

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration Between

LANCASTER CAYUGA CLUB POLICE  
BENEVOLENT ASSOCIATION

Employee Organization

-and-

THE TOWN OF LANCASTER

Public Employer,

**OPINION**

**AND**

**AWARD**

PERB Case No.: IA 2014-010; M2013-303

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

Shaun DiMino  
President, Lancaster Cayuga Club Police Benevolent Association

Jeffrey Swiatek, Esq.  
Public Employer Panel Member

**APPEARANCES:**

For the Lancaster Cayuga Club Police Benevolent Association  
Bartlo, Hettler, Weiss & Tripi  
By: Paul D. Weiss, Esq. & Yvonne S. Tripi, Esq., Of Counsel

For the Town of Lancaster  
Hodgson Russ LLP  
By: Joseph L. Braccio, 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 Lancaster Cayuga Club Police Benevolent Association (Union) and the Town of Lancaster (Town).

The Town is located in Erie County and is located a short distance east of Buffalo. The Town of Cheektowaga is adjacent to the east side of the Town of Lancaster.

The Town is approximately 37.8 square miles. It includes the Village of Lancaster and parts of the Village of Depew.

The Town experienced significant population growth in the 1990s, seeing its population increase by more than 20%. From 2000 to 2010, the Town's population increased an additional 6.6%. Based on the 2010 census, the Town's median household income is \$65,518.

The Town is a "fiscally eligible municipality" pursuant to Section 209(6) of the Civil Service Law, which was incorporated into the compulsory interest arbitration procedure by the State Legislature in 2013. This law provides that:

If the average full value property tax rate of such public employer is greater than the average full value property tax rate of seventy-five percent of counties, cities, towns and villages, with local fiscal years ending in the same calendar year as the most recently available information, the public arbitration panel must find that such public employer is a fiscally eligible municipality.

The consequences of being designated a fiscally eligible municipality alter the Panel's role from making a decision requiring it to give equal weight to all of the statutory criteria to requiring it to give a much greater weight to the Town's ability to

pay. More specifically, in rendering this Award, the Panel is now required to assign a weight of 70% on the Town's ability to pay with all of the other statutory criteria cumulatively being accorded a weight of 30%. In plain English, this obligates the Panel to place the great majority of its analysis and assessment on the Town's ability to pay in rendering this Award. This is precisely what the statute requires and this is precisely what the Panel has done in rendering this Award.

The Town's police department is a full-service police agency. It operates on a 24/7 basis. It provides police services throughout the Town of Lancaster, including the Village of Lancaster but excluding the Village of Depew, which has its own police department.

The Union currently represents approximately 46 police officers in a variety of positions such as Patrol Officer, School Resource Officer, Detective and Lieutenant.

The Town's Police Department utilizes its officers in roles that require specialized skills beyond those of patrol officer. These roles include but are not limited to training of new officers, detective work, an Emergency Response Team (which includes crisis negotiators), Bicycle Patrol and an Accident Investigation Unit. The Town's police officers also participate in several task forces in conjunction with other local, state and federal law enforcement agencies.

Three other bargaining units have contractual relationships with the Town, none of which have agreements in place for the period covering this Award. The Town is taking the same position with those bargaining units as it is with the Union in this dispute, namely, the implementation of a cost-neutral combination of wage increases and employee health insurance contribution increases.

The Town took this same position with its non-represented employees. After providing non-represented employees with no salary increase in 2012 and 2013, the Town provided these employees with salary increases of 1% in 2014 and 2% in 2015. These were offset by a new health insurance premium contribution of 8.5% effective March 1, 2015.

The last collective bargaining agreement (CBA) between the parties covered the period from January 1, 2008 through December 31, 2011. In 2011, the parties began negotiations for a successor contract. The parties met on numerous occasions but the negotiations were unsuccessful. On February 24, 2014, the Union declared impasse. Thereafter, acting pursuant to PERB's rules of procedure, PERB mediator Gregory Poland met with the parties but the mediation process did not result in an agreement.

On September 3, 2014, the Union filed a Petition for Compulsory Interest Arbitration pursuant to Section 209.4 of the Civil Service Law. The Town filed a response to the Petition on September 17, 2014.

Thereafter, the undersigned Public Arbitration Panel 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. The term covered by the Interest Arbitration Panel Award covers the period of January 1, 2012 through December 31, 2013.

Hearings were conducted before the Panel at the offices of the Town on June 12, 2015 and June 19, 2015. The parties were represented by counsel at the hearings. The parties presented witnesses and submitted numerous and extensive exhibits. After the

conclusion of the hearings, written closing arguments were submitted to the Panel 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 in-person and telephonic Executive Sessions, the Panel reached an Award. The Award is a compromise. Although it does not fulfill the wishes of either party, it is accepted and approved by all three Panel members. Accordingly, all references to "the Panel" in this Award shall mean the tripartite Panel.

The positions taken by both parties are 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, 2012 through December 31, 2013.

#### **THE STATUTORY CRITERIA OF SECTION 209.4 OF THE CIVIL SERVICE**

##### **LAW**

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.

As noted above, the Panel also has specifically reviewed, considered and accorded 70% of the weight of the decision to the Town's ability to pay pursuant to Section 209(6) of the Civil Service Law. The analysis of the impact of this statutory requirement on this decision will be discussed in the Ability to Pay and Salary Section of this Award.

#### **A. 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."

#### **Union Position**

The Union 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 Union presented the testimony and exhibits of Anthony J. Hynes, an independent consultant with more than twenty-five years of experience examining contracts and providing comparisons of comparable bargaining unit groups. The Union submitted a total of eight Erie County communities and police departments that its members should be compared to. These include the Town of Amherst, Town of Cheektowaga, Town of Aurora/Village of East Aurora, Town of Evans, Town of Hamburg, Town of Orchard Park, Town of Tonawanda and Town of West Seneca. The Union notes that the Town concurs with the PBA regarding the list of comparables, except it eliminated the Town of Aurora/Village of East Aurora and added the Town of Eden.

The Union contends that all of the departments in its proposed list of comparables share numerous commonalities. They are all in the same county. All of the jurisdictions compete with one another for employees. They generally share a similar housing market and employees have similar costs of living.

The Union asserts that the Panel should consider the Town of Aurora/Village of East Aurora in its list of comparables. It notes that the Village of East Aurora provides police services to the Town of Aurora, making the Village of East Aurora's Police Department more analogous to a town police department.

The Union maintains that the Town of Eden should be rejected as a comparable. The Union stresses that the Town of Eden does not resemble the Town of Lancaster in any way in terms of population and demographics. According to the Union, aside from

being located in Erie County, the Town of Eden shares no similarities with the Town of Lancaster. For example, the Town of Eden is much smaller than Lancaster (population of 7,688 compared to 41,604 in Lancaster) and is largely rural, while Lancaster is suburban. The Union also emphasizes that the Town of Eden has drastically less crime than Lancaster and employs only four full-time police officers.

#### Town Position

The Town reminds the Panel that because it is a fiscally eligible municipality, the comparison between Union members and other police department members is of limited significance. More specifically, all of the other statutory factors, other than ability to pay, cannot be given more than 30% total weight when reaching a determination.

The Town stresses that this criteria is further diluted because the statute expressly requires the Panel to also compare police officers to "other employees generally in public and private employment in comparable communities." It opines that police officer compensation far exceeds the average compensation of municipal residents in all of the comparable communities, including Lancaster. For example, while the gross average wage for a Lancaster police officer in 2011 was \$85,066, the median household income for Lancaster's residents as a whole was \$65,518. The Town further notes that even in Orchard Park, where the median value of a home exceeds Lancaster by \$36,000, the median household income of \$77,517 is well below the gross average wage of Lancaster's police officers.

The Town argues that this statutory criteria does not require and should not allow the Panel to place Lancaster's officers at a median point or any particular point relative to the group of comparators. It stresses that comparability must be assessed with the other

comparators. Thus, while the Town does not strenuously object to the list of comparables proposed by the Union, it believes they are of virtually no relevance because there is great variation in terms of geography, population, relative wealth, home values, police force size and bargaining unit history.

#### **Panel Determination on Comparability**

The Panel Chair finds that parties have little dispute on the group of comparables. Both parties proposed the same group of comparables with one exception in each case. The Town objects to the Village of East Aurora and the Union objects to the Town of Eden.

The Panel Chair determines that all of the same comparables proposed by both sides should constitute the list of comparables in addition to the Village of East Aurora and the Town of Eden. The list of comparables that both parties agree on is reasonable for a variety of reasons including but not limited to the fact that they all share the same form of government, are all located within the same county and share similar responsibilities insofar as services they are required to provide to residents and the sales tax they receive from the County. These jurisdictions are also in the same general market in terms of cost of living.

The Panel Chair also finds that it is appropriate to add the Village of East Aurora and the Town of Eden to the list of comparables. Both jurisdictions are in Erie County. Although the Village of East Aurora has a different government structure than the Town, it provides police services for a town and shares many other similarities with the group of comparables. Similarly, while the Town of Eden's size is far smaller than Lancaster, it has enough in common with the Town to be added to the list of comparables.

The Panel Chair will note that many of the arguments raised by the Town regarding comparability are relevant but not insofar as for determining the list of comparables. In other words, the Town's arguments play a role in the results of this Award insofar as the weight that should be accorded to the comparability criteria. However, they do not change the fact that the Panel is obligated to select and then make comparisons to a finite group of "...employees performing similar services or requiring similar skills under similar working conditions..." That is what is being decided in this section of the award.

Accordingly, pursuant to the statutory criteria, the main universe of comparables is the Town of Amherst, Town of Cheektowaga, Village of East Aurora, Town of Evans, Town of Hamburg, Town of Orchard Park, Town of Tonawanda, Town of West Seneca and the Town of Eden.

## **2. ABILITY TO PAY**

### **Union Position**

The Union stresses that ability to pay requires the Panel to analyze both the Town's current fiscal status as well as the interests and welfare of the public, including the public's interest in maintaining a strong law enforcement presence. The Union insists that the evidence strongly supports its contention that the Town has the ability to pay for its proposed wage increase of 4% per year and other compensation items.

The Union emphasizes that even though the Town knew that the Panel had the authority to impose a salary increase, the Town purposefully adopted budgets providing no salary increase for Union members in its adopted budgets in 2012, 2013, 2014 and

2015. At the same time that the Town declined to include any monies in its budgets for salary increases, it also reduced the amount raised by property taxes to fund police expenditures in its 2015 budget by \$434,000. In the Union's view, the Town's irresponsible failure to budget appropriately should not be given any credence. In the Union's view, the Town's intentional decision to not set aside any monies in its budget and to then claim that it would be irresponsible for the Panel to require the Town to deplete its fund balance, is a bad faith attempt to have its position adopted by the Panel because all of the evidence does not support its position. The Union avers that the irresponsibility lies on the part of the Town and that the Panel should not approve of its imprudent measures by finding it lacks the ability to pay, particularly given its strong set of finances.

The Union begins by emphasizing that unlike other municipalities that have suffered population loss, the Town's population increased by 6.6% from 2000 to 2010 and by 8.1% from 2000 to 2013. While most of the comparable communities in Erie County experienced sizable population losses, Lancaster continues to add to its tax rolls. At the same time, the Town's per capita income increased by 32% between 2000 and 2013, which outpaced all other comparable communities other than East Aurora. The Union notes that the Town has the third highest median household income and the third highest home values among the comparable communities. The Town's unemployment rate of 4.8% is among the lowest in the Buffalo Metropolitan area. In the Union's view, this compares favorably to the New York State and national rates.

The Union stresses that its expert Anthony J. Hynes testified that the Town's status as a fiscally eligible municipality has nothing to do with ability to pay. The Union

points out that according to the statute, if a municipality's general fund balance is below 5% of annual expenditures or if the tax rate is higher than 75% of all New York State municipalities, the municipality is considered fiscally eligible. The Union points out that Mr. Hynes testified that numerous municipalities across the State that do not provide police or fire protection have lesser tax rates than those that do. Mr. Hynes further opined that this statute does not prove inability to pay. It is merely a single comparative statistic about tax rates and nothing else.

The Union stresses that the New York State Comptroller's Fiscal Stress Monitoring System analyzes a broad set of fiscal indicators to get a full picture of a municipality's fiscal health. Among other things, the Comptroller reviews local finances for environmental, demographic and economic stressors, such as population loss and property value stagnation. This analysis considers that population loss often shrinks sales tax revenues and real property tax bases. It also considers aging population and the extent to which a municipality has depressed employment, increased foreclosures, reduced property values, fund balance levels and operating surpluses or deficits. The Comptroller then assigns a fiscal score to each municipality. The lower the score, the healthier the municipality.

According to the Union, the Comptroller's 2013 Fiscal Stress Monitoring System lists Lancaster as the only comparable other than Amherst to have a zero fiscal score, a score that is indicative of robust fiscal health. On the environmental score side, Lancaster is listed at 8.3%, which the Union considers to be another sign of healthy fiscal strength. The Union notes that the Comptroller's threshold score to qualify a community as environmentally stressed is 45%.

The Union argues that the Town's fiscal health is further evidenced by its current Moody's Aa affirmed ratings on the Town's general obligation and its Aa3 prime bond rating. To the Union, it is indisputable that these are objective measures of the Town's fiscal health and show that the Town's tales of economic gloom and doom wholly lack credence.

The Union contends that the Town's full value property assessment has increased over the last seven years as a result of true growth factors. The Union avers that the Town's own numbers show a growth of more than \$224 million on full value valuation assessment from 2009 to 2014. This comports with increases in building permits the Town has issued for new construction from 132 in 2013 to 228 in 2014.

The Town's maintenance of a separate police fund dedicated to provide revenues for the Town's Police Department further demonstrates that the Town has the ability to pay for the Union's proposed increases. According to the Union, in 2003 a separate fund and a Municipal Cooperation Agreement was established upon the consolidation of the Village of Lancaster Police Department into the Town's Police Department. Per the same Agreement, the Village agreed to pay the Town all sales tax received from Erie County between April 1, 2003 and March 1, 2033. Per the Agreement, starting in 2005, the Town agreed to allocate to the Police Fund a portion of its sales tax revenues to the point where the Town's allocation increases by 4% each year until reaching 100% in 2018.

The Union maintains that the Town has experienced significant surpluses in the special revenue funds of which the Police Fund is a part of. The Union notes that the total fund balance in the special funds increased from approximately \$2.5 million in 2009 to \$4.85 million in 2013.

The Union argues that the data shows that Erie County has experienced strong sales tax growth in recent years. This has increased the revenue allocations in the Town's Police Fund based on the Agreement described above. As the Town has seen its revenue from sales tax in the Police Fund significantly increase, it has consciously chosen to substantially reduce the share of real property taxes it uses to fund police activities. The Union presented charts showing that the Town has reduced Police Fund revenues from property taxes from \$4,777,753 in 2011 to \$3,634,323 in 2015. As the tax levy in the Police Fund is shrinking, the Town is increasing the tax levy in the Highway Fund-Town Outside of Village. However, the Union asserts that the Town is reducing the tax levy in the Police Fund by amounts substantially larger than the increase in tax levy to the Highway Fund-Town Outside of Village. In the Union's view, the Town is essentially raiding the police fund in favor of other priorities. This imprudent strategy is exacerbated by the Town's decision not to budget for wage increases in its 2012, 2013, 2014 and 2015 budgets.

The Union insists that the Town's political decision not to budget for compensation increases is reckless and unsound. To the Union, the Town should not be able to act irresponsibly and then claim it does not have the financial ability to pay for a retroactive increase due to its poor decision making. The Union urges the Panel not to sanction the Town's bad faith tactics. Having failed to appropriately budget, the Town's predicament is a product of its poor governance and has nothing to do with a lack of ability to pay.

The Union claims that its data shows that the impact of its proposed wage and benefit increases is minimal and will not affect the budget or tax levy. The Union notes

that a 1% salary increase for its members will cost approximately \$32,353.00. In the Union's view, when its wage proposal of 4% per year is calculated and compounded, the total retroactive cost is \$1.34 million. Since the Town has more than \$1.9 million of fund balance available in the Police Fund, the Union maintains that the Town has the ability to pay for this Award.

The Union contends that the Town's estimates on the tax rate required to fund the increase is flawed and grossly exaggerated. Among other things, the Union notes that the Town intends to use \$480,000 of appropriated fund balance to partially fund any raises provided by this Award. The Union emphasizes that the Town's data cannot be taken seriously because it included the \$480,000 of appropriated fund balance as an added liability to be raised by taxation in 2016 when this amount becomes part of the tax levy and an ongoing revenue source for the Police Fund going forward.

The Union observes that the Town's audited financial statements for the fiscal year ended December 31, 2014 indicate a total police fund balance in excess of \$2.5 million, with more than \$2.094 available to fund all police expenditures including wage increases. When this uncontroverted statistic is coupled with the Town's pattern from 2008 to 2014 of underestimating the year-end fund balance and utilizing little or none of the appropriated fund balance, it becomes abundantly clear that the Town has the ability to pay for the proposed raises.

The Union contends that despite having the ability to pay for this Award, the Town is attempting to cry poverty due to its wholly irresponsible budgetary practices, which have deprived it of revenue. The Union notes that for the for the fiscal years 2012 to 2015, the Town's actual tax levy has been well below the tax cap limit. The Union

states that the cumulative difference between the Town's actual tax levy and the Town's tax cap levy limit is \$3.7 million. According to the Union, in 2015 alone the Town could have raised an additional \$892,000 and stayed below the tax cap.

For all of the reasons above, the Union urges the Panel to find that the Town has 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 recovering from 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, including a strong desire by its residents not to keep paying higher taxes. In the Town's view, the Panel must be sensitive to its taxpayers because the proposals sought by the Union 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 engage in large scale layoffs and reduce its services.

The Town argues that it qualifies as a fiscally eligible municipality under the Civil Service Law because its taxes are higher than a great majority of residents in New York State. The Town emphasizes that this requires the Panel to assign its ability to pay a weight of 70% when rendering its determination. The Town opines that this new section of the compulsory interest arbitration law was clearly intended to encourage restraint on interest arbitration panels determining whether to impose additional financial burdens on

a fiscally eligible municipality and its taxpayers. When the Town's status as a fiscally eligible municipality is considered along with its recent political history and the limits it has to increase revenues pursuant to the tax cap law, it becomes abundantly clear that the Town lacks the ability to pay for any salary increases.

The Town contends that its economic conservatism is strongly supported by the taxpaying public as demonstrated by the 2011 election for Town Supervisor. The Town maintains that it proves that the taxpaying public is fed up with tax increases because taxes have become unaffordable in the Town. This is further supported by the Town's status as a fiscally eligible municipality, a status that comes as a result of its high tax burdens compared to other municipalities across the State.

In 2011, Dino J. Fudoli, a Republican, challenged Robert H. Giza, a Democrat who had served for 16 years as Town Supervisor. Supervisor Fudoli has a private business background. He testified that he was motivated to run because he was convinced that Town spending and property taxes were too high and that Town employees' wages and benefits were too generous. Supervisor Fudoli made these issues front and center in the campaign. He ultimately won by a 55% to 45% margin, which was noteworthy in a Town where Democrats outnumbered Republicans by 3,000 in a town of 28,000.

The Town stresses that Supervisor Fudoli has implemented numerous cost cutting measures including those directly impacting him. He has cut his own salary by 10%, and refused to take an annual stipend of \$8,122 for his work as the Town's budget officer. He also surrendered a Town-owned SUV that was previously used by the Supervisor of the Town. Supervisor Fudoli, with the support of the Town Board, has also taken a cost cutting and zero expense growth approach in his dealings with the Town's various

bargaining units. The Town argues that this comports with the Town's needs and the taxpaying public's wishes.

The Town adopted budgets in 2012, 2013, 2014 and 2015 do not provide any new monies for compensation increases for any bargaining units, including the police. The Town's judgment was that it is inappropriate to fund new compensation increases due to the already high tax burdens and the effects of the Great Recession.

Nonetheless, the Town finances have been adversely affected by the dramatic increases it has been mandated to pay in its mandatory contributions to the New York State Retirement System on behalf of all Town employees. Although the rates vary by tier and plan, the tier that many employees are placed at (Tier 2) increased from 21.4% to 32.4% in 2015. The Town asserts that the rate increases have been the equivalent of the Town funding salary increases in the range of 2% to 2.75% each year. From 2010 to 2014, the Town's contribution to the Police and Fire Retirement System on behalf of police officers rose from \$965,609 to \$1,536,145 in 2014, an increase of 59%. Although the rates recently dipped, the Town contends that the recent dip in the stock market will undoubtedly lead to new rate increases in the near future.

Dave Brown, the Town's Director of Administration and Finance, has budgeted conservatively over the years, an approach that Mr. Hynes, the Union's ability to pay expert, agreed was appropriate. This approach has allowed the Town to have a reasonable fund balance and other positive economic indicators. The Town stresses that it should not be punished by this Panel for its smart and reasonable practices by having the Panel award unsupportable salary increases. In the Town's view, its reasonable fund balance

and the upward current trend of sales tax revenue should not automatically translate to a finding that awarding a salary increase is appropriate.

The Town stresses that any salary increase awarded by this Panel will be extremely difficult to absorb, given the Town's current budget structure. It asserts that the Town's auditors have warned that the Town is now in a position of structural deficit, i.e., recurring expenses being greater than recurring revenues. The Town states that its current unassigned fund balance at the end of 2014 was 16.9%, which equates to about two months of expenses. Although the Town concedes that this is considered a solid fund balance figure by many financial experts, this number will be reduced by any unanticipated emergencies. When the Town's postemployment liabilities and long term infrastructure costs are added to the picture, it becomes abundantly clear that the Town's demand for wage freezes is the most appropriate outcome.

The Town concedes that it has managed to maintain a relatively stable tax rate for the police fund. However, this has occurred due to the merger between the Town and Village of Lancaster police departments. By the Town assuming the cost of the Village's police services, the Town's residents outside the Village would bear the cost burden unless a revenue stream was found, which was the Village's sales tax revenues.

The Town maintains that the Union's reliance on this sales tax revenue to buttress its ability to pay claims is unsound. It contends that the Union's financial expert even conceded that reliance on sales tax is risky because of its cyclical nature. Indeed the Town notes that the 2015 sales tax figures are running only about 1% ahead of the 2014 numbers.

The Town contends that it lacks the ability to pay for the Union's proposal because the retroactive payments would drain the Town's resources and/or require a large increase in the Town's tax levy. It claims that the cost of the Union's proposal from 2011 to 2016 would be in excess of \$2 million. Thus, if the Panel awards the Union's demands, the Town would either have to completely exhaust all remaining fund balance in the police fund or use the entire amount of the tax levy increase the Town could raise within the real property tax cap.

Although the consequences would not be as dire if the Panel awarded 2% salary increases for each of two years, the Town insists that it lacks the ability to pay for that type of raise. Such a raise would exceed \$1 million from 2011 to 2016 and would either lead to a serious decline in the Town's fund balance and/or require the Town to raise taxes by double digit percentages, something the taxpaying public clearly cannot afford.

Under any of the scenarios, the evidence establishes that the Town's budget and its taxpaying public will be negatively impacted. In the Town's estimation, the only logical finding is that the Town lacks the ability to pay for any increase to wages and benefits during the term covered by this 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 will begin by explaining Section 209(6) of the Civil Service Law and why this part of the law that The Town is a "fiscally eligible municipality" pursuant to Section 209(6) of the Civil Service Law, which was

incorporated into the compulsory interest arbitration procedure by the State Legislature in 2013, does not alter the ability to pay analysis. This new law provides that,

If the average full value property tax rate of such public employer is greater than the average full value property tax rate of seventy-five percent of counties, cities, towns and villages, with local fiscal years ending in the same calendar year as the most recently available information, the public arbitration panel must find that such public employer is a fiscally eligible municipality.

The consequences of being designated a fiscally eligible municipality alter the Panel's role from making a decision requiring it to give equal weight to all of the statutory criteria to requiring it to give a much greater weight to the Town's ability to pay. More specifically, in rendering this Award, the Panel is now required to assign a weight of 70% on the Town's ability to pay with all of the other statutory criteria cumulatively being accorded a weight of 30%. In plain English, this obligates the Panel to place the great majority of its analysis and assessment on the Town's ability to pay in rendering this Award. This is precisely what the statute requires and this is precisely what the Panel has done in rendering this Award.

However, the Town's designation as a fiscally eligible municipality does not alter the ability to pay analysis as this continues to be an assessment on the merits of whether a given municipality has the ability to pay. This analysis shows that the fundamental economic conditions of the Town are strong. Much of the objective data in this record supports the Union's contention that the Town has the ability to pay. The Town has had strong population growth over the past several years. There is solid evidence of increased building permits and of overall growth in terms of the housing market. The Town has one of the highest median household incomes and median home values in the area. Its unemployment rate of 4.8% in December 2014 is a positive economic indicator. The

Town has seen genuine growth in sales tax revenue over the past few years, which is another positive sign that the Town and the region's economy are doing well. It must be noted that sales tax revenues is a direct revenue stream to the Town's Police Fund pursuant to a Municipal Agreement between the Town and Village of Lancaster to merge police departments and take over public safety responsibilities for the Village. Pursuant to that Agreement, the Town has not only seen that revenue grow due to increased sales tax growth but has also seen that revenue grow because the Village is required to increase its percentages of sales tax received by the Village in each year until the point where the Village provides 100% of its sales tax receipts to the Town's Police Fund.

There is other extremely important objective data that strongly supports the Panel Chair's finding that the Town has the ability to pay. The New York State Comptroller has a Fiscal Stress Monitoring System it uses as an early warning sign of fiscal stress to local governments. The State Comptroller examines specific financial indicators such as year end fund balance, operating deficits/surpluses, cash, and fixed costs. It also looks at environmental indicators such as population, property values, dependence on revenue from other governmental units, sales tax, etc. It ultimately assigns a fiscal score and an environmental score to each municipality, with the lowest scores being indicative of a municipality not being distressed.

In the 2013 assessment, the Town has a 0% fiscal stress designation, which is the best score possible and an indication of strong fiscal health. The Panel Chair notes that data in the record shows that Lancaster and Amherst were the only municipalities in the group of comparables that had a 0% fiscal score in 2013. The Panel Chair notes that the

Town's environmental score of 8.3% is also a strong score and is well below the Comptroller's threshold score of 45% that qualifies a community as fiscally stressed.

The Town's strong fiscal health is also evidenced by its Aa3 bond rating for the Town's outstanding indebtedness. This rating occurs after the bond rating agency examines a slew of relevant data applicable to the Town. The Aa3 bond rating is categorized as a high grade investment and allows the Town to borrow money at lower interest rates. Most importantly, it shows that an objective agency considers the Town's finances to be strong after a thorough examination of relevant data.

Finally, the Panel Chair finds that that the Town has the ability to pay for this Award even though the Town did not set aside any monies in its budgets from 2012 to 2015 for salary increases. The Panel Chair notes that the revenue the Town receives for sales tax will grow pursuant to its Municipal Agreement with the Village. Although the parties differ on the actual amount this will increase, it will be at least \$170,000 more in 2016 than it was in 2015. The Town also has some recent history of not using the amount it budgets for appropriated fund balance, which will yield additional monies.

The Town's fund balance also supports the Panel Chair's ability to pay findings. The Town's audited financial statements for the fiscal year ended December 31, 2014 indicate a total Police Fund balance in excess of \$2.5 million. As much as \$2.0 million is available to fund wage increases.

Although the data above suggests that the Town will not have to exclusively utilize fund balance to fund this Award, the evidence still demonstrates that the Town has the ability to pay for the Award even if all of the monies needed to come from existing fund balance. Although the data submitted by the parties' varies widely on the issue of

the retroactive costs of any settlement, the Panel Chair finds that the imposed salary increases of 2% for 2012 and 2% for 2013 will be below \$1 million even when the costs needed to fund the increase in 2014 and 2015 is included.

The Panel Chair has carefully considered the Town's argument that it lacks the ability to pay. He finds it to be unpersuasive. While the Panel Chair is cognizant that immediately preceding the term of this Award, the national, New York State and local economy went into a tailspin unlike anything seen in recent history, the fact remains that the objective data does not support the outcome urged by the Town. The Town clearly has a desire not to increase the compensation provided to its employees but the data submitted by both sides cannot be found to objectively find that the Town lacks the ability to pay. The Town undoubtedly has had to come up with additional money over the relevant time period to fund substantial increases to pensions. However, much of the other evidence in the record does not support its ability to pay claim. The Panel Chair notes that even in the area of health insurance, the Town's health insurance costs have been exceptionally modest due to changes made to the health plans. He further notes that the Town does not have great retirement liabilities for health insurance down the road due to the fact that post-2000 hires are not eligible for health insurance paid for the Town.

In short, for the reasons stated above and based on the entire record herein, the Panel Chair finds that the Town has the ability to pay for this Award and that the wage increases awarded herein constitute a fair and reasonable Award.

### 3. THE INTERESTS AND WELFARE OF THE PUBLIC

#### Union Position

In the Union's view, this consideration encompasses the fact that the Town's taxpayers benefit from having a professional, well-trained police agency to protect the property and citizens of the Town. In the Union's estimation, there can be no question that the work performed by all members of this unit play an enormous role in the interest and welfare of the public. Its members protect life and property by fighting crime or providing life-saving intervention services to the Town's residents. The Union asserts that its officers' responsibilities require its members to have the education, skills, and training to exercise independent and sound judgment in the variety of important and potentially dangerous situations they face every day.

The Union stresses that the critical public safety role played by its officers mandates that its members' wages and benefits be competitive so that the Town can attract and retain quality employees. The Union opines that the Panel must issue an Award that allows its members to retain its competitive ranking compared to others in Erie 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.

The Town maintains that its status as a fiscally eligible municipality establishes that its taxpayers are under the burden of an average full property tax rate that is greater than that of the taxpayers in at least 75% of the municipalities in New York State. It points out that its tax base is largely residential, with 14,647 out of 18,679 parcels being residential in the Town.

The Town submits that when Supervisor Fudoli won the 2011 election, its taxpayers sent a very strong message that they can no longer afford tax increases. Supervisor Fudoli ran on a platform that asserted that the Town needed to curtail tax increases and spending increases. In the Town's view, the 2011 election results speak volumes about the public's ongoing concerns about its high taxes. Since there is no evidence that the public would be adversely affected if the Union's members did not receive compensation increases in this round of negotiations, and there is no evidence that Lancaster is losing good officers and/or failing to attract new talent due to its wage structure, the Town urges the Panel to put the interests and welfare of the public at the forefront of its thinking. It maintains that the public will benefit if the Panel adopts the Town's proposals.

#### **Panel Determination on Interests and Welfare of the Public**

The Panel Chair has carefully considered the statutory criteria regarding the interests and the welfare of the public in crafting this Award, 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

Union'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 and the Union's modest longevity proposal, all of the other economic proposals advanced by the Union 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.

#### **4. 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.

##### **Union Position**

The Union focuses its arguments on the especially hazardous nature of law enforcement work and the skills, abilities, education and personal characteristics required

to be a police officer. The Union stresses that even though its officers' routine work involves patrolling for the purpose of preventing crime and controlling traffic, its officers' paramount responsibility involves the protection of lives and property.

The Union stresses that the Department has had three officers die in the line of duty and that hazardous events can occur at any moment on any given day. While the Union recognizes that there are other lines of work that are hazardous, the Union insists that there is a clear distinction between the risks its officers take every day and the other high risk trades or professions. The Union maintains that the risks faced by police officers are unknown and unpredictable due to the random nature of crime and human beings. The Union contends that officers silently share the fear that each working day could be their last one depending on what they face at any given moment.

#### **Town Position**

Although the Town does not dispute that law enforcement is hazardous work with a variety of unknown risks, the Town asserts that the police profession is not so unique that it should not be compared to other risky trades or professions. The Town points out to the Panel that many of its taxpayers put their safety in jeopardy each day while working in high risk trades and professions outside of law enforcement. Since many occupations compensate employees at lesser rates than the amount paid to police officers, the Town contends that the lesser compensation and benefit packages provided to employees in other high risk trades and professions warrants some consideration by the Panel.

### **Panel Determination on Comparison of the Peculiarities of the Police Profession**

The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of police work. In the Panel Chair's view, the unique training, skills, pressures and dangers that police officers face each day mandates a finding that the peculiarities of the profession warrant a direct comparison with police officers.

### **5. CONSIDERATION OF PREVIOUSLY NEGOTIATED AGREEMENTS**

#### **Union Position**

The Union notes that the prior CBA between the Town and the Union covered the period from January 1, 2008 to December 31, 2011. It provided salary increases of 3% per year for each year. In the CBA that preceded the most recent one, the parties agreed to a 0% increase in 2005 and a 3% increase for both 2006 and 2007.

The Union contends that its agreement in the 1999 to 2002 CBA to eliminate lifetime retiree health insurance for any new hire whose employment commences after January 1, 2000 is the most significant previous negotiated agreement for the Panel to consider. The Union objects to the Town's claim that its agreement to eliminate retiree health insurance was fairly exchanged for the benefits its members received in exchange. According to the Union, apart from the 3% base wage increases it received which was consistent with the parties' settlement patterns, police officers received nothing unique in exchange for this major concession. The Union asserts that there were no increases to benefits such as uniform allowance, shift equalization pay, overtime pay, call-in pay, longevity, etc.

The Union contends that it has a history of agreeing with the Town to modify its health insurance plans to achieve additional savings to the Town. In the Union's view, its consistent cooperation with the Town, coupled with the 2000 agreement to eliminate retiree health insurance has resulted in a significant windfall in savings to the Town. To the Union, this history should induce the Panel to adopt its retiree health insurance proposal and reject the Town's premium contribution proposal for active employees.

**Town Position**

The Town insists that the terms of previously negotiated agreements are relevant to the issue of wages and health insurance because these provisions are the result of numerous arms length transactions between the parties where the Union voluntarily agreed to the salaries and health insurance provisions it currently has in place. It emphasizes that this is the first time the parties have ever gone to interest arbitration. Hence, the terms and conditions in the CBA are the product of years of negotiations.

The Town asserts that the Panel should exercise great care and prudence in rendering this Award so as to not disturb the historical agreements between the parties. To do otherwise would be a disincentive for the Union to ever come back to the bargaining table and be open to real change and the back and forth of gains and concessions that is necessary in any round of negotiations.

The Town maintains that the Union has overlooked the fact that its agreement to eliminate retiree health insurance for officers hired after January 1, 2000 was part of a fair exchange. This fact, coupled with the fact that none of the officers hired after January 1, 2000 has actually retired, should also lead the Panel to not disturb retiree health insurance.

### Panel Consideration of Previously Negotiated Agreements

The Panel has given full consideration to previously negotiated agreements in rendering this Award. The Panel Chair finds that since this is the first time the parties have ever gone to interest arbitration that it is prudent to exercise great caution in rendering this award with the hope that the parties will be able to voluntarily resolve their negotiations disputes in the future.

### BASE WAGES

#### Union Position

The Union is seeking a 4% salary increase for both 2012 and 2013. It insists that this salary increase is necessary to close the gap between the wages its members receive and the wages paid to other officers in the comparable communities.

The Union contends that it presented compelling and persuasive evidence establishing that its proposed 4% increase is necessary to bring its members into parity with the wages provided to police officers in comparable communities. It stresses that its consultant Anthony Hynes presented comparisons between the wages and benefits provided to its members and those provided to police officers in comparable communities. In the Union's view, these comparisons starkly illustrate that only a substantial wage increase will even begin to bridge the gap between the salary received by its officers and the amount received by officers in the group of comparables.

The Union claims that its detailed analysis shows that its members lag behind the average salary of the comparators over 26 years by as much as 4.5% and that their top step is 6.1% less than the average. When one directly compares Lancaster to Amherst, the

disparity is even greater with Lancaster's police officers lagging as much as 7.3% over a 26-year average and 8.6% at the top step.

The Union asserts that Lancaster has the lowest top step salary among all of the comparable units. It maintains that its analysis demonstrates that for 2013, its members lag behind Amherst on average by 9.5% and 10.8% at the top step and behind the average of all the comparables by 5.9% and 7.7% at the top step. The Union maintains that the gap in compensation between its members and that provided to the comparables becomes even wider when all other compensation items are added in addition to base salary. The Union claims that its objective data shows that when all other compensation is factored in along with base salary, its members lag behind Amherst on average by 17.5% and by 19.5% at the top step and lag behind the average of other comparable units by 7.0% and 9.6% at the top step.

The Union claims that the modest 4% increase its proposing will help narrow the gap between its wages and the higher wages paid to the comparables but that it will not close the gap. In the Union's estimation, even if all of its wage and salary proposals are implemented, it would be above where it is but still well below the average of all of the other comparables. The Union urges the Panel to adopt its proposal and help close the gap.

#### **Town Position**

The Town maintains that the Panel should deny the Union's salary proposal. It proposes a wage freeze for existing employees and a 15% reduction of wages for those unit members hired on or after January 1, 2012. The Town asserts that the Union's proposal should be wholly rejected because it is completely unaffordable given the

Town's fiscal restraints. The Town notes that if granted, the Town would endure an additional cost of \$161,135 for 2012 and an additional structural cost of \$293,074 for 2013. Although the cumulative costs attributable to this wage increase for 2012 and 2013 would be 615,344 for this two year period, the Town expresses grave concerns about these costs because they are also payable in 2014 and 2015. The Town's analysis shows that the cost of the Union's proposal from 2011 to 2015 is in excess of \$1.5 million.

The Town asserts that even a 2% wage increase for 2012 and 2013 would be a substantial unfunded cost and place the Town in the position of having to raise more than \$1 million for the period from 2011 to 2015. The Town contends that this would have a staggering effect on taxes. It argues that its analysis shows that the Police Fund tax rate would have to be increased by 17.01% because the Town did not budget for salary increases in the Police Fund or any other fund.

The Town wholly rejects the Union's suggestion that it should utilize one-shot fund balance monies from the Police Fund to pay for its proposed increase. The Town contends that this would be a ludicrous and unsound decision. It cites the fact that its fund balance is currently at the bare minimum baseline of 16.67%. Even more important, once the one shot revenue is utilized, the Town would have no choice but to fund these recurring expenses by raising taxes.

The Town emphasizes that its demand for no salary increase comports with the desires of its taxpaying public. The Town reminds the Panel that Supervisor Fudoli, a Republican, soundly won the 2011 election in a town where Democrats strongly outnumber Republicans. Supervisor Fudoli campaigned to hold the line on tax increases because he was highly concerned about escalating tax increases and because 70% to 80%

of the residents he spoke with during his campaign asked him to do something about holding down taxes and spending.

Supervisor Fudoli and the Town Board have held the line on taxes and spending since 2011. The Town notes that Supervisor Fudoli took a 10% pay cut from his Supervisor's salary, refused to accept an additional \$8,122 annual stipend for his work as the budget officer and surrendered a Town-owned SUV. The result is annual compensation that is 18.8% less than his predecessor.

The Town insists that it is merely asking the Union to hold the line on salary increases at this time. It is not asking any of its existing officers to take a pay cut. When the needs of the public are considered along with the Town's grave concerns over its ability to pay, the Town maintains that the only appropriate outcome would be a wage freeze for the two years that the Panel is empowered to decide over salary.

For all of these reasons, the Town urges the Panel to reject the Union's demand and to accept its proposal.

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

The Panel Chair has carefully considered the Town's ability to pay in formulating this Award and has given a great majority of his analysis to the ability to pay criteria over the other statutory criteria because that is what is required in this interest arbitration proceeding. More specifically, as a result of the Town's status as a fiscally eligible municipality, the ability to pay component must be given a weight of 70% in adjudicating this dispute. Since salary increases are directly related to ability to pay, the Panel Chair's analysis on ability to pay frames his determination in this section of the Award and leads

to the determination that the Town has the ability to pay for salary increases of 2% in 2012 and 2% in 2013.

The reality is that the Panel Chair has determined that the Town's finances are in good shape and that it has the ability to pay for salary increases of 2% for 2012 and 2% for 2013. One may automatically think that this should then result in an Award that grants the Union's demands. This is not the case because the retroactive costs of 4% per year are too great for the Town to absorb at this time. In other words, while the data shows that the Town has the ability to pay for salary increases of 2% per year, the Panel Chair is convinced that, strictly from an ability to pay analysis, salary increases of 4% per year are not affordable at this time. When the Panel Chair considers other factors such as the low cost of living in the past few years and settlements of comparable municipalities, he remains convinced that the record does not support the Union's proposed increases of 4% per year but that it does support the salary increase of 2% per year.

The Panel Chair is cognizant of the fact that the salary increases awarded do not allow the Union to achieve the competitiveness with its comparables that it wishes to achieve. However, the wage growth being awarded is competitive with so called going rate increases and it comports with the Town's ability to pay, which must be the focus in this proceeding.

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 6.01 – SALARIES

The 2011 salary schedule will be increased by 2% effective January 1, 2012 and by an additional 2% effective January 1, 2013.

## LONGEVITY

### Union Position

The Union proposes to adjust the non-cumulative longevity payments by \$100 at each level provided in the current longevity structure. For example, under the Union's proposal the current payment of \$1,225 per year after five years of service would increase to \$1,325 per year after five years of service.

The Union asserts that longevity increases have been neglected by the parties over the past several rounds of negotiations. While there have been some modest increases over the years, the increases have been very sporadic. In the Union's view, this is precisely why there is a large gap between the wages paid to its members and the wages paid to police officers in the group of comparables, particularly at the most senior levels.

The Union asserts that its currently longevity schedule lags the market substantially at all of the service levels. It maintains that its officers rank second to last among the comparables when calculating longevity earnings over a 25-year career. In the Union's estimation, its members will still lag behind most of the comparables even if this proposal is granted by the Panel.

### Town Position

The Town insists that the PBA has failed to present any support for this demand. It asserts that its police officers receive competitive longevity payments and that there is no compelling reason to further increase these payments. Since longevity payments add up over time, the Town stresses that the Panel should not increase the Village's liability on this already expensive payment

### Panel Determination on Longevity

The Panel Chair finds clear support in the record for an increase to longevity. Police officers in Lancaster with significant seniority earn the same or less longevity than most of their counterparts in neighboring towns. Thus, a modest increase is warranted so PBA members can maintain their relative standing.

However, in light of the ability to pay criteria and the fact that the Panel must give this criterion 70% weight, the Panel Chair hereby determines that this benefit should be increased prospectively with no retroactive payments. This will allow police officers to receive the increases they deserve while providing the Town relief on the retroactive costs.

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 LONGEVITY

Section 6.05 – Longevity will be modified by increasing the amounts paid at all levels by \$100.00 effective October 1, 2015.

## **HEALTH INSURANCE FOR ACTIVE EMPLOYEES AND RETIREES**

Currently, employees hired after January 1, 2000 are not eligible to receive health insurance paid by the Town in retirement. In other words, they are required to fully fund their health insurance benefits in retirement. The PBA proposes to change that language by requiring the Town to pay for health insurance in retirement for all employees hired after January 1, 2000.

With respect to active employees, the current agreement requires the Town to pay 100% of the cost of health insurance premiums for all active employees in the unit. The Town proposes to change this provision by requiring all active employees to contribute 10% of the premium cost with the Town contributing the remaining 90%.

### **Town Position**

The Town insists that its proposal is warranted for several reasons. First and foremost, although the Town has successfully controlled its health insurance costs over the past five years by self-insuring, the fact remains that health insurance has been increasing at astronomical rates over the past several years. Second, the Town opines that its police officers receive a more generous health insurance benefit for active employees than police officers throughout the County and employees throughout the State and country. The Town notes that every municipality identified as comparable by the Union has some form of health insurance premium contribution for active employees. For example, police officers in Cheektowaga pay 5% toward the cost of premiums if hired on or before November 1, 2012 and 15% if hired after that date.

The Town insists that fully paid employer health insurance is a relic of the past that can no longer be afforded by any employer. The Town contends that its modest

proposal of a 10% premium contribution will at least begin to bring the Town's police officers closer to the reality faced by many of Lancaster's taxpayers in terms of their health insurance cost burdens.

The Town strongly opposes the Union's proposal to create a retiree health insurance benefit for police officers hired after January 1, 2000. It maintains that this benefit was discontinued in the context of a fair arms length transaction where there was a fair exchange of items that included 3% annual wage increases for each of four years for the Town's police officers.

The Town stresses that the Union's proposal runs completely contrary to the current trends in collective bargaining, which are requiring employees to share a greater piece of the health insurance costs. It also raises a practical point that it would be extremely difficult to grant retiree health insurance to retirees that have left their employment with the Town and are no longer represented by a bargaining unit.

Most importantly, the Town strongly objects to the Union's proposal because it would be prohibitively expensive to fund. The Town observes that evidence was presented establishing that it would cost approximately \$441,000 annually to even begin to fund this benefit. Since this cost will undoubtedly increase year after year, the Town urges the Panel to reject the Union's proposal.

The Town asserts that the Union has not offered to give back the 12% of cumulative salary increases that were provided to police officers and the other benefits that were granted in exchange for eliminating retiree health insurance. Under these circumstances, the Town claims that the Union's proposal cannot be given any credence.

The Town objects to Mr. Hynes' calculations in support of this proposal. It contends that the calculations were based on multiple speculative assumptions and provided no anticipated increases in the costs of premiums. In the Town's estimation, the Union's evidence in support of this proposal was so flawed and incomplete that it should be wholly rejected by the Panel.

#### **Union Position**

The Union insists that Town-paid health insurance in retirement for all employees hired after January 1, 2000 is a proposal that must be granted by the Panel. It stresses that none of the other comparables leave their retirees without any coverage after retirement. The Union notes East Aurora and Orchard Park only provide full coverage for retirees until they turn 65 but that the other comparables pay for the majority of healthcare costs for retirees.

In light of this draconian situation for its retirees, the Union argues that the Town's proposal for premium contribution for active employees should be rejected. It asserts that the health contributions for active employees in the comparable communities are far less onerous than the proposal made by the Town. For example, in Orchard Park officers do not pay a premium contribution unless officers choose a specific plan offered by the employer. In Tonawanda and West Seneca, some members contribute toward health insurance for a short period of time after employment but nothing thereafter. In Amherst, effective January 1, 2016, all members pay a flat contribution of \$300.00 for individual coverage and \$750.00 for family coverage with contributions ceasing at retirement.

The Union asserts that Town's demands ignore its strong economic position and represent a dramatic and unduly burdensome cost shift on the backs of police officers. While healthcare concessions may be appropriate in municipalities that are struggling and in municipalities that provide fully funded health insurance to its retirees, there is no evidence that the Town is suffering financially to the point where it needs greater cost sharing than it already has, i.e., 100% contribution for all retirees after January 1, 2000.

The Union points out that the Town's healthcare proposals must also be rejected because they would wipe out any anticipated wage increase provided by the Panel. Employees will be going backwards, a circumstance that is unjustified and untenable in the Union's view. The Union contends that the Town does not need the healthcare concessions. It simply wants them. Since the Town's healthcare proposals are not justified and would have devastating effects on each police officer's bottom line of take home pay, the Union urges the Panel to reject the Town's proposal.

**Panel Determination on Health Insurance for Active Employees and Retirees**

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 have the potential to be a drain on the budget. However, the Town has not endured any financial adversity on its health insurance costs in the past several years due to self insuring and due to changes the Union has agreed to in terms of benefits that are being provided to officers. In other words, the Town's claim of actual hardship in the area of health insurance is theoretical but not real.

Most noteworthy to the Panel Chair is the fact that the Town is the only jurisdiction in the group of comparables providing no retiree health insurance to the group of police officers hired on or after January 1, 2000. When the Panel Chair considers how far afield this benefit is vis-à-vis the comparables and considers the modest increases the Town has endured on health insurance over the past five years, he sees no objective way to support the Town's proposal for premium contributions for active employees. It lacks support in all ways based on the record evidence and is rejected.

At the same time, the Panel Chair cannot find support for granting the Union's proposal to provide retiree health insurance for employees hired after January 1, 2000. The ability to pay criteria is very significant in this determination. After all, establishing this benefit would subject the Town to paying for the expenses for dozens of retirees each year. This benefit will cost hundreds of thousands of dollars annually. The Panel Chair cannot find that the Town has the ability to pay for this benefit due to the future expenses that the Town would be required to fund.

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 AND  
RETIREES**

1. The Town's health insurance proposal for active employee health insurance contributions is rejected.
2. The Union's proposal to require the Town to pay for retiree health insurance

for those employees hired after January 1, 2000 is rejected.

### **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**

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

### **RETENTION OF JURISDICTION**

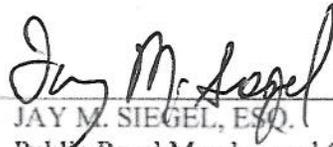
The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Award.

### **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, 2012 through December 31, 2013. The terms of this Award shall be effective on such

dates as set forth herein and payable to any unit member working during such award term. Payment of any retroactive wage and/or prospective longevity adjustment shall be made no later than 60 days after the execution of this Award by the Panel Chair.

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

10/11/15  
Date

  
\_\_\_\_\_  
JEFFREY SWIATEK, ESQ.  
Employer Panel Member

9/30/15  
Date

  
\_\_\_\_\_  
SHAUN DIMINO  
Employee Organization Panel Member

9/29/2015  
Date

STATE OF NEW YORK )  
COUNTY OF PUTNAM )

ss. :

*KN*

On this <sup>1<sup>st</sup></sup> day of ~~September~~ <sup>October</sup> 2015 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.

*Kathleen Duffett*

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

STATE OF NEW YORK )  
COUNTY OF ERIE )

On this <sup>30<sup>th</sup></sup> day of September 2015 before me personally came and appeared Jeffrey Swiatek, 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.

*Leighann Barone*  
Notary Public

STATE OF NEW YORK )  
COUNTY OF ERIE )

LEIGHANN R. BARONE  
No. 01BA5045203  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires June 12, 2019

On this <sup>29<sup>th</sup></sup> day of September 2015 before me personally came and appeared Shaun DiMino 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.

*Susana Shanks*  
Notary Public

SUSANA SHANKS  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires July 31, 20 17

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration Between

LANCASTER CAYUGA CLUB POLICE  
BENEVOLENT ASSOCIATION

Employee Organization

-and-

THE TOWN OF LANCASTER

Public Employer

**Public Employer  
Panel Member**

**Concurring Opinion**

PERB Case No. IA 2014-010; M2013-303

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At the outset, I wish to recognize that the Panel Chair exercised his duties in a most professional manner, and that he permitted each party a full and fair opportunity to present evidence and arguments. I have no doubt that the Award reflects his genuine efforts to reach the most just and reasonable result possible, based upon careful consideration of the required statutory factors. I likewise wish to recognize the courteous and productive efforts of the Employee Organization Panel Member.

I hereby concur with the Award in this matter. The panel deliberations in a compulsory interest arbitration proceeding necessarily involve discussion, deliberation and even a measure of “bargaining” among the Panel members. My sole reason for concurring with the Award is that doing so, in my view, put the Town in the best position to avoid an even more costly result. The interest arbitration process is imperfect, and has proven to be strikingly unresponsive to the fiscal realities faced by municipalities in both the short and long term. As a result, a Public Employer Panel Member must often support the least damaging – even if still undesirable - alternative when participating in this process.

The Award provides for fully retroactive salary increases of 2% effective January 1, 2012 and 2% effective January 1, 2013. I do wish to comment on certain of the findings that are used to support the conclusion that the Town has an ability to pay for these increases.

First, the Award correctly recognizes that the Town does not have any additional monies in its budgets for 2012, 2013, 2014 or 2015 with which to fund salary increases. The Award further asserts that sales tax revenues, which are highly volatile, are expected to increase by at least \$170,000 from 2015 to 2016. Even if that premise is accepted, however, the Town must still come up with more than \$800,000 in order to fund the compensation increases in the Award. This necessarily means the Town will have to either consider staffing reductions to reduce expenditures, or will have to pay for these increased costs by substantially raiding fund balance, which has been declining and is currently at the bare minimum amount recommended by fiscal experts. The approach of depleting one-shot monies such as fund balance to pay for recurring salary increase cannot be sustained, yet there does not appear to be any recognition of that fact in the Award. Unfortunately, all the good work the Town has done over the past several years to pursue a sustainable and responsible fiscal course will be jeopardized by the Award.

Further, the Town imposed a wage freeze for its non-union employees for 2012 and 2013, and the Town has been similarly consistent with its other three bargaining units in declining to agree to any net wage increases for 2012 and 2013, on the basis that Town employees are already well-compensated and that the Town's taxpayers – who have suffered through the “Great Recession” and an uneven recovery – deserve a break. Yet the Award now provides Cayuga Club members with significant wage increases for those years. The Award thus presents the Town a Hobson's Choice: Either provide similar retroactive wage increases for those other employees for the years at issue, which are unaffordable and would force the Town to consider further staffing reductions, or decline to do so and thus leave the Cayuga Club members as the only Town employees to receive wage increases during that period. There does not appear to be any appreciation for the broader significance of the Award within the Town.

The wage increases provided in the Award appear to be based, in part, on the assertion that “the Town's health insurance costs have been exceptionally modest due to changes made to the health plans.” (*Award*, p.24). It is doubtful that the Town's taxpayers would similarly conclude that a union member's family plan coverage, which costs over \$18,000 annually and which is fully paid by the Town, constitutes an “exceptionally modest” cost or in any way supports further wage increases.

I must also express what I am sure will be the Town's profound disappointment that the Award does not include any provision for an employee contribution towards the cost of health insurance coverage – not a single penny. This is despite the fact that every comparable community requires officers to contribute towards coverage in some manner, and that the vast majority of the Town's taxpayers must substantially contribute towards the cost of their own health insurance coverage. In the end, you cannot escape the conclusion that the Town is effectively being punished for having successfully negotiated language several years back reducing the retiree health insurance benefit for newly-hired officers –which, by the way, does little to assist the Town with meeting its current fiscal challenges. It is surely not “just and reasonable” to continue to require the Town's taxpayers to fully fund the cost of health insurance coverage for union members under these circumstances.



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Public Employer Panel Member