

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Interest Arbitration Between:

THE TOWN OF DE WITT,  
Public Employer

-And-

DE WITT POLICE BENEVOLENT ASSOCIATION,  
Employee Organization

PERB Case No. IA2009-005; ~~M2009-289~~

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PUBLIC EMPLOYMENT RELATIONS BOARD  
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AUG 27 2010

CONCILIATION

**FINAL OPINION AND AWARD  
OF TRIPARTITE ARBITRATION PANEL**

**PUBLIC PANEL MEMBER AND CHAIRPERSON:**

Dennis J Campagna, Esq.  
9120 Michael Douglas Drive  
Clarence Center, N.Y. 14032

**PUBLIC EMPLOYEE PANEL MEMBER**

Anthony V. Solfaro, President  
New York State Union of Police Associations, Inc.  
263 Route 17K, Suite 1004  
Newburgh, N.Y. 12550

**PUBLIC EMPLOYER PANEL MEMBER:**

Michael A. Richardson, Labor Relations Consultant  
100 Kinderhook Street Chatham, NY 12036

**APPEARANCES:**

**For the DeWitt P.B.A.**

John K. Grant, Esq.  
263 Route 17K, Suite 1004  
Newburgh, N.Y. 12550

**For the Town of DeWitt**

Gregory A. Scicchitano, Esq.  
Scicchitano & Pinsky, PLLC  
5789 Widewaters Parkway  
Syracuse, N.Y. 12550

**BACKGROUND**

Pursuant to Civil Service Law, Section 209.4, on July 3, 2009, Richard A. Curreri, Esq., Director of Conciliation of the New York State Public Employment Relations Board (“PERB”) designated the undersigned as the Public Panel Member and Chairperson as well as the Public Employee Panel Member and Public Employment Panel Member for the purpose of rendering a just and reasonable determination on matters in dispute between the Town of DeWitt (“Town”) and the DeWitt Police Benevolent Association (“P.B.A.”). The parties to this dispute operated under the terms of a Collective Bargaining Agreement with effective dates January 1, 2001 through December 31, 2003. (“CBA”) The CBA was thereafter modified by a subsequent agreement by and between the parties covering the period January 1, 2004 through December 31, 2007. The instant proceeding represents the parties’ first experience in Interest Arbitration.

**THE PARTIES TO THIS PROCEEDING**

The Town of DeWitt is located Onondaga County, New York, USA. As of the 2000 census, the town population was 24,071. The town is named after Major Moses DeWitt, a judge and soldier. The **Town of DeWitt** is located east of the City of Syracuse and borders the city on its east side. The town is a suburb of Syracuse. The town is also the site of most of the campus and all of the academic buildings of Le Moyne College.

As of the 2000 census, there were 24,071 people, 10,068 households, and 6,503 families residing in the town. The population density was 711.0 people per square mile (274.6/km<sup>2</sup>). There were 10,694 housing units at an average density of 315.9/sq mi (122.0/km<sup>2</sup>). The racial makeup of the

town was 89.70% White, 4.89% African American, 2.98% Asian, 0.56% Native American, 0.02% Pacific Islander, 0.26% from other races, and 1.58% from two or more races. Hispanic or Latino of any race were 1.35% of the population.

There were 10,068 households out of which 30.0% had children under the age of 18 living with them, 50.2% were married couples living together, 10.7% had a female householder with no husband present, and 35.4% were non-families. 30.9% of all households were made up of individuals and 13.4% had someone living alone who was 65 years of age or older. The average household size was 2.35 and the average family size was 2.94.

In the Town the population was spread out with 24.1% under the age of 18, 5.6% from 18 to 24, 27.0% from 25 to 44, 25.0% from 45 to 64, and 18.3% who were 65 years of age or older. The median age was 41 years. For every 100 females there were 91.6 males. For every 100 females age 18 and over, there were 88.3 males.

The median income for a household in the Town was \$46,759, and the median income for a family was \$60,325. Males had a median income of \$45,926 versus \$29,797 for females. The per capita income for the town was \$29,198. About 4.7% of families and 7.2% of the population were below the poverty line, including 9.4% of those under age 18 and 3.7% of those age 65 or over.

The PBA is the certified bargaining agent for all Civil Service Police Officers and Sergeants, including those officers holding non-competitive class status of Investigators who are employed by the Town of DeWitt Police Department, but excluding the Chief of Police, Deputy Chief of Police, Captains, Lieutenants, Dispatchers, Community Service Officers, part-time employees and all other employees. For the purposes of this Award, the PBA represents approximately 25 Police Officers, 4 Sergeants, and 4 Investigators.

## **THE INSTANT PROCEEDING**

The Town and the P.B.A. commenced negotiations for a successor to the 2003-2007 CBA in or about September, 2007 with an exchange of bargaining proposals and thereafter met on several occasions but were unable to reach agreement. The P.B.A. filed its impasse declaration with PERB and mediation efforts proved to be unsuccessful. Subsequently, the P.B.A. filed its Petition for Compulsory Interest Arbitration on March 3, 2009. The Town responded on July 1, 2009, and included a "Comprehensive Settlement Offer" with its response.

A formal hearing was held in the Town of DeWitt, New York on January 20, 2010. The Town and the P.B.A. were represented by skilled and experienced attorneys. At all times during such hearings, the parties were accorded and took full advantage of the opportunity to introduce relevant evidence, present testimony, summon witnesses, cross-examine witnesses and otherwise support their respective positions on the outstanding issues before the Panel. A stenographic record was made at the hearings which is the official record of the proceedings. At the conclusion of the hearings, the Parties elected to summarize its position with the filing of a written closing statement postmarked and/or electronically transmitted on March 31, 2010.

All issues which have attendant support submitted by each party were carefully considered, as well as any responses offered by the opposing party. The Public Arbitration Panel ("Panel") met in executive session on April 2, 2010 at which time the Panel deliberated on each of the outstanding issues, carefully and fully considered all the data, exhibits, closing statement and testimony of the sworn witnesses who appeared at the hearing on behalf of both parties applying the statutory criteria. The results of those deliberations are contained in this Opinion and Award, which constitutes the Panel's determination as to a just and reasonable solution of the impasse consistent with our obligation under Section 209.4 of the Act. Those issues presented by the parties which are not contained in this Opinion and Award were also carefully considered by the Panel, but are rejected, and accordingly, no award is made on those issues.

**N.Y.S. CIVIL SERVICE LAW, § 209.4**

On July 3, 2009, Richard A. Curreri, PERB's Director of Conciliation, designated the foregoing Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute existing between the Town and the PBA.

In arriving at a just and reasonable determination of the matters in dispute, the Panel considered the following statutory guidelines with which it was charged by Section 209.4:

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

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

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

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

The following demands were submitted for an Award to the Panel for determination pursuant to the statutory criteria set forth above:

## **THE P.B.A.'S DEMANDS**

### **1. DURATION**

#### **Term**

This Award shall be effective for the period of January 1, 2008 through December 31, 2009.

#### **Retroactivity**

The Town shall pay all employees who worked during the expired Agreement no later than sixty (60) calendar days of the signature of the Panel Chair to the Award. Each individual shall receive a worksheet setting forth what the calculation(s) represent.

### **2. ARTICLE - RECOGNITION, MEMBERSHIP DUES, AGENCY SHOP FEE & OTHER DEDUCTIONS**

#### **RECOGNITION**

The Town of DeWitt ("Town") recognizes the DeWitt Police Benevolent Association ("PBA") as the sole and exclusive bargaining agent for all full-time Police Officers, Investigators and Sergeants, except the Lieutenant, Captain, Deputy Chief and Chief of Police, Dispatchers, Part-time Police Officers and all other employees.

#### **MEMBERSHIP DUES DEDUCTION**

Upon written authorization of the employee concerned, but no later than the first (1<sup>st</sup>) week of employment, or until the affected employee subsequently revokes the authorization, in writing, to both the Town and PBA, the Town shall deduct the membership dues established by the PBA from each payroll check of each employee. The Town shall forward all dues deductions to the PBA no later than five (5) calendar days after the pay period in which the deductions occurred.

The PBA shall notify the Town, in writing, the established dues for deduction, and changes, as they occur.

#### **AGENCY SHOP FEE**

The Town agrees to deduct from the wages of an employee who does not provide written authorization for dues deduction as set forth in Section 1.3 herein, who is not a member of the PBA, but is represented by the PBA for the purpose of collective bargaining, an Agency Shop Fee in the amount equivalent to the amount of dues payable by a member of the PBA, provided that the PBA establish and maintain a procedure providing for the refund to any employee demanding the return of any or part of such Agency Shop Fee,

deductions which represent the employee's prorated share of the expenditure by the PBA in aid of activities or cause incidentally related to terms and conditions of employment. The Town shall deduct the Agency Shop Fee from each payroll check of each employee. The Town shall forward all Agency Shop Fee deductions to the PBA no later than five (5) calendar days after the pay period in which the deductions occurred.

The PBA shall notify the Town, in writing, the established Agency Shop Fee for deduction, and changes, as they occur.

### **ASSESSMENTS**

The Town agrees to deduct from the wages of an employee, any assessment establishing the PBA. The Town shall forward all assessments to the PBA no later than five (5) calendar days after the pay period in which the deductions occurred. The PBA shall notify the Town, in writing, the assessment to be deducted.

### **INDEMNIFICATION**

The PBA agrees to hold the Town harmless from any and all damages as a result of making the payroll and other deductions set forth in this Article.

## **3. ARTICLE – OBLIGATIONS OF THE PARTIES**

### **NO STRIKE**

The PBA agrees that it will not cause, instigate, encourage or condone any strike, slowdown, concerted refusal to perform assigned work, or any other kind of job action which is designed to impede or has the effect of impeding the normal and efficient operation of the Police Department.

### **LABOR/MANAGEMENT**

Authorized spokespersons for the Town and PBA shall meet at the request of either party, to discuss questions or differences of opinion concerning the administration of this Agreement or other terms and conditions of employment. The request shall be in writing, addressed to the Town Supervisor or designated representative, or PBA President or designated representative, at their respective addresses, and shall contain a statement of the specific subject matter or matters to be reviewed.

The labor/management meeting shall be scheduled by mutual agreement. The parties may agree to extend the time limits in the event a grievance may be required, as contained within the Grievance Procedure, in order to resolve the subject matter as stated in the written request.

Any agreement or understanding reached between the parties shall be reduced to writing and signed by an authorized representative of each party and attached and made a part of this Agreement.

**4. ARTICLE - COMPENSATION**

**A. BASE WAGE SCHEDULE**

STEP	YEAR OF SERVICE	1/1/2008 (5%)	1/1/2009 (5%)
1	Starting w/o BMPTC Certification	\$39,380	\$41,350
2	Starting w/BMPTC Certification	\$43,756	\$45,944
3	Starting 2 <sup>nd</sup> Year	\$46,958	\$49,306
4	Starting 3 <sup>rd</sup> Year	\$50,164	\$49,306
5	Starting 4 <sup>th</sup> Year	\$53,061	\$55,714
6	Starting 5 <sup>th</sup> Year	\$55,955	\$58,753
7	Starting 6 <sup>th</sup> Year	\$58,850	\$61,793
	Investigator(s)	\$61,793	\$64,883
	Sergeant(s)	\$64,883	\$68,127

\* The Base Wage for an employee who is uncertified and attending the required Bureau of Municipal Police Training Council (BMPTC) Academy, shall be ninety percent (90%) of the Step 2 Base Wage for his/her first (1<sup>st</sup>) twenty-six (26) weeks of employment.

Thereafter, the employee shall be paid at the Step 2 Base Wage.

\*\* The Investigator(s) shall be paid a five percent (5.0%) differential over and above Step 7.

\*\*\* The Sergeant(s) shall be paid a five percent (5.0%) differential over and above the Investigator differential.

**B. LONGEVITY SCHEDULE**

Each employee shall be paid longevity as follows:

<u>Step</u>	<u>Years of Service</u>	<u>1/1/08</u>	<u>1/1/09</u>
8	Starting 8 <sup>th</sup> through 9 <sup>th</sup>	\$ 700.00	\$ 750.00
9	Starting 10 <sup>th</sup> through 11 <sup>th</sup>	\$1,000.00	\$1,050.00
10	Starting 12 <sup>th</sup> through 13 <sup>th</sup>	\$1,300.00	\$1,350.00
11	Starting 14 <sup>th</sup> through 15 <sup>th</sup>	\$1,600.00	\$1,650.00
12	Starting 16 <sup>th</sup> through 17 <sup>th</sup>	\$1,900.00	\$1,950.00
13	18 <sup>th</sup> and Above	\$2,200.00	\$2,250.00

**C. NIGHT DIFFERENTIAL**

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An employee who works between the hours of 3:00 p.m. and 7:00 a.m., or any part thereof, shall be paid a night differential as follows:

<u>1/1/08</u>	<u>1/1/09</u>
+\$2.50/hr	+\$3.00/hr

**D. CREDITING OF PRIOR SERVICE**

Each employee with prior full-time police service (e.g., Deputy Sheriff, Town, Village, etc.) shall be credited with each year of service, or any part thereof, and placed on the Base Wage and Longevity Step accordingly, and provided with a corresponding anniversary date as if he/she had all the prior credited police service time with the Town (e.g., 3 years and 3 months of full-time police service, and hired July 1, 2007, placed on Step 5 of the Base Wage schedule with an anniversary date of April 1, 2004 for movement through the Step program).

**E. EMERGENCY MEDICAL TECHNICIAN (EMT) AND CERTIFIED FIRST RESPONSE (CFR) COMPENSATION**

Each employee who is certified as an EMT or CFR, shall be paid the following differentials, added and included into his/her Base Wage and Longevity, if applicable, and included in the overtime calculation:

	<u>1/1/08</u>	<u>1/1/09</u>
EMT	\$1,000.00	\$1,250.00
CFR	\$ 500.00	\$ 625.00

**ARTICLE - UNIFORMS, EQUIPMENT AND ALLOWANCES**

**A. UNIFORM AND EQUIPMENT REPLACEMENT**

The Town shall pay the cost of replacing or repairing any uniform article or equipment as set forth above on a normal wear and tear basis.

**B. CLEANING ALLOWANCE**

Each employee shall be paid an annual cleaning allowance as follows:

	<u>1/1/08</u>	<u>1/1/09</u>
1 <sup>st</sup> pay period in January	\$300.00	\$337.50
1 <sup>st</sup> pay period in July	<u>\$300.00</u>	<u>\$337.50</u>
	\$600.00	\$675.00

The payment shall be in a lump sum subject to all applicable withholding, except in the event receipts are submitted to the Town. In that event, the total amount of the receipts shall not be subject to applicable withholding.

**C. INVESTIGATORS CLOTHING ALLOWANCE**

Upon appointment to Investigator and each year thereafter, that employee shall receive an annual clothing allowance as follows:

<u>1/1/08</u>	<u>1/1/09</u>
\$750.00	\$800.00

An appointment during the year shall be pro-rated based on one twelfth (1/12<sup>th</sup>) for each calendar month remaining in the year, including the month appointed, regardless of the date (e.g., appointed July 1, 2008, receives \$375.00 and on January 1, 2009, receives \$800.00).

The payment shall be in a lump sum subject to all applicable withholding, except in the event receipts are submitted to the Town. In that event, the total amount of the receipts shall not be subject to applicable withholding.

#### **D. PERSONAL PROPERTY**

The Town shall reimburse each employee for lost or damaged personal property, in the performance of duty, up to a maximum of one hundred dollars (\$100.00) per occurrence, for each item (e.g., wristwatch, etc.). The Town shall reimburse an employee for lost or damaged eyeglasses in the performance of duty, the actual cost.

### **ARTICLE - HOLIDAYS**

#### **A. HOLIDAYS**

Each employee shall be paid, at his/her Base Wage and Longevity, if applicable, in a lump sum payment in the first pay period of December each year, for twelve (12) unspecified Holidays, whether worked or not. An employee who enters service during the year shall be paid for one (1) Holiday each calendar month, or major portion worked (e.g., 10 work days, which shall include use of any paid leave such as but not limited to, vacation, personal leave, etc.)

#### **B. SUPER HOLIDAY PAY**

An employee who works on any of the following Holidays, or any part thereof, shall be paid at the rate of one and one-half times (1.5X) his/her applicable hourly rate of pay, including longevity, if applicable, for:

1/1/08

1. Memorial Day
2. Independence Day
3. Labor Day
4. Thanksgiving Day
5. Christmas Day

## **SEPARATION**

In the event of separation of an employee from service, that employee or employee's beneficiary or estate, as the case may be, shall be paid for one (1) Holiday each calendar month, or major portion worked (e.g., 10 work days, including any paid leave, such as but not limited to, vacation, personal leave, etc.), at the rate of pay in effect at that time in the first (1<sup>st</sup>) pay period following separation.

## **ARTICLE - PERSONAL LEAVE**

### **A. CONVERSION**

All unused personal leave at the end of each calendar year shall be converted and placed into the employee's unused accumulation of sick leave.

### **B. SEPARATION**

Any unused personal leave credits at the time of separation, shall be paid to the employee, or beneficiary or estate, as the case may be, at the rate of pay in effect at that time in the first (1<sup>st</sup>) pay

## **ARTICLE - OVERTIME AND CALL-IN PAY**

### **A. OVERTIME PAYMENT**

An employee who works in excess of his/her eight (8) hour tour of duty, or workweek, or forty (40) hours in a workweek, or when not scheduled to work (e.g., days off, or reports to work prior to or after scheduled tour of duty), shall be considered overtime. The Town shall pay all employees who work overtime at the rate of one and one-half times (1.5X) the employee's total hourly rate of pay. Overtime shall be calculated and paid in one-quarter (1/4) hour increments as follows:

Up to the 1 <sup>st</sup> 15 minutes	one-quarter (1/4) of an hour
16 through 30 minutes	one-half (1/2) of an hour
31 through 45 minutes	three-quarters (3/4) of an hour
46 through 60 minutes	one (1) hour

All paid leave, such as but not limited to, sick, vacation, personal leave, compensatory time, Holiday, etc., shall be considered as hours worked in the computation of overtime.

All overtime shall be paid in the pay period earned.

The hourly rate for overtime shall be calculated based on the employee's work schedule (e.g., 4-2 = 1946.64 hours, and 5-2 = 2080 hours).

**B. COMPENSATORY TIME**

At the employee's option, he/she shall have the right to elect, in lieu of payment of overtime, except as set forth herein, compensatory time, which shall be calculated as set forth in 10.1 (e.g., 8 hours of overtime, credited with 12 hours of compensatory time). An employee may accumulated and maintain from year to year up to a maximum of two hundred (200) hours (25 work days). It is agreed and understood that accumulated compensatory time may be used and accumulated throughout the year up to the maximum set forth herein.

An employee shall not be entitled to elect compensatory time in lieu of overtime payment when he/she works a Holiday as set forth in that Article, or when an employee works a special detail, funded by a grant (e.g., seatbelt, DWI patrols, etc.).

All requests for compensatory time off shall be made and granted not more than thirty (30) calendar days prior to the date(s), which shall not be unreasonably denied

### **C. COMPENSATORY TIME PAYMENT**

An employee shall be entitled to be paid for his/her unused accumulated compensatory time as follows:

- a. Upon notice to the Town in the first (1<sup>st</sup>) pay period of November of each year, of the specific amount being requested to be paid for, which shall be paid in the first (1<sup>st</sup>) pay period in December each year; and
- b. In the event of separation of service of an employee, that employee or employee's beneficiary or estate, as the case may be, shall be paid for all accumulated compensatory time at the rate of pay in effect at that time, no later than the pay period following separation.

### **D. CALL-IN PAY**

An employee "called-in" to and reports for work which is not contiguous with his/her regularly scheduled work day, or on his/her regularly scheduled day off, or on a Holiday as enumerated therein, be guaranteed and paid a minimum of three (3) hours of overtime pay as set forth above. The term contiguous shall mean within one (1) hour before the start of the employee's work day. In that event, the employee shall be paid pursuant to 10.1 herein. Upon the completion of the work called in for, the employee can leave work and shall not be required to perform any other duties. In the event the employee leaves work in less than three (3) hours, he/she shall be paid the minimum set forth herein.

An employee who is an Evidence or Accident Investigation Technician and "called in" to work to perform his/her specialized training, shall be paid two times (2X) his/her applicable hourly rate of pay for all hours worked, or any part thereof.

## **ARTICLE - INSURANCES**

### **A. HEALTH INSURANCE**

The Town shall offer the New York State Health Insurance Plan Core Plus Enhancements (Empire Plan), at no cost for individual or dependent coverage.

### **B. DENTAL PLAN**

Insert the name Guardian Dental Plan

**C. VISION PLAN**

Insert the name Empire Vision Plan

**D. FLEXIBLE SPENDING**

The Town shall provide, at no cost to the employee, a Flexible Spending Account, pursuant to Section 125 of the Internal Revenue Code.

**E. PLAN CHANGES**

The Town may elect another health, dental and/or vision plan from the plans named herein, provided that:

- a) The benefits shall be the same or improved in all respects at the time of the change, and that there shall be no loss of benefits of the plan by the change, waiting period(s), or any other change;
- b) The prescription drug coverage shall be the same;
- c) The geographic areas of acceptability shall be the same;
- d) The participating number of providers shall be the same or greater;
- e) The Town provides written notice to the PBA President, as set forth herein.

Any dispute concerning the above shall be resolved by the PBA filing directly for arbitration as set forth in the Grievance Procedure article.

It is agreed and understood by and between the parties that the Town shall provide written notice to the PBA President at least ninety (90) calendar days prior to the effective date of the plan change. The Town shall identify the benefit(s) that shall remain the same or are being improved in order for the PBA to determine whether or not the plan change provides the same or improved level of benefits as set forth herein. In the event the PBA determines that the plan change does not provide the same level or improved benefits, as set forth in the Town's notice, the matter shall be submitted to arbitration as set forth herein. The Town shall not be permitted to implement any change until such time that the matter has been resolved through arbitration as set forth herein.

## **F. HEALTH INSURANCE BUY-OUT**

The Town shall provide for an optional buy-out of health insurance coverage for full-time employees. The buy-out of health insurance coverage shall provide that an employee who is covered by another health insurance plan may notify the Town on the Request to Decline and Waive Health Insurance Coverage form, attached hereto as Appendix " " and made a part of this Agreement, that he/she is selecting to decline and waive the health insurance coverage provided by the Town, for which the employee is eligible and entitled to receive pursuant to the collective bargaining agreement between the parties

An employee who declines and waives health insurance coverage as provided above, shall be compensated at fifty percent (50%) of the premium cost in effect, payable in equal installments on the first (1<sup>st</sup>) payroll period following each calendar quarter. The buyout shall be pro-rated in the event the employee resumes health insurance coverage during that calendar quarter (i.e., \$900.00 a quarter to be paid, resumes coverage on the 1<sup>st</sup> day of the 3<sup>rd</sup> month of the quarter, employee paid only \$600.00).

An employee who elects to receive the buy-out fee, shall, at any time during the period for which the employee has declined and waived health insurance coverage through the Town, be required to provide written notice to the Town that he/she is covered by health insurance under a different plan. An employee who has elected to receive the buy-out fee is required to provide written notice to the Town on the Request to Resume Health Insurance Coverage form, attached hereto as Appendix " " and made a part of this Agreement, that he/she is no longer covered or wishes to re-enter the health insurance plan provided by the Town. The effective date of the employee's re-establishment of health insurance coverage by the Town shall be at the earliest possible date as provided by the plan. The Town shall notify the plan upon notice by the employee of that employee's decision to re-establish health insurance coverage through the Town.

The waiver(s) herein shall be used for the request to decline and waive health insurance coverage or request to resume health insurance coverage. The Town shall provide the forms to the employee that are attached hereto as Appendix “ ” and made a part of this Agreement.

#### **G. NEW YORK STATE DISABILITY INSURANCE PLAN**

The Town shall provide the New York Disability Insurance Plan for all employees, at no cost to the employee.

#### **H. MEDICAL ACCOUNT**

Effective January 1, 2008, and each January 1<sup>st</sup> thereafter, the Town shall provide one hundred fifty dollars (\$150.00) into the Medical Savings Account, each year, for each employee, which can be used by the employee and eligible dependent(s) pursuant to the plan. All unused money shall be rolled over from year to year.

#### **I. INSURANCES ON RETIREMENT**

The Town agrees to pay one hundred percent (100%) of the premium or cost for all employees and eligible dependent(s) for health, dental and vision coverage who have at least fifteen (15) years of police service with the Town, or with twenty (20) years of combined police service with the Town and any other police agency in New York State (e.g., Deputy Sheriff, Village, Town, etc.). The benefits of the health, dental and vision plans shall be the same as provided to active employees. In the event an employee receives a disability retirement from the New York State and Local Police and Fire Retirement System, that employee shall be treated as if he/she had met the years of service as set forth herein.

In the event of the death of a retiree, the Town shall pay seventy-five percent (75%) of the premium or cost for the surviving spouse and eligible dependent(s) for the health, dental and vision plans.

## **J. PERFORMANCE OF DUTY DEATH**

The Town shall provide health, dental and vision coverage to the surviving spouse and eligible dependent(s) to an employee killed in the performance of his/her duty for a period of thirty (30) months, at no cost.

## **ARTICLE - SICK LEAVE**

### **A. ACCUMULATION**

Upon hire, each employee shall be credited with one (1) day (8 hours) of sick leave on the first (1<sup>st</sup>) calendar day of each month or major portion worked (e.g., 10 work days, including any paid leave such as but not limited to, vacation, personal leave, etc.) during the first calendar year of service. On January 1<sup>st</sup> following the employee's date of hire, all employees shall be credited with twelve (12) days (96 hours) of sick leave without limit to accumulation for use during each year for illness or other disability not related to a performance of duty sickness or disability. Each employee shall be entitled to use up to four (4) days (32 hours) of sick leave each year for family illness.

### **B. DEDUCTION**

All sick leave usage shall be deducted in one-quarter (1/4) hour increments. In the event an employee exhausts his/her sick leave accumulation, he/she shall be entitled to designate the use of any other paid leave credits or accruals (e.g., personal leave, vacation, compensatory time, etc.).

### **C. NOTICE AND STATEMENT OF PHYSICIAN**

Except in an emergency, each employee shall notify the Police Department in advance that he/she or a family member is sick and will not be reporting for work. An employee who is absent from work on sick leave for more than three (3) consecutive work days, may be required by the Chief of Police or designee to provide a statement from the employee's physician certifying that the employee was unable to work during that period due to his/her or family illness.

**D. SICK LEAVE INCENTIVE**

A sick leave incentive bonus shall be paid to an employee in the first (1<sup>st</sup>) pay period of January each year, at the rate of pay in effect of December 31<sup>st</sup>, as follows:

<u>Sick Leave Days Used</u>	<u>Amount</u>
0	5 days pay
1	3 days pay
2	2 days pay

**E. SEPARATION PAYMENT**

In the event of separation of service of an employee, that employee or employee's beneficiary or estate, as the case may be, shall be paid for all accumulated sick leave at the rate of pay in effect at that time, no later than the pay period following separation.

### **LIGHT DUTY ASSIGNMENT**

The Town shall make light duty assignments available to employees who incur an off-duty injury and/or illness, based on the following requirements:

- a) the employee requests, in writing to the Chief of Police or designee, a light duty assignment; and
- b) no other employee, except one (1) who is pregnant, is working a light duty assignment; and
- c) the employee requesting a light duty assignment can perform the duties of that assignment, as confirmed by his/her physician's statement; and
- d) the employee provides his/her physician's statement that he/she shall return to full duty without restriction, within ninety (90) calendar days from the start of the light duty assignment; and
- e) the light duty and tour of duty assignment shall be at the discretion of the Chief of Police or designee, so long as the light duty assignment shall not exacerbate the injury or illness and the tour of duty and workweek are the same as set forth in this Agreement; and
- f) the event or action in which the off-duty injury and/or illness resulted from did not violate the adopted Rules of Conduct as set forth in this Agreement.

### **ARTICLE – RULES OF CONDUCT**

The Town has adopted the Police Department's Rules of Conduct for its orderly and efficient operation, which are incorporated in the operational manual.

The Chief of Police, may amend the Rules of Conduct in the operational manual from time to time with the approval and adoption of the Town. Any modification shall be promptly posted and reviewed with the PBA President and/or designee, upon written request to the Chief of Police.

Any terms of this Agreement, or terms and conditions of employment, which are in conflict with the Rules of Conduct in the operational manual shall supersede and take precedence of those contained in the Rules of Conduct. The Rules of Conduct shall not include or incorporate terms and conditions of employment that are bargainable between the Town and PBA.

## **ARTICLE – GRIEVANCE PROCEDURE**

### **A. DEFINITION OF GRIEVANCE**

A grievance is any controversy, dispute, difference arising out of the interpretation or application of this Agreement or rules, procedures, regulations, administrative orders, work rule or any other term and condition of employment affecting the employee, group of employees or the PBA acting on behalf of same or itself (“aggrieved party”).

### **B. PROCEDURE**

#### **Step 1: Chief of Police**

A grievance shall be filed in writing with the Chief of Police within thirty (30) calendar days after its occurrence. A written decision shall be provided by the Chief of Police or designee, which shall not be an employee represented by the PBA, no later than seven (7) calendar days after receipt of the grievance to the aggrieved party.

#### **Step 2: Town Board, or designee, Police Commission**

If the aggrieved party wishes to appeal an unsatisfactory decision of Step 1, the appeal shall be filed with the Town Supervisor within seven (7) calendar days after receipt of the grievance. The Town Board or its designee, the Police Commission, shall issue its written decision to the aggrieved party within seven (7) calendar days of receipt of the grievance.

#### **Step 3: Arbitration**

In the event the PBA wishes to appeal an unsatisfactory decision at Step 2, a Demand for Arbitration shall be submitted to the New York State Public Employment Relations Board (PERB) for selection of an arbitrator pursuant to its Rules of Procedure by the end of the seventh (7<sup>th</sup>) calendar day of receipt of the grievance.

The fees and expenses of the arbitrator shall be divided equally by the parties. Each party shall be responsible for the costs of preparing and presenting its own case.

The arbitrator shall not have any power to add to, subtract from or modify the provisions of this Agreement. The decision of the arbitrator shall be final and binding.

## **ARTICLE – BILL OF RIGHTS**

### **A. CONDUCT OF INVESTIGATIONS**

The wide ranging powers and duties given to the department and its members involves them in all manner of contacts and relationships with the public. Out of these contacts may come questions concerning the actions of the members of the force. These questions may require

investigation by an officer, not represented by the PBA, as designated by the Town. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

- A. The interview of a member of the force shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise. The member of the force shall have the right to consult with an attorney provided by the PBA in a reasonable time prior to the interview, and have an attorney or representative of his/her choosing present during any interview. If any time is lost, the member of the force shall be given compensatory time.
- B. The interrogation shall take place at a location designated by the Chief of Police, which ordinarily will be at the police department or a location having a reasonable relationship to the incident alleged.
- C. The member of the force shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the member of the allegations should be provided. If it is known that the member of the force is being interrogated as a witness only, he/she should be informed at the initial contact.
- D. The questioning shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
- E. All members of the force shall be obligated to answer any questions concerning their conduct as it relates to their employment, except those which violate their constitutional, legal or contractual rights.
- F. The member of the force shall not be subjected to the use of offensive language by the investigating officer nor shall he/she be threatened with transfer or disciplinary action. The foregoing prohibition against threats shall not be construed to prohibit the investigating officer from advising the member of the force of the possible discipline may be sought to be imposed, nor from advising the member of the force that if he/she refuses to answer any questions as it relates to employment, he/she may be subject to additional charges. The individual's consent to disciplinary action shall not be binding until twenty-four (24) hours after he/she is advised of the specific nature of the penalty sought, except in circumstances where there is danger to the public.
- G. If a member of the force is under arrest or is likely to be, or if he/she is a subject or the target of a criminal investigation, he/she shall be given his/her rights pursuant to the current decisions of the United States Supreme Court.

**ARTICLE – RETIREMENT PLAN**

**A. TWENTY (20) YEAR PLAN**

The Town agrees to provide the non-contributory twenty (20) year retirement plan under Section 384-d of the New York State and Local Police and Fire Retirement System for all employees.

**B. ONE (1) YEAR FINAL AVERAGE**

The Town agrees to provide the non-contributory one (1) year final average salary under Section 302(9)(d) of the New York State Retirement and Social Security Law.

**ARTICLE - HOURS OF WORK, TOURS OF DUTY & WORK SCHEDULE**

**A. PATROL WORK SCHEDULE**

Each employee, except as set forth herein, shall work four (4) consecutive days on, followed by two (2) consecutive days off and repeat the cycle.

**B. PERMANT TOURS OF DUTY – PATROL**

The following hours of work, which shall consist of a permanent “A,” “B” and “C” line tours of duty for all Sergeant(s) and police officers assigned to patrol duties shall be as follows:

“A” line: 11:00 p.m. to 7:00 a.m.  
“B” line: 7:00 a.m. to 3:00 p.m.  
“C” line: 3:00 p.m. to 11:00 p.m.

All Sergeant(s) and police officers who bid for or are assigned to the permanent tours of duty set forth above, shall work the patrol work schedule set forth above.

The annual bidding shall commence on November 1<sup>st</sup> through November 30<sup>th</sup> of each year effective January 1<sup>st</sup> through December 31<sup>st</sup> of each year. The Sergeants and police officers shall provide their selection to the Chief of Police (example: 1<sup>st</sup> “A” line, 2<sup>nd</sup> “B” line and 3<sup>rd</sup> “C” line). All bidding shall be by seniority, with Sergeants bidding first (1<sup>st</sup>), and then bidding by all other police officers assigned to patrol duties. In the event there are an insufficient number of volunteers based on seniority, then the Chief of Police may involuntarily assign Sergeant(s) and police officers in the inverse order of seniority to the “A,” “C” and “B” lines until the staffing level determined by the Chief of Police has been achieved. The bidding or involuntarily assignment of a Sergeant(s) shall be by when he/she was appointed to the rank of Sergeant and of police officers based on their date of hire by the Town. After receipt of all selections and based on the staffing levels determined by the Chief of Police for all tours of duty as set forth herein, he/she shall provide and/or post the tour of duty granted based on the selections submitted by seniority or involuntarily assignment.

In the event a vacancy in any tour of duty occurs during the year due to promotion or resignation, or retirement, or illness or injury which is not due to and/or incurred in the performance of duty where an employee has been out for at least thirty (30) consecutive calendar days, or has notified the Chief of Police based on a medical provider indicating that he/she will be out over thirty (30) calendar days, or due to the severity of the illness or injury, the Chief of Police can determine that the absence will be over thirty (30) calendar days, and the Chief of Police elects to fill that vacancy, he/she shall post the vacancy to be filled for a minimum of seven (7) consecutive calendar days prior to its filling, providing any Sergeant and/or police officer with the opportunity to volunteer, depending on the need determined (i.e. Sergeant and/or police officer), to fill the vacancy. In the event there are no volunteers, the Chief of Police may involuntarily assign the least senior Sergeant and/or police officer, depending on the need determined to fill the vacancy. In either case, voluntary or involuntary assignment, each employee shall receive a minimum of seventy-two (72) consecutive hours off from the end of the last tour of duty worked, to the start of the tour of duty he/she is reporting to. Any employee who is voluntarily being reassigned, or is being assigned involuntarily, and who has had any previously approved paid leave (e.g., vacation, personal leave, etc.) shall have the option to have that leave re-credited or take the leave previously approved. In the event of an emergency, as defined by law, all time frames herein are waived. The Chief of Police shall limit all involuntary assignments to fill a vacancy, except for the annual bidding, not to exceed sixty (60) consecutive calendar days.

Notwithstanding the above, an employee who is injured or becomes sick due to his/her performance of duty who is on General Municipal Law § 207-C status, and has been out of work for at least sixty (60) consecutive calendar days and provides notice based on a medical provider that states the employee shall not be able to return to work for at least another thirty (30) consecutive calendar days or more, and the Chief of Police elects to fill that vacancy, he/she shall follow the same procedure set forth herein regarding filling the vacancy. In the event of an emergency, as defined by law, all time frames herein are waived. The Chief of Police shall limit all involuntary assignments to fill a vacancy, except for the annual bidding, not to exceed sixty (60) consecutive calendar days.

In the event a new hire is uncertified and attends the required basic Municipal Police Training Course (Academy), or a new hire has prior full-time police service, he/she shall be placed on a Monday through Friday work schedule with Saturday and Sunday as his/her days off until graduating the Academy, and/or the in-service training is completed as set forth herein. The Monday following Academy graduation, or upon hire of the new hire with prior full-time police service, he/she shall be placed by the Chief of Police to work on each tour of duty as set forth above, rotating and starting the next tour of duty on the following Monday for a period of three (3) months or the duration determined by the Chief of Police that the Academy graduate or new hire with prior full-time police service has successfully completed the in-service training. Thereafter, that employee shall be placed on the tour of duty where the vacancy is or occurred after a volunteer is sought as set forth herein, until the annual bidding occurs.

When an employee attends the required Supervisory Training upon promotion to Sergeant, that employee shall be placed on a Monday through Friday work schedule with Saturday and Sunday as the employee's days off until the required and/or in-service training set forth herein is completed. The Monday following graduation of the Supervisory Training, that employee may

be placed by the Chief of Police to work each tour of duty as set forth above, rotating and starting the next tour of duty on the following Monday for a period of three (3) months, or the duration determined by the Chief of Police that the new Sergeant has successfully completed the in-service training. Upon completion of the required and/or in-service training, that Sergeant shall be placed the following Monday on the tour of duty where the vacancy is or occurred, after a volunteer is sought as set forth herein, until the annual bidding occurs.

An employee may voluntarily agree to be removed from his/her scheduled tour of duty to attend a training seminar or class in lieu of working his/her scheduled tour of duty that day. In the event the employee voluntarily agrees to be removed from his/her scheduled tour(s) of duty, no involuntary assignment shall occur.

During the year, January 1<sup>st</sup> through December 31<sup>st</sup>, and in the event an employee seeks to switch his/her bidded or involuntary assignment to a tour of duty, he/she may seek a volunteer for the switch, subject to the approval of the Chief of Police, which will not be unreasonably denied. In the event there is no volunteer, that employee shall remain in his/her tour of duty until the annual bidding occurs as set forth herein.

In the event a Sergeant and/or employee assigned to patrol doesn't "meet standards" during the year based on his/her performance evaluation as set forth in Article 7 - Performance Evaluations, the Chief of Police, may remove that Sergeant or employee from his/her bidded tour of duty to the tour of duty he/she determines in order to improve and "meet standards." This period not to exceed sixty (60) calendar days, using the same procedure set forth herein. In the event a Sergeant and/or employee does not "meet standards" for two (2) consecutive performance evaluations, that Sergeant and/or employee may lose his/her seniority ranking for the purpose of the following annual bid.

### **C. INVESTIGATOR(S) AND YOUTH OFFICER(S) WORK SCHEDULE**

Each Investigator shall be scheduled to work Monday through Friday. The Investigator(s) shall be assigned by seniority in title to one (1) of the following hours of work:

8:00 a.m. to 4:00 p.m.  
9:00 a.m. to 5:00 p.m.  
10:00 a.m. to 6:00 p.m.

The Youth Officer(s) hours shall be 8:00 a.m. to 4:00 p.m.

In recognition of the patrol work schedule, each Investigator and Youth Officer shall be granted one (1) work day (8 hours) off every six (6) weeks, to be taken on a Friday or Monday, as agreed to with the Chief of Police or designee. Additionally, each Investigator shall be credited with six (6) hours of compensatory time on the first (1<sup>st</sup>) day of each calendar month. The accumulation and use of compensatory time shall be as set forth in the Article – Overtime and Call-In Pay.

#### **D. MUTUALS**

Each employee shall be entitled to mutual (switch/swap) his/her tour of duty with another employee, with the prior approval of the Chief of Police or designee, which shall not be unreasonably denied.

#### **E. WORK SCHEDULE POSTING**

The Chief of Police or designee, on or before the 20<sup>th</sup> day of each calendar month, for the ensuing calendar month, shall post the work schedule, and changes as they occur, regarding approved paid leave.

#### **ARTICLE – JURY DUTY LEAVE**

Each employee shall be released from his/her scheduled tour of duty with full pay when on Jury Duty Leave without the use of any other paid leave accruals or benefits. On those days when the employee has his/her scheduled days off (i.e., Monday and Tuesday), that employee shall not be entitled or paid for Jury Duty Leave by the Town. The employee shall use the “call in” system to the court(s), if available, and in the event the employee is not required to report for Jury Duty, he/she shall report to work. After the court has released the employee from their required commitment to serve on Jury Duty service (i.e., not daily, but no longer is required to call in or report to court), the employee shall report to their regular scheduled tour of duty. Any compensation received for Jury Duty service shall be turned over to the Town for those days in which he/she was released and paid from his/her scheduled workday(s). Any mileage or meal allowances paid shall be retained by the employee.

#### **ARTICLE – DISCIPLINARY PROCEDURE**

##### **Command Discipline – Informal Stage**

In the event the Chief of Police determines that a formal procedure is not required due to the relatively minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or Police Department’s adopted Rules of Conduct by the Town, the affected employee(s) shall be afforded te opportunity to resolve the matter, with representation, through a written Stipulation of Settlement, setting forth the terms agreed upon between the parties.

The Chief of Police shall initiate Command Discipline by advising the employee(s) of the minor infraction(s) of the written and/or accepted standards of conduct or performance, and/or the Police Department’s adopted Rules of Conduct by the Town, and the proposed penalty. In the event the employee(s) does not agree wit the proposed penalty, or in the event a settlement cannot be agreed upon, or rejects Command Discipline, the Town may then file written charge(s) against the employee(s) as prescribed herein.

The maximum penalty that may be imposed at this level by the Chief of Police is as follows:

1. A written reprimand to be placed in the employee's personnel file, which shall not exceed twelve (12) months, and/or
2. A reduction in vacation accruals from the employee up to three (3) work days (24 hours).

In the event Command Discipline resolves the matter by a signed Stipulation of Settlement, neither the employee nor Association may file or pursue a grievance pursuant to the Grievance Procedure article of this Agreement.

### **Procedure Rights – Formal Stage**

#### **A. APPLICABILITY**

The Disciplinary Procedure set forth herein shall be for incompetency or misconduct, and apply to all employees who have completed six (6) months of service, with the employee retaining all rights pursuant to the Civil Service Law, except the hearing and its review, which shall be pursuant to Article 75 of the Civil Practice Law and Rules.

#### **B. EMPLOYEE RIGHTS**

1. An employee shall be entitled to representation by the PBA, or a representative of his/her choosing other than by the PBA, throughout the entire disciplinary procedure.
2. In the event a recording device or stenographic or other record is to be used during the disciplinary interview, the employee and/or representative shall be advised in advance. In that event, a copy of the interview shall be provided to the employee and/or representative at no cost to the employee.
3. In all disciplinary proceedings, the employee shall be presumed innocent until proven guilty and the burden of proof on all matters shall rest upon the Town.
4. An employee shall not be coerced, intimidated, or suffer any reprisals either directly or indirectly that may adversely affect his/her work hours, wages, or working conditions as the result of the exercise of his/her rights under this procedure.

### **C. LIMITATIONS**

An employee shall not be disciplined for acts or omissions, except those which would constitute a crime, which occurred more than one (1) year prior to the Notice of Discipline. However, an employee's past record may be considered by the arbitrator in determining the penalty, if any, to be imposed.

### **D. INVESTIGATION**

The Town retains its authority to investigate an incident which may result in the service of a Notice of Discipline upon an employee consistent with this Agreement. Subsequent to the service of a Notice of Discipline on the employee, all investigatory activities of the Town involving direct questioning or requests for written statements and/or reports by the employee served, shall cease.

### **E. DISCIPLINARY PROCEDURE**

1. Discipline shall be imposed only for incompetency or misconduct. The specific acts for which discipline is being imposed and the penalty proposed shall be specified in the Notice of Discipline. The Notice of Discipline served on the employee shall contain a description of the acts or omissions alleged to be evidence of misconduct or incompetency including reference to dates, times and places.
2. Where the Town seeks as a penalty a written reprimand, suspension without pay not to exceed sixty (60) calendar days, a fine not to exceed one hundred dollars (\$100.00), demotion or dismissal from service, the Notice of Discipline shall be in writing and served on the employee personally or by registered or certified mail, return receipt requested, with a copy provided simultaneously to the PBA President. A Notice of Discipline shall be served within seventy-two (72) hours following an employee's suspension. In no event shall an employee who has been served with a Notice of Discipline be suspended without pay for a period not to exceed thirty (30) calendar days.
3. An appeal of a Notice of Discipline shall be filed directly to Step 3: Arbitration in accordance with the Grievance Procedure article of this Agreement.
4. The hearing shall have a court reporter who will transcribe the hearing, which shall be the official record. The cost of the court reporter and transcribed record shall be shared equally by the Town and PBA. In the event the employee is represented by other than the PBA, he/she shall be responsible for his/her equal share of the arbitrator's fees and expenses.
5. The arbitrator's decision with respect to guilt or innocence and penalty, if any, shall be final and binding upon the parties and he/she may approve, disapprove or take any other appropriate action warranted under the circumstances including but not limited to ordering reinstatement and back pay for all or part of a period of suspension, if any.

## **F. SETTLEMENT**

A disciplinary matter may be settled at any time following service of the Notice of Discipline. The terms of the settlement shall be agreed to in writing. An employee shall be notified of the right to have a representative of his/her choosing, if any, or the PBA representative review the proposed settlement before he/she executes it. A settlement entered into by an employee, the Town, and/or the PBA, shall be final and binding on all parties.

## **ARTICLE – GENERAL PROVISIONS**

### **A. Printing and Furnishing of the Agreement**

The Town agrees to print and furnish each employee one (1) copy of this Agreement, at no cost, for which they will sign for, as received. New employees shall also be provided a copy of this Agreement upon hiring.

### **B. Paid Leave Accrual Balances**

Information regarding the balance of all paid leave accruals shall be provided to each full-time employee in every payroll check.

### **C. Mileage Reimbursement**

An employee required and authorized to use his/her personal car for Town use shall be reimbursed, via a separate check, at the Internal Revenue Service (IRS) approved rate per mile.

### **D. Personnel File**

There shall be only one (1) personnel file for each employee. An employee shall be entitled to review his/her personnel file, maintained at the Chief of Police's office, in the presence of the Chief of Police or designee, upon five (5) calendar days' notice. No complaint, report, memoranda or material, except pre-employment material and normal payroll and attendance records shall be placed into an employee's personnel file until such time as the employee has had an opportunity to read same and to provide a response to be filed therewith. An employee shall be entitled to copies of items therein, not previously provided, at the Town's expense. The employee shall be required to initial and date the times reviewed in a place that shall not cause the item to be illegible. The employee shall have the right to respond to any item intended to be placed into his/her personnel file that is adverse to them and made a part of the file. The

employee maintains the right to file a grievance pertaining to the inclusion of any such item deemed to be adverse through Article 15 – Grievance Procedure.

**E. Payroll Checks**

The Town shall issue paychecks bi-weekly, paid on Friday, no later than one (1) week after the end of each pay period. In the event of a Holiday on Friday, employees shall be paid on Thursday.

**F. Direct Deposit**

The Town shall provide, at no cost, for any employee who elects to participate, directly deposit of his/her payroll.

**G. Meal Allowance**

An employee shall be paid a meal allowance for attending a training or school, outside of the Town, pursuant to the prevailing U.S. General Services Administration (GSA) Domestic Per Diem schedule.

**H. Closing of Town Hall**

Any employee directed to and reports to work by the Chief of Police or designee, when the Town has declared an emergency (e.g., snow storm, etc.), shall be paid at the rate of one and one-half times (1.5X) his/her hourly rate of pay, inclusive of longevity, if applicable, for the first (1<sup>st</sup>) eight (8) hours, and two times (2X) for all hours or any part thereof thereafter.

**I. Deferred Compensation Plan**

The Town shall provide, through the State of New York, at no cost, its deferred compensation plan pursuant to Section 457 of the Internal Revenue Service Code, for any employee who elects to have funds withdrawn from his/her payroll and placed in the plan.

## **ARTICLE – PERFORMANCE EVALUATIONS**

The purpose of the performance evaluation attached hereto as Appendix “\_\_” and made a part of this Agreement is to evaluate the employee’s performance during the specific time period set forth herein. The rater(s) shall complete the attached performance evaluation based on objective observations of the employee, which is to be supported by written documentation, such as memo book entries, written communications, notes, recorded statistical data, and the like. The rater(s) shall be prepared to support the evaluation through documentation. This is the standard to be applied for all parts of the performance evaluation. The rater(s) shall be required to sign and date each area. The ratee shall be required to sign and date the performance evaluation on the appropriate page. The ratee’s signature shall only acknowledge that he/she has participated in the conference to review the performance evaluation with the rater(s). The ratee shall be entitled to provide any written comments at the time of the review regarding the performance evaluation. An employee dissatisfied with his/her evaluation of any specific criteria, shall have the right to file an appeal objecting to that evaluation with the Chief of Police within seven (7) calendar days after the performance evaluation review. The appeal shall be in writing and specify the section(s) of the performance evaluation he/she is dissatisfied with and objecting to. If the employee is dissatisfied with the overall score, he/she shall indicate this on the written appeal. The Chief of Police shall conduct a meeting with the employee appealing and the employee’s PBA representative within fifteen (15) calendar days of receipt of the appeal. The Chief of Police shall issue his/her written determination of the employee’s appeal within seven (7) calendar days after the meeting with the employee and his/her PBA representative. An employee dissatisfied with any part of the Chief of Police’s determination of his/her appeal may elect to file a grievance pursuant to Article 15 – Grievance Procedure of this agreement. For the purposes of this procedure, the grievance shall be filed directly with the Town Board and/or Police Commission at Step 2 who will render its written decision on the grievance as set forth therein. If the employee is dissatisfied with any part of the decision of the Town Board and/or Police Commission, the PBA may proceed to arbitration pursuant to Article 15 – Grievance Procedure Step 3: Arbitration of this Agreement. At the arbitration, the Town shall have the burden of proof to establish that the performance evaluation of the employee in each criteria which has been appealed is supported by substantial evidence.

Performance evaluations shall be done two (2) times each year, once in the month of April and once in the month of October each year.

Every supervisor, which shall be a Sergeant and/or Lieutenant, who has supervised an employee for at least sixty (60) work days within an evaluation period, shall submit a performance evaluation of the employee. If more than one (1) supervisor, as defined herein, has supervised an employee for at least sixty (60) work days during the performance evaluation period, the evaluations of the supervisors shall be weighted in arriving at the employee’s rating.

A score of 1 to 2.49 will be considered “below standard.” A score of 2.5 to 3.24 will be considered to “meet standards.” A score of 3.25 and above will be considered to “exceeds standards.” The performance evaluation of a subordinate by any supervisor who has not received a total evaluation of at least “3.0” shall be considered null and void and the subordinate employee shall be considered as “meets standards” for the evaluation period in question. The

performance evaluation of a subordinate by any supervisor who has not received a total evaluation of at least "2.75" in the specific performance criteria shall be considered null and void and the subordinate employee's score in that specific criteria shall be deemed as "meets standards" for that evaluation period.

No performance evaluation, in part or in whole, may be used for disciplinary charges, or as evidence in any disciplinary proceeding.

Employees who receive "meets standards" on their performance evaluation shall receive one (1) day paid vacation. Employees who receive "exceeds standards" on their performance evaluation shall receive an additional three (3) days paid vacation. Employees who receive two (2) consecutive "exceeds standards," shall receive in addition to any of the aforementioned vacation days, an additional two (2) days of vacation, for each additional "exceeds standards."

**ARTICLE – PERFORMANCE OF DUTY SICKNESS OR INJURY**

Each employee shall be paid his/her full wages and benefits set forth in this Agreement during any and all times he/she is incapacitated from work by reason of any sickness and/or injury which arises out of or in the course of his/her employment.

**ARTICLE – EDUCATIONAL AND TRAINING INCENTIVE PAYMENT**

The Town shall pay each employee who has a degree or training as follows:

Associates Degree	=	\$250.00 each year
Bachelors Degree	=	\$500.00 each year
Masters Degree or Above	=	\$750.00 each year

An employee shall only be paid for one (1) of the above

Firearms Instructor	=	\$500.00 each year
Defensive Tactics Instructor	=	\$500.00 each year
EVOC Instructor	=	\$500.00 each year
CPR/AED Instructor	=	\$500.00 each year
Field Training Officer	=	\$200.00 each training cycle*

\* Compensatory Time shall not be paid to any Field Training Officer for each training cycle, and pro-rated in the event of a partial training cycle. Sergeants shall not be eligible for Field Training Officer payments.

APPENDIX “ “

REQUEST TO DECLINE AND WAIVE HEALTH INSURANCE COVERAGE

1. I, \_\_\_\_\_, hereby request a decline and waiver of health insurance provided by the Town for which I am presently eligible. I understand that I must be covered by another health insurance plan to be eligible for waiver of Town health insurance coverage. Accordingly, I certify that I am presently covered by the following health insurance plan:

Name of Plan: \_\_\_\_\_

Coverage provided by or through: \_\_\_\_\_  
(Name of organization or Employer)

Subscriber Number: \_\_\_\_\_

Attached to this form is a copy of the identification card for this health insurance plan.

2. In making this request, I understand and agree that I and/or my dependents will not be eligible, except as indicated above, for Town provided health insurance coverage for which I and/or my dependents are now eligible for. Notwithstanding anything to the contrary in this form, I understand and agree that I may apply on the form “Request to Resume Health Insurance Coverage” to re-establish Town provided health insurance coverage and that the effective date for resumption of Town provided health insurance coverage is subject to and conditioned on the requirements of the health insurance carrier. I hereby acknowledge that I have been advised by the Town as to the health insurance carrier's present requirements for resumption of health insurance coverage, and I understand that those requirements may be changed at any time by the health insurance carrier.
3. I understand and agree that I will be compensated by the Town for my waiver of health insurance coverage in accordance with the applicable terms of the collective bargaining agreement detailing this area between the Town and the PBA.
4. I understand and agree that my waiver of health insurance shall remain in effect unless I apply on the appropriate form to the Town to discontinue the waiver of health insurance coverage. I understand and agree that the waiver of health insurance coverage shall continue until I complete and file with the Town the necessary form to re-establish the health insurance coverage provided by the Town in accordance with the requirements of the Town's health insurance carrier. The effective date of re-establishment of my health insurance coverage shall be as provided by the Town's health insurance carrier. Upon resumption of my health insurance coverage through the Town, the compensation I have received in connection with the waiver of health insurance coverage shall cease, in accordance with the terms of the collective bargaining agreement by and between the Town and the PBA.

Employee Signature \_\_\_\_\_ Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Town of DeWitt Agent \_\_\_\_\_ Print Name \_\_\_\_\_

Date: \_\_\_\_\_

cc: President, Town of DeWitt PBA

APPENDIX " "

REQUEST TO RESUME HEALTH INSURANCE COVERAGE

1. I, \_\_\_\_\_, hereby request to re-establish Town provided health insurance which I had previously received from the Town. I have attached a completed New York State Health Insurance Transaction Form, which is required by the health insurance carrier.
2. I understand and agree that the effective date for resumption of Town provided health insurance coverage is subject to and conditioned on the requirements of the Town's health insurance carrier.
3. I understand and agree that the compensation which I have received in connection with the previously executed Request to Decline and Waive Health Insurance Coverage will be terminated upon re-establishment of Town provided health insurance coverage in accordance with the applicable terms of the collective bargaining agreement by and between the Town and the PBA.

Employee Signature \_\_\_\_\_ Print Name \_\_\_\_\_

Date: \_\_\_\_\_

Accepted For The Town of DeWitt:

Town of DeWitt Agent \_\_\_\_\_ Print Name \_\_\_\_\_

Date: \_\_\_\_\_

cc: President, Town of DeWitt PBA

**APPENDIX “ ”**  
**PERFORMANCE EVALUATION**

**DESK MANAGEMENT**

	<u>Lowest</u>			<u>Highest</u>	
	1	2	3	4	5
1) Interaction with public <b>Comments:</b>					
2) Telephone demeanor <b>Comments:</b>					
3) 911 Usage <b>Comments:</b>					
4) Basic radio operation <b>Comments:</b>					
5) Highway/fire radio usage <b>Comments:</b>					
6) Fire paging <b>Comments:</b>					
7) SHVAC paging <b>Comments:</b>					
8) NYSPIN and/or E-Justice <b>Comments:</b>					

RATER'S SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

A comment is required to support each rating category. Rating shall be based upon Rater's direct observation of ratee. Use back of sheet if necessary.

**APPENDIX “    ”**  
**PERFORMANCE EVALUATION**

**RATER COMMENTS:**

Based on objective data that can be supported by written documentation, use this space to give an account of this employee's performance. Consider all the categories on the previous page in your assessment. Include your supervisory response to documented problems.

RATER(S) SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

A comment is required to support each rating category. Rating shall be based upon Rater's direct observation of ratee. Use back of sheet if necessary.

**APPENDIX “    ”**  
**PERFORMANCE EVALUATION**

**RATEE COMMENTS:**

I PARTICIPATED IN THE PERFORMANCE EVALUATION CONFERENCE AND HAVE REVIEWED MY EVALUATION.

**COMMENTS:**

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RATEE'S SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

A comment is required to support each rating category. Rating shall be based upon Rater's direct observation of ratee. Use back of sheet if necessary.

## **THE TOWN'S DEMANDS**

The Town submitted no demands in its response to the PBA Demand for Interest Arbitration, and relied on its direct case and examination of all witnesses for a just and reasonable Award.

## **POSITION OF THE PARTIES ON THE STATUTORY CRITERIA**

### **A. THE ISSUE OF COMPARABLE JURISDICTIONS**

CSL § 209.4 requires the Panel to engage in a comparative analysis of terms and conditions with “other employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment in comparable communities.”

### **B. The PBA's Position**

It is the PBA's position that with the exception of the City of Syracuse, the various Towns and Village Police Departments within the boundary of Onondaga County represent the most relevant comparables since the police officers within each of these municipal jurisdictions perform identical police services as the Town of DeWitt on a 24/7 basis. In support of this position, the PBA notes that these Police Departments share the same job description for police officers thus making their duties and responsibilities substantially identical.

### **C. The Town's Position**

It is the Town's position that the list of comparables should be limited to those Towns and Villages comparable in size and shape to the Town of DeWitt.

## **D. THE ABILITY TO PAY**

### The P.B.A.'s Position

It is the PBA's position that the Town is economically sound and is in a strong position to afford the costs associated with an award that is consistent with the PBA's demands as presented to this Panel.

In support of its position, the PBA quotes the remarks of the Town's Panel Member who noted that the Town "is relatively well-off compared to the other 950-some towns in New York State." The PBA notes further that the Town has a solid economic forecast notwithstanding the economic recession currently experienced across the United States.

Finally, the PBA maintains that the fundamental, fiscal and economic condition of the Town is strong as reflected by the basis indicators – taxes are low, debt is extremely low, and the Town enjoys a Moody Bond Rating of A-1. Finally, the PBA adds that the Town's fund balance is strong with a contingency fund of \$200,000 and an unappropriated fund balance of \$2.1 million.

### The Town's Position

The Town recognizes that, in the absence of a severe budget crisis, an employee's wage must increase by at least the rate of inflation otherwise the employee would, in effect, experience a "wage cut".

In addressing prior increases given to the PBA, the Town notes that although the negotiated wage increases for the PBA bargaining unit did not keep up with inflation in calendar years 2000 and 2005, wage increases the other years between 1999 and 2007 were above inflation.

During calendar years 1999 through 2007 the parties negotiated average annual wage increases of **3.1 percent**. During that same period, 1999 through 2007, the annual inflation rate (based on

the CPI-W) averaged **2.7 percent**. As a result, from 1999 through 2007, the wages for employees in this bargaining unit were adjusted to be, on average, **0.4 percent** above inflation. The following chart was presented to the Panel at the hearing. It was the Town's stated position that the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) is one of the most frequently used statistics for identifying periods of inflation or deflation.

Year	CPI-W Annual	PBA Raises	+/-
1999	2.2	3.0	+0.8
2000	3.5	3.0	-0.5
2001	2.7	3.0	+0.3
2002	1.4	3.0	+1.6
2003	2.2	3.0	+0.8
2004	2.6	3.0	+0.4
2005	3.5	3.0	-0.5
2006	3.2	3.5	+0.3
2007	2.9	3.5	+0.6
2008	4.1		
2009	-0.7		

12-Month Percent Change  
 Series Id: CWUR0000SA0  
 Area: U.S. city average  
 Base Period: 1982-84=100

The Town asserts that if one were to apply this historical factor of 0.4 percent above inflation to wage increases for calendar year 2008, wages would increase by 4.5 percent (4.1% inflation + 0.4% adjustment). However, for calendar year 2009, wages would *decrease* by -0.3 percent (0.7% *deflation* + 0.4% adjustment).

Rather than considering 2008 and 2009 separately, one could take the average rate of inflation for these two years, which equates to **1.7 percent**, and then add the historical factor of **0.4 percent** above inflation. As a result, the wage increases would be **2.1 percent** for 2008 and again for 2009.

Finally, the Town argues that the following three points should be considered: 1) the Town of DeWitt, like all towns in New York State during this period of fiscal instability, must continue to be prudent in managing its finances; 2) for the nine years prior to 2008, wages for employees in this bargaining unit were adjusted to be, on average, 0.4 percent above inflation; and, 3) the parties failed to negotiate any "trade offs" in consideration of wage adjustments above inflation.

### **DISCUSSION – ABILITY TO PAY**

Aside from the discussion regarding GASB 45 as it pertains to the impact of future retiree health insurance costs and its impact on the budget, it was generally undisputed that the Town of DeWitt enjoys a strong financial condition relative to other Towns and Villages within Onondaga County and is at or near the top of every economic indicator as it relates to the period governed by the term of this Award.

In terms of real property tax, the Town assesses its properties at 100% of market value and has done so virtually every year from 2000 to 2010. During this period of time, the growth of real property has continued to increase, a fact which is significant since the Town draws its property tax revenues based on the value of its real property. It should also be noted that the Town's assessed tax rate has been somewhat depressed as a result of the Town's yearly receipt of \$500,000 in sales tax revenues from the County. Moreover, the Town's real property tax levy has been the second lowest over the last five years among the comparables used in this Interest Arbitration Award. In this regard, the Town recently experienced an annual tax increase of 2.28%, the second lowest among the comparables used in this Award.

In terms of sales taxes, the Town of DeWitt is in a favorably unique position. The Town is entitled to greater than \$5 Million in sales tax revenue annually. However, the Towns located within the borders of Onondaga County have the option of taking their sales tax distributions either in cash or as a credit against the County's property tax levy. The obvious effect of taking it as a credit is a lowering of the County's purpose tax levy. Thus, by way of example, in 2009 and 2010, the Town took \$600,000 in cash from its sales tax distribution and applied it to the Highway Fund, thereby eliminating a revenue risk as it might impact that particular Fund.

The Town has also maintained a healthy fund balance in both the General Fund (where Police expenditures including salaries and benefits are drawn from) as well as the Part Town General Fund, including unreserved fund balances well in excess of that recommended by the New York State Comptroller. In this regard, the record evidence shows that the General Fund has enjoyed operating surpluses over the last five year period. In addition, the unreserved fund balance as a percentage of expenditures has been greater than 40% for the last four years. This is significant since the Bond agencies as well as the State Comptroller recommend at least 5%-10% as a guide.

In summary, therefore, the Town's financial condition is strong with all economic indicators suggesting that it will continue to do so. The Town has a consistent record of collecting more revenue than it budgets, its real property tax is guaranteed, it takes only a fraction of the sales tax to which it is entitled, and the Town's General Fund as well as its Combined Fund spends less than it budgets. Accordingly, the Panel is of the opinion that the Town is capable of paying a fair and reasonable increase.

**E. THE INTERESTS AND WELFARE OF THE PUBLIC**

It was undisputed that the Town residents are well served by its well-trained and experienced police department. It is significant, therefore, that this Panel designs an Award that attracts and retains highly qualified Police Officers

**F. PECULIARITIES OF THE POLICE PROFESSION**

While the parties may be at odds on a number of issues, they both agree and accordingly there is no dispute that the police profession is a unique one, and consequently, there are no real comparisons that can be made with other trades or professions. No other is truly comparable. Appropriate weight must therefore be given to the particularly hazardous nature of a police officer's work as well as to their special qualifications, training and skills required for the position of police officer.

**G. THE TERMS OF PAST COLLECTIVE AGREEMENTS NEGOTIATED  
BETWEEN THE PARTIES**

The P.B.A.'s Position

Given the lack of any compelling reason in the record for any change in these jointly negotiated provisions, the P.B.A asserts that just and reasonable increases in its economic demands be Awarded by this Panel.

The Town's Position

The Town maintains that PBA unit members fare well when compared to other Town police groups, placing them in the upper tier in terms of salaries and benefits. In this regard, the Town asserts that the Panel award moderate increases to the existing economics contained in the expired collective bargaining agreement.

**POSITION OF THE PARTIES ON THE OUTSTANDING ISSUES**  
**AND**  
**THE PANEL'S FINDINGS AND CONCLUSIONS ON THESE ISSUES**

The parties presented testimony, argument and documentary evidence with respect to wages and health insurance, as well as the other numerous issues noted above, and the Town further developed its respective positions on the issues dealing specifically with wages and health insurance in their post-hearing submission. In addition to a comparison study by the PBA in support of each of its economic proposals, specific arguments were made on the other financial issues proposed by the PBA. As a result, the discussion below is reflective on the manner and method the parties chose to support their positions. It should also be noted that in addition to such arguments, documents and evidence, the Panel, in reaching its determination on the issues discussed below, has carefully considered the statutory guidelines set forth in Section 209.4 as well as the positions of the parties on these guidelines as set forth above.

Given the foregoing, the Panel hereby makes the following Awards with which the Public Panel Member and Chairperson concurs in its entirety.

**1. DURATION OF AWARD**

The parties agree to a two-year Award which shall be effective January 1, 2008 through December 31, 2009. Based on such agreement, the Panel hereby makes the following

**AWARD**

The term of this Award shall be from January 1, 2008 through December 31, 2009.

I **CONCUR** with the above Award regarding **DURATION**.

Date: **04-22-2010**

\_\_\_\_\_  
Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award regarding **DURATION**:

Date: **04-22-2010**

\_\_\_\_\_  
Anthony V. Solfaro  
Employee Organization Panel Member

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**2. THE COMPARABLES**

Following a careful review of the materials submitted and arguments made, and for the reasons noted below, the Panel is of the unanimous opinion that for the purposes of the Comparability comparison as set forth in CSL § 209.4, the Panel hereby considers all Towns and Villages in Onondaga County as representative of the appropriate comparison for purposes of determining terms and conditions associated with this Interest Arbitration Award. In addition, the Onondaga County Sheriff's Department Road Patrol Unit shall also be included among the comparables used herein.

The criteria that defines the making of "comparable communities" are factors long considered by Interest Arbitration Panels to include population, geographical proximity, size of the department,

property valuations, retail sales, income levels, poverty rates, nature of the police force (i.e., full vs. part time, 24/7 service), number and nature of police actions as examples. When taking these factors into consideration, the panel must conclude that the Towns and Villages located in Onondaga County are the most relevant for comparison purposes due primarily to the fact that all police officers within these Towns and Villages share an identical job description and render services to their respective communities 24/7. In addition, there are a sufficient number of Towns and Villages within Onondaga County, 12 of them, such that a meaningful comparison can be made.

In addition to the Towns and Villages housed within Onondaga County, the Panel has elected to include the Onondaga Sheriffs' Department Road Patrol unit primarily since the New York Legislature has recently conferred Interest Arbitration in a limited fashion to these bargaining units. In addition, Road Patrol Deputies share a substantially identical job description and provide police services to the greater part of Onondaga County on a 24/7 basis.

### **AWARD**

**The Comparables shall consist of all Towns and Villages within Onondaga County. In addition, the Onondaga County Sheriffs Road Patrol Unit shall be included for this purpose.**

I **CONCUR** with the above Award.

**Date: 04-22-2010**

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Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award.

**Date: 04-22-2010**

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Anthony V. Solfaro  
Employee Organization Panel Member

### **3. WAGES & WAGE RATES**

The P.B.A has proposed increases ranging from a low of 5% for bargaining unit members.

The Town has made no wage demand.

The parties presented testimony, documentary evidence and argument in support of their respective positions on the issue of Wages, bringing into evidence a comparison of the wage rates and other benefits in other comparable communities, including those with similar skills, the employer's ability to pay, an analysis of wages and other benefits negotiated by the parties in the past. Particular emphasis was placed on a comparison of wages of the PBA as compared to Police in other jurisdictions within Onondaga County, as well as a thorough discussion on the Town's ability to pay. Those arguments are found in the discussion of the Statutory Criteria.

Having carefully considered the foregoing arguments, the Panel first takes note of two competing interests. The first interest, advanced by the PBA, asserts that the Panel may only consider the financial status of the Town during the relevant time period of 2008 and 2009, and any other data outside of this period is simply not relevant to the task of this Panel. The second interest, advanced by the Town, asserts that should the Panel grant any increases, such increases will likely be paid from 2010 funds. Accordingly, the Town maintains that this Panel must take into consideration the Town's fiscal status for 2010. The Panel finds each of these interests compelling and concludes that any decision by the Panel must take into consideration each such concern.

Turning now to the demands:

Historically, DeWitt has enjoyed the strongest wage and longevity schedule among all Police agencies within the County of Onondaga. Beginning with fiscal/calendar year 2005, DeWitt Police Officers ranked third in the 5 year cumulative base salary totals, and second in the 10<sup>th</sup>, 15, 20 and 25 year cumulative base salary totals in the County. In 2006 and in 2007, DeWitt Police Officers ranked third in the 5 year cumulative base salary totals, and second in the 10 year

cumulative totals, and first in the 15, 20<sup>th</sup> and 25<sup>th</sup> year cumulative base salary totals in the County.

The Town suggested that wage increases granted by the Panel for the two years at issue should be guided as follows:

[Th]e Town respectfully requests that the Arbitration Panel merely adjust the wages for this bargaining unit to account for the average rate of inflation, which would equate to 1.7 percent for 2008 and 1.7 percent for 2009.

Following the Panel's careful review of the record in this matter, and mindful of the statutory criteria set forth in CSL § 209, the Panel believes that a more just increase should be guided by the arithmetic average percentage increase of all Towns and Villages contained in the list of comparables. Such listing includes the Village of Baldwinsville, Town of Camillus, Town of Cicero, Village of East Syracuse, Town of Geddes, Village of Liverpool, Town of Manlius, Village of North Syracuse, Village of Skaneateles, Village of Solvay and the Onondaga County Deputy Sheriffs (Road) Patrol units. The arithmetic averages are as follows:

2008:	4.0%
2009:	3.65%

Based on a careful analysis of all testimony, exhibits, particularly those dealing with the Town's fiscal picture, as well as other documentary evidence, and after due consideration of the statutory criteria, the Panel hereby determines that a salary increase of 4% effective January 1, 2008, followed by an additional salary increase of 3.65% effective January 1, 2009, represents a fair and equitable increase at this time. These increases will insure that the Town Police Officers remain competitively compensated for attraction/retention purposes and should also assure bargaining unit members that they will not lose any ground in the salary rankings for base pay. It is also significant that this awarding of salaries takes into consideration the two competing interests noted and discussed above.

This Panel's decision to award Town Police Officers with 4.0% in 2008 will assure that they maintain their overall status. Therefore, in 2008, after receiving an additional 4.0%, the Town will pay its officers at a first (1<sup>st</sup>) step rate of \$43,339<sup>1</sup>, a step (6) base rate of \$58,290, for a five year cumulative total of \$247,513, keeping them in second place with respect to the five-year cumulative totals. More importantly, this analysis makes it clear to this Panel that even assuming reasonable increases for other departments in the County that may not have resolved their contracts for 2009, the top police pay rate for the Town of DeWitt, when viewed in the context of all other compensation and benefits provided, represents a fair and equitable wage at this time.

As noted earlier, the Panel acknowledges the important and dangerous work performed by this Police group. The Panel also recognizes the unique and specialized skills of members of the department, and that given the current climate there have been increased demands placed on members of the department who are willing to risk all to keep us safe. This is a significant factor as to why this Panel feels that PBA unit members deserve fair and equitable salary increases such that the department can continue to attract and retain skilled, dedicated and highly capable individuals. Our determination in this regard fits well with the Town Board's pledge to spend Town resources in a prudent fashion. We might add that prudent spending does not necessarily imply no spending, particularly where, as here, circumstances require the award of a fair and equitable wage increase.

Finally, in addressing the Town's ability to pay, as well as the impact of this Award on the public, it is clear to the Panel that the evidence presented supports the conclusion that this Award is well within the financial means of the Town. In this regard, we note that the Town's unreserved fund balance for 2010 was estimated at 18.2% of expenditures. The Town Comptroller calculated this percentage by subtracting monies the Town had appropriated in its new budget. The Comptroller's undisputed testimony revealed that the Town has managed to keep their unreserved fund balance at 20% for the last fifteen years. This percentage reflects a

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<sup>1</sup> This figure represents Step 1 of the Schedule and the five year cumulative total does not include the "Trainee" step of the CBA.

very healthy budget considering that the New York State Comptroller and bond rating agencies recommend a fund balance of between 5% and 10% of the total budget.

Accordingly, after consideration of the exhibits, documentation and testimony presented, and following due consideration of the criteria set forth in Section 209.4 of the Civil Service Law, the Panel makes the following:

**AWARD**

**The 2007 salary schedule for all PBA Bargaining Unit members shall be increased four (4.0%) percent on each and every step effective January 1, 2008.**

**The 2008 salary schedule for Police Officer shall be increased by three and one-half percent (3.65%) on each and every step on January 1, 2009.**

I **CONCUR** with the above Award.

**Date: 04-22-2010**

\_\_\_\_\_  
Michael A. Richardson  
Employer Panel Member

I **DO NOT CONCUR** with the above Award.

**Date: 04-22-2010**

\_\_\_\_\_  
Anthony V. Solfaro  
Employee Organization Panel Member

**4. LONGEVITY**

Currently, PBA unit members receive longevity commencing at the beginning of Year 8 of service as follows:

<b>YEARS OF SERVICE</b>	<b>AMOUNT (2001 RATES)</b>
Beginning of Years 8 & 9	\$550.00
Beginning of Years 10 & 11	\$750.00
Beginning of Years 12 & 13	\$950.00
Beginning of Years 14 or More	\$1150.00
Beginning of year 15 & Each additional year at \$50 per year to maximum amount year 20 of	\$1,450.00

The PBA seeks to change the current Longevity Schedule by modifying the to years 14, 15, 16, 17 and 18+ together with increases in all levels.

Upon review, the Panel finds that while longevity payments are an integral part of the Police Officer's compensation package, and while there is support for a modest increase, respectfully, there is no support for the type of major change proposed by the PBA. While PBA Unit Members fare very well relative to longevity payments made, the amount of any increase must be balanced against the fact that the wage rate increase awarded falls represents the arithmetic average, and that the majority of other Towns and Villages in the list of comparables received increases in their Longevity schedules. The Panel also takes note of the fact that the PBA's Longevity schedule has not seen an increase since 2001. Accordingly, the Panel makes the following

**AWARD**

**1/1/08**

No Increase

**1/1/09**

Add \$25.00 to each and every level of the current Longevity Schedule as follows:

<b>YEARS OF SERVICE</b>	<b>AMOUNT (2009 RATES)</b>
Beginning of Years 8 & 9	\$575.00
Beginning of Years 10 & 11	\$775.00
Beginning of Years 12 & 13	\$975.00
Beginning of Years 14 or More	\$1175.00
Beginning of year 15 & Each additional year at \$75 per year to maximum amount at year 20 of	\$1,625.00

I **DO NOT CONCUR** with the above Award on **Longevity**.

Date: **04-22-2010**

\_\_\_\_\_  
Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award on **Longevity**.

Date: **04-22-2010**

\_\_\_\_\_  
Anthony V. Solfaro  
Employee Organization Panel Member

## **5. PRIOR SERVICE CREDIT**

The PBA's demand for recognition of prior service credit was prompted by the fact that police officers who are hired by the Town from another police agency do not receive credit for prior service for the purposes of base wage rate, longevity or retiree health insurance credit. In total, 21 of the 33 Bargaining Unit members possess prior service credit as police officers, but none of that prior service has been recognized by the Town as noted herein. With respect to base wage rates, the record reflects that when police officers at other police agencies are recruited and/or hired by the Town, they are "brought in" at the salary step that most closely approximates the base rate of pay the Officer was receiving at his/her prior employer that provides for an increase. No prior service credit has been recognized for the purposes of Longevity or Retiree Health Insurance coverage.

The PBA asserts that the foregoing lack of prior service credit has a detrimental impact on salary and longevity in that Officers earn substantially less than either schedule would suggest had all such service been rendered in the Town. Thus, by way of example, PBA President Norton possessed 8 years of prior police service when he joined the Town's police department 8 years ago. However, for longevity purposes Officer Norton is treated as an 8<sup>th</sup> year officer as he enters his 17<sup>th</sup> year of police service.

With respect to retiree health insurance coverage, the PBA maintains that this benefit requires that they would not receive retiree health until working for the Town for 20 years, whereas in reality, an officer is required to work many years, depending on how many prior years of police service he/she has worked, beyond his/her 20 years of total service, which represents the existing 20 year retirement plan.

As the panel reviews the PBA's concerns, it is mindful of the fact that these police officers who join the Town's Police Department do so voluntarily, and at the time of their recruitment into the Town's Police Department possess at least equal bargaining power as does the Town. This fact must be balanced against the PBA's genuine concern regarding the cumulative impact resulting from the lack of credited service by the Town. When balancing these factors, the Panel is of the

opinion that while there must be some recognition of prior Police Service credit, recognition on a 1 for 1 basis is not warranted at this time. Accordingly, with the foregoing as a backdrop, the Panel renders the following **AWARD**:

All current and future bargaining unit members who are hired by the Town of Dewitt Police Department who possess prior Police experience shall receive prior service credit for such experience on a basis of one year of service credit for every four years of prior service with a credited Police Department outside of the Town of Dewitt. Such prior service credit shall apply for the purposes of Longevity and Retiree Health Coverage. This provision shall become effective on December 31, 2009 at 11:59 p.m.

**I DO NOT CONCUR** with the above Award on **PRIOR SERVICE CREDIT**.

**Date:** 04-22-2010

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Michael A. Richardson  
Employer Panel Member

**I CONCUR** with the above Award on **PRIOR SERVICE CREDIT**.

**Date:** 04-22-2010

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Anthony V. Solfaro  
Employee Organization Panel Member

**6. MUTUALS – [SHIFT SWAPPING] – ARTICLE 16**

The PBA has proposed language that would permit mutual switches of tours with the approval of the Chief of Police, which approval “shall not be unreasonably denied.” The record reflects that historically, the Department has permitted shift swaps. However, the record also reflects that whatever practice might exist is inconsistent. Moreover, the PBA is concerned that with the

Chief of Police's admitted "absolute discretion" to grant or deny a mutual request, there is always room for arbitrary action.

As the Panel carefully reviews the record in this matter, we find interests on both sides that are not mutually exclusive. The PBA's interests are noted above, and the Panel finds them to be reasonable. The Town's interests include the right of the Chief of Police to determine the operational needs of his department and the additional interest of fiscal responsibility. In this later regard, the Chief has indicated his concern over granting shift swap requests that would result in the granting of overtime. The Panel finds both of these interests reasonable.

Given the foregoing, the Panel finds the following **AWARD** addresses the interests of both parties:

**AWARD ON MUTUALS [SHIFT SWAPPING]**

Article 16 shall be modified with the addition of the following language:

There shall be a presumption in favor of the Chief's approval for shift swapping where such swapping does not affect the defined operational needs of the Police Department or result in overtime.

I **CONCUR** with the above Award regarding **MUTUALS**.

Date: **04-22-2010**

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Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award regarding **MUTUALS**.

Date: **04-22-2010**

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Anthony V. Solfaro  
Employee Organization Panel Member

**7. SICK LEAVE ACCUMULATION [ARTICLE 12.1]**

Article 12 at Section 12.1 of the CBA provides that bargaining unit employees receive twelve (12) days (96 hours) of sick leave per calendar year. Section 12.2 provides payment to any bargaining unit member of up to twelve (12) days of unused sick leave time, but provides, in relevant part: "Unused sick leave may not accumulate from year to year." Upon review of the sick leave provision of all comparable jurisdictions, the Panel finds that DeWitt is the only jurisdiction that does not permit any accumulation of sick leave time. Accordingly, Officers are naturally faced with a use it, get reimbursed for it, or lose it choice each year. More importantly, since sick leave provides employees the assurance of continued pay during times of illness, DeWitt Police Officers could easily find themselves off the payroll following twelve days of illness in any one year. Accordingly, the Panel finds and concludes that the right to accumulate sick leave provides a benefit to both the Officer as well as the Town. In this later regard, the right to accumulate unused sick leave creates an automatic incentive not to squander sick leave days granted yearly. Accordingly, the Panel makes the following **AWARD**:

**AWARD ON SICK LEAVE ACCUMULATION**

Language shall be added to Section 12.1 of the CBA that provides for unlimited accumulation of unused (or unpaid pursuant to Section 12.2) sick leave. In addition, that portion of Section 12.2 which provides that unused sick leave may not accumulate from year to year shall be deleted. This provision shall become effective on December 31, 2009 at 11:59 p.m.

I **CONCUR** with the above Award.

**Date: 04-22-2010**

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Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award.

**Date: 04-22-2010**

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Anthony V. Solfaro  
Employee Organization Panel Member

## **8. HEALTH INSURANCE - [ARTICLE 10, SECTION 10.1]**

The Town currently participates in a self-insured health plan as part of an Onondaga County consortium administered by POMCO as its third-party administrator. The 2010 premium equivalent for family coverage runs approximately \$1300 per month. This self-insured plan is experience rated. Since the pool of participants in the Plan is limited, major health occurrences to any covered life in the Plan could have a drastic effect on the premium rates sent by the consortium in any year. Bargaining unit members who participate in the Plan are required to pay 15% of the premium capped at \$153.00 for the OCEBA Plan T, and \$220.00 for HMOs.

Both parties to this agreement are concerned about the real possibility for double-digit rate increases and their effect on Town resources. The PBA has proposed a move to the N.Y.S. Health Insurance Plan, also known as the Empire Plan.

The Empire Plan was introduced in 1986 as a unique health insurance plan designed to meet the needs of both public employers and their employees across New York State. Then as now, the Empire Plan offers a wide spectrum of services unmatched by most health insurance providers. The Empire Plan has 11,000 network hospitals, skilled nursing facilities and hospice care facilities nationwide. In addition, Plan enrollees have the freedom to choose from over 170,000 medical, mental health and other participating providers nationwide. The Plan's Prescription Drug Program offers a choice of more than 50,000 participating pharmacies, nationwide, as well as a mail service pharmacy. Now, more than 50 years following its inception, the Empire Plan is one of the largest public employer health insurance programs nationwide, covering over 1.2 million State and Local government employees, retirees and their families. Statewide, over 800 local government employers offer the Empire Plan. These participating groups have witnessed financial stability in that over the five year period of 2004 to 2008, the annual net premium increase for the Empire Plan averaged approximately 8%. The Plan's combination of managed care features and reasonable copayments have resulted in a comprehensive benefit package while keeping costs down. Finally, the Empire Plan offers a rate structure that includes a reduced premium for Medicare eligible individuals.

In reaching its determination, the Panel is mindful that any direction by this Panel on the health insurance issue before it must be made in light of the fact that this Award covers the period January 1, 2008 through December 31, 2009. Accordingly, for all intents and purposes, this Award will have "expired" even before it has been issued. Therefore, there remains a serious question as to the practicalities of an Award that changes a health insurance plan retroactively. However, had the Panel had the opportunity to review the proposed changes, particularly the proposed change from the current self-funded plan to the Empire Plan during a period when the Award had not expired, there is no doubt that the Panel would have awarded a change to the Empire Plan together with a reasonable and fair "buy-out" provision for those bargaining unit members who are able to secure health insurance coverage through another source. In this later regard, while such a buy-out provision is mutually beneficial to both the employee as well as the Town under a community-rated program like the Empire Plan, a buy-out provision is not feasible under a self funded program, particularly where, as here, those who are most likely to opt out are covered employees who are healthy.

Given the foregoing, following a careful and thorough analysis of all testimony, exhibits, and other documentary evidence, the Panel makes the following

**AWARD ON HEALTH INSURANCE**

The parties' demands for changes to the Health Insurance provision are rejected due to the dates associated with the term of this Award and the fact that the retroactive effect of such changes are simply not practical. However, the final Award will make clear that had the Panel reviewed the proposed change from the current self-funded plan to the Empire plan during a period when the Award had not "expired," there is no doubt that the Panel would have awarded a change to the Empire Plan together with a reasonable and fair "buy-out" provision for those bargaining unit members who are able to secure health insurance coverage through another source.

**I DO NOT CONCUR** with the above Award on **HEALTH INSURANCE**.

**Date:** 04-22-2010

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Michael A. Richardson  
Employer Panel Member

**I CONCUR** with the above Award on **HEALTH INSURANCE**.

**Date:** 04-22-2010

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Anthony V. Solfaro  
Employee Organization Panel Member

**9. HEALTH INSURANCE - RETIREES - [ARTICLE 10, SECTION 10.1]**

In its demands, the PBA seeks a provision that mandates the Town to pay 100% of the premium or equivalent cost for health, dental and vision coverage for any unit member who has fifteen (15) years of police service with the Town or twenty (20) years of total cumulative police service for those Officers who had prior Police service in another jurisdiction before coming to the Town. The Town opposes any such change. In order to address the PBA's proposal, a review of the history underlying the current Retiree Health Insurance benefit is helpful.

For calendar years 2001 through 2003, the parties negotiated that “Any member of the bargaining unit who retires shall be given the option of maintaining health insurance with the Town for a period of three years from the date of retirement, provided they make the same premium contribution as active Town employees at that time are making. Retirees shall reapply annually. The health insurance policy shall provide the same coverage as active Town employees at that time receive and shall be subject to the same changes whenever the Town changes coverage or benefits”.

In the collective bargaining agreement for calendar years 2004 through 2007 the parties significantly expanded this post-employment benefit to extend beyond three years from the date of retirement based on an employee’s years of service.

In recent years the parties have significantly increased the retiree medical insurance benefits through collective bargaining. The Town argues that any further enhancements to this very costly benefit should not be made through interest arbitration. The changes proposed by the PBA would result in an increase that could only be offset by significant concessions in other aspects of the “total compensation package” (e.g. wage rates, longevity, stipends, overtime, holiday pay, employee contribution to medical premiums, etc.). Accordingly, the Town asserts that any further enhancements to this benefit should be addressed through the collective bargaining process.

Following our careful review of the respective proposals, the Panel is of the opinion that a change to the Retiree Health Insurance program as proposed by the PBA is not warranted at this time. However, the Panel is also of the opinion that a modest change in the eligibility age is warranted, particularly given the fact that police officers in the Town are eligible to retire following twenty years of credited service with the NYS Police & Fire Retirement System. Accordingly, we make the following **AWARD**

**AWARD ON RETIREE HEALTH INSURANCE**

The current Retiree Health Insurance provision as set forth in Item #11, "Retiree Health Insurance" of the 2004-2007 Agreement shall continue forward with the following change: Change fifty (50) years of age to forty-nine (49) years of age. The remainder of this provision shall carry forward unchanged.

I **CONCUR** with the above Award.

**Date: 04-22-2010**

\_\_\_\_\_  
Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award.

**Date: 04-22-2010**

\_\_\_\_\_  
Anthony V. Solfaro  
Employee Organization Panel Member

**10. HEALTH INSURANCE – DISABLED OFFICERS WHO RETIRE [ARTICLE 4.6]**

Currently an employee who has been approved for a disability retirement prior to with 20 years of credited service with the Town, may continue individual or family health coverage under the Town's health insurance program provided the retired officer pays 50% of the premium associated with such coverage, rounded up to the next dollar. The Panel is of the unanimous consensus that this provision warrants change. Accordingly, the Panel makes the following

**AWARD:**

Effective January 1, 2008 and thereafter, any bargaining unit member who retires from the DeWitt Police Department as a result of disability occasioned by an on-duty event and who meets the eligibility standard for disability retirement with the New York State Police and Fire Retirement System (PFRS), who at the time of such disability retirement falls short of the required service requirement for Health, Vision and Dental benefits as set forth in Item #11 sections 4 and 5 shall be presumed to have met such service standards at the time of such approved disability retirement.

I **CONCUR** with the above Award.

**Date:** 04-22-2010

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Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award.

**Date:** 04-22-2010

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Anthony V. Solfaro  
Employee Organization Panel Member

**RETROACTIVITY**

It is the PBA's position that full retroactivity to any Unit Member who worked during any period incorporated by this Award is due and owing. The Town, on the other hand, believes that only those who remained on the rolls during and subsequent to the period covered by the Award or those who may have retired during the term of this Award are due any retroactive benefits.

The Panel is of the belief that full retroactivity to any bargaining unit member who worked during any period covered by the term of this Award is due and owing. The Panel finds support for its conclusion in the Appellate Division, Third Department's decision in *Baker vs. Hoosick Falls Central School District*, 3 AD 3d 678 (3d Dep't 2004), aff'g 194 Misc. 2d 116 (Sup. Ct.

Rensselaer County, 2002). In *Hoosick Falls*, the teachers each retired during the pendency of contract negotiations on a contract that was to be retroactive to years in which the teachers worked. The successor contract included retroactive pay raises, which were paid to current but not retired teachers. The Teacher's Union had refused to negotiate the issue with regard to retired teachers. Defendant School District's motion to dismiss asserted the complaint was time barred, that the teachers lacked standing, and that the complaint failed to state a cause of action. The court affirmed, holding that (1) the teachers commenced their action within the time requirement in N.Y. C.P.L.R. § 217(2) and the only evidence to the contrary was mere speculation; (2) as the teachers had alleged an injury-in-fact caused by the exclusion from the retroactive pay raises, they had standing to bring their action; (3) under the facts of the case, the association owed a continuing duty to the teachers to negotiate on their behalf over terms and conditions that would be retroactively applied; and (4) the association's total lack of representation of the teachers was sufficient to state a cause of action for breach of the association's fair representation duty. In relevant part, the Court noted:

[P]ERB has nonetheless recognized that an employee organization may have a continuing duty to represent former employees "in circumstances in which the severance from employment is being contested or there is some other basis upon which to conclude that there is a continuing nexus to employment" (*Matter of Bartolini [Westchester County Correction Officers' Benevolent Assn.]*, *supra* at 3184; see *Matter of Heady [County of Dutchess--Dutchess County Deputy Sheriffs' PBA]*, 31 PERB 3068, at 3151 [1998]). In our view, there is a continuing nexus between a retiree's former employment and negotiations over terms and conditions that will be retroactively applied to those periods of active employment. We conclude, therefore, that the Association had a continuing duty to represent plaintiffs in negotiations for the new retroactive CBA.

(Id. at 681)

Given the foregoing, the Panel makes the following Award:

### **RETROACTIVITY**

The Panel Awards full retroactivity to any Unit Member who worked during any period incorporated by the term of this Award.

I **DO NOT CONCUR** with the above Award on RETROACTIVITY.

Date: **04-22-2010**

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Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award on RETROACTIVITY.

Date: **04-22-2010**

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Anthony V. Solfaro  
Employee Organization Panel Member

**REMAINING ISSUES**

The Panel has reviewed the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not studied and seriously considered in the context of contract terms and benefits by the Panel. In Interest Arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions lead to agreement. The Panel, in reaching what it has determined to be just and reasonable has made an Award on all demands submitted. Accordingly, we make the following **AWARD:**

**AWARD ON REMAINING ISSUES - TOWN**

Any demands and/or terms other than those specifically modified by this Award are hereby rejected.

I **DO NOT CONCUR** with the above Award.

Date: **04-22-2010**

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Michael A. Richardson  
Employer Panel Member

I **CONCUR** with the above Award.

Date: **04-22-2010**

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Anthony V. Solfaro  
Employee Organization Panel Member  
Employee Organization Panel Member

**AWARD ON REMAINING ISSUES - PBA**

Any demands and/or terms other than those specifically modified by this Award are hereby rejected.

I **CONCUR** with the above Award.

Date: **04-22-2010**

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Michael A. Richardson  
Employer Panel Member

I **DO NOT CONCUR** with the above Award.

Date: **04-22-2010**

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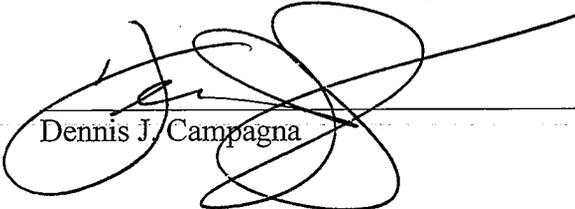
Anthony V. Solfaro  
Employee Organization Panel Member

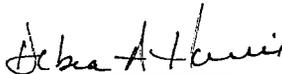
**RETENTION OF JURISDICTION**

The Panel Chairman hereby retains jurisdiction over any and all disputes arising out of the interpretation of this Opinion and Award.

STATE OF NEW YORK )  
TOWN OF ORANGE ) ss. :

On this 28<sup>th</sup> day of August 2010 before me personally came and appeared **Dennis J. Campagna, Esq.** to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

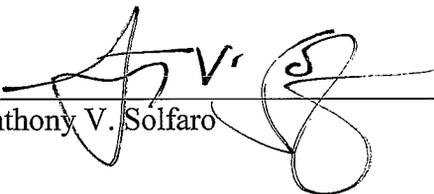
  
Dennis J. Campagna

  
Notary Public

DEBRA A. HARRIS  
Notary Public, State of New York  
No. 4972228  
Resident of Orange County  
Commission Expires 9/24/10

STATE OF NEW YORK )  
TOWN OF ORANGE ) ss. :

On this 28<sup>th</sup> day of August 2010 before me personally came and appeared **Anthony V. Solfaro** to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

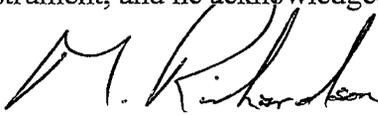
  
Anthony V. Solfaro

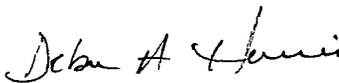
  
Notary Public

DEBRA A. HARRIS  
Notary Public, State of New York  
No. 4972228  
Resident of Orange County  
Commission Expires 9/24/10

STATE OF NEW YORK )  
TOWN OF ~~ULSTER~~ Orange ) ss. :

On this 28<sup>th</sup> day of August 2010 before me personally came and appeared **Michael A. Richardson** to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

  
Michael A. Richardson

  
Notary Public

DEBRA A. HARRIS  
Notary Public, State of New York  
No. 4972228  
Resident of Orange County  
Commission Expires 9/24/10