

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL  
CASE NUMBER IA 2005-27; M2005-062

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

Pelham Police Association, Inc.  
Employee Organization

- and -

Village of Pelham  
Public Employer  
----- X

IA 2005 - 027  
M-2005-062

**OPINION**

**and**

**AWARD**

Before: Rosemary A. Townley, Esq.  
Public Panel Member and Chairperson

Anthony V. Solfaro, President  
New York State Union of Police Associations, Inc.  
Public Employee Organization Panel Member

Ernest R. Stolzer, Esq.  
Public Employer Panel Member

Appearances: For the Pelham Police Benevolent Association, Inc.  
John K. Grant, Esq.  
Sgt. James Mitrione, PBA President  
Kevin Decker, Decker Economics

For the Village of Pelham  
Robert J. Tracy, Esq.  
Clifton, Budd & DeMaria, LLP  
Christopher K. Kurtz, Esq.  
Bond, Schoeneck & King, PLLC  
Richard Slingerland, Village Administrator  
Joseph Benefico, Police Chief

Hearings: March 13 & March 30, 2006

## **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 hear and render a just, reasonable and binding determination.

The Village of Pelham (Village) is a municipal corporation located in the southern part of Westchester County. It has a population of approximately 6,404 people.

The Pelham Police Association, Inc. (PBA) is the certified bargaining agent for all Police Officers and Sergeants employed by the Village. At the present time, the Pelham Police Department is comprised of 26 full time sworn officers.

The last collective bargaining agreement between the parties covered the period which commenced on June 1, 2002 and ended on May 31, 2004.

The parties began negotiations prior to the expiration of the previous collective bargaining agreement, but such negotiations did not result in an agreement. Thereafter, acting pursuant to the PERB impasse procedure, a PERB appointed mediator met with the parties. Mediation was unsuccessful and the PBA filed a Petition for Interest Arbitration (Panel Exh. 2) pursuant to Section 209.4 of the Civil Service Law.

The Village filed a response to said Petition (Panel Exh. 3) and thereafter, the undersigned Public Arbitration Panel was designated by PERB (Panel Exhibit 1), pursuant to Section 209.4 of the Civil Service Law, for the purpose of making a just, reasonable and binding determination of this dispute.

Hearings were conducted before the undersigned Panel on March 13th and 30th, 2006 at Village Hall. At all hearings, both parties were represented by Counsel. Both parties submitted numerous and extensive exhibits, documentation and were afforded the opportunity to examine and cross examine witnesses. The hearings were transcribed and are the official record of this proceeding. Both parties presented extensive arguments on their respective positions in post hearing briefs. The record was closed on or about August 3, 2006, upon the receipt of the parties' post hearing briefs.

Thereafter, the Panel fully reviewed the evidence and arguments submitted by both parties. After significant discussions and deliberations at the Executive Session held on August 31, 2006, correspondence between the Panel members and Executive Sessions held by teleconference on November 10, 2006 and December 7, 2006, the Panel reached agreement on the terms for the period of this Interest Arbitration Award as set forth herein. Neither of the Panel Members would accept all of the recommendations of the Panel Chairperson. However, since only a simple majority is required for each issue, the support of all items by at least the Panel Chairperson and one (1) other Panel Member resulted in this binding award. All references to "the Panel" in this Award shall mean the Panel Chairperson and at least one (1) other concurring Panel Member to constitute a majority on that subject matter.

Accordingly, set out herein is the Panel's Award as to what constitutes a just, reasonable and binding determination for the period June 1, 2004 through May 31, 2006.

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.

## I. COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with “other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.”

### PBA Position

The PBA contends that Pelham police should be compared on a primary basis with towns and villages located in the southern part of Westchester County that are either contiguous to or very close to the Village of Pelham. It argues that the most relevant comparable communities are the Towns of Eastchester and Harrison and the Villages of Bronxville, Larchmont, Mamaroneck, Scarsdale, Tuckahoe and Pelham Manor.

The PBA argues that the nearby Towns and Villages have similar economic influences and a commonality in terms of the duties, tasks and problems faced by police working in this area. It also asserts that these municipalities are the ones with which relevant comparisons may be drawn because several of the Villages are very similar to the Village of Pelham in total population and overall size of the Department. To this end, the PBA points out that the Village of

Pelham has a population of 6,404 and that the Villages of Pelham Manor (5,462), Bronxville (6,543), Tuckahoe (6,211) and Larchmont (6,485) are all nearly identical in population. In terms of size of force, the Village of Pelham has 26 full time sworn officers, nearly the same as the Villages of Pelham Manor (28), Bronxville (21), and Tuckahoe (26).

The PBA recognizes that some of the Towns and Villages that are nearby to the Village of Pelham have somewhat larger populations and police forces than Pelham. It cites the fact the Village of Scarsdale has a population of 17,823 and a police force with 39 full time officers, that the Village of Mamaroneck has a population of 18,736 and 52 full time officers, and that the Town of Eastchester has a population of 18,564 and 48 full time officers. Nonetheless, according to the PBA, these Towns and Villages are relevant because they are geographically close and similar enough to the Village in terms of population and size of Department to provide a meaningful basis for comparison of wages and benefits.

The PBA objects to the Village's contention that the Panel should consider all Villages in Westchester to be comparables. It asserts that some of the Villages in northern Westchester are not close in proximity to Pelham and that many of them have substantially different socioeconomic factors that impact them. Since there are more than enough available comparable communities in lower Westchester there is little reason to expand the universe of municipalities with which to make comparisons. In support of this position, the PBA cites the following quote from an interest arbitration award a few years ago in the Village of Bronxville:

The statutory criteria of "comparable communities" in the statute has been interpreted by arbitration panels to mean those similar communities in close geographic proximity.

Finally, the PBA asserts that the Village of Pelham Manor be considered the most direct comparable for the purposes of comparing wages, benefits and terms and conditions of

employment. This is so because the Pelham and Pelham Manor are contiguous communities in the same Town and are extremely similar with nearly identical populations, size of police forces, and economic influences.

#### Village Position

The Village argues that the proper pool of comparison is all Villages within Westchester County. It asserts that the PBA's argument that comparables should be limited to only those Villages and Towns in close geographical proximity to Pelham lacks merit because the PBA has disregarded the Village's two most immediate neighbors, the City of New Rochelle to the east and the City of Mount Vernon to the west. Thus, since the PBA is not truly relying on geographical proximity, there is no reasonable basis to limit the pool of comparables to those Towns and Villages located very close to Pelham.

Instead, the Village argues that a more appropriate comparison for Village of Pelham police would be to review the universe of all Villages within Westchester County. This is the most appropriate grouping for comparative purposes because of the similarities of economies, budget size and level of services to residents. Members of these departments also have very similar duties, tasks and challenges.

#### Panel Determination

The Panel Chairperson has reviewed and considered the appropriate comparables as required by the statutory criteria. There is no doubt that the eight Towns and Villages cited by the PBA that are in close proximity to Pelham have much in common with each other in terms of working conditions for police. The level, frequency and complexity of the criminal climate are quite similar in these jurisdictions as is the wealth of the various municipalities and their residents. Clearly, they are more similar to each other than to some of the Villages at the

northern edge of Westchester County. At the same time, there is no doubt police officers working in northern and western Villages in Westchester County also have much in common with Pelham's police officers in terms of their daily activities, the challenges they face, and the financial conditions in the Villages where they work.

Accordingly, the Panel finds that pursuant to the statutory criteria, the comparables having the greatest influence over the Panel are the eight (8) jurisdictions cited by the PBA that are in close proximity to the Village of Pelham. The Panel also finds that Villages throughout Westchester County are also appropriate comparables, although not as much weight should be accorded to them as should be provided to the eight (8) jurisdictions that are nearest to Pelham.

## **II. WAGES AND ABILITY TO PAY**

### PBA Position

The PBA maintains that the Village clearly has the financial ability to pay for fair and equitable increases, which it has requested in the nature of a 4.75% salary increase for each of the two (2) years to be covered by this Interest Arbitration Award. The PBA contends that the evidence presented at the arbitration hearings clearly establishes that notwithstanding the Village's protestations, it continues to maintain a sound and flourishing financial situation.

The PBA presented testimony by Kevin Decker, of Decker Economics, to support the argument that the Village does indeed have the financial ability to pay the increases sought on behalf of Pelham police. Decker, a municipal finance expert, testified that he reviewed the Village's financial status and prepared a report on its fiscal condition and ability to pay the wage increases sought by the PBA (PBA Exhibit 36).

The PBA asserts that Mr. Decker's report shows that the Village is in excellent financial condition and that its residents have enjoyed the benefit of decreasing real tax rates. Over the

past ten (10) years, the full value tax rate decreased by an average of 3.24%. Over the past five (5) years, it decreased by an average of 6.29% for residential properties and 8.35% for commercial properties.

Moreover, the Village's sales tax revenue continues to grow at a healthy pace. According to the PBA, Mr. Decker's analysis shows that sales tax revenues for 2006 are projected to be 4.52% above the previous year and sales in the County have been trending upward for quite some time.

The Village also has the ability to pay because it enjoys a very healthy fund balance and virtually no debt. The Village's unappropriated fund balance is \$1,655,470, which is a healthy 16.98% of expenses, asserts the PBA. The Village's total debt of \$855,000 represents a mere 1.42% of the permissible debt limit. Accordingly, it maintains, the Village can comfortably afford to pay the wages and economic benefits sought by the PBA.

The PBA also argues that there are other important facts that demonstrate why its proposal for salary increases of 4.75% for each of two years is just and reasonable. It initially notes that the Village's decision to provide raises of 4.25% and 4.5% in the last two (2) years to two non-unit superior officers in the police Department is a genuine expression of the Village's ability to compensate its police personnel. It also asserts that the Consumer Price Index is increasing at a rate of more than 3.75% for the period of the award and more than 4% for both the second half of 2005 and the first half of 2006.

Finally, it asserts that Pelham police officers lag behind their counterparts in southern Westchester in wage compensation, earning approximately \$3,000 less per year than Pelham Manor police. This, according to the PBA, cannot be reconciled with the very similar identity of the cited communities, particularly Pelham Manor. In addition, there is no rational basis for the

PBA to rank 6<sup>th</sup> or 7<sup>th</sup> of the nine cited communities in southern Westchester in wage compensation, which has been the case for quite some time.

### Village Position

The Village asserts that the ability of a municipality to pay for an award is not a theoretical ability to pay, but rather an analysis of the practical ability of the municipality to shoulder the increased costs. According to the Village, the issue of ability to pay must be analyzed based on what the Village can reasonably afford, given its constituency, tax base, economic status, and the need to expend monies on the other priorities in the Village such as fire protection, recreation, public works and water.

The Village reminds the Panel of the Court of Appeals admonition that “ability to pay” must be considered without resort to a tax increase *City of Buffalo v. Rinaldo*, 41 N.Y.2d 764 (1977). It argues that the Village should not be forced to jeopardize its financial future to meet the PBA demands.

The Village also challenges the PBA’s contention that the Village has the ability to pay based upon the testimony of the PBA’s financial witness, Kevin Decker. The Village asserts in its brief that Mr. Decker’s testimony and report was often incomplete and/or inaccurate and/or irrelevant. The Village points out that Mr. Decker admitted he did not do an item by item calculation of what the PBA’s proposals would cost the Village. The Village reasons that Mr. Decker’s failure to do this basic analysis raises serious doubts about the value of his testimony based upon his report.

The Village also finds fault with Mr. Decker’s failure to account for some of the major fiscal issues facing the Village. It argues that there are several economic issues that should influence the Panel’s analysis regarding the Village’s ability to pay. For example, the Village

expresses grave concern regarding the escalating cost of health insurance and its impact on the Village budget and consequent taxes. It points out that the health plan that most bargaining unit members utilize increased by 14% in 2004, 9.6% in 2005 and 11.1% in 2006. Similarly, the Village's pension costs rose from \$195,498 in 2003-04 to \$570,710 in 2004-05 and \$616,976 in 2005-06.

The Village also argues that the decreasing tax rates in the Village have not resulted in taxpayers paying less in taxes. The Village taxes are based upon an annual reassessment of property values, which value has risen each year. Therefore, while the tax rate has decreased, the actual dollar amount in taxes paid each year by the residents has risen each year. The PBA's financial witness acknowledges that this was the case during cross examination. The Village taxpayers are assuming an increasing portion of the Village's tax levy. The Village notes that Mr. Decker testified that in 2002, homestead property owners in the Village paid 77% of the levy, while in 2006 they are paying 83% of the levy. Moreover, even if the tax rate has recently declined, the rate is being applied to properties with higher assessments resulting in higher tax bills.

The Village asserts that police overtime is a significant and growing cost that impacts the Village's ability to pay and should factor into the Panel's analysis when determining a just and reasonable salary increase. It states that whereas only 2 of 26 bargaining unit members earned over \$100,000 in 2004, the records show that 8 of 26 bargaining unit members earned more than \$100,000 in 2005. This increase is directly attributable to overtime costs incurred because there are several officers in the Department who are suffering from police disabilities and/or injuries.

With respect to the competitiveness of the current wages paid to members of the Department, the Village asserts that PBA members belong where they are because the Village

ranks near the bottom of the PBA's comparable Westchester communities in key economic criteria. The Village cites the fact that Pelham ranks 6<sup>th</sup> out of the PBA's 9 comparable communities in per capita income.

The PBA's wages are competitive according to the Village. Although the PBA's base wage is ranked 15<sup>th</sup> out of the 17 villages in Westchester, its pay is actually competitive because its base wage of \$71,089 is within \$800 of placing the Village 7<sup>th</sup> out of the 17 villages in terms of base wages. Additionally, the 20 year wage comparison shows the PBA ranks 5<sup>th</sup> out of its 9 comparable communities in 2003.

Finally, the Village argues that the PBA has failed to provide any evidence to justify why the Panel should deviate from the pattern established in the other settlements of the Village with its other bargaining units. The Village asserts that it is critical for labor relations peace to maintain internal parity amongst the bargaining units. In this regard, the Village points out that members of the Village Firefighters Union negotiated a four (4) year contract with Base Wage increases of 3.5% effective June 1, 2004, 3.25% effective June 1, 2005, 3.25% effective June 1, 2006, 3.5% effective June 1, 2007, and 3.75% effective June 1, 2008. The Firefighters Union also negotiated a health insurance contribution for firefighters hired after January 1, 2006 of 35% for the first six (6) years of employment and 15% per year for the remainder of their careers. The Village's most recent agreement with the CSEA provides for increases of 3.75%, effective June 1, 2004, June 1, 2005 and June 1, 2006. The CSEA agreed that employees in their unit hired on or after June 1, 2004, contribute 12% of the health insurance cost after their fifth (5<sup>th</sup>) year of employment until the end of their career with the Village. There is simply no justification for the PBA's proposed wage increases of 4.75% per year at a time when the Village's other bargaining units are agreeing to reasonable wage increases. The Village

concludes that the evidence supports its proposal for wage increases of 1%, effective June 1, 2004 and 2%, effective June 1, 2005.

#### Panel Determination

In determining the appropriate general wage increases to be provided to the PBA police officers, the Panel has reviewed all relevant financial data of the Village, including the budgets and accompanying financial material. The Panel has also considered the constitutional debt limits and margins. While the Village is appropriately concerned about some of the economic issues it needs to contend with in the future, it does have the ability to pay the increases herein without substantially increasing property taxes. The Village is in excellent health with regard to its debt position, has a substantial fund balance and is in a County that continues to have healthy growth in terms of sales tax revenue and economic development.

On the other hand, the Panel finds that the salary increases proposed by the PBA are more in the range of the comparability of other police contracts. However, the Panel is aware that health insurance and pension costs have climbed significantly and have an unfavorable effect on the Village's budget and have been considered in rendering a just and reasonable award regarding an increase. These factors as well as the settlements in the comparable Westchester communities which were given the most weight, lead the Panel to the determination that the wage increases awarded not be as proposed by the PBA.

In determining the appropriate wage increases, the Panel notes that the settlements in the Town and Village police departments located in close proximity to Pelham are in the range of 3.5% to 4.5% per year for the years in dispute. Thus, wage adjustments of 3.95% in each of the two (2) years is warranted, in light of the longevity increases which are addressed below.

It is clear that this Panel must engage in a subjective balancing test and that the obvious hazards and difficulty of the job of police officer must be balanced against the myriad needs of the Village. The Panel has carefully considered all of the financial data, the arguments presented by both parties and has applied such data to the criteria mandated by Section 209.4 of the Civil Service Law. Accordingly, after extensive review, the Panel makes the following Award on Salary Increases: Amend Section 1 of Article V – Wages and Longevity of the expired collective bargaining agreement (p 2) to read as set forth below:

1. Effective June 1, 2004, the base annual salary for all unit members shall be increased by 3.95%; and
2. Effective June 1, 2005, the base annual salary for all unit members shall be increased by 3.95%.

Retroactivity on all economic benefits shall be paid to any employee who worked during the expired agreement within sixty (60) calendar days of the issuance of the Award, specifically the Panel Chair's execution date. The Village shall provide a worksheet to each employee who worked during the expired agreement setting forth the calculations and what they represent.

Concur	<u>          </u>	<u>Ernest R. Stolzer</u>
Dissent	<u>X</u>	<u>12/20/06</u>
		Date

Concur	<u>X</u>	<u>Anthony V. Solfaro</u>
Dissent	<u>          </u>	<u>12/21/06</u>
		Date

### III. SERGEANT DIFFERENTIAL

Currently, Pelham police Sergeants do not receive a specific rank differential over and above Police Officer First Grade.

PBA Position

The PBA contends that there needs to be a defined rank differential that does not currently exist to properly compensate Sergeants for the responsibilities of that position. It notes that Sergeants in numerous Villages in Westchester receive a greater differential than that currently provided for in Pelham.

Village Position

The Village maintains that the current rank differential provided to Pelham Sergeants compares favorably with that provided to Sergeants in other Villages in Westchester and falls in the middle range. Further, as previously argued, the Village maintains that it has limited resources available for salary increases due to accelerating costs in the areas of health insurance and pension. Accordingly, the Village proposes no change to the current sergeant differential.

Panel Determination

Upon review, the Panel agrees with the PBA that an adjustment in Sergeant differential is warranted based upon a review of the rank differentials paid to Sergeants in other Villages and Towns throughout the County. This data shows that eight (8) Villages out of nine (9) comparables used by the PBA provide a Sergeant differential of at least 12%.

Award on Sergeant Differential

Effective June 1, 2004, the Sergeant differential shall be 11.5% above Police Officer First Grade, and effective June 1, 2005, the Sergeant differential shall be 12% above the Police Officer First Grade.

Concur	<u>Ernest R. Stolzer</u>
Dissent	<u>X 12/20/06</u>
	Date
Concur	<u>X Anthony V. Solfaro</u>
Dissent	<u>12/21/06</u>
	Date

#### IV. LONGEVITY PAYMENTS

##### Discussion on Longevity Payments

Currently, Pelham police receive longevity payments after 10 years of service in the amount of \$550.00, which is increased to \$835.00 per year after 15 years of service and increased to \$1,250.00 per year after 18 years of service.

The PBA seeks to change longevity from flat dollar payments to a percentage basis that would provide a range that is higher than the current longevity payment schedule, and would have the effect of increasing with each base increase which does not currently occur.

Specifically, the PBA proposes the following longevity schedule:

After 6 years	2% above classification
After 9 years	3% above classification
After 12 years	4% above classification
After 15 years	5% above classification
After 18 years	6% above classification

The PBA argues that the self adjusting longevity payments it is proposing are appropriate because the current longevity payment is among the worst of the nine (9) cited communities in lower Westchester, with only Pelham Manor paying less longevity to its officers. It also asserts that over a 20 year period, the Village's officers' rank 6<sup>th</sup> or 7<sup>th</sup> in wage and longevity combined and an adjustment is warranted.

In the alternative, the PBA argues that regardless of whether the Panel maintains flat dollar longevity payments or converts longevity to percentages, it is imperative that officers receive a more meaningful longevity schedule in recognition of the value that experience has in the community.

The Village is opposed to any change and/or increase in longevity payments and maintains that the current longevity schedule is adequate and comparable with that provided to other police officers in comparable jurisdictions. The Village is particularly troubled by the PBA's proposal to convert longevity from flat dollar payments to percentages. It asserts that percentage based longevity payments have a tremendous compounding effect and are unlikely to ever be renegotiated. The Village does not want the Panel to award, in its view, such a generous and excessive demand.

Upon review, the Panel finds that longevity payments are an integral part of compensation for police officers and that longevity increases are warranted in this case based upon a review of longevity paid to the comparables. The Panel notes that many of the neighboring jurisdictions provide far greater longevity payments than Pelham, with many paying not with just greater dollar amounts but with greater frequency within the salary schedule progression.

However, even though the Panel finds that an increase in longevity is warranted, the Panel is not persuaded that this is the time to convert longevity from flat dollar payments to percentage payments as proposed by the PBA. Of the eight (8) comparable Villages in Westchester at issue, six (6) continue to provide longevity in the form of flat dollar payments. There is insufficient evidence justifying a change from this format at this time.

Accordingly, the Panel finds that an increase in longevity is warranted and must occur so that the overall compensation package is adequate, fair and equitable when viewed against that provided to police in the comparable jurisdictions.

Award On Longevity Payments – Amend Section 2 of Article V – Wages and Longevity (p. 2) as

follows:

	<u>6/1/04</u>	<u>6/1/05</u>
After 10 Years (+\$ 150.00)	\$ 650.00	\$ 700.00
After 15 Years (+\$ 250.00)	\$1,010.00	\$,1085.00
After 18 Years (+\$ 250.00)	\$1,425.00	\$1,500.00

Concur	<u>X</u>	<u>Ernest R. Stolzer</u>
Dissent	_____	<u>12/20/06</u>
		Date

Concur	_____	<u>Anthony V. Solfaro</u>
Dissent	<u>X</u>	<u>12/21/06</u>
		Date

**V. ACTIVE EMPLOYEE AND RETIREE HEALTH INSURANCE CONTRIBUTIONS**

PBA Position

With respect to health insurance for active employees, the PBA states that it does not seek to alter the very substantial active employee contribution of 50% for the first four (4) years of employment. However, the PBA expresses grave concern about the Village's request to reduce the employee contribution in years one (1) through four (4) from 50% to 30% but to require new contributions of 15% from the fifth year until the end of each officer's career. Based on the 2005 health insurance rates, each employee would pay an additional \$88,004 in contributions for family coverage over his or her career.

The PBA maintains that this situation not only constitutes an unfair economic hardship but is also unfair because police officers in Pelham already contribute more than their counterparts in comparable communities. For example, Bronxville police officers contribute 25% during their first four (4) years and thereafter Bronxville pays for the full cost of coverage. In the Town of Eastchester, officers receive fully paid health coverage throughout their career. In

Mamaroneck, officers pay 30% for their first five (5) years and then pay nothing for the balance of their careers. Similarly, in both Pelham Manor and Tuckahoe, officers make contributions in the range of 25% during their first four (4) years and then pay nothing for the remainder of their careers.

With respect to retiree coverage, the PBA proposes that the 25% retiree health contribution be eliminated. The PBA contends that the current contribution of 25% is higher than many of their counterparts. It should be reduced in light of the fact that Pelham police officers earn less money based on their top pay than many of their comparable counterparts, which means less in actual retirement income to pay for the 25% contribution.

#### Village Position

As stated previously, the Village is extremely concerned about the escalating health insurance costs and its burden on its budget and its taxpayers. It asserts that its proposal for active employee health insurance contributions is reasonable because it would lower the contribution from 50% to 30% for officers in their first four (4) years of employment when they are less able to pay these amounts. It would also establish a new 15% contribution for officers from their fifth year and beyond because those officers earn higher salaries and are better able to absorb premium contribution payments.

According to the Village, this proposal is necessary so that it can have some relief from the burdens of double digit percentage health insurance increases that have occurred in seven (7) of the past eight (8) years. The Village argues its proposal is also appropriate because it is consistent with the trend among the Village's other bargaining units. For example, the Village's firefighters recently agreed that employees hired after January 1, 2006 would pay 35% during their first six (6) years of employment and 15% during the remainder of their employment. The

Village's CSEA unit also has a provision stating that employees hired after June 1, 2004 will pay 12% from year 6 until retirement.

With respect to retiree health insurance, the Village maintains that there is no economic justification for the PBA to receive an enhanced retiree health benefit, particularly in these times of continued health insurance premium increases. Moreover, the Village recently had its firefighters agree that any firefighters hired after January 1, 2006 would pay 25% of the cost of health insurance in retirement.

#### Discussion on Active Employee and Retiree Health Insurance Contributions

Health insurance remains one of the most difficult and contentious labor management issues because of its importance to employees and their families and because its cost has grown over the past several years. After careful and lengthy deliberations on this issue the Panel has determined that it will neither be awarding any changes to active employee health insurance nor to retiree health insurance.

With respect to active employee health insurance, the Panel takes note of the fact that among the eight (8) comparable communities, the Villages of Bronxville, Pelham Manor, Mamaroneck, and Tuckahoe, as well as the Town of Eastchester require contributions from employees, or reductions in salaries, who were hired after certain dates, but then receive full coverage when they reach a certain point in their employment, usually the completion of their fourth or fifth year. Yet the Town of Harrison does not require any contribution towards health insurance from its officers. On the other hand, the Village of Scarsdale requires a flat dollar amount contribution each pay period from all employees hired after January 1, 1984 and employees do not contribute toward the cost of health insurance after their fourth year of service. Based on the foregoing and the eight (8) comparable communities that have been used as a basis

for this award, there shall be no change to the active health insurance contribution or duration of payment.

Requiring Pelham's officers to make a contribution after their fourth year of service through the remainder of their careers will make their contribution towards health insurance more than police officers in all but one (1) police department in Westchester County. Moreover, although the Village argues that there is a pattern of Village employees contributing toward the cost of health insurance after their fourth year of employment, the evidence only establishes that certain newly hired employees in the CSEA and firefighters' units contribute double digit percentages after their fifth year of employment. Pelham's firefighters hired prior to January 1, 2006 do not contribute toward the cost of health insurance after their fourth year of employment. In any event, and as noted above in a previous discussion concerning comparability, the relevant basis for comparison are police units.

Similarly, the Panel determines the evidence to justify increasing the contribution by the Village toward retiree health insurance coverage is not warranted. The Village has demonstrated that health insurance premiums have increased considerably over the past several years and insurance continues to take up a greater portion of the Village's budget each and every year. Although the Panel is sensitive to the fact that it may not be easy for retired officers to pay their portion of the health premiums in retirement, the Village contribution remains a competitive benefit.

#### Award On Active Employee and Retiree Contributions

1. There shall be no change in the current provision regarding active employees' contribution toward the cost of health insurance.

2. There shall be no change in the current provision regarding the contribution paid by retirees toward the cost of health insurance.

*STVAAA* DISSENT WITH RESPECT TO # 1  
REGARDING ACTIVE EMPLOYEES  
CONCUR WITH RESPECT TO # 2  
REGARDING RETIREES

Concur \_\_\_\_\_ Ernest R. Stolzer  
Dissent \_\_\_\_\_ 12/20/06  
Date \_\_\_\_\_

- CONCUR WITH RESPECT TO # 1  
REGARDING ACTIVE EMPLOYEES  
- DISSENT WITH RESPECT TO # 2  
REGARDING RETIREES

Concur \_\_\_\_\_ Anthony V. Solfaro  
Dissent \_\_\_\_\_ 12/21/06  
Date \_\_\_\_\_

*ANT V. SF*

**VI. HOLIDAY PAY**

Discussion on Holiday Pay

The PBA proposes that the Village make holiday payments based upon a work schedule of 243 days per year rather than the 250 days currently relied on in the agreement. This would mean that each day of paid holiday time would be calculated by dividing each employee's annual salary by 243 instead of 250. This proposal is intended to coincide with the PBA's proposal to change the annual work schedule to 243 days.

The PBA also proposes to modify super holiday pay. The current provision provides for super holiday pay of two and one-half times (2.5X) the regular rate of pay only when officers are required to work at least two (2) of the five (5) holidays mentioned, Christmas, New Year's Day, Independence Day, Labor Day and Thanksgiving. The PBA proposes to modify the provision by adding Memorial Day as a so-called super holiday and by proposing that any time an officer works on any of the super holidays he or she will receive two and one-half times (2.5X) his or her regular rate of pay.

The Village objects to both aspects of the PBA's proposal. With respect to the former, it proposes to calculate holiday pay by dividing each employee's annual salary by 260 days. This is

more accurate because it adds actual work days of 248 to paid holidays. With respect to the PBA's super holiday proposal, the Village asserts that there is no evidence before the Panel which justifies this change.

After reviewing the evidence in the record, the Panel has determined that it will not be making any changes to holiday pay based on the record.

Award on Holiday Pay

There shall be no change to the existing holiday pay provisions in the Agreement.

Concur	<u>X</u>	<u>Ernest R. Stolzer</u>
Dissent	<u>        </u>	<u>12/20/06</u>
		Date

Concur	<u>        </u>	<u>Anthony V. Solfaro</u>
Dissent	<u>X</u>	<u>12/21/06</u>
		Date

**VII. DENTAL INSURANCE**

Proposals

The Village currently contributes \$630.00 annually for each employee to be enrolled in a dental plan. The PBA asserts that increases are essential because there have been no increases since 1994. It also asserts that the current contribution is less than half the amount provided to a majority of the police departments in the area. The PBA proposes that the Village's contribution be increased as follows:

	<u>6/1/04</u>	<u>6/1/05</u>
Individual	\$60.00 per month	\$70.00 per month
Family	\$85.00 per month	\$95.00 per month

The Village objects to any increase in its contribution toward the cost of dental insurance. It contends that no increase is justified because of the increased financial burden it has had to shoulder in the areas of health benefits and pension costs.

Panel Discussion

The Panels notes that the Village currently contributes \$630.00 for each employee per year into the Welfare Fund for a dental plan . After reviewing the evidence in the record, which shows that there has been no increase in the Village’s contribution to the Welfare Fund, and a review of the comparable Westchester communities which were given the most weight, and other police comparables that were applied, it shows the following which has been summarized:

1. Village of Bronxville provides fully paid dental coverage for the employee and dependents, except filling allowances shall be a maximum of \$65.00. The Village’s cost shall not exceed \$900.00 per year per unit member.
2. Town of East Chester provides a welfare contribution of \$1,000.00 for each employee each year, with it increasing to \$1,050.00 as of 1/1/06.
3. Town of Harrison pays 100% of the dental premium.
4. Village of Larchmont provides a welfare contribution of \$925.00, \$955.00, \$995.00 and \$1,035.00 on 6/1/04, 6/1/05, 6/1/06 and 6/1/07, respectively.
5. Village of Mamaroneck provides a welfare fund payment as follows:

	<u>6/1/04</u>	<u>6/1/05</u>	<u>6/1/06</u>	<u>6/1/07</u>
Individual	\$1,090.00	\$1,140.00	\$1,190.00	\$1,240.00
Family	\$1,340.00	\$1,390.00	\$1,440.00	\$1,490.00

6. Village of Scarsdale provides the following per employee each year towards a dental plan.

<u>6/1/05</u>	<u>6/1/06</u>
\$580.00	\$780.00

7. Village of Tuckahoe provides 100% of the cost for a dental plan.

8. Ardsley – Dental Insurance Coverage – The Employer shall pay 90% of the premium or cost of a mutually agreed upon dental plan for the employee and eligible dependents, with the employee paying 10% of the premium cost. However, the employee’s annual contribution shall be capped at \$120.00 in one year.

9. Briarcliff Manor – The Village shall provide a dental insurance plan which shall be subject to a 20% deductible on covered expenses with limits as follows:

Individual	\$2,125.00/yr.
Family	\$3,125.00/yr.
Lifetime Orthodontics	\$2,975.00

10. Croton – Dental Insurance – The Village shall continue to provide the dental plan, which has been in effect.

11. Elmsford – Welfare Fund – Each member provided a contribution of \$850.00.

12. Irvington – Dental Insurance – The Village shall offer a dental insurance plan through Anthem Health for the individual and eligible dependents. The Village pays 90% and the employee pays 10% of the premium cost.

13. Port Chester – Dental Plan – The Village pays 100% of the employee cost, and 50% of the cost of the family portion.

14. Sleepy Hollow – Welfare Fund – The Village shall contribute for each employee per year of \$1,150.00.

15. Tarrytown – Welfare Plan – The Village shall contribute to the welfare program as follows:

Single	\$115.00/month (\$1,380.00/yr)
Family	\$195.00/month (\$2,340.00/yr)

The Panel finds that an increase for each employee is justified.

Award on Dental Insurance

The Village shall contribute an additional \$85.00 to the existing contribution, effective 6/1/04, and an additional \$85.00 on 6/1/05 to the 6/1/04 contribution amount for each employee per year to the dental insurance plan.

Concur	<u>Ernest R. Stolzer</u>
Dissent	<u>X</u> <u>12/20/06</u>
	Date

Concur	<u>X</u> <u>Anthony V. Solfaro</u>
Dissent	<u>12/21/06</u>
	Date

**VIII. UNIFORM ALLOWANCES**

PBA Proposals

The PBA submits that the current annual uniform allowance of \$500.00 be increased to \$800 on June 1, 2004 and to \$850 on June 1, 2005, payable to employees after one (1) year of service. The PBA also proposes a separate and new cleaning allowance of \$400.00 effective June 1, 2004 that would increase to \$450.00 on June 1, 2005. Finally, the PBA proposes that the initial uniform and equipment purchase allowance of \$500.00 should be changed by requiring the Village to provide each new employee with an initial uniform and equipment allotment.

PBA President James Mitrione testified in support of these PBA proposals. He testified that the initial uniform and equipment purchase costs more than \$2,000.00, requiring new officers to expend more than \$1,500.00 of their personal funds on these initial purchases. He also said that the current cleaning and maintenance with the current uniform allowance is insufficient, as cleaning alone can cost as much as \$48.75 weekly.

The PBA argues that all of its proposals are justified because the current allotments do not come close to adequately addressing the true cost of purchasing, cleaning and replacing uniforms for officers. Moreover, the Village's contribution toward initial purchases and annual allowances has not increased since 1998 and it is far less than what is provided to virtually every other police department in the area.

The Village argues that it should not be required to subsidize the full purchase cost for new officers' uniforms and equipment, and provide for a new allowance to clean uniforms. It contends that a modest increase may be justified but that the PBA's proposal is excessive.

The Panel finds merit in much of the PBA's proposal regarding uniform allowances. The evidence establishes that police officers in the Village of Pelham lag far behind in the area of monies provided for uniform allowances. The Panel feels that changes need to be made to all aspects of the uniform allowance provision to make these benefits more on par with area comparables. There is support for increases based upon a review of the comparables in the areas of new hire uniform/equipment purchase, annual uniform allowances and annual cleaning allowance.

#### Award on Uniform Allowance

1. The new hire uniform/equipment purchase amount will be increased to \$1,000.00, effective May 31, 2006.

2. Uniform allowances beginning with the second year of employment will be increased to \$800.00 per year, effective June 1, 2004; and increased to \$850.00 per year, effective June 1, 2005.

3. A separate yearly cleaning allowance of \$100.00 per year will be established effective June 1, 2004. This allowance will increase to \$150.00, effective June 1, 2005.

Concur	_____	<u>Ernest R. Stolzer</u>
Dissent	<u>X</u>	<u>12/20/06</u>
		Date

Concur	_____	<u>Anthony V. Solfaro</u>
Dissent	<u>X</u>	<u>12/21/06</u>
		Date

## IX. WORK SCHEDULE

### PBA Proposals

The PBA has proposed to modify the existing work schedule by changing it from five (5) days on 72 hours off rotating tours work schedule to a schedule consisting of four (4) days on, followed by two (2) days off. The 5-72 schedule results in a 248 day work year and the 4-2 schedule results in officers working 243 days per year.

The PBA asserts that a 1998 letter agreement between itself and the Department allowed for the establishment of a steady midnight tour with rotating day and evening tours with officers working a 5-2, 5-2, 5-3 schedule. According to the PBA, the parties abided by that agreement until January 2005 when the Village's Chief of Police announced he was abolishing the permanent midnight tour and reverting to the full rotating schedule set forth in the CBA.

The PBA argues that the Chief failed to give any plausible explanation as to why he eliminated the schedule that the parties operated under from 1998 through January 2005. It

argues that the schedule change has had a negative impact on officers morale, and has not improved productivity.

The PBA maintains that police officers in Pelham are currently working more days annually than most of their counterparts. Under the proposed 4-2 schedule, PBA members will be in line with the work year of most, if not all, other comparables. The PBA also claims that the Village can implement this schedule with minimal financial impact, if any.

The Village is primarily opposed to the PBA's proposed 4-2 schedule. It argues that the Chief had legitimate reasons for eliminating the steady midnight tour. It asserts that the Chief was concerned that the midnight tour was being staffed with too many inexperienced officers. He was alarmed that they were not getting the opportunity to become familiar with the Village and learn how it operates during the busy daytime hours.

The Village is mainly opposed to the 4-2 schedule because it states that it will result in reduced manpower and increased costs. Since all officers would be working five (5) less days each year at 243 days instead of the current 248 day work year, there is no doubt that it will lose approximately 115 manpower days (23 police officers multiplied by 5 less work days per year). In the Village's estimation, this will make scheduling more challenging and will lead to increased overtime costs. The PBA asserts that the 4-2 schedule should not be looked at in less days in the traditional manner, but hours off on swings of tours which does not represent actual days off like a 5-2 schedule.

The Panel has carefully considered the arguments of the parties regarding this issue and shall not change the work schedule as it currently stands. This would make scheduling more challenging and may lead to overtime costs. The change in the schedule proposed by the PBA would reduce the number of work days from 248 to 243 a year, for a total of approximately 115

days less work days a year based on the current unit size. As a result, the Panel has decided that no changes are to be made to the existing work schedule.

Award Regarding Work Schedule

No changes shall be made to the existing work schedule.

Concur	<u>X</u>	<u>Ernest R. Stolzer</u>
Dissent		<u>12/20/06</u>
		Date

Concur		<u>Anthony V. Solfaro</u>
Dissent	<u>X</u>	<u>12/21/06</u>
		Date

**X. SICK LEAVE**

Village Proposals

There are two aspects to the Village's sick leave proposal. The first part of the proposal would require a doctor's note, upon request, for absences of three (3) or more consecutive work days. Currently, a note is only required for absences of more than three (3) consecutive work days of being out sick and/or injured. The second aspect of the proposal would allow the Village to require a doctor's note, upon request, when sick leave is used in conjunction with regular time off, vacation time, personal time or compensatory time.

The Village asserts that allowing the Chief to ask an officer for a doctor's note after three (3) consecutive work days of illness, instead of more than three (3) days, is a public safety issue. It contends that if an officer is sick enough to be out of work for three (3) consecutive work days, the Village should be able to be assured that the officer is healthy enough to carry a weapon, drive a car and perform all of the other tasks associated with police work. Similarly, the Chief should have the right to verify sick leave used in conjunction with other leave time to assure that

sick leave is not being abused. The Village maintains that this proposal should reduce overtime costs and improve efficiency.

#### PBA Proposal

The PBA argues that there is no evidence submitted or testimony provided at the hearings by the Police Chief or anyone else that this is an area of concern, as well as no compelling reason for the Village's proposed changes. It also asserts that the Village failed to present evidence establishing that the Department has any history of sick leave abuse, particularly in conjunction with approved time off (vacation, personal leave, etc.).

#### Panel Discussion

Upon review, the Panel agrees with the PBA that there has been insufficient evidence presented that demonstrates that the Village should have the right to request a doctor's note in conjunction with approved time off. However, the Panel agrees that any employee who is out sick more than two (2) consecutive work days shall provide, when required by the Chief of Police, a statement signed by the employee's physician, within ten (10) calendar days of the request, stating that sick leave was necessary, and the employee is able to return to work without any restriction(s). Sick leave should only be utilized for its intended purposes and the Village has the right to ensure that.

#### Award on Sick Leave

Effective with the issuance of the Award, specifically the date the Chair executes this Award, Article XII – Sick Leave, Section 1(B), shall be amended to read as follows:

Any employee who has been out sick and/or injured for more than two (2) consecutive work days, shall provide, which is not related to a General Municipal Law Section 207-c illness or injury, when requested by the Chief of Police, a statement signed by the employee's

physician, within ten (10) calendar days of the request, stating the sick leave was necessary, and the employee is able to return to work without any restriction(s).

Concur	<u>X</u>	<u>Ernest R. Stolzer</u>
Dissent		<u>12/20/06</u>
		Date

Concur		<u>Anthony V. Solfaro</u>
Dissent	<u>X</u>	<u>12/21/06</u>
		Date

## XI. COURT CALL IN PAY

### Village Proposal

The Village proposes to change call in pay for court appearances by reducing the pay for officers who make court appearances while off-duty and not immediately before or after their regular tour from double time (2X) to time and one-half (1.5X). The Village argues that payment at the rate of time and one-half (1.5X) is quite reasonable because court appearances are a regular part of a police officer's job.

### PBA Proposal

The PBA responds to this demand by asserting that there has been no evidence or testimony in support of the Village's proposal. The PBA also notes that most of the other police departments in Westchester pay officers making court appearances in a manner that is similar to the way the Village's officers are currently paid. Accordingly, since the proposal would do nothing other than reduce take home pay for police officers, it should be rejected.

### Discussion Regarding Court Call-In Pay

The Panel agrees that there is insufficient evidence in the record to justify making any changes to the court call-in pay compensation procedures.

Award Regarding Court Call In Pay

No changes shall be made to the provisions in the current agreement that address pay for officers required to report off-duty for court appearances.

Concur	_____	Ernest R. Stolzer
Dissent	<u>X</u>	<u>12/20/06</u>
		Date

Concur	<u>X</u>	Anthony V. Solfaro
Dissent	_____	<u>12/21/06</u>
		Date

**XII. GRIEVANCE PROCEDURE**

Village Proposal

The Village proposes that a reasonable time limit be placed upon that time in which a grievant may present a grievance to the Village Administrator after a Step One decision is issued by the Chief of Police. It proposes that such a limit be set at “not later than 20 working days.” At present, there is no specific time limit on how long before a grievance has to be presented from Step One to Step Two. The Village maintains it is contrary to the expeditious nature of grievance resolution. It maintains that a specific time limit would provide structure to the grievance procedure and provide for the resolution of disputes in a timely manner and when documents and events are fresh and readily available.

PBA Proposal

The PBA’s position is that there should be uniformity to the procedure, and that it be consistent at each Step. The current procedure uses “working” and “business” days. Each Step should be the same, “working” or “business,” and it should be defined..

Discussion by the Panel

The Panel agrees with the Village that in order to process grievances in an expeditious and timely manner when the event in question is fresh in the minds of those involved, a time limit must be set between the date when the Chief of Police issues a Step One decision and the date when an appeal is filed. The Panel also agrees with the PBA that a uniformed definition on "working" or "business" days be used to avoid conflict in processing a grievance. In this manner, the chances for resolving the dispute are increased when the amount of time between the two (2) events is reduced, or at least the matter is being processed in a organized and timely manner. This proposal would benefit both parties.

Award on Grievance Procedure

A grievant shall have twenty (20) working days, from the date of the issuance of a Step One decision from the Chief of Police to present the grievance to the Village Administrator. Change Step Two from business to working days and insert working in Step Three after fifteen (15). A working day shall be defined as Monday through Friday, excluding holidays when Village Hall is closed.

Concur  X   Ernest R. Stolzer   
Dissent \_\_\_\_\_  12/20/06   
Date

Concur  X   Anthony V. Solfaro   
Dissent \_\_\_\_\_  12/21/06   
Date

**XIII. DUTY RELATED INJURY (GML) 207-C**

Effective with the issuance of this Award, specifically the date the Panel Chair executes this Opinion and Award, the following is Awarded and shall replace the existing Article XVIII – Duty Related Injuries (GML 207-c) with General Municipal Law Section 207-c Procedure.

**ARTICLE XVIII – DUTY RELATED INJURIES (GML §207-c)**

Effective with the date of execution of the Award by the Panel Chair, the following shall replace the existing Article:

**ARTICLE XVIII - GENERAL MUNICIPAL LAW SECTION 207-c PROCEDURE**

**SECTION 1 - APPLICABILITY**

Section 207-c of the General Municipal law provides that any police officer or covered employee:

“who is injured in the performance of his duties or who is taken sick as a result of the performance of his duties so as to necessitate medical or other lawful remedial treatment shall be paid by the municipality by which he is employed the full amount of his regular salary or wages until his disability arising therefrom has ceased and, in addition, such municipality shall be liable for all medical treatment and hospital care furnished during such disability.”

This procedure is intended to regulate the application for, and the award and/or termination of, benefits under Section 207-c of the General Municipal Law (“GML 207-c”). It shall operate as a waiver of any other forum to seek redress regarding the subject matter set forth herein. Nothing contained herein should be construed as limiting the power of a party to challenge an arbitration award, as provided herein, pursuant to C.P.L.R. Article 78.

**SECTION 2 -DEFINITIONS**

- a. Employer: Village of Pelham
- b. Chief: The Chief of Police of the Village of Pelham
- c. Claimant: Any police officer of the Village of Pelham who claims to have been injured in the performance of his/her duties or who claims to have been taken sick as a result of the performance of his/her duties.
- d. Recipient: Any police officer of the Village of Pelham who has been granted Section 207-c benefits.

e. Claims Manager: The Village Administrator, or the individual designated by the Employer who is charged with the responsibility of administering the procedures herein.

f. Section 207-c Benefits: The regular salary or wages (Base Wage and Longevity) and medical treatment and hospital care payable to an eligible claimant under Section 207-c. In addition to receiving his/her regular salary or wages and payment of medical treatment and hospital care, an employee receiving Section 207-c benefits shall be entitled as set forth in the collective bargaining agreement to:

- 1) Health, dental and life insurance in the same manner in which and to the same extent as the employee was receiving same when working;
- 2) Holiday pay and bereavement leave;
- 3) Vacation, personal leave days and clothing allowance shall be pro-rated from the start of any duty related injury and/or sickness. The fifteenth (15<sup>th</sup>) day of each month shall be used as the halfway point. Each month shall be considered one-twelfth (1/12<sup>th</sup>) of a full year's benefit.

There shall be no overtime worked or educational reimbursement available to the Recipient during the period he/she is receiving Section 207-c benefits.

### SECTION 3 - APPLICATION FOR BENEFITS

1. Any Claimant who is injured in the performance of his/her duties or is taken sick as a result of the performance of his/her duties will notify headquarters and file a Quick Fax (or its replacement form) before the end of his/her tour of duty, or within seventy-two (72) hours of when the Claimant should reasonably have known of the injury or illness to themselves, no matter how slight. The Chief or, in his absence, the Chief's designee, shall take action to initiate an investigation into the reported injury or illness and make a full and complete report of the injury or illness and circumstances to the Claims Manager no later than the close of the second (2<sup>nd</sup>) business day of Village Hall after the Quick Fax (or its replacement form) is filed.

2. The incident report shall include, to the extent practicable, the following information:

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

3. In addition to filing an incident report, the Claimant must file an application for Section 207-c benefits within twenty (20) calendar days of the incident giving rise to the claim on

the Application attached hereto as Appendix "A," and the Notice to the Comptroller attached hereto as Appendix "B" and made a part of this Agreement with the Claims Manager. The Claims Manager shall file the Notice to the Comptroller with a copy to the Claimant. Where the Claimant's injury or illness prevents him/her from filing an application for Section 207-c benefits, such application may be filed on behalf of a Claimant within twenty (20) calendar days of the incident giving rise to the claim on the attached form. The application may be made by either the Claimant or by some other person authorized to act on behalf of the Claimant. All applications for Section 207-c benefits shall be made in writing, and shall include the following information:

- a) the time, date and place where the injury or illness producing incident occurred;
- b) a detailed statement of the particulars of the incident;
- c) the nature and extent of the Claimant's injury or illness;
- d) the Claimant's mailing address;
- e) the names of any potential witnesses; and
- f) the name, address and telephone numbers of all of the Claimant's treating physicians.

4. An application for Section 207-c benefits shall be deemed untimely unless it is filed in accordance with this procedure. A Claimant's failure to comply with these reporting obligations may result in the denial of an application for benefits under this procedure. In event these requirements cannot be met due to:

- (i) the Claimant's physical or mental incapacity;
- (ii) an unforeseeable emergency and/or exigent circumstance; or
- (iii) any other situation which the Claims Manager finds acceptable.

The above requirements shall be met within a reasonable time of the Claimant's inability to do so, or such other time as determined by the Claims Manager. In these circumstances, the PBA President or designee, or a member of the Claimant's family may file the application for benefits on the Claimant's behalf. If an application for benefits is deemed "untimely", a Claimant, the PBA President or designee, or family as the case may be, may appeal such determination within twenty (20) calendar days of receipt of the "untimely" determination pursuant to Section 10 of this procedure.

#### SECTION 4 -AUTHORITY AND DUTIES OF CLAIMS MANAGER

1. The Claims Manager shall have the sole and exclusive authority to determine whether a Claimant is entitled to Section 207-c benefits. In making the determination, the Claims Manager shall examine the facts and circumstances giving rise to the application for such benefits.

2. The Claims Manager shall have the authority to:

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

3. In an initial determination investigation, a Claimant must cooperate with the Claims Manager and provide all necessary information, reports and documentation. A determination of initial eligibility shall be made within thirty (30) calendar days after receipt of all necessary information specified above, or sixty (60) calendar days from the date on which the Quick Fax or other incident report was submitted, based upon the investigation, without holding a hearing.

4. The Claims Manager shall mail a written copy of his/her decision to the Claimant, the Village Mayor, and if the Claims Manager is someone other than the Village Administrator, to the Village Administrator and the Chief within ten (10) calendar days of his/her determination. The written determination shall set forth the reasons for the Claims Manager's decision.

5. An appeal from an initial determination of the Claims Manager must be made within twenty (20) calendar days of receipt of the initial determination pursuant to Section 10 of this procedure.

#### SECTION 5 - TIME OFF PENDING INITIAL DETERMINATION

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

2. Upon the granting of Section 207-c status, the use of sick leave during the period of determination shall be changed to Section 207-c status and the Recipient's personnel record shall show no use of sick leave.

## SECTION 6 - MEDICAL TREATMENT AND EXAMINATION

1. After the filing of an application for benefits and before a final determination is made granting Section 207-c benefits, the Claims Manager may require a Claimant to submit to one (1) or more medical or other health examinations as may be directed by the Claims Manager. The Claims Manager may require the Recipient to submit to one (1) or more medical or other health examination(s) or inspection(s) to determine if the Recipient has recovered and is able to perform his/her regular duties, specified light duty, and/or examinations are required to process an application for a disability retirement.
2. The Claims Manager may require a Recipient to submit to treatment which may include, but is not limited to, medical and/or surgical techniques deemed necessary by the appointed physicians. Any Section 207-c Recipient who refuses to accept such medical treatment shall be deemed to have waived his/her rights to Section 207-c benefits. After such refusal, a Recipient who has been deemed to have waived his/her rights under this section may appeal, within ten (10) calendar days of such refusal, and request a hearing pursuant to Section 10 of this procedure. Pending the hearing and determination thereon, the Recipient shall continue to receive his/her Section 207-c benefits as set forth in this procedure.
3. **Medical Reports.** All physicians, specialists and consultants treating a Claimant or Recipient of Section 207-c benefits shall be required to file a copy of any and all reports with the Claims Manager. The Claimant or Recipient shall execute and file with the Claims Manager, the Medical Release Form attached hereto as Appendix "B" and made a part of this Agreement. The Claimant or Recipient shall receive a copy of the medical reports filed with the Claims Manager. The medical reports which are filed shall remain confidential and only released for purposes of administering the procedures herein.
4. **Payment for Medical and Related Services.** A Recipient must notify the Claims Manager of expenses for medical services, hospitalization, or other treatment alleged to be related to the injury or illness giving rise to the claim. Notice shall be made prior to incurring the expense, except in extenuating circumstances that prevent such notice from being provided.

No claim for surgical operations or physiotherapeutic procedures costing more than one hundred fifty dollars (\$150.00) shall be paid unless they were authorized in advance by the Claims Manager or required in an emergency. Determinations of the Claims Manager under this paragraph shall be based upon medical documentation.

Bills for medical services, drugs, appliances or other supplies will require filing a copy of the medical bill and/or prescription by a doctor with the Claims Manager for the particular items

billed, stating thereon that the items were incurred as a consequence of the injury or illness upon which claim for benefits is based.

A Recipient who is receiving treatment shall make every effort to schedule such examinations or treatment during non-work hours.

The Claims Manager shall receive periodic written updates, when requested, informing him/her of the Recipient's status or progress no later than fourteen (14) calendar days after receipt of the request. It will be the responsibility of the Recipient's treating physician(s) to provide the status or progress report of the Recipient.

## SECTION 7 - LIGHT DUTY ASSIGNMENTS

1. Any Recipient receiving Section 207-c benefits who has not been granted a New York State disability retirement for the disability incurred in the performance of duty, may be examined by a physician chosen by the Claims Manager to determine the Recipient's ability to perform specified light duty assignment(s). Any Recipient deemed able to perform the specified light duty by the Claims Manager, based upon medical documentation, may, through the Chief, be directed in his or her sole discretion, to perform the specified light duty.

2. A Recipient who disagrees based upon conflicting medical documentation with the directive by the Chief to report for specified light duty may request a hearing, pursuant to Section 10 herein, within seven (7) calendar days after receipt of the directive, with the Claims Manager. Where the refusal to report to work and perform the specified light duty is based upon conflicting medical documentation, the parties agree that the matter shall proceed directly to arbitration, pursuant to Section 10 of this procedure.

3. Payment of Section 207-c benefits shall be continued with respect to an employee who disagrees with the order to report for specified light duty, based on conflicting medical documentation, until it is determined whether the Recipient is capable of performing the specified light duty as set forth in Section 1 above. Where a determination by an Arbitrator has been made pursuant to Section 10 of this procedure that the Recipient can report to and perform specified light duty, and that individual fails to report or refuses to perform the specified light duty, if same is available and offered, that employee's Section 207-c status shall be discontinued.

4. A Recipient who returns to light duty shall not be scheduled to work more days or hours per week than provided in Article XIX – Miscellaneous, Section 1, and Article XXII – Hours of Work, or to training that is inconsistent with the injury or illness. In the event there are more light duty officers available on one (1) tour of duty, than can be effectively utilized, the Chief of Police may change the tour of duty to effectively utilize those on light duty assignment. The changed tour of duty shall be the same hours worked by patrol. In that event, the changed tour of duty shall be filled on the basis of seniority among those on light duty, with the most senior employee within rank having first (1<sup>st</sup>) choice of the tours of duty.

In the event there are an insufficient number of volunteers among those on light duty assignment for changed tours of duty, an involuntary assignment shall be done in the inverse order of seniority within rank.

5. A Recipient who is working light duty, shall be entitled to all contractual benefits.

#### SECTION 8 - CHANGES IN CONDITION OF RECIPIENT

1. Every Section 207-c Recipient must notify the Claims Manager of any change in his or her condition which may enable the Recipient to return to normal duties or be classified as eligible for specified light duty. This notice shall be made in writing within seventy-two (72) hours of any such change to the Claims Manager. Failure to notify the Claim's Manager as set forth herein will subject the matter to a hearing pursuant to Section 10 of this procedure and may result in the forfeiture of the Recipient's benefits under Section 207-c.
2. Work Hardening Program – Upon returning to work from an extended illness or injury, a Recipient may be required to enter a temporary and transitional program designed to insure that he/she has returned to a level of fitness appropriate for return to work and perform his/her regular duties. This program would take place at a facility selected by the Claims Manager, and all costs related to the program would be the responsibility of the Employer. All time spent in the program by a Recipient would be fully compensated by the Employer and take place during working hours.

#### SECTION 9 - RIGHT OF PERPETUAL REVIEW AND EXAMINATION

1. The Claims Manager shall have the right to review the eligibility of every Section 207-c Recipient throughout the period during which benefits are received. This right shall include, but shall not be limited to:
  - a) requiring Recipient to undergo a medical examination by physician(s) or medical provider(s) chosen by the Claims Manager;
  - b) requiring Recipient to apprise the Claims Manager as to their current condition; and
  - c) requiring Recipients or any other involved parties to provide any documentation, books or records that bear on the Recipient's case;
  - d) direct Recipients who have not been granted a disability retirement allowance pursuant to Retirement and Social Security Law Sections 363 and/or 363-c to undergo reasonable medical treatment(s) in accordance with this procedure.

## SECTION 10 - HEARING PROCEDURE

1. Hearings requested under the provisions of this procedure shall be conducted by a neutral Arbitrator related to the issues to be determined. The parties shall attempt to agree on a mutually acceptable Arbitrator. In the event the parties cannot agree, the Arbitrator shall be selected in accordance with Article XIV – Grievance Procedure and Arbitration, by filing directly at Step Three to the American Arbitration Association.

The parties to the arbitration shall be the Employer and the Claimant or Recipient. The Arbitrator shall conduct a de novo proceeding with respect to the issues to be determined. The Arbitrator shall have the authority to consider and decide all allegations, issues and defenses made with regard to the GML 207-c claim, including any dispute between the parties as to the nature of the proceeding. With respect to issues and determinations involving “untimely applications”, specified light duty, forfeiture of benefits or termination of benefits, the burdens of production and proof by a preponderance of the evidence, shall be upon the Employer. With respect to any application by Claimant to be granted Section 207-c status or benefits, the burden of proof is on the Claimant to establish his/her right to such status and benefits.

The Claimant or Recipient may be represented by a designated representative and may subpoena witnesses. However, evidence pertaining to the application for benefits pursuant to the Workers’ Compensation Law, Retirement and Social Security Law and federal Social Security Law, including whether or not the applications were controverted, granted or denied, shall be admissible as evidence and to be given the weight deemed appropriate by the Arbitrator. Each party shall be responsible for all fees and expenses incurred in their representation. Either party or the Arbitrator may cause a transcript to be made, the cost of which shall be shared equally between the PBA, or in the event the Claimant or Recipient is represented by a representative other than the PBA, the Claimant or Recipient and Employer. After the hearing, the Arbitrator shall render a determination which shall be final and binding upon all parties. Any such decision of the Arbitrator shall be reviewable only pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. The fees and expenses of the Arbitrator shall be borne equally by the parties as set forth herein.

## SECTION 11 - COORDINATION WITH WORKERS’ COMPENSATION BENEFITS

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

## SECTION 12 - MISCELLANEOUS

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

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

3. The parties agree that any disputes relating to the administration of the provisions of this procedure shall be resolved through Section 10 of this procedure.



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15. Where did the incident occur? Specify. \_\_\_\_\_

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

17. When was the incident first reported? \_\_\_\_\_

To Whom? \_\_\_\_\_ Time \_\_\_\_\_

Witness(es) (if any) \_\_\_\_\_

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

By Whom? \_\_\_\_\_ Time \_\_\_\_\_

19. Name and address of attending physician \_\_\_\_\_

20. Name of Hospital or Medical Facility \_\_\_\_\_

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

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

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

I SUBMIT THIS APPLICATION PURSUANT TO THE POLICY AND PROCEDURE GOVERNING THE APPLICATION FOR AND THE AWARD OF BENEFITS UNDER SECTION 207-c OF THE GENERAL MUNICIPAL LAW. THE STATEMENTS CONTAINED IN THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, ACCURATE AND TRUE.

\_\_\_\_\_  
(Signature of Applicant if other than Injured Officer)

\_\_\_\_\_  
(Date)

Application Received By:

\_\_\_\_\_  
Signature of Person Authorized to Receive Application)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Date of Report

\_\_\_\_\_, New York

\_\_\_\_\_  
Signature of Injured Officer

**APPENDIX "B"**

**The Comptroller of the State of New York**  
New York State and Local Employee's Retirement System  
110 State Street  
Albany, New York 12244-0001

**CERTIFIED MAIL  
RETURN RECEIPT**

Dear Comptroller:

In compliance with Section 363 and Section 363-c of the Retirement and Social Security Law instructing me to notify your agency of any and all injuries and illnesses sustained in the line of duty as an employee of the Village of Pelham Police Department, I hereby submit the following report:

\_\_\_\_\_  
Name of injured Police Officer

\_\_\_\_\_  
Registration and Social Security Number

\_\_\_\_\_  
Home Address

\_\_\_\_\_  
Date of incident

\_\_\_\_\_  
Time of incident

\_\_\_\_\_  
Location of incident

\_\_\_\_\_  
Description of injury and/or illness

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Medical care required

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Police Officer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness to Injury

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date



7. **RIGHT TO REVOKE:** I understand that I have the right to revoke this authorization at any time by notifying in writing the party listed in Section (3) of this authorization and the party listed in Section (1) of this authorization.
8. I understand that any use or disclosure made prior to the revocation of this authorization will not be affected by a revocation.
8. I understand that I am entitled to receive a copy of this authorization.
9. I understand that this authorization will expire twelve (12) months after the date of my, or my personal representative's, execution of this authorization.
10. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan or eligibility for health insurance benefits will not be conditioned on my authorization of this disclosure.

\_\_\_\_\_  
 Signature of Individual  
 or individual's personal representative

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Print name of individual  
 or individual's personal representative

If a Personal Representative executes this form, that Representative warrants that he or she has authority to sign the form on the basis of:

Concur   X   Ernest R. Stolzer  
 Dissent \_\_\_\_\_  
 Date 12/20/06

Concur   X   Anthony V. Solfaro  
 Dissent \_\_\_\_\_  
 Date 12/21/06

**REMAINING ISSUES**

Discussion on Remaining Issues

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals 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 contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on a few of the proposals submitted by each of the parties.

Award on Remaining Issues

Except for those demands addressed herein by the Panel, any demand and/or items other than those specifically modified by this Award are hereby rejected.

Concur   X   Ernest R. Stolzer  
Dissent \_\_\_\_\_ 12/20/06  
Date

Concur   X   Anthony V. Solfaro  
Dissent \_\_\_\_\_ 12/21/06  
Date

DURATION OF AWARD

Pursuant to the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award is for the period commencing June 1, 2004 and ending May 31, 2006.

Handwritten signatures and dates: Anthony V. Solfaro 12/21/06, Rosemary A. Townley, Esq., Ph.D. 12/16/06, Ernest R. Stolzer 12/20/06. Printed names and titles: ANTHONY V. SOLFARO, Public Employee Panel Member; ROSEMARY A. TOWNLEY, ESQ., Ph.D., Public Panel Member and Chairperson; ERNEST R. STOLZER, Public Employee Panel Member. Jurisdiction: STATE OF NEW YORK, COUNTY OF WESTCHESTER.

On this 16th day of December 2006 before me personally came and appeared Rosemary A. Townley, Esq., Ph.D. to be known and known to me to be the individual described in the foregoing Instrument, and she acknowledged the same to me that she executed the same.

JON MILES GERBER
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01GE5066785
Qualified In Westchester County
Commission Expires 10/07/06

Handwritten signature of Notary Public.

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

On this 20th day of December 2006 before me personally came and appeared Ernest R. Stolzer, 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.

DORETTA A. INCORVAIA
Notary Public, State of New York
Qualified in Dutchess County
November 24, 18 2009

Handwritten signature of Notary Public.

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

On this 21st day of December 2006 before me personally came and appeared Anthony V. Solfaro to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 20 07

Handwritten signature of Notary Public.