

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between
TOWN OF FISHKILL POLICE FRATERNITY, INC.

AND

TOWN OF FISHKILL

PERB Case No. IA2005-055; M2005-221

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

The Public Arbitration Panel members are:

Peter A. Prosper
Public Panel Member and Chairperson
P. O. Box 5436
Clifton Park, New York 12065

Anthony V. Solfaro, President
Employee Panel Member
New York State Union of Police Associations, Inc.
1 Spring Square Business Park
Newburgh, New York 12550

John M. Donoghue, Esq.
Employer Panel Member
Donoghue, Thomas, Auslander & Drohan, LLP
2517 Route 52
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APPEARANCES:

For the New York State Union of Police Associations, Inc.,
on behalf of its affiliate Town of Fishkill Police Fraternity, Inc.

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1 Spring Square Business Park
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For the Town of Fishkill

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Pursuant to the provisions of Civil Service Law, Section 209.4, Richard A. Curreri, Esq., Director of Conciliation of the New York State Public Employment Relations Board (PERB), issued the Designation of Public Interest Arbitration Panel (Panel) on June 5, 2006, for the purpose of making a just and reasonable determination on the matters in dispute between the Town of Fishkill ("Town") and the Town of Fishkill Police Fraternity, Inc. ("Union"). The prior Collective Bargaining Agreement between the parties covered the period from January 1, 2002 through December 31, 2005. Although the Agreement expired, it remains in full force and effect pending this Award.

The Town is a municipal corporation located in Dutchess County. The Town has a population of approximately 20,000, with a land area of 27.54 square miles.

The Union is the certified bargaining agent for all part-time police officers of the Town. At the time of the hearing, there were thirty-eight (38) part-time police officers in the bargaining unit, including part-time in-house designations of detective, sergeants and detective sergeant.

The parties commenced negotiations for a successor agreement in 2005, but were unable to reach a negotiated settlement. After mediation was unsuccessful, the Union filed for Compulsory Interest Arbitration on March 29, 2006. The Town filed its response on April 12, 2006. A hearing was held in the Fishkill Town Hall on January 26, 2007, at which time both parties were represented by counsel, were provided ample opportunity to introduce evidence, present testimony, summon witnesses, examine and cross-examine witnesses, and otherwise support their respective positions on the outstanding issues before the Panel. The hearing had a transcribed record and was the official record of proceeding. The parties filed post hearing briefs which were received in a timely manner on or about May 25, 2007.

All issues which have attendant support submitted by each party were carefully considered by the Panel in its deliberations in making a just and reasonable determination in this matter. The Panel met in executive session on June 26, 2007, and deliberated on each of the outstanding issues, carefully, and fully considered all the data, exhibits, briefs and testimony of the sworn witnesses who appeared on behalf of both parties. The results of those deliberations are contained in this OPINION AND AWARD (Award), which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. Those issues presented by the parties that are not contained in this Award were also carefully considered by the Panel, but are remanded back to the parties, and therefore no Award is made on those matters. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. The Panel considered the impact of each item upon the whole, and made its Award concerning the combination of items that would provide a just and reasonable determination for the parties.

In arriving at the determination and Award contained herein, the Panel has considered the following statutory guidelines with which it was charged by Section 209.4:

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, 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 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.

(vi) The determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

THE ISSUES

The Town filed an Improper Practice Charge with the Public Employment Relations Board on April 13, 2006, contending that some of the Union's demands were non-mandatory subjects of negotiation. After discussion between the parties, the following demands were withdrawn: The Union withdrew #10 regarding General Municipal Law §207-c, and the following in demand #13 "Proposed New Article – General Provisions:"

All new employees shall undergo training through the New York State Field Training Officer (FTO) program with a certified FTO. No new employee shall work, without a certified FTO providing supervision, until he/she has satisfactorily completed the program. No new employee in the FTO program shall be used towards the minimum staffing as set forth in Article 17.

Each transport of a prisoner, outside of the Town, shall have two (2) employees on that transport for the safety and health of the employees.

The Town withdrew its objection to Union Demand No. 14 "Proposed New Article – Instructors Pay."

The following issues were submitted by the Union for determination:

1. **HOUSEKEEPING** - change all Articles to numeric from roman numerals and number or letter each paragraph and delete dates no longer applicable. Insert Chief of Police where Chief Executive Officer appears.

2. **ARTICLE 5 - GRIEVANCE PROCEDURE**

Business Day - shall be defined as Monday through Friday, exclusive of the Holidays as set forth in Article 8 herein.

Step 2 - Filing with Town Supervisor's Office.

Delete hearing before Town Board and that a written decision be provided within twenty (20) business days after receipt of the grievance by Town Supervisor after consultation with the Town Board.

Delete filing with Town Clerk. File with Town Supervisor's office.

3. **ARTICLE 6 - WAGES** - Change Article heading to **HOURLY RATES OF PAY AND LONGEVITY.**

See Appendix "A" attached.

4. **ARTICLE 7 - COURT AND ADMINISTRATION APPEARANCES, PARADE DUTY AND CALL-IN DUTY**

Amend to read as follows:

Each employee shall be paid a minimum of three (3) hours, at one and one half times (1.5X) their applicable hourly rate of pay, inclusive of longevity if applicable, for any necessary administrative appearance(s), parade duty, training, or call-in duty to work patrol at times other than their scheduled tour of duty. In the event that the employee works more than three (3) hours, he/she shall be paid for all additional hours, or part thereof, at one and one-half times (1.5X) their applicable hourly rate of pay, inclusive of longevity, if applicable.

Each employee shall be paid a minimum for two (2) hours, at one and one half times (1.5X) their applicable hourly rate of pay, inclusive of longevity, if applicable for each court appearance. In the event that employee is in court for more than the two (2) hours, he/she shall be paid for all additional hours, or part thereof, at one and one-half times (1.5X) their applicable hourly rate of pay, inclusive of longevity, if applicable.

5. **ARTICLE 8 -HOLIDAY PAY**

Amend to read as follows:

Each employee shall be paid three times (3X) their applicable hourly rate, including longevity, if applicable, for all hours, or any part thereof, worked on the following Holidays:

Add the following Holidays to the existing list:

- Election Day
- New Year's Eve

6. **ARTICLE 9 – UNIFORMS** - Change Article heading to **UNIFORMS AND EQUIPMENT.**

Paragraph # 1 - Add the following:

The town shall provide the initial issue of uniforms and equipment to each employee upon hire, at no cost to that employee.

Paragraph #2 - Amend the schedule as follows:

	<u>1/1/06</u>	<u>1/1/07</u>
750+	\$350.00	\$375.00
500 to 749	\$325.00	\$350.00
250 to 499	\$300.00	\$325.00
1 to 249	\$275.00	\$300.00

An employee promoted to Detective shall receive a one (1) time payment, as set forth below, for the purchase of business attire for the performance of their duties. Thereafter, they shall be entitled to receive the following annual clothing amounts. The amount to be paid is as follows:

	<u>1/1/06</u>	<u>1/1/07</u>
	\$300.00	N/C \$300.00

7. **ARTICLE 12 - EDUCATIONAL REIMBURSEMENT**

Amend to read as follows:

An employee who is assigned to attend a police training course(s) by the Chief of Police, when not regularly scheduled and working, shall be paid at the rate of one and one-half (1.5X) his/her applicable hourly rate of pay for all hours, or any part thereof, including travel time.

An employee who is attending the Base Municipal Police Training Council (BMPTC) training academy for certification as a police officer, shall be paid at the Step 1 rate of pay for all hours while attending the academy, travel time, and study and notebook preparation at the straight time rate of pay of Step 1 base hourly rate of pay, except if all such time exceeds forty (40) hours in a week. In that event, the employee shall be paid at the rate of one and one-half times (1.5X) his/her applicable hourly rate of pay for all hours over forty (40).

8. **ARTICLE 13 - FUNERAL EXPENSES**

Insert "\$9,500.00" where "\$6,500.00" appears.

9. **ARTICLE 17 - SCHEDULING**

Amend to read as follows:

Paragraph # 1 - The Chief of Police or designee shall post the patrol work schedule availability no later than the first (1st) day of each calendar month providing the number of employees needed for each tour of duty as set forth below for the following calendar month. Based on that posting, all employees working the patrol schedule shall provide a minimum of sixty (60) hours (10 tours of duty) of their availability no later than the fifteenth (15th) calendar day of each month for the ensuing month to the Chief of Police or designee, except where an employee's primary employment requires him/her to work. In that case, the employee shall be excused from the foregoing requirement. The Chief of Police or designee reserves the right to verify with the employee's primary Employer that he/she was required to work and not provide availability as set forth herein, or in the event the employee is required to work his/her primary employment and cannot report for his/her scheduled tour of duty as posted on the patrol schedule.

The Chief of Police or designee shall post the work schedule no later than the twenty-fifth (25th) of that month. The Chief of Police or designee shall sign and date the posted work schedule, which shall acknowledge its approval. Seniority shall have preference in the scheduling of the tours of duty, if availability is submitted as set forth herein up to the first thirty-two (32) hours (4 tours of duty) each bi-weekly pay period. However, the work assignment within the scheduled tour of duty shall be at the sole discretion of the Chief of Police or designee. An employee may not change or switch his/her scheduled tour of duty without the prior approval of the Chief of Police or designee, except in the case of an emergency.

Paragraph #2 - The road patrol tours of duty shall be as follows:

- "A" line - 12:00 midnight to 6:00 a.m.
- "B" line - 6:00 a.m. to 12:00 noon
- "C" line - 12:00 noon to 6:00 p.m.
- "D" line - 6:00 p.m. to 12:00 midnight

There shall be a minimum of three (3) employees assigned and working patrol on each tour of duty as follows, subject to employee submission of availability:

- "A" line - Sunday-Saturday
- "D" line - Sunday-Saturday

At no time shall there be less than two (2) employees working the patrol work schedule on any tour of duty.

The School Resource and/or D.A.R.E. officer(s) shall be scheduled for a maximum of twenty (20) hours per week, based on that employees availability and school schedules. An employee who is a School Resource and/or D.A.R.E. officer shall not be counted towards the patrol minimum staffing level set forth herein, while performing in those capacities. However, in the event the school is closed (i.e., weather, teachers conferences, etc.), that employee shall report for road patrol duties during the hours he/she would be at school.

The Detective Sergeant shall be scheduled and work three (3) tours of duty Monday through Friday in a minimum of six (6) hour blocks of time, mutually agreeable to the Chief of Police or designee, and the Detective Sergeant. The three (3) Detectives shall be scheduled and work three (3) tours of duty, Monday through Saturday, in a minimum of six (6) hour blocks of time, mutually agreeable to the Chief of Police or designee and the Detective(s). In the event the Detective Sergeant or Detective(s) are called out, when not scheduled to work (i.e., 2:00 a.m. on a Tuesday), he/she shall be paid a minimum of three (3) hours, at one and one half times (1.5X) their applicable hourly rate of pay, inclusive of longevity, if applicable, for each call out to the police department or crime scene.

Each employee in the Detective Division shall be assigned to be "on call" Monday through Saturday from 12:00 midnight to 6:00 a.m. to respond to inquiries and calls from the police department without responding to the police department or crime scene.

In recognition of being placed "on call" that employee shall be paid as follows:

<u>1/1/06</u>	<u>1/1/07</u>
\$55.00/wk	\$60.00/wk

In the event the employee "on call" responds to the police department or crime scene, he/she shall be paid pursuant to Article 7, paragraph two (2).

The Town shall not create any full-time police officer position(s), if the creating of any such position(s) results in eliminating or diminishing any part-time position or hours of work.

Paragraph #9 - An employee shall be paid a shift differential for all hours worked, or any part thereof, as follows:

	<u>1/1/06</u>	<u>1/1/07</u>
"A" line (Monday through Friday)	+\$2.00/hr	+\$3.00/hr
"A" line (Saturday, Sunday & Holidays)	+\$3.00/hr	+\$4.00/hr
"D" line (Monday through Friday)	+\$1.50/hr	+\$2.50/hr
"D" line (Saturday, Sunday & Holidays)	+\$2.50/hr	+\$3.50/hr

10. **ARTICLE 19 - WAGE CONTINUATION FOR INJURIES SUSTAINED IN THE COURSE OF DUTY** - Change Article heading to **GENERAL MUNICIPAL LAW 207-C.**

Amend to read as follows:

The parties acknowledge and agree that General Municipal Law §207-c applies to all police officer employees who become sick and/or injured in the performance of their duties. For the purpose of applying the statute, "regular salary or wages" shall be based upon the average number of hours worked by the employee up to a maximum of one (1) year immediately preceding the sickness and/or injury sustained in the performance of their duties. The employee shall file the following, no later than fourteen (14) calendar days of the becoming aware of the sickness and/or injury, with the Chief of Police or designee:

1. Departmental Incident Report form;
2. Worker's Compensation Claim form;
3. §207-c Application, Medical Release form and Comptroller's Notification form.

The §207-c application, Medical Release form and Comptroller's Notification form are attached hereto as Appendix "B" and made a part of this Agreement.

The Chief of Police or designee shall have the above forms available and accessible for each employee to fill out and submit.

11. **ARTICLE 20 - FIREARMS AND IN-SERVICE TRAINING AND SAFETY**

Paragraph # 1 - Add the following:

The Town shall provide firearms qualification two times (2X) a year for each employee. The Chief of Police shall provide a minimum advance notice of thirty (30) calendar days of the date, time and location of the firearms qualifications.

12. **ARTICLE 27 - DURATION OF AGREEMENT**

Insert "2006" and "2007" where "2002" and "2005" appear.

13. **PROPOSED NEW ARTICLE - GENERAL PROVISIONS**

Upon hire, each employee shall be provided a copy of the collective bargaining agreement by the Town, at no cost.

The Town shall assist the new employee in completing and returning his/her retirement plan election of Section 384-d to the N.Y.S. Police and Fire Retirement System. The employee shall receive a copy of his/her retirement application and cover letter forwarding the application.

The Town shall advise the Association President, in writing, of all new hires, their starting date, and rate of pay.

All new employees shall undergo training through the New York State Field Training Officer (FTO) program with a certified FTO. No new employee shall work, without a certified FTO providing supervision, until he/she has satisfactorily completed the program. No new employee in the FTO program shall be used towards the minimum staffing as set forth in Article 17.

Each transport of a prisoner, outside of the Town, shall have two (2) employees on that transport for the safety and health of the employees.

14. **PROPOSED NEW ARTICLE - INSTRUCTOR PAY**

The Town shall pay each employee the following additional hourly rate of pay set forth below for all hours worked who is an instructor in the following areas:

	<u>Hourly Rate to be Paid</u>	
		N/C
	<u>1/1/06</u>	<u>1/1/07</u>
Certified Field Training Officer (FTO)	+1.00/hr	+1.00/hr
Certified Firearms Instructor	+0.50/hr	+0.50/hr

APPENDIX "A"**BASE HOURLY RATE SCHEDULE**

	<u>1/1/06</u>	<u>1/1/07</u>
Step 1	\$21.00	\$23.00
Step 2	\$23.00	\$25.00
Step 3	\$25.00	\$27.00
<u>Detective(s), DARE, Youth Officer(s) and/or K-9 Officer(s)</u>	\$27.50	\$29.70
<u>Sergeant(s)* *</u>	\$30.25	\$32..67
<u>Detective/Sergeant(s)* * *</u>	\$33.28	\$35.94

*The Detective(s), DARE, Youth Officer(s), and/or K-9 Officer(s) shall receive a differential of 10% over and above the Step 3 hourly rate.

**The Sergeant(s) shall receive a differential of 10% over and above the Detective(s), DARE, Youth Officer(s) and/or K-9 Officer(s) hourly rate.

***The Detective Sergeant(s) shall receive a differential of 10% over and above the Sergeant(s) hourly rate.

Step 1 shall encompass employees in their first (1st) year of hire who have no prior credited experience as a police officer or who is attending the Basic Municipal Police Training Council Academy (BMPTC). All employees shall remain at Step 1 from their date of hire until their first anniversary date of hire, at which time they shall move to Step 2 and so on through the Steps, including Longevity.

Any employee who is hired with BMPTC certification and prior credited police service, shall be placed on that respective Step as if the employee had been working for the Town, and move accordingly to the Longevity schedule herein.

Movement to or between longevity steps shall occur when an employee commences, based on his/her anniversary date of hire, including prior credited police service, the year of employment first (1st) appearing within the described duration of the applicable longevity step. For example, a police officer will move from Step 4 to Longevity Step 5 upon the completion of his/her fourth (4th) anniversary date of hire and the commencement of their fifth (5th) year of employment and so on.

LONGEVITY

	<u>1/1/06</u>	<u>1/1/07</u>
Step 4 Start (5-6 Years)	\$2.00/hr	\$2.50/hr
Step 5 Start (7-8 Years)	\$2.50/hr	\$3.00/hr
Step 6 Start (9-10 Years)	\$3.00/hr	\$3.50/hr
Step 7 Start (11-12 Years)	\$3.50/hr	\$4.00/hr
Step 8 Start (13 Years +)	\$4.00/hr	\$4.50/hr

The above Longevity shall be paid over and above the employee's Base Hourly Rate.

The following issues were submitted by the Town for determination:

Article I: Intent of Parties

Delete, unnecessary.

Article V: Grievance Procedure

Add to first paragraph: "A grievance shall not include matters of command discipline for minor disciplinary infractions up to and including fines of no more than \$100 or/ suspensions of two or less days. Such matters shall not be included within the grievance definition nor susceptible to processes within the grievance procedure."

Article VI: Wages

Increase wage rates as follows:

1/1/2005 - 12/31/2005	2%
1/1/2006 - 12/31/2006	2%
1/1/2007 - 12/31/2007	2%
1/1/2008 - 12/31/2008	2%

Article VII: Court and Administration

In the fifth line, delete the words "Effective January 1, 2002, and capitalize "the"

Article IX: Uniforms

Delete the first sentence - and replace as follows: "An employee at all times while on duty, including court and administrative appearance, parade or other duty shall be required to wear the full uniform, including body armor (vest)."

In the third paragraph, delete the first sentence.

In the fourth paragraph delete the first sentence. Delete the words "Effective March 1, 2001", and capitalize the word "all" in the second line.

In the fifth paragraph, delete the words "Effective September 1, 2000", and capitalize the word "all."

In the sixth paragraph, delete the first sentence. In the second sentence delete the word "Thereafter," and capitalize the word "each." In the last line, delete the words "no later than January 1,2003."

Article XIII: Funeral Expenses

Delete the words "Effective January 1, 2002," and capitalize the word "the" in line one.

Article XVII: Scheduling

In the second paragraph, second line, delete the following: "and, in consideration thereof, the Town shall not create any full-time police officer positions during the duration of this Agreement, if the creating of any such full-time position results in the elimination of any part-time position currently held by any actual member of the Association's bargaining unit as of the date of this Agreement."

In the third paragraph, delete the words "Effective January 1,2002" and capitalize the word "no."

Delete the final sentence in the fourth paragraph, beginning with, "An employee who does not respond to the canvas ... " and replace with "In the event that an employee is unavailable at the time that replacement is sought, the Department may move to the next available person on the list."

In the eighth paragraph, delete the words "Effective January 1,2002" and capitalize the word "the."

In the ninth paragraph, delete the words "Effective January 1,2003" and capitalize the word "any."

Add a new paragraph: "Employees who are absent for more than four (4) tours of duty shall be required to submit medical documentation for the reason for the absence."

Article XX: Firearms and In-Service Training and Safety

Delete the third paragraph.

Article XXI: Disciplinary Proceedings

Add to C.I as follows: "Matters of minor discipline issued by the Chief on matters in which fines of not more than \$100 or suspensions of not more than two days are applied shall not be subject to the grievance procedure of this contract."

Article XXV: Retirement:

Delete the words "Effective January 1,2004" in the first line.

APPENDIX A:

Add a new sentence at end of paragraph as follows: "However, a new employee may be moved to a higher step after the completion of a probationary period, and upon recommendation of the Chief of Police and approval by the Town Board.

Longevity Clause

Add new sentence - "The calculation of years for the achievement of longevity shall be based upon actual hours actual time worked by the employee within those years. Time shall not accumulate until a full year of service is realized."

THE PARTIES' POSITIONS ON STATUTORY CRITERIA

WAGES PAID IN COMPARABLE JURISDICTIONS

Summary Position of the Union

The Union argues that the comparable jurisdictions are those within Dutchess County, including full and part-time police officers, and the Town of Lewisboro in northern Westchester County. The Union included the Village of Fishkill, which is staffed only with part-time police officers, but does not provide 24/7 coverage. The Union states that the only reason it includes this department is because it lies within the Town and the Town's part-time police officers cover the Village when it does not provide coverage. The Union notes that Town of Hyde Park and

Village of Wappingers Falls are units with both full and part-time police officers represented by their respective PBAs. The Village of Fishkill, Town of Hyde Park and Village of Wappingers Falls have also been included by the Town in its comparable jurisdictions.

The Union also uses other Dutchess County jurisdictions including the police departments in the Town of East Fishkill, Town of Poughkeepsie, City of Beacon, and the City of Poughkeepsie, which are staffed by all full-time police officers. The Union also includes the Town of Lewisboro even though it is in northern Westchester County. The Union states that the Town of Lewisboro is geographically proximate to the Town, and, like the Town's police department, it is staffed with all part-time police officers who provide coverage 24/7/365 or nearly so, with it recently hiring one (1) full-time police officer. The Union asserts that the Town of Lewisboro is the only part-time police department of its kind that is virtually identical to the Town. The Union also asserts that consideration of the Town of Lewisboro, with the other comparables it used, is necessary and appropriate because it is a Town, and it alone shares the Town's police department's unique composition of predominately all part-time police officers providing coverage around the clock. The Union rejects the Town's use of Ulster County comparables, and the Dutchess County Villages of Red Hook and Rhinebeck due in fact that they are not 24/7/365, and that they have both recently negotiated their initial collective bargaining agreements with their respective Employers.

Summary Position of the Town

The Town argues that the most relevant comparable communities are those that employ part-time police officers in those communities within Dutchess County.

The Town states that under Civil Service Law §209(4), among other required factors, the Panel must engage in a comparative analysis of those communities in terms of "other employees performing similar services, or requiring similar skills under similar working conditions, with other employees generally in public and private employment in comparable communities."

The Town relies on the communities of the Town of Hyde Park and the Villages of Fishkill, Wappingers Falls, Red Hook and Rhinebeck as comparable to the Town because they are situated in Dutchess County and they employ part-time police officers, with the Town of Hyde Park and Village of Wappingers Falls also employing full-time police officers. The Union members predominantly live in Dutchess County. According to the Town statistically, 127 part-time police officers' positions existed in Dutchess County in 2005. The Towns of Fishkill, and the Villages of Fishkill, Red Hook and Rhinebeck, are staffed solely with part-time police officers. The Town argues that because 85% of the Union members are not qualified to hold a full-time police officer position, the common labor pool is the part-time police officer position in these communities. The Town asserts that it is more attractive to Union members as an Employer because the twenty-four (24) hour coverage allows greater flexibility for those police officers to fit in part-time work around their full-time work schedules.

The Town states that the Town of Hyde Park and the Villages of Fishkill, Wappingers Falls, Red Hook and Rhinebeck all share the same county economic base, re in close geographic proximity; and are similar in family income, home values and per capita income.

Discussion and Analysis

The analysis of comparable jurisdictions for the most part are to include all those communities within Dutchess County that utilize full and part-time police officers, or at least a large number. Both parties agree that the relevant labor market area is Dutchess County. The Union includes Lewisboro in Westchester County because it has only part-time officers who are on a 24/7 work day. However, as the Town points out, economic and other conditions in Westchester County preclude using Lewisboro as a comparative community. Otherwise, both parties are in substantial agreement on the composition of comparability communities. The Panel has reviewed and considered both parties comparables in reaching a fair and reasonable Award.

ABILITY TO PAY**Summary Position of the Union**

The Union states that the Town concedes its ability to pay any fair and reasonable Award that the Panel renders. The record evidence reveals that the Town has the financial ability to pay all of the Union's demands. The Town, according to the Union, bases its opposition to the Union's demands on the claim that the demands are unreasonable and unjustifiable.

The Union argues that the Town is in excellent financial shape, but argues that it has an unwillingness to pay rather than an inability to pay.

The Union notes that the Town has two (2) general funds, the Town-wide General fund (the A Fund), and the Town Outside Village (TOV) fund, (the B Fund). The Union asserts that Town property taxes since 2005 have not been allocated to the B Fund, but were previously, from which unit employees are compensated and there is nothing that prevents the B Fund from

receiving a portion of the property tax levy. Within the TOV fund, sales tax revenue is the single largest source of revenue, amounting to twenty-nine percent (29%) of the B Fund.

The Union avers that the value of real property in the Town has grown at an annual average rate of approximately ten and-a-half percent (10.5%) over the 1997-2007 period, with dollar increases from 908 million in 1997 to 2.46 billion in 2007.

The Union asserts that there is great wealth within the Town as represented by the taxable real property wealth per resident. The Town's taxable real property wealth per resident is \$103,789. Property taxes have been virtually unchanged from 1997 to 2007.

The Union also asserts that the Town's financial condition is as positive when examining sales tax data. The Town's receipt of sales tax has grown steadily, reaching about \$800,000 in 2005, with budgeted amounts of \$950,000 for 2006 and 2007.

The Union states that there is no real financial problems facing the Town relative to debt, and its fund balance as a percentage of expenditures at the end of 2005 is twenty-nine percent (29%), an excellent ratio and well beyond the recommendation of the NYS Comptroller and bond rating agencies, which does not include a contingency fund.

Summary Position of the Town

The Town states that it does not dispute that it has the ability to pay reasonable, prudent, fair and equitable increases for its police force. However, states the Town, the Union's demands are extraordinary, and far exceed the Town's ability to pay. The Town asserts that an ability to pay analysis is based on what the Town can reasonably afford to pay the police officers taking into consideration the tax base, economic and fiscal status and the interest and welfare of its residents.

The Town states that it maintains two (2) general funds, the Town wide General Fund (A) and the Town-Outside the Village General Fund (B). The B Fund includes the operations of the police department. The Town states that the A and B Funds have separate tax bases, expenses, revenue sources, and fund balances.

The Town argues that the testimony of Mr. Decker, the Union's financial expert, that the Town has a healthy fund balance for 2005 of \$1,989,936 is incorrect. To arrive at his conclusion, Mr. Decker relied on the global report of the Town's 2005 financial condition prepared by Town Accountant, Sedore, O'Sullivan and Letterio. Of that total fund balance, \$1,230,891 belonged to the Parkland Trust, a proprietary fund that can be used only for park playground or other recreational purposes. When those monies are deducted, the fund balance of the A and B Funds is \$759,043. But, asserts the Town, because the police department is funded solely from the B Fund, the B Fund balance was only \$943.00.

Regarding revenues, the Town states that the significant source of revenue for the B Fund are sales tax, fund balance and planning and building fees. The Town argues that in 2006, there was a total shortfall in B Fund revenues of \$841,166.

The Town argues that other financial drains are placed on the Town, such as the increase in retirement costs for police by \$25,000 and the B Fund's large debt load for the construction of a new police department building.

THE INTEREST AND WELFARE OF THE PUBLIC

Summary Position of the Union

The Union asserts that it is beyond dispute that the public is best served by having a professional, well-trained, well-educated police department staffed with qualified and experienced police officers. This happens only when the wages and benefits of those police officers are at a level that is not only sufficient to attract them to Town service, but sufficient to retain them.

The Town is in a very sound financial condition, and the interest and welfare of the public compels an Award at a level which will entice persons to become and remain members of the police department and one that will reflect the police officers' relative status and position in the Town and the surrounding law-enforcement communities.

Summary Position of the Town

The Town relies on its statements as contained in the ability to pay section of this Award. It stated that any Award must weigh both the interests and welfare of the public and the financial ability of the Town to pay for any reasonable increases in wages and benefits. An Award will have an impact on the Town's budget which in turn will have an impact on the tax burden of its residents.

PECULIARITIES OF THE POLICE PROFESSION

Summary Position of the Union

The Union asserts that the police profession is not only unique but significantly different, and therefore no real comparison can be made with other trades or professions. The statute provides a significant difference in comparison because it affords compulsory interest arbitration to police officers. There is no other comparable other than police officer to police officer. The criterion as interpreted and applied over the years by interest arbitration panels looks inward and examines the peculiarities of the police profession itself. In that regard, the parties cannot and do not dispute that appropriate weight must be given to the especially hazardous nature of a police officer's work and to the special qualifications, training and skills required off a police officer.

Summary Position of the Town

The Town acknowledges that police officers hold a unique status as protectors of people and property. Their duties expose them to dangers not confronted by other Town employees.

**THE TERMS OF COLLECTIVE AGREEMENTS
NEGOTIATED BETWEEN THE PARTIES IN THE PAST**

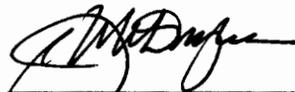
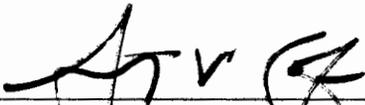
The Panel is required to consider the past bargaining history of the parties. The Panel has in evidence the parties prior Collective Bargaining Agreements, including Memorandum of Agreements, and the expired Agreement. The Panel has examined and analyzed those Agreements and the terms and conditions contained therein, and has considered that information in its deliberations and Award.

DISCUSSION AND ANALYSIS ON THE ISSUES

HOUSEKEEPING

Based on a review of the Union's argument, the Panel Awards the following:

The collective bargaining agreement shall make reference that all Articles be changed to numeric from roman numerals, and each paragraph shall be indicated by numbers or letters with dates no longer applicable deleted. In addition, "Chief of Police" shall be inserted where Chief Executive Officer appears.

CONCUR <input checked="" type="checkbox"/>	DISSENT <input type="checkbox"/>		<u>1/10/08</u>
		JOHN M. DONOGHUE, Employer Panel Member	Date
CONCUR <input checked="" type="checkbox"/>	DISSENT <input type="checkbox"/>		<u>1/9/08</u>
		ANTHONY V. SOLFARO Employee Panel Member	Date

HOUSEKEEPING

Based on review of the Town's argument, the Panel Awards the following:

Article 7 – delete “Effective January 1, 2002,” and capitalize “the.”

Article 9 – Uniforms:

3rd paragraph – delete first sentence.

4th paragraph – delete “Effective September 1, 2000” and capitalize the word “all.”

5th paragraph – delete “Effective September 1, 2000” and capitalize the word “all.”

Article 13 – Funeral Expenses:

Delete “Effective January 1, 2002” and capitalize the word “the.”

Article 17 – Scheduling

3rd paragraph – delete “Effective January 1, 2002” and capitalize the word “no.”

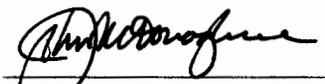
6th paragraph – delete “An employee hired on or after January 1, 2002” and insert “Each employee” in the 1st sentence. Delete the last sentence.

8th paragraph – delete “Effective January 1, 2002” and capitalize the word “the.”

9th paragraph – delete “Effective January 1, 2003” and capitalize the word “any.”

Article 25 – Retirement

Delete “Effective January 1, 2004” and capitalize the word “the.”

CONCUR	<input checked="" type="checkbox"/>	DISSENT	<input type="checkbox"/>		<u>1/10/08</u>
				JOHN M. DONOGHUE, Employer Panel Member	Date
CONCUR	<input checked="" type="checkbox"/>	DISSENT	<input type="checkbox"/>		<u>1/9/08</u>
				ANTHONY V. SOLVARO Employee Panel Member	Date

departments just to supplement a full-time force. This is a full-time department for all relevant purposes and the wages and benefits of these police officers should correspond, pro-rata, to their full-time counterparts according to the Union.

The collective bargaining agreement currently provides a four-step base hourly rate wage schedule for the title of police officer. Police officers who are hired without having completed basic training are on the salary schedule as “No MPTC.” Thereafter there are three (3) steps (Step I, Step II and Step III based on yearly tenure with the Town. The Union proposes combining “No MPTC” and “Step 1.”

The Union asserts that it is customary in police contracts that special categories of police officers and supervisors are paid a differential. In the current agreement, Detectives, DARE, Youth and K-9 officers receive a 5% differential above the Step III base hourly rate. The Sergeants receive a 10% differential and Detective Sergeants receive a 15% differential above the Step III base hourly rate of pay. The Union proposes that these differentials be fixed to a uniform 10% above the previous rank level instead of all being calculated based on top hourly rate of pay.

The Union proposes the following base hourly rate schedule:

	<u>1/1/06</u>	<u>1/1/07</u>
Step I	\$21.00	\$23.00
Step II	\$23.00	\$25.00
Step III	\$25.00	\$27.00
Detectives, DARE, Youth Officer & K-9	\$27.50	\$29.70
Sergeants	\$30.25	\$32.67
Detective Sergeants	\$33.28	\$35.94

The Union also proposes that when the Town hires a police officer who has completed his/her training and has other police service, that police officer is to be placed on the hourly rate

and/or longevity Step corresponding with that service as though the other service had been with the Town.

The Union argues that the Town's estimate of the cost of the Union's demand exaggerates the actual cost because the Town's calculations are based on the assumption that all unit employees work 1,040 hours per year or twenty (20) hours per week for each week of the year at the highest hourly rate of pay. The Union asserts that assuming all part-time police officers averaged fifteen (15) hours each week, for fifty-two (52) uninterrupted weeks of work, that yields only 780 hours each year per member, leaving two hundred and sixty (260) hours in the budget at the highest hourly rate of pay, which is not an accurate cost to the Town.

Summary Position of the Town

The Town asserts that employment is very competitive and it has not had to actively advertise to fill vacancies. The Chief of Police at any given time, maintains an active list of thirty (30), unsolicited resumes from individuals seeking employment.

The Town argues that the Union's unprecedented demands far exceed not only the wages being provided to their counterparts in neighboring communities, but the Consumer Price Index. Considered in the context of part-time police officers who are supplementing a full-time salary, this disparity is even more glaring. The Town argues that the Union's demands exceed the Consumer Price Index. The Town states that the CPI for 2005-06 averaged 3.6% a year. The Town proposes a two percent (2%) increase to the rates of pay effective on January 1, 2005 and 2006, respectively.

The Town also argues that even if the Panel were to consider Cities and Towns with full-time police agencies within Dutchess County as comparables, the recent settlements are a far cry from the Union's demands.

Discussion and Analysis

Several distinctions must be made between part-time police officers supplementing full-time police officers and part-time police officers being the only police force 24/7/365. In the instant case, the Town employs only part-time police officers with no full-time police officers on the payroll. Each part-time officer is limited to a maximum of twenty (20) hours per week. The Town has almost no overtime costs related to having part-time police officers because many of the part-time police officers have other full-time employment. The Town is able to pay its part-time police officers less than it would have to pay for full-time police officers. In addition, there are additional costs associated with full-time police officers that are not incurred by the Town because it employs only part-time officers (e.g., overtime, health insurance, vacation, sick leave, etc.). Although only part-time, on-duty part-time police officers faces the same types of workload and risks as those who are full-time police officers.

It is somewhat misleading to couch wage increases in this case for part-time police officers in terms of percentages, to those received by full-time police officers, who are paid when they are out of work (e.g., sick, vacation, personal leave, etc.), which is not the case in this matter. Part-time police officers are paid when they work. Certainly a three percent (3%) wage increase for a full-time police officer making \$50,000 per year is substantially different from a part-time

police officer making \$20.00 an hour and receiving the same percentage and is paid only when he/she works. What is relevant in the instant case is the total cost impact on the Town.

This Panel has examined not only the wages of the part-time police officers in the Town, but also the wages of part-time police officers and full-time police officers in the comparable jurisdictions, and all other relevant factors including the totality of the economic package awarded.

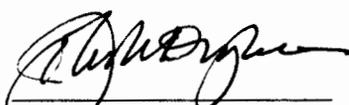
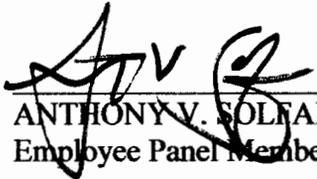
Based on the statutory criteria, analysis of all the testimony, data, exhibits and documentary evidence, post-hearing briefs submitted, the Panel makes the following Award:

<u>Officers</u>		<u>1/1/06</u>		<u>1/1/07</u>
No MPTC	(+\$1.25/hr)	\$18.40	(+\$1.25/hr)	\$19.65
Step I	(+\$1.25/hr)	\$19.45	(+\$1.25/hr)	\$20.70
Step II	(+\$1.25/hr)	\$21.43	(+\$1.25/hr)	\$22.68
Step III	(+\$1.25/hr)	\$23.26	(+\$1.25/hr)	\$24.51
Detective(s), D.A.R.E., Youth				
Officer(s), and/or K-9 Officer(s)*		\$24.66		\$25.98
Sergeant(s)**		\$25.82		\$27.21
Detective Sergeant(s)***		\$26.98		\$28.43

* The Detective(s), D.A.R.E., Youth Officer(s), and/or K-9 Officer(s) shall receive a differential of 6% over and above the Step III hourly rate. (This represents an increase of 1% to the differential as of 1/1/06).

** The Sergeant(s) shall receive a differential of 11% over and above the Step III hourly rate. (This represents an increase of 1% to the differential as of 1/1/06.)

*** The Detective Sergeant(s) shall receive a differential of 16% over and above the Step III hourly rate. (This represents an increase of 1% to the differential as of 1/1/06.)

CONCUR	_____	DISSENT	<u>29</u>		<u>1/10/08</u>
				JOHN M. DONOGHUE	DATE
				Employer Panel Member	
CONCUR	<u>X</u>	DISSENT	_____		<u>1/9/08</u>
				ANTHONY V. SOLFARO	DATE
				Employee Panel Member	

LONGEVITY

Summary Position of the Union

The Union proposes to compress the existing longevity schedule from payments that start at 5, 8, 11, 14 and 17 years of service to 5, 7, 9, 11 and 13 years of service. The compression of years is necessary, according to the Union, given the changing composition of the Town's police force. There are a great many unit employees hired after the year 2000, with turnover. The existing steps are unachievable for many of the police officers, making the existing longevity schedule no longer valid regarding length of service.

The Union reject's the Town's longevity proposal in which payments would be based on hours worked, which the Town did not identify what hours worked that would trigger the payment. All longevity payments are based on total length of service with an Employer, not number of hours worked.

Summary Position of the Town

The Town asserts that the present manner by which longevity is calculated penalizes Union members who work more hours each week. The current system assumes that all part-time officers work the same number of hours each week. The Town states that its demand eliminates

the injustice by calculating longevity based on the actual number of hours worked. The Town states that this method also acts as an incentive to work the maximum number of hours allowed each year.

Discussion and Analysis

The concept of longevity has long been payment to employees for years of loyal service. The agreements in evidence have longevity provisions for both full- and part-time police officers. In the instant case, the employees are part-time police officers. However, the concept is the same, that is, individuals are recognized for remaining in the employ of an Employer based on years of service. While there may be variations in hours worked from one part-time police officer to another over a period of years, the differences are more than likely minimal. Even so, it is the concept of recognition for years of service with the Employer, not how many total hours worked each year.

Based on the statutory criteria, analysis of all the testimony, data, exhibits and documentary evidence, post-hearing briefs submitted, the Panel makes the following Award:

Longevity Steps:

		<u>1/1/06</u>		<u>1/1/07</u>
Step A - 5-7 Years	(+\$.10/hr)	+\$1.75/hr	(+\$.10/hr)	+\$1.85/hr
Step B – 8-10 Years	(+\$.15/hr)	+\$1.85/hr	(+\$.15/hr)	+\$2.00/hr
Step C – 11-13 Years	(+\$.20/hr)	+\$1.95/hr	(+\$.20/hr)	+\$2.15/hr
Step D - 14 Years + *		+\$2.15/hr		+\$2.40/hr

*Denotes a compression.

31
CONCUR DISSENT _____
JOHN M. DONOGHUE
Employer Panel Member
Date 1/10/08

CONCUR DISSENT _____
ANTHONY V. SOLIFARO
Employee Panel Member
Date 1/9/08

HOLIDAY PAY

Summary Position of the Union

The Union proposes that all Holiday be paid at triple time (3X) when worked, and add two (2) new holidays of Election Day and New Year's Eve. The Union contends that if the Holidays are paid pursuant to its demand, and increased by two, the Town police officers will receive Holiday pay as paid in the comparable jurisdictions.

Summary Position of the Town

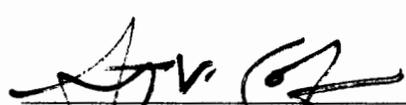
The Town rejects the Union's demand on paying triple time (3X) for working on any Holiday, as well as adding two (2) new Holidays, which is inconsistent in the comparable communities and will be costly to the Town.

Discussion and Analysis

Currently, there are thirteen (13) Holidays paid at premium pay when worked, eleven (11) at time and one-half (1.5X), and two (2) at double time (2X).

Based on the statutory criteria, analysis of all the testimony, data, exhibits and documentary evidence, post-hearing briefs submitted, the Panel makes the following Award:

In addition to the existing thirteen (13) named Holidays and holiday payment in the current collective bargaining agreement, the following additional Holidays shall also be paid at double time (2X) :

	1/1/06 Memorial Day	1/1/07 Memorial Day Independence Day Labor Day	
CONCUR <input checked="" type="checkbox"/>	DISSENT <input type="checkbox"/>		<u>1/10/08</u> Date
		JOHN M. DONOGHUE Employer Panel Member	
CONCUR <input checked="" type="checkbox"/>	DISSENT <input type="checkbox"/>		<u>1/9/08</u> Date
		ANTHONY V. SOLFARO Employee Panel Member	

UNIFORMS AND CLEANING

Summary Position of the Union

The Union proposes that the Town provide the initial issue of uniforms and equipment at no cost when an employee is hired. The Union also seeks to increase the uniform allowance for police officers. Finally, the Union seeks an initial one time clothing allowance for Detectives and Detective Sergeants.

Summary Position of the Town

The Town argues that no increase in the uniform reimbursement is warranted. The Town's uniform allowance conforms to what part-time police officers received in comparable communities. The Town states that it issues all part-time officers a full uniform and equipment upon the date of hire, and replacement on an as needed basis at no cost to each part-time police officer. Regarding cleaning, the Town states that part-time officers do not directly receive the uniform/cleaning allowance, but the cost is billed directly by the vendor to the Town.

Discussion and Analysis

Based on the statutory criteria, analysis of all the testimony, data, exhibits and documentary evidence, post-hearing briefs submitted, the Panel makes the following Award:

The existing schedule shall be amended for the uniform/cleaning allowance as follows:

(N/C)				
Hours Worked				
Previous Year		<u>1/1/06</u>		<u>1/1/07</u>
1000+	(+\$17.50)	\$252.50	(+\$17.50)	\$270.00
750-999	(+\$15.00)	\$235.00	(+\$15.00)	\$250.00
500-749	(+\$12.50)	\$217.50	(+\$12.50)	\$230.00
250-499	(+\$12.50)	\$202.50	(+\$12.50)	\$215.00
1-249	(+\$10.00)	\$185.00	(+\$10.00)	\$195.00

An employee promoted to Detective shall receive a one (1) time payment for the purchase of business attire for the performance of their duties. Thereafter, they shall be entitled to the above amounts, based on their respective hours worked in a year to purchase business attire and/or a cleaning allowance. The one (1) time payment is as follows:

<u>1/1/06</u>	<u>1/1/07</u>
+\$75.00	+\$100.00

CONCUR DISSENT

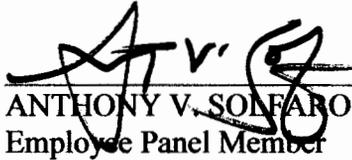


JOHN M. DONOGHUE
Employer Panel Member

1/10/08

Date

CONCUR DISSENT


ANTHONY V. SOLFARO
Employee Panel Member

1/9/08

Date

SHIFT DIFFERENTIAL

Summary Position of the Union

The Union seeks to increase the existing shift differential for the "A" line from one dollar (\$1.00) per hour, to include differentials of different amounts for weekdays, versus weekends and Holidays, and to also provide a shift differential for the "D" line, with different amounts in the same manner as described herein for the "A" line. The Union also asserts that the existing shift differential for the "A" line has remained unchanged since January 1, 2003.

Summary Position of the Town

The Town also states that the current shift differential is one dollar (\$1.00) per hour when an officer works the A line, which is from 12:00 midnight to 6:00 a.m. The Town believes this amount is appropriate. The Town argues that a shift differential provides an incentive to work the A line, and that the Chief of Police has no problem staffing the A or D lines.

Discussion and Analysis

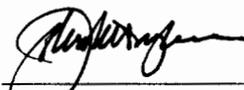
Based on the statutory criteria, analysis of all the testimony, data, exhibits, and documentary evidence, post-hearing briefs submitted, the Panel Makes the following Award:

The existing shift differential for the "A" line tour of duty (12:00 midnight to 6:00 a.m.), shall be increased as follows:

(+\$.35/hr)	(+\$.35/hr)
1/1/06	1/1/07
\$1.35/hr	\$1.70/hr

CONCUR

DISSENT



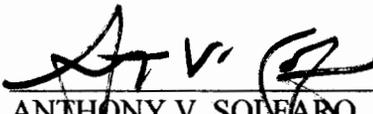
 JOHN M. DONOGHUE
 Employer Panel Member

1/10/08

 Date

CONCUR

DISSENT



 ANTHONY V. SOLFARO
 Employee Panel Member

1/9/08

 Date

DETECTIVE ON-CALL SCHEDULE AND PAY**Summary Position of the Union**

The Union seeks to have a Detective "on call" Monday through Saturday from 12:00 midnight to 6:00 a.m. when no Detective is scheduled to work. In that event, the Detective who is "on call" shall be paid \$55.00 per week effective January 1, 2006 and \$60.00 per week effective January 1, 2007. The Union states that an "on-call" status disrupts an employee's personal life, and it is appropriate that he/she be paid for that disruption and to be available to respond to inquiries and respond to crime scenes when necessary. The Union also has other detective scheduling demands.

Summary Position of the Town

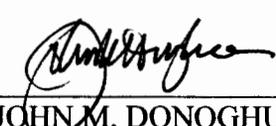
The Town argues that the Union presented no evidence that justified the need for detectives to be "on call." The Town states that it has assigned six (6) part-time police officers to fill the duties of a part-time detective. The Town states that there is no need for the Union's proposal to be Awarded.

Discussion and Analysis

Based on the statutory criteria, analysis of all the testimony, data, exhibits and documentary evidence, post-hearing briefs submitted, the Panel makes the following Award:

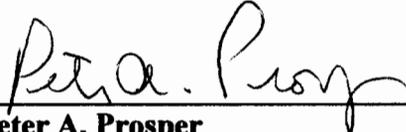
Each employee in the Detective Division who is assigned to be "on-call" when no Detective or Detective Sergeant is scheduled and working, in order to respond to inquiries and telephone calls from the police department without requiring to physically go to the police department or crime scene, shall be paid as follows:

1/1/07
+\$2.50/hr for every hour
or part thereof placed "on-call."

CONCUR _____	DISSENT <input checked="" type="checkbox"/>		<u>1/10/08</u>
		JOHN M. DONOGHUE, ESQ	Date
CONCUR <input checked="" type="checkbox"/>	DISSENT _____		<u>1/9/08</u>
		ANTHONY V. SOLFARO	Date

AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Peter A. Prosper
Public Panel Member and Chairman

Dated: 1/15/08

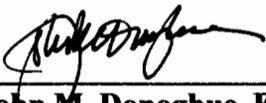
Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Anthony V. Solfaro
Employee Panel Member

Dated: 1/9/08

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



John M. Donoghue, Esq.
Employer Panel Member

Dated: 1/10/08

AWARD AFFIRMATION

~~STATE OF NEW YORK~~
STATE OF FLORIDA
COUNTY OF SARATOGA):ss, Ashton Beach

On this 15th day of JAN, 2008 before me personally came PETER A. PROSPER to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same: Provided NY DL xDt. 01/26/08



[Handwritten Signature]

STATE OF NEW YORK)
COUNTY OF ORANGE):ss

On this 9th day of January, 2008 before me personally came ANTHONY V. SOLFARO, to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Nancy L. Marcojohn
NANCY L. MARCOJOHN
Notary Public, State of New York
No. 4988931
Qualified in Dutchess & Ulster Counties
Commission Expires Nov 18, 18 2009

STATE OF NEW YORK)
COUNTY OF DUTCHESS)ss:

On this 14th day of January, 2008 before me personally came JOHN M. DONOGHUE, ESQ., to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

Emilie A. Long
EMILIE A. LONG
Notary Public, State of New York
No. 01LO6135760
Qualified in Orange County
Commission Expires 10/24/ 09

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

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

TOWN OF FISHKILL POLICE FRATERNITY, INC.

-and-

TOWN OF FISHKILL

PERB Case No. IA2005-055; M2005-221
-----X

**DISSENTING
OPINION**

It is the opinion of this arbitrator that the Panel erred when it issued an Award that in all financial aspects is not only unprecedented in the Hudson Valley but also fails to consider the required factors of §209 of the New York Civil Service Law (“the Act”). Accordingly, I respectfully dissent from the Base Salary and Standby Pay sections of the Award. I have concurred in the rest of the Award since this long-lingering matter must be brought to an end.

When rendering a fair and reasonable Award, the Panel is charged to consider various factors enumerated in the Act, including:

1. A “comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages and 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.” N.Y. Civ. Serv. Law §209.4(v)(a).
2. The interests and welfare of the public and the financial ability of the public employer to pay. N.Y. Civ. Serv. Law §209.4(v)(b).

For the following reasons, it is my opinion that these factors were not appropriately considered, and I must dissent.

A. The Panel's determination of comparable communities and ability to pay is not supported by the record.

The record is bereft of support for the Panel's conclusion that the Parties "are in substantial agreement" on the composition of comparable communities. According to the record, it is the Town's position that the appropriate sphere of comparable communities comprises those Towns and Villages in Dutchess County that employ part-time police officers. On the contrary, the Union contends that the Town's police department is operationally equivalent to a full-time department and should be compared with them.

Despite the Union's failure to proffer support for its contention, the Panel erroneously based its Award upon the Union's unsupported position that the Town's police department should be compared to full-time police departments. However, the Union's position should have been rejected.

First, the Panel disregarded the crucial language of the CBA, which severely limits the Town's ability to hire full-time police, and the Union's acknowledgment that this provision serves solely to provide job security for its unit members.

Second, even without considering the job security provisions of the CBA, the fact is that there is no basis to justify an Award that creates a tandem relationship between part-time police officers employed in by a police department operating 24/7/365 with full-time police officers who are also employed elsewhere.

The Panel majority ignores the most prominent, bright-line distinctions between the eligibility for employment and the working conditions of part-time versus full-time police

officers. Full-time police officers in the civil service are in competitive positions and are limited neither in their job opportunities nor the amount of hours they can work. In stark contrast, under Civil Service Law, part-time police officers are in non-competitive positions, can only work a maximum 20 hours per week, and are severely limited in part-time job opportunities available in the surrounding tri-county area. In the Town's tours, all part-time officers share the same limitation on hours worked per week and the same qualifications for employment. Unlike full-time officers, the part-time officers hold their positions by personal choice while they simultaneously deriving full-time pay and benefits from other agencies.

Despite these distinctions, the Panel determined that the appropriate comparability analysis was that proffered by the Town. For all of the foregoing reasons, however, this determination was erroneous.

While the Town conceded it had the ability to pay, it qualified its position based on an assumption of fair and reasonable increases. Further, the Town submitted irrefutable evidence that its ability to pay is severely limited.

Without support on the record, the Panel awarded wage increases in excess of 50% higher than those given in other jurisdictions. The Panel majority determined that the Town could afford these increases because it does not have to pay the benefits associated with full-time employees. However, such an Award can hardly be said to be fair and reasonable, reflects a failure to consider comparable jurisdictions, and ignores the Town's irrefutable evidence that its ability to pay was limited. Accordingly, the Panel's determination regarding the Town's ability to pay was erroneous.

As is discussed above, the Panel's award regarding wages is unprecedented and bears no rational relationship to the pay scale of part-time officers in comparable communities.

Embracing these faulty and unsubstantiated analyses, the Panel summarily plucked from the air a dollar amount increase for hourly rates of pay and differentials, longevity, and on-call. Without considering the drastic increases awarded to the Town's part-time police officers in other areas of compensation, the increase in their hourly rates of pay alone is \$1.25 a year for each year of the Award. This amounts to an average annual increase of 6%, as stated previously, which is greater than 50% higher than increases obtained in other jurisdictions. This increase combined with the various awarded pay differentials effectively resulted in a 10% advance by the Union.

The Panel proffers no rationale to support this financial windfall. It merely argues that quantifying increases based on a percentage is inappropriate, given the differences in a full-time salaried police officer who gets paid regardless if the officer works or not, in contrast to the hourly salary of a part-time police officer who is paid only when he or she works. However, assuming *arguendo* that the Panel's assertion is correct, this would not be a sufficient basis for a dollar-amount Award of this magnitude. As there is no rational basis for the Panel majority's decision, the increases should not have been awarded.

B. The Panel's decision regarding detective on-call schedules and differential pay is irrational.

No evidence was submitted by either the Town or the Union that the Town schedules detectives for "on-call" duty or that such schedules are even warranted. Because the Town may not employ part-time officers beyond 20 hours, the creation of a standby status whereby on-call

hours must be counted as hours worked results in an officer “working” a no-show, non-productive job. The Union’s demand to create this compensated “on-call” status is self-serving, designed solely as another unsubstantiated means to compensate the Union members without justification for doing so. The Panel’s failure to recognize this and its determination to award on-call schedules and pay differentials are irrational.

CONCLUSION

In conclusion, for these reasons, I respectfully dissent from the Award on the hourly rates of pay and on-call differentials.

Dated: January 14, 2008



John M. Donoghue

STATE OF NEW YORK
COUNTY OF DUTCHESS

On the 14th day of January, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared JOHN M. DONOGHUE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

EMILIE A. LONG
Notary Public, State of New York
No. 01LO6135760
Qualified in Orange County
Commission Expires 10/24/ 09