

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

---

In the Matter of the Compulsory Interest Arbitration

-between-

TOWN OF ULSTER POLICEMEN'S BENEVOLENT  
ASSOCIATION, INC. & SUPERIOR OFFICERS ASSOCIATION  
Employee Organizations,

**OPINION**

**AND**

-and-

**AWARD**

TOWN OF ULSTER

Public Employer,

PERB Case No.: IA 2011-003; M2010-189 (PBA Unit);  
IA 2011-004; M2010-190 (SOA Unit)

---

BEFORE: Jay M. Siegel, Esq.  
Public Panel Member and Chairman

Anthony V. Solfaro  
Employee Organization Panel Member

William M. Wallens, Esq.  
Public Employer Panel Member

APPEARANCES:

For the Town of Ulster Policemen's Benevolent Association, Inc., (PBA  
and SOA Units) affiliated with the New York State Union of Police  
Associations, Inc., AFL-CIO

By: John M. Crotty, Esq.

For the Town of Ulster  
Roemer Wallens Gold & Mineaux, LLP  
By: Aurelia M. Mensh, Esq., Of Counsel

## BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board (PERB) to make a just and reasonable determination of a dispute between the Town of Ulster Policemen's Benevolent Association (PBA) and the Town of Ulster (Town) as well as the Superior Officer's Association (SOA) and the Town. The parties agreed to consolidate these proceedings for reasons of economy and efficiency.

The Town is in the northern part of Ulster County directly north of the City of Kingston. It is 90 miles north of New York City and 60 miles south of Albany. It is commonly known as the business hub of Ulster County. In the 2010 census, the Town had a population of 12,327.

The Town's Police Department operates on a 24/7 basis. The PBA bargaining unit currently has 15 full-time officers, 13 part-time officers, 5 detectives, 5 sergeants, 1 detective-sergeant, 3 full-time dispatchers and 8 part-time dispatchers. The SOA unit represents all sworn officers above the rank of sergeant. The SOA currently consists of a Lieutenant and Chief of Police.

The last collective bargaining agreements (CBAs) covering both units expired on December 31, 2008. In 2009, the parties began negotiations for a successor contract but the negotiations were unsuccessful. Thereafter, acting pursuant to PERB's rules of procedure, a PERB-appointed mediator met with the parties. Mediation was unsuccessful and on May 16, 2011, the PBA and SOA filed Petitions for Interest Arbitration (Panel Exhibits 1 and 2) pursuant to Section 209.4 of the Civil Service Law.

The Town filed its response to said Petitions on May 23, 2011 (Panel Exhibits 3 and 4). On July 11, 2011, the undersigned Public Arbitration Panel (Panel Exhibits 5 and 6) was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

A hearing was conducted before the Panel at the offices of the Town on February 28, 2012. All parties were represented by counsel at the hearing. A transcribed record was taken. The parties submitted numerous and extensive exhibits and documentation, including written closing arguments in which all parties presented extensive arguments in support of their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. After significant discussion and deliberations at multiple Executive Sessions, the majority of the Panel reached an Award. The Award is a compromise. It does not fulfill the wishes of either party. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chair and at least one other concurring member.

The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, all of which are incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Award setting forth the terms and conditions for the period January 1, 2009 through December 31, 2010.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following criteria, as detailed in Section 209.4 of the Civil Service Law:

- 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 the 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.

### COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, 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."

### PBA Position

The PBA stresses that comparability is the criterion establishing the market to be used to assess how existing terms and conditions of employment compare to similar

employees within the relevant market. In other words, it is a search for the market within which a comparison of prevailing wages and benefits is to be made.

The PBA contends that its members should be compared with all of the police agencies in Ulster County. It maintains that the Town's proposal to compare the Town only to a few select towns in Ulster County is a limiting market that does not comport with the comparability criteria. To the PBA, geographical proximity is much more relevant than limiting the group of comparables to a few select towns as asserted by the Town. In the PBA's view, its proposed group of comparables is most appropriate because it provides a complete picture of the full extent of the market.

The PBA maintains that the Town's proposed group of comparables is far too limiting and does not give the Panel a complete assessment of the prevailing wages and benefits in the market. The PBA asserts that its list of comparables is appropriate because it is comprehensive and neither too big nor too small.

The PBA argues that there is nothing unique about town governments that requires or warrants a comparability analysis limited only to other towns in Ulster County. In the PBA's view, comparability requires a search for the relevant market, not a search for governments of the same type. The PBA maintains that in dozens of cases over the years, arbitration panels have not restricted their comparability analysis in such a way. The PBA urges this Panel to follow the same path and adopt all police agencies in Ulster as the group of comparables.

### **Town Position**

The Town insists that the towns of Lloyd, New Paltz and Saugerties should be deemed comparable to the Town of Ulster. The Town contends that this is the most

appropriate group of comparables because they are all located in Ulster County and share similar populations, per capita and family incomes, geographic location and police unit size.

The Town rejects the PBA's broad list of all police jurisdictions in Ulster County as its comparables. In the Town's view, the PBA's group of comparables is not appropriate because it compares municipalities with distinctly different taxing structures, liabilities and obligations. For example, counties have certain mandated expenditures with fixed costs that towns and villages do not have. Towns do not have a constitutional spending limit while cities and villages do.

The Town stresses that there are extremely important differences among the PBA's list of comparables that render its list to be inappropriate. For example, population among the group of comparables proposed by the PBA varies greatly, ranging from a high of 23,893 in the City of Kingston to a low of 3,971 in the Village of Saugerties. Index crime rates for 2010 vary from a high of 692 in the City of Kingston to a low of 53 in the Village of Saugerties. Department sizes vary from a low of two full-time police officers in the Town of Rosendale to a high of 80 full-time police officers in the City of Kingston. The Town insists that the totality of the data shows that the jurisdictions proposed by the PBA are not truly comparable to the Town of Ulster.

The Town urges this Panel to adopt the finding of other panels and hold that the same type of municipality is the best source of comparison. The Town asserts that the comparable communities should be limited to the comparables offered by the Town, i.e., the towns of Saugerties, Lloyd and New Paltz.

### Panel Determination on Comparability

The Panel Chair finds that the towns of Saugerties, Lloyd, Marlborough and New Paltz are the most appropriate group of comparables. The other police agencies in Ulster County can be given some consideration by the Panel but should be given less weight than the four most comparable towns. A number of facts lead the Panel Chair to this conclusion. First and foremost, while the Ulster County jurisdictions proposed in the PBA's list of comparables each share the common element of being police agencies in Ulster County, they are not distinguishable as a group in any meaningful way. By contrast, the towns proposed by the Town as well as the Town of Marlborough share the same form of government, which has some relevance in a comparability analysis. They also share meaningful similarities such as population, size of department, index crimes, income of population, and geographical proximity.

In other words, police officers working in all of the towns in the Town's list of comparables as well as the Town of Marlborough have similar risks, similar jobs, similar populations and have similar living expenses. The same cannot be said for the jurisdictions proposed by the PBA. Police officers in the City of Kingston have a very different working situation than police officers working in a small town or village in Ulster with just a few full-time police officers. Although the other jurisdictions in the County are relevant because they provide a more complete picture of the overall Ulster County market for law enforcement, the similarity of the towns of Ulster, New Paltz, Saugerties, Lloyd and Marlborough are more directly relevant to this dispute. As such, they must be accorded the greatest weight insofar as comparability analysis is concerned.

## ABILITY TO PAY

### PBA Position

The PBA stresses that tales of economic gloom and doom and how the recent recession has affected the private and public sectors has little relevance to this dispute. The PBA points out that the Town is not Flint, Michigan, the State of Minnesota, or Buffalo. The PBA maintains that the ability to pay analysis is not a global one. What is relevant here is that the Town is not poor. Its residents are not struggling and are not overtaxed. In the PBA's view, the Town's claim that it is "suffering tremendous financial strains" is a gross exaggeration.

The PBA asserts that any small decrease in Town revenue due to the ripple effect of the recession has been managed by the Town such that it has the ability to pay the officers an increase in salary and benefits. Equally important, even though health insurance and pension costs have increased on a per capita basis, the Town's overall bills have not markedly increased due to fewer personnel. Indeed, the PBA notes that the Town's pension bill decreased in 2010-2011. Even so, increased costs do not equate to, nor should they play any role in the Panel's determination whether the Town has an ability to pay.

The PBA's evidence of the Town's ability to pay was based on the testimony and exhibits presented by Economist Kevin Decker. The PBA asserts that the evidence offered through Mr. Decker conclusively establishes that the Town has the ability to pay for a substantial increase in salary and benefits. According to the PBA, Mr. Decker's presentation should be accorded great weight because he is an expert in municipal finance and his testimony was largely un rebutted.

The PBA asserts that the Town does not remotely resemble any of the municipalities that are struggling to stay afloat and that any claims of that nature are ludicrous. The PBA maintains that the elected officials in the Town may have chosen to do the same with more or less for political reasons. However, this is not a justification for denying PBA members the increase in salary and benefits they deserve.

The PBA stresses that much of the Town's recession-related doom and gloom claims are simply irrelevant. The PBA concedes that the Town has had some managing to do but that this was primarily due to its past failure to accurately estimate its budget expenditures. The PBA maintains that the most relevant fact is that, despite some challenges, the objective evidence does not evince any record of a stagnating or a rapidly declining Town economy.

The PBA stresses that after an extensive review of the Town's own financial records, Mr. Decker testified that the Town had an ability to pay. The PBA contends that neither the accuracy of Mr. Decker's report or his testimony was undermined in any way. Thus, although Mr. Decker acknowledged that the Town had run deficits in four of the last five fiscal years, he opined that they were "not problematic" because the only way a municipality can draw down a high fund balance is to run a deficit. Of significant note to Mr. Decker was the fact that the Town had a healthy general fund balance of \$1.56 million at the end of fiscal year 2010. The PBA maintains that the Town's fiscal health is demonstrated by this figure as it represents nearly 21% of general fund expenditures. Since the State Comptroller and financial experts all recommend that 5% to 10% is a healthy fund balance, the PBA contends that the Town's fund balance is very healthy indeed.

The PBA takes issue with Supervisor Quigley's testimony about the Town's allegedly unsound financial condition. The PBA argues that Mr. Quigley's contention that the previous administration misled the public about the budget should not be given any credence. In the PBA's view, the Town's published financial records, which were reviewed by State regulators and financial rating agencies, must be considered reliable. As such, the PBA insists that Mr. Decker's analysis is objective and supported by compelling economic statistics that make it abundantly clear that the Town has the ability to pay for a fair and reasonable increase to salary and benefits.

For all of the reasons above, the PBA urges the Panel to find that the Town has the ability to pay for its economic proposals.

### **Town Position**

The Town insists that the Panel cannot ignore the fact that this Award covers a time period when the Town was suffering the effects of one of the greatest economic recessions in this country's history. It asserts that its ability to pay has been adversely affected by forces outside of its control, such as a significant decline in the Town's tax base, a weak housing market and virtually no sales tax revenue. In the Town's view, the Panel must be sensitive to the Town's taxpayers because the proposals sought by the PBA are well beyond the Town's ability to pay.

The Town stresses that the recovery has been lukewarm and the Town still faces significant limits on its ability to increase revenue today and for the foreseeable future. The Town maintains that its economic realities require it to tighten its belt so it does not become one of the municipalities that are forced to shut down.

The Town notes that its taxpayers have had to contend with significant real property tax levy increases over the past several years and in particular during the time period covering this Award. According to the Town, between 2005 and 2009, the average annual increase to the real property tax levy was 6.77%, including increases of approximately 20% in 2009 and 4% in 2010.

Even more troubling is that the Town's tax base showed a decrease of approximately \$15 million between 2009 and 2010. The Town contends that these decreases are consistent with a growing trend of commercial property owners in the Town, who seem to be coming out in droves to file tax certiorari actions.

The Town stresses that other Town revenue sources, such as sales tax and departmental income will not fund this Award. These items are a small portion of the Town's revenues and have not increased in real value in the past five years.

The Town argues that it has real restrictions on its ability to increase revenues due to the 2% property tax cap. The Town stresses that the Town Board of is committed to staying within the 2% cap and that it will not override this pursuant to the statutory exceptions. Hence, to the extent that increases to the PBA contract exceed the 2% tax cap, the Town will simply cut services.

The Town contends that its revenues simply cannot keep pace with its ever-increasing expenses and that this cannot be ignored. Although the Town has taken several actions to contain costs, the fact remains that increases to health insurance and pension costs alone are taking a substantial bite out of the Town's tax levy. Indeed, from 2005 to 2010, the Town's pension obligations for police have increased from approximately \$227,000 per year to more than \$354,000 per year. Pension rates then increased to an

astronomical 21.2% of payroll in 2011 and 25.4% of payroll in 2012. Health insurance premiums have also seen significant (sometimes double-digit) percentage increases during this same period.

The cumulative effect of all of the economic trends has been staggering to the Town. In 2005, the Town had nearly \$2.4 million in unreserved fund balance. After ending several of the past fiscal years in a deficit, the Town has seen its fund balance dwindle to virtually nothing, causing it to borrow \$1.3 million in 2009 in the form of a bond anticipation note. In the Town's view, this is the only reason it is showing a strong fund balance in 2009. This does not change the structural budget challenges the Town is facing. At the same time, taxpayers are nearly over the edge. To the Town, the Panel needs to make a determination that takes the Town's need for fiscal prudence into consideration. The Town insists that the PBA's proposals are excessive and do not remotely resemble a fair and reasonable award.

#### **Panel Determination on the Town's Ability to Pay**

The Panel Chair has carefully considered the statutory criteria regarding ability to pay as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs filed, which form the record in this matter.

The Panel Chair is cognizant that during the term of this Award, the national, New York State and local economy went into a tailspin unlike anything seen in recent history. Revenues went down and unemployment substantially increased. The housing market dipped significantly for the first time in years and numerous companies went out of business or struggled to stay afloat. New York and its municipalities have clearly been affected by the uncertainties caused by this recession.

The Town has also been impacted by the difficult economy. It has had to contend with some decreases in its tax base and other important revenues while having to come up with money to fund substantial increases to pensions and health insurance. The fact remains that the Town has been taking in less money than it has expended in several of the past fiscal years. During the time of this Award, the Town borrowed money to be certain that it had the resources to meet its obligations. The economic challenges facing the Town are real and require fiscal prudence.

On the other hand, the Panel Chair finds that the record establishes that the fundamental economic conditions of the Town are strengthening. The Town has done an excellent job of managing its financial situation. The Town had the goal of restoring its fiscal health and all economic indicators are that the Town has been successful in moving toward achieving its goal. In addition, there are also signs of greater economic activity in the Town's business hub, which should result in growth in the Town's commercial tax base in the future. The Panel Chair is confident that the Town's fiscal management, along with its improving economic conditions, will allow it to maintain a stable position. The Panel Chair finds that the Town has the ability to pay for this Award and that the wage and other increases awarded herein constitute a fair and reasonable Award.

### **THE INTERESTS AND WELFARE OF THE PUBLIC**

#### **PBA Position**

In the PBA's view, this consideration encompasses the fact that the Town's taxpayers benefit from having a professional, well-trained police department. In the PBA's estimation, this can only happen when its members' wages and benefits are

competitive so that the Town can attract and retain quality employees. The PBA opines that the Panel must issue an Award that allows its members to retain its competitive ranking compared to others in Ulster County so as to ensure that its members will not leave the Town for other law enforcement positions in the County.

### **Town Position**

The Town stresses that the Panel is obligated to consider the fact that this Award will directly affect the citizens and taxpayers of the Town and the economic future of the Town for years to come. It must also consider the fact that citizens in the Town are struggling with increased tax burdens and concerns about the ability of its Town government to remain on sound financial footing. These considerations, along with the fact that the economic forecast is guarded, mandate that the Panel exercise its power with great care and caution while fashioning its Award.

### **Panel Determination on Interests and Welfare of the Public and Financial Ability of the Public Employer to Pay**

The Panel has carefully considered the statutory criteria regarding the interests and the welfare of the public and financial ability of the Town to pay, as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs forming the record in this matter. In looking at this specific issue, the Panel Chair finds that the PBA's argument that the public benefits by having a competitively compensated staff of police officers must be given credence. It influences the Panel Chair's determination that there is a need for a wage adjustment in both years covered by this Award. The Panel Chair's Award in the area of salary is premised on the recognition that

it is prudent for the Town and beneficial to the public for its police officers to be competitively compensated.

At the same time, except for salary, all of the other economic proposals advanced by the PBA have been rejected by the Panel Chair because he is concerned about the detrimental effect that any new long-term financial commitments may have on the Town's bottom line. It is not in the interest of the public to significantly augment the economic package provided to police officers as this could have a detrimental impact on the Town's budget.

### **COMPARISON OF PECULIARITIES OF THE POLICE PROFESSION**

The Panel has also carefully considered the statutory criteria regarding the comparison of the police profession with other trades or professions, including specifically: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; and (5) job training and skills. The PBA asserts that the police profession is so unique that no other useful comparison can be made with other trades or professions.

The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of police work and the unique training, skills, pressures and dangers that police officers face each day. The Panel finds that the peculiarities of the profession mandate a direct comparison with police officers.

## BASE WAGES

### PBA Position

The PBA is seeking to change the number of steps on the salary schedule for full-time officers from ten to six. Under the PBA's proposal, full-time officers would reach top pay after five years of service (which is the case for all of the comparables) instead of the current structure, where they reach top pay after nine years of service. The PBA proposes that compensation be adjusted by flat dollar amounts to fit the new system effective January 1, 2009, followed by a 2% increase effective January 1, 2010, except for Step 6, which would be increased by 3.5%.

The PBA proposes the full-time dispatcher schedule be modified from eight steps to six steps. It also proposes that salary schedules for part-time police officers and dispatchers be modified to provide salary schedule increases that start when an employee is first hired, instead of the current system which only provides salary schedule increases after an employee is working for five years. Finally, for superior officers, the PBA proposes a 4% increase in 2009 followed by a 3.5% increase in 2010.

The PBA maintains that the reasonableness of the PBA's proposal can be seen from charts showing wage adjustments to police officers in the universe of comparables. To the PBA, the data clearly demonstrates that its proposed raises would be consistent with the market and reasonable.

The PBA asserts that a structural change to the salary schedule is warranted because base wages for full-time officers are below market averages. The PBA stresses that in 2008 its officers at five through 25 years of service ranked at a low of ninth among the PBA's comparables on salary to a high of sixth place. The PBA's high mark of sixth

place does not occur until an officer has worked for 25 years, which is five years beyond the eligibility requirement to retire. The PBA argues that the reasonableness of its proposal is highlighted by the fact that, if adopted, it would only move the Town to fifth place among the comparables.

The PBA contends that its proposal is also warranted because it is consistent with the prevailing market increases for 2009 and 2010 which are between 3% and 4% and sometimes more. Among other settlements, the PBA takes note of the fact that officers in the City of Kingston received a 3.25% increase in 2009 and another 3.25% increase in 2010. Officers in the Town of Marlborough received 3.5% in 2009 and 3.5% in 2010. Officers in the Town of New Paltz received more than 3.5% in both 2009 and 2010.

The PBA concedes that some of the jurisdictions from the list of comparables received far less than 3% in 2009 and/or 2010. However, the PBA stresses that the salary increases for those units in those specific years cannot be read in isolation because most of them involved multi-year collective bargaining agreements that also included salary increases in the range of 4% in at least one year.

The PBA insists that the Town's proposal to freeze salaries is patently unfair. In the PBA's view, the Town has no claim that its financial condition is worse than any one of the PBA comparables, let alone all of them. The Town is arguably in a period of recovery. It has money available to fund a settlement. The PBA maintains that, just as the other comparable jurisdictions have done, this Town can and should fund reasonable salary increases during the term of this Award. Thus, the Panel must reject the Town's proposal.

The PBA insists that if its officers do not receive a salary increase they will become underpaid relative to the market. The PBA maintains that its offer is justified because its officers deserve salary increases, just as they were deserved by their counterparts working in the neighboring municipalities. The PBA argues that salaries should be increased by at least 3% to 4% because that is the market average during the years in question. Hence, that increase is necessary to allow its officers to maintain their relative standing vis-à-vis the other officers in the universe of comparables.

### **Town Position**

The Town maintains that the Panel should deny the PBA's salary proposal. While acknowledging the tremendous law enforcement work that police officers perform, the Town asserts that the PBA's proposal should be wholly rejected because it is completely unaffordable given the Town's fiscal restraints.

In the Town's estimation, the PBA's proposal to change the structure of the salary schedules is completely excessive in this economic climate. The PBA's proposal also should be rejected because it would cost the Town more than \$500,000 and require the Town to significantly reduce services.

The Town claims that awarding the proposed wage increases would be completely unfair to other Town employees who did not receive a wage increase for a three year period that covered the term of this Award. To make matters worse, PBA employees already receive much better salary and benefits than other Town employees. In the Town's estimation, any additional increase to PBA members would further distort and exaggerate the differences between PBA members and other Town employees in a way that would be insulting to other Town employees.

The Town maintains that there is no need for a salary increase because the wage comparisons show that PBA members are paid the same or similar to other officers in the group of comparables. The Town stresses that in 2008 at the highest step, the Town paid its police officers \$52,738. In that same year police officers at the highest step in the Town of Lloyd received \$61,116, while police officers in the Town of New Paltz received \$54,785 and police officers in the Town of Saugerties received \$47,710.

The Town asserts that the data consistently shows that its police officers are competitively compensated. This becomes even more apparent when health insurance premium contributions are factored in. For example, PBA and SOA members contribute a mere \$400.00 per year toward health insurance, while in the Towns of Lloyd and Saugerties police officers contribute 15% and 10% respectively for health insurance.

The Town contends that the Panel should disregard some of the previous settlements in the County because virtually all of the higher salary settlements or awards in the universe of comparables were negotiated or issued prior to the time that the recession impacted the region. To the Town, the universe completely changed after the local, State and national economy shifted downward.

For all of these reasons, the Town urges the Panel to reject the PBA's demand.

#### **Panel Determination on Base Wages**

The Panel Chair has carefully considered the statutory criteria balancing the reasonable economic needs of the Town's police officers, with the obligations of the Town in the context of what is fair and reasonable in a more challenging economy.

Wages are one of the most important elements in any labor agreement. Employees have the utmost concern about the wages they will be paid and wages represent the greatest expenditure for the Town.

The record contains data that supports both parties' positions. The Town faces genuine economic concerns. It has had to contend with flat revenue streams and an economy that is more fragile than has been seen in this area for many years. The Town has had a structural deficit in some of the past years. This has required the Town to use a significant amount of fund balance to meet its obligations. These are genuine economic issues that cannot be ignored.

The general state of the economy and the overall tax burden faced by taxpayers, whose burden has increased substantially in recent years, leads the Panel Chair to conclude that the wage proposal made by the PBA must be significantly moderated. Although there are some police units that received wage adjustments in the range of 3% to 4% in 2009 and 2010, the Panel Chair notes that virtually all of these increases were agreed upon prior to the time that the economy faltered.

The record demonstrates that the Town's budget has been strained by increases to health insurance and pensions. At the same time, decreasing property values, increasing tax certiorari claims and a limited ability to increase revenue attributable in part to the 2% tax cap, mandates a much more moderate economic settlement than the one being proposed by the PBA.

In the Panel Chair's view, the changed economy, coupled with some of the specific challenges facing the Town, requires an award that is less than 2% per year on

average so that the Town can manage its resources carefully and limit the impact of this Award on its taxpayers.

The Panel Chair finds that a wage increase of 1% in 2009 and 2% in 2010 for all full-time employees is the most appropriate way to handle salary increases for this unit at this time. This will allow unit members to maintain their relative standing vis-à-vis the list of comparables with a limited impact on the Town's overall budget. Since part-time employees receive hourly wages and no benefits, the Panel Chair agrees with the PBA's contention that those employees must receive flat dollar adjustments that will exceed 2%. The amounts being awarded for part-time employees are slightly above 2%. There is no evidence that these increases will have a marked impact on the Town's bottom line.

The Panel Chair finds it to be important for Town police officers to maintain their standing relative to other officers in the universe of comparables. If the Panel awarded no salary increase as proposed by the Town, which is well below the average amount received by officers in the universe of comparables, the Panel could jeopardize the relative standing of the Town's police officers.

In awarding these salary increases, the Panel Chair finds that the Town has the ability to pay for a fair increase in wages overall.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

## AWARD ON BASE WAGES

### ARTICLE 21- BASE WAGE - PBA

Effective January 1, 2009, all steps of the 1/1/08 salary schedule will be increased by 1% to create a new salary schedule effective January 1, 2009. Effective January 1, 2010, all steps of the new 1/1/09 salary schedule will be increased by 2% effective January 1, 2010. The Step 2 hourly rate for part-time police officers will be increased to \$1.00 above Step 1 as of 1/1/09 and to \$1.25 above Step 1 as of 1/1/10. The Step 2 hourly rate for part-time dispatchers will be increased to 50 cents an hour above Step 1 as of 1/1/09 and 75 cents an hour above Step 1 as of 1/1/10.

### ARTICLE 18-SOA

Article 18.2 shall be changed by increasing the salaries set forth in the salary schedule by 1%, effective January 1, 2009 and an additional 2%, effective January 1, 2010.

To be reflected in the Collective Bargaining Agreements as follows:

- A. The Base Wage for all full-time employees shall be as follows:

#### POLICE OFFICERS

Step	Years of Service	(1.0%)	(2.0%)
		1/1/09	1/1/10
1	Starting	\$37,460	\$38,209
2	After 1 Year	\$38,709	\$39,483
3	After 2 Years	\$39,971	\$40,770
4	After 3 Years	\$41,203	\$42,027
5	After 4 Years	\$43,221	\$44,085
6	After 5 Years	\$46,195	\$47,119
7	After 6 Years	\$47,710	\$48,664
8	After 7 Years	\$49,225	\$50,210
9	After 8 Years	\$50,740	\$51,755
10	After 9 Years	\$53,265	\$54,330

B.

**DISPATCHERS**

Step	Years of Service	(1.0%)	(2.0%)
		1/1/09	1/1/10
1	Starting	\$27,450	\$27,999
2	After 1 Year	\$29,763	\$30,358
3	After 2 Years	\$32,079	\$32,721
4	After 3 Years	\$34,510	\$35,200
5	After 4 Years	\$36,469	\$37,198
6	After 5 Years	\$37,381	\$38,129
7	After 6 Years	\$38,468	\$39,237
8	After 7 Years	\$39,429	\$40,218

C.

**HOURLY RATES**

**PART-TIME POLICE OFFICERS**

Step	Years of Service	1/1/09	1/1/10
1	Starting - 5 <sup>th</sup>	\$18.82/hr	\$19.19/hr
2	Starting 6 <sup>th</sup> and Above	\$19.82/hr	\$20.44/hr

The Step 1 part-time police officer's hourly rate is calculated by dividing the full-time police officer's Step 1 Starting Base Wage by 1990.88 hours, which represents the existing annual work schedule.

The Step 2 hourly rate reflects the following:

1/1/09 - +\$1.00/hr above Step 1

1/1/10 - +1.25/hr above Step 1

**PART-TIME DISPATCHERS**

Step	Years of Service	1/1/09	1/1/10
1	Starting - 5 <sup>th</sup>	\$13.85/hr	\$14.13/hr
2	6 <sup>th</sup> and Above	\$14.35/hr	\$14.88/hr

The Step 1 part-time dispatcher's hourly rate is calculated by dividing the full-time dispatcher's Step 1 Base Wage by 1981.44 hours, which represents the existing annual work schedule.

The Step 2 hour rate reflects the following:

1/1/09 - +.50/hr above Step 1

1/1/10 - +.75/hr above Step 1

**ARTICLE 18 - COMPENSATION-SOA**

**18.2 Salary**

The annual salary shall be as follows:

	(1.0%)	(2.0%)
	1/1/09	1/1/10
Chief of Police	\$98,591	\$100,563
Lieutenant	\$81,193	\$82,817

For the purpose of calculating the hourly rate of pay, 2,080 hours shall be used.

Upon the retirement of Paul Watzka as Chief of Police, the Chief of Police's salary shall be 10% above the Lieutenant's salary.

\_\_\_\_\_  
Concur  
Anthony V. Solfaro

  
\_\_\_\_\_  
Dissent

  
\_\_\_\_\_  
Concur  
William M. Wallens, Esq.

\_\_\_\_\_  
Dissent

## HEALTH INSURANCE FOR ACTIVE EMPLOYEES

### PBA Position

The current agreement for the rank-and-file full-time employees and SOA members requires them to pay \$400 per year for individual or family coverage each year of their career until they reach retirement. The Town proposes increases to this payment for all current employees and that new hires be required to contribute 15% toward the cost of health insurance premiums.

The PBA is open to a modest increase in its contribution toward premiums but stresses that this is contingent upon its other health insurance proposals being implemented. These include its proposal to have a retiree's dependent health insurance continue after the death of the retiree with the Town paying 75% of the cost and survivors paying 25%. The PBA stresses that the sad reality of police work is that law enforcement personnel die earlier than most on the job and in retirement. In the PBA's estimation, it has a justifiable interest in assuring that its members' dependents have their health care needs taken care of after their death. The PBA contends that its proposal should be adopted because it is fair and reasonable.

### Town Position

The Town contends that its health insurance proposal must be adopted to account for the rapid and continued rise in health insurance. It asserts that requiring new hires to contribute on a percentage basis will help absorb some of the Town's skyrocketing costs and ensure that the burden is more equitably shared between the Town, its taxpayers and PBA members. In the Town's view, greater cost sharing on health insurance is a necessity to assure the Town's long-term sustainability.

The Town rejects the PBA's proposal to pay 75% of the premium costs for dependent coverage upon the death of a retiree. The Town contends that it simply cannot afford to take on any new financial burdens. If anything, the Town needs to have further cost sharing of the current benefits it provides. It simply cannot afford to take on this new liability. Moreover, the Town stresses that there is no justification for this proposal based on a review of the benefits provided to unit members in the list of comparables. In other words, no other officers in jurisdictions in Ulster County receive the type of benefit for surviving spouses that is being proposed by the PBA.

The Town stresses that it has been suffering from ever-escalating health insurance costs. To the Town, this trend must be addressed by having all employees contribute a much greater share than they are currently contributing. This is the case in the private sector and numerous municipalities and there is no reason why it should not be the case in the Town of Ulster.

#### **Panel Determination on Health Insurance for Active Employees**

Health insurance continues to be one of the most difficult and contentious labor-management issues due to its importance to employees and their families, and its cost, which has been increasing over the past several years.

The Panel Chair agrees with the Town that the health insurance increases over the past few years have been staggering and that there is no reason to believe this will change in the future. There is no doubt that if some form of greater premium contribution is not implemented at some point in the near term, that it will have an adverse effect on the Town's budget and its ability to deliver services in the future. The Town's arguments are compelling and lead the Panel Chair to conclude that an increase toward premium

contributions for current employees is reasonable and that this is not the appropriate time to impose new financial burdens on the Town, such as the PBA's proposal for surviving spouse benefits.

However, there are compelling factors that persuade the Panel Chair that it is not just and reasonable to impose the premium contributions that are proposed by the Town. First and foremost is the fact that the salary adjustment being awarded is less than PBA members have received in the recent past. Any premium contribution increase must be measured against the salary increase and should not be at a level that would negate the salary increase being awarded by the Panel.

In addition, the Panel is obligated under Section 209.4 of the Civil Service Law to look at the benefits that comparables are receiving. While there are a few jurisdictions requiring percentage contributions that far exceed the contribution being awarded by this Panel, there are also some jurisdictions that do not require officers to contribute toward the cost of health insurance.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

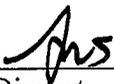
**AWARD ON HEALTH INSURANCE FOR ACTIVE EMPLOYEES**

**ARTICLE 22.B - PBA & ARTICLE 15.1 - SOA** – Replace the 2<sup>nd</sup> to last

sentence in both provisions with the following:

Effective December 31, 2010, all full-time employees shall contribute a total of six hundred dollars (\$600.00) each year towards the health insurance premium.

\_\_\_\_\_  
Concur  
Anthony V. Solfaro

  
\_\_\_\_\_  
Dissent

  
\_\_\_\_\_  
Concur  
William M. Wallens, Esq.

\_\_\_\_\_  
Dissent

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are resolved, and not all contentions are agreed with. The Panel, in reaching what it has determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.

AWARD ON REMAINING ISSUES

Except as set forth in this Award, the Town's demands are hereby rejected.

Except as set forth in this Award, the PBA's demands are hereby rejected.

<u>AS ON TOWN'S DEMANDS</u>	<u>AS ON PBA'S DEMANDS</u>	<u>WMA</u>	_____
Concur	Dissent	Concur	Dissent
Anthony V. Solfaro		William M. Wallens, Esq.	

RETENTION OF JURISDICTION

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

<u>AS</u>	_____	<u>WMA</u>	_____
Concur	Dissent	Concur	Dissent
Anthony V. Solfaro		William M. Wallens, Esq.	

**DURATION OF AWARD**

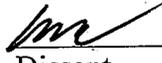
Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award is for the period commencing January 1, 2009 through December 31, 2010. The terms of this Award shall be effective on such dates as set forth herein.

**IMPLEMENTATION AND PAYMENT OF RETROACTIVITY**

The Town shall pay retroactivity to each individual who worked during any period on or after January 1, 2009, as soon as possible, but in no event later than 60 calendar days following the date of the signature of the Panel Chair to this Award.

  
\_\_\_\_\_  
Concur  
Anthony V. Solfaro

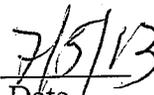
\_\_\_\_\_  
Dissent

  
\_\_\_\_\_  
Concur  
William M. Wallens, Esq.

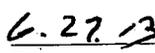
\_\_\_\_\_  
Dissent

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is our award.

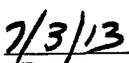
  
\_\_\_\_\_  
JAY M. SIEGEL, ESQ.  
Public Panel Member and Chairman

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
WILLIAM M. WALLENS, ESQ.  
Employer Panel Member

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
ANTHONY V. SOLFARO  
Employee Organization Panel Member

  
\_\_\_\_\_  
Date

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

On this <sup>5<sup>th</sup></sup> day of <sup>July</sup> ~~June~~ 2013 before me personally came and appeared Jay M. Siegel, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

  
\_\_\_\_\_  
Notary Public  
**KATHLEEN BUFFETT**  
Notary Public, State of New York  
No. 02DU6128192  
Qualified in Putnam County  
Commission Expires 06/06/20 17

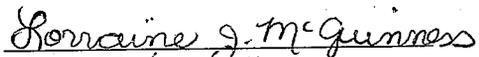
STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss. :

On this <sup>27<sup>th</sup></sup> day of June 2013 before me personally came and appeared William M. Wallens, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

  
\_\_\_\_\_  
Notary Public  
**RAYANNE L. SHEEHAN**  
Notary Public, State of New York  
Qualified in Schenectady County  
No. 5039263  
Commission Expires February 13, 2015

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

On this <sup>3<sup>rd</sup></sup> day of <sup>JULY</sup> ~~June~~ 2013 before me personally came and appeared Anthony V. Solfaro to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

  
\_\_\_\_\_  
Notary Public  
**LORRAINE J. MCGUINNESS**  
NOTARY PUBLIC, STATE OF NEW YORK  
Qualified in Orange County  
Reg. No. 4620194  
Commission Expires June 30, 20 15

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between

TOWN OF ULSTER POLICEMEN'S  
BENEVOLENT ASSOCIATION, INC.

Employee Organization/Petitioner,

- and -

TOWN OF ULSTER,

Public Employer/Respondent.

PERB Case Nos. M2010-189;  
IA2011-003  
(Rank-and-File Unit)

M2010-190  
IA2011-004  
(Superior Officers Unit)

Jay M. Siegel, Esq.,

Panel Chairman

Anthony V. Solfaro,  
Employee Organization  
Panel Member

William M. Wallens, Esq.,  
Public Employer Panel Member

---

DISSENTING OPINION

ANTHONY V. SOLFARO

Employee Organization

Panel Member

I dissent from the wage and benefit terms of this award and from the rationale used by the Panel majority to support what I consider to be an unfair and unreasonable resolution of the impasse in negotiations between the PBA and the Town.

The two statutory criteria emphasized by the Panel majority, understandably, are comparability and ability to pay. Neither criterion, however, is applied by the Panel majority correctly or in a manner consistent with the facts of record.

Comparability establishes the market within which a determination is made as to whether the at-issue employees are currently at, below or above others within that market with respect to their wages, benefits and other terms and conditions of employment and as to where they would place in that comparison if the union's or employer's demands were to be awarded. In this case, that market was all of the police agencies within Ulster County, not a small subset of those agencies limited to four town governments. Governmental structure does not have any relevance in a comparability analysis. A comparability analysis is not and never has been restricted to governments of the same type or ones having the same demographics. The factors recited by the Panel majority in its comparability discussion relate to the Town's ability to pay, or some other statutory criteria, not comparability. The Panel majority has commingled and confused what are separate and distinct statutory criteria to yield a market centered and focused on just four towns. That is an incorrect, cherry-picked result that distorts prevailing wages and benefits. Whether the Town can afford to match the wages and benefits that prevail in the market, or whether the Town should do so even if it can, whether because of differences in population size, department size, crime rates, resident income or wealth, or any other factor or demographic, are questions

that relate to ability to pay and, perhaps, some other statutory criteria, but not the comparability criterion.

Featured significantly in the Panel majority's discussion about the Town's ability to pay are the majority's views as to the effects of the now ended recession on the country as a whole, on the State of New York, and on other municipalities within the State. The economic condition of other governments, however, is immaterial to ability to pay. The Taylor Law by its clear and express terms looks only to the ability to pay of the one public employer that is the party to the interest arbitration proceeding, none others. The global gloom and doom scenario portrayed in this award, that is incorrect and described with words intended to inflame and exaggerate, is just a wrong application of the ability to pay criterion. Ability to pay is purely local. If other governments' economies were good, I am sure arbitration panels would be quick to conclude that would not matter in a given proceeding because ability to pay attaches to the one government that is the party to the interest arbitration proceeding. The converse is just as true. The allegedly "bad" economic condition of other entities or governments is immaterial to an ability to pay analysis except to the limited extent it could be proven in a particular proceeding that the financial condition of those other entities or governments actually affects the ability to pay by the public employer that is the party to the particular arbitration proceeding.

The Panel majority also does not discuss the extent to which Town officials were responsible for the Town's past or current economic condition, even if it is as the Panel majority describes it. The majority mentions causation in passing in a summary of the PBA's arguments, but there is no discussion of it in the Panel majority's analysis. The Panel majority ignores

Supervisor Quigley's volunteered testimony on direct examination that former Town officials and their agents misstated or mismanaged the Town's finances for several years with lingering negative effects. Employees should not pay the price for the mistakes or misdeeds of others, yet that is the result this Panel majority imposes.

The Town's decision to stay considerably below the property tax cap is yet another irrelevancy seized upon by the Panel majority to justify its award. That tax cap decision is a purely political one made by the Town's elected officials. Politically based decisions do not and should not have any role in shaping the terms of an interest arbitration award. If the Town Board had decided to adopt a budget containing no monies for employee raises and benefits, that would not mean that wages and benefits should be frozen by an arbitration panel. If that were so, wages and benefits could be frozen in perpetuity simply by a government's repeated enactment of flat budgets. A municipality's tax cap decisions are not properly afforded any more weight than are a government's budgetary decisions.

The Panel majority concedes that the wage increases awarded are well below the market average for 2009 and 2010. It justifies this result by concluding that many of those higher wage settlements were reached before the effects of the recession were fully felt. There is much wrong with this "that was then, this is now" rationale.

First, the Panel majority assumes on the basis of no facts that those earlier wage settlements in other municipalities would have been lower if they had been reached in 2009 or after. That is sheer speculation.

Second, that rationale punishes only these employees for the parties' inability to reach a collective bargaining agreement or because of the time that it takes to complete the statutory impasse systems. That is unfair because neither is the employee's fault.

Third, and most disturbing, the rationale is internally inconsistent and hypocritical. If the economy had seen substantial improvement in 2011 and after, I believe this Panel majority would have been quick to conclude that what was controlling were the economic conditions prevailing in 2009 and 2010, the years covered by the award, not the conditions in 2012 or 2013. This kind of analysis denies employees market rate wages and benefits when times are good and when times are bad and has employees always coming up last.

Although the Panel majority stresses various Town costs and expenses to justify its award, omitted entirely is any mention of economist Kevin Decker's unrebutted testimony on behalf of the PBA as to the cost to Town taxpayers of a 3.5% annual increase in base wages, one considerably higher than what the Panel majority awards.

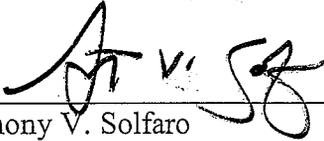
Decker testified that even if such a base wage increase were to be financed entirely through the real property tax – something this record proves would be completely unnecessary – the average taxpayer would see a \$.25 per week increase in tax bill as a result. I believe the Panel majority omitted this cost statistic because revelation of it in the award would have made it much more difficult for the Panel majority to justify its base wage award because the impact on taxpayers would be noticeably negligible or nonexistent. At the same time, the Panel majority

recites at length and in detail the costs and financial statistics the Town offered in opposition to the PBA's demands. That is not a balanced presentation of the facts. Decker's unrebutted and expert testimony based on the Town's own records and those on file with various State agencies proves this Town is in generally good financial condition with residents carrying no more an average tax burden with above average wealth.

The wage award also does not even do what the Panel majority says it is doing. The Panel majority states that the wage award will allow these employees to maintain their relative standing in the market. That is false. As the market wage increases for the years in question are higher than what this Panel has awarded, these employees' wage standing in the market unquestionably has been eroded. That circumstance is made all the worse by the increases in employee health insurance contribution awarded by the Panel majority and the majority's refusal to award anything on the PBA's several other demands, including one that would have afforded the survivors of deceased employees, including those killed in the line of duty, some continuing health insurance coverage. That is just unconscionable. Moreover, several of the PBA's demands sought improvement in benefits that have not been changed in many years. That continuing stagnation and resulting erosion of original value moves these employees further back as against prevailing market conditions.

I had hoped and expected that this Panel majority would be guided by the statutory criteria and the facts of record in rendering an award. Instead, this Panel majority was swayed by gross distortions of fact, misapplications of statutory criteria, media and interest group assaults on public employees and politicians' inflammatory rhetoric to produce an award that is unfair and unreasonable to these employees.

For these reasons, I dissent.

A handwritten signature in black ink, appearing to read "A. V. Solfaro", written over a horizontal line.

Anthony V. Solfaro  
Dated: July 3, 2013