

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration
Between:
TOWN OF WALLKILL

-and-

FINAL AND BINDING OPINION AND AWARD OF
TRIPARTITE ARBITRATION PANEL

TOWN OF WALLKILL
POLICE BENEVOLENT ASSOCIATION, INC.
CASE NO: IA 2005-008
M 2004-177

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**NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN: Joel M. Douglas, Ph.D.

PUBLIC EMPLOYEE PANEL MEMBER: Anthony V. Solfaro
President, New York State Union of Police
Associations, Inc. [NYSUPA]

PUBLIC EMPLOYER PANEL MEMBER: Michael R. Hitsman, Esq.
Hitsman, Hoffman & O'Reilly, LLC

CONCILIATION

Appearances:

For the Town of Wallkill: John F. O'Reilly, Esq.
Hitsman, Hoffman & O'Reilly LLC
Town Labor Counsel

For the PBA: Law Offices of John K. Grant, P.C.
By: John K. Grant, Esq.

Date: August 22, 2007 Sept 9, 2007 JMG

Pursuant to the provisions of Section 209.4 of the Civil Service Law, and in accordance with the rules of the Public Employment Relations Board, an Interest Arbitration panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the Town of Wallkill ("Town") and the Police Benevolent Association of the Town of Wallkill Police Benevolent Association ("PBA" or "Association"). Hearings were held in Wallkill, New York on January 23, 2006, January 24, 2006, and March 8, 2006 during which time both parties were represented and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. The hearings were transcribed and a copy given to the undersigned. Three Executive sessions were held in Newburgh and Wallkill, NY on June 21, 2006, May 14, 2007, and May 16, 2007 at which time the Panel deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. Additional executive sessions ["conference-calls"] were held between the aforementioned three parties. The results of those deliberations are contained in the AWARD that 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 specifically addressed in this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

In arriving at this Award, the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

In arriving at its 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 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.

BACKGROUND

The Town of Wallkill is located in Orange County in the Hudson Valley and adjoins Rockland County. There are three cities located in the County, Port Jervis, Middletown, and Newburgh. The PBA considers the Towns of Blooming Grove, New Windsor, Newburgh and Woodbury as comparables. (PBA X #33, #34, #35 and TX # 26-35) The PBA argues that when considering the proposed comparables that geographic proximity, population, department size, reported crime statistics, tax rates, property values, total housing units and constitutional tax limits mandate a finding that the aforementioned municipalities be deemed as comparables. This position was credited.

The instant IA process must be viewed in the context of a federal *Consent Decree* and the appointment of a *Police Department Monitor* to oversee the Town of Wallkill Police Department activities and insure compliance. (PX #4c) In 2001 the Town was sued by the Office of the State of New York Attorney General who claimed that the Department was operating in violation of the law. As part of the evolution and subsequent resolution of the lawsuit, the Department was required to adopt the “best practices” model, hire a Deputy Chief, ensure that there was a Sergeant or a supervisor on each shift, and to report periodically to the monitor. These requirements impacted on the level of police services provided as well as the costs associated with such delivery.

Chief Robert Hertman discussed his duties and relationship with the *Consent Decree* and the court appointed *Monitor*. The main issues concerning the *Consent Decree*, as perceived by the Chief, were staffing levels, the work chart, supervision, complaint procedures, and overall monitoring.¹ As noted by the Town, the appointment of the monitor impacted upon their departmental managerial authority and what could be accomplished. It appears that the oversight by the *Monitor* has since been removed and that Department management issues have been resolved. Nevertheless, the background of this impasse must embrace some reference to the overall litigation that the Town Police Department has been involved in during the time period covered by this Award.

The bargaining unit at impasse consists of thirty 30 full-time and 2 part-time officers which includes 6 sergeants. The 2006 budget has allocated 4 new police officer positions. The PBA asserts that the Wallkill Police Departments is among the lowest paid of the 24 Police Departments in Orange County and additionally work the lengthy 252 day chart, which includes the use of a holiday applied every 4th set of tours of duty to provide a 3rd pass day to change the employees days off. As a result the PBA is seeking substantial adjustments in the total compensation package, reductions in the work schedule, as well as health care for dependents of retirees. It is the position of the PBA that unless significant increases are awarded that retention of existing police officers will become increasingly difficult and lead to further departmental disruption.

The Police Department operates twenty-four hours /seven days per week. The parties are signatories to a CBA covering the period of January 1, 1995 – December 31, 1998, and a Memorandum of Agreement for the period of January 1, 1999 – December 31, 2003. The documents were not converted into a completed CBA. The Town also negotiates with three CSEA units. (See TX 4 and 5)

ISSUES AT IMPASSE

At the hearings the following issues were submitted for evaluation and decision by the Panel. Where viable, the aforementioned demands and subsequent recommendations have been consolidated to address the needs of both parties. The *Opinion* constitutes the findings of the Panel, however, the

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The court appointed monitor was Chief Esserman of the Providence, RI, Police Department. Additionally, U.S. District Court Judge Colleen McMahon was designated to hear all federal law suits involving the town of Wallkill Police Department.

language contained herein is the sole responsibility of the Chairman. The issues at impasse submitted to the Panel for an Opinion and Award included:

1. TERM OF THE AWARD
2. FULL-TIME BASE WAGES AND PART-TIME HOURLY RATE OF PAY
3. LONGEVITY
4. BONUS PAYMENT FOR NON-USE OF LEAVE
5. HEALTH INSURANCE RETIREES
6. SENIORITY
7. CLOTHING ALLOWANCE
8. RETROACTIVITY

***ISSUE NUMBER ONE
TERM OF THE AWARD
DISCUSSION AND AWARD***

The instant **OPINION** and **AWARD** concern a successor Memorandum of Agreement to the previous Collective Bargaining Agreement. Unless agreed to by the parties and Awarded by the Panel, the instant Award would cover the two-year period January 1, 2004 - December 31, 2005. In its determination the Panel was guided by the appropriate statutory criterion:

- (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 arguments in favor of an extended Award are well known to the parties and were set forth by the undersigned in an executive session. However, an extended Award was not authorized and therefore the following is Awarded.

TERM OF THE AWARD

1. *The term of this Award is from January 1, 2004 - December 31, 2005.*

ISSUE NUMBER TWO

**FULL-TIME BASE WAGE AND PART-TIME HOURLY RATE INCREASE
DISCUSSION AND AWARD**

The statutory criterion of “ability to pay” was considered by the Panel. The issues of salary and other compensation were directly related to the statutory criteria of “comparability” and “ability to pay.” The Panel has considered all the cited statutory criteria and first addresses the comparability standard. Geographical proximity is a critical element of comparability. The statute requires that comparability be based on “employees performing similar services or requiring similar skills under similar working conditions.”

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 employees generally in public and private employment in comparable communities.

That sworn law enforcement personnel perform the same duties is beyond dispute. Therefore, comparisons must include all relevant full-time salaried full-service police departments. The record reflects that the Town of Wallkill Police Department is a full time professional full-service 24/7 police agency. Comparability analysis must be based on cross governmental lines and agencies. Comparability is also based on job functions and skills performed by those police officers employed in comparable communities. That analysis must include demographic and economic variables and accordingly the Orange County Police Departments must be considered as primary comparables.

The PBA asserts that the Town has accumulated double digit surpluses and that they have accumulated substantial funds while at the same time reducing real property taxes, while the police officers lag far behind its comparables in its wage and benefit package. They argue that there is little bond debt, that revenue from sales and mortgage taxes have increased, and that the highway, water, sewer, and general funds all have significant surpluses. The PBA asserts that the Town is seeking to perpetuate the status quo and to offer minimum salary adjustments while at the same time placing a freeze on health care and other fringe benefits.

The Town argued that the Police Department is a relatively new department and that the issues raised by the PBA were rejected in the initial Arbitration Award issued in May of 1992. Accordingly they submit that due to the age and experience levels of the other departments, Wallkill cannot be slotted into a comparability position typically found in more established Police Departments. (See Town X#1, #2)

CPA Linda Hannigan of the firm Sedore and Company testified on behalf of the Town. She has conducted audits of the Town of Wallkill for the period 2001-2005 and was accepted by the Panel as an expert witness on the Town’s financial condition. Hannigan presented detailed testimony as to the Government Accounting Standards Board [GASB 45] requirements and the role that has on unfunded liabilities. She noted that while sales tax revenue for the Town was substantial, the local sales tax is economically sensitive and cannot be relied upon indefinitely. She added that the mortgage tax had flattened and that sales tax collections had diminished. With respect to the general fund she testified that there was a present deficit of some \$800,000.00 to \$1,000,000.00 and that the Town has used the 2005 general fund to lower the overall tax rate. (Town X #38) Hannigan acknowledged other liabilities including those related to the Golf and Enterprise funds totaling some \$1.2 million which were carried

throughout the 1990's.

Other contingencies confronting the Town, as viewed by Hannigan include the implementation of GASB 45, the actuarial calculation of unfunded health insurance benefits for retirees, increases in health insurance expense funds, the Town's liability for compensated absences, increased pension costs, and tax certiorari increases. (See TX #14 for Financial Statements as of and for the Year Ended December 31, 2003, also see TX # 15 for Financial Statements as of and for the Year Ended December 31, 2004, also see TX #16, Town of Wallkill 2004 Adopted Budget, TX #17, Town of Wallkill 2005 Adopted Budget, TX #18, Town of Wallkill 2006 Adopted Budget) Hannigan noted that there was no surplus in 2005 and there was instead a projected deficit of nearly one million dollars. She noted that although there were discussions about the sale of the Town golf course, none had yet been effectuated. Hannigan's testimony and the Town's financial records were utilized in the formulation of the instant *Opinion and Award*.

John F. Ward, Town Supervisor, testified as to the history of the Police Department and the various financial and budgetary issues facing the Town. He referenced the new Police Station and Town Hall and how officers now have enhanced career opportunities by remaining with the Police Department. He was cautious over the use of the fund balance and noted that there was the increased possibility of more adverse tax certiorari rulings facing the Town. He believed that in the years ahead the Town will shift more toward residential and away from commercial development. He acknowledged that during the last four years the Town property tax had decreased, albeit minimal. Additionally, the record documented that the golf fund owes \$ 1.3 million to the general fund and that there is a relatively new Town Hall bond anticipation note

The PBA relied upon the testimony of its expert financial witness to support their position on "ability to pay." The testimony of Kevin Decker, economist and principal in the firm of Decker Economics was admitted into the record as expert testimony. His report detailed the financial condition of the Town and was utilized in the formulation of the instant *Opinion and Award*. [See PBA X#38]. Decker concentrated on the Town duly adopted budgets, reports submitted to the Office of the NYS Comptroller, audited financial statements and debt statements. The adopted Town Budget for the years 2001 [PBAX #64], 2002 [PBAX #65], 2003 [PBAX #66], 2004 [PBAX #67], and 2005 [PBAX # 68] and 2006 (PBA X #69), as well as other related financial documents, were introduced into the record and were used in the formulation of this Award.

In terms of revenue, Decker noted the following: Town property taxes were lower in 2006 then they were in 2002 with an average full value rate decrease since 1999 of negative 3.5%. (PBA X#38 pp 7-8) At the same time sales tax revenues increased from \$1.5 million in 1996 to \$3.11 million in 2005. This included an excess projection of some \$800,000 in 2005. Sales tax revenues have increased by some 5.94 % since 1996 and an average of 6.67 % over the past five years. (PBA X#38, p. 10.) Additionally, the Orange County sales tax, a portion of which the Town receives, increased from 3 to 3.75% in June 2004 thereby bringing additional tax revenue to the Town. The 2005 County sales tax revenue was some \$3.11 million with 2006 projected revenue set at \$2.75 million.

In terms of bonded indebtedness, Decker noted the following: A decrease in debt from \$37.2 million in 1995 to \$23 million in 2005. The Town has also an improved S&P bond rating of "A" and Moody's "A-2," both of which place them sixth best of some twenty categories. The reserve accounts, as testified to by Decker, all showed substantial reserves. As of 2005 the unreserved fund balances showed as a percentage of the overall Departmental budget excesses of 48% [General Fund], 23.8% [Highway Fund], 167.5% [Water Fund] and 95.7 [Sewer Fund] The testimony of Decker was also instructive as to

comparability. He noted the differences between jurisdictional missions but in essence endorsed the PBA comparability approach. He acknowledged that Towns have no constitutional tax limits.

The Town offered salary increases of 2.5% and 3% in each of the two years at issue. They also demanded that all other financial issues remain unchanged from the prior CBA.

The PBA demands were for annual wage adjustments of 4.5% on base with credit provided for prior police experience. In addition they sought increases in longevity, compression in the Sergeant's years of service and increasing the percentage differential, and a specific dollar amount for increases in the part time officers hourly rate of pay.²

The Decker testimony and his report, as well as Hannigan's testimony, were the basis for the economics contained in this Award.

As I have often written in the past, wage and salary determination is far from an exact science; however, the undersigned was guided by the criteria set forth in the Taylor Law. Among other factors these included the:

... 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 employees generally in public and private employment in comparable communities. Section 209.4 of the Act:

Additional criteria included:

... (b) the interests and welfare of the public and the financial ability of the public employer to pay. (Section 209.4 of the Act)

As is so frequently the case, negotiated benefits obtained at the bargaining table by either party were afforded presumptive preservation.

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. (Section 209.4 of the Act)

In recent rounds of bargaining between the parties, they have negotiated increases higher than the CPI. In the instant Award, the awarded increases were greater or in the range of the CPI for the referenced period. There is no demonstrated inability of the Town to pay the awarded increases. Indeed the opposite exists. The record documents that the wage increases of 4.0% and 4.25% are well within the statutory criteria. The "market rate" for Orange County police officers for the period 2004-2005 was in

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It appears that the parties submitted identical proposals for one dollar per hour increases as of January 1, 2004 and January 1, 2005 for the part-time officers.

the range of 4% plus. (PBA X#14) Thus, even if the PBA proposal were to be granted in its entirety, the “catch-up” problem, as viewed by the PBA, would continue.

It is the opinion of the Panel that based on the record and the statutory criteria, including the Town’s ability to pay, that the Base Wage Awarded herein is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following salary adjustments for the period of January 1, 2004 to December 31, 2005.

FULL-TIME BASE WAGE INCREASES

1. For the period January 1, 2004 through December 31, 2004 the current police officers’ base wage schedule shall be increased by 4.00% retroactive to January 1, 2004.
2. For the period January 1, 2005 through December 31, 2005, the current police officers’ base wage schedule shall be increased by 4.25% retroactive to January 1, 2005.
3. The following base wage schedule is awarded:

FULL-TIME POLICE OFFICER’S BASE WAGE SCHEDULE

<u>Step</u>	<u>Years of Service</u>	<u>1/1/04</u>	<u>1//105</u>
1	First Year	\$37,235	\$38,817
2	After 1 Year	\$44,379	\$46,265
3 ³	After 2 Years	\$46,086	\$48,045
4	After 3 Years	\$47,793	\$49,824
5	After 4 Years	\$50,230	\$52,365
6	After 5 Years	\$52,078	\$54,291

SERGEANTS DIFFERENTIAL

Additional issues presented to the Panel concerned the number of years of service for compensation, and the differential paid to Sergeants. At present, a Sergeant during his/her first two (2) years is paid a differential of 6.0% above the top pay police officer, and 12.0% after two (2) years as a Sergeant. Of note is the relationship of the supervisors’ duties and responsibilities within the context of the *Consent Decree*, the “Best Practices Guidelines,” and the court appointed Monitor. The Sergeants now have greater supervisory responsibilities, and as such, there is a need to compress the existing years of service to reach the “top” Sergeant’s differential, and additional compensation is warranted by increasing the differential percentage at each level of service as a Sergeant.

³ Step 3 is a new Step. The Base Wage was created by multiplying the 2003 Base Wage Schedule at After 1 and 3 Years by 4.0%, adding them together and dividing by two.

Based on the record and the statutory criteria, including the Town's ability to pay, it is the opinion of the Panel that the Sergeant differential awarded herein is fair and equitable. In full consideration of the evidence submitted and arguments presented, the Panel Awards the following Sergeant differential:

Effective January 1, 2004, the Sergeant's years of service shall be compressed to reflect a Sergeant in his/her first (1st) year of service as Sergeant shall be paid a differential of 6.5% above Step 6 of the Full-time Police Officer's Base Wage schedule upon appointment up to one (1) year. Effective January 1, 2004, the Sergeant's years of service shall be compensated to reflect a Sergeant After 1 Year be paid a differential of 13.0% above Step 6 of the Full-time Police Officer's Base Wage schedule. There shall be no compression or differential increase for the Sergeant in year two (2) of this Award. The Sergeant's Base Wage and differential shall reflect the following:

SERGEANT BASE WAGE

<u>Years of Service</u>	<u>1/1/04</u>	<u>1/1/05</u>
First Year *	\$55,463	\$57,820
After 1 Year **	\$58,848	\$61,349

* The Sergeant(s) shall be paid a differential, upon appointment, over and above a Step 6 police officer as follows:

(+1/2%)	(N/C)
<u>1/1/04</u>	<u>1/1/05</u>
6.5%	6.5%

** The Sergeant(s) shall be paid a differential upon completion of one (1) year of service as Sergeant, over and above a Step 6 police officer as follows:

(+1.0%)	(N/C)
<u>1/1/04</u>	<u>1/1/05</u>
13.0%	13.0%

PART-TIME HOURLY RATE

The parties have apparently agreed to the following increases in the part-time hourly rate. In consideration of the record and the ability of the Town to pay, the following adjustments to the hourly rate of pay for the part-time police officer is Awarded.

Effective January 1, 2004, probationary part-time police officers shall receive an increase of \$1.00 per hour to \$16.00 per hour. Effective January 1, 2004, a part-time police officer, upon 1040 hours, shall receive an increase of \$1.00 per hour to \$18.00 per hour as set forth below.

Effective January 1, 2005, probationary part-time police officers shall receive an increase of \$1.00 per hour to \$17.00 per hour. Effective January 1, 2005, a part-time police officer, upon 1040 hours, shall receive an increase of \$1.00 per hour to \$19.00 per hour as set forth below.

		<u>1/1/04</u>		<u>1/1/05</u>
Probationary	(+\$1.00/hr)	\$16.00/hr	(+\$1.00/hr)	\$17.00/hr
Upon 1040 hours	(+\$1.00/hr)	\$18.00/hr	(+\$1.00/hr)	\$19.00/hr

ISSUE NUMBER THREE
LONGEVITY
DISCUSSION AND AWARD

The present longevity system is activated at Step seven. The PBA seeks a revised longevity schedule including one in which all other prior credited police service in New York State would be included in the longevity calculations.

The PBA argued that retention problems have hindered the Department and that if the longevity rates were improved this might help in retaining experienced police officers. In light of the legal issues confronting the Department, retention and seniority of supervisory personnel are two elements that should be given priority.

Based on the record and the statutory criteria, including the Towns 's ability to pay, it is the opinion of the Panel that the longevity increases awarded herein is fair and equitable. In full consideration of the evidence submitted and arguments presented, the Panel Awards the following increases to the existing Section 5.3 Longevity schedule:

Step	Years of Service	1/1/04	1/1/05
7	Start 6 th through 8 th	\$ 475.00 (+50.00)	\$ 500.00 (+25.00)
8	Start 9 th through 11 th Yr	\$ 925.00 (+75.00)	\$ 975.00 (+50.00)
9	Start 12 th through 14 th Yr	\$1,350.00 (+75.00)	\$1,425.00 (+75.00)
10	Start 15 th through 17 th Yr	\$1,825.00 (+125.00)	\$1,925.00 (+100.00)
11	Start 18 th Year and above	\$2,275.00 (+150.00)	\$2,425.00 (+150.00)

ISSUE NUMBER FOUR
BONUS PAYMENT FOR NON-USE OF LEAVE
DISCUSSION AND AWARD

The Memorandum of Agreement covering the period January 1, 1998 – December 31, 2003 provides for a limited incentive whereby full-time officers not using a specific number of sick or injury leave days from the prior calendar year receive additional pay. The PBA has proposed that this compensation be increased while the Town submits that the status quo is adequate. Sick leave incentives are common in public sector collective bargaining. The present system provides a minimal inducement.

Based on the record and the statutory criteria, including the Town's ability to pay, and in consideration of the continued value to be derived by the Town, the Panel Awards that the present incentive be increased, effective January 1, 2004 to reflect the following:

Effective January 1, 2004 full-time officers with no absences for sick leave or injury leave shall receive five (5) days pay.

**ISSUE NUMBER FIVE
HEALTH INSURANCE FOR RETIREES
DISCUSSION AND AWARD**

The issue of Health Insurance for retired police officers has become a major area within the Interest Arbitration process. Police officers may retire after 20 years of service, which may occur at an earlier age than other public employees, other than firefighters, is not disputed. However, due to the uniqueness of the profession and bargaining unit demographics, without codification of the existing practice of providing health insurance for retirees there can be a significant time period when there is no health insurance protection between the age of an officer's retirement (mid-forties) until they are eligible to collect Medicare at age 65.

The Town offered a freeze on overall health insurance premium contributions at the rate in effect in December 2004, with all increases to be paid by the employee. In terms of retiree health insurance, the Town proposed that retirees pay the same amount for health insurance as active members plus an additional ten per cent. In terms of dependent health insurance the Town proposed that dependants of retirees pay the same as active members plus an additional fifty percent.

In terms of the statutory requirement of comparability the record documents that the Taylor Law requires that the Panel consider a "comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment . . ." It is primarily for these reasons that police departments traditionally have offered their retirees health care insurance and have extended same to their dependents.

The CBA does not provide a precise benefit for dependent health coverage; however some protection is afforded thru NYSHIP and §167(2) of the Civil Service Law. In support of their demand the PBA cites a 1998 N.Y.S. Court of Appeals decision in *Aeneas McDonald PBA, Inc. V., Geneva*, 92.N.Y.2d 326, 680 N.Y.S.2d 887 (1998). As I noted in previous IA Awards:

The central thrust of the PBA's position is related to a 1998 NYS Court of Appeals decision in *Aeneas McDonald Police Benevolent Association, Inc. v. Geneva*, 680 NYS2d 887 (1998). In that matter the Court held that in spite of the fact that municipalities (City of Geneva) provided certain health insurance benefits to retirees, there was no prohibition from reducing said benefits without prior collective negotiations with certified bargaining units. Thus, as argued by the PBA, the [Town] . . . notwithstanding the provisions of [a] Resolution could unilaterally withdraw all such benefits since there was no continuing obligation to provide benefits which resulted from a legislative act.

Throughout the State the response of Unions to *McDonald* has been to attempt to include health insurance benefit for retirees in the successor CBA. The Union is seeking to continue what they receive to be a benefit guaranteed to them at the commencement of their employment while the Town. . . based on the aforementioned decision, and absent any contractual or otherwise legally enforceable benefit obligation to provide the continued health insurance benefit could unilaterally modify or withdraw health insurance coverage to retirees pursuant to law unless said benefits are made part of the CBA.

This reasoning was persuasive in awarding retiree health insurance as set forth below.

Based on the record and the statutory criteria, including the Town's ability to pay, the Panel Awards that the present Health Insurance Plan for retirees be modified to reflect the following:

ARTICLE 17 - HEALTH INSURANCE: (pp. 16-17):

Section 17.3 - Amend to read as follows (NOTE: refers to health insurance on retirement):

Effective January 1, 2004, the Town shall pay one hundred percent (100%) of the health insurance premium for the employee and an additional fifty-five percent (55%) of the difference between the individual and family (dependent) premium paid by the Town (e.g., individual = \$500/month and family = \$1,100/month, Town pays \$830/month of family premium), has at least fifteen (15) years of service with the Town, retires and is granted a pension from the New York State and Local Police and Fire Retirement System. In the event an employee with less than fifteen (15) years of service is granted a service connected disability retirement from the New York State and Local Police and Fire Retirement System, the fifteen (15) years of service required will be waived, pursuant to Title 4. Department of Civil Service, Chapter V. Part 73. State Health Insurance Plan (4 NYCRR 73.2.a(3)(vii)). The health insurance plan shall be the same as provided to active employees.

ISSUE NUMBER SIX

SENIORITY

DISCUSSION AND AWARD

The PBA is seeking a modification in the definition of seniority. The arguments in favor of controlling seniority language are well-known and is, at times, advantageous to both the Employer and employee. In full consideration of the legal problems that have faced the Town of Walkill Police Department, and in consideration of the need to retain senior officers, the following seniority provisions are awarded.

Based on the record and the statutory criteria, the Panel Awards that Section 22.1 be modified to reflect the following.

ARTICLE 22 – SENIORITY: (p. 19):

Seniority shall commence on the date of hire the employee starts working for the Town as a full-time police officer, except as provided for by law. Upon designation to Detective or promotion to Sergeant, seniority shall commence on the date of appointment the employee starts work in that title.

Add a new section to read as follows:

22.3 Seniority shall prevail in the granting of all time off (e.g., vacation, etc.).

**ISSUE NUMBER SEVEN
CLOTHING ALLOWANCE
DISCUSSION AND AWARD**

The PBA is seeking to increase the present clothing allowance to bring the January 1, 2004 level to \$700.00 annually and the January 1, 2005 level to \$750.00 annually. The Town has proposed the continuation of the status quo. Based on the record and the statutory criteria, including the Town's ability to pay, the Panel Awards that the clothing allowance be increased as follows:

FULL-TIME

(+50.00)	(+25.00)
<u>1/1/04</u>	<u>1/1/05</u>
\$700.00	\$725.00

PART-TIME

(+10.00)	(+5.00)
<u>1/1/04</u>	<u>1/1/05</u>
\$60.00	\$65.00

**ISSUE NUMBER EIGHT
RETROACTIVITY
DISCUSSION AND AWARD**

The Town argued that only those on the payroll for the two-year period covering this Award are entitled to the aforementioned wage adjustments and economic increases provided by the Award. The PBA argued in opposite and demanded that all economic improvements apply to any employee who worked for any period of time during the January 1, 2004- December 31, 2005-time period. The record demonstrates that the economic adjustments are best conferred on those officers who have remained on the Town of Wallkill Police force and that the resources of the Town are best spent on the present workforce. Full time officers who chose to leave shall receive a small payment in recognition of their service but full retroactivity for full time employees shall be as provided herein. There shall be no limitation on retroactivity paid to part time police officers.

In terms of retroactivity of economic improvements for full time employees, the following is Awarded:

Each full-time employee shall receive one hundred percent (100%) retroactivity to January 1, 2004, based on the aforementioned Award. This shall include full time employees who are on the payroll as of the date of execution of this Award by the Panel Chairman, full time employees who have retired and are granted a pension from the NYS Police and Fire Retirement System while employed by the Town, and full time employees on General Municipal Law Section 207-c Leave as of the date of execution of this Award by the Panel Chairman.

Those full-time employees who have separated from Town service other than pursuant to a retirement and are granted a pension as set forth herein and are not on the payroll as of the date of execution of this Award by the Panel Chairman, shall receive a total of twenty-five dollars (\$25.00) for each calendar month or part thereof worked, retroactively to January 1, 2004, for purposes of all economic improvements.

The Town shall provide at the time of payment, a worksheet to everyone receiving retroactivity setting forth how the calculation(s) was made and what it represents. The terms of this Award for current employees and those on General Municipal Law §207-c leave, shall be implemented no later than one (1) full pay period following the date of execution of this Award by the Panel Chairman. All retroactivity shall be paid no later than forty (40) calendar days following the date of execution of this Award by the Panel Chairman.

A-W-A-R-D

1. TERM OF THE AWARD

A. The term of this Award is from January 1, 2004 - December 31, 2005.

CONCUR MS 8/24/07 DISSENT _____

CONCUR MS 8/28/07 DISSENT _____

2. FULL-TIME BASE WAGE SCHEDULE

1. For the period January 1, 2004 through December 31, 2004 the current police offices' Base Wage schedule shall be increased by 4.00% retroactive to January 1, 2004.
2. For the period January 1, 2005 through December 31, 2005, the current police officers' Base Wage schedule shall be increased by 4.25% retroactive to January 1, 2005.
3. The following Base Wage schedule is awarded:

FULL-TIME POLICE OFFICER'S BASE WAGE SCHEDULE

<u>Step</u>	<u>Years of Service</u>	<u>1/1/04</u>	<u>1/1/05</u>
1	First Year	\$37,235	\$38,817
2	After 1 Year	\$44,379	\$46,265
34	After 2 Years	\$46,086	\$48,045
4	After 3 Years	\$47,793	\$49,824
5	After 4 Years	\$50,230	\$52,365
6	After 5 Years	\$52,078	\$54,291

CONCUR _____ DISSENT MS 8/24/07

CONCUR MS 8/28/07 DISSENT _____

3. **SERGEANTS DIFFERENTIAL**

Effective January 1, 2004, the Sergeant's years of service shall be compressed to reflect a Sergeant in his/her first (1st) year of service as Sergeant shall be paid a differential of 6.5% above Step 6 of the Full-time Police Officer's Base Wage schedule upon appointment up to one (1) year. Effective January 1, 2004, the Sergeant's years of service shall be compensated to reflect a Sergeant After 1 Year be paid a differential of 13.0% above Step 6 of the Full-time Police Officer's Base Wage schedule. There shall be no compression or differential increase for the Sergeant in year two (2) of this Award. The Sergeant's Base Wage and differential shall reflect the following:

SERGEANT BASE WAGE

<u>Years of Service</u>	<u>1/1/04</u>	<u>1/1/05</u>
First Year *	\$55,463	\$57,820
After 1 Year **	\$58,848	\$61,349

* The Sergeant(s) shall be paid a differential, upon appointment, over and above a Step 6 police officer as follows:

(+1/2%)	(N/C)
<u>1/1/04</u>	<u>1/1/05</u>
6.5%	6.5%

4 Step 3 is a new Step. The Base Wage was created by multiplying the 2003 Base Wage Schedule at After 1 and 3 Years by 4.0%, adding them together and dividing by two.

** The Sergeant(s) shall be paid a differential upon completion of one (1) year of service as Sergeant, over and above a Step 6 police officer as follows:

(+1.0%)	(N/C)
<u>1/1/04</u>	<u>1/1/05</u>
13.0%	13.0%

CONCUR Jrs 8/24/07 DISSENT _____
 CONCUR [Signature] 8/28/07 DISSENT _____

4. PART-TIME HOURLY RATE

Effective January 1, 2004, probationary part-time police officers shall receive an increase of \$1.00 per hour to \$16.00 per hour. Effective January 1, 2004, a part-time police officer, upon 1040 hours, shall receive an increase of \$1.00 per hour to \$18.00 per hour as set forth below.

Effective January 1, 2005, probationary part-time police officers shall receive an increase of \$1.00 per hour to \$17.00 per hour. Effective January 1, 2005, a part-time police officer, upon 1040 hours, shall receive an increase of \$1.00 per hour to \$19.00 per hour as set forth below.

	<u>1/1/04</u>	<u>1/1/05</u>
Probationary	\$16.00/hr	\$17.00/hr
Upon 1040 hours	\$18.00/hr	\$19.00/hr

CONCUR Jrs 8/24/07 DISSENT _____
 CONCUR [Signature] 9/28/07 DISSENT _____

5. LONGEVITY

Step	Years of Service	1/1/04	1/1/05
7	Start 6 th through 8 th	\$ 475.00 (+50.00)	\$ 500.00 (+25.00)
8	Start 9 th through 11 th Yr	\$ 925.00 (+75.00)	\$ 975.00 (+50.00)
9	Start 12 th through 14 th Yr	\$1,350.00 (+75.00)	\$1,425.00 (+75.00)
10	Start 15 th through 17 th Yr	\$1,825.00 (+125.00)	\$1,925.00 (+100.00)
11	Start 18 th Year and above	\$2,275.00 (+150.00)	\$2,425.00 (+150.00)

CONCUR Jrs 8/24/07 DISSENT _____
 CONCUR _____ DISSENT [Signature] 9/28/07

6. BONUS PAYMENT FOR NON-USE OF LEAVE

Effective January 1, 2004, full-time officers with no absences for sick leave or injury leave shall receive five (5) days pay.

CONCUR AMS 8/24/07 DISSENT _____
CONCUR [Signature] 8/28/07 DISSENT _____

7. HEALTH INSURANCE FOR RETIREES

Section 17.3 - Amend to read as follows (NOTE: refers to health insurance on retirement):

Effective January 1, 2004, the Town shall pay one hundred percent (100%) of the health insurance premium for the employee and an additional fifty-five percent (55%) of the difference between the individual and family (dependent) premium paid by the Town (e.g., individual = \$500/month and family = \$1,100/month, Town pays \$830/month of family premium), has at least fifteen (15) years of service with the Town, retires and is granted a pension from the New York State and Local Police and Fire Retirement System. In the event an employee with less than fifteen (15) years of service is granted a service connected disability retirement from the New York State and Local Police and Fire Retirement System, the fifteen (15) years of service required will be waived, pursuant to Title 4. Department of Civil Service Chapter V. Part 73. State Health Insurance Plan (4 NYCRR 73.2.a(3)(vii)). The health insurance plan shall be the same as provided to active employees.

CONCUR _____ DISSENT AMS 8/24/07
CONCUR [Signature] 8/28/07 DISSENT _____

8. SENIORITY

Seniority shall commence on the date of hire the employee starts working for the Town as a full-time police officer, except as provided for by law. Upon designation to Detective or promotion to Sergeant, seniority shall commence on the date of appointment the employee starts work in that title.

CONCUR AMS 8/24/07 DISSENT _____
CONCUR [Signature] 8/28/07 DISSENT _____

Add a new section to read as follows:

22.3 Seniority shall prevail in the granting of all time off (e.g., vacation)

CONCUR AMS 8/24/07 DISSENT _____
CONCUR [Signature] 8/28/07 DISSENT _____

9. CLOTHING ALLOWANCE

FULL-TIME

(+50.00)	(+25.00)
<u>1/1/04</u>	<u>1/1/05</u>
\$700.00	\$725.00

PART-TIME

(+10.00)	(+5.00)
<u>1/1/04</u>	<u>1/1/05</u>
\$60.00	\$65.00

CONCUR NYS 8/24/07 DISSENT _____
CONCUR [Signature] 9/28/07 DISSENT _____

10. Retroactivity

Each full-time employee shall receive one hundred percent (100%) retroactive application to January 1, 2004 of the economic adjustments provided by this Award. This shall include full time employees who are on the payroll as of the date of execution of this Award by the Panel Chairman, full time employees who have retired and are granted a pension from the NYS Employees Retirement System while employed by the Town, and full time employees on General Municipal Law Section 207-c Leave as of the date of execution of this Award by the Panel Chairman.

Those full-time employees who have separated from Town service other than pursuant to a retirement and granted a pension as set forth herein and are not on the payroll as of the date of execution of this Award by the Panel Chairman, shall receive a total of twenty-five dollars (\$25.00) for each calendar month or part thereof worked, retroactively to January 1, 2004, for purposes of all economic improvements.

Part time employees shall receive full retroactive application of the terms of this Award.

The Town shall provide at the time of payment, a worksheet to everyone receiving retroactivity setting forth how the calculation(s) was made and what it represents. This payment shall constitute the entire economic adjustment provided to such former and full-time employees. The terms of this Award for current employees and those on General Municipal Law §207-c leave, shall be implemented no later than one

(1) full pay period following the date of execution of this Award by the Panel Chairman. All retroactivity shall be paid no later than forty (40) calendar days following the date of execution of this Award by the Panel Chairman.

CONCUR _____ DISSENT AMS 8/24/07
CONCUR [Signature] 8/28/07 DISSENT _____

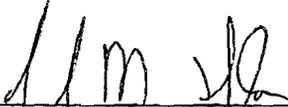
SUMMARY

In reaching our findings above, we have carefully considered and weighed all of the relevant statutory criteria, as well as the standards traditionally relied upon in Interest Arbitrations of this kind. In the Panel's view, they balance the rights of the members of the bargaining unit to fair and reasonable improvements in their terms and conditions of employment with the legitimate needs of the Town to judiciously apportion its economic resources. Furthermore, all provisions and language contained in the prior Agreements are hereby continued, except as specifically modified in this Award. Those issues presented at arbitration by the parties that are not specifically addressed in this award were also carefully considered by the public arbitration panel, but rejected in their entirety.

CONCUR _____ DISSENT AMS 8/24/07
CONCUR [Signature] 8/28/07 DISSENT _____

AFFIRMATION

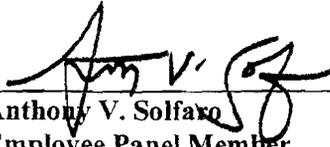
Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Joel M. Douglas, Ph.D.
Public Panel Member and Chairman

Dated: 8/4/07

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: 8/24/07

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.



Michael R. Hitsman, Esq.
Employer Panel Member

Dated: 8/28/07

AWARD AFFIRMATION

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this 4th day of September, 2007 before me personally came Joel M. Douglas 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:

*CYRIL J. MAIR
487 3537
WEST CTY
CXP 10/3/07*

STATE OF NEW YORK
COUNTY OF ORANGE

On this 24th day of August, 2007 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, 192009

Ohio
STATE OF ~~NEW YORK~~
COUNTY OF ~~WESTCHESTER~~ *Franklin*

On this 28th day of August, 2007 before me personally came Michael R. Hitsman 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:



Carolyn F. Edens
CAROLYN F. EDENS
Notary Public, State of Ohio
My Commission Expires 08-12-2011