

**INTEREST ARBITRATION PANEL**

**IN THE MATTER OF THE INTEREST ARBITRATION**

**Between**

**THE TOWN OF NORTH GREENBUSH, NEW YORK**

**And**

**NORTH GREENBUSH POLICE BENEVOLENT ASSOCIATION**

**NYS PERB CASE #: IA2011-020  
M2010-323**

**OPINION**

**AND**

**AWARD**

**The Arbitration Panel members are:**

Ira B. Lobel, Esq.  
Public Panel Member and Chairperson

Elayne G. Gold, Esq., Roemer Wallens Gold & Mineaux, LLP  
Employer Panel Member

Ennio J. Corsi, Esq., General Counsel, Council 82, AFSCME, AFL-CIO  
Union Panel Member

**Appearances:**

For the Town of North Greenbush :  
Dionne A. Wheatley, Esq., Roemer Wallens Gold & Mineaux, LLP

For the North Greenbush Police Benevolent Association  
Matthew P. Ryan, Associate General Counsel, Council 82, AFSCME, AFL-CIO

**INTRODUCTION**

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the New York State Public Employment Relations Board, by letter dated December 7, 2011, designated the Chairperson, the Public Employer, and Employee Organization Panel Members, to make a

just and reasonable determination of the outstanding issues in the collective bargaining dispute between the Town of North Greenbush (hereinafter referred to as the "Town") and the North Greenbush Police Benevolent Association (hereinafter referred to as the "Union").

The collective bargaining agreement ("CBA") expired on December 31, 2010. After the parties failed to reach agreement in direct negotiations, impasse was declared. Ira Lobel, the neutral chair in these proceedings, was appointed in March, 2011, to serve as mediator.

Settlement was not reached during mediation and the Union filed a Petition for Compulsory Interest Arbitration on or about October 7, 2011. The Town filed a response on or about October 20, 2011. Simultaneously with its response, the Town filed an Improper Practice ("Scope") Charge objecting to arbitrability of certain proposals submitted by the Union. The Union has also filed a Scope Charge with the New York State Public Employment Relations Board ("PERB"). Both matters are pending at this time.

Ira B. Lobel was appointed Chairperson of the Arbitration Panel ("Panel"); Ennio J. Corsi and Elayne G. Gold were designated as panel representative for the Union and the Town, respectively. The interest arbitration hearing was held on May 1, 2012, in Wynantskill, New York. Both parties were represented by counsel and introduced oral and written evidence, examined and cross-examined witnesses, and otherwise supported their respective positions on the outstanding issues. The parties timely filed post hearing briefs on or about June 15, 2011.

The Panel met in executive session on July 11 and August 7, 2012, and by phone on August 17, 2012, and deliberated on each of the outstanding issues. The Panel has carefully and fully considered all the data, exhibits, briefs, and testimony of the sworn witnesses. The results of those deliberations are contained in this OPINION AND AWARD ("Award").

The Panel considered each item individually and the impact of each item upon the entire

agreement and working relationship. This Award is the result of these 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.

### **BACKGROUND REGARDING THE TOWN OF NORTH GREENBUSH**

The Town of North Greenbush has a population of approximately 12,000 inhabitants. The bargaining unit is composed of 3 full-time sergeants, 14 full-time and 1 part-time police officers, and 2 full-time and 3 part-time dispatchers. The Department also has a police chief and lieutenant, both of whom are excluded from the unit. This interest arbitration proceeding is only applicable to the police officer titles.

The contract period for this arbitration award goes from January 1, 2011 until December 31, 2012. Unless the parties agree to accept a longer contract, the panel is limited to this period. In this instance the parties did not agree to a longer period.

The Town also has contracts with two other bargaining units. Employees in the highway department are represented by CSEA and have a contract that runs from January 1, 2011 through December 31, 2013. Most of the office employees in the Town are represented by UPSEU. During the time the Panel was meeting to develop this Opinion and Award, the UPSEU and North Greenbush reached a new tentative agreement for the term January 1, 2012 to December 31, 2014.

### **PARTIES' POSITIONS AND DISCUSSION REGARDING STATUTORY CRITERIA**

Under the Taylor Law, the Panel is charged with analyzing four different factors. This analysis is set forth below.

#### **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."

The Union argues that the appropriate comparisons are police departments in Coeymans, Colonie, East Greenbush, Guilderland, Stillwater, and Schodack. The Town includes all of the above towns except Colonie and Guilderland.

The Union argues that the communities it offered were the same ones used in the

previous interest arbitration award issued in October, 2004 ((IA2003-010; M2002-284). It maintains that the arbitration panel in that matter determined, with no objection from the Town's panel member, that the towns referenced above comprise the proper universe of comparable jurisdictions for North Greenbush. Since comparability was already decided, the issue should not be addressed again unless there is a showing of a dramatic change in the standards used: population, geographic area, number of police officers, property laws, budget, and tax base. The Union maintains there is no showing of a "dramatic change" warranting an undoing of the comparable jurisdictions used in one interest arbitration and two subsequent negotiated contracts.

The Town argued that Colonie and Guilderland should not be included. The Town maintained the same rationale used by the previous arbitration panel to exclude Bethlehem should have been used to exclude both Colonie and Guilderland. It claimed that both have larger police forces and substantially wealthier communities. It also noted the importance of comparing contracts with the same expiration date.

**Discussion.** The Panel has carefully considered the parties' positions regarding comparability. The conclusions drawn by this Panel regarding comparability have an impact on the final determination of this Panel. The parties agree that Coeymans, East Greenbush, Glenville, Stillwater and Schodack should be included for comparability. There is disagreement over Colonie and Guilderland. For the reasons set forth below, all of the above towns will be included in our analysis, within the guidelines expressed below.

Determination of the appropriate comparable jurisdictions, as required by law, is not an exact science. The law does not require this panel to specifically state that the police officers in this particular case must be compared to a specific jurisdiction or group of jurisdictions. The law requires that this panel compares wages, hours and conditions of employment of the employees

in the Town of North Greenbush with other employees similarly situated. Any conclusions developed involve a multifaceted analysis in which a variety of factors are considered.

In making comparisons, it is impossible to conclude that any town, or group of towns, is so similar that a direct comparison should be made. This is true even for the towns referenced by both the Union and the Town. Each town cited by the parties has a basis for a valid comparison; none of the towns are so close that an exact correlation can be made. For example, some contracts might emphasize paying more money for junior employees; others may put emphasis on senior employees; still others may choose to emphasize benefits in lieu of wages. Each decision will have an impact in any comparative analysis.

Additionally, larger and/or wealthier towns normally pay better than smaller and/or less affluent communities. This could justify the exclusion of Colonie and Guilderland. However, all of the towns mentioned recruit in the same labor market; all employers must be cognizant of the salary and fringe benefits in surrounding jurisdictions in order to properly recruit and retain quality employees. All are relevant; none can be conclusive.

Any analysis must also include the recent settlement with the CSEA and UPSEU units in North Greenbush. While neither is conclusive, treatment of other employees in the same jurisdiction must be factored into any decision made by this panel.

The Panel has also examined other recent settlements and tentative agreements, including those involving State employees, municipal employees in surrounding towns, and private employees. There is no question that there has been a significant downward trend in wage settlements in recent years. This trend must be factored into the Panel's decision.

Finally, it is inappropriate to focus only on salaries. Total compensation must be considered and must include actual pay, the percentage wage increase, benefit changes, **and** the

overall compensation package in other jurisdictions. To the fullest extent practical, the overall compensation package should include wages, benefits, and other forms of compensation. Each contract also can emphasize different aspects of the compensation package.<sup>1</sup> Additionally, some of the benefits affect employees differently.<sup>2</sup> It is necessary to examine average total compensation to analyze whether wages, hours, and conditions of employment are comparable.

Taking all of this into account, the overall wages of the policemen in North Greenbush are comparable in the beginning stages of one's employment and lag behind as officers accrue greater seniority. These details will be analyzed further in our discussion of the specific open issues.

## **2. INTERESTS AND WELFARE OF THE PUBLIC AND THE ABILITY TO PAY**

Another factor to be considered is the "interests and welfare of the public and the financial ability of the public employer to pay." In the current economic climate facing all municipalities, this factor has become particularly difficult to evaluate. In many locations, revenue from the general tax levy (property tax) and sales tax is flat or declining.

The Town described in detail many of the challenges it is currently facing. It noted the lack of audits and sloppy bookkeeping by previous Comptrollers put the Town in a perilous and uncertain position. While Comptroller Anthony Germano sees the budget crisis as improving, he maintains that the Town is still facing significant challenges. For example, Mr. Germano noted an improvement in the fund balance in 2011 because the Town collected more than expected in

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1 For example, one jurisdiction could emphasize starting salaries; another could stress salaries for senior employees. Other jurisdictions could pay employees through a shift differential, longevity, or clothing allowance. All of these variables must be considered for a thorough comparison.

2 For example, the value of health insurance benefits can widely vary based on the need for single or family plan or a buy-out; longevity pay will benefit senior employees differently from junior employees.

sales tax revenue. This is in contrast to a fund balance that declined during the previous seven years.

Nevertheless, Comptroller Germano is still concerned about a number of possible financial setback events that could change the fund balance to a negative number in short order. For example, there are possible costs involving the merger of the fire departments in North Greenbush and DeFreesville, a payment (or non-payment) of \$350,000 owed by a local non-profit, a payment of \$80,000 owed to the Highway Fund, and the possible purchase of two new police vehicles.

Gary Storrs, the economist retained by the Union stressed the positive fund balance maintained by the Town. He noted that the fund balance in the general fund finished 2011 at \$191,829, or 5.2% of fund's spending for the year, well above the 4.8% listed as "good" by Standard & Poor's. He noted that the net debt per capita is "low." Mr. Storrs also emphasized the increase in sales tax revenue for 2011. He also noted that real property taxes have been increasing, despite national trends to the contrary. Overall, he concluded that the Town is in good fiscal condition.

After a declining fund balance in seven of the last eight years, it may be prudent for the Town to take a cautious approach and focus on rebuilding the balance before committing to significant additional expenditures. Furthermore, there is significant public concern voiced with any tax increase. Compounding this difficult political situation is the uncertainty regarding the impact of the State imposed 2% property tax cap and the potential decline in State aid to municipalities.

### **3. PECULARITIES OF THE PROFESSION**

There is no doubt that police officers are engaged in a dangerous profession. In terms of the hazards of employments, the physical qualifications, educational demands, and mental qualification, police in any town can face a myriad of daily problems. As society becomes more complex, these demands can increase, even in a small town such as North Greenbush. Police officers in North Greenbush face similar challenges to police officers elsewhere.

### **4. PAST NEGOTIATIONS AND BARGAINING HISTORY**

This is the first interest arbitration hearing between the parties since 2003. The two previous contracts were settled without a binding decision by a third party.

The Panel recognizes that the current wages and working conditions of the police officers are the cumulative result of previously agreed upon collective bargaining agreements. For good or bad, the comparative position of the police officers in other cities and towns is the result of these collectively bargained agreements. The Panel must acknowledge and recognize that prior agreements were arrived at for good and valid reasons, taking into account economic conditions and other settlements in the Town and elsewhere.

### **DISCUSSION OF SPECIFIC PROPOSALS**

Both sides have brought a significant number of proposals to be considered by the Panel, an indication of the status of bargaining between the parties before the declaration of impasse. The Panel has carefully discussed and considered each and every item submitted to arbitration. For a number of issues, because of particular importance to one of the parties or its relationship to other issues, the Panel has specifically stated its rationale for leaving the language unchanged

from the previous contract. Otherwise, any proposal not mentioned should remain as contained in the current contract. If the subject matter is not in the contract, the status quo should remain.

**1. ARTICLE X, SECTION B, 15: RELIEF OFFICER (Town Proposal #11)**

The current contract language reads as follows:

The relief officer will be scheduled for forty hours per week. However, the Chief may exercise the following option in scheduling the relief officer: thirty two consecutive hours on the same shift (A,B,C, D line) and eight (8) consecutive hours on another shift.

**Position of the Town.** The Town seeks to modify the above language by exercising the following additional option in scheduling the relief officer: twenty-four consecutive hours in the same shift (A,B, C, D line) and sixteen hours on another line.

**Position of the Union.** The Union acknowledges this proposal would provide more flexibility, but argues that the impact on the relief officer's personal life could be significant.

**Discussion.** The purpose of a relief officer is to fill in for vacancies that routinely occur. In small departments such as North Greenbush, such flexibility is particularly important. The Panel agrees that providing the Chief with the opportunity to schedule another shift for the relief officer could be extremely helpful without being overly disruptive to the employee involved.

The language developed maintains the same notice as present in the current contract. However, the Panel has a made a slight modification in the proposed language to ensure that there could be no more than two different shifts assigned to the relief officer during the week.

**Award.** The following language shall be substituted for Section 15 above;

The relief officer will be scheduled for forty hours per week. However, the Chief may exercise the following options to the standard workweek in scheduling the relief officer: thirty two consecutive hours on the same shift (A,B,C, D line) and eight (8) consecutive hours on another shift; or twenty-four (24) consecutive hours on the same shift (A, B, C, D line) and sixteen (16) consecutive hours on another line.

## **2. ARTICLE 10, SECTION D, POSTING OF COMP TIME (NEW) (Union Proposal #10)**

**Position of the Union.** The Union seeks to add a section that would require compensatory time to be posted conspicuously for review by all officers. There would be a new section in the CBA as follows:

Comp time shall be posted monthly in an area accessible to the members.

**Position of the Town.** The Town argues that this proposal is an administrative matter that should be referred to Labor Management discussions between the Chief and union representatives.

**Discussion.** An issue such as this is often raised because, for whatever reason, officers do not believe they have ready access to comp time records. From a personnel standpoint, it is usually a good idea to make sure all officers know what their comp time accrual is. If a mistake arises, it can be corrected quickly. The Panel agrees that posting these records on a monthly basis is simply a good personnel practice.

**Award.** The language proposed by the Union shall be incorporated into the contract.

## **3. ARTICLE X, SECTION D, HOME VISITATION FOR CALL-INS (NEW) (Union Proposal #8)**

**Position of the Union.** The Union seeks to eliminate the practice of going to an officer's home in an attempt to secure their presence for an emergency order back assignment by adding the following new section:

When it is necessary to order members for patrol in an emergency, the order back procedure will not include going to the members' residence.

**Position of the Town.** The Town notes that no evidence was introduced as to how prevalent the practice was. It also asserts that this is an issue best addressed in labor management discussions.

**Discussion.** With current technology, an officer can use caller ID to screen calls. He/she can easily refuse to answer the phone and avoid any call back. This makes the call-in process more difficult than a number of years ago. While it is understandable that, for a variety of good and valid reasons, an officer may refuse a call back, the Department must have the ability to obtain necessary coverage.

Visiting a person's home to order one in for an emergency can be an unwarranted intrusion into an officer's personal life. It can also be administered in a manner that can easily be perceived to show favorites and preferences for or against certain employees.

The current methodology used for call-ins is not included in the contract. The Panel is reluctant to add a prohibition against a certain practice when the details of that practice are not entirely clear. Accordingly, the Panel will direct the parties to attempt to memorialize the current practice regarding emergency order back. Once this is completed, a sentence prohibiting visiting an officer's home to effectuate the call-back shall be added. As with most language of this type, there should be an exception for unusual circumstances.

**Award.** The parties are directed to memorialize the current practice regarding emergency call back. This could be accomplished as a contract provision, a side letter, or a memorandum of agreement. Included in these practices shall the following sentence:

When it is necessary to order members for patrol in an emergency, the order back procedure will not include going to the members' residence, except in unusual circumstances on a non-discriminatory basis.

#### **4. ARTICLE X, SECTION D, SUBSECTION 3, CALL-IN (Town Proposal #5)**

The current contract provides the following:

3. Call back shall be a minimum of three (3) hours. Any member who shall be called back to duty shall be compensated at a pay rate of time and one-half per

hour for each hour worked, based on the respective member's regular hourly wage. Call back to duty shall mean returning to active duty with the Police Department, as well as being required to appear or give testimony before any Grand Jury, court, departmental or agency hearing, which may compel a members' attendance, either by subpoena, written notice, or by direction of a superior officer. This shall not, however, include testimony on behalf of the Union or one of its members at a grievance arbitration or disciplinary proceeding.

This callback provision shall not apply in any case when a call back to duty is a direct extension of a regularly scheduled tour of duty for that member: In this case, the member shall be compensated in accordance with the standard overtime provisions as detailed in this contract.

**Position of the Town.** The Town seeks to change the language in the second paragraph to the following:

This call back provision will not apply in any case when an employee is called back to duty either directly before or asked to stay as an extension of a regularly scheduled tour of duty for that member. In these instances, the employee shall be compensated in accordance with the standard overtime provision as detailed in this contract.

**Position of the Union.** The Union argues that the current language is clear and should be maintained .

**Discussion.** The Union maintains that this proposal merely restates that which already exists. It states in its brief that a shift can be extended beforehand or afterward under the terms of the current language.

Examining both the current language and the Town proposal, the Chairperson concurs with the Union's assessment. However, reasonable people could differ on its interpretation and infer that the current language does not apply to pre-shift assignments. The language proposed by the Town leaves no room for differing interpretations.

Contract language is sometimes written in a manner that can lead to different interpretations. When the parties both agree on the same approach, it behooves both sides to

eliminate any possible divergent interpretations. The language proposed by the Town accomplishes additional clarity. It would not change any of the current practices of the parties (such as call-ins for court appearances); it would simply clarify that calling one early and keeping one late does not require a three hour minimum.

*Award.* The second paragraph proposed by the Town is incorporated into this Award.

#### **5. ARTICLE XIV, SECTION E, PBA BUSINESS LEAVE (Town Proposal # 12)**

The current contract reads as follows:

The president or his/her designee and the vice president shall be allowed all necessary release time with full pay to participate in negotiations with the employer or connected there with if conducted during their regular duty hours, to adjust grievances and to participate in all hearings and functions pertaining to the implementation of this agreement. The president and the vice president or his/her designee shall be entitled to a maximum of three (3) days release time at full pay to attend regional and state conferences or affiliated associations or organizations.

**Position of the Town.** The Town is seeking to add the following sentence to the above language:

In the event that the President and/or Vice-President are designating time to a "designee", the Police Chief must be provided with prior written notice of same.

The Town argues that a courtesy notice would avoid any potential dispute that the union leave day was used or that the officer did not have the authority to use the union leave time.

**Position of the Union.** The Union argues that this proposal leaves the Town the opportunity to use its discretion to deny a request by saying the notice of designation was too late or in some other improper manner.

**Discussion.** When this subject is addressed in contracts in other jurisdictions, a union official usually has to give the employer some type of written notice whenever he/she goes on released time. A written notice protects the employee; with such a notice, there can be no accusation of being improperly absent or AWOL. Reading this section for the first time, the Chairperson

queried why there was any opposition.

Based on the language of this contract, it is obvious that the President, Vice-President, and Chief have worked out a notice and approval system that is mutually satisfactory. When a designee is given release duty, it is not obvious who is going and when. A written notice makes sense for the protection of the designee and the ability of the Chief to make staffing changes, if necessary. It must also be noted that the proposed clause involves written notice, not written approval. Approval for the designee should exist in the same manner that currently exists for the President and Vice-President.

*Award.* The language proposed by the Town will be incorporated into the contract.

#### **6. SCHEDULE A, DATE FOR PAYMENT OF LONGEVITY PAY (Union Proposal #12)**

The current contract calls for payment of longevity on the first Wednesday in June.

**Position of the Union.** The Union seeks for longevity pay to be paid on the employees' anniversary date.

**Position of the Town.** The Town notes that changing to the anniversary date would be an added expense to the Town.

**Discussion.** Payment of the longevity payment is a lump sum payment. As such, the employee will receive the same amount whether he receives this lump sum payment on his anniversary date or in June, as required by the contract.

Nevertheless, employees often perceive that they are being shortchanged when a payment such as longevity is paid on a date other than the anniversary date. Employees usually recall their hiring dates; a longevity payment about the time of their hiring is a reminder that they have reached another milestone in their employment career.

Additionally, since most payroll systems are processed via a computer, changing the schedule to an anniversary date system should not involve significant additional cost. It is not the intention of the Panel, nor is it anticipated, that this change will result in any windfall or forfeiture for any unit member.

**Award.** Modify Schedule A to read.

Longevity benefits will be paid following the completion of the payroll period immediately following the employees' anniversary date.

## **7. ARTICLE XV, SECTION B1, HEALTH INSURANCE PREMIUM (Union Proposal #2)**

The current contract calls for the employer to pay one hundred percent (100%) of the single premium and fifty percent (50%) to the annual premiums for coverage of the dependents.

**Position of the Union.** The Union demands that the Town contribute 100% of the annual health insurance premium for individual and family coverage.

**Position of the Town.** The Town seeks to impose a ten percent (10%) employee contribution for the single premium. The family premium would remain the same.

**Discussion.** There are few items more explosive or controversial than the payment of health insurance. Costs of health insurance are increasing at a faster rate than the cost of living. The Town has attempted to keep premium costs down by making adjustment to the co-pays, benefiting both the Town and the employees paying the premiums.

For as long as Panel members can remember, health insurance has been a major issue in all negotiations. Employers understandably want to control costs on an item that is increasing in an uncontrolled manner. Employees understandably see any payment of the premium as reducing their net take home pay. Both positions are easily understood. These positions are so divergent that amicable solutions are often difficult.

The reality is that very few employees in today's world have an employer who pays 100% of the coverage for either a single or family plan. The other reality is that it is very rare for an employer to increase its percentage of its health insurance contribution. In most situations, the employer contribution to health insurance premiums decreases during the life of any renegotiated collective bargaining agreements.

Another reality dealing with health insurance is that each employee evaluates the benefit as it affects them. Accordingly, a person who needs single coverage does not normally care what happens to family coverage, or vice versa. This means that the evaluation must be examined as it affects the entire bargaining unit. Of the 15 officers in the bargaining unit, six take advantage of the buyout, 2 have single coverage, five have family coverage, and two officers are new (so they neither take health insurance nor are eligible to take advantage of the buyout).

The Town's proposal to impose a 10% premium contribution affects only two officers. If one looks at the premium contribution paid by the municipality for individual coverage in the comparable communities, two communities are at 100% (Guilderland and Schodack); Colonie and Glenville are at 90%, Coeymans as 75%; and East Greenbush is at 70%.<sup>3</sup> Based on these comparisons, individuals paying 10% of the premium is comparable to all the towns cited.

For family coverage, the benefit in North Greenbush is clearly inferior to all the comparable towns except Schodack. Schodack has the same benefit as North Greenbush. The key difference is that the Union is seeking to improve this section of the contract. This percentage has been in existence since at least the 1997-1999 CBA. This has been a long term provision in this contract; there is no justification to change it.

This view is further confirmed by the recent agreements between the Town and the

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<sup>3</sup> There is no reference to health insurance in Stillwater collective bargaining agreement.

CSEA unit and the Town and the UPSEU unit. Those agreements have the same provision for family coverage; both also changed the employee contribution for single coverage from 0 to 10% for current employees in this contract cycle.

**Award.** Employees with individual coverage shall pay 10% of the premium. This should become effective in the month following the date of this award. Percentage contributions for employees with family coverage shall remain as contained in the expired CBA.

#### **8. ARTICLE XV, SECTION B3, ELIMINATION OF MINIMUM USE REQUIREMENT FOR HEALTH INSURANCE BUYOUT (Union Proposal # 6)**

The current contract provides for a \$3,000 payment for employees who opt-out of Town provided health insurance. "In order to be eligible for this health insurance buy-out, an employee must have received Town provided health insurance for the previous three (3) years."

**Position of the Union.** The Union seeks elimination of this provision, arguing that it actually costs the Town money.

**Position of the Town.** The Town argues that the waiting period is appropriate. The Town also argues that paying such a stipend to probationary employees is not a proper use of the Town's limited dollars.

**Discussion.** Historically, health insurance buyouts first began as an effort to discourage double coverage when both husband and wife received 100% employer paid health insurance and received very little benefit for the second plan. The buyout was a mechanism to minimize double coverage and eliminate what was perceived as a waste of money in providing a second plan. Today, with most employees paying a percentage of the premium, few employees can justify having double coverage. This reality eliminates much of the purpose for the buyout.

Health insurance is a benefit that comes with employment. There should not be a reward

for people not taking the benefit. If the buyout concept was carried to a logical conclusion, all employees would receive the same value for health insurance, whether taking no coverage, a single plan, or a family plan. This would be neither realistic nor good public policy. Employees should receive the benefit based on what is needed, and not a reward for avoiding the benefit expenditure.

Three of the towns in the comparable group have no buyout. The other two units in North Greenbush have either never had the buyout or will eliminate it for new employees.

The three year waiting period contained in this contract has no logical basis and is unique. None of the panel members have seen such a provision in other contracts. The justification for having a buyout should be unrelated to an employee's seniority or prior participation in health insurance. However, modifying this benefit in the manner proposed by the Union would cost \$3,000 for each of the 2-3 employees not currently eligible. This would entail a significant cost to the Town.<sup>4</sup> The Panel believes that the buyout provision should be discussed for future employees, but cannot justify any expansion or modification of the current provision, both on the basis of cost and sound labor relations policy.

*Award.* The current language should remain the same.

## **9. DIRECT ECONOMIC ITEMS – WAGES AND SIMILAR BENEFITS**

### **Schedule A - Wages and Longevity (Union Proposal #1 and 3) Shift Differential – New (Union Proposal #11)**

**Position of the Union.** The Union seeks a 5% increase in base salary for both 2011 and 2012. It maintains that, by any comparison, North Greenbush officers are paid at or near the lowest of all the comparable departments. The Union also seeks a 10% increase at each longevity step. The

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<sup>4</sup> This cost would be significantly more than the estimated expenses of the shift differential discussed below.

Union also proposes adding a shift differential of \$.75 for the 11:00 PM to 7:00 AM shift and \$1.00 for the 3:00 PM to 11:00 PM shift. It notes that half of the towns in the comparable group have a shift differential.

**Position of the Town.** The Town has made no proposal for economic improvements, arguing that the fiscal condition of the Town does not warrant any increases in its financial obligations.

**Discussion.** Any examination of wages must include an examination of the total economic package, including items such as longevity and shift differential, if applicable. In evaluating any increase, two aspects must be examined – the actual wages and recent percentage increases. In addition, compensation must be evaluated at various stages of one's career, such as starting salary, five (5) year compensation, ten (10) year compensation, and maximum compensation. When evaluating rates at various points in an officer's career, one must also evaluate longevity and other direct economic benefits.

Evaluating the base wage, the starting salary for North Greenbush at the end of the last contract period was \$41,754. If a 2% per year increase was awarded, this would put the starting salary at \$42,589 in 2011, and \$43,440 in 2012. These salaries would be significantly above Coeymans and Stillwater<sup>5</sup>, within \$1250 of both Glenville and East Greenbush (one slightly higher, one slightly lower), and significantly below Schodack and Colonie. Guilderland has not had a contract since December, 2010; at that time, Guilderland had starting salaries about 7% greater than North Greenbush.

Based on the above, starting salaries in the Town are competitive and appropriate, especially with the inclusion of a 2% wage increase. An examination of the wage scales at the 5

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<sup>5</sup> The contract for Stillwater is for 2012 and shows an hourly rate of \$16.67 for patrolman. This computes to a yearly salary of \$34,674, based on a 40 hour work week, or a 2080 hour work year.

and 10 year mark, North Greenbush remains competitive with Coeymans and Schodack<sup>6</sup>, is far ahead of Stillwater (which has only one rate for its officers), and falls significantly behind Glenville and East Greenbush. If Guilderland and Colonie are included, these discrepancies become more significant. However, inclusion of these two towns, considering their wealth and size, is instructive but not controlling. The goal should be to maintain the differential in salaries between North Greenbush and these two wealthier and larger communities (or approximately the same percentage increase).

Based on the above, salaries are competitive with the comparable towns if 2% increases are awarded. Another variable to look at is the percentage increases. The chart below shows the percentage increases over the last several years, including 2013. This information comes from Employer Exhibit U and the contracts supplied by the Union (Union Exhibits 202-4).<sup>7</sup>

<b>Municipality</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
North Greenbush	3.0%	3.0%	Open	Open	Open
Coeymans	3.0%	2.5%	0%	Open	Open
East Greenbush	3.5%	2.0%	0%	3.0%	3.0%
Glenville	2.5%	2.75%	1.5%/1.5%	1.5%/1.5%	Open
Schodack	?	3.25%	3.25%	3.25%	Open
Stillwater	?	3.0%	3.0%	0%	Open
Colonie	?	3.25%	3.25	Open	Open
Guilderland	3%	3%	Open	Open	Open

Based on the above, it appears that the 2% wage increase is competitive, but slightly below the averages of the other settlements in the comparable towns. In most circumstances, the wage increases in other localities with settled agreements would warrant a similar percentage wage increase in the 2.5-3.0% range. However, many towns negotiated more than two years ago

<sup>6</sup> Schodack has a top rate at 7 years of service. In 2009, this was \$52,225; they are still operating under the terms of that agreement. Given this number and projecting a 2-3% per year increases for both North Greenbush and Schodack, it could be argued that 10 year salaries are competitive.

<sup>7</sup> A question mark indicates that, based on the information provided, it was not possible to ascertain the percentage increase.

when the economy was somewhat better. Also, half the towns in the comparative group have no contract for 2012.

The economic situation in North Greenbush makes a percentage increase consistent with other settled towns inappropriate for 2011 and 2012. The other contracts noted above were negotiated before two-three years ago. The downturn in the economy is now clear and the likelihood of any significant change in the near future is dim. The State has imposed a 2% property tax hike. It is not clear what impact this will have on future revenue sources. The finances of the Town are improving, but are still not in good shape. Both of the other unions within the Town have agreed to a 2% wage increase in their recent agreements. The Panel must evaluate not only other salaries and employees similarly situated (police officers in other communities) but also other dissimilar employees within the same jurisdiction. Neither is controlling. Both must be considered.

Two other wage issues were raised by the Union: longevity and shift differential.<sup>8</sup> Comparing longevity payments is a complex task because it affects each employee differently, depending on years of service and the town one is working in. For example, a police officer in East Greenbush does not start receiving longevity until the 8<sup>th</sup> year, at a lower rate than a North Greenbush officer in the 4<sup>th</sup> year; however, by the 15<sup>th</sup> year, East Greenbush's longevity is significantly better. A similar analysis can be made during comparisons with the police department in every other town.<sup>9</sup>

Examining the longevity benefit in North Greenbush with the benefits in other towns, the

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<sup>8</sup> The Union had a proposal to increase the clothing allowance. The Panel agrees that the clothing allowance is in line with the comparable contracts and should not be addressed at this time. The Panel believes that available dollars should be concentrated in the wages and other economic benefits.

<sup>9</sup> Stillwater has no longevity steps.

Panel has concluded that the longevity benefit is competitive and should not be changed. There are benefits in the current system and it is inappropriate to make changes. Accordingly, the longevity should remain unchanged.

Shift differential is a more difficult analysis. To properly evaluate whether a shift differential is appropriate, one must analyze the theory behind the benefit and any impact it could have on other employees in the work force.

The purpose behind a shift differential is twofold: to financially encourage employees to work a less desirable shift; and to financially compensate employees who are forced to work a less desirable shift. There have been many studies that have tried to determine whether an increase in compensation will encourage senior employees to work less desirable shifts; most have concluded that it does not. On the other hand, employees on less desirable shifts maintain that they should receive some compensation for their inconvenience.

Coeymans, Schodack and Stillwater do not have a shift differential. The other three comparable towns have a shift differential ranging from \$0.25 per hour to 1% of salary. The 24-7 nature of police work distinguishes this benefit from other employee groups in the Town. Given the reality that the 2% wage increase is below the average increase in comparable towns, a new shift differential benefit is justified for this contract. It is reasonable for employees permanently assigned to work a less desirable shift to be compensated for this inconvenience. Based on the above, a majority of the Panel agrees that a shift differential should be incorporated into the contract. As a new component of compensation, it should be done cautiously and modestly. While the Panel Chairperson has projected a modest total cost, it is conceded that this is an estimate.

**Award.** All eligible employees shall receive the following wage increase:

Effective January 1, 2011 – 2% base increase

Effective January 1, 2012 – 2% base increase

A clause regarding shift differential should be added to the contract, effective the first full pay period after the issuance of this Award. The language should be as follows:

A unit member who is scheduled to work the 3:00 p.m. to 11:00 PM, shift or the 11:00 p.m. to 7:00 AM shift will be compensated an additional twenty cents (\$.20) per hour for all hours worked during such shift (excludes vacations, personal days, sick leave, GML 207-c leave, etc.). A member who is temporarily reassigned to work such a shift will receive the shift differential. A member who is called on to duty or is held beyond the member's regular shift will not receive the shift differential.

## **10. REMAINING ISSUES**

The Panel has reviewed in detail all of the demands and proposals of both parties, together with all of the extensive material submitted by both sides. The fact that some of these proposals have not been specifically addressed does not mean that they were not evaluated and considered in the overall context of contract terms and benefits. In any interest arbitration award, as in any collective bargaining agreement, there must be a careful balance between changes in the current contract and continuance of a system currently in place. The process is by its nature conservative, and changes are usually made in incremental steps. The Panel in this Opinion and Award has attempted to balance the current situation between the parties with the proposed changes made by both parties. The Panel believes that this approach is consistent with the conservative nature of collective bargaining and interest arbitration awards.

**Award.** Except for those proposals and/or items previously agree upon by the parties, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

Where appropriate, the terms of the current contract shall remain in full force and effect.

**11. DURATION OF CONTRACT.**

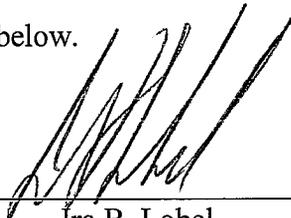
There shall be a two year contract effective from January 1, 2011 to December 31, 2012.

**RETENTION OF JURISDICTION**

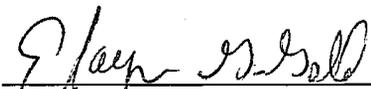
The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award, including action on the scope charges, if appropriate.

**CONCLUSION**

This OPINION AND AWARD has been the result of lengthy discussions among the panel members. Each has brought significant experience and knowledge to these deliberations and the conclusions set forth above are the result of compromises on the part of all parties to reach a fair and just conclusion. Despite these deliberations, both the union and management representative had one issue in which a unanimous conclusion could not be reached. The opinion on these dissenting issues is set forth below.



\_\_\_\_\_  
Ira B. Lobel  
Public Panel Member and Chairman



\_\_\_\_\_  
Elayne G. Gold  
Public Employer Panel Member



\_\_\_\_\_  
Ennio J. Corsi  
Employee Organization Panel Member

**AFFIRMATION**

STATE OF NEW YORK )  
COUNTY OF ALBANY )

I, Ira B. Lobel, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: September 30, 2012

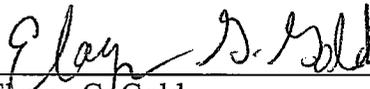


\_\_\_\_\_  
Ira B. Lobel  
Public Panel Member and Chairperson

STATE OF NEW YORK )  
COUNTY OF ALBANY )

I, Elayne G. Gold, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: September 27, 2012



\_\_\_\_\_  
Elayne G. Gold,  
Public Employer Panel Member

STATE OF NEW YORK )  
COUNTY OF ALBANY )

I, Ennio Corsi, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: September 27, 2012



\_\_\_\_\_  
Ennio J. Corsi  
Employee Organization Panel Member

**Panel Member Ennio J. Corsi, Concurring in Part and Dissenting in Part**

I concur in all of the Opinion and Award except Part 7, titled "Article XV, Section B1, Health Insurance Premium", in which I dissent.

In Part 7 of the Opinion and Award, the Panel rules that effective in the month following the date of the Award, employees who have individual health insurance coverage shall pay 10% of the premium. On the surface, two individuals in the bargaining unit, making base salaries of approximately \$55,000 per year each, are immediately affected by this change, and each will pay over \$50 per month and over \$600 per year for their health insurance going forward. That \$600 per year will consume a significant part of the raises that each officer will receive pursuant to the Award in 2011 and 2012 and will continue to consume part of their earnings going forward. This is a burden on these individuals, a particularly bitter pill to swallow in light of the fact that this Panel has imposed a cost to these individuals for health insurance when there was no such cost when they agreed to take their jobs some 19 years and 12 years ago respectively. While these individuals are honored to serve the Town and its citizens and are grateful for their jobs, this Panel has betrayed these individuals, unilaterally changing an important term and condition of their employment after their many years of dedicated service.

In the future, other individuals currently on the job may be negatively affected by this change as well. Article XV, Section F provides, in relevant part, that unit employees who retire from the job can continue to receive health insurance benefits if they pay the same premium contribution as active employees. Prior to the change imposed by the Panel, what this has meant in practical terms is that retirees on fixed incomes could at least opt for and receive individual health insurance in retirement at no cost if they couldn't afford to pay 50% of the cost of family health insurance in retirement. This individual health insurance in retirement at no cost wasn't

given away by the Town or swindled away from the Town by the Union. It was benefit that was earned and bargained for – indeed, it was bought and paid for by the members of this unit through their prior concessions in past negotiations. That benefit didn't just magically appear in the contract. Good and valuable consideration was given by the employees in exchange for that benefit. Now, in an Interest Arbitration proceeding, this valuable contractual right and benefit is being taken away from them with no consideration at all in return.

Apparently, the words “comparability” and “reality” are one-way streets with the majority of this Panel, words thrown around and used when and in ways in which it is expedient to do so. In what is without a doubt the most hypocritical analysis and justification I have seen in some twenty years in this business, the Panel acknowledges in its Opinion and Award that for family health insurance coverage, the benefit in North Greenbush is “clearly inferior” to all of the other comparable town except one, yet uses as its rationale for not fixing that problem the fact that the employee premium contribution for family coverage has been a “long term provision in this contract; there is no justification to change it.” The provision under which 100% of the annual premium for individual health insurance coverage was paid for by the Town was similarly a long term provision. Panel can't have it both ways. If there is no justification to impose this change in the employee premium contribution for family coverage because it has been a long term provision, then there is no justification to impose this change in the employee contribution for individual coverage.

Let's call a spade a spade. The Panel's 2-to-1 majority decision to change the employee contribution to individual health insurance coverage is, purely and simply, a “cost shift” – and this Panel should be forthright about that. In the short term, it is unnecessary, unjustified, unreasonable, and unfairly discriminatory against two individuals in this unit. Again, these two

individuals are being saddled with a cost that will cheat them out of a significant part of the 2011 and 2012 pay raises, raises that their peers in the unit will reap in full. Further, the \$600 annually shifted onto each of these two individuals is essentially pocket change for an entity with a budget of \$4,000,000, but it is lot for an individual worker. In addition, in the long term, it steals from retirees the security and comfort in retirement that they bargained for and earned, and it may end up resulting in onerous burdens for some retirees. The Panel should have made this change applicable to new hires only, and should have left the long-standing terms and conditions of employment of loyal long-term employees as they are. New hires would know coming in, right from the beginning of their employment, what the terms and conditions of their employment are – and they can decide to take the job or not take the job as they see fit. These two individuals were not given that courtesy or consideration. The Panel was wrong on this issue.



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Ennio J. Corsi  
Employee Organization Panel Member

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration :  
between : **DISSENT OF**  
 : **PUBLIC EMPLOYER**  
The Town of North Greenbush, New York : **PANEL MEMBER**  
 :  
and : **INTEREST**  
 : **ARBITRATION**  
North Greenbush Police Benevolent Association : **PERB Case No.:**  
 : **IA2011-020; M2010-323**  
 :  
-----

The Town of North Greenbush, through its Panel Member, must dissent concerning the part of this Interest Arbitration Award which discusses and awards a shift differential to the members of the North Greenbush Police Department.

Currently, the Police Department and its employees have no differential paid for working various shifts. Through negotiations, specifically at Union Proposal Number 11, the Union requested that a shift differential be paid for those working the 3:00 p.m. to 11:00 p.m. shift, as well as to those working the 11:00 p.m. to 7:00 a.m. shift. There were no significant discussions at negotiations, nor was there any testimony put forth at the Interest Arbitration supporting the need for any shift differential. Specifically, there was no claim by the Union or any of its witnesses that the junior employees are “stuck” on the same shift, as more senior employees bid onto a shift that may be more desirable (see Town’s closing brief at page 33). In addition, employees get to re-bid their shifts three times per year giving all employees ample opportunities to select a shift that may be most workable for their particular lifestyles and schedules. Because this is a new benefit, there is no way to put a cost as to the exact economic impact it will have on the Town and its finances. In addition to granting, through

this Award, a 2% wage adjustment in each of the contract years, the addition of shift differential (albeit prospective with the Award) will increase the overtime rate.

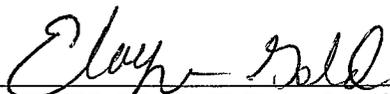
The Panel, at page 8 of the Award, states that “(a)fter a declining fund balance in seven of the last eight years, it may be prudent for the Town to take a cautious approach and focus on rebuilding the [fund] balance before committing to significant additional expenses.” The awarding of shift differential goes against the Panel’s apparent concern for the Town’s finances and the Town’s desire to continue on the path to stability (see testimony of Comptroller Anthony Germano; see Town’s closing brief at page 34).

The Town has consistently treated all of its employees, whether they be police, public works, and/or general clerical employees, in the same fair manner with respect to provision of wages, health insurance and other benefits. The inclusion of shift differential through this Award deviates from that consistency and puts the Town in a difficult position vis-à-vis its other bargaining units, both of whom agreed to many concessions in order to even achieve the 2% wage adjustments that they did in the last rounds of bargaining.

For these reasons, this Public Employer Panel Member must dissent on the majority of the Panel’s decision to award shift differential.

Dated: Albany, New York  
September 11, 2012

Respectfully submitted,

  
ROEMER WALLENS GOLD & MINEAUX LLP  
Elayne G. Gold, Esq.  
Attorneys for the Town of North Greenbush  
Office & P.O. Box:  
13 Columbia Circle  
Albany, New York 12203  
Tel. No. (518) 464-1300

**NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD**

**INTEREST ARBITRATION PANEL**

**IN THE MATTER OF THE INTEREST ARBITRATION**

**Between**

**THE TOWN OF NORTH GREENBUSH, NEW YORK**

**And**

**NORTH GREENBUSH POLICE BENEVOLENT  
ASSOCIATION**

**NYS PERB CASE #: IA2011-020  
M2010-323**

**SUPPLEMENTAL**

**OPINION**

**AND**

**AWARD**

**The Arbitration Panel members are:**

Ira B. Lobel, Esq.  
Public Panel Member and Chairperson

Elayne G. Gold, Esq., Roemer Wallens Gold & Mineaux, LLP  
Employer Panel Member

Ennio J. Corsi, Esq., General Counsel, Council 82, AFSCME, AFL-CIO  
Union Panel Member

**BACKGROUND**

The Town of North Greenbush (“Town”) and the North Greenbush Police Benevolent Association (“Union”) are parties to a collective bargaining agreement for the period between January 1, 2009 and December 31, 2010. When the parties were unable to reach agreement on a successor contract, the Agreement was extended by an Interest Arbitration Award (“Award”) for the term January 1, 2011 until December 31, 2012. The Interest Arbitration proceeding began with the appointment of the arbitration panel in November, 2011. The hearing was held

on May 1, 2012; the Interest Arbitration Panel met on July 11 and August 7, 2012. The Award became final when it was executed on September 31, 2012, by the undersigned and the two panel members, Elayne Gold representing the Town and Ennio Corsi representing the Union.

On or about June 20, 2013, the Union filed a Petition in Court to confirm the Award in accordance with CPLR §7510. The Town had no objection to the confirmation of the Award, but did object to the Union's motion to have the Court grant the wage increase to certain former Town employees. By decision dated October 30, 2013, the Honorable Patrick McGrath (Rensselaer County Supreme Court) confirmed the Interest Arbitration Award and remanded the matter to the Arbitration Panel to decide whether police officers employed during the period covered by the Interest Arbitration Award but not employed at the time of the Award should be entitled to retroactive wage adjustments.

Three individuals employed by the Town during the operative period of the Award left service before September 2012 when the Award was issued. Police Officer John Jurs, Jr. left service on January 18, 2012; Police Officer Kyle Jones on April 30, 2011; and Police Officer Michael Merola on November 17, 2011. All three sought retroactive pay for the period in which they were employed. Such request was denied by the Town.

The Award stated the following regarding the wage increases:

All eligible employees shall receive the following wage increase:

Effective January 1, 2011 – 2% base increase  
Effective January 1, 2012 – 2% base increase

The Panel “retain[ed] jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award...” and the Court determined the best resolution of this matter lies with the Panel and its Chairperson.” Accordingly, this supplemental interest arbitration decision is limited to the narrow issue of whether the Award is applicable to the three above named Police

Officers who left the employ of the Town during the period covered by the Award.

The Panel met on March 24, 2014, to discuss this single issue. Briefs were submitted on or about April 16, 2014, and the matter was deemed closed.

### **POSITION OF THE TOWN**

The Town argues that the Award applies only to employees employed by the Town at the time the Award was issued. It maintains that, pursuant to Article III of the Collective Bargaining Agreement (“CBA”), at the time of the arbitration award and currently, the terms of the CBA apply to “employees of the Police Department.” “Employee” is defined in Article II of the CBA as “any Police Officer, whether full or part time” or “any civil clerk/dispatcher, whether full or part time.” By this language, the Town deduces that employee, for the purposes of the CBA and the Award, means a police officer currently employed. The Town maintains that the plain reading of the wage increase portion of the Award, together with the CBA’s definition, leads to the conclusion the Award applies to police “employees” on the payroll at the time of the Award. The Town maintains that the ex-employees were not contemplated during the Interest Arbitration and were not discussed by the Panel in its Executive Sessions, emails or phone calls. Accordingly, the Award excludes them.

### **SUMMARY POSTION OF THE UNION**

The Union argues that the former employees are entitled to retroactive pay. It notes that the three employees were all employed and performed services for the Town during the operative period of the Award. The Award by its terms requires retroactive payment without limitation or exception to the employees who left service prior to the date the Award was issued. The Award states the increases are applicable to all eligible employees. It maintains this term was intended

to delineate between the interest arbitration eligible unit members and the non-interest arbitration eligible unit members (clerks/dispatchers) for purposes of the award and in amending the contract. Construing “eligible” to mean “current” would violate the law because it would include employees ineligible for interest arbitration. The Union also maintains that interest arbitration is not negotiations and it is irrelevant whether the Union proposed retroactive pay. Unless it is otherwise specifically stated, any police officer working during the operative period should receive retroactive pay for the time worked, regardless of whether they are current employees.

## **DISCUSSION**

In the executive session meeting on March 14, 2014, both sides acknowledged that there is little consistency in other collective bargaining situations regarding retroactive pay for employees who left during the term of a contract before it was re-negotiated. There are many situations in which pay increases apply only to employees currently working. There are also many situations in which pay increases are applied retroactively to all employees working during the period in question, even those no longer employed. The approach taken is a function of the deal struck between the parties, based on a wide variety of considerations, including the amount of money available and the philosophy of both sides.

In an interest arbitration award, the decision is rendered by the arbitration panel. In the instant matter, whether or not the pay increases would be applicable to employees who left the Town’s employ was never discussed during the Panel’s deliberations, either formally or informally. The Town’s panel member assumed that the phrase “eligible employees” meant only current employees. The Union’s panel member assumed that the phrase applied to all officers employed during the period, even those no longer in the employ of the Town. As neutral chair, I did not consider this issue. It is now necessary for the panel chair to make a decision.

Both sides cite a decision in *Lecci v. Levitt* 71 Misc. 2d 1091, 92, 337 NYS 2d 861 (1972) in which the Court determined an employee should get “the benefits of the contract executed after his retirement. The agreement was made retroactive to January 1, 1971 [one day before the employee retired]. At that time petitioner was a member of the police force and thus received all of the benefits thereunder and was, therefore, entitled to the benefits conferred by the contract.” The Union argues this case should be dispositive. The Town distinguishes this case from the instant matter because, in that case, the separated employee was “entitled to benefits conferred by contract.” Since the negotiated language specified the contract was retroactive to a date certain, it was hence applicable to employees who were employed during the period covered by the contract.

Both sides make valid arguments stating why this case can be relevant or can be distinguished. In the Chair’s judgment, the case is instructive but not dispositive. In the instant case, there was an interest arbitration award as opposed to a collective bargaining agreement specifying retroactivity. In the instant Award, there is no use of the term retroactivity. This requires me to decide whether “eligible employees” should apply to all police officers employed during the period, as opposed to limiting retroactive payments to those currently employed.

Another case mentioned by both sides is *County of Erie* (Index No. 4274/08, Sup. Ct., Erie Cnty.). In that case, the Court noted the arbitration panel specifically wrote the decision “as though it is amending the wage portion of the Collective Bargaining Agreement to result in retroactive wage increases effective January 1, 2005 and January 1, 2006 at three percent (3%) each.” The Court noted that “because the arbitrators described their Award as though the Collective Bargaining Agreement was being amended retroactively and therefor as though the parties had initially agreed upon these terms, it follows that the persons covered by the Award

are those who were eligible at that retroactive time to benefit from the modified agreement.”

The Union argues that this case is dispositive and should be followed, noting the instant Award left intact all items not mentioned. The Town notes that the *Erie* decision specifically stated that the Collective Bargaining Agreement was being amended retroactively, distinguishing it from the instant matter which uses the term eligible employees instead of retroactivity. With the use of the term “eligible employee” instead of “retroactivity,” the question in this case is whether an effective date before an employee leaves the employ of the Town is equivalent to the use of the word retroactive.

When the Panel convened on March 24, 2014, Panel Member Corsi indicated that the Fair Labor Standards Act (FLSA) mandates retroactive pay in this situation. In its brief, the Union argues that Title 29, Part 778.30 requires retroactive pay increases. It states the following:

Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employees for the period of its retroactivity.

The Union maintains that this language is dispositive and requires the payment of retroactive pay. The Town counters that the purpose of this section is to regulate the payment of overtime during the period in which retroactivity is applied.

As noted above, many contracts have applied wage increases to people who have left and many have excluded such employees from any retroactivity. Both approaches have pluses and minuses for the parties; neither conflicts with FLSA. The only potential violation of FLSA occurs when, if retroactivity is granted, it is not applied to any overtime earned during the period.

The Town also claims that in its review of the records, employees who leave never receive retroactive pay increases (Exhibit C, number 7). The Town seeks adherence to this practice based on both negotiated agreements and other employees who have left employment.

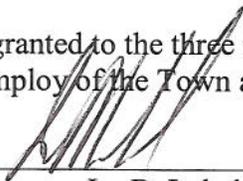
However, this assertion is not dispositive for this Arbitration Panel as to what was meant in this Interest Arbitration Award.

As mentioned in the opening paragraphs of this section, the issue of retroactive pay for employees who left was not discussed by the Panel and was overlooked by the Panel Chair. Both sides have made compelling arguments in support of their respective positions. The cases cited are instructive but not dispositive.

Over the years, when working as a mediator, I often avoided the word “retroactive” in finalizing contract terms and used effective dates instead. My use of the word “eligible” employees in this situation is analogous to this practice. “Eligible” employees applies to all those covered by the agreement during the period in question, including police officers who left the employ of the Town and excluding dispatchers/clerks not covered by the Interest Arbitration Award. Absent any clear language to the contrary, eligible employees must include all police officers employed during the period in question, including those no longer in the employ of the Town. To exclude these employees, there must be a specific exclusion in the Award. It is not necessary for the Union to raise the issue during its presentation or during the Panel deliberations. It is a matter to be decided by the Interest Arbitration Panel.

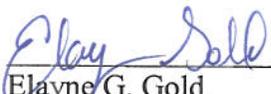
**AWARD**

Retroactive wages shall be granted to the three individuals in question for the period of time that they were in the employ of the Town and covered by the Collective Bargaining Agreement.



Ira B. Lobel  
Public Panel Member and Chairman

Concur \_\_\_\_\_ Dissent X

  
Elayne G. Gold  
Public Employer Panel Member

Concur X Dissent \_\_\_\_\_

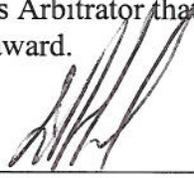
  
Ennio J. Corsi  
Employee Organization Panel Member

**AFFIRMATION**

STATE OF NEW YORK )  
COUNTY OF ALBANY )

I, Ira B. Lobel, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: May 13, 2014



\_\_\_\_\_  
Ira B. Lobel  
Public Panel Member and Chairperson

STATE OF NEW YORK )  
COUNTY OF ALBANY )

I, Elayne G. Gold, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: May 13, 2014



\_\_\_\_\_  
Elayne G. Gold,  
Public Employer Panel Member

STATE OF NEW YORK )  
COUNTY OF ALBANY )

I, Ennio J. Corsi, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: May 13, 2014



\_\_\_\_\_  
Ennio J. Corsi  
Employee Organization Panel Member

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration : **DISSENT OF**  
between : **PUBLIC EMPLOYER**  
 : **PANEL MEMBER TO**  
The Town of North Greenbush, New York : **SUPPLEMENTAL**  
 : **INTEREST**  
and : **ARBITRATION**  
 : **AWARD**  
North Greenbush Police Benevolent Association :  
 : **PERB Case No.:**  
 : **IA2011-020; M2010-323**  
-----

The Interest Arbitration Panel (the "Panel") in the referenced matter was called upon to issue a Supplemental Award as more detailed in the body of the Supplemental Opinion and Award issued by the majority of the Panel. The Town of North Greenbush (the "Town") maintained and continues to maintain that those individuals who were no longer on the payroll at the time the initial Award was issued are not entitled nor eligible for retroactive pay; nevertheless, the Panel majority, in the Supplemental Opinion and Award, did not agree with the Town's position. As such, the Town's Public Employer Panel Member hereby dissents.

The Panel majority opines that the determinations in Lecci v. Levitt, 71 Misc. 2d 1091 (1972), as well as the determination in the County of Erie matter (Index No. 4274/08, Supreme Court Erie County) are instructive but not dispositive; I would beg to differ. It is clear that in the Lecci matter, there was actual negotiated language that was in the contract dealing with retroactive pay. In the instant matter, there is no contractual language concerning same. In the County of Erie matter, the Interest Arbitration Panel in that case specifically included in the decision language that would amend the collective agreement and/or make the Award in the Erie County matter applicable to those who had left the jurisdiction's payroll prior to the issuance of the Award. The County of Erie facts are very easily distinguishable

from the at-issue matter; the herein Panel admittedly did not address the issue, did not write any language into the Award to so address the issue and there remained no contractual language requiring the Panel to grant retroactive pay to individuals not employed by the Town at the time the initial Award was rendered.

Furthermore, the Town, as supported by affidavits submitted with the Town's supplemental Brief, does not have any practice of paying retroactive payments to any employees, whether they be police personnel or otherwise, when those folks are no longer on the payroll of the Town when either an Interest Arbitration Award is rendered or a Collective Bargaining Agreement is successfully negotiated at the bargaining table.

For all these reasons, the Town cannot support this Supplemental Award.

Dated: Albany, New York  
May 13, 2014

Respectfully submitted,



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