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PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration between

Town of Haverstraw,

Public Employer,

-and-

Haverstraw Town PBA, Inc.,

Employee Organization.

AWARD OF PUBLIC
ARBITRATION PANEL

CONCILIATION

PERB Case No.: IA2008-009; M2007-303

BEFORE: Louis J. Patack, Esq.
Public Panel Member and Chairperson

Ronald A. Longo, Esq.
Public Employer Member

Keith I. Braunfotel, Esq.
Employee Organization Member

APPEARANCES:

For the Town of Haverstraw:
Keane & Beane, P.C.
Lance Klein, Esq., of Counsel

For the Haverstraw Town PBA, Inc.:
Braunfotel & Frendel, LLC
Scott D. Frendel, Esq., of Counsel

BACKGROUND

The Town of Haverstraw ("Town") is located in Rockland County. It has a population of around 35,000, and covers an area of 22.4 square miles. The police department has 73 officers,

who, with the exception of the Chief of Police and Lieutenants, are represented by the Haverstraw Town PBA, Inc. ("PBA").

The parties' last collective bargaining agreement expired on December 31, 2002. Subsequently, terms and conditions of employment for PBA bargaining unit members were established by two interest arbitration awards, one covering the period 2003-04, and the other 2005-06.

When the parties were unable to negotiate an agreement to take effect on January 1, 2007, an impasse was declared and the parties proceeded to mediation. When mediation did not succeed in producing an agreement, the PBA, on June 2, 2008, filed a petition for interest arbitration with the State Public Employment Relations Board ("PERB"). The Town filed a response on July 9, 2008.

On November 21, 2008, Richard A. Curreri, PERB Director of Conciliation, designated the undersigned chairperson, together with Ronald A. Longo, public employer member, and Keith I. Braunfotel, employee organization member, to serve as the public arbitration panel to resolve the dispute.

The arbitration panel conducted a hearing at the Haverstraw Town Hall on March 19, May 11 and 12, and June 8, 2009. The Town was represented by Lance Klein, of the law firm Keane & Beane, P.C., and the PBA by Scott D. Frendel of the firm Braunfotel & Frendel, LLC. At the hearing the parties offered evidence through witnesses and documents, and made arguments in support of their positions. A stenographic record of the hearing was made.

Following the hearing the panel members met in executive session on June 17 and 25, 2009.

During the executive session meetings the panel members thoroughly discussed the parties' proposals, and the evidence produced and issues discussed at the hearing.

In considering the proposals, the panel members, as required, applied the following criteria of Section 209.4 of the New York Civil Service Law:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

At the urging of the chair the Town and PBA panel members agreed to prioritize issues and concentrate the panel's efforts on what each party considered its most important proposals, leaving others for subsequent negotiations. Although the panel members strongly advocated for their respective parties, both made serious efforts to resolve this matter. Ultimately, however, and as reflected in the awards made below, consensus could not be reached on all items.

What follows is a summary of the evidence received at the hearing and the arguments made in relation to the statutory criteria, the panel's attempts at integrating both, and the discussion of, and awards made in connection with, specific proposals. While the arbitration award constitutes the findings of the panel, the opinions and language contained herein are those of the chair.

COMPARABILITY

In making its award, the panel is required to compare the wages, hours and employment conditions of the Town to those in comparable communities.

The PBA contends that the panel should compare Haverstraw to the other towns in Rockland County. These include Clarkstown, Orangetown, Ramapo and Stony Point.

Sareena M. Sawhney, a senior manager with the accounting and consulting firm, Marks Paneth & Shron, LLP, testified for the PBA on the issues of comparability and ability to pay.

Sawhney explained that the basis for comparing Haverstraw to the other Rockland towns was that the arbitrators in the parties' 2003-04 and 2004-05 interest arbitrations both used only Rockland municipalities, and that it was her understanding from these awards that using only the Rockland towns has been the practice for the past 25 or 30 years.

The Town argues that Clarkstown, Orangetown and Ramapo are not similar to Haverstraw, although Stony Point is, and that there are several towns in the neighboring counties of Westchester, Putnam and Orange, to which Haverstraw is more accurately compared. These include Carmel, Eastchester, Greenburgh, Harrison, Mamaroneck, Mount Pleasant, Newburgh, Ossining, Warwick and Yorktown.

The Town maintains that there has never been a good reason for refusing to consider municipalities in other counties, and that other interest arbitration panels regularly do so.

The Town introduced several charts containing statistical information on the towns it contends are both comparable to and different from Haverstraw. The charts include figures on population, square mileage, size of police force, crime rates, real property tax revenues, median home values and median family income. The Town argues that an examination of these charts supports its argument that Clarkstown, Orangetown and Ramapo, although not Stony Point, have

different demographics than Haverstraw, while the towns to which it refers are much closer to Haverstraw in terms of population, real property taxes, home values, family income, and other measures, and should be used by the panel when considering matters of comparability.

The awards in the prior two interest arbitration proceedings were received into evidence. Howard Edelman was the panel chair in the 2003-04 case, and Peter Prosper, in the 2005-06 proceeding. Both compared Haverstraw to only Rockland towns and villages.¹ Edelman quoted at length from a 1999 Haverstraw interest arbitration award written by arbitrator Joel Douglas, in which he discussed the over 25-year history of using only Rockland County municipalities as comparables. In addition to his discussion of the parties' "custom and longstanding practice," Douglas also cited as another factor for using only Rockland municipalities that "[d]ue to its geographical limitations as one of the smallest of counties in New York State the County is relatively homogeneous and compact" (PBA Exhibit 3, p. 8)

The arguments the Town made before the Prosper arbitration panel are the same as it makes here, and in that proceeding it offered as comparables the same towns, with one exception, that it contends should be used here.

Prosper, as had been suggested by Edelman, wrote that just because the comparability standard used by the parties, or perhaps more accurately, by interest arbitrators, had not changed in thirty years did not mean that it can never change. Prosper agreed with Edelman, however, that only significant changes in the demographics and other data relative to the towns offered as comparables by Haverstraw would warrant using those towns as comparables. Prosper did not find that the Town offered evidence of such changes

¹ In the prior two proceedings, the PBA argued that both Rockland towns and villages should be used as comparables, while here it has limited the field to only towns.

Prosper added that another factor arguing in favor of using only Rockland County municipalities is that it appears that at some point in time the parties agreed that Rockland County represents a discrete labor market, within which the various County municipalities compete for employees, and attempt to have wages and benefits in line with their counterparts.

The panel agrees with the previous Haverstraw arbitrators that the practice of using Rockland municipalities as comparables should not be discarded without good justification.

Adding to what those other arbitrators have said, another reason for concentrating on Rockland towns is that they are all part of the same county government, and, in that respect, share the benefits and burdens of being part of that government.

While the Town is certainly correct that panels often venture outside a county for comparables, the reason for doing so often appears to be that there are no even arguably similar municipalities within the county. That might be true, for example, in more rural counties, or where there is only one large city in a county. It is also the case, however, that panels often refuse to consider as comparables municipalities that are thought to be too geographically distant from the town, village or city under consideration.

The question becomes whether the data provided by the Town support its argument that the non-Rockland towns it has proposed, together with Stony Point, should be used instead of Clarkstown, Orangetown and Ramapo, or, at a minimum, should be added to the discussion.

The chart on "comparable communities data" submitted by the Town (Town Exhibit 1) provides figures on several areas of interest. These figures can obviously be analyzed in myriad ways, but two of the most relevant categories, at least in terms of what taxpayers can afford to pay, are median home value and family income.

For home values, the median of the twelve towns selected by Haverstraw as comparables (including Haverstraw) is \$255,400, and of the three non-comparables, \$255,700,² while the averages (of the median values) are \$305,108 and \$250,733 respectively.

For family income, the median of the Town's comparables is \$90,508, and of the non-comparables, \$87,341, and the averages, \$87,812 and \$82,057 respectively.

Examining these figures shows that both home values and family income for the Town's comparables and non-comparables are relatively close, and that both are substantially higher than for Haverstraw, where the median home value is \$187,600, and family income, \$53,850.

The Town might argue that the category of real property taxes should also be taken into account. Here, the median of the Town's comparables is \$18,872,746, and of the non-comparables, \$51,171,904, and the averages, \$20,271,000 and \$60,005,000 respectively.

Taxes for the Town's comparables are certainly much closer to those for Haverstraw (\$20,985,000) than they are for the non-comparables. It might be argued, however, that the Town's non-comparables have generally higher populations and larger police forces.

While, as noted above, there might be numerous ways to analyze the figures presented by the Town, given the similarities between the Town's comparables and non-comparables, there is no justification for discarding the Rockland towns as comparables, and they remain the panel's principal focus. But these similarities also argue for giving consideration to the non-Rockland towns, and, as evidenced below, this has been done.

² The median is the middle figure in a set of numbers ranked from highest to lowest, or, where there is an even number of figures, the average of the two middle figures. The median is a useful statistical measure, because it reduces the impact of a few unusually high or low numbers in a set of figures where the other numbers are more closely grouped together.

ABILITY TO PAY

There is general agreement between the parties that the Town has the ability to pay a certain level of raises and benefits. Of course the PBA believes the Town can well afford to meet all of its proposals, while the Town points out that while it has been very careful in managing its finances, it can afford only modest increases. The Town emphasizes that it is not a wealthy community, its taxpayers are already overburdened, and it faces the possibility of a huge liability due to a recent grievance filed by the Mirant Corporation, a power company, challenging its real property assessment.

Sawhney testified that the Town has the ability to pay salary increases ranging from 11% to 15% for the two-year period covered by this award, and, at the same time, fund the PBA's other proposals. A report she prepared on this issue, and others, and a revised version, were received into evidence as PBA Exhibits 11 and 17 respectively.

Sawhney used figures from the Town's 2007 audit report, claiming it was the latest set of financials received by the PBA. She focused on the Town's general fund equity balance, which is the difference between assets and liabilities. She explained that the fund equity balance consists of reserved and unreserved portions, that the reserved balance is already committed for specific expenses, and that, after subtracting the reserved balance from the total, one is left with the unreserved fund balance, which is money available for spending at the end of the year.

According to Sawhney's analysis, as of December 31, 2007, the Town had an unreserved fund balance of \$9.2 million, an amount available for spending in 2008, and which figure exceeds the maximum recommended to be held in reserve. This figure was the primary basis for Sawhney's conclusion that, as of December 31, 2007, the Town was "in strong financial health"

(Transcript, 145). She also believed, based upon preliminary numbers, that the unreserved fund balance would increase to \$10 million by the end of 2008.

Sawhney testified to other indicators of the Town's financial strength, including the growth of the equity fund balance over the past several years, a favorable "current ratio" (ratio of cash and investments to current liabilities) as of the end of the 2007 fiscal year, the fact that actual general fund revenues exceeded budgeted revenues in 2007, and that sales and use taxes, and departmental income have increased, and could be expected to continue to grow in 2008 and 2009.

Sawhney testified that a review of the Town's budgets from 2006 through 2009 indicates that the Town has already factored in increases for PBA members by increasing the budget for police personnel by a total of \$1.4 million over that period. She agreed, however, that she could not say for certain that all this money was targeted for raises. In fact, as she admitted on cross-examination, although the Town budgeted \$7.5 million for police personnel in 2007, it actually spent \$7.9 million, none of which went to pay raises, since they are the subject of this proceeding.

Asked on cross-examination what percentage of the December 31, 2007, unreserved fund balance her suggested increases for both years would be, Sawhney estimated that they would be seven percent of the \$9.2 million figure. She clarified this figure, saying that the seven percent related to just salary raises. On cross-examination, Sawhney was asked about the current ratio, and agreed that it did not indicate the extent of the Town's long-term debt. She made the point, however, that it was not necessary to look at that figure to determine the Town's ability to pay the proposed salary and benefit increases. She emphasized that salary and benefit increases represent short-term liability, and that the current ratio shows that the Town is in a very liquid

financial position, having excessive cash to meet current liabilities. She also suggested that the Town has its large unreserved fund balance, notwithstanding that it makes annual payments on its long-term debt.

Finally, on cross-examination, Sawhney acknowledged that her recommendations on salary and benefit increases were made in terms of percentages, and not the dollar cost of the PBA proposals. She continued to maintain, however, that if one were to cost out the proposals, and taking into account salaries, longevity and clothing allowance, they would still amount to only eight percent (not the seven percent for salaries alone) of the December 31, 2007, unreserved fund balance.

Supervisor Howard Phillips and Director of Finance Michael Gamboli testified for the Town on the issue of its ability to pay.

Phillips discussed the Mirant real property assessment litigation. He testified that the lawsuit, commenced in 1995, was resolved in 2006 with a court ruling that greatly reduced the assessed values of Mirant's two power plants. According to the Supervisor, because of the reduction the North Rockland Central School District, which encompasses almost all of Haverstraw, and the Town of Stony Point, was required to sharply increase school taxes.

In addition to the impact of the litigation, Mirant closed its Lovett plant, resulting in the loss of \$10 million in property taxes. The result is that North Rockland will now be required to further increase school taxes.

Phillips testified that the impact on home owners is magnified because there are different tax rates for homeowners and commercial properties, and that without the Lovett plant, a disproportionate portion of real property school taxes will be borne by homeowners.

Finally with Mirant, Phillips explained that the company could be expected to challenge its Bowline plant assessment in May, the time when such a proceeding could be commenced. (When Gamboli testified in June, he confirmed that Mirant, in May, did file a grievance seeking to reduce the assessment on its remaining Town properties.)

Phillips commented that the School District has been forced to eliminate about 75 positions over the past three years, and that although the workload for all Town employees has greatly increased, he has not been able to hire new staff for many years.

Phillips testified about the fact that, for various reasons, including its location, it is very difficult to attract new businesses to Haverstraw.

Phillips discussed what he sees as the continuing impact of the Town absorbing the Village of Haverstraw police department in 2006. He testified that the expenses incurred as a result of the merger are not nearly met by the additional tax revenues received from Village properties.

Phillips responded to testimony from Sawhney that the Town golf course has been a significant source of income. He explained that when all expenses are considered, not just those that appear on the listing of current revenues and expenses, the course is not a money-making proposition.

In addition to the golf course, the Supervisor explained that the Town's Bowline Park operates at over a \$300,000 annual deficit.

Sawhney testified that sales tax revenues from the County could be expected to increase, but Phillips was of the opinion that they would decrease. Phillips explained that the only reason that these revenues increased in 2008 is because, for reasons not important here, the Town was

able to negotiate to receive a greater percentage than it had been receiving of the sales taxes. His assumption, however, is that due to the poor economy sales in general will be down.

Phillips discussed the \$9.2 million unreserved fund balance, and testified that because of the uncertain financial impact of the various Mirant issues, the Town, over the past several years, has built up this surplus. He also explained that the surplus has been increased in order to pay off the debt incurred from the purchase of certain Letchworth Village property, and as a hedge against unforeseen major capital expenses.

On cross-examination, Phillips agreed that tax revenues received in 2007 and 2008 were greater than budgeted figures. He also agreed that the unreserved fund balance increased between 2007 and 2008, and that, despite the economy, there were increases in other revenue streams, including the golf course, from 2007 to 2008.

Asked about the Letchworth Village property, Phillips testified on cross-examination that although the Town is currently using unreserved fund balance dollars to make payments on the bond anticipation note being used to fund the purchase price, it will pay off the note once the property is sold. Phillips conceded that although the Town has had offers to purchase, they have been rejected. He explained that one substantial offer had been withdrawn, and that the other offers to date have been far below what the Town believes the property is worth. The Town, therefore, is waiting until the real estate market improves in the expectation that it will then be able to sell at a favorable price.

Phillips, on re-direct examination, testified that the Town anticipated using the Letchworth proceeds to retire the \$28 million Mirant bond. He also testified that although there had been certain revenue increases between 2007 and 2008, they were negligible.

Finance Director Gamboli provided further detail on some of the matters already addressed. Discussing the \$28 million Mirant bond, Gamboli testified that the Town pays \$1.1 million annually in principal and interest, but that this amount is part of the budget, and paid from tax revenues.

Gamboli provided examples of the steep increase in both school and local taxes paid by both homeowners and businesses over the past few years.

He also testified from a chart that the amount of taxes levied, or billed, by the Town, after steadily rising since 2001, decreased somewhat in 2007 and 2008, but then increased again in 2009 (Town Exhibit 25). Asked how tax rates could increase, but levies go down, he explained that this seeming disparity was a result of the property reevaluation process.

Gamboli was asked how the award made by this panel would be funded, and replied that it would be paid out of the 2009 unreserved fund balance, since it has not been budgeted. He explained that the \$1.4 million which Sawhney assumed had been budgeted for increases in police salaries and benefits was not just for anticipated raises, but was placed in the budget to also cover unknown salary-related expenses, including those resulting from the takeover of the Village police force.

Gamboli testified about the impact of the police department on the Town's budget, and explained that total police expenses as a percentage of the general fund have increased in recent years, and now account for over half the general fund. He attributed much of the increase to the takeover of the Village force.

Gamboli gave his calculation of what an 11% proposed salary increase would cost. He based his figures on the fact that the total for police salaries paid in 2007 was \$8 million. Using that figure, and adding in 5.5% increases for both 2007 and 2008, he calculated that it would take

\$1.344 million to fund an 11% award for the two years. He explained that in addition to the \$1.344 million in retroactive pay, it would take another \$904,000 to fund the 2007 and 2008 increases in 2009. The total, therefore, for the three years would be \$2.248 million, all of which would come from the unreserved fund balance.

Gamboli also contended that the fund balance is not the \$9.9 million shown on the State Comptroller's report (PBA Exhibit 18), but only \$9.7 million, due to a mistake he knows exists.

According to Gamboli, an 11% increase over two years would cost an additional \$299,000 in retirement contributions, and a possible increase in Social Security and Medicare contributions. He also testified that an unanticipated retirement issue will cost the Town another, unbudgeted, \$850,000, although he conceded that the amount might be able to be paid out over ten years.

Gamboli noted that he only computed the cost of salary increases, and not the cost of funding the PBA's other proposals.

Responding to Sawhney's claim that the Town enjoyed a favorable "current ratio," Gamboli discounted the value of that measure, saying that the Town's current liabilities are not contained in its financial statements. He argued that the \$26.8 million Mirant bond, for example, is considered a short-term debt.

On cross-examination, Gamboli, commenting on the tax levies shown on Town Exhibit 25, testified that the Town usually collected slightly more than the budgeted levies. He agreed, however, that for the 2007 general fund, the Town collected a little over \$10,000 more than the budgeted tax levy, and for 2008, around \$19,000 more.

Also, on cross-examination, Gamboli agreed that for 2007, general fund revenues exceeded budgeted expenditures. Questioned about the police salary figures, he agreed that the

figures to which he had referred included positions not represented by the PBA, such as the chief, lieutenants, dispatchers and secretaries.

Finally on cross-examination, Gamboli was asked about an agreement the Town recently entered into with the County Solid Waste Management Authority under which it will receive fees for collecting garbage. He testified that he was unable to estimate the income that would be generated by this activity.

It bears repeating that the Town does not contend that it cannot afford modest increases in pay and benefits. Its argument is that it is not in a financial position, especially in this precarious economy, that would warrant its being required to fund the PBA's proposals, which it considers to be anything but modest.

Based upon all the evidence discussed above, the panel believes the Town has the ability to pay reasonable increases in wages and benefits, ones that are in line with those provided not just in the Rockland County towns, but in municipalities throughout the state.

Haverstraw, while not a wealthy community, has government leadership which appears to have been particularly careful in managing its finances. Despite the funding of principal and interest on its Mirant debt, the Town still has been able to maintain, and in fact increase, its unreserved fund balance, or surplus. The Town also has the Letchworth Village property, which, although it reasonably does not want to sell in the current real estate market, will almost certainly sell at some point in time for an amount sufficient to either retire or at least significantly reduce the Mirant debt. The Town argues that what might occur in the future does not help its current financial position, but it does respond, at least in part, to the Town's repeated suggestion that it might be required to use current funds to pay off the Mirant loan. The other part of the response is that the evidence suggests that the Town will be able to continue to finance the debt.

Sawhney believed that it might take 8% of the surplus, estimated to be between \$9 and \$10 million, to pay retroactive increases at the 11% lower-end of the range of the PBA's basic salary increase proposals. Using Gamboli's figures, and again using 11%, retroactivity would consume about 14% of the unreserved balance.³

The record supports a finding that the Town has set aside a significant portion of the award's increases.⁴ Gamboli testified that this money was added to the budget to cover unanticipated expenses, but did not explain what those expenses totaled for the two years covered by the award.

There is no question but that North Rockland school taxes have increased dramatically over the past few years as a result of the Mirant litigation, and that they might go up again at some point in the future due to the company's most recent challenge to its assessment. Town taxes appear to have remained relatively stable, however, and the evidence presented by the Town does not suggest that the raises provided below will require any appreciable increase in those taxes.

The Town has made a point that the percent of the Town's general fund devoted to overall police department costs has steadily risen since 2000, to the point where it is now over 50% of the general fund (Town Exhibit 27). There was no evidence offered, however, to suggest that this trend is different from that in any of the other towns referred to by either party. But the fact that a disproportionate amount of the Town's resources appear to be devoted to the operation

³ Gamboli also estimated the 2009 cost of raises provided in 2007 and 2008. While the panel is sensitive to the fact that all raises continue to have a carry-over effect, 2009 salaries are more appropriately addressed in negotiations for a contract to take effect upon the expiration of the term of this award.

⁴ The \$1.4 million figure testified to by Sawhney includes \$400,000 for 2009, and to be consistent with footnote 4, that amount is not factored in here.

of the police force does not support a conclusion that the Town is without the ability to pay the increases provided herein.

In conclusion, then, the panel believes, based upon the totality of the evidence produced at the hearing, that the Town does have the ability to pay the awarded increases.

OTHER RELEVANT STATUTORY CRITERIA

In addition to comparability and ability to pay, CSL § 209.4 also requires the panel to consider the unique aspects of the Haverstraw police officer's job, and the interests and welfare of the public.

Starting with the latter, the panelists agree that the public is best served when the salaries and benefits afforded PBA members reflect the hazardous nature of their work, but at the same time are sensitive to the real financial strains, especially during the current economic downturn, being felt by the Town's taxpayers.

As to the role of the police officer, although there might be serious arguments over what constitutes appropriate salary and benefit levels, there is no dispute when it comes to an appreciation of the hazardous nature of police work. Any officer who walks a beat, rides in a car, or responds to a call regularly puts his or her life on the line.

The PBA makes the point that the Village of Haverstraw is a particularly difficult area to police, having a disproportionately high level of drug and gang activity. The PBA is also of the opinion that the police department is understaffed, and that, as a result, police work is more dangerous than it might be if more officers were employed.

While Chief Miller is clearly supportive of his police force, he also believes that, in the end, all police work is pretty much the same – it is simply a very dangerous business.

Taking into account the evidence presented on the nature of Haverstraw police work, the panel is unable to conclude that it is more difficult than that performed in other areas to such a degree as to warrant special consideration in making awards on salaries and benefits.

PROPOSALS

Although both parties submitted numerous proposals to arbitration, as is common in interest arbitration proceedings, some were not addressed during the hearing. At the executive sessions, as mentioned earlier, the parties, again as is often the case, focused on even fewer items. The result is that this award deals with five proposals. They include the PBA's on salary, longevity, rank differential and night shift differential increases, and the Town's proposal on the creation of a line-of-duty injury procedure.

It should be clearly understood that while it is necessary to limit the issues being considered in interest arbitration, the issues not addressed here are still of importance to the parties, and can be expected to be addressed at upcoming negotiations.

The proposals and their resolution by the panel are as follows:⁵

1. Salaries – The PBA requests increases of 10% for both 2007 and 2008. At the hearing, the Town proposed a 2% raise for each year.

Sawhney testified that Haverstraw officers would have to receive salary increases of, at a minimum, between 11% and 15%, depending upon rank, over a two-year period in order to be brought up to the average salaries being earned by their counterparts in the four Rockland County towns to which she compared Haverstraw.

⁵ The chair concurs with all the awards, and the other panel members indicate whether they concur or dissent following each award.

The Town argues that although prior arbitrators have used Rockland County towns as comparables, none have suggested increases that would bring Haverstraw salaries up to what is earned in those towns. As discussed above, the Town also maintains that it cannot afford the level of raises awarded here, especially when they are combined with the awards on longevity and differentials.

Finally, the Town points to the latest settlement entered into between the North Rockland Central School District, which includes most of Haverstraw, and its teachers' union (Town Exhibit 20). The contract, covering the four-year period beginning July 1, 2007, contains annual salary increases of 0-2%, 3%, 3.5% and 4%. In addition to the raises, those teachers still moving through the salary schedule receive annual increments averaging about 2%. The settlement also increases employee health insurance contributions.

The panel agrees that, especially in this economy, Haverstraw officers should not expect to receive raises that would significantly close the gap between their salaries and those received in the other Rockland towns. Even when the economy has been stronger, previous Haverstraw arbitrators have not sought to do this; and other interest arbitrators view it as a legitimate goal to maintain the salary and benefit relationships among comparables.

According to both parties, salary increases for Clarkstown, Orangetown, Ramapo and Stony Point have averaged about 3.5% to 4% in 2007 and 2008.

The Town did not calculate percentage increases for the towns it uses as comparables. Rather, it presented 2007 and 2008 salaries for first and fifth-year officers, detectives and sergeants in those towns. (The Town also gave salaries for the detective/sergeant position, but only for 2007.)

The panel attempted to calculate both the average and median increases from 2007 to 2008, based on the figures supplied by the Town. (Certain towns were not used in each rank because they did not reflect 2007 and 2008 figures, did not have figures for one or the other year, or showed decreases from one year to the next – which the panel found improbable. The panel also did not use Stony Point numbers because the numbers were not broken down by rank.)

Understanding that these numbers might be approximations, it appears that the average increase from 2007 to 2008 for first year officers in the towns to which Haverstraw compares itself were 3.09%, and the median, 3.93%. For fifth year officers, the average increase was 3.79%, and the median, 3.9%. For detectives, the average was 3.63%, and the median, 3.9%; and, for sergeants, the average increase was 3.61%, and the median, 3.93%.

What the numbers show is that 3.5% to 4% salary increases are commonplace among all the towns referred to by the parties as comparables.

As to the North Rockland Central School District, it should be understood that the actual increases there, taking increments into account, were 2-4% for 2007-08 and 5% for 2008-09. As to health care contributions, it is common for school district employees to pay a portion of insurance premiums. Although officers in the Town's comparables make varying contributions, some of which end after a few years of service, no contributions are made by officers in the Rockland towns, and that includes Stony Point, which the Town considers a comparable.

Taking into consideration all the evidence, the parties' arguments, and the statutory criteria, the panel believes that reasonable salary increases should be 3.6% in both 2007 and 2008.

AWARD

Salaries shall be increased by 3.6% effective January 1, 2007, and by 3.6% effective

January 1, 2008.


Concur

Dissent

Concur


Dissent

2. Longevity – The PBA proposal is that effective January 1, 2007, longevity increments shall be 3% of base wages.

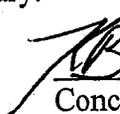
Currently, officers receive up to eight longevity increments, in the amount of \$800, payable upon completion of different years of service. The last increase went into effect in 2004.

Sawhney testified that, based upon her review of the police contracts in the four Rockland towns, the total of longevity payments that could be received during a career by officers in those towns exceeded the total that could be received by a Haverstraw officer by about \$44,000.

The panel's review of the contracts and arbitration awards for the Rockland towns confirms that they all have richer longevity schedules than Haverstraw. One way for Haverstraw to improve in this area would be to start computing longevity payments as a percentage of salaries. Without increasing the number of longevity increments, the panel believes that those increments should be fixed at 1% of a first grade patrolman's salary.

AWARD

Effective January 1, 2007, longevity increments shall be 1% of a first grade patrolman's salary.


Concur

Dissent

Concur


Dissent

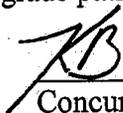
3. Detective Differential – The PBA proposes differentials for various ranks, including, for detective, an increase from 7.5% to 10% above first grade patrolman salary.

Sawhney testified that, for 2008, in order to raise detective differentials to the average provided in the other Rockland towns, current figures would have to increase by 4.2% of the first grade patrolman salary.

Reviewing the Town's figures (Town Exhibit 17-O) it appears that a 10% differential is common for many towns, including ones outside Rockland. The panel believes that the PBA proposal is modest, especially given the fact that there are only a small number of detectives, and should be implemented, but starting with the second year of the award.

AWARD

Effective January 1, 2008, the detective differential shall be 10% above the salary of a first grade patrolman.


Concur

Dissent

Concur


Dissent

4. Night-Shift Differential – The PBA proposes that the night-shift differential be increased from 5% to 10% of the officer's hourly rate of pay.

The chart on night-shift differentials entered into evidence by the Town (Town Exhibit 17-R) contains no figures for several of the Town's comparables, and contains a percentage differential for only one of the others (6% for South Nyack). For Rockland County towns, there is no figure for Orangetown, and a 10% differential for both Clarkstown and Ramapo. Stony Point, a comparable for both parties, has an 8% differential for the A-line (which the panel assumes to be the midnight shift at issue here).

Haverstraw officers have not seen an increase in the night-shift differential in several years, and the panel believes that an increase to 8%, effective with the second year of the award, is fair and reasonable.

AWARD

Effective January 1, 2008, the night-shift differential shall be 8% of the officer's rate of pay.

AB
Concur

Dissent

Concur Dissent

5. Line-of-duty injury procedure – The Town proposes the adoption of a comprehensive General Municipal Law § 207-c policy. Both parties offered testimony and arguments about perceived problems with the manner in which line-of-duty applications are currently processed.

The efficient and cost-effective administration of the benefits provided for under GML § 207-c serves the interests of both the Town and members of the police department. The record contains a number of departments that have procedures for the administration of § 207-c benefits. Determining eligibility for benefits, clearly enunciating the obligations and rights of officers who have been granted § 207-c status, and allowing for a method to fairly determine when officers are no longer eligible for § 207-c status, insure consistency and fairness, and are necessary in administering a department the size of Haverstraw's. The panel has made every attempt to accommodate the interests of all involved in the procedure it has adopted.

AWARD

The "Town of Haverstraw Police Department Line of Duty Injury Procedure," attached to the award, and incorporated herein, shall take effect immediately upon the award's execution.

Concur Dissent

Concur Dissent

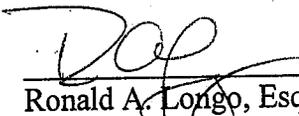
MISCELLANEOUS ITEMS

All retroactive payments awarded herein shall be made as soon as practicable, but no later than 60 days following execution of the award. The panel retains jurisdiction over this proceeding until the payment of retroactivity, and the implementation of this award is completed as set forth herein.

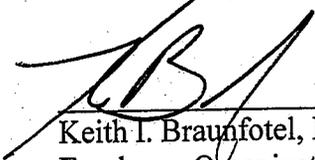
Finally, a separate opinion by the Town panel member is attached to the award.



Louis J. Patack, Esq.
Public Panel Member and Chairperson



Ronald A. Longo, Esq.
Public Employer Panel Member

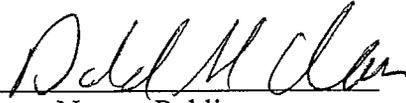


Keith I. Braunfotel, Esq.
Employee Organization Panel Member

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

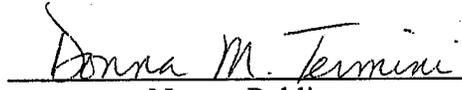
On this 29 day of September, 2009, before me personally came and appeared Louis J. Patack, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

DONALD ST. GLAIR
Notary Public in the State of New York
Qualified in Rensselaer County No. 01ST5076 ⁷⁹⁸
My Commission Expires April 28, 2011


Notary Public

STATE OF NEW YORK)
COUNTY OF ~~ALBANY~~) ss.:
ROCKLAND

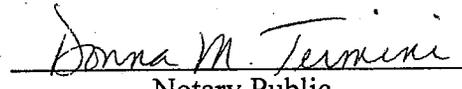
On this ___ day of September, 2009, before me personally came and appeared Ronald A. Longo, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.


Notary Public

DONNA M. TERMINI
Notary Public, State of New York
No. 4969503
Qualified in Rockland County
Commission Expires July 16, 2010

STATE OF NEW YORK)
COUNTY OF ~~ALBANY~~) ss.:
ROCKLAND

On this ___ day of September, 2009, before me personally came and appeared Keith I. Braunfotel, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.


Notary Public

DONNA M. TERMINI
Notary Public, State of New York
No. 4969503
Qualified in Rockland County
Commission Expires July 16, 2010

Town of Haverstraw Police Department Line of Duty Injury Procedure

I. GENERAL GUIDELINES

1. Upon the occurrence of a job related injury or illness to a member of the Department (hereinafter "member" or "officer"), the member shall seek medical attention as soon as is practicable.

(a) If necessary, the member will be taken to the hospital to document any injury or illness and for referral of the member to a specialist and / or for additional medical treatment. In the event that a member is required to be taken to the hospital, the member shall be accompanied by at least one uniformed officer who will remain with the member until such time as the member is admitted, released, or a responsible adult arrives to assist the member.

(b) The Department shall have the option of having the member examined by a physician of its choice.

(c) Within five (5) days of the occurrence of the injury or illness, or within five (5) days after the member has been released from a medical care facility, whichever is sooner, Departmental Administrative Personnel will check on the member's condition. It will be the responsibility of the member to either notify, or have someone on his/her behalf notify, the Department that he/she has been released from a medical care facility.

2. As soon as is practicable, the member shall speak with his/her supervisor or the Administrative Sergeant to assist in the completion of the appropriate paperwork, which shall include the completion of a Department issued incident report

3. Upon completion of the incident report, it will be immediately forwarded to the

Chief or his designee for review and the Chief will accept same as a claim for 207-c status.

4. General Municipal Law §207-c Status:

(a) Consideration of an application for 207-c benefits will not be made until the referenced medical records and required authorizations are submitted. (See paragraph 5).

(b) Upon the member making a claim for 207-c benefits with (1) an incident report, (2) medical documentation (see par. 5) and (3) authorizations having been submitted to the Chief of Police or his designee, no accrued leave time, including but not limited to sick time, personal time, vacation time, or compensatory time, shall be charged until a determination as to eligibility is made by the Chief or his designee.

(c) Upon filing of the documents listed in paragraphs 2 and 5 of this procedure, the Chief or his designee shall have ten (10) business days to make a determination. In the event that the Chief or his designee takes in excess of ten (10) business days to deny a member 207-c status none of the time in excess of the ten (10) business days will be deducted from the member's accrued leave time, including but not limited to sick time, personal time, vacation time, or compensatory time. This additional time beyond the ten (10) business days shall be considered paid administrative leave.

(d) Once a determination has been made as to whether the member is granted 207-c status, the member concerned and the PBA will be notified, in writing, by the Chief of Police. In the event the Chief determines that the member is denied 207-c status, the denial of benefits must be in writing and reasons for said denial must be set forth.

5. Medical Documentation:

(a) When a member notifies the Department in writing that he/she is unable to work due to an alleged line of duty injury, he/she must provide medical documentation that shall

include:

- (1) A diagnosis and indication of how the injury or illness affects the member's ability to perform his/her duties;
 - (2) An estimated duration for the absence, if known;
 - (3) A prognosis for recovery, if known;
 - (4) In lieu of 1, 2, and 3 above, the Chief or his designee will accept a New York State Workers Compensation Form C-4 which is fully completed (exclusive of billing information) and properly executed by a medical doctor.
 - (5) Authorization to release health information (see below).
- (b) (1) The medical documentation shall be the subject of immediate review by a physician designated by the Department.
- (2) If a written opinion is issued by the Department's Physician, a copy shall be provided to the member at or about the time of the Chief's determination on the application for benefits.

(c) The member shall provide medical authorization to his/her physician of record on the release form issued by the Department for all medical records pertaining to the member's current injury or illness for review by the designated physician. Such Authorization shall be in a form similar to that issued by the Office of Court Administration and shall limit the release of such medical information to uses consistent with the provisions of §207-c.

(d) If the Department's physician does not concur with the diagnosis and/or opinion of the member's physician, the member may be required to undergo an additional medical evaluation to the extent necessary to determine a diagnosis.

- (2) All evaluations ordered by the Town, will be done at the expense of the Town.
- (3) Should the designated physician require the member to undergo a follow up evaluation, the member shall be required to submit to same.
- (4) If the Town ordered medical evaluations are to be conducted outside of Rockland County the Town will provide the member with transportation to and from any such medical evaluations.

(e) Any member who wishes to return to work after an injury or illness shall do so only after the member has obtained and submitted a medical report from the member's treating physician which states the member is fit for full duty. All members must notify the Department at least twenty-four (24) hours in advance of such return if it would be scheduled on a week day and at least seventy-two (72) hours in advance of such return if it would be scheduled on a weekend or holiday.

(f) Members who have returned to work after being out on 207-c status, and thereafter (i.e., at a later date) report themselves as being unable to report for duty due to a prior 207-c duty related injury or illness, shall only be required to follow the guidelines contained in paragraph 5; not paragraph 2.

6. Conduct while on 207-c status:

(a) Members are not to engage in any conduct or activity that would exacerbate the injury or illness sustained, which may prolong the recovery from such injury or illness. Members engaged in such activity or conduct may cause themselves to be removed from 207-c status and/or disciplined, subject to a hearing to the extent such is required.

(b) While on 207-c status the member shall be required to remain at the residence as listed with the Department's records during his/her regularly scheduled tour of duty pursuant to published work schedules. This will be an eight (8) hour shift. See below.

(c) Members on 207-c status for thirty (30) calendar days or more will be removed from their squad and placed on a separate squad which will not be counted towards the number of officers scheduled to work a particular shift.

- (2) Officers placed on the separate squad may, without restriction, use all accrued time including but not limited to vacation, family sick, bereavement, compensatory, and personal time.
- (3) Officers placed on the separate squad will have their benefits pursuant to Article XV (Uniforms) reduced on a pro-rated share, as determined by the length of time placed on the separate squad. The practice of the parties regarding all other benefits for member on 207-c status shall remain unchanged as existing at the time of the issuance of the Arbitration Award.
- (4) Any officer placed on the separate squad does not have the right to return to the same regular squad upon his/her return to duty. However, the Chief or his designee will make a reasonable attempt to place an officer who is returning from line of duty status back into a regular squad where vacation selection already approved will be honored. There is no right to return to the steady midnight squad, if one is existing.
- (5) Officers placed on the separate squad will remain on the same

work chart and schedule followed prior to being injured.

(d) The member will be required to request permission from the Officer in Charge (Lieutenant or Sergeant) at the Police Desk, when seeking to leave his/her residence during a tour of duty. The member will indicate his/her purpose for leaving the residence and shall report back to the Officer in Charge upon his/her return to said residence.

(e) Members shall be available at their residence during their regularly scheduled tours of duty for an absence check either by telephone or in person by a supervisory member of the Department. Failure of the member to respond may result in discipline. However, a member shall never be subject to an absence check from 11:00 pm to 7:00 am.

7. Return to Duty:

(a) Should the Town's designated physician indicate that the member can return to full duty, the Department may order the member to return to duty.

(b) Should the member choose not to return to duty and seek to maintain 207-c status, the member will be subject to an evidentiary hearing or whatever procedure is required by prevailing law at the time which will determine whether or not such member shall continue under 207-c status.

II. HEARING PROCEDURE

1. The parties agree that all proceedings held regarding the termination or discontinuance of benefits pursuant to subdivisions (1), (2) or (3) of Section 207-c of the General Municipal Law and involving members of the bargaining unit shall be held before a hearing officer selected from the list below:

- (a) Joel Douglas
- (b) Howard Edelman

(c) Alfred Cava

As a member of the Panel hears a case, his/her name shall move to the bottom of the list and the remaining members of the Panel shall move up in order. Should any hearing officer wish to be removed from this list or should the parties agree to remove a hearing officer, they shall mutually agree upon a replacement within ninety (90) days. In the event the parties cannot agree upon a replacement, the remaining Panel members shall jointly select a new hearing officer from a list of six (6) names; three (3) names submitted by the employer and three (3) names submitted by the Union.

2. A member of the Police Department or the Town (i.e., the Department), may request a hearing by submitting a written request for a hearing, including the proposed question(s) to be determined, to the Chief of Police or member of the Department, as the case may be, by delivering a copy of the request to the other party. In the event that the question to be determined is the result of a written medical determination or opinion rendered by a physician or other health care provider following a medical inspection or examination of the subject officer as provided in section 207-c (1), (2) or (3) of the General Municipal Law, then a copy of such determination shall be forwarded to the subject police officer together with the request for a hearing. In the event any such medical determination or opinion is oral then a written account as to the sum and substance of such determination or opinion shall be forwarded to the police officer and PBA together with the request for a hearing. No earlier than seven (7) and not later than fifteen (15) calendar days thereafter, the Chief of Police will then certify the question to be determined to the Town Attorney. The Town Attorney shall contact the hearing officer, next in the rotation, to determine if the hearing officer has an available date to hear such case. Such availability shall be no less than seven (7) days nor more than forty-five (45) days from

certification of the question. If that hearing officer cannot provide such a date, the Town Attorney shall contact the next hearing officer, until such time as a hearing officer accepts the appointment with the aforementioned parameters for scheduling the initial hearing date. Copies of the notice of appointment and hearing shall also be mailed to the police officer, the Chief of Police, the PBA and the PBA Attorney.

3. Notice of appointment and hearing. Upon receiving notice from the Town Attorney that he/she has been designated as a hearing officer to hear a particular case, the hearing officer shall contact the advocates for the Town and the member in order to establish a hearing date. Such hearing shall take place not less than seven (7) days from the date of notice to the hearing officer, nor more than four-five (45) days. Upon the establishment of a hearing date, notice shall be sent by the hearing officer to the advocates indicating: (1) the name of the designated hearing officer; (2) the date, time and place of the hearing; (3) the question(s) to be determined; (4) that the parties may be represented by counsel and shall appear personally or by counsel at the hearing; (5) that the parties shall have the right to produce witnesses and present evidence, to cross-examine witnesses and examine evidence produced by the other side and to have subpoenas issued to require the production of witnesses and evidence or either party may issue such subpoenas in their own behalf in the manner and form as prescribed by the Civil Practice Law and Rules; (6) that a stenographic record of the hearing will be made; and (7) such other information as may be considered pertinent by the Appointing Authority.

4. An adjournment of the initial hearing date may be granted by the hearing officer upon request of either party not less than seven (7) calendar days prior to the scheduled hearing date only upon good cause shown. No adjournment shall exceed ten (10) calendar days. During the pendency of the proceeding the hearing officer shall cause a record to be made of the

proceeding and shall be authorized to issue subpoenas for the production of witnesses and evidence on behalf of either party. The Town shall bear the responsibility of the cost of the hearing officer and the stenographic minutes of the proceedings a copy of which is to be provided to the member or such member's legal counsel.

5. Three (3) days prior to the scheduled hearing date the parties or their respective legal counsel will exchange a list of prospective witnesses that each intends to call for the purpose of giving testimony, including expert witness or opinion testimony, pertaining to the question to be determined and all documentary evidence including medical and investigative reports available at the time.

6. The subject police officer shall have the right to request that the hearing officer close the hearing to the public.

7. The burden of proof shall rest, initially, with the party requesting the hearing. Neither the Appointing Authority nor the designated hearing officer will be bound by the formal rules of evidence, but its determination shall be based upon substantial evidence contained in the Record.

8. The hearing officer shall hear testimony and take evidence on the question(s) certified and shall, within thirty (30) calendar days of the close of the hearing, forward a complete copy of the record together with his/her findings of fact and recommendation(s) on the question(s) certified to the Appointing Authority which retains the full power and authority to render the final determination on such question(s). At the time the hearing officer's findings of fact and recommendations are forwarded to the Appointing Authority, a full and complete copy of the findings of fact and recommendation(s) shall be mailed to the advocate for the Department as well as the advocate for the member of the bargaining unit and the PBA.

9. Any decision of the Appointing Authority may be appealed pursuant to the procedures set forth in Article 78 of the CPLR.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between
Town of Haverstraw,

Public Employer,

-against-

Haverstraw Town PBA, Inc.,

Employee Organization.

PERB Case No.: IA2008-009; M2007-303

DISSENTING OPINION OF
PUBLIC EMPLOYER
MEMBER
REGARDING AWARD OF
INTEREST ARBITRATION
PANEL

The following constitutes the dissenting opinion of the duly appointed Public Employer Panel Member in the above-captioned matter.

The Award as rendered by the majority of the Panel reflects the following economic changes: (1) an increase in salary of 3.6% each of the two (2) years of the award, in addition to salary increases caused by changes in grade; (2) an increase in longevity from the fixed dollar schedule in the expired contract to 1.0% of the first grade patrol officer's salary; (3) an increase in the differential paid to detectives from 7.5% to 10%; and (4) an increase in the night shift differential from 5% to 8%. In so doing, the undersigned feels strongly that the Award as issued by the majority of the Panel does not properly consider that portion of the Taylor Law which requires consideration of: (1) the interest and welfare of the public and (2) the financial ability of the public employer to pay. See Civil Service Law §209 subdivision 4(v)(b).

While the undersigned appreciates the efforts made by the majority of the Panel in not simply relying upon prior Awards regarding what constitutes comparables by including consideration of jurisdictions outside of Rockland County, it is respectfully submitted that the majority of the Panel misses the most important issue. To use a phrase coined by the Clinton Campaign in 1992, those involved in this process have to recognize that "it's the economy". While the majority bases its Award on settlements from other Towns, those decisions were made at a different point in this Country's economic history.

The majority acknowledges that the Record is filled with "steep" tax increases for Town taxpayers, be it from Town tax bills or School District tax bills. Yet, the burden placed upon these same taxpayers cannot possibly be properly taken into account by the majority when they issue an Award of 7.2% in salary increases compounded over two (2) years with additional increases in longevity and differentials. The Award fails to adequately recognize the difficult state of the economy, especially in the Town of Haverstraw. As indicated in the Record, the unemployment rate in the area which includes the Town rose from 5.1% in the base year of 2006 to 9.2% in 2009, the year in which the Award must be paid. The Record reflects that unpaid

Town tax bills went up approximately 30% from the base year of 2006, as was also the case with unpaid school tax bills. Yet, in spite of these and other telling statistics, the majority decision increases a first grade patrol officer's base pay by almost \$3,300.00 to \$94,008.00 in 2007 and by approximately \$3,400.00 in 2008 to \$97,392.00. They also failed to have the individuals receiving these raises pay any portion of the steadily increasing health insurance costs, even though they acknowledge that officers in some other departments do pay some percentage of the premium. It is respectfully submitted that there is no evidence in the Record that the individuals who have to pay these salaries (i.e., the taxpayers) received anywhere near these raises. Clearly, the ones who became unemployed did not.

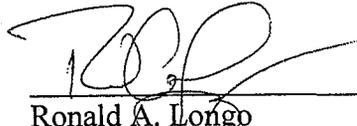
While the majority opinion focuses heavily upon the Town surplus, it acknowledges the significant impact on the Town created by the debt resulting from the Mirant Settlement. It essentially penalizes the Town for what the majority refers to as "government leadership which appears to have been particularly careful in managing its finances". The tax stabilization fund set up to protect the taxpayers and to deal with this significant debt is actually being used against the taxpayers. These monies should not be considered in this analysis and are even more important in this economy given the fact that the Town's original plan to sell the Letchworth property to pay this debt is not realistic in the current real estate market. Accordingly, the majority's position that the Town has money set aside for the impact of the Award is not accurate. Even the PBA's expert admitted that the budgeted amount for police salaries in 2007 was \$400,000.00 below what was actually spent, even without a salary increase. Assuming one percent of the payroll for this bargaining unit is approximately \$75,000.00, the cost of the 2007 salary increase is approximately \$270,000.00. The cost of the 2008 salary increase, including the 2007 salary increase, is approximately \$540,000.00. Therefore, the cost of the retroactive settlement to date, including the cost for 2009, will be approximately \$1.25 million dollars exclusive of the payroll tax impact (i.e., social security and pension cost). The retroactive check for a first grade patrol officer (not including longevity) will be approximately \$16,000.00. There is no indication in the Record that the Town has this kind of money just sitting around. These figures do not even take into account the majority's decision to increase longevity, detective differential and midnight differential.

The majority dismisses the Town's argument that the portion of the budget which supports the Police Department has steadily risen as a portion of the Town's general fund and that this amount is now over fifty (50%) percent of the total budget. While the majority argues that this does not impact the Town's ability to pay, it does speak to the interests and welfare of the public in that with this trend there will be pressure to reduce other services. Also, the increases received by members of this bargaining unit continue to out pace the salary increases provided to other employees of the Town as well as those received by taxpayers.

Finally, the undersigned does not dissent from that portion of the Award that institutes a Line of Duty Injury Policy for members of the bargaining unit. This change will help with regard to the efficient running of the Police Department and, in fact, benefits both parties. However, it is duly noted that while salaries have been increased retroactively, that longevity is increased retroactively, that detective differential is increased retroactively and that night shift

differential is increased retroactively, the efficiencies that are brought to bear by virtue of the new Line of Duty Procedure will take effect in October, 2009. While the effective date of the Procedure is not the Panel's fault, it is noted that there is significant retroactive impact in the economic provisions awarded by the majority.

Based upon the above, I respectfully dissent from the Award as to all issues other than the Line of Duty Injury Procedure.



Ronald A. Longo
Public Employer Panel Member

Sworn to before me this
30th day of September, 2009

Donna M. Termini
Notary Public

DONNA M. TERMINI
Notary Public, State of New York
No. 4969503
Qualified in Rockland County
Commission Expires July 16, 2010

-----X
In the Matter of the Interest Arbitration Between
HAVERSTRAW TOWN PBA

-and-

THE TOWN OF HAVERSTRAW.

PERB Case No. IA2008-009; M2007-303
-----X

DISSENTING OPINION OF
PUBLIC EMPLOYEE
MEMBER
REGARDING AWARD OF
INTEREST ARBITRATION
PANEL

The following constitutes the dissenting opinion of the duly appointed Public Employee Panel Member in the above-captioned matter.

The undersigned dissents from that portion of the Award that institutes a Line of Duty Injury Policy for members of the bargaining unit. This change should have been the subject of future negotiations. This policy represents a substantial structural change to the administration of the Police Department, which could not be fully addressed by the panel in the arbitration process.

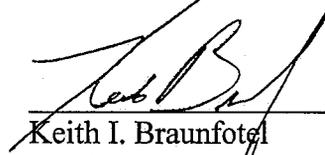
Moreover, on the issue of comparability the precedent set by two prior arbitration awards clearly dictates that the comparables to the Town of Haverstraw are the Town of Clarkstown, Town of Orangetown, Town Ramapo, and the Town of Stony Point. The Panel is unanimous in its decision that the Town of Stony Point is comparable. The Chairman states clearly that the above referenced Towns are the "primary focus" of the panel and it is this panel member's opinion that they should be the only focus.

It must be emphasized that the above referenced Towns share a common pool of tax revenue solely generated within Rockland County. No other jurisdictions identified by the Town can make that same claim. This is supported by the record and more specifically the testimony of the Town's finance director, Michael Gamboli, who testified that each Town noted above (Haverstraw, Clarkstown, Orangetown, Ramapo and Stony Point) share a common sales tax revenue. It must be emphasized that the sales tax is divided only within this group of Towns. There is no reason to look beyond these Towns all of which are geographically located in Rockland.

There is no basis in procedure or in fact to consider comparables outside of Rockland County. The Panel notes a reason to venture outside a county for comparables would be if there are "no even arguably similar municipalities within the county." However, the Town conceded Stony Point, a municipality within the County of Rockland, is a comparable. Therefore, since there is clearly a similar municipality within the County of Rockland, there is no basis to look for distant comparables outside of Rockland.

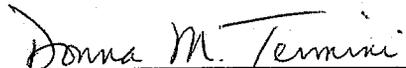
Based upon the above, I respectfully concur with all other aspects of the award. This Panel member agrees with the Chairman and the previous Haverstraw arbitrators that the practice of using Rockland municipalities as comparables should not be discarded without good justification. There is no justification to look outside the confines of Rockland County for comparables.

Based upon the above, I respectfully concur all aspects of the decision however, only to the extent that the appropriate comparables are the Towns of Clarkstown, Orangetown, Ramapo, and Stony Point and dissent to the award of the Line of Duty Injury Procedure.



Keith I. Braunfotel
Public Employee Panel Member

Sworn to before me this
30th day of September, 2009


Notary Public

DONNA M. TERMINI
Notary Public, State of New York
No. 4969503
Qualified in Rockland County
Commission Expires July 18, 2010