

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL**

**In The Matter of the Interest Arbitration between
VILLAGE OF OWEGO,**

Petitioner,

-And-

OWEGO POLICE BENEVOLENT ASSOCIATION,

Respondent.

PERB Case Nos. IA2010-044; M2010-221

BEFORE:

John T. Trela
Public Panel Member and Chairman

Anthony V. Solfaro
President, NYS Union of Police Associations, Inc.
Union Panel Member

John F. Corcoran, Esq.
Hancock Estabrook, LLP
Employer Panel Member

APPEARANCES:

For the Owego Police
Benevolent Association
John M. Crotty, Esq.

For the Village of Owego
Melinda B. Bowe, Esq.
Hancock Estabrook, LLP

OPINION AND AWARD

**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED**

JUL 05 2012

CONCILIATION

INTRODUCTION

Pursuant to the provisions of Section 209 (4) of the *Civil Service Law*, the New York State Public Employment Relations Board (PERB) designated the Public Panel Member and Chairperson, the Public Employer Panel Member and the Public Employee Organization Panel Member referenced above on May 9, 2011. The panel is designed to make a just and reasonable determination of the outstanding issues in the collective bargaining dispute between the Village of Owego (hereinafter referred to as "the Village", or "employer") and the Owego Police Benevolent Association (hereinafter referred to as the "Union", or "PBA", or "bargaining unit").

The Village and the PBA are parties to a collective bargaining agreement ("CBA") dated August 1, 2010 through July 31, 2013. However, the CBA is silent with regard to a procedure for resolving claims and disputes arising under Section 207-c of the General Municipal Law. Accordingly, the instant matter before this panel concerns the single issue of establishing a 207-c procedure for the parties which heretofore has not existed. The results of those deliberations are contained in this **OPINION AND AWARD ("Award")**.

The panel considered each individual item proposed in this 207-c procedure for a resolution between the parties. The positions taken by each party are clearly specified in the petition and the response, in numerous exhibits submitted at hearing, and in the post-hearing briefs, all of which are incorporated by reference into this award. This award is a result of those deliberations. In arriving at the determination and award contained herein, the panel has considered the following statutory guidelines contained in Section 209.4 of the statute:

"... (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

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

NOTE: Where referenced herein, the usage of the term panel applies where two of the three panel members concur.

PROFILE OF THE VILLAGE OF OWEGO

The Village of Owego is located in Tioga County with a population of slightly less than 3,700 residents accordingly to the statistics submitted by the Village. The PBA submitted no population statistics for this instant matter. The Village of Owego is located just north of the New York-Pennsylvania border. At the time of the hearing in this proceeding, the Police Department consisted of a chief of police, 6 full-time police officers, and 10 part-time officers.

THE PARTIES' POSITIONS AND DISCUSSION REGARDING STATUTORY CRITERIA

1. COMPARABILITY

Section 209.4 of the *Civil Service Law* requires that, in order to properly assess and determine the issues before it, the panel must engage in a comparative analysis of terms and conditions with "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."

Both the PBA and the Village have made excellent arguments as to why the panel should utilize their preferred comparisons.

The Village offered into evidence those police contracts now in place in several comparable sized and situated communities in close proximity to Owego. They include the Villages of Waverly, Cayuga Heights, Dryden and Elmira Heights, along with Cayuga County. Owego and Waverly are located in Tioga County, while Cayuga Heights and Dryden are both located in neighboring Tompkins County. Elmira Heights is situated in the contiguous County of Chemung. The Village of Waverly's Police Department is comprised of 10 full-time and five part-time officers. Both Cayuga Heights and Dryden employ 6 full-time and 8 part-time officers. Finally, Elmira Heights' police force consists of only 9 full-time officers. All of these villages are comparable in terms of staff size.

A simple inspection of all of the collectively bargained agreements in the Villages comparables referenced above so states the Village, will demonstrate that not a single

one contains lengthy 207-c procedures in any form, let alone procedures that are similar in either scope or complexity to those proposed by the PBA. Simply stated, there is no comparability between Owego and the jurisdictions the PBA has submitted to the panel for consideration. The hearing record is devoid of any information submitted by the PBA demonstrating any common demographics between these comparables and the Village statistics.

Contrary to the arguments presented by the Village, the PBA argues that the size of the employer should have no bearing on the award of the panel. The simple reason is that the statute applies to all employees identically so the procedures and policies should not change based upon the size of the employer. What is good for a large employer is equally good for a small employer. Accordingly, the PBA submits that the provisions recently made applicable to the City of Middletown and Town of Crawford by interest arbitration awards and negotiated agreements in the Town of Vestal, City of Elmira, and the City of Corning are what should serve as the basic models for an award in this proceeding, with a certain few modifications that are needed to conform the benefits that are entitled to the village's disabled officers to this particular employment relationship. Ultimately, the panel's task is to render a just and reasonable award upon the matters in dispute. The PBA believes that adoption of its proposal results in such an award.

Panel Discussion on Comparables

The respective positions of the parties regarding comparability has been carefully considered by the panel. These conclusions have an impact on the final determination

by the panel. The determination of the exact appropriate comparable jurisdictions as required by the law however is not an exact science. For example, the law does not require a panel to specifically state that the Police Officers in this instant bargaining unit must be compared to a specific bargaining unit or jurisdiction or group of jurisdictions. Accordingly, the Panel Chair, with the Village panel member concurring, concludes that the Village's comparables are appropriate.

The Terms Of Past Collective Bargaining

The current collective bargaining agreement is silent with respect to procedures for the administration of section 207-c benefits. This is the first time that this issue has been negotiated by the parties, and such negotiations were initiated in order to resolve a previous controverted light-duty order under 207-c.

DISPUTED DIFFERENCES

The PBA proposes the following items for incorporation into the new procedure which have not been agreed to by the Village. In its closing brief, the Village stated its overall objection to the PBA proposals in general narratives rather than individual discussion of each PBA proposal.

Section 2: Definitions: Shift premium:

The PBA argues that members bid for assignment to permanent tours and receive premium payment for being regularly assigned to the tours of \$1.00 per hour for the 3 PM to 11 PM tour and \$1.25 dollars per hour for the 11 PM to 7 AM tour. Shift premiums are part of the officer's hourly pay rate. As such, it is questionable whether

the panel even has the power to exclude these payments to disabled officers because the monies are arguably part of the regular wages that GML Section 207-c requires be continued during disability as a matter of law. Police officers who were unable to work because they have performed their duties as required and expected should not suffer a wage reduction. The PBA believes that result would be fundamentally unfair and unreasonable.

The Village opposes this proposal and argues that the panel should note that all of the above referenced jurisdictions within the comparables they provided offer less supplemental benefits than what the Village has already offered to the PBA. Accordingly, this proposal should be rejected.

Holiday payment:

The PBA notes that under the current contract if a holiday falls on an employee's regularly scheduled day off, that employee receives additional pay for the day. That applies regardless of whether the employee is absent on sick leave, vacation or other paid leave time on regularly scheduled work days surrounding the holiday. There should be no difference if the employee is absent on GML Section 207-c leave and a holiday that falls on his/her regularly scheduled day off. That employee should not also suffer the loss of holiday pay for holidays on regularly scheduled days off since the employees receive it as discussed above. This benefit was awarded by Arbitrator Selchick in the City of Middletown award, which is one of the PBA comparables. PBA (Exh.-8).

The Village opposes this proposal as the comparables they embrace offer less supplemental benefits than what the Village has already offered to the PBA. Accordingly this proposal should be rejected.

Vacation and personal leave during the ninety (90) consecutive work days of absence on GML Section 207-c leave:

The PBA states that the Village argues that sick, vacation and personal leave time should only be credited during the first 90 calendar days of absence. The PBA maintains that sick leave should continue to be credited during the entire absence of the employee on leave. There has been a long term practice of the Village crediting employees with sick, vacation and personal leave while absent on 207-c leave. The PBA notes that this matter is currently the subject of an improper practice charge filed with PERB and that they will ultimately be successful in that endeavor. Nonetheless, the PBA has, in the spirit of reasonableness, proposed that the parties compromise and agree to the crediting of vacation and personal leave during the first 90 consecutive workdays an employee is absent. The PBA proposal at least gives an employee the benefit of accruing this leave time consistent with his/her 5/2 work schedule, rather than being limited to a 90 calendar day period.

Time limit on initial determination and time off pending determination:

The PBA argues that an employee has a fundamental right to a guaranteed speedy decision on an application for benefits. The Village has reluctantly agreed to extend the time limit for an employee to submit an application for benefits from ten (10) to twenty (20) days, yet it seeks to allow itself essentially unlimited time to make a determination and has rejected any protection should it not issue a decision within even its proposed time frame of thirty (30) calendar days after receipt of the application or sixty (60) days after receipt of all necessary information. Under the Village's proposal, the Village determines when all necessary information is received, so that the time limit of sixty (60) days is no time limit at all.

The Village opposes this proposal for the reasons referenced above.

Section 3:

Application for benefits:

The parties have agreed to the timeframe of twenty (20) calendar days for submission of appeals set forth in paragraphs 3 and 5 of this section. The parties however continue to disagree over the language concerning the medical release to be signed in paragraph 3 of this section. The Village insists that its proposed language for medical release is only a sample for the procedure. The PBA is opposed to the language for the simple reason that it enables the Village to unilaterally change the release without any consent required from the PBA. Given the sensitive nature of the medical information covered by the release, and the fact that all other procedures presented to the panel include a release in final form, the PBA maintains that only the final form binding release should be included in the procedure.

Paragraph 8 of this section is also an area of disagreement. The PBA proposes that a strict time limit be imposed on the Village in making its initial determination of eligibility and that if no determination is made within that time frame the member be placed on a form of administrative leave, with no charge to accrued leave time.

Injured employees face the real possibility of receiving no pay when injured as a result of performing their duties, while awaiting a decision on an application.

Section 5

Medical Treatment:

In Sections 1 and 2, the Village seeks to include language that if an employee refuses a medical examination or medical treatments he/she will be deemed to have waived GML Section 207-c benefits. For employees who have been awarded benefits,

the Village proposal means that their benefits would be terminated prior to any due process hearing, which would violate their rights under the law. If the Village alleges that an employee receiving benefits has refused to comply with an order for an examination for treatment, the Village can simply provide a notice of intent to terminate benefits and the hearing process can proceed. A deemed waiver of benefits, as proposed by the Village, is not only contrary to law, but is a draconian measure that the panel should not impose.

Section 6
Return to Regular and Light Duty Assignments:

The only area of dispute in this Section is in paragraph 2 which relates to what conflicting medical evidence an employee must submit in order for a return to light duty order to be suspended. The Village seeks to require a detailed report. The PBA opposes this requirement and has suggested language that a "note or letter from a medical provider that the employee cannot perform the order duty" be submitted. The PBA suggests this language and opposes the Village requirement because it is virtually impossible to obtain the type of detailed report the Village seeks in the short timeframe in this section.

Section 9
Hearing and other procedures:

Paragraphs 1 and 2 of this section continue to be major areas of contention. The PBA argues that the only fair and reasonable procedure for appeals from denials or terminations of benefits or orders to return to duty is arbitration before a neutral arbitrator as proposed by the PBA. It is interesting to note the PBA points out that in the Village's own comparables, including the Village of Waverly, the Village of Elmira

Heights, the Village of Dryden and the Village of Cayuga Heights denials or terminations of GML Section 207-c benefits are all subject to arbitration before neutral arbitrators pursuant to the contractual grievance procedure. There could be no question that unless an appeal or dispute is determined by a neutral arbitrator, there is no point to an appeal process. A hearing before a hearing officer unilaterally hand-picked by the Village, who then may make a non-binding recommendation to the Village is tantamount to no internal appeal at all. The employee and PBA may as well not waste their money and resources on an internal appeal and instead start an Article 78 proceeding since the appeal is destined to end in litigation anyway. The Village's proposed appeal process is unfair and unreasonable on its face.

Section 11
Miscellaneous

Paragraph 2 is one area of continued dispute between the parties in this section. The PBA proposes language that any disputes regarding the administration of the procedure be resolved through the parties' contractual grievance procedure, since the panel's award will not be part of the collective bargaining agreement. For example, if the Village fails to issue a decision on an initial application within the timeframe in the procedure or if the Village fails to provide health insurance benefits to a recipient of benefits, an appeal pursuant to the procedure would not be authorized. Without a process for resolving procedural disputes, the PBA and the disabled employee could conceivably be without a remedy because the forum for enforcement of the award is unclear and unsettled. The Village opposes this language. The Village wants the PBA to have no enforcement mechanism for the important rights the procedure will bestow, so that it will

disadvantage employee and advantage employer. The parties have already established a mechanism for resolution of disputes of terms and conditions of employment by adoption of the grievance procedure. There is no reason why the parties should not similarly submit disputes regarding administration of the GML section 207C procedures to the same process.

Panel Determination

The panel has reviewed in detail all of the demands and proposals of both parties to fashion an appropriate 207-c procedure, including all of the extensive material that both sides submitted. The panel in this Opinion and Award has attempted to balance the current situation between the parties with the proposed changes made by each side.

PANEL AWARD ON SECTION 207-C

NOTE: Many of the provisions below contain agreements reached prior to the submission for Interest Arbitration, during the executive session and proposals submitted during subsequent email transmissions.

This procedure shall be incorporated into the collective bargaining agreement of the parties as an addendum, but shall not be subject to the CBA's grievance and arbitration procedure. The hearing officer shall therefore have the authority to resolve any and all disputes concerning the administration of this procedure subject only to judicial review. See Section 11.8 below.

SECTION 1 – APPLICABILITY

This procedure is intended to regulate the application for, award and/or termination of, benefits under Section 207-c of the General Municipal Law (“GML 207-c”) in the Village of Owego.

SECTION 2a - DEFINITIONS

- a. Village: Village of Owego.
- b. Chief: Chief of Police of the Village of Owego.

- c. Claimant: Any police officer of the Village of Owego who claims to have been injured in the performance of his/her duties or who claims to have been taken sick as a result of the performance of his/her duties.
- d. Recipient: Any police officer of the Village of Owego who has been granted Section 207-c benefits.
- e. Claims Manager: The individual(s) designated by the Village who is/are charged with the responsibility of administering the procedures herein. The PBA President shall be advised, in writing, by the Village Mayor of the individual(s) designated, and changes as they occur.
- f. Section 207-c Benefits: The regular salary or wages (Base Wage and Longevity) and medical treatment and hospital care payable to a Recipient under Section 207-c.

SECTION 2b – BENEFIT LEVELS

In addition to receiving his/her regular salary or wages, medical treatment and hospital care, an employee receiving Section 207-c benefits shall also be entitled to:

- a. Health, dental, optical, life, and disability insurance in the same manner in which and to the same extent, including premium cost sharing, as the Recipient was receiving same when working.
- b. Sick, vacation, and personal leave accruals as set forth in the collective bargaining agreement for a period of up to ninety (90) calendar days from date of initial receipt of Section 207-c benefits, for each Section 207-c granted/accepted claim. In the event the employee is out of work more than ninety (90) consecutive calendar days, his/her sick, vacation, and personal leave accruals shall be suspended until such time as the employee returns to work.

SECTION 3 - APPLICATION FOR BENEFITS

1. Any Claimant who is injured in the performance of his/her duties or is taken sick as a result of the performance of his/her duties will notify his/her designated Supervisor/Administrator and file an Incident Report within seventy-two (72) hours of when the Claimant should reasonably have known of the injury or illness.

2. The Incident Report shall include, to the extent practicable, the following information:

- a) the time, date and place of the incident;
- b) a statement of the facts surrounding the incident;
- c) the nature and extent of the Claimant's injury or illness; and
- d) the name of any possible witnesses to the incident.

3. In addition to filing an Incident Report, the Claimant must file with the Claims Manager an application for Section 207-c benefits within twenty (20) calendar days of the incident giving rise to the claim on the Application attached hereto as Appendix "A", or within twenty (20) calendar days of the Claimant's knowledge or claimed belief that the illness or injury is causally related to the performance of duty, and the Notice to the Comptroller attached hereto as Appendix "B", and one or more Medical Release Forms modeled after the sample attached hereto as Appendix "C" and made a part of this Procedure. Where the Claimant's injury or illness prevents him/her from filing an application for Section 207-c benefits, such application may be filed on behalf of a Claimant. The application may be made by either the Claimant or by some other person authorized to act on behalf of the Claimant. All applications for Section 207-c benefits shall be made in writing on the Application form annexed hereto as Appendix "A".

4. A Claimant's failure to comply with these reporting obligations may be waived by the Claims Manager for good cause shown.

5. If an application for benefits is deemed "untimely," a Claimant, or the PBA President or designee, as the case may be, may appeal such determination within twenty (20) calendar days of receipt of the "untimely" determination pursuant to Section 9(1),(2) of this procedure.

6. The Claims Manager shall have the sole and exclusive authority to initially determine whether a Claimant is entitled to Section 207-c benefits.

7. The Claims Manager's authority shall include, but not be limited to, the following:

- a) employ experts and specialists to assist in the rendering of the determination of eligibility;
- b) require the production of any book, document or other record that pertains to the application, injury or illness;
- c) require the Claimant to submit to one (1) or more medical examinations related to the illness or injury;
- d) require the Claimant to execute one of more Medical Release Forms;
- e) require the attendance of the Claimant and all other witnesses for testimony upon reasonable notice; and
- f) do all that is necessary or reasonable in the processing of said application

8. In an initial determination investigation, a Claimant must cooperate with the Claims Manager. A determination of initial eligibility shall be made within thirty (30) calendar days after receipt of all necessary information specified above, or sixty (60) calendar days from the date on which the application was submitted, whichever is earlier, and without holding a hearing. Failure to render a determination within that timeframe shall be deemed a denial of the application for Section 207-c benefits.

9. The Claims Manager shall mail a written copy of his/her decision to the Claimant, upon the issuance of his/her determination. The written determination shall set forth the reasons for the Claims Manager's decision.

10. Any appeal from an initial determination of the Claims Manager must be made within thirty (30) calendar days of receipt of the initial determination and will be processed pursuant to Section 9(1),(2) of this procedure.

SECTION 4 - TIME OFF PENDING INITIAL DETERMINATION

1. Pending the initial determination of benefit eligibility, any time-off taken by the Claimant that he/she claims is the result of the injury or illness as a result of the performance of his/her duties giving rise to the application for Section 207-c benefits, shall be charged to the Claimant's accrued sick leave time, personal leave, floating holiday time, and vacation time, at the Claimant's option, and in that order.

2. In the event the Claimant has exhausted all of his/her available paid leave accruals above, the Claims Manager may, in his/her sole and non-reviewable discretion, authorize paid administrative leave throughout the remaining period during which the application is being processed, if it appears probable that the Claimant will be eligible for such benefits and the Claims Manager so determines. In the event the Claimant is granted Section 207-c benefits, all paid leave time used shall be credited back to the Claimant.

SECTION 5 - MEDICAL TREATMENT AND EXAMINATION

1. After the filing of an application for benefits, the Claims Manager may require a Claimant to submit to one (1) or more medical or other health examinations as may be directed by the Claims Manager. Any Section 207-c Claimant who refuses to submit to such examination(s) shall be deemed to have waived his/her rights under Section 207-c after such refusal. Any appeal from a determination of the Claims Manager that the Claimant has waived said rights under this subsection must be made within twenty (20) calendar days of receipt of said determination and will be processed pursuant to Section 9(1),(2) of this procedure.

2. The Claims Manager may require a Recipient to submit to one (1) or more medical or other health examination(s) or inspection(s) to determine if the Recipient has recovered and is able to perform his/her regular duties, specified light duty, and/or examinations as required to process an application for a disability retirement. Any Section 207-c Recipient who refuses to submit to such examination(s) shall be deemed to have waived his/her rights under Section 207-c after such refusal. Any appeal from a determination of the Claims Manager that the Recipient has waived said rights under this subsection must be made within twenty (20) calendar days of receipt of said determination and will be processed pursuant to Section 9(1),(2) of this procedure.

3. The Claims Manager may require a Recipient to submit to treatment which may include, but is not limited to, medical and/or surgical techniques deemed necessary by the appointed physicians. Any Section 207-c Recipient who disagrees, based upon conflicting

medical documentation, may request a determination pursuant to Section 9(3) herein, within thirty (30) calendar days after receipt of the directive. Pending the hearing and determination thereon, the Recipient shall continue to receive his/her Section 207-c benefits as set forth in this procedure.

4. Medical Reports. The Claimant or Recipient shall execute and file with the Claims Manager, one or more Medical Release Forms modeled after the sample attached hereto as Appendix "C" and made a part of this Procedure, so that the Claims Manager can request relevant records from all medical providers treating a Claimant or Recipient of Section 207-c benefits. The Claimant or Recipient shall take all necessary steps to insure the filing of said records and/or reports with the Claims Manager. The Claimant or Recipient shall receive a copy of the medical records/reports filed with the Claims Manager. The medical reports which are filed shall remain confidential and only released for purposes of administering the procedures herein, Workers' Compensation, applications made pursuant to the Retirement and Social Security Law, any other benefit program, or as otherwise permitted by law. The Claims Manager may request periodic written updates informing him/her of the Recipient's status or progress.

5. Payment for Medical and Related Services. All bills for medical treatment and care shall be submitted for payment pursuant to Workers' Compensation Law if the Recipient is awarded Workers' Compensation benefits. The Recipient shall submit for payment to the Claims Manager any bills for medical treatment and care not paid pursuant to Workers' Compensation Law.

6. A Recipient who is denied payment for medical treatment and care may request a hearing pursuant to Section 9(1),(2) herein within thirty (30) calendar days after receipt of the denial.

SECTION 6 – RECIPIENT RETURN TO REGULAR AND LIGHT DUTY ASSIGNMENTS

1. Any Recipient receiving Section 207-c benefits who has not been granted a New York State disability retirement for the disability incurred in the performance of duty, may be examined by a physician chosen by the Claims Manager to determine the Recipient's ability to perform either his/her regular duties or specified light duty assignment(s). Any Recipient deemed able to perform his/her regular duties or the specified light duty by the Claims Manager, based upon medical documentation, may be directed, upon at least fourteen (14) calendar days notice, by the Chief of Police in his/her sole discretion, to perform his/her regular duties or the specified light duty. It is understood that any assignment to light duty is temporary and that an officer so assigned does not have any entitlement to a continued light duty assignment for an indefinite period of time. Furthermore, nothing contained herein shall require the Village to create light duty assignments. If the order to return to regular or light duty is not contested by the Recipient, an earlier return to work date, which shall be reasonable under the circumstances, may be arranged between the Recipient and the Chief of Police.

2. A Recipient may contest an order to return to regular duties or specified light duty by submitting conflicting medical documentation to the Claims Manager within fourteen (14) calendar days after receipt of the directive. The conflicting medical evidence must consist of a detailed report from a treating physician stating that the Recipient is unable to perform the regular duties or specified light duty and explaining the specific reasons for such opinion. The Claims Manager shall review the medical documentation, and within fourteen (14) calendar days of its receipt shall issue to the Police Chief and Recipient a decision as to whether the order to return to regular duties or specified light duty should be confirmed, modified or withdrawn. If the Recipient is dissatisfied with the decision, he/she may notify the Claims Manager, in writing, within fourteen (14) calendar days after receipt of the Claim Manager's decision, of the need for a third medical examination to be conducted pursuant to Section 9(3) of this procedure. Pending the determination of the third medical examiner, the Recipient shall continue to receive his/her Section 207-c benefits as set forth in this procedure.

3. Where a determination by the medical examiner has been made pursuant to Section 9(3) of this procedure that the Recipient can report to and perform either his regular duties or specific light duty and that Recipient fails to report or refuses to perform such duty, if same is available and offered, that Recipient's Section 207-c status shall be discontinued. A Recipient's Section 207-c status shall also be discontinued if the Recipient does not contest an order to report for regular duties or specified light duty and thereafter fails to report or refuses to perform the specified duty.

4. No Recipient on specified light duty shall be assigned to perform work, a tour of duty or training that is inconsistent with the injury or illness.

5. A Recipient who is working specified light duty shall be entitled to the contractual benefits pursuant to the provisions of the applicable collective bargaining agreement.

6. A Recipient who is working specified light duty and is absent due to the injury or illness shall be granted Section 207-c status for the absence and shall not be charged sick or other paid leave for the absence based upon medical documentation that the absence is due to the injury or illness. A Recipient denied Section 207-c benefits for the absence(s) may request a hearing or determination pursuant to the applicable provisions of Section 9 herein, within thirty (30) calendar days after notification from the Claims Manager that Section 207-c benefits will not be paid for the absence(s).

SECTION 7 - CHANGES IN CONDITION OF RECIPIENT

1. Every Section 207-c Recipient must notify the Claims Manager of any change in his or her condition which may enable the Recipient to return to normal duties or be classified as eligible for specified light duty. This notice shall be made in writing within seventy-two (72) hours of any such change to the Claims Manager.

SECTION 8 - RIGHT OF PERPETUAL REVIEW AND EXAMINATION

1. The Claims Manager shall have the right to review the eligibility of every Section 207-c Recipient throughout the period during which benefits are received. This right shall include, but shall not be limited to:

- a) requiring Recipient to undergo a medical examination by physician(s) chosen by the Claims Manager;
- b) requiring Recipient to apprise the Claims Manager as to his/her current condition; and
- c) requiring Recipient(s) or any other involved parties to provide documentation, books or records that bear on the Recipient's case.

SECTION 9 - HEARING AND OTHER PROCEDURES

1. Hearings requested under the provisions of this procedure, where there is no medical dispute between a Recipient's physician and the Village's medical examiner, shall be conducted by a neutral Hearing Officer to be jointly selected by the parties from the following individuals who shall serve as Hearing Officers:

- A. Jeffrey Selchick;
- B. Thomas Rinaldo; and
- C. Michael Lewandowski.

The above named Hearing Officers shall be used on a rotational basis. The Hearing Officer shall make his/her best efforts to provide a date for the hearing to be conducted within sixty (60) calendar days of the request. In the event the Hearing Officer next on the rotation cannot provide a date to conduct the hearing as set forth herein, the next Hearing Officer shall be canvassed for a hearing date as set forth herein. In the event none of the Hearing Officers are available within the sixty (60) calendar days, the Hearing Officer who has the first available date shall be assigned the matter.

The scope of review of the Hearing Officer shall be confined to whether the Claims Manager had a reasonable basis for his/her determination.

2. The Claimant or Recipient may be represented by a representative of his/her choice and may subpoena witnesses. Each party shall be responsible for all fees and expenses incurred in their representation. A transcript shall be made, the cost of which shall be shared equally between the PBA, or in the event the Claimant or Recipient is represented by a representative other than the PBA, the Claimant or Recipient, and Village. The fees and expenses of the Hearing Officer shall be borne equally by the parties as set forth herein.

3. The Hearing Officer shall render and submit to the Village Board, with a copy to the Claimant's/Recipient's representative, his/her final written Decision, including findings of fact and conclusions of law, within thirty (30) calendar days after close of the hearing. Any such

Decision of the Hearing Officer shall be reviewable pursuant to the provisions of Article 78 of the Civil Practice Law and Rules.

4. **Conflicting Medical Documentation of Recipient's Ability to Perform His/Her Regular Duties or Specific Light Duty.**

In the event there is a medical dispute between a Recipient's physician and the Village's medical examiner as to whether the Recipient is able to perform his/her regular duties or specified light duties, as detailed by the Claims Manager, the PBA and the Village agree that the Recipient's physician and the Village's medical examiner shall designate a third medical examiner, trained in the medical specialty regarding the illness or injury, to conduct an independent medical examination. The third medical examiner's written report and opinion regarding whether the Recipient is capable of reporting back to and performing his/her regular duties or specified light duties shall be binding upon the PBA, Village and Recipient. The opinion and report shall be provided, in writing, to the Claims Manager as soon as practical following the examination. The Claims Manager shall provide a copy to the Recipient by personal service or mail. In the event it is determined that the Recipient can return and perform his/her regular duties or specified light duties, he/she shall report to work on his/her next regularly scheduled tour of duty after service or receipt of the notice to return to work from the Claims Manager. The cost of the third medical examiner's examination and report shall be shared equally by the Village and the PBA.

SECTION 10 - COORDINATION WITH WORKERS' COMPENSATION BENEFITS

1. Upon payment of Section 207-c benefits, any wage or salary benefits awarded by the Workers' Compensation Board shall be payable to the Village for periods during which the Recipient received Section 207-c benefits. If the Recipient shall have received any Workers' Compensation benefits hereunder which were required to be paid to the Village, the Recipient shall repay such benefits received to the Village, or such amounts due may be offset from any Section 207-c benefits thereafter. Upon termination of Section 207-c benefits, any continuing Workers' Compensation benefits shall be payable to the Recipient. The parties shall not be bound by a determination of the Workers' Compensation Board.

SECTION 11 - MISCELLANEOUS

1. A matter may be settled at any stage of this proceeding. The terms of such settlement shall be reduced to writing, and signed by the parties. Any such settlement entered into shall be final and binding on the parties.

2. A Recipient who returns to full duty and re-injures or aggravates the prior injury or illness shall be subject to the same application process as set forth herein for an initial injury or illness.

3. The Village shall, in accordance with Internal Revenue Service (IRS) regulations, not withhold federal or state income taxes or social security and Medicare taxes from a

Recipient's Section 207-c payments. The Village shall provide the Recipient with an annual W-2 statement that does not include Section 207-c benefits as wages and salary.

4. A Recipient who is receiving examinations or treatment and has returned to specified light duty, shall make every effort to schedule such examinations or treatment during non-work hours. If he/she is unable to do so, necessary time off will be granted and shall not be charged to any accrued leave time.

5. In the event that any portion of this procedure is invalidated by a final decision of a tribunal of competent jurisdiction including the Public Employment Relations Board, then that portion shall be of no force and effect, but the remainder of this procedure shall continue in full force and effect. In that event, either the Village or the PBA shall have the right to immediately reopen negotiations with respect to a substitute for the invalidated portion pursuant to the Taylor Law.

6. Payment of Section 207-c benefits shall be discontinued with respect to any Recipient who is granted an applicable disability retirement pension as provided by law.

7. A Claimant or Recipient must fully cooperate with the Claims Manager in the administration of this Section 207-c procedure.

8. This procedure shall be incorporated into the collective bargaining agreement of the parties as an addendum, but shall not be subject to the grievance and arbitration procedure contained in the collective bargaining agreement. Therefore, disputes concerning the administration of this procedure may be referred to a hearing pursuant to Section 9(1),(2),(3) of the Procedure.

APPENDIX "A"
VILLAGE OF OWEGO

GENERAL MUNICIPAL LAW SECTION 207-c APPLICATION

1. _____

Name of Officer

2. _____

Address to which correspondence concerning application should be directed.

3. _____ 4. _____

Telephone Number

Date of Birth

5. _____

Name of Sergeant/Supervisor

6. _____

Current Job Title

7. _____

Occupation at Time of Injury/Illness

8. _____

Length of Employment

9. _____ 10. _____ 11. _____

Date of Incident

Day of Week

Time

12. (a) _____

Name of witness(es) and address(es) (if available)

(b) _____

(c) _____

13. (a) _____

Name of co-employees at the incident site.

(b) _____

(c) _____

14. Describe what the officer was doing when the incident occurred. (Provide as many details as possible. Use additional sheets if necessary.)

15. Where did the incident occur? Specify. _____

16. How was the claimed injury or illness sustained? (Describe fully, stating whether injured person slipped, fell, was struck, etc., and what factors led up to or contributed. Use additional sheets if necessary.) _____

17. When was the incident first reported? _____

To Whom? _____ Time _____

Witness(es) (if any) _____

18. Was first aid sought and/or medical treatment authorized? _____

By Whom? _____ Time _____

19. Name and address of attending physician _____

20. Name of Hospital or Medical Facility _____

21. State name and address of any other treating physician(s) _____

22. State nature of injury and part or parts of body affected _____

23. Will the officer be returning to work (If known)? _____ When? _____

24. The name and address of my representative to whom a copy of any decision concerning the application should be sent:

I SUBMIT THIS APPLICATION PURSUANT TO THE POLICY AND PROCEDURE GOVERNING THE APPLICATION FOR AND THE AWARD OF BENEFITS UNDER SECTION 207-c OF THE GENERAL MUNICIPAL LAW. I UNDERSTAND THAT THE LAW PRESCRIBES PENALTIES FOR PERJURY, FOR KNOWINGLY MAKING FALSE STATEMENTS IN A WRITTEN INSTRUMENT OFFERED FOR FILING WITH A PUBLIC ENTITY SUCH AS THE VILLAGE, AND FOR WILLFULLY MAKING FALSE STATEMENTS IN CONNECTION WITH A CLAIM FOR BENEFITS. BY SIGNING MY NAME BELOW I HEREBY AFFIRM UNDER PENALTY OF PERJURY THAT THE INFORMATION AND STATEMENTS I HAVE MADE HEREIN ARE TRUE.

(Signature of Applicant if other than Injured Officer)

(Date)

Application Received By:

Signature of Person Authorized to Receive Application)

(Date)

Date of Report

_____, New York

Signature of Injured Officer

APPENDIX "C"
VILLAGE OF OWEGO

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

To: _____:

[Name and address of person or organization releasing medical information]

I, the undersigned, _____, authorize the above-named person or organization, to release my health-related information and/or materials (as indicated below) to:

[Name & address of person or organization to which disclosure is made]

This Authorization covers the medical information selected below:

The following Medical information:

Psychotherapy Notes (If this Authorization is for Psychotherapy Notes, do not check any other box; an authorization for Psychotherapy Notes cannot be used with any other authorization for the release of medical information)

Other as specified: _____

This Authorization also includes authority to copy any and all such records.

The purpose for this Authorization is:

This Authorization expires on: _____ or on the occurrence of the following event:

Treatment, payment, or enrollment in a health plan or eligibility for benefits will not be conditioned on signing this Authorization. I may revoke this authorization at anytime in writing. Such revocation will not affect any use or disclosure already taken in reliance upon this Authorization.

Award on Remaining Issues

Except for proposals and/items previously agreed upon by the parties herein, any proposals and/or items other than those specifically modified by this award are hereby rejected by the panel.

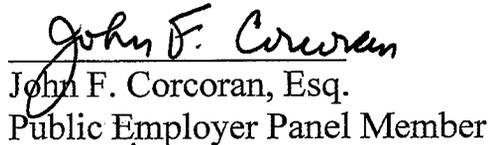
Implementation and Retention of Jurisdiction

This procedure shall be implemented immediately and shall also be applicable to any presently pending Section 207-c situation or claim within the Village. Furthermore, the Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this opinion in award.



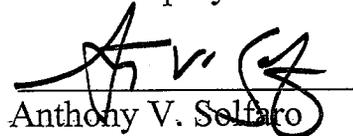
John T. Trela
Public Panel Member and Chairman

Date of Award 7/5/12



John F. Corcoran, Esq.
Public Employer Panel Member

Date of Award _____

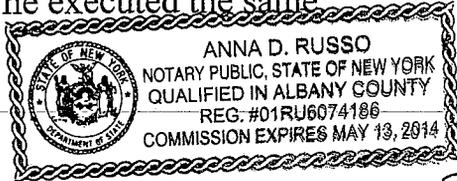


Anthony V. Salfaro
Employee Organization Panel Member

Date of Award 6/19/12

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

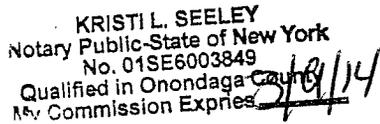
On this 5th day of July, 2012 before me personally came and appeared John T. Trela to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same



[Signature]
Notary Public

STATE OF NEW YORK)
COUNTY OF)ss.:

On this 22nd day of May, 2012 before me personally came and appeared John F. Corcoran, Esq. to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

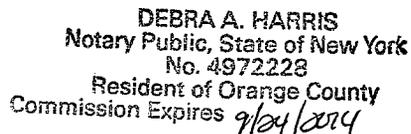


[Signature]
Notary Public

STATE OF NEW YORK)
COUNTY OF Orange).:

On this 19th day of June, 2012 before me personally came and appeared Anthony V. Solfaro, to me known and known to me to be the individual described in the foregoing instrument and he acknowledged to me that he executed the same.

[Signature]
Notary Public



**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

**In the Matter of the Compulsory Interest Arbitration between
VILLAGE OF OWEGO,**

Public Employer/Petitioner,

**CONCURRING
OPINION**

-and-

OWEGO POLICE BENEVOLENT ASSOCIATION,

Public Employee Organization/Respondent.

PERB Case Nos.: IA2010-044; M2010-221

I write separately as the Village of Owego's Panel Member to respectfully respond to several points made by the Panel's Employee Organization Member in his partial dissent to the Opinion and Award.

First, I believe that the criticism of the Panel Chair's approach to his crafting of the Opinion and Award is overstated. The Opinion and Award does have evidentiary support, is not arbitrary or capricious, and is the end product of extensive Panel deliberations. I am of the view that the Opinion and Award does specify in sufficient detail the basis for its findings and evinces a proper consideration of the factors set forth in Section 209(4)(c)(v) of the Civil Service Law. Moreover, the statute does not require that the opinion and award specifically address each of the enumerated factors as to each of the individual disputed items.

Second, Section 6.2 of the awarded Section 207-c Procedure, which requires an employee contesting an order to report for regular or light duty to submit a "detailed report from a treating physician stating that the [employee] is unable to perform the regular duties or specified light duty and explaining the specific reasons for such [an] opinion", is fair and reasonable. It serves

several worthwhile purposes including but not limited to insuring that the employee's medical condition is truly in dispute and in need of formal resolution. The typical "doctor's note" would not necessarily answer that key question. The detailed report could also provide the Village an ability to craft a light duty assignment consistent with the employee's medical limitations, in recognition that the employee may be capable of some but not all of the duties contemplated by the order to report to duty. The typical "doctor's note" would not facilitate that sort of analysis.

Third, the dissenting opinion's criticism of the awarded hearing officer mechanism for resolving non-medical disputes under the Section 207-c Procedure is unwarranted. The Procedure properly requires the hearing officer to confine his/her scope of review to whether the Village's Claims Manager had a reasonable basis for whatever determination is at issue. That is the "gold standard" under the applicable case law and one which reflects the proper measure of deference to the employer as the administrator of the Section 207-c Procedure. Moreover, the "reasonable basis" standard is akin to the well-established standard of review applied by a court in a CPLR Article 78 proceeding. Therefore, rendering the determination of the Hearing Officer subject to ultimate judicial review in an Article 78 proceeding is also entirely appropriate and recognizes that the courts are better equipped, and considerably more experienced, in applying that standard of review than are arbitrators who typically view cases before them from a de novo perspective.

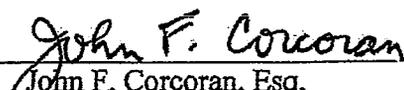
Furthermore, I do not agree with the dissent's speculative assertion that the Village could not initiate an Article 78 proceeding to seek judicial review of a hearing officer's decision with which it might not agree. I am unaware of any case law supporting that novel argument. Moreover, the notion of Article 78 review of hearing officer decisions involving Section 207-c matters is not foreign or strange but rather reflects an accepted practice. See, e.g., Ridge Road

Fire District v. Schiano, 16 N.Y.3d 494, 44 PERB ¶ 7507 (2011)(fire district brought Article 78 proceeding challenging hearing officer's grant of disability benefits under the analogous Section 207-a of the General Municipal Law, and Court of Appeals vacated hearing officer's determination as being arbitrary and capricious thereby reinstating fire district's denial of benefits).

Fourth, leaving it to a hearing officer to resolve claimed violations of the Section 207-c Procedure subject only to later judicial review under Article 78, as opposed to exposing such claims to de novo arbitration under the grievance and arbitration procedure of the Village's and the PBA's collective bargaining agreement, is perfectly sensible. What the PBA apparently sought, and did not achieve, was a vehicle by which to divert disputes into de novo arbitration in derogation of the more deferential standard of review to which employers are entitled when it comes to administering their obligations and rendering their determinations under Section 207-c. See County of Chemung, 44 PERB ¶ 3026 (2011)(finding that Union's proposed hearing procedure calling, as is the case here, for a hearing before a neutral hearing officer resulting in a binding decision with the ultimate authority for resolving the dispute resting with an Article 78 court was a mandatory subject of bargaining, and therefore properly before an interest arbitration panel, because it did not expressly or implicitly call for a de novo review of the employer's determination of a claim for Section 207-c benefits).

Finally, to suggest that the named hearing officers, all well-respected adjudicators in public sector labor relations, would not apply the applicable standard of review in a fair manner, and somehow unfairly advantage the Village, is sheer speculation and unduly pessimistic.

Dated: June 28, 2012


John F. Corcoran, Esq.
Employer Panel Member

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

-----X
In the Matter of Compulsory Interest Arbitration

-between-

VILLAGE OF OWEGO,

Employer/Petitioner,

**PERB Case Nos.
IA2010-044; M2010-221**

-and-

OWEGO POLICE BENEVOLENT ASSOCIATION,

Employee Organization /Respondent.

-----X

DISSENTING OPINION OF ANTHONY V. SOLFARO

EMPLOYEE ORGANIZATION PANEL MEMBER

This interest arbitration proceeding was initiated by the Village of Owego (Village) and it is limited to a dispute between the Village and the Owego Police Benevolent Association (PBA) concerning the substantive benefits to be extended to police officers who become disabled as a result of the performance of their job duties and the procedures to be applicable to disability claims arising under General Municipal Law (GML) 207-c.

The scope of the dispute was narrowed by agreements reached between the PBA and the Village and those agreements properly have been incorporated into this award. As to the several areas of disagreement remaining between the parties, certain of them were resolved by an award upon terms consistent with PBA demands and certain others were resolved upon terms proposed by the Village. I do not dissent as to every aspect of this award. I understand and accept that interest arbitration awards rarely adopt one party's demands across the board or exactly as that party has proposed. That said, I must dissent from certain of the Chairman's rationale and, more often, the total absence thereof. I file this dissent to try to prevent future panel chairs from repeating what I consider to be this Chairman's major mistakes. I also dissent from certain of the specific terms of this award as discussed hereafter.

As to the statutory "comparability" criterion, the Panel Chairman adopts the Village's comparables that were chosen based on size of municipality. GML §207-c rights and obligations, however, are exactly the same for all municipal police officers and, therefore, the size of the government that employs the police officer has nothing to do with comparability. Upon job related disability issues, municipalities and their police officers come into an interest arbitration proceeding identically situated upon the comparability criterion regardless of size of the government. The Chairman comes to his conclusion about the comparables without any explanation or rationale. At the very least, the Panel Chairman should have explained in the award why size of government matters as to the statutory comparability criterion. The Chairman did not explain his determination because he could not. He just made a pronouncement and that is unacceptable.

As noted above, the parties had a few unresolved differences regarding the substantive benefits a disabled police officer should receive and for how long, and they had some differences as to the procedures to be followed in regard to disability claim filing, determination and appeal.

As to substantive disability benefits, the Panel Chairman identifies the benefits in dispute and he then summarizes the parties' arguments as to why the benefits should or should not be received by a disabled employee. That same approach is adopted by the Panel Chairman for the parties' dispute about claim procedures. The Chairman then makes an award upon the disputed substantive and procedural issues, but the award does not at all explain why certain benefits were denied or others were limited in scope or duration, and why certain claim procedures were adopted and others were rejected.

Compulsory interest arbitration panels are required by law to explain why they have made the awards they make. That explication requirement is the least the parties, the public and the judiciary deserve. It is not enough that the members of an arbitration panel themselves may know why an award was made, assuming even they know. The award by its terms must explain why it was reached in light of facts and the specified statutory criteria and this one does not. No one reading this award will know why this Panel majority came to any of the determinations it comes to. They will know what was in dispute. They will know, to some limited extent, the parties' arguments pro and con their demands. What they do not know from this award are the reasons for the majority award because there is no explanation given. That complete failure to explain is a disservice to the parties, their representatives, the public, PERB, the State Legislature and the members of the judiciary who are called upon from time to time to review interest arbitration awards for confirmation, modification or vacatur.

As to the substantive benefits that were flatly denied (shift premium; holiday pay) and the limitation imposed to leave time earnings and accruals, the award is, by its very terms, an attempt to "balance" the parties' differing positions. That "split-the-baby" approach, however, is unacceptable even if it had been explained. That approach entails imposed compromise for the sake of compromise that disregards the facts of record, the statutory criteria, and the merits of the parties' respective arguments.

The parts of the award concerning procedures present more important issues than do the substantive economic benefits that were denied or limited because the procedures govern every aspect of disability claim filing, processing, determination and appeal. Those procedures must be fair, clear and workable. Anything else will only cause problems between the parties and likely litigation. I believe that the award in this proceeding in the following respects is not the fair and reasonable award it is required by law to be.

Section 6 of the awarded GML §207-c procedure pertains to light duty assignments. The Village is permitted under subsection 1 to order a disabled employee to light duty upon a doctor's examination and a simple determination by the Village's Claims Manager that the employee is capable of performing light duty. The employee who contests a light duty order, however, is held to a far higher standard. The award requires an employee to submit within fourteen (14) days a "detailed report from a treating physician" in which the employee's doctor is to state that the employee is unable to perform the light duty assignment giving "specific reasons for such opinion."

There is no "balance" in this part of the award contrary to the Panel majority's own stated goal. The Village is not held to so high a standard. Only the employee is held to strict time and detail requirements. It will be extremely difficult, if not impossible, for an employee to be seen by a doctor within fourteen (14) days who is willing and able to prepare a "detailed", "specific" medical rebuttal to the Village's light duty determination. Moreover, there are no standards in the award as to what will be sufficiently "detailed" or sufficiently "specific". That opens the door to the Village concluding that whatever the employee submits is not "good enough" and that may produce litigation to neither party's advantage.

Under the terms of the award, officers who are working light duty are entitled to "the contractual benefits" under the applicable collective bargaining agreement. As I told the Panel Chairman many times, the award should have stated that light duty officers are entitled to "all" contractual benefits. Officers on light duty are working at the Village's order in the assignment given to them by the Village. As working employees, they are entitled as of right to the wages and benefits being received by any other working police officer. The word "the" in context is

unclear and, once again, the use of that word opens the possibility to the Village reading it narrowly and denying the light duty officer the contractual benefits the officer is owed. That, again, sets the table for litigation. That result could have been avoided easily, but the Chairman, for no known or articulated reason, rejected my position and wrote something that is ambiguous and that serves only the Village's interests.

The award permits for a hearing on disputed disability issues before a panel of named Hearing Officers, which Hearing Officer's decision is "reviewable pursuant to the provisions of Article 78 of the Civil Practice Law and Rules".

I did not agree with all of the Hearing Officers named in the award and as such, only those who were mutually acceptable should have been appointed. That aside, because all of the Hearing Officers are arbitrators, the hearing being held before them should have been a standard arbitration proceeding resulting in an arbitration award that is reviewable by either the Village or the PBA under CPLR Article 75, not CPLR Article 78. Once again, there is no explanation in the award for the result the Chairman reaches.

If an employee loses before the Hearing Officer, that employee will face the nearly impossible task on appeal under CPLR Article 78 to prove to a court that the Hearing Officer's decision was "arbitrary" for some reason. That greatly and unfairly advantages the Village and the Village knows it, which is why it insisted upon review under CPLR Article 78.

If the employee wins before the Hearing Officer, and the Village seeks to appeal, there will be substantial questions as to whether the Village can even bring such a proceeding. CPLR Article 78 allows for review of governmental actions. There is no governmental action in issue when the government's decision has been rejected by the Hearing Officer. That aside, who are the proper respondents? The Hearing Officer? The employee? The PBA? I do not believe that any of these are proper CPLR Article 78 respondents and I do not believe that an interest arbitration panel has the power by an award to expand the judiciary's jurisdiction that is set by law. In his desire to give one to the Village, this Chairman may have given it nothing.

Imposing CPLR Article 78 review thus raises multiple questions, none of which would have been present if this Panel Chairman had just established a clean arbitration proceeding for disability disputes resulting in an arbitration award that could be reviewed by either the Village or the PBA under the clear standards set forth in CPLR Article 75. The failure to award a clean arbitration hearing is all the more inexplicable and unfair because several of the Village's own comparables, that the Chairman adopts, have GML §207-c procedures that contain arbitration provisions.

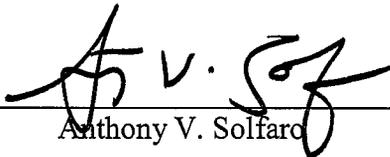
Under another part of the award, the Panel Chairman makes this GML §207-c procedure an addendum to the parties' collective bargaining agreement, but he then exempts any claimed violations of any of the terms of the GML §207-c provisions from the contractual grievance/arbitration procedure. That was done, again, at the Village's insistence because it knows that the PBA's inability to grieve greatly advantages the Village. Instead, claimed violations of the GML procedure are submitted under the award to the named Hearing Officers for a decision subject to CPLR Article 78 review.

There is not one reason given in the award for exempting claimed violations of the GML §207-c provisions from the contractual grievance/arbitration provisions. None were given because there are not any I can think of that are reasonable or persuasive.

Having correctly and properly made the GML §207-c procedure a part of the parties' CBA, there was no reason to exempt claimed violations of that procedure from the grievance/arbitration provisions of the CBA. Grievance/arbitration procedures exist for the very purpose of allowing parties to present claimed violations of any of the terms of a collective bargaining agreement to an arbitrator for an opinion and award with review pursuant to CPLR Article 75. The GML §207-c Hearing Officers do not sit to decide contract questions. Their function is to decide disability issues. Making these Hearing Officers the enforcement mechanism for violations of the CBA is just inappropriate. Far worse, this was done by the Panel Chairman knowing that the determination would advantage the Village and would disadvantage the PBA and the disabled police officers it represents. That is unconscionable.

Job related disability is a fact of life for most police officers. For most, it is only a question of when, where and how bad. It is vitally important, therefore, that there be a comprehensive GML §207-c procedure in place. There is one now as a result of this award, but it is not what it should have been. Despite my criticisms of this procedure, the best I can say about it is that having a procedure is better than not having one at all. This award, however, could have been and should have been better and better, ultimately, for both parties. In his zeal to compromise and get out a result, this Chairman has set the stage for what I fear will be both litigation and prolonged negotiation in the future to deal with the several issues addressed herein. That is unfortunate because those results could have been avoided.

For these reasons, I dissent.



Anthony V. Solfaro
6/19/12

Dated

Sworn to before this
19th day of June, 2012



NOTARY PUBLIC

DEBRA A. HARRIS
Notary Public, State of New York
No. 4972228
Resident of Orange County
Commission Expires 9/20/2014