

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

NYS PERB Case No.:
IA2007-013; M2007-084

-between-

VILLAGE OF PELHAM MANOR,
"Village / Petitioner"

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

AUG 10 2009

- and -

**PELHAM MANOR POLICE BENEVOLENT
ASSOCIATION, INC.,**
"PBA / Respondent"

CONCILIATION

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTE
ARBITRATION PANEL
For the Period:
6/1/06 – 5/31/08

PANEL MEMBERS

Panel Chairman Roger E. Maher
Employee Panel Member David A. Davis, Esq.
Employer Panel Member David M. Wirtz, Esq.

APPEARANCES

For the Pelham Manor Police Benevolent Association, Inc.
Law Offices of Davis & Hersh, LLP
Lloyd M. Berko, Esq.

For the Village of Pelham Manor
Law Offices of Littler Mendelson, P.C.
Bruce R. Milman, Esq.
Gary D. Shapiro, Esq.

BACKGROUND

The Pelham Manor Police Benevolent Association, Inc. (hereinafter "PBA") and the Village of Pelham Manor (hereinafter "Village") are parties to a collective bargaining agreement (hereinafter "Agreement") that covered the three (3) year period from June 1, 2001 through May 31, 2004 as amended by an interest arbitration award dated 1/29/03 covering the period of June 1, 2004 through May 31, 2006 (2006 Award), which together set forth the terms and conditions of employment of the twenty-seven (27) members of the PBA.

The parties met on April 10, 16, 30, May 21 and June 4, 2007, in an attempt to reach a new CBA. During negotiations, the PBA presented its proposals in the form of a revised CBA, and the Village submitted its proposals. During the sessions, the parties thoroughly discussed each others proposals.

Despite the effort of the parties to negotiate an agreement, impasse was reached and on July 12, 2007 and the Village filed a Declaration for Impasse and Request for Mediator with the New York State Public Employment Relations Board (PERB).

The parties met on September 6 and 19, 2007 with PERB appointed mediator Karen R. Kenny. Despite her attempt to bring the parties together, the parties were unable to reach an agreement. Consequently on October 15, 2007, the Village filed a Petition for Compulsory Interest Arbitration with PERB. The PBA entered a Response to the Petition.

PERB designated Roger E. Maher as the neutral Chairperson of the Panel; the PBA designated David A. Davis, Esq. as its panel member; and the Village designated David M. Wirtz, Esq. as its panel member. The Panel is authorized to issue an Award covering June 1, 2006 through and including May 31, 2008.

Compulsory Interest Arbitration hearings were held on October 28, November 4, and November 24, 2008. The parties were both represented by counsel and afforded a full opportunity to present oral and written documentary evidence in support of their respective positions. PBA President Robert Martin, PBA Vice President Jeffrey Gaul, and Dr. Amy McCarthy, an expert in municipal budgets and finance testified on the PBA's behalf. The PBA submitted seventy-nine (79) exhibits that were entered into evidence. Village manager John Pierpont testified on behalf of the Village. The Village submitted thirty-six (36) exhibits that were entered into evidence. The parties agreed that a stenographic record would not be taken of the proceedings. Ten (10) joint exhibits were also entered into evidence. The record was declared closed and a briefing schedule was established. The Panel received the parties' post hearing briefs dated January 23, 2009. Thereafter the Panel convened in executive session on March 9, 2009, June 1, 2009 and June 11, 2009.

DEMANDS OF THE PBA

1. Wages

a) Increase wages by 5% in the first year of the agreement; and

b) Increase wages 5.5% in the second year of the agreement. New salary schedule :

	<u>6/01/06</u>	<u>6/01/07</u>
Det. Sgt.	\$101,508	107,092
Sergeant	\$96,641	\$101,957
Detective	\$88,903	\$93,793
First Grade P.O.	\$84,036	\$88,658

Second Grade P.O.	\$76,186	\$80,377
Third Grade P.O.	\$68,340	\$72,098
Fourth Grade P.O.	\$60,495	\$63,823
Fifth Grade P.O.	\$41,225	\$43,493

c) **Sergeant Salary shall be 15% above First Grade P.O.**

2. Longevity:

Increase longevity payments as follows:

<u>Upon completion of:</u>	<u>Current</u>	<u>Proposed</u>
10 years of service	(Cumulative)	(Cumulative)
15 years of service	\$ 750	\$1,750
19 years of service	\$ 1,250	\$2,250
	\$ 1,250	\$3,250*

*Upon 18 years of service.

3. Hospital and Welfare Coverage (Article VIII):

a) Retiree Health Contributions:

~~Delete: current Section 2: Payments by the Employer under any provision of this Agreement or any other written agreement between the parties shall be made only for retirees who were active Village employees as of the execution date of this Agreement (or of any successor Agreement) and shall be made only during the term of said Agreement.~~

New Section 2: The Employer shall pay one hundred percent (100%) of the cost of health insurance or plan, providing benefits and coverage at least equal to or better than the plan currently in effect, for the retiree and family. Payments under this provision shall be made only for retirees who were active Village employees as of the execution date of this Agreement (or of any successor Agreement) and shall continue to be made during retirement, and shall continue to be made for the former employee's spouse if the former employee predeceases his spouse.

b) Current Retiree Health Contributions:

New Section 2a: In accordance with the strong recommendation of the Village's long term labor counsel, David Wirtz, and of Martin Ellenberg set forth in their recent arbitration award, if it has not done so previously, the Village shall immediately reinstate its past practice of paying at least sixty- five percent (65 %) of the cost of individual coverage and fifty (50%) of the additional cost of family coverage for police retirees. The Village changed the practice in April 2005.

c) New Plan Benefits:

Section 5: The Employer shall have the right to switch health insurance plans provided such new plan provides benefits at least comparable to the benefits being provided by the present health insurance plan and, provided further, that the Employer send ninety (90) days advance notice to the Association together with a copy of the new proposed plan for review. The Employer shall promptly supply all information requested by the Association to the Association, or if requested by the Association, signed authorizations to obtain the same from the plan or from other sources. In the event that the Association objects to the change, it shall have forty-five days after the receipt of notice and all requested information to file a Grievance and may utilize the procedures in this Agreement. In the event that the Association files a Grievance, the Employer may not switch plans until after the Arbitration Award, and then only if the change is in accordance with the Arbitration Award.

d) Dental Contribution:

Section 6: Effective June 1, 2006, the Employer shall contribute eleven hundred dollars (\$1100.00) per contract year per employee to a dental plan provided, by the Association, towards individual or family coverage (depending upon the particular employee's status). ~~(DELETE: This maximum shall be increased to six hundred dollars (\$600.00) effective June 1, 1997.)~~

Additionally, on June 1, 2007, the Employer shall pay to the Association the sum of eight hundred dollars (\$800.00) per employee as a lump sum adjustment of payments towards the dental plan provided by the Association.

New: Section 6a: The Employer shall continue to make the contribution for dental coverage provided for employees in this Collective Bargaining Agreement for current employees when they retire during retirement.

4 Life Insurance (Article X):

Section 1: Effective June 1, 2006 (Delete: -1996), the Employer shall pay to the Association four hundred fifty dollars (\$450.00) per employee per contract year to purchase a life insurance policy at least in the sum of one hundred thousand dollars (\$100,000) for each member of the bargaining unit.

Section 2: On June 1, 2007, the Employer shall pay to the Association four hundred dollars (\$400.00) per employee as an adjustment to its life insurance payments.

5. Uniform and Equipment Allowances (Article XVII):

Section 6: The Employer shall continue to provide for work uniforms for members of the bargaining unit. The uniform allowance shall be nine hundred fifty dollars

(\$950) effective June 1, 2007. (Delete: six hundred dollars (\$600) effective June 1, 1997). In addition to this uniform allowance, bargaining unit members shall receive a uniform cleaning and maintenance allowance of four hundred dollars (\$400.00) per contract year. Said sums shall be paid in cash to each police officer and not credited as an allowance. Additionally, on June 30, 2007, the Employer shall pay to each employee the sum of nine hundred dollars (\$900.00) as a lump sum adjustment to its uniform allowances.

6. Holiday Pay (Article VI):

Section 2: Employees who are required to work on Martin Luther King's Birthday, Easter Sunday, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, Christmas Day (December 25) or New Year's Day (January 1") shall receive regular pay plus an additional day's pay in addition to the holiday pay provided for in Section 1 above.

7. Attendance Bonus (Article XVI):

Section 5 ... Absences due to line of duty injuries (~~Delete: other than those for which the employee has applied for and is determined to be covered by General Municipal Law Section 207 e~~) shall not be treated as sick leave for purposes of this Section 5 unless those absences, when added together, exceed four (4) months or more during said calendar year. Employees who are relieved of duty due to illness or injury during a shift shall not be charged with a sick day for purposes of this Section 5.

8. Grievance and Arbitration (Article XVIII):

a) Grievance Timeline and Procedure:

Section 2: Change "Chief Committeeman" to "the Association."

NEW: Section 3: The Chief of Police shall respond in writing to the Association, giving the reason for his decision, within five business days of his receipt of the grievance. In the event that such grievance is not resolved after being presented to the Chief of Police, it shall then be presented to the Village Manager within 10 business days of the receipt by the Association of the response from the Chief of Police. The Village Manager shall respond in writing to the Association, giving the reason for his decision, within 10 business days of his receipt of the grievance.

~~DELETE CURRENT Section 3: In the event that such grievance is not resolved within five (5) business days of presentation, it shall then be submitted within ten (10) business days of such presentation, in writing, to the Village Administrator for resolution.~~

NEW: Section 4: In the event that such grievance is not resolved within 10 business days by the Village Manager, the Association has the right to present the grievance to the Board of Trustees, within 20 business days of the Association's receipt of the Village Manager's response to the grievance.

~~DELETE CURRENT Section 4:~~ ~~In the event that such grievance is not resolved within ten (10) business days of presentation to the Village Administrator, it shall then be presented to the Board of Trustees within twenty (20) business days of submission to the Village Administrator.~~

Section 5: Board of Trustees shall respond in writing to the Association, giving the reason for its decision, within thirty days of receipt of a grievance. In the event that such grievance is not resolved within thirty (30) days of presentation to the Board of Trustees, it may then be submitted to either party to binding arbitration: before an impartial arbitrator. The impartial arbitrator shall be designated by the parties, or alternatively, an arbitrator shall be selected from a list provided by the PERB.

~~DELETE CURRENT Section 6:~~ ~~It is the intent of the parties that the special four person arbitration panel named in Section 5 above shall be continued as a permanent panel and, further, that each such individual arbitrator named shall continue to serve during this Agreement and all successor agreements unless and until he or she dies or submits his or her resignation in writing or the parties mutually agree to drop or replace such arbitrator. In such event, he or she shall be replaced upon the permanent panel by Benjamin Wolf and Maurice Benewitz in that order.~~

b) Section 8:

~~DELETE CURRENT Section 8:~~ ~~Only one grievance arising out of the same incident, occurrence of event may be submitted to each arbitration hearing, unless the parties agree to the contrary.~~

c) Section 9:

~~DELETE CURRENT Section 9:~~ ~~No grievance settled or arbitration award shall be retroactively effective to a date more than thirty (30) calendar days before the first presentation of the grievance under Section 2 Above.~~

9. GML § 207~c (Article XIX):

a) Light Duty Assignment:

The Union proposes that Article XIX, Section 2(d) be revised so that a physician makes the determination as to the ability of an employee to perform light duty.

b) Determinations:

Section 4(b): An officer receiving Section 207-c benefits will submit to such medical examinations as are required by the Chief. (DELETE: Upon receipt of a medical report certifying that the officer may perform full duty or light duty, the officer will return to duty if so ordered by the Chief. An officer who refuses to return to work after certification of fitness for duty forfeits any right to GML Sec. 207-c benefits and may be subject to discipline. An officer may, however, seek review of the determination of fitness for duty as provided below.)

c) Review of Determinations:

1. Appeal of Chief's determination: An officer who (a) has been denied disability benefits upon proper application, or (b) is determined to no longer be entitled to such benefits or (c) has been determined to be fit to return to full duty or light duty status, may appeal the Chief's determination, in writing, within (DELETE: ten (10) days) thirty (30) days of the Chief's determination to the Village Administrator.

2. Hearing Officer: In the event that the officer disagrees with the determination of the Village Administrator, he or she may request a hearing within ten (10) days of the receipt of the Village Administrator's determination.

The hearing will be held [by] a mutually agreed [upon] hearing officer or arbitrator. (DELETE: before the "Village Board or its designee.")

DELETE: If a hearing officer is designated by the Village Board, he or she will prepare findings and recommendations which will be submitted to the Village Board for its final determination. The final determination of the Village Board will be made as soon as is practicable after the close of the hearing or upon receipt of the hearing officer's report.

The final determination (DELETE: of the Village Board) may only be reviewed as provided for in Article 78 of the New York Civil Practice Law and Rules.

d) Outside Employment:

Section 7(a): Officers receiving benefits under GML Sec. 207-c shall refrain from any activity which is inconsistent with their disabled status. (DELETE: Officers receiving disability benefits will not engage in outside employment.)

DEMANDS OF THE VILLAGE

ARTICLE II – RECOGNITION

- Section 5 Delete
- Section 6 Move to insert as last sentence of Section 2

ARTICLE III - RECIPROCAL RIGHTS

Add: "color, sexual orientation, or any other basis protected, and to the extent required, by applicable law"

ARTICLE IV - WAGES AND LONGEVITY

- Section 2 Change "for one (1) tour of duty or more" to "for more than one (1) tour of duty"
- Section 3 Change to read as follows: "Longevity payments shall be based on consecutive years of service completed as a police officer with the Village for all officers hired on or after July 1, 2007."

ARTICLE VII - VACATIONS

- Section 1 Amend to provide that employees hired on or after July 1, 2007 shall be eligible for up to a maximum of 20 working days
- Section 7 Change "two (2) weeks" to "six (6) months"
- Section 12 Change "sixty (60)" to "thirty (30)"

ARTICLE VIII - HOSPITAL & WELFARE COVERAGE

- Section 1 Delete "until such time as they reach Patrolman-1st Grade" for employees hired on or after June 1, 2007
- Section 2 Amend to provide that the Village shall pay fifty (50%) percent of the

individual health insurance premium into retirement for all employees who retire during the term of the Agreement, and thirty-five (35%) percent of the difference between the individual and family premium for retirees who are eligible for, and elect, family coverage

Section 3 Delete

Section 4 Amend the second paragraph to provide that the payment shall be made at the end of the 12-month period

Section 7 Add to the last sentence: "to the extent permitted by the program"

ARTICLE IX - PENSIONS

Section 2 Delete

Section 4 Delete

ARTICLE X - LIFE INSURANCE

Section 1 Delete the language after "policy"

ARTICLE XII - EDUCATION ASSISTANCE

Section 3 Delete "(exclusive of retirement)" and add: "and/or may be deducted from any payments for accrued benefits made to a resigning employee pursuant to this Agreement"

ARTICLE XV - LEAVE FOR ASSOCIATION BUSINESS

Delete

ARTICLE XVI - SICK AND PERSONAL LEAVE

- Section 1 Amend to provide that sick leave shall be earned at the rate of one day per month of service
- Section 5 In the second paragraph, change the second sentence to read as follows:
"Absences pursuant to General Municipal Law § 207-c shall not be treated as sick leave for purposes of this Section 5.

ARTICLE XVII- MISCELLANEOUS

- Section 1 Add: "to the maximum extent permitted by the System"
- Section 2 Delete
- Section 6 Clarify last sentence if necessary
- Section 8 Add "and/or the New York State Human Rights Law"

ARTICLE XVIII - GRIEVANCE PROCEDURE

- Section 5 Add to the second: "in accordance with the list-only labor arbitration procedures of the American Arbitration Association." Delete the third sentence.
- Section 6 Delete

ARTICLE XIX - G.M.L. SEC. 207-c

- Section 3 (a) In the second paragraph, add "in writing" after "Chief"
- Section 4(a) Change "on a monthly basis" to "every two weeks in person unless it is medically impossible for the employee to do so"
- Section 5 Amend to provide that the appeal of the Chief's determination shall go directly to the Village Board or its designee

For an officer to be "clean and well groomed" within the meaning of Article 10 of the Rules and Regulations of the Department, he shall be clean-shaven in accordance with applicable law.

STATUTORY CRITERIA

New York Civil Service Law § 209(4)(c)(v) sets forth the criteria that the Panel must consider in weighing the evidence presented by the parties to reach a "just and reasonable determination of the matters in dispute." Those factors are:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other traders or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel may also consider "any other relevant factors" when making its determination of the matters in dispute. *Id.* Among the "other relevant factors" that panels often consider are the terms and conditions of employment and terms of collective agreements negotiated by other bargaining units in the same municipality, particularly other uniformed public safety employees such as firefighters.

Ability to Pay

Summary Position of the Village

1. Ability to Pay is Comparable, Not Absolute

Admittedly, Pelham Manor is the fifth wealthiest among Westchester County villages in terms of median income. See VX 37. However, ability to pay is not an absolute inquiry. Rather, as the Taylor Law itself indicates, it must be balanced against the interests of the

public. And it is the interests and welfare of the public that come first in that equation." ⁵ See Civ. Svc. L. § 209(4)(c)(v)(b). As Arbitrator John Sands stated in his 2003 interest arbitration award for the nearby Village of Larchmont, "Ability to pay does not operate to require imposition of a higher award than the other Taylor Law criteria justify." See VX 16. Arbitrator Sands also stated, "the 'comparability' criterion does not mandate that a unit occupy a particular rank within the universe of comparable communities." Id. Thus, it does not follow from its fifth ranking in median income that Pelham Manor must have the highest or second highest paid police force in Westchester County, which apparently it does. See AX 23.

2. Residential Taxpayers Bear the Majority of the Village's Tax Levy and Already Pay High Taxes.

The Association's expert testimony on the Village's finances rested on the fact that the Village is debt free and that it has substantial reserves. However, Ms. McCarthy's depiction omits an important back-story. That story is that (1) the vast majority of Village revenue comes from real estate taxes, (2) the vast majority of the real estate tax levy falls on residential taxpayers, and (3) that the proportion of taxes falling on residential taxpayers is high and has increased despite efforts to stem or reverse that trend. Finally, the taxes paid by the Village's residents are extraordinarily high by any reasonable measure.

In 1999, 75% of the Village's real estate taxes were borne by its residential taxpayers. Consequently, at that time, the Village re-evaluated its property tax assessment outlook and adopted the provisions of the Homestead Law, which permits it to tax real estate at two different rates - one for residential properties and another for non-residential properties - in an attempt to

⁵ "the interests and welfare of the public and the financial ability of the public employer to pay;"

preserve the proportion of taxes paid by residential taxpayers and prevent it from getting any larger. However, residential property assessments and the residential tax levy have since increased faster than their non-residential counterparts. Thus, although the Homestead Law should facilitate a slowing down of that shift, such a shift has nonetheless persisted. See VX 5. For example, 83.18% of the real estate taxes were borne by residential taxpayers during the 2006-2007 fiscal year, and as the 2008-2009 budget demonstrates, the burden falling on residential taxpayers is even greater now, with 85.53% of the real estate taxes predicted to be borne by residential taxpayers. See VX 1,3. As one can see in VX 5, this shift has been notable, and according to Village Manager John Pierpont, those numbers would have been even more stark if not for the adoption of the Homestead Law. The percentage increases in homestead tax growth in the Village have outstripped the increases in the CPI-U⁶ for the corresponding years (see VX 5, 6), and the median property taxes paid in Westchester County (\$8,422) are the highest in the country (VX 8, p. 1). Further, the Village's own tax rate and the rates of similar communities, when the various taxes imposed by those municipalities are equalized to full property value (VX 7), which is the basis for the Village's assessment of its property taxes, are multiples more than the Westchester County median. It is worth noting that those villages were chosen for comparison because they are the ones the Village Manager considers when making financial comparisons. Perhaps even more significant, the Village's median real estate taxes as a

⁶ Recently, the Bureau of Labor Statistics announced a significant drop in the CPI for 2008. .See <http://www.bls.gov/news.release/pdf/cpi.pdf> ("For the 12 month period ending December 2008, the CPI-U rose 0.1 percent. This was the smallest calendar year increase since a 0.7 percent decline in 1954 and compares with a 4.1 percent increase for the 12 months ended December 2007.")

percentage of median home value is 2.573% (VX 7), which places it and its comparator villages in the middle of the list of the most disproportionately taxed counties that pay the highest percentage of their fair market value in taxes (VX 8, p. 2).

In effect, despite the Village's apparent economic wealth, its residents pay more than comparable communities and far more than the national norm. Considering those statistics, as well as the country's overall economic condition, the Village cannot be expected to do much tinkering with its residential taxes.

3. The Report Produced by the Association's Expert Failed to Consider Several Major Points.

During her presentation, the Association's Maryland-based expert gleaned what she could from analyzing the Village's budgets and financial statements, and focused in part on the Village's debt level. While Ms. McCarthy is well credentialed and offered some insights, she was obviously not familiar with the workings of the Village, with some of the rules governing municipal finances in New York, or with the practical and political aspects of running a village, which is not a purely academic exercise. Her testimony should be discounted accordingly.

Ms. McCarthy noted that the Village does not have any debt and that it funds its expenses from current income. But, although she has never been responsible for running a municipality or answered to a village board or taxpayers, she also testified that doing so may not be the best way to fund the Village. However, by gradually building up reserves from current income to pay for capital expenditures, the Village taxpayers earn the income on invested fund balances, rather than paying interest on debt to investors. This is not irresponsible; it is wise! Nonetheless, Village Manager John Pierpont testified that virtually any large, unexpected expense, like a hurricane or other natural disaster, would push the Village into debt.

Considering the Village's other financial obligations, the current and increasing property tax burdens on the Village's residents, the perilous state of New York State, and the nationwide economic downturn, the village should not be required to grant the police any increase in salary, let alone 10.5% over two years, as well as other exorbitant increases in benefits demanded by the Association.

Summary Position of the PBA

A. The Interests and Welfare of the Public and the Financial Ability of the Public Employer to Pay.

The interests and welfare of the public are met by having a collective bargaining agreement in place for the PBA that provides wages, hours, terms and conditions of employment in line with the other Westchester village police collective bargaining agreements, which will foster high morale among PBA members, and will in turn maintain the extraordinarily high quality of service residents of the Village have come to enjoy and expect.

The Village has the financial ability to pay for the PBA's proposals. There is no doubt the Village's fiscal condition is healthy, In fact, the Village, year after year, does not borrow money, does not have debt and maintains a surplus. (U. Ex. 47). Dr. Amy McCarthy, an expert in municipal budget analysis, testified on behalf of the PBA and concluded the Village has the ability to pay for the cost of the PBA's economic proposals. In making this determination, Ms. McCarthy examined numerous documents including Village budgets and audited financial statements. (U. Ex. 47 and V. Ex. 1,2,3,9).

To aid her presentation, Dr. McCarthy prepared an illustrative packet of charts and

analysis of the Village's fiscal data. (U. Ex. 47, pp. 1-9). Dr. McCarthy testified that the revenues used to pay PBA members comes from the Village's general fund. The majority of the general fund revenue comes from real property taxes. Revenues consistently increased in fiscal years 2006, 2007 and 2008, while tax rates decreased during those years. (Id.). While expenditures also increased, the increases have not kept pace with increase in revenue. (Id.). Accordingly, the Village has been able to maintain a healthy and substantial fund balance surplus. (Id.). Even the fund balance surplus has increased over the last three fiscal years and the Village has projected another for 2009. (Id.). In 2005, Pelham Manor ranked fifth out of twenty-two (22) Westchester County Villages in household income and it had over 1 billion dollars of assessed real estate value in fiscal year 2008. (Id., V. Ex. 34).

In further testament to the Village's fiscal health, Dr. McCarthy pointed to the Village's ratio of current assets to current liabilities. Because the Village's assets have grown far more than its liabilities, its ratio of 8.38 in fiscal year 2007, and 13.31 in fiscal year 2008, are well above the norm. (Id.). Dr. McCarthy testified that a ratio of 1 or more is a sign of good fiscal health. Also, the Village's unreserved net assets constituted 9.1 % (fiscal year 2007), and 10.1 % (fiscal year 2008) of the Village's revenue in those years. (Id.). Dr. McCarthy testified that these percentages were in the normal range and indicated the Village budgeting is normal and good. The Village also maintains a fund for "unforeseen events", currently \$410,000, which can be allocated for any future expense, such as the cost of this Award. Since 2003, revenues have also grown more rapidly than police department expenditures. Police department expenditures, as a percentage of revenues, have remained constant and there are no indications that the trend will be affected should the Panel grant all of the PBA's proposals.

It is clear the Village is also ready to pay for the PBA's proposals. The Village submitted the testimony of the Village administrator, John Pierpont. Mr. Pierpont offered no testimony or evidence to oppose Dr. McCarthy's conclusion that the Village has the ability to pay. In fact, Mr. Pierpont admitted, because the Village operates without deficit and maintains a surplus, it does not borrow money or need to use any of its constitutional debt limit. Moreover, its tax rate is below the constitutional tax limit, which allows the Village the leeway to raise taxes if necessary. However, Mr. Pierpont did not conclude that taxes will need to be raised in the event the PBA's proposals are granted. In fact, there are no indications that raising taxes would be necessary to pay for the Award. Mr. Pierpont confirmed this when he testified there is no legal impediment against the Village allocating all or part of the \$410,000 budgeted for "unforeseen events" to help pay for the Award, if necessary. Clearly, the Village has the ability to pay for the PBA's proposals, and the Panel should grant all of the PBA's proposals.

Discussion and Analysis

The heart of any economic package is primarily the wage determination. It is the largest cost item for the Village. It is the most significant term and condition of employment for bargaining unit members in conjunction with health insurance. The Chairman is cognizant that the tax burden placed upon the Village is not decreasing in conjunction with taxable assessed valuation. The Chairman engaged in incorporating a balance in the wage increases and other monetary demands awarded with other police agreements and/or awards in the comparable communities submitted to and used by the Panel. The PBA's demand for a Base Wage increase of 5% in the first year and 5.5% in the second year of this Award is not warranted. However, the Village's lack of any direct wage increase for each of the same two (2) years is not justified either.

A simplistic view of the increases to the comparables in 2006 average 3.96%. The average wage increase for 2007 was 4.07%. The forgoing view does not provide a complete and or comprehensive record of what other elements went into a respective settlement or interest arbitration award.

In addition the Chairman opines that in light of the current and dire economic recession that has negatively effected all economic strata albeit prospectively from the term of this interest arbitration award, nonetheless these current economic realities can not be excused when fashioning a wage increase.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article IV Wages and Longevity

4% wage increase effective 9/1/06 to all police categories set forth in wage Schedule A (1) having expired on 5/31/06.

4% wage increase effective 9/1/07 to all police categories set forth in wage schedule A (1) having expired on 5/31/07.

Article VIII Hospital and Welfare Coverage

Retiree Health Insurance

Summary position of the Village

The Village submits this issue is the most crucial one to be decided by the Panel, particularly the PBA's demand that the Village increase its retiree health contributions for both individual and family coverage to 100%.

To the extent that the demand purports to cover current retirees it is non-mandatory. Retirees are not employees under the Taylor Law.

If Association members are perplexed by their retiree benefits, the PBA can act as a resource for clearing up the confusion; requiring the Village to pay the entire bill so members not be confused is both a non sequitur and a draconian solution to a fixable problem.

Further, both parties know that the proper historical contribution rates for retired officers are the total premium for individual coverage and 35% of the difference between individual and family premiums for family coverage. The evidence before the Panel, including documents prepared by the Association itself for a prior round of negotiations (VX 18), the notes of Village attorney Bruce Millman memorializing the testimony of an Association witness/member during the 2006 interest arbitration hearing (VX 19), and a 2006 internal Village memorandum (VX 17), show beyond debate that both parties have long known and acknowledged the proper contribution rates, and that the Village did no more than correct an error when it made a change in its contributions in 2006.

The Association's proposed change would have a seismic impact on the Village's finances. According to a report prepared by the Village's actuary, the Association's 100% retiree

health proposal would more than double the present value of the Village's "Police Only" total future liability, from \$6,328,854 to \$13,736,580. See VX 23.

Newly issued GASB 45 (VX 11) now requires that public sector employers reflect on their books the true cost of retiree health benefits. This is not a "future liability" or potential cost. The GASB cost is an existing, current liability that a public employer has already committed to, by virtue of the promises it has made to its current employees about what it will pay for them in their retirement. See VX 11. GASB 45 is a public sector equivalent to a private sector accounting standard (FASB 106⁸) that was originally adopted in December 1990 but subsequently amended. The very purpose of these accounting standards is to expose the true cost of commitments made to retirees, so that decisions about those commitments are made responsibly. See VX 11. Thus, while the methods for calculating the GASB cost may be the arcane doings of actuaries, the calculation itself is something this Panel can not responsibly ignore.

Even without the additional expense of \$7,407,726 attributable to the Union's demand, GASB 45 has long-term financial implications for the Village. Specifically, the Village's actuary estimated Pelham Manor's total present liability for current employees' retiree health insurance to be \$22,365,148 as of June 1, 2008 (VX 22, 23), up from \$21,992,596 on June 1, 2007 (VX 13). Similarly, all of the other economic indicators - Total Actuarial Accrued Liability, Annual Required Contribution, Annual OPEB⁹ Cost, and Actual Net OPEB Obligation (end of year) - increased substantially from the 2007 actuarial report (VX 13) to the 2008 one (VX 22, 23). Further, to amortize the GASB cost for the police portion of the current plan would require an

⁸ <http://www.fasb.org/st/#fas125>

⁹ "OPEB" means "other benefits," which are the costs for which GASB 45 is meant to account.

additional annual expenditure of \$270,889 per year (VX 23), or approximately 10% of total police officer salaries for 2008 (comparing \$270,889 to the total number derived from VX 33) excluding the substantial increase in retiree health insurance contributions requested by the Association this proceeding. If the PBA's demand for 100% contributions is factored in, then the annual cost to amortize the police portion of the liability would be \$536,828 (VX 23), or 19% of the Village's total annual salary expenditure for police.

The purpose of GASB 45, like that of its private sector precedent, FASB 106, is to force employers to reflect on their books their present cost of current, existing obligations to pay for benefits the future. Indeed, faced with the mere possibility that GASB 45, which requires a municipality to book its true costs (VX 11), would be implemented, Arbitrator John Sands determined that it was inappropriate for an interest arbitration panel to grant the Larchmont PBA's proposal to increase the village's retiree health insurance contributions. See VX 16 at pp. 35-36. However, GASB 45 is no longer theoretical - it is reality. Ever since private sector employers have been forced to recognize those costs, they have consistently employed a variety of measures to reduce them, ranging from increasing retiree premium contributions to raising age and/or service requirements, and even eliminating retiree insurance altogether. See VX 25, p.21-22.

Given that the Association's demand "is obviously not a commitment that any rational employer would likely undertake," it would be entirely inappropriate for the Panel to impose such a commitment on an unwilling rational employer. Therefore, the Village respectfully submits that this Panel should adopt the logic of the Rexam court and not burden the residents/taxpayers of Pelham Manor in a way they would not have done themselves. Armed with knowledge of the nature of the benefit and of what the costs will be for the Village, it would

be irresponsible for the Panel to grant this demand, even in part, because any award requiring the Village to pay 100% of retiree health insurance costs would be outrageous.

Summary Position of the PBA

The PBA proposes that the Village contribute 100% of the cost of the individual and family health insurance in effect for active employees upon their retirement and for the officer who has already retired during the term of this Award. Currently, there is no provision in the CBA that addresses the rate of contribution for active employees who retire. This proposal should be granted for several reasons: 1) it would rectify a historical lack of accountability and transparency; 2) it would definitely set the contribution rates; 3) the cost of the proposal is de minimus during the term of the award and the Village has proven it is prepared to pay for the proposed increases in contributions; 4) the comparables weigh heavily in favor of the PBA; and 5) it may serve to restore healthy labor relations.

There has been a historical lack of transparency and accountability with regard to the health plan. In 2005, the Village informed current retirees they had not been contributing enough towards health insurance. (U. Ex. 27). For many years, retirees were contributing 35% of the premium for individual coverage, the Village 65%. Both parties have contributed 50% of the difference between the individual and family premiums for family coverage. The Village, in a shocking display of thoughtlessness and incompetence, sent out letters to each retiree informing them they had been "under billed" during the course of their retirement and demanded payment. (Id.). It was no coincidence that these bills were distributed at the same time the PBA made a proposal to increase the Village's retiree health insurance contribution to 100% of the premium. It was also no coincidence that the Village Administrator, Mr. Pierpont, also the administrator of

the Village's self-insured health plan, POMCO/MEBCO, initiated the collections while the parties were in contract negotiations.

Mr. Pierpont testified that the reason the retirees were billed was because there had been a "transposing" error. According to him, the bills should have indicated that the retiree, not the Village, was responsible for 50% of the cost of the premium for individual coverage and 65% of the difference for family coverage. Somehow, this "error" went unnoticed for over ten (10) years. Understandably, the retirees and the PBA were outraged.

The Village did not submit testimony or evidence to indicate it did not have the ability to pay or that it was not prepared to pay for the PBA's health insurance proposal. It merely expressed its unwillingness to pay for the proposal. Its primary argument against the PBA's proposal is based on the Governmental Accounting Standards Board Accounting Standard No. 45 ("GASB 45"). GASB 45 is an accounting rule, not a law. (V. Ex. 11). It is meant to require municipalities to report the cost of providing post employment benefits, including healthcare. (Id.). It does not require advance funding of post employment benefits. (Id.). Financial planning and budgeting to cover those costs remains at the discretion of the Village. (Id.). The Village is merely required to report current costs for current retirees and to estimate its unfunded actuarial liability if it chooses to defer current expenses. (Id.). The Village has never deferred its current expenses or incurred debt in the past, and has not indicated it will need to do so in the future. The Village did not show that, if the PBA's proposal is granted, it will cause the Village to deviate from its sound budgeting practices.

An examination of the comparable jurisdictions reveals that Pelham Manor police officers must contribute more to their health insurance upon retirement than any other

Westchester Village police officer:

As U. Ex. 30 reveals, seventeen (17) of twenty-two (22) jurisdictions pay 100% of the individual health insurance premium for their retired police officers (Id.). Fourteen of those jurisdictions also pay 100% for family premiums. Of the remaining five jurisdictions Pelham Manor is the only jurisdiction with less than a 75% Village contribution towards individual coverage and the only Village with less than a 50% contribution towards family coverage. These comparables weigh heavily in Pelham Manor PBA's favor. Granting this proposal will remove the PBA from the fringe of the Westchester County village police pattern by the Panel.

The second part of the PBA's Hospital and Welfare coverage proposal involves current retirees. As set forth above, the Village had been contributing sixty-five percent (65%) of the cost of the individual premium fifty percent (50%) of the difference of the individual and family premiums for family coverage. Then, in 2005, the Village pulled the rug out from under the retirees, those who can least afford to contribute to health insurance, and lowered their contributions to fifty percent (50%) for individual coverage and (35%) of the difference of the individual and family premiums for family coverage. The PBA seeks to reinstate the 65%/50% Village contribution.

For all the forgoing reasons, the proposal is just and reasonable and should be granted in its entirety.

Discussion and Analysis

The Chair is well aware that this issue of retiree health insurance increases to 100% as sought by the PBA is the core issue of this impasse and has bitterly divided each party during their negotiations as observed first hand by the Chairman, who previously served as mediator

and essentially as a result of reaching impasses on this issue resulted in the current interest arbitration proceeding.

The Chair has also been apprised that this issue has previously been a contentious one during the preceding interest arbitration award. The Chair opines that this single issue has confounded the parties' labor relations to date.

It also did not go unnoticed by the PBA that despite the Village's assertion that, "It would be entirely inappropriate for the Panel to impose such a commitment on an unwilling rational employer," nonetheless the Village granted an increase in its portion of payment for retiree health insurance to 70% for members of the Villages paid firefighting Association. This increase was also accompanied with a concession of the firefighters forgoing unlimited sick leave for new hires to a fixed amount of sick leave hours, and health care contributions for new hires

Moreover when you compare the other 22 Villages within Westchester and note that 17 of 22 jurisdictions pay 100% of the individual health insurance premium for their retired police officers and in 14 of the jurisdictions they also pay 100% of the family premium. Pelham Manor is the only jurisdiction with less than 75% of Village contribution toward individual coverage and the only Village with less than 50% contribution towards family coverage.

These comparables of the 22 police jurisdictions within Westchester and Pelham Manor's Fire Department cause the Chair to award the PBA parity with the Village's Fire Department for current members retiree health benefit for family and individual coverage.

However, the Chair's award of this level of increase of the PBA's demand will only be granted with an equivalent tradeoff as was done with the Village's firefighters that being the elimination of unlimited sick leave benefits in this case for new hire police officers and the creation of a fixed number of sick leave days per annum, and health care contributions for new

hires.

It needs to be stressed that while the Chair was persuaded by the seventeen Westchester Village's comparables, and that the Village increased its portion for retiree health insurance for the Village's paid Firefighters Association.

Nonetheless the Chair does not find a history or pattern of bargaining between the Village, the Firefighters Association and the PBA that would constitute a pattern for this PBA. Said another way the eight Village firefighters collective bargaining do not set a pattern for the larger PBA.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

**Article VIII Hospital & Welfare Coverage
Retiree health Insurance**

Employees employed as of 5/31/08

Village to pay effective 5/31/08

70% individual coverage premium

70% family coverage premium

New Hires (hired on or after 5/31/08)

Village to pay effective 5/31/08:

50% individual coverage premium

35% of the difference between the individual and family premiums for family coverage

Current retirees (retired prior to 5/31/06)

Codify existing practice as to the amount of premium the Village pays

Village to pay effective 5/31/08:

50% individual coverage premium

35% of the difference between the individual and the family premium for family coverage

Article VIII Hospital and Welfare Coverage

New Hires hired on or after 5/31/08

Section 1: The Employer will pay the full cost of the present health insurance plan. Additional benefits purchased heretofore by some of the employees may be retained on a payroll deduction basis. However, employees hired on or after 5/31/08 shall be required to pay the following levels of contributions:

(A) In their first year of employment, thirty-five percent (35%) of the total employer-employee contribution for individual coverage under such plan and fifty percent (50%) of the difference between such total employer-employee contribution for individual coverage and the total employer-employee contribution for individual and dependent coverage;

(B) In their second year of employment thirty-five percent (35%) and thirty-five percent (35%) respectively; and

(C) In their third, fourth, fifth and sixth years of employment, twenty-five percent (25%) and thirty-five percent (35%) respectively;

Article 16 Sick and Personal leave
Section 1

Effective 5/31/08 only for all new police officer hires, the unlimited sick leave benefit shall be eliminated, and in its place, new hire police officers shall earn 1.25 sick days per month from date of hire for a total of fifteen (15) sick days per calendar year.

These new police officer hires shall be able to bank unused sick days from the preceding calendar year to the subsequent calendar year.

Upon retirement the Village shall reimburse the officer for 50% of his/her accumulated sick leave at the daily rate in effect at time of retirement.

Add Section 5 Absences pursuant to general Municipal Law 207-C shall not be treated as sick leave for purposes of this Section 5.

Article VIII, Section VI Dental

Summary Position of the Village

The Village opposes any increase to the amount of contribution made, in that the existing contribution is sufficient to cover this level of dental benefits.

Summary Position of the PBA

The PBA's health and welfare coverage proposal is to increase the Village's contribution to the PBA supervised dental plan from \$600 per member per year to \$1,100 per member per year. This proposal should be granted for several reasons. First, the contribution has been the same since 1997, while the cost of dental insurance has risen since then. (U.Ex. 34). Second, the contribution does not cover the cost of the dental plan. Third, the comparables weigh in the PBA's favor.

The PBA contracts with POMCO to administer the plan. The Village's contribution, for all 28 members, comes to \$16,800 per year. In 2006, the plan costs totaled \$32,396.01, and in 2007, \$34,196.74. (Id.). The out-of-pocket cost for each member in 2006 was \$557 per member, and \$621 per member in 2007. Even with the proposed increase, PBA members would continue to be obligated to pay out-of-pocket. Furthermore, the proposal should be granted because the Village contributes the least amount to dental insurance of the comparable villages. (U. Ex. 33). Eleven (11) of the comparable Villages contribute on a percentage basis, and eight (8) of those Villages pay the entire cost of the premium. (Id.). The proposed increase is in line with the other Village's contributions. Therefore, the comparables weigh in the PBA's favor.

Discussion and Analysis

The chairman has determined that an increase to the existing amount of contribution by the Village is warranted given that the level of contribution has remained the same since 1997.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article VIII Section 6 Dental

Add \$200.00 per member effective 5/31/08

Article X Life Insurance

Summary position of the Village

The Village opposes any increase to the amount of contribution made, in that the existing contribution is sufficient to cover this level of life insurance.

Summary Position of the PBA

This proposal is to increase the life insurance contribution, which has not been increased since 1996. Presently, the Village's contribution is \$190 per member per year to the PBA's self-funded life insurance policy. Like the dental plan, the PBA contracts with a third party administrator to provide life insurance to its members. (U Ex. 36). In 2006, the PBA received \$5,320 from the Village for 28 members and paid \$12,432 in premiums, requiring the PBA

members to contribute an additional \$7,112. (Id.). In 2007, the PBA received the same \$5,320 from the Village, incurred \$14,040 in premiums, requiring a contribution of \$8,720. In 2008, the PBA received \$5,130 from the Village for 27 members, incurred \$15,936 in premiums, which required a contribution of \$10,806. Therefore, in 2008, each member had to contribute \$400 towards life insurance.

Increasing the Village's contribution to \$450 per member would cover the expense today, but considering in the last three years the premiums have increased more than \$1000 per year, the PBA's proposed the increase in contributions will surely be surpassed by the increase premiums, perhaps as soon as this year. Moreover, the proposal should be awarded because the majority of Westchester Villages contribute 100% of the cost of the life insurance premiums for their police. (U. Ex. 35). The others contribute a substantial amount to a welfare fund that is used for both life and dental insurance. (Id.). It is time for the PBA's life insurance benefit to conform to the Village police pattern.

The PBA also proposes a one-time payment of \$400 per member to make them whole for the years of no increase in this benefit.

For all the foregoing reasons, the PBA's life insurance proposals are just and reasonable and should be granted in their entirety.

Discussion and Analysis

The chairman has determined that an increase to the existing amount of contribution by the Village is warranted given that the level of contribution has remained the same since 1996

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article X

Life Insurance

Add \$210.00 per member effective 5/31/08

Article XVII
Uniform and equipment allowances

Summary Position of the Village

The Village opposes any increase to the amount of contribution made, in that the existing contribution is sufficient to cover this level of uniform and cleaning allowances

Summary Position of the PBA

This proposal is to increase both the uniform and the cleaning allowance. These allowances have not been increased since 1997. The uniform allowance is currently \$600 per member per year. The PBA proposes the allowance be increased to \$950 per member per year. After ten (10) years without an increase, an increase is warranted. The PBA's proposed increase is in line with the police pattern. (U. Ex. 37). Accordingly, the proposal is just and reasonable and should be granted in its entirety.

The PBA has also proposed an increase in the cleaning allowance. Currently, the PBA members are receiving \$225 per year. The proposal is to increase the allowance to \$400 per member per year. The proposed increase would place the PBA in the middle of the police

pattern. (U. Ex. 39). It is therefore just and reasonable and should be granted in its entirety.

The PBA has also prepared a comparison chart that demonstrates the combined clothing and cleaning allowances provided to other Westchester Village police officers. (U. Ex. 39). Pelham Manor is currently in the bottom third for the combined benefit.(Id.). If both proposals are granted, the combined total will be in line with the pattern. (Id.).The PBA has also proposed a one-time payment of \$900 per member to make up for the years of no increase and below average benefits. All aspects of the uniform and cleaning proposals are just and reasonable and should be granted in their entirety.

Discussion and Analysis

The Chairman has determined that an increase to the existing amount of contribution by the Village for the uniform and cleaning allowance is warranted given that the level of contribution has remained the same since 1997, except the Chairman will not grant the PBA's request of a one time payment of \$900.00 per member as catch-up. The Chairman believes the awarded amount to be warranted and reasonable.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article XVIII

Uniform and equipment allowance

Uniform allowance add \$125.00 per member effective 5/31/08

Cleaning allowance add \$100.00 per member effective 5/31/08

Article XVIII Grievance Procedure

Summary Position of the Village

Consistent with AX 43, the Village proposed to amend Sections 5 and 6 of Article XVIII seeks to abandon the panel format and to join the majority of villages in Westchester County that use AAA procedures for labor arbitrations. Also during the hearing, counsel for the Association acknowledged that the parties were in agreement on the modification to this provision.

Summary Position of the PBA

The PBA's proposal has four parts. The first part is to change the grievance timeline and require the Chief, the Village Manager, and the Board of Trustees to provide the PBA with a written response to a grievance. The second part is to abolish the panel of arbitrators in the contract and have a third party administer the arbitrator selection process. The third part of the proposal is to delete language prohibiting the PBA from filing multiple contract violations over the same event, and the fourth part is to delete the language restricting settlements or arbitration awards to only 30 days of retroactivity.

Discussion and Analysis

The Panel agrees to grant the parties' joint agreements on each of their proposals on grievance procedure.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

**Article XVIII
Grievance Procedure**

The Panel adopts the prior agreements reached by the parties as to changes to Article XVIII. Section 5 shall reflect that arbitrator shall be selected in accordance with the list-only labor arbitration procedures of the American Arbitration Association. Section 6 shall be deleted.

**Article III
Reciprocal Rights**

Summary Position of the Village

The Purpose of the Village's proposal to modify the Reciprocal Rights clause is to update the contract to reflect the current state of anti-discrimination law in New York. Specifically this proposal would counter any presumption that members of certain legally protected categories are not similarly protected by the parties' agreement.

Summary Position of the PBA

While the PBA is not against adding this language to the CBA, the Village failed to provide any evidence or testimony in support of this proposal. No evidence was presented and no justification was articulated by the Village. The proposal is neither just nor reasonable and the Panel should deny it in its entirety.

Discussion and Analysis

The Chair finds the Village's proposed language change to this Article to be appropriate and legally current. Accordingly the Village's proposed language is granted.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article III Reciprocal Rights

Add: "Color, sexual orientation, or any other basis protected and to the extent required, by applicable law."

Article VII Vacation

Summary Position of the Village

According to a study conducted by the Employee Benefit Research Institute, the average annual leave accrual in 1998 for a full-time state and local employee was 12.6 days after 1 year of service, 18.6 days after 10 years of service, and 22.3 days after 20 years of service. See VX 31. Currently, the Village's police officers receive 12 days after 1 year of service, 20 days after 10 years service, and 25 days after 20 years of service. The Village's proposal, which seeks to cap the number of vacation days for employees hired on or after July 1, 2007, is merely an attempt to rein in costs for officers who work an average of only 204 days per year (VX 35).

The Village also proposes an enlargement of the time an officer is required to give the Village upon his resignation if he wants to receive payout of his accrued vacation time. Due to training requirements and competition among departments, it is difficult to immediately fill a spot held by a departing officer. In addition, the Village faces the possibility of significant overtime costs in the interceding period, as well as a possible shortage of manpower or the overburdening of officers who remain until a replacement is hired. If the required notice period were longer, it would afford the Village additional time to find and process a replacement for the departing officer.

Also, under either the current vacation schedule or the Village's proposed one, Pelham Manor's police officers receive a generous amount of vacation time per year. That allotment is predicated on them coming to work. It is often stated that "[t]he usual purpose for granting employees vacation time is 'to allow the employee to relax, rest and restore his or her energy so that he or she may continue to perform all required functions or duties with ability, efficiency and dispatch. In short, it is a matter of policy, to secure continued good performance and to maintain a good and satisfactory relationship.'" See *Lesko v. Lesko*, 184 Mich. App. 395,407 (1990). However, officers can miss up to 60 days per year and still receive their full vacation privileges. Because a police officer should not need, nor should the Village's taxpayers have to pay an officer his full vacation schedule if he only works a partial year, the Village seeks to limit the circumstances under which officers can earn vacation time without working for it. For example, the Village rightly believes that officers who take long unpaid leaves of absence or who abuse the Village's unlimited sick leave policy (See, e.g., VX 32) should receive benefits at a corresponding reduced rate. The proposed amendments to Section 12 of Article VII - that any employee absent from work more than thirty (30) calendar days during a calendar year (except

employees injured the line of duty) shall be on a pro-rated basis - reflects that belief.

Summary Position of the PBA

Section 1 of the CBA provides that PBA members are entitled to a maximum of 25 days of vacation after 18 years of service. The proposal is to reduce that maximum to 20 days for employees hired on or after July 1, 2007. The only evidence submitted by the Village in support of this proposal was an excerpt of a study on vacation time available to state and local employees nationwide. (V. Ex. 31). The study quotes a 2000 U.S. Department of Labor survey of vacation time accrued in 1998. (Id.). The survey revealed that the average number of vacation days accrued by a public sector employee was 22.3 days after 20 years of service. (Id.). Although this study is completely irrelevant to this arbitration because it does not address the comparable jurisdictions used for this arbitration, it is worth pointing out that the Village's proposal to reduce the maximum vacation time to 20 days is less than the national average and that PBA members are only receiving 2.7 days more than the national average. More importantly, at 25 days, PBA members receive the median amount of maximum vacation accruals when compared to other Westchester County PBA's. (U. Ex 51). Therefore, this proposal is neither just nor reasonable and must be denied in its entirety.

Section 7 Change "two (2) weeks" to "six (6) months"

Section 7 provides that employees who resign must give the Village two (2) weeks' notice to receive accrued vacation pay. The Village proposes to increase the time to six (6) months. The Village provided no testimony or evidence to support this proposal. The Panel has no basis to grant it. Accordingly, this proposal is neither just nor reasonable and must be denied in its entirety.

Section 12 Change "sixty (60)" to "thirty (30)"

Section 12 provides that employees absent for more than 60 days shall receive a pro-rata share of vacation. The Village proposes to decrease the threshold to 30 days. Again, the Village failed to provide any testimony or evidence to support this proposal, and therefore, the Panel has no basis to grant it. The proposal is neither just nor reasonable and must be denied in its entirety.

Discussion and Analysis

The Chair upon review and consideration of the Village's proposal denies and grants parts of this proposal. The Chair holds that aspects of the Village's proposal are considered to be reasonable to both it and its officers so as to be an incentive for officers to report to work regularly. Another aspect of the Village's proposal requires a notice provision upon an officers retirement so that the Village can plan its manning and for it to not incur unforeseen overtime as a result of a retirement of an officer without timely notice to the Village.

Accordingly the Chair grants the Villages proposal regarding Section 7 and Section 12 and denies in its entirety its proposals for Section 1.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article III Vacation

Section 7 Change "two (2) weeks to six (6) months"

Section 12 Change "sixty (60) to thirty (30)"

Article VIII Hospital and Welfare Coverage

Summary Position of the Village

As healthcare costs continue to increase, it is increasingly common for employers to shift a portion of those costs to their employees. "In each of the prior years in which the Kaiser Family Foundation and Hewitt Associates have conducted the annual retiree health benefit survey, employers looking to reign in spending have been shifting costs onto retirees in the form of higher premium contributions and cost-sharing requirements " See VX 25 at "Introduction." Even among Westchester County police departments, it is increasingly common for employees to contribute until they reach the top grade, including career contributions in Hastings, Larchmont, Pleasantville, Port Chester, Scarsdale, and Tarrytown. See AX 52. Oddly enough, top grade patrol officers in Pelham Manor who, by virtue of their salary, are best able to afford to contribute, are the ones who do not. While the Village proposes to eliminate special treatment for top grade police officers, it only seeks to make that change prospectively for new officers hired on or after June 1, 2007. Thus, this proposal will not only ensure more equitable treatment and save the Village money in the future, but will have no detrimental effect on officers hired before the term of the agreement.

The Village's proposed amendment to Section 2 - stating that for employees who retire during the term of the agreement, the Village shall pay 50% of the individual health insurance premium and 35% of the difference between the individual and family premium for retirees who are eligible and do elect family coverage - simply codifies what has been the parties' longstanding practice. See VX 17, 18, and 19. As Village Manager John Pierpont credibly

testified at the hearing, he knows that this is the proper historical breakdown because he has encountered it repeatedly throughout his many years as Village Manager. Also, Mr. Pierpont testified that the Association handed him the document entered into evidence as VX 18 during negotiations. As a quick review of that document makes clear, it has even been the PBA's understanding that in the instant situation the rule is "Pelham Manor - 50% for individual and 35% for family upon retirement." Id. Contrary to the Association's doomed argument, the Village's accidental transposition of these figures for a period of time does not modify the parties' initial and continual understanding.

The Village seeks to delete Section 3 because the window it describes - employees employed by the Village as of June 1, 1987 who retired on or before September 1, 1990 - has closed and this provision does not apply to any current Association member who is also an active employee of the Village police force. Thus, the removal of that section would not prejudice any current or future employee, and would serve the important purpose of cleaning up the parties' agreement.

The amendment to Section 4 of Article VIII was proposed by the Village as a means of changing when employees who opt-out of the Village's health insurance plan will be paid out. This proposal protects the Village against making a full payout to an employee who may opt-out of coverage and later opt back in by setting the date for repayment at the conclusion of the 12-month period.

Finally, the change to Section 7 proposed by the Village reflects the fact that the Village alone cannot determine when a retiree is eligible under an insurance plan, but that eligibility is dictated by the plan itself and/or its trustees or administrators.

Summary Position of the PBA

Section 1 of the CBA provides that employees shall contribute 25% of the individual premium for health coverage and 35% of the difference between the individual and the family premiums until they reach Patrolman-1 st Grade. It takes four (4) years for a member to reach Patrolman - 1 st grade. The Village proposes that PBA members hired after June 1, 2007, be required to make these contributions for their entire career. The Village did not present any evidence to support why this proposal should be granted. Upon review of the comparable jurisdictions, three (3) bargaining units are not required to contribute, ten (10) are only required to contribute for five (5) years or less and only one (1) is required to contribute for ten (10) years. (U. Ex. 52). Only six (6) of twenty-one (21) bargaining units surveyed contribute for health insurance for their entire career. (Id.). Therefore, this proposal is neither just nor reasonable and must be denied in its entirety.

The Village proposes to amend Section 2 of the CBA to provide that it will contribute 50% of the individual health premium and 35% of the difference between the individual and family premium for health insurance for retirees. While the Village acknowledges that there should be language in the contract addressing this important issue, for an the reasons discussed, supra, the Panel should grant the PBA's proposal regarding health insurance contributions for retirees and deny the Village's proposal in its entirety.

The Village proposes to delete Section 3, which applies to bargaining unit employees who retired on or before September 1, 1990. The Village provided no testimony or evidence why this section should be deleted. The proposal is neither just nor reasonable and should be denied.

The Village proposes to amend the second paragraph of Section 4 of the CBA, which

provides for a payment to employees who decline coverage under the Village's health insurance plan. Currently, such an employee is entitled to the payment, on December 15th prior to the calendar year he or she is declining coverage. The Village proposes that the payment be made at the end of the calendar year in which coverage is declined. The Village provided no testimony or evidence to support why this section should be amended. Furthermore, it inures to the Village's favor to pay employees in advance for declining coverage because employees will be more likely to take advantage of the option if they receive payment up front. This, in turn, will save the Village more money. This proposal is neither just nor reasonable and should be denied in its entirety. The Village proposes to amend the last sentence of Section 7 of the CBA by adding the

phrase "to the extent permitted by the program." The Village provided no testimony or evidence to support

why this proposal should be granted. The proposal is neither just nor reasonable and must be denied in its entirety.

Discussion and Analysis

The Chair upon review and consideration of the Village's proposal denies and grants part of its proposal.

The Chair has already addressed significant changes to this Article in this Award and does not believe additional significant changes at this time are warranted, except for the minor changes sought by the Village

The Chair will grant deletion of Section 3 of Article VIII based upon the Village's representation that deletion of this section only cleans up the language of the contract, and does not effect any active or retired members level of benefits.

The Chair will also grant the language change sought by the Village for Section 4 as such change is deemed to protect the Village's payment to an officer who opts out and opts back in the Village's health benefit plan. Such change is understood to not change the Article's incentive level.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

**Article VIII
Hospital and Welfare Coverage**

Section 3 DELETE

Section 4 amend the second paragraph to read "provide that the payment shall be made at the end of the twelve month period."

**Article IX
Pensions**

Summary Position of the Village

The Village seeks to delete Section 2 of Article IX because no Association member was hired before July 1, 1973, and therefore, it no longer applies. Deleting extinct provisions serves

important purpose of cleaning up the parties' agreement to reflect the current reality of the bargaining unit's terms and conditions of employment.

The Village also proposes to delete windfall termination pay from the agreement. The Village's officers receive generous pensions. Therefore, they are taken care of in retirement through the substantial contributions made by the Village on their behalf throughout their careers. See VX 33. Further, on average, a top grade police officer in Pelham Manor earns \$487.32 per day. See VX 35. Thus, termination pay costs the Village, on average at the current wage rate, an additional \$2,923.92 per employee upon his retirement. Note, too, that as an unfunded benefit, this retirement pay is also subject to GASB 45 and the full cost of the Village's vested future obligations for this pay should be added to and reflected as a liability on its balance sheet. Like all other public and private institutions, the Village must react to the current recession and the inevitable strain it will place on its budget, and the simplest, most effective reaction is to eliminate from the contract unnecessary payments such as this one.

Summary Position of the PBA

The Village proposes to delete Section 2 of this Article. While this section is no longer relevant because the Village no longer employs any officers hired prior to July 1, 1973, the proposal should be denied. The Village did not present any evidence or testimony to support why it should be granted. It is neither just nor reasonable and must be denied in its entirety.

The Village also proposes to delete Section 4 of this Article. Section 4 provides that employees shall receive six (6) days' pay upon retirement. This proposal would eliminate a

minimal, but important benefit. Termination pay and other payouts upon retirement are a prevalent benefit in police contracts not only throughout Westchester, but throughout the state. Some of these payouts are quite substantial, yet the PBA has not sought to increase its payout. The Village provided no justification why this benefit, which recognizes an officer's service to the Village, should be deleted from the contract. It certainly would not be a substantial cost savings and can only be interpreted as a petty and abusive proposal. Accordingly, the proposal is neither just nor reasonable and must be denied in its entirety.

Discussion and Analysis

The Chair upon review and consideration of the Village's proposal elects to only delete Section 2, because by deleting this extinct provision of the parties agreement, further clears up the language of this agreement. Other aspects proposed by the Villages are rejected.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article IX Pension

Delete Section 2

Article XII Education Assistance

Summary Position of the Village

The Village proposes to amend Article XII, Section 3 to provide additional recourse to recover tuition from employees who abuse the Village's generosity in providing them with the opportunity to advance their education by retiring or resigning after the Village has paid for their education, thereby depriving the Village of its investment in the officer's training or education. This simply a matter of fairness and curbing potential abuse.

Summary Position of the PBA

The Village proposes to require an employee who resigns or retires within three (3) years of taking a course in political science to refund tuition and textbook expenses paid by the Village. Currently this provision does not apply to retirees. Moreover, the Village proposes that these benefits be deducted from accrued benefits. The Village failed to present any evidence or testimony to justify this proposal. It is neither just nor reasonable and therefore it must be denied in its entirety.

Discussion and Analysis

The Chair upon review and consideration of the Village's proposal grants a change in Section 3 in a limited part. The limited change represents some effort to obtain cost reductions by the Village's ability to recoup payments made for education assistance from an officer who resigns. Is change is worthy of inclusion in the parties' agreement.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence, and post-hearing briefs submitted, the Panel makes the following Award:

Article XII
Education Assistance

Add " And/or may be deducted from any payments for accrued benefits made to a resigning employee pursuant to this Agreement.

Article XVII
Miscellaneous

Summary Position of the Village

The Village proposes an amendment of Section 1 of Article XVII to acknowledge that the rules governing an officer's ability to purchase credit for military service during World War II towards his retirement are dictated by the New York State Retirement System, not the parties' private agreement. Therefore, this change, like others sought by the Village in its petition, seeks to update the parties' agreement to reflect the current state of the law. In addition, to our knowledge, there are no World War II veterans currently serving in the department. Thus, this provision should be eliminated because it no longer applies (and will not ever apply in the future).

Section 2 of Article XVII currently provides that "[a]n employee who is served with departmental charges and simultaneously prosecuted criminally for the same violation shall not

be tried administratively without his or her consent until the criminal action has been completed or a reasonable time of not less than six months has passed since such service." The Village seeks to delete this provision because police officers should be held to a higher standard, not a lower one. Taken literally, this provision would mean that a police officer who assaults a fellow police officer could not be removed from the department and would have to be maintained on the payroll for at least six months before the Village could even begin the hearings that are at the core of the disciplinary removal process.

This provision not only makes for bad public policy, but it is also contrary to the Court of Appeals decision in *Patrolmen's Benevolent Association of the City of New York, Inc. v. New York State Public Employment Relations Board, et al.*, 6 NY.3d 563, 848 N.E.2d 448, 815 N.Y.S.2d 1 (2006). There, the court held that police disciplinary procedures are not negotiable in municipalities where Civil Service Law Section 75 does not govern and its Board is given discretion over discipline. The Village is such a municipality. Section 5711-q of New York's Municipalities Laws commits police discipline in the Village to the Village Board's discretion. Specifically, subsection nine, entitled "Discipline and charges," states:

" ... The board of trustees or municipal board shall have power and is authorized to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police force ..."

Also, the Association's proposed provision is virtually identical to the statute in the above described case, in which a contractual restriction on the discipline of police officers was found to violate public policy.

The proposed changes to Section 8 of Article XVII (JX C, p. 12) were made to reflect the current state of the law. Specifically, the Village insists on this change because certain on-the-

job accommodations must be made to comply with the disability discrimination provisions of the New York State Human Rights Law and the Americans With Disabilities Act.

Summary Position of the PBA

Section 1 provides that employees with military service may purchase credit from NYS Retirement System. The Village proposes to add the above language to this section. While the Village provided no support for this proposal, if the Panel does grant it, the reference to WWII should be deleted.

There is no need to grant the Village's proposal to delete Section 2, nor did the Village present any evidence or testimony demonstrating a need. Section 2 provides that an employee who is served with departmental charges and prosecuted criminally for the same offence shall not be tried administratively without consent until criminal action has been completed. Since the Village already has the option to suspend employees without pay pending a disciplinary hearing, there is no prejudice to the Village to keep this provision in the CBA. It is also unfair to the employee because the employee must choose between not testifying at the administrative hearing and risking his testimony being used against him in the criminal case. Regardless, the current provision does not prevent the Village from eventually trying the employee administratively. The Village did not provide any testimony or evidence in support of this proposal. The proposal is neither just nor reasonable and must be denied in its entirety.

The Village's proposal to "clarify" section 6 "if necessary" is nonsensical on its face and the Village offered no testimony or evidence to explain it. Therefore, it is neither just nor reasonable and should be denied in its entirety.

The Village seeks to include the New York State Human Rights Law to Section 8 regarding making reassignments or accommodations to comply with the American with Disabilities Act. While the PBA agrees that the Village does have an obligation to accommodate employees pursuant to the NYSHRL, the Village offered no testimony or evidence to support this proposal. The Panel should deny it in its entirety.

As discussed in detail, above, the PBA is in favor of selecting arbitrators using the American Arbitration Association for the selection of arbitrators. Section 6, the panel of arbitrators, should be deleted from the CBA should the Panel determine that arbitrators will be selected using AAA's rules.

The Village proposes to require the Chief, if he chooses to excuse a late application for 207-c benefits, to grant an extension to apply for benefits in writing. Currently, there is no such requirement in the CBA. The Village did not present and testimony or evidence in support of this proposal to justify it. The proposal is neither just nor reasonable and should be denied in its entirety.

Discussion and Analysis

The Chair upon review and consideration of the Village's proposal regarding this Article agrees to limit the extent of the change to updating Section 1 and Section 8 to further clear up the parties contract language.

Article XVII Miscellaneous

Section 1 add "to the maximum extent permitted by the system"

Section 8 add "and/or the New York State Human Rights Law"

Article XIX

GML Section 207.C

Summary Position of the Village

The Village's change to the second paragraph of Article XIX, Section 3(a) - requiring that the Chief excuse the late filing of an incident report in writing - is intended to ensure that no confusion arises as to whether the Chief has, in fact, excused the late filing and whether an officer has permission to proceed on a late filing for GML § 207 -c leave. It therefore would protect both parties.

The Village also proposes changes to Sections 4(a) and 5 of the CBA. Under its proposal for Section 4(a), the Village asks the Panel to modify the contract to require officers on § 207-c leave to present themselves in person every two weeks, unless medically impossible, to provide the Village with an update on his status. This will assist the Chief in establishing, as is his right and duty under GML § 207 -c, whether an officer is capable or incapable of returning to light or regular duty, and would impose a just, minimal burden on a police officer who is absent from work at full pay at taxpayer expense. This will also serve to avoid officer abuse, as is the case in the matter of Officer Wolak, who went on § 207 -c leave because she allegedly could not perform certain types work, yet while on leave, she performed that exact same type of work for the United States military in Iraq. See *Village of Pelham Manor v. Wolak*, Supreme Court, Westchester County, Index No. 6192/08.

The Village proposes amending Section 5 to create a more streamlined appeals process,

eliminating a hearing and going straight to the Village Board for final determination. It is the Village's position that both of these proposals will make the § 207-c process more economically sound by reducing wasted time and Village resources.

Summary Position of the PBA

The PBA's proposal regarding GML 207 has five parts: 1) a physician, instead of the Chief, shall make the determination as to the ability of an employee to perform light duty; 2) pending an appeal of a full or light duty determination, an officer shall not lose 207-c benefits or be disciplined for not returning to work; 3) the time frame for an officer to appeal a decision shall increase from ten (10) to thirty (30) days; 4) the Village and the officer shall mutually agree on a hearing officer who will issue a final determination; and 5) members receiving 207-c benefits may engage in outside employment.

The Union proposes that Article XIX, Section 2(d) be revised so that a physician makes the determination as to the ability of an employee to perform light duty. The first part of this proposal is good for both parties. Currently, the Chief determines whether an officer is able to perform a light duty assignment. The Chief is not a licensed physician and should not assess an officer's physical capabilities. While the PBA acknowledges the Village's right to assign an officer to light duty, the Village and the officer would be best served if the assignment does not exacerbate an officer's condition, thus prolonging his or her return to full duty. Moreover, the proposal should be granted because a majority of Westchester Village police contracts, with a discoverable 207-c policy, provide for a physical to determine ability to perform light duty work. (U. Ex. 44). Therefore, this aspect of the PBA's proposal is just and reasonable and should be

granted in its entirety.

The second aspect of this proposal would delete the provision in the CBA whereby an officer loses all 207 -c benefits and is subject to discipline if he or she fails to return to work pending an appeal of the Village physician's determination that the officer is fit for full or light duty. This provision should be deleted because it does not comport with the law. The Court of Appeals in *Park v. Kapica*, 8 N.Y3d 302, 832 N.Y.S.2d 885 (2007), held that a municipality may not terminate 207-c benefits if an officer appeals the decision in accordance with a collectively bargained appeal procedure. Moreover, if an officer avails himself of due process protections by challenging the physician's determination, "such a challenge cannot be equated with a refusal to return to duty." *Id.*, at 312,889. Because this provision does not comport with the law it is unenforceable and should be deleted from the contract. Also, an officer should not be subject to discipline for properly invoking the appeal procedure. Only two (2) other jurisdictions have a similar provision in their CBA. (U. Ex. 45). For all the foregoing reasons, this aspect of the PBA's proposal is just and reasonable and should be granted in its entirety.

The third part of the proposal is to extend the time for an officer to appeal the Chief's determination from 10 to 30 days. This would allow PBA members with an additional 20 days to obtain medical documentation from their physicians and to be examined by their own physicians prior to a hearing. This is a just and reasonable aspect of the PBA's proposal and should be granted.

The fourth part of the proposal is for a mutually agreed upon hearing officer to issue a binding decision. Presently, the CBA provides the Village Board or its designee hears and decides the appeal. The Village then makes the binding decision. This process is inequitable. Officers who are injured in the performance of their duties should not have to face a "kangaroo

court." Their benefits should not rest on the shoulders of a biased appeal body. Receiving a full and fair hearing before a neutral is the only way to insure the process is fair and officers' 207 -c benefits are not terminated because of personal animosity or any other arbitrary reason. Accordingly, this aspect of the proposal is just and reasonable and should be granted in its entirety.

The final portion of the PBA's 207-c proposal is to delete the language prohibiting an officer from engaging in outside employment while receiving 207 -c benefits. An officer who suffers an on-duty injury should not be precluded from engaging in outside employment that does not otherwise interfere with his or her recovery or is inconsistent with the nature of the injury. For instance, an officer who injures his leg while on duty should not be prohibited from continuing his outside employment as a real estate agent, a landlord, as a business owner, etc. This proposal is fair because it does not take from the Village its right to take disciplinary action if an officer is exacerbating his injury or acting inconsistent with his injury by his or her participation in outside employment. A blanket prohibition is too broad and unjustified. Every Village, with the exception of two (2), do not have a prohibition on outside employment while officers are on 207-c leave. (U.. Ex. 46). Accordingly, this aspect of the PBA's proposal is just and reasonable and should be granted in its entirety.

For all the foregoing reasons, all of the PBA's proposals are just and reasonable and should be granted in their entirety.

Discussion and Analysis

The Chair after a review and consideration of the parties competing proposals for this Article, and given the complexity of this Article's Benefit, 207-c, the Chair will only grant

modest changes to each parties demand as follows:

Article XIX GML Section 207-c

- Section 2(d) Amend to provide that a medical physician makes the determination as to the ability of an employee to perform light duty.
- Section 3(a) In the second paragraph, add "in writing" after "Chief"
- Section 4(a) Change "on monthly basis" to "every two weeks in person unless it is medically impossible for the employee to do so."
- Section 4(b) Amend to only read: "An officer receiving Section 207-c benefits will submit to such medical examinations as are required by the Chief."
- Section 5 Amend to provide that the appeal of the Chief's determination shall go directly to the Village Board or its designee.
-

DURATION OF AWARD

In accordance with the law, the Panel's maximum duration for an Award is two (2) years, for the period of June 1, 2006 through May 31, 2008. Based on the foregoing, the Panel's Award is for the period of June 1, 2006 through May 31, 2008.

IMPLEMENTATION OF THE AWARD

The terms of this Award shall be implemented no later than thirty (30) days following the date of execution of this by the Panel Chairperson. The Panel retains jurisdiction until the payment of retroactivity and the implementation of this Award is completed as set forth herein.

X _____
CONCUR DISSENT

 7/13/09
DAVID WIRTZ DATE
EMPLOYER PANEL MEMBER

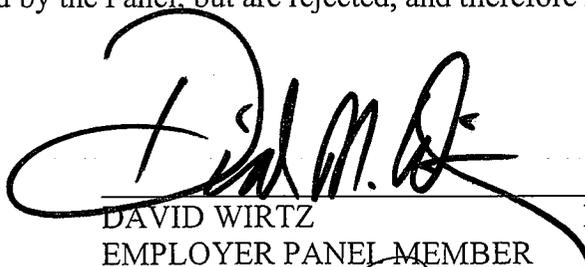
X _____
CONCUR DISSENT

 7/6/09
DAVID DAVIS DATE
EMPLOYEE PANEL MEMBER

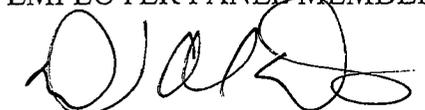
SUMMARY OF OTHER ISSUES

As stated herein, those issues presented by the parties that are not addressed in this Award were also carefully considered by the Panel, but are rejected, and therefore no Award is made on those matters:

X _____
CONCUR DISSENT

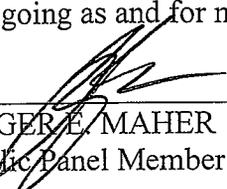
 7/13/09
DAVID WIRTZ DATE
EMPLOYER PANEL MEMBER

X _____
CONCUR DISSENT

 7/6/09
DAVID DAVIS DATE
EMPLOYEE PANEL MEMBER

ARBITRATOR'S AFFIRMATION

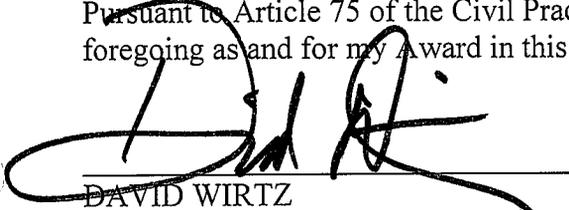
Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



ROGER E. MAHER
Public Panel Member and Chairman

Dated: 6-30-09

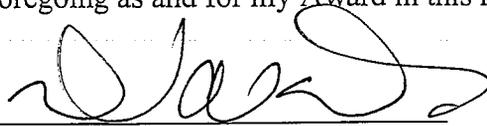
Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



DAVID WIRTZ
Employer Panel Member

Dated: 7/13/09

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



DAVID DAVIS
Employee Panel Member

Dated: 7/6/09

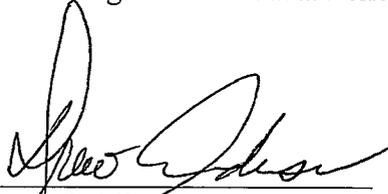
AWARD AFFIRMATION

STATE OF NEWYORK)

COUNTY OF KINGS) ss.:

On this 30TH day of JUNE, 2009, before me personally came ROGER E. MAHER, to me personally known and known to me to the be the same person described in and who executed the foregoing instrument, and He acknowledged to me that He executed the same:

Drew Anderson
Notary Public State of New York
No. 01AN6157176
Qualified in Kings County
Commission Expires Dec 4, 2010

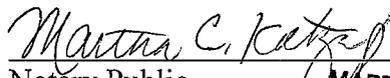


Notary Public

STATE OF NEWYORK)

COUNTY OF KINGS) ss.:

On this 14th day of July, 2009, before me personally came DAVID WIRTZ, to me personally known and known to me to the be the same person described in and who executed the foregoing instrument, and He acknowledged to me that He executed the same:



Notary Public
MARTHA C. KATZEFF
Notary Public, State of New York
No. 5002483
Qualified in Bronx County
Commission Expires 12/30/2010

STATE OF NEWYORK)

COUNTY OF KINGS) ss.:

On this 16th day of July, 2009, before me personally came DAVID DAVIS, to me personally known and known to me to the be the same person described in and who executed the foregoing instrument, and He acknowledged to me that He executed the same:



Notary Public
ROSEMARY SOUZA
Notary Public, State of New York
No. 5000344, Suffolk County
Commission Expires Aug. 10, 2010