

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
X-----X
In the Matter of the Interest Arbitration

-between-

**PORT WASHINGTON POLICE BENEVOLENT
ASSOCIATION**
“Petitioner or PBA”

Compulsory Interest Arbitration
PERB Case No. IA2006-041;
M2006-217

-and-

PORT WASHINGTON POLICE DISTRICT
“Respondent or District”

X-----X

BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
PETER A. BEE, ESQ., RESPONDENT MEMBER
WILLIAM DIEBOLD, PETITIONER MEMBER

APPEARANCES:

FOR THE PETITIONER:

**CERTILMAN, BALIN, ADLER & HYMAN, LLP by MICHAEL C. AXELROD & ADAM
S. COVITT, ESQS.**

FOR THE RESPONDENT:

BEE READY FISHBEIN HATTER & DONOVAN, LLP. by KENNETH A. GRAY, ESQ.

BACKGROUND

The parties are signatories to the collective bargaining agreement between Port Washington Police Benevolent Association (Petitioner) and Port Washington Police District (Respondent) that expired on December 31, 2006 (Petitioner Exhibit [PX] 2 [5]). Negotiations for a successor agreement proved unsuccessful. The dispute was submitted to mediation. A February 14, 2007 mediation failed to resolve the matter (PX2[6]).

Consequently, and pursuant to §209.4 of the New York State Civil Service Law (*The Taylor*

Law), Interest Arbitration procedures were invoked. In that connection, Petitioner filed a Petition for Compulsory Interest Arbitration with Public Employment Relations Board (PERB) on February 26, 2007 (PX 2 [6]). The District responded to the petition on March 13, 2007(Respondent Exhibit [RX] 1).

On May 7, 2007, PERB appointed me as the neutral member of the arbitration panel designated to hear and finally decide all relevant issues (Joint Exhibit 1). The PBA designated William Diebold as its panelist and the District named Peter A. Bee, Esq. to be its panelist. Hearings on this matter were held on September 17, 19, and October 29, 2007. In addition, the Panel met in executive sessions on January 10, February 21, March 28, April 21, 2008.

POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

PBA indicates that as a result of an inability to obtain a successor agreement either through negotiations or mediation, pursuant to the *Taylor Law*, it commenced a process of interest arbitration. It observes that this is the a mechanism through which its terms and conditions of employment set forth in the successor collective bargaining agreement will be determined.

It recalls that it initially identified its priorities within the 25 items it submitted for the consideration of the panel. It indicates that it has further reduced the number of its priorities.

It emphasizes that its requests are as follows:

1. **Duration of contract**- 3 years
2. **Salary increase**- 5% per year
3. **Night shift differential**- (a)12% additional pay for hours worked by all members between 3 PM and 7AM and (b) members who miss work due to a line of duty injury will remain eligible for the

night shift differential.

4. **Longevity-** (a) The increases in longevity pay are to be as follows:

<u>YEARS</u>	<u>NEW</u>	<u>YEARS</u>	<u>NEW</u>
6	1800	21	6300
7	2100	22	6600
8	2400	23	6900
9	2700	24	7200
10	3000	25	7500
11	3300	26	7800
12	3600	27	8100
13	3900	28	8400
14	4200	29	8700
15	4500	30	9000
16	4800	31	9300
17	5100	32	9600
18	5400	33	9900
19	5700	34	10,200
20	6000	35	10,500

(b) All prior law enforcement performed by PBA members shall be credited when calculating longevity eligibility.

5. **UNIFORM ALLOWANCE-** A \$50 increase during each year of the contract.

6. **PBA RELEASE TIME-**

(a) A PBA board member shall be released for his/her entire tour without penalty to attend conventions with the PBA president. If the PBA president cannot attend the convention, a second PBA board member shall be released for his/her entire tour without penalty.

(b) Any member of the PBA executive board or a committee chairman of the following organizations: Nassau Police Conference, NYS Association of PBAs, Police Conference of NY, National Association of Police Organizations, shall be released for his/her entire tour without penalty to attend these meetings.

7. **WELFARE PLAN**- Increase contribution paid to PBA Health and Welfare Fund by District for each member by \$300 for each year of the contract.

8. **GML §207c**- Incorporate the procedures in place in Suffolk County police organizations.

9. **SICK DAYS ACCUMULATION**- Increase the days accumulated for pay out at retirement to 210 in Year 1, 220 in Year 2 and 230 in Year 3.

10. **SPOUSAL MEDICAL INSURANCE**- Full coverage of spousal medical insurance after the line of duty death of a member, active or retired, until the spouse remarried and/or the children become emancipated. Full cost of spousal medical insurance for 7 years after the non-line of duty death of a member.

11. **TRAINING TIME**- Payment at regular rate of pay for training time in excess of the 40 hour cap.

12. **FIELD TRAINING OFFICER/ARMORER/DEFIBRILATOR COMPENSATION**-Two hours of additional pay in addition to regular compensation for each day that FTOs, armorers and defibrillator instructors and certified instructors are assigned an officer for field training or are involved in training other officers.

13. **TWELVE HOUR TOURS**-Make the 12 hour tour agreement permanent.

14. **BEREAVEMENT LEAVE**- 4 days of leave of absence with full pay in the case of the death of a spouse, child, grandchild, parent, sibling, parent-in-law or step-parent. Leave to be granted immediately after the death but will begin at 0001 of the following day and may be extended for the balance of the 4 day leave. On application to the Chief, a member will be granted 1 day of leave with full pay for the day of the funeral of a grandparent, son-on-law, daughter-in-law, brother-in-law, sister-in-law, foster parent, foster child provided the member attends the funeral.

15. **MEMORANDA OF AGREEMENT**- Previously agreed to memoranda of agreement between

the parties shall be incorporated into the collective bargaining agreement.

The PBA states that prior Fact-Finders reports and interest arbitration awards contain language that is relevant here. In this connection, notes the Petitioner, the following documents need to be considered: 1975 Port Washington Fact- Finder's Decision of Arbitrator Philip Carey, 1994 Port Washington Interest Arbitration Award of Arbitrator Thomas Carey, 1996 Port Washington Interest Arbitration Award of Arbitrator Martin F. Scheinman, 2001 Port Washington Interest Arbitration Award of Arbitrator Joel Douglas, 2006 Floral Park Interest Arbitration Award of Arbitrator Martin F. Scheinman, 2002 Lake Success Interest Arbitration Award of Arbitrator Martin F. Scheinman, 2006 Settlement of Old Brookville PBA, 2004 Settlement of Village of Freeport PBA, 2007 Nassau County PBA Interest Arbitration Award.

It stresses that, while preparing its demands, it relied upon comparative statistical data concerning comparative longevity rates, salaries, percentage increases, top pay, sick leave payouts, night differentials and uniform allowances when formulating its proposals. It adds that it considered Nassau/Suffolk statistics about median income, population, occupational wages and school districts. It urges that it also reviewed the 2002-06 Nassau County Index of Crimes.

The PBA maintains that the December 2005 and December 2006 Port Washington Police District independent auditors' financial statements indicate the financial health of the District. It posits that this information is relevant when the District's *ability to pay* is assessed.

Petitioner opines that it is mindful of the statutory criteria under Civil Service Law §209(5) and is convinced that it has presented a compelling argument in support of its proposals. It insists that its members were once the highest paid police officers in New York State and, in recent years, have fallen into the lower echelons.

It indicates that the Port Washington Police District is unique and that an understanding of this fact is essential. It notes that it is led by elected civilian commissioners. It stresses that the District operates, manages and controls its own affairs as an administrative agent of the Town of North Hempstead.

It states that the District is on a peninsula comprised of 4.87 square miles. It claims that it is made up of three communities with median incomes that range from \$125,000 to \$138,000. It emphasizes that the members are part of an active police department that has one police officer per 400 residents. It posits that police departments in areas with comparatively sized populations have lower workloads.

The PBA asserts that its members have a significant work load. It points out that there is a substantial crime rate in the Police District.

It adds that this factor is compounded by the fact that it is a resort community for four months out of the year. It urges that the boating community in the summer accounts for an increase in traffic and population.

As to the 2004-06 CBA, the PBA agrees that there were many benefits. It argues, however, that the benefits pale when compared to surrounding jurisdictions.

It notes that the records show that the District is well below the average in terms of longevity payments. It points out that the disparity increases as longevity time increases.

It maintains that the salary schedule and daily rate of pay were at the upper echelons until the late 1980's, when they started to recede. It urges that, at this time, it would take a 5.41% increase for its members to reach the average top salary earned.

Petitioner suggests that the bargaining history here has paralleled that of Nassau County and

its police department. It contends that the Nassau County contractual entitlements have been the standard of comparison for police departments such as the Port Washington Police District. It observes that Port Washington police officers have historically had higher salaries than their Nassau County counterparts. It indicates that the disparity was dealt with in the 2006-12 CBA in Nassau County in that the Nassau County PBA received annual 4% increases.

It claims that the Nassau County PBA also received significant increases in night differentials, clothing allowance and longevity payments. It concludes that, in order to restore the favorable comparison, its bargaining proposals should be given favorable consideration.

The PBA avers that most of the other police departments in Nassau County compare either favorably or similarly with the Nassau County Police Department. It emphasizes that Port Washington deviates most with any comparisons with Nassau County.

Petitioner argues that the District has the ability to pay for its requested proposed wage increases. It states that, in 2006, the District had a General Fund balance of \$5.8 million. It indicates that the District, while not claiming an inability to provide for wage increases, has offered no wage increases for 2007 and 2008.

The PBA posits that the District's presentation related to financial matters was hypothetical and based on conjecture. It recalls that the District acknowledged having an accumulated \$6 million surplus. It insists that the District's justification for needing such a large accumulated surplus is based on an unreasonable assumption. It adds that there is no mandate to maintain such a large surplus.

It recognizes an \$885,000 asset forfeiture fund is not available for salary increases. It stresses, however, that this money can be used for equipment, training and special overtime details.

The PBA asserts that District exhibits show \$1.8 million in terminal pay in the last seven years. It maintains that the evidence failed to show that a significant number of officers have not yet vested for future payouts and would not be entitled to the payouts calculated. It points out that no reason was given for their inclusion in the calculation and that no comparison was given to potential payouts in other jurisdictions.

It refers to *Newsday* articles about employee contributions toward the cost of health care. It urges that the employees cited were not police officers. It concludes that these articles are not relevant here.

As to longevity payments, the PBA observes that the District's proposal is designed to maintain the status quo relative to comparability. It maintains that, as evidenced by the fact that it is near the bottom of a list of comparable jurisdictions, it is far behind in longevity payments.

It rejects the argument that its night differential proposal represents a radical change. It posits that it merely seeks comparability with other districts.

Petitioner says that Respondent has produced a memorandum that indicates that it complies with all aspects of GML §207c. It opines that this is not true and that all requests for §207c benefits have been ignored.

It recalls that Mary Kohlroser testified about the District's finances. It posits that she agreed that there were many errors and inaccurate assumptions in the District's reports. It adds that she conceded that these reports do not compare costs with other districts. It notes that she acknowledged that certain costs included those for non-bargaining unit members and that the inclusion of these costs inflated the costs' percentages. It indicates that Kohlroser was unaware of grants received by the District that were not included in her report.

Petitioner insists that the District offered no other evidence to show an inability to pay a fair and reasonable wage increase. On the other hand, according to the PBA, the median income in the District is higher than most other communities in the County. At the same time, in its view, it has received lower percentage increases than virtually every other police department since 2004.

It insists that its proposals are reasonable. It contends that there is no justification for its being at the bottom of the scale in comparison with other police districts.

By contrast, states Petitioner, the District has not offered proposals that can be seriously considered by the panel. It indicates that these proposals reflect a lack of familiarity with CBAs in other police departments.

It points out that the District has offered 3% increases when all other departments have provided at least 4% increases. It indicates that the District's longevity proposal will increase its descent in comparability with Nassau County. It suggests that the District's proposals concerning night differentials and uniform allowances are nominal. It observes that the District's health care proposal would result in its members being the first ones to contribute to the cost of health insurance. It opines that there is no justification for the panel to grant any of these proposals.

Petitioner concludes that the panel should grant its proposals. As a corollary, it asks the panel to reject the District's proposals.

CONTENTIONS OF THE DISTRICT

Respondent asserts that the PBA demanded the arbitration of the instant impasse. It notes that it filed an Answer to the Demand, which included objections to a number of the PBA proposals as being non-permissive and/or non-mandatory subjects of bargaining. It reasons, therefore, that these items are not properly before the panel.

It adds that a number of the demands are the subject of an Improper Practice Charge before PERB. It stresses that these items should not be the subject of an award until the PERB matter is resolved.

The District indicates that its proposals are as follows:

1. **Duration of contract**- 3 years
2. **Salary increase**- 3% per year
3. **Longevity**- The increases in longevity pay are to be as follows:

<u>YEARS</u>	<u>1/1/07</u>	<u>INCREASE</u>
6-9	\$1225	+\$50
10-14	\$2375	+\$100
15	\$3650	+\$150
16	\$3750	+\$150
17	\$3850	+\$150
18	\$3950	+\$150
19	\$4050	+\$150
20	\$4150	+\$150
21	\$4250	+\$150
22	\$4350	+\$150
23	\$4450	+\$150
24	\$4550	+\$150
25	\$4650	+\$150

4. **Night shift differential**- Effective 1/1/07- \$4700 (representing \$50 increase)

5. UNIFORM & MAINTENANCE ALLOWANCE-

Uniform allowance to remain \$725

Increase Uniform Maintenance Allowance as follows:

<u>Effective Date</u>	<u>Allowance</u>	<u>Increase</u>
1/1/07	\$825	+\$25
1/1/08	\$850	+\$25
1/1/09	\$875	+\$25

6. **WELFARE FUND**- Increase Welfare Fund contribution as follows: .

<u>Effective Date</u>	<u>Allowance</u>	<u>Increase</u>
1/1/07	\$1770	+\$25
1/1/08	\$1795	+\$25
1/1/09	\$1820	+\$25

7. **TERMINATION PAY**- Amend ¶7 of CBA to reflect that banked time to be paid out at the daily rate which was in effect when it was earned and/or accrued.

8. **TRAINING DAYS/PAYBACK TIME**- Currently members can be assigned to attend 24 hours of Training Time (typically assigned as two (2) twelve (12) hour assignments. Although the District believes it has the ability to assign the Training Time as it sees fit, the District proposes to clarify the issue with language stating that Training Time can also be assigned as three (3) eight (8) hour assignments (subject to the needs of the District and availability of training).

9. **SICK LEAVE ABUSE**- Modify definition of *Sick Event* in Appendix B of CBA to include leaving work *sick* counts as an *event*.

10. **HEALTH**- Current members shall contribute 25% of the cost of Health Insurance. Members hired on or after 1/1/07 shall contribute 50% of the cost of Health Insurance.

The District asserts that the range of salaries in 16 comparable districts for 2006 is \$91,580 to \$100,212, with only one jurisdiction being over the \$100,000 mark. It stresses that the salary in the District for 2006 , \$95,012, falls into the top half of the range.

It argues that the PBA proposal is exorbitant and would have the effect of allowing jurisdictions to leap-frog over one another. It adds that CPI in NY, Northern NJ and Long Island was 1.9%. It concludes that a 3% salary increase is sufficient to cover cost of living increases. It observes that the PBA indicated that it wanted to keep pace and a 5% increase is inconsistent with that position.

The District posits that its longevity payments proposal is generous. It stresses that these increases (\$50-\$150) are consistent with past contract settlements and arbitration awards.

It posits that the PBA proposal is unrealistic and by adding a new step at Year 35 would equate to a 233% increase to the current top longevity pay. It urges that such an award would catapult the PBA over at least 10 comparable jurisdictions.

It claims that its proposal concerning night shift differentials would be consistent with past contract settlements and arbitration awards. It states that it would be in line with comparable jurisdictions.

It points out that the PBA proposal to change the night shift differential from a flat dollar amount to 12% of additional pay represents a drastic change. It stresses that past arbitration panels have rejected such a change.

With respect to Uniform and Maintenance Allowances, the District argues that its proposal is reasonable. It suggests that the PBA is already receiving the second highest amount when compared to comparable jurisdictions.

As to contributions to the Welfare Fund, the District observes that it has proposed raising its contribution to the fund in 2007 to \$1770 per member. It indicates such an increase would be consistent with past contract settlements and arbitration awards and would be in line with comparable jurisdictions.

It posits that the PBA has not introduced evidence to support its demand for an annual increase of \$300. It recalls that prior increases have ranged from 0 (in 1995 and 2002) to \$125 (in 1996-99).

Respondent has proposed calculating Termination Pay based on when the time was accrued

rather than based on the salary at the time of retirement. It suggests that the current method has a devastating financial impact. It posits that it currently has a \$6.2 million liability for accrued time that will have to be paid out at retirement and that the costs will only increase over time. It seeks to curb escalating expenses.

The District does not seek to increase the current 24 hours of training time. It indicates that it merely wants the PBA to acknowledge that it is able to assign members to three 8 hour shifts instead of two 12 hour shifts. It claims that such a clarification would allow it to schedule training more effectively and efficiently.

The District notes that, historically, members who appear for duty and then *book off* sick, this time was not considered an *event* for purposes of determining if an officer is a sick leave abuser. It opines that it has the managerial right to consider such an incident as an *event* and seeks acknowledgment from the PBA that it has the right to do so.

Respondent asserts that its Health Insurance proposal is related to the cost of the coverage. It emphasizes that its cost for such insurance in 2007 was \$1.05 million. It insists that the increase in the cost of health insurance in Nassau County from 2005-06 was 11.1%.

It indicates that other public employers have demanded employee contributions for health insurance. It points out that at least civilian employees in the Towns of Hempstead, North Hempstead, Riverhead and Southampton already contribute to the cost of health insurance.

The District rejects the PBA's Release Time Proposal. It suggests that this proposal is an attempt to resolve a hypothetical conflict between a future PBA President and the current President. It opines that the panel should not be used this way. It concludes that the PBA has not shown that the existing Release Time provision is insufficient.

Respondent initially opposed the panel imposing any GML §207c procedure or a permanent 12 hour tour. It stated that there are IP charges before PERB concerning these matters and they are not properly before the panel.

Additionally, in the view of the District, the demands were without merit. It stressed that it handles all §207c matters in a manner that is consistent with the statute. It averred that the PBA has not demonstrated a need to deviate from the statute. With respect to the 12 hour tour, it stated that the parties have, in the past, utilized varying schedules to meet the needs of the District. As described hereinafter, the panelists ultimately were able to reach an accommodation on these issues.

The District objects to any increase in Sick Day accumulations. It argues that the PBA has shown no need to increase the current limits or that the current limits are not in line with comparable jurisdictions. It adds that any increases in this area will have an adverse financial impact on the District.

It observes that it objects to any changes in Spousal Medical Insurance. It asserts that there has been no showing for a need for change in this area or that the current situation is inconsistent with that of comparable jurisdictions. It notes that granting such a proposal would negatively affect the District's financial condition.

Respondent rejects the PBA proposals concerning Training Time, Field Training Officer/Armorer/Defibrillator Compensation and Bereavement Leaves. It insists that the need for these proposals has not been shown or that the current provisions are not in line with those of comparable jurisdictions. It maintains that the cost of these proposals would have an adverse effect on the District's finances.

The District does not object to the PBA demand about the inclusion of prior Memoranda of

Agreement in the successor Agreement. It does object, however, to the PBA proposal concerning police officers promoted out of the bargaining unit. It observes that this issue is the subject of an IP and is not properly before the panel. It adds that the demand is without merit and represents an effort to bargain for people who would no longer be part of the bargaining unit.

Respondent concludes that its proposals should be granted. It submits that the PBA demands should be denied.

OPINION

§209 of the New York State Civil Service Law (*Taylor Law*) sets forth the parameters which an Interest Arbitrator must utilize in deciding terms and conditions of employment. These criteria are as follows:

- a. Comparison of 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. terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including but not limited to, the provision for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and

job security.

With these criteria in mind, I turn to the specific issues before me. The first such matter is the initial criterion.

There are a significant number of fact finding and interest arbitration decisions which bear on this standard. These decisions span several decades (PX2[8-11]).

These decisions reflect a well established premise that the jurisdictions which are most comparable to the Port Washington Police District (PWPD) are the villages and cities in Nassau County as well as Nassau County *per se*. There is a total of 16 such jurisdictions.

A review of the parties' exhibits reveals that they have both relied on data from the comparable districts when formulating their arguments. In the absence of any controversy as to the identity of the comparable jurisdictions, this panel will continue to analyze the proposals in the context of Nassau County and its villages and cities.

Criterion (b) concerns the interests and welfare of the public and the financial ability of the public employer to pay for the costs associated with increases in wages and improvements in benefits. I will first address the interests and welfare of the public.

It is unquestioned that the needs of the public are met by a well paid and well maintained corps of police officers that operates safely and efficiently. It is also clear that a police force with good morale is essential. Positive morale results in higher productivity and a flow of high quality candidates for the positions available.

The issue of the District's ability to pay requires a different kind of analysis. It would first be helpful to describe the District. Port Washington is located in northern Nassau County. It is south of Sands Point and east of Kings Point and Great Neck Estates (PX2[2]). In terms of area, it

is comprised of 4.9 square miles (PX3[23]). The District is comprised of three communities with median incomes ranging from \$125,000 to \$138,000 (PX3[23]).

The tax base in the District includes a significant amount of commercial property. There are 360,000 square feet of office space within the police district (PX3[23]). Thus, in terms of tax levy income, the District is funded through a combination of residential and commercial properties.

The District appears to be well managed from a financial standpoint. As of December 31, 2006, it had a \$5.8 million General Fund balance in place (RX2[F]). Some comment is required about the components of this General Fund balance.

Of the \$5.8 million, almost \$1.2 is in a fund to cover sick and termination pay. The explanation on the auditors statement indicates that the total liability for termination pay is \$6 million. It goes on to state that the District is not required to set that much money aside but that it is prudent to set aside the amount of money that the District expects to expend over the next few years.

It should be noted that the \$6 million liability in this area presumes that everyone eligible to retire did so simultaneously (203)¹. By contrast, the auditor's explanation indicates that there are ten employees in the District with more than 25 years of service who are *prime candidates for retirement in the next few years*.

Assuming *arguendo* that all ten of the potential retirees are PBA members, one needs to get a historical perspective of the sick and termination pay costs over the past several years. Between the beginning of 2000 and the end of 2007 the District has expended a total of a bit less than \$1.9 million. On average, the District was spending about \$265,000 a year in this area.

¹Numbers in parentheses correspond to pages in the transcript.

A review of the fund balance of \$1,180,069 sick and termination pay and the average expenditure over the past seven years suggests that the current balance with no additional funds added is sufficient to fund the next 4½ years.

The report goes on to indicate that in 2007 and 2008 the District intends to add a total of \$550,000 to the fund for sick and termination pay payouts. The additional funds are greater than the average payout over the past seven years.

I must add that higher salaries will increase these payouts since they are calculated based on salary at retirement and not at the time at which they are accrued. However, the District's finances are in sound condition with respect to sick and termination pay.

The auditor's report indicates that \$885,000 of the \$5.8 million General Fund surplus is reserved for *asset forfeiture fund*. It is undisputed that these monies cannot be used for salary increases. However, it is also true that this fund can be used for training, vehicles and certain types of overtime payments. These funds reflect the District's share of asset forfeiture revenue resulting from its work with the Department of Justice after allowable expenditures have been made. At least some of these expenses could have been incurred in the absence of this fund. Under those circumstances, these expenses would have been charged to other budget items and might well have reduced other surpluses.

The largest element of the \$5.8 million General Fund surplus is in the *unreserved-undesignated* fund (\$3,665,497). This money can be used for any purpose deemed appropriate by the Commissioners.

This surplus was in fact reduced to \$1,865,497 in 2007 after the Commissioner appropriated \$995,000 to the police radio project, \$250,000 to the sick and termination pay fund, and \$600,000

to reduce increases in 2007 tax levy.

\$43,000 of the surplus is in the Workers' Compensation fund. A review of the December 31, 2006 financial report (PX4[31]) shows that the actual Workers' Compensation expenditure was about \$28,000 less than the budgeted amount of \$233,000. An accumulated surplus of \$43,000 in this area is significant.

There are two other components to the General Fund surplus. They are relatively small and need not be discussed.

The District agreed that it projected that there would be no deficit for 2007 (211). This suggests that the budgeting was conservative and accurate. In the presence of accumulated surpluses, I must conclude that the District is financially healthy.

This conclusion is based in the data entered as evidence. Moreover, the District did not argue that it is *unable to pay* for reasonable increases in salaries and benefits to the members of the PBA. In sum, in terms of the second criterion of the Taylor Law, I conclude that the District has the *ability to pay* for appropriate improvements in the collective bargaining agreement.

Criterion (c) is based upon a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. It is clear that police personnel are faced with serious and unique hazards. Police personnel, in general, and, in this case, police officers, risk death and serious injuries regularly. There is a strong similarity between police officers and other law enforcement units relative to the specific considerations in this criterion. Thus, this criterion is satisfied when the PBA is compared with other police departments. It should not be surprising that the comparability with respect to

salary and benefit considerations is matched by a comparison with other units within Nassau County and not with other trades or professions. Law enforcement is unique and those employed in this field can only be compared with others in that field.

The final statutory criterion requires a consideration of past collective bargaining agreements between the parties with respect to compensation and fringe benefits. This criterion mandates that the instant proceeding not be viewed in a vacuum, but rather in the context of prior negotiations and awards between PBA and the Port Washington Police District, as well as recent awards and settlements involving other police units in Nassau county. This panel has exhaustively undertaken such a review as part of the instant process.

Having discussed the relevant statutory criteria, I now turn to the parties' specific proposals. The length of the contract is the first issue to consider.

Both parties indicated that a three year successor agreement is appropriate. I concur. The predecessor agreement expired on December 31, 2006. A three year contract will expire on December 31, 2009. These are unsettled economic times and it may be imprudent to require the parties to make a longer term commitment until the implications of either recessionary or inflationary tendencies become clearer. Under the circumstances, an Award with a term of January 1, 2007 through December 31, 2009 is appropriate.

The parties had significant differences over the matter of salary increases. The District proposed annual 3% increases while the PBA sought 5%. In order to assess this matter, one needs to begin by reviewing the maximum salaries in 2006. At that time, the top salary in Port Washington was \$95,012. It ranked eighth when compared to the comparable police departments. The seven police departments with higher maximum salaries had negotiated 4% increases for 2007 (RX2[A]).

It must be added that the police department in Old Brookville was directly below Port Washington in 2006. Its top salary was \$94,554. However, the parties there agreed to a 6.5% increase in 2007(RX2[A]).

Thus, even if the increase in Port Washington is 4%, it will drop down to ninth place in the range of comparable departments. I have reviewed the facts relative to Old Brookville. The parties there concluded a six year agreement that included increases based on CPI in Years 3-5 of the contract (PX3[16]). To the extent that the Old Brookville CBA is to some degree unique, I find it to be more appropriate to focus on the police departments with shorter term agreements and ones that have specified percentage increases. Moreover, the Old Brookville contract was resolved between the parties and not through the process of Interest Arbitration. In the absence of such an award, it is impossible to know of particular factors in that jurisdiction that led to the agreement that was reached.

In sum, a 4% increase for the calendar year 2007 is consistent with the vast majority of the comparable jurisdictions. It is true that the application of such consistency results in Old Brookville moving ahead of Port Washington but the use of comparability in a broad sense is more appropriate than relying on the results of negotiations in a single jurisdiction.

Turning now to 2008, there are fewer settled contracts. Half of the 16 comparable jurisdictions have either completed the process of negotiating agreements or have received Interest Arbitration awards. Of the eight police departments with defined percentage increases in place, the range is 3.9%-4.25%. Old Brookville is again the anomaly in that it relies on CPI with a minimum increase of 3.9%. Exclusive of Old Brookville, the average increase was 4.1% (PX3[21]). Based on the available data concerning comparable jurisdictions, I conclude that a 4% increase in 2007 is

comparable with the salary increases in other Nassau County police departments and will keep the Port Washington Police Department in its current position relative to the other police departments.

The third and final year of the successor agreement will be the 2009 calendar year. There are fewer districts with settled contracts in place for 2009 than there are for 2008. In fact there are five such jurisdictions. The salary increases rang from 3.9 to 4.5%.

The small group of *comparable* districts and the distressed state of the economy suggests less reliance on comparability for the coming year than was the case for 2007 and 2008. It is my view that a slightly smaller increase in salary would be appropriate in 2009 than was the case in prior years. In short, I find that the low end of the small number of comparable districts is appropriate. Therefore, the salary increase for 2009 shall be 3.95%.

A final note on salary increases concerns the statutory requirement to consider the terms of prior collective bargaining agreements between the PYPD and the PBA as well as current agreements between parties in comparable jurisdictions. Between 1986 and 2006, the salary increases in Port Washington have averaged 4.5%. They have ranged from a low of a low of 3.75% per year in 2004-06 to a high of 6.5% in 1986-88.

This 4.5% average must be considered in the context of the contemporaneous agreements in comparable districts and economic conditions at those times. As is evident from the analysis above, I conclude that the appropriate salary increases for the three years of the successor collective bargaining agreement are 4%, 4% and 3.95%. I expect that there will be greater clarity to the general economic situation by the time the 2007-09 contract expires and that there will also be more data available with respect to comparable jurisdictions by that time. Thus, the length of this contract will afford the parties the opportunity to engage in meaningful negotiations in a relatively short time

frame.

A second important *money* issue to be resolved is the adjustment to longevity payments. It would be useful to begin this discussion with an outline of the longevity payments in the expired CBA. As of January 1, 2006, the longevity payments were as follows: In years of service 6-9, \$1175, 10-14, \$2275, in Year 15, \$3500, Year 16, \$3600, Year 17, \$3700, Year 18, \$3800, year 19, \$3900, Year 20, \$4000, Year 21, \$4100, Year 22, \$4200, Year 23, \$4300, Year 24, \$4400, and Year 25, \$4500. There was no increase in longevity payments after Year 25.

The proposals of the parties differed widely. As specifically outlined in the section of this decision devoted to the parties's proposals, the PBA sought to raise the longevity payment in Year 6 to \$1800 and to increase every increment thereafter by \$300. It also proposed a longevity payment in years 30-35 with each of those payments having an increment of \$300 over the prior year. Thus, as proposed by the PBA, the range of longevity payments between years 6 and 35 would have been \$1800 to \$10,500.

By contrast, the District proposed retaining the limit on longevity payment increases at the 25 year mark. It also sought to increase the longevity payments in years 6-9 by \$50, years 10-14 by \$100 and all other longevity payments by \$150.

A review of the comparable districts' longevity payments is revealing. The PWRD longevity payment after six years in 2007 is the third lowest among the 16 comparable jurisdictions. After ten years, there are only five police departments with lower longevity payments. After 15 years, there are six such departments, after 20 years, there are two jurisdictions with lower longevity and after 25 years, there is only one.

In addition to the ranking of the PWRD with respect to the comparable police departments,

it must be noted that the longevity payments in PWPD are consistently below the average of the other 15 jurisdictions. This is true at every level irrespective of the number of years of service required to get the longevity payments.

It is clear that, regardless of basis for the analysis, the comparisons between Port Washington and the other police departments become less favorable in 2008 and 2009. This is true in part due to the fact that some of the comparable jurisdictions have Agreements in place for 2008 and obviously Port Washington does not.

It is apparent that the District's proposal is inadequate to address its relative position when compared with other jurisdictions. At the same time, the percentage of increase sought by the PBA is excessive. For example, the PBA proposal, if granted, would result in its leap-frogging over nine other police departments in the longevity payment after 25 years of service.

Another element to be considered is the matter of there being no longevity payment after the one at Year 25. 13 of the other police department have longevity payments for Years 26-30. The creation of a longevity payment for Years 26-30 would be helpful in narrowing the gap between PWPD and other departments.

The PBA proposed a new longevity payment at Year 35. The creation of a new longevity payment for Years 26-30 is an important improvement in this area. I am persuaded that the inclusion of two such *new* payments is unwarranted at this time. Thus, the PBA proposal for new longevity payments in Years 31-35 is rejected.

When blending the need to improve longevity payments with the District's need to maintain fiscal prudence, I conclude that the following increases in longevity payments are appropriate. In Year 1 (2007), the increase in these payments at the sixth, tenth and fifteenth years will be \$200.

There will be a \$100 increase in the Year 16 longevity payment. There will be no increase in longevity payments in Years 17-24. However, there will be an increase of \$100 over the existing longevity payment at Year 24 in each year of Years 25-30.

In 2008, there will be an increase of \$50 in longevity payments in Years 16-30. There will be no increase in longevity payments in Years 6 through 15. The increases in 2009 will mirror those in 2008. A chart is annexed hereto reflecting these sums.

The PWPDP argued that longevity pay increases in the range of \$50-150 a year are consistent with past settlements and interest arbitration awards. These increases continue to reflect such a consistency.

A third item of financial importance to the parties is the night differential paid to police officers who are assigned to tours between 3:00 PM and 7:00 AM. Here again, the parties' proposals were significantly different.

The PWPDP proposed a one time \$50 increase from \$4650 to \$4700. It intended for the new night differential to be established as of January 1, 2007.

For its part, the PBA requested a 12% of salary differential. It added that officers who miss work as a result of line of duty injuries should continue to receive the night differential.

The analysis here must begin with a discussion of the issue of whether the differential should be a percentage of salary or a flat dollar amount. This difference in approach is not new to these parties. It was an issue that arose in 1992, 1995 and 2001. The arbitration panels in those year rejected the concept. I find nothing in the record that persuades me that the conversion of the night differential to a percentage of salary is justified here. Therefore, the night differential will remain a flat dollar amount.

The second element of this discussion concerns the matter of whether the increase in the night differential should be a one time increase (as of January 1, 2007) or an annual increase during the life of the successor CBA. A review of the record reveals that the night shift differential increases in the PYPD were annual (RX2[K]). This is true irrespective of whether there was an interest arbitration award or a negotiated settlement. The increases ranged from \$100 to \$700, with the preponderance of them being \$100.

I have considered the practices followed in comparable police districts (PX4[27]). First, many of those jurisdictions calculate the differential as a percentage of salary. For reasons previously noted, that approach will not be used here. However, when the percentage of salary approach is used and salaries increase every year, the night shift differential also increases every year. Additionally, in the jurisdictions using a flat dollar amount when determining night shift differentials, the increase is annual.

In fact, there is only one jurisdiction in which the increase in the night shift differential was a one time increase and remained for the balance of the contract. I hasten to add that in that police department, a five year agreement was negotiated and the night shift differential was doubled on the first day of the fourth year of the contract. There was no increase in the first three years and in the fifth year. Thus, the size of the increase in the night shift differential was such that the situation in that jurisdiction was easily distinguishable from all of the other police departments where there were annual increases in night differentials.

Having concluded that the night shift differential is to be a flat dollar amount that is to increase each year of the life of the 2007-09 CBA, I now turn to the issue of the amount of the increase.

After reviewing the night differentials in collective bargaining agreements in the comparable jurisdictions and, where necessary converting the percentages of base pay and/or hourly rates to flat dollar amounts, I have determined that the lowest night shift differential shift differential is \$5200 per annum. The differentials represent a broad range of amounts with many of the police districts having night differentials in excess of \$9000.

Once again there needs to be a balance between considering the data from comparable jurisdictions and fiscal responsibility. In that vein, the night differential will be increased by \$200 per year for each of the three years of the successor collective bargaining agreement.

The next issue to be considered is the Uniform and Maintenance Allowance. The PWRPD proposed a \$25 increase in this area while the PBA indicated that a \$50 increase per year is appropriate.

A review of the information concerning comparable jurisdictions indicates that Port Washington ranks second. Under these conditions, a modest increase is appropriate.

Currently, PBA members receive a \$725 uniform allowance and an \$800 uniform maintenance allowance. Therefore, there will be a \$25 increase in their uniform allowance during each year of the new Agreement. By the expiration date of the successor agreement, there will be parity between the allowances for uniforms and uniform maintenance.

The PWRPD currently contributes \$1745 to the Welfare Fund. The PBA proposed a \$300 increase per year while the District proposed an annual increase of \$25.

The record does not support more than a modest increase in the contribution to the Welfare Fund. I find that the PWRPD proposal is appropriate. The increase to the Welfare Fund will be \$25 in each of the three years of the contract.

The parties were diametrically opposed over the issue of an addition to the number of sick days that can be accumulated and paid out at retirement. Currently PBA members can accumulate a maximum of 400 sick days, 50% of which can be paid out at retirement.

The PBA proposed increasing the number of day accumulated to 420 in Year 1, 440 in Year 2 and 460 in Year 3 of the successor contract. This proposal indicated that 50% of the accumulated days would be paid out at retirement.

For its part, the District indicated that the current contract provision should not be changed. It claimed that there was no evidence that the current provision was out of line with comparable jurisdictions. It added that an increase in this area will adversely affect its finances.

A review of the sick day pay-outs in comparable police districts reveals that the average number of accumulated sick days paid out at retirement is 243 (PX4[26]). 12 of the comparable jurisdictions have a greater number sick days paid out at retirement than is the case in Port Washington.

The District's financial concerns will be addressed by retaining the current contract language in the first year of the new Agreement. There will be an increase to 420 sick days that can be accumulated in the second year. The increase in 20 days will result in a payout at retirement of an additional 10 days.

There will be an increase of an additional 20 days, to a total of 440 days, in the third year of the Agreement. As a result, the payout at retirement will be again increased by 10 days.

In short, the payout at retirement will remain 200 days in 2007. It will increase to 210 days in 2008 and 220 in 2009. This improvement will place the PWPD at the mid-point of the list of 15 comparable jurisdictions.

Health insurance was a major concern of the parties. The PBA stressed that there are no police departments where police officers contribute to the cost of their health insurance.

On the other hand, the District proposed that police officers hired prior to January 1, 2007 pay 25% of the cost of their health insurance and those hired after that date pay 50%. It stressed that the cost of health insurance in the District in 2007 was \$1.05 million and continues to increase (RX4 & RX2[H]). It added the employees of several municipal jurisdictions currently pay for a portion of their health insurance.

There can be no question that the cost of health insurance is a growing concern. Increasing numbers of employers are seeking to have their employees either contribute to the cost of health insurance for the first time or to increase their contribution. The pressure in this area appears to be inexorable.

However, the PBA was accurate when it stated that municipal employees in various areas do pay for part of their health insurance but in no instance do police officers do so. It stressed the unique nature of being a police officer.

Having considered the arguments of the parties, I am persuaded that members of the Port Washington PBA should not contribute to the cost of their health insurance during the life of the successor CBA.

An issue related to the matter of health insurance contributions is the PBA proposal for the District to improve payments for spousal medical insurance. The PWPD objected to any change in this area.

I find that there is no evidence to suggest that current contract language is out of line with that of comparable jurisdictions. In addition, the assertions of the District concerning increasing

costs are relevant here. Therefore, I conclude that there will be no increase in the PWPB payments for the cost of spousal health insurance.

Sick leave abuse is addressed in Appendix B of the 2004-06 CBA. Currently, when an officer reports for his tour and *book off sick*, that instance is not considered an *event* for purposes of identifying sick leave abusers. The District proposed that, under those circumstances, those tours should be considered *events* when determining sick leave abuse. The PBA indicated that there was no need for such a change.

Having considered the arguments, a change in Appendix B is appropriate. When a police officer *book off sick* after having worked at least half of his/her tour, it will not be considered an *event*. On the other hand, if the PBA member works less than half of his tour when s/he *book off sick*, it will be considered an *event* under Appendix B.

The PWPB has 12 hour tours for its police officers. However, it is never been made permanent within the District. Historically, it has been renewed in each contract as Appendix A (*The 12 Hour Tour Agreement*). The PBA proposed that the 12 hour tour be made permanent.

This subject is pending before PERB. However, the parties have agreed that *The 12 Hour Tour Agreement* previously set to expire on December 31, 2003, but thereafter continued for the term of the next successor CBA (1/1/04-12/31/06), shall be further continued for the same term as is covered by this Award.

The PBA had a major concern about establishing a more defined process for the disposition of claims for benefits by its members under General Municipal Law §207c. This is a second subject pending PERB action. However, as part of the instant process, the parties agreed that the following provision should become part of the 2007-09 award and shall become effective upon the delivery

of the Award..

1. To enable the Port Washington Police District (hereinafter referred to as the *District*) and the Port Washington Police Benevolent Association (hereinafter referred to as the *PBA*) to resolve disputed cases of illness or injury (physical or mental) resulting from the performance of official police duties which purportedly occurred while an officer (*employee*) was performing official police duties (pursuant to General Municipal Law §207c), the District and the PBA shall utilize the following nonbinding arbitration procedure:
2. The District may within thirty (30) calendar days of its receipt of written notice of a claimed line-of-duty injury or illness or a claim of a recurrence or aggravation of a prior line-of-duty injury or illness reject said claim by written notice to the employee, or same shall be deemed granted. Upon reasonable notice to the PBA and member, the time to render a decision can be extended for an additional thirty (30) days. The employee may, within fourteen calendar (14) days after the District's rejection of the employee's claim, elect to have the issue referred to an independent arbitrator for a nonbinding recommendation to the District.
3. Prior to submission to arbitration, if the Department's rejection is predicated upon the existence and/or permanence of an injury and/or illness necessitating medical or other lawful remedial treatment (and/or the medical likelihood that such injury and/or illness was incurred in the performance of the tasks alleged by the officer), the employee may forward (with the consent of the PBA), at a shared cost of up to a maximum of \$500 for each party for a review of that determination to an independent medical consulting service (which shall be the service now headed by Dr. Craig Rosenberg). The medical consulting service shall determine (in such case) whether, if necessary, the injury and/or illness exists; if so, the medical likelihood that such injury and/or illness was incurred in the performance of the tasks alleged by the officer; and whether such injury and/or

illness has disabled the officer from performing his/her duties, in whole or in part; and, if only in part, what duties and/or responsibilities could be performed by the officer; and whether such injury and/or illness is permanently or temporarily so disabling; and if only temporarily disabling, the date when such officer should be re-evaluated. The medical consultant, prior to making its determination, shall receive copies of the employee's diagnostic reports, x-rays, lab reports, hospital records, and/or such other clinical evidence as the parties may deem relevant, which would enable the consultant to render its own objective determination. The determination, together with the records upon which it is based, shall be made available to both parties. Such determination shall be advisory to the Department, which shall have the right to accept or reject such determination.

4. If a medical consultant's report is rejected, the following issues may be referred to the independent Arbitrator. The issues to be considered are as follows:

a. Whether a claimed GML §207c illness or injury (physical or mental) exists;

b. Whether a claimed GML §207c illness or injury (physical or mental) was incurred in the performance of duties;

c. Whether an illness or injury (physical or mental) has re-occurred and/or been aggravated; and

d. Whether a claimed GML §207c illness or injury (physical or mental) is, or is no longer, disabling, either in whole or in part, and if in part, with which duties such illness or injury are compatible (i.e., full or light duty).

5. Arthur Riegel shall be designated as the §207c arbitrator. The fee of the arbitrator shall be equally shared by the parties. The parties to the arbitration shall have the right to call, examine and cross-examine witnesses and to present such other evidence as allowed by the arbitrator. The arbitrator shall, within thirty (30) days following the close of the arbitration hearing, issue his report which shall identify the issues involved and his recommendation to the District as to how the issues should be decided. The District shall thereafter have thirty (30) days to

either accept, reject or modify (in part or in whole) the recommendations of the arbitrator, or same shall become binding.

In the event that the District does not accept the advisory opinion of the arbitrator, the rejection shall expressly articulate the basis for such rejection which shall be premised solely upon the following grounds:

The arbitrator's opinion is:

- A. Arbitrary or capricious;
- B. Shocking to the conscience;
- C. Contrary to the evidence;
- D. Obtained in a fraudulent manner; or
- E. Unreasonable.

At any time during the pendency of the proceeding, up to the decision of the District, if any party discovers any relevant additional evidence, such additional evidence shall be fully disclosed to all parties and submitted to the arbitrator or District for consideration in the determination or modification of the decision.

The parties came to an additional voluntary agreement. Three specific Memoranda of Agreement into which the parties have entered shall be incorporated into the 2007-09 Award. These memoranda of agreement are all dated November 29, 2004.

Two of them revise ¶4(b). One established a requirement of a minimum of four years of service in the PYPD before s/he can be assigned to the Detective Division. The second one gave the PYPD the right to make one appointment to the Detective Division regardless of the appointee's number of years of service.

The third Memorandum of Agreement required the creation of a new provision in the CBA, ¶32. The new provision concerned *Off Duty Security Work*.

It is necessary to comment on the proposals set forth by the parties which have not already been discussed in this Award. These proposals include: changes to the provisions concerning PBA Release Time, training time, Field Training Officer/Armorer/ Defibrillator compensation,

Bereavement Leave, Training Days/Payback Time and changes in the calculation of sick day pay outs at retirement. These proposals are rejected.

The PBA had a proposal concerning members promoted to positions outside of the bargaining unit. This proposal was withdrawn and will not be the subject of any comment.

In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent prior interest arbitration awards in arriving at my findings. I believe that this Award properly balances the rights of the members of the PBA to improved wages and benefits with the PWPDP's obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests.

Thus, based on the above, I make the following

AWARD

1. **TERM-** This Award shall cover the period January 1, 2007 through December 31, 2009.

2. **SALARY-** Amend the base salary contained ¶4 of the CBA such that the 2006 salary schedules will be increased by the following percentages:

As of January 1, 2007- 4%

As of January 1, 2008- 4%

As of January 1, 2009- 3.95%

3. **LONGEVITY PAYMENTS-** Amend the longevity payments now contained ¶5 of the CBA such that they will be increased as follows:

As of January 1, 2007- Increase the longevity payments in Years 6 through 15 by \$200 over the prior calendar year. Increase the longevity payment in Year 16 by \$100 over the prior calendar year. In addition using the longevity payment in Year 24 as a base, establish longevity payments in Years 25-30 with there being a \$100 increase over the prior year of service.

As of January 1, 2008- Increase the longevity payments in Years 16-30 by \$50 over the prior calendar year.

As of January 1, 2009- Increase the longevity payments in Years 16-30 by \$50 over the prior calendar year.

See chart attached hereto.

4. **NIGHT DIFFERENTIAL-** Amend Night Differential payments contained in ¶6 of the CBA as

follows:

As of January 1, 2007- Increase the Night Differential by \$200.

As of January 1, 2008- Increase the Night Differential by \$200.

As of January 1, 2009- Increase the Night Differential by \$200.

5. UNIFORM ALLOWANCE AND MAINTENANCE- Amend the payments contained in ¶13 of the CBA as follows:

As of January 1, 2007- Increase Uniform Allowance payment by \$25 with no change in the Uniform Maintenance Allowance.

As of January 1, 2008- Increase Uniform Allowance payment by \$25 with no change in the Uniform Maintenance Allowance.

As of January 1, 2009- Increase Uniform Allowance payment by \$25 with no change in the Uniform Maintenance Allowance.

6. PWPD CONTRIBUTIONS TO THE WELFARE FUND- Amend the payments contained in ¶15 of the CBA as follows:

As of January 1, 2007- Increase the contribution to the Fund per member by \$25.

As of January 1, 2008- Increase the contribution to the Fund per member by \$25.

As of January 1, 2009- Increase the contribution to the Fund per member by \$25.

7. ACCUMULATED SICK DAYS AND PAY-OUT AT RETIREMENT- Amend the provisions contained in ¶7 of the CBA as follows:

As of January 1, 2007- No change in the provision.

As of January 1, 2008- Increase the number of maximum number of sick days that can be accumulated to 420 days and the maximum number of sick days to be paid out at retirement to 210.

As of January 1, 2009- Increase the number of maximum number of sick days that can be accumulated to 440 days and the maximum number of sick days to be paid out at retirement to 220.

8. HEALTH INSURANCE CONTRIBUTIONS- The terms of ¶14 of the CBA shall remain unchanged for the life of the 2007-09 Award.

9. SPOUSAL MEDICAL INSURANCE- The terms of ¶14 shall remain unchanged for the life of the 2007-09 Award.

10. SICK LEAVE ABUSE- Amend Appendix B of the CBA such that PBA members who report for duty and *book off sick*:

a. If the officer works more than half of his tour, the incident will not be considered an *event* for the purpose of identifying Sick Leave Abuse.

b. If the officer works less than half of his tour, the incident will be considered an *event* for the purpose of identifying Sick Leave Abuse.

11. TWELVE HOUR TOURS- Modify ¶19 and Appendix A as follows: *The Twelve Hour Tour Agreement set to expire on December 31, 2003 and continued for the term of the January 1, 2004-*

December 31, 2006 CBA shall be further continued for the same terms as is covered by this Award.

12. **GENERAL MUNICIPAL LAW §207C-** The agreement of the parties set forth in discussion portion of this document are awarded for the period 2007-09.

13. **INCORPORATION OF PREVIOUSLY AGREED TO MEMORANDA OF AGREEMENT IN THE 2007-09 COLLECTIVE BARGAINING AGREEMENT-** The following three Memoranda of Agreement dated November 29, 2004 are hereby incorporated in the 2007-09 Award: 1. the revision of ¶4(b) such that appointees to the Detective Division will be required to have completed a minimum of four (4) years of service in the PYPD, 2. the revision of ¶4(b) granting the PYPD the right to make one (1) appointment to the Detective Division irrespective of the appointee's number of years of service on the PYPD, 3. the establishment of a new ¶32 concerning *Off Duty Security Work*.

14. **TRAINING DAYS-** The proposals are denied except that the PYPD shall have the option of assigning members to three (3) eight hour shifts of training as opposed to two (2) twelve hour shifts of training.

15 All other proposals of the parties are denied.

Dated: June , 2008
Hewlett Harbor, NY



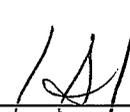
ARTHUR A. RIEGEL
CHAIR, INTEREST ARBITRATION PANEL

AFFIRMATION

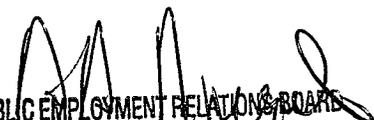
STATE OF NEW YORK)
COUNTY OF NASSAU)

I, Arthur A. Riegel, Esq., affirm that I am the individual describe in and who executed the foregoing instrument which is my Opinion and Interest Arbitration Award.

As requested.



ARTHUR A. RIEGEL, ESQ

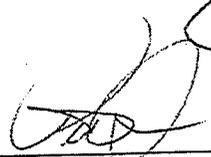

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

JUL 10 2008

EMPLOYER PANELIST

I, Peter A. Bee, Employer member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|---|--------|---------|
| 1. Term- | Concur | Dissent |
| 2. Salary Increase- | Concur | Dissent |
| 3. Longevity Payments Increase- | Concur | Dissent |
| 4. Night Shift Differential Increase- | Concur | Dissent |
| 5. Increase in Uniform Allowance and Maintenance- | Concur | Dissent |
| 6. Increase in Welfare Fund Contribution- | Concur | Dissent |
| 7. Increase Sick Day Accumulation & Sick Day Payout at Retirement- | Concur | Dissent |
| 8. Increase in Employee Contribution for Health Insurance- | Concur | Dissent |
| 9. Increase in Spousal Health Insurance- | Concur | Dissent |
| 10. Modification in Sick Leave Abuse Program- | Concur | Dissent |
| 11. Continuation of Twelve Hour Tours- | Concur | Dissent |
| 12. Procedures under General Municipal Law § 207c- | Concur | Dissent |
| 13. Incorporation of prior Memoranda of Agreement into 2007-09 CBA- | Concur | Dissent |
| 14. Training Days- | Concur | Dissent |
| 15. Rejected PWPB proposals- | Concur | Dissent |
| 16. Rejected PWPBA proposals- | Concur | Dissent |


8/16/08
PETER A. BEE, ESQ.

EMPLOYEE PANELIST

I, William Diebold, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- 1. Term- Concur Dissent
- 2. Salary Increase- Concur Dissent
- 3. Longevity Payments Increase- Concur Dissent
- 4. Night Shift Differential Increase- Concur Dissent
- 5. Increase in Uniform Allowance and Maintenance- Concur Dissent
- 6. Increase in Welfare Fund Contribution- Concur Dissent
- 7. Increase Sick Day Accumulation & Sick Day Payout at Retirement- Concur Dissent
- 8. Increase in Employee Contribution for Health Insurance- Concur Dissent
- 9. Increase in Spousal Health Insurance- Concur Dissent
- 10. Modification in Sick Leave Abuse Program- Concur Dissent
- 11. Continuation of Twelve Hour Tours- Concur Dissent
- 12. Procedures under General Municipal Law § 207c- Concur Dissent
- 13. Incorporation of prior Memoranda of Agreement into 2007-09 CBA- Concur Dissent
- 14. Training Days- Concur Dissent
- 15. Rejected PWRP proposals- Concur Dissent
- 16. Rejected PWPBA proposals- Concur Dissent

William Diebold
WILLIAM DIEBOLD.

SCHEDULE OF LONGEVITY PAYMENTS

<u>STEP</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
6	\$1175	\$1375	\$1375	\$1375
7	\$1175	\$1375	\$1375	\$1375
8	\$1175	\$1375	\$1375	\$1375
9	\$1175	\$1375	\$1375	\$1375
10	\$2275	\$2475	\$2475	\$2475
11	\$2275	\$2475	\$2475	\$2475
12	\$2275	\$2475	\$2475	\$2475
13	\$2275	\$2475	\$2475	\$2475
14	\$2275	\$2475	\$2475	\$2475
15	\$3500	\$3700	\$3750	\$3800
16	\$3600	\$3700	\$3750	\$3800
17	\$3700	\$3700	\$3750	\$3800
18	\$3800	\$3800	\$3850	\$3900
19	\$3900	\$3900	\$3950	\$4000
20	\$4000	\$4000	\$4050	\$4100
21	\$4100	\$4100	\$4150	\$4200
22	\$4200	\$4200	\$4250	\$4300
23	\$4300	\$4300	\$4350	\$4400
24	\$4400	\$4400	\$4450	\$4500
25	\$4500	\$4500	\$4550	\$4600
26	\$4500	\$4600	\$4650	\$4700
27	\$4500	\$4700	\$4750	\$4800
28	\$4500	\$4800	\$4850	\$4900
29	\$4500	\$4900	\$4950	\$5000
30	\$4500	\$5000	\$5050	\$5100
30+	\$4500	\$5000	\$5050	\$5100

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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

-between-

PERB Case No. IA2006-041;
M2006-217

PORT WASHINGTON POLICE BENEVOLENT
ASSOCIATION,

“Petitioner or PBA”

CONCURRING
OPINION OF PORT
WASHINGTON PBA
PANEL MEMBER
WILLIAM DIEBOLD

-and-

PORT WASHINGTON POLICE DISTRICT,

“Respondent or District”
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As the union’s representative on the Panel in this Interest Arbitration, I first wanted to thank both the Panel Chairman, Arthur Riegel, and Port Washington Police District Panel Member, Peter Bee for their hard work and cooperation in fashioning the majority opinion of the Award. The capable assistance of Chairman Riegel in helping the parties reach temporary resolution of the work schedule and 207-c issues made the process successful and helped reduce the amount of any delay while we waited for the Public Employment Relations Board to issue an opinion on the charge filed by the District challenging the arbitrability of these two issues. At the same time, his steady hand in fashioning the remedy and his well-written opinion must be complimented.

I offer this Concurring Opinion for several reasons. While we signed off on the majority of the Panel’s Award, to some extent we were constrained to do so. The Port Washington Police Department is a unique body not handicapped by the multiple layers of government and is in

existence purely to provide police protection to the residents who live within its boundaries. As such, the services provided to District residents are significant yet are provided at a lower cost than services provided to other municipal entities. As a consequence, the salary and benefits of Port Washington Police Department members should be second to none.

However, Police Departments, contractual entitlements, and the work performed by its members do not happen overnight. The District lags behind in longevity and shift differential. Members of the Department deserve a more substantial increase in both areas, particularly in light of the fact that the Panel has taken the unusual measure in Port Washington of issuing a three (3) year contract. However, the increases provided during the term of the Award are significant enough for the PBA to sign off on them along with that provided for the uniformed allowance and the welfare fund contribution. The increase in the retirement sick leave payout also is significant. However, although the Panel declined to order health insurance contributions, providing some relief to members of the PBA, the Panel should have granted health insurance for members to their spouses who die in the line-of-duty spouses needs to be remedied and will be a focus in the next round of bargaining. Also, the PBA will also seek to permanentize the 12-hour tours so that it is not held over the PBA's head every time they go to the bargaining table.

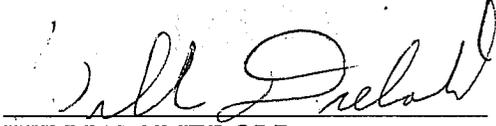
As I expressed earlier, the temporary resolution of the 207-c procedure is a help, particularly since the Award was not substantially delayed while we awaited the determination of the District's Improper Practice Charge before PERB. However, the process still has far too many layers. Although it makes the playing field more level, a member of the Department who is injured in the line-of-duty who is either not popular with the police administration or has borderline injuries, still has an up hill battle which could be costly if the District decides to string the case out by rejecting arbitrator or medical evaluators' decisions. Although this "short fix"

was signed off in this contract, it will not deter the PBA from seeking a fairer procedure in the next round. The District will be carefully monitored to ensure that it does not continue to abuse these vital statutory rights of police officers.

The other proposals rejected by the Panel including increased PBA release time, training time, field training officer/armor, defibrillator compensation, enhanced bereavement leave, training days and pay-back time and calculations of sick day payouts at retirements are important to the PBA and are benefits enjoyed by many other departments within the universe of comparison of the Port Washington Police District. Although they were rejected this time, the PBA will continue to seek their negotiation/awards in the future.

On the whole, the process worked to the benefit of all parties. Once again, I would like to thank Arbitrator Riegel for his patience and assistance in the arbitration process.

Dated: Port Washington, New York
June 16, 2008


WILLIAM DIEBOLD