \$2,500 for Dep; \$1,000 Ind. (must opt out for entire 12 months)	
4	White Plains City PD	Ind & Dep: before 1/1/90 – 100%	Hired 7/1/95 or after:
		1/1/90 + after – yrs 0-4 75%; 5+ yrs 100%	0-9 yrs service – 0% 10-14 yrs service – 50% (Ind.) 35% (Dep).
		Opt Out – 40% of premium savings (must opt out for full year)	15-19 yrs service – 80% (Ind & Dep) 20+ yrs service – 100% (Ind. & Dep)
5	Yonkers City PD	0-35 mo of service: Ind 50%, Dep. 65%	
		36-47 mo of service: Ind 55%, Dep. 70%	
		48-59 mo of service: Ind. 65%, Dep. 75%	
		60-71 mo of service: Ind. 70%, Dep. 80%	
		72+ mo of service: Ind. 80%, Dep. 90%	
		Opt out - \$1,000 per year	

(City Exhibit 11).

The record also shows that the Firefighters, in their 2007 to 2009 Agreement with the City, agreed, for 2007, to contribute \$700 to the health insurance premiums for individual coverage and \$1,325 to the health insurance premium for family coverage. Effective January 1, 2008, the contributions

increased to \$900 for individual coverage and \$1,680 for family coverage. (Joint Exhibit 5, Article X, p. 11).

The record also contains the following data regarding the health insurance premiums charged to the City, and the rate of increase and the percentage of Officers' contribution:

Year	Total Family Healthcare Premium	% increase in premium	City's Portion of Premium	Police Officer Contribution	Police Officer % Contribution Rate
2002	\$8,687.64	xxx	\$7,712.64	\$975.00	11.22%
2003	\$9,736.92	12.10%	\$8,761.92	\$975.00	10.01%
2004	\$11,096.88	14.00%	\$10,121.88	\$975.00	8.79%
2005	\$12,164.16	19.60%	\$11,189.16	\$975.00	8.02%
2006	\$13,514.28	1.10%	\$12,539.28	\$975.00	7.21%
2007	\$14,376.84	6.40%	\$13,401.84	\$975.00	6.78%
2008	\$15,105.36	5.00%	\$14,130.36	\$975.00	6.45%
2009	\$15,386.04	1.90%	\$14,411.04	\$975.00	6.34%
2010	\$15,971.16	3.80%	\$14,996.16	\$975.00	6.10%
2011	\$18,167.04	13.74%	\$17,192.04	\$975.00	5.37%

(City Exhibit 35)

The City proposes that Officers contribute 20% of the cost of their health insurance premiums. The PBA opposes any change. The Arbitrator finds, however, that the status quo cannot stand. Particularly influential in the Arbitrator's reasoning is the increase in health insurance premiums, which calls for the City to obtain some relief. The Firefighters, the Arbitrator would also note, given the annual family health care premium of \$18,167.04, are paying nearly 10% of the health insurance premium. The Arbitrator has identified previously the PBA's relative position with the Firefighters on salary that the instant Award

achieves, and for the reasons set forth herein, and consistent with the statutory criteria, this Award will require PBA members to pay increased levels of contributions. The Arbitrator will not impose a “flat rate” increase since in the ever-changing rate structure of health insurance premiums; a percentage contribution makes more sense. The Arbitrator does not find justification, however, for the City’s 20% contribution level that it seeks in its proposal but will award a 10% increase for health insurance for all PBA members.

Accordingly, in view of all statutory criteria, and based on the Arbitrator’s findings, the Arbitrator will award on health insurance as follows:

AWARD

Effective December 31, 2010, all PBA members will pay 10% of the cost of health insurance coverage that they have selected.

REMAINING ISSUES

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

AWARD ON REMAINING ISSUES

Except for those proposals and/or items previously set forth in the above Award, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

The Arbitrator hereby expressly retains jurisdiction of any and all disputes arising out of the interpretation or application of this Opinion and Award.

s/Jeffrey M. Selchick

11/12/11

JEFFREY M. SELCHICK, ESQ.
Arbitrator

Date of
Award

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

On this 12th day of November, 2011 before me personally came and appeared Jeffrey M. Selchick, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public