

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

X-----X

**In the Matter of the Interest Arbitration**

**-between-**

**MALVERNE POLICE BENEVOLENT  
ASSOCIATION**

**“Petitioner or PBA”**

**Compulsory Interest Arbitration**

**PERB Case No. IA2008-014;  
M2008-016**

**-and-**

**INCORPORATED VILLAGE OF MALVERNE**

**“Respondent or Village”**

X-----X

**BEFORE:**

**ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL  
PETER A. BEE, ESQ., RESPONDENT MEMBER  
DAVID A. DAVIS, ESQ., PETITIONER MEMBER**

**APPEARANCES:**

**FOR THE PETITIONER:**

**DAVIS & HERSH, LLP by LLOYD M. BERKO , ESQ.**

**FOR THE RESPONDENT:**

**BEE READY FISHBEIN HATTER & DONOVAN, LLP. by WILLIAM C. DeWITT, ESQ.**

**BACKGROUND**

The parties are signatories to the collective bargaining agreement between Malverne Police Benevolent Association (Petitioner) and the Incorporated Village of Malverne (Respondent) that expired on May 31, 2007 (Joint Exhibit [JX] 2 ). Negotiations for a successor agreement proved unsuccessful. Negotiations were held on April 24, May 10, June 12, August 28, October 5, November 19, and February 12, 2008.

The dispute was submitted to mediation. Arbitrator Edelman was appointed mediator by PERB on April 25, 2008 (JX7). The mediation was successful and the negotiators for the parties

executed a memorandum of agreement (MOA) in August 2008. The MOA was subject to ratification by the Village and the PBA (JX8). The PBA membership rejected the MOA.

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 October 10, 2008 (JX9). The Village timely responded on October 20, 2008 (JX10).

On October 20, 2008, the Village filed an Improper Practice charge with PERB (JX12). It alleged that PBA proposals 4, 7, 13, 14, and 16 were non-mandatory subjects of bargaining.

On November 7, 2008, the PBA filed an Improper Practice charge with PERB (JX13). It asserted that Village proposals 7 and 9 were non-mandatory subjects of bargaining.

On November 12, 2008, PERB appointed me as the neutral member of the arbitration panel designated to hear and finally decide all relevant issues (JX 11). The PBA designated David A. Davis, Esq. as its panelist and the Village named Peter A. Bee, Esq. to be its panelist.

An informal conference was convened by PERB Administrative Law Judge Cacavas on January 15, 2009. At this conference the PBA withdrew PBA Proposal 4 and the Village withdrew its objection to PBA Proposal 13. The PBA requested clarification concerning Village Proposal 9 (JX14).

On February 2, 2009, the PBA withdrew its objection to Village Proposal 9 (JX15). On March 9, 2009, the PBA withdrew PBA Proposals 16(c) and 16(e). PERB Administrative Law Judge Maier, in a decision dated May 13, 2009, found that PBA Proposals 7, 14, 16(b) and 16 (d) are mandatory subjects of bargaining and that Village Proposal 7 is not (JX17). Judge Maier noted in his decision that the PBA had withdrawn Proposal 16(a) (JX17, Footnote 10).

Hearings on this matter were held on March 16, June 2, and July 16, 2009. The Panel also met in executive session on multiple occasions, with the last formal one on January 25, 2010.

## **POSITIONS OF THE PARTIES**

### **CONTENTIONS OF PETITIONER**

The PBA contends that, after considering the statutory criteria set forth on § 209 (4)C)(v) of the New York State Civil Service Law, the panel should find in favor of its proposals. It stresses that, in addition to other matters, the panel must consider the following criteria

- 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.

It posits that all of its proposals are fair and just. It opines that they should be granted in their entirety. It adds that the Villages proposals should be denied.

It cites relevant case law in support of its position. It observes that *City of Amsterdam v. Helsby*, 37 N.Y.2d 19, 371 N.Y.S.2d 404 (1975) stands for the proposition that the panel's authority

supersedes local laws and self-imposed budgetary restrictions to the contrary. It states that the Village is required to fund the award if the panel finds there is the ability to pay for it.

It posits that *City of Buffalo v. Rinaldo*, 41 N.Y.2d 764, 396 N.Y.S.2d 152 (1977) stresses that it is within the purview of the panel to determine the relative weight to be given to each of the statutory criteria. It points out that the Court upheld the panel's improvements of wages and working conditions despite the dire fiscal condition of the city. It recalls that the panel gave consideration to the wages and working conditions of police officers in comparable jurisdictions.

It maintains that the 4<sup>th</sup> Department recently upheld the interest arbitration panel in *Buffalo Firefighters Association, Inc. v. Massiello*, 850 N.Y.2d 744 (4<sup>th</sup> Dept., 2008). It urges that the Court found that the panel considered all of the statutory factors and set forth, with specificity, the basis for its findings.

It argues that the instant panel should give less weight to the economic factors cited by the Village and give greater weight to the factors set forth in the other statutory criteria.

The PBA asserts that the statute requires the panel to compare the hours, wages and conditions of employment of the PBA with other employees doing similar work and with employees in the public and private sectors in comparable communities. It avers that there are no employees in the public or private sector whose work compares to that of a police officer. It reasons, therefore, that the only comparable employees are employees employed in the villages and cities of Nassau County and by Nassau County itself.

In this connection, the PBA cites Arbitrator Howard Edelman's finding in three prior interest arbitration awards involving these parties that it is appropriate to compare the terms and conditions of employment of the Malverne PBA with police officers employed by Nassau County and other

villages in Nassau County. It adds that the undersigned opined in the interest arbitration award he wrote for the panel of the Port Washington PBA and the Port Washington Police District that the most comparable jurisdictions are the towns and villages of Nassau County and Nassau County *per se*.

The PBA emphasizes that the interests and the welfare of the public and the financial ability of the public employer must be considered by the panel. It indicates that high morale by the PBA members helps to maintain the high quality of service that the Village residents have come to expect.

It adds that attractive wages and benefits permit the Village to attract high quality recruits for its police force. It insists that a wage freeze and reduced benefits do not serve the best interests of the public.

It posits that the Village has the ability to pay for the PBA's proposed increases in wages and benefits. It cites its budget expert, Dr. McCarthy, who indicated that her conclusion that the Village has the *ability to pay* was based on the Village's sound budgeting, its ability to raise taxes and issue debt and the Village's relative position among other comparable municipalities. It stresses that the Village did not refute this conclusion but rather indicated that it was unwilling, not unable, to pay for the PBA's demands.

It urges that PBA members are paid out of the Village's healthy general fund. It avers that the general fund's assets exceed its liabilities. It stresses that during the 2008 fiscal year the Village's assets were double its liabilities.

It adds that the Village's fiscal well being is shown by its unappropriated fund balance. It states that an unappropriated fund balance is comprised of surpluses that have not been designated for a particular purpose. The PBA points out that the unappropriated fund balance has steadily

increased over the past four years.

It posits that it is a good practice to maintain an unappropriated fund balance of 5-15% of total revenues. It maintains that the Village's unappropriated fund balance for the 2008 fiscal year was 14.7%.

The PBA recalls that the Village projected a deficit of \$407,078 in the 2008 fiscal year. It states that the Village finished the year with a \$571,066 surplus. It asserts that the Village projected a deficit of about \$400,000 for the 2009 fiscal year but the Village is predicting a positive fund balance of more than \$1.7 million.

It indicates that revenues have increased at a faster rate than police department expenses every year from 2004-2008 and, in 2009, the Village predicted a reduction of 2.5% in expenses as compared to 2008.

It adds that the Village has developed a contingent fund of over \$600,000. It opines that this money could be used to fund this award.

The PBA notes that the full value of the Village's real property increased by 40.2% through 2007, the last year for which such statistics are available. It notes that real estate tax revenue increased by 33.4% from 2004-2008 and that this increase outpaced police department expenditures by 13%.

It claims that Malverne compares favorably with other villages. As compared with other villages on the South Shore, the PBA observes that Malverne is the least populated village and has the second highest median income.

It states that the State Constitutional Tax Limit is 2% of the five year average full valuation of the real property . It explains that the Village can raise revenue through tax increases in the

amount of 2% of the five year average full valuation of the real property . It emphasizes that it raised taxes by .79% of the five year average full valuation of the real property or 26% of the tax limit.

The Village's outstanding debt, in its view, must be assessed when considering the Village's fiscal health. It posits that the Village has the third lowest total debt and the sixth lowest debt per capita when it is compared to twelve other villages. It computes the Village's outstanding debt to be .01% of its taxable full value, well below the State Constitutional Tax Limit of 7%.

It asserts that the Village's bonds were upgraded to A3 from A2 by Moody's. It opines that this upgrade was based on the Villages' fiscal management and practices.

The PBA insists that the Village has shown its willingness and ability to pay for increases in wages and benefits. It argues that this is shown by the Village's acceptance of the MOA that was agreed to.

It notes that the parties agreed to resolve two outstanding contract grievances, i.e. *blood day* and *special day* grievances. It recalls that these matters proceeded to arbitration after the MOA was not ratified. It urges that the Village prevailed in the *special day* grievance and the PBA was successful in the *blood day* grievance.

The PBA indicates that the Village insists that the panel revisit these matters. It insists that these grievances have been resolved and remedies have been issued. Therefore, it avers that the panel is foreclosed from considering the merits or the remedies fashioned in these grievances.

It states that the Village has referred to numerous articles that dealt with current economic conditions. It posits that none of the articles deal with Malverne. Moreover, says the PBA, newspaper articles are inherently unreliable hearsay.

It observes that the best evidence is the data regarding Malverne's good fiscal health. It concludes that Malverne has the ability to pay and should pay for all of the PBA's proposals.

The PBA argues that there are no employees other than police employees who perform duties similar to those of the PBA's members. It asserts that the hazards associated with police work are numerous and well documented.

It agrees that the crime rate has decreased in recent years. However, it stresses that there is still crime in New York State and a significant amount of it is in Nassau County.

The PBA indicates that the qualifications to become a police officer are very high. It states that, in addition to physical and psychological qualifications, applicants must have 32 college credits and must pass a background investigation.

It observes that the job training and skills of its members are immense. It suggests that the job training and skills development continue after graduation from the Academy and throughout the officer's career.

The PBA maintains that the Village and its Police Chief promulgate Rules and Procedures and amendments thereto. It insists that PBA members are expected to adhere to them.

It contends that the Village has not attempted to contradict the PBA claims that there are no other jobs that are comparable to that of a police officer. It states that the panel should concur with the PBA arguments.

It indicates that the panel should consider CBAs negotiated in the past. It suggests the prior contracts have resulted in PBA members being well compensated. It stresses that the panel should not deviate from this history.

The PBA contends that its proposals are just and reasonable. It concludes that they should

be granted.

As to the term of the Award, the PBA claims that a term that is longer than two years is preferable. However, it recognizes that, absent an agreement of the parties, the panel is limited to a two year award. It notes that the parties could not come to agreement about extending the term of the Award to a period in excess of two years and therefore the panel is constrained to an Award covering a two year period.

The PBA argues that wages should be increased by 6% in each year. It maintains that the Village has the ability to pay for these increases without raising taxes or to do so in a manner proportionate to what was done in the past.

It suggests that the comparable villages in Nassau County and Nassau County itself have averaged wage increases in excess of 4% in 2006, 2007, 2008 and 2009. It states that the top salary for Malverne police officers ranked 14<sup>th</sup> of the 18 comparable jurisdictions.

It maintains that, if the PBA proposal is granted, the top salary in Malverne for 2007 would be about \$1500 below the average of the comparable jurisdictions and that of 2008 would be about \$800 above the average.

It adds that the Malverne salary schedule would remain in 14<sup>th</sup> place if the panel awarded that average salary increase. It concludes that these facts suggest that the panel should award a wage increase that is higher than the average.

It asserts that a 6% increase for the sergeants would keep them in the same position relative to other Nassau County sergeants. As to the lieutenants, the PBA argues that a 6% increase would improve the standing of the Malverne lieutenants but would still leave them significantly below the highest paid lieutenants in Nassau County.

The PBA recalls that the Village has emphasized the economic downturn as a reason for the panel to freeze wages in 2007 and 2008. It asserts that awarding wage increases during periods of economic uncertainty is not unprecedented. It cites increases for 2009 awarded in Port Washington, Garden City and Glen Cove that exceeded or were equal to 3.95%. It adds that the increases in Garden City and Glen Cove were negotiated during an economic downturn in 2009.

The PBA opines that its wage proposal is just and reasonable. It argues that, based on the evidence, it should be granted.

It states that the night differential should be increased to 12% and that it should be paid for all hours actually worked between 4:00 PM and 8:00 AM. It observes that the current night differential for hours worked 4:00 PM-8:00 AM is 10% of base pay.

It states that tours are currently 7:00 AM-7:00 PM and 7:00 PM-7:00 AM. It indicates that officers who work the day tour get paid 4 hours of night differential pay and those who work the night tour get 12 hours of night differential pay.

It proposes an increase in night differential pay to 12% because it is well documented that night work has a negative impact on a member's health and family life. It observes that two other jurisdictions have 12% night differentials. It adds that Malverne night differentials rank in the middle of comparable jurisdictions. It maintains that this is so because of the relatively low top salary in Malverne. It stresses that this proposal should be granted to avoid increasing the disparity between the PBA and the highest ranking departments.

The PBA observes that its proposal to modify pensions was withdrawn prior to the interest arbitration. It notes that it will not be discussed.

It indicates that the uniform allowance should be increased to \$1575. It suggests that

members currently receive a \$1375 uniform allowance and that it seeks an increase of \$200. It stresses that the uniform allowance in comparable jurisdictions is almost \$1000 higher than that of Malverne.

The PBA proposes that the maximum accumulation of compensatory time be increased from 40 hours to 120 hours. It urges that the 40 hour limit has not been increased in 11 years.

It stresses that all other bargaining units in Nassau County permit accruals of more than 40 hours. It argues that ten bargaining units permit accruals of 120 hours with two of them permitting the accrual of 480 hours and another one providing for unlimited accruals.

The PBA proposes a change such that disciplinary actions against members be processed pursuant to CBA Section 24 and not under New York State Civil Service Law §75 or New York State Village Law §8-804. It claims that there is no negotiated disciplinary procedure between the parties. It opines that the current system is inherently unfair. It posits that a neutral arbitrator would have no preconceived notions or biases. It adds that the penalties imposed would be more appropriate since experienced arbitrators are exposed to a greater number of discipline cases.

It rejects the current approach because the Village Board or its hearing officers assess disproportionate penalties. It stresses that it objects to the current process because it is not final and binding. The PBA points out that a majority of the Nassau County bargaining units have final and binding arbitration of discipline matters.

The PBA states that currently officers receive 25 cents per mile when they use their own vehicles if recalled to duty to travel to and from court or any other location. It proposes that this reimbursement be increased to the maximum rate permitted by IRS.

It points out that the 25 cent rate has not been increased since 1990 and is less than half of

the IRS rate. It opines that the granting of this proposal would obviate the need for future negotiations relative to this matter. It claims that six Nassau County bargaining units use the IRS rate to determine the reimbursement rate.

It proposes that officers who work at that headquarters desk be given a differential. It stresses that the differential should be 50% of the difference between the top hourly rate of police officers and that of sergeants for each hour worked.

It avers that there is always a desk officer assigned. It observes that the Department is currently short one supervisor and has been for the past 18 months. It insists that until the Department is properly staffed, a police officer will frequently be assigned the role of desk officer. It contends that the police officer should be compensated for this supervisory duty.

It claims that three other jurisdictions compensate officers for doing analogous work. It maintains that the Chief's argument against this proposal actually supports it. It stresses that the Department should either hire an additional supervisor or pay the officer performing the duties of the desk officer a differential.

The PBA proposes that members shall be paid for accumulated and unused sick leave to the extent of 50% of such days but not to exceed 300 eight hour days. It indicates that this proposal calls for an increase from an accumulation of 200 unused sick leave days to 300 such days.

It points out that this benefit has not been increased in over a decade. It observes that 11 other bargaining units provide for the cashing in of over 200 days and two are paid for 300 days. It adds that this will benefit the Village in that it will encourage police officers to avoid using sick leave unnecessarily.

It proposes adding Dr. King's birthday as a paid holiday. It suggests that members get

holiday pay for 12 holidays but are not entitled to the days off.

It urges that 13 other comparable bargaining units got 13 or more paid holidays. It stresses that the 13 other jurisdictions have added the day as a paid holiday since the State and the County have designated the day as an official day of observance.

The PBA proposes that members be permitted to bank up to five vacation days and that these days be rolled over from year to year. It stresses that this benefit does not currently exist in the CBA. It opines that the Village will benefit in that members may not use up their vacation days and the Village will not need to replace them with officers on overtime.

It indicates that seven of the comparable jurisdictions offer this benefit. It states that members of two of those jurisdictions can roll over four or six days per year and can accumulate an unlimited number of such days. It claims that others can accumulate such days up to a maximum amount.

As to retirees, the PBA proposes that retirees who retire after the date of this agreement retain the same optical and dental benefits as do active members for the life of the retiree, his/her spouse or dependent children, unless the spouse remarries or the child becomes emancipated. It posits that optical and dental benefits become increasingly important after members retire.

It observes that non-contract Village employees receive this benefit and it should be extended to the PBA. It claims that other comparable bargaining units enjoy this benefit.

It posits that the spouse and dependent children of active members who die shall continue to receive the same medical, dental and optical benefits as do active members unless the spouse remarries or the child is emancipated. It maintains that the current CBA provides for health insurance benefits for five years for the spouse and dependent children of an officer who dies in the

line of duty or until the spouse remarries or the child is emancipated, whichever is earlier.

It emphasizes that this proposal would remove the five year cap on the payment of health insurance premiums for officers who die in the line of duty. It adds that the benefit would apply irrespective of whether the death occurred on or off duty and would include optical and dental benefits as well.

It urges that there are many reasons to award this benefit. It notes that the families of members who die in the line of duty should not be abandoned after five years. It adds that the number of younger officers increases the likelihood of deceased members having a spouse and young children. It indicates that there will be no cost to the Village during the life of this Award and hopefully will never be used. It states that a majority of the comparable jurisdictions have some form of this benefit.

The PBA insists that it is the only bargaining unit that does not include families of members who die off duty in their survivor benefits and only three units do not have this benefit at all.

It states that the Village provides defense and indemnification to members for punitive damages claims. It points out that this benefit was due to sunset on May 31, 2007. It proposes that this benefit be continued.

It maintains that this provision provides protection from punitive damage claims for officers properly discharging their duties within the scope of their employment. It suggests that the Village has provided this protection in the past and has agreed to extend this benefit until 2010.

The PBA states that it withdrew Proposal 16(a). This proposal deals with General Municipal Law §207c.

It indicates that 16(b) indicates that employees on §207c leave shall not lose vacation time,

sick leave entitlement, personal days, clothing and cleaning allowances, night differential or any other benefit irrespective of the length of the leave. It states that this benefit is currently limited to 60 days. It points out that an officer on §207c leave for 60 days also loses his/her major medical benefits. It concludes that the officer's family would be left without health coverage.

It urges that three other units provide for a continuation of benefits for the life of the §207c leave and that the other units continue benefits for a period of at least 90 days up to a maximum of one year. It stresses that an increase from 60 days is justified by the comparables.

It asserts that it withdrew Proposals 16(c) and (e). It posits that 16(d) proposes that employees be eligible to have a dispute over his/her ability to perform light or full duty police work resolved by a mutually acceptable medical doctor whose decision will be final and binding to all. It adds that the Village shall continue to make §207c payments and maintain the officer's work status during the pendency of the dispute.

The PBA maintains that this procedure should be used in order to determine the fitness of an officer. It urges that this process is preferable to the use of a neutral arbitrator when fitness is at issue. It cites four other jurisdictions that have this benefit.

As to the Village's proposals, the PBA opines that they are neither reasonable nor just. It concludes that they should be denied.

It states that the Village has not made a salary proposal. It notes that its only proposal was the addition of an additional salary step.

It stresses that the Village did not justify its proposal by showing the level of savings to be realized if it were to be granted. It adds that there was no showing of a need for the additional salary step.

The PBA points out that it and 11 other units have a six step salary schedule. It posits that the Village is proposing a seven step salary schedule without a corresponding wage increase.

As to a two year wage freeze, it insists that such a freeze has never been negotiated or awarded by an arbitration panel in the parties' history. It suggests that no comparable community has ever had such a wage freeze.

It concludes that the Village has the ability to pay for a reasonable wage increase. It recalls that the unratified MOA provided for 4% wage increases.

The PBA observes that the Village proposed the elimination of the 12 hour tours and their replacement with 8 hour tours. It suggests that the 12 hour tours have been in place for the past 20 years and the Village seeks its rescission without any evidence to do so.

It recalls that Chief Aresta attempted to relate the 12 hour tours to increases in overtime. It emphasizes that there are no facts and figures to support this claim.

The PBA maintains that the establishment of the 12 hour tours was the result of an agreement of the parties. It opines that the agreement can only be changed through an agreement of the parties and not through an arbitration award.

Moreover, states the PBA, every comparable jurisdiction has a 12 hour tour schedule. It urges that this proposal should be rejected because it is incomplete and lacks specificity.

It asserts that the Village proposed a sick leave modification such that accumulated unused sick leave would be paid out at the pay rate in place at the time it was accumulated and not at the rate of pay in place at the time of retirement. It insists that the Village provided no data to show the amount of savings to be accrued if this proposal were granted. Furthermore, in the PBA's view, no bargaining unit in Nassau County employs this approach and has it written into their CBA.

It indicates that the second part of the proposal calls for the reduction of sick leave from 17 days of 12 hour duration plus four hours to 12 days of 12 hour length. It maintains that the Village did not justify this element of the proposal.

It suggests that there is no abuse of sick leave. It recalls that Village charts bear out this conclusion. It posits that the evidence supports the importance of making no changes to these aspects of the sick leave program. It points out that the comparable units either have unlimited sick leave or permit the annual accrual of 26 days of sick leave days of 8 hour lengths.

The PBA claims that the Village proposes that its members pay 20% of the cost of medical, dental and optical insurance. It insists that its members pay nothing for the insurance. It adds that no police unit in Nassau County contributes to the cost of health insurance.

It posits that the Village provided no data to show the savings to be accrued by the Village if this proposal were granted. It opines that it should not be the first bargaining unit in Nassau County to be required to contribute to the cost of health insurance.

It stresses that the Village proposed changes to the grievance process. It states that the proposal calls for a 10 day limit for the appeal of grievance denials and a 20 day limit for the demanding of arbitration. It argues that currently there is no time limit in which to demand arbitration.

It states that the Village may have a reasonable basis for this proposal but it was not presented at the hearing. It concludes therefore that the panel does not have the means to make a just and reasonable determination concerning this proposal.

It states that the Village proposed that the Police Chief or his designee be permitted to schedule three additional training days per calendar year at no additional cost. It avers that the

current two training days are compensated with 12 hours of compensatory time. It posits that the Village proposal could result in an officer being scheduled for training on a regular day off and would receive nothing in the way of compensation for time taken from their personal schedules.

It argues that the Village did not justify this proposal. It posits that training is important to the member and the Village and that the member should not bear the brunt of the training with the Village reaping the benefit of a well trained police force without paying for the cost of the training.

It concludes that the proposal should be rejected. In the alternative, it opines that, if it is granted, the members should be granted compensatory time for the hours of training.

The PBA states that the CBA provides members with 24 hours of personal leave that cannot be denied by the Chief unless it occurs during a contractual holiday. It adds that the contract provides for 56 hours of personal leave that cannot be cashed out or carried over from year to year.

It maintains that the Village proposed the officers be permitted to cash out 24 of these hours. The PBA says that it does not object to this proposal provided that members are not pressured to sacrifice valuable time that is designed to be used for unexpected situations.

The PBA recalls that it prevailed in an arbitration referred to as the *crossing guard* grievance. It notes that the grievance concerned a time when a crossing guard was on a leave and minimum staffing was increased from three to four officers so that the duties of the crossing guard would be covered by an officer on straight time or to avoid covering a tour that was short.

It insists that it petitioned the Court to confirm the award. The PBA notes that the Village now seeks a modification in the arbitration award.

It argues that this proposal should be denied. It asserts that the Village should not be rewarded for its willingness to circumvent minimum staffing. It notes that the proposal is overly

broad and will result in more grievances.

It states that there would be a limit on the number of officers that would constitute minimum manning during *specifically delineated instances*. It claims that the Chief would decide the number of officers need for a given instance and that there would be a great potential for abuse.

It recalls that the Village stated that the proposal would prevent overtime. It urges that the Village failed to provide the data needed in order to quantify savings in overtime. It concludes that the proposal should be denied.

The PBA indicates that the Village proposed the elimination of travel time for recall. It suggests that the CBA currently provides for one hour of travel time to and from duty when an officer is recalled or is required to remain beyond his/her regular tour.

It points out that the Village justified this proposal by claiming that officers are paid for their mileage. It argues that this justification is neither valid nor logical.

It stresses that travel time compensates for the time taken to travel to and from work when an officer is recalled. It emphasizes that a mileage allowance compensates one for the wear and tear on his personal vehicle. It insists that these two benefits are not comparable. It adds that every Nassau County police bargaining unit is given travel time.

The PBA requests that the panel issue a two year award in which it finds all of the PBA proposals to be reasonable and just and the Village's proposals to be unreasonable and unjust. It concludes that the PBA proposals should be granted in their entirety and that the Village proposal be denied in their entirety.

## **CONTENTIONS OF THE VILLAGE**

The Village states that Civil Service Law §209 is controlling in this matter. It stresses that, in addition to any other relevant factors, the panel must consider the following criteria

- 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.

It indicates that it is located on the south shore of Long Island and has an area of 1.1 square miles. It adds that it has a population of 8934 people of which 4806 constitute its labor force. It observes that the median family income is \$87,197 and the per capita income is \$31,418. It stresses 95% of its budget is based on residential taxes with the remainder coming from taxes on commercial property.

The Village asserts that there are 23 members of the police force who primarily are involved in vehicle and traffic enforcement. It points out that the average total compensation per police officer is \$140,172.

It states that 34% of the 2008-09 budget, approximately \$4.4 million, went to the operation of the police department. It insists that about \$3.4 million (74% of the \$4.4 million) was spent on compensating police officers. The Village includes a multitude of items (base salary, step increases, longevity payments, holiday pay, health, dental and optical insurance, night differentials, overtime, etc.) in the \$3.4 million.

It argues that in 2007-08 the base pay ranged from \$65,715 (for an officer with one year of experience) to \$173,443 (for an officer with seven years of experience). It asserts that, beyond base salary, the two most costly budget items are health insurance and regular overtime.

It maintains that the cost of a family health insurance policy in 2008-09 was \$15,222 and the cost for a single officer was \$7,139. It stresses that the total cost of this item was in excess of \$325,000.

It posits that, with the exception of Long Island police forces, municipal employees have contributed to health insurance premiums. It opines that there is no reason for police officers not to pay for a portion of their health insurance while other municipal employees have done so for a long time.

It rejects the premise that police officers should not pay for a portion of their health insurance because of the risks of their jobs. It insists that the provisions of General Municipal Law §207c provide for the medical costs incurred by officers injured in the line of duty.

The Village posits that overtime is a second issue that must be addressed. It avers that the language of Section 14 of the CBA was the basis for *special* or *green days*. It recalls that the rejected MOA deleted Section 14. It urges that the issue of these days was arbitrated after the MOA was rejected. It emphasizes that the Village prevailed and it recouped the compensatory time accrued

by officers on *special* or *green days*.

However, states the Village, it was unable to recoup the overtime pay received by officers called in to cover for those using the ill-gotten compensatory time. It stresses that these overtime hours totaled hundreds of thousands of dollars.

The Village asserts that a retroactive pay increase will result in the increase of overtime payments that should not have been made. It opines that this would reward improper conduct. It concludes that the PBA received compensatory time but did not provide an equivalent service.

It points out that the PBA compared Malverne to other municipalities in Nassau County. It insists that there is no other municipality which had officers abuse leave provisions over a four year period such that there were excessive overtime costs.

It maintains that Malverne does not fit in with other jurisdictions. It states that its population is smaller than the larger municipalities that have populations of 15000 or more and is larger than the smaller villages of 5000 or less. It adds that the median income is also lower than the smaller municipalities with higher median incomes and is higher than those larger ones with lower median incomes. It concludes that a salary increase in Malverne has more impact than on wealthier taxpayers in smaller jurisdictions as well as on the more numerous taxpayers in the larger municipalities.

The Village indicates that the testimony of the PBA's fiscal expert requires comment. It recalls that she stated that the Village's fiscal assets, i.e. cash, investments, receivables, in 2008 were just under \$4 million. It observes that \$1.5 million of the \$4 million must be used for the projects for which they were designated. It stresses that this reduces the liquidity to about \$1.4 million. It adds that several pending lawsuits against the Village further reduces the liquidity.

It suggests that there is a disagreement over what Moody's Investor Services requires the

Village to maintain as a fund balance. It recalls that the PBA expert indicated that all that is required is 5%. It posits, however, that Moody's has indicated that the Village's ability to maintain a 10% fund balance will be an important rating factor.

It asserts that the accounting change required under GASB 34 is relevant. It maintains that the Village implemented GASB 34 in 2006. It points to differences in the fixed asset category between 2004 and 2007 as a result of GASB 34.

It urges that questions were raised by the PBA comparisons between median family income and population in various villages in Nassau County. It recalls that the PBA exhibit compares populations in 2007 with median incomes in 2000. It points out that the population figures used were from 2000 and not 2007.

It asserts that, unlike other jurisdictions, the Village uses the *Clemenshaw* method when computing assessed valuations. It posits that under *Clemenshaw* assessed values remain static unless there are substantial alterations to the house while under the market value approach, the price of the house is the determinant.

It maintains that the Village documents show that 95% of its taxable assessed property is residential and 5% is commercial. It adds that the Villages' tax rate per \$100 is almost \$20 higher than the nearest villages. It urges that this is so because of its relatively small commercial base.

It insists that, due to the poor economy, it lost revenue in interest and mortgage recording tax. It emphasizes that there were 28 foreclosures in 2008 and 2009 while there were a total of five in 2004-07. It avers that there was a 12% decline in median value of homes.

It states that losses in the State pension system due to stock market declines has resulted in larger contributions by local communities. It opines that money needs to be set aside for this now.

It adds that the decline in the CPI in the northeast as of June 17, 2009 has been the largest 12 month decline since the inception of this index in 1966.

As to the Village's proposals, it states that it has proposed an additional step between the first and second steps. It notes that there is a \$9218 difference between these steps. It observes that such a difference is not justified given that 25% of that time is spent in the academy. It argues that the officers will not be prevented from reaching top salary but will be required to have more experience in order to get there.

It recalls that it proposed the elimination of 12 hour tours and replacing them with eight hour tours. It stresses that the Village agreed to the 12 hour tours in order to reduce overtime. It points out that overtime costs have increased and that the desired long term effect has not been realized.

It maintains that Glen Cove with a police force of 51 officers placed a cap on total overtime when using the 12 hour tour in the 2004-07 CBA. It stresses that during those years the overtime costs in Malverne with 23 officers were \$100,000 higher than that of Glen Cove.

It claims that officers on an eight hour tour are more alert than when on a 12 hour tour. It adds that the overtime to replace a sick officer on a 12 hour tour is greater than one in an eight hour tour.

It notes that the PBA argued that there are negative health effects to working a 12 hour tour. It refers to a study submitted by the PBA that deals with *shift work*. It insists that this study supports the Village's proposal that eight hour tours result in more alert and healthier police officers.

The Village proposes that sick leave be banked at the rate of pay in effect at the time it is accrued and not at the time it is paid out. It asserts that officers should not get the benefit of the increased salary in place at the time it is paid out.

It also proposes that sick leave be reduced from 17 days and 4 hours to 12 days. It points out that only one officer in 2007 used more than 12 days of sick leave and five did so in 2008. It suggests that these officers could have tapped into their sick leave banks.

The Village proposes that officers hired after January 1, 2009 contribute 20% of the cost of their health, dental and optical insurance. It stresses that other than the cost of base salary, the cost of family coverage for 19 of the 23 members of the department is the largest expense item in the police budget.

It opines that, given the terms of General Municipal Law §207c, there is no reason for police officers to be exempt from paying for a portion of their health, dental and optical insurance. It stresses that this proposal would not affect any current officers and the proposal should be granted.

The Village notes that the current CBA requires the filing of initial grievances with 120 days and that there is no time limit for the demanding of arbitration. It proposes a 10 day limit for the appeal of an unsatisfactory response to an initial grievance to the Village Board of Trustees. It adds that the Village will have a maximum of 30 days to respond to the appeal. It indicates that the PBA will have 20 days to demand the arbitration of the grievance if the response of the Village Board of Trustees is unsatisfactory.

The Village states that it proposes that the Police Chief or his designee be permitted to schedule three training days each calendar year at no additional compensation. It stresses that these training days be scheduled on officers' days off without any additional compensation.

It observes that officers currently have two training days for which they receive compensatory time. It insists that this proposal would leave these two training days as is.

It points out that currently officers get 12 hours of compensatory time irrespective of the

length of the training day. It adds that of the seven jurisdictions that require training days, four provide no additional compensation and two provide some compensation.

The Village posits that currently officers have 56 hours of personal leave of which 24 may be used at the sole discretion of the officer. It states that the only limitation on the 24 hours is they cannot be used on a holiday and only one officer at a time can use it.

It points out that this time is lost if not used by the end of the year. It proposes that the officers be permitted to exchange for pay at straight time 12 or 24 hours of non-discretionary (golden day) personal leave time.

The Village proposes a modification of the *crossing guard* grievance award to allow for specific instances that requested time off by members is subject to the approval of the Department and may be denied in specifically delineated instances for legitimate business purposes. It indicates that the result of the Award is that an officer scheduled to work on the day of specified number of special events in Malverne can decide to take off thereby leaving fewer officers than needed for safety purposes on the day of the event. It urges that the Department is then required to call in an officer on overtime.

It stresses that the purpose of this proposal is to reduce overtime. It adds that this proposal would be implemented about six times per year.

The Village proposes to eliminate travel time for recall. It observes that recalled officers are paid at the overtime rate, get travel time of up to one hour to and from duty and receive insurance coverage from the Village for one hour before and one hour after such an additional duty.

It asserts that for non-ambulance recalls, an officer received one hour of travel time to work and one hour of travel time from work. It avers that the officer also receives two hours of overtime

if s/he does not go on duty and no less than four hours if s/he does.

It stresses that, in addition, the officers receive 25 cents per mile when called in on recall. It contends that the elimination of travel time does not eliminate the overtime and mileage compensation that the officers would continue to receive. It points out that the cost of travel time in 2006-07, 2007-08 and 2008-09 has been \$38,615, \$34,392 and \$24, 773 respectively.

The Village urges the rejection of the PBA proposal of a 6% salary increase. It stresses that such an increase would cost a total of about \$2.5 million in each year of the Award. It states that the 6% increase would cause greater costs in salary, holiday pay, travel time, night differential, overtime and holiday overtime.

It points out that it has calculated the increased cost of increases in salary of 1%-6%. It maintains that a 1% salary increase in each of two years would result in additional compensation costs to the Village of about \$52,000. It urges that greater salary increases would result in proportionately greater increases.

The Village argues that CSL §209 permits the panel to consider *other factors* when deciding on an Award. It opines that one such *factor* is the abuse of *Special Days* by the PBA members. It posits that a retroactive increase in salary would be a signal to PBA members that fleecing tax payers will not affect whether a salary increase is provided. It adds that a retroactive increase would result in increased overtime payments.

The Village avers that the current state of the economy must be considered. It indicates that the stock market is off by 33% since last year at this time. It notes that CPI has had the greatest decrease since 1966. It observes that the decline in the stock market will require it to make substantially higher pension contributions. It indicates that currently there are five times as many

homes in foreclosure than was true in the past and that there has been a loss in the lucrative mortgage recording tax. It concludes that there should be no salary increase for the two years of this Award.

The Village states that the PBA proposed an increase of night differential payments to 12% of base pay for all hours actually worked between 4 PM and 8 AM. It recalls that this provision exists in the context of 12 hour tours that run from 7 AM-7 PM and 7 PM-7 AM.

It points to the PBA citation of a study concerning shift work. It stresses that the study dealt with shift work, not night work. It adds that the study does not suggest that a night shift differential makes for a safer employee.

It posits that the PBA President noted the adverse effects that night shift assignments have on the officers' lives and that the night shift reduces life expectancies. It emphasizes that shift assignments are determined by seniority. It insists that officers with greater seniority choose the night shift. It stresses that all of the officers in the night shift are senior to those on the day shift. It states that all of these officers could have selected the day tour but chose not to.

The Village asserts that the PBA proposed an increase of \$200 in the uniform allowance. It indicates that the current uniform allowance is already generous and that this proposal should be rejected.

It notes that the PBA proposals called for an increase in the maximum accumulation of compensatory time to 120 hours. It states that officers can currently elect to receive compensatory time in lieu of overtime pay and can accumulate such time to a maximum of 40 hours. It adds that this time can be cashed in later.

The Village maintains that, after vacation, sick leave and personal days are deducted, officers with five or more years of service work 116.6 -121.5 days. It adds that officers who donate blood get

credit for 12 hours. It stresses that officers can donate blood five times per year. It calculates that the officer who donates blood reduces the number of days s/he works by five days.

It maintains that, if this proposal were granted, officers would potentially work 101.5-106.5 days per year. It argues that this would be about 600 hours fewer than the work chart sets forth.

The Village avers that there is a cost to paying out compensatory time accrued in prior years at the current salary level. It stresses that paying out compensatory time five years after it was banked costs almost twice as much as it would have cost five years earlier.

It opines that compensatory time is supposed to reduce overtime costs. It states that increasing the amount of compensatory time accumulated defers and increases overtime costs.

The Village urges that it places no restrictions on compensatory time. It insists that other villages do. It contends that the PBA has presented no evidence to show the need for the increase set forth in this proposal.

The Village requests the denial of the PBA proposal to modify the discipline process such that it is pursuant to §24 of the CBA rather than through the provisions of CSL §75 or Village Lw §8-804. It recalls that the PBA stated that the change is needed in order to avoid officers being charged differently based on whether they are liked by the Village Board. It indicates that charges were preferred five or six times in the last five years and that there was no testimony offered to show the presence of bias in those cases.

It suggests that the MOA contained a provision that called for the arbitration of charges if the penalty sought was greater than five days and that the arbitrator's decision would be advisory. It indicates that the MOA reserved the right to the Village Board to make final determinations with the charged officer having appeal rights pursuant to Village law §8-806.

It observes that villages cited by the PBA that provide for the arbitration of disciplinary charges have varying restrictions attached to the disciplinary process. It posits that these limitations must be understood as clarifications of the PBA argument about what is done in other villages.

The Village insists that the PBA proposal to increase the mileage allowance to the rate permitted by IRS should be denied. It emphasizes that it currently pays 25 cents per mile plus travel time. It notes that the cost of travel time for 2007-08 and 2008-09 was about \$34,000 and \$25,000 respectively. It adds that it equals or exceeds what other villages pay for mileage.

The Village posits that the PBA proposed that its members be paid for accumulated and unused sick leave to the extent that they receive 50% of up to 300 eight hour days. It urges the panel to deny this proposal.

It points out that the current terminal leave provisions provide for a 50% payout for up to 200 eight hour days. It adds that the additional terminal leave language in the CBA provides for 40 hours for each year beyond 20 years of service and one day for each 72 days of service thereafter.

The Village asserts that it is improper to grant this proposal without a cost out sheet. It adds that it is economically unsound to bind the Village to such an increase in future payments.

It recalls that the PBA argued that this proposal is an incentive to officers to demur from using sick leave. It observes that this argument must be rejected since such an incentive was previously negotiated and is currently in the CBA.

The Village notes that the PBA proposed adding Martin Luther King Jr's birthday as a paid holiday. It points out that the CBA currently provides for 12 paid holidays. It notes that officers scheduled to work on one of these days get paid at a rate of 2½ times their regular pay rate and those not scheduled to work but called in on one of these days get paid at a rate of 3 ½ times their regular

pay rate.

It stresses that the cost of holiday pay in 2007-08 was over \$100,000 and was about \$95,000 in 2008-09. It adds that holiday overtime pay in each of these years was about \$9,000.

It indicates that the PBA produced a chart of paid holidays in other villages. It suggests that villages that provide more than 12 paid holidays compensate the officers in different ways.

It contends that granting an additional paid holiday creates additional costs for the Village. It asks the panel to deny this proposal.

According to the Village, the PBA proposed that five unused vacation days be banked and rolled over from year to year. It states that the current CBA does not allow for such an accumulation. It points out that most villages do not allow for such accumulations and want police officers to take their vacations. It stresses that this proposal should be denied.

The Village notes that the PBA proposed that, after the effective date of this agreement, retirees receive the same dental and optical benefits as do active members. It adds that this benefit should continue for the life of the retiree, his/her spouse and dependent children. It states that the spouse would lose the benefit upon remarriage and that dependent children lose it upon becoming emancipated.

It emphasizes that only two villages provide dental benefits to retirees and none provide optical benefits. It stresses that the cost of these benefits for those in active service for the past years has been about \$20,000 per year. It suggests that the cost of this proposal was not provided. It concludes the proposal must be denied.

The Village asserts that the PBA proposed that the spouse and dependent children of active members who die shall continue to receive, for the rest of their lives, the same medical, dental and

optical benefits as do active members. It indicates that these benefits would cease if the spouse remarries or the child is emancipated.

It claims that the current CBA provides for health insurance for spouses for five years or until s/he remarries (whichever comes first) if the member dies in the line of duty. It says that children receive such coverage until the age of 18 or the spouse obtains his/her own insurance. It adds that the CBA provides for a \$100,000 insurance policy.

It agrees that a number of villages provide medical coverage upon the death of an active member. It observes that Freeport only provides for hospitalization, Long Beach provides long term coverage for line of duty deaths and three years if not in line of duty and Port Washington provides 75% coverage for spouses.

It argues that the proposal is incomplete in that it makes no provision for officers who decline health insurance because his/her spouse provides it.

The Village urges the rejection of the PBA proposal that the Village continue to provide defense and indemnification for officers who are the subject of punitive damages claims. It insists that this provision has sunsetted and Village Board members do not have similar protections. It asserts that Village Board members have been the subject of such suits brought by Malverne police officers. It avers that the officers should have no greater protection than do members of the Village Board.

It urges that only three villages have such a provision in their contracts. It insists that this proposal should be denied.

The Village posits that the PBA has proposed that officers receiving GML §207c benefits shall not lose vacation time, sick leave accruals, personal days, clothing and cleaning allowances,

night differential and any other benefit to which s/he might be entitled for as long as the officer is on §207c leave. It stresses that the proposal indicates that such benefits may be carried over and taken upon the members return to active duty or paid to the member or his/her legal representative in the event his/her services are terminated.

It maintains that this matter was negotiated about seven years ago. It argues that there was no testimony to show that the current policy is unworkable. It notes that there were no examples cited showing a prejudice to officers.

It recalls that the PBA asserted that the main concern was the loss of medical benefits after 60 days. It contends that no examples were cited in which an officer lost medical benefits. It adds that the proposal does not address medical benefits and the CBA section that this proposal seeks to replace does not identify medical benefits.

It agrees that four other villages continue to provide benefits while officers are on §207c leave. It posits that none of them provide the benefits contained in this proposal to the extent or time frame proposed here.

It insists that the current policy is only seven years old and that the parties had full knowledge of the terms of that agreement. It concludes this proposal must be denied.

As to GML §207c, the Village points out that the PBA proposed that, in cases in which there is a dispute over an officer's return to either light or full duty, the member may elect to be examined by a mutually acceptable doctor rather than through an evidentiary hearing. It stresses that the proposal indicates that the member's §207c status be continued during the pendency of the dispute and that the decision of the medical doctor be final and binding.

The Village avers that there are inconsistencies on the PBA proposal. It urges that the §207c

benefits would continue if the member did not agree to a doctor who is acceptable to the Village. It adds that there is no provision for the recoupment of benefits in the event the doctor decides that the benefits should have been terminated on the date designated by the Village.

The Village argues that, unlike arbitrators, doctors are not trained to evaluate the testimony of witnesses. It opines that an arbitrator is capable of making decisions where disputes over the return to duty are involved. It urges the denial of this proposal.

The Village concludes that all of its proposals should be granted. It argues that all of the PBA proposals 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,(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 two decades.

These decisions reflect a well established premise that the jurisdictions which are most comparable to the Malverne Police Department are the villages and cities in Nassau County. In this regard it cites Arbitrator Edelman's decision in the 1996-99 Interest Arbitration Award (PX4). It quotes Arbitrator Edelman as indicating that it is appropriate to compare Malverne to other Nassau County villages. It points out that Arbitrator Edelman referred to three prior interest arbitration awards.

I was the author of the 2006-09 interest arbitration award involving the Port Washington PBA and the Port Washington District. In that Award, I stated that the villages and cities in Nassau County as well as Nassau County *per se* were the comparable jurisdictions.

There is a total of 16 such jurisdictions. Malverne and Port Washington are two of the jurisdictions. Thus, just as I did in the Port Washington matter, I conclude that the villages and cities in Nassau County and Nassau County *per se* are the jurisdictions comparable to Malverne.

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 Village's ability to pay requires a different kind of analysis. It would first be helpful to describe the Village. Malverne is located on the south shore of Nassau County. It is south of Franklin Square, north of Lynbrook and west of Hempstead. In terms of area, it is comprised of 1.1 square miles. It has a population of 8,934. 4,806 people are part of the work force. The median family income is \$87,197 and the per capita income is \$31,418 (VX18).

Of particular relevance here is the fact that the Village maintains its own police force. The membership of the PBA is comprised of 23 people, 18 police officers, three sergeants and two lieutenants.(PBAX2).

In FY 2008-09, the Village budget was a little over \$13.6 million. The cost of the police department comprised 34% of the general budget (VX5). As might be expected, salaries are the single largest budget item. The next two most expensive items are overtime and health insurance. In some years the overtime is greater than the health insurance and in others, the reverse is true. Numerous other items comprise the balance of the police department budget.

The tax base in the Villages includes a small amount of commercial property. 95% of the Village's budget comes from taxes on residential property while 5% comes from commercial property (VX7).

The Village appears to be well managed from a financial standpoint. As of May 31, 2008, it had a \$2.1 million General Fund balance in place (VX4, PX7).

Of the \$2.1 million, almost \$173,000 is in a restricted fund to cover terminal leave/vacation payouts. All but \$25,000 of this sum is assigned to the Police Department. The data is not available to assess the total liability for terminal leave/vacation payouts.

There was an additional \$525,000 reserved for other purposes. After the reserves were subtracted from the General Fund Balance, there was an unrestricted fund balance of about \$1.4 million (VX7).

The projected General Fund Balance for FY 2009 is \$1.7 million. It should be added that the budgeted expenditures for FY 2009 is about \$400,000. There is no other data available to show reserves that need to be deducted from the \$1.7 million. Thus, the unrestricted fund balance is unknown at this time. The incomplete data concerning FY 2009 makes it impossible to make a definitive statement about the fiscal health of the Village. Additionally, the impact of the economic downturn in FY 2009 is especially relevant in this regard.

However, the Village of Malverne does not exist in a vacuum. The data discussed above must be viewed in the context of a 7% unemployment rate and an even larger underemployment rate. There is little evidence to suggest a significant change in this regard for most, if not all, of 2010 and beyond.

The number of foreclosures has dramatically increased (VX14). In fact, the number of foreclosures between March 2008 and July 2009 is almost six times that of the period 2004-07. Moreover, in a jurisdiction in which the real estate is overwhelmingly residential, the impact of foreclosures on the collection of real estate taxes is real.

Furthermore, the general economy has resulted in greater difficulty in selling houses. Thus, when fewer houses are sold and a correspondingly smaller number of houses are bought, there is a

reduction in revenue from the mortgage recording tax (VX37).

The Village's tax base has been affected by a decline in the median value of homes. In 2008 and 2009, the decline was 12% (VX14).

The Village has been required to assume greater expenses. It is well known that the stock market, while improving recently, suffered a very significant loss in values. As of this date, various indices indicate that the stock market is still about 25% below its level prior to the downturn. This has had a real effect on the pension system. The net result of the losses in the stock market is such that local jurisdictions have been required to increase their contributions to the pension fund (VX15). Moreover, to the extent that it is not known when the stock market will recover to the level it reached before the economic crisis, local governments need to be prepared to continue to make larger contributions to the pension fund.

Additionally, Malverne is not an island. The economic condition of New York State must be considered. The prospective budget of New York State is in flux and local governments need to anticipate diminished funding in numerous areas. These reductions will likely result in municipalities being required to make up for at least part of the lost revenue.

I have considered all of the pluses and minuses. There are accumulated surpluses which can be used in part to fund compensation increases. However, the state of the local and regional economy has had a real impact on Village revenues such that its ability to provide for increases in wages and other benefits is less than might be anticipated based on the presence of surpluses in prior years.

In short, after the review of all of the factors, I must conclude that it is unrealistic to conclude that the Village is incapable of any making any improvements in the compensation received by its police officers. On the other hand, the PBA's proposals are equally unrealistic. Thus, I find that the

Village is financially able to pay for reasonable increases in compensation.

This conclusion is based largely on the data entered in evidence. Moreover, I note that the Village did not argue that it is *unable to pay* for reasonable increases in compensation to the members of the PBA. In sum, in terms of the second criterion of the Taylor Law, I conclude that the Village has the *ability to pay* for appropriate improvements in the wages and benefits set forth 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 rather than groups of employees not engaged in police duties. 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 Village of Malverne, 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 two year successor agreement is appropriate. I concur. The predecessor agreement expired on May 31, 2007. A two year contract will expire on May 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 the current economic downturn become clearer. Under the circumstances, an Award with a term of June 1, 2007 through May 31, 2009 is appropriate.

The parties had significant differences over the matter of salary increases. The Village proposed no increases in each year of this Award while the PBA sought 6 % increases per year. In order to assess this matter, one needs to begin by reviewing the maximum salaries in 2006. At that time, the top salary for police officers in Malverne was \$93,105. It ranked fourteenth when compared to the comparable police departments (PBAX37).

The average increase among all of the comparable departments in 2007 was 4.21%. However, this statistic is skewed by the increases given in Old Brookville (6.5%) and Kensington (5.0%). I do not know if there were special issues in those negotiations. However, the average increase comes down to 4.0% when these two departments are removed from the mix.

Exclusive of Old Brookville and Kensington, the range of the increases was 3.75%-4.25%. The median increase was 4.0%. The mode was also 4.0% (PBAX36).

The first year of the instant Award is June 1, 2007-May 31, 2008. In order to be consistent with the data for the other departments, the increase identified here will be for 2007. The top salary

for police officers in 2006 was \$93,105. Based on a 3.1% increase, the top salary in Malverne will be \$95,991 and would put it in sixteenth place when compared to the other jurisdictions. The top salary will be within about \$140 of that of the Nassau County Police Department.

Turning now to 2008, there were 16 comparable police departments. The average increase among these jurisdictions was 4.08%. Once again, this statistic is skewed by the wage increase in Kensington (5.0%). When, for purposes of this analysis, this increase is not considered due to its distorting effect, the average increase is slightly less than 4.02%. The range of the increases was 3.75%-4.25%. This range is exactly what it was in 2007. While the median increase was slightly higher than it was in 2007, the mode remained 4.0% (PBAX36). With a 3.9% increase, the ranking of the top salary for police officers in Malverne will be \$99,734. The difference in this top salary between Malverne and the Freeport and Nassau County Police Departments would be at most \$150.

Sergeants are part of the PBA bargaining unit. This is true of all of the comparable departments. The top salary for sergeants in Malverne in 2006 was \$110,833.

The analysis of the increases for the sergeants is the same as for police officers and will not be repeated. Using the same assumptions that I used relative to the police officers, the top salary for sergeants in 2007 will be \$114,268 and will be \$118,725 in 2008. In 2008, as compared to 2006, the ranking of the sergeants slipped one place to 14 of 18 jurisdictions (PBAX38).

The Malverne PBA includes lieutenants. 11 other units do so as well. Top pay for Malverne lieutenants is \$125,594. This salary is sixth highest among the comparable jurisdictions. Once again, using the assumptions used in connection with the police officers and sergeants, the relative standing of the lieutenants relative to the other jurisdictions remains unchanged in 2007 and 2008. The top salary for Malverne lieutenants in 2007 will be \$129,487 and will be \$134,537 in 2008.

In addition to considering the wage increases in comparable jurisdictions, the statute requires consideration of wage increases in prior collective bargaining as well as those granted by panels in interest arbitration proceedings involving these parties. I have conducted such a review.

I studied the record of the period 1997-2006. The average increases over this ten year period were approximately 4.15%.

The standards set forth in CSL §209 require the panel to consider the four criteria stated in the statute as well as *any other relevant factors*. In this context, it would be a denial of the obvious to ignore the general economic climate at this time. This issue affects the Village's *ability to pay* and must also be a *relevant factor*.

However, before discussing the general economy as of the writing of this Award, it is first necessary to consider the comparable conditions in the past several years. I observed that the salary increases between 1998 and 2006 were about 4.15%. It cannot be denied that there was a full employment economy during those years. It must be added the property values were increasing at an almost unprecedented rate. As a consequence, property tax revenues were going up on a consistent basis.

Furthermore, residential properties were being bought and sold with relative ease. This led to significant mortgage tax receipts.

It is undisputed that 28 houses went into foreclosure between March 2008 and July 2009 while there were a total of five foreclosures in the four years between 2004 and 2007. The minimal number of foreclosures in 2004-07 had to positively impact of real estate collections.

The decline in the economy is the most severe since the Great Depression of the 1930's. The effect of this issue goes directly to the Village's *ability to pay*. It is also a *factor to be considered*

by the panel. By every measure available, employment levels during the eight year period prior to the expiration of the most recent CBA were high and people had money to spend. Local businesses benefitted, tax revenues and interest income were stable and the Village was in a position to pay for the salary increases that were either negotiated or awarded at that time. The same cannot be said for these times.

One of the criteria to be considered under the statute is the interest arbitration awards and negotiated agreements in comparable jurisdictions. I have concluded that the villages and cities of Nassau County and Nassau County *per se* are the jurisdictions comparable to Malverne.

The data suggests that the average salary increases in the comparable jurisdictions for the years covered by this Award was just about 4.0%. These increases must also be put into the context of recent economic developments.

I have studied the information related to the comparable jurisdictions. Malverne is the only unit in which there was no agreement in place for 2007 and one of two units with no agreement in place for 2008.

Almost all of the comparable bargaining units have agreements or awards that date back to at least 2006. Five of them date back to 2005 and four others go back as far as 2003 and 2004.

The common denominator in almost every one of the comparable jurisdictions is that the salary increases were put in place before the economic collapse of mid-2008. The factors that need to be considered at this time were not in play when the salary increases in the comparable jurisdictions were determined. Thus, it is unrealistic to draw a strict comparison between the salary increases to be awarded to the Malverne PBA at this time with the salary increases decided upon at least two years ago. Those raises provide guidance but cannot be given undue weight in this case.

Finally, the parties' MOA called for 4% increases. The MOA was executed in August 2008. Despite the excellent representation and advice of counsel, the PBA rejected the MOA. One month later the economic downturn began to be painfully felt.

That economic disaster, the most serious one in the past 70 years, was not short term as hoped. It is now 17 months later and unemployment levels are still extremely high and underemployment levels are even higher. Most analysts are not even prepared to opine on the number of people who are unemployed and have given up looking for work and may not be reflected in the unemployment statistics. I must conclude that the 4% increases agreed to and subsequently rejected can no longer be considered reasonable and cannot be awarded.

That being said, after carefully considering all of statutory criteria and the *other relevant factors*, I conclude that the salary increases will be 3.1% per year for the year June 1, 2007-May 31, 2008 and 3.9% for June 1, 2008-May 31, 2009. I should add that there are other elements of this Award that add to the value of the 2007 salary increase. Last, this is not to say that the Malverne police officers are any less valuable than the officers in other jurisdictions. They are every bit as good as their colleagues elsewhere. Unfortunately, these are unprecedented times and this Award is reflective of these realities.

The PBA wanted a larger increase and the Village opined that there should be no increase. There is logic to both positions. However, I am persuaded that the Village can pay for these increases and that they are appropriate at this time.

As a final matter concerning salaries, the Village proposed the creation of a new salary step between Steps 1 and 2. Given the retroactive nature of this Award, I find no reason to grant this proposal. If the Village has a serious interest in this proposal, it can include it in the negotiations for

the successor agreement.

The PBA proposed an increase in the night differential from 10% to 12%. The Village urged the denial of this proposal.

Eleven of the comparable jurisdictions use a percentage of base salary when calculating the night differential. Seven of them have the same percentage (10%) as does Malverne. Two have a 12% night differential and two others have percentages below 10%.(PBAX42).

I have reviewed the actual dollar payments for night differential in the various comparable jurisdictions. In 2006, the night differential in Malverne, \$9310, was higher than nine of the comparable jurisdictions. With no change in the night differential in Malverne, its night differential remained higher than eight of the other police departments.

I am persuaded that an increase of the night differential to 12% is not justified at this time. This proposal is denied.

The PBA proposed an increase in the uniform allowance from \$1375 per year to \$1575 per year. The Village argued that it provides the police officers with their uniforms and that the uniform allowance is for the cleaning and maintenance of the uniform.

As of 2006, the uniform allowance in the Village is fifth highest among the comparable jurisdictions. With no increase in this area in 2007, the PBA's uniform allowance remains fifth highest (PBAX46).

As to 2008, I find that a \$40 increase in the uniform allowance is appropriate. However, this addition is effective as of May 31, 2009, the last day of this Award. This increase is consistent with the terms of the MOA.

PBA members can currently accumulate 40 hours of compensatory time. The officers have

the option of receiving overtime pay in lieu of unused compensatory time. The PBA proposed increasing the number of hours accumulated from 40 to 120.

The Village opposed this proposal. It urged the panel to deny it.

A review of the data (PBAX47) reveals that only three of the comparable jurisdictions have no provision that allows for the accumulation of compensatory time. All of the others allow for an accumulation of more than 40 hours.

It is undisputed that the current provision in the CBA has not been modified in the past ten years. I conclude that number of hours of compensatory time that can be accumulated should be increased from 40 to 60. The totality of the record supports a modest increase in this area.

The current CBA provides for disciplinary proceedings against police officers in accordance with Village Law §8-804 and 8-806. The PBA proposed the revision of this contract provision such that disciplinary actions be subject to binding arbitration. The Village denied the need for binding arbitration.

All but five of the comparable jurisdictions provide for the arbitration of disciplinary charges. In this connection, the parties' MOA contained an agreement to modify ¶28.1 of the CBA to include advisory arbitration in disciplinary matters in which the Village sought penalties greater than a five day suspension.

The language of the MOA provision sets forth the rights of the Village as well as the rights of the PBA member. This provision was well drafted and well conceived. This PBA proposal is granted to the extent that ¶28.1 is to include item 8 of the MOA.

The PBA proposed increasing the mileage allowance from its current rate, \$.25 per mile, to the rate permitted by the Internal Revenue Service (IRS) rate. The Village opposed this increase.

A review of data concerning the comparable police departments indicates that six of them have agreed to the IRS rate, six others have mileage allowances that average \$.26 per mile and five others have no provision for a mileage allowance in the CBA (PBAX53).

The PBA argued that the current rate has not been changed since 1990 and is outdated. While I recognize that the cost of fuel has increased substantially since 1990, the data concerning the comparable jurisdictions suggests that the current reimbursement rate is equal to or greater than that of 11 of the 17 comparable jurisdictions. Thus, this proposal is denied.

The PBA proposed a differential for any officer assigned to work the *desk* at headquarters. The proposed differential was to be half the difference between the hourly rate of an officer at top salary and that of a sergeant.

The PBA claimed that the department is short staffed and that officers have been frequently assigned the duties of an *officer in charge*. It posited that these officers should be compensated for their assumption of additional duties.

Of the comparable jurisdictions, only three of them provide for this differential (PBAX 56). The Village pointed out that the *desk* need not be staffed by a superior officer and that two of the three departments that pay such a differential do so only when an officer assumes the duties of a sergeant or a lieutenant.

I am persuaded that this proposal is not justified at this time. Therefore, it is denied.

PBA members are currently paid for 50% of accumulated unused sick leave up to a maximum of 200 days. The PBA proposed increasing the maximum number of days to 300.

I have considered how this matter is handled in comparable jurisdictions. Eleven of them allow for the accumulation of at least 215 days.

This item must be viewed in the context of a benefit to be realized at retirement. It is uncontested that Malverne officers get Terminal Leave benefits that go beyond accumulated sick leave. These additional benefits must be considered since the Terminal Leave benefits include more than accumulated sick leave. In the absence of assertions that other jurisdictions have similar terminal leave benefits, the analysis of the comparable jurisdictions is incomplete.

The PBA argued that this proposal would benefit the Village in that it would encourage officers to reduce their use of sick leave. However, the CBA already provides for an incentive to use of sick leave or injury in the line of duty time. Thus, this provision cannot be viewed as an incentive to conserve sick leave since the parties have negotiated such a provision that is already in the CBA.

I find that the record does not support the granting of this proposal. Therefore, it is denied.

The current CBA provides for 12 paid holidays. The birthday of Dr. King is not one of them and the PBA proposed increasing the number of paid holidays to 13 by including Martin Luther King Jr's birthday. The record shows that 13 of the comparable jurisdictions provide 13 or 14 paid holidays and 13 of them consider this day a paid holiday (PBAX 60&61).

The Malverne community is a diverse one and the recognition of Dr. King would be meaningful. However, in times of fiscal travail, an additional paid holiday has cost consequences. This is particularly true in the context of officers being paid 2½ their regularly hourly rate when they work on holidays and 3½ their regularly hourly rate when they work overtime on holidays. Under current conditions this proposal must be denied.

The PBA proposed permitting officers to roll over and bank five unused vacation days per year. It posited that there be no limit placed on the accumulation.

Seven of the comparable jurisdictions have contract provisions allowing for such

accumulations. These police departments vary widely in the manner in which this matter is implemented. Four of the police departments that provide for the accumulation of unused vacation days place limits in the number of days that can be accumulated (PBAX63).

This proposal will be granted, as indicated below. However, the fiscal implications must be considered. In this respect, a modification on the approach used in Port Washington best meets the personal needs of the police officers and the fiscal needs of the Village.

The PBA members will be permitted to accumulate five of their unused vacation leave days in the year prior to retirement and have it paid out to them upon retirement the following year. The advantage to the officers is the increase in their terminal leave benefits. The advantage to the Village is the minimal cost of the increased payout upon retirement. This is unlike situations where days are accumulated at the beginning of an officer's career when his/her salary is lower and paid out years later when the salary is much higher. Therefore, as indicated above, officers will be permitted to accumulate five unused vacation days in the year prior to retirement. The salary for these five days will be added to the officer's termination pay upon his/her retirement.

The PBA proposed that its members who retire after the effective date of this agreement shall continue to receive the same dental and optical benefits for the life of the retiree as do active officers. It added that this provision also cover the spouse and dependent children of the retiree (unless the spouse remarries or the dependent child becomes emancipated).

The PBA claimed that non-contract employees of the Village and other police departments enjoy this benefit. The record shows that the Nassau County benefit fund provides the dental and optical benefits in question to Nassau County police officers and two villages provide dental benefits (PBAX66). In so far as non-contract Village employees are concerned, without greater data

concerning the work and the compensation packages of these people, it is very difficult to draw comparisons.

I am persuaded that this proposal must be denied. A major determinant here is the overwhelming number of comparable jurisdictions that do not offer this benefit.

In contrast to the proposal to provide dental and optical benefits to retirees, their spouses and dependent children, the PBA sought the continuation of medical, dental and optical benefits to the spouses and dependent children of deceased active members for the rest of their lives. These benefits would cease if the spouse remarries or the child becomes emancipated. Only three police departments do not provide some form of this benefit.

The current CBA provides for medical insurance for the spouse of an officer killed in the line of duty for five years after the death or until the spouse remarries, whichever comes first. The provision concerning officers killed in the line of duty should remain in the CBA.

However, a new section should be added to the contract. The new language deals with officers in active service whose death is off duty. The vast majority of the comparable jurisdictions continue to provide medical insurance for the spouse and dependent children for varying periods of time after the death of officers in active service. Only three of these police departments provide dental insurance as well.

I am persuaded that the spouse and dependent children should continue to receive the officer's medical insurance for a period of time after s/he dies off duty. That period of time will be two years.

There is no evidence in the record to indicate that this provision will come into play with any degree of frequency. Thus, two goals will be achieved.

The families of officers in active service who die off duty will continue to have health insurance for a reasonable period of time, two years, such that they will have the time to adjust to their new situations and to make appropriate arrangements for medical insurance in the future. By the same token, the infrequency of off duty deaths of active members of the police force is such that the financial impact on the Village budget is likely to be minimal.

The Village provided the defense and the indemnification of officers in actions in which punitive damages are sought. This provision sunsetted on May 31, 2007.

This substance of provision shall continue through the life of this Award. It will sunset on May 31, 2011 unless extended by agreement of the parties.

The PBA proposed five changes to the contract language concerning General Municipal Law §207c. This five part proposal comprised PBA Proposal 16. Three of the elements of this proposal, Proposals 16a, 16c and 16e, were withdrawn by the PBA.

The two remaining sub-proposals, 16b and 16e, concern the continuation of benefits throughout the duration of an officer's General Municipal Law §207c leave and the reliance on a medical doctor's decision to resolve disputes over the ability of an officer on a General Municipal Law §207c leave to return to either light or full duty.

Prior to the declaration of the instant impasse the parties engaged in substantive negotiations about these subjects. Given that the parties will resume negotiations shortly after the issuance of this Award, I find that it would be more appropriate for these matters to be dealt with in the next round of bargaining. Therefore, these proposals are denied.

Turning now to the Village proposals, I have previously rejected the Village proposal to add a new salary step. My awarding 3.1% and 3.9% salary increases in the two years of this Award

carries with it the denial of the Village's proposal to have a two year wage freeze.

The Village proposed changing the current 12 hour tours to tour of eight hours. Such a change would be inconsistent with the tours in virtually all of the comparable jurisdictions. Moreover, there was no evidence presented in support of this proposal. In sum, this proposal is denied.

The Village's proposal concerning sick leave is denied. The current language concerning the payout for banked sick leave days is in use in all or virtually all of the comparable jurisdictions. It is also true that the current number of sick leave days is the same number as in all but four of the comparable police departments and only one of the four provides for fewer days of sick leave.

Health insurance was a major concern of the parties. The Village proposed that police officers pay 20% of the cost of their health, dental and optical insurance. It noted that the cost of this insurance is the second greatest item in the Village's budget for police officers. It observed that the Village expended about \$325,000 in this connection. The pressure in this area appears to be inexorable.

The Village cited an Interest Arbitration Award for the Village of Herkimer in which the panel evidently granted a proposal to have police officers pay for part of their health insurance. The PBA stressed that there are no police departments in any of the comparable jurisdictions where police officers contribute to the cost of their health insurance. This assertion appears to be accurate. In short, based on the applicable standards, this proposal is denied.

A revision of the Grievance Procedure was a concern of the Village. The Village proposed the establishment of clearer time table for the steps in the Grievance Process. The PBA urged its rejection.

In the MOA, the parties agreed to amend ¶24 of the CBA. This provision called for a requirement that the PBA advance a grievance to the Village's Board of Trustees within 30 calendar days of receiving the Chief's response to a grievance filed and a further requirement that the PBA advance a grievance to arbitration within 30 days of receiving the response of the Board of Trustees.

I find the terms of the MOA revision to ¶24 to be appropriate. The Village's proposal in this regard is granted in a manner consistent with item 9 of the MOA.

The Village proposed three additional training days with no additional compensation for the officers. The PBA objected to this proposal in part because there was no showing of a need for these additional training days. A review of the Village's arguments in support of this proposal reveals no statement of need for the additional training. In the absence of a showing of a need for additional training in Malverne and/or evidence that comparable jurisdictions provide for a greater number of training days, this proposal is denied.

PBA members currently have 56 hours of personal leave per year. With the exception of holidays and more than one officer doing so at the same time, 24 of the hours may be used at the sole discretion of the officers. If not used by the end of the year, the 24 hours are lost.

The Village propose to offer the officers the option of taking the 24 hours at straight time. In its view, this would deter officers from taking the hours rather than losing them.

The PBA did not oppose this proposal with the understanding that officers should not be pressured into giving up valuable leave that could be used for unexpected situations. To the extent that that this proposal simply provides the police officers with the option of cashing in the 24 hours of personal time taken at their discretion, it should be granted.

The Village proposed a modification of the *crossing guard* grievance award. This decision

was the result of an arbitration in which the PBA prevailed. This proposal is unduly vague about the circumstances under which it would apply. As a consequence, it is denied.

The Village's final proposal calls for the elimination of travel time for recall. Every comparable jurisdiction provides for travel time when an officer is recalled. The fact that an officer receives a mileage allowance when s/he is recalled does not strengthen the merits of this proposal. In short, it is denied

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 Village's obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests.

Continued public safety, the need for positive morale within the police department and the Village's need to be able to recruit strong candidates to fill vacant positions have been in the forefront of my analysis. In my view, the terms of this Award will be supportive of these criteria.

Thus, based on the above, I make the following

#### **AWARD**

1. **TERM-** This Award shall cover the two(2) year period June 1, 2007 through May 31, 2009.
2. **SALARY INCREASE EFFECTIVE JUNE 1, 2007-** Amend the base salary contained in ¶4 of the CBA such that as of June 1, 2007 the 2006 salary schedules will be increased by 3.1%
3. **SALARY INCREASE EFFECTIVE JUNE 1, 2008-** Amend the base salary contained in ¶4 of the CBA such that as of June 1, 2008 the salary schedules will be increased by 3.9%
4. **NIGHT DIFFERENTIAL-** Night Differential

payments as described in ¶6 of the CBA will remain unchanged.

**5. UNIFORM ALLOWANCE** - Amend the payments contained in ¶22 of the CBA as follows:

Effective May 31, 2009- Increase Uniform Allowance payment by \$40

**6. MAXIMUM ACCUMULATION OF COMPENSATORY TIME**- Amend ¶ 7.4 of the CBA as follows: The maximum accumulation of compensatory time will be increased from 40 hours to 60 hours.

**7. DISCIPLINARY PROCEDURES**- Amend ¶28.1 of the CBA, Departmental Charges, to provide for arbitration of disciplinary matters where the penalty sought by the Village is greater than a five (5) day suspension. The arbitrator shall be selected pursuant to the procedure provided in ¶24.3 of the CBA. The decision and award of the arbitrator shall be advisory only and the Village Board retains all rights to make a final determination pursuant §8-804 of the NYS Village Law. The member retains all rights to appeal the Village Board's determination pursuant to §8-806 of the NYS Village Law.

**8. MILEAGE ALLOWANCE FOR RECALL**- ¶7.3 of the CBA will remain unchanged.

**9. DIFFERENTIAL FOR OFFICER ASSIGNED TO HEADQUARTERS DESK**- This proposal is denied.

**10. INCREASE IN CASH OUT OF NUMBER OF ACCUMULATED UNUSED SICK LEAVE DAYS**- ¶15.5 of the CBA is to remain unchanged.

**11. ADD MARTIN LUTHER KING JR'S BIRTHDAY AS A PAID HOLIDAY**- This proposal is denied.

**12. PERMIT THE ACCRUAL AND BANKING OF FIVE (5) VACATION DAYS PER YEAR**-¶17 of the CBA is to be changed such that officers will be permitted to accumulate five(5)unused vacation leave days from the year prior to retirement with the salary for those five (5) days added to the termination pay received by the officer upon his/her retirement.

**13. RETIREE RECEIPT OF DENTAL AND OPTICAL BENEFITS**- ¶31 of the CBA is to remain

unchanged.

14. **HEALTH, DENTAL AND OPTICAL INSURANCE FOR SPOUSES AND DEPENDENT CHILDREN OF OFFICERS WHO DIE WHILE OFF DUTY BUT ACTIVE SERVICE-** Amend ¶21.2 of the CBA as follows:

The Village will pay the cost of health insurance of spouses and dependent children of officer who die off duty but are in active service for two years after the death of the officer.

15. **INDEMNITY-** ¶26 of the CBA will be extended until May 31, 2011 when it will sunset and become null and void unless extended by the mutual written agreement of the parties.

16. **LINE OF DUTY INJURY-** Three of the sub-proposals, 16a, 16c and 16e, were withdrawn by the PBA. Sub-proposals 16b and 16d are denied.

17. **ADD AN ADDITIONAL SALARY STEP BETWEEN STEPS 1 AND 2-** With respect to the number of salary steps, ¶4 of the CBA is to remain unchanged.

18. **REPLACE TWELVE (12) HOUR TOURS OF DUTY WITH EIGHT (8) HOUR TOURS-**¶11.1 of the CBA is to remain unchanged.

19. **UNUSED SICK LEAVE IS TO BE PAID OUT AT THE RATE AT WHICH IT WAS "BANKED"-**¶15.1 and 15.5 of the CBA are to remain unchanged.

20. **THE NUMBER OF SICK LEAVE DAYS IS TO BE REDUCED FROM SEVENTEEN (17) TO TWELVE (12)-**¶15.1 and 15.6(b) of the CBA are to remain unchanged.

21. **POLICE OFFICERS HIRED AFTER JANUARY 1, 2009 ARE TO CONTRIBUTE 20% OF THE COST OF THEIR HEALTH INSURANCE-** ¶21 of the CBA is to remain unchanged.

22. **AMEND THE LANGUAGE OF THE GRIEVANCE PROCEDURE RELATIVE TO THE APPEAL OF GRIEVANCES TO VARIOUS STEPS IN THE PROCESS-** Amend ¶24.0 of the CBA to require the PBA to advance a grievance to the Board of Trustees of the Village within thirty (30)

calendar days of receiving the Chief's answer to a grievance and to require the PBA to advance a grievance to arbitration within thirty (30) calendar days of receiving the Board of Trustees' answer.

23. ADD THREE (3) TRAINING DAYS PER YEAR AT NO ADDITIONAL COMPENSATION TO THE POLICE OFFICERS- This proposal is denied.

24. OFFICERS MAY ELECT TO EXCHANGE AT STRAIGHT PAY TWELVE (12) OR TWENTY FOUR (24) OF NON-DISCRETIONARY PERSONAL LEAVE TIME- Amend ¶16.1 of the CBA to provide officers with this option.

25. MODIFY THE "CROSSING GUARD" ARBITRATION AWARD- This proposal is denied.

26. ELIMINATE TRAVEL TIME FOR RECALL- ¶10.0 of the CBA is to remain unchanged.

27 All proposals of the PBA not specifically included in this Award are denied.

28 All proposals of the Village not specifically included in this Award are denied.

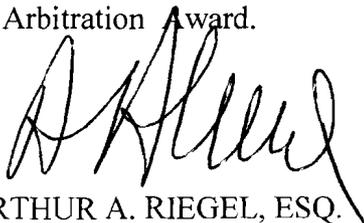
Dated: February 8, 2010  
Hewlett Harbor, NY

  
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.

  
ARTHUR A. RIEGEL, ESQ.

this option.

25. MODIFY THE "CROSSING GUARD" ARBITRATION AWARD- This proposal is denied.

26. ELIMINATE TRAVEL TIME FOR RECALL-

¶10.0 of the CBA is to remain unchanged.

27 All proposals of the PBA not specifically included in this Award are denied.

28 All proposals of the Village not specifically included in this Award are denied.

Dated: February 8, 2010  
Hewlett Harbor, NY

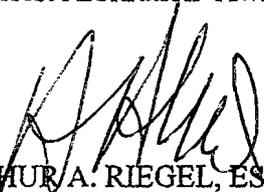
  
ARTHUR A. RIEGEL  
CHAIR, INTEREST ARBITRATION

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.

  
ARTHUR A. RIEGEL, ESQ.

EMPLOYER PANELIST

I, Peter A. Bee, Esq., 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. Wage Increase-Effective June 1, 2007

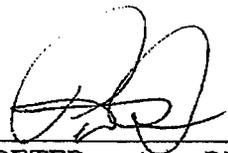
Concur

Dissent

- |   |                       |
|---|-----------------------|
| 3. Wage Increase-Effective June 1, 2008                                     | Concur                |
| <u>Dissent</u>  |                       |
| 4. Night Shift Differential Increase-                                       | <u>Concur</u> Dissent |
| 5. Increase in Uniform Allowance-   | Concur                |
| <u>Dissent</u>  |                       |
| 6 Increase in maximum accumulation of compensatory time-                    | Concur                |
| <u>Dissent</u>  |                       |
| 7. Modification of Disciplinary procedure-                                  | Concur                |
| <u>Dissent</u>  |                       |
| 8. Increase in mileage allowance-   | <u>Concur</u>         |
| Dissent   |                       |
| 9. Differential for officers assigned to Headquarters Desk -                | <u>Concur</u>         |
| Dissent   |                       |
| 10. Increase in maximum accumulation of unused sick leave days -            | <u>Concur</u>         |
| Dissent   |                       |
| 11. Addition of Martin Luther King Jr. Day as a paid holiday-               | <u>Concur</u>         |
| Dissent   |                       |
| 12. Banking and rolling over five (5) vacation days per year-               | Concur                |
| <u>Dissent</u>  |                       |
| 13. Dental and optical benefits for retirees-                               | <u>Concur</u>         |
| Dissent   |                       |
| 14. Medical, dental and optical benefits for spouse & dependent children of |                       |

|  |        |         |
|--|--------|---------|
| deceased active members-   | Concur | Dissent |
| 15. Defense and indemnification for punitive damage claims-            | Concur | Dissent |
| 16. Procedures under General Municipal Law § 207c-                     | Concur | Dissent |
| 17. Additional salary step-  |        | Concur  |
| Dissent  |        |         |
| 18. Replace twelve (12) hour tours with eight (8) hour tours-          |        | Concur  |
| Dissent  |        |         |
| 19. Rate at which unused sick leave is paid out-                       | Concur | Dissent |
| 20. Reduction in number of sick leave days-                            |        | Concur  |
| Dissent  |        |         |
| 21 20% contribution for health insurance for those hired after 1/1/08- |        | Concur  |
| Dissent  |        |         |
| 22. Amend Grievance Procedure-   | Concur | Dissent |
| 23. Training Days-   | Concur | Dissent |
| 24. Pay out for non-discretionary personal leave time-                 |        | Concur  |
| Dissent  |        |         |
| 25. Modification of <i>Crossing Guard</i> arbitration award-           |        | Concur  |
| Dissent  |        |         |
| 26. Elimination of travel time for recall-                             | Concur | Dissent |
| 27. All other rejected PBA proposals-                                  | Concur | Dissent |
| 28. All other rejected Village proposals-                              |        | Concur  |
| Dissent  |        |         |

ESQ.

  
PETER A. BEE,

**EMPLOYEE PANELIST**

I, David A. Davis, Esq., 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. Wage Increase- Effective June 1, 2007                  | Concur | Dissent |
| 3. Wage Increase- Effective June 1, 2008                  | Concur | Dissent |
| 4. Night Shift Differential Increase-                     | Concur | Dissent |
| 5. Increase in Uniform Allowance-                         |        | Concur  |
| Dissent   |        |         |
| 6. Increase in maximum accumulation of compensatory time- |        | Concur  |

EMPLOYEE PANELIST

I, David A. Davis, Esq., 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. Wage Increase- Effective June 1, 2007  | Concur | Dissent |
| 3. Wage Increase- Effective June 1, 2008  | Concur | Dissent |
| 4. Night Shift Differential Increase-   | Concur | Dissent |
| 5. Increase in Uniform Allowance-   | Concur | Dissent |
| 6. Increase in maximum accumulation of compensatory time-   | Concur | Dissent |
| 7. Modification of Disciplinary procedure-  | Concur | Dissent |
| 8. Increase in mileage allowance-   | Concur | Dissent |
| 9. Differential for officers assigned to Headquarters Desk -  | Concur | Dissent |
| 10. Increase in maximum accumulation of unused sick leave days -  | Concur | Dissent |
| 11. Addition of Martin Luther King Jr. Day as a paid holiday-   | Concur | Dissent |
| 12. Banking and rolling over five (5) vacation days per year-   | Concur | Dissent |
| 13. Dental and optical benefits for retirees-   | Concur | Dissent |
| 14. Medical, dental and optical benefits for spouse & dependent children of<br>deceased active members- | Concur | Dissent |
| 15. Defense and indemnification for punitive damage claims-   | Concur | Dissent |
| 16. Procedures under General Municipal Law § 207c-  | Concur | Dissent |
| 17. Additional salary step-   | Concur | Dissent |
| 18. Replace twelve (12) hour tours with eight (8) hour tours-   | Concur | Dissent |

- 19. Rate at which unused sick leave is paid out- Concur Dissent
- 20. Reduction in number of sick leave days- Concur Dissent
- 21. 20% contribution for health insurance for those hired after 1/1/08- Concur Dissent
- 22. Amend Grievance Procedure- Concur Dissent
- 23. Training Days- Concur Dissent
- 24. Pay out for non-discretionary personal leave time- Concur Dissent
- 25. Modification of *Crossing Guard* arbitration award- Concur Dissent
- 26. Elimination of travel time for recall- Concur Dissent
- 27. All other rejected PBA proposals- Concur Dissent
- 28. All other rejected Village proposals- Concur Dissent

  
 \_\_\_\_\_  
 DAVID A. DAVIS, ESQ.