

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Arbitration

- Between -

SOLVAY POLICE BENEVOLENT
ASSOCIATION, INC.

- and -

VILLAGE OF SOLVAY, NEW YORK

PERB Case #

~~1A265-049~~
M2005-161

1A265-049

AWARD

The Panel, having duly considered the arguments and proofs submitted by the parties, renders the following Award:

1. **Term of the Award.**

The term of this Award is for the period June 1, 2004 through May 31, 2006.

2. **Wage Increases.**

In consideration of the comparability data supplied to the Panel by the parties, as well as other relevant factors such as the new language requiring all unit employees to contribute a small portion of the cost of the health insurance premium, the Panel awards that wage provisions of the expired agreement be modified to include the following increases on the effective dates:

4% - Effective June 1, 2004;

2% - Effective June 1, 2005;

2% - Effective December 31, 2005

3. **Health Insurance For Retiring Employees.**

The Panel awards as follows:

The Village will provide a health insurance benefit (consistent with its current policy on health insurance for employees who retire) for employees hired prior to June 1, 2004,

who retire with at least twenty (20) years of police service with the Village, or with twenty (20) years of combined police service with the Village police and a police force covered by the New York State and local police retirement systems, on a cost-sharing basis, with the Village paying 1/3 of the cost of the retiring employee's individual or family benefit, and the retiring employee paying 2/3 of the cost of his or her individual or family coverage.

4. Current Employee's Health Insurance Contribution.

The Panel awards as follows:

Modify Section 7.1 to read as follows:

"7.1 Village Obligation

"Effective May 31, 2006, the Village shall pay 97% of the premiums charged by any group medical insurance carrier providing individual or family coverage for those members of the police department presently or hereafter enrolled in said plan and will continue in effect the existing plan. Unit employees hired prior to January 17, 2002 will contribute 3% of the cost of the premium for said individual or family coverage. Unit employees hired on or after January 17, 2002, (including any part-time employees employed as of September 26, 2001, who becomes a full-time unit employee) shall contribute 15% of the cost of the premium for individual or family coverage."

5. Seniority.

The Panel denies the PBA's seniority proposal.

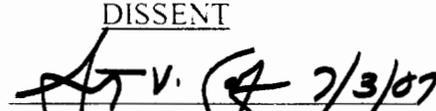
6. Compensation for work-related injuries.

The Panel denies the Village's proposal to amend Section 5.4.

CONCUR

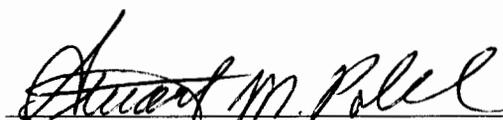

Patrick O'Neill Date

DISSENT


Anthony V. Solfrano Date 7/3/07

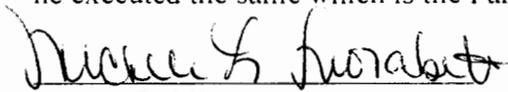
NOTE: A written dissenting opinion will be provided 30 days from the above date to be attached to the Award. AS

Date: July 17, 2007


Stuart M. Pohl, Panel Chair

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
VILLAGE OF AMHERST)

On this 17th day of July, 2007, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared **Stuart M. Pohl**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.

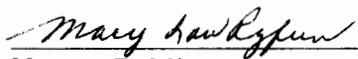

Notary Public

MICHELE L. MORABITO
No. 01MOS040233
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 03/06/ 2011

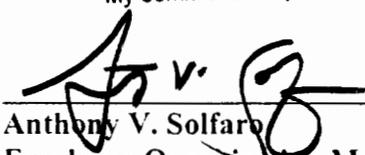

Patrick O'Neill
Public Employer Panel Member

STATE OF NEW YORK)
COUNTY OF ONONDGA) ss.:
VILLAGE OF SOLVAY)

On this 12th day of July, 2007, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared **Patrick O'Neill**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.

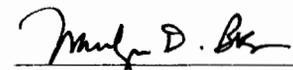

Notary Public

MARY LOU RYFUN
Notary Public in the State of New York
Qualified in Onondaga County No. 4796822
My Commission Expires June 30, 20 10


Anthony V. Solfaro
Employee Organization Member

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

On this 3rd day of July, 2007, before me, the subscriber, a Notary Public of the State of New York, personally came and appeared **Anthony V. Solfaro**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed the same which is the Panel's Opinion and Award.


Notary Public

MARILYN D. BERSON
Notary Public, State of New York
Qualified in Dutchess County
Reg. No. 02BE4977873
Commission Expires Feb. 19, 20 01

**NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD**

**In the Matter of the Compulsory Arbitration
- Between -
SOLVAY POLICE BENEVOLENT
ASSOCIATION, INC.
-and-**

VILLAGE OF SOLVAY, NEW YORK

**INTEREST
ARBITRATION
OPINION AND AWARD**

**PERB Case # IA2003-030
M2005-161**

Before: Interest Arbitration Panel

Stuart M. Pohl, Esq.	- Chairman
Anthony V. Solfaro	- PBA Panel Member
Patrick O'Neill	- Public Employer Panel Member

In Attendance:

For Association

John M. Crotty	- Attorney
Lawrence J. Claps	- PBA President
Kevin R. Decker	- Financial Consultant

For Employer

Edward Melvin	- Attorney
Michael Fecco	- Comptroller

On June 9, 2006, Richard A. Curreri, the Director of Conciliation for the New York State Public Employment Relations Board ("PERB"), wrote to me and my fellow Panel members, Patrick O'Neill and Anthony V. Solfaro, advising that we had been designated to serve as the Panel Members of the Public Interest Arbitration Panel (hereinafter, the "**Panel**") in the above-entitled matter, and that I was to serve as the Chairman of said Panel.

A hearing in this matter was held on December 4, 2006, in the Town of Solvay Town Hall, in Solvay, New York. At that time, the **Solvay Police Benevolent Association, Inc.** (hereinafter, the “**Association**”) was represented by John M. Crotty, Esq., and the **Village of Solvay** (hereinafter, referred to interchangeably as the “**Employer**” or “**Solvay**” or “**Village**”) was represented by Edward Melvin, Esq., of counsel, Costello, Cooney, Fearon, PLLC.

At the hearing, both parties were given a full opportunity to present written and oral opening statements, to call witnesses and to present documentary evidence in support of their respective proposals and positions, as well as to cross examine any witnesses called by the other. Each party availed itself of these opportunities. At the conclusion of the hearing, the parties agreed to submit post-hearing briefs. The Panel received both briefs by February 19, 2007. Due to illness and death in the Panel Chairman’s immediate family, the parties graciously agreed to extend the due date for the Panel’s decision until April 20, 2007.

I. Introduction

This document is the Opinion and Award of the Panel identified above and as designated by PERB, pursuant to Civil Service Law Section 209.4 on April 20, 2004. The prior collective bargaining agreement between the parties (hereinafter referred to as the “**cba**”) became effective June 1, 2000 to May 31, 2004.

The parties attempted to negotiate a successor to the cba without success. They exchanged proposals and then held bargaining sessions which proved fruitless. A mediator was appointed in Case No. M2005-161. No new agreement was reached. As a consequence, on March 13, 2006, a **Petition For Compulsory Interest Arbitration** was filed by the Association with PERB. The

Employer filed its **Response to Petition for Compulsory Interest Arbitration** with PERB on April 5, 2006.

Subsequent to the above-noted hearing, the Panel met in executive session on May 3, 2007, in Solvay, New York. Thereafter, this Award was drafted and reviewed by the Panel. At least two of the three members of the Panel concurred in the disposition of each issue within the parameters framed by this Opinion and Award.

II. POSITIONS OF THE PARTIES AND PANEL'S OPINION

Civil Service Law Section 209, subsection 4(c)(v) provides that, in making a "just and reasonable" determination of the matters in dispute, the Panel should take into account various factors:

" . . . in addition to any other relevant factors, the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.
- d. the terms of collective bargaining 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. "

Before arriving at the various conclusions set forth on the pages that follow, the Panel

carefully reviewed, and where appropriate, discussed in executive session, the voluminous financial data, reports and written arguments which were skillfully assembled and presented by the parties at the December 4, 2006 hearing. Given the nature of the outstanding issues presented to us, we paid particular attention to the comparable data and arguments relating to a comparison of Solvay police officers, to police officers in comparable municipalities; the public interest and welfare; the working conditions which are unique to police officers; and the financial ability of Solvay to pay for the economic provisions contained herein. The parties submitted post-hearing briefs that succinctly set forth their contentions. The following paragraphs will briefly summarize, when their positions are in conflict, their position on each of the above factors. In the pages that follow, the Panel will discuss any relevant evidence of record, and our conclusions as to what constitutes a fair and reasonable determination of the outstanding issues presented in this proceeding.

After due consideration, a majority of this Panel has arrived at the following conclusions concerning the impasse and its resolution:

COMPARABLE COMMUNITIES

Unlike in many other interest arbitration proceedings, the parties in this matter have, for the most part, agreed on the communities the Panel should look at for drawing the comparisons required by the Taylor Law. Thus, they agreed that at least the Village of Baldwinsville, the Village of East Syracuse, the Village of Liverpool, the Village of Manlius, the Village of North Syracuse and the Village of Skaneateles, as well as the Town of Camillus, the Town of Cicero, the Town of DeWitt, the Town of Geddes and the Town of Clay are *comparable* municipalities to the Village of Solvay.

It is this Panel's responsibility to compare the wages, hours and other working conditions of employees performing similar services in comparable communities. The Panel also understands that

the purpose for such comparison is to assure, as much as is possible under the circumstances, external equity for the employees of the public employer. This, of course, does not require the Panel to grant wages increases and benefits which result in *parity* among comparable communities.

While the precise job duties performed by individual officers of each police department might well vary from community to community, the Panel has assumed that, for the most part, the police employees of each of the suggested communities perform essentially the same duties, and are subject to the same physical and educational requirements. Although the levels and types of crimes and offenses and crime prevention activities may well vary from community to community, the Panel has also assumed that the employees of each department cited by the parties engage in a hazardous profession which has no comparable counterpart in the private sector.

Having reviewed the data submitted by the parties to support their claims as to which communities are “comparable” to the Village of Solvay, and given their agreement as to which municipalities are comparable, though not as to each open proposal, the Panel has decided that all the communities enumerated above, are comparable for purposes of our analysis and findings.

ABILITY TO PAY

1. The Association.

The Association points out that its economic proposals are few and that, given the small size of the unit (twelve employees) their impact will be manageable. The cost of whatever wage increase is awarded will be “insignificant.” Each raise of 1% of base wages will amount to about \$5,870 for the unit. Furthermore, *ability to pay* is only one factor to be considered by the Panel. It is not necessarily the deciding factor. Although the Village is not the wealthiest among the comparable

communities in this proceeding, it is not insolvent or at risk of becoming so if the Association's two "modest proposals" are awarded by the Panel. The bases of these conclusions are as follows:

a. A review of the Village's General Fund, for 2003 through 2006, reveals that it has underestimated both its revenue and its expenditures. It has utilized transfers from and into the General Fund to derive an acceptable surplus or deficit as each fiscal year has drawn to a close. Such flexibility would enable it to absorb any increased costs related to the Association's two economic demands.

b. 39% of the Village's General Fund revenues come from real property taxes. The entire tax levy is placed in the General Fund and is guaranteed by the County of Onondaga. Property taxes have increased since 1997. As in other comparable communities, the trend of increasing property taxes has occurred in the Village. While its tax revenues have only increased an average 2.13% annually, it stands toward the median of all comparable communities. Even if the Tax Foundation's findings are accepted by the Panel, it does not follow that Village residents are paying too high a property tax. The full value of homes has simply grown at a slower rate than elsewhere in New York or the rest of the United States. Nor does the Tax Foundation's findings necessarily mean that the Village lacks the ability to pay for the Association's economic demands.

c. The Association's expert persuasively testified that the Village's tax levy increase, during the period 1997 to 2007, was not exorbitant as compared to comparable communities. The Village is presently at only about 45% of its constitutional taxing limit. Its projected tax margin, as of May 31, 2007, is \$2.1 million.

d. The Village's sales tax revenues have also increased since 1997. It has already

budgeted for a 4.2% increase for 2007, evidencing the continuing growth of sales and purchases in Onondaga County.

e. The Village's successful electric utility has contributed increasing amounts of money to the Village's General Fund since 2004. Although the amount of these contributions is based upon a formula set by the New York State Power Authority (hereinafter referred to as the "Authority"), they nonetheless have provided the Village with a steady stream of revenue.

2. The Village.

The Village lacks the ability to pay for the Association's economic demands. The Association's witness, Kevin Decker, based his conclusion that the Village could afford the demands, upon "trends" in property taxes and sales taxes. He provided the Panel with no support for such conclusions.

a. Regarding property tax trends, the only one Mr. Decker actually established was that the Village's tax burden exceeded assessed real property tax proceeds each year during the period 1997 to 2007. The median value of owner-occupied houses in the Village has increased only \$3,600 from 1990-2000. The Village has been taxing its residents at a faster rate than the rate at which the value of their homes has grown. The Panel should not equate the Village's "ability to pay" with its "ability to tax."

b. The sales tax *trend* about which Mr. Decker testified is of little use in this proceeding, given his admission that there is no "guarantee" that the sales tax rates he saw for past years, would continue in the future.

c. The Panel should, instead of relying upon the Association's *trends*, look at the Village's actual financial condition and circumstances. Once the Panel does so, it will conclude

that it does not have the ability to pay for the following reasons:

i. The Village's fund balance is not at recommended levels. Even Mr. Decker agreed that the Village has gone through difficult fiscal times. Much of the Village's "expenditure problem" lies with uncontrolled increases with health care and retirement/pension costs. Mr. Decker conceded that health care costs have increased "substantially" over the past ten years.

ii. In the past five years, the Village has incurred annual deficits or minimal annual surpluses. The Village's "razor-thin" surplus in fiscal year 2005-2006 (\$24,283) was offset by an accumulated deficit of negative \$67,700. Its accumulated deficit as it entered fiscal year 2006-2007 was a negative \$43,427. Thus, the Village has not maintained the \$250,000 to \$500,000 fund balance it should be maintaining, according to the testimony of Mr. Decker. He testified that, according to Moody's Investment Service, a municipality's fund balance should equal 5% to 10% of its expenditures (its expenditures are in excess of \$5 million). Even if 1% is used, the Village would still be \$40,000 to \$50,000 short of the Moody's goal.

iii. Although Mr. Decker is correct that the Village is only at 46.6% of its constitutional limit, it has increased that percentage dramatically in the past several years. It cannot afford to continue doing so.

iv. The Village also has sustained significant and non-sustainable increases in the use of its constitutional debt limit. At the end of 2005-2006, it was at 45.31% of that limit. Now it has increased to 87.08% for the 2006-2007 fiscal year, due principally to three new capital projects; i.e., a \$3 million landfill mandated by the State; an \$800,000 Police Station; and library renovations costing \$2.25 million. Its borrowing costs have increased due to its

increased debt limit percentage.

v. The Authority has issued new guidelines to the Village regarding how much money it can transfer, or what payments in lieu of taxes can be made to the Village's general fund in the future. While there will be a two year tiered implementation of the new formula, its effect, even in fiscal year 2007-2008, will be a reduction of \$130,000 in revenues. That reduction will be \$260,000 less in 2008-2009 and \$400,000 less in each year fiscal thereafter. These reductions make it absolutely clear that the Village lacks the ability to pay the Association demands urged in this proceeding.

vi. The alleged savings in retirement costs in the fiscal year 2006-2007 budget were, at most, \$2,000, for the reasons explained in Mr. Fecco's testimony.

vii. The Association's reliance on prior arbitration decisions, suggesting the Village had other available savings, should be rejected. The Association offered no proof that any savings were budgeted for or realized, given the existence of the accumulated deficit.

3. Panel's Opinion On Ability To Pay.

The Panel has carefully analyzed the financial data, and the testimony of the parties' witnesses concerning that evidence. Having completed that review, the Panel concludes that the wage increases sought by the Association are within the financial ability of the Village to pay. As the parties are no doubt aware, the statutory criterion of ability to pay is relevant when an interest arbitration panel determines that, based upon other statutory criteria, the wage increase sought for employees is justified. For the reasons detailed in a subsequent section of this Opinion, the Panel believes the wage increases proposed by the Association are both fair and reasonable. However, the remaining question to answer is whether the Village has the ability to pay for that package. If it does

not, then that wage package should be reduced.

The Panel finds that the Village does have sufficient ability to pay for the wage increases sought by the Association for 2004-2005 and 2005-2006. The full increases sought are warranted, based upon the evidence presented during the hearing in this matter. The Panel believes that the percentages it has awarded herein are sufficient and necessary to maintain the Solvay police officers' relative salary position as compared to wages received by police officers in comparable communities. The Panel further concludes that the percentages awarded herein, as more fully discussed below, represent a just and reasonable settlement of the wage issue.

The Village's Comptroller, Mr. Fecco, is rightfully concerned about what the future holds for the Village's financial condition. However, the Panel will not consider his affidavit and arguments relating thereto, concerning new Authority limits on transfers of funds, or payments in lieu of taxes, to the Village from its Electric Department. The record in this proceeding was closed on December 4, 2006. No attempt was made by the Village to re-open the hearing based upon newly discovered evidence. In any event, the future transfer of funds or payments in lieu of taxes between the Electric Department and the Village's General Fund, is of no relevance to the Village's ability to pay for wage increases during a time period not effected by any such change in policy by the Authority. Its real property tax rates and sales tax revenues are sufficient to fund the wage increases sought by the Association in this proceeding for the fiscal years covered by this Award. Although there is no way of definitively predicting that sales tax revenues will continue to increase well into the future, the Village's budgeted funds are sufficient to pay for this retroactive award. Moreover, while the Village has used increasing amounts of its taxing authority to maintain "razor-thin" surpluses and a modest accumulated deficit, the small size of the police force will significantly lessen

the impact of the wage increases awarded herein.

It is self-evident that the Village's constitutional taxing limit is a double-edged sword since Village taxpayers are already being asked to absorb a substantial portion of the tax burden. However, there is insufficient evidence to conclude that the Village would have to resort to real property tax increases to fund the wage increases to be paid for 2004-2005 and 2005-2006. Even if tax increases became necessary, there is insufficient evidence for the Panel to conclude either that the Village's taxing limit would be breached, or that the Village's taxpayers would revolt. Excellent police services and the safe living environment such services provide have a price. The Village long ago determined that excellent service warranted keeping its police officers near or at the top of the wage range among comparable municipalities.

INTERESTS AND WELFARE OF THE PUBLIC
AND
PECULIARITIES OF THE POLICE PROFESSION

1. The Association.

The public served by the Village's professional police force will clearly benefit if the Village is able to recruit and retain well-qualified and experienced officers. In order to do so wages and benefits must be set at competitive levels that will maintain their relative status and position among the comparable law enforcement communities.

The only meaningful comparison the Panel should consider is between police officers in the Village and those in comparable communities. Given the hazardous nature of their work, police officers should not be compared to Village employees in the Department of Public Works/Electric Department. Even so, employees in that unit do not pay a percentage of the health insurance

premium as the Village proposed that police officers do. All other Village employees, both represented and non-represented, pay only a set dollar amount toward the cost of the health insurance benefit.

2. The Village.

The Village offered no contentions regarding these two criteria.

3. The Panel's Opinion.

The proper comparisons utilized by the Panel in this proceeding were to the numerous comparable communities cited by the parties in their briefs and exhibits. While there are individual variances in the terms and conditions of employment of employees in the comparable communities found in the current record, it is apparent to the Panel that the nature of police work and the hazardous nature of that work makes comparison to other police officers the only meaningful comparison.

BARGAINING HISTORY OF THE PARTIES

1. The Association.

The Association urges the Panel to consider the parties' past dealings and bargaining, particularly with regard to its health insurance for retirees demand. The Panel should also consider the impact of the prior award of Arbitrator Thomas Rinaldo. In effect, his conclusions that the Village had violated the parties' Agreement with regard to holidays and a change in health insurance benefits, demonstrated that the Village was unjustly enriched. That circumstance should contribute to a finding by the Panel that the Village has the ability to pay for the Association's modest economic proposals.

2. The Village.

The Village offered no contention regarding this criterion.

3. The Panel's Opinion.

The Panel finds no merit in this argument. Even if we were to conclude that the Village was unjustly enriched, there is no evidence to establish that any monies saved by the Village as a result of actions Arbitrator Rinaldo found to be violative of the Agreement, remain available to help fund the economic proposals urged by the Association for the 2004-2005 and 2005-2006 periods.

III. OUTSTANDING ISSUES

The current impasse concerns three (3) outstanding Association proposals and two (2) outstanding Town proposals.

The Associations proposals deal with (1) Retirement health insurance upon retiring; (2) Base wage increases for fiscal year 2004-2005 and fiscal year 2005-2006; and (3) seniority determination.

The Town's proposals, aside from its opposition to the above Association proposals, include: (1) current unit employee health insurance contributions; and (2) compensation for work-related injuries.

The specifics of each proposal will be analyzed and discussed subsequently, herein.

C. Panel's Opinion and Award On Each Proposal.

Given the circumstances presented in this proceeding, the Panel has elected to discuss and award only on the salary and health insurance (and seniority upon which the parties agree) issues, which appear to lie at the heart of the parties' inability to reach a new agreement. The award on

these issues is based upon the parties' contentions and evidence offered in support of, or opposition to, each issue. It is further based upon the discussion of the Panel, during executive session, at which at least a majority of the Panel concluded that an Award addressing only the issues of salary and health insurance (and seniority) for fiscal year 2004-2005 and fiscal year 2005-2006, would result in a just and reasonable resolution of the parties' impasse, especially given the fact the parties will soon return to the bargaining table to negotiate a new agreement.

1. Wages.

a. The Association's Position: Wages should be increased by 4%, effective June 1, 2004; 2%, effective June 1, 2005; and 2% effective, December 31, 2005.

This proposal is both reasonable and affordable. The Village's offer of 3% and 3% is too low, particularly since it was made along with a proposal that unit employees contribute 15% of the cost of their health insurance coverage. Given the ever-increasing cost of health insurance, the 15% contribution would effectively reduce the officers' wages in spite of a wage increase.

The Association's wage proposal would cost the Village approximately \$23,480¹ for the first year of the Award (as compared to the cost of the Village's wage proposal; \$17,610); and somewhat more than that for the second year, given the split increases effective June 1, 2005 and December 31, 2005.

The Association conceded its unit members are not "underpaid," and are "fairly positioned vis-à-vis other police officers in the relevant market throughout their career." It claims the wage increases sought in this proceeding are needed to protect those wages from inflation and to maintain

¹The Village did not dispute the Association's cost figure of \$5,870 per 1% wage increase. Thus, the Panel has relied upon that figure in discussing the cost of the wage proposals submitted by the parties.

the officers' relative wage standing in the market. The Village should not be opposed to this, given the fact that successive bargaining agreements have kept the unit's officers on par with the highest paid officers in the comparable market. A review of PBA 1-13² reveals that police officers in comparable communities have received percentage increases that would cause the Village's officers to fall behind, if the Association's wage proposal is rejected by the Panel. The wage increases sought by the Association would, essentially, keep the officers' wages in their relative position in the comparable labor market. Indeed, unit members would fall behind their peers if the Village's wage and health insurance proposals were accepted by the Panel.

The only basis for rejecting the Association's wage proposal would be a finding by the Panel that the Village cannot afford the increases urged herein. As Mr. Decker concluded, there is no basis for finding that the Village lacks the ability to pay for these modest wage increases.

Awarding a wage increase that is less than urged by the Association would ignore the fact that, in the public safety setting, wage and benefit increases in excess of 4% are "commonplace."

Finally, the Panel should consider the fact that, as substantiated by the Rinaldo Award, the Village has been unjustly enriched as a result of its improper and unilateral change in health insurance and its improper calculation of holiday pay owed to unit employees.

Regarding the Village's proposal to increase wages 3% and 3%, assuming its health insurance proposal is awarded by the Panel, the Association opposes said proposals for the reasons discussed here and in the Ability to Pay section of this Opinion (see, page 5, et. seq.), as well as under the Health Insurance section which follows.

²All references to Association Exhibits received into evidence in this proceeding are cited, herein, as "PBA__."

b. The Village's Position. Wages should be increased by 3%, effective June 1, 2004, and 3%, effective June 1, 2005, and then only if the Panel Award includes the Village's health insurance proposal.

The 3% and 3% wage increases proposed by the Village have already been agreed to by the Village's Department of Public Works ("DPW") and Electric Department, as well as its non-represented employees. Using those percentages, unit officers with four or more years of service (1st class) would receive a base wage as follows:

2004-2005	\$49,219
2005-2006	\$50,696

An officer receiving a base wage of \$49,219 for 2004-2005 would still be ahead of police officers in six of the comparable communities (Baldwinsville, Camillus, Cicero, Geddes, Liverpool and Manlius [see, PBA 11]). Even when the Village's health insurance proposal is factored in, that officer would still be among the three highest paid officers in the municipalities in PBA 11, except for the Town of DeWitt, where he would be about \$280 behind the highest paid officer.

In 2005-2006, the \$50,696 a Village 1st class officer would receive would still place him at a higher wage than police officers in five of the comparable communities (Geddes, Camillus, Cicero, Liverpool and Manlius [see, PBA 11]). Applying the employee's health insurance contribution to this annual wage would still leave him as the second highest paid officer among the ten comparable communities contained in PBA 11.

The Association's wage proposal should be rejected for several reasons. If the wage increase urged by the Association is utilized for 2004-2005 and 2005-2006, Village officers would be the second highest paid among the ten municipalities relied upon by the Association PBA 13 (the base

wage plus longevity). Even if the Village's proposal is accepted by the Panel, Village police officers would remain among the highest paid officers if health insurance is accounted for.

c. The Panel's Opinion.

The Panel has carefully considered this issue and the testimony and documentary evidence supplied by the Association through its Financial Consultant, Kevin R. Decker, and by the Village through Mr. Fecco. The Panel is satisfied that the Village has the financial ability to pay for an award which is just and reasonable within the intent of the Taylor Law. It also appreciates the Village's position that using any savings or cost reductions generated by a change in the health insurance contribution, to fund the salary increases sought by the Association, is neither mandated by law, nor necessarily prudent in the uncertain economic environment in which it operates.

The Panel believes that the wage proposal submitted by the Association reflects wage increases that are somewhat higher than the cost of living increases in the Northeast United States, for the years in question (See, PBA 17). There is little doubt that the Village's police officers have qualifications that remain quite satisfactory; have jobs that entail significant risks to their own health and safety; and have to continue to perform their duties with quality and professionalism, so as to benefit the public they are sworn to protect.

Unlike in many interest arbitrations, the Association has not sought to improve numerous economic provisions in the expired Agreement. That fact suggests that the Association is generally pleased with the economic benefits years of bargaining have gained for unit employees. It is further apparent to the Panel that the cost of providing unit employees with a comprehensive package of economic benefits, including higher wages and health insurance, as contained in the expired agreement, cannot be ignored by the Panel. But, it does not necessarily follow that the continuing

of various economic benefits, and the seemingly never-ending increase in health insurance costs, preclude the Panel from improving levels of compensation, if the record, as we have concluded here, supports such improvement(s). Nor, however, should it preclude the Village from attempting to gain some degree of control over the costs of providing a comprehensive health insurance benefit to its police officers, irrespective of when they were hired.

As noted previously herein, the Village has the ability to pay for the wage increases awarded herein. The increases proposed by the Association are fair, reasonable and in the best interests of the employees of this unit, and the best interests of the public the members of the unit serve.

A review of the numerous communities the Panel has selected as comparable reveals that police officers of the Village do enjoy one of the highest base wages among the comparable communities. While the Village's economic picture for years in question was far from robust, it did contain sufficient gains in sales tax and real property tax revenues to fund the raises awarded herein.

The Panel believes that the salary increases awarded herein are sufficient to address the competing interests of the police officers, on the one hand, and the taxpayers whom they serve, on the other. These increases are modest and will allow police officers to maintain their standard of living and their position relative to police officers in comparable communities. Any financial burden placed on the Village by this award is well within its ability to pay. Moreover, given the reduction in health care costs which will be realized by requiring all unit employees to bear some of the cost of health insurance premiums, the financial health of the community will be ultimately be enhanced in a manner which is both fair and reasonable to both the employees of the unit and to the community.

2. Association Proposal - Health Insurance For Retiring Employees.

a. The Association's Position.

The Association seeks to have the Panel include within its Award, a provision that says that whatever health insurance benefit retirees receive should be reduced to written form. Said provision would further require that 50% of the premium for such insurance be paid by the Village and 50% of the premium be paid for by the employee.

It claims the inclusion of such language in the Award is needed for several reasons. First, police officers need some degree of certainty and protection when they retire after a minimum of twenty years of service with the Village. Mr. Fecco testified that retired employees do receive a form indicating they receive health insurance with a split premium of 2/3 paid by the retiree and 1/3 paid by the Village (T. 152³). The record demonstrates that there remains confusion, even within the administration, as to what the health insurance benefit for retired police officers is, and what share of the premiums those retirees are responsible for. Inclusion of clarifying language in the Award should be granted by the Panel for this reason alone. Without including this benefit in the Award, the Village will be free to change or eliminate the benefit consistent with current law.

Also, the Association has proposed that the share of contributions for providing such benefit upon retirement should be 50% paid by the retired employee with at least twenty years of service, and 50% paid by the Village. It has proposed this contribution-sharing arrangement to allow the Village to reduce its commitment to current employees to a binding, written form, while recognizing that the increasing costs of providing health insurance for retirees should be a shared responsibility.

³All references to pages of the transcript of the December 4, 2006 hearing are cited, herein, as "T. ___."

Although the Association recognizes that the trend in the private sector is to eliminate health insurance benefits for retirees, that trend has not reached the public sector, and certainly not organized police units.

Inclusion of such a benefit in the Award is necessary for several additional reasons. First, unlike in school districts and Boards of Cooperative Educational Services, employees of local governments are not protected by 1994 N.Y. Laws, ch. 729, that prohibits those entities from changing the health insurance benefits of retirees unless there has been a corresponding change in the health insurance benefits of current employees. Attempts to extend this protection to retirees of all other local governments has been rebuffed. Since the Village has conceded such benefit has been provided for by Village policy, the Panel should codify that benefit by including it in the final Award. The problem was compounded by the New York State Court of Appeals decision in Aeneas McDonald PBA, Inc. vs. Geneva, 92 N.Y. 326 (1998), in which the right of a municipality to reduce the health insurance benefits of retirees, without bargaining, even though said benefit has been provided in the past.

Second, what the Association seeks in this proceeding is consistent with how retiree health insurance is treated in the comparable communities (PBA 14). Only three of the eleven comparable communities' agreements contain no language providing retirees with health insurance. While the benefit, and eligibility for it, vary from community to community, the norm is to include the benefit in the parties' bargaining relationship, and in written, binding form. Also, the Panel should be guided by the prior interest arbitration awards of the Peter Prosper Panel in City of Kingston PBA Union, Inc. and City of Kingston (PBA 20); the Joel Douglas Panel in County of Rockland and Rockland County District Attorney's Criminal Investigator's Association, Inc. (PBA 21); and the

Campagna Panel in Tompkins County & Sheriff of Tompkins County and Employees Union of Tompkins County Sheriff's Department (PBA 22).

Finally, since most of the unit employees are years away from retirement, the inclusion of the health insurance benefit in the Award will have no economic impact on the Village for the period covered by the Panel's Award.

b. The Village's Position.

The Village has opposed this proposal for several reasons. First, there is no need for such a provision since the Village's policy is to provide health insurance for retirees with the Village paying for 1/3 of the premium and the employee paying the remaining 2/3. There is currently no years of service requirement, meaning that any employee in the unit who retires is eligible to receive the benefit. To require the Village to include a provision guaranteeing health insurance to retirees, in these times of escalating insurance costs, is to ignore the financial realities of the request. Indeed, the bargaining agreements in Solvay, as well as in the comparable communities of Liverpool, Skaneateles and Cicero, contain no provision for retiree health insurance. The agreements in the other comparable communities, however, do include a retiree health insurance benefit, the premium cost for which varies from community to community. As reflected on Village 12, the degree of coverage and the premium cost-sharing provisions range from requiring the retiring employee to pay anywhere from 100% of the premium (e.g., Village of Baldwinsville), to one providing for only individual coverage, for officers with at least twelve years of service, with those officers contributing 10% of the premium cost (e.g., Town of Geddes).

c. The Panel's Opinion.

The Panel appreciates the Association's concern that the Village may, at some unspecified

point in the future, eliminate its current policy of providing retired officers with health insurance on a shared-cost basis. However, it is also true that the Village made no change or elimination of such benefit during the period covered by this Award. Further, it has indicated a willingness to reduce to writing its current policy. The PBA is concerned that, if the Village chooses to do so, whether for justifiable or bad faith reasons, it would have the legal right to reduce or eliminate this valuable benefit if the benefit is not included in the instant Award. It has cited Interest arbitration awards, listed at pages 20-21, supra, in communities other than those which have been deemed comparable for purposes of the instant proceeding, where each panel, for reasons expressed in those awards, included a provision for health insurance upon retirement. Although those Awards are not relevant to what has been done in the comparable communities, the Panel is persuaded that the rationale utilized in said awards is instructive in the instant proceeding.

The Prosper Panel found there was an existing past practice to provide current employees who retire single coverage health insurance, 100% of the premiums of which were paid by the City of Kingston. The premiums for family coverage were paid at 50% of the difference between individual and family coverage. It concluded such benefit was a major one which should be included in the award. It reached that conclusion, rejecting the City's argument that increasing premium costs and financial exigencies in the future might require it to modify its practice. The Panel concluded that any such modifications of such a major benefit should be negotiated (PBA 20).

The Douglas Panel believed that a long-standing County Resolution to provide current employees with health insurance should be included in the award, especially in light of the Court of Appeals decision in Aeneas, supra., at p. 20 (PBA 21).

Finally, the Campagna Panel incorporated into its award a long-standing County Resolution

by which retiring employees were entitled to continuing health insurance coverage. The Panel awarded health insurance coverage for employees retiring after March 1, 2004, consistent with the Resolution, with premiums to be shared by the retiring employee and the County. As in Prosper Panel Award, the Campagna Panel rejected the County's argument that ever-increasing health insurance premiums would place an onerous financial burden on the County and its taxpayers. It held that the prevailing benefit had been relied upon by current employees in reaching new collective bargaining agreements and should, therefore, be included in the Award.

A careful study of this issue in contracts in the comparable communities in this proceeding, does reflect a range of eligibility requirements, entitlement and cost-sharing language. Some contracts provide no continuing health insurance to officers upon their retirement (e.g., Liverpool, Skaneateles and Cicero). In another, the health insurance benefit is provided if the officer has twelve years of service, but the retiring officer is required to pay 100% of the premium (Baldwinsville, NY). In still others the premium cost-sharing ranges from 20% for individual coverage to 100% for family coverage, with the benefit ending upon reaching age 65, or becoming Medicare eligible (e.g. Clay); to Camillus, where the benefit is only provided for officers hired after January 1, 2001; to Geddes, where that Town provides no family coverage and only limited individual coverage. The point here is that it is difficult to conclude that the comparable communities, taken on the whole, provide a level of benefit for retiring officers that is better than that currently provided under the Village's policy.

The Panel has been persuaded that there should be provision made within its Award providing that current employees, hired prior to June 1, 2004, who retire with at least twenty years of police service with the Village, or with twenty (20) years of combined police service with the

Village police and a police force covered by the New York State and local police retirement systems, shall be entitled to health insurance otherwise consistent with the Village's long-standing policy. While said modification will result in a benefit that is not as generous as the PBA seeks, it will serve three purposes: (1) it will codify into the parties' bargaining relationship an important benefit which has, in practice and by policy, been in place for years. (2) It will serve as a starting point for future bargaining between the parties should the PBA deem a more generous benefit warranted, or should the Village conclude that the increasing costs of maintain such a benefit warrants a modification of the benefit, or of the cost-sharing for such benefit. (3) It will assure that those employees entitled to such benefit by virtue of this Award, will receive a long-standing benefit that has been relied upon by the Union during the parties' bargaining for new collective bargaining agreements and that has been relied upon by said employees as a vital condition of their employment. Thus, the Panel has been convinced that the Award must include a health insurance benefit for employees hired prior to June 1, 2004, who retire with at least twenty years of police service with the Village, or with twenty (20) years of combined police service with the Village police and a police force covered by the New York State and local police retirement systems, on a cost-sharing basis, with the Village paying 1/3 of the cost of the retiring employee's individual or family coverage. Such an award is appropriate and necessary. Any future increases in costs which require the Village to modify the existing health insurance program, or the premium cost-sharing arrangement it has long provided for its employees should be the subject of future negotiations. Also left to future bargaining is the issue of whether employees hired on or after June 1, 2004 should become entitled to the same or similar benefit.

3. Village Proposal - Current Employees Health Insurance Contributions.

a. The Village's Position.

The Village seeks to amend the health insurance language of the Agreement by requiring all unit employees to contribute 15% of the cost of the premium for individual or family coverage. Presently, only police officers hired on or after January 17, 2002 make the 15% contribution.

Without detailing the specifics here, the Village presented compelling justification for why it needs all employees to share the rising costs in health insurance premiums. For obvious reasons, it has drawn the Panel's attention to the comparable communities where all, to one degree or another, have contract language under which its police officers are required to share in the ever-rising costs of providing comprehensive health insurance coverage (Village 12). Some police pay a fixed amount of money each year (e.g., N. Syracuse - \$300/individual - \$900/family). Others pay a percentage of the individual or family premium, ranging from 7% - Skaneateles to 25% - Baldwinsville). The 15% contribution sought by the Village in this proceeding would place all unit officers in the middle of the eleven comparable communities.

b. The Association's Position.

The Association is opposed to requiring police officers hired prior to January 17, 2002 to make any contribution to the cost of their health insurance coverage. The Association already agreed to give the Village considerable help in dealing with the continuing rise in health insurance premiums during bargaining for the 2000-2004 Agreement. It agreed to have new employees pay 15% of the cost of their health insurance because it agreed with the Village that a phase-in approach was the most fair and reasonable approach to the problem. The Panel should not ignore this fact,

given the statutory guideline requiring it to consider the parties' past agreements. Nor should ignore the fact that officers hired prior to January 17, 2002 were grand fathered so that their contribution remained at 0%. To impose any contribution obligation on them in the Panel's award would deprive them of the benefit of the bargain.

In addition, the Association is indirectly helping the Village to pay for the rise in health insurance benefits, by not seeking improvements in other fringe benefits. The need to deal with the mounting health insurance crisis in this country should not fall on the shoulders of those who can least afford to pay. Moreover, other employees of the Village do not pay a percentage of the health insurance premium as the Village proposed that police officers do here. All other Village employees, both represented and non-represented, pay only a set dollar amount toward the cost of the health insurance benefit.

There are also flaws in the Village's analysis and reliance upon the comparable data. The Panel should deny the Village's proposal.

c. The Panel's Opinion.

The Panel has carefully considered the various statutory criteria upon which its Award is now based. One such criterion is "other relevant factors." One such factor is the fact that all other represented Town employees, both represented and non-represented, have agreed to, or were required to accept, health insurance benefits requiring that they contribute to the cost of such benefit. The Panel agrees with the Association's contention that said employees are not "comparable" to police officers, since they do not share the same job responsibilities or hazards inherent in police work. Nonetheless, the reality is that the escalating cost of health insurance benefits has been and will continue to be a financial drag on the Village. While the premium increases envisioned by the

parties are quite speculative the further out in time one takes them, this Panel is dealing with a finite time period during which those costs did significantly increase. It is fair to conclude that it is highly unlikely the cost of continuing health insurance coverage will decrease under the country's current health care and health insurance systems.

That the Village has dealt with the problem of escalating premium costs by either negotiating employee contributions in the DPW and Electric Departments; negotiating contributions for new police officers; or imposing contribution requirements on its non-represented employees (albeit a dollar amount, not a percentage of premium), is also of significance to this Panel.

The Panel understands the reluctance of the PBA to *open the door* to shared responsibility for health insurance in the future. But, the Panel is convinced that health insurance proposal of the Village, as modified in our Award, will give recognition to the taxpayers that its police officers, who will be receiving the wage raises they sought in this proceeding, appreciate the increased burden increasing health insurance premiums have on everyone who is fortunate enough to have such coverage. While the PBA is justified in urging that the costs of the health insurance crisis facing the nation should not be placed on the shoulders of employees, it does not follow that the entire cost of such escalating premiums must be borne solely by the Village and its taxpayers. Although it is true the parties agreed, in 2002, to deal with the health insurance crisis by placing a cost-sharing burden only on new-hires, that fact alone does not preclude or warrant forever excusing veteran employees from assuming a small portion of that cost.

The amount of the contribution that will be required of unit employees hired before January 17, 2002 is quite small (3%). Nonetheless, this small contribution will provide a degree of assistance to the Village in attempting to meet its financial obligations, while not unduly burdening the members

of the unit. The 3% figure was agreed upon after consideration of the comparable data of record. It also was selected (a) in recognition of the fact that police officers do hold unique jobs which subject them to hazards and risks to their health that are different than other employees; and (b) that employees hired prior to January 17, 2002 cannot be expected to pay the same contribution percentage as police officers hired thereafter; (c) that it is not unreasonable for the Village to expect all unit employees to bear some portion of the cost of the health insurance benefit; and (d) that a small degree in relief on this issue is necessary. The Panel presumes that the latter employees accepted, or would accept employment, with full knowledge that they had to pay more than veteran employees.

For all these reasons, the Panel will award that unit employees hired prior to January 17, 2002 will be required to contribute 3% of the cost of their individual or family coverage. However, since this Award deals with years that have already passed, it would be unfair to impose a retroactive cost on said employees. Therefore, the Panel will make the effective date of the requirement May 31, 2006.

4. Seniority.

a. The Association's Position.

The Association offered no evidence on this issue, other than the parties' 2000-2004 Agreement. The Agreement contains no definition of "seniority." Because the Agreement refers to "seniority" in Section 5.7(c), Section 5.7(e) and Section 5.7(g), a definition of seniority, consistent with the parties existing practices, would be useful.

b. The Village's Position.

The Village did not initially oppose the Association's demand within the context of an

overall package (See Response to Petition For Compulsory Interest Arbitration, Panel Ex. 3, ¶3C). In its post-hearing brief, the Village now opposes the addition of this seniority language, asserting that the Association offered no evidence to support its proposal. Because the subject of the proposal raises factual issues not addressed in the current record, the Panel is reluctant to incorporate the Association's proposed language in its Award.

c. The Panel's Opinion.

The Association provided the Panel with no evidence to establish why the proposed seniority definition should be added to the parties' relationship. If the Panel was convinced that the parties' existing practices regarding seniority were problematic, or if the Association had demonstrated that, because no definition of seniority has been included in the Agreement, the sections of the contract referencing seniority have been abused or interpreted in a manner that has denied unit employees of negotiated benefits, we would include the proposed language in our Award. Therefore, the Panel will award that the Association's proposal be denied.

5. Amend Section 5.4 - Compensation For Disability.

a. The Village's Position.

The Village proposed the elimination of the following language in the first paragraph, that reads:

“Each member of the police department shall be paid his full salary during any and all times that he is incapacitated from work by reason of any injury or physical or mental conditions which arises out of or in the course of his employment as a police officer for the Village of Solvay.”

In its place, the following language would be added:

“Each member of the police department shall be protected under the rules of the New York State General Municipal Law Section 207-c

related to any injury or illness that arises out of or in the course of his or her employment as a police officer for the Village of Solvay.”

The only justification offered by the Village for seeking this language is that it does no more than incorporate into the Agreement the statutory right of employees to receive compensation under Section 207-c. It offered no evidence to support its claimed desire to change the contract language in Section 5.4.

b. The Association’s Position.

The Association urges the Panel to deny this proposal since there is no evidence to establish why a change in the language of Section 5.4 is needed. It also points out that the language of Section 207-c of the General Municipal Law is somewhat different than that found in Section 5.4 of the Agreement. Section 207-c speaks of injuries or illnesses incurred in the “performance of duties,” whereas Section 5.4 refers to injuries and physical and mental conditions arising “in the course of employment.” The Association suggests that the statutory language may narrow the scope of the contractual benefit currently available to unit employees.

c. The Panel’s Opinion.

The Panel has not been persuaded that there is a need to substitute the language of General Municipal Law Section 207-c for the language of Section 5.4 of the 2000-2004 Agreement. There is no evidence that the existing language of the Agreement has created operational or other problems for the Village that would be remedied by a change to the language of 207-c. Further, if that language change would deprive unit employees of the level of benefit they have come to expect under Section 5.4 of the 2000-2004 Agreement, there is no apparent reason for straying from that language for years that have already passed. Therefore, the Panel will award that the Village’s proposal be denied.

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

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

**SOLVAY POLICE BENEVOLENT
ASSOCIATION, INC.,**

Petitioner,

- and -

VILLAGE OF SOLVAY,

Employer.

**PERB Case No:
IA2005-049; M2005-161**

**DISSENTING OPINION
OF EMPLOYEE
PANEL MEMBER
ANTHONY V. SOLFARO**

-----X

The Panel majority's award on the issues of health insurance benefits during an employee's employment and upon an employee's retirement compel my dissent. The Panel's award in these respects is internally inconsistent, it is not justified by the criteria the Panel is obligated to apply, or the facts of record, and it is otherwise arbitrary, irrational and objectively unfair and unreasonable. But before turning to the health insurance issues, a brief comment about the base wage award is appropriate.

I do not agree with any suggestion by the Panel majority that the salary increases awarded are fair and reasonable only and to the extent those increases are offset by the concessions the Panel majority has awarded the Village on health insurance. As the Panel majority itself states at several places in its opinion, the wages awarded are modest and fair, they are well within the Village's ability to pay, and are at a level necessary to maintain the unit employees' relative position within the comparable communities. Thus, even without the Panel's extraction of a health insurance premium contribution from employees who were previously exempt from any contribution by the parties' most recent, June 2000 – May 2004, collective bargaining agreement, the salary increases awarded are necessary and appropriate.

Returning to health insurance, and specifically retiree health insurance, the Panel majority understands the need for at least a codification of the Village's long-standing policy and

practice of paying one-third of the insurance premium upon an employee's retirement for either individual or family coverage. But the codification of that existing benefit is only partial because the Panel majority excludes officers who were hired on and after June 1, 2004 from the protections awarded the employees who were hired earlier. As to these "new" officers, the Panel majority leaves the issue of their right to health insurance on retirement to the parties' "future bargaining."

The two-tiering of a benefit so important as retiree health insurance simply cannot be explained or justified. That is why the Panel majority does not even attempt to rationalize why within this unit of twelve officers some have minimal retirement health insurance benefits protected and others do not. There is, quite literally, not one reason given by the Panel majority for this result. The Panel majority does not offer any reasons because there are none.

Not only is the award in this respect without justification, it is inconsistent with the reasons given by the Panel majority for the codification of the retirement health insurance benefit that it did award to employees who were hired before June 1, 2004.

The Panel correctly recognizes that the Village's unwritten policy and practice regarding retiree health insurance formed the basis for the parties' collective bargaining over a long period of time. That rationale, however, applies equally to all unit employees, not just those who were hired before June 1, 2004.

Moreover, the Panel majority conditions eligibility for the retirement health insurance benefit upon satisfaction of a twenty-year service requirement. But the date an employee is hired is irrelevant to that years-of-service requirement. Regardless of when an employee is hired, that employee still must have the twenty years of creditable police service to be eligible for the retirement insurance benefit the Panel majority awards. The Panel's exclusion of certain officers from this benefit based on their date of hire by the Village is wholly inconsistent with the condition imposed by the Panel for eligibility for the benefit. Length of total service gives rise to eligibility for retiree health insurance, not the date of initial hire.

The Panel majority also codifies the retirement health insurance benefit at the level presently existing which has the Village paying only one-third of the applicable premium. It rejects the PBA's demand for a 50-50 cost sharing between the Village and retiree. The Panel majority explains its refusal to improve the existing benefit with the cursory observation that it is not persuaded that the retirement health insurance benefits existing within the comparable market are better than the Village's existing benefit under which the Village pays only one-third of the insurance premium.

Even if that observation were correct – which it is not, based on the record in this proceeding – the rationale does not at all address a unit employee's ability to pay on retirement two-thirds of the then applicable health insurance premium. The reality is that the cost imposed upon the retiree to secure health insurance coverage for self and family puts the benefit beyond the reach of most, if not all, retirees. The existing benefit, therefore, becomes illusory, a point the Panel majority ignores completely. As and to the extent the benefit prevailing in the market is objectively unreasonable, then the market cannot logically fix the terms for the fair and reasonable award the Panel is obliged by law to render.

As to the accuracy of the Panel majority's comparability conclusion, it is true that the retiree health insurance benefits within the relevant market differ, a point that is not surprising at all. But the majority of those comparable municipalities cover the individual in full upon retirement or require no more than a 25% contribution by the retiree. Dependent or family coverage after retirement is more unusual within this market, but given the much better individual benefit within the majority of comparable jurisdictions, the 50/50 split proposed by the PBA is very much consistent with the market average. Thus, the Panel majority's conclusion that the record does not evidence a disparity between the Village's current benefit and what is available within the market is incorrect. What the Village now offers as to health insurance upon retirement is below prevailing market average and the record shows this clearly.

The Panel majority's award requiring employees who were hired before January 17, 2002 to pay 3% of the health insurance premium during their employment is shockingly indefensible because the award in this respect rests on nothing of relevance.

The entirety of the Panel's rationale for this part of the award is this: health insurance is expensive and other officers within the comparable jurisdictions pay for their health insurance to greater or lesser extent. But those exact circumstances were known to these parties when they agreed in collective negotiations upon the method to be used to defray health insurance costs.

In the most recent June 2000 - May 2004 collective bargaining agreement, the parties agreed for the first time that employees who were hired on and after January 17, 2002 would pay 15% of the health insurance premium. Five of the twelve unit employees make that premium contribution pursuant to that agreement that the Panel majority continues unchanged in this respect.

The parties very clearly agreed that a phase-in of a health insurance payment was the fair and reasonable way to deal with the issue of health insurance payment during employment. Employees hired before January 17, 2002 were expressly carved out by that agreement from having to pay a percentage of the health insurance premium. That agreement is plainly working and working quickly as 42% of unit employees now pay for their health insurance directly and at a substantial level in a very short period of time since negotiated.

The Panel majority mentions this agreement in passing, but it then reduces it to utter insignificance, thereby disregarding the statutory criterion that requires weight be given to the parties' collective bargaining agreements and bargaining history in shaping this award.

Never, on the great many interest arbitration panels on which I have served, has a Panel Chairman concluded that the parties' very recent agreement to a methodology for the handling of any given issue is not good enough. These parties' agreement is working exactly as the parties intended, indeed, likely better than the Village expected in the sense of the speed with which a large percentage of unit employees are contributing directly toward the cost of health insurance. The award upon this issue reflects nothing more than this Panel Chairman's personal belief that these police officers need to demonstrate to Village residents their willingness to help pay for their health insurance. That type of personal opinion and bias has no place in the disposition of public safety impasses and is the product both of the Chairman's desire to give the Village

something on this issue no matter what, and likely, I believe, his evident inexperience in chairing interest arbitration panels.

The “two-tiering” of health insurance benefits both during employment and upon retirement as awarded by the Panel majority is unprecedented in my thirty years plus experience and is a result that is not supported by fact or the law that governs this proceeding. The majority award greatly increases the likelihood, if not the certainty, of future impasses and interest arbitration proceedings as both sides will be forced to struggle with the consequences of this unfortunate two-tiering of a major employee benefit. Under the facts and law, this Panel should have at least codified the existing retiree health insurance benefit for all unit employees, not just some, and it should have honored the parties’ agreement as to health insurance contribution during employment by awarding a continuation of that agreement unchanged such that only new hires as defined by the parties make the premium contribution. Its failure and refusal to do so is a great disservice to the parties, to these police officers, to the public they serve, and to the interest arbitration process itself. I, therefore, dissent.

Dated: _____

8/1/07

Anthony V. Solfaro

