

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. IA 2014-011; M2014-114

INTEREST ARBITRATION PROCEEDINGS

In the Matter of the Interest Arbitration Between

SOLVAY POLICE BENEVOLENT
ASSOCIATION, INC. AFFILIATE:
NYS UNION OF POLICE ASSOCIATIONS, INC.

AND

VILLAGE OF SOLVAY, NY

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

Subject: June 1, 2011-May 31, 2013 CBA

Public Arbitration Panel

Anthony V. Solfaro, PBA Panel Member
Michael A. Tremont, Employer Panel Member
Nancy Faircloth Eischen, Impartial Arbitrator/Chair

Appearances

For the Union: John M. Crotty, Esq.
PBA Attorney

For the Employer: COSTELLO COONEY & FEARON, PLLC
By: Jim Barna, Esq.
Richard J. Andina, Esq.

OPINION OF THE PANEL CHAIR

PROCEEDINGS

The Village of Solvay, New York ("Solvay", "Village" or "Employer") and the Solvay Police Benevolent Association, Inc. ("PBA" or "Union") have a long-standing collective bargaining relationship, with several predecessor negotiated agreements, certain topic specific Memoranda of Agreement, and one prior interest arbitration award (covering June 1, 2004 to May 31, 2006). When these Parties could not reach consensus in negotiations and mediation on a successor to their 2006-2011 negotiated Collective Bargaining Agreement, the PBA petitioned for interest arbitration under §209.4 of the Public Employees' Fair Employment Act ("Act" or "Taylor Law").

In accordance with Section 209.5 of the Act the New York State Public Employment Relations Board ("PERB") designated Anthony V. Solfaro, Employee Organization Member, Michael A Tremont, Public Employer Member and Nancy Faircloth Eischen, Impartial Member/Chairman of a Public Arbitration Panel ("Panel"). The Panel is charged with rendering a just and reasonable determination establishing the terms and conditions of employment for the Village's CBA-covered police officers, for the contract period commencing June 1, 2011 [the day following the last day of the June 1, 2005-May 31, 2011 collectively bargained agreement]. Under §209.4(c)(vi) of the Act, the Award issued by this Panel must be retroactive to June 1, 2011 and the maximum covered period is two years from June 1, 2011 through May 31, 2013, because the parties did not empower the Panel to issue an Award for a period longer than that statutory term.

The Panel held a transcribed interest arbitration hearing on May 13, 2015, at which both parties were represented by Counsel and afforded full opportunity to present

evidence and argument in support of their positions. Initial post-hearing briefs were filed by agreement of Counsel on August 28, 2015 and eventually supplemented with final briefs dated June 3, 2016, following the Panel's Executive Session deliberations of May 11, 2016.

As explained, below, rendition of the Opinion of the Panel Chair and the Panel Award was delayed by the pendency of an improper practice charge that significantly impacted the scope of the Panel's jurisdiction and authority in this case. Also, the Parties graciously exceeded to my request for a brief but unavoidable delay in the completion of this Opinion of the Panel Chair.

THE IMPROPER PRACTICE CHARGE

The elephant in the room for much of this interest arbitration proceeding has been an improper practice charge (Case No. U-33915), filed by the PBA on October 28, 2014. In that IP charge, the Union alleged that the Village had violated §209-a.1 (d) of the Act (refusing to negotiate in good faith) by submitting, after invocation of interest arbitration by the Union, "many and major regressive demands" for determination in this arbitration. The Village filed an answer denying the material allegations of the charge, asserting that the proposals it submitted in response to the PBA's petition for interest arbitration had previously been submitted to the PBA during negotiations and properly were before this Panel for determination. The Administrative Law Judge held a hearing on the IP charge on April 3, 2015 and briefs were filed in that case in mid-June 2015.

It is well recognized that an interest arbitration panel has inherent discretionary authority to grant or deny a stay of an interest arbitration proceedings during the pendency of an improper practice charge. *See* 4 NYCRR § 205 ("The conduct of the arbitration panel shall be under the exclusive jurisdiction of the arbitration panel."). *See*

also Patrolmen's Benevolent Association of New Windsor, Inc., 31 PERB 3061, 1998 WL 35396621 (Oct. 27, 1998). However, the Panel is prohibited from making an award on an issue "the arbitrability of which is the subject of an improper practice charge" until a determination on the charge is rendered or the charge is withdrawn. See 4 NYCRR § 205.6(d). As explained in one PERB decision:

"The purpose of this rule is to permit the arbitration panel to make an award, if it chooses to do so, on items the arbitrability of which is not in dispute, while reserving to this Board the exclusive power to determine arbitrability questions raised in improper practice proceedings. In these circumstances an arbitration panel must exercise its own discretion however as to the appropriate course it will follow with respect to the demands before it in each case. If the decision on the merits of the issues pending before this Board could in the view of the arbitration panel affect its decision on the merits of the issues pending before the panel the panel could properly determine not to proceed with those other issues until our final determination." Town of Amherst, 14 PERB 3010, 1980 WL 611452 (Feb. 12, 1980).

Following Executive Session discussions and a series of majority votes, this Panel exercised its above-described inherent discretion by: 1) Denying the motion of the Village to stay the previously scheduled May 13, 2015 interest arbitration hearing; 2) Permitting both Parties to present and advocate for their respective positions in that arbitration hearing; 3) Denying the motion of the Union to issue an interim Award based solely upon the Union's demands; and 4) Granting the Union's motion to file a supplemental brief if the ALJ decision denied the IP charge.

In short, because the Panel majority concluded that the pending PERB ALJ decision of the IP charge might well affect our decision on the merits of the issues in the interest arbitration, we determined not to proceed with rendition of the Opinion of the Chair and the Panel Award until the final PERB determination of the arbitrability of the Village's proposals. The January 20, 2016 ALJ decision in Case No. U-33915 reads, in parts most pertinent, as follows:

The demands contained in the Village's response were not first submitted during the interest arbitration phase. On the contrary, the demands were first submitted by the Village as proposals more than two years prior, when the parties were still negotiating. That the Village may have submitted more favorable proposals to the PBA much earlier in the negotiating process and as long ago as 2011, which is what the PBA relies upon to support its charge, is immaterial in light of the fact that the parties were negotiating over the allegedly regressive proposals dating back to 2012.

Specifically, the Village's demands concerning sick leave, compensatory time and health insurance buy-out, as contained in its interest arbitration response, are identical in content to the proposals it submitted to the PBA during the parties' May 21, 2012 and June 21, 2012 negotiating sessions. In addition, the Village's demands concerning wages, longevity and uniform allowance, as contained in its interest arbitration response, are identical in content to the proposals it submitted to the PBA during the parties' June 21, 2012 negotiating session. . . .

There is no record evidence indicating that the PBA complained of these proposals as being regressive at the time they were first proffered by the Village in 2012. Indeed, that question is not before me. Rather, I must decide whether or not the demands submitted at the interest arbitration stage, in 2014, were regressive at that time. Nor is there any evidence establishing that the Village proffered more favorable proposals to the PBA subsequent to the May and June 2012 negotiating sessions and prior to the interest arbitration filing in 2014. Since these Village proposals were the last and most recent on the table prior to interest arbitration, and they are identical to the demands contained in the Village's response to the PBA's interest arbitration petition, the demands in question are neither regressive nor new.

Therefore, for the reasons set forth above, the charge must be, and hereby is, dismissed in its entirety.

The Panel convened in Executive Session on May 13, 2016 to review the record and discuss the Panel Award, following which the record was closed with the receipt of June 3, 2016 supplemental briefs requested by the Panel Chair. The Panel then fully reviewed all data, evidence, and argument on each of the issues submitted by the parties. After deliberating on each of those outstanding demands, the Panel Chair rendered this Opinion and executed the Panel Award. It should be noted and understood that a Panel Member's signature of the attached Panel Award does not necessarily imply concurrence with all of the views expressed by the Panel Chair in her Opinion.

POSITIONS OF THE DISPUTANTS

The positions taken by both parties are specified in their pre-hearing and post-hearing written submissions and exhibits, all of which were given full consideration, albeit only summaries are set forth in this Opinion:

The Union Demands

Base Wages - CBA §3.2

The PBA seeks a 2.5% increase on all wage amounts effective June 1, 2011 and an additional 2.5% increase effective June 1, 2012.

Longevity - CBA §3.3

The PBA seeks to change the existing longevity system. It seeks a \$25 increase on all step amounts effective June 1, 2011 and another \$25 increase on June 1, 2012.

Uniform Allowance - CBA §4.2

The PBA requests a \$25 increase to the current \$575 allowance effective June 1, 2011 (to \$600) and an additional \$25 effective June 1, 2012 (to \$625).

Night Differential - CBA Article 6

Employees who are scheduled to work between 3:00 p.m. and 7:00 a.m. are currently paid a \$1.00 per hour shift differential. The PBA proposes a 10¢ increase to this differential effective June 1, 2011 with an additional 10¢ increase effective June 1, 2012.

Meal Allowance - CBA Article 6

Employees who attend training or schools outside a contractually specified geographic zone, and that lasts at least eight hours, receive as of June 1, 2010 a \$10.00 meal allowance that covers breakfast, lunch and dinner. The PBA seeks a \$2.50 increase to \$12.50 effective June 1, 2011 and an additional \$2.50 increase (to \$15.00) effective June 1, 2012.

Health Insurance - CBA Article 7

The PBA has three health insurance demands. Two pertain to health insurance for active employees during employment and one pertains to health insurance in retirement.

Active Employees

A. Premium Contribution – CBA §7.1

Employees who are hired on or after January 17, 2002, including any part-time officers who were employed as of September 26, 2001 and thereafter become full-time, pay 15% of the premium for their chosen health insurance coverage whether individual or family/dependent. The PBA would reduce that contribution to 10% of the applicable insurance premium.

B. Health Insurance Buy-Out – CBA §7.3

Employees who waive health insurance currently receive \$1,500 if individual coverage is surrendered or \$3,000 if family/dependent coverage is waived. The PBA would change that current flat dollar payment to a sum equal to 50% of the premium for individual coverage payable in quarterly installments. Terms and conditions for the payment would remain as they are now under the expired CBA.

C. Retiree Health Insurance – CBA §10.4

Employees who retire with at least 20 years of credited police service or who receive an earlier disability retirement from the State Retirement System may continue health insurance in retirement. The Village currently pays 50% for individual coverage and 40% if family/dependent coverage is chosen. The retiree pays the balance of the applicable premium cost (50% individual; 60% family/dependent).

The PBA would have the Village pay 100% of the cost of individual coverage plus 50% of the difference between the individual and family/dependent coverage if family/dependent coverage were chosen by the retiree. That would be the base family/dependent retiree health insurance benefit which could be enhanced under the PBA's demand if an employee has accumulated unused leave time and surrenders that leave time upon separation from employment. The basic family/dependent health insurance benefit improves on a sliding scale under the PBA's proposal depending on the number of unused leave days surrendered from 60% paid by the Village if 90 to 104 leave days are surrendered to 100% paid by the Village if 150 or more days of unused time are surrendered upon retirement.

Leave Time Demands – CBA Article 5

The PBA has demands affecting vacations, sick leave and personal leave. Common to all of these leave time demands is a provision that would allow employees the option to bank unused leave days into a retirement escrow account that would be used by the employee to cover the cost of family/dependent health insurance on retirement that is not paid by the Village as discussed above.

Holidays – CBA §5.2

Employees are currently paid for eleven (11) holidays. They receive an additional paid holiday when there is an election for a Village office. The PBA would add Martin Luther King Jr's birthday as a holiday retaining all other holidays.

Sick Leave – CBA §5.3

Employees currently receive each year 130 non-cumulative days of sick leave without any pro-ration for a new employee. The PBA would pro-rate sick leave depending upon when in a given year an employee were first hired such that they would receive 1/12th of 130 days for each month or part thereof remaining in the fiscal year in which the employee was hired.

The PBA would also change the way sick leave is earned. Instead of all employees receiving 130 days each year, employees would be credited initially with 130 days. Thereafter, sick leave would be earned and accrued at four hours every two-week pay period. This time would accumulate and be carried over year-to-year and there would not be any cash out of accrued sick leave on separation from service; however the sick leave time could be escrowed for purposes of enhancing the basic retiree family/dependent health insurance benefit.

The Employer Demands

The Village proposals for changes in the predecessor CBA were: (1) a reduction in new hires' starting salary; (2) a reduction in the amount of sick leave time; (3) the addition of compensatory time; (4) a decrease in longevity pay; (5) elimination of the health insurance buyout, and (6) a receipt requirement for the uniform allowance (*Proposed new language italicized*):

1. Amend Section 3.2 (Base Wage Schedule) - New Starting Salary

Under the Village's proposal, starting June 1, 2012 the starting salary would be decreased from its current \$46,492 to \$37,194, followed by step increases every six months thereafter for 2 years to bring the salary back up to \$46,492:

New Hires After June 1.2012

Starting Pay Rate \$ 37,194

After 6 Months \$39,054

After 12 Months \$41,202

After 18 Months \$43,674

After 24 Months \$46,492

2. Amend Section 3.3 (Longevity Schedule)

The Village's proposal is to reduce the longevity payment by \$75.00 after 5 years of service, \$175.00 at 10 years of service, \$275.00 at 15 years of service, and \$25.00 after twenty years of service.

<u>Step</u>	<u>Years of Service</u>	<u>06/01/11</u>
5	After 5	\$200.00
6	After 10	\$350.00
7	After 15	\$500.00
8	After 20	\$1000.00

3. Amend Section 4.2 (Uniform Allowance)

Each employee in order to be paid a uniform allowance must provide the Village with a receipt.

4. Amend Section 5.3 (Sick Leave)

Delete the first two paragraphs of Section 5.3 and replace with:

5.3 Sick Leave

Each member of the police department shall be entitled to fifty (50) days sick leave each calendar year, and shall be paid his full salary for fifty (50) work days during any and all times that he is incapacitated from work by reason of illness each calendar year. It is further understood and agreed that sick leave shall not accumulate from year to year, and that upon retiring or separation from the police department, the retiring or separating member shall not be entitled to monetary compensation for any of said sick leave which has not been actually utilized during the year preceding said retirement or separation.

5. Amend Article 6 to replace overtime compensation with compensatory time:

The Village maintains that it was paying unsustainable amounts of overtime compensation to its police officers in fiscal years 2012 and 2013 and these payouts must be decreased. To ameliorate the effects of this income reduction, the Village proposes to reward its officers with future time off if they have to work overtime.

COMPENSATORY TIME

An Officer may accumulate compensatory time in lieu of overtime pay up to a maximum of forty (40) hours and may be replenished as it is utilized. Compensatory time is that of the overtime hourly rate and shall be defined and accumulated as time and one-half. Accumulated

compensatory time shall be taken similar to that scheduled as vacation time. Officers may carry over any accumulated compensatory time up to the maximum of forty (40) hours to the next calendar year.

6. Delete Section 7.3 (Health Insurance Buy-Out)

The collective bargaining agreement provides medical benefits to the police officers and their families. The CBA provides a lump sum "buy out" (\$1,000 for individual/\$3,000 for family) for any officer who elects not to use these benefits, generally because they receive medical insurance from other sources. [At present one (1) of the eleven (11) active officers is taking that buyout option.] The Village maintains that "eliminating the health insurance buyout will assist the Village in its fiscal efforts, and it will not have dramatic impact on police officer compensation".

DETERMINATIVE FACTORS

CSL §209.4(c)(v) sets forth specific criteria that an interest arbitration panel must consider in arriving at the "fair and reasonable" award it must render:

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

From 1974 through 2013, no single one of these statutory standards was alone necessarily dispositive and interest arbitration panels had full discretion to determine what weight to place on anyone of them. City of Buffalo v. Rinaldo, 41 N.Y.2d 764, 767.

In 2013, however, the following new provisions of CSL § 209.6.iv significantly amended the Taylor Law's interest arbitration statute by mandating that an interest arbitration panel accord determinative weight to the financial ability to pay of a "fiscally eligible" public municipality:

c) 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 of the most recently available information, the public arbitration panel must find that such public employer is a fiscally eligible municipality. The office of the state comptroller shall make publicly available the list of counties, cities, towns, and villages that have an average full value property tax rate that meets such criteria in each local fiscal year. If a public employer has not reported to the office of the state comptroller the information necessary to calculate its average full value property tax rate, such public employer may not be deemed a fiscally eligible municipality and the provisions of this subdivision shall not apply.

(d) If the average fund balance percentage of such public employer is less than five percent and the state comptroller has certified that any additional fund balances in funds other than the general fund available for payment of arbitration awards in each year, if added to the fund balance of the general fund, would not cause the average fund balance percentage of such public employer to exceed five percent, the public arbitration panel must find that such public employer is a fiscally eligible municipality. The office of the state comptroller shall make publicly available the list of counties, cities, towns, and villages that have an average fund balance percentage that is less than five percent in each local fiscal year. If a public employer has not reported to the office of the state comptroller the information necessary to calculate its average fund balance percentage, such public employer may not be deemed a fiscally eligible municipality and the provisions of this subdivision shall not apply.

(e) When such public employer has been found to be a fiscally eligible municipality, the public arbitration panel shall, first and foremost, consider ability to pay by assigning a weight of seventy percent to that portion of the criterion contained within clause b of subparagraph (v) of paragraph (c) of subdivision four of this section that pertains only to the public employer's ability to pay. All other criteria contained in subparagraph (v) of paragraph (c) of subdivision four of this section, including that portion of clause b of subparagraph (v) of paragraph (c) of subdivision four of this section that pertains to the interest and welfare of the public, shall constitute an aggregate weight of thirty percent. Additionally, with respect to the total monetary value of any determination, the panel must recognize and take into account in its determination the constraints, obligations and requirements imposed by the real property tax cap pursuant to section three-c of the general municipal law upon the public employer involved in the dispute before the panel.

ANALYSIS

The Fiscal Eligibility Factor

As part of an interest arbitration panel's required obligation to consider the public employer's ability to pay, the new Taylor Law amendments mandate a panel determination whether the employer is "fiscally eligible" under an average fund balance percentage test and/or an average full value tax rate test.

The average fund balance percentage measures how much a municipality has remaining in its General Fund relative to how much it spends from its General Fund over the past five years. This is an indicator of a municipality's ability to pay for unexpected costs or pay for increased costs without raising taxes. It is calculated for each municipality by dividing the total fund balance in the General Fund by the total expenditures from the General Fund for each of the last five years. These five fund balance percentages are then averaged to determine the average fund balance percentage.

The average full value property tax rate measures how high property taxes are in a given municipality relative to the municipality's taxable property value. This is an indicator of the property tax burden facing a municipality's taxpayers - the higher the rate, the higher the burden. It is calculated for each municipality by dividing the amount of property taxes levied by the full value of taxable real estate for each of the last five years. These five full value property tax rates are then averaged to determine the average full value property tax rate.

In the present case, there is no dispute that during the 2011-2012 period of time covered by our Panel Award the Village was a "fiscally eligible" public employer under both the average fund balance percentage test and the average full value tax rate test.

Interest arbitration panels like ours must still consider all of the above-cited statutory criteria; both the traditional factors dating from 1976 and the new factors added by the Legislature in 2013. This Panel has done so in rendering its Award in this matter. However, when the employer is a “fiscally eligible” municipality, an arbitration panel no longer has absolute discretion concerning the weight to accord each factor. In interest arbitration proceedings involving a fiscally eligible employer, a Taylor Law panel must ascribe 70% weight to ability to pay and 30% to all other criteria. This Panel has done so in rendering its Award in this matter.

It is also noted that the new “fiscally eligible” legislation added another novel factor for interest arbitration panels to consider in making the award. Beyond the 70% predominant weight given ability to pay and the historic Taylor Law criteria (comparability; interest and welfare of the public; bargaining history), this Panel also must now also “recognize” the State’s real property tax cap and take into account the public employer’s “constraints, obligations and requirements” imposed by that tax cap “with respect to the total monetary value of any determination”.

Significantly, while the new legislation mandates that interest arbitration panel “recognize” the State’s real property tax cap, it ascribes that factor no particular value in calculating the aggregate 30% weight to be accorded all factors other than ability to pay. Because the Village is a “fiscally eligible” municipality within the meaning of the new interest arbitration legislation, this Panel is required to “recognize” the State’s tax cap legislation and take into account the Village’s “constraints, obligations and requirements” under that tax cap legislation. This Panel was done so in rendering its Award in this matter.

The Traditional Taylor Law Factors

That the interests and welfare of the public are well served by the fair compensation and good morale of its police officers is a truism so obvious that no further explication is required. The unique qualifications police officers must possess are also quite self-evident. The inherent hazards of that profession are dramatically and tragically demonstrated by recent events in Baton Rouge and Dallas. Consideration of the terms of collective bargaining agreements negotiated between these Parties in the past plainly shows they traditionally and consistently reflected, if not surpassed, the compensation and fringe benefits of police officer contracts of a mutually recognized cadre of comparable nearby Central New York public employers: Village of Baldwinsville, Town of Camillus, Town of Cicero, Town of Dewitt, Town of Geddes, Village of Skaneateles, Village of Liverpool, Town of Manlius and Village of North Syracuse. (Until the Village of East Syracuse abolished its police department, it formerly was also ranked as a recognized comparable).

Based on the Record it is apparent that the Village and the Union are still in general agreement that in this case the appropriate "comparables" are the above listed towns and villages in Onondaga County with police departments. *See generally* Village Exhibit No. 16 (A)-(L); *see also* Union Exhibit No. 16. Thus, for the June 1, 2011-May 31, 2013 period covered by our Award, this Panel bases the awarded wage increases for Village of Solvay police officers upon that very same established comparability constellation. [It is worth noting that the same mutually recognized comparables also were endorsed and utilized by the prior interest arbitration panel in awarding terms and conditions for Village of Solvay police officers for the period June 1, 2004 to May 31, 2006.]

The following were the percentage wage increases for police officers in each of those recognized comparable communities for the two-year period covered by our Award:

Police Officer Wage Increases-- Comparables

	<u>2011</u>	<u>2012</u>
Village of Baldwinsville	2.25%	2.50%
Town of Camillus	2.0%	1.0%
Town of Cicero	1.50%	1.5%
Town of Dewitt	2.375%	2.625%
Town of Geddes	0.00%	0.0%
Village of Skaneateles	0.00%	*
Village of Liverpool	3.0%	2.0%
Town of Manlius	3%	2.0%
Village of North Syracuse	<u>3.25%</u>	<u>2.50%</u>
<u>Average</u>	1.875%	1.828%

* Effective 6/1/12, Skaneateles police officers apparently accepted a lump sum payment for 2012 as did that Village's DPW employees -- but the percentage is not specified in that Agreement and could not be calculated from available record data.

CONCLUSION

Based upon all of the foregoing, the Panel Award provides annual wage increases of 1.875% for contract year 2011 and 1.828% for contract year 2012. The rest of the Union's demands in this arbitration are denied without further discussion, based primarily upon this fiscally eligible Employer's compromised ability to pay during the 2011-2012 period. The Panel similarly declines to either grant or discuss further the Village's demands for numerous concessionary amendments of the 2006-2011 negotiated Collective Bargaining Agreement. There is insufficient evidence in the record before us to warrant arbitral imposition of those Village demands and there are also other sound and compelling policy reasons for restraint by this Panel.

First and foremost, the Village and the Union have yet to agree (or have imposed by a different Taylor Law arbitration panel) terms for contract years 2013, 2014 or 2015. Thus, we must emphasize that nothing contained in this Opinion or the Panel Award is intended nor should anything herein be construed to express a determination, holding or finding by this Panel concerning matters in dispute in the ongoing round of bargaining for a successor to the June 1, 2011-May 31, 2013 contract term covered by our Panel Award.

Additionally, in my considered judgment, an impartial arbitrator of interest disputes best serves the contesting parties by restraint and humility in exercising the authority to supplement their collective bargaining process with a legislated resolution they could not achieve through their own negotiating efforts. In that process, the arbitrator should pay close attention to any evidence of mutual intent, especially including prior contracts and suppress any tendency to arbitral indulgence in extreme solutions, groundbreaking novelty, experimentation, or external manipulation of the historical balance of power. See Twin City Rapid Transit, LA 845, 848 (McCoy 1947), and North American Aviation, 19 LA 76, 77 (Cole/Aaron/Wirtz 1952). *See also*, Birmingham-Jefferson County Metropolitan Transit Authority, 103 LA 1 (Baroni 1994); United Traction Co., 27 LA 309, 310 (Scheiber 1956). In fashioning the fair and reasonable Panel Award in this case, the Panel Chair has honored those principles while also being ever mindful of the above-described statutory standards set forth in Section 209 of the Civil Service Law.

The fair and reasonable wage increases of the Panel Award for the two-year period June 1-2011-May 31, 2012 are both consistent with the traditional Taylor Law criteria and within this fiscally eligible municipality's limited ability to pay. [The record establishes that the cost of a 1% in base wage for this small bargaining unit of eleven (11) active police officers is approximately \$7,029; and with associated roll-up costs for FICA and pension contributions added in it is \$9,289]. The State's tax cap was also carefully considered with respect to the total monetary value of the Panel Award but ultimately is not a significant factor in this case. There is no evidence that the Panel's Award of relatively modest, fair and reasonable annual 2011 and 2012 general wage increases, founded in police contracts mutually recognized by these Parties as comparable in prior bargaining and in the previous interest arbitration, would cause the Village to exceed the tax cap.

NYS PERB Case No. IA 2014-011; M2014-114
AWARD OF THE PUBLIC ARBITRATION PANEL

1. **Term:** 2 years from June 1, 2011 - May 31, 2013.

2. **Wage Increases:** **2011** 1.875% effective June 1, 2011
 2012 1.828% effective June 1, 2012

Note: All wage increases shall be added to the applicable wage progressions.

3. **Implementation:** The awarded wage increases shall be implemented no more than 45 calendar days after the signatures of a Panel majority to the Award. Retroactivity shall be paid out to any unit member who worked during the expired period. The Village shall provide a worksheet to each unit member who is receiving retroactivity, showing how the calculation(s) were made, and what they represent.

Nancy Faircloth Eischen

Nancy Faircloth Eischen, Panel Chair

On this 2 day of August 2016, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared **Nancy F. Eischen**, to me known and know to me to be the individual described in and who executed the foregoing instrument and she acknowledged that she executed the same, which is the Panel's Opinion and Award.

Susan Manzer

SUSAN MANZER
Notary Public, State of New York
No. 01MA612504
Qualified in Chemung County
My Commission Expires Jan. 18, 2017

STATE OF NEW YORK
COUNTY OF TOMPKINS SS: *Toga*

On this day 2 of August 2016 I, NANCY F. EISCHEN, certify that I am the individual described herein and that I executed the foregoing instrument, which I affirm upon my oath as Arbitrator to be my Award in PERB Case No. IA 2014-01; M 2014-114.

Susan Manzer

Anthony V. Solfaro

Anthony V. Solfaro
Employee Organization Panel Member

DISSENT WITH THE AWARD

Date: 8/11/16

Michael A. Tremont

Michael A. Tremont
Public Employer Panel Member

*CONCUR WITH OPINION
AND AWARD*

Date: 8-10-16

SUSAN MANZER
Notary Public, State of New York
No. 01MA612504
Qualified in Chemung County
My Commission Expires Jan. 18, 2017