

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

-between-

Compulsory Interest Arbitration

SOUTHOLD POLICE BENEVOLENT  
ASSOCIATION,

PERB Case No. IA2010-024;  
M2010-006

“Petitioner or PBA”

-and-

TOWN OF SOUTHOLD,

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

“Respondent or Town”

RECEIVED

X-----X

APR 30 2012

BEFORE:

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

CONCILIATION

APPEARANCES:

FOR THE PETITIONER:

SOLOMON RICHMAN, PC by FREDERICK J. RICHMAN, ESQ.

FOR THE RESPONDENT:

LAMB & BARNOSKY, LLP by CHUMI DIAMOND, ESQ.

BACKGROUND

The parties are signatories to the collective bargaining agreement between Southold Police Benevolent Association (Petitioner) and Town of Southold (Respondent) that expired on December 31, 2009 (Joint Exhibit [JX] 1). Negotiations for a successor agreement proved unsuccessful.

The parties submitted a Joint Declaration of Impasse on April 14, 2010 (JX2). Accordingly, the dispute was submitted for mediation. The Honorable Philip Maier was designated to serve as mediator for this dispute on April 22, 2010 (JX3). A mediation session

was held on June 7, 2010. Despite the best efforts of Judge Maier, the mediation failed to resolve the dispute.

Consequently, and pursuant to §209.4 of the New York State Civil Service Law (*The Taylor Law*), Interest Arbitration procedures were invoked. In that connection, Petitioner filed a Petition for Compulsory Interest Arbitration with Public Employment Relations Board (PERB) on October 13, 2010 (JX4). The Town (Respondent) responded to the petition on October 25, 2010(JX5).

On November 10, 2010, PERB appointed me as the neutral member of the arbitration panel designated to hear and finally decide all relevant issues (JX6). The PBA designated its president, Joseph Wysocki, as its panelist and the Town named Richard K. Zuckerman, Esq. to be its panelist. Hearings on this matter were held on June 10 and October 6, 2011. In addition, the Panel met in executive session on April 16, 2012.

### **UNRESOLVED ISSUES**

#### **TOWN OF SOUTHDOLD**

1. Section 6.7 (Vacation/One Day Blocks). Change 10 to 5.
2. Section 6.8 (Vacation/Summer). Change 7 to 5.
3. Section 7.4 and 7.5 (Holidays). Delete Lincoln's Birthday and Washington's Birthday and replace with Presidents' Day.
4. Section 7.11(a) (Duty Chart). All employees shall work a permanent 260 day chart.
5. Section 8.2 (Retirement Benefits). Add payment of vacation days. Change "intention to retire" to "irrevocable retirement."
6. Section 9.1 (Salary Schedules). Add a new and additional Second Year step on

the salary schedule that will be between current First Year and current Second Year steps.

7. Section 12.1 (Health Insurance). Revise to provide for a 15% employee premium contribution.

8. Sections 13.2, 13.3 (Overtime Payments). Revise to read that, "Notwithstanding any inconsistent provision or practice to the contrary, employees shall be entitled to overtime as follows: at time and one half for all hours worked after actually working the maximum number of hours covered by the applicable FLSA Section 207(k) work cycle as designated by the Town. If the Town and the employee do not agree to pay the overtime as compensatory time, overtime payments shall be made by not later than the second payroll period following the end of the applicable cycle."

9. Section 25 (Staff Meetings). Add- The Chief of Police shall have the right to schedule one annual Department meeting with all employees for which no compensation shall be paid to the employees.

10. NEW (Tour Changes). The Chief of Police may change an employee's tour of duty for purposes of court appearances, motor vehicle hearings and other reasons that meet the needs of the Department.

11. Wage Proposal: Effective January 1, 2010 there shall be a 0% wage increase. Effective January 1, 2011 each step on the salary schedule shall be increased by 2%.

### **POSITIONS OF THE PARTIES**

#### **CONTENTIONS OF PETITIONER (PBA)**

The PBA argued as follows:

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

- a) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public

- and private employment in comparable communities;
- b) The interests and welfare of the public and the financial ability of the public employer to pay;
  - c) Comparison of peculiarities in regard to other trades or professions including specifically: 1) hazards of employment 2) physical qualifications 3) educational qualifications 4) mental qualifications 5) job training and skills;
  - d) Terms of Collective Bargaining Agreements negotiated between the parties in the past providing for compensation and fringe benefits including but not limited to the provision for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The initial statutory criteria requires a comparison of wages, hours and conditions of employment of the Town's police officers 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.

The PBA contends that the appropriate comparable jurisdictions given the statutory criteria are Southampton Town, East Hampton Town, Riverhead Town, Shelter Island Town and the Suffolk County Police Department.

The PBA rejects the Town's position that the Suffolk County Police Department is not a statutorily appropriate comparable jurisdiction. The Town proffered the same arguments before the Scheinman Panel in the party's last impasse arbitration. The Panel rejected their argument and found that although Suffolk County is not identical in all respects to the Town, it is clearly a comparable jurisdiction. Thus, the Panel found that the comparisons drawn by the PBA between the Town's police officers and the police officers employed by Suffolk County are relevant to the dispute. (JX7)

The PBA accepts the determination of the Scheinman Panel that Shelter Island likewise is not identical to Southold in all respects, however, it remains a comparable jurisdiction.

The PBA maintains that there have been no material changes in circumstances or the statutory criteria that would warrant a change in the appropriate comparable jurisdictions as determined in the Scheinman Award (JX7).

The second statutory criteria to be considered concerns the interest and welfare of the public employer to pay for the costs associated with increases in wages and improvements to benefits.

It is beyond dispute that the needs of the public are met by a well-paid and well-maintained core of police officers that operate safely and efficiently. It is also clear that a police force with good morale is essential. Positive morale results in higher productivity and a flow of high-quality candidates for the positions available.

The PBA contends that the Town has the ability to pay for the PBA proposals, which are fair, just and should be granted in their entirety. The PBA relies upon the Ability to Pay Report prepared by Kevin Decker, the PBA's expert on municipal cost and analysis (PBA Exhibit [PX] 11). Mr. Decker concludes that the Town has the ability to pay for the PBA wage proposals. Mr. Decker bases his conclusions on the availability of local tax and revenue sources, historical results, emerging trends regarding expenditures and tax/revenue rates and bases, and the underlying economics and demographics of the community (Southold) from which revenues are generated. Mr. Decker's analysis is based on reviews of the Town's Annual Financial Report, updated documents for fiscal year ended December 31, 2010, filed with the New York State Comptroller's Office, New York State Comptroller's Office 2006-2011 Adopted Town Budgets,

sample tax bills for 2010 and 2011, Town of Southold Audited Financial Statements for 2006 to 2009, Annual Financial Reports for 2006 and 2010 (Town's Adopted Budget for 2011), Town of Southold's Audited Financial Statements for 2005/2008, Annual Financial Reports for 2009 and 2010, Town's Adopted Budget for 2011 and other documents referred to in the exhibits attached to his report.

Mr. Decker concedes in his report that there is no denying that the recent economic downturn impacted municipal budgets across the country. However, as Southold does not rely on economically sensitive revenue items (sales tax, mortgage tax, parking fees, etc.) to the same extent as many other municipalities, the economic downturn did not impact the Town's financial condition as significantly. While noting the deterioration of the Town's financial position during 2008, the Town's financial stability was never seriously threatened. In addition, it is noted that the Town has added to fund balances in each of the last two years by generating sizable operating surpluses.

The Decker report demonstrates that Southold's increase in tax levy has been moderate over the last two years with real property tax increases of 5.8% and 2.4% in 2010 and 2011, despite the national economic downturn.

The Decker analysis notes that the population growth in Southold has been increasing at a greater rate than Suffolk County and concludes that this trend should in the long term result in a higher demand for real estate and thus a long term increase in property values.

Despite recent increases in the Town's tax rate, Exhibit D of the Decker Report evidences that the town of Southold has a relatively low real property tax bill compared to single family homeowners in other east-end Suffolk County towns. In 2010 the owner of an average single

family home in Southold paid the lowest combination of Town purpose and Special District taxes of any of the East End Towns.

While the Town may point to a decline in revenue in recent years, the Decker Report evidences that these declines are in the past and that the Town's current property tax rate already reflects the loss of revenue. The evidence further demonstrates that sales tax revenues have increased every year from 2006 - 2010.

Based on an average single family home assessment of \$6,754.00, the owner of an average single family home paid \$572.00 in real property taxes in 2010 to support the Southold Police Department or \$1.57 per day. Expressed another way, if the Police Department was abolished entirely, it would save the owner of an average single family home a total of \$572.00 annually. (PX11, IV).

Arbitral notice should be taken that the parties concur that the one percent number for the costing out of salary increases is \$48,029.00 (Town Exhibit [TX] 8). Mr. Decker's one percent number of \$56,625.00 includes costs not historically considered by the parties when costing out Collective Bargaining Agreements.

The PBA contends that the record demonstrates that the Town of Southold continues to be in solid financial shape. The Town enjoys low real property taxes compared to other East End municipalities, healthy fund balances in the Town's general fund, and a demonstrated ability to generate a favorable budget variance by collecting more revenue and spending less than originally budgeted. (PX11, VIII).

The PBA defended its proposals as follows:

Section 6.1 Vacations

The PBA's demand with respect to an increase in total vacation days would result in modest increases in the number of vacation days granted. The increases would vary depending upon seniority and range from an additional two days for a first-year employee to six additional days for an officer with eleven through fifteen years of service.

There is no dispute as to the rigors and stresses endured by police officers. These difficulties are compounded when an officer is working a rotating schedule. The increased cost to the Town is not accurately reflected in the Town's projected increase in cost (TX 85). An increase in the awarding of vacation days naturally results in a decrease in the utilization of sick, personal and compensation days by members of the Department. Considering these offsetting factors, the modest increase in vacation days will result in a minimal fiscal impact, on the Town's Budget.

#### Section 6.7 Vacations

The PBA Proposal to amend Section 6.7 is intended to provide additional flexibility in the utilization of vacation days without imposing any additional financial burden on the Town. The issue of vacation flexibility for members of the Southold Police Department has been a recurring one throughout the years. The primary reason for the necessity of increased vacation flexibility is due to the fact that the Town has a significant increase during the summer season in both population and police activity. The summer season coincides with the time that families traditionally take their vacation. By eliminating the maximum number of one-day vacation segments, officers can coordinate their vacation days with their RDO's, thereby allowing for family vacations without the Town incurring any financial detriment, or disrupting the operation of the Department.

The adoption of this Proposal would have little or no impact on the operation of the Department and no financial cost to the Town, but would provide desperately needed flexibility for members of the Department.

#### Section 6.7(e) Vacations

The PBA Proposal to amend Section 6.7(e) is motivated by the need to create additional flexibility for the utilization of vacations primarily during the summer season. This particular proposal provides for the possibility of more than one employee from a particular squad being on vacation at the same time. The PBA proposal is that two employees from each squad may be on vacation at the same time. This would allow for additional flexibility, not impair the Department's operational needs and result in no financial cost to the Town.

This PBA proposal would not mandate the granting of a vacation day to two officers from each squad but would provide the flexibility to grant two officers vacation time from the same squad at the same time when minimum staffing limits were met. The proposal would eliminate the current situation where regardless of staffing needs, the possibility of two officers being on vacation on the same squad at the same time is prohibited.

#### Sections 6.8 and 6.9 Vacations

This PBA proposal is intended to provide for added flexibility and utilization of vacation picks during the summer season without an operational or financial impact upon the Town. This amendment would provide a modest increase in the number of total vacation picks (from 7 to 10) that an employee could take between Memorial Day and Labor Day.

This proposal is another attempt to address issues of vacation utilization without impacting the operations of the Department or negatively impacting the Town's Budget. By

broadening the definition of a vacation pick to anything more than two consecutive working days, once again flexibility could be achieved without operational or financial impact.

#### Section 7.2(d) Sick Leave

This PBA proposal would result in little or no economic impact. The proposal, if incorporated into the Collective Bargaining Agreement, would allow an employee to utilize sick leave for a member of the employee's immediate family whether or not the individual resided in the employee's household. This proposal would recognize the fact that a divorced/separated member may have a child/parent who requires care due to an illness even if the child/parent resides outside of the employee's household, due to the child or parent's illness. This proposal is limited in nature and would continue the requirement of furnishing proof of incapacitating illness and of the employee's responsibility as parent or guardian.

It is respectfully submitted that the Town's projected increase in cost for this demand bears no relationship to the actual cost, if any, of this demand. The expansion of this benefit would only apply to members of the Department who have children who are living outside of the household and still requires the same proof as currently exists.

#### Section 7.7 (a) Personal Leave

This PBA Proposal would provide for a sixth personal leave day, one more than the current five days. The PBA concedes that the current CBA provides for one more day than the comparable Police Department jurisdictions. In the Southold Police Department, personal days have been historically approved, regardless of whether there is an overtime cost to the Department. In consideration of the previously discussed restrictions in the utilization of vacation days, the granting of personal leave days has been a means of securing time off during

the summer months. The granting of an additional personal leave day, although resulting in a minimal financial impact, would be one avenue for the providing of additional flexibility for members during the summer season.

#### Section 7.8 Bereavement Leave

The PBA's proposal would amend Section 7.8 of the CBA to provide for an additional day of bereavement leave (presently one day to two), in the event of the death of the member's grandparent, brother-in-law, sister-in-law, foster parent, foster child, niece, nephew, aunt, uncle, half-brother or half-sister.

This amendment to the Collective Bargaining Agreement would have a nominal affect on the utilization of bereavement leave. It is respectfully submitted that the Town's costing of bereavement leave (TX 97) bears little or no relation to reality or past practice when it assumes that every officer would utilize additional days off as a result of this small modification to the provision in question.

#### Section 9.1 Salaries

The PBA proposes 5% increases in base salaries effective January 1, 2010 and January 1, 2011. The PBA contends that its salary proposal is most reasonable taking into consideration the relevant statutory criteria set forth in Section 209 (5) of New York State's Civil Service Law. The PBA's salary proposal, if awarded, would place its members in an economic position comparable to police officers in the appropriate comparable jurisdictions.

The PBA asserts that when comparing its wages to the appropriate comparables, the increase in salaries would maintain the Southold Police Department in line with the appropriate comparables in both wages and increases (PX13 and 14, Town Exhibit 99). For the years under

consideration, the increases in 2010 through 2011 range from 3 to 4%, for all of the comparable jurisdictions.

Additional awards and negotiated settlements for consideration include Arbitrator Edelman's Award in Garden City which provided for increases of 3.5% for four years commencing in 2009 (PX 9) and the Village of Southampton Settlement with 3% increases for 2010, 2011 and 2012 (PX 10).

When considering the statutory criteria and the Town's finances, it is evident that the Town has the ability to pay. The Town of Southold has the lowest property tax rates on the East End of Long Island. A 5% increase in 2010 would result in a \$240,145.00 increase in base wages. The increases as proposed by the PBA would result in an average single family home assessment increase of between \$15 and \$16 annually. Every comparable jurisdiction received increases between 2.95% and 4% for 2010 and 2011. The average 2010 increase being 3.06% and the average 2011 increase being 3.37%.

Although the PBA recognizes that the national economy suffered a serious downturn in 2008, the evidence demonstrates that the economy has reverted and the Town has the ability to pay the salary proposal. Taking all applicable criteria into consideration, this proposal is fair, just and should be granted in its entirety.

#### Section 9.3(a) Three Tour Differential

The PBA proposal would provide for \$400.00 increases in years 2010 and 2011 for those members working three tours. A review of the comparable jurisdictions with members working a Three Tour Rotating Schedule demonstrates that Southold has fallen behind in the level of compensation for members working a Three Tour Schedule (PX15).

Three Tour pay for Town of Southampton Police is almost \$300.00 more than in the Town of Southold. The modest proposal would adjust this inequity and provide a benefit to thirty-eight members at a nominal cost.

#### Section 9.3(b) Two Tour Differential

The PBA proposal would provide for \$200.00 increases in years 2010 and 2011 in Two Tour Differential. A review of PBA Exhibit 15 demonstrates that the Southold members working Two Tours have fallen far behind individual members in comparable jurisdictions working Two Tours. In comparison to the Town of Southampton, the current differential is \$1,090.00 and when compared to the Town of Riverhead, a member getting the Two Tour Differential is lagging behind to the tune of \$1,840.00.

In accordance with the Town's own projections, the cost of the Two Tour Differential (see TX 104 and 105) calculated on 9 police officers working a Two Tour Differential is \$4,400.00 or a .10% wage increase.

#### Section 9.4 D.A.R.E.

The PBA proposal would amend the stipend awarded the D.A.R.E. instructor which has stood for many years at \$1,000.00 to \$1,300.00. This modest increase in cost, \$600.00 over the length of the contract, would have no operational impact, minimal financial cost and address a longstanding inequity.

#### Section 21.2 Uniform Cleaning and Uniform Equipment Allowance

The PBA's proposal would increase the uniform allowance for members assigned to Uniform duties from \$400.00 to \$1,000.00. A review of PX16 demonstrates that even with the PBA's requested increase, the Southold uniform allowance would still be less than the Town of

East Hampton, Village of East Hampton, Town of Southampton and Riverhead. It is patently clear that a significant increase in uniform equipment allowance is necessary and appropriate to maintain Southold's standing with the comparable communities for this benefit.

Section 21.3 Uniform Cleaning and Uniform Equipment Allowance Non-Uniformed Members

A review of PX 16 demonstrates that the non-uniform equipment and uniform allowance for members of the Southold Police Department have fallen far behind those of the comparable departments. Even with the requested increase, Southold's non-uniform members will have the lowest non-uniform allowance of the comparable jurisdictions.

Section 27.2 Canine Unit

The PBA proposal 10(f) would simply provide that the K-9 officers' stipend increases reflect the same increases awarded to PBA members. The Canine Unit Stipend was agreed to by the parties by a Memorandum of Agreement dated December 22, 2004. The Agreement did not address as proposed herein an escalation clause which would coincide with the salary increase contained in future Collective Bargaining Agreements. The Agreement provides for the same percentage increases as base wages for 2005, 2006 and 2007, but has remained constant for the last five years. The PBA proposal would result in a minimal fiscal impact and address an ongoing inequity that will only increase over time, if not addressed.

The PBA urged the denial of the Town's proposals as follows:

Section 6.7 Vacation/One-Day Blocks

The Town's proposal would reduce from 10 to 5 utilization of vacation time for one-day segments. As previously addressed in PBA Proposals 1 through 5, it has been a long-standing issue for members of the Department to utilize vacation days during the summer season. The

Town's proposal would, in effect, compound this problem by moving in the exact opposite direction needed. The operational needs of the Department would not be enhanced, there would be no economic benefit to the Town and the awarding of this proposal would only aggravate an already difficult situation, where members are unable to utilize vacation days during the summer months.

#### Section 6.8 Vacation/Summer

As previously noted in response to Town Proposal 1, this proposal would result in a further exacerbation of the inability of members to utilize vacation days during the summer season. Once again, the Town proposal would have a minimal impact on the Department's operations and no economic impact of consequence. The Department has operated under this provision for over two decades without any noticeable impediments to its operations.

#### Section 7.4(a) and 7.5 Holidays

Town Proposal number 3 would delete Lincoln's and Washington's birthdays and replace it with President's Day. The current CBA provides for the same number of holidays and the same particular holidays as all the comparable jurisdictions. As such a deviation would be contrary to the statutory criteria.

#### Section 7.11(a) Duty Chart

The Town's proposal would require all employees to work a 260 day chart as opposed to the current 239 day chart. The current CBA does provide for those members during their first two years of employment to work a 260 day chart. The current proposal would result in the members of the Southold Police Department working far in excess of any comparable jurisdiction and as such would constitute a deviation contrary to the statutory criteria. However,

the PBA has previously proposed and continues to maintain that the parties should meet and discuss adjustments and refinements to the Duty Chart to address how savings could be achieved, to the benefit of both the Town and PBA.

### Section 8.2 Retirement Benefits

The Town's proposal to alter the retirement benefits covered by Section 8.2 alters the current language in two regards: a) it incorporates the payment of vacation days and b) changes the 45 day notice from one's "intention" to retire to an "irrevocable retirement." The Town alleges that this modification is necessary to assist it in its annual budgeting process. With an operating fund in the vicinity of \$13 million, it is difficult to envision how, if a member withdrew his/her intention to retire within 45 days of the adoption of the Town Budget, this would create a budget crisis. On the other hand, the proposal would cause great hardship to individuals who, due to a change in circumstances, have to modify his/her retirement plans. When considered in terms of the hardship this modification would inflict upon a member versus the Town's budgeting issues, it is respectfully submitted that without any economic benefit to the Town the proposal would likely cause severe disruption to a member's career options. As such, the proposal should be denied in its entirety.

### Section 9.1 Salaries

Town Proposal 6, Section 9.1 would add a new and additional second year step on the salary schedule between the current first and second year steps. The Town's Proposal number 6 would require Southold Police Department Members to spend an additional year within the salary schedule prior to reaching top step. The record is void of any evidence supporting the Town's position that savings are necessary to fund the limited costs of the PBA's modest

proposals.

Furthermore, the Town's pricing of this amendment drastically undervalues the projected savings over a six-year period. The \$46,890.00 savings reflected in TX 63 assumes the hiring of one officer over the six-year period. Using the Town's figures and assuming that the Town hires on average two new police officers each year during this six-year period, the savings would conservatively be in excess of \$300,000.00.

It is respectfully submitted that the Town proposal is onerous and outside of the applicable statutory criteria.

#### Section 12.1 Health Insurance

The PBA urges the denial of the Town's Proposal for a 15% Employee Premium Contribution. Although the PBA is cognizant of the escalating cost of health insurance, it relies on the statutory applicable standards and the fact that every single comparable jurisdiction's Police Department provides 100% Employer Health Insurance Coverage. Additionally, every Police Department on Long Island as well as New York City has 100% employer paid health insurance. The PBA rejects any reference to the CSEA as statutorily comparable for purposes of health insurance. The Scheinman Award (PX7) identified the only appropriate statutory comparables as the enumerated East End Police Departments and the Suffolk County Police Department. Arbitrator Riegel grappled with this issue in the Malverne Award (PX 8) and determined under similar circumstances, while recognizing the increased costs of health insurance, that the "applicable standards" required the denial of the Town's proposal for health insurance contributions.

Additionally, the recent decision by Arbitrator Edelman in Garden City (PX 9) likewise

found that the applicable standards required a denial of the Town's proposal. In that Award, Arbitrator Edelman rejected the Village Firefighters as comparable for statutory purposes. It is well settled that the responsibilities and duties of police officers have unique hazards, physical qualifications, job training and skills. Therefore, as Arbitrator Edelman rejected the Village Firefighters as statutorily comparable, the statute requires the rejection of the CSEA as statutorily comparable to the PBA.

#### Section 13.2 and 13.3 Overtime

The Town's Proposal would dramatically alter the long-standing practice of awarding overtime compensation at one and one-half times the normal rate of pay or compensatory time beyond a member's normal tour of duty. The Town's proposal would replace those standards with the applicable FLSA Section 207(k) work cycle, as designated by the Town. Once again, the applicable statutory standards mandate the denial of this proposal. Not one of the applicable comparable jurisdictions relied on by the Town provide for overtime compensation being paid utilizing this methodology. Furthermore, the Town has failed to provide any meaningful analysis concerning what, if any, cost savings would be achieved. It is respectfully submitted that to dramatically alter the long-standing history in the methodology of how overtime is calculated and paid without a thorough analysis of its impact operationally and fiscally would be inappropriate, and contrary to the statutory criteria.

#### Section 25 Staff Meetings

Currently the Collective Bargaining Agreement provides for up to three staff meetings per year for those members with the rank of Sergeant or above, at which no compensation shall be paid. The Town proposal would provide an annual All-Department Member meeting for which

no compensation shall be paid to employees.

Given the size of the Southold Police Department, the Chief has more than ample opportunity to meet with all members of the Department throughout the year on numerous occasions to discuss any police matters that need to be considered. Furthermore, the current CBA provides for three supervisory meetings. Utilizing these meetings, the Supervisory Staff has the opportunity to then convey to members any police matters which need to be considered that are discussed at the currently provided for staff meetings. There is no economic or operational need for the adoption of this proposal.

The Town made a proposal concerning tour changes. Its proposal with respect to tour changes would give the Chief of Police unfettered discretion in disrupting employees' work schedules for purposes of court appearance, motor vehicle hearings and any other reasons that meet the needs of the Department. The granting of Town Proposal 10 would not only render Section 13 (Compensation for Court Attendance and Overtime Work) of the CBA moot, it would also emasculate Section 7.11(a) of the current CBA dealing with the existing duty chart.

The PBA urges that the Arbitrator's denial of this proposal submitted without any evidence that its adoption would result in either an economic or operational benefit, and would be contrary to similar benefits in the CBA's of the comparable jurisdictions.

The PBA contends that its proposals are fair, reasonable and justified under the relevant statutory criteria. The PBA demands take cognizance of both the national and local economic downturn in 2008 as well as the stabilization of the economy thereafter and its slow but steady turnaround. The evidence submitted demonstrates that the Town had consecutive years of increasing surpluses, sales tax revenues and population growth.

The PBA submits that based upon the applicable statutory criteria, considering the appropriate comparable jurisdictions as well as the Town's ability to pay, that its proposals are fair, just and should be granted in their entirety. The PBA once again draws attention to the fact that Southold has the lowest real property taxes of all the East End communities.

The PBA further asserts that the Town's proposals, particularly those involving health insurance contributions, the duty chart, and overtime compensation are unreasonable and contrary to the statutory criteria and as such must be rejected.

### **CONTENTIONS OF THE RESPONDENT (TOWN OF SOUTHOLD)**

The Town argued as follows:

As this Panel Chair has recognized in his 2010 Interest Arbitration Award in the impasse between Suffolk County and the Suffolk County PBA: "these are extremely challenging times for municipalities." The County, State and Federal governments, and many parts of the world, are facing an unprecedented economic downturn. A municipality's ability to pay is being driven by forces outside of its control. The housing bubbles have burst with little sign of recovery at any point in the near future. Interest rates earned on investments have almost disappeared. Revenue streams continue to decrease and all but evaporate. Another recent development with significant potential negative impact on a municipality's financial stability is the New York State Legislature's approval of the so-called property tax cap legislation, which provides that, effective January 1, 2012, annual property tax levy increases must be no more than 2% or the rate of inflation, whichever is less. Moody's Investors Service has projected that, as a result of this cap, "non-school district municipalities will also face added financial pressure given weakened economically sensitive revenues such as sales tax and growing personnel expenses such as

pension contributions” (Town Exhibit [TX] 20).

The Town is no exception. It too has been seriously and adversely impacted by these forces. To counter them, the Town has taken substantive steps, such as maintaining strict control over expenditures, utilizing reserve fund monies and successfully negotiating significant concessions from its other union, all in an effort to protect its already financially strapped taxpayers.

Rather than recognizing these dire circumstances and assisting the Town during this difficult financial time, the PBA has presented the Panel with a wage and benefit package that will make it even more difficult for the Town to survive the current economic crisis. Indeed, much like the rest of the nation, the Town’s expenses have escalated at a record-breaking pace due to unprecedented increases in health care, payroll taxes and pension/retirement costs. At the same time, the vital revenue generated from interest bearing monies has significantly decreased (TX. 25–27, 30). For these reasons, the Town must continue to reduce, or at least hold the line on increases in its expenses.

Recognizing that the status quo is unsustainable and that municipalities can no longer absorb the costs associated with awards which are rich with benefits, interest arbitration panels have begun to reject police unions’ attempts to obtain more and better benefits. Indeed, the past few years have seen record low cost interest arbitration awards. In fact, the recent 2010 Suffolk County PBA award imposed significant concessions with regard to the reduction of the starting salary, the reconfiguration of the salary schedule, deferral of longevity increases, the modification of benefits available to police officers on extended General Municipal Law 207-c status (e.g., night differential, personal and sick leave accruals and clothing and cleaning allowances), the

implementation of a sick leave management program, as well as the lowest (at the time) average wage increase in the history of Long Island police interest arbitration.

More recently, the Shelter Island PBA Interest Arbitration Award included the lowest average annual percentage increase in Long Island interest arbitration history. Even the increases received by the PBA as part of that award were funded through significant concessions, such as the ability to eliminate much of the overtime costs incurred during the busy summer months by allowing the Town to use non-PBA unit member police and peace officers to perform all types of bargaining unit work, elimination of dual family health insurance coverage, implementation of a General Municipal Law 207-c policy and the delayed implementation of increases to longevity, sergeants compensation and uniform and cleaning allowances.

This trend is also evidenced in recent memoranda of agreement involving East End Towns, with each providing more savings and less onerous wage and benefit improvement. For example, in the Town of Riverhead, the work year for new hires was increased, restrictions were imposed on the receipt of dual health insurance coverage and other concessions were obtained with regard to dental and optical insurance. In the Town of East Hampton, the parties agreed to 2.95% and 2.56% wage increases for 2011 and 2012, respectively, among the lowest the region has seen in decades. In the Town of Southampton, the parties agreed to 3% wage increases for 2010 and 2011, but delayed the implementation of the 2010 wage increase until April 1, 2010 (TX 99).

In this environment of lower wage increases and increasing concessions, a new PBA contract will be awarded here in Southold. While these other contracts and awards represent a good start at holding the line, it is the Town's contention that more must be done. Indeed, the

significance of this Award cannot be underestimated, as the Town's financial health over the next few years will be shaped, in large part, by how the Panel addresses the issues before it.

The Public Employees' Fair Employment Act (a/k/a "The Taylor Law") recognizes the fundamental differences between public sector and private sector employers. The Supreme Court of the United States has also recognized that public and private employers are uniquely different.

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

By statute (Civil Service Law § 209(4)(c)(ii)), the Public Member of this Arbitration Panel represents the members of the general public; i.e., the taxpayers who both bear the burden of potential increased costs needed to maintain their police force and who likewise receive the benefits of the provided services. The Public Member is the panel member ultimately charged with making choices, traditionally reserved to the public's elected officials, regarding among the largest expenses and expenditures of the Town: salaries, fringe benefits and other terms and conditions of PBA unit members' employment. These decisions, by virtue of the sheer amount of money involved, will directly impact the Town's elected officials' ability to set financial and policy priorities. This Award will also play a critical role in establishing the financial policy and other priorities in the years following its expiration.

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

- a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills; and
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

N.Y. CIV. SERV. LAW § 209(4) (c) (v).

The two most significant issues in this case concern the Town's ability to pay for the PBA's demands and comparability. The record demonstrates that the increases sought by the PBA are unwarranted relative to unit members' and their comparables' already generous wage and benefit packages, and out of touch with the Town's ability to pay for them.

The Town should not be required to pay for the increases sought by the PBA. Parties involved in public sector labor relations have finally recognized employers' inability to pay for excessive demands, especially in light of the economy and tax cap constraints. We are experiencing unprecedented times. The focus must be on savings. The Panel should focus on the taxpayers who are losing their jobs in record numbers and not on the average Town police officer, who earns nearly 50% more per year than the average Town household income (TX 15 and 46). As a result, any increase awarded to the PBA should be funded, in whole or in relevant

part, by real cash concessions.

Several factors about the Town's revenue situation make it difficult for the Town to fund the award demanded by the PBA. These include the sources of the Town's revenue (primarily residential property taxes) and the Town's de minimis economic development.

Southold derives nearly all of its revenue from residential property taxes. In fact, an astounding 87% of the entire property tax base is residential (TX. 1). Moreover, there is almost no major commercial or industrial tax base in the Town (TX 2-14). As Town Supervisor Russell stated in his opening statement to the Panel on October 6, 2011, the Town "is a largely agricultural community that does not have a significant commercial presence and many here are substantially seasonal and tourism based." This creates a direct correlation between tax increases and amount of money that is to be paid by struggling homeowners, especially in light of the declining residential home values.

Therefore, the impact of tax increases is borne most heavily by the Town's permanent residents; the very people who can least afford them. The Town has seen an unprecedented increase in the amount of uncollected tax revenues, a strong indication that residents can no longer carry the heavy tax burden. In fact, in 2011, Town tax warrants returned to Suffolk County for enforcement totaled \$5,037,482, a 58% increase over 2008 (TX 19).

To make matters worse, in 2009, the Town's unemployment rate increased to 9.8%, more than double the rate reported in the 2000 census (TX. 17 and 18). The unemployment crisis has become so alarming in the Town that, in 2010, the Suffolk County Department of Labor began offering job search related assistance for unemployed residents (TX 18).

Over the period of the award, and in all likelihood the years that will follow it, the Town

has continued and will continue to face severe revenue shortfalls. In 2008, the Town received \$1,720,244 from the collection of refuse and garbage fees. In 2010, that amount fell 20% to \$1,434,388. In addition, the Town's budget has been severely impacted by the dramatic decrease in Mortgage Tax revenues. For example, the Town received \$1,551,455 in 2008 from this vital revenue stream. Yet, in 2010, this amount fell by 40% to \$1,063,088 (TX. 34). As of November 10, 2011, the Mortgage Tax revenue for 2011 was only \$783,936, a 35% reduction from 2010. The Town continues to project that revenues will continue to significantly decrease.

These staggering decreases in vital revenue streams have dramatically and negatively impacted the Town's financial health as well as its ability to fund increases in the monies paid to its workforce. This Award, which impacts a large portion of the Town's expenses, such as the MTA payroll tax and health insurance costs, will have a profound impact on the Town's ability to endure this current economic downturn within the strict confines of the 2% tax cap legislation (TX 20, 24, 25).

The Town has also seen an unprecedented increase in expenses. In 2009, the Town was required to pay \$53,783 as part of the MTA Payroll Tax implemented by the New York State Legislature. In 2010, this expense increased by 12.8% to \$60,656. The Town is anticipating that the cost for 2011 will increase by another 8.3% (TX 24). Between 2009 and 2010, the Town's police union member health insurance costs increased from \$1,106,539 to \$1,134,134 and are projected to increase to \$1,394,000 in 2011 (11.8% increase). The Town's insurance carrier has projected that these costs will further increase to \$1,558,034 in 2012 (another 12% increase) (TX 26 - 28).

In addition to these expenses, the recent increases in pension costs, particularly

contributions to the NYPFRS, have been significant. In 2007, Town police pension costs were \$969,217. In 2011, this cost had increased by 35% to \$1,310,262 and in 2012 is projected to increase by another 23% to \$1,613,844 (TX 30).

The PBA's "ability to pay" presentation failed to show that the Town has the resources to fund the PBA's demands. While the PBA asserted that the Town could pay for the PBA's demands because it ended the past two years with a positive fund balance, the fact is that the Town had to use even greater portions of that fund balance in order to prepare budgets that the Town's residents could afford. For example, in 2011, the Town appropriated over \$1,500,000 in fund balance as part of its budget. Had the Town not done so, the tax rate increase would have been over 7%. As Town Comptroller John Cushman stated, the fund balance does not replenish itself and is not a never ending source of revenue.

While the PBA also argued that once the economy improves the Town's budget will improve, this does not mean that there are currently available monies to fund the PBA's demands. Nor is there any reason to believe that the PBA's predictions will, in fact, occur. There is no signal that the housing market has begun to recover or that the Town can begin to rely upon significant Mortgage Tax revenue or interest earnings increases. Even if it did, the potential impact of the imposition of the 2% tax cap greatly restricts the Town's ability to budget and thus pay for what the PBA seeks.

In short, the PBA's ability to pay analysis did little, if anything, to show that the Town can afford to meet the PBA's demands. To assert that the economic crisis has ended, or is coming to an end, ignores the fact that the Town is still facing revenue shortfalls and radical increases in costs (TX 20 - 35). To suggest that even a small increase in property taxes is an

option to fund an award, as the PBA did (PX 8, pg. 14), is insulting to the Town's residents and the intelligence of this Panel.

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

a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar work conditions and with other employees generally in public and private employment in comparable communities.

In this proceeding, the established pattern for the Panel to consider is a comparison of the Town with other East End Towns. Southold is located within a distinctive portion of Suffolk County popularly known as the "Peconic County;" i.e., those towns east of Brookhaven. These include the Towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold.

Several arbitrators have found that the East End Towns are, in fact, the most comparable to each other for police interest arbitration purposes. For example, the pattern was most recently confirmed by the Panel Chair in the 2008-2010 Shelter Island PBA award. There, he found "the best comparators to Shelter Island are the East End Towns" (TX 43).

Likewise, Arbitrator Maxwell Doner reached the same conclusion in his 1994 Town of Riverhead PBA award, in which he held that:

Much of the PBA's salary data compares the Town [Riverhead] with municipalities' in Nassau and Suffolk County Villages as well as Suffolk County itself (PX 4, 35). Such a comparison is inconsistent with the parties' long standing bargaining history. Instead the more appropriate analysis is with the other East End Towns of Southampton, Southold and East Hampton.

(TX 40).

In addition, Arbitrator Theodore H. Lang noted in his award in the 1996 Town of Shelter Island PBA Award that:

The Panel concluded that, while there are distinguishable differences among the Peconic Towns, the Panel was required by Law to compare town police to other police and that the closest and fairest comparison would be with the other four "Peconic" town police departments, namely, Southold, Riverhead, Southampton and East Hampton.

(TX 41).

Moreover, Arbitrator Stanley Aiges echoed these sentiments in his 1999 Shelter Island PBA award when he held that:

To place this dispute in perspective, it is noteworthy that there are five townships on the "east end" of Suffolk County, Long Island. They are East Hampton; Southampton; Riverhead; Southold and Shelter Island. All agree they provide a proper frame of reference. Indeed, in his December 1996 Interest Arbitration Opinion and Award covering calendar 1995 and 1996, Arbitrator T. H. Lang noted Shelter Island is best compared to the other four East End ("Peconic") Police Departments. Yet, he wrote, a number of facts distinguish Shelter Island. Namely, its "geographical isolation," its "high degree of volunteerism," its "relatively peaceful" police activity, its "higher prudent fiscal management" and its "general frugality." Nevertheless, the law requires that Shelter Island's police department be compared to other police groups. And the fairest bases for comparison are the four other "Peconic" town police departments.

(TX 42).

Little has changed significantly over the past few years to warrant abandoning the long standing comparability analysis. The Town remains more closely aligned with other East End Towns with regard to population size, the size of its police department and the volume of police calls per officer. In addition, the East End Towns are obviously geographically linked and have the same governmental structure.

The PBA points solely to Arbitrator Martin Scheinman's 1996 Southold PBA award in order to support its argument that Suffolk County is the most comparable jurisdiction. This award, issued over 16 years ago, has not been followed by any interest arbitration panels whose awards are in evidence, including that involving the Suffolk County PBA. In addition, it is unreasonable to compare the County police force of almost 2,000, responsible for a population of nearly one million people, with the Town's police force of 47 police officers responsible for a population of a little over 20,000 people. Accordingly, the Town respectfully urges the Panel to reaffirm the traditional East End Town comparability analysis.

While the Town acknowledges the valuable work that its police officers carry out in light of the nature of their job, it must also be acknowledged that these officers are already more than adequately compensated. Awarding the PBA's demand of an annual 5% wage increase is well beyond any recent police wage increases in comparable or, for that matter, any jurisdictions (TX. 98, 99). Likewise, the PBA has not argued and cannot argue that its 5% wage demand is justified to meet increases in the cost of living. From 1992 to 2009, the wages paid to unit members outpaced increases in the CPI by approximately 21% (the equivalent of an extra \$24,617 per unit member) (TX 49). Nor has the PBA presented evidence demonstrating an increase in workload or a change in the nature of the work performed that might possibly justify the wage increase it has demanded.

The total cost of the PBA's wage demand is \$492,292, which is equivalent to a 10.26% compounded wage increase, a cost that simply cannot be justified during a fiscal crisis (TX 20, 101). This is not the time to make such a demand and, therefore, it should be rejected by the Panel.

The PBA failed to submit compelling, or at times any, evidence or justification for its remaining demands. Instead, it insists simply that members are entitled to wage and benefit increases because...well...they allegedly are. At a cost of \$1,145,216, the equivalent of a nearly 24% wage increase, these demands are completely indefensible (TX 115). The Town respectfully submits that, for the reasons which follow, the Panel should reject each one of them.

The PBA has not justified its demand for increased vacation leave. Southold police already receive the following vacation schedule: five days during the officer's first year, 16 days after one year; 19 days after six years, 22 days after 11 years and 25 days after 16 years. The PBA seeks to change the entitlement as follows: seven days during the officer's first year, 21 days after one year; 24 days after six years of employment, 27 days after 11 years of employment and 33 days after 16 years employment (TX 82). This would result in the PBA having the highest number of vacation days after 16 years of service when compared with other East End Towns (TX 83). In addition, if awarded, PBA members would receive 97 additional days of vacation over a 20 year career, or the equivalent of nearly a half a year off from work (TX 88 and 47).

The PBA did not explain why its unit members should be given any additional time off from work. Nor is there proof in this record that its members' existing vacation benefit is lacking in some objective manner (T. Ex. 131). In fact, if the Police Department called in other officers to cover for these additional vacation days, the Town's overtime costs would increase over a two year period by approximately \$305,909. The Panel should reject the PBA's demand and award the Town's proposal regarding vacation usage because it will improve the scheduling process.

The current contract provides that, among other things, police officers “shall be permitted to divide their vacation time into a maximum of 10 one day segments” (TX 54). The PBA has demanded that the 10 day limitation on one day segments be eliminated, while the Town has proposed changing from 10 to five the number of one day segments permitted for vacation picks (TX 54, 85). As testified to by Police Chief Flatley, the scheduling process for the Department is extremely complicated and time consuming. This process is exacerbated by the use of one day segments, which tend to be more difficult to cover given each officer’s shift and tour assignments. While the PBA asserted that police officers want more opportunity to use their vacation time, it failed to provide any evidence that police officers have been denied an opportunity to take vacation time when they have requested it. The demand should, accordingly, be rejected and the Town’s proposal awarded because a lower number of one day segments would make the scheduling process less cumbersome.

The contract provides that only one employee from each squad may be on vacation at the same time. The PBA has proposed increasing this to two employees (TX 86). The PBA provided no justification for its demand. Chief Flatley testified that, if it were awarded by the Panel, this would regularly place the Town in the position of having to call in an officer on overtime. At a time when the Town needs to cut costs, a demand that will likely lead to drastic increases in overtime should not be awarded.

The PBA is demanding an increase in the number of vacation days which can be taken between Memorial Day and Labor Day. This period is the busiest of the year for the Town due to increased tourism and the influx of second homeowners. As Chief Flatley stated, the traffic and

congestion in the Town dramatically increases during the summer months, as does the number of events requiring police presence. In fact, the number of incident reports during the summer months is significantly higher than throughout the rest of the year (TX 87A). It is during this period of time that the Town needs all of its available police power. Allowing more police officers to take vacation would, therefore, directly lead to increased overtime costs. This demand should, accordingly, be rejected by the Panel.

Any block of more than one day of vacation is currently considered a vacation pick. The PBA demands that a vacation pick should be considered anything more than two consecutive working days which are charged as vacation days. The PBA has provided no justification for this demand and has further failed to provide any evidence indicating that there is a problem that must be fixed. In fact, the PBA could not even demonstrate that any vacation leave requests have been denied. The Panel should, therefore, reject this demand.

The contract now provides that an employee may use up to five sick leave days per calendar year in the event that the employee's spouse or immediate family member (living in the household) cannot take care of his/herself or take care of the children of the employee for whom the employee has the responsibility of parent or guardian (PX 89). The PBA demands the elimination of the limitation requiring that family sick leave be limited to the care of a family member living in the police officer's household.

No comparable jurisdiction having a family sick leave benefit allows a police officer to use family sick leave other than to care for a spouse or immediate family member. In fact, the family sick leave benefit does not even exist in Southampton and Shelter Island (TX 90). Town police officers already receive an adequate number of vacation and personal days that can be

used, in addition to the existing family sick leave, in order to care for a family member not covered by the existing clause. Moreover, this seemingly "feel good" demand comes at a potential increased cost of \$63,159, the equivalent of a 1.31% wage increase. The Panel, therefore, should reject it (T. Ex. 91).

The PBA demands an increase of one personal day, to a total of six per officer (TX 92, 93). A six personal day per year benefit is nonexistent in other East End Towns. In fact, Town police officers already have the highest number of personal days provided to any police officer on the East End (TX 93). If the proposal were granted, the Town would be forced to incur large overtime costs to cover the lost days, particularly given that the average Town police officer currently uses all five personal leave days (TX 47). This cost is prohibitive at \$63,150, the equivalent of a 1.3% wage increase for the entire unit over a two year period (TX 95). Given these facts, and since the PBA failed to submit any evidence justifying its demand, it should be rejected.

The current contract provides that a police officer will be granted one working day off to attend the funeral of his/her grandparent, brother-in-law, sister-in-law, foster parent, foster child, niece, nephew, uncle, aunt, half-brother or half-sister. The PBA is demanding that employees be granted two working days off for bereavement leave subsequent to the death of each of the family members and that there be no time limitation within which the two days must be taken (TX 95). There are, however, already a sufficient number of personal leave days available for PBA unit members to use for bereavement.

For its part, the Town has demonstrated that limiting the time within which a bereavement day may be used is not uncommon. Both Riverhead and Southampton provide that

bereavement leave must be taken within a certain number of days from the death or funeral (T. Ex. 97). In addition, this demand could result in an increased cost of \$126,300, the equivalent of a 2.63% wage increase, for replacing unit members out for additional bereavement leave (TX 97). For these reasons, the Panel should reject this demand.

The contract provides that each police officer who works three tours around the clock or the steady night tour shall receive \$4,050. The PBA seeks to increase this differential by \$400 in 2010 to \$4,450 and another \$400 to \$4,850 in 2011. The contract also provides for a \$2,460 tour differential for the police officer who works two rotating tours of duty. The PBA seeks to increase the two tour differential by \$200 to \$2,660 in 2010 and another \$200 in \$2,860 in 2011 (TX 102, 104).

This demand would result in a \$30,400 increase in three tour differential, the equivalent of a 0.65% wage increase and a \$4,400 increase in the two tour differential, the equivalent of a 0.10% wage increase (TX 103, 105). Given these facts, and since the PBA provided no justification for its costly demands, it should be rejected.

Presently, a police officer assigned as the D.A.R.E. instructor receives a yearly stipend of \$1,000 (TX 106). The PBA demands a 30% increase in this stipend.

Again, the PBA failed to provide the Panel with any justification supporting this substantial increase. The record lacks any evidence that the current stipend is inadequate or that the duties have changed significantly to warrant any increase. While the Town recognizes the importance of the D.A.R.E program, it is simply unreasonable to impose this type of additional burden while the Town struggles to contain costs.

The current contract provides for a uniform allowance of \$400 and a clothing and

equipment allowance of \$700 (TX 108). The PBA demands that the uniform and clothing and equipment allowances be increased by \$600 and \$800 to \$1,000 and \$1,500, respectively (T. Ex. 108, 110). The demand for an increased uniform allowance would cost \$51,600 (the equivalent of a 1.07% wage increase) and \$6,400 (the equivalent of a 0.13% wage increase) for the clothing and equipment allowance (TX 138, 140). The PBA presented no evidence of any need for these increases. They should, therefore, be rejected.

The current canine stipend is \$7,896, almost double the stipend paid in any comparable jurisdiction (T. Ex. 113). The PBA has demanded that the Town increase the canine stipend by 5% in each year (T. Ex. 112), yet presented no evidence as to why it should be awarded. As a result, this demand should be rejected.

The Town proposed a wage freeze for 2010 and 2% wage increase effective January 1, 2011. This proposal recognizes the fact that police officers are already more than adequately compensated. It is also consistent with related increases in the cost of living, the raises received by other Town employees and, most importantly, the Town's overall ability to pay (TX 66, 67).

Furthermore, as a matter of fairness, the Panel must consider that the Town's CSEA unit members, non-union employees and elected officials received a true wage freeze in 2010, meaning no percentage wage increase or step movement for those employees eligible to receive a step increase. In 2010, PBA unit members entitled to step movement received one as scheduled. In 2011, elected officials received no wage increase, and both CSEA and non-union employees received a 4% wage increase. While the CSEA and non-union employees received more than the increase proposed by the Town for the PBA, both groups began contributing to their health insurance premiums in 2011. In addition, these wage increases were negotiated well before the

tax cap legislation was passed (T. Ex. 67).

Unlike the PBA's demand, which would cost \$492,292, the Town's proposal is significantly less costly and more affordable (a cost of \$96,085) (TX 80). In addition, this proposal addresses the Town's concerns about its financial position and need to use the utmost caution when it comes to increasing labor costs. For these reasons, the Panel is respectfully urged to adopt the Town's proposal.

The current contract provides for 13 holidays (New Year's Day; Martin Luther King, Jr. Day; Lincoln's Birthday; Washington's Birthday; Easter Sunday; Memorial Day; Independence Day; Labor Day; Columbus Day; Election Day; Veteran's Day; Thanksgiving Day and Christmas Day) for which police officers are entitled to receive equivalent time off or receive compensation in lieu thereof (TX 56). The Town seeks to delete Lincoln's Birthday and Washington's Birthday and replace them with President's Day, thereby eliminating one holiday. Police officers would still be entitled to 12 holidays, a more than adequate number. This proposal would save the Town approximately \$42,100, the equivalent of a 0.87% wage increase (T. Ex. 57). It is an appropriate concession to award in these troubled financial times.

The work chart for current PBA unit members is 260 days for the first two years of employment and then 239 days per year thereafter (TX 58). The Town seeks to increase the work year to 261 days per year for all unit members.

Police officers appear at work on an average of only 189 days per year (T. Ex. 59). Increasing the number of appearances is more than reasonable in an environment where the Town has to do more with less. Had this been implemented at the start of the contract, it would have saved \$231,554 (the equivalent of a 4.82% wage increase) in overtime costs (TX 59).

Although the parties cannot go back in time, implementing this change prospectively would provide the Town with substantial future savings. This proposal should, therefore, be awarded.

The current contract provides that a police officer must notify the Police Chief in writing of the employee's future intention to retire in order to be paid for his/her unused accumulated sick leave. The Town proposes that employees now be required to provide an irrevocable notice of intent to retire at least 45 days before the adoption of the Town budget but, in no event, later than October 1, in order to be paid for unused accumulated sick leave and vacation leave (TX 60).

Town Comptroller John Cushman testified that, when a police officer submits a letter of intent to retire, the added expense for the payout of leave accruals is accounted for in the Police Department budget. An officer's revocation of his/her intent to retire can create excess money in a budget line that could be used for other purposes. Requiring more notice of an intent to separate will permit the accounting for the payout of these monies in a more realistic manner, thereby making the Town's ability to budget for other needs potentially more flexible.

Requiring notice in order to be paid for accrued vacation days upon separation and requiring that the notice be irrevocable creates an incentive for a police officer to make a timely and final decision to leave and to do so in time for budget preparation by the Town. Since this proposal would not result in any immediate detriment to any PBA member and would increase the Town's ability to better budget for the next year's expenses, the Panel should award this proposal.

The Town seeks to add an additional step to the existing salary schedule (between the current first and second year steps) and to make equidistant the increments between steps one and

two (TX 61). The proposal would decelerate the rate at which police officers reach top pay and eliminate the inequality that results when one officer receives a \$23,000 step increase while all other officers receive significantly less on all other steps in the schedule (TX 62). There is no reason why a police officer should reach the top of the salary schedule after only five years on the job.

The PBA has failed to articulate any reason why this proposal should not be granted, particularly when no current PBA member would be impacted by the additional step. Given that adding the additional step would save \$46,890 over a six year period if a new police officer were added to the police force (TX 63), the Panel should award this proposal.

The Town seeks to require a 15% employee health insurance contribution from each unit member. Historically, the Town has paid the full cost of its employees' health insurance premiums during employment and retirement (TX 64). This benefit comes at an enormous price. Health insurance costs are increasing at a record-breaking pace (TX 68 and 69). In 2011, the cost of an individual health insurance plan rose to \$8,327 and \$18,167 for a family plan, up 13.23% and 13.75% from 2010, respectively (TX 68 and 69). In 2009, the Town spent \$685,811 towards the cost of health insurance coverage for active police officers. In 2010, the cost increased to \$696,412 and, in 2011, it increased by 14.8% to \$799,857 (TX 71). The Town can no longer afford to pay the same generous health insurance benefits that it has offered in the past. Indeed, in this day and age, it is almost unheard of for an employee to receive fully paid employer-sponsored health insurance (TX 28).

The Town urges the Panel to require PBA unit members to join the rest of the Town's employees and much of the nation's workforce and contribute towards the cost of their health

insurance premiums. The Town would save \$224,441, the equivalent of a 4.67% wage increase, by implementing this proposal (T. Ex. 71).

Pursuant to the contractual overtime procedures, employees receive overtime payments (time and one-half) for all hours worked in excess of their work day. Any time off for vacation, sick leave, personal leave, holidays or other leave with pay is considered time worked (TX 72). This is far more generous than what the law requires. The Town seeks to modify the contractual overtime provisions so that overtime entitlements are in compliance with, but not in excess of, those required by the Federal Fair Labor Standards Act (FLSA).

Unlike the current PBA contract, federal law requires that overtime be paid in a more equitable manner that would not impose such an overwhelming drain on the Town and its struggling taxpayers. The FLSA mandates that an employee be paid overtime for time actually worked in excess of that specified by law for the relevant work cycle (TX 73). With the exception of three police officers, PBA members currently work a 20-day cycle. Federal law requires the payment of overtime (i.e., payment of time and one-half the police officer's hourly rate of pay) for a police officer assigned to a 20-day work cycle only after he/she has actually worked 122 hours during that 20-day period.

Restrictions on overtime payments are appearing more frequently in collective bargaining agreements. For example, the Suffolk County Park Police, the Suffolk County Probation Officers and the Suffolk County AME units agreed to this type of proposal as part of recent contract settlements. It was, likewise, awarded by the 2004-2005 Suffolk County DSBA and the 2004-2005 Suffolk County Correction Officers interest arbitration panels. In addition, the 2007 Nassau County PBA interest arbitration panel awarded restrictions on overtime eligibility (an

officer's first 24, 48 and 36 hours of overtime worked in 2007, 2008 and 2009, respectively, were paid at the straight time rate) (TX 75).

Implementing the FLSA work cycles for all police officers would obviously go a long way toward limiting the overtime costs within the Police Department, as an employee would be paid straight time, instead of time and one-half, until the employee reached the threshold set forth in the law. Given that this proposal would have saved the Town \$92,637, the equivalent of a 1.93% wage increase (TX 116), if it had been implemented retroactively to the first day of the new contract, and for the other reasons discussed above, the Panel should award this proposal.

Currently, while the Chief of Police can meet with whomever he wants, he can only do so on the employee's off-duty time and by incurring overtime costs for those police officers below the rank of sergeant. The Town proposes that the Chief be given the right to schedule an annual Department meeting with all police officers for which no additional compensation would have to be paid so as to be able to discuss important policy issues, safety concerns and new initiatives (TX 76). This would help the Town to more efficiently manage its workforce and improve Town-wide policing. Given the fact that the PBA did not advocate against this proposal, as well as its apparent reasonableness, the Town respectfully urges the Panel to award its proposal for these reasons.

The current contract provides that police officers receive a minimum number of hours of pay (at a rate of time and one-half) when they are ordered to report to work to handle court appearances, motor vehicle hearings or for other Department needs. The Town seeks to allow the Chief to change a police officer's tour of duty for these purposes without being required to pay the police officer at the overtime rate (TX 77). This proposal would have little impact on

officers with regard to court appearances and motor vehicle hearings, since both are generally planned well in advance of the scheduled date. At a time when the Town must do more with less, this proposal would allow the Chief to cost-effectively respond to staffing needs. Moreover, this proposal would generate savings for the Town, particularly during busy summer months when there are often last minute events that require a police officer's presence. It is, therefore, reasonable and appropriate for the Panel to award the Town the ability to temporarily change a police officer's tour for those purposes without incurring a tour change.

For all the reasons set forth by the Town, the Town respectfully and earnestly requests that the Panel award the Town's proposals and reject those demanded by the PBA.

### OPINION

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

- a. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.
- d. terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including but not limited to, the provision for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

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

The parties differed relative to the appropriate comparators. The PBA argued that the East End Towns (Towns of Shelter Island, Southampton, Riverhead and East Hampton) and the Suffolk County Police Department are the best comparators to Shelter Island. The Town, for its part, agreed that the East End Towns are, for purposes of this proceeding, most comparable. It excluded the Suffolk County Police Department from the list of comparators. Therefore, since there is agreement about the East End towns being comparable to the Town of Southold, the only question to be resolved relative to comparability is whether the Suffolk County Police Department needs to be considered.

In this connection, the PBA cited a 1996 interest arbitration award in which Arbitrator Scheinman found the comparisons between the Town's police officers and those of the Suffolk County Police Department to be relevant. For its part, the Town asserted that there are a significant number of interest arbitration decisions which bear on this standard. It noted that the 1994-94 Town of Riverhead interest arbitration award of Arbitrator Doner, the 1995-96 interest arbitration concerning the Town of Shelter Island written by Arbitrator Lang, and the 1999 Town of Shelter Island award authored by Arbitrator Aiges are deemed relevant. It posited that none of these awards included the Suffolk County Police Department as being comparable to the East End towns. The Town argued that the 1996 award of the Scheinman panel was the only one that deemed Suffolk County to be a comparable jurisdiction to Southold.

I have read the 1996 award written by Arbitrator Scheinman (PBA Exhibit [PX] 7) and

note that Arbitrator Scheinman distinguished between comparators with respect to level of comparability. The arbitrator noted that differences among comparables can be considered by panels. That being said, Arbitrator Scheinman did not disagree as to the comparability among East End towns.

To the extent that the East End towns are within Suffolk County, it is difficult to conclude that the County is not relevant here. However, there are major differences to be considered in this regard. Some of those differences include: the size and structure of the police forces, the area covered by the police forces, the budgets of the political jurisdictions as well as that of the police force, the diversity of the population and the overall nature of the crimes committed in the County and the Town. These are but a few of the major differences between Southold and Suffolk County. Thus, while I agree that there is some relevancy in 2012 to the comparison between Suffolk County and the Town of Southold, I find that the primary comparators to the Town of Southold for purposes of the instant analysis are the other East End towns.

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

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

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

and the Town.

Kevin Decker, the PBA's expert on municipal cost analysis, concluded that the Town had the ability to pay for the PBA proposals (PX11). He based his conclusions on the availability of local tax and revenue sources, historical results, emerging trends regarding expenditures and tax/revenue rates and bases and the underlying economics and demographics from which revenues are generated. Mr. Decker reviewed a significant number of financial reports in advance of setting forth his conclusions.

Mr. Decker acknowledged the recent economic downturn but stressed that Southold was not affected by it as much as other municipalities. He opined that Southold does not rely on sales tax, mortgage tax, parking fees, etc. to the same degree as do other jurisdictions.

He concluded that the Town's financial stability was never threatened by the recession. He added that the Town has added to fund balances in the past two years.

Mr. Decker pointed out that the population of Southold has grown faster than that of Suffolk County. He opined that such growth will result in greater real estate demands in the future with long term increases in property values. He emphasized that property taxes in Southold are lower than in other East End towns.

Mr. Decker maintained that the revenue declines in Southold are in the past and that property tax rates already reflect the revenue loss. He observed that sales tax revenue has increased every year since 2006.

He pointed out that the per family cost of the Southold police department is \$1.57 per day. He calculated the annual savings of abolishing the department as \$572.

The Town painted a very different picture of its fiscal health. It stressed that the Town

relies almost exclusively on residential property taxes. It has little in the way of a commercial and industrial tax base. Thus, budget increases must of necessity come from increases in property taxes. These increases must be borne largely by homeowners.

The record created indicates that property owners have little ability to pay for substantial tax increases. It is uncontroverted that Town tax warrants returned to the County have increased by 20% since 2008. Additionally, the rate of unemployment in Southold Town rose to almost 10% in 2009. It may be that the national rate of unemployment has dropped to 8.3% in January 2012 but that does not mean that the employment picture in Southold has markedly improved. Moreover, even if the rate of unemployment has diminished recently, one must recall that the statistics suggest a large number of people who are underemployed, i.e. have taken jobs that pay less than the ones from which they were laid off.

The Town cites decreases in revenue and increases in expenses. For example, mortgage tax revenue and fees received from refuse collection are down while the combination of the MTA Tax and increases in pension and health care costs are up. Furthermore the 2% tax cap legislation has increased the Town's difficulty to get through the economic downturn that began in late 2008.

There is evidence that suggests that the overall economy has shown signs of slow improvement. However, this is not to say that the recovery has manifested a return to pre-2008 conditions. The Town of Southold continues to struggle and may well continue to do so for the foreseeable future.

Having thoroughly reviewed the arguments and data concerning the Town's ability to pay for the Southold PBA proposals, I conclude that the Town is unable to meet those demands. I

credit the Town's arguments about its economic conditions. I am persuaded that the Town is facing a serious fiscal crisis at this time. I am further convinced that there has been little significant economic improvement since and there are no firm indicators at this time that suggest that the myriad of financial problems and unemployment rates will be resolved anytime soon.

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

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

Criterion (c) is based upon a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. It is clear that police personnel are faced with serious and unique hazards. Law enforcement personnel, in general, and, in this case, police officers, risk death and serious injuries regularly. There is a strong similarity between police officers and other law enforcement units relative to the specific considerations in this criterion. Law enforcement is unique and those employed in this field can only be compared with others in that field.

The final statutory criterion, statutory criterion (d), requires a consideration of past

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

Having discussed the relevant statutory criteria, I now turn to the parties' specific proposals. For purposes of clarity, this discussion will begin with the PBA proposals and will be followed by the Town proposals. Since the parties numbered the proposals, the proposals will be identified by subject and number. When both parties submitted proposals related to the same subject, the number of each party's proposal will be identified.

#### **TERM OF THE AWARD**

Absent an agreement of the parties, the panel is limited to issuing a two year award. There is no such agreement in this case. Thus, this award is a two year award that covers the period January 1, 2010-December 31, 2011.

#### **SECTION 9-WAGES- PBA PROPOSAL 9, TOWN PROPOSAL 11**

The parties had significant differences over the matter of salary increases. The PBA proposed wage increases of 5% in each year of this award. It posited that the Town has the ability to pay for such increases and would place its members in a position comparable to that of police officers in other East End towns.

The Town indicated that the increases demanded by the PBA are beyond its ability to fund. It proposed a wage freeze for the period January 1-December 31, 2010 and an increase of 2% for the second year of this Award. It stated that such increase is consistent with increases in

the cost of living and with raises received by other Town employees. It calculated the cost of its proposal as \$96,085 as compared to the \$492,292 cost of the PBA proposal.

While I recognize the high regard in which the Town's police force is held, the Town's inability to pay for the demanded wage increases must trump the PBA's arguments. 5% annual wage increases would be difficult to contemplate in better times and cannot be considered or justified at this time.

However, I am persuaded that the Town has the ability to pay for annual wage increases that are in excess of 2%. In the context of a complete award, I conclude that the Town has the ability to pay for a 3% increase on July 1, 2010 and a 3% increase on January 1, 2011.

I have considered the PBA's arguments relative to the wage scale in comparable jurisdictions. Increases of 3% in each year of this Award places the top step of the Southold wage scale slightly behind that of Riverhead and several thousand dollars above those of East Hampton and Shelter Island.

It is much more difficult to calculate the comparison between Southold and Southampton. Southampton has a six step wage scale while Southold still has one of five steps. Additionally, Southampton has different wage scales for police officers hired at different times.

Even though the average increases in the other East End towns range from 2.95% to 3.37%, an analysis of all of the data suggests that 3% increases result in a salary schedule that compares favorably with those of the other East End towns. In short, these increases are consistent with the standards set forth in the Taylor Law.

The cost of such an increase may be calculated based on the *1% number* as of December 31, 2009, the last day of the predecessor agreement. The *1% number* is 1% of the base salary. In

this case, the 1% number is \$48,024.

The uncompounded cost of two 3% increases is \$288,144 or \$144,072 per year. However, the compounded cost is clearly more than the above stated sums. In short, the 3% annual increases are fair and reasonable.

However, I am cognizant of the financial difficulties that the Town is experiencing. In recognition of these problems, the first 3% increase will be effective as of July 1, 2010. The second one is as of January 1, 2011. See Appendix A for a chart setting for the wage scale as July 1, 2010 and January 1, 2011.

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

**SECTION 9.3(a) - THREE TOUR DIFFERENTIAL- PBA PROPOSAL 10a**

The PBA proposed an increase of \$400 in this item (\$4050 to \$4450). It observed that Southold has lagged behind comparable jurisdictions relative to this matter.

The Town rejected this proposal as being too expensive. It calculated the cost of this proposal as being \$30,400 or the equivalent of a 0.65% wage increase.

I have reviewed the data provided and note that the three tour differential in Southampton is \$300 higher than that of Southold (PX15). The existing differential in the Town of Southold is comparable to that paid for working similar shifts in the other Towns.

Given the current economic condition of the Town, I find that the proposed increase is not justified at this time. Therefore, this proposal is denied.

**SECTION 9.3(b) - TWO TOUR DIFFERENTIAL-PBA PROPOSAL 10b**

The PBA proposed a \$200 increase in this item (\$2660 to \$2860). It observed that

Southold has lagged far behind comparable jurisdictions relative to this matter. It noted that the cost of this increase would be \$4400 or a 0.10% increase.

The Town urged the panel to reject this proposal. It indicated that the PBA has offered no justification for this increase.

The record indicates that the two tour differential in Southold is \$1150 less than that of Southampton and \$1840 less than that of Riverhead. No data was provided relative to East Hampton and Shelter Island.

There is a significant difference between Southold and other comparators with respect to the two tour differential. It would be appropriate to narrow the gap in this area to some degree.

There are nine officers who work the two tour shift. The two tour differential will be increased by \$100. The cost of this improvement is \$900 or .02%. This increase becomes effective as of December 31, 2011.

**SECTION 9.4- STIPEND FOR D.A.R.E INSTRUCTOR –PBA PROPOSAL 10c**

The PBA proposed an increase of \$300 for this item (\$1000 to \$1300). It observed that this stipend has not been increased for many years and that such an increase would have a minimal effect on the budget.

The Town asserted that there is no justification to warrant such an increase. It added that this increase represents a 30% jump in costs.

There is no evidence relative to this matter concerning comparable jurisdictions. Nor is there anything in the record to suggest that the duties of this instructor have changed such that such an increase is justified at this time. Therefore, this proposal is denied.

**SECTION 21.2-UNIFORM & EQUIPMENT ALLOWANCE-PBA PROPOSAL 10d**

This proposal applied to officers assigned to uniformed duties. The PBA proposed that this allowance be increased by \$600 (\$400 to \$1000). It suggested that even if this increase were awarded by the panel, Southold officers would receive less than their counterparts in East Hampton, Southampton and Riverhead (PX16).

The Town argued that the cost of this proposal is \$51,600 or the equivalent of a 1.07% wage increase. It added that the PBA has provided no justification for this increase.

I am persuaded that there have been increases in the cost of cleaning uniforms and in the purchase of uniforms and equipment. It is also true that the relevant comparators provide for greater allowances in this area. However, an annual increase of \$600 is excessive at this time. Thus, effective January 1, 2011, the PBA is awarded a \$300 increase in this area. The cost of this improvement will be \$25,800 or .54%.

**SECTION 21.3- CLOTHING & EQUIPMENT ALLOWANCE FOR NON-UNIFORM PERSONNEL-PBA PROPOSAL 10e**

This proposal applied to non-uniformed officers. The PBA proposed that this allowance be increased by \$800 (\$700 to \$1500). It suggested that even if this increase were awarded by the panel, Southold officers would receive less than their counterparts in East Hampton, Southampton and Riverhead (PX16).

The Town argued that the cost of this proposal is \$6400 or the equivalent of a 0.13% wage increase. It added that the PBA has provided no justification for this increase.

As noted above there have been increases in the cost of cleaning and purchasing equipment. Furthermore, there is a significant disparity in this area between Southold and its

relevant comparators. However, as I indicated in connection with PBA Proposal 10d, an \$800 increase is excessive at this time. Therefore, effective January 1, 2011, the clothing and equipment allowance for non-uniform officers is increased by \$300. This increase will substantially reduce the gap between Southold and the relevant comparable jurisdictions. The cost of this improvement will be \$2400 or 0.05%.

**SECTION 27.2- CANINE UNIT- PBA PROPOSAL 10f**

The PBA proposed 5% increases for officers in this unit in each year of the Award. It argued that this stipend has not been increased in the past five years.

The Town asserted that the stipend paid in Southold is higher than in comparable jurisdictions. It added that there is no evidence to support this proposal.

The record indicates that Southold's stipend for the canine unit is far greater than that of the other East End towns. This increase is unjustified and is therefore denied.

**SECTION 6.1- VACATIONS- PBA PROPOSAL 1**

The PBA proposed increasing the number of vacation days set forth in the CBA as follows:

Date of hire through Year 1- 5 to 7 days

Years 2-5- 16 to 21 days

Years 6-10- 19-24 days

Years 11-15- 22-27 days

Years 16-20- 28 to 33 days

The PBA indicated that these increases in vacation days is modest and is required due to the rigor and stress of the job. It posited that a greater number of vacation days would reduce the

use of sick leave and personal days.

The Town objected to this proposal in that this proposal if granted would result in officers getting an additional 97 vacation days over a 20 year career. It pointed out that currently officers have 189 appearances per year and that granting this proposal would result in a further diminution of the number of appearances. It added that there would be a significant cost to the Town if officers receiving additional vacation time were covered by other officers on overtime.

I have reviewed the vacation allocations of officers in comparable jurisdictions (TX83). The number of vacation days given to officers in Southold is clearly comparable to that of the other East End towns. Moreover, while I am aware of the stress associated with police work, I find no evidence to suggest that the current vacation allotments are inadequate. Therefore, this proposal is denied.

**SECTION 6.6- DELETION OF "MAXIMUM OF 10 ONE DAY SEGMENTS- PBA PROPOSAL 2, TOWN PROPOSAL 1**

The current language in the CBA limits police officers to a maximum of 10 one day segments of vacation days. The PBA proposed the elimination of this limitation. For its part, the Town proposed the reduction of the maximum number of one day vacation segments to five.

The PBA indicated that granting this proposal would allow officers greater opportunities to combine vacation days with RDOs such that they would be more able to plan summer vacations with their families, a time when families traditionally take vacations.

The Town asserted that the scheduling of vacations is already complicated and would become more difficult if additional one day vacation segments were possible. It added that there is no evidence to suggest that officers have been denied opportunities to take vacation days when

they are requested.

I am not persuaded that the current system is working ineffectively. There is nothing in the record to indicate that the language in the CBA presently needs to be modified. Thus, PBA Proposal 2 and Town Proposal 1 are denied.

**SECTION 6.7(e) - PERMIT TWO EMPLOYEES PER SQUAD TO BE ON VACATION AT ONCE- PBA PROPOSAL 3**

The current terms of the CBA limits the number of officers per squad on vacation at any given time to one. The PBA proposed increasing that limit such that two officers per squad could be on vacation at the same time. It sought to create greater flexibility for officers to take vacation days during the summer.

The Town objected to this proposal because it would result in greater overtime costs. It contended that additional numbers of officers would have to be called in on overtime if double the number of officers were on vacation simultaneously.

A fundamental issue is that the summer is the busiest time in Southold. It is a beach and a second home community. It stands to reason that doubling the number of officers on vacation, particularly in the summer, would have a serious impact on the quality of the policing done. Moreover, I am convinced that the additional overtime costs to the Town would outweigh the benefit enjoyed by the police officers. As a consequence, this proposal must be denied.

**SECTION 6.8- AMEND NUMBER OF SUMMER VACATION PICKS- PBA PROPOSAL 4, TOWN PROPOSAL 2**

The current language in the CBA limits vacation picks between Memorial Day and Labor Day to seven days. The PBA proposed increasing that number to 10 days while the Town

proposed reducing it to five.

The parties' arguments relative to this matter were similar to those made in connection with other proposals concerning vacations. They need not be repeated.

As noted above, the period between Memorial Day and Labor Day is the busiest time of the year. The greatest need for a police presence is in the summer. At a time of economic duress, the inevitable consequence of granting the PBA proposal is increased overtime costs. At the same time, there is no evidence to suggest that the current arrangement is disadvantageous to either the PBA or the Town. With that in mind, both proposals are denied.

**SECTION 6.9 (NEW) - VACATION PICKS SHALL BE CONSIDERED MORE THAN TWO CONSECUTIVE DAYS WHICH ARE CHARGED AS VACATION DAYS-PBA PROPOSAL 5**

The PBA proposed new contract language setting forth the provision set forth above. It posited that awarding this proposal increases flexibility in scheduling vacations without a negative impact on budget or operations.

The Town argued that a vacation pick is currently considered a block of more than one vacation day. It observed that the PBA provided no justification for this proposal.

There is no evidence to suggest the need for this proposal. As is said in the vernacular *if it ain't broke, don't fix it*. The current system has not been shown to be ineffective. As a consequence, this proposal is denied.

**SECTION 7.2(d) - DELETE "LIVING IN THE HOUSEHOLD" FROM THE SECTION-PBA PROPOSAL 6**

This provision as written permits the officers to use up to five days of sick leave for the care of family members who live in the officer's household. The PBA proposed the deletion of

the limitation of the use of these sick leave days to family members living in the officer's household.

The PBA argued that granting this proposal would have little economic impact. It added that officers may be divorced and have children living outside of their household. It suggests that such a circumstance may require the officer to care for a sick child.

The Town objected to the proposal as being unnecessary since officers have personal and vacation days that can be used for the purpose of caring for family members living outside of the household. It added that this provision has the potential to cost as much as \$63,159 or the equivalent of a 1.31% wage increase.

I have reviewed the record relative to the relevant provisions in the CBAs of comparable jurisdictions (TX89). The fact is that none of the comparators have a provision that provides for the care of family members not living in the officer's household. Moreover, two of the comparators have no provision for the use of sick leave for the care of family members and one has language that permits the use of sick leave for a spouse and no other family member in the household.

There is no basis for the granting of this proposal. Therefore it is denied.

**SECTION 7.7(a) - INCREASE NUMBER OF PERSONAL DAYS TO SIX- PBA PROPOSAL 7**

The current CBA provides for officers to have five personal days per year. The PBA proposed increasing this number to six.

The PBA observed that the cost of this proposal would be minimal and would provide greater flexibility for officers particularly during the summer months. The Town urged the

rejection of this proposal and indicated that the Southold PBA already has the greatest number of personal days as compared to other East End towns. It calculated the cost of this proposal as \$63,159 or the equivalent of a 1.31% wage increase.

The record (TX 93) reveals that officers in all of the comparable police departments get four personal days. Additionally, the cost of granting this proposal is unacceptably high at times such as these. In short, this proposal is denied.

**SECTION 7.8- INCREASE BEREAVEMENT LEAVE FROM ONE DAY TO TWO DAYS FOR CERTAIN PEOPLE- PBA PROPOSAL 8**

Currently the CBA provides for four days of bereavement leave in the event of the death of members of the "immediate family". It also allows for one day of bereavement leave for the death of grandparents, brother/sister in law, foster parent/child, niece, nephew, half-brother/sister. Under certain circumstances grandparents and foster parents can be considered members of the "immediate family". The PBA proposed increasing bereavement leave for the death of grandparents, brother/sister in law, foster parent/child, niece, nephew, half-brother/sister from one day to two.

The PBA asserted that this proposal would have a nominal effect on the utilization of bereavement leave. It observed that the Town's estimate of the cost of granting this proposal bears no relation to reality or the past practice of officers' utilization of bereavement leave.

The Town argued that there is no justification for this proposal. It added that personal days can be applied for in the event that a second day is needed.

There is no evidence that police officers in comparable jurisdictions enjoy the proposed benefit. I conclude that the CBA provides for possible flexibility relative to grandparents and

foster parents. In addition, the use of personal days makes it possible for officers to have a second day of bereavement leave, if needed. Thus, this proposal is denied.

**SECTION 6.7- VACATION/ONE DAY BLOCKS- TOWN PROPOSAL 1-** See PBA Proposal 2

**SECTION 6.8- VACATION/SUMMER- TOWN PROPOSAL 2-** See PBA Proposal 4

**SECTION 7.4(a) & 7.5- REPLACE LINCOLN'S & WASHINGTON'S BIRTHDAYS WITH PRESIDENTS' DAY- TOWN PROPOSAL 3**

The current CBA provides for 13 paid holidays. Both Lincoln's and Washington's Birthdays are included. The Town proposed replacing these two paid holidays with Presidents' Day, thus reducing the number of paid holidays from 13 to 12. The Town noted that this would provide a savings of \$42,100 or the equivalent of 0.87% wage increase.

The PBA opposed this proposal in that the comparable jurisdictions have 13 holidays including these two holidays. It concluded that awarding this proposal would be inconsistent with statutory criteria.

It may well be that the comparators still have 13 paid holidays. However, in the presence of the widely accepted Presidents' Day as a national holiday replacing Lincoln's and Washington's Birthdays, the individual holidays have become anachronisms.

The PBA argued that granting this proposal would be inconsistent with statutory criteria. I disagree. The statutory criteria do not require that all of the comparators must be in lock step with each other. Just as wage increases, number of personal leave days or provisions concerning bereavement leave may differ from jurisdiction to jurisdiction, it is also true that there can be some differences in the number of paid holidays. In this instance the difference in the number of paid holidays is minimal and the long term savings to the Town is significant. This proposal is

granted effective December 31, 2011. It will result in annual savings of \$21,050 or .45%.

**SECTION 7.11(a) - DUTY CHART- TOWN PROPOSAL 4**

The current duty chart for officers on the force two full years is 239 days. In their first two years, police officers have a 260 day duty chart. The Town proposed amending the duty chart such that all officers have a 260 day duty chart.

The Town stressed that currently police officers have 189 appearances per year and that increasing this number is appropriate in an environment in which greater efficiency is required. It asserted that granting this proposal at the start of this contract would have resulted in \$231,554 in overtime savings. This would have been the equivalent of a 4.48% wage increase. It recognized that the parties cannot go back in time but argued that the prospective savings would be significant.

The PBA averred that granting this proposal would result in the PBA members working a significantly longer duty chart than its comparators. It stressed that this would deviate from established statutory standards. The PBA noted that it has proposed meeting with the Town to discuss changes in the duty chart that would effect savings and would be mutually beneficial.

I am persuaded that the comparable jurisdictions have duty charts that do not approach 260 days. I am not prepared to grant this proposal. However, I would encourage the parties to meet and discuss ways of reducing costs since the long term fiscal issues will continue into the future and the 2% tax cap will limit the parties' negotiations in the future. It is always better for the parties to mutually resolve significant economic problems rather than have a third party do it for them. Having said that, this proposal is denied.

**SECTION 8.2- RETIREMENT BENEFITS- TOWN PROPOSAL 5**

Currently officers are required to notify the Town of their intent to retire 45 days prior to the adoption of the budget but in no event later than October 1. The Town proposed the revision of this provision such that the notice of "intent to retire" be changed to an "irrevocable notice of retirement."

The Town indicated that the "notice of intent" triggers a process in which it prepares for the payout of accruals at the time of retirement. It argued that a rescission of the intended retirement results in monies being left on budget lines that could have been used for other purposes. It stressed that the awarding of the proposed change to the CBA would obviate this problem.

The PBA noted that the benefit to the Town if this proposal were granted is far outweighed by the burden placed on officers whose circumstances change such that their retirement plans need to be changed. It urges the denial of this proposal.

While I can understand the theoretical concern of the Town, I am not persuaded that this matter represents a practical problem for the Town. As noted above, in the absence of an evident problem, there is no need to fix it. As such, this proposal is denied.

**SECTION 9.1- SALARY SCHEDULES- TOWN PROPOSAL 6**

The Town proposed adding a new salary step between the current first and second steps. It stated that the awarding of this proposal would decelerate the movement to top pay and obviate the inequality in increase between salary steps. It stated that no current officer would be impacted by this proposal. It posited a savings of \$46,890 per new hire over the six years it would take for him/her to reach maximum salary.

The PBA objected to this proposal. It asserted that its proposals were modest and that the savings accrued from this proposal are not needed to fund them. It noted that the Town has substantially underestimated the projected savings that would result from awarding this proposal. It concluded that this proposal is onerous and outside of the statutory criteria.

A key issue here is that no current employee will feel the impact of this proposal. Furthermore, at a time of increasing difficulty in adequately funding police budgets and particularly in light of the legislatively enacted 2% cap, this proposal offers the Town an opportunity to reduce its costs prospectively. Finally, as to the statutory criteria, there have been many instances in which starting salaries have been dramatically reduced and/or subsequent salary steps equalized.

In short, this proposal is granted. A new salary schedule for new hires will be created. The starting salary will remain as of January 1, 2011. However, a new Step 2 will be created and all increases in salary steps between starting salary and top salary will be equalized. The steps in the new schedule are to remain equalized in future contracts unless otherwise negotiated by the parties.

The enactment of this proposal will result in a savings of \$45,144 during the first five years of a newly hired police officer's tenure. This translates to a savings of just under 1%.

This proposal is effective December 31, 2011. See Appendix B.

#### **SECTION 12.1- HEALTH INSURANCE- TOWN PROPOSAL 7**

The Town proposed that all officers contribute 15% of the cost of their health insurance. It pointed out that the cost of health insurance currently ranges from about \$8,300 (single coverage) to over \$18,000 (family coverage). It added that the cost of health insurance increased

by 14.8% in 2011. It observed that the Town can no longer afford to pay the full cost of employee health insurance. It stresses that all other Town employees pay for part of their health insurance and that police officers should do so as well.

The PBA strenuously urged the panel to reject this proposal. It posited that in every comparable jurisdiction police officers get fully paid health insurance.

I have reviewed the record and note that in no other police department do officers pay for part of their health insurance. Therefore, consistent with Taylor Law standards, this proposal must be denied.

However, it is patently clear that the cost of funding employee health insurance has risen to levels at which employers are experiencing increasingly greater difficulty in absorbing these costs. This is but one area of increasing cost that police departments are being forced to contain. It is apparent that the time will come, probably sooner rather than later, that police officers, probably in a larger police department, will begin to contribute to the cost of health insurance for themselves and their families.

For the moment, the Taylor Law standards support the maintenance of the status quo on Long Island. It is highly questionable that the issue of comparability will be applicable in the future. However, at this time, this proposal should be denied.

**SECTION 13.2 & 13.3- OVERTIME PAYMENTS BASED ON FLSA STANDARDS-TOWN PROPOSAL 8**

The Town proposed the utilization of FLSA standards when computing overtime payments. It maintained that the current language in the CBA provides for overtime pay (time and one-half) for all hours worked in excess of the officer's work day with time off for

vacations, sick leave, personal days, holidays or other leaves considered time worked.

It proposed the imposition of FLSA standards. It explained that per FLSA, overtime is paid based on the the applicable work cycle. It noted that the work cycle for all police department employees except three people is 20 days or 122 hours. As a consequence, according to FLSA, overtime pay would be earned after an officer actually worked in excess of 122 hours in a 20 day cycle. The Town asserted that hours actually worked exclude time off for vacations, sick leave, personal days, holidays or other leaves.

The Town calculated the savings resulting from the awarding of this proposal as being \$224, 441 or the equivalent of a 4.67% wage increase.

The PBA argued that the applicable statutory standards maintain the denial of this proposal. It insisted that none of the comparators have overtime calculated based on FLSA standards.

While it may be true that many public and private employers calculate overtime payments based on FLSA language, the comparable jurisdictions do not. Therefore, the Taylor Law standards persuade me that this proposal must be denied.

**SECTION 25- STAFF MEETINGS- TOWN PROPOSAL 9**

The current language in Section 25 provides the Chief with the right to call all sergeants to three meetings per year for which no compensation is paid. The Town proposed amending this language to include the right of the Chief to have a meeting with all officers one time per year with no additional compensation being paid.

The PBA insisted that the Chief already has ample time to meet with officers and that there is no need for this proposal. It indicated that the Chief already has three meetings per year

with the sergeants. It posited that the sergeants are in a position to share the substance of their meetings with the Chief with the officers. It concluded that this proposal should be denied.

Effective communications between the Chief and the police officers is necessary. However, there is no evidence that there are communications problems that need to be remedied at this time. I find that there is no evidence that evinces the need for this proposal. Thus, it is denied.

#### **NEW SECTION- TOUR CHANGES- TOWN PROPOSAL 10**

The Town proposed new contract language that would allow the chief to change officers' tours of duty for purposes of court appearances, motor vehicle hearings and other reasons that meet the Town's needs. It suggested that this proposal would obviate the need for officers to come in for court appearances, motor vehicle hearings, etc. at the overtime rate. It claimed that this proposal would make it possible for officers to appear at the above mentioned hearings while on duty and at straight time.

The PBA argued that granting this proposal would nullify Sections 7.11(a) and 13 of the CBA. As such, in its view, this proposal should be denied.

A serious argument can be made that the proposed new language is inconsistent with Section 13. It would not be helpful to have language in one part of the CBA that appears to be inconsistent with a different section. Additionally, the Town offered no evidence as to savings that would flow from granting this proposal. Therefore, this proposal is denied.

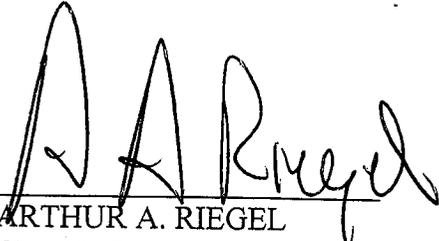
In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent prior interest arbitration awards in arriving at my findings. I believe that this Award properly balances the rights of the members of the PBA to improved wages and benefits with the Town's

obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests. Thus, based on the above, I make the following:

### AWARD

1. **TERM** - This Award shall cover the period January 1, 2010 through December 31, 2011.
  
2. **WAGES** - Amend the base wage scale for PBA members contained in ¶9 of the CBA such that the 2009 schedule of wages will be increased by the following percentages:  
  
As of July 1, 2010- 3%  
As of January 1, 2011- 3%  
See Appendix A (attached).
  
3. **WAGE SCALE FOR NEW HIRES**- Amend ¶9.1 of the CBA such that the wage scale for new hires will consist of six (6) equidistant salary steps. This change is effective as of December 31, 2011.
  
4. **TWO TOUR DIFFERENTIAL**- Amend ¶9.3(b) of the CBA such that the Two Tour Differential will be increased by \$100. This increase is effective as of December 31, 2011.
  
5. **UNIFORM & EQUIPMENT ALLOWANCE** - Amend ¶21.2 of the CBA such that the Uniform & Equipment Allowance will be increased by \$300. This increase is effective as of January 1, 2011.
  
6. **CLOTHING & EQUIPMENT ALLOWANCE FOR NON-UNIFORM PERSONNEL** - Amend ¶21.3 of the CBA such that the Clothing & Equipment Allowance will be increased by \$300. This increase is effective as of January 1, 2011.
  
7. **REPLACE WASHINGTON'S & LINCOLN'S BIRTHDAY WITH PRESIDENTS' DAY**- Amend ¶7.4(a) and 7.5 of the CBA such that Washington's and Lincoln's Birthday will be deleted from the list of paid holidays and will be replaced by Presidents' Day. This change is effective as of December 31, 2011.
  
8. **OTHER PROPOSALS** - All other proposals of the parties, irrespective of whether they were discussed, are denied.

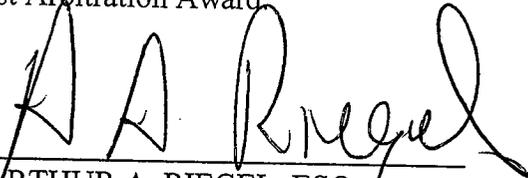
Dated: April 22, 2012  
Hewlett Harbor, NY

  
ARTHUR A. RIEGEL  
CHAIR, INTEREST ARBITRATION  
PANEL

**AFFIRMATION**

STATE OF NEW YORK)  
COUNTY OF NASSAU)

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

  
ARTHUR A. RIEGEL, ESQ.

**EMPLOYEE PANELIST**

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

- |             |                                    |                                    |
|-------------|------------------------------------|------------------------------------|
| 1. Item # 1 | <u>Concur</u>                      | Dissent                            |
| 2. Item # 2 | <u>Concur</u> <sup>ff</sup>        | <u>Dissent</u> <sup>*</sup>        |
| 3. Item # 3 | <u>Concur</u> <sup>last year</sup> | <u>Dissent</u> <sup>1st year</sup> |
| 4. Item # 4 | <u>Concur</u>                      | Dissent                            |
| 5. Item # 5 | <u>Concur</u>                      | Dissent                            |
| 6. Item # 6 | <u>Concur</u>                      | Dissent                            |
| 7. Item # 7 | Concur                             | <u>Dissent</u>                     |
| 8. Item # 8 | <u>Concur</u> <sup>* Except</sup>  | Dissent                            |

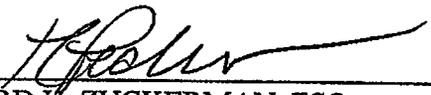
for Usabon

Joseph Wysocki  
JOSEPH WYSOCKI,  
EMPLOYEE PANELIST

**EMPLOYER PANELIST**

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

- |             |   |                                       |
|-------------|---|---------------------------------------|
| 1. Item # 1 | <u>Concur</u>   | Dissent                               |
| 2. Item # 2 | <u>Concur</u> *                                       | <u>Dissent</u> *                      |
| 3. Item # 3 | <u>Concur</u><br><i>1st year only</i>                 | <u>Dissent</u><br><i>2d year only</i> |
| 4. Item # 4 | <u>Concur</u>   | Dissent                               |
| 5. Item # 5 | <u>Concur</u>   | Dissent                               |
| 6. Item # 6 | <u>Concur</u>   | Dissent                               |
| 7. Item # 7 | <u>Concur</u>   | Dissent                               |
| 8. Item # 8 | <u>Concur</u> *<br><i>except for health insurance</i> | Dissent                               |

  
\_\_\_\_\_  
RICHARD K. ZUCKERMAN, ESQ.  
EMPLOYER PANELIST

**APPENDIX A**

**WAGE CHARTS**

<b><u>Steps</u></b>	<b><u>7/1/10</u></b>	<b><u>1/1/11</u></b>
1	\$41,102	\$42,335
2	\$64,487	\$66,792
3	\$75,808	\$78,802
4	\$86,776	\$89,369
5	\$101,272	\$104,431
Sergeant	\$119,089	\$122,662
Lieutenant	\$133,901	\$137,918

**APPENDIX B**

**SALARY SCHEDULE FOR NEW HIRES**

<b><u>SALARY STEPS</u></b>	<b><u>SALARY</u></b>
STEP 1	\$42,335
STEP 2	\$54,754
STEP 3	\$67,173
STEP 4	\$79,592
STEP 5	\$92,011
STEP 6	\$104,431

