

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration between
TOWN OF NEWBURGH

Public Employer,

-and-

TOWN OF NEWBURGH POLICEMEN'S
BENEVOLENT ASSOCIATION,

Employee Organization.

PERB Case No. IA -2010-029/M2010-117

BEFORE:

Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

Richard P. Bunyan, Esq.
Employee Organization Panel Member

Elayne G. Gold, Esq.
Public Employer Panel Member

APPEARANCES:

For the Town of Newburgh
Roemer, Wallens, Gold & Mineaux, LLP
Aurelia M. Miller, of Counsel

For the Town of Newburgh Policemen's
Benevolent Association
Bunyan & Baumgartner
Joseph P. Baumgartner, Esq., of Counsel

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION
OPINION

AND

AWARD

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned was designated by the Chairman of the New York State Public Employment Relations Board ("PERB") to make a just and reasonable determination of a dispute between the Town of Newburgh ("Town") and the Town of Newburgh Policemen's Benevolent Association, Inc. ("PBA").

The Town is located in the northeast corner of Orange County and is adjacent to the City of Newburgh. Its population at the 2010 census was 29,801, which saw the Town for the first time exceed the population of the City of Newburgh with its population of 28,866. The Town is sometimes referred to as the "Crossroads of the Northeast" because Stewart International Airport is partially located in the Town and two major interstate highways cross the Town (Interstates 84 and 87). Located on the west bank of the Hudson River, the Town is bordered on the north by the Towns of Plattekill and Marlborough, both of which are in Ulster County, and on the west by the Town of Shawangunk, which is located in Ulster County, and the Town of Montgomery, which is located in Orange County, and its southern boundary is with the Town of New Windsor, which is also located in Orange County, save for a portion of the southeast boundary which abuts the City of Newburgh. The eastern boundary of the Town is the Hudson River, which separates the Town from the Dutchess County Towns of Poughkeepsie, Wappinger, and Fishkill. The area of the Town is 47 square miles, 43.7 of which is land and 3.3 of which is water.

The Town is governed by a Town Board consisting of four Councilpersons and the Town Supervisor. There is also a Town Clerk and Receiver of Taxes, both of which are elected. The Assessor of Real Property is appointed by the Town Board, as is the Town's Superintendent of Highways. The Town is one of 20 in Orange County and one of the eight towns in the County that contain no incorporated villages.

The Town is served by four different school districts: the Newburgh Enlarged City School District; the Unified Marlboro School District; the Valley Central School District; and the Walkkill Central School District. Firefighting services in the Town are provided by volunteer fire departments.

The PBA is the sole and exclusive bargaining agent for Sergeants, Police Officers, Detectives, and Youth Officers in the Town's Police Department. According to the record evidence, there are approximately 53 members of the bargaining unit. In 2010, the total PBA salaries were \$4,099,213.08, with \$268,749.82 paid out in overtime.

The Town and the PBA are parties to a Collective Bargaining Agreement for the period January 1, 2006 to December 31, 2008 (Joint Exhibit 3). The parties commenced negotiations towards a successor Agreement, and following their inability to reach settlement during negotiations, and subsequent mediation, impasse was declared and the parties engaged in mediation but were not able to reach an Agreement. On or about November 2, 2010, the PBA filed a petition for compulsory interest arbitration with PERB. (Joint Exhibit 1). The Town's

response to the petition was filed on or about November 22, 2010. (Joint Exhibit 2).

A hearing before the Panel was held on May 23, 2011. At the hearing both parties were represented by counsel and other representatives. The parties submitted numerous and extensive exhibits and documentation, and presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by both parties. After significant discussions and deliberations during the Executive Session phase of this process, this Panel, consisting of the Panel Chairman, the Employee Organization Panel Member and the Employer Panel Member reached at least a majority agreement on the terms of this Interest Arbitration Award. Agreement by each Panel Member on each item is indicated.

The positions taken by the parties are set forth in the Petition and the Response thereto, as well as in the numerous hearing exhibits and testimony offered at the hearing. The parties' positions, as relevant, will merely be summarized for the purposes of this Opinion and Award.

This Award covers the two year maximum period duration as set forth in Civil Service Law Section 209.4(c)(vi), and thus is to run for the period January 1, 2009 through December 31, 2010.

Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the terms and conditions of employment at issue for the period January 1, 2009 through December 31, 2010.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service

Law:

- a) comparison of the wages, hours and conditions of employment 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 interest 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.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "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."

Position of the PBA

According to the PBA, two recent Interest Arbitration Awards should be taken into account, both of which have identified comparable communities for Town and Village Police Departments in Orange County as all other Town and Village Police Departments in said County. Thus, the PBA identifies an Interest Arbitration Award between the *Village of Washingtonville Police Benevolent Association and the Village of Washingtonville*, PERB Case No. IA2008-23; M2008-185 (Siegel, Chairman) and an Interest Arbitration Award between the *Town of Cornwall Police Benevolent Association, Inc. and Town of Cornwall*, PERB Case No. IA2009-026; M2008-334 (Maher, Chairman). The rationale relied upon in both Awards for comparability, according to the PBA, establishes its position that members of the bargaining unit herein are to be considered comparable to all other Village and Town Police Officers that are employed in Orange County.

Position of the Town

According to the Town, the comparable communities that should be taken into account by the Panel are the City of Newburgh and the Towns of New Windsor, Wallkill, and Warwick. These comparables, the Town puts forth, are all located in Orange County and can be considered comparable in terms of population, per capita and median family income, geographic location, and police unit size. The Town acknowledges the City of Newburgh as an "outlier", but

asserts that its close proximity to the Town justifies the Panel utilizing it as a comparable community. The Town rejects the Union's proffered universe of comparables because of the Town's assessment that there are "huge disparities" in population and income in a number of the jurisdictions relied upon by the PBA such that they cannot be considered comparable in any true sense to the Town. It is the Town's position that the universe of comparables advanced by the PBA fails to offer the Panel a sufficiently clear picture of where the Town and the PBA should be located within an appropriate pool of comparables.

PANEL DETERMINATION ON COMPARABILITY

The Chairman of the Panel offers his observation, based on his years of experience in presiding over numerous police Interest Arbitration proceedings in New York, that often the strongest arguments raised concerning the question of comparables are those raised by a party in opposition to the comparables proffered by another party. Often, in the same proceeding, the opposing party in turn offers equally strong arguments against the comparables offered by the other party. It may well be, in other words, that it is easier to criticize a proffered list of comparables or a particular proffered comparable than make a cogent argument as to why one or another proffered universe should be accepted. The Chairman finds there is a trend that Interest Arbitration Panels have recently adopted whereby greater weight, lesser weight, or no weight at all is given to the comparables offered by both parties in connection with a particular proposal

under consideration. This approach favors inclusivity over exclusivity and allows for a consideration of the proposals placed before a Panel that might not be as result-oriented as would occur if exclusivity were to prevail by total rejection of comparables. The Panel thus will identify a list of most appropriate or primary comparables that does not exclusively favor or reject either party's proffered list.

A snapshot of the possibly relevant municipalities in Orange County, shows the following:

	Municipality	FY 2011 Market Value of Taxable Real Property (\$Millions)	2010 Census Population	Taxable Real Property Wealth Per Resident
1	Tuxedo Park [V]	\$574.1	623	\$921,570
2	Tuxedo [T]	\$1,341.9	3,624	\$370,268
3	Cornwall-on-Hudson [V]	\$422.0	3,018	\$139,830
4	Woodbury [T]	\$1,582.5	11,353	\$139,393
5	Newburgh [T]	\$3,840.1	29,801	\$128,858
6	Warwick [T]	\$3,946.6	32,065	\$123,083
7	Goshen [V]	\$669.2	5,454	\$122,705
8	Cornwall [T]	\$1,530.5	12,646	\$121,023
9	Chester [V]	\$474.4	3,969	\$119,538
10	Chester [T]	\$1,383.9	11,981	\$115,509
11	Goshen [T]	\$1,579.7	13,687	\$115,419
12	Greenwood Lake [M]	\$358.9	3,154	\$113,780
13	Florida [V]	\$314.4	2,833	\$110,967
14	Monroe [V]	\$923.6	8,364	\$110,426
15	Wallkill [T]	\$2,861.1	27,426	\$104,321
16	Blooming Grove [T]	\$1,812.2	18,028	\$100,519
17	Crawford [T]	\$911.8	9,316	\$97,880
18	Montgomery [T]	\$2,117.5	22,606	\$93,668
19	Highland Falls [V]	\$361.9	3,900	\$92,786
20	Harriman [V]	\$218.9	2,424	\$90,301
21	Washingtonville	\$519.3	5,899	\$88,024

Municipality	FY 2011 Market Value of Taxable Real Property (\$Millions)	2010 Census Population	Taxable Real Property Wealth Per Resident
[M] 22 New Windsor [T]	\$2,196.5	25,244	\$87,011
23 Deerpark [T]	\$596.5	7,901	\$75,495
24 Walden [V]	\$508.2	6,978	\$72,827
25 Mount Hope [T]	\$509.7	7,018	\$72,634
26 Maybrook [V]	\$193.6	2,958	\$65,441
27 Middletown [C]	\$1,527.6	28,086	\$54,390
28 Port Jervic [C]	\$471.7	8,828	\$53,437
29 Newburgh [C]	\$1,187.3	28,866	\$41,131

(PBA Exhibit 16, Exhibit D)

The available record evidence regarding size of bargaining unit discloses that the Town has 53 Officers in its unit, consisting of 46 Police Officers and 7 Sergeants; the Town of New Windsor has 35 Officers in its bargaining unit; the Town of Wallkill has 42 Officers in its bargaining unit; and Town of Warwick has 49 Officers in its bargaining unit. The City of Newburgh, it is noted, has 72 Officers in its bargaining unit. (Town Exhibit W, p. 1).

As to the municipalities identified in the preceding paragraph, the record discloses the following additional information:

Municipality	Per Capita Income	Median Household Income	Median Family Income	Individuals Below Poverty Level %	Families Below Poverty Level %
Newburgh (T)	32,884	78,346	84,966	4.1	1.8
New Windsor (T)	30,320	73,082	81,684	5.0	3.5
Newburgh (C)	15,956	37,391	41,432	25.5	20.6
Wallkill (T)	27,338	60,138	71,802	7.7	5.4
Warwick (T)	36,096	85,383	97,724	4.6	2.8

(Id, p. 2).

The Panel finds that the proffered comparables of the Town, particularly focusing on size of bargaining unit, population, and indices of wealth, reflect the most appropriate focus for the Panel's inquiries. As the Town observes, the City of Newburgh is somewhat of an "outlier" but the Panel has nevertheless accepted the City as one of the primary comparables because it is contiguous with the Town. In keeping with the Panel's observations above, however, the Panel will also take into account, though to a lesser extent, all other Towns and Villages in Orange County with Police Departments.

ABILITY TO PAY AND INTEREST AND WELFARE OF THE PUBLIC

Position of the PBA

The PBA notes that evidence in this regard is found in the record in the testimony of its expert financial witness Kevin Decker and a report of the Town's financial condition that was prepared by Decker Economics. The PBA urges the Panel to conclude, based on this evidence that the Town "remains in a healthy and stable economic condition." Thus, the PBA points to its evidence that the Town has the second highest taxable real property value in the County and is ranked fifth in taxable real property wealth per resident. In addition, the PBA points out that there has been "a relatively low increase in property tax from 2006 through 2011" in the Town as "compared to the rest of the County." The Town's "full tax rate" is also "relatively low" when compared to the rest of the County,

according to the PBA, and, in fact, the Town ranked last in the County regarding "tax as a percentage of income." In this regard, the PBA observes that its evidence establishes that the owner of a single family residence in the Town pays \$.72 per day for police protection that is provided by the Town. Additionally, the PBA asserts, the Decker Economic report illustrates that sale tax revenue in the Town "has recovered from the recession and early indications from 2011 show that it will surpass pre-recession rates." Actual revenue received by the Town in 2010, according to the PBA, already demonstrates that the Town has "come off the lows of the recession." The Town's unreserved fund balance, the PBA observes, was \$5,560,624, which was 35.15% of its expenditures, and its unreserved, unappropriated fund balance was \$3,872,168.

The PBA maintains that any wage package that would differ "dramatically" from salary and wage increases that have been given to police officers in comparable jurisdictions or a wage package that would find members of the PBA "earning significantly less" than fellow police officers in comparable jurisdictions would be contrary to "the interest and welfare of the citizens of the Town of Newburgh and the State of New York." The PBA emphasizes that the interest and welfare of the public cannot be limited to "financial" matters and, as a matter of "necessity", one must also take into account "the community's interest and welfare in having its police force continue to serve its essential needs and provide essential services." The Town's wage proposal, the PBA argues, is one that would "cause a decline in police morale", and would therefore not serve the

interest and welfare and the public. Further, the Town's wage proposal, the PBA puts forth, is "not supported by the evidence" in line with the Town's ability to pay, which ability, the PBA asserts, allows the Town "to pay the PBA demands."

Position of the Town

The Town notes that its Supervisor, Wayne Booth, who is also its Budget Officer, presented testimony at the instant arbitration as the financial expert for the Town. The evidence offered by Supervisor Booth, including supporting documentation, the Town puts forth, discloses that "its real property tax levy has nearly doubled since 2003 to 2011", in turn "causing tax rates to correspondingly increase." Thus, the Town notes a tax rate increase in 2009 of 22.40% and 14.21% in 2010. In keeping with what the Town describes as "this large fluctuation", the Town notes a 2012 settlement agreement with its largest taxpayer, Dynegy Inc., which has resulted in the Company paying only 40% of the Town's assessment. The settlement agreement, according to the Town, obliged it to pass on the cost to its taxpayers and "also resulted in a \$2,000,000 loss in revenue each year moving forward." A "huge tax increase in 2013", the Town predicts, will result if Dynegy's proposed market value is reduced to what Dynegy's seeks as its assessment.

Further, the Town claims there has been a dramatic decline in mortgage tax revenues, which it has been accompanied by reduction in interest income and building permits. The fall off in revenues, the Town notes, occurred at a time

when its "expenditures have been increasing exponentially." Pension contributions to the retirement system, the Town notes, are "mushrooming". Police pension costs, the Town observes, rose from \$657,082 in 2007 to \$676,914 in 2010. Also increasing, the Town maintains, are health insurance premiums, which increased 10.36% in 2009, 1.06% in 2010 and 13.1% in 2011.

These increases in the overall cost of health insurance premiums, the Town reminds the Panel, occurred in the context of only three PBA members making any contribution toward health insurance premiums.

The Town asserts that its struggle to maintain a budget required it to implement employee layoffs in 2009. According to the Town, the Panel must also take into account Supervisor Booth's explanation that the conclusion by Mr. Decker on behalf of the PBA regarding ability to pay because real property tax and tax rates that are lower in the Town than the average rates in Orange County cannot be considered "completely accurate because other communities provide services which make their tax bills higher." The Town also reminds the Panel that its "ability to pay does not equate to the ability to tax, nor the ability of the taxpayer to pay." The fact that the Town budgeted \$200,000 from its Contingency Fund to be used in 2011, in the Town's estimation, cannot be seen as a source to fund an Award since the "contingency fund is for unforeseen expenses; not to sustain operating costs." Any "healthy" fund balance identified by Mr. Decker, the Town puts forth, must be seen as a source of "working capital for non-reoccurring expenses and as a shock absorber to level out the tax rates."

The Town emphasizes its position that it "must consider what it should do, not what it can do" and "[i]n order to maintain its financial stability, the Town must be fiscally responsible and manage its resources in a manner that takes into account the very real economic challenges that loom on a national, state and local level."

**PANEL DETERMINATION ON THE TOWN'S ABILITY TO PAY
AND THE INTEREST AND WELFARE OF THE PUBLIC**

The Panel would note in the first instance that the Town, not surprisingly, offers no disagreement with the PBA's assertion that the interest and welfare of the public are served by a Police Department whose members are adequately compensated. Indeed, given the perilous nature of a police officer's duties, the training and dedication necessary to become an effective officer, and the need of a municipality to attract and retain officers for a quality police force; adequate compensation directly serves the interest and welfare of the public. Needless to say, the parties herein respectfully differ in their opinions as to what constitutes adequate compensation for members of the Town's Police Department.

Regarding ability to pay, the Chairman of the Panel would observe that the evidence offered by both parties on this issue is credible. That is to say, the fiscal realities visited on the Town, which includes the beleaguered national and state economy and declining revenues, are factors that allow the Town to point to practical limitations on its ability to pay. It is often been remarked that the ability

to pay is not equal to the Town's ability to tax. This observation is particularly apt where the Town has significantly increased its real property tax rates from 2003 to 2011 and is also facing a further loss of tax revenues due to loss of revenues from the Town's largest taxpayer, Dynegy, Inc. Nor can the Chairman of this Panel blink away the fact that the Town made a determination, clearly not an easy one, to implement employee layoffs in 2009.

The limitations on the Town's ability to pay do not mean, however, that the Town has no ability to fund modest increases in salaries, consistent with the other applicable statutory criteria. Thus, the PBA's presentation of evidence on ability to pay does reflect that fact that some upturn in actual revenue received by the Town. Additionally, the Chairman notes recent savings from unfilled and eliminated positions in the Police Department, and in other departments of the Town.

Further, the Chairman of the Panel takes note of the Town's unreserved and unappropriated fund balance as being relevant to the assessment of this issue. At the same time, the Chairman of the Panel must engage in a prudent assessment of the amount of increases awarded to avoid imposing too great a strain on the Town's fiscal situation, which could lead to adverse effects on the interest and welfare of the public. Thus, the Chairman of the Panel has carefully taken into account ability to pay in determining the appropriate increases in wages and benefits provided by this Award.

BASE WAGES

Position of the PBA

The PBA incorporates its "ability to pay" arguments in support of its proposal that for each year of the Award there be a five percent increase in base wages. Additionally, the PBA observes that its view of its proffered comparables supports its wage proposal, which it asserts is in keeping with that which is provided to the Police Officers in its proffered comparable. It notes the testimony of Mr. Decker and his ability-to-pay analysis, focusing particularly on Exhibit O thereto. This Exhibit, the PBA observes, references Decker's analysis as to the "impact of pay raise to PBA members."

Thus, the PBA observes that Mr. Decker noted that the Town spent approximately \$4.5 million in 2009 and \$4.1 million in 2010 for salaries, to include wages as well as overtime, holiday pay, and longevity. Focusing on base salary, Mr. Decker, the PBA points out, concluded that a "1% increase in salary for the bargaining unit is estimated at between \$39,700 and \$43,700." (Exhibit O, to Decker Analysis). Accordingly, the PBA observes that a 1% increase, which would be "inclusive of contributions for FICA ... and NYS Pension", as calculated by Mr. Decker, would cost approximately \$53,600. A 4% salary increase, the PBA thus observes, according to the Decker Analysis, "results in a total cost increase of approximately \$214,400." (Id.). Were this amount "financed with an increase in the real property tax", the PBA notes, based on Mr. Decker's assessment, "it would increase the assessed value tax rate from \$11.50 per

thousand to \$11.67 per thousand, an increase of 1.5%” resulting in an “impact on owner of average single family home of \$11.02 per year.” (Id.). Moreover, this salary increase, the PBA argues, could, per observations set forth in Decker’s testimony, be paid out of the fund balance or from the existing Police Department budget. The PBA emphasizes that an Award below this amount would find its members “earning significantly less than police officers in comparable jurisdictions.”

Position of the Town

A 5% increase over the years of the Award, the Town contends, must be considered “unreasonable and untenable given the Town’s fiscal constraints.” It is the Town’s position that a consideration of history of wage increases Town-wide also reveals the Union proposal to be “unreasonable.” The Town points out the important fact that CSEA settled its contract for the years 2009 through 2012 with the Town by accepting a 0% increase in 2009, a 2% increase in 2010 and 2011, and a 3% increase in 2012. Such increases, the Town observes, were also provided to non-Union personnel, and, the Town asserts, “[i]t would be patently unfair to all other Town personnel to accept the Union’s wage proposal, especially when every other employee accepted a 0% wage increase in 2009.”

Additionally, the Town asserts that a review of its comparables would indicate that the Town provides salaries that are either the same or higher than the other comparables. The Town of New Windsor, the Town notes, recently

entered into an agreement with its PBA in which a 1.5% wage increase for members with three years of service became effective December 31, 2010 and a 1.5% increase for members effective July 1, 2012. A consideration of all of the proffered comparables of the PBA, according to the Town, would still support the conclusion that "salaries paid to the Union are on par with other Orange County police departments." The Town rejects any reliance on the Interest Arbitration Award issued for the Town of Cornwall and its PBA since, the Town puts forth, "a review of the salary schedule undeniably shows that even with these large wage increases [9.5% compounded for two years] Cornwall police officers are grossly underpaid." Thus, the Town urges the Panel to "look beyond the percent increases awarded in the Cornwall Award and instead, look at the actual wages earned by officers in the Town of Cornwall."

PANEL DETERMINATION ON BASE WAGES

The Chairman of the Panel has considered carefully the statutory criteria, balancing the reasonable economic needs of the PBA members with the obligations of the Town in the context of what must be considered fair and reasonable in a difficult economy. In considering the parties' positions, the Panel Chairman notes that the type and degree of hazards faced by PBA members as well as the combination of physical and mental skills required of them is such that the Town's position based on non-Union employees in its Agreement with CSEA, while relevant to an overall assessment of wages, does not present a focus of

appropriate comparables. In short, and offering no disrespect to the important work performed by civilian employees of the Town, the fact of the matter is that police officers must be compared to other police officers. The Taylor Law mandates such a comparison, and determining police salaries based on what was received by CSEA represented employees of the Town is not within the Taylor Law criteria, to which this Panel must adhere.

In this regard the Chairman of the Panel finds it instructive to consider the years 2008, 2009, and 2010 for the primary comparables.

Municipality		2008	2009	2010
City of Newburgh	First year	\$46,727	Expired 12/08	Expired 12/08
	Highest Salary (6 th Year)	\$65,369		
Town of New Windsor	First year	\$47,633	\$49,062	\$51,025
	Highest Salary (6 th year)	\$62,826	\$64,711	\$67,299
Town of Wallkill	First year	\$43,808	\$44,025	\$46,226
	Highest Salary (6 th year)	\$65,732	\$69,532	\$73,329
Town of Warwick	First Year	\$49,077	\$50,543	\$52,062
	Highest Salary (5 th year)	\$62,213	\$64,085	\$65,998
Town of Newburgh	First year	\$45,292	Expired 12/08	Expired 12/08
	Highest Salary (6 th year)	\$68,120		

The above information discloses that the PBA members at the top salary step during their sixth year earned a base wage above all the comparables in 2008. New Windsor Police Officers, it is noted, received a wage increase of 3% both in 2009 and 2010 and Town of Warwick Officers received a wage increase of 3% in 2009 and 3% in 2010. Further, the Panel Chairman would note the nearly all other Police Departments in Orange County received 3% or better in 2009. The closest comparable in terms of population and size of department, the Town of Wallkill, finds its highest step Officers being paid \$69,532 in 2009 and \$73,329 in 2010.

The PBA members, among the primary comparables, fared well in 2008. To keep pace with the primary comparables and to stay consistent with Orange County raises in general for all Departments, as well as keeping the PBA members somewhat comparable with the closest match, the Town of Wallkill, the Panel Chairman finds that an appropriate across-the-board wage in 2009 is 2% and an appropriate across-the-board increase in 2010 is 3%

AWARD ON BASE WAGES

ARTICLE VII – WAGES

Effective January 1, 2009 each step on the salary schedule shall be increased by 2%, retroactive to January 1, 2009. Effective January 1, 2010 each step on the salary schedule shall be increased by 3%, retroactive to January 1, 2010.

RB
Concur
Richard P. Bunyan

Dissent

Concur

EG
Dissent
Elayne G. Gold

LONGEVITY

Position of the Parties

The PBA seeks to convert longevity to a percentage of an Officer's pay. Currently, the parties provide for yearly longevity payments of \$500.00 for completion of five years; \$1,000.00 for a completion of 10 years; \$1,500.00 for a completion of 15 years; \$2,000.00 upon completion of 18 years; and \$2,200.00 upon completion of 20 years of service. The PBA's proposal seeks a longevity increase of 1.0% of base salary at five years; 1.5% at 10 years; 2% at 13 years; 2.5% at 15 years; 3% at 18 years; and 4% at 20 years, with the proposal to take effect January 1, 2011. The Town maintains that it cannot afford any increases in this area. Essentially, the parties' positions on longevity mirror their arguments as to the PBA's base wage proposal.

PANEL DETERMINATION ON LONGEVITY

A review of the comparables discloses:

Municipality		2008	2009	2010
City of Newburgh			Expired 12/08	Expired 12/08
	7 – 9 years	\$950		
	10- 14 years	\$1,450		
	15 – 19 years	\$1,950		
	20 years +	\$2,250		
Town of New Windsor				
	8 th year	add 2%	No change	add 2.5%
	11 th year	add 2%	No change	add 2.5%

Municipality		2008	2009	2010
	14 th year	add 2%	No change	add 2.5%
	17 th year	add 2%	No change	add 2.5%
	20 th year	add 2%	No change	add 2.5%
Town of Walkill				
	6 – 8 years	\$500	No change	No change
	9 – 11 years	\$975	No change	No change
	12 – 14 years	\$1,425	No change	No change
	15 – 17 years	\$1,925	No change	No change
	18 years +	\$2,425	No change	No change
Town of Warwick				
	Start at 5 years	\$29.91	\$30.81	\$31.73
	Start at 8 – 11 years	\$31.31	\$32.25	\$33.22
	Start at 12 – 15 years	\$32.79	\$33.77	\$34.78
	Start at 16	\$34.32	\$35.35	\$36.42
	Start at 17 – 18	\$35.94	\$37.02	\$38.13
	Start at 19 & Above	\$37.63	\$38.76	\$39.92
Town of Newburgh				
	Upon completion of 5 years	\$500	Expired 12/08	Expired 12/08
	Upon completion of 10 years	\$1,000		
	Upon completion of 15 years	\$1,500		
	Upon completion of 18 years	\$2,000		

Municipality		2008	2009	2010
	Upon completion of 20 years	\$2,200		

The Panel Chairman would observe that the overall salary structure naturally must be considered, along with all other statutory criteria, in assessing an appropriate Award for longevity. It is the Chairman of the Panel's determination that the PBA's proposal for longevity payments to change to a percentage increase would be excessive. Further, the Panel Chairman notes that it would be appropriate to issue an Award that would not increase longevity in 2009 to provide some relief to the Town for that year. Finally, the Chairman of the Panel believes that the determination on longevity in this Award is consistent with the primary comparables. Accordingly, the Chairman of the Panel hereby awards an additional \$100.00 to each longevity step, effective January 1, 2010.

AWARD ON LONGEVITY

ARTICLE IX

Effective January 1, 2010, \$100.00 to be added to each longevity step. So that employees who have completed 5 years of service will receive yearly longevity payments of \$600; employees who have completed 10 years of service shall receive yearly longevity payments of \$1,100; employees who have completed 15 years of service shall receive yearly longevity payments of \$1,600; employees who have completed 18 years of service will receive yearly longevity payments of \$2,100; and employees who have completed 20 years of service shall receive yearly longevity payments of \$2,300.

RB
Concur

Richard P. Bunyan

Dissent

Concur

Elayne G. Gold

E. G.
Dissent

HEALTH INSURANCE

The Town seeks to amend Article XXI to require Town Police Officers hired on or after June 1, 2010 to contribute 20% towards the health insurance premium cost of family or individual coverage, during the term of their employment with the Town. Currently, the only contribution for health insurance premiums is set forth in Section 5 of Article XXI for employees hired on or after January 1, 2007 who opt for family coverage through the New York State Health Insurance Program or a comparable program. It is noted that the current contribution required ends upon completion of the sixth year of service. The Town claims that its evidence presented at the hearing conclusively demonstrates that "the rapid and continued rise in health insurance premium rates, such that the premium rates for single coverage have been increased approximately 23% and family rates have increased approximately 26% since 2007. It has reached the point, the Town maintains, that it is paying the same for health insurance coverage as it did in 2007 when there were 13 fewer Officers.

The Town notes that there are only three PBA members now contributing toward health insurance premiums. The Town underscores the necessity, from its perspective, of obtaining relief in this area to achieve "economic stability." In addition, the Town also notes that CSEA agreed to a 20% health insurance contribution for members hired after the CSEA Agreement was ratified.

PANEL DETERMINATION ON HEALTH INSURANCE

The Chairman of the Panel agrees that the Town is accurate in describing increase in premium rates as "dramatic". This observation is demonstrated as follows:

<u>Year</u>	<u>Single</u>	<u>Family</u>	<u>Percent Increase</u>
2007	\$564.84	\$1,198.07	4.7%
2008	\$592.38	\$1,258.78	6.3%
2009	\$598.58	\$1,282.17	10.36%
2010	\$612.34	\$1,330.93	1.06%
2011	\$693.92	\$1,513.92	13.1%

(Town Exhibit H)

The actual costs to the Town are set forth below:

Yr.	Single	# of Members Enrolled	Total	Family	# of Members Enrolled	Total	Grand Total
2007*	\$564.84	9	\$61,002.72	\$1,198.07	52	\$747,595.68	\$808,598.40 for 61 members
2008*	\$592.38	9	\$63,977.04	\$1,258.78	49	\$740,162.64	\$804,139.68 for 58 members
2009*	\$598.58	8	\$57,463.68	\$1,282.17	45	\$692,371.80	\$749,835.48 for 53 members
2010*	\$612.34	10	\$73,480.80	\$1,330.93	44	\$702,731.04	\$776,211.84 for 54 members
2011*	\$693.92	7	\$58,289.28	\$1,513.92	41	\$744,848.64	\$803,137.92 for 48 members

* Only three members contribute each year. (Town Exhibit I).

In light of all statutory criteria, but particularly focusing on the Town's need to maintain some kind of economic stability, which in turn serves the interest and welfare of the public, the Chairman of the Panel finds that the time has come for the Town to receive a more significant level of contribution toward health insurance premiums from PBA members. Additionally, it is clearly the current view and trend that all employees should contribute to health insurance throughout the course of their employment. By providing that new employees hired after the date of this Award will contribute towards health insurance for the full term of their employment, the Panel is providing the Town with significant future savings.

Accordingly, the Panel hereby Awards a 15% contribution toward health insurance premiums, individual and family, for all members of the bargaining unit who are hired after the date of this Award.

AWARD ON HEALTH INSURANCE

ARTICLE XXI

For all employees hired after the effective date of this Award, a health insurance contribution of 15% toward health insurance premiums provided in accordance with Article XXI shall be required for the term of employment with the Town.

Concur
Richard P. Bunyan

RB

Dissent

EG

Concur
Elayne G. Gold

Dissent

HOLIDAYS

Two Town proposals, Nos. 5 and 17, seek to amend the parties' Agreement in a manner consistent with a September 3, 2009 Memorandum of Agreement reached by the parties. That Memorandum (Joint Exhibit 2A) settled a June 19, 2009 grievance and confirmed the parties agreement to add the underlined language to Article XXVII – Tour of Duty, Section II, as follows:

The tour of duty for Detectives and Youth Officers shall be Monday through Friday, with weekends and holidays off. The tour shall be a rotation of five (5) days on duty and two (2) days off duty, five (5) days on duty and two (2) days, five (5) days on duty and two (2) days on duty and four (4) days on duty and three (3) days off duty.

If a scheduled holiday falls on the Friday of the “(4) days on duty and (3) days off duty” week, the Detective or Youth Officer will have the next scheduled working day off duty. (new language is underlined).
(Joint Exhibit 2)

The balance of the existing language contained in Article XXVII, Section II will continue as it appears in the 2006-08 Agreement. The new additional language is also relevant to Article XV, Section II and should be noted therein as well.

PANEL DETERMINATION ON TOWN PROPOSALS NOS. 5 AND 17 (JUNE 19, 2009 MEMORANDUM OF AGREEMENT)

The Panel finds that it is appropriate to Award the Town Proposals Nos. 5 and 17 since the Award would do no more than confirm and place into the Agreement the existing Memorandum of Agreement between the parties.

**AWARD ON TOWN PROPOSALS NOs. 5 AND 17
(JUNE 19, 2009 MEMORANDUM OF AGREEMENT)**

Article XXVII, Section II is amended by adding the following language thereto:

If a scheduled holiday falls on the Friday of the "(4) days on duty and (3) days off duty" week, the Detective or Youth Officer will have the next scheduled working day off duty.

RB
Concur Dissent
Richard P. Bunyan

Eg
Concur Dissent
Elayne G. Gold

RETROACTIVITY

This proposal of the Town seeks to delete Article XXVI on retroactivity because it "sunsets."

PANEL DETERMATION ON RETOACTIVITY

The Town's observation about the language of Article XXVI is accurate. There is no basis for continuing to include such language in the parties' Agreement. Clearly, the subject language is now moot.

AWARD ON RETROACTIVITY

Article XXVI is deleted in its entirety.

RB
Concur Dissent
Richard P. Bunyan

Eg
Concur Dissent
Elayne G. Gold

**TOUR OF DUTY
(ARTICLE XXVII, TOWN PROPOSAL NO. 18)**

Currently, Section II of Article XXVII addresses "on call" pay by providing that every Detective and Youth Officer is to receive two hours of compensation at the rate of time and one half per day, with the exception that ID Officer/Detective is to receive three hours of such compensation for "on call." In its Proposal 18, the Town seeks to amend the language by removing "per day" from the existing contract language, consistent with the testimony of Chief Mahoney that payment is made "per week" and not "per day." This longstanding practice, according to the Town, has been accepted by the PBA and it is abundantly clear that the current contract language is a typographical error.

**PANEL DETERMINATION TOUR OF DUTY
(ARTICLE XXVII, TOWN PROPOSAL NO. 18)**

The Panel finds the unrefuted evidence offered by the Town supports the conclusion set forth by the Town and provides the rationale for awarding the Town its proposal.

**AWARD ON TOUR OF DUTY
(ARTICLE XXVII, TOWN PROPOSAL NO. 18)**

Effective the date of this Award, Article XXVII, Tour of Duty, at Section II, subparagraph c shall read as follows:

Each Detective and Youth Officer assigned to be on-call will receive two (2) hours of compensation at time and a half; except the I.D. Officer/Detective who will receive three (3) hours of compensation at time and one half per week for "on-call".

_____	<u>RB</u>	_____	_____
Concur	Dissent	Concur	Dissent
Richard P. Bunyan		Elayne G. Gold	

**TOUR OF DUTY
(ARTICLE XXVII; TOWN PROPOSAL NO. 19)**

The record shows that the parties executed a Memorandum of Agreement dated September 3, 2009 which added a new Section IV (D.A.R.E.) to Article XXVII. In its Proposal No. 19, the Town seeks to add this Memorandum of Agreement to the parties' Agreement.

**PANEL DETERMINATION ON TOUR OF DUTY
(ARTICLE XXVII, TOWN PROPOSAL NO. 19)**

The Panel finds that the September 3, 2009 Memorandum of Agreement, by stating it is amending Article XXVII by adding a new Section IV, justifies awarding the Town Proposal 19.

**AWARD ON TOUR OF DUTY
(ARTICLE XXVII, TOWN PROPOSAL NO. 19)**

Effective the date of this Award, Article XXVII is amended by adding a new

Section IV, as follows:

(a) A bargaining unit employee of the Town of Newburgh Police Department who is assigned to instruct the D.A.R.E. curriculum in participating Elementary Schools shall work a tour of duty as described above in Article XXVII (Tour of Duty) Section II for the period of time that the said employee is actually engaged in the D.A.R.E. instruction. The choice of participating schools and the duration of the period of time for instruction of D.A.R.E. shall be in the sole discretion of the Town Board. Participation by the Town in the D.A.R.E. Program will be at the sole discretion of the Town Board.

(b) The initial duration for the instructional (D.A.R.E.) period will commence on the first day of the payroll cycle closest to October 1st of each year and will conclude at the end of the payroll cycle closest to May 31st of each year.

(c) The normal workday will be from 8:00 A.M. to 4:00 P.M. with the flexibility for the employee to modify such hourly work schedule with the pre-approval of the Chief of Police or his/her designee. (Subdivision a, b & c of Section II, above, will not apply to said employee). The employee assigned to instruct D.A.R.E. will follow the Holiday Schedule, Article XV Section I, and will observe Article XV Section II as per employees working a Detective schedule. During school holidays and vacations the employee will remain on the tour of duty described in Article XXVII, Section II, and perform tasks and duties as directed by the Chief of Police or his/her designee.

(d) The employee who is designated as the D.A.R.E. Officer shall receive a percentage increment above the employee's base salary during the duration of the assignment as same is detailed in Appendix A (Detective and Youth Officers).

(e) An employee, when working outside the above described duration (subsection "b"), will be paid pursuant to Appendix A in reference to their pre-existing (non D.A.R.E.) title.



 Concur Dissent
 Richard P. Bunyan



 Concur Dissent
 Elayne G. Gold

**RESIGNATION AND DISCIPLINE
(ARTICLE XXIX, TOWN PROPOSAL NOS. 21, 22, & 23)**

There are three Town Proposals, Nos. 21, 22, and 23, that seek to amend Article XXIX, Resignation and Discipline. Town Proposal No. 21 seeks to amend Section IV.f by deleting the term "hearing" and replacing it with the word "meeting." The Town points to the testimony of Supervisor Booth that the Town, when a disciplinary grievance is appealed to the Town Board, does not hold a "formal hearing" but a "meeting." The parties' Agreement, the Town further observes, is silent as to what is meant by the term "hearing", and the Town seeks an Award to allow it to avoid an "insurmountable and elusive standard that was not contemplated by either party."

In Proposal No. 22, the Town seeks to amend Section IV.g of Article XXIX by requiring that a Demand for Arbitration be filed by the Union with the New York State Public Employment Relations Board. Although the language of the current Agreement is silent on this point, the Town notes it has been the "practice" of the Union to file its arbitration demands with PERB, which the Town asserts is in keeping with the Taylor Law. Accordingly, the Town claims that its Proposal No. 22 should be awarded because of the clarity it would bring to the parties' Agreement.

Proposal No. 23, the Town observes, seeks an amendment of Section VI.2 by increasing the maximum penalty that may be imposed as command discipline to up to 64 hours. This proposal, as the Town views it, must be considered "beneficial" to the operation of the Police Department and the Officers by giving the Chief flexibility, on the one hand, "to impose a more stringent penalty" while, on the other hand, "keeping discipline out of the formal disciplinary process." Moreover, the Town observes that an Officer who is be unwilling to accept the command discipline would continue to have the right to refuse it, which means that the proposal "does not diminish the Union's rights or benefits with respect to disciplinary issues."

**PANEL DETERMINATION ON RESIGNATION AND DISCIPLINE
(ARTICLE XIX, TOWN PROPOSALS NOs. 21, 22, & 23)**

The Panel finds that the Town has asserted sound arguments and, to the extent necessary, evidentiary support for these proposals, none of which work to create an adverse effect on members of the bargaining unit. Accordingly, the Panel awards the Town its Proposals No. 21, 22, and 23.

**AWARD ON RESIGNATION AND DISCIPLINE
(ARTICLE XIX, TOWN PROPOSALS NOS. 21, 22, & 23)**

Effective the date of this Award, Article XIX, Resignation and Discipline, is amended as follows:

Section IV.f is amended by deleting the term "hearing" and replacing said term with "meeting."

Section IV.g is amended by adding thereto the language, "said Demand for Arbitration is to be filed with the New York State Public Employment Relations Board."

Section VI.2 is amended by deleting there from the language "thirty-two (32) hours" and in its place adding the language "sixty-four (64) hours."

RB
Concur Dissent
Richard P. Bunyan

Eg
Concur Dissent
Elayne G. Gold

**GRIEVANCE PROCEDURE
(ARTICLE XXX, TOWN PROPSOAL NO. 24)**

Currently, "days" are not been defined by the parties in their Grievance Procedure set forth in Article XXX of their Agreement. The Town proposes that "days" be defined as "work days", which "gives both parties the maximum amount of time to react and respond to grievances." The Town emphasizes that this proposal, if awarded, would provide "greater clarity and ease of administration" of the parties' Grievance Procedure for both the Town and the PBA.

**PANEL DETERMIANTION ON GRIEVANCE PROCEDURE
(ARTICLE XXX, TOWN PROPSOAL NO. 24)**

The Panel finds that the Town's proposal should be awarded. As the Town observes, "days" are not defined in Article XXX, which could create confusion as the parties seek to navigate through the grievance procedure and assess their respective positions. There is no adverse effect that the awarding of this proposal would have on the PBA.

**AWARD ON GRIEVANCE PROCEDURE
(ARTICLE XXX, TOWN PROPSOAL NO. 24)**

Effective the date of this Award, Article XXX, Grievance Procedure, at Section A, Step 1, Step 3, and Step 4, is amended by deleting therefrom the term "days" when said term is used alone (as opposed to "calendar days") and inserting in its place "work days."

RB
Concur Dissent
Richard P. Bunyan

EG
Concur Dissent
Elayne G. Gold

**GML SECTION 207-c BENEFITS
(APPENDIX B, TOWN PROPOSAL NO. 25)**

This proposal on the part of the Town seeks to amend Appendix B regarding the parties' General Municipal Law §207-c procedure. Section 20 of Appendix B, as currently worded, allows an employee "to accrue all economic fringe benefits provided by the Collective Bargaining Agreement" when the Police Officer is on leave under 207-c "for a period of four (4) months or less" and, when the Officer is on leave under 207-c "for a period exceeding" four months, the Officer no longer receives uniform allowance or sick leave bonus until returning to full duty but receives the remainder of the "economic fringe benefits." The Town notes the testimony of Supervisor Booth that the interpretation related to fringe benefits other than uniform allowance and sick leave bonus has been in place because of "past practice."

The Town's proposal (No. 25) seeks to amend Section 20 so that an Officer whose GML 207-c leave has exceeded four consecutive months "shall no longer receive entitlement to personal leave, vacation leave, or any other fringe benefits." As the Town puts it, the amendment is sought because present conditions require it to be "mindful of the economic impact and intent of such fringe benefits", particularly "when considering such benefits as personal and vacation leave." Officers should not be allowed to "accrue fringe benefits", under the circumstances identified in the proposal, the Town claims, when such

benefits are "intended as recompense for full duty service and performance to the Town and its constituents."

**PANEL DETERMINATION ON GML SECTION 207-c BENEFITS
(APPENDIX B, TOWN PROPOSAL NO. 25)**

The Panel, taking note of the ability to pay concerns of the Town, and interest and welfare of the public criteria, understands the logic and evidence in support of the Town's proposal. Nevertheless, it also appreciates the importance to Officers of receiving other than salary during an extended GML § 207-c leave. In light of all statutory criteria, the Panel will award the Town its proposal to the extent that an employee on GML § 207-c status for a period exceeding six (6) consecutive months will no longer receive entitlement for personal leave, vacation leave or any other fringe benefit except health insurance benefits. For those Officers currently on GML § 207-c leave, the six (6) month period will commence from the Date of this Award.

**AWARD ON GML SECTION 207-c BENEFITS
(APPENDIX B, TOWN PROPOSAL NO. 25)**

Appendix B, GML §207-c Procedure, at Section 20 shall be amended such that any employee who is on GML §207-c status for a period exceeding six (6) consecutive months shall no longer receive entitlement to personal leave, vacation leave, or any other fringe benefits except health insurance benefits.

Concur
Richard P. Bunyan



Dissent



Concur
Elayne G. Gold

Dissent

**DRUG AND ALCOHOL TESTING
(APPENDIX D, TOWN PROPOSAL NO. 26)**

The Town seeks to amend Appendix D, which is its Drug Policy and Testing Plan, by amended the title and content thereof so that it will apply not only to drug testing but "alcohol testing." The Town observes that this proposal seeks to "expand" the coverage of Appendix D, in keeping with the Town's goal of having "drug and alcohol testing Town-wide." It notes that its Handbook for non-Union personnel and the CSEA contract allows for such drug and alcohol testing, and claims that members of the PBA should be held to the same standard as other Town personnel.

**PANEL DETERMINATION ON DRUG AND ALCOHOL TESTING
(APPENDIX D, TOWN PROPOSAL NO. 26)**

The Panel finds that the interest and welfare of the public would be served by granting the Town its proposal. The safety concerns that inform this proposal are obvious. In light of all statutory criteria, the Panel will award the Town its proposal.

**AWARD ON DRUG AND ALCOHOL TESTING
(APPENDIX D, TOWN PROPOSAL NO. 26)**

Effective the date of this Award, Appendix D, Town of Newburgh Police Department Drug Policy and Testing Plan shall be amended such that the title and content will apply to drug and alcohol testing.

Concur
Richard P. Bunyan

RB

Dissent

Eg

Concur
Elayne G. Gold

Dissent

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are resolved, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not made an Award on all of the demand submitted by each of the parties.

AWARD ON REMAINING ISSUES

Except as set forth in this Award, the PBA's demands are hereby rejected.

Except as set forth in this Award, the Town's demands are hereby rejected.

RETENTION OF JURISDICTION

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

DURATION OF AWARD

Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi)(Taylor Law), this Award is for the period commencing January 1, 2009 through December 31, 2010.

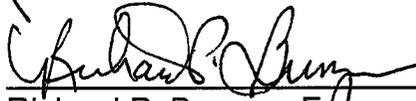
Accordingly, the Panel, after consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is the Panel Award.



Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

2-28-12

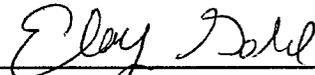
Date of Award



Richard P. Bunyan, Esq.
Employee Organization Panel Member

2/27/2012

Date



Elayne G. Gold, Esq.
Public Employer Panel Member

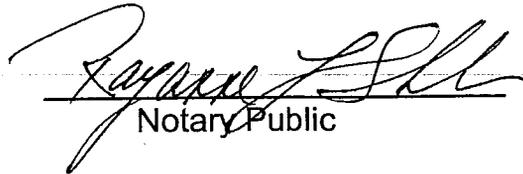
2/28/2012

Date

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

On this 28 day of February 2012 before me personally came and appeared Jeffrey M. Selchick, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

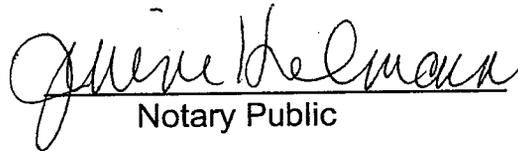
RAYANNE L. SHEEHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 5039263
Commission Expires February 13, 2015


Notary Public

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

On this 27 day of Feb, 2012 before me personally came and appeared Richard P. Bunyan, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

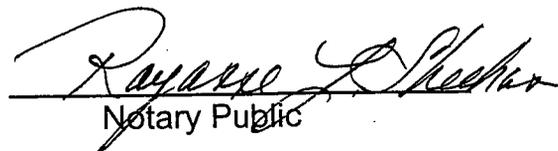
Jenine Heckmann
Notary Public, State of New York
No. 01HE6209463
Qualified in Rockland County
Commission Expires July 27, 2013


Notary Public

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

On this 28 day of February 2012 before me personally came and appeared Elayne G. Gold, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

RAYANNE L. SHEEHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 5039263
Commission Expires February 13, 2015


Notary Public

DISSENT OF PUBLIC EMPLOYER PANEL MEMBER

In the Matter of the Interest Arbitration between the Town of Newburgh and
the Town of Newburgh Policeman's Benevolent Association

PERB Case No.: IA2010-029; M2010-117

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
MAR 02 2012
CONCILIATION

Elayne G. Gold, Esq., the Public Employer Panel Member, hereby dissents from that part of the Interest Arbitration Award that provides a wage adjustment to the members of the Town of Newburgh PBA. In particular, Panel Member Gold cannot agree to the 2% retroactive to January 1, 2009, followed by a 3% retroactive and effective January 1, 2010.

For the most part, this Interest Arbitration Panel accepted the Town proposed and selected comparables of the Town of New Windsor, the Town of Wallkill, the Town of Warwick, and the City of Newburgh. When looking at those comparable municipalities, and as more fully detailed in the Town's Comparable Study (Town Exhibit "W"), one easily sees that the Town not only provides same or similar salaries, but in most instances the salaries provided by the Town of Newburgh well exceeds those of the other municipalities. Merely looking at the percentage increases does not tell the whole picture, and that is why a review of the Comparable Study reveals that at least on average, if not better than average, the Town of Newburgh more than sufficiently compensates its police personnel.

Although other non-uniform bargaining units within the municipality are not generally viewed as "comparable" by an Interest Arbitration Panel, in a jurisdiction the size of a town (as opposed to a county or a city) one needs to look at the historical treatment of all employees town wide. Many times what one will find is that a town seeks consistency in terms of how it treats those employees with respect to wages and other broad based terms and conditions of employment. Town Exhibit "E" shows a history, dating to 2006, as to how the Town of Newburgh has treated its unionized and non-unionized employees. What one will find from a review of Exhibit "E" is that in 2006, 2007, and 2008 all unionized employees (both CSEA and Police) received a 4%

wage adjustment; non-union received a 3.5% in 2006 but nevertheless in 2007 and 2008, also received a 4% increase.

In 2009 the CSEA Bargaining Unit agreed to a 0% wage adjustment and only a 2% wage adjustment in 2010. Although CSEA is not a unit of police personnel or any uniformed service, the CSEA spent many months at the bargaining table working hard and making hard decisions to reach contractual agreement. The negotiations, like those with the PBA, were during a time of fiscal downturn and Town layoffs. The deviation by this Panel from the CSEA Bargaining Units' collectively negotiated contract for years that overlap this Interest Arbitration Award puts the Town in a position of deviation from its longstanding "practice" of consistency – a practice which the Town considers both fair and equitable.

For these reasons, Public Employer Panel Member Gold must dissent from the wage portion of this Interest Arbitration Award.

Respectfully submitted by:



Elayne G. Gold, Esq.
Public Employer Panel Member
Town of Newburgh