

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest Arbitration)	
)	Award
)	of
Between)	INTEREST
)	ARBITRATION
Village of Mount Kisco)	PANEL
and)	
)	IA-2008-017
Village of Mount Kisco PBA, INC.)	

Before the Public Arbitration Panel

Terence M. O'Neil, Esq.	Employer Panel Member
John K. Grant, Esq.	Employee Organization Panel Member
I. Leonard Seiler, Esq.	Public Panel Member and Chairman

APPEARANCES

For the Village:

Christopher T. Kurtz, Esq.	Attorney for the Village
Brian P. Murphy, Esq.	Attorney for the Village
James Palmer	Village Manager/Tax Assessor
Rose Sickenius	Village Treasurer
Steven J. Anderson	Police Chief

For the Union:

John M. Crotty, Esq.	PBA Attorney
James A. Duckham	PBA Attorney
Kevin Decker	Financial Expert

On February 6, 2009, the New York State Public Employment Relations Board ("PERB") having determined that a dispute continued to exist in negotiations between the Village of Mount Kisco, a hybrid municipality (i.e. both a town and village) located in Northern Westchester County in New York State (hereinafter referred to as the "Village") and the Village of Mount Kisco PBA, (hereinafter referred to as the "Union or PBA") designated the undersigned Public Arbitration Panel (hereinafter referred to as the "Panel") pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a fair, just and reasonable determination of the matters in this dispute.

Each Party submitted a large number of demands. Any reasonable settlement of the issues to be resolved in this Award must be respectful of the police officers and the Village's taxpayers whose conflicting needs must be balanced as best as can be. The taxpayers want the police to provide them safety but at affordable costs.

The Panel then proceeded under the applicable statutes, rules and regulations to inquire into the causes and circumstances of this continued dispute and at the conclusion of its inquiry made the findings and Award which follow.

Upon notice duly given, after several postponements, hearings were held on September 18 and October 19, 2009, in the Village Hall. Both parties were present, offered testimony of expert financial witnesses to support their respective positions and they were represented by counsel throughout these proceedings as shown in the above List of Appearances. At the start of the hearings, the Village made known that it had filed with PERB "Improper Practice Charges" in that the Union in its Petition for Compulsory Interest Arbitration to PERB included several negotiating proposals which were either non-mandatory subjects of collective bargaining or were not part of the Parties' collective bargaining negotiations prior to the petition. It requested that PERB direct the Union to withdraw said proposals from interest arbitration.

The Union, in turn, submitted to PERB. its own "Improper Practice Charges" (IPCs) objecting to eight (8) Village demands included in its answer to PERB to the Union's Petition for Compulsory Interest Arbitration that were not previously the subject of negotiations between the parties.

The Parties were in agreement that though this dispute could be resolved in Interest Arbitration, PERB's rules prevented the Panel from issuing an Award on those issues submitted to PERB. in the Parties' "Improper Practice Charges". In an effort to expedite the process, the Village withdrew its IPC on November 7, 2011 and urged the Union to do the same. The Union did not. In December 2011, a PERB Administrative Law Judge dismissed the Union's IPC. The Union nonetheless filed exceptions to the ALJ decision to the full PERB. Although a further lengthy delay was anticipated, the full PERB issued its decision upholding the dismissal of the PBA's charge on March 5, 2012. As of that date, the Panel was free to issue the Award herein.

It was agreed that said Award would, in keeping with the "Compulsory Interest Arbitration" statute, be limited to the two (2) years June 1, 2007 to May 31, 2009.

The Parties were afforded full and equal opportunity to be heard and present statements of fact, supporting witnesses and other evidence and arguments, both oral and written, in support of their respective positions regarding the issues in dispute. The Parties agreed to follow their system for Interest Arbitration presentations, wherein the Union at the first panel hearing on September 18, 2009, submitted its opening statement and case. At the second panel hearing on October 19, 2009, the Village submitted its opening statement and case.

The Public Interest Arbitration Panel admitted into evidence seventy-nine (79) Union exhibits, and eighty (81) Village exhibits.

The parties agreed at the hearing on October 19, 2009, to submit their post-hearing briefs six (6) weeks after receipt of the written transcript of the hearing. The Impartial Chairman received his transcript on October 29, 2009. The Parties

subsequently agreed to several postponements for the submission of their post-hearing briefs and finally submitted them on February 22, 2010.

Following receipt of the post hearing briefs on February 24 and 25, 2010, the Chairman declared the hearings closed in a letter to the Parties and his fellow panel members dated March 1, 2010. In said letter he noted that PERB was scheduled to hear the Parties' improper practice charges on March 18, 2010.

While the Chairman sought to reach unanimous consensus on each of the items at impasse during the lengthy delay, he was not successful in the first and second Executive Sessions.

A third and final Executive Session to seek unanimity was held on March 30, 2012. This Award was drafted following said session.

After due and deliberate consideration of all of the evidence, facts, exhibits and documents submitted and in accordance with the applicable criteria prescribed by PERB, the Panel arrived at the Determination and Award which follows. The Panel in arriving at such determination based its findings on the mandated statutory criteria of the New York State Civil Service Law, Section 209.4(v):

- 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 interest and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective bargaining agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel carefully considered each of the outstanding issues and at the urging of the Chairman sought to reach unanimous consensus on each of them. The Chairman thanks his fellow panelists for helping bring this long pending negotiation to a conclusion.

BACKGROUND:

The Village of Mount Kisco is 3.1 miles in size, located in Northern Westchester County and is one of very few hybrid municipalities (i.e. both a town and village) to be found in the county and New York State.

The Mount Kisco Police Department employs thirty-two (32) unit members including Police Officers, Sergeants, Lieutenants and Detectives.

The Parties' last collective Bargaining agreement (effective June 1, 1999-May 31, 2002) was modified by an Interest Arbitration Award covering the period June 1, 2002-May 31, 2004 and by a Memorandum of Agreement covering the period June 1, 2004-May 31, 2007.

IN GENERAL:

1. The dispute involves the continued impasse between the Village and the Union over the terms and conditions of a new contract to be effective as of June 1, 2007. Primarily holding up the completion of negotiations was the Village's insistence that the time has come for the better paid police officers to contribute toward the cost of their rapidly rising health care premiums or accept a wage freeze as the Village could no longer afford both. The PBA sought nice salary increases and no health care contributions by those at top grade or above.

2. Prior to the request for the appointment of this Arbitration Panel the parties engaged in multiple negotiating sessions and two (2) mediation sessions with a PERB appointed mediator.

3. It is now some five (5) years since the Parties began negotiations for a successor contract to the one that expired on May 31, 2007. The long delay in the issuance of this Award was caused by the delay associated with the "Improper Practice Charges" filed with PERB.

4. The Parties exercised their right to have a full and complete record of the Hearings as set forth in Section 209.4 (iii) of the New York State Civil Service Law.

5. The "positions" of the Parties and the Panel's "discussions" are summaries and are not intended to be all inclusive.

6. The data contained herein is based on the testimony and exhibits submitted at the hearings, the Parties' post hearing briefs and submissions accepted by the Panel as of the commencement of the Panel's Executive Session (3/7/11).

Comparable Communities:

The Panel is charged by New York State Civil Service Law, Section 209.4(v) to consider as part of its deliberations terms and conditions of PBA members in comparable communities as well as "with other employees generally in ...public employment". Unfortunately, the Parties to this interest arbitration do not agree as to which Westchester communities are most comparable to Mt. Kisco. The PBA seeks to use the Towns of Bedford, New Castle, North Castle and Yorktown, which are four (4) geographically proximate Westchester towns. Whereas, the Village wants to use the five (5) Villages spread throughout Westchester County of Elmsford, Ossining, Port Chester, Sleepy Hollow and Tuckahoe which were used in the last Interest Arbitration and a more recent teamster's fact-finding for comparison purposes.

It must be noted that the Village is one of three (3) unique Town/Village government entities in Westchester County, but neither party has offered the other two (2) (Harrison and Scarsdale) for comparison.

Thus, the first determination of the Panel is to decide which of the proposed communities, if any, to employ in this arbitration. Such determination is to be made on the basis of 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.

Discussion:

The Union's arguments to deviate from the comparable communities employed in a prior interest arbitration and the more recent Village fact-finding are not convincing. Whereas, the Village's submission on geographic size, population and basic economic indices are supportive of prior rulings of compatibility.

Therefore, this Panel will give due consideration to the data submitted for the same comparable communities as used prior hereto.

General Economic Background:

A great deal of time has expired since the Parties' last contract expired. During this period, the economy has been experiencing an ever-increasing economic recession leaving municipalities with dramatically reduced revenues and prospects for little more. However, the resolution of the financial issues in this Award should reflect the economic conditions that prevailed in the years covered by the Award. At the start (June 1, 2007) of the contract that is the subject of this Award the economy was still enjoying good times. However, for the first time in a long while, ongoing weakening economic woes and severe fiscal distress began in 2008, the second year of this contract. During the roaring '00s public employees generally enjoyed better economic packages and benefits than the taxpayers who are obligated to pay the public employees their salaries and benefits. With no quick recovery in sight, governments have been forced at all levels to make difficult budgetary choices. Municipalities in tough financial condition with reduced revenues and budget restraints, began having difficulty in balancing their books. They have had to weigh their decisions cautiously in how best to spend their limited resources in addressing their generosity of the past, if the municipality was to live within its means. They have had to make a sober examination of the high costs of wages and benefits, and come up with serious proposals to rein them in while remaining fair to their conscientious police employees who perform important public safety duties while trying to avoid laying them off. With a diminishing tax basis, they have had to prioritize their expenditures, reduce expenses where they could, look for any way to save money and work within the bounds of proper spending. Revenue shortfalls due to reduced State aid, lower investment returns, the mortgage debacle and sinking property values, business failures, severely pressed taxpayers who could not afford tax increases, etc. have prompted municipalities

to a retrenchment in spending and even to institute staff reductions to meet budget limitations. Usually the highest costs incurred by a municipality are police salaries, pensions and health benefits and thus, they have been seeking a sharing of costs from their police officers, especially since their besieged residents and businesses are also hard pressed financially. In difficult fiscal times, municipalities must strive to balance their budgets in a fair and even-handed fashion. The means must be found that is a right and fair way to address the budget gap.

Collective bargaining, as contemplated by the National Labor Relations Act, is a procedure looking toward making of collective agreement between employer and accredited representatives of employees concerning wages, hours and other conditions of employment, and requires that parties deal with each other with open and fair minds and sincerely endeavor to overcome obstacles existing between them to the end that employment relations may be stabilized and obstruction to free flow of commerce prevented." (Black's Law Dictionary, fourth edition 1951).

All Parties must do their part in achieving an equitable and fair resolution. Unions in more and more communities, are recognizing that the generous contracts of the past are over for now, and they must start reducing their demands and consider making some concessions to save their jobs in contract negotiations with cash strapped communities.

The Union contended that at June 1, 2008, the Village had a Contingency Fund of \$800,000 which could be used for the contract to be covered by this Award. Additionally, it noted that an eight million dollar (\$8,000,000) library was funded in cash by the Village.

The Village noted that it was earning no interest on the Contingency Fund and was free to continue to save it for an unseen emergency or spend it for the traditional uses of a Contingency Fund. As for the library, it was a capital project and was bonded.

The following issues were submitted at the arbitration hearings for Determination and Award by the Panel:

Contract Issues:

- A. Union
 - Preamble
 - 1. Recognition
 - 2. Annual Salary
 - 3. Overtime
 - 4. Paid Holidays
 - 5. Sick Leave
 - 6. Longevity
 - 7. Line of Duty Injuries
 - 8. Uniforms & Personal Property
 - 9. Hospitalization
 - 10. Welfare Fund
 - 11. Educational Incentive Plan

- 12. Work Schedule
- 13. Time Off, Association Officers

- B. Village Housekeeping Items
 - a. Annual Salary (Village ex. 1)
 - b. Overtime (Village exs. c,d)
 - c. Paid Holidays (Village exs. e, 2)
 - d. Sick Leave (Village ex. 3)
 - e. Personal Leave (Village exs. f, 4)
 - f. Line of Duty Injuries (Village ex. 5)
 - g. Uniforms & Personal Property (Village ex. g)
 - h. Hospitalization (Village exs. h, 6)
 - i. Training (Village ex. 7)
 - j. Educational Incentive Plan (Village exs. i, 8)
 - k. Grievance Procedure (Village exs. j, 9)
 - l. GML Section 207-c (Village ex. 10)
 - m Drug Testing (Village ex. 11)
 - n. Prior Service Credit (Village ex. 12)
 - o. Work Schedule (Village ex. k)
 - p. Time Off, Association Officers (Village ex. 1)

Opening Statements:

Union Position:

In its opening the Union pointed to the unique status of Mt. Kisco as a Town/Village, few of which were to be found in Westchester County.

The PBA maintained that Mt. Kisco was one of the richest municipalities in Westchester County, enjoyed one of the lowest unemployment rates and its tax increases were very low compared to the rest of the county. Additionally, it contended that the Village had easy and ready ability to meet the Union's economic demands. Furthermore, it claimed that Mt. Kisco in comparison to comparable Westchester County municipalities has shown a growing disparity in salaries and fringe benefits over the years.

The PBA alleged that the concession's the Village demanded were unnecessary, unreasonable and not comparable to like municipalities. "With but few exceptions, every one of the Village's demands would take away existing rights or benefits of unit employees. Even those demands the Village characterizes as ones that only 'clarify' or 'codify' the status quo are actually ones that take away existing terms and conditions of employment. There is no justification for an erosion of existing benefits, and certainly not those such as health insurance that is a life necessity."

At that hearing, the Union submitted, without objection of the Village, its book captioned PBA Exhibits, containing twenty-seven (27) exhibits much of which dealt with the statutory criterion of comparability.

The PBA stated that the Parties were in agreement that the Award which is retroactive by law to 6/1/07 should cover the maximum duration of two (2) years which would be through 5/31/09.

The PBA in its presentation, only offered the testimony of Kevin Decker, well known financial consultant for police and fire units in Interest Arbitration matters (his resume, Union ex. 26) who also testified in the parties' last Interest Arbitration hearing. He offered his analysis of Mt. Kisco's budgets for some 6-7 years and the audit of 5/31/08 and other applicable public documents to determine the financial ability of Mt. Kisco to meet PBA contract demands. Also in his testimony, he compared the economic PBA contract provisions, in accordance with Section 209 (4) of the Interest Arbitration Statute, of the comparable Westchester communities of Village of Ardsley, Town of Bedford, Village of Briarcliff Manor, Village of Bronxville, Village of Buchanan, Village of Croton-on-Hudson, Village of Dobbs Ferry and Town of Eastchester and some others with those of Mt. Kisco. He paid particular attention to the municipalities of North Castle (T), Mount Kisco (V/T), Bedford (T), Yorktown (T) and New Castle (T) which the PBA asked him to use for comparisons in accordance with 207 (c).

He noted that although the Village has increased the tax rate on assessed value of Village properties over the years, (real property taxes being 60% of the Village's General Fund), recent increases have been less than 5% and only increased 1.5% for the fiscal year ending May 31,2010, "while the prior year's increase was 3.87%". Actually, the full value tax rate has actually declined over the past ten (10) years by an annual average of 3.74%.

Mr. Decker testified that the second largest revenue source is Departmental Income (monies from parking lots, meters, fire protection services, parks and recreation, inspection fees and services delivered to other governments) and it has increased 94% from May 31, 2001-May 31, 2010.

The final source of revenue the Sales and Use Tax, has steadily increased from May 31, 2001-May 31, 2010 to 1.4 million dollars but is only budgeted in the fiscal year May 31, 2010, at 1.25 million dollars. A small decline Mr. Decker attributed to the recent recession.

The Union declared that the Village's "budgeted deficit of \$65,000. for the years ending May 2009 and 2010 is small and does not reflect any distress....In each of the last five years, the Village has collected more than budgeted and it has spent less in three years than expected. The revenue variance over the five years averages a plus \$1.26 million per year".

In its cross-examination of Mr. Decker, the Village sought clarification and the sources of his financial data and questioned some of his findings.

Village Position:

It noted that "Common sense suggests that a Village could not and should not tax its citizens to the highest legal limit. Thus, the issue of 'ability to pay' must be governed by what Village can reasonably afford given its constituency, economic status, State aid and the need to expend monies in order to provide other services to maintain a stable municipal infrastructure."

The Village also pointed to the unique status of Mt. Kisco as a Town/Village, few of which were to be found in Westchester County. It maintained that it resulted in certain financial obligations that towns do not have to meet, such as, if the residents don't pay their school taxes, because of its status as a Town/Village the Village must pay the school tax.

It called the Panel's attention to the serious economic recession or depression that local communities, the county, the state, and the nation have been facing since the middle of 2008, which the Panel must take into consideration in fashioning an Award. The Village reminded the Panel that its Award will also affect the Village's negotiations with other Village bargaining units, especially those having a "pay parity" provision in their collective bargaining agreement.

The Village noted that the Union's demands were for the most part economic and excessive, i.e. the expenditure of Village funds for such as wage increases, foreign language incentive pay, additional super-paid holidays, amounts of sick leave, sick leave payout at retirement, longevity payments, welfare contribution, uniform/maintenance allowance, education incentive payments, sick leave incentives, etc.

Furthermore, it noted that it is facing steep increases in pension costs and ever escalating health insurance costs.

It further maintained that because of its low socio-economic ranking in the county and its receiving significantly less in sales tax revenue, mortgage tax revenue and interest earnings since the 2006-7 fiscal year, the impact of increasing costs is felt more intensely.

Additionally, it disputed the P.B.A.'s designation of "comparable communities" which the Panel is obligated under the Interest Arbitration statute to consider in its deliberations.

The Village submitted charts on its various demands showing comparisons with its cited "comparable communities" and the tax burden for Village taxpayers. In support of these documents, the Village offered the testimony of James Palmer, Village Manager/Assessor who was subjected to cross-examination. He testified that he has been the Village's full time tax assessor for the past fifteen (15) years and the Village Manager for over three (3) years.

The Village also presented the testimony of Steven J. Anderson, Chief of Police, for a little over two (2) years but a member of the Village Police Department since 1995, who was also cross-examined.

He presented information as to "the time off taken by members of the department in the categories of sick and injured which may be acknowledged 207-c time or may be unacknowledged 207-c time, vacation and the combination of vacation and holidays" for calendar years 2005, 2006, 2007, 2008 and 2009 year to 9/14/09.

Furthermore, he described how short-shift overtime was calculated. Chief Anderson stated that the Village Police Commissioners' policy was that the Village have a minimum of three (3) officers on duty one (1) lieutenant, sergeant or desk officer and two (2) police officers on patrol at any given time so as to adequately serve the public interest. To maintain that level, someone must be held over or called in on overtime if an officer scheduled for that shift is unable to do so (e.g. calls in sick).

Additionally, he testified to the following:

1. A twenty (20) year pension and disability retirement
2. Overtime for court appearances. He maintained that though the officer of the court may dismiss the police officer before three (3) hours have expired, said officer is still on duty under the authority of the Police Department.
3. That the initial list of equipment and uniforms for new hires is paid for by the Village.
4. Personal Leave and compensatory time.
5. General Municipal Law 207-c applications which he handled as Claims Manager.

Rose Sickenhaus, Village Treasurer, testified that unpaid and outstanding taxes are particularly detrimental to the finances of Mount Kisco due to its unique co-terminus status of being a Village and Town. It is responsible for 100% of the annual taxes that should be paid to Westchester County and the school district.. This obligation exists, unlike for municipalities that are only villages, regardless of how much tax revenue is actually collected by the Village for those entities. For any shortfall, the Village must dip into it's unreserved general fund to make up the difference. Since revenues are derived from real property taxes, property owners are responsible for a huge portion of the Village's annual tax levy.

Additionally, she testified that the contributions that the Village is required to make to both the police and fire retirement systems and for other Village employees, not wearing a uniform, is increasing dramatically. These have an affect on other expenditures as well as on the revenue sources the Village has. The cost of police retirement in 2004 was \$157,701 and in 2008 it was \$635,807, a 400% increase. Furthermore, the Panel must keep in mind that once the Award is rendered, retroactive retirement payments will have to be made from the Village's limited funds. She noted that "There is a dramatic decline in the revenue that will be - that we have received in sales tax, mortgage tax and interest earnings from the 2007-8 year to the 2008-9 year which is just shy of \$500,000."

Miss Sickenhaus also pointed out that there are 100 currently active Village employees whose health insurance must be accounted for. Of the 100, a significant number have been enrolled in the family plan for the past fifteen (15) years whose cost has increased cumulatively over 100%.

James Palmer, Village Manager, testified that between just fiscal years 2005-6 and 2009-10, the average tax burden on taxpayer residents increased approximately 17% with the predominate share of the increase incurring in the same fiscal years to be covered by the Panel's Award, namely 2007-2008 and 2008-2009 - a period of time when the country and the community collapsed into a near depression. Residential taxpayer's tax burdens continued to increase despite the fact that their property values have crashed, investments and retirement savings evaporated, banks closed and jobs were lost.

The Village noted that the Panel's determination, by history and practical application, will also bear on the agreements made by the Village with its other bargaining units. Therefore, it is incumbent on the Panel which exercises this enormous power to do so cautiously.

Discussion:

Elected municipal representatives have the responsibility to oversee the protective services that the police are employed to provide but within appropriate taxes imposed on the taxpayer. The police are dependent on stable public sector jobs for their good salaries and ample fringe benefits, but diminished tax and other receipts are threatening municipalities' ability to continue salary increases and increased benefits costs as they were able to before and keep within their budgets. It should be noted that the police officers, for the most part, have been enjoying better economic packages than those of the taxpayers who are obligated to pay the costs of the police officers.

Nationwide beginning in 2008 and with no end in sight, times have been economically tough and negotiations between police unions and local officials have grown increasingly tense when Union demands are weighed against the employer's decreased revenues. Local governments in the difficult economic climate beginning in 2008, that resulted in budget shortfalls, had to get their greatest expense - employee salaries and rapidly rising health and pension benefits, among others, under control.

Municipalities began agonizing over how to balance their budgets when losses in State aid and limited revenues left them only painful choices. Many of their taxpayers had lost their jobs and the devastating impact of the mortgage debacle severely reduced their tax revenues. These budget restraints have been forcing municipalities to be creative in satisfying the needs of its taxpayers and public service employees. Municipalities must realize they are facing depressed economic times that they haven't witnessed in sometime and that they must adjust to them. During economic downturns because of the reduced revenues, governments are constantly forced to rebalance their budgets by cutting salaries and benefits or raising taxes. The means must be found to address the budget gap in a fair and even-handed fashion.

The national fiscal crisis that began in 2008, due to the beginning of the economic recession, had many ill effects, particularly in ever-rising health care and underfunded rising pension plan obligations. It has been aggravated by the previously granted unsustainable employee salaries and rich benefits. In fairness in the employer's meeting this fiscal crisis broadly shared sacrifices will be required of the taxpayer and the public employees. In reducing its budget, the employer must create a list of all its expenses, rate their priority, and start paying them from the top down. Many local and state governments around the country to avoid employee layoffs and/or unbearable tax increases, have sought employee contributions, as here, toward their health care premiums.

The escalating costs of government have to be paid by the taxpayers and if they are no longer able to do so governments must look for savings in their expenditures if they are to restore fiscal responsibility.

The Panel in determining what is "fair" treatment of the Village's police employees must be mindful of the impact the Award will have on the community's "ability to pay". The Panel must be aware that public safety has been consuming ever-larger portions of the Village's budget and getting harder to sustain, especially in the economic tight conditions that prevailed in the years the contract covered.

The impact of this Award covering the period of June 1, 2007 - May 31, 2009, contrary to the Village's fear, will have minimal impact on other Village employee unit

contract negotiations as the Teamsters have concluded their negotiations through May 31, 2113 (Village ex. CCCC) and the Administrative group through May 31, 2008 (Village ex.AAAA).

The Parties left it to chance as to the future economy when they didn't negotiate a new contract when the last one expired on May 31, 2007. Unfortunately for the Union the national economy went into a severe recession beginning in the second year after their last contract expired from which it has still not recovered.

Beginning with the economic recession that began in 2008, determining priorities for municipalities with diminishing revenues have become very difficult. They have been combing through their budgets looking to reduce expenditures wherever they can including employee layoffs. The Village must pay its bills , live within its means and be firm in not spending more than it expects to take in.

Any Award rendered by the Panel will have to be funded by reduced Village revenues and the fact that taxpayers find themselves overburdened and unable to pay any additional taxes.

The Village's budgets have been steadily increasing, particularly in the 2000's, because of significant increases in employee salaries, health and underfunded pension plans, liability and other insurance costs, utility and energy costs as well as other costs. Additionally, since 2008, many public pension funds have experienced big collapses in the value of their investments which must be replenished. Additionally, the Village, like all other municipalities has experienced a rise in mortgage foreclosures as well as a dramatic decline in property values (resulting in lower assessments and lower tax revenues), reduced sales tax revenues from local businesses and declining State aid. All of the foregoing must be considered when fashioning "fair and reasonable" salary increases for the Village's police officers.

Considering all of the foregoing, a reasonable Award would be as follows:

Provisions in Dispute:

Preamble:

The Union in its post hearing brief withdrew its proposal to amend this contract provision.

1. Recognition

Union demands:

a) Agency shop fee deduction proposal is withdrawn.

b) Section 3. Of Membership dues the Union's proposed change has two (2) main features:

a) Reduction in time for the submission of dues by the Village from the present "ten (10) days after the last day of the month in which deductions are made" to "on the day of payroll or within five (5) calendar days after said deduction was made."

b) Omission of the last sentence of present section 3 which relieves the Village of any liability for making the deductions.

Village response: Rejects changes to the existing Section 3 membership dues language.

Discussion:

Based on the foregoing discussion, and the fact that the Union offered no convincing arguments as to why the changes were needed, the Panel declines to grant the PBA demand.

Award:

Union proposal be denied.

Union 2 & Village 1: Annual salary

Union Demand : Section 1. A 4.75% increase in each year of the two (2) year contract for police officers with an additional \$750.00 with four (4) years or more on the job.

Increase Police Sergeants pay as follows:

6/1/06	6/1/07	6/1/08
\$88,590	\$93,702	\$99,056

Increase Lieutenants pay as follows

6/1/06	6/1/07	6/1/08
\$101,434	\$107,757	\$113,914

Section 2. Increase differential for detectives from 8.3% to 10%. It noted that the present differentials date back to at least 1999 and are "below average market rate no matter the chosen set of comparables. Indeed, within the Village's set of five comparables two (Elmsford and Ossining) are at a 10% differential and Sleepy Hollow pays a 12% detective differential."

Section 4. New. Police Sergeant(s) shall receive a 15% differential over and above Police Officer after 4 years annual salary. It claims to represent the current differential and should "be addressed by contractual language".

Section 5. New. Lieutenant(s) shall receive a 15% differential over and above Police Sergeant(s) annual salary. It claims to represent the current differential and should "be addressed by contractual language" .

Section 6. New. In essence a provision for an additional salary payment "for being proficient in a foreign language relevant to the community" 6/1/07 of 3% and 6/1/08 of 4% of annual salaries.

Mr. Decker testified that "the adopted general fund budget for 2009-2010 includes a contingency account of \$798,300. Of this total, \$354,300 is explicitly identified for unsettled labor contracts. It also noted, that the adopted police department budget for the fiscal year 2009-2010 includes \$38,852 in funding for each of two new patrolmen, who have yet to be hired".

The Union contends that "The Village's salary proposal is manifestly too low in terms of percentages and it would freeze the base wages of many in the unit for years." Its justification for its salary proposal it noted that its member salaries lag behind the salaries of officers as Mt. Kisco officers with five or more years of service had a base wage in 2006 of \$77,035, which is below the average for all towns in the County of (\$77,789), below the average for all of \$79,947. Even with the "proposed 4.75% increase in base wages, Mt. Kisco police officers will still earn far less in base wage over a career than most of their counterparts in any relevant market..."

The Panel, the Union noted, must remember in this regard that percentages granted in "other municipalities are being applied in many cases to wage schedules that are already substantially higher than those in Mount Kisco. The Panel will notice that 'all villages' average percentage increase was over 4% for each of years 2007, 2008 and 2009. An award at percentages at least equal to these is necessary just to maintain these officers' relative standing in the market."

Village Response: The Village implored the Panel to take note of its rapidly rising costs for pensions and health insurance for active employees and retirees.

It noted that consideration must also be given to the fact that any increases in salaries and benefits will be funded in the years after 2009, which have not been promising financially. Other Village expenses have also been increasing. The PBA's demands are too costly and ignore the magnitude of the present recession in order to benefit its members -regardless of the cost to the Village and its taxpayers. Fact is, the wage demand exceeds the three previous raises of 4%,4% and 4.25% when the economy was more stable in 2004, 2005 and 2006. Additionally, it notes that the PBA's wage demand far exceeds the New York CPI Index of 4% for May 2008 and a 1% for May 2009. Furthermore, when comparing officers' salaries with those in other communities, consideration must be given to the fact that the Village provides its officers with higher longevity pay than most and the officers receive their longevity pay and salaries while working significantly fewer total hours than their counterparts (2nd lowest in twenty-two (22) Westchester villages).

Instead, the Village proposes a 2.5% increase in each year of the two (2) year agreement, which it believes appropriate, for police officers with four (4) years or more on the job and superior officers. The wages of all other police officers who would be getting step increases be frozen. It maintained that this was a fair and reasonable offer considering the financial situation of the Village. It noted that the salaries of Mt. Kisco police officers range from \$70,000 - \$120,000, which far exceeds that of the Village's taxpayers.

The Village also urged rejection of the Union proposal for a new Section 6, for additional money for a foreign language as the Village is not in a financial position to fund an additional increase in some officer's salary. Furthermore, a review of every municipality in Westchester County reveals that this is a unique benefit not enjoyed by any one else. Furthermore, Westchester County has created a separate civil service classification and corresponding "Spanish-speaking" civil service list for hiring. The availability of such a list negates any need for a pay bonus for fluency in Spanish.

Discussion:

Negotiations between police unions and local officials have grown increasingly tense when the Union demands are weighed against public employer's decreased revenues and rising expenses such as escalating increases in salaries, health, pension, liability and other insurance costs, increasing utility, energy and other costs. These increased costs, together with mortgage foreclosures as well as a dramatic decline in property values (resulting in lower reassessments and lower taxes), reduced sales revenues of local businesses, declining State aid and lesser investment returns at a particularly daunting time, must also be considered in determining what is a "fair and reasonable" salary increases for police officers.

In determining a community's ability to pay the Panel must consider the municipality's ability to pay in the very difficult economic times that began in 2008. The Village receiving lesser revenues needs to optimize every dollar it expends. Any Award rendered by the Panel must take into account these reduced Village revenues and the fact that its taxpayers find themselves overburdened and unable to pay any additional taxes. It is the duty, however, of the Panel to determine what is "fair" treatment of the Village's employees while mindful of the impact it will have on the Village's taxpayers who will have to foot the bill for said employee service. In fashioning a "fair increase" in salaries, the Panel has to take into consideration the facts that though the Village Police Officers' salaries may be lower than some other Westchester communities cited, its longevity pay is higher than most and they work significantly fewer total days than their counterparts (2nd lowest of twenty-two (22) Westchester villages).

There is a country-wide movement in municipalities and states to get public employees and unions to accept wage freezes or even reduce wages already negotiated in prior contracts due to budget crunches.

The Union maintained that Village's reserves and taxing authority permitted the Village to grant comparable raises.

The Village, in turn, claimed that though its police salaries may be lower than some other Westchester communities' salaries, it may not have the same financial ability to pay those salaries.

The major rationale for the PBA's wage demands were comparisons with surrounding towns and that the Village had constitutional leeway to increase taxes.

The wage increases for "comparable communities" for the years 2007-8 and 2008-9 were as follows:

Community	6/1/2007	12/1/07	6/1/08-09
Elmsford (PBA ex. 36 & 36a)	2.25%	2.25%	3.5%
			Freeze P.O. 2-5
Ossining (PBA ex. 51a)	1/1/07-1/1/08	12/31/08	
	4%	4%	
Portchester (PBA ex. 56a)	3/31/07	3/31/08	3/31/09
	4%	4%	4%
Sleepy Hollow (PBA ex. 60b)	6/1/07	12/1/07	6/1/08
	2.50%	2.75%	2.50%
Tuckahoe (PBA ex. 62a)	6/1/07		6/1/08
	3.95%		3.85%

The Village, in support of its case, submitted four (4) collective bargaining agreements (Village exs. ZZZ, AAAA, BBBB and CCCC). Pertinent information from those exhibits relating to salaries is as follows:

The Village Administrative Group (Ex. AAAA) 6/1/07

Group I 3.5%

Group 2 3.75%

Group 3 4.0%

Local 456 I.B.T.etc. (ex. BBBB) 6/1/07 4%

Local 456 I.B.T.etc. (ex. CCCC) 6/1/08 0%

However, in determining what is a fair and just increase, one must not forget, that many of the foregoing contracts were negotiated before the deterioration in economic conditions

Consideration must be given to the following facts: that though PBA salaries may be lower than some other Westchester communities, the Village doesn't have the same financial ability to pay those salaries and the Village's higher longevity pay than most while the Mt. Kisco police officers work significantly fewer total days than their counterparts (2nd lowest of twenty-two (22) Westchester villages).

The only freeze to be found in any one of the "comparable communities" is for Elmsford and that is for P.O. grades 2-5 for the year 6/1/08-09.

In determining "fair and reasonable" increases for top grade and superior officers the Panel kept in mind that later in the Hospitalization clause (page 29) of this Award, it would be imposing on them a 15% health insurance premium contribution beginning June 1, 2008.

As to a "fair and reasonable" salary for police officers in grades 1-4 the following must be taken into consideration: as of June 1, 2008, they will receive step increments and as provided in the hospitalization provision of this Award (page 29) the refund difference between the 25% health premium they were obligated to pay prior thereto and the 15% contribution required as of June 1, 2008.

The availability of hires from a county "Spanish-speaking" civil service list negates any need for PBA proposed new section 6.

Considering everything, a "fair and reasonable" Award would be:

Award:

The following salary increase be granted police officers with four (4) or more years on the job:

Effective 6/1/07 and retroactive to that date, a 3.75% increase in base salary.

Effective 6/1/08 and retroactive to that date, a 2.5% increase in base salary.

Effective 12/1/08 and retroactive to that date, a 2% increase in base salary.

The wage increases for all other police officers shall be as follows:

6/1/07 2% 12/1/07 1.85 %

6/1/08 freeze 12/1/08 freeze

All other aspects of Union's wage demand, including modifications to differential calculations for Detective, Sergeant and Lieutenant are denied.

Union request for a foreign language incentive was withdrawn.

Union 3 & Village c,d. Overtime

Union Demand: Increase option of receiving compensatory time from a maximum of 48 to 120 hours. It noted that the present cap of 48 hours is only one tenth of the 480 hours of mandatory time authorized under Section 7(c) of the Fair Labor Standards Act (FLSA). The Union stated that police officers needed and wanted time away from the hazards and stresses of their profession as well as time with their families and so its proposal is reasonable.

Additionally, it would delete in Section 5(c) of the present contract "best interest of the Department" restriction because it alleges it "conflicts with the FLSA and is, therefore, void and unenforceable." Deleting it would bring the parties' contract in compliance with FLSA.

Village response: Rejects the Union's demand for it sees no basis for it and contends that its provision is comparable to comparable villages. Furthermore, any increase in compensatory time increases the potential for pyramiding overtime. "Nearly tripling this figure would result in the Village outpacing most of its comparable villages".

In turn, it proposes calculating overtime that occurs immediately before or after an employee's shift "on hours actually worked" rather than the present three hour minimum pay.

Additionally, it seeks to exclude from overtime any time spent on "PBA's business, such as grievance and interest arbitration's and PERB matters".

Union response to the Village's demands: "The three-hour minimum pay guarantee they receive is compensation for the disruption to their personal lives and the inconvenience that is caused them by having to work on an off-duty day. Forcing them to work the full three hours when court finished early to secure the three-hour minimum pay guarantee defeats every purpose for a call-in minimum."

Discussion:

Large overtime payments have been featured in fattened paychecks for police for years. This has been especially true in the years prior to retirement. In the financial climate of this contract, the Village must seek to reduce all unnecessary expenses such as overtime where possible.

Award:

Union demands be rejected.

Village demands are granted as to calculating overtime on hours actually worked and no overtime for any time spent on PBA business.

Union 4 & Village e, 2: Paid Holidays

Union demands: Add to Christmas and Thanksgiving Days which are paid double time, if worked, the following holidays: Memorial, Independence and Labor Days as well as Christmas Eve. It notes that at present, all other holidays other than Christmas and Thanksgiving Days are paid at the straight time rate and this has been so for a decade, whereas, other Westchester County police departments pay a premium rate for work on a holiday when the officer is away from family and friends.

Village response: Rejects union holiday proposal as there is no basis for increasing the number of "super holidays" from two (2) to six (6) especially in the economic climate in affect for this contract.

In turn, the Village proposes the reduction of the current 13 holidays to 12 by deleting Lincoln's Birthday and Washington's Birthday and substituting "President's Day" which is celebrated nationally. This reduction of one (1) day would not only save the Village one (1) day's pay but "would result in a significant and perpetual savings to the Village both in the form of reduced overtime compensation for replacements and in the area of cash payouts to officers."

Additionally, "the Village would remove Section 3 of Article 6 that gives employees an option to take vacation days as payment for holidays in lieu of cash since it significantly increases the Village's overtime expenses and allows officers to work even fewer days than their already favorable work chart. Presently, a lot of the police officers take a lot of time off."

The Village would also deny pay for any holiday if an employee reports ill or injured, whether from an on-duty or off-duty incident, within 24 hours before or after a holiday. The Village maintains that such restraint on use is reasonable and necessary. When the vacation option is utilized, officers must often be called in on overtime to satisfy minimum staffing needs. Between 2006 and 2009, these costs went from \$286,425 to \$504,824.

The latter demand was challenged by the Union in an "improper practice charge" which PERB dismissed.

Furthermore, the Village would also move the date for holiday pay from November 1st of each year to the first pay period in November.

Union response: This is but another example of the Village's attempt to move its police officers to a benefit level lower than most other Westchester police units which observe at least thirteen (13) holidays.

Furthermore, "the Village would punish officers with loss of holiday pay if they had the misfortune of becoming ill or injured within 24-hours of a holiday, even if the illness or injury was job related. This demand is not limited to or tied to sick leave abusers."

Additionally, the Village seeks to eliminate an officer's ability to take vacation time in lieu of holiday pay, a long-standing benefit, even though there is "no evidence that taking vacation time has caused a service disruption , the Village's justification becomes

entirely economic" and unjustified as any economic impact is minimal. The Union maintained that the Village should have no problem in scheduling, as the police officers choose their holidays in November of the preceding year by seniority.

Discussion:

The Administrative Group K (Village ex. AAAA) contract provision lists thirteen (13) holidays and Local 456, I.B.T (Village ex. BBBB) contract provision lists the same thirteen (13) holidays. Local 456, I.B.T (Village ex. CCCC) contract provision retains (13) holidays but substitutes the Employee's Birthday for Good Friday.

Present financial difficulties do not warrant an increase in "super holidays".

No proof was offered by the Village that police officers have been abusing holiday day pay when they unfortunately become ill or injured within 24 hours of a holiday.

Award:

Maintain the present thirteen (13) holidays and the provision concerning holiday pay.

The Union proposal to increase the number of "super holidays" is rejected.

The Village proposal of moving the date for holiday pay from November 1st of each year to the first pay period in November, is granted.

Union 5 & Village 3: Sick Leave

Union demands: The Union claims that its proposals are in line with those of the Village's of discouraging the imprudent use of sick leave. They are needed to make the long-term sick leave incentive "easier to apply and understand, and more in line with the market benefit".

Section 3: Would change the way it is calculated which is presently earned by unit employees according to their date of hire. The Union seeks to eliminate the "two-tiering" of this benefit which is uncommon in other Westchester communities. Furthermore, it maintains that converting "'days' of leave into 'hours' is more practical and reasonable because sick leave is often taken in less than full day increments. Earning time in hours and charging sick leave absences in hours creates a balance in the sick leave equation that is missing under the present contract language." Additionally, presently if an officer gets sick before having a month on the job, he is entitled to no sick leave to charge it against and this is unfair and should be corrected.

Section 5. Would change payment of percentages for all days of unused accumulated sick leave (upon "separation" and not just retirement) and accumulated days would be paid at "his/her applicable daily rate of pay in effect at the time". This benefit would be the same for all unit employees without regard to date of hire. Additionally, said "payment shall be no later than the pay period following separation."

Section 6. In event of death, payment should be paid as set forth in the above revised Section 5 i.e. if no named beneficiary is known then to his/her estate thus denying the Village of "an undeserved windfall".

Section 8. Change flat dollar amounts to number of day's pay. "Although the method of compensation varies across Westchester County municipalities, tying it to either days' pay or a percentage of base salary makes the most sense. This 'indexing' makes the benefit self-adjusting thereby preserving the value of the benefit over time. The indexing also avoids disparity in treatment by ensuring that the benefit is tied to each officer's own wage."

Any additional costs that may be incurred by the foregoing proposals in any given year should be minimal as few officers retire in any one (1) year.

Village response: Rejection of all Union changes to sick leave provision which provides attendance incentive payments "designed to provide officers with a financial incentive to come to work every day and avoid utilizing their sick leave unless absolutely necessary". Compensating officers while home on 207-c leave injuries for not utilizing their sick time, who do not have the option for doing so, "demeans the incentive for those who work all year to earn the payment."

Additionally, Village proposed in Section 8 "new language that would deny those payments to any officer who during any given calendar year is absent from duty 30 days or more due to illness or an injury that is sustained in the performance of duties within the meaning of General Municipal Law (GML) section 207-c" which it felt was sufficient. Thus, only those who miss an extended amount of time during the calendar year would not be eligible for this attendance financial incentive to come to work. Furthermore, "statutory provisions of GML Section 207(c) regarding an officer's tax-free income while on Section 207(c) leave helps offset any potential financial loss sustained by an officer who is not eligible for (the maximum) of \$750 attendance incentive".

This change was challenged by the Union in an "improper practice charge" which was subsequently dismissed by PERB.

Discussion:

Upon due consideration of this issue, the Panel declines to grant the PBA and Employer demands on this issue.

It would not be practical to make any of the proposed changes retroactively. The Parties can address these in future negotiations.

Award:

Leave the sick leave provision "as is".

Union 6: Longevity

Union demand: Compress years of longevity steps and increase dollar amounts of each step by \$50 on 6/1/07 and 6/1/08, "which proposal is balanced, logical, consistent with the concept of a twenty-year police career." Doing so, "is wholly reasonable, entirely in line with awarded and negotiated increases in the market, and necessary to guard against loss of value caused by the stagnation of the benefit over time". The

present "21-year step is out of line with the market and not in sync with the employees' 20-year retirement benefit under Article XV of the CBA."

Village response: Leave provision "as is". The Union demand would result in substantially higher longevity pay earlier in police officers' careers and for longer periods and is not justified "in the fragile state of the Village's economy and the Village's already generous longevity provisions."

Discussion:

The Union is correct, as can be seen below, that the Village's longevity benefit is less than non-comparable communities. However, the Village's longevity steps are in keeping with comparable communities.

Community:

Mount Kisco (PBA 5a) 5/31/04

After ten (10) years	\$625
After twelve (12) years	\$950
After seventeen (17) years	\$2,175
After twenty (20) years	\$2,475

Elmsford (PBA exs. 36 & 36a)	6/1/07	6/1/08	6/1/09
		(new hires)	
After seven (7) years	0.5% of base salary	five (5) years	\$630
After eleven (11) years	1%	ten (10) years	\$840
After fifteen (15) years	1.5%	fifteen (15) years	\$1,260
After seventeen (17) years	\$2,175	twenty (20) years	\$1,680
			\$1,747

Ossining (PBA ex. 51a)	1/1/07
After five (5) years	\$450
After ten (10) years	\$750
After fifteen (15) years	\$1,050
After twenty (20) years	\$1,300

Portchester (PBA ex.56a)	3/1/07
After seven (7) years	\$1,225
After twelve (12) years	\$1,475
After fifteen (15) years	\$2,175

Sleepy Hollow (PBA ex.60b)	6/1/07	6/1/08	6/1/09
Start of 6 th year		\$750	\$850
Start of 9 th year		\$1,125	\$1,225
			\$950
			\$1,325

Start of 12 th year	\$1,500	\$1,600	\$1,700
Start of 15 th year	\$1,875	\$1,975	\$2,075
Start of 18 th year	\$2,250	\$2,350	\$2,450

Tuckahoe (PBA ex. 62)	6/1/06
After five (5) years	\$975
After ten (10) years	\$1,175
After fifteen (15) years	\$1,375

The Administrative Group K (Village ex. AAAA) provides:

	06/07	07/08
5 years	\$1,430	\$1,430
10 years	\$1,630	\$1,630
15 years	\$1,830	\$1,830

Local 456 IBT (Village ex. BBBB) provides:

After seven (7) years of service	\$1,430
After ten (10) years of service	\$1,630
After fifteen (15) years of service	\$1,830

Those with fifteen (15) years or more of service by ratification of the Stipulation of Agreement shall be entitled to the following longevity:

After fifteen (15) years of service	3% of gross salary
After twenty (20) years of service	4% of gross salary
After twenty-five (25) years of service	6.5% of gross salary

Award:

The longevity steps be left "as is".

Longevity payments shall be increased at each of the existing longevity increment steps by \$50.00 retroactive to June 1, 2007.

Longevity payments shall be increased at each of the existing longevity increment steps by \$50.00 retroactive to June 1, 2008.

Union 7 & Village 5: Line Of Duty Injuries

Union demand: Increase death benefit from \$7,500 to \$10,000.

Village response: Rejects the demand and would amend Section 4 of said provision as follows:

Condition a survivor's death benefit according to "applicable provisions of the Plan." The surviving spouse's coverage is to 65 and dependents to 26 years of age if the plan permits. If the surviving spouse is required to personally pay the premiums, the village will reimburse the spouse's costs. But, it doesn't want to find itself in the position of being self-insured.

Additionally, it seeks resolution over a dispute as to whether current accruals are based on ninety (90) work or calendar days.

Discussion:

The Village's compensation of \$7,500 compares very favorably with that of comparable communities as noted next:

Elmsford (PBA ex. 36) as of 5/1/08, funeral expenses not to exceed \$6,250 for officers killed in the line of duty.

Ossining (PBA ex. 51) as of 12/31/07, funeral expenses not to exceed \$5,000.

Portchester (PBA ex. 56a) as of 6/1/07, in accordance with Section 208-b General Municipal Law.

Sleepy Hollow (PBA ex. 60b) no provision.

Tuckahoe (PBA ex. 62a) no provision.

In view of the poor economic conditions and the fact the Village's present compensation compares favorably with like communities, there is no valid reason to expend limited funds to increase this benefit as the Union requests.

Award:

Leave provision "as is".

Union 8 & Village g: Uniforms & Personal Property

Union demands: Section 1: Increase uniform/maintenance allowance by \$75 for each year of the two (2) years of the contract. "As these monies cover uniform purchase, replacement, maintenance and equipment purchases beyond what is provided by the Village as initial issue, the amounts proposed by the PBA are very reasonable and affordable."

Additionally it would add a new provision that "each employee shall be entitled to a uniform cleaning allowance each year as follows:" 6/1/07 \$300 and 6/1/08 of \$350 as it maintains that the present "allowances are intended for the purchase of uniform (and equipment) items that are not provided by the Village and for the maintenance of the uniforms (i.e. repair and replacement). Those existing allowances are not intended to cover and do not cover the cost associated with the cleaning of uniform items that is strictly necessary so that officers can maintain the 'neat and tidy' appearance the Village expects of them."

Village response: Rejects Union demands contending that there is no basis for said increases and that "Mount Kisco presently provides its officers with the 2nd or 3rd most generous uniform/maintenance allowance among its Village comparables".

The Village claimed that "The plain meaning of the word 'maintenance', when used in the phrase 'uniform and maintenance allowance', implies that any necessary cleaning expenses are included".

It would change the date for payment from September 1st to the "first pay period in September". It also seeks "language to ensure that the moneys that are paid to

employees under this Article is the full extent of the Village's financial obligation with respect to employee's purchase and maintenance of uniforms".

The Union's Panel member was agreeable to changing the payment date for said uniform allowance from September 1st to the first pay period in September.

Discussion:

The present Village provision is for a yearly \$850 uniform and maintenance allowance. Additionally, a police officer can collect up to \$100 per incident for replacement of personal property that is lost or destroyed as a result of said employee's actions in the line of duty.

Other comparable communities provide as follows:

Elmsford (PBA ex. 36) as of 6/1/07, \$1,100 per year and full reimbursement for damaged uniforms occurring in the performance of duties.

Ossining (PBA ex. 51) as of 1/1/07, up to \$550 per year for the purchase of uniforms and \$550 per year maximum for dry cleaning and pressing uniforms, one (1) pair of shoes to a maximum of \$75.

Portchester (PBA ex. 56a) as of 6/1/07, up to \$1,400 per year for the purchase of uniforms, equipment and cleaning.

Sleepy Hollow (PBA ex. 60b)	6/1/07	6/1/08	6/1/09
Uniforms	\$725	\$750	\$800
Cleaning	\$200	\$225	\$275

Tuckahoe (PBA ex. 62) All employees (except detectives) shall be provided uniform replacements of standard quality whenever such replacement is necessary, including the initial uniform.

It would appear that the Village's uniform/maintenance allowance, especially if it includes cleaning expenses as the Village maintains, is less than those cited above.

Since the expiration of the Parties' last contract, the costs of maintenance of uniforms which police officers are required to do, has been rising like everything else so an increase is justified.

Award:

Effective 6/1/07 the uniform allowance be increased by \$50.00 and as of 6/1/08 another \$50.00. Said allowance said shall be paid in the first pay period in September of each year instead of September 1st.

The Union's new proposed provision for a uniform cleaning allowance is rejected as any necessary cleaning expenses are included in the phrase "maintenance".

Union 9 & Village h,6: Hospitalization

Union demands: The Union contended that it sought to improve and/or maintain existing health insurance benefits, whereas, the Village was looking to take away existing health insurance benefits and impose higher costs. It proposed to delete some sections of the last contract, but only if its proposed modifications to certain existing sections are granted.

Section 1. (a) "Add the following sentence: All contributions shall be in 'pre-tax' dollars pursuant to the Internal Revenue Service (IRS) 125 Plan." It maintains that this is what is "permitted by Internal Revenue Service (IRS) regulations pertaining to so-called '125 Plans'".

(b) It contended that the present fixed amounts for voluntary withdrawal from health insurance coverage are so low that practically no one is enticed to waive coverage. Therefore, it proposed changing to 50% of the then premium from the present fixed amount to be paid "on the first (1st) pay period following each calendar quarter for each month the employee waives coverage" instead of a lump sum annual payment.

An employee should be able to request re-enrollment without the conditions and restrictions in the expired contract.

Section 2: The Union proposes elimination of existing conditions and restrictions and would have the Village pay 100% of the health insurance premium or cost for" each employee and eligible dependent(s) upon retirement and not for just those "who are actively employed as of June 1, 1982 and who either reached age fifty-five (55) or have completed twenty-five (25) years of service when they retire." It states that "100% employer-paid health insurance on retirement for the former employee and dependents is the health insurance benefit that prevails throughout Westchester County."

Section 3: It seeks complete deletion of this provision which speaks of retiring employees hired after June 1, 1989, if its proposed change to Section 2 is awarded..

Section 4: It seeks complete deletion of this provision which is similar to Section 3, if its proposed change to Section 2 is awarded.

Section 5: It seeks complete deletion of this provision which refers to insurance offered by another employer to a retiree.

Section 6: It seeks complete deletion of this provision which states that if a retiree's new employer provides coverage it "will be primary and the Village sponsored Hospitalization insurance, if any, will be secondary."

Section 7: Gives "The Village the right to change hospitalization insurance to overall benefits..." The Union seeks to be given adequate notice by the Village of any proposed change of insurance carrier, plan or benefits. It also seeks to include review procedures including arbitration if there is a dispute about substantially comparable benefits.

The Union contended that health insurance premiums fully paid but the employer during employment and upon retirement is a benefit that prevails throughout Westchester County. And, the number and variety of restrictions and conditions imposed in health insurance coverage by Mt. Kisco is out of line with the market and are unfair. It noted that the present 20-year retirement plan is all but illusory, as few, if any, police officers are able to retire after twenty years of service with Mt. Kisco.

Village response: The Village contends that its requested changes in this provision are very important. The costs of health care have been rising steadily and dramatically - increased 79% from 2004-08. Its proposed change is that "The active employee health insurance contribution rate be 25% of the cost of health insurance premiums once the police officer reaches four (4) years of employment and throughout the duration of his employment. It noted that presently members of the Village's Clerical

Bargaining Unit , hired after June 1, 1992, must contribute 25% of the cost of health insurance premiums throughout their employment despite the fact they earn lower wages.

"If the parties do not compromise and work together to share the burden of employment-regarding costs, then there will be serious repercussions." It noted that Arbitrator Edelman in his August 23, 2007 Interest Arbitration Award in the Town of New Castle, ("one of the most affluent municipalities in the County, and a Town that the PBA refers to as a 'comparable' municipality") found that:

"in light of the Employer's escalating health costs, which have increased significantly since 2001, the Panel is convinced that some redress is justified, and further, that such redress must result in some sharing of the Health Care cost burden."

It agrees to addition of Union Section 1a but sees no basis for Section 1b. It rejects the remainder of the Union proposals for "it would be fiscally irresponsible for a local government to not to try to rein in health insurance costs that are spiraling out of control." It argues that the PBA provisions for Sections 2-6 "essentially eviscerate a series of complex, collectively bargained" provisions and replaces them with simpler but more expensive ones. Additionally, it argues that "the PBA failed to submit any evidence supporting and/or justifying it's proposals."

As to Sections 2-6, they "are reactionary and wholly inconsistent with the present state of the economy and health care." The PBA's proposals "essentially eviscerate a series of complex, collectively bargained retiree health insurance agreements between the PBA and the Village and replaces them with a very simple, yet, very expensive provision for the Village...Pay one hundred percent of the health insurance premium or cost for each employee and eligible dependent(s) upon retirement". In one fell swoop, the PBA seeks to eliminate age requirements, length of service requirements, dependency qualifications, and alternative coverage provisions. In their place , the PBA places the entire financial burden of retiree health insurance squarely on the Village." It maintained that "the PBA did not produce any evidence to justify why these significant changes are warranted, or whether it is common in the County."

As to Section 7, the Village contended that there was no justifiable reason to grant this proposal and it "would do little more than drastically draw out the health care decision-making process and add considerable cost to the process. The current language provides sufficient protection(s) for the PBA".

It makes the following proposals of its own in an attempt "to rein in health insurance costs that are spiraling out of control".

a) Right to switch from existing health insurance plan to the State Empire Plan which would have resulted in substantial savings of some \$42,275. In 2009.

b) Wants to change the expired contract's 25% contribution from post-6/1/89 hirees from only the first four (4) years of employment to a 25% employee contribution that begins once the employee reaches "Police Officer after 4 years" (i.e. First/Top Grade), and which will continue for the duration of the employee's employment with the Village. This would take money from police officers when they are earning more and better able to pay. Such provision would be more like the one in the Village's Clerical unit, which since 1992, has had new Village hirees make a 25% contribution toward the

cost of their health issuance throughout the course of their employment. It noted that PBA members are collectively, by far, the highest paid public employees in the Village.

In keeping with this provision the Village would delete the last sentence of section 3 which states: "when the employee reaches age fifty the Village would assume 100% of the cost of hospitalization charges."

As to section 4 it would reduce the cost of individual health insurance coverage from 100% to 75% and their dependents from 50% to 25%.

As to Section 5(a), the Village would make a change in language but of like import. It would simply explore the areas of potential alternative health care insurance for retirees from other employment. "Thus opening the door for spousal coverage which presently doesn't exist".

In justification of its proposed changes in health coverage it claims that astronomical costs of health insurance have fundamentally altered the way that municipalities must think about, and conduct business. It argued that the PBA was on the wrong side of the national trend to reduce sky-rocketing health costs.

Union response: "The PBA wants to improve or maintain existing health insurance benefits." Whereas, the Village wants to take away existing benefits and/or impose new costs on employees. It noted that the contracts cited by the Village were for periods of time subsequent to the time period of June 1, 2007 to May 31, 2009 to be addressed in this Award. Additionally, it contended that at June 1, 2007 it was already contributing more to health insurance premiums than other Westchester communities.

Discussion:

This issue was a main contention between the Parties and the subject of extensive discussion as well as "Improper Practice Charge" which PERB dismissed. The Award on this issue was carefully considered by the Panel.

Struggling municipalities faced with reduced tax collections, State aid, etc. have had to make adjustments in their expenditures if they were to keep within their shrinking budgets. An unintended consequence forced them to take a hard look at health care costs which are one of the largest and rapidly increasing costs for municipalities for present and retired employees and their families. The Police Department has been consuming greater chunks of municipal budgets each passing year. Especially since retirees and their dependents are living longer than before and requiring far more medical attention than active employees. Thus, their costs of medical benefits are rising significantly faster.

Municipalities have the unenviable burden of guessing how much money they will collect in the coming year, so they will know how much will be available to spend, which they usually over estimate. This task is even more difficult during the first year of an economic recession.

The municipalities have been employing various means to curb these rapidly rising health care costs such as: greater employee contributions, higher deductibles, limiting coverage, higher co-payments for doctors' visits and prescription drug co-payments, stopping double-dipping under their and their spouse's policy and tightening

eligibility for retirees and their dependents for health coverage. Some have also provided inducements for officers to drop Village coverage and receive coverage under their spouses health care coverage.

The trend toward the current push back of previously negotiated generous fringe benefits -health and pension-is mandated by the fiscal crisis faced by all levels of government- federal, state and local. Those generous benefits granted in good financial times became an excessive burden on hard-pressed taxpayers beginning in 2008. In granting generous health care benefits in past years, municipalities did not consider the payment of future rapidly rising costs should the economy suffer a down turn. Besides, health care costs for police workers, retirees and their families are much more likely to require small or no co-payments, which can lead to more doctor visits and medical treatments that don't make them any healthier and at great costs. Ultimately these health plans become so expensive that public employers cannot rely on increased taxes, if possible, to pay for them. Taxpayers who began facing severe financial gaps between their incomes, if they still had them, and their minimal expenses, were in no position to afford increased taxes. It is obvious that changes are needed especially since health care cost increases have been consuming a majority of municipalities budget increases.

It has become obvious, that cost reductions must be implemented because of the recession induced crisis. Police, nationwide, are contributing less to their benefits than private sector workers, so they must be willing to make some sacrifices by sharing in the ever increasing premiums of health care coverage, if they are all to be continued to be employed.

Private employees do not usually enjoy the same generous health benefits that police officers do, although it is their taxes that are paying for these better benefits. Due to deteriorating economic conditions beginning in 2008, these taxpayers, who generally pay a greater portion of their health insurance than police officers, some of whom have lost jobs and face home foreclosures can no longer afford the ever rising costs of police officers health coverage.

Police officers and other public employees generally have enjoyed generous health care benefits for many, many years. Now a new economic reality is in place and matters are financially very difficult for federal, state and local governments in meeting rapidly escalating health costs. Fact is, soaring health care costs have moved to center stage in public sector negotiations. Reining in ever escalating health care costs is crucial in dealing with dramatically reduced receipts if Village budgets are to be kept from spiraling out-of-control. The Village is asking modest health care cost reductions as compared to what the private sector has been dealing with for quite some time. Public sector employee health care packages are the envy of the private sector employees and no longer affordable by hard-pressed taxpayers. Unless this issue is dealt with soon, more drastic action will be required in the future.

Municipalities almost everywhere have been seeking their union's cooperation in curbing the rapidly rising health care costs that have been "cannibalizing" ever increasing portions of their budgets for the past several years. There is nobility in shared sacrifice in meeting these ever increasing costs of health care. It is important that the resolution of this serious problem allows both Parties to claim a successful resolution.

Unlike from most other County police unions, the Village has been enjoying contributions from its step 1-4 police officers and seeks an increase in this contract by way of sharing rapidly rising premiums for health coverage. It noted that police officers who have completed their steps are in a better financial condition than those still on step and so should be the ones to contribute to rapidly rising health insurance premiums.

In view of the salary increases awarded to police officers with four (4) or more years on the job a contribution, but less than the one sought by the Village, would seem to be called for. The Panel deems a 15% contribution more appropriate than the 25% contribution sought by the Village, despite the fact that other Village employee units are being required to contribute 25%.

As to Section 5a, the Village proposal to possibly opening the door for spousal coverage from another employer's coverage that presently does not exist should not be objectionable.

The Village's demands for changes in retiree health care benefits involve complex matters not receptive to retroactive treatment and are, therefore, best left to future negotiations of the Parties.

The Panel having considered all evidence and arguments submitted by the Parties on this issue and the statutory criteria, makes the following:

Award:

Union change 1a is granted i.e. use of 'pre-tax' dollars pursuant to the IRS 125 Plan, but not 1b. nor 2-6. However, section 7 is granted,

An employee, effective June 1, 2008, shall make a 15% contribution that begins once the employee reaches "Police Officer after 4 years" (i.e. First/Top Grade), and which will continue for the duration of the employee's employment with the Village. Any police officer who paid the Village a 25% health care contribution beginning June 1, 2008, shall be refunded the difference between 25% and 15% for each such year. Also, any unit employees Top Grade and above, who previous to June 1, 2008 made a required 25% health care contribution or been relieved of same by the Village shall have said amounts credited to the 15% they are obligated in this Award to make as June 1, 2008.

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There shall be no change as to retiree benefits, and the last sentence of Section 3 shall be not be deleted.

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Village shall have the right to switch the existing insurance plan subject to the Union's right to review as provided in their proposed section 7, which is granted.

10. Welfare Fund

Union demands: Section 1: Union would increase the Village contribution to the Union Welfare Fund by \$75 for each year of the two (2) year contract for both individual and family/dependent coverage. The Union in seeking resolution of this contract, at the Executive Session, proposed that the Welfare Fund be increased by \$75 in only the second year of the contract.

Village response: Rejection of Union demand as the PBA has failed to demonstrate why the Village's contribution to the Welfare Fund should be increased. Additionally, when "comparing Mount Kisco to it's comparable Villages, Mount Kisco already has the most generous Welfare Fund contribution of all villages."

Discussion:

Presently, the Village (PBA 5) is contributing \$1,325 to the Welfare Fund for family coverage and \$975 for individual coverage, while the comparable communities are doing the following:

Elmsford (PBA ex. 36) as of 6/1/05 \$6,200 and as of 6/1/08 \$7,000 per year.

Ossining (PBA ex. 51) No provision

Portchester (PBA ex.56a) No provision

Sleepy Hollow (PBA ex. 60b)	6/1/07	6/1/08	6/1/09
	\$1,260	\$1,300	\$1,375

Tuckahoe (PBA ex. 62) No provision

It would appear that not all comparable communities contribute to PBA Welfare Funds and for those that do, they range widely in their contributions with the Village falling in between.

Award:

The Union demand for an increase is warranted and appropriate, but due to the limited available funds a more modest increase is in order, i.e. a \$50.00 increase effective June 1, 2008.

Union 11 & Village i,8: Educational Incentive Plan

Union demands: It claimed that the existing provision "is outdated and aberrational in several respects. There is no payment for acquisition of the degree itself" only for a two-year Associate Degree in Police Science, the only one area of study.

Section 1: The Union seeks to expand the number of eligible courses that are "directly relevant and helpful to the delivery of police services" in the Village for this benefit.

Section 2: The Union seeks significant increases in annual lump sum payments for degrees obtained in keeping with reasonable market rates. It noted that the present \$50 provision had not changed in years "and is yet another example of an economic benefit that has eroded in value over time to the point it is no longer a fair or reasonable rate."

Section 3: Delete subdivision A & B of this provision.

Section 4: Delete in it's entirety.

Section 6: New, Union request for a foreign language incentive payment.

Village Response Rejects all of the Union demands for they are not warranted or supported by any evidence. It pointed out "that many County police departments do not have an educational inventive provision at all, let alone one as expensive as the PBA proposal." It seeks the following three (3) proposals for itself:

a. Amend section 1 to require that the educational institution be "properly accredited and approved by the Village" and that a "B" instead of "C" average for reimbursement. A minimum grade of "C" sets the bar too low for getting by and should

not be considered "successful completion" of a course. The comparable Villages of Sleepy Hollow and Tuckahoe have imposed higher academic standards" and Mount Kisco should do likewise. At the second Executive session, the Village said it would agree to properly recognized authority or a list of accredited educational associations.

This, too, was the subject of the Union's "improper practice charge" which PERB dismissed. The Union would, however, agree to an educational institution "properly accredited by a recognized authority or from an agreed upon list of accredited educational institutions".

b. Language limiting the Village as obligated to only pay for a two-year Associate's degree in Police Science. Village payment on "a four-year degree in Police Science would be conditioned upon the employee establishing to the Villages 'satisfaction' that outside sources would reimburse the Village for 80% of the cost of the third and fourth years of study".

This, too, was the subject of the Union's "improper practice charge" which PERB dismissed.

c. Replace section 2 which provides each employee with up to \$500 annually for college credits to a unit-wide cap of \$10,000. The comparable Villages of Sleepy Hollow and Tuckahoe have recently implemented similar provisions which safeguard against unexpected (and thus unfunded) costs run-up in any particular year. It pledged that if the PBA offered proof that \$10,000 was insufficient it would be raised.

This, too, was the subject of the Union's "improper practice charge" which PERB dismissed.

Furthermore, the Village argues that since the financing of an officer's education is far more expensive than when the education provision was negotiated nearly thirty (30) years ago, any enhancement of the officer's salary because of that very education cannot be justified and the provision for salary enhancement shall be deleted.

Union response: These provisions are overkill and must be rejected.

Discussion:

The Union, as previously indicated, would agree to an educational institution "properly accredited by a recognized authority or from an agreed upon list of accredited educational institutions".

For some time prior to June 1, 2007, the start of the contract in this Interest Arbitration, the costs of and remuneration for most contract provisions had been increasing. But, not the Village's payments for Police Science credits earned. The Interest Arbitration process has to try to be fair to all Parties concerned. A lot of people are hurting and, of course, they're the ones footing the bill.

The present Village plan (PBA 5) encourages employees to seek an Associate Degree in Police Science by its willingness to "purchase all necessary books and related instructional material." Additionally, the Village commits itself to "pay fifty percent (50%) of the employee's registration fee, enrollment fee and course fees upon registration of the employee." Upon successful completion with at least a "C" average by the

employee, the Village shall reimburse the employee the remaining fifty percent (50%) of said fee.

Furthermore, the Village agrees to pay employees fifty dollars (\$50) for each six (6) degree-credits earned to a maximum of five hundred dollars (\$500) per year.

Comparable communities offer the following:

Elmsford (PBA 36) pays the cost of tuition and books only for training related to police functions, e.g. E.M.T., Advanced First Aid or C.P.R.. Police officers who have received and maintained E.M.T. certification shall receive an additional stipend of two hundred dollars (\$200) per year.

Ossining (PBA ex.51) The Village shall pay the cost of tuition, books and transportation allowance for successfully completed police science and criminal justice related courses to a maximum of fifteen hundred dollars (\$1,500).

Employees will receive an addition to salaries of ten dollars (\$10) per credit to a maximum fifty (50) credits for approved courses.

Portchester (PBA ex.56a) The maximum reimbursement for each semester shall be two thousand dollars (\$2,000) for accredited courses in police science and related studies. To receive this reimbursement the officer needs a passing grade of "C".

Maximum reimbursement for non-accredited courses approved by the chief or his designee shall not exceed one thousand dollars (\$1,000) each fiscal year.

Sleepy Hollow (PBA ex.60b) The Village "encourages employees to take training and/or educational course(s), or pursue a degree in Criminal Justice, Police Science, Business Administration, Police Justice Administration, Psychology, Law, Computer Science, Foreign language relevant to the community, or other course(s) or studies approved by the Chief of Police or Board of Trustees."

If the employee receives a passing grade of "C" or better or passing the Village will reimburse tuition costs, required fees and cost of books, but to a maximum of twelve thousand dollars (\$12,000) for the entire bargaining unit in any one year.

Tuckahoe (PBA ex.62) as of June 1, 2007. "Paid tuition at Westchester Community College rates for all accredited courses in Bachelor Degree bearing programs in police science, criminal justice, public administration, management, communications, social sciences and information technology shall be paid provided (1) the Chief of Police determines that the course content is expected to enhance the member's service to the Department, (2) a "B" grade is received for course, and (3) the unit member has not already acquired a Bachelors Degree. The Department's fiscal year annual expenditure under this provision shall not exceed \$2,500 per individual or \$10,000 in aggregate for the bargaining unit."

The Union's request for expansion of approved courses seems reasonable when one examines, as above, like communities. However, said expansion should be related to police work. Said judgment of relationship should be made by the Chief of Police and/or Board of Directors.

As stated in the Parties' contract: "Employees are encouraged to enroll in college level courses leading to an Associate Degree in Police Science" and it provides various incentives as stated above, for police officers to do so. Incentives provide encouragement for taking action which action can't be taken retroactively. The Panel's authority ends at

May 31, 2009, therefore any incentive changes will have to be made in subsequent negotiations. The same would be true for expanding the scope of approved courses.

Award:

Upon due consideration, the Panel declines to grant the demands of the PBA and the Employer on this issue at this time and refers the issue back to the Parties for future negotiation.

Union 12 & Village k: Work Schedule

Union demand: In section 1, the Union would more elaborately define how the two hundred and thirty (230) annual work days would be worked by patrol and superior officers.

Village Response: It filed an "Improper Practice Charge" which it ultimately withdrew before any decision was rendered.

It maintained that the police work schedule is already the second lowest in "comparable communities". Furthermore, the Village's police officers have a high absentee rate, and take a great deal of sick days requiring the Village to resort to overtime replacements.

The Village would add the following language to section 1: The Chief be permitted to reschedule "plug-in" days if an officer is absent on a "plug-in" day due to a leave of absence or a performance of duty disability that is covered under GML section 207-c.

Discussion:

Upon due consideration, the Panel declines to grant the demands of the PBA and the Employer on this issue at this time and refers the issue back to the Parties for future negotiation.

Award:

The changes sought are respectfully denied.

Union 13 & Village l: Time Off Association Officers

Union demands: Proposed that existing language be changed as follows: "The PBA President or designee shall be granted time off with pay and without use any of his/her paid leave (i.e. vacation, personal leave, etc.) and shall not be required to work his/her regularly scheduled tour of duty on the day of negotiations, mediation, interest arbitration hearing(s), disciplinary hearing(s), Improper Practice Charge conference(s) and hearing(s) disciplinary hearing(s) and labor management meeting(s) with the Village.

Stipulation 5H amends this Time Off provision "to enable the PBA President to switch tours or swap tours with another officer to facilitate the conduct of PBA business so long as overtime is not incurred."

Village Response: Rejection of these proposals and it would add language to provide release time is granted only when PBA business "directly conflicts" with the officer's scheduled work hours. If an officer is not scheduled to be working, there is no problem.

Discussion:

Upon due consideration, the Panel declines to grant the demands of the PBA and the Employer on this issue at this time and refers the issue back to the Parties for future negotiation.

Award:

The changes sought are respectfully denied.

Village 14,f: Personal Leave

Village demand: The Village "proposes to add '7 days notice where possible, if not, as much notice as possible' to the Personal Leave provision". It maintains that the Chief of Police deserves such notice to adequately prepare staffing levels for necessary public protection and said request is not unreasonable.

It also seeks denial of any personal leave if it were to result in overtime for another officer.

Union response: The Village "proposal would gut the reason for personal leave Personal leave, as the name implies, is personal to the employee. Whether or not an employer chooses to fill a vacancy caused by personal leave, or any other matter, is a decision reserved to the employer. The costs associated with that fill are wholly unrelated to the reason for personal leave. This demand is properly denied."

Presently the contract requires 48 hours notice.

Discussion:

Especially during difficult economic times, wherever possible, the most reasonable notice to the Village is warranted to enable the Village to grant it at the minimum cost possible - i.e. without having to grant overtime to another police officer.

Since the Village's proposal for "7 days notice where possible, if not, as much notice as possible" is qualified, reasonable and fair, it does not significantly increase an officer's burden when seeking personal leave.. Denial should only occur in instances when overtime for another officer will be required.

Award:

Village demand for seven (7) days notice whenever possible be granted prospectively. However, there may be circumstances when the personal leave is warranted but would result in overtime for another officer, but the chief should still try to accommodate the warranted personal leave.

Village 7: Training

Village demand: Village would delete Section 1 which states "for the benefit of the employee, the Village shall continue an in-service training program for the employees". It argues that training should not be mandated but optional and the Village should determine what is given and when.

Union response: "Training is essential in police work" and is an issue tied directly to officer health and safety." Thus, said provision should not be deleted. Furthermore, some training programs are State mandated.

Village responded: Mandated programs will be provided.

Discussion:

Training is a function of management and it should be the one to determine what training is necessary and when it shall be given except for mandated courses which legally must be given.

Award:

Delete present section 1 and prospectively substitute: The Village will provide mandated training which legally must be given.

Village j, 9: Grievance Procedure

Village demand It seeks to reduce from thirty (30) business days to twenty (20) business days for the filing of a grievance. It maintained that thirty (30) days was "substantially longer than any other comparable village's time limit" and offered supporting documentation. It stated that twenty (20) business days was more than enough time and the sooner it learns of problems the quicker it can take action and limit its liability, if any.

It also wants to add a new section, based on it's experience with the PBA repeating virtually identical grievances hoping for a different outcome. Said provision would read as follows:

"The PBA shall not file a second or subsequent arbitration over a grievance that covers the same issue(s) and clause(s) that have previously been the subject of a completed arbitration in which an award was issued or settlement reached."

Union response: It challenged said proposals in an "Improper Practice Charge", which PERB Dismissed.

Discussion:

Upon due consideration, the Panel declines to grant the demands of the PBA and the Employer on this issue at this time and refers the issue back to the Parties for future negotiation.

Award:

The changes sought are respectfully denied.

Village 10: GML Section 207-c

Village requests deletion of Vacation Accruals from Article XIV, Section 1a and the list of benefits available to officers who are on Section 207c status. It notes that this law provides for the payment of a police officer's regular salary (on a tax-free basis) who is injured in the performance of his duties. In addition to the generous statutory benefits provided by Section 207c, a prior Interest Arbitration Award (effective June 1, 2002 - May 31, 2004) granted officers absent pursuant to GML Section 207-c, the ability to accrue vacation days during the first ninety (90) days of Section 207 c leave, despite being out of work. Of the villages comparable to Mount Kisco, only Port Chester and Tuckahoe permit their officers to do so while Elmsford, Ossining and Sleepy Hollow do not allow it.

The Village also requested that the Panel reduce the ninety (90) days to thirty (30) days and resolve whether those are work or calendar days.

It contends that the above benefit is not justified as vacation accruals should only be for working police officers.

Union response: Objects to any change in this provision.

Discussion:

As previously noted, budgetary restraints are forcing all municipalities, including Mt. Kisco, to examine and weigh all contract provisions for possible savings.

As stated by the Village in its presentation, this is not a universal provision, and in fact, only appears in a minority of comparable contracts (two out of five).

Award:

The provision be maintained but the ninety (90) day clause be reduced to sixty (60) days and shall be interpreted as calendar days.

Village 11: Drug Testing

Village demand: It asks that "hair testing" be added to the Parties' contracted acceptable drug testing methods. It says that "hair testing techniques provide a much larger snapshot of the subject's prior drug history, if any, and thus is a more accurate drug test than a urine analysis which can be doctored. The very best tests must be administered to those Police Officers who are charged with promoting the safety and well-being of the citizens of Mount Kisco.

Union response: Objects to any change.

Discussion:

There can be no denying that included in the duties and responsibilities of police officers is the enforcement of mandated drug laws. In doing so, they should be drug free themselves and willing to take any reputable tests that proves they are.

Award:

Village demand be granted.

Village 12: Prior Service Credit

Village demand: It seeks to codify the right, it argues was recognized under certain grievance arbitration awards, permitting it to place a new hire at any grade on the wage schedule except to the extent otherwise mandated by law.

Union response: It challenged said proposal in an "Improper Practice Charge" which PERB dismissed.

Discussion:

Village demand is fair and reasonable

Award:

Village demand be granted.

RETENTION OF JURISDICTION

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The Panel Chairman hereby expressly retains jurisdiction of any and all disputes arising out of the interpretation or application of the Award.

ACKNOWLEDGMENT

We hereby affirm that we concur in the foregoing Award, except as where may be indicated otherwise.

All provisions and language of the Parties' prior contracts are hereby continued, except as specifically modified in this Award.

It is understood, that all terms of this Award shall be deemed retroactive to the dates specified herein and the Panel awards full retroactivity to any unit member who worked during any period incorporated by the term of this Award.

Dated: MAY 14, 2012
Hackensack, New Jersey

I concur with all of the foregoing.



I. Leonard Seiler
Public Member and Panel Chairman

I concur with all of the foregoing, except for the following from which I dissent:

 5/14/12

Terence M. O'Neil, Esq.
Village Appointed Arbitrator

I concur with all of the foregoing, except for the following from which I dissent:

John K. Grant
PBA Appointed Arbitrator

AFFIRMATION

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.



I. Leonard Seiler
Public Panel Member and Chairman
Dated: *MAY 4*, 2012

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.

John K. Grant
Employee 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.



Terence M. O'Neil
Employer Panel Member
Dated:

RECEIVED

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

JUL 16 2012

-----X
In the Matter of Compulsory Interest ArbitrationCONCILIATION
DISSENT

Between

IA 2008-017

Village of Mount Kisco

And

-----X
Village of Mount Kisco PBA, Inc.**DISSENT OF EMPLOYEE ORGANIZATION**
PANEL MEMBER JOHN K. GRANT

I hereby dissent from each and every part of the Interest Arbitration Award. The Award, as a whole, ignores the requirements of Civil Service Law Section 209.4 (c)(v) and is largely an outrageous rant against public employees generally and police officers in particular. Furthermore, the Chair's comments and half-hearted attempts at logical reasoning reveal a level of bias infecting the entire Award.

The Chair's discussion begins with, and relies almost exclusively on, a discourse about the state of the national economy and its impact on municipalities in general. He does so with absolute disregard for the overwhelming evidence relating to the strong financial condition of this municipality.

Throughout this process, the Panel Chair has presented to the other members of this Panel a series of draft awards containing factual errors, misrepresentations of the evidence before the Panel, and an exclusive reliance on his own perspective of the state of the national economy that is not supported by the evidence. Panel Chair Seiler superimposes his individual concerns about the national economy as he believes it was, in 2008 and 2009 and ignores the stability and strength of Mt. Kisco's financial condition and the economic recovery that has been ongoing since mid-2010. The most disturbing aspect of the conclusions reached by the Chair is the manner in which he reached his conclusions, one devoid of consideration of the statutory criteria.

As an example, an earlier draft of the Award included a 10% employee contribution of the health insurance premium equivalent. However, in the final award the Panel Chair suddenly reversed himself and increased the contribution to 15% of the premium equivalent. When questioned on the surprising change, the Chair referenced a recent New York Times article he read relating to the issue of employee contribution rates. He then commented on how prominent a role health insurance issues are playing in contract negotiations in 2012 in Westchester County. Thus, the Chair acknowledged that his Award, in which the Employer Panel Member joyously concurs, is predicated upon considerations other than the statutorily mandated criteria, and for the most part, upon supposed "facts" found outside the record. In fact, the Award not only improperly relies on non-record information, but also disregards virtually any meaningful examination of any of the statutory criteria the Panel is obligated to weigh and consider.

Instead, the Panel Chair peppers his Award with repeated generalized references such as "municipalities with dramatically reduced revenues," "municipalities in tough financial condition with reduced revenues and budget restraints, began having difficulty in balancing their books," "they [municipalities] have had to weigh their decisions cautiously in how best to spend their limited resources in addressing their generosity of the past." He further references municipalities "trying to avoid laying them [police] off" and "revenue shortfalls due to reduced state aid, lower investment returns, the mortgage crisis and sinking property values, business failures, severely pressed taxpayers who could not afford tax increases, etc., have prompted municipalities to a retrenchment in spending and even to institute staff reductions to meet budget limitations." These constant, unsupported and general references to "besieged residents and businesses" being "hard pressed financially" dominate the Chair's thinking and the resulting Award, and entirely displace any thoughtful analysis of this municipality's ability to pay. That is the relevant criterion, not the financial condition of other public or private sector entities.

The Chair's repeated, unsupported references to, "Unions in more and more communities are recognizing that the generous contracts of the past are over... and they must start reducing their demands and consider making some concessions to save their jobs in contract negotiations with cash strapped communities" suggest that general economic trends in distant and remote communities compel the massive upheaval his award represents.

This Award is arbitrary, capricious and based on something or some thinking that has nothing to do with Mount Kisco, its fiscal condition, comparable communities, the bargaining history of these parties, or the other criteria the Panel is obligated by law to consider.

Since 1977, interest arbitration panels have been required to consider all of the criteria in Civil Service Law §209.4(c)(v), and those panels must specify and explain clearly in their awards how they applied those criteria in making their awards. This specification is required so that the parties understand clearly why the award was made as it was and to ensure that a court, if called upon to review the award, will have the opportunity to conduct an intelligent and meaningful analysis to guard against arbitrary awards. When an interest arbitration panel fails to make specific findings supported by the record upon each of the statutory criteria and fails to explain how it applied those criteria to each of the issues before it, the resulting award becomes so fundamentally flawed it should be vacated for that reason alone.

Here, the Chair has ignored the statutory criteria. Even where he has attempted to address the criteria, the effort is so flawed that vacating this Award is essential to protect any semblance of integrity in the interest arbitration process. Furthermore, this dissent would address the poor quality of the written Award if that weren't so self-apparent to anyone who reads it.

The deficiencies in the Award's meager attempt to reference the statutory criteria are many. The misstatements of fact are equally prevalent. I will address only the most significant.

A. Comparability Analysis

First, the reasoning regarding comparability was entirely flawed. This flawed basis of comparison skews the entire comparability analysis. Oddly, once the Chair used tortured reasoning to identify a group of comparable agencies, he ignored those agencies and simply adopted Town/Village proposals unsupported by use of those "comparable" agencies.

The Award provides at page 4:

The PBA seeks to use the Towns of Bedford, New Castle, North Castle and Yorktown, which are four (4) geographically proximate Westchester towns. Whereas, the Village wants to use the five (5) villages spread throughout Westchester County of Elmsford, Ossining, Port Chester, Sleepy Hollow and Tuckahoe which were used in the last Interest Arbitration and a more recent Teamster's fact finding for comparison purposes.

It must be noted that the Village of Mount Kisco is one of three (3) unique Town/Village government entities in Westchester County, but neither party has offered the other two (2) (Harrison and Scarsdale) for comparison.

Thus, the first determination of the Panel is to decide which of the proposed PBA and Village communities, if any, to employ in this arbitration. Such determination is to be made on the basis of 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.

Discussion:

The Union's arguments to deviate from the comparable communities employed in a prior interest arbitration and the more recent village contract fact-finding are not convincing. Whereas, the Village's submission on geographic size, population and basic economic indices are supportive of prior rulings of comparability.

Therefore, this Interest Arbitration Panel will give due consideration to the data submitted for the same comparable communities as used prior hereto.

However, in that prior arbitration proceeding that this Panel Chair stated he would rely upon, Arbitrator David N. Stein expressly relied on a group of nine Villages and the four towns of Bedford, New Castle, North Castle and Yorktown that the PBA sought as a comparison. Chairman Stein states in the Award at pages 36-37:

Comparable Communities/Peculiarities of Profession, Etc.

The Taylor Law makes relevant to any award concerning the terms and conditions of employment of public safety employees the terms and conditions of employment and wage increases achieved by officers in other communities. In identifying the police to whom the Employer's police should be compared, the precedents instruct the panel to specify one or more communities.

The municipalities claimed by the PBA to be comparable, namely New Castle, North Castle, Bedford and Yorktown are different in terms of area (they are several times as large), and, in the cases of New Castle, North Castle and Bedford, are more wealthy and currently have a greater ability to pay than Mt. Kisco. (A panel's findings on questions such as ability to pay and appropriate comparables should be limited to the period covered by its interest award.) Thus, I have concluded that a "catch-up" improvement in the terms and conditions of employment of the Employer's police is not currently warranted. The Employer should not be compelled to match, even approximately, the superior terms and conditions of employment of officers in the four communities the PBA has cited as comparable.

Nonetheless, there is no question that the appropriate comparison between the Employer's police and other employees must primarily turn on what police earn in some grouping of the County's communities. This is because the concerns and risks faced by police everywhere are peculiar to that profession, and, in New York State, the statutory coverage of police officers is unique in many respects.

The Employer has identified a list of nine villages in the County which it believes are comparable: Elmsford, Sleepy Hollow, Buchanan, Tuckahoe, Dobbs Ferry, Mamaroneck and Tarrytown. The *per capita* income and median household income of the residents of Mt. Kisco and these nine municipalities are similar. The poverty rates in these villages are closer to those in Mt. Kisco than to the other villages and towns in the County, and its population (9,983) falls within the range of the populations of many of the nine villages, as well as some of the other villages in the County, such as: Sleepy Hollow (9,212), Village of Rye Brook (8,602), Village of Briarcliff Manor (7,696), Village of Hastings (7,648), Village of Croton (7,606), Village of Pleasantville (7,172), Village of Irvington (6,631), Village of Bronxville (6,543), Village of Larchmont (6,685), Village of Pelham (6,400) and Village of Tuckahoe (6,211).

While these nine municipalities are more relevant as comparables than the four identified by the PBA (New Castle, North Castle, Bedford and Yorktown), as contiguous communities, the latter group cannot be ignored. As the wealth of these increases, the wealth in Mt. Kisco should also be affected in areas such as sales tax growth, residential property values, school taxes and crime. Since the Employer's police most frequently interact with the police in the four nearby communities, the terms and conditions of police in those communities, especially rates of increase, cannot be ignored.

In his fact-finding report, Peter Korn said the following regarding the appropriate comparables:

Normally, determining the appropriate comparables requires a good deal of explanation. However, in this case, we have the advantage of a recently issued interest arbitration award where the Arbitrator spent a good deal of time examining municipal comparables with Mount Kisco. **After undertaking an analysis of the comparables submitted by the parties herein and reviewing the interest arbitration award, the Fact Finder adopts comparability conclusions similar to those set forth in that award.** The appropriate set of comparables are Westchester villages that have similar characteristics to Mount Kisco in terms of population, geographical size, financial capacity, per capita and median household income, poverty levels, and housing characteristics. The adjacent towns are substantially larger, have more opportunity for growth and development, significantly greater income levels, less poverty and a seemingly better ability to finance public services.

The Fact Finder determines that the appropriate set of comparables is the nine villages of Port Chester, Ossining, Sleepy Hollow, Buchanan, Tarrytown, Elmsford, Tuckahoe, Dobbs Ferry and Mamaroneck. These are the same villages put forward as comparables in the PBA interest arbitration case. However, the Fact Finder concludes, as did the interest arbitrator, that the adjacent towns' CBAs cannot be ignored, since Village employees regularly interact with their employees and it competes within the same labor pool. This is especially true when comparing wage rate increases.

In those proceedings, Panel Chair David Stein and Fact-Finder Korn expressly relied on a nine (9) village and four (4) town group of communities for comparability purposes.

Contrary to the reasoning he advanced, the Chair here then went to rely only on the five villages initially offered by the Employer as comparable - contrary to the earlier Interest Arbitration Award, the fact-finder's report, and his own argument that those prior findings on comparability were sound and deserved deferential treatment here. Not only did Panel Chair Seiler ignore the four towns offered by the PBA, but he also disregarded every village included in the analysis in the prior award that the Employer did not offer here. The resulting Award then imposes terms which are the result of an utter disregard of any appropriate comparability analysis, including one the Chair cites as most appropriate. In doing so, the Chair, and the Employer Panel member who joins in the Award, betray the Panel's statutory obligation. In the final analysis, the Award instead rests on what appears to be little more than a substantial resentment and bias against public employees and police officers. It cannot be justified based on any version of comparability.

B. Ability to Pay Analysis

Similarly, as stated, the Award relies exclusively on statements regarding the Town/Village's ability to pay that have no support in the record and are contradicted by the evidence before the Panel. The Chair has supplanted the statutorily mandated consideration of this municipality's ability to pay with a discourse on the state of the national economy, which he characterized as a, "period of time when the country and community collapsed into a near depression...nationwide beginning in 2008 and continuing with no end in sight..." (10-11). The evidence shows the Village remains in a strong financial condition throughout the period in issue.

The Award is also internally inconsistent inasmuch as the Chair concludes that the resolution of financial issues of the award should reflect "the economic conditions that prevailed in the years covered by the Award." Yet, he then cites the Village administrator's testimony that the finances of the Town/Village were fine in September 2009 but prospectively were *expected* to deteriorate. This has not proven true. The analysis ignores the actual financial data relevant to

the period of the Panel's deliberations and repeatedly suggests the "sky is falling" around the country and, by implication and implication only, in Mt. Kisco. The assertion was not true then and it is not true now. The record confirms that the Town/Village is in excellent financial condition.

The 2008 through 2012 Mt. Kisco budgets show huge and growing fund balances, rising sales tax revenue and virtually flat property taxes. According to the Town/Village's 2012 budget, sales tax revenue received by the Town/Village is higher for 2012 than 2007. There have been no layoffs in Mt. Kisco, unemployment in the area is extremely low (4th lowest of 62 Counties), and the Town/Village government finances remain extremely strong.

The Town/Village amassed a total general fund surplus of a staggering 41.7% of its end of fiscal year 2009. Yet, the Chair cries of an economic depression and reduced municipal revenues. Obviously, the Chair ignores the economic recovery well underway, as revenues rebound due to Town/Village sales tax receipts exceeding pre-2008 levels and are now higher than ever before.

The Town/Village had an unreserved fund balance at the end of 2009 of \$4,811,703 or 25.6% of total spending, an increase from a surplus of \$3,034,543 in 2008. Significantly, the Town/Village, unlike all other villages in Westchester, has not filed and continues to withhold its required financial statement with the State of New York since 2008. These fund balances substantially exceed the levels of 5% to 10% the New York State Comptroller's office recommends.

Amazingly, this massive unreserved fund balance is above and beyond the \$1.256 million dollars added to a "Future Capital Project Fund" that already had \$2.4 million dollars of current taxpayer money set aside for future projects the Town/Village still has not selected. The Town/Village is overtaxing current residents, which the Chair refers to as "overtaxed," and setting aside millions for capital projects. The Town/Village is putting the money in a pot to hold and use for capital projects that will be enjoyed by, and benefit, future taxpayers. At the very same time, the Chair suggests that Mt. Kisco police should sacrifice comparable wages and

comparable benefits to other officers so that the Town/Village may provide relief to those property taxpayers.

There is not only a high degree of inaccuracy in the Chair's analysis, but it reeks of a level of intellectual dishonesty that has been employed to make the Award appear justified.

The majority's analysis of the need for greater employee health insurance contributions speaks of "struggling municipalities faced with reduced tax collections, state aid etc, have had to make adjustments in their expenditures" and that "generous benefits granted in good financial times became an excessive burden on hard pressed taxpayers in 2008." In the Award, the Chair has adopted an "every employee should pay more" mentality regardless of what these officers already pay, what officers in other comparable police agencies pay, and without regard to the finances of this municipality or the cost of coverage.

The Chair emphasizes the fiscal stresses on municipalities in general, taxpayers' burdens in general and claims "the trend toward the current pushback on previously negotiated generous fringe benefits - health and pension - is mandated by the fiscal crisis faced by all levels of government - federal, state and local."

As noted above, this municipality, in the heart of one of the wealthiest counties in the country, is not facing any fiscal crisis. The Award totally ignores this employer's ability to pay.

In total, the Award is falsely premised upon a faulty foundation: that there is an inability to pay an award affording wage and benefit adjustments consistent with those in other comparable agencies. But the record does not support such a premise. The overreliance or exclusive reliance on "the national fiscal crisis," combined with an abandonment of the required statutory criteria, renders the Award infirm.

There are many other factual misrepresentations, but I will point out a few more examples that are employed by the majority to justify the end Award. In the Award, the majority expressly states that the Town/Village lacks the ability to pay its officers a base wage and

longevity package comparable to other municipalities because Mt. Kisco police officers work “significantly fewer total days than their counterparts, second lowest of twenty-two.” This statement is absolutely false. This information, although misrepresented by the Town/Village in its brief, was proven to the Panel Chair in Executive Session, who ignored the accurate information and continues to include the blatantly false information on work schedules in his final Award. Also, as shown in the record, Mt. Kisco police officers receive fewer vacation days over their career than virtually all of their counterparts, regardless of which group of comparables are examined. Thus, the suggestion that, “they should be paid less because they work less,” is another lie intended to make an unjustifiable Award appear reasonable.

The end result of the flawed and misleading discussions of comparability and ability to pay is a one-sided, biased, frontal assault of these officers, their service and those of police officers and public employees in general.

As to the resulting substantive provisions of the Award, the following is submitted.

C. Wages

I dissent from the portion of the Award as it relates to wage adjustments. As emphasized repeatedly here, the Award on this issue ignores the statutorily mandated criteria that must be considered.

In discussing wages, the Chair uses a limited group of comparables that is contrary to the groups prior proceedings had considered justified. He then ignores comparable police salaries and relies on a misrepresentation of fact regarding the financial condition of Mt. Kisco and the number of days worked by unit members.

The Panel majority awarded base wage increases as follows:

1. Officers “with four (4) or more years on the job,” described by the Chair as those at “Police Officers after 4 years” and above:

<u>6/1/07</u>	<u>12/1/07</u>	<u>6/1/08</u>	<u>12/1/08</u>
3.75%	-- 0 --	2.5%	2.0%

All other police officers (police officer starting to police officer after 3 years) as follows:

<u>6/1/07</u>	<u>12/1/07</u>	<u>6/1/08</u>	<u>12/1/08</u>
2.0%	1.85%	-- 0 --	-- 0 --

The wage Award provides for no increase in 2008 for officers yet to reach top pay, negatively affecting the wage schedule, now and in the future. The wage Award is defective for several reasons.

First, the Chair cites only the wage adjustments of 5 villages claimed as comparable by the Employer. Among those five, the average wage increases were as follows:

<u>2007</u>	<u>2008</u>
4.3%	4.12%

The average wage adjustment among all municipalities in Westchester for 2007 and 2008 was as follows:

	<u>2007</u>	<u>2008</u>
Towns	3.96%	3.97%
Villages	4.06%	4.06%
All	4%	4.05%

The Chair justifies freezing base wages for patrolmen below top step because he suggests that Elmsford did the same as part of its 2008-2010 agreement. Here lies one more example of the intellectual dishonesty of the Chair, here used to justify freezing all officers below top pay. What the Chair conceals is that, in Elmsford, the agreement advances any active officer not yet at top pay (PO1) to top pay effective June 1, 2008. The Elmsford agreement then grants substantial adjustments as follows:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
PO1	3.5%	3.5% (+\$500)	3.5% (+\$1,000)
PO2	Freeze	3.5%	3.5% (+\$1,000)
PO3	Freeze	3.5%	3.5% (+\$1,000)
PO4	Freeze	3.5%	3.5% (+\$1,000)
PO5	Freeze	3.5%	3.5% (+\$1,000)

The Chair conveniently omits these figures. In Elmsford, officers hired after June 1, 2008 contribute 10% toward health insurance for their career. Those hired before contribute only for a limited period. Here, the Chair cherry picks the employer with a low wage component and ignores the balance of the wage package to attempt to justify the unjustifiable.

The Chair also suggests that Mt. Kisco officers receive a higher longevity than most others. But again in his analysis of an Elmsford officer's compensation, he ignores the fact that officers there receive longevity on a percentage basis of the individual's base wage regardless of rank. Secondly, and perhaps most importantly, he ignores that officer longevity pay in Elmsford is cumulative and compounds with each base wage adjustment at years 7 (.5%), 10 (1.0%), 15 (1.5%) and 20 (2.0%).

Specifically, the Chair claims that his wage award is predicated on the fact that, "the Village doesn't have the same financial ability to pay those salaries and the Village's higher longevity pay than most while the Mt. Kisco police officers work significantly fewer total days than their counterparts (second (2nd) lowest of twenty-two (22) Westchester Villages)."

At Executive Session, the Chair was shown the proof that the assertion that, "officer longevity is higher than most, while members work less days per year than their counterparts," is absolutely false and a complete misrepresentation of the facts. Yet, he entirely ignored this proof.

Even among just the five villages cited by the Town/Village, officers in both Sleepy Hollow and Tuckahoe work fewer work days each year. Officers working a midnight tour in Port Chester work thirteen (13) days fewer. When combined with vacation leave, Tuckahoe, Sleepy Hollow and Port Chester all work less. This is one more example of the Chair's utter disregard for the truth.

Similarly, all of the Town agencies that the Chair ultimately ignored work fewer days each year.

The Chair makes only nominal, inconsequential adjustments to longevity, again ignoring any semblance of comparability analysis or consideration of the other statutory criteria.

D. Dramatic Increases to Employee Contributions to Health Insurance Coverage

I also specifically express my dissent from the Award's dramatic change to the health coverage scheme employed in the Town/Village for many years. Here, the Chair, with no justification turns the existing health coverage contribution on its head.

The Chair's decision in this particular area is the most offensive and indefensible part of the Award.

As done consistently throughout the Award, the Chair's "discussion" is long on anti-public employee rhetoric and absolutely devoid of any factual basis.

First, the Chair falsely suggests that there was "extensive discussion" on the issue. In fact, there was virtually none. Efforts to ascertain what his thinking was on this critical subject were greeted largely with silence. The sole explanation was a befuddling, out of the blue reference by the Chair to a news article about private sector health insurance, that is not part of the record, followed by a series of draft awards.

In his Award, the Chair provides absolutely no comparability analysis when imposing this new drastic change in health coverage contributions. Nor could he as the existing active and retiree coverage cost sharing in Mt. Kisco already imposed on the working officer and retiree a higher contribution requirement than any cited comparable.

The Chair repeatedly suggests that "soaring health care costs" require "reigning in" and he speaks, with obvious animosity, that "public sector employee health care packages are the envy of the private sector and no longer affordable by hard-pressed tax payers."

He ignores the high contribution already made by these employees. He ignores the strong finances of this municipality. He ignores the fact that this Town/Village has overtaxed its residents for years, stockpiling money for pet projects. He ignores that the actual cost of the self insured coverage for this municipality actually went down in 2008 and increased an average of just over 3.0% per year between 2007 and 2011.

There simply was no legitimate consideration or thoughtful consideration of any of the statutory criteria, but instead, just a conclusion followed by an expression of obvious bias against public employees and these police officers in particular.

This Chair has handed this Employer an undeserved windfall whereby officers are paid less and receive benefits well below market. He does so not because this Employer is one of the hard pressed municipalities hurt by the recession, but apparently because he believes all police officers and all public employees are overpaid and over-benefited.

The utter failure to even attempt to address the statutory criteria when imposing such a substantial upheaval of a complex, longstanding, cost-sharing provision provides the most clear cut example of this Panel Chair's current inability to serve as a purported impartial public panel member and Chair.

No other Town/Village comparable, by agreement or otherwise, has reduced health coverage to its currently employed police as Panel Chair Seiler has in this Award.

No PBA comparable did so.

No comparable cited by Stein's Interest Arbitration Award did so.

No comparable cited by Korn's fact-finding report did so.

In fact, Mt. Kisco officers have already contributed more, during their career and upon retirement, than the municipalities the Chair called "comparable." This was the case before the Chair awarded this draconian revision to the health insurance contribution.

In the municipalities that recently changed the health insurance contributions, changes were prospective and provided for increases effective in fiscal 2010 and even then largely apply only to newly hired employees.

The previously existing employee health insurance contribution that requires a 25% contribution by employees for their first four (4) years is a higher contribution rate than the comparables the Panel Chair claims are appropriately considered. Perhaps most importantly, all of those comparables received higher wage adjustments for the period in issue, further widening the gap between Mt. Kisco and the cited comparables, even including the poorer neighbors.

No cited comparable police unit made changes like the Chair imposes here on all officers with the new contribution retroactive to 2008.

The upheaval is rendered all the more problematic and illogical when considering some officers were induced to transfer here with the promise that they would not have to pay the 25% contribution, having received credit for prior police service. Under this Award those officers would pay the full amount going forward. The provision makes no sense. It is particularly absurd given the Award will have expired nearly three (3) years before its issuance.

E. Remaining Substantive Changes

While the Panel Chair rejected thirteen (13) of fifteen (15) Union demands, often claiming that the issue should be referred back to the parties for future negotiations, he had no difficulty in granting the Town/Village six (6) of ten (10) demands.

First, the Chair granted the Town/Village's request that personal leave be denied at the whim of the Chief and whenever the personal leave would result in overtime for another officer.

The Chair weakly mitigated that award by saying that when personal leave is warranted, “the Chief *should still try* to accommodate the warranted personal leave.”

Second, the Panel Chair made significant changes to the benefits an officer would receive while absent due to an injury in the line of duty. Prior to this award, officers in Mt. Kisco were able to accrue vacation days during the first 90 days of GML §207-c leave. The Panel Chair granted the Village demand that the time period be reduced. The Chair altered the contract so that an officer absent pursuant to GML §207-c can only accrue vacation days during the first 60 days of leave instead of 90 days. The Chair’s only explanation was that, “budgetary restraints are forcing all municipalities to examine and weigh all contract provisions for possible savings.” The Chair makes this claim about “all municipalities” despite the fact that there is not a single comparable that has reduced this benefit in the manner the Panel Chair has here. This is yet another example of the Chair’s overriding interest in reducing wages and all benefits of police regardless of the propriety of doing so under the statutory criteria.

Third, the Village demanded that hair testing be added to the Parties’ acceptable drug testing methods. Without any evidence that the current testing methods are failing, without a single incidence of illegal drug abuse in the department, or a scientific discussion on the merits and drawbacks of hair testing, the Chair flippantly decided to radically alter the contract’s existing testing procedures and granted the demand for hair tests. Despite rejecting many Union proposals on the grounds that, “said issue is one that is better left for the parties to decide in future negotiations,” here, the Chair imposed another significant change to the contract at the expense of the Union. The Chair gave the Employer windfall after windfall without any justification or consideration of the statutory criteria.

Some of the Union’s demands were minor and appear relatively inconsequential. The demands that the Panel Chair rejected include the Union’s demand that the Employer submit dues in a more timely manner; that the Village increase the death benefit paid to the family of an officer killed in the line of duty by \$2,500; that the PBA president not have to utilize his paid leave time to attend negotiations, interest arbitration and disciplinary hearings, and that the Village create a \$300 annual uniform cleaning allowance.

While the Panel Chair rejected virtually every one of these Union requests, he also refused to grant some demands that would have a substantial impact on the working officer.

First, the Union requested that the cap for optional compensatory time be increased from 48 hours to 120 hours. Not only did the Panel Chair reject the proposal, but he also removed a provision that gave union members three hours of minimum pay when they are called in to work overtime. This reveals a complete lack of understanding for the purpose of basic provisions in a collective bargaining agreement and an inability to understand labor relations issues from the perspective of the employee. When an employee is called in to work overtime, contracts often provide that employee with a minimum of three hours pay to compensate that worker for the inconvenience of suiting up and travelling to work at an unaccustomed hour. Panel Chair Seiler tosses out this benefit, with the disrespectful and obtuse comment that, "large overtime payments have been featured in fattened paychecks for police for years." The Chair ignores that this agency, like others, remains understaffed and orders officers to work overtime tours with ever increased frequency. Unlike clerical workers, police officers don't have the ability to leave unfinished work until their next regularly scheduled business day. Policing is a 24/7, 365 days a year business. The "fattening" of paychecks comes at the cost of weekends, holidays, days and nights, rotating schedules, and missed family events that the rest of us get to enjoy when we go home at 5:00 p.m.

Second, the Panel Chair rejected the Union's demand to include Memorial Day, Independence Day, Labor Day and Christmas Eve to the list of holidays that if worked, would pay a premium rate to officers that must spend the holiday away from friends and family.

Third, the Union proposed some adjustments to the sick leave policy including 1) new officers would have sick leave during their first months of work (as new hires sometimes get sick too) 2) that previously earned sick leave be paid upon separation and not just retirement, and 3) that the sick leave benefit be based off of an actual day's pay and not just a flat dollar amount, so that the benefit could be preserved over time. The Panel Chair rejected all of these sick leave related proposals.

Fourth, the Union attempted to more elaborately define the work schedule of officers to a cycle of four consecutive days on and seventy-two hours off. The Panel Chair rejected this proposal as well, citing the Village's claim that the police work schedule is, "already the second lowest in comparable communities" despite the fact that in the Executive Session he received documentation that the Village's claim was blatantly false.

The rejected Union demands and the granted Village demands discussed above are further examples of the Panel Chair's biased and hostile mentality towards police officers and public employees in general. The Chair unjustly and improperly assaulted the contractual benefits of men and women in the Mount Kisco police department with no regard for any semblance of fairness, much less the statutory criteria. This reactionary, biased and poorly written award has permanently altered and greatly damaged the relationship between the parties in Mount Kisco and is an embarrassment to the institution of impartial Interest Arbitration.

As such, I dissent from each and every part of this Award and urge the PBA to seek its reversal in the appropriate forum.

Submitted By,

Dated: July 13, 2012


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