

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between

JOHNSON CITY POLICE ASSOCIATION
Association/Petitioner

AND

VILLAGE OF JOHNSON CITY
Employer/Respondent

FINAL AND BINDING

OPINION AND AWARD

OF TRIPARTITE

ARBITRATION PANEL

PERB Case No. IA2008-020; M2008-172

Award Period June 1, 2006 -- May 31, 2008

The Public Arbitration Panel members are:

Peter A. Prosper
Public Panel Member and Chairperson
P. O. Box 5436
Clifton Park, New York 12065

Anthony V. Solfaro, President
Employee Panel Member
New York State Union of Police Associations, Inc.
263 Route 17K
Newburgh, New York 12550

Mary Louise Conrow, Esq.
Employer Panel Member
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APPEARANCES:

For the Johnson City Police Association

John K. Grant, Esq.
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For the Village of Johnson City

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NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

Pursuant to the provisions of Civil Service Law, Section 209.4, Richard A. Curreri, Esq., Director of Conciliation of the New York State Public Employment Relations Board (PERB), issued the Designation of Public Interest Arbitration Panel (Panel) on February 13, 2009, for the purpose of making a just and reasonable determination on the matters in dispute between the Village of Johnson City ("Village) and the Johnson City Police Association ("Association"). The Village and the Association were parties to a collective bargaining agreement ("Agreement") from June 1, 2000 through May 31, 2004. Following expiration of that Agreement, an Interest Arbitration Panel made an award for the period June 1, 2004 through May 31, 2006 (PERB Case No.: IA2006-025; M2005-080). Negotiations for a successor Agreement commenced and proposals were exchanged on or about January 30, 2008. The parties held negotiation sessions on February 6, 2008, March 18, 2008, June 30, 2008 and August 27, 2010. When agreement on the outstanding issues was not achieved, the Association filed a Declaration of Impasse with the Public Employment Relations Board on September 16, 2008. A mediator was assigned and a mediation session was held on November 20, 2008. Despite the efforts of the mediator, the parties remained apart on various issues and proposals. On January 12, 2009, the Association filed a Petition For Compulsory Interest Arbitration with the PERB. The Village filed its Answer To Petition For Compulsory Interest Arbitration on January 26, 2009 with the PERB. On February 13, 2009, PERB designated Peter A. Prosper, Chair, Mary Louise Conrow, Esq., Employer Representative and Anthony V. Solfaro, Association Representative as members of the Panel. Hearings were held in Johnson City New York, on June 29, and September 21, 2010, at which time both parties were provided ample opportunity to introduce evidence, present testimony, summon witnesses, examine and cross-examine witnesses, and otherwise support their

respective positions on the outstanding issues before the Panel. The hearing had a transcribed record and was the official record of proceeding. The parties filed post hearing briefs which were received in a timely manner.

All issues which have attendant support submitted by each party were carefully considered by the Panel in its deliberations in making a just and reasonable determination in this matter. The Panel met in executive session on June 26, 2007 in Johnson City, New York, and deliberated on each of the outstanding issues, carefully, and fully considered all the data, exhibits, briefs, testimony of the sworn witnesses who appeared on behalf of both parties, and applying each element of the statutory criteria. The results of those deliberations are contained in this OPINION AND AWARD (Award), which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. Those issues presented by the parties that are not contained in this Award were also carefully considered by the Panel, but are denied, and therefore no Award is made on those matters. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion based on the testimony, documentary evidence, post-hearing briefs and applying each element of the statutory criteria. The Panel considered the impact of each item upon the whole, and made its Award concerning the combination of items that would provide a just and reasonable determination for the parties.

In arriving at the determination and Award contained herein, the Panel has considered the following statutory guidelines with which it was charged by Section 209.4:

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:
 - a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of

employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

- b. the interests and welfare of the public and the financial ability of the public employer to pay;
 - c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
 - d. ~~the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.~~
- (vi) The determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

THE ISSUES

Demands submitted by the Association:

ARTICLE 2 - GRIEVANCE PROCEDURE -- DISCIPLINE AND DISCHARGE

Change article heading to "Grievance Procedure".

- (a) Delete, including Addendums "D" and "E" and insert the following:

Section 1 - Terms and Definitions

The Terms and Definitions as used herein shall have the following meaning:

"Village" shall mean the Village of Johnson City.

"Association" shall mean the Johnson City Police Association.

"Employee(s)" shall mean any person or persons covered by the terms of this collective bargaining agreement.

"Grievant" shall mean employee, groups of employees, or the Association acting on behalf of same, alleging to have a grievance.

"Grievance" shall mean any claimed violation, misinterpretation or inequitable application of the collective bargaining agreement, laws, rules, procedures, regulations, administrative orders, work rule or any other term and condition of employment which relate to but are not limited to employee health or safety, physical facilities, materials or equipment furnished to employees or supervision of employees. However, such term shall not include any matter which is otherwise reviewable pursuant to law or any rule or regulation having the force and effect of law.

"Business day" shall mean Monday through Friday, excluding Holidays.

Section 2 - General

1. Each employee shall have the right to present a grievance in accordance with the procedures provided herein free from interference, coercion, restraint, discrimination or reprisal; and shall have the right to be represented by the Association at all stages of the Grievance Procedure.

2. The grievance shall be submitted to the Chief of Police. A written response is required of the Chief of Police hereunder and shall be returned to the employee involved and/or the Association for their response. In the event the written response is unsatisfactory from the Chief of Police, the grievance shall be appealed to the Village Board. A written response is required from the Village Board and shall be returned to the employee and/or Association. In the event the Village Board's written response unsatisfactory, the grievance may be appealed to arbitration.

3. Each grievance shall contain a short plain statement of the alleged violation(s) and the specific reference(s) to the Article(s) and Section(s) of this Agreement which the employee(s) and/or Association claims to have been violated.

4. Settlement of a grievance by mutual agreement, prior to the issuance of an arbitrator's award as provided herein, can only be agreed to by the Village and Association and the parties shall enter into a signed stipulation of settlement setting forth the terms resolving the grievance.

5. A settlement of or an award upon, a grievance may not be retroactive as the equities of each case demand.

6. The grievance and arbitration procedure provided for herein, shall be in addition to any other means of resolving grievances, disputes and

complaints provided for by statute or administrative procedures applicable to the Village.

Section 3 - Procedure

Step 1: Chief of Police

An employee or the Association shall present the grievance in writing to the Chief of Police no later than thirty (30) calendar days of its known occurrence. The Chief of Police shall forthwith upon receiving the grievance, make a good faith effort to resolve same, including as appropriate, discussions with the employee(s) and the Association. The Chief of Police shall issue a written decision to the employee(s) and the Association by the end of the tenth (10th) business day after receipt of the grievance.

Step 2: The Village Board

If the employee and/or the Association, wishes to appeal an unsatisfactory decision of Step 1, the appeal must be presented to the Village Board within five (5) business days from the date of receipt of the Step 1 decision. The Village Board shall issue a written decision to the employee and Association by the end of the tenth (10th) business day after the appeal was received.

Step 3: Arbitration

In the event the Association wishes to appeal an unsatisfactory decision at Step 2, a demand for arbitration shall be submitted to the American Arbitration Association (AAA).

The arbitrator shall have no power to add to, subtract from, or modify the provisions of this collective bargaining agreement in arriving at a decision of the issue(s) presented. The arbitrator shall confine himself/herself to the precise issue(s) submitted to arbitration and shall have no authority to determine any other issue(s) not so submitted to him/her, nor shall he/she submit observations or declaration/of opinion which are not essential in reaching the determination. All fees and expenses of the arbitration shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case.

ARTICLE 3 - DISCIPLINARY PROCEDURE

Command Discipline - Informal Stage

In the event the Village 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 departments adopted Rules and Regulations, the affected employee(s) shall be afforded the opportunity to resolve the matter, with representation, through a written Stipulation of Settlement, setting forth the terms agreed upon between the parties.

The Village 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 and Regulations and the proposed penalty. In the event the employee(s) does not agree with the proposed penalty, or in the event a settlement cannot be agreed upon, or rejects Command Discipline, the Village 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: a written reprimand to be placed in the employee's personnel file, which shall not exceed twelve (12) months; and/or a reduction in vacation accruals for the full time employee which shall not exceed three (3) work days.

In the event Command Discipline resolves the matter by a signed Stipulation of Settlement, the employee or Association may not file or pursue a grievance pursuant to Article 2 - Grievance Procedure of this Agreement.

Procedure Rights - Formal Stage

In the event the Village determines that a written charge(s) is required, the Disciplinary Procedure prescribed herein shall be available to all employees with at least one (1) year of service with the Village, unless otherwise available pursuant to law. In the event the Village seeks to impose a written reprimand, suspension without pay for up to thirty (30) calendar days, or a fine not to exceed one hundred (\$100.00) dollars, the Disciplinary Procedure shall be Section 75 and/or 76 of the Civil Service Law. In the event the Village seeks to impose a suspension of more than thirty (30) calendar days, reduction in grade (demotion), or dismissal from service (termination), the employee shall have the right to choose either Section 75 and/or 76 of the Civil Service Law, or arbitration as described herein, but not both alternative procedures to grieve such disciplinary action. If any penalty is imposed at the conclusion of the Section 75 or arbitration hearing, the employee or Association may not file or pursue a grievance pursuant to Article 2 - Grievance Procedure of this Agreement. The remedy for review of a determination made

pursuant to a Section 75 hearing is an appeal through an Article 78 proceeding. An employee electing to proceed to arbitration, as described herein, may only appeal the determination and penalty imposed thereon pursuant to Article 75 of the Civil Practice Law and Rules.

Notice of Discipline - Formal Stage

In the event the Village sees fit to impose a written reprimand, suspension without pay, a fine, reduction in grade or dismissal from service, notice of such disciplinary decision shall be made in writing and served upon the employee. The disciplinary measure shall be imposed only for incompetence or misconduct. The specific act(s) that warrants disciplinary action and the proposed sanction(s) shall be specifically contained in the Notice of Discipline.

The Association shall be provided a copy of the Notice of Discipline at the same time as the affected employee(s).

The Notice of Discipline shall be accompanied by a written statement that: "An employee served with a Notice of Discipline has the right to object by filing a response within ten (10) calendar days by exercising his/her rights as set forth above, which shall be fully set forth in the Notice of Discipline served on the employee."

Procedure Selection - Formal Stage

In the event the employee does object, then he/she shall file a written notice of their choice of procedure, subject to the provisions stated above with the Village and Association no later than ten (10) calendar days after receiving the Notice of Discipline.

The alternative disciplinary procedure to Section 75 and/or 76 provides for a hearing by an independent arbitrator at its final stage.

The employee has the right to be represented by the Association, an attorney, or other representative of their choice, at every stage of the proceeding.

Suspension

In no event however, 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.

Grieving a Notice of Discipline and Filing for Arbitration

An employee electing an independent arbitrator may grieve a Notice of Discipline by directly filing a demand for arbitration at Step 3 of the Grievance Procedure prescribed in Article 2 hereof. The independent arbitrator shall hold a hearing at a mutually agreed upon date(s) and time(s) to all parties' representatives. The affected employee may be represented at the arbitration by the individual(s) of his/her choosing and shall be entitled to present witnesses on his/her behalf. The arbitrator shall render a written decision no later than thirty (30) calendar days after the hearing has been declared closed.

The arbitrator shall confine himself/herself to the precise issue(s) submitted for arbitration and shall have no authority to determine any other issue(s) not so submitted to him/her nor shall he/she submit observations or declarations of opinion which are not essential in reaching the determination. The arbitrator's decision with respect to guilt or innocence and penalty, if any, shall be final and binding on 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 the period of suspension, if any.

Settlement

The disciplinary may be settled at any stage of the proceeding. The terms of the settlement agreed to shall be reduced to writing and signed by the appropriate parties.

Fees and Expenses

All fees and expenses of the arbitrator, if any, shall be paid by the Village. In the event demotion or termination is sought by the Village, the hearing shall have a transcribed record provided at no cost to the employee or Association.

ARTICLE 6 - UNIFORM & EQUIPMENT ALLOWANCE:

A. Amend the dates and amounts in the first paragraph of the Award as follows:

(+\$50.00)	(+\$50.00)
<u>6/1/06</u>	<u>6/1/07</u>
\$825.00	\$875.00

Amend the second paragraph to read as follows:

A new hire shall receive a cleaning allowance each year on his/her one (1) year anniversary date as follows:

(+ \$100.00)	(+ 75.00)
<u>6/1/06</u>	<u>6/1/07</u>
\$375.00	\$425.00

ARTICLE 7 - BASE WAGE AND LONGEVITY:

A. Amend the dates and amounts of the Base Wage schedule as follows:

<u>Step</u>	<u>Years of Service</u>	<u>6/1/06</u>	<u>6/1/07</u>
1	Starting	(4.5%) \$31,957	(4.5%) \$33,395
2	Starting 2 nd Year	(4.5%) \$39,478	(4.5%) \$41,255
3	Starting 3 rd Year	(4.5%) \$42,350	(4.5%) \$44,256
4	Starting 4 th Year	(+500 \$55,359 x 4.5%)	(+500 \$58,373 x 4.5%)
	Detective(s)	\$56,466*	\$59,540
	Sergeant(s)	\$60,341 **	\$63,627
	Lieutenant(s)	\$64,216***	\$67,713
	Captain(s)	\$68,922****	\$72,674

* The Detective(s) Base Wage shall be 2% over and above the Step 4 Police Officer's Base Wage. (NEW)

** The Sergeant(s) Base Wage shall be 9% over and above the Step 4 Police Officer's Base Wage. (NEW)

*** The Lieutenant(s) Base Wage shall be 16% over and above the Step 4 Police Officer's Base Wage. (NEW)

**** The Captain(s) Base Wage shall be 24.5% over and above the Step 4 Police Officer's Base Wage. (NEW)

B. Amend the dates and amounts of the Longevity schedule as follows:

<u>Step</u>	<u>(N/C)</u> <u>Years of Service</u>	<u>6/1/06</u>	<u>6/1/07</u>
5	Starting 5 th through 8 th	(+50.00) \$ 350.00/yr	(+50.00) \$ 400.00/yr
6	Starting 9 th through 12 th	(+50.00) \$ 750.00/yr	(+50.00) \$ 800.00/yr
7	Starting 13 th through 16 th	(+50.00) \$ 1,150.00/yr	(+50.00) \$ 1,200.00/yr
8	Starting 17 th and Above	(+75.00) \$ 1,575.00/yr	(+75.00) \$ 1,650.00/yr

ARTICLE 9-VACATION AND HOLIDAY PAY:

Separate into two (2) articles.

ARTICLE 10 - HOLIDAYS:

Old (b) Make A and amend to read as follows:

Effective June 1st and each June 1st thereafter, each employee shall be credited with thirteen (13) unnamed holidays each year. An employee hired during the year shall be credited with one (1) holiday for each calendar month, or part thereof worked, with two (2) holidays credited for May. Each employee shall have the right to take the holidays off in individual days or one (1) week blocks, with the prior approval of the Chief of Police or designee, which shall not be unreasonably denied. At the option of the employee upon written request to the Chief of Police, he/she shall be paid in the last pay period in May, or the second (2nd) pay period in June of each year for any unused holidays, or can carryover unused holidays from year to year.

B. An employee who is scheduled to work on the following holidays or any part thereof shall be paid at the rate of time and one-half (1.5X) their applicable hourly rate of pay:

1. New Year's Day
2. Easter Sunday
3. Memorial Day
4. Independence Day
5. Labor Day
6. Thanksgiving Day
7. Christmas Eve
8. Christmas Day

In the event an employee is working overtime on any of the above named holidays, he/she shall be paid three (3) times his/her applicable hourly rate.

It is agreed and understood that the holiday shall begin at 11 :00 p.m. based on the tours of duty of the work schedule.

(e) Delete in its entirety (see A above).

(f) Delete in its entirety (see B above).

ARTICLE 11 - OVERTIME PAY & COMPENSATORY TIME:

Delete the first paragraph and (A), and amend to read as follows:

A. Overtime and Compensatory Time:

An employee who works in excess of their regularly scheduled eight (8) hour tour of duty, when not regularly scheduled to work, in excess of forty (40) hours in a workweek or in excess of the employee's workweek, shall be paid at the rate of one and one-half times (1.5X) their applicable hourly rate. At the employee's option, he/she may elect compensatory time off in lieu of payment, which shall be earned as set forth herein. The election shall be made in writing to the Chief of Police or designee at the time overtime is earned. Each employee shall be entitled to accrue and maintain up to a maximum of one hundred and twenty (120) hours of compensatory time at all times. An employee shall receive payment for overtime in the event he/she has the maximum hours of compensatory time accumulated herein until such time as there is less than the maximum allowable accumulation. All requests for compensatory time off shall be submitted to the Chief of Police or designee, a minimum of twenty-four (24) hours in advance of the requested time off. The Chief of Police or designee shall not deny any request for compensatory time off so long as the requirement notice herein has been provided. All paid leave, such as, but not limited to, personal leave, vacation, sick, holiday, etc. shall constitute time worked for the computation of overtime.

An employee may convert up to forty (40) hours of his/her compensatory time upon written notice to the Chief of Police or designee in the first (1st) pay period in November each year. The payment shall be made in the first (1st) pay period of December of each year.

Upon separation, the employee shall be paid for all accumulated compensatory time no later than the pay period following separation. In the event of death, the employee's beneficiary or estate, as the case may be, shall be paid as set forth herein.

B. Compensatory Time:

Delete in its entirety (see A above).

ARTICLE 13 - INSURANCE:

Delete existing language in (a) related to the Dental Plan.

C. Health Insurance and Dental Plan Coverage for Retired Employees - Effective June 1, 2006, the Village shall pay one hundred percent (100%) of the health

insurance and dental plan premium or cost for the employee and eligible dependent(s). The health insurance and dental plan benefits shall be the same as active employees. In the event of death by an employee who is either active and the death occurs on or off duty, or death occurs during retirement, the Village shall continue to provide the surviving spouse and eligible dependent(s) with the health insurance and dental plan as set forth in this Article.

(d) Delete in its entirety. (See "C" above and re-letter accordingly.) (NOTE: Refers to a health insurance contribution by employees on retirement hired on or after June 1, 2001.)

D. Health Insurance Buyout - Amend the schedule as follows:

Number of Employees Who Participate in Optional Buyout	Amount to be Paid
1 to 2 employees	25% of the premium
3 to 4 employees	35% of the premium
5 or more employees	50% of the premium

NEW Dental Plan for Active Employees - The Village shall pay one hundred percent (100%) of the premium or cost for all employees and eligible dependent(s) in the Blue Cross/Blue Shield Dental Plan, which will include orthodontic and periodontal options.

ARTICLE 15 - EDUCATIONAL INCENTIVE PROGRAM

- A. Insert "\$3,500.00" where "\$1,500.00" appears. (NOTE: Refers to maximum amount each semester)
- B. Insert "\$650.00" where "\$450.00" appears. (NOTE: Refers to 2 Year Degree)
- C. Insert "\$1,000.00" where "\$700.00" appears. (NOTE: Refers to 4 Year Degree)

ARTICLE 16 - SHIFT DIFFERENTIAL

Amend the dates and amounts as follows:

	(+\$.50/hr) <u>6/1/06</u>	(+\$.50/hr) <u>6/1/07</u>
"A" line tour of duty (11 :00 p.m. to 7:00 a.m.)	\$1.75/hr	\$2.25/hr
"C" line tour of duty (3 :00 p.m. to 11:00 p.m.)	\$1.55/hr	\$2.05/hr

ARTICLE 17 - ON-CALL PAY

A. Amend the dates and amounts as follows: (NOTE: refers to Detectives on-call)

	(+\$25.00/day)	(+\$25.00/day)
	<u>6/1/06</u>	<u>6/1/07</u>
Monday through Saturday	+\$50.00/day	+\$65.00/day
Sunday and Holidays as set forth in Article 9(f) – Vacations and Holiday Pay	+\$60.00/day	+\$75.00/day

B. Amend the dates and amounts as follows: (NOTE: Refers to Breathalyzer Operators on-call)

	(+\$15.00/day)	(+\$15.00/day)
(N/C)	<u>6/1/06</u>	<u>6/1/07</u>
Monday through Friday	+\$40.00/day	+\$55.00/day
Saturday, Sundays (weekends and Holidays as set forth in Article 9(f) – Vacation and Holiday Pay	+\$50.00/day	+\$65.00/day

ARTICLE 23 - PHYSICAL FITNESS INCENTIVE

Amend dates and amounts as follows:

(+\$75.00)	(+\$75.00)
<u>6/1/06</u>	<u>6/1/07</u>
\$425.00	\$500.00

ARTICLE 25 – TERM OF THE CONTRACT

This Agreement shall be effective June 1, 2006 through May 31, 2007. In the event this Agreement expires and there is no successor Agreement, all implied and explicit terms and conditions shall remain in full force and effect until such time as a negotiated Agreement or Interest Arbitration Award modifies those terms referred to herein.

ARTICLE 26 – RETROACTIVITY

Insert “2006” where “2000” appears.

Demands submitted by the Village

Section 2 - GRIEVANCE PROCEDURE/DISCIPLINE & DISCHARGE.

Delete paragraph 2(b) on discipline and remove/create a new section entitled "Discipline and Discharge Procedure" and modify the title of Section 2 to reflect that it pertains to Grievance Procedure only.

Amend the paragraph following the existing paragraph 2(b) by adding the words "and Arbitrators" after the words "Hearing Officers." This paragraph, as modified, and the , last paragraph in existing paragraph 2(b) shall remain in both the existing and new sections,

Section 4 - SICK LEAVE.

Amend paragraph 4(f) by adding the following to words to the first sentence:

"Except as provided herein,"

Add the following sentence after the first sentence of paragraph 4(f), as modified:

"In addition, the maximum accumulated sick leave which can be sold back is limited to 75% of the total sick days accumulated by the employee on the date of the sick leave buy-back request."

Add the following sentence to the end of paragraph 4(f): "In no event, will an employee be paid for more than 75% of the total sick days accumulated by the employee on the date of the sick leave buy-back request."

Change the maximum amount of accrued sick days which can be sold back by amending paragraphs 4(f) and 4(g) to change the words and number "one hundred and thirty (130)" to the words and number "one hundred (100)" throughout said paragraphs.

Amend paragraph 4(h) to add a new third sentence as follows: "The requested time off which is occasioned by the death of the employee's immediate family, to include the amount of time granted, shall be granted in the sole discretion of the Chief of Police on a case by case basis."

Section 6 - UNIFORM & EQUIPMENT ALLOWANCE.

Amend paragraph 6(h) to add the following sentence. "Said employee shall have no claim to a clothing allowance (or any pro-rata part thereof) until such time as the employee returns to full time employment."

Section 9 - VACATION & HOLIDAY PAY.

Amend the second sentence in paragraph 9(f) by deleting the words "one and a half (1 ½) times their overtime rate" and replacing with the words "two and one-quarter (2 1/4) times their base rate."

Section 13 - INSURANCE.

Amend current section 13 as follows:

- (a) Active Member Coverage: The Employer will make available a medical insurance plan and a prescription drug plan to each eligible regular full-time employee and the employee's eligible family. In no event shall the Employer be required or obligated to pay or reimburse any portion of any doctor's bill, hospital bill, prescription bill, x-ray bill, laboratory bill, procedure bill, or any other medical bill or expense that is not covered or reimbursed by the insurance plan.

Effective June 1, 2006, the prescription drug co-pay shall be based on a three tier drug formulary plan of \$1 0 (generic), \$20 (brand) and \$30 (brand).

The Employer may change the insurance carrier and/or after alternative plans in place of the then current plan, provided the alternative plan's benefit structure is substantially equivalent to the then current plan.

For all eligible members hired prior to 12/1/1993 the Employer shall pay ninety percent (90%) of the medical insurance premiums for individual coverage and ninety percent (90%) for family coverage, as the case may be. The employee's contribution to the medical insurance premium will be deducted from the employee's regular paycheck and the employee shall benefit as a result of the health insurance co-pay being pre-taxed under the I.R.S. rules.

- (b) For all eligible members hired after 12/1/1993 the Employer shall pay eighty-five percent (85%) of the medical insurance premiums for individual coverage and eight-five percent (85%) for family coverage, as the case may be. The employee's contribution to the medical insurance premium will be deducted from the employee's regular paycheck and the employee shall benefit as a result of the health insurance co-pay being pre-taxed under the I.R.S. rules.
- (c) The Employer shall offer medical insurance and prescription drug coverage to eligible full-time employees after they retire from the Village of Johnson City Police Department and are receiving retirement benefits under the

New York State Police & Fire Retirement System. Coverage is also available for the retiree's eligible spouse if the spouse was covered under the Employer's medical insurance plan on the retiree's last date of employment with the Employer. The retiree is responsible for the same percentage of the premium that was in effect on his last day of employment. In the event the retiree predeceases the retiree's eligible spouse, the spouse may continue medical insurance and prescription drug coverage provided the spouse pays 50% of the full cost of the medical insurance premium. Medical insurance coverage and a prescription drug plan will continue for the retiree and/or eligible spouse until requirements of Medicare coverage are met, at which time primary coverage will be provided by Medicare. At that time, the retiree and/or eligible spouse may be required to change medical insurance and/or prescription drug plans in order to enroll in a Medicare supplemental policy made available through the Employer. The Employer will NOT reimburse an eligible retiree and the retiree's spouse for the cost of the Medicare Part B premium.

- (d) [DELETE]
- (e) Effective June 1, 2006, the Village shall provide for an optional buyout of health insurance coverage by an employee. The buy-out of health insurance coverage shall provide that an employee who is covered by another health insurance plan may notify the Village on the Request to Decline And Waive Health Insurance Coverage form (made available by the employer), that s/he is selecting to decline and waive the health insurance coverage provided by the Village, 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 and paid in equal installments in the first (1 st) payroll period following each calendar quarter (i.e., April, July, October and January) as follows:

<u># of Employees participating in Buy-Out Program</u>	<u>Amount to Be Paid</u>
1 to 3 Employees	20% of Premium
4 to 6 Employees	30% of Premium
7 or more Employees	40% of Premium

Provided, however, that any buy-out of health insurance coverage shall reflect what the net Cost of the Premium would be if the same employee had taken the insurance offered by the Village. For example, if the cost of the family coverage premium is \$15,000 and there is a 10% premium co-pay paid by the employee (i.e., \$1,500), then the buy-out amount shall be based on the applicable percentage of the net amount: \$13,500 (i.e., the

Cost of Premium, less the amount that the employee co-pays toward the Cost of Premium, times the applicable percentage).

An employee who elects to receive the optional buy-out payment, shall, at any time during the period for which the employee has declined and waived health insurance coverage through the Village, be required to provide written notice to the Village that s/he is covered by health insurance under a different plan. An employee who has elected to receive the optional buy-out payment is required to provide written notice to the Village on the Request to Resume Health Insurance Coverage from (provided by the Employer) that s/he is no longer covered or wishes to re-enter the health insurance plan provided by the Village. The effective date of the employee's re-establishment of health insurance coverage by the Village shall be at the earliest possible date as provided by the plan. The Village shall notify the plan upon notice by the employee of that employee's decision to re-establish health insurance coverage through the Village. The option buy-out payments shall be pro-rated in the event a resumption of health insurance occurs during any quarter.

- (f) [DELETE]
- (g) Effective June 1, 2001 the Employer and the member shall contribute to the cost of providing New York State Disability insurance. The member's contribution shall be at the maximum rate permitted by law, currently at \$.60 per week. It is understood that the member has the option of exhausting accrued paid time off prior to applying for such disability benefits.
- (h) The parties also agree that the Employer will provide a flexible spending plan pursuant to Section 125 of the Internal Revenue Code for any eligible member so electing to take advantage thereof. Such plan is to be immediately available.
- (i) At the time of retirement, an employee may elect to apply accumulated sick leave credits toward monthly premium payments for retiree medical insurance. The retiree may also use his or her sick leave credits toward monthly premium payments for an eligible spouse.

Section 15 - EDUCATIONAL INCENTIVE PROGRAM.

Amend the fourth sentence of paragraph 15(a) by deleting the words "except for reimburse those two officers (B. Dodge/M. Walikas) who had initiated such studies prior to the ratification of this agreement."

Delete the last paragraph of the section.

Section 20 - RELEASE TIME.

Amend the first sentence change the number to "8" to the number "4."

Amend the second sentence by deleting the words "any member(s)" and inserting the words the Association president and/or Vice-president.

Section 22- NO LAYOFF CLAUSE.

Delete the section.

Section 23 - PHYSICAL FITNESS INCENTIVE.

In the second sentence, delete the words after the semicolon.

In the last sentence, delete the words "to be optional to members,"

Section 24 - BIDDING ON SHIFTS.

Amend the section and Addendum "G" by adding the following sentence: "All bidding will be submitted to the Chief of Police no later than the first day of May of each year."

Addendum "C" - FINANCIAL REIMBURSEMENT - PURCHASE OF THE GLOCK MODEL 22

Delete the following numbers and corresponding names: 1, 4, 5, 10, 12, 13, 14, 15, 17, 18, 9, and 23.

Addendum "A" and "H" - SALARY SCHEDULE.

Delete.

Propose to raise Base Wages as of 12/1/05 (as listed in the PERB Opinion and Award of September 2007, Article 7 – "Base Wage and Longevity" for all steps as follows:

Effective 6/1/06:	0.5%
Effective 6/1/07:	0.5%
Effective 6/1/08:	0.5%

New Section - SUBSTANCE ABUSE POLICY

Propose to add a new section entitled "Substance Abuse Policy" and the following paragraph: "See attachment ____ " Substance Abuse Policy. All employees acknowledge that they will comply with the requirements of the policy and may be subject to discipline and/or discharge for violations of said policy."

Add attachment annexed hereto – "Attachment ____ - Substance Abuse Policy" (See Village's Answer to the Petition For Compulsory Interest Arbitration for the full text as contained in Panel Exhibit 2).

THE PARTIES' POSITIONS ON STATUTORY CRITERIA

WAGES PAID IN COMPARABLE JURISDICTIONS

The parties agree on the jurisdictions that they deem comparable. Both have stated that the municipalities surrounding Johnson City and within Broome County have similar socio and economic conditions and experiences. Those local municipalities are: the City of Binghamton, the Village of Endicott, the Town of Vestal, as well as the Broome County Sheriff's Office. Those police agencies provide full service police protection to their respective residents and the County overall. The Village of Johnson City, City of Binghamton, Village of Endicott and the Town of Vestal are all in close proximity to each other, share overlapping populations, similar property values, and size of jurisdiction, as well as other socio and economic factors.

The Village states that although it accepts the City of Binghamton, the Village of Endicott, the Town of Vestal and the Broome County Sheriff's Office as comparable communities for this Interest Arbitration, it also states that it is most comparable in terms of size of population and police departments to the Village of Endicott. Conversely, the Village is least comparable to the City of Binghamton, which has a population three times the size of the Village and a police force more than double the size of the Village force.

This Panel accepts the above submitted jurisdictions as comparable for evaluating the various terms and conditions for an Award.

ABILITY TO PAY

Summary Position of the Association

The Association states that its position on ability to pay is based substantially on the Report [PBA Exhibit No. 35] and testimony of Kevin Decker, a qualified municipal financial expert. Mr. Decker testified that he is a partner in Valuation Resource Group, and also is president of Decker Economics, a consulting firm providing analysis of a municipality's ability to pay. He has a master's degree in economics from the State University of New York at Albany and a bachelor's degree in economics, also from the State University of New York at Albany. He has been working as an economist since 1979, specifically in the area of municipal finance, working in this area for over 30 years. He has testified as an expert in many interest arbitration proceedings in New York State, including more than thirty (30) proceedings in the last four (4) years.

Mr. Decker testified that he prepared an analysis of the ability to pay of the Village of Johnson City and looked at a number of different documents and sources of information including the Village budgets for the last five to six fiscal years, the Village's audited financial statements for the fiscal years ending May 31, 2002 through May 31, 2005, the Village's annual financial reports filed with the State Comptroller's Office, the Village's official statements, the Village constitutional tax limit forms also filed with the State Comptroller, sales tax information provided by the Broome County Finance Department, data from the US Census Bureau and a number of state agencies that collect financial data regarding municipalities, which included the State Comptroller's Office, New York State Department of Tax and Finance, and the New York State Office of Real Property Services. After a

thorough analysis of the above documents, Mr. Decker concludes that the Village has the ability, if not the desire to pay, a fair and reasonable award.

Mr. Decker testified that the largest operating fund on an ongoing basis of the Village is the general fund. He testified that in the fiscal year ending May 31, 2009, the general fund had expenditures of \$15.3 million. The general fund is the fund out of which members of the police Association are paid and therefore, was the focus of Mr. Decker's analysis.

Mr. Decker testified that 58.5% of the Village's general fund revenues come from the real property tax and 21.8% from the sales tax. The property tax and sales tax constitute 80% of all the Village revenues.

Mr. Decker testified that between 2006 and 2011, the Village tax levy increased from \$7.5 million to \$9.1 million, an annual rate of change of 3.9% [PBA Exhibit No. 35C]. The Village has increased the assessed value tax rate by 3.8% annually over that same period with a 2007 rate increase of 8.9%. Mr. Decker also testified that the Village has not adopted a 100% assessed valuation, and concluded that had the Village adopted such a methodology the true annual tax rate has decreased by an average annual rate of 3.1%.

Mr. Decker testified that all communities have been confronted with a pretty significant economic downturn in 2008. He then compared the growth in Real Property Tax levies for the comparable communities for 2008 through 2010. Noting the same exceptional circumstances involving the Village of Endicott, Mr. Decker testified that Johnson City saw the lowest growth in the tax rate of any of the cited comparable communities. Mr. Decker testified that Johnson City's tax levy increased only by 2.9% in 2011.

Mr. Decker also found that upon examining full value property tax rates during the period of economic downturn (2008-2010), Johnson City does better than any of the cited comparable communities. Upon examining the combined county, municipal, school and special district tax rates for the same period, Johnson City fares better than all of the comparables, other than the Town of Vestal.

Regarding sales tax revenues, Mr. Decker testified that Johnson City shares in a population determined portion of 3% of the 4% sales tax imposed by Broome County, with the County retaining a full 1%. Since 2000, the County has increased the shared portion going to municipalities to its current 50%-50% division of the 3%. Beginning in 2011, there will be a limit as to how much municipalities share.

The 2010 sales tax revenues of the Village were approximately \$2.9 million and estimated at \$2.96 million for fiscal year 2011. When considering the underlying sales tax base within the County, it is clear that increased economic growth will generate more sales tax revenue and the stable growth of such a revenue source will continue.

Mr. Decker testified how the Village spends its general fund money, with 45.3%, for personal services including wages and salaries to persons on the Village payroll. Additionally, 34.5% is employee benefits which includes pension costs, health insurance, contributions to Social Security, disability, and Workers' Compensation. Mr. Decker testified that 11.2% percent are contractual expenses including payments to outside vendors and 5.8% is debt service, principal and interest on outstanding bonds and bond anticipation notes. Mr. Decker stated that 3.2% is equipment expense.

Mr. Decker testified out that public safety expenditures for police and fire services accounted for 42.8% of all spending, not unusual for a Village that maintains a paid police department and fire department. Of that amount, all police department personnel were budgeted at just over \$2.5 million.

Mr. Decker testified that historically the Village has consistently had positive end of year balances, spending less than projected while collecting higher revenues than anticipated. Only in 2009 did the Village break with this pattern. The causes appear self-induced as testified to by Mr. Decker. The Village spent less than anticipated, and the Village received real property and sales tax revenue exceeding projections. The Village overestimated interest earnings by \$90,000.00 and budgeted for bond revenue of \$1.17 million but never issued bonds leading to a revenue shortfall of \$796,000.00. These two sources of deficiency led to the Village's having the first operating deficit in five years, which was substantial.

Regarding expenditures for the police department, Mr. Decker testified that the Police Department has consistently underspent its budget. In 2009, the Village budgeted \$2.7 million dollars for the Police Department, but only spent \$2.5 million. In 2010, the Village increased the budget to over \$3 million, but spent only \$2.5 million, including a retroactive payment for fiscal 2006-207 through 2007-2008. The 2011 budget is \$2.4 million. The budget includes funding of a Captain's position (\$65,255) that has been vacant since the Captain's retirement. There are other vacant positions budgeted that the Village has advised the Panel will not be filled. Thus, the budget imbalance disproportionately points to the cost of police service while simultaneously providing the impression that the fiscal condition of the Village is not good.

Mr. Decker went on to testify that the Village also has a contingency account of \$100,000.00, which can be properly used to pay retroactive wage awards.

Mr. Decker concluded by calculating the cost of a 1.0% raise for all budgeted unit member positions would cost approximately \$21,000.00 or \$27,440 with all roll-up costs, including FICA, retirement, etc. This cost could be absorbed without a substantial impact on homeowners in the Village according to Mr. Decker. A four and one-half percent (4.5%) raise, with all attendant roll-ups would cost approximately \$123,000.00.

In summary, Mr. Decker testified that the Village clearly has the financial resources to provide a wage and benefit increase commensurate with the statutory criteria and the wage and benefit package provided to law enforcement officers in the surrounding communities, including the Deputy Sheriffs of Broome County.

Summary Position of the Village

Counsel for the Village states that, like all small municipalities in upstate New York, it has been grappling with declining populations and decreasing property values. Over the past few years the Village's financial condition has deteriorated. Despite recent gains to close a huge deficit in the reserve fund balance, the current economic recession only compounds the problem. The economy has impacted the Village's ability to pay. The Village ended the current year with a fund balance level that was below the recommended levels as a result of a \$696,000.00 operating deficit. There were two primary sources for the deficit. The first was interest in earnings and the second was expenditures. The Village recorded revenue of only \$370,000.00, and fell short of the budget by \$796,000.00. With respect to expenditures, the Village underspent the budget by

\$464,000.00, but it could not overcome the \$900,000.00 revenue shortfall, which contributed to the operating deficit.

Thomas Johnson, the Clerk/Treasurer for the Village of Johnson City, testified at the hearing. Mr. Johnson was a municipal auditor with the State Comptroller's office for 32 years. He left the position in October 2005, was appointed Chief Fiscal Officer for the Village of Endicott and served in that position for three years. He was appointed to the Village of Johnson City Clerk/Treasurer position on January 1, 2010.

Mr. Johnson testified that he did an economic analysis of the Association's financial proposals and projected a cost of these proposals to the Village. Mr. Johnson testified as to Village Exhibit 4, which contained the results of his analysis. Based on a modest home with a fair market value of \$100,000.00, Mr. Johnson testified that the impact of the salary and all other items, but absent the health insurance, would result in an 8.9% increase in the tax rate or, in other words, taxes would go up by roughly \$896.00 per year for that taxpayer for the same service. The impact of increases in health insurance, coupled with the nominal employee contribution, would only make that impact worse.

Mr. Johnson testified as to the Moody's Investors Service Analysis completed by Moody's in September of 2010. Mr. Johnson testified that Moody's will grade municipalities for the purpose of assessing their risk when the Village goes out to borrow money. Mr. Johnson testified that the mis-classification of the bond anticipation note proceeds from prior years were subsequently taken out of revenue, which resulted in a downward adjustment of \$800,000.00 to \$900,000.00 in the fund balance.

Mr. Johnson also addressed the potential liability from an arbitration award of \$1.25 million if the six firefighters were to be rehired. Mr. Johnson testified that the continued liability of the firefighter litigation had a significant negative adverse impact on the Village's rating. Mr. Johnson testified as to Moody's discussion of the downward tax assessment with respect to the large retail stores at the Actual Mall, which resulted in an assessment reduction of \$270,000.00. The net effect was that Wal-Mart's taxable assessed value would impact the Village by about \$30,000.00 per year.

Mr. Johnson testified about the Village's debt load, specifically with respect to its co-ownership of the Binghamton/Johnson City sewage treatment plant with the City of Binghamton. Mr. Johnson confirmed that Moody's had downgraded the Village's bond rating from A-1 to A-3.

Mr. Johnson also testified that the Village of Johnson City experienced an extensive sales tax revenue decline, which was reflective of the economy. He testified that the Village was experiencing a quarter of a million dollars shortfall in sales tax revenue a year. Mr. Johnson testified that the Village was worse off than it was two years ago. Mr. Johnson testified there was no contingency fund set up with respect to the firefighter arbitration case.

Mayor Hannan testified that he served in the Johnson City Police Department from 1975 to 1999, retiring as Chief of Police. In addition, Mr. Hannan served as a Village Trustee since January 2008 and as Mayor of the Village of Johnson City since June 12, 2009. Mayor Hannan testified that he was present for the discussion of the firefighter contract during the time frame of May 2008, and to the immense public outrage of the 41% increase, which created outrage in the Village.

Mayor Hannan testified about the dissolution proceeding that the Village underwent beginning in December 2007. Mayor Hannan testified that the Village was evenly split over dissolving the Village and that the proposition to dissolve fell by a mere 40 votes. Mayor Hannan testified that following the passing of the firefighters' Agreement by the Village Board, which included a 41% pay increase over five years, the Village's litigation expense with the firefighters actually went up. For example, Mayor Hannan testified that the firefighters filed numerous grievances and other legal actions against the Village, including a minimum manning clause, the destruction of missing firefighter discipline records, and other matters.

Asked for his opinion on taxpayer revolt and dissatisfaction, Mayor Hannan testified that he has corresponded with numerous residents who want their taxes cut and that they are not in favor of any increases in the cost of services or any increase in taxes. Mayor Hannan testified that the Village taxpayers wanted a significant reduction in the cost of services and a reduction in the cost of individual departments with a special emphasis on the fire department.

Mayor Hannan testified that the Village had pursued all means to control costs. For example, he testified about the Village's efforts to share services with respect to the Fire Department and the Police Department. In both departments, the Village now shares a Police Chief with another municipality on a 50/50 basis. With respect to police retirees, Mayor Hannan clarified that five officers retired this past June of 2010 and that those positions will remain vacant, with the exception of two sergeant positions, which were filled. Despite the filling of only two of the five positions, the Village does not expect to see any savings due to the increased cost of pension and health insurance.

The record of this hearing contains the financial statements of the Village and the GASB 45 projections on the cost of employee benefits, both of which support the finding that the Village does not have the ability to pay the increase in benefits demanded by the Association. The record also contains official documents on the Village's recent experience with the dissolution plan and related news coverage, cost cutting, and public salaries. In addition, the record also contains several articles which establish the effect of rising aged populations on small municipalities in upstate New York, the exact situation now faced by the Village. The record includes two articles on dissolution and the challenges faced by local government in upstate New York.

The Village contends that the Association cannot even project the cost of the wage and benefit increases on the Village. More importantly, the Association cannot point to any predictable tax revenue and other sources (sales tax, mortgage tax, gross utility, etc.) to fund the increases sought by the Association. It is clear that the Village's financial situation will only worsen as the younger population migrates out and the aged population remains, which will increase the demand on municipal services while being able to pay less for these services. As such, the Village is simply not able to afford the Association's wage increases and other proposals.

The Village asserts that it has established that it does not have the ability to pay. Finally, the Village also asserts that the "taxpayer revolt" expressed by Mayor Hannan was certainly a matter of record as evidenced by the multi-year deficits, dissolution vote and the extensive press coverage. The Village cannot afford the impact of a retroactive award.

THE INTEREST AND WELFARE OF THE PUBLIC

Position of the Association

The Association asserts that it is beyond dispute that the public is best served by having a professional, well-trained, well-educated police department fully staffed with qualified and experienced police officers. This happens only when the wages and benefits of those police officers are at a level that is not only sufficient to attract them to Village service, but sufficient to retain them for a career.

The Village is fortunate enough to be in a sound financial condition, and the interest and welfare of the public compels an Award at a level which will entice persons to become and remain members of the Village's police department and one that will reflect the police officers' relative status and position in the Village and the comparable law-enforcement communities in Broome County.

The Association argues that the interest and welfare of the public can only be advanced by the issuance of an Award which continues the process of moving the Village's Police Department forward.

Position of the Village

The Village relies on its statements and assertions as contained in the ability to pay section of this Award. It stated that any Award must weigh both the interests and welfare of the public and the financial ability of the municipality to pay for any increases in wages and benefits. An Award will have an impact on the Village's budget which in turn will have an impact on the tax burden of its residents.

PECULIARITIES OF THE POLICE PROFESSION

Position of the Association

The Association asserts that the police profession is not only unique but significantly different, and therefore no real comparison can be made with other trades or professions. The statute provides a significant difference in comparison because it affords compulsory interest arbitration to police officers. There is no other comparable other than police officer to police officer. The criterion as interpreted and applied over the years by interest arbitration panels looks inward and examines the peculiarities of the police profession itself. In that regard, the parties cannot and do not dispute that appropriate weight must be given to the especially hazardous nature of a police officer's work and to the special qualifications, training and skills required to be a police officer.

Position of the Village

The Village acknowledges that police officers hold a unique status as protectors of people and property. Their duties expose them to dangers not confronted by other Village employees. In view of these dangers, they must meet physical qualifications upon appointment and are encouraged to maintain their physical fitness during their employment. In matters of hazards, physical qualifications and job training, there are no other Village employees like them. The salary and benefits they receive is in recognition of the unique services.

THE TERMS OF COLLECTIVE AGREEMENTS NEGOTIATED BETWEEN THE PARTIES IN THE PAST

The Panel is required to consider the past bargaining history of the parties. The Village and the Association were parties to an Agreement from June 1, 2000 through May 31, 2004.

Following expiration of that Agreement, an Interest Arbitration Panel made an award for the period June 1, 2004 through May 31, 2006 (PERB Case No.: IA2005-025; M2005-080), which provided for increases in wages, uniform allowance, shift premium, "on call" pay and the physical fitness incentive. That Interest Arbitration Award, which was unanimous, modified the employees' contribution for health insurance from a flat dollar, to a percentage of that employee's Base Wage. In its deliberations, the Panel examined and analyzed the last negotiated Agreement, Interest Arbitration Award, and the terms and conditions contained therein as part of formulating this Award.

DISCUSSION AND ANALYSIS OF THE ISSUES

Duration of the Award

The parties agree to a two (2) year Award which shall be effective June 1, 2006 through May 31, 2008.

Based on agreement by the parties, the Panel makes the following:

AWARD

The term of this Award shall be from June 1, 2006 through May 31, 2008.

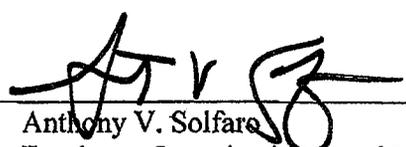
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11



Anthony V. Solfaro
Employee Organization Panel Member

Article 2 - Grievance Procedure – Discipline and Discharge

The Association proposes various changes in the Grievance Procedure. The Association also proposes changes as well to the Disciplinary Procedure, with an arbitrator being selected through the Grievance Procedure, with his/her decision being final and binding. The Panel will address the Association's Grievance Procedure for an Award. As stated in part in the last arbitration award (PERB Case No.: IA2005-025; M2005-08) for the period June 1, 2004-May 31, 2006 stated, "the Panel believes the two (2) existing grievance procedures should be consolidated in one procedure, and the disciplinary procedure cleaned up." The Association's demand proposes that the arbitrator be selected through the American Arbitration Association (AAA). The Panel urges that the parties set up a 3-arbitrator rotating panel for both procedures, rather than submitting to an agency for the selection of an arbitrator as a cost-saving measure.

The proposal of the Association contains standard language that is included in many other police department grievance procedures. The Village has no opposition so long as Management Rights are considered, where appropriate.

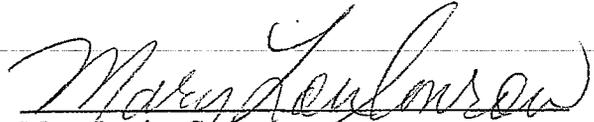
The Panel carefully considered the testimony, documentary evidence, post-hearing briefs, and statutory criteria. Based on the foregoing, the Panel makes the following:

AWARD

The Association's demand regarding its Grievance Procedure, except that STEP 3: Arbitration shall be submitted to the New York State Public Employment Relations Board, in the event a 3 arbitrator rotating panel is not mutually agreed upon by the parties.

I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfaro
Employee Organization Panel Member

Article 6(A) – Uniforms and Equipment

The Association seeks an increase of \$50.00 annually in the uniform and equipment allowance from the current \$775.00 to \$825.00 in June 2006 and \$875.00 in June 2007. In addition, the Association seeks an increase in the new hires cleaning allowance after their 1 Year anniversary date of \$100.00 in June of 2006 and \$50.00 in June of 2007. The prior Arbitration Award increased those allowances by \$25.00 in June 2004. Prior to the change by the Arbitration Award, it had not changed since 1999. The Association argues that officers have seen no increase in the cleaning and/or uniform allowance for years while the cost and expense of cleaning and maintenance of such items has certainly increased. Adjustment must be made periodically to avoid the benefit losing its relationship to the original intent.

While the Panel understands that there are costs for the maintenance and cleaning of uniforms and equipment, it does not believe that the increases sought by the Association are not substantiated, but a modest increase to the existing amounts are provided.

The Panel carefully considered the testimony, documentary evidence, post-hearing briefs, and statutory criteria. Based on the foregoing, the Panel makes the following:

AWARD

That the amount of uniform and/or cleaning allowance for each employee with one (1) year of service shall be paid as follows:

(N/C)	(+\$25.00)
<u>6/1/06</u>	<u>6/1/07</u>
\$775.00	\$800.00

A new hire shall only receive a cleaning allowance upon one (1) year anniversary of employment as follows:

(N/C)	(+\$25.00)
<u>6/1/06</u>	<u>6/1/07</u>
\$275.00	\$300.00

Thereafter, the employee shall receive all scheduled payments above.

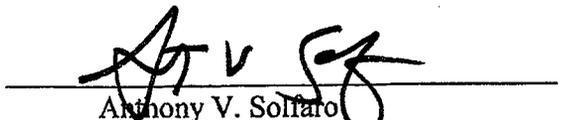
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfaro
Employee Organization Panel Member

Article 7 – Base Wage and Longevity

The Association proposes a 4.5% increase on all Steps, with \$500.00 adjustment and then 4.5% at Step 4 for Police Officers beginning June 1, 2006, and June 1, 2007. It also proposes that percentage differentials over and above the Step 4 Police Officer be established for Detective(s), Sergeant(s), Lieutenant(s) and Captain(s), rather than a rate. The Association also seeks to increase the value of each longevity Step by fifty (\$50.00) dollars on June 1, 2006 and June 1, 2007.

The Villages proposes a .5% increase in wages for all members of the Association beginning June 1, 2006 and June 1, 2007.

The Association argues that the proposed adjustments do not alter the basic compensation package paid to police officers and are not inconsistent with the pattern of settlements in the comparables throughout the County during the same period of time covered by the period of this Award. It notes that the CPI percentage increase for 2006 was 3.2%, the percentage increase for 2007 was 2.8% and for 2008 was 3.8%. As such, according to the Association, any wage adjustment below that level constitutes a wage reduction in terms of purchasing power. Further, the exceptional delay in bringing this proceeding to a close has resulted in police officers being deprived of the income they worked for, for more than four years. Police officers have had to live on and support their families for more than four years on wages, which due to inflation, are worth substantially less than when last adjusted in December 2005.

The Association asserts that the Panel cannot ignore the reality of the inflationary trend which impacts unit members just as it does all citizens. The delay in completing this proceeding achieved by the Village compounds the pain. The Association argues that employees in the

comparable communities who receive a universal percentage increase to improve their wages and benefits, given their higher base to begin, will continue to move even further ahead of the Johnson City police officer. A wage adjustment in conformity with the Association's demand will insure that Village police officers maintain their relative standing with the cited comparables.

The Association notes that although there has been no contract in place in the City of Binghamton since December 2005, the City and PBA recently agreed to a six year settlement for 2006 through 2011, with base wage adjustments for 2006, 2007 and 2008 annually with full retroactivity and no increased employee health insurance contribution.

The City of Binghamton and Johnson City are contiguous municipalities and are inextricably intertwined. Not only are they bordering communities, but the two share substantial municipal services including the joint sewage plant and now, significantly, a Chief of Police. Direct comparison and equality of wages of police officers appears to be wholly appropriate based on this precedent as well.

The Association argues that wage adjustments for the other comparables cited by both parties were consistent with each other. For example, Broome County Deputy Sheriffs received increases of 3.0% for the years 2006, 2007 and 2008, coupled with an improved retirement plan from 25 years to 20 years, and health insurance on retirement for the first time, with the County paying 85% of the premium cost. The City of Binghamton police officers received 3.25% in each of those years, the Village of Endicott police officers received 3% in 2006 and 2007 and 3.25% in 2008, and the Town of Vestal police officers received 4% in each of the three years of 2006, 2007 and 2008, with other economic adjustments as well.

The Village argues that even without factoring in its more generous health insurance benefits, its police officers were only slightly behind the comparables for years 2006 - 2008 with respect to Base Wages for those police officers with less than four years of service. However, with the exception of the City of Binghamton, the Village asserts that it has paid more than the comparables when factoring in Base Wages and longevity together. Using the Association's exhibits, the data demonstrates that the Village paid the most in Base Wages in 2005 for its police officers with four years of service at \$50,475.00 compared with a Broome County Deputy Sheriff at \$51,772.00, the Village of Endicott at \$49,834.00, and the Town of Vestal at \$50,068.00. The Base Wages in 2006 for its police officers with four years of service, if the Association's demand is fully awarded, would be \$55,359.00, compared with a Broome County Deputy Sheriff at \$53,325.00, the Village of Endicott at \$53,235.00, and the Town of Vestal at \$52,091.00. The Base Wages in 2007 for its police officers with four years of service, if the Association's demand is fully awarded, would be \$58,373.00, compared with a Broome County Deputy Sheriff at \$54,925.00, the Village of Endicott at \$54,965.00 and the Town of Vestal at \$54,196.00. The Village asserts that the Base Wage comparison analysis does not reflect that it is far more generous in paying longevity than the other comparables. For example, the Village of Endicott pays no longevity. In 2005, for police officers with ten (10) years of service, the Village paid \$700.00, while the Village of Endicott paid nothing, the City of Binghamton paid \$550.00, Broome County Deputy Sheriffs were paid \$450.00 and the Town of Vestal paid \$275.00. For police officers with twenty-five (25) years of service, the Village still paid more in longevity in 2005 (\$1,500.00), than all other comparables, except the City of Binghamton, which paid \$50.00 more (\$1,550.00).

The Village asserts that the same is true with respect to the years 2006 - 2008. The Village states that its longevity component more than offsets any difference in Base Wage pay with respect to comparables. Considering that the Village is paying as much or more than comparables during the relevant period, there is no reason to provide more than it proposes to increase the Base Wage, and nothing for longevity.

The Panel notes the arguments and comparisons made by the two parties. The Association's basic arguments are that wages must keep up with the Consumer Price Index, and the increases received in 2006 to 2008 by the comparable jurisdictions in the area in order to maintain its relative standing. The Panel is mindful that recruitment and retention of police officers is a function of salaries and benefits. However, the increases sought by the PBA are not substantiated, but neither is the ½% to the Base Wage and no increases to longevity as sought by the Village. The Panel carefully considered the testimony, documentary evidence, post-hearing briefs, and statutory criteria. Based on the foregoing, the Panel makes the following:

AWARD

A. Base Wage Schedule

<u>Step</u>	<u>Years of Service</u>	(3.5%)	(3.5%)
		<u>6/1/06</u>	<u>6/1/07</u>
1	Starting	\$31,651	\$32,759
2	Starting 2 nd Year	\$39,100	\$40,469
3	Starting 3 rd Year	\$41,944	\$43,412
4	Starting 4 th Year	\$54,312	\$56,213
	Sergeant(s) *	\$59,147	\$61,217
	Lieutenant(s) *	\$63,023	\$65,229
	Captain(s) *	\$67,539	\$69,903

* Upon promotion to Sergeant, Lieutenant or Captain, that employee shall be paid the respective Base Wage upon appointment. (No change to existing language.)

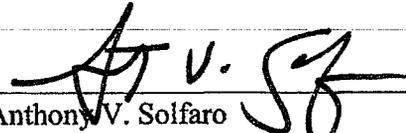
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfaro
Employee Organization Panel Member

B. Longevity

<u>Step</u>	<u>Years of Service</u>	(N/C)	(+\$25.00)
		<u>6/1/06</u>	<u>6/1/07</u>
5	Starting 5 th through 8 th	\$ 300.00/yr	\$ 325.00/yr
6	Starting 9 th through 12 th	\$ 700.00/yr	\$ 725.00/yr
7	Starting 13 th through 16 th	\$1,100.00/yr	\$1,125.00/yr
8	Starting 17 th and Above	\$1,500.00/yr	\$1,525.00/yr

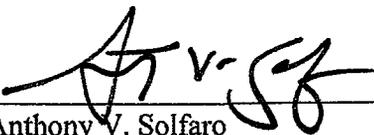
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfaro
Employee Organization Panel Member

ARTICLE 16 – SHIFT DIFFERENTIAL

The Association seeks to increase the existing shift differential by \$.50/hr beginning June 1, 2006 and June 1, 2007 over the existing amounts of \$1.25/hr for the hours of 11:00 p.m. to 7:00 a.m., and \$1.05/hr for the hours of 3:00 p.m. to 11:00 p.m. The Association notes that the last interest arbitration award provided for an increase on June 1, 2004, and no increase on June 1, 2005. The increase provided reflected no increases in the 2000-2004 Agreement.

The Village maintains its position that no increases are warranted in this or any other economic benefit.

The Panel is mindful that an increase is warranted, but not the increases sought by the Association, or no increases as sought by the Village. The Panel carefully considered the testimony, documentary evidence, post-hearing briefs, and statutory criteria. Based on the foregoing, the Panel makes the following:

AWARD

Amend the existing amounts paid as follows:

	<u>(N/C)</u>	<u>(+\$.25/hr)</u>
	<u>6/1/06</u>	<u>6/1/07</u>
11:00 p.m. to 7:00 a.m.	\$1.25/hr	\$1.50/hr
3:00 p.m. to 11:00 p.m.	\$1.05/hr	\$1.30/hr

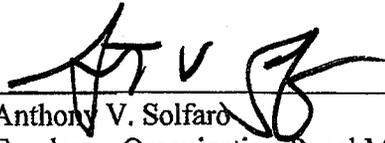
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I ~~(concur)~~ (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfaro
Employee Organization Panel Member

ARTICLE 17 – ON CALL PAY

The Association seeks to increase those Detectives and Breathalyzer Operators by +\$25.00/day who are designated as being “on call” each day due to the requirement to restrict movement while off duty and be available to report for work when called, from +\$25.00/day Monday through Saturday (Detectives), and Monday through Friday (Breathalyzer Operator), and from +\$35.00/day Sundays and Holidays (Detectives), and Saturday, Sundays and Holidays (Breathalyzer Operators) as contained in Section A and B respectively. The Association notes that the last arbitration award provided for an increase on June 1, 2004, and no increase on June 1, 2005. The increase reflected that there had been no increases in the 2000-2004 Agreement.

As noted previously, the Village maintains its position that no increases are warranted in this or any other economic benefit.

The Panel is mindful that an increase is warranted, but not the increases sought by the Association, or no increases as sought by the Village.

The Panel carefully considered the testimony, documentary evidence, post-hearing briefs and statutory criteria. Based on the foregoing, the Panel makes the following:

AWARD

A. Amend the existing amounts as follows (Detectives):

	(N/C) <u>6/1/06</u>	(+\$2.00/day) <u>6/1/07</u>
Monday through Saturday	+\$25.00/day	+\$27.00/day
Sunday and Holidays as set forth in Article 9(f) Vacation and Holiday Pay	+\$35.00/day	+\$37.00/day

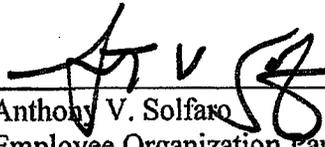
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11

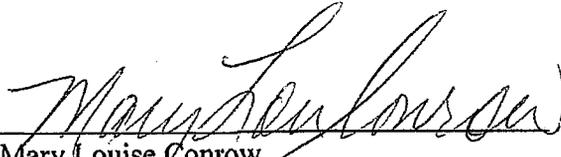

Anthony V. Solfaro
Employee Organization Panel Member

B. Amend the existing amounts as follows (Breathalyzer Operators):

	(N/C) <u>6/1/06</u>	(+\$2.00/day) <u>6/1/07</u>
Monday through Friday	+\$25.00/day	+\$27.00/day
Saturday, Sundays (weekends) and Holidays as set forth in Article 9(f) Vacation and Holiday Pay	+\$35.00/day	+\$37.00/day

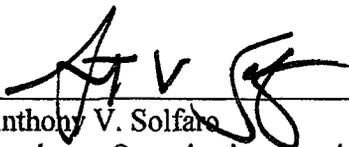
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I concur (do not concur) with the above Award

Date: 8/4/11



Anthony V. Solfaro
Employee Organization Panel Member

ARTICLE 23 – PHYSICAL FITNESS INCENTIVE

The Association seeks to increase the annual physical fitness incentive for those who participate and successfully meets the minimum standards established from the existing payment by \$75.00 beginning June 1, 2006 and June 1, 2007. The Association notes that the last interest arbitration award provided for an increase on June 1, 2005, the second year, with no increase in the first year. The increase reflected that there had been no increases in the 2000-2004 Agreement. The Association asserts that continuing increases are necessary to provide incentive to participate each year.

The Village maintains its position as stated previously that no increases are warranted in this or any other economic benefit.

The Panel is mindful that an increase is warranted, but not the increases sought by the Association, or no increases as sought by the Village.

The Panel carefully considered the testimony, documentary evidence, post-hearing benefits and statutory criteria. Based on the foregoing, the Panel makes the following:

AWARD

Amend the existing annual amount as follows:

(N/C)	(+\$25.00)
<u>6/1/06</u>	<u>6/1/07</u>
\$350.00	\$375.00

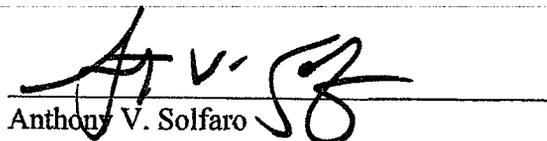
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfaro
Employee Organization Panel Member

REMAINING DEMANDS

The Panel has thoroughly reviewed all the demands, documentary evidence, testimony, post-hearing briefs and statutory criteria. Based on the foregoing, the Panel makes the following:

AWARD ON REMAINING DEMANDS – VILLAGE

Any demand other than those specifically contained in the Award is denied.

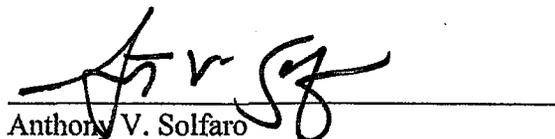
I (concur) (do not concur) with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfaro
Employee Organization Panel Member

AWARD ON REMAINING DEMANDS – ASSOCIATION

Any demand other than those specifically contained in the Award is denied.

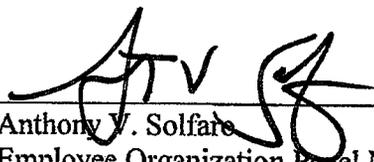
I (concur) ~~(do not concur)~~ with the above Award

Date: 7/13/11


Mary Louise Conrow
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 8/4/11


Anthony V. Solfare
Employee Organization Panel Member

RETROACTIVITY

The terms of this Award shall be implemented as soon as possible, but in no event later than May 31, 2011. The Village shall provide a worksheet to all employees who worked during any period incorporated by the terms of this Award, detailing the basis of the calculation of his/her compensation, including any retroactive amounts that may be due pursuant to the terms of this Award, and shall make every effort to do so no later than 30 calendar days following the date of the Panel Chairman's signature, but in no event more than 45 calendar days following such. The Panel retains jurisdiction until payment of retroactivity and implementation of this Award is completed as set forth herein. Any disputes shall be returned to the Panel for its final and binding determination.

I (concur) ~~(do not concur)~~ with the above Award

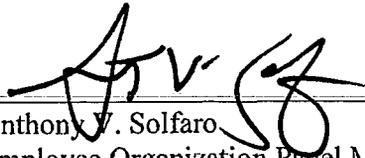
Date: 01/13/11



Mary Louise Conrow
Employer Panel Member

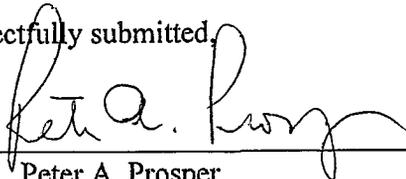
I (concur) (do not concur) with the above Award

Date: 8/4/11



Anthony V. Solfaro
Employee Organization Panel Member

Date: 8/8/11

Respectfully submitted,


Peter A. Prosper
Public Panel Member and Chair

STATE OF NEW YORK)
~~COUNTY OF SARATOGA~~) SS:

On this day of , 2011, before me personally came and appeared
PETER A. PROSPER, to me known and known to me to be the individual described in and who
executed the foregoing instrument and he acknowledged to me that he executed the same.

STATE OF NEW YORK)
COUNTY OF ORANGE) SS:

On this 4th day of August , 2011, before me personally came and appeared
ANTHONY V. SOLFARO, to me known and known to me to be the individual described in and
who executed the foregoing instrument and he acknowledged to me that he executed the same.

Lorraine J. Mc Guinness

LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 20 15

STATE OF NEW YORK)
COUNTY OF BROOME) SS:

On this 13th day of JULY , 2011 before me personally came and appeared
MARY LOUISE CONROW, to me known and known to me to be the individual described in
and who executed the foregoing instrument and she acknowledged to me that she executed the
same.

Ronitta J. McPherson

RONITTA J. MCPHERSON
Notary Public, State of New York
No. 01MC6141851
Qualified in Tioga County
Commission Expires February 27, 20 14

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

JOHNSON CITY POLICE ASSOCIATION,

Petitioner,

-vs-

THE VILLAGE OF JOHNSON CITY,

Respondent.

**DISSENT BY
PUBLIC EMPLOYER
REPRESENTATIVE,
MARY LOU CONROW, ESQ.**

**Case # M2008-172
IA 2008-020**

I respectfully dissent from the Interest Arbitration Award ("Award") for the following reasons:

I. Summary of the Award

- a. Duration. June 1, 2006 – May 31, 2008;
- b. Grievance Procedure – Discipline and Discharge. Adopted Union demand (with

exception of Step 3);

- c. Uniforms and Equipment.

- 1. Current Employees.

- (a) No change as of 6/1/06;
 - (b) \$25 annual increase of 6/1/07;

- 2. New Hires.

- (a) No change as of 6/1/06;
 - (b) \$25 annual increase as of 6/1/07.

- d. Base Wages and Longevity.

- 1. Base Wages.

- (a) 3.5% increase as of 6/1/06;

- (b) 3.5% increase as of 6/1/06;
- 2. Longevity.
 - (a) No change as of 6/1/06;
 - (b) \$25 annual increase as of 6/1/07.
- e. Shift Differential.
 - 1. No change as of 6/1/06;
 - 2. \$00.25/hour increase as of 6/1/07.
- f. On Call Pay.
 - 1. Detectives.
 - (a) No change as of 6/1/06;
 - (b) \$2.00/day increase as of 6/1/07.
 - 2. Breathalyzer Operators.
 - (a) No change as of 6/1/06;
 - (b) \$2.00/day increase as of 6/1/07
- g. Physical Fitness Incentive.
 - 1. No change as of 6/1/06;
 - 2. \$25 annual increase as of 6/1/07.
- i. Retroactivity. Award is retroactive to 6/1/06.

II. Legal Standards for Interest Arbitration

Civ. Serv. Law §209.4(c)(v) provides the criteria for review in interest arbitration proceedings. Particularly, the panel must consider the following factors:

- a. comparison of the wages, hours and conditions of employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees

performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

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

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

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

Additionally, the panel may consider "any other relevant factors". Id.

While the relevant weight to be given to each factor is within the purview of the panel, Buffalo v. Rinaldo, 41 N.Y.2d 764, 10 PERB ¶7014 (1977), it is respectfully submitted that the Panel's decision must specify the basis for its finding, taking into account the aforementioned criteria. Caso v. Coffey, 41 N.Y.2d 153, 9 PERB ¶7026 (1976).

Interest arbitration is not, and was not intended to be, an alternative to, or substitute for good faith negotiations. Town of Haverstraw Patrolman's Benevolent Association, 9 PERB 3063 (1976). Accordingly, this Panel should not be utilized as a negotiation tool for the ASSOCIATION to obtain concessions from the public employer when, in fact, true negotiations were in process.

III. Application of the Legal Standards to this Award

1. Comparison of Wages and Benefits to the Comparables

In arriving at a just and reasonable determination of wage rates, arbitrators are required to evaluate, among other factors, the wages paid in comparable jurisdictions. In determining which jurisdictions are comparable, arbitrators are asked to assess both economic and non-economic factors. Accordingly, factors such as the size and population of a municipality and the size of the local bargaining unit are appropriate for consideration. Likewise, geographic proximity, as well as regional or local economics and demographics, are significant factors.

Economic factors are, of course, of equal if not greater import inasmuch as these factors truly drive negotiations. Factors such as property tax, median income, median home values, a municipality's budget, deficit fund balance and tax base constrain its' ability to pay, as well as determine how and when a municipality can support increases in pay and benefits.

The Village conclusively established that it was most comparable in terms of size of population and police departments to the Village of Endicott. Conversely, the Village established that it was least comparable to the City of Binghamton, which has a population three times the size of the Village and a police force more than double the size of the Village force.

Base Wage and Longevity Comparison: The Association's own exhibits reflect that the Village (without factoring in its more generous health insurance benefits) was only slightly behind the comparables for years 2006 – 2008 with respect to Base Wages for those police officers with less than four years of service. However, it is undisputed that the Village, with the exception of Binghamton, has paid more than the comparables to the vast majority of the Village officers, most of whom have more than four years of service. This is especially true when factoring in Base Wages and longevity.

1. Per Association Exhibit 2, the Village paid the most in Base Wages in 2005 for officers with four or more years of service (\$50,475.00) compared with Endicott (\$49,834.00) and Vestal (\$50,068.00), Broome County was slightly higher at (\$51,772.00);

2. Per Association Exhibit 3, the Village paid the most in Base Wages in 2006 for officers with four or more years of service (\$55,359.00), compared with Broome County (\$53,325.00); Endicott (\$53,235.00) and Vestal (\$52,091.00).

3. Per Association Exhibit 4, the Village paid the most in Base Wages in 2007 for officers with four or more years of service (\$55,359.00), compared with Broome County (\$54,925.00); Endicott (\$54,965.00) and Vestal (\$54,196.00).

4. Per Association Exhibit 5, the Village was still competitive with respect to Base Wages in 2008 for officers with four or more years of service (\$55,359.00), compared with Broome County (\$56,573.00); Endicott (\$56,889.00) and Vestal (\$56,385.00).

5. The above Base Wage comparison analysis does not reflect that the Village is far more generous in paying longevity than the other comparables. For example, Endicott pays no longevity. (See Association Exhibit 17). In 2005, for officers with ten (10) years of service, the Village paid \$700.00 while Endicott paid nothing, Binghamton paid \$550.00, Broome County paid \$450.00 and Vestal paid \$275.00. For officers with twenty-five (25) years of service, the Village still paid more in longevity in 2005 (\$1,500.00) than all other comparables, except Binghamton, which paid \$50.00 more (\$1,550.00). (See page 2 of Association Exhibit 2.) The same is true with respect to 2006 - 2008. (See page 2 of Association Exhibits 3 - 5.) For example, in 2008, the Village continued to pay \$700.00 for officers with ten years of service, while Endicott paid nothing and Broome County paid \$450.00 and Vestal paid \$350.00. In 2008, the Village continued to pay \$1,500.00 for officers with

twenty-five years of service, while Endicott paid nothing and Broome County paid \$1,100.00, and Vestal paid \$1,250.00. As such, the Village's longevity component more than offsets any difference in Base Wage pay with respect to comparables.

Considering that the Village is/was paying as much or more than comparables during the relevant period, it was arbitrary and capricious for the majority of the Panel to order a 7% increase in Base Wages over two years. The majority of the Panel clearly did not take into account the Village's ability to pay. The Chairman gives no explanation as to the Panel's analysis or how it arrived at the Village's ability to pay this award. The decision simply reiterated both parties position with no discussion as to how it arrived at the ability pay which is an abuse of discretion and arbitrary and capricious. This violates the statutory requirement that the Panel review and analyze

Health Insurance:

The Association currently pays a small percentage of salary as their contribution to health insurance. For employees hired before November 30, 1993, an employee pays 1% for individual coverage, while family coverage ranges from 2% to 1.7% based on grade. For employees hired on or after December 1, 1993, an employee pays between 3.2% to 1.65 % based on grade for individual coverage, while family coverage ranges from 4.25% to 2.12% based on grade. So, a Captain with 17 years of service who is paid \$66,755.00 in base pay, including longevity, currently pays no more than \$1,415.21 per year, regardless of how expensive the coverage really is. An officer with less service and grade could pay somewhat less.

By contrast, Binghamton now requires that officers pay \$1,310.00 for individual coverage and \$2,450.00 family coverage in 2010 and 2011, with newly hired officers being

forced into a PPO-B plan with a required 15% contribution.¹ Broome County requires that the employee pay a contribution equal to 15% of the actual cost of the premium. (Association Exhibit 37-B.) Endicott required that its officers pay 10% -13 % of the cost of the premium during the period 2006-2008 and Endicott officers currently pay 14%. (Association Exhibits 38 and 38-A.) Based on a percentage of premium scenario, an officer who is required to contribute 15% of the cost of the premium would be required to pay \$2,700.00 on a premium which costs \$18,000.00. This is the model that all other comparables are using.

It was arbitrary and capricious, and an abuse of discretion, for the majority of the Panel not to order even a modest increase in the health insurance contributions of the Association's members. The Chairman did not discuss why the Panel did not award an increase in contribution when the Village is already lagging behind the comparables. If the Chairman had analyzed the comparables, he would have ordered at least a small increase in the health insurance contribution. By not doing so, the majority of the Panel handsomely increased wages beyond those paid by comparable municipalities and despite the fact that other comparable municipalities required that their officers pay more towards health insurance. The majority of the Panel also denied the Village taxpayers the ability to recoup anything with respect to the mounting cost of health insurance.

Dental Insurance: The Village provides dental insurance while Binghamton, Broome County, and Endicott do not. Among the comparables, only Vestal provides dental insurance. The majority of the Panel apparently did not accurately look at the comparables again. This is an abuse of discretion as it is clearly required when doing an award.

¹ Per the Resolution attached to Mr. Grant's letter of October 20, 2010. This jump in contributions may explain the rationale behind the wage increases for 2006-2010 and the 0% raise for 2011.

On Call Pay: The Association provided no comparisons for on "On Call" pay.

However, Binghamton pays \$40.00/day for Detective "On Call" pay (Association Exhibit 36-A.) Broome County pays a yearly stipend of \$1,550.00 for detectives assigned to the Detective Bureau for compensation for working weekends and holidays, which works out to around \$30.00 per weekend. (Association Exhibit 37-B.) Considering that the Village is/was paying as much or more than comparable municipalities during the relevant period, it was arbitrary and capricious to increase On Call Pay. Again, the majority of the Panel clearly ignored the comparables and abused its discretion by not applying the statutory elements and arbitrarily increasing this pay when the Village already exceeded the comparables in this area.

Physical Fitness Incentive: The Village pays a \$350.00 annual fitness incentive, while other comparables (Binghamton, Endicott and Vestal) do not. Broome County has established a \$3,000.00 fund to encourage passage of fitness tests. (See page 21 of Panel Exhibit 7 and Association Exhibit 19.) Considering that the Village is/was paying as much or more than comparable municipalities during the relevant period, it was arbitrary and capricious for the majority of the Panel to increase the Physical Fitness Incentive. Again, the majority of the Panel clearly ignored the comparables and abused its discretion by not applying the statutory elements and arbitrarily increasing this pay when the Village already exceeded the comparables in this area.

Shift Differential: The Village pays the most for shift differential (\$1.25/hr for the overnight "A" shift and \$1.05/hr for the evening "C" shift) when compared to Binghamton, Broome County and Endicott. Vestal pays less for "C" shift (\$1.00/hr) and more for the "A" shift (\$1.50/hr). See Association Exhibit 25. Considering that the Village was paying as much or more than comparables during the relevant period, it was arbitrary and capricious for the

majority of the Panel to increase Shift Differential pay. Again, the majority of the Panel clearly ignored the comparables and abused its discretion by not applying the statutory elements and arbitrarily increasing this pay when the Village already exceeded the comparables in this area.

Uniforms and Equipment: The Association presented no comparisons in this regard (See Association Exhibits). Moreover, when factoring in all pay and benefits, the Village does not pay significantly less than other comparable municipalities with respect to uniforms. As such it was arbitrary and capricious for the majority of the Panel to increase the uniforms and equipment allowances.

Grievance and Discipline Procedure: The Association presented no testimony on the need for a change to the negotiated Grievance and Discipline Procedure. There was not one piece of evidence submitted to support the need for a change in the procedure. Moreover, the Award does not even address the rationale for adopting the Association demand. The Chairman simply agreed to give the Association a new grievance procedure without any evidence regarding the need for same and without any review in relation to the statutory criteria. There was no evidence submitted regarding comparables or the cost that this procedure may add to the Village's bottom line. Finally, few Panels, if any, would address non-economic issues such as a negotiated grievance and discipline procedure. The Association literally received more from Interest Arbitration than it ever could have at the negotiating table. Given complete absence of any "record" to support a change in the negotiated grievance and discipline procedure, it was arbitrary and capricious, and an abuse of discretion, for the majority of the Panel to make this award.

2. Ability to Pay

The Village does not have the ability to pay the Panel's award. The impact of the award is catastrophic. The Panel's award of 7% increase in Base Wages for the period 6/1/06 – 11/7/07 is estimated to result in an increase of \$154,588.68. The increase in Base Wages for the period 11/21/07 – 12/31/08 is estimated to be \$174,248.82. For the following calendar years which are impacted by the Panel's award (2009, 2010, 2011; etc.), the annual additional increase in Base Wages amounts are estimated to be \$160,484.43, \$159,550.44 and \$131,769.07 per year, respectively. This has a total financial impact of \$780,641.44.

The Panel's awards of increases in uniform allowances are estimated to add another in \$4675 cost to the Village. The retroactive and current increases of Base Wages and uniform allowances alone are estimated to amount to \$785,316.² Assuming a pension contribution of 20.90%, the Village is estimated to pay an additional \$164,131.14 in pension costs on these increases in Base Wages and uniform allowances. As such the Panel's award will result in a \$949,447.58 liability, which the Village can ill afford.

The Village, like all small municipalities in Upstate New York, has been grappling with declining populations and decreasing property values. The population itself is aging and, therefore, future economic growth is unlikely. Over the past few years, the Village's financial condition has deteriorated. Despite recent gains to close a huge deficit in the reserve fund balance, the current economic recession only compounds the problem.

The majority of the Panel completely disregarded the evidence in relation to the ability to pay and does not even provide an analysis regarding the Village's ability to pay. It merely reiterates the party's respective positions and then gives an award without a single word of analysis, which contravenes the statutory requirements set forth for this Panel.

² This estimate does not include other aspects of the Panel's award such as longevity, shift differential, On Call pay or physical fitness incentive.

Specifically, Kevin Decker, an economist, testified for the Union. Mr. Decker admitted on direct that the economy had impacted the Village's ability to pay. Mr. Decker focused on the last couple years, primarily because "the last couple of years, as everybody is aware of, have been particularly challenging from an economics point of view and from a state budget point of view. The national economy and the state economy entered what most people classify as a pretty significant economic downturn right around 2008. That downturn, although it's probably officially over, still lingers; there are still higher-than-average rates of unemployment. You can see the effects at the state level where the State is struggling with its state budget. So many municipalities have found the last two years to be especially challenging". (Pages 27-28.)

Mr. Decker conceded that the Village's ability to borrow money to pay increasing labor costs was theoretical at best. With respect to the use of the state constitutional tax limit, Mr. Decker pointed out that the Village "theoretically, could increase its real property tax levy by \$7.1 million. That, of course, would take it right up to 100% of the tax limit. No one is suggesting that they should do that; no one is suggesting that it would be prudent to do that; nobody is suggesting that it is necessary to do that. It's just simply one of the measures that come out of a use of state constitutional tax limit". (Pages 32-33.) Comparatively speaking, Mr. Decker found that Johnson City's state constitutional tax limit was better than Endicott or Binghamton, but not quite as good as Broome County as a whole. (Page 33.)

Mr. Decker also conceded that the sales tax situation was changing for the worse both with respect to allocation by the County and the actual revenues realized. With respect to the Village's share of the sales tax revenue, Mr. Decker pointed out that "beginning in 2011, there is going to be a limit as to how much the municipalities can share in the increase in the sales tax within the County. So it is going to limit the ability of any municipality, Johnson City included,

to get year-over-year increases in the sales tax". (Page 34.) Mr. Decker testified that the sales tax for 2010 will be about \$2.96 million. He estimated that "roughly, 200-some thousand dollars short on sales tax". (Page 34.)

Mr. Decker conceded that public safety is the single largest functional area of spending. He found that it was not unusual for a village that maintains both a Police Department and a Fire Department. (Page 37.) Mr. Decker noted that Johnson City had two years of operating deficits including 2009. (Page 38.) Mr. Decker also conceded that a fund balance number should be between five and six percent of their budget to be set aside in the fund balance. In actuality, Mr. Decker testified that it is preferable that the amount of the fund balance number be a little higher than that. He recommended going to ten percent. (Page 38.) Mr. Decker further conceded that in 2009, the Village ended the year with a fund balance level that was, in fact, below the recommended levels as a result of that \$696,000.00 operating deficit.

Mr. Decker noted that in 2009 the Village ended up with a deficit of almost \$696,000.00, creating a negative variance of \$436,000.00. Specifically, in 2009, he noted that revenues fell short of the budget by \$900,000.00. There were two primary sources for that. The first was interest in earnings and the second was expenditures. (Page 41.)

Mr. Decker noted that the Village only recorded revenue of \$370,000.00 and fell short of the budget by \$796,000.00. (Page 41.) With respect to expenditures, Mr. Decker noted that the Village under spent the budget by \$464,000.00, but it could not overcome the \$900,000.00 revenue shortfall, which contributed to the operating deficit. (Page 41.)

In 2010, Mr. Decker noted that there was a small built in deficit in use of the fund balance to balance the budget. In 2011, he noted the budget would be essentially balanced. (Pages 38-39.)

In his presentation, Mr. Decker testified that Moody's Investor Services had assigned the Village's general obligations bonds a rating of DAA-1, which he testified were considered lower medium grade obligations and the rating is 8th best on Moody's scale of 21 ratings. (Page 46.)

On cross-exam, Mr. Decker conceded that he really only offered expert opinions on behalf of unions. As such, he cannot be considered a "neutral" witness. For example, on cross examination, Mr. Decker testified that he testified exclusively on behalf of Unions in New York State. (Page 47.) He specifically testified that he has done 30 or so interest arbitrations in the last four years. (Page.) In all those, he testified on behalf of the Union. (Page 47.) Mr. Decker conceded that he has never found a situation where a Village did not have the ability to pay a wage increase. (Page 47.)

Further, Mr. Decker's testimony was hampered by his self-admitted limited role and scope. Mr. Decker conceded he never prepared a municipal budget. (Page 51.) He testified that he never prepared a multi-year plan on behalf of a municipality. (Page 51.) He testified that he did not perform a cost analysis of the Union's proposals, other than the one percent increase in wages, which would be roughly equivalent to a \$27,000.00 increase to the bottom line. (Page 51.)

Mr. Decker conceded that the constitutional tax limit for the Village, currently at 41.4%, does not measure anything other than a municipality's ability to further tax its residents. (Page 52.) Mr. Decker also conceded that, in his opinion, the municipality should have an unreserved fund balance in the neighborhood of 5 to 10 percent. (Pages 52-54.) Mr. Decker testified that Moody's recommends an unreserved fund balance of 5 to 10 percent. (Page 53.)

Mr. Decker conceded that he did not include the Town of Union as a comparable municipality. (Page 54.) He also conceded that the Town of Vestal does not have a paid Fire

Department unlike the Village of Johnson City and the Village of Endicott. (Page 55.) As such, Mr. Decker conceded that the tax impact on taxpayers varies based on the amount of people and commercial properties contained in the municipality. For example, Johnson City has 15,000 people in its municipality, whereas Vestal has 45,000 people.

With respect to the breakdown analysis of commercial properties in these municipalities, Mr. Decker conceded that he did no such analysis. (Pages 55-56.) Specifically, Mr. Decker conceded that he was not aware of the number of commercial properties in Vestal and the size of their tax base versus the commercial properties in Johnson City and the size of their tax base. (Page 56.) Mr. Decker conceded he did not know if Johnson City's residents would take more of a hit than Vestal residents if taxes were increased. (Page 56.)

Mr. Decker conceded that the Town sets the assessment and the State of New York sets the equalization rate for the Village. (Pages 56-57.) Mr. Decker conceded that the redemption of Johnson City's state constitutional tax limit from 70% in 2006 to 2009 to the current limit of 41.4% was primarily attributed to the sewer debt exclusion that was approved by the State. (Page 59.) To that end, Mr. Decker further conceded that if the sewer debt exclusion was not approved by the State, the constitutional tax limit would be virtually the same. Furthermore, even if it is not part of the constitutional tax limit analysis anymore, the taxpayers in Johnson City still have to pay for the sewer debt service. (Page 59.) Mr. Decker conceded that there was no joint sewage treatment facility located within Endicott or Vestal. (Page 60.)

With respect to the future, Mr. Decker conceded that the current trend for sales tax revenues appears in the negative and that is not a positive trend for the last couple of years. (Page 60.) Mr. Decker attributed the negative trend to the great economic difficulty that municipalities are experiencing. (Pages 60-61.) Mr. Decker was unable to forecast when that

negative trend will turn around. (Page 61.) With respect to any change in the negative trend, Mr. Decker testified “I think the hope from most people was that the recovery would have taken hold a little bit more vigorously by now. It hasn’t happened. Whether it starts to happen next quarter or three quarters from now, we don’t know”. (Page 61.) Based on the great economic difficulties the Village and the State and the Country finds itself in, Mr. Decker expected the 2009 numbers would be “worse” than the 2008 numbers based on the flat sales tax. (Page 62.)

Mr. Decker confirmed that 80% of the Village expenditures pertained to personal services and employee benefits and that public safety is the biggest single function within the general fund budget. (Pages 62-63.) Mr. Decker used an unaudited financial statement to base his opinions of the unreserved balance in the positive \$84,226.00 and was not aware there was an actual unreserved fund balance deficit of \$181,973.00 in 2009. (Page 63.)

Mr. Decker testified that a legitimate use of the fund balance is to pay down debt. (Page 75.) Mr. Decker testified that the fund balance would be used for several things, including holding taxes down, reducing taxes in the particular year. (Page 75.) Mr. Decker testified that the Village should be more interested in building up the fund balance to increase expenditures. (Page 77.)

Mr. Decker was forced to concede that the Village’s situation was unique. For example, he testified that he has never conducted an ability-to-pay analysis with respect to a municipality that almost dissolved. (Page 77.) When asked if Johnson City was better off now than it was when he last testified in 2006, Mr. Decker responded “Certainly the economic climate is not as good as it was four years ago. In terms of where the Village stands financially, I don’t know that it’s any better or any worse. I mean, my recollection is – again, it’s just my recollection – the Village was coming off two or three years of very significant operating deficits last time. I think

primarily tied to overspending in the budget. They've seem to have gotten that a little bit under control in the last few years. So to that extent, things are a little bit better". (Page 78.)

In summing up whether or not Johnson City was better or worse off, Mr. Decker testified "If we're looking at everything tied together, the economy is definitely not in as good a place as it was in 2006, although the expectation is it's going to get better some time soon. The finances, I would have to say, are probably about the same". (Page 78.) Mr. Decker testified that he only learned the morning that he testified that the Village abolished six firefighter positions the previous year. (Page 78.) Mr. Decker was not prepared to testify about the significant impact that an arbitration award may have on the Village if the six firefighters are ordered reinstated. (Pages 78-79.)

Thomas Johnson, the Clerk/Treasurer for the Village of Johnson City, testified. Mr. Johnson was a municipal auditor with the State Comptroller's office for 32 years. He left the position in October 2005, was appointed Chief Fiscal Officer for the Village of Endicott and served in that position for three years. He retired from the State and was appointed to the Village of Johnson City Clerk/Treasurer position on January 1, 2010. (Page 97.)

Mr. Johnson testified that he did an economic analysis of Union Exhibit 1, in which he projected a cost of these Union proposals on the Village. (Pages 97-98.) Mr. Johnson testified as to Village Exhibit 4, which contained the results of his analysis. (Page 98.) Based on a modest home with a fair market value of \$100,000.00, Mr. Johnson testified that the impact of the salary and all other items, but absent the health insurance, would result in an 8.9% increase in the tax rate or, in other words, taxes would go up by roughly \$896.00 per year for that taxpayer for the same service. (Page 106.) The impact of increases in health insurance, coupled with the nominal employee contribution, would only make that impact worse.

Mr. Johnson testified as to the Moody's Investors Service Analysis completed by Moody's in September of 2010. This is set forth at Tab 6 of Volume 3. (Pages 112-113.)

Mr. Johnson testified that Moody's will grade municipalities for the purpose of assessing their risk when the Village goes out to borrow money. (Page 113.) Mr. Johnson testified that the misclassification of the bond anticipation note proceeds from prior years were subsequently taken out of revenue, which resulted in a downward adjustment of \$800,000.00 to \$900,000.00 in the fund balance. (Page 114.)

Mr. Johnson also addressed the potential liability from an arbitration award of \$1.25 million if the six firefighters were rehired. (Page 115.) Mr. Johnson testified that the continued liability of the firefighter litigation had a significant negative adverse impact on the Village's rating. (Page 116.) Mr. Johnson testified as to Moody's discussion of the downward tax assessment with respect to the large retail stores at the Oakdale Mall, which resulted in an assessment reduction of \$270,000.00. (Page 117 and Tab 6 of Village Exhibit III.) The net effect was that Wal-Mart's taxable assessed value would impact the Village by about \$30,000.00 per year. (Page 118.)

Mr. Johnson testified about the Village's debt load, specifically with respect to its co-ownership of the Binghamton/Johnson City sewage treatment plant with the City of Binghamton. (Page 118.) Mr. Johnson confirmed that Moody's had downgraded the Village's bond rating from A-1 to A-3. (Page 119.) Mr. Johnson also testified that the Village of Johnson City experienced an extensive sales tax revenue decline, which was reflective of the economy. He testified that the Village was experiencing a quarter of a million dollars shortfall in sales tax revenue a years. (Page 119.) Mr. Johnson testified that the Village was worse off than it was

two years ago. (Page 120.) Mr. Johnson testified there was no contingency fund set up with respect to the firefighter abolition case. (Page 123.)

Mayor Hannon testified that he served in the Johnson City Police Department from 1975 to 1999, retiring as Chief of Police. (Page 133.) In addition, Mr. Hannon served as a Village Trustee since January 1, 2008 and as Mayor of the Village of Johnson City since June 12, 2009. (Page 133.) Mayor Hannon testified that he was present for the discussion of the firefighter contract during the timeframe of May 2008 and he testified to the immense public outrage of the 41% increase, which created outrage in the Village. (Page 134.)

Mayor Hannon testified about the dissolution proceeding that the Village underwent beginning in December 2007. Mayor Hannon testified that the Village was evenly split over dissolving the Village and that the proposition to dissolve fell by a mere 40 votes. (Pages 135-136.) Mayor Hannon testified that following the passing of the firefighters' Collective Bargaining Agreement, which included a 41% pay increase over five years, the Village's litigation expense with the firefighters actually went up. (Pages 136-137.) For example, Mayor Hannon testified that the firefighters filed numerous grievances and other legal actions against the Village, including a minimum manning clause, discipline over the destruction of missing firefighter discipline records, and other matters. (Page 137.)

Asked for his opinion on taxpayer revolt and dissatisfaction, Mayor Hannon testified that he has corresponded with numerous residents who want their taxes cut and that they are not in favor of any increases in the cost of services or any increase in taxes. Mayor Hannon testified that the Village taxpayers wanted a significant reduction in the cost of services and a reduction in the cost of individual departments with a special emphasis on the fire department. (Page 138.)

Mayor Hannon testified that the Village had pursued all means to control costs. For example, he testified about the Village's efforts to share services with respect to the Fire Department and the Police Department. In both departments, the Village now shares a Police Chief with another municipality on a 50/50 basis. (Page 139.) With respect to police retirees, Mayor Hannon clarified that five officers retired this past June of 2010 and that those positions will remain vacant, with the exception of two sergeant positions, which were filled. Despite the filling of only two of the five positions, the Village does not expect to see any savings due to the increased cost of pension and health insurance. (Page 140.)

In addition to the concessions made by Mr. Decker and the testimony of Mr. Johnson and Mayor Hannon, the Record contains the financial statements of the Village and the GASB 45 projections on the cost of employee benefits, both of which support the finding that the Village does not have the ability to pay the increase in benefits demanded by the Association. (See Village Exhibit II.)

The Record also contains official documents on the Village's recent experience with the dissolution plan (See Tabs 1 – 3 of Village Exhibit Volume III) and news coverage on the dissolution, cost cutting and public salaries. (See Tabs 7 – 11 of Village Exhibit Volume III.) In addition, the Record also contains several scholarly articles which establish the effect of rising aged populations on small municipalities in Upstate New York, the exact situation now faced by the Village (Village Exhibits 16-20). The Record includes two scholarly articles on dissolution and the challenges faced by local government in Upstate New York. (See Tabs 4 and 5 of Village Exhibit Volume III.)

In the end, the Association cannot even project the cost of the wage and benefit increases on the Village. More importantly, the Association cannot point to any predictable tax revenue

and other sources (sales tax, mortgage tax, gross utility, etc.) to fund the increases sought by the Association. Even Mr. Decker confirms the Village is probably worse off than it was at the last Interest Arbitration proceeding. Had the panel majority looked at this evidence and analyzed the ability to pay, the only conclusion that it could have arrived at was that the Village did not have the ability to pay on the award as rendered. Again, the majority of the Panel did not engage in their statutory duty to review and analyze the Village's ability to pay, which is one of the most important, if not THE most important item in coming to an award.

It is clear that the Village's financial situation will only worsen as the younger population migrates out and the aged population remains, which will increase the demand on municipal services while being able to pay less for these services. As such, the Village is simply not able to afford the Association's wage increases and other proposals. It is obvious from the lack of any discussion, other than the gratuitous regurgitation of the Village and Associations proposals, that no comparison, discussion or consideration was made in relation to the Village's ability to pay this award. What is even more devastating is that the State passed the tax cap shortly after the panel issued this award. This is going to create an even greater burden and send the Village closer to financial disaster, if not possibly push them into potential insolvency. It was a complete abuse of discretion by the majority of this panel not to analyze, or even discuss, these items. As such, this decision is completely arbitrary and capricious, and is an abuse of the Panel's discretion.

VI. Conclusion

The evidence, including the Association's own exhibits, conclusively established that when compared to other municipalities like Broome County, Binghamton, Endicott and Vestal, the Village actually paid its officers more than the others, especially when figuring in longevity, something that Endicott does not even pay. The Village is also more generous than the other comparables in terms of the health insurance, dental insurance, shift differentials, holidays, education incentive, On Call pay, physical fitness incentive and uniform allowances. In short, there is no rational basis to increase wages or other benefits when the Village police officers are already some of the best compensated in Broome County.

The evidence also clearly established that the Village does not have the ability to pay the Panel's award, which is estimated to exceed one million dollars in retroactive and current costs. Even Kevin Decker, the Association's own expert, conceded that the Village was probably worse off than it was before and that the effects of the recession can still be felt. Finally, the Village has established that the "taxpayer revolt" expressed by Mayor Hannon was certainly a matter of record as evidenced by the multi-year deficits, dissolution vote and the extensive press coverage. It is clear that the majority of the Panel did not consider the cost of their demands upon the Village taxpayers, many of whom can least afford a tax increase.

Moreover, the Village cannot afford the impact of a retroactive award. As such, the Village requests that, due to its financial condition, any award be prospective. See Prue v. Village of Syracuse, 201 AD2d 894, 607 NYS2d 756 (4th Dept. 1994).

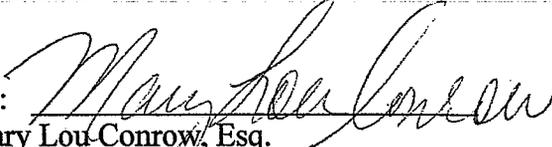
Accordingly, the Award is arbitrary and capricious in that it made generous increases in wages and benefits without a rational basis and without a single analysis of the ability to pay, which is a statutory requirement. Simply put, the Village pays its police officers more than comparable municipalities when considering wages, benefits, paid time off and health insurance.

The majority of the Panel disregarded the facts and the evidence and imposed an Award which was not warranted and which the Village tax payers can ill afford. The financial consequences of this decision could be catastrophic on the Village of Johnson City. As such, I strongly dissent for the above reasons and request that this dissent accompany the final Award when issued.

Dated: July 13, 2011

Respectfully submitted,

COUGHLIN & GERHART, LLP

By: 
Mary Lou Conrow, Esq.
Representative for Public Employer, Village of Johnson City
P.O. Box 2039
Binghamton, NY 13902-2039
(607) 723-9511

*Sworn to before me this
13th day of July, 2011.*

Ronitta J. McPherson

RONITTA J. MCPHERSON
Notary Public, State of New York
No. 01MC6141851
Qualified in Tioga County
Commission Expires February 27, 20 14

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

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

**PERB Case No:
IA2008-020; M2008-172**

JOHNSON CITY POLICE ASSOCIATION,

Petitioner,

**Concurrence by
Anthony V. Solfaro,
Employee Organization
Panel Member**

- and -

VILLAGE OF JOHNSON CITY,

Employer/Respondent.

-----X
The many inaccuracies in the dissent filed by the Employer's panel member has compelled me to file this concurring opinion.

The central basis for the dissent is a claim that the Chairman either did not consider the record evidence at all, or did not consider it properly, and that he either ignored or misapplied the several Taylor Law criteria that are applicable in interest arbitration proceedings, particularly the Employer's ability to pay what was awarded. Ms. Conrow comes to this conclusion because she believes the Chairman's opinion is not sufficiently detailed. Quite frankly, the assertions made by the dissent are preposterous.

This panel Chairman is one of the most experienced and one of the most respected of this state's interest arbitrators. Chairman Prosper has issued a great many interest arbitration awards in his lengthy career, often times serving as the panel chairman by mutual agreement of the parties. There were two days of hearing that produced testimonial and documentary evidence. There is a transcribed record of the proceedings. The very experienced public sector labor

attorneys who represented the Village and the Association filed extensive post-hearing briefs. The panel members met in executive session. The terms of the award state throughout that the panel, in rendering its award, carefully analyzed the last collective bargaining agreement, the prior interest arbitration award, the witnesses' testimony, the documentary evidence, the post-hearing briefs and the statutory criteria. The text of the award makes manifest that the Chairman and both panel members were keenly aware of the issues in dispute and the parties' arguments with respect thereto, particularly as the parties' panel members both sat on the panel for the prior interest arbitration award. The record evidence is summarized in considerable detail in the award, as are the parties' arguments and the statutory criteria.

The dissent's claim that the opinion had to contain far greater analysis of the record evidence and much more discussion of the statutory criteria is not the law in this state. To require more of a panel than was done would be to require verbiage just for the sake of verbiage. If anything, this award is more detailed than a great many others to which I have been a signatory, whether as a concurring or dissenting panel member, over the course of my thirty plus years in this business. All of the matters in dispute were decided upon the panel's evaluation of the entirety of the record and upon application of all of the statutory criteria. Ms. Conrow, herself an experienced public sector labor attorney, knows this full well and she knows that this award is very representative of those that have been issued since interest arbitration became a part of the Taylor Law in 1974.

The percentage base wage increases that are awarded and the adjustments that are made to a certain few economic fringe benefits by this panel majority are entirely consistent with the

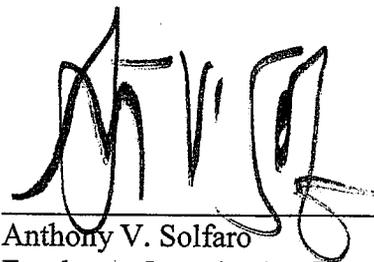
market increases and adjustments made during the June 2006-May 2008 period covered by this award and are justified by all of the Taylor Law criteria that are applicable in this proceeding, including comparability and ability to pay.

The dissent is simply dissatisfied with the merits of the award that deny this Employer what would have been an across-the-board reduction in the wages and benefits received by these police officers had its demands been awarded.

That said, I am not completely satisfied with this award. The Association's and my own firm belief that the record evidence and the statutory criteria warranted an award more favorable to these police officers than was rendered does not, however, establish that the panel and its Chairman failed to perform any statutory duty.

The panel was charged with a duty to issue such a fair and reasonable award and it has done so, despite the dissent's opinion to the contrary. It is for this reason that I concur with the award, except as may be otherwise stated as to any particular issue or issues.

Dated: August 4, 2011



Anthony V. Solfaro
Employee Organization Panel Member

SWORN TO BEFORE ME
THIS 4th DAY OF AUGUST, 2011

Lorraine J. McGuinness
LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 20 15