STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

x

In the Matter of the Interest Arbitration

NYS PERB Case No.:
IA2009-026; M2008-334
(PT PO)
IA2009-027; M2008-335
(FT PO)

-between-

TOWN OF CORNWALL POLICE BENEVOLENT ASSOCIATION, INC.
"Petitioner/ Association/ Union"

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTE
ARBITRATION PANEL
For the period: 1/1/09 – 12/31/10

- and -

TOWN OF CORNWALL.
"Respondent/ Town / Employer"

x

PANEL MEMBERS

Panel Chairman ..... Roger E. Maher
Employee Panel Member ..... Anthony V. Solfaro
Employer Panel Member ..... Thomas McDonough, Esq.

APPEARANCES

For the Town of Cornwall Police Benevolent Association, Inc.
Law Offices of John K. Grant PC.
By John M. Crotty, Esq.

For Town of Cornwall
Law Offices of Jackson Lewis, LLP
By Michael Hekle, Esq.

BACKGROUND

The Town of Cornwall (the "Town", the "Employer") and the Town of Cornwall Police Benevolent Association, Inc. (the "Association", the "Union") are parties to a Collective Bargaining Agreement for the term January 1, 2005 through December 31, 2008. The parties are also subject to an Interest Arbitration Award covering the time period January 1, 2009 through December 31, 2010.

The parties commenced negotiations on or about 10/18/08 toward a successor agreement, and following their inability to reach settlement at the negotiation table, impasse was declared. On or about 10/27/09 the Union filed a petition for Compulsory Interest Arbitration. On or about November 11, 2009, the Town filed its Response and it also filed an Improper Practice Charge on November 11, 2009, stating that several of the proposals submitted by the Association as part of the Interest Arbitration Petition, were not arbitrable as they were not "directly related to compensation" pursuant to New York State Civil Service Law §209.a(2)(b). By stipulation between the parties some of the proposals were withdrawn, and others are still pending before PERB for a determination as to whether they can be submitted to the Interest Arbitration Panel. Those demands still pending before PERB will be duly noted in the analysis of the respective proposals of the Association and the County.

Roger E. Maher was appointed as Chairperson of the Panel being convened to resolve the disputes between the parties. The Association designated Anthony V. Solfaro as its representative on the Panel, and the Town designated Michael Hekle, Esq. of Jackson Lewis LLP, as its representative. A hearing was held on August 4, 2010, at which each party was

represented in making its presentation to the Panel.

The jurisdiction of the Panel is as found in New York State Civil Service Law §209.4(c)(v), as amended. The term to be covered by the Interest Arbitration Award is January 1, 2009 to December 31, 2010.

The parties were both represented by counsel and afforded a full opportunity to present oral and written documentary evidence in support of their respective positions.

Economist Kevin R. Decker, an expert in municipal budgets and finance testified on the PBA's behalf. The PBA submitted one hundred six (106) exhibits that were entered into evidence.

Commissioner of Finance, Westchester County, Ann Marie Berg, Town of Cornwall Supervisor Kevin Quigley and Town of Cornwall Police Chief, Todd Hazard testified on behalf of the Town. The Town submitted fifty (50) exhibits. The parties agreed that a stenographic record would be taken of the proceedings. The record was declared closed and a briefing schedule was established. The Panel received the parties' post hearing briefs dated December 6, 2010. Thereafter the Panel convened an executive session on December 13, 2010. The Panel Chair also initiated numerous telephonic consultations with Panel members jointly and separately.

DEMANDS OF THE PBA

Full Time Police Officer Proposals

Article 3 - Compensation

1. BASE WAGE

A. Amend only schedule as follows:

Step	Years of Service	1/1/09		1/1/10	
	Academy Rate *	(4.5%)	$36,043 *	(4.5%)	$37,665 *
1	Start	(4.5%)	$42,404	(4.5%	$44,312
2	After 1 Year	(4.5%)	$46,019	(4.5%)	$48,090
3	After 2 Years	(4.5%)	$48,324	(4.5%)	$50,499
4	After 3 Years	(4.5%)	$55,080	(4.5%)	$57,559
5	After 4 Years	(4.5%)	$58,333	(4.5%)	$60,958
6	After 5 Years	NEW	$60,833	(4.5%)	$63,570
Detective/Investigator and/or Youth Officer **			$68,875		$66,749
Sergeant ***			$70,263		$73,424

* The Academy Rate is 85% of Step 1 for the period of time attending the Municipal Police Training Council (MPTC) basic police academy. Upon graduation, that employee shall move to Step 1. (NOTE: Represents N/C from existing language).

** The Detective, Investigator and/or Youth Officer shall be paid a differential of 5% over and above the Step 6 Base Wage. . (NOTE: Currently paid $2,100.00 above employee's BASE WAGE).

*** The Sergeant(s) shall be paid a differential on 10% over and above the Detective's differential. (NOTE: Currently paid 14% over and above Step 5).

B. Amend Longevity schedule for employees hired on or after January 1, 1998 as follows:

Completed Years of Service	Percentage of Base Wage
4 (N/C)	4% each year (N/C)
7 *	6% each year (N/C)
13 **	9% each year (N/C)

* Denotes a compression of 3 years. Denotes a compression of 2 years.

** Denotes a compression of 2 years.

2. PREMIUM PAY

I. Uniform Cleaning, Maintenance and Replacement

Amend schedule to read as follows:

Total Payment	Cleaning	Replacement and Maintenance Allowance
1/1/09 $1,200.00	(+$75.00) $600.00	(+$75.00) June $300.00 December $300.00
1/1/10 $1,425.00	(+$75.00) $675.00	(+$75.00) June $375.00 December $375.00

K. Add heading of Shift Differential and delete "not" in the last sentence and amend amounts as follows:

	(+$.40/hr) 1/1/09	(+$.25/hr) 1/1/10
"A" line - 12:00 midnight to 8:00 a.m.	$1.00/hr	$1.25/hr
"C" line - 4:00 p.m. to 12:00 midnight	$ .75/hr	$1.00/hr

3. IN-SERVICE SCHOOLING

A. Amend to read as follows:

Upon receipt of an Associate's Degree, an employee shall receive $300.00 added annually to their Base Wage and/or Longevity.

B. Amend to read as follows:

Upon receipt of a Bachelor's Degree, an employee shall receive $450.00 added annually to their Base Wage and/or Longevity.

5. SEPARATION AND RETIREMENT BENEFITS

Insert "unused accumulated sick leave" in the 1st sentence.

Add the following to read as follows:

All of the foregoing shall be paid at the rate of pay in effect at the time of death, separation or retirement. The payment shall be made in the pay period following death, separation or retirement.

2. ARTICLE 4 - LEAVES WITH PAY

1. SICK LEAVE

Amend the 1st paragraph to read as follows:

Sick leave shall be earned on the basis of thirteen (13) days each year, with unlimited accumulation.

Amend the 2nd paragraph to read as follows:

An employee who retires, shall be paid for all unused accumulated sick leave at the rate of one (1) day for every two (2) days, at the rate of pay in effect at that time (Example: 150 days accumulated = 75 days paid).

2. PERSONAL LEAVE

Insert "three (3) work days each" where "three (3) days per" appears. (NOTE: Not a substantive change).

3. ARTICLE 5 - HOLIDAY AND VACATION \VITH PAY

2. VACATION WITH PAY

NEW D. On completion of fifteen (15) years of service with the Town of Cornwall Police Department, 25 work days.

4. ARTICLE 6 - HEALTH INSURANCE AND RETIREMENT

1. HEALTH INSURANCE

In the event the Employer seeks to change the health insurance carrier, plan and/or its benefits, the change(s) shall be submitted, in writing, to the PBA President. The PBA shall respond to the Employer, within ninety (90) calendar days of receipt of the notice from the Employer, that they agree or disagree that the change(s) are not substantially equal to the existing carrier plan and/or benefits. In the event the PBA does not agree that the new health insurance carrier, plan and/or benefits is substantially equal, the parties agree to submit this matter directly to arbitration through the American Arbitration Association (AAA), pursuant to their voluntary rules and procedures in effect at that time. The parties reserve the right to select an arbitrator to hear this matter. The arbitrator's decision and function shall be as set forth in Article 9 - Grievance Procedure in this Agreement. In no event shall any change in health insurance carrier, plan and/or benefits be effectuated until such time as an arbitration award has been issued which permits the change(s).

2. HEALTH INSURANCE BUY OUT

A. Amend to read as follows:

An employee may opt to decline and waive health insurance provided by the Employer, during the open period each year, to be effective the following January through December, only when the employee has other health insurance and in accordance with the terms set forth in Appendix "A" and made a part of this Agreement. An employee who declines and waives health insurance coverage as provided in Appendix "A" shall receive fifty percent (50%) of the premium or cost, s set forth therein.

3. INJURY ON THE JOB - Change to read INJURY OR ILLNESS ON THE JOB

B. NO LOSS OF PAY- Amend to read as follows:

Employees who suffer an injury on the job, or become sick due to a job related Incident, shall not suffer any loss of pay or benefit.

5. HEALTH INSURANCE UPON RETIREMENT

A. Delete "from the Town of Cornwall Police Department with" on the 1st line.

B. Insert "and eligible dependent(s)" after "police officer" on the 2nd line.

5. ARTICLE 7 – EMPLOYEE STATUS:

Change heading to EMPLOYEE RIGHTS.

New Section 6 to read as follows:

6. BILL OF RIGHTS FOR EMPLOYEES SUBJECT TO INVESTIGATION

The following provisions shall apply to all employees being investigated for alleged disciplinary violations:

1. The interview and/or interrogation of an employee shall be at a reasonable hour, preferably when the employee is on duty, unless the exigencies of the investigation dictate otherwise. When practical, interviews and/or interrogations should be scheduled for the day time.

2. The interview and/or interrogation shall take place at a location designated by the investigating officer.

3. The employee shall be informed of the rank and name of the

interviewing and/or interrogating officer in charge of the investigation and all personnel present during the interview and/or interrogation.

4. The employee shall be informed of the nature of the investigation before the interview and/or interrogation commences, including the of the complainant. The address of the complainant and/or witnesses need not be disclosed. However, sufficient information reasonably calculated to apprise the employee of the allegations shall provided. If it is known that the employee is being interviewed and/or interrogated as a witness only, he/she should be so informed at the initial contact.

5. The questioning shall not be overly long. Reasonable respites shall be. Time shall be also provided for personal necessities, meals, telephone calls and rest periods as are reasonably necessary.

6. The employee shall have the right to record the interview and/or interro gation.

7. The department shall afford full opportunity for any employee, if he/she so requests, to consult with counsel before being interviewed and/or interrogated, concerning the violation of the rules and regulations, provided the interview and/or interrogation is not unduly delayed. However, in such cases, the interview and/or interrogation may not be postponed for the purpose of counsel beyond forty-eight (48) hours following the notification of the interview and/or interrogation. Counsel, if available, and/or a representative of the Association, may be present during the interview and/or interrogation of the employee, provided the employee requests such presence.

8. All employees shall be notified of any charge or complaint made against him/her, the nature of the complaint and the name of the complainant within a reasonable time, provided that the withholding of such information is not required for law enforcement purposes.

9. The aforementioned procedure shall be observed by all superior officers and other officials conducting disciplinary investigations of alleged actions of any employee.

6. PROPOSED NEW ARTICLE - DISCIPLINARY PROCEDURE

Command Discipline - Informal Stage

In the event the Employer determines that a formal procedure is not required due to the relatively minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or police departments adopted Rules and Regulations, the affected employee(s) shall be afforded the opportunity to resolve the matter, with representation, through a written Stipulation of Settlement, setting forth the terms agreed upon between the parties.

The Employer shall initiate Command Discipline by advising the employee(s) of the minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or the Police Department's adopted Rules and Regulations and the proposed penalty. In the event the employee(s) does not agree with the proposed penalty, or in the event a settlement cannot be agreed upon, or rejects Command Discipline, the Employer may then file written charge(s) against the employee(s) as prescribed herein.

The maximum penalty that may be imposed at this level by the Chief of Police is as follows:

1. A written reprimand to be placed in the employee's personnel file, which shall not exceed nine (9) months and/or

2. A reduction in paid leave accruals (e.g., vacation, personal leave, Holiday, etc.) for the full-time employee which shall not exceed five (5) work days. The employee shall designate which paid leave to be deducted. The deduction can be a combination of different paid leave.

In the event Command Discipline resolves the matter by a signed Stipulation of Settlement, neither the employee nor PBA may file or pursue a grievance pursuant to Article 9 - Grievance Procedure of this Agreement.

Procedure Rights - Formal Stage

In the event the Employer determines that a written charge(s) is required, the Disciplinary Procedure prescribed herein shall be available to all employees with at least one (1) year of service with the Employer, unless otherwise available pursuant to law. In the event the Employer seeks to impose a written reprimand, suspension without pay for up to ten (10) calendar days, or a fine not to exceed one hundred ($100.00) dollars, the Disciplinary Procedure shall be Section 75 and/or 76 of the Civil Service Law. In the event the Employer seeks to impose a suspension of more than ten (10) calendar days, reduction in grade (demotion), or dismissal from service (termination), the employee shall have the right to choose either Section 75 and/or 76 of the Civil Service Law, or arbitration as described herein, but not both alternative procedures to grieve such disciplinary action. If any penalty(s) is/are imposed at the conclusion of the Section 75 or arbitration hearing neither the employee nor PBA may file or pursue a grievance through Article 9 - Grievance Procedure of this Agreement. The remedy for review of the determination and penalty made pursuant to a Section 75 hearing is an appeal through the procedures set forth in

the Civil Service Law or an Article 78 Proceeding. The remedy for review of the determination and penalty made pursuant to an arbitration hearing, as described herein, is an appeal through an Article 75 of the Civil Practice Law and Rules.

Notice of Discipline - Formal Stage

In the event the Employer sees fit to impose a written reprimand, suspension without pay, a fine, reduction in grade or dismissal from service, notice of such disciplinary decision shall be made in writing and served upon the employee. The disciplinary measure shall be imposed only for incompetence or misconduct. The specific act(s) that warrants disciplinary action and the proposed sanction(s) shall be specifically contained in the Notice of Discipline.

The PBA shall be provided a copy of the Notice of Discipline at the same time as the affected employee(s).

The Notice of Discipline shall be accompanied by a written statement that:

> "An employee served with a Notice of Discipline has the right to object by filing a response within ten (10) calendar days by exercising his/her rights as set forth above, which shall be fully set forth in the Notice of Discipline served on the employee."

Procedure Selection - Formal Stage

In the event the employee does object, then he/she shall file a written notice of their choice of procedure, subject to the provisions stated above with the Employer and PBA no later than ten (10) calendar days after receiving the Notice of Discipline.

The alternative disciplinary procedure to Section 75 and/or 76 provides for a hearing by an independent arbitrator at its final stage.

The employee has the right to be represented by the PBA, an attorney, or other representative of their choice, at every stage of the proceeding.

Suspension

In no event, however, shall an employee who has been served with a Notice of Discipline be suspended without pay for a period not to exceed thirty (30) calendar days.

Grieving a Notice of Discipline and Filing for Arbitration

An employee who elects arbitration, shall grieve a Notice of Discipline directly at Step 3 of the Grievance Procedure prescribed in Article 9 hereof, no later than ten (10) calendar days after receiving the Notice of Discipline by filing a Demand for Arbitration with the American Arbitration Association (AAA), with a copy to the Town Supervisor.

The independent arbitrator shall be selected in accordance with the procedures set forth in Article 9 - Grievance Procedure through the American Arbitration Association (AAA).

The independent arbitrator shall hold a hearing at a mutually agreed upon date(s) and time(s) to all parties' representatives. The affected employee may be represented at the arbitration by the individual(s) of his/her choosing and shall be entitled to present witnesses on his/her behalf.

The arbitrator shall confine himself/herself to the precise issue(s) submitted for arbitration and shall have no authority to determine any other issue(s) not so submitted to him/her nor shall he/she submit observations or declarations of opinion which are not essential in reaching the determination. The arbitrator's decision with respect to guilt or innocence and-penalty, if any, shall be final and binding on the parties and he/she may approve, disapprove or take any other appropriate action warranted under the circumstances, including, but not limited to, ordering reinstatement and back pay for all or part of the period of suspension, if any.

Settlement

The disciplinary may be settled at any stage of the proceeding. The terms of the settlement agreed to shall be reduced to writing and signed by the appropriate parties.

Fees and Expenses

All fees and expenses of the arbitrator, if any, shall be paid equally by the Employer and PBA. In the event the employee is not represented by the PBA, he/she shall be responsible for his/her equal share of the arbitrator's fees and expenses. In the event demotion or termination is sought by the Employer, the hearing shall have a transcribed record provided at no cost to the employee or PBA.

7. ARTICLE 13 - DURL\TION

Insert "2009" and "2010" where "2005" and "2006" appears and delete the 2nd sentence. (NOTE: the 2nd sentence was agreed to in the last negotiations. See the Memorandum of Agreement (MOA) dated 4/26/06).

8. PROPOSED NEW ARTICLE – DENTAL INSURANCE

The Employer shall provide the (*insert plan name here*) for all individuals and eligible dependents at no cost.

Part Time Police Officer Proposals

The part-time police officers should have the identical language of the full-time police officers contract throughout their contract where applicable.

1. **ARTICLE 2 - COMPENSATION**

A. WAGES - Change Section to Read BASE WAGE HOURLY RATE OF PAY

Amend the schedule as follows:

(+1.25/hr)	(+1.25/hr)
1/1/09	1/1/10
$21.30/hr	$22.55/hr

B. **PREMIUM PAY**

3. **Overtime Pay:**

Incorporate language for overtime after an 8-hour tour of duty, call-in or court time.

4. **Uniform Purchase. Cleaning and Maintenance of Uniform**:

Incorporate cleaning schedule as follows:

Hours Worked	1/1/09	1/1/10
Up to I50 hours	$125.00/yr	$l50.00/yr
15l to 300 hours	$150.00/yr	$175.00/yr.
301 to 450 hours	$175.00/yr	$200.00/yr
451 to 600 hours	$200.00/yr	$225.00/yr
601 to 750 hours	$22S.00/yr	$2S0.00/yr
751 to 900 hours	$250.00/yr	$27S.00/yr
901 and above	$300.00/yr	$325.00/yr

The above payment shall be made in the first (1st) pay period of January each year based on the hours worked the preceding calendar year.

5. **Holiday Pay:** Amend Holiday Schedule and Payment as Follows:

1/1/09

NEW 1. New Years Day (1.5X)

NEW 2. Lincoln's Birthday (1.5X)

NEW 3. Washington's Birthday (1.5X)

NEW 4. Good Friday (1.5X)

5. Memorial Day (2X) – Currently 1.5 X

6. Labor Day (2X) - Currently 1.5 X

NEW 7. Columbus Day (1.5X)

NEW 8. Veteran's Day (1.5X)

9. Thanksgiving Day (2X) – Currently 1.5X

NEW 10. Day after Thanksgiving (1.5X)

11. Christmas Eve (2X) – Currently 1.5X

12. Christmas Day (2X) – No Change

13. New Year's Eve (2X) - Currently 1.5X

C. SHIFT DIFFERENTIAL - NEW

Same as the full-time police officer, but has to work that tour of duty to be paid the respective differential.

D. LONGEVITY - NEW

1. Upon completion of 4 years of service with the Town of Cornwall Police Department, an employee shall be paid a longevity step of 4% of the employee's base wage hourly rate of pay.

2. Upon completion of 7 years of service with the Town of Cornwall Police Department, an employee shall be paid a longevity step of 6% of the" employee's base wage hourly rate of pay.

3. Upon completion of 13 years of service with the Town of Cornwall Police Department, an employee shall be paid a longevity step of 9% of the employee's base wage hourly rate of pay .

2. **ARTICLE 7 - WAGE CONTINUATION PURSUANT TO GENERAL MUNICIPAL LAW SECTION 207-c**

Make 1st paragraph A.

NEW B. Employees who suffer an injury on the job, or become sick due to a job related incident shall not suffer any loss of pay.

3. **PROPOSED NE\V ARTICLE - BILL OF RIGHTS FOR EMPLOYEES SUBJECT TO INVESTIGATION**

The following provisions shall apply to all employees being investigated for alleged disciplinary violations:

1. The interview and/or interrogation of an employee shall be at a reasonable hour, preferably when the employee is on duty, unless the exigencies of the investigation dictate otherwise. 'When practical, interviews and/or interrogations should be scheduled for the day time.

2. The interview and/or interrogation shall take place at a location designated by the investigating officer.

3. The employee shall be informed of the rank and name of the interviewing and/or interrogating officer in charge of the investigation and all personnel present during the interview and/or interrogation.

4. The employee shall be informed of the nature of the investigation before the interview and/or interrogation commences, including the name of the complainant. The address of the complainant and/or witnesses need not be disclosed. However, sufficient information reasonably calculated to apprise the employee of the allegations shall be provided. If it is known that the employee is being interviewed and/or interrogated as a witness only, he/she should be so informed at the initial contact.

5. The questioning shall not be overly long. Reasonable respites shall be allowed. Time shall be also provided for personal necessities, meals, telephone calls and rest periods as are reasonably necessary.

6. The employee shall have the right to record the interview and/or interrogation.

7. The department shall afford full opportunity for any employee, if he/she so requests, to consult with counsel before being interviewed and/or interrogated,

concerning the violation of the rules and regulations, provided the interview and/or interrogation is not unduly delayed. However; in such cases, the-interview and/or interrogation may not be postponed for the purpose of counsel beyond forty-eight (48) hours following the notification of the interview and/or interrogation. Counsel, if available, and/or a representative of the Association, may be present during the interview and/or interrogation of the employee, provided the employee requests such presence.

8. All employees shall be notified of any charge or complaint made against him/her, the nature of the complaint and the name of the complainant within a reasonable time, provided that the withholding of such information is not required for law enforcement purposes.

9. The aforementioned procedure shall be observed by all superior officers and other officials conducting disciplinary investigations of alleged actions of any employee.

4. **PROPOSED NEW ARTICLE - DISCIPLINARY PROCEDURE**

Command Discipline - Informal Stage

In the event the Employer determines that a formal procedure is not required due to the relatively minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or police departments adopted Rules and Regulations, the affected employee(s) shall be afforded the opportunity to resolve the matter, with representation, through a written Stipulation of Settlement, setting forth the terms agreed upon between the parties.

The Employer shall initiate Command Discipline by advising the employee(s) of the minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or the Police Department's adopted Rules and Regulations and the proposed penalty. In the event the employee(s) does not agree with the proposed penalty, or in the event a settlement cannot be agreed upon, or rejects Command Discipline, the Employer may then file written charge(s) against the employee(s) as prescribed herein.

The maximum penalty that may be imposed at this level by the Chief of Police is as follows:

1. A written reprimand to be placed in the employee's personnel file, which shall not exceed nine (9) months and/or

2. Removal from the work schedule which shall not exceed three (3) work days.

In the event Command Discipline resolves the matter by a signed-Stipulation of Settlement, neither the employee nor PBA may file or pursue a grievance pursuant to Article 9 - Grievance Procedure of this Agreement.

Procedure Rights - Formal Stage

In the event the Employer determines that a written charge(s) is required, the Disciplinary Procedure prescribed herein shall be available to all employees with at least one (l) year of service with the Employer, unless otherwise available pursuant to law. In the event the Employer seeks to impose a written reprimand, suspension without pay for up to ten (10) calendar days, or a fine not to exceed one hundred ($100.00) dollars, the Disciplinary Procedure shall be Section 75 and/or 76 of the Civil Service Law. In the event the Employer seeks to impose a suspension of more than ten (10) calendar days, reduction in grade (demotion), or dismissal from service (termination), the employee shall have the right to choose either Section 75 and/or 76 of the Civil Service Law, or arbitration as described herein, but not both alternative procedures to grieve such disciplinary action. If any penalty(s) is/are imposed at the conclusion of the Section 75 or arbitration hearing neither the employee nor PBA may file or pursue a grievance through Article 4 Grievance Procedure of this Agreement. The remedy for review of the determination and penalty made pursuant to a Section 75 hearing is an appeal through the procedures set forth in the Civil Service Law or an Article 78 Proceeding. The remedy for review of the determination and penalty made pursuant to an arbitration hearing, as described herein, is an appeal through an Article 75 of the Civil Practice Law and Rules.

Notice of Discipline - Formal Stage

In the event the Employer sees fit to impose a written reprimand, suspension without pay, a fine, reduction in grade or dismissal from service, notice of such disciplinary decision shall be made in writing and served upon the employee. The disciplinary measure shall be imposed only for incompetence or misconduct. The specific act(s) that warrants disciplinary action and the proposed sanction(s) shall be specifically contained in the Notice of Discipline.

The PBA shall be provided a copy of the Notice of Discipline at the same time as the affected employee(s).

The Notice of Discipline shall be accompanied by a written statement that:

> "An employee served with a Notice of Discipline-has the right to object by filing a response within ten (10) calendar days by exercising his/her rights as set forth above, which shall be fully set forth in the Notice of Discipline served on the employee."

Procedure Selection - Formal Stage

In the event, the employee - does- object.-then –he/she shall file a written notice of their choice of procedure, subject to the provisions stated above with the Employer and PBA no later than ten (10) calendar days after receiving the Notice of Discipline.

The alternative disciplinary procedure to Section 75 and/or 76 provides for a hearing by an independent arbitrator at its final stage.

The employee has the right to be represented by the PBA, an attorney, or other representative of their choice, at every stage of the proceeding.

Suspension

In no event, however, shall an employee who has been served with a Notice of Discipline be suspended without pay for a period not to exceed thirty (30) calendar days.

Grieving a Notice of Discipline and Filing for Arbitration

An employee who elects arbitration, shall grieve a Notice of Discipline directly at Step 3 of the Grievance Procedure prescribed in Article 4 hereof, no later than ten (10) calendar days after receiving the Notice of Discipline by filing a Demand for Arbitration with the American Arbitration Association (AAA), with a copy to the Town Supervisor.

The independent arbitrator shall be selected in accordance with the procedures set forth in Article 4 - Grievance Procedure through the American Arbitration Association (AAA).

The independent arbitrator shall hold a hearing at a mutually agreed upon date(s) and time(s) to all parties' representatives. The affected employee may be represented at the arbitration by the individual(s) of his/her choosing and shall be entitled to present witnesses on his/her behalf.

The arbitrator shall confine himself/herself to the precise issue(s) submitted for arbitration and shall have no authority to determine any other issuers) not so submitted to him/her nor shall he/she submit observations or declarations of opinion which are not essential in reaching the determination. The arbitrator's decision with respect to guilt or innocence and. penalty, if any, shall be final and binding on the parties and he/she may approve, disapprove or take any other appropriate action warranted under the circumstances, including, but not limited to, ordering reinstatement and back pay for all or part of the period of suspension, if any.

Settlement

The disciplinary may be settled at any stage of the proceeding. The terms of the settlement agreed to shall be reduced to writing and signed by the appropriate parties.

Fees and Expenses

All fees and expenses of the arbitrator, if any, shall be paid equally by the Employer and PBA. In the event the employee is not represented by the PBA, he/she shall be responsible for his/her equal share of the arbitrator's fees and expenses. In the event demotion or termination is sought by the Employer, the hearing shall have a transcribed record provided at no cost to the employee or PBA.

5. **ARTICLE 9 - DURATION**:

Insert "2009" and "2010" where "2005" and "2006" appear, and delete the last sentence

DEMANDS OF THE TOWN

For Full-Time Police Officers

Proposal #1

Article 2, Work Schedule, Section 3 (A) and (C)

Replace "four (4) consecutive work days" with "five (5) consecutive work days".

Proposal #2

Article 2, Work Schedule, Section 3 (F)

Replace with the first two sentences with:

Any change to an employee's work schedule shall be on a minimum of twenty-four (24) hours notice. In the event there is less than twenty-four (24) hours notice, the employee shall be paid overtime for all hours worked in which notice was not provided.

Proposal #3

Article 3, Section 1 (A), Base Wage

Increase current wage schedule as follows:

1/1/09: One (1) percent

1/1/10: One (1) percent

1/1/11: One (1) percent

1/1/12: One (1) percent

Proposal #4

Article 4, Section 1, Sick Leave

Replace the first sentence with:

Sick leave shall be earned on the basis of twelve (12) days per year and may be accumulated up to one hundred twenty (120) days.

Proposal #5

Article 6, Section 1 - Hospitalization

Replace the first paragraph with the following:

The Employer shall pay seventy-five percent (75 %) of the premium cost of health insurance for the individual employee and dependent coverage.

Proposal #6

Article 6, Section 5 (A) - Health Insurance Upon Retirement

Replace the first sentence with the following:

Upon retirement from the Town of Cornwall Police Department with twenty (20) or more years of service, the Employer shall pay seventy-five percent (75 %) of the premium cost of health insurance for the individual employee and dependent coverage.

Retain the remainder of the section.

Proposal #7

Article 6, Section 5 (B) - Health Insurance Upon Retirement

Replace with the following:

Notwithstanding the above and unless contrary to applicable law, the Employer shall pay seventy five percent (75 %) of the premium cost of health insurance for a police officer who receives a disability retirement from a line of duty incurred injury or illness, provided that the injury or illness was sustained while the police officer was working for the Employer and said injury or illness did not occur prior to employment with the Employer.

Retain the remainder of the section.

Proposal #8

Article 7, Section 4 (A) - Promotions and Transfers

Replace the listed factors with the following:

a. Qualifications to perform the position as determined by the Employer;

b. Seniority;

c. Adequate probationary period

Proposal #9

Article 12, Section 4 - Conformity with Law and Practice - No Diminishment

Delete.

Proposal #10

Article 13 - Duration

Replace with:

This Agreement shall be effective as of January 1, 2009 and shall continue in effect through December 31, 2011. The Union and the Employer agree that all negotiable items have been discussed during negotiations leading to the Agreement, and both agree that negotiations will not be re-opened on any item, whether contained in this Agreement or not, during the life of this Agreement. Any Employer policies unaltered or unchanged by the language of this Agreement shall remain in force and it shall be the prerogative of the Employer to initiate and announce new policies not affecting or changing matters contained in this Agreement. In the event either party wishes to amend this Agreement, negotiations must commence no later than August 15, 2011 unless another time is mutually agreed to.

All provisions, agreements, etc. of the current contract shall remain in effect during the agreed time period of this four (4) year contract, January 1,2008 through December 31,2011.

DEMANDS OF THE TOWN

For Part -Time Police Officers

Proposal #1

Article 2, Section A, Compensation - Wages

Increase current wage schedule as follows:

1/1/09: One (1) percent

1/1/10: One (1) percent

1/1/11: One (1) percent

1/1/12: One (1) percent

Proposal #2

Article 5, Section C - Conformity with Law and Practice - No Diminishment

Delete.

Proposal #3

Article 9 - Duration

Replace with:

This Agreement shall be effective as of January 1, 2009 and shall continue in effect through December 31, 2011. The Union and the Employer agree that all negotiable items have been discussed during negotiations leading to the Agreement, and both agree that negotiations will not be re-opened on any item, whether contained in this Agreement or not, during the life of this Agreement. Any Employer policies unaltered or unchanged by the language of this Agreement shall remain in force and it shall be the prerogative of the Employer to initiate and announce new policies not affecting or changing matters contained in this Agreement. In the event either party wishes to amend this Agreement, negotiations must commence no later than August 15, 2011 unless another time is mutually agreed to.

All provisions, agreements, etc. of the current contract shall remain in effect during the agreed time period of this four (4) year contract, January 1,2008 through December 31,2011.

STATUTORY CRITERIA

New York Civil Service Law § 209(4)(c)(v) sets forth the criteria that the Panel must consider in weighing the evidence presented by the parties to reach a "just and reasonable determination of the matters in dispute." Those factors are:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with 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 traders 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 the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel may also consider "any other relevant factors" when makings its determination of the matters in dispute. Id. Among the "other relevant factors" that panels often consider are the terms and conditions of employment and terms of collective agreements negotiated by other bargaining units in the same municipality, particularly other uniformed public safety employees such as firefighters.

SUMMARY OF THE TOWN'S POSITIONS

Comparability

The Town states a significant consideration for the instant Panel, as in most interest arbitration proceedings, is determining the appropriate comparable municipalities. The Town proffers the proper comparables for the Panel's consideration are the Towns of Chester, Crawford, Deer Park, Goshen and Montgomery based upon geography, as well as key operational and financial indicators.

The PBA's assertion the entire County should be used for comparison purposes grossly ignores the vast diversity of Orange County. For example, southern communities enjoy a dramatically higher median household income from those in the northern and central region of the County.

The Town asserts that median household income data and consistent with the economics of the parties' current collective bargaining agreement, Cornwall is a mid to lower tier town within Orange County with respect to resident income.

Ability to Pay

As stated at hearing, the Town maintains it is capable of paying a fair and equitable salary to its officers consistent with the economic realities of the Town and based on other comparable police departments. As Cornwall's financial expert Anne Marie Berg stated, response to whether the Town has the ability to pay based on the PBA's demands, "Technically yes, but it would not be prudent or financially sound [for the] town government to do [so] ... they would

have to raise the taxes [of the residents] and deplete the fund balance. This is significant where Cornwall residents have seen a 5% increase in their general tax bill from 2007 to 2008 (from $7,311 to $7,676) and where the County average was only $5,608 in 2008. Moreover, under current Supervisor Quigley, the Town has been forced to raise taxes by approximately 7% (2008-09) and another 13% (2009-10) to help stabilize the budget after prior years of tax give backs. Interestingly, when the PBA's financial expert Kevin Decker was asked the same question he initially responded the Town could pay for the PBA's wage demand based on a 4.6% increase in the Town budget for "personal services". However, upon further cross-examination, Mr. Decker appropriately conceded that he did not know where the funds dedicated to the "personal services" line in the budget went and even later admitted there "wasn't enough detail in the budget to allow [him] to determine whether that [money was] an increase in staff, whether that's increased hours for part-timers, whether it's raises ... [or] overtime" or payment of step increases.

1. The Financial Realities of the Relevant Period.

The Town of Cornwall's budget as constituted is incapable of sustaining an award based on the current PBA demands. More specifically, the PBA's demands in total represent an economic impact to the Town of $266,426 (Full-time officers) and $20,149 (Part-time officers) in Year 1 and $328,686 (Fun-time officers) and $24,346 (Part-time officers) in Year 2.[8] However, Cornwall's General Fund (TOV) unreserved fund balance, the primary fund the Town could use to finance unanticipated costs, was only $562,384 for the fiscal year ending December 31, 2009 Ms. Berg's statement regarding the Town's inability to sustain the PBA's demands

8. The Town's reference to "impact" or "financial impact" connotes the financial cost of a particular PBA demand above and beyond the current rate/benefit provided by the Town.

going forward already bears true in the second year and assumes there are no other financial needs within the Town requiring funds from the unreserved fund balance. Even without shouldering the costs of the PBA's demands, the Town's unreserved fund balance has been steadily depleting over the last few years from $763,799 (FY 2007) to $562,384 (FY 2009) resulting in a -26.28% loss. In addition, the inflationary effect of the PBA's demands beyond the two years of the instant award would far exceed the financial means available to the Town absent severe tax increases.

These exorbitant demands are even more untenable when considering Cornwall's low household median income, low population growth and high poverty rate. In addition, from a taxation perspective, Cornwall has seen significant tax increases, depletion of its unreserved fund balance, substantial increases in retirement system payments, and a major loss in revenue over the past few years. In particular, the Town has attempted to recoup revenues lost under the prior administrator's tax "give backs" to stem the overuse of the unreserved fund balance. This has resulted in significant tax increases on Cornwall residents. The Town also has experienced a dramatic loss in mortgage tax revenues from (i.e., from $623,291 (2007) to $304,914 (2009) - a 105% reduction) and sales tax revenues (i.e., 1,318,475 (2008) to $1,263,026 (2009)).

There is little dispute based on these figures the citizens of Cornwall are already carrying a significant tax burden based on their modest median income.

2. The Town's Wage Rates for the Relevant Period.

For the two-year award period, the Town's wage and longevity demand versus the appropriate comparable communities (i.e., Crawford, Deer Park, Montgomery), or even compared to the entire County, were far more than appropriate than the Union's demands. This

is particularly true when taking into account the Town's negative population trend and financial woes. Despite the PBA's submission of voluminous charts and graphs, providing data as far as 2012, the time period at issue is January 1, 2009 to December 31, 2010.[9]

Interestingly, when comparing "apples to apples", Cornwall ranks appropriately in the lower tier for wages and longevity, during the last year of its current contract (2008), based on the data submitted by the PBA. More specifically, a review of the Town's 5th year wage rate for 2008 places Cornwall[10]:

Wages	Longevity	Wages and Longevity
5 yrs. - 9th out of 13 towns	5 yrs. – 1st out of 13 towns 10 yrs. - 1st out of 13 towns	5 yrs. - 8th out of 13 towns

Even more compelling and better representative of Cornwall's position amongst the towns of Orange County is the median 5th year wage and longevity figure for towns being $53,946.62 ... over $4,000 below the Town of Cornwall. Moreover, assuming a 1 % increase for 2009, Cornwall would maintain its historical place amongst Orange Country towns by again ranking 8th out of 13 towns in a combination of wages and longevity. [11]

Consequently, the PBA's 4.5% wage demands would place Cornwall at or near the top of the compensation rankings which would be completely disproportionate to the economic realties of the community and its historical place amongst the mid/lower tier municipalities in compensation.

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9 . The PBA's assertion the Village has "a lot of catching up to do" may be based on the fact the last contract expired well over three years ago. However, the Panel is solely tasked with determining an award that is just and reasonable for the period of 2005 to 2007. The remaining "catch-up" will be the responsibility of the parties through good faith negotiations.

10 These 2008 rankings include the Town of Crawford, which the PBA excluded because its agreement expired in December 2006. However, those figures are still current and being used by Crawford and, thus, are valid figures.

11 This ranking includes the most current figures for municipalities with expired agreements (i.e., Blooming Grove (expired 12/08), Crawford (expired 12/06), Deer Park. (expired 12/08), Goshen (expired 12/08), Newburgh (expired 12/08).

History of Past Contract Negotiations

The Town has three collective bargaining units, full-time Police Officers, ("FT officers"), part-time Police Officers ("PT officers"), and Town employees represented by the Civil Service Employees Associations. The CSEA unit consists of employees in the Highway Department, Sewer Department, Sanitation Department, certain Town Hall staff, and police dispatchers.

The most recent CBAs covering FT officers and PT officers had a four-year duration from January 1, 2005 to December 31, 2008. Although the PBA had filed for interest arbitration, the Town and PBA reached agreement on both CBAs. Then-Town Supervisor Richard Randazzo and PBA President Douglas Schofield signed memoranda of agreements for both police units on April 26, 2006.

The Full-time 2005-2008 CBA was a generous agreement that rewarded senior police officers. Step 5, the highest step on the salary schedule, received the following increases: 3.625% on January 1, 2005; 3.625% on January 1,2006; 3.625% on January 1,2007, and 3.75% on January 1,2008. The lower steps received the same, reduced increases during the 2005-2008 CBA, all less than three percent: Step 3 increased 2.75% each year; Step 2 increased 2.625% each year, Step 2 increased 2.50% each year, and Step 1 increased 2.375% each year. In addition to the high increases to Step 5, the sergeant differential increased from 13.00% to 14.00% above Step 5.

The Full-time 2005-2008 CBA also contained other improved financial benefits. The longevity schedule for officers hired on or after January 1, 1998 was compressed and improved. The uniform cleaning, maintenance, and replacement payment to officers was increased by

$100.00 during the contract term. The "A" and "C" line shift differentials were increased by $.10 per hour each. The Bereavement Leave benefit was improved. Additionally, management rights and "zipper clause" language was removed from the "Duration" clause.

The Part-time 2005-2008 CBA also significantly enhanced Part-time officers' wages and benefits. The part-time officer wage rate increased by 21 percent during the life of that CBA term. The Agreement also added holidays, and increased by two the number of paid at double time.

The current CBA for the CSEA unit runs from January 1, 2009 to December 31, 2012. The CBA increases wages by four percent on January 1, 2009, and three percent each year in 2010, 2011, and 2012. Aside from increases to the health insurance buyout (from $400 to $800 for family insurance, and from $250 to $500 for individual coverage discontinuance), the wage increases were the only significant economic improvements to the CBA.

Significantly, CSEA-represented employees receive lesser wages and benefits than police officers with comparable service. For instance, in 2008 the Step 5 salary schedule rate paid to the highest-paid CSEA employee, Working Leader, was more than $1,900 less than the 2008 Step 3 police officer rate. Other skilled CSEA unit employees also earn far less than police officers employed by the Town, even after CSEA unit contractual increases. Moreover, longevity payments did not improve for CSEA unit employees in the most recent CBA.

In contrast to the current terms for full-time police officers, all CSEA unit employees hired during the past 21 years must pay for health insurance coverage. All CSEA unit employees hired after September 21, 1989 pay 10% of health insurance premiums. Employees after January

5, 2005 who retire with at least 25 years of service contribute 25% for individual coverage and 50% for family coverage in retirement. Those hired before January 4, 2005 make the same contributions, but can retire after 20 years of service. Conversely, no fulltime officers contribute toward employee or retiree health insurance premiums.

CSEA employees hired after July 1, 1998 receive no night differential; those hired previously receive $.30 per hour for just "A" line hours, a lesser benefit than in the Full-time officers' CBA. Rather than the $950.00 PBA uniform maintenance and cleaning allowance, certain CSEA employees receive $150.00 toward safety shoes. Upon retirement, Full-time officers receive payments for unused sick days; CSEA employees do not.

As this sampling of benefits show, the PBA has enjoyed a far better wage and benefit package than the CSEA unit employees. As a result, any comparison of single item between the PBA and CSEA contracts, such as wage increase, is inappropriate absent consideration of other economic terms.

SUMMARY OF THE PBA's POSITIONS

Comparability

The Panel is required to make comparisons of the wages and benefits of the officers with the wages and benefits of other employees in comparable communities.[3]

In analyzing this criterion, the Panel must be careful to not commingle or confuse 'comparability" with employer "ability to pay" as the Town does by seeking to limit a

3 Act §209.4(c)(v)(a).

comparison of these officers' wages and benefits to only those police officers who are employed by towns Orange County. As the Taylor Law makes manifest, comparability and ability to pay are distinct factors that are to be applied separately.

"Ability to pay" looks only to the financial condition of the one government that is the party to interest arbitration proceeding. That criterion, logically, forces a panel to examine to what extent the employer that is the party to the pending arbitration proceeding can "afford" to pay wages and benefits that are being demanded by the union. The financial condition of other governments that are not parties to the given interest arbitration proceeding as measured by any indicia is irrelevant to the criterion of ability to pay.

"Comparability" is the criterion that establishes the market that is used to assess how the existing terms and conditions of employment of the police officers who are the subject of the pending arbitration proceeding compare to the terms and conditions of employment of others within the relevant market and how the at-issue police officers' employment terms would compare to prevailing market wages and benefits if the employer's or the union's demands were to awarded by an interest arbitration panel. This criterion, again logically, requires a panel to consider what other employees are receiving from their employers deciding what the employees at issue in the arbitration proceeding should receive. Comparability does not examine whether or to what extent one particular government resembles another. Comparability is a search for the market within which a comparison of prevailing wages and benefits is to be made.

The contours of the marketplace within which the comparison of wages and benefits is to be made is a function of geographic proximity to the employer that is party to the interest arbitration proceeding and the nature of the employment and services rendered by the at-issue

employees, not any ability to pay factors.

The PBA has offered as comparables all of the police departments and agencies within Orange County. The Town would have the Panel use only other town governments within Orange County. If the distinction between comparability and ability to pay is kept in mind and each is applied separately, as each must, it is clear that all police agencies within Orange County constitute the appropriate market for purposes of wage and benefit comparisons. Orange County is the marketplace within which the Town competes with other governments for police officer services. It is the police officers within Orange County with whom the Town's officers interact most closely and most frequently. The Town's comparability arguments are based upon factors that evidence relative wealth or poverty of governments. Those are ability to pay indicators. Although town governments within Orange County are among the municipalities to be considered in making a comparability analysis, Orange County towns do not constitute the full extent of the market. The market is broader and it is properly all departments within Orange County. Whether the Town can afford to match the wages and benefits that exist in the Orange County market as a whole, or in any particular municipality that is a component part of that including other towns, is an ability to pay question, not a comparability question. Orange County is the market for comparison of wages and benefits, not just a few town governments within Orange County.

Ability to Pay

The Panel is required under Taylor Law §209.4(c)(v)(b) to consider in its award "the financial ability of the public employer to pay." Logically, yet again, the Legislature by this criterion is instructing an interest arbitration panel to consider the financial condition of the

employer that is the party to the arbitration proceeding m deciding what that employer's employees should receive under an award.

The PBA presented testimony from economist Kevin Decker. Decker has testified many times as a recognized expert in New York State municipal finance in police and fire interest arbitration proceedings, in tax certiorari proceedings and in civil judicial actions. The Town has admitted his expertise.

Decker testified to his findings with respect to the Town's ability to pay after an extensive review of the Town's own financial records. PBA Exhibit 67 contains the summary of Decker's analysis of the Town's financial condition. Neither the accuracy of Decker's charts and summaries nor his testimony was challenged with any success by the Town at the hearing or thereafter.

The Town maintains several fund categories. There is a Town-wide general fund and a Town-wide highway fund, a Town Outside Village (TOV) general fund and a TOV highway fund; a water fund, a sewer fund, a sanitation fund, a capital projects fund, and miscellaneous funds. The TOV general fund is the one from which PBA unit employees are paid and it is fund that Decker considered to be most relevant to ability to pay issues.

The largest source of revenue for the TOV general fund is the real property tax, accounting for nearly one million dollars and approximately 67% of that fund.

The second largest TOV general fund revenue source is sales tax at approximately $630,000 for the 2009 fiscal year.

Combined, the real property tax and sales tax constitute about 82% of the TOV general fund revenue.

The statistics that follow prove the truth of Decker's conclusion that the real property tax situation in Cornwall is in "real good shape."

Over the fiscal years ended 2005 through 2010, the Town's total real property tax levy increased at an annual average rate of 3.25%. That is the second lowest increase tax levy of the PBA's many comparables. Only the City of Newburgh is lower. Every town within Orange County is higher and most are considerably higher. At the same time, the overall assessed value tax rate rose at just a .3% annual average. If Town property were assessed at full value, the tax rate actually would have decreased at an annual average rate of 3.22%. The Town cut the tax levy and the tax rate in 2008, likely, in Decker's opinion, to avoid amassing an even greater fund balance than it had that year and still has.

The full value of taxable real property within the Town has increased at an annual rate of 6.67%. That growth ranks Cornwall 17 th among the PBA's 27 comparables, but fourth best among town governments that all had a slower rate of increase in property values than did cities or villages within Orange County.

In terms of overall real property tax rates (county, municipal, school, and special district combined), the Town at $23.52 per thousand ranks 20th among the PBA's comparables .

Perhaps most persuasive of the truth that the Town's residents are not overtaxed is PBA Exhibit 67(H). As there set forth, the average single family homeowner pays $218 annually or $.60 day to support all police department expenses. Only 2.6% of a taxpayer's total tax bill is

attributable to Police Department expenses. Expenditures in other Town departments have increased at near double the Police Department's rate. Thus, any increases in overall Town spending cannot be attributed exclusively or even primarily to the PBA's two bargaining units.

The Town ranks eighth (8^{th}) among the comparables in per capita wealth putting it in the upper one-third of the Orange County comparables.

The Town's sales tax revenues rose steadily from 2000 through 2008, climbing to 1.3 dollars by mid-year 2008, in part the result of a rate increase in June 2004. Taxable sales in Orange County have increased by an average of 5.87% every year from 1998 through 2006, far outpacing the 2.60% inflation rate. Sales tax revenue fell somewhat by the end of 2009 to about $1.26 million, a decline Decker attributed to the now ended recession. The budgeted sales tax for 2010 is 1.1 million dollars, a figure Decker was certain would be met and most likely exceeded.

In the last five fiscal years, the Town has enjoyed operating surpluses in the TOV general fund. For the fiscal year ended 2009, the TOV general fund had a balance of over $562,000. At almost 27% of TOV general fund expenditures, that 2009 balance greatly exceeds the State Comptroller's and financial experts' recommended 5%-10 fund balance and it is a "very, very healthy" fund balance by any measure. The balances the Town's other funds are such that the TOV general fund will not have to support those other funds, another indication of the Town's overall economic strength.

There is also a contingency account of approximately $10,000 in the 2010-11 TOV general fund budget. This contingency fund, like the Town's substantial unreserved fund balance, can be devoted to any purpose the Town chooses.

The "deficits" for the fiscal years 2008 and 2009, that are certain to be cited by the Town as an indication of its financial weakness, do not reflect any economic distress. As Decker explained, the only way a municipality can avoid having too high a fund balance, for which the Town was criticized by the State Comptroller in 2001, is to run a deficit. The deficits are just dissipation of excessive fund balance and are "nothing to be concerned about."

This Town, like many municipalities, has historically overestimated expenses and underestimated revenues. The positive revenue variance from 2005 through 2009 averages $282,643 in the TOV general fund and $982,221 in the combined general funds and highway funds.

The Town carries very low debt, such that debt does not present any financial problems for the Town that ranks 25th among the PBA's Orange County comparables.

The cost of 1 % of the actual and budgeted spending for all Police Department personnel, including FICA and pension contributions, is no more than $11,580.

The only conclusion that can be drawn reasonably from these various indicia of economic condition is that the Town can pay everyone of the PBA's wage and fringe benefit demands exactly as presented by the PBA. As Decker concluded, this Town is in "very, very strong financial condition" and is "very well positioned" financially despite the now ended recession. Its taxpayers are not "overly burdened" tax wise. Relative to other municipalities in Orange County, that all pay and benefit their police officers much better than the Town does its officers, the Town is doing "very well". This record proves conclusively that the Town enjoys above average levels of property wealth, below average levels of tax rates, and tax levy increases near the

bottom of the rankings for the last six years. Town residents enjoy low taxes, the Town is experiencing and will to continue to experience an improving sales tax from the "retail center" that is Orange County, with continuing strong levels of financial reserves that are "very, very healthy."

The national and state recession, now ended, has admittedly hurt and continues to hurt certain municipalities in this State badly in part because the recovery is slower than many expected. But the Town is not one of those communities. This Panel should not be misled by the Town's claims that its residents have suffered and are still suffering greatly as a result of the recession. This Town is not Buffalo, N.Y. or Flint, Michigan no matter how many times and how many different ways the Town may try to equate itself with municipalities this State and this country that are still struggling financially. There is no persuasive evidence of record of a stagnating or deteriorating Town economy. The evidence is overwhelmingly to the contrary. There been small decreases in Town revenue in the short term because of the ripple effects of the recession, but these dips do not establish an inability to pay the PBA's demands. It is also true, as the Town argues, that the cost of health insurance and employer contributions to the pension system have increased recently, but increased cost, as next discussed, does not equate to an inability to pay. Moreover, every other municipality in Orange County, all of which pay and benefit their police officers far better than does the Town, has absorbed these same costs. As have they, so can this Town.

The Town expended considerable time and effort in calculating the "cost" of the PBA's demands. The results produced, however, even assuming the accuracy calculations, yields nothing persuasive upon the issues that are before this Panel for award.

In the first place, the calculations regarding the costs of the PBA' s proposals, whether short term or long term, rest on an assumption that the demands will be awarded exactly as proposed by the PBA without any change in any material respect. As much as the PBA might like that result, and as much as that result is deserved, the PBA is not so naive as to believe or expect that will happen. Rarely does any party come out of an interest arbitration proceeding with a 100% "win" across the board.

Second, the Town's cost calculations are inflated because the calculations include non-unit personnel and they rest on several assumptions that are not necessarily correct.

Third, and most important, "cost" simply is not the relevant factor this proceeding. The statutory question to be asked and answered in relevant respect is whether the Town has the ability to pay a demand or a given set of demands. There are some employers who do not have the ability to pay even low cost demands. There are other employers who can afford to pay any demand regardless of its cost. Indeed, it is not uncommon, even these days, for some public employers to stipulate in interest arbitration proceedings to their ability to pay all of a union's demands.

The Town has not done so in this proceeding. The issue, however, always is and remains ability to pay, not wage and benefit cost, and upon this record, there is no question as to ability to pay the PBA's demands. Indeed, the Town's financial expert admitted to pay, challenging only the wisdom of the Panel granting the totality of the PBA's demands unchanged in any respect.

The Town also appears to argue, as do many employers in interest arbitration proceedings, that despite its proven ability to pay the wages and benefits the PBA seeks, this

Panel must recognize some notion of a "practical" ability to pay. Apparently, this practical ability to pay is a how Town officials "feel" about their resident's willingness to pay the costs of an award.

This subjective concept of an ability to pay, that is incapable of objective definition and application, has no basis in the Taylor Law. Moreover, this "practical" ability to pay does not come into play in this proceeding because there is no evidence that an award consistent with the PBA's demands would require any increase in taxes let alone a sizeable increase.

As amply demonstrated upon the record, and will be pointed out in this brief, these officers' overall wages and benefits markedly lag those in the relevant market of Orange County. These employees do not now have a wage and benefit package that is fair or competitive in the market upon any standard. The Panel can and should change that situation.

This Town, despite the Town's protestations to the contrary, is a desirable community, a status due in large part to the safety and security Town residents enjoy as a result of the services delivered by these police officers who are underpaid and under benefited relative to the comparable market. As those other communities within Orange County can and have done far better their police officers, so can this Town. This Panel should make the Town do what it has not done and will not do voluntarily on its own through collective bargaining.

When collective bargaining fails to produce an agreement upon terms and conditions of employment, the provisions and public policies of the Taylor Law impose upon an interest arbitration panel a duty to render a fair and reasonable award grounded upon the statutory criteria and the record evidence. The Town has the ability to pay the PBA's demands. An award

consistent with those demands will start to fairly benefit and compensate these police officers for the unique and valuable services they provide to Town residents. The Panel must not shirk its duty to provide them with that package, or be misled by the Town's claims of approaching poverty or the alleged unreasonableness and unaffordability of the PBA's demands. The Town can pay; it simply would prefer not to and it would prefer, instead, to spend its money on other things or save it for a rainy day. This Panel must change a status quo that has unfairly and unreasonably advantaged the Town for years and that is done only by this Panel awarding terms and conditions of employment consistent with the PBA's demands.

Terms of Past Collective Bargaining Agreements

The Panel is required to consider the parties' bargaining history under Act §209.4(c)(v)(d). This criterion, again logically, is the Legislature's recognition that in deciding what employees' terms and conditions of employment should be, it is appropriate for an interest arbitration panel to consider what their contractual terms are now and what they have been over time. This criterion takes a picture of "what is" under last contract and "what was" under earlier contracts, and then asks what "should be" under an award that is the statutory substitute for a negotiated agreement.

Significant the Panel's consideration of this criterion is recognition of the existing wage schedule that the Panel will see is staggered throughout the existing steps. The step variation is not uniform. The compounded and long-term savings generated by that schedule helps the Town pay for the employees' benefits, including the health insurance benefit that the Town now wants to erode by asking the Panel to impose a substantial premium contribution. The health insurance concession the Town demands cannot reasonably be granted unless the Panel is prepared to alter

completely the base wage and longevity schedules and that type of major change should be left to future negotiations.

As collective negotiations under the Taylor Law extend to the administration of a collective bargaining agreement, including the resolution of any questions arising thereunder, (Act §§203; 204), the Panel can also consider under this criterion, as appropriate, the full range of transactions affecting the parties' labor relationship, including departmental general orders and operational procedures. In that regard, General Order 18.01 and 18.02 are of relevance to the PBA's alternative discipline demand.

As also relevant to this criterion, the Panel will observe from the record several points of importance from the PBA's perspective. First, these officers' wages and benefits are far below market rates and conditions. Second, many of these officers' fringe benefits have not been changed in years (e.g., education stipends; vacation benefits; health insurance buyouts) or changed only slightly. (e.g., uniform allowances; shift differentials) Third, the Town's demands, whether analyzed individually or collectively, seek to take back directly or indirectly the officers' wages and several of the officers' economic fringe benefits. Because these police officers are already underpaid and under benefited relative to the market, the Town should not be awarded any erosion of existing benefits or an erosion of the officers' wage standing in the market. Concessions that would be granted to the Town by the take away of what these officers have obtained from the Town cannot be justified upon application of any award criteria, To grant any of the Town's demands, that all call for an erosion of existing wages and benefits, would just make an already indefensible situation worse.

DISCUSSION AND ANALYSIS

The Chairman acknowledges the Town's Supervisor's desire to provide a fair wage to its employees that does not do financial harm to it, and that the severe economic downturn in the nation as a whole has caused the Town not to accede to the PBA's economic proposals. Instead it had offered 1% wage increase for each open year of the CBA.

The Chairman opines no matter how responsible or laudable the Town Supervisor's position to husband the Town Treasury as it relates to collective bargaining with its employees, the fact remains despite the Town's offer of 1% for each year of the CBA to the PBA such an offer is clearly at odds with the fact that the Town for the same period in question (1/1/09 to 12/31/10) agreed to provide a 4% and 3% wage increase to the CSEA bargaining unit. Yet it offers the PBA a 1% wage increase for each of these two years.

It is unrealistic for the Town to believe a 1% per annum wage increase would be likely in negotiations and or interest arbitration when the Town settled with other bargaining units at 4% and 3% and no change to their medical plans.

Moreover while municipal administrators need to be cognizant of increasing costs to the Town, it must also deal fairly with its employees and provide terms and conditions of employment consistent with other comparable police departments in Orange County.

The Chair finds a review of the record developed at the hearing regarding the Town's ability to pay does indicate there is any impediment for the Town to adopt the Panel's Award.

The Chair notes the current Town Supervisor had to raise taxes by 7% for 2008 - 2009 and another 13% for 2009 – 2010 to help stabilize the budget. However such increases were not caused by excessive labor costs. Rather, the record evidences the Town's prior supervisor for

apparent political purposes provided tax reductions prior to his reelection so that the last four years of tax increases were the Town's response to claw-back unrealistic tax reductions.

The economic assessment as developed in the record established the Town ranks eighth among comparables in per capita wealth, putting it in the upper third of Orange County comparables. Additional positive economic indicia evidences that taxable sales in Orange County have increased an average by 5.87% every year from 1998 through 2006. While sales tax revenue fell somewhat by the end of 2009, this decline was attributed to the now ended recession by the PBA's economist Decker. The PBA economist believes the Town's budgeted sales tax for 2010 of 1.1 million dollars, is a dollar amount that most likely will be exceeded. Similarly the Town has enjoyed for the last five fiscal years operating surpluses in its general fund. At almost 27% of its general fund expenditures the 2009 balance greatly exceeds the New York State Controller recommended 5 – 10 % fund balance. And the Chair views these general fund surpluses as another indication of the Town's overall economic strength.

Mr. Decker, the PBA's economist, maintains this Town like many municipalities has historically overstated expenses and underestimated revenue. And the Town also carries a very low debt, and such debt does not present any financial problems for the Town.

Decker had concluded: "The Town is in very strong financial position and is very well positioned financially despite the now ended recession." Decker said the Town's taxpayers are not over burdened tax wise. And he submitted the only conclusion to be drawn from the various indicia of the Town's economic condition is that the Town is certainly in the position to pay the terms of this Award without reverting to raising taxes.

The Chair submits the heart of any economic package is primarily a wage determination and I this matter it is the largest cost item for the Town and the most significant in terms of condition of employment for these bargaining unit members.

The Chairman is entrusted to incorporate in this award, a balance of wage increases and other monetary demands awarded in other police agreements and or awards in the comparable communities submitted to and used by the Panel.

Having said this, the Chair holds the PBA demand of a base wage increase of 4.5% in the first year and 4.5% in the second year of this award for full-time police officers is not warranted, as is its proposal of a $1.25 per hour increase for each year of two for part-time police officers. However, the Town's proposal of 1% wage increase in each year for both full and part time police officers is not justified especially as the Town granted wage increases of 4% and 3% to the balance of other Town represented employees. Moreover among the comparable CBA agreements and concurrent interest arbitration awards covering Orange County there are no settlements in the range as the Town suggests.

The Chair submits the Town's lack of a longevity increase is also not consistent with other like police contracts and interest arbitration awards in Orange County covering this period of time. Ever mindful of the increasing cost of longevity, the Chair awards a .5% increase for longevity in the second year of the award and that the across the board wage increases are split in some measure so as to offset the cost of longevity.

There was evidence produced to suggest that a minor increase be granted for uniform cleaning, maintenance and replacement, and towards that end the Chair awards a modest adjustment.

In regards to the shift differential in police awards, it is generally understood that such differentials are modified consistent with the across the board wage increases, and in the spirit of moderation the Chair awards a di minimus hourly increase in shift differential effective in the second year.

The Chair acc edes to the PBA's request to enhance the monetary award for police officers who obtain either an associate or bachelor degree in police science. The Chair believes such enhancement is warranted and inures to the benefit of the Town by having a more educated and professional police force.

The parties competing health insurance proposals were that the Town sought for police officers to share in the cost of health insurance premiums versus the PBA wanting the status quo, as well seeking to credit retirees for prior police service outside of the Town which would result in a cost increase to the Town for health insurance for retirees. In considering each party's position, the Chair denies this PBA request so as to lessen the Town's overall health insurance cost for this bargaining unit, as will eligible employees opting out of Town paid health insurance coverage given the enhanced buy out for an employee to so do.

With respect to part-time police officers, the Chairman has awarded a basic hourly wage increase for each year of two that is below the settlement reached with other Town represented employees. However the Chair believes the creation of an hourly longevity increase will encourage the continued service of part-time police officers.

Finally regarding premium pay for holiday pay for part-time police, the record evidences that among the scheduled premium holidays the parties have previously agreed to increase the premium pay for certain holidays. The Chair believes a further increase for Memorial day is warranted, and denies the PBA request to include Labor day.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence and the post hearing briefs submitted. Accordingly, the Panel makes the following Award:

FULL-TIME POLICE OFFICERS

1. **ARTICLE 3 - COMPENSATION**: (pp.4-8)

1. **BASE WAGE** (pp. 4-5)

A. Amend only schedule as follows:

(N/C) **(N/C)**

Step	Years of Service	1/1/09	7/1/09	1/1/10	7/1/10
	Academy Rate *	$35,526 *	$35,881*	$36,779*	$37,146 *
1	Start	(3'%) $41,795	(1%) $42,213	(2.5%) $43,268	(1%) $43,701
2	After 1 Year	(3'%) $45,358	(1%) $45,812	(2.5%) $46,957	(1%) $47,427
3	After 2 Years	(3'%) $47,630	(1%) $48,106	(2.5'%) $49,309	(1%) $49,802
4	After 3 Years	(3'%) $54,288	(1%) $54,831	(2.5'%) $56,202	(1%) $56,764
5	After 4 Years	(3%) $57,496	(1%) $58,071	(2.5%) $59,523	(1%) $60,118
(N/C)	Detective/Investigator and/or Youth Officer **	$2,100		(+400.00) $2,500	

* The Academy Rate is 85% of Step 1 for the period of time attending the Municipal Police Training Council (MPTC) basic police academy. Upon graduation, that employee shall move to Step 1. (NOTE: Represents N/C from existing language.)

* * Detective, Investigator and/or Youth Officer differential is the amount to be paid over the employee's Base Wage. Longevity will be added to the Base Wage, then the differential will be added. (NOTE: Represents N/C from existing language.)

Definition of service, as used heretofore, shall be years of full time service with Employer (NOTE: Represents N/C from existing language.)

	X		5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X			5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

B. Amend Longevity schedule for employees hired on or before December 31, 1997, based on their years of full time service with the Employer as follows, effective January 1, 2010:

(N/C) Completed Years of Service	**(+1/2%)** Percentage of Base Wage
13 and Above	9.5%

(NOTE: The completed Years of Service for 2, 3, 5, 7, 9, 11 and 15 with corresponding percentages are no longer applicable.)

	X		5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X			5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

Amend Longevity schedule for employees hired on or after January 1, 1998 as follows, effective January 1, 2010:

(N/C) Completed Years of Service	**(+1/2%)** Percentage of Base Wage
4	4.5% each year
10	6.5% each year
15 and above	9.5% each year

	X		5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X			5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

2. **PREMIUM PAY** (pp. 5-6)

1. **Uniform Cleaning, Maintenance and Replacement**

Amend schedule to read as follows:

	Total	Cleaning	Cleaning Allowance Payment
(N/C)	1/1/09 $950.00	$525.00	June $262.50 December $262.50
(+$25.00)	1/1/10 $975.00	$550.00	June $275.00 December $275.00

X _____ Thomas P. McDonough 5/9/11
CONCUR DISSENT THOMAS P. MCDONOUGH DATE
EMPLOYER PANEL MEMBER

_____ X _____ 5/10/11
CONCUR DISSENT ANTHONY V. SOLFARO DATE
EMPLOYEE PANEL MEMBER

K. Add heading of Shift Differential and amend amounts and hours as follows: (NOTE: Change in hours based on Memorandum of Agreement by the parties dated January 13, 2009.)

	(N/C) 1/1/09	**(+$.10/hr)** 1/1/10
"A" line - 10:00 p.m. to 6:00 am	+$.60/hr	+$.70/hr
"C" line - 2:00 p.m. to 10:00 p.m.	+$.35/hr	+$.45/hr

X _____ Thomas P. McDonough 5/9/11
CONCUR DISSENT THOMAS P. MCDONOUGH DATE
EMPLOYER PANEL MEMBER

_____ X _____ 5/10/11
CONCUR DISSENT ANTHONY V. SOLFARO DATE
EMPLOYEE PANEL MEMBER

3. **IN-SERVICE SCHOOLING** (p. 7)

A. Insert "$350.00" where "$200.00" appears (NOTE: Refers to a one-time payment for receipt of an Associate's Degree in Police Science, not added to base.)

X			5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
	X		5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

B. Insert "$500.00" where $350.00" appears (NOTE: Refers to a one-time payment for receipt of a Bachelor's Degree in Police Science, not added to base).

X			5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
	X		5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

5. **SEPARATION AND RETIREMENT BENEFITS** (p. 8)

Add the following to read as follows:

All of the foregoing shall be paid at the rate of pay in effect at the time of death, separation or retirement. In the event of separation or retirement of an employee, that employee shall be paid no later than the payroll following separation or retirement. In the event of death of an employee prior to separation or retirement, the employee's beneficiary or estate, as the case may be, shall be paid at the rate of pay in effect at the time of death no later than (30) calendar days following death, or thirty (30) calendar days after the Employer has been provided with written documentation of who the beneficiary is, or written documentation of who the Executor is for the estate.

X			5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X			5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

2. **ARTICLE 4 - LEAVES WITH PAY**: (pp.8-9)

2. **PERSONAL LEAVE**

Insert "three (3) work days each" where "three (3) days per" appears. (NOTE: Not a substantive change).

X		5/9/11	
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		5/10/11	
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

3. **ARTICLE 6 - HEALTH INSURANCE AND RETIREMENT** (pp.11-12)

2. **HEALTH INSURANCE BUY OUT** (p. 11)

A. Add the following to read as follows after the last sentence:

Effective thirty (30) calendar days after the signature of the Panel Chair to the Interest Arbitration Award, an employee who declines and waives health insurance coverage as provided in Appendix "A" shall receive fifteen percent (15%) of the health insurance premium as set forth therein.

	X	5/9/11	
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		5/10/11	
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

5. **HEALTH INSURANCE UPON RETIREMENT** (p. 12)

Insert "and dependent coverage" after "police officer" on the 2nd line.

X		5/9/11	
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE

X _____ 5/10/11
CONCUR DISSENT ANTHONY V. SOLFARO DATE
EMPLOYEE PANEL MEMBER

4. **ARTICLE 13 – DURATION** (p.18)

The duration of this Award shall be January 1, 2009 through December 31, 2010. In the event there is no negotiated agreement achieved prior to December 31, 2010, this award and agreement as of December 31, 2008, shall continue in full force and effect.

X _____ 5/9/11
CONCUR DISSENT THOMAS P. MCDONOUGH DATE
EMPLOYER PANEL MEMBER

X _____ 5/10/11
CONCUR DISSENT ANTHONY V. SOLFARO DATE
EMPLOYEE PANEL MEMBER

5. **RETROACTIVITY**

The term of the Award shall be implemented as soon as possible, but in no event later than the second (2nd) pay period in May, 2011. The Employer shall provide a worksheet pay retroactivity for all unit members who worked during any period incorporated by the term of this Award, detailing the basis of the calculation of his/her compensation including any retroactive amounts that may be due pursuant to the terms of this Award. and shall make every effort to do so not later than (30) calendar days following the date of the Panel Chairman's signature, but in no event more than forty-five (45) calendar days following such. The Panel retains jurisdiction until payment of retroactivity and implementation of this Award is completed as set forth herein. Any disputes shall be returned to the Panel for its determination.

X _____ 5/9/11
CONCUR DISSENT THOMAS P. MCDONOUGH DATE
EMPLOYER PANEL MEMBER

X _____ 5/10/11
CONCUR DISSENT ANTHONY V. SOLFARO DATE
EMPLOYEE PANEL MEMBER

6. **AWARD ON REMAINING DEMANDS OF THE EMPLOYER**

Any demands and/or terms other than those specifically set forth in this Award by the Employer, are hereby denied.

_____	X		5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X			5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

7. **AWARD ON REMAINING DEMANDS OF THE PBA**

Any demands and/or terms other than those specifically set forth in this Award by the PBA, are hereby denied.

X			5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
_____	X		5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

PART-TIME POLICE OFFICERS

1. **ARTICLE 2 - COMPENSATION**: (p. 2)

A. **BASE WAGE HOURLY RATE OF PAY**

Amend the schedule as follows:

(+.70/hr) 1/1/09	**(+.70/hr)** 1/1/10
~~$20.75/hr~~	~~$21.45/hr~~

	X	Thomas P. McDonough	5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		Anthony V. Solfaro	
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

B. **PREMIUM PAY** (p. 2)

5. Holiday Pay: Amend Holiday Schedule and Payment as Follows:

(N/C) 1/1/09	12/30/10
1. Memorial Day (1.5X)	I. Memorial Day (2X from 1.5X)
2. Independence Day (2X)	(N/C) 2. Independence Day (2X)
3. Labor Day (1.5X)	(N/C) 3. Labor Day (1.5X)
4. Thanksgiving Day (2X)	(N/C) 4. Thanksgiving Day (2X)
5. Christmas Eve (1.5X)	(N/C) 5. Christmas Eve (1.5X)
6. Christmas Day (2X)	(N/C) 6. Christmas Day (2X)
7. New Year's Eve (1.5X)	(N/C) 7. New Year's Eve (1.5X)

	X	Thomas P. McDonough	5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		Anthony V. Solfaro	5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

C. **LONGEVITY - NEW**

The Employer shall pay Longevity to each employee based on their years of service with the Employer, over and above their Base Hourly Rate of Pay set forth in Section A as follows:

Completed Years of Service	7/1/10
5	+$.10/hr
10	+$.15/hr

The above hourly rates are not cumulative.

	X	Thomas P. McDonough	5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		A V S	5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

2. **ARTICLE 9 - DURATION**: (p. 7)

The duration of this Award shall be January 1, 2009 through December 31, 2010. In the event is no negotiated agreement achieved prior to December 31, 2010, this Award and agreement as of December 31, 2008, shall continue in full force and effect.

X		Thomas P. McDonough	5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		A V S	5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

3. **RETROACTIVITY**

The term of the Award shall be implemented as soon as possible, but in no event later than the second (2nd) pay period in May, 2011. The Employer shall provide a worksheet pay retroactivity for all unit members who worked during any period incorporated by the term of this Award, detailing the basis of the calculation of his/her compensation, including any retroactive amounts that may be due pursuant to the terms of this Award, and shall make every effort to do so not later than thirty (30) calendar days following the

date of the Panel Chairman's signature, but in no event more than forty-five calendar days following such. The Panel retains jurisdiction until payment of retroactivity and implementation of this Award is completed as set forth herein. Any disputes shall be returned to the Panel for its determination.

X		Thomas P. McDonough	5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		A V. S	5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

4. **AWARD ON REMAINING DEMANDS OF THE EMPLOYER**

Any demands and/or terms other than those specifically set forth in this Award by the Employer, are hereby denied.

	X	Thomas P. McDonough	5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
X		A V. S	5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

5. **AWARD ON REMAINING DEMANDS OF THE PBA**

Any demands and/or terms other than those specifically set forth in this Award by the PBA, are hereby denied.

X		Thomas P. McDonough	5/9/11
CONCUR	DISSENT	THOMAS P. MCDONOUGH EMPLOYER PANEL MEMBER	DATE
	X	A V. S	5/10/11
CONCUR	DISSENT	ANTHONY V. SOLFARO EMPLOYEE PANEL MEMBER	DATE

PANEL MEMBER AFFIRMATIONS

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

ROGER E. MAHER
Public Panel Member and Chairman

Dated: 5-11-11

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

THOMAS P. MCDONOUGH, ESQ.
Employer Panel Member

Dated: _____

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

ANTHONY V. SOLFARO
Employee Panel Member

Dated: 5/10/11

4833-5812-8137, v. 1

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

x

In the Matter of the Interest Arbitration

NYS PERB Case No.:
IA2009-026; M2008-334
(PT PO)
IA2009-027; M2008-335
(FT PO)

-between-

TOWN OF CORNWALL POLICE BENEVOLENT ASSOCIATION, INC.
"Petitioner/ Association/ Union"

- and -

DISSENTING OPINION
OF PUBLIC EMPLOYER
PANEL MEMBER
For the period: 1/1/09 – 12/31/10

TOWN OF CORNWALL.
"Respondent/ Town / Employer"

x

As the Town-appointed representative on the Triparte Arbitration Panel, I respectfully dissent to the Panel's award of Base Wage and Longevity increases to both Full-Time Police Officers and Part-Time Police Officers, and to the Panel's rejection of the Town's demand that Full-Time Police Officers contribute towards their health insurance benefits.

The economic challenges facing the Town, our state, and our nation during 2009 and 2010, the years covered by the Award, are well-chronicled. Nonetheless, the Panel has increased full-time Police Officer base wages by seven and one-half (7.5) percent, while further increasing the percentage of pay eligible Police Officers received as longevity payments. The Panel has also significantly raised the pay of part-time Police Officers, and introduced a longevity benefit where none existed before. The Panel also rejected the Town's proposal for full-time Police Officers to contribute towards the increasing premium costs for their health insurance.

The evidence presented at the Hearing established that the Town has felt the impact of the national recession. The Town has had little actual or projected population growth, and decreasing mortgage and sales tax revenues. Taxes increased from 2008 to 2010, while the Town's unreserved fund balance has reduced from 2007 to 2009. The Town suffered a -28.7 drop in median home sale prices/values between 2007 and 2009, and the number of single family building permits significantly reduced. The Town has the fifth highest poverty rate among towns in Orange County. The Panel appears to ignore these important economic realities in pronouncing the Town fit to pay the high wage and longevity increases it imposed on the Town.

The Panel cites wages in the current Collective Bargaining Agreement between the Town and the Civil Service Employees Association ("CSEA") covering certain non-police

employees to support the increases to Police Officer wages in the Award. Significantly, the Award provides full-time Police Officers with higher wage increases in 2009 and 2010 than those provided in the Town-CSEA Agreement for the same period. Moreover, CSEA-represented Town staff are generally paid less than Police Officers employed by the Town, and those hired since 1989 contribute toward the cost of health insurance.

The Town appreciates the efforts of its hard-working, dedicated Police Officers. The Panel's Award, particularly concerning Base Wage and Longevity, places an excessive burden on Town taxpayers already strapped by higher taxes, decreased property values, and other strains imposed by difficult economic times. Therefore, I must respectfully dissent on the issues of Base Wage and Longevity provided to full-time and part-time Police Officers by the Award, and to the Panel's failure to require that full-time Police Officers contribute towards their health insurance premiums.

Thomas P. McDonough
Public Employer Panel Member

Sworn to this 9th
day of May 2011

JONATHAN KOZAK
NOTARY PUBLIC, State of New York
No. 02KO6048338
Qualified in Westchester County
Commission Expires Oct. 30, 2014