

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. IA2010-037; M2010-069

In the Matter of the Interest Arbitration

- between -

ROCKVILLE CENTRE POLICE BENEVOLENT
ASSOCIATION, INC.

- and -

INCORPORATED VILLAGE OF ROCKVILLE CENTRE

PUBLIC

ARBITRATION

PANEL

AWARD

Pursuant to Section 209.4 of the New York Civil Service Law, on March 18, 2011 the New York State Public Employment Relations Board ("PERB") designated the undersigned Public Arbitration Panel in the above matter to resolve the dispute over the terms of the collective bargaining agreement to be effective January 1, 2010-December 31, 2011 between the Village of Rockville Centre Police Benevolent Association, Inc. ("PBA") and the Incorporated Village of Rockville Centre ("Village" or "Rockville Centre").

In November 2009 the parties began formal negotiations over a successor agreement to the contract expiring on December 31, 2009, with subsequent negotiation sessions on December 3, 2009, January 12, 2010, January 20, 2010, February 9, 2010, March 1, 2010 and May 10, 2010. On November 10, 2010 the parties engaged in mediation. The PBA filed a "Petition for Compulsory Interest Arbitration" ("Petition") on December 29, 2010 and the Village filed a "Response to Petition for Compulsory Interest Arbitration" ("Response") on January 24, 2011, giving rise to this proceeding. PBA 17.

Hearings on the matter were held on December 16, 2011, January 13, 2012, February 1, 2012, April 23, 2012, August 21, 2012, September 5, 2012 and October 22, 2012. The parties were accorded full opportunity to present witnesses, documents and other evidence in support of



their respective positions. All witnesses gave sworn testimony, and a transcript of the proceeding was recorded. The Panel and the parties agreed to defer to the advocates' presentations on the parties' respective positions and that no post-hearing briefs would be filed to limit further delay, and the Panel met in executive session on November 5, 2012, December 6, 2012, and January 17, 2013. During those sessions, the PBA and the Village withdrew certain proposals from consideration.¹ Also by mutual consent of the parties, "minor contractual changes and clarifications" on which the parties reached agreement during their negotiations are incorporated into this Award.

At all times the PBA was represented by Certilman Balin Adler & Hyman, LLP, Paul S. Linzer, Esq., Jennifer A. Bentley, Esq., and Stephen McQuade, Esq., of counsel. The Village was represented by Bond, Schoeneck & King, PLLC, Christopher T. Kurtz, Esq., and Hilary L. Moreira, Esq., of counsel.

OVERVIEW/PRIOR HISTORY

Rockville Centre, located near the southern shore of Long Island in Nassau County, has been an Incorporated Village with its own municipal water system and power generation system operated by the Rockville Centre Electric Light and Power since the late 1890s. The Village has a relatively stable population base of approximately 24,000 residents. Village D; PBA 51@3. In addition to single-family homes and apartment complexes, two major hospitals, a college, and the Archdiocese of Long Island, the Village has a substantial commercial center with over 150 establishments and approximately 3,000 visitors on a daily basis. PBA 51, Table 1. It is a Long Island Railroad hub station with a half-hour commute to Manhattan, and it is considered the third

¹ The PBA withdrew Proposals 7, 8, 10, 11, 13, 14, 16, 17 & 18. The Village withdrew Proposals 2 (Bullet 3), 4, 7, 14 & 19.

busiest police department of the 19 villages in the Nassau County Police Conference. T 6-12, PBA 4, 5, 42.

Since the late 1890s the Village has also had its own Police Department. PBA 6-7. At present, in addition to the Commissioner (who is not a bargaining unit member), the Department's bargaining unit includes 34 Police Officers, five Detectives, nine Sergeants, three Lieutenants and one Inspector. The police force is well-trained in conformance with Village mandates, including accreditation by the Joint Terrorism Task Force. Village NNN; T 729. Over an extended period of time the relationship between the PBA and the Village has been characterized by "...relative harmony in labor relations." T 17. For over 20 years, with the exception of the 1978-79 contract resolved by an interest arbitration award, the parties have been signatories to negotiated collective bargaining agreements. Village U. The most recently negotiated agreement between the parties covered the term, January 1, 2005-December 31, 2009. PBA 2.

APPLICABLE STANDARDS

This Public Arbitration Panel joins in the responsibility of PBA members, the Police Department and the Village, to promote and protect the safety of the public. By statute the Panel is charged with reaching a "just and reasonable determination" on the matters in dispute between the Village and the PBA, guided by express statutory criteria that include: comparison of wages and working conditions with other employees performing similar services or requiring similar skills under similar working conditions and other employees generally in public and private employment in comparable communities; the interests and welfare of the public and ability to pay; peculiarities of police work, including hazards, physical qualifications, educational

qualifications, mental qualifications, job training and skills; and, the terms of the parties' prior collective bargaining agreements.²

PBA POSITION OVERVIEW

The PBA urges the Panel to adopt its proposals as representing a fair and equitable resolution of the matters in dispute and consistent with statutory criteria. The PBA seeks only to maintain its long-standing relative standing with respect to other Nassau County village police departments in wages, longevity and other benefits, and is not attempting to increase its ranking. T 18. The proposals of the Village, by contrast, are inconsistent with the statutory criteria and have the potential for placing Rockville Centre PBA salary and benefits "grossly below" averages in Nassau County. PBA 22, 23, 24; T 30. Among comparable jurisdictions, only in the Village is termination pay paid at the rate earned. The average sick payout in Nassau County and other jurisdictions is 257 sick days but PBA members only received 200 days. The industry standard for night differential is 10%, but the Village night differential is 8.99%. Village PBA members receive an equipment allowance of only \$850.00 as opposed to the "industry standard" of \$1,220.00. The Village's denominator/divisor for termination pay of 2088 is one of the

² More specifically, New York State Civil Service Law Section 209.4.c, applicable to compulsory interest arbitration and this proceeding, provides in relevant part:

...(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 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...[and] not be subject to the approval of any local legislative body or other municipal authority.

highest in Nassau County, and most other comparable jurisdictions have divisors ranging from 1856 to 1872. Unlike any other Nassau County jurisdictions, Village retirees already contribute to the cost of healthcare insurance. On longevity payments, bargaining unit members rank "dead last." PBA 24.

In addition, the long-standing financial well-being of the Village and its ability to pay the modest increases proposed is ongoing as evidenced by the financial statements and forecasts of the Village Comptroller as well as the excellent ratings on the Village's general obligation bonds by both Moody's Investor Service and Standard & Poors, including the Village's August 15, 2012 issue. Village H & I.

The Village also benefits from its transportation access, business and transportation opportunities, schools and recreational facilities and municipal water and power supplies. Residential stock is high-value and stable and business occupancy rates continue to be high. PBA 57. The "multidimensional and multifaceted nature" of the activities of the Village and its police force, involve not just residents but also thousands of daily visitors and patrons of local restaurants and business establishments. PBA 41; Village X & T; T 84, 297 & 307. Members have the right to expect at least to remain where they are, if not to take a step forward.

VILLAGE POSITION OVERVIEW

The Village urges that under the statutory criteria, the Panel must take into account the "drastically declining revenue" and "rapidly increasing" expenditures of the Village over the last several years, and, in light of more recent economic realities, adopt a "burden sharing" award as advanced by its proposals. T 429-430. Since 2008 the country and Nassau County and the Village "have been mired in a recession," the CPI has "plummeted," revenues and revenue sources are declining and wage freezes and layoffs are an "unfortunate commonplace" in both the private sector and the public sector, except for those who have interest arbitration. Village X,

V, W; T 428. Its proposals also take into account, particularly in the proposals for new hires, a tailoring to reflect actual hours worked and what the job currently is.

The Village further points to the problem over time with a "me too" approach as evidenced by the current financial crisis in Nassau County, "fiscally...basically bankrupt" despite the wealth of its citizens and now governed by the Nassau Interim Finance Authority ("NIFA"), and the potential for cutting previously negotiated employee benefits. T 424-425. To avoid this situation, the Village must "rein in spending" to "stay fiscally stable while expenditures rise and the revenues fall." T 425.

PANEL CONCLUSIONS ON PROPOSALS

I. CONTRACT TERM

The parties did not agree to an extension of the contract term. In conformance with statutory requirements, the contract term awarded is January 1, 2010-December 31, 2011.

II. SALARY³

PBA POSITION:

The PBA proposes a 5.5% salary increase in each year of the two-year contract term as appropriate and necessary to maintain the relative standing of bargaining unit members with those in the primary localities recognized historically as the most appropriate comparators, the 18 villages in Nassau County other than Great Neck Estates because of its parity agreement with Nassau County. PBA 22, 23, 24. In 2009, the Village PBA members ranked 11th out of 18 jurisdictions in wages. In 2010, 14 resolved contracts reflect salary increases in the range of

³ PBA Proposal 2 and Village Proposal 3 address salary and salary schedules and propose changes to Section 10.1 - Employees Benefits (Annual Salaries of the parties' 2005-2009 contract. PBA Proposal 10, also related to salary, was withdrawn.

3.5%, 4% and 4.5% over generally three-year contract terms, with (not counting Sands Point that took a 0% in return for its 1/60 retirement benefit) an average annual percentage increase of 3.72% that if awarded in the Village would place Rockville Centre PBA members in the middle of comparators. In 2011, the average percentage wage increase for comparable jurisdictions was 3.89 percent. Awarding that amount would still place Rockville Centre in the middle. PBA 23. Moderate increases in the top base salary rate for all ranks would also be necessary for Village PBA members to maintain their current ranking.

The PBA further asserts that salary increases must be viewed in the context of other benefits where Village bargaining unit members rank near the average on some, such as holidays, but on other benefits at lower or the lowest ranking. PBA 24.

The PBA points out that the New York State 2% tax cap was not in effect in 2010 or 2011, and therefore the tax cap should not be considered in the context of any award of a contract term prior to the tax effective date. Additionally, because of Suffolk County's poor financial shape as opposed to that of the Village, Suffolk County is not an appropriate comparator. More appropriately considered comparators are the negotiated settlements in other Nassau County villages since 2008, including:

- Nassau County: 2008 "extender" for 2013, 2014, 2015: 3.5%, 3.5%, 3.75%.
- Malverne: 2009, 2010, 2011 [expired 6/1/12]: 3.5%, 3.5%, 3.5%.
- Port Washington: 2010, 2011, 2012: 3.25%, 3%, 3% [+ "major" increase in longevity].
- Lake Success: 2010, 2011 (exp. 6/1/12): 3.75%, 3.75%.
- Freeport: 2010-2015: 3.35%, 3.5%, 3.5%, 3.5%, 2.5%, 3.5%.

The PBA urges that, particularly given the fact that Village bargaining unit members have not had a contract in place for over two years, there should be no consideration of any "splits" in any base pay increases.

VILLAGE POSITION: The Village proposes no wage increase in 2010 and a 2% wage increase effective January 1, 2011.

The Village proposal reflects the ongoing economic downturn and pattern of economic realities and trends, both in the Village as well as throughout the County and the nation. The CPI continues to be "extremely low," and this year the Village was required to impose a 6.7% tax increase for taxpayers, now the highest tax rate among comparable Nassau County jurisdictions. Village LL, MM, NN, OO; T 523. Bargaining unit members' incomes far exceed the median income of Village taxpayers, and the ability of taxpayers to fund substantial increases is further restricted by the current real estate property tax levy limit. There is no record evidence with regard to the ability of the Village to exceed the 2% tax cap. In addition, other sources of Village funding – including assistance from Nassau County and the State as well as local residents' successful certiorari challenges – have also substantially declined. PBA 51; Village RR - HHH.

Village proposals do not result in any significant adverse impact on the relative standing of Village bargaining unit members' overall income in comparison with other police officers in Nassau County. Because current unit members get to the top step in only five years, Village PBA members have the highest cumulative 20-year wage totals of all villages in Nassau County. Village Q. Many of the PBA's "comparators" are "Gold Coast" and do not accurately reflect property values or income levels of Village residents, more similar to the municipalities of Lynbrook, Malverne and Garden City. Village X; T 433. In addition, PBA units in other jurisdictions have made concession/givebacks in order to receive wage increases. Village V. as reflected in the very recent Suffolk County settlement, the "new norm" is 0/0/0 wage increases in addition an extension to a 12-step salary schedule and a 15% contribution to health insurance for new hires: "Finally reality has reached and impacted Long Island police salaries."

PANEL CONCLUSIONS ON SALARY: Wages, as noted by prior interest arbitration panels, are the "heart of any economic package" for both employees and employers. Wages are critical in determining what constitutes a "just and reasonable determination" on the matters in dispute under the statutory criteria, and the parties' presentations and evidence also focused on wage-related proposals.

~~There is no question that the stagnation in the overall economy triggered in 2008~~ continues to have a significant impact on the Village and its residents. Village Controller Michael Schussheim testified persuasively to the "strain" that the Village has been under during the past five years to maintain finances "...in a fairly healthy state...No one wants to see a decline in service levels, but at the same time we don't want to overburden the real estate tax payers and [we] try to limit the tax rate increases as best we can." T 544.

The Village has experienced substantial declines in real estate valuation and other major revenue sources, including interest income, State aid and taxes, in addition to the imposition of a statutory-based tax cap. Over the past several years, the Village has increased taxes more than double municipalities such as Garden City, Malverne, Hempstead and Freeport. In Fiscal Year 2011, real property taxes, although declining, were responsible for approximately 61% of the Village budget revenue, and Public Safety accounted for approximately 31.4% of Village expenditures. In addition, the Village faces significant and unanticipated mandated unfunded obligations for pension payments and significantly increasing and unanticipated insurance premium costs, as do all jurisdictions. The Village is also on notice by bond rating agencies that failure to control spending and to build up its reserves will adversely affect the cost of raising monies to support Village activities and the ability to participate in the bond market. There has been a small decline in the Village's population base and a rise in unemployment from the 2008

range of 3.5%-5.4% to the 2009-2011 range of 4.5% to 6.8%. Village AAA, BBB, QQ @62, G & H; PBA 51@7; T 420, 547, 578-85.

Historically, Nassau County and other police jurisdictions within Nassau County have been the primary comparators used under the statutory criteria, related not just to geography but also to the uniqueness of police work as against other public sector and private sector occupations. The Village's presentation included a focus on New York State as an employer as well as other jurisdictions outside of Nassau County such as Mount Kisco, New York. While appropriately a consideration, reliance on non-law enforcement bargaining units in jurisdictions not in the Village labor market rather than police units in the local labor market from which the Village police force is drawn would be inconsistent with the statutory criteria that must guide this Panel's determination. As the statute also requires, the welfare of Rockville Centre and its citizens and Rockville Centre's ability to pay a fair and reasonable wage must be a primary consideration.

Overall, the Village has generally been in the middle range among comparator jurisdictions on wage percentage increases, at the low-end in comparisons of certain benefits such as longevity and at the high end in comparisons of other benefits such as salary progression at early steps. Village AA-EE. The Panel recognizes that reliance solely on comparisons with other neighboring jurisdictions and a "me too" approach does not necessarily take into account other bargaining "trades" made in exchange to achieve particular goals in a given contract term – for example, foregoing a more substantial wage increase to achieve an enhanced pension plan as in Sands Point – or conversely increasing hours worked or flexibility in scheduling in exchange for a higher wage increase.

The Panel must also take note of the fact that Nassau County, previously the "trend setter" for municipal and village jurisdictions within the County, as well as Suffolk County,

Nassau County's primary comparator in the past, are both "in very serious financial condition." In considering the statutory factors of the welfare of residents as well as the ability of the Village to pay an awarded wage increase, all have an interest in preventing a similar consequence in the Village.

The peculiarities of police work in the Village require bargaining unit members to handle matters associated with an active night-time commercial center, a hospital and public housing as well as routine matters associated with a primarily residential community. Commissioner Gennario testified to the competence of the Village police force, and the record makes clear that Village bargaining unit members are highly regarded. As the PBA asserted, Village police personnel "...do an outstanding job handling a multitude of duties and responsibilities," for which they should be compensated fairly. Commissioner Gennario also acknowledged the adverse impact on the morale of the police force as a result of the parties' failure to reach a negotiated settlement in light of the extended period of negotiated agreements, and the PBA's willingness to compromise outside of the bargaining framework to address unanticipated issues, for example, an informal agreement to change the start time of the morning shift from 6:45 a.m. to 7:00 a.m.

Statutory criteria further require consideration of the parties' prior agreements, including annual salary increases from 2005 through 2009 ranging between 3.9% and 4.5%. Village B. More recently negotiated agreements and awards, including Garden City, Lynbrook, Freeport as well as the Nassau County supplement and Suffolk County agreements, are longer-term but taken together demonstrate that percentage increases for PBA members as well as for other employees are declining from those negotiated or imposed in or before 2008. Annual salary increases of 4% or 5% that may have been appropriate prior to 2008 are for the foreseeable future, likely "a thing of the past."



The Panel is mindful that jurisdictions such as Nassau County and Suffolk County have recently taken "extraordinary measures in the face of severe fiscal circumstances," and that their law enforcement personnel have agreed to or been required to forego any salary increases during at least part of extended contract terms. However, in each instance, the controlling circumstance expressly cited as the basis for the outcome was the prospect of imminent layoffs of bargaining unit members, and a clear demonstration of the cost savings necessary to protect employee jobs. Village DD. There is no evidence on the record that the layoff of bargaining unit members, imminent or otherwise, is a consideration before this Panel.

Similarly, as cited by the Village, other Village bargaining unit employees such as teachers who agreed to contract terms that included at least one year of no salary increase did so facing the prospect of imminent layoffs. That is a critical factor and distinction from the circumstance presented in this proceeding, as is the fact that in the other circumstances cited by the Village, the parties entered into longer-term contracts that could accommodate cost-savings over an extended period of time that cannot be accommodated in the circumstance of imposed terms for a two-year contract covering a period of time in the past.⁴ Village Y, Z, AA.

The Panel also must take into account the relatively healthy financial circumstance of Rockville Centre. As a result of its stable base and exercise of fiscal responsibility by its Comptroller and elected officials, the Village is in a far better financial position than Nassau County and certain other Nassau County jurisdictions within the County. The Village General Fund experienced an increase in the overall fund balance from a May 31, 2010 total of \$1,415,92.00 to \$1,553,686.00 at the end of Fiscal Year 2011, with \$37,845,000.00 in revenues and actual expenditures of \$37,283,000.00. Village QQ; T546. The determinations on the

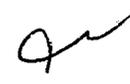
⁴ It is also noted that under the Nassau County and Suffolk County stipulations, certain monies "foregone" in the contract term are in effect "payable" upon retirement. Thus, while representing a current savings, some liability is ongoing and may present more significant problems in the future.

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Village's August 15, 2012 General Obligation Bond Issue of Moody's ("A2a") and S&P ("AA...very strong capacity to meet financial commitments") as well as the New York State Comptroller's Comprehensive Annual Fiscal Report for 2011 ("The Village continues to enjoy strong economic and fiscal growth.") reflect the Village's current ability to pay a wage increase. Village H & I; PBA 52, 53 & 54.

The Panel takes into account the ongoing and successful certiorari appeals of citizens and declining mortgage tax revenue that adversely affect the Village's ability to pay, but other financial indicators are more positive. Village business occupancy rates remained stable and high, and unemployment has declined from a high of 6.3% in 2009, to 6.1% in 2010 and 5.6% in 2011. Village G. The Village is also exploring new revenue sources such as increased fines and fees. Rockville Centre Mayor Frances Murray is working to eliminate the Nassau County "headquarters tax" of approximately \$6.1 million in 2011 the Village pays based on the substantial decline in services provided by the County, particularly to the Police Department, without an adjustment to the tax imposed. PBA 52, 56 A, 59; Village GG.

In agreements either negotiated or awarded after 2008 in comparable jurisdictions such as Garden City, wage increases in 2010 and 2011 were 3.5% and 3.5%, with some delay in the implementation of increases over the two years. However, in addition, in Garden City the amounts "foregone" because of the implementation delay are payable to bargaining unit employees upon retirement. PBA 30. Bargaining unit members in the Village have not had the benefit of any wage increase for over three years. Particularly in the context of the parties' prior and long-standing ability to reach mutually acceptable resolution of contract terms, the adverse effect on morale of police officers resulting from the delay in resolving the 2010-2011 contract, as testified to by the Commissioner, is a consideration. T 790.



While the Village should not be penalized for its fiscal responsibility, the totality of circumstances does not support an extraordinary award of no increase. Only in the context of jurisdictions with severe financial circumstances have no wage increases been awarded to law enforcement officers in the appropriate comparator jurisdictions, and the Village has in fact provided for wage increases for PBA members in its budgets. An award that recognizes economic realities and at the same time does not represent a significant decline in bargaining unit members' relative ranking among other Nassau County jurisdictions is appropriate. PBA 33, 39; T 623.

In light of the other long-term cost-saving measures awarded, a 3.25% salary increase on each step of the current schedule in each of the two contract years, effective January 1, 2010, and a 3.25% salary increase on each step of the 2010 schedule, effective January 1, 2011, is supported by the statutory criteria, and is awarded.

II. SALARY SCHEDULE

VILLAGE POSITION: The Village proposes a revision of the current annual salary schedule to include additional steps and a redistribution of step amounts, to be effective July 1, 2010. The following proposed changes to the current Section 10.1 salary schedule assume a "0" salary increase in 2010 and reflect economic realities and trends as outlined previously:

CURRENT SCHEDULE		PROPOSED SCHEDULE — Eff. 7/1/10	
Training - on hiring (NCPD Academy)	\$33,900	Training - on hiring (NCPD Academy)	\$33,900
Police Experience - on hiring (NCPD Academy exempt)	\$45,321	Police Experience - on hiring (NCPD Academy exempt)	\$45,321
Step 1 - start of 7th month	\$60,319	Step 1 - start of 13th month	\$52,141
Step 2 - start of 13th month	\$76,645	Step 2 - start of 25th month	\$55,621

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Step 3 - start of 25th month	\$84,432	Step 3 - start of 37th month	\$58,961
Step 4 - start of 37th month	\$91,993	Step 4 - start of 49th month	\$65,781
Step 5 - start of 49th month	\$99,712	Step 5 - start of 61st month	\$72,601
Step 6 - start of 61st month	\$106,757	Step 6 - start of 73rd month	\$79,421
Sergeants	\$123,896	Step 7 - start of 85th month	\$86,241
Lieutenants	\$136,289	Step 8 - start of 97th month	\$93,061
		Step 9 - start of 109th month	\$99,881
		Step 10 - start of 121st month	\$106,757
		Sergeants	\$123,896
		Lieutenants	\$136,289

PBA POSITION: The PBA proposes no change in the current salary schedule. While PBA members reach top step in five years as opposed to the average in other jurisdictions of seven years, the PBA points out that this ranking is the only benefit where the Village PBA ranks above the median of Nassau County comparables. Additionally, Kensington and Lynbrook, which have six and seven steps to the top step respectively, have a greater 20-year accumulation of base pay than RVC unit members. PBA 25 & 26. Higher base pay rates render the number of steps "somewhat inconsequential." Also, were there to be consideration of any increase in the number of steps on the salary schedule, such changes should not be effective until January 1, 2013 to avoid dilution of earnings of the newest bargaining unit members.

PANEL CONCLUSIONS ON SALARY SCHEDULE

In recognition of the need to control future spending, the Panel also awards adjustments to the current salary schedule for bargaining unit members hired after December 31, 2011 by the addition of one step to the current salary schedule and realignment of steps and step amounts that brings new hires to parity with current bargaining unit members after seven years. The new

schedule should result in future savings but does not significantly affect new hires over time who remain employed in the Village for over seven years. Such adjustments are consistent with settlements and awards resolving contracts between the PBA and other Nassau County jurisdiction comparators dating back to 2008, including Lynbrook and Garden City. PBA 26, 30 & 32.

Accordingly, the Panel awards the following adjustments to the current salary schedule for new hires on or after December 31, 2011:

ADJUSTED SCHEDULE for New Hires (effective December 31, 2011)	
Training - on hiring (NCPD Academy)	\$33,900
Police Experience - on hiring (NCPD Academy exempt)	\$45,321
Step 1 - start of 13th month	\$52,141
Step 2 - start of 25th month	\$61,244
Step 3 - start of 37th month	\$70,346
Step 4 - start of 49th month	\$79,449
Step 5 - start of 61st month	\$88,552
Step 6 - start of 73rd month	\$97,654
Step 7 - start of 85th month	\$106,757
Sergeants	\$123,896
Lieutenants	\$136,289

III. LONGEVITY⁵

PBA POSITION: The PBA proposes a change to the Section 10.3 longevity payment from a flat dollar amount to a percent of top base salary (2.5% at five years of service, 5% at after 10 years of service, 7.5% after 15 years of service, 10% after 20 years of service, 12.5 % after 25 years of service, and 15% after 30 years of service), and maintenance on full-time pay status while on military leave. According to the PBA, longevity is a "very sensitive" issue for the PBA members, who are generally at the lowest end of the longevity scale in villages in the Nassau Police Conference, particularly after year six of service. PBA 24; T 30, 32. Enhanced longevity would also enhance retention of senior members of the force.

VILLAGE POSITION: The Village takes the position that the proposed change is unwarranted.

PANEL CONCLUSIONS ON LONGEVITY: Village bargaining unit members rank last among relevant comparators at almost every current longevity step, and the disparity is particularly pronounced at the six-year step (now \$1,000.00). PBA 24. The Panel concludes that awarding a percentage increase to replace the current dollar amount as proposed by the PBA is inappropriate given its longer-term financial consequences as well as the fact that virtually every other Nassau County comparator agreement provides longevity steps in dollar as opposed to percentage amounts.

To address the current disparity and to offset the potential impact of the awarded adjustment to the salary schedule steps, the Panel awards an increase of \$500.00 to the current longevity amount payable after six years of completed service, that is, \$1,500.00.

⁵ PBA Proposal 3. Village Proposal 4 withdrawn.

IV. NIGHT DIFFERENTIAL⁶

PBA PROPOSAL: The PBA proposes the current night differential under Section 10.6 be increased by 12% of the hourly rate of the top base salary in each rank, including hours between 3:00 p.m.-7:00 p.m., and for all hours scheduled between 3:00 p.m.-7:00 a.m. if the bargaining unit member is on duty injury status, sick leave or vacation. In addition bargaining unit members would continue to receive the differential pay through the end of the tour. Such a differential is necessary because the duties performed during this time period are more demanding and potentially more dangerous given the influx of visitors at night as well as interference with sleep and other normal schedules of unit members. The differential is at present in the middle of other comparable villages in the Nassau County Police Conference.

VILLAGE POSITION: The Village proposes a change in the hours that qualify for night differential pay from the current 3:00 p.m.-7:00 a.m. period to 4:45 p.m.-6:45 a.m., and the application of the differential only for those hours actually worked. Night shifts are filled voluntarily, and, in accord with the preference of the Commissioner, primarily by more recently hired members. There is no indication of any problem in filling night shifts. The record does not sufficiently establish a basis for imposing a change in the hours constituting a "night shift," the amount of the differential or the application of the differential. The parties' respective proposals on changes to Section 10.6 are denied.

PANEL CONCLUSIONS ON NIGHT DIFFERENTIAL: Changing the hours of what constitutes a "night shift" is an issue requiring more input by the parties. Night shifts are filled voluntarily, and, in accord with the preference of the Commissioner, primarily by more recently hired members. The proposal is denied.

⁶ PBA Proposal 4 and Village Proposal 5.

V. DESK DUTY OFFICER⁷

PBA POSITION: The PBA recommends an increase in pay for the assigned desk duty officer because of the "tremendous responsibilities" of that position in controlling incoming traffic and responses to calls, and irrespective of whether the assignment goes to a Patrol Officer or a member of a higher rank.

VILLAGE POSITION: The Village proposes no change or additional payment for the desk duty officer assignment.

PANEL CONCLUSIONS ON DESK DUTY OFFICER: In testimony Lt. James Vafeades described the range of duties different from more traditional police officers duties performed by the Desk Duty Officer. The assignment of the Desk Duty Officer is generally filled by Patrol Officers, although occasionally by higher ranking Officers, at the discretion of the Commissioner. The parties' prior agreements support that over several contract terms, additional compensation for the Desk Duty Officer assignment has been increased by the same percentage as annual salary increases, an amount that does not represent a significant cost to the Village. Accordingly, the Panel Awards an increase in the additional payment to bargaining unit members assigned as Desk Duty Officer to \$24.16, effective January 1, 2010, and an increase to \$24.95, effective December 31, 2011.

VI. CLOTHING/EQUIPMENT ALLOWANCE⁸

PBA POSITION: The PBA proposes an increase in the amount of the clothing/equipment allowance in Section 10.11.3 from \$850.00 to \$1500.00. The "modest" increase in clothing and equipment allowance is necessary simply to cover increased costs.

⁷ PBA Proposal 5. No Village Proposal.

⁸ PBA Proposal 6. No Village Proposal.

VILLAGE POSITION: The Village proposes no change in the current clothing/equipment allowance.

PANEL CONCLUSIONS ON CLOTHING/EQUIPMENT ALLOWANCE: The record supports that the current \$850.00 allowance amount is very low in comparison with other jurisdictions, and the allowance covers certain equipment in addition to uniforms that may involve safety issues. PBA 46. A modest increase to offset individual member expenditures that does not represent a significant cost to the Village is therefore warranted. The Panel awards an increase in the current clothing/equipment allowance to \$1000.00, effective January 1, 2011.

VII. SICK LEAVE⁹

VILLAGE POSITION: The Village proposes amendments to Section 13.6 to reduce the total annual sick leave allotment from 208 hours per year to 96 hours per year for employees hired after July 1, 2010 as well as a reduction in the annual allotment of paid sick leave for sick family members from 24 hours to 12 hours. Other neighboring municipalities, such as Malverne, also have a 200-day sick payout. PBA 45.

PBA POSITION: The PBA urges that the Village proposal on the prorating of benefits by limiting the time benefits can accrue to three months for a member injured in the line-of-duty and on leave pursuant to General Municipal Law 207(c) is, in effect, "punishing" a member for service, particularly if the injury is serious requiring more than three months of recovery time. PBA members should not be required to operate under this type of "threat." T 48.

PANEL CONCLUSIONS ON SICK PAY: In the performance of their duties on behalf of the public, unit members work long hours, at times in much less controlled circumstances than other employees. While sick pay usage has been high at times, there is no evidence on the record

⁹ PBA Proposal 7 withdrawn. Village Proposals 17 & 18. Village Proposal 19 withdrawn.

of any abuse. In addition, 24 hours is not excessive for family members. The Village's proposed change is not supported on the record in the context of other adjustments awarded and is denied.

VIII. TERMINATION PAY¹⁰

VILLAGE POSITION: The Village proposes that Section 16.1 be amended for those employees hired after the date of the new agreement or award, as follows :

- Change retirement payouts from being spread out over 1 or 2 years at the employee's option (Sect. 16.3) to spread out over any number of years up to 5 years at the Village's option.
- Effective December 31, 2011, change terminal leave amounts (Sect. 16.2 (a)) from 40 hours for each year of completed service to 20 hours for each year of completed service.
- Effective December 31, 2011, change divisor used to calculate hourly rate for payment for accumulated but unused sick leave amounts (50% - not to exceed a total of 1,600 hours) to 2088.

PBA POSITION: The Village proposal is not warranted.

PANEL CONCLUSIONS ON TERMINATION PAY: The current divisor for calculating retirement payouts is higher than that in certain comparator contracts more recently negotiated, but there is insufficient demonstration on the record of a basis warranting imposition of such a change; it is best left to direct negotiations between the parties.

However, given the potential for having several bargaining unit members elect to retire in the same year and the strain on finances such a circumstance would place on the Village budget, a three-year payout at option of Village is reasonable and consistent with several other comparator jurisdictions. Nor was there any demonstration that such an option would necessarily or likely disadvantage retiring members. Accordingly, the Panel awards an amendment to Section 16.3 to provide the Village with the option to make retirement payouts over a three-year period, with no less than one-third payable upon the commencement of

¹⁰ PBA Proposal 8 withdrawn. Village Proposal 21.

retirement, another one-third (1/3) payable within the next 12 months, and the final one-third (1/3) payable within the following 12 months.

VIII. HEALTH INSURANCE¹¹

VILLAGE POSITION: The Village proposes changes to Sections 17.10.2 and 17.10.3 to provide that all new employees (following the date of ratification) contribute – through an IRC § 125 Plan (pre-tax deduction) – to the cost of their health insurance premiums as follows: at Step 2 – 10%; at Step 6 – 15%; and, at Step 10 (top step/grade) and for the duration of their employment and during retirement – 20%. Health care costs have been sky-rocketing and are likely to continue to do so, and the clear trend is for employees to participate in coverage, both in the Village and throughout New York State. The current retiree contribution to healthcare is only \$375 per year, not a significant enough contribution to offset any "active employee" contribution.

PBA POSITION: The PBA proposes continuation of payment of health insurance for active employees, employees who retire, and for spouses of employees who passed away during the term of the contract until remarriage. Such a benefit is consistent throughout Nassau County and Suffolk County. By contrast, no interest arbitration award involving the traditional Nassau County-based comparators applicable to the 2010-2011 time period in question has included police officer health insurance contributions, and the Village's proposal for such significant contributions, representing a "monumental shifting" of cost burdens, is "unacceptable." PBA 30. T 40-41.

PANEL CONCLUSIONS ON HEALTH INSURANCE: There is no question that health care costs have increased dramatically in the recent past, far exceeding earlier projections and

¹¹ PBA Proposal 9. Village Proposal 21.

actuarial assumptions, and that some employee contribution to overall health care costs is an emerging trend.

However, an award that would only impact new hires as proposed by the Village would be of little or no immediate financial consequence to the Village. The Panel takes note of the fact that the parties have already negotiated for retiree participation in health insurance premiums costs, although not a substantial amount, and the Village is the only jurisdiction in Nassau County where police officers have done so. Alternative plans or other cost-sharing alternatives, such as participation by bargaining unit employees at higher steps or as part of a retirement incentive package, might better foster more long-term, mutual goals and interests of the parties. The parties jointly can better explore the viability of and where best to introduce any further assumption of the burden of healthcare costs by employees.

In the context of the overall Award, the Panel concludes that the issue of changes to Sections 17 on health insurance is not ripe for decision, and the proposal is denied.

IX. WORKERS COMPENSATION-RELATED BENEFITS¹²

PBA POSITION: The PBA proposes changing Section 3.7 to provide for continuation of salary for one calendar year on receipt of Workers Compensation benefits as opposed to the current provision for 90 days. Given that officers receiving Workers Compensation benefits would have done so in the line of duty, continuation of salary is "self-explanatory." T 42, 171.

VILLAGE POSITION: The Village proposes no change in the current provision.

PANEL CONCLUSIONS ON WORKERS COMPENSATION-RELATED BENEFITS:

The record does not set forth a sufficient basis for awarding a change in the Section 13.7 provision of 90 calendar days of salary on receipt of Workers Compensation benefits. The proposal is denied.

¹² PBA Proposal 12. No Village Proposal.

X. WORK YEAR/WORK CHART¹³

PBA POSITION: The PBA proposes changing the divisor from 1872 hours to 1856 hours in each applicable section of the work chart provisions of Section 11. Such a change would be consistent with the industry norm in other comparable jurisdictions and is appropriate. The Village proposal to increase the divisor to 2088 is not appropriate or justified. PBA 17; T 176, 302.

VILLAGE POSITION: The Village proposes amendments to Section 11, including:

- Work Year - change where necessary to be consistent (and where necessary throughout the contract) from work year predicated on 1872 hours to work year predicated on 2088 hours.
- Meal Period - change meal periods as follows:
 - Eight (8) hour tours = from 60 minutes to 30 minutes
 - Ten (10) hour tours = from 75 minutes to 45 minutes
 - Twelve (12) hour tours = from 90 minutes to 60 minutes
- Primary Work Chart - change so that the start/end time(s) of the 10 Hour tour "day shift" (0645 hours (start) - 1645 hours (end)) may be changed to start/end up to 2 hours later than presently scheduled upon 30 days written notice to the PBA.
- Supplemental Work Chart/Special Assignment Schedule - The Commissioner shall have the discretion to make changes to the Supplemental Work Chart/Special Assignment Schedule upon one (1) week written notice to the affected individual(s) and PBA.
- Alteration of Assignment - delete "...other than command level training..." and change so that 108 hour "swing" provision/arbitration does not apply to this section.

These proposed changes are reasonable and would improve operations and services to the public. T 750-765, 848-65; Village B, S & OOO.

PANEL CONCLUSIONS ON WORK YEAR/WORK CHART: The record supports that at the time they negotiated and agreed to 12-hour tours, the parties did not sufficiently account

¹³ PBA Proposal 15. Village Proposals 8, 9, 10, 11 & 12.

for the impact of that change on other contract provisions and practices. The Village made a demonstrated that the introduction of the 12-hour tour resulted in unrecognized consequences to other contract provisions, and that improving operations through certain changes in the work chart and assignment provisions are reasonable and could result in significant operational improvements and cost savings. The record also supports that certain practices, such as an extension of the contractually-mandated lunch hour pursuant to Section 11, have developed over time independent of the provisions themselves, and enforcement of those provisions now in place would result in increased productivity.

Because the implications and nuances of any particular change were not sufficiently developed on this record, it would be inappropriate not to afford the parties, with their long-standing history of reaching settlement, an opportunity to address proposed changes to the work chart and assignment restrictions in a manner tailored to the parties' particular needs.

Accordingly, proposed changes to the work year/work chart provisions of Section 11 are deemed to be not ripe for decision and are denied.

XI. HOLIDAY PAY¹⁴

VILLAGE POSITION: The Village proposes to amend Section 10.7 by replacing Lincoln's Birthday and Washington's Birthday with President's Day. The reduction of one day of holiday pay represents a cost savings, and is not out of line with the number of holidays provided in other comparable jurisdictions.

PBA POSITION: The Village's proposed change is not warranted.

PANEL CONCLUSIONS ON HOLIDAY PAY: The number of holidays (13) now provided to unit members in Section 10.7 is not excessive and consistent with holiday benefits

¹⁴ PBA Proposal 17 withdrawn. Village Proposal 6.

provided to PBA members in many of the comparators jurisdictions. No diminution in the current benefit is warranted on this record. The Village's proposal is denied.

XII. VACATIONS¹⁵

VILLAGE POSITION: The Village proposes that Section 13.1 be amended to reduce total annual paid vacation allotment for those employees hired after July 1, 2010 from 160 hours per year to 100 hours per year for more than one (1) year and less than five (5) years of service, and from 216 hours per year to 150 hours per year once they have more than five (5) years of service.

PBA POSITION: The onerous change proposed by the Village is not warranted.

PANEL CONCLUSIONS ON VACATIONS: There is an insufficient basis on record to award the proposed change. The Village proposal is denied.

XIII. BEREAVEMENT LEAVE¹⁶

PBA POSITION: The PBA proposes changing the reference in Section 13.5 from "four consecutive days" to the "next 4 scheduled tours of the member", and changing "one day" to the "member's next to schedule." The issue is one of fundamental fairness. T 188.

VILLAGE POSITION: No change is warranted.

PANEL CONCLUSIONS ON BEREAVEMENT LEAVE: There is no demonstration on the record of any particular problem or failure of the Village or the Commissioner to accommodate the needs of any PBA member who was otherwise entitled to bereavement leave that would warrant imposition of the proposed change. The PBA proposal is denied.

¹⁵ No PBA Proposal. Village Proposal 16.

¹⁶ PBA Proposal 19. No Village Proposal.

XV. DISCIPLINARY PROCEDURE¹⁷

PBA POSITION: The PBA proposes an amendment to Section 8.6 on Representation by removal of the provision that: "Said Representative shall be a member of the Association." This change would permit nonmembers, such as attorneys, to represent a member in a disciplinary proceeding, appropriate given the potential consequences to the member. T 190.

VILLAGE POSITION: The Village proposes that the requirement that the investigation of allegations be completed within 90 days from the time of discovery by the Office of the Police Commissioner in Section 8.4.5 be applicable only to internal investigations as opposed to matters that involve criminal or potentially criminal matters, or the District Attorney's office. A 90-day time framework is unrealistic in matters where outside law enforcement agencies are involved.

PANEL CONCLUSIONS ON DISCIPLINARY PROCEDURE: Practical and potentially legal considerations on representation in internal matters cannot be fully explored without significantly more input from the parties. The record further indicates that in practice, attorneys, when requested, may be present for consultation, and there is no suggestion on the record that any member's individual rights have been undermined in the past. The PBA proposal is therefore denied.

The Village's requested amendment to restrict the application of the 90-day time limit on internal investigations to those that do not involve criminal or potentially criminal matters or the District Attorney's office appears reasonable on its face, and no persuasive reason not to apply the 90-day time limitation in the identified circumstances was presented. Amending Section 8.4.5 to provide that the 90-day time limit on internal investigations shall apply only upon

¹⁷ PBA Proposal 20. Village Proposal 1.

completion of any investigation that involves criminal or potentially criminal matters or the District Attorney's office is awarded.

XVI. GRIEVANCE AND ARBITRATION PROCEDURES¹⁸

VILLAGE POSITION: The Village proposes amendments to Section 9.1.1 - 9.1.3, first to reduce the time for filing the initial grievance from 90 days to 21 days, and to provide that Step 1 grievances be filed directly to the Police Commissioner or his designee. Additionally, the amount of time for the Police Commissioner to respond to Step 1 grievances should be increased from 5 days to 21 days.

PBA POSITION: The PBA takes the position that proposed changes are not warranted.

PANEL CONCLUSIONS ON GRIEVANCE AND ARBITRATION PROCEDURES:

The current 90-day time framework for the initial filing of grievances is significantly greater than that of the majority of comparator jurisdictions, and there was no indication on the record of any adverse impact on unit members by some limitation on the time framework for initial grievance filings, or by increasing the number of days for the Commissioner to respond. Similarly, there was no demonstration that it would be inappropriate for grievances to be filed directly to the Commissioner or his designee.

The Panel awards the following amendments to Section 9: initial grievances are to be filed within 30 days; at Step 1, grievances are to be filed directly to the Police Commissioner or his designee; and, the Police Commissioner is afforded 21 days to respond to an initial grievance at Step 1.

¹⁸ No PBA Proposal. Village Proposal 2/ Bullet 3. withdrawn.

XVII. OVERTIME¹⁹

VILLAGE POSITION: The Village proposes the following changes to Section 12.10:

- Non-Contiguous Overtime - Notwithstanding the language found in Section 11.1 on meal periods, when an employee is called in for "non-contiguous" overtime, he/she shall not receive a paid meal period of 60 minutes unless he/she has actually worked or will actually work at least seven (7) hours in connection with the "non-contiguous" overtime assignment. The determination of whether the employee will actually work at least seven (7) hours shall be within the sole discretion of the Commissioner or his designee, and may be made for the purpose of scheduling such meal periods to maximize the efficiency of operations...
- Overtime and Comp Time (Contiguous / Non-Contiguous) - reduce minimum "call in" overtime hours compensation (*i.e.*, non-contiguous OT) from 4 hours for 8 hour charts and 6 hours for 10 to 12 hours charts, to 4 hours for all charts, including court appearances.

PBA POSITION: The PBA takes the position that no change is warranted or justified.

PANEL CONCLUSIONS ON OVERTIME: Without question, the Village experiences significant overtime costs. As previously noted, however, the record indicates that certain provisions on use of time have not been enforced. Additionally, the Commissioner's testimony indicates that there may have been an inadvertent "blurring" of certain categories of overtime, and that part of the operational overtime issues could be resolved by other measures such as hiring additional officers. Village JJJ; T 795-787. The Village proposals changes to Section 12 are denied at this time.

XVIII. INJURY IN THE LINE OF DUTY²⁰

VILLAGE POSITION: The Village proposes a three-month limit in the amount of time benefits can accrue while a member is injured in the line of duty and on leave under General Municipal Law 207(c).

¹⁹ No PBA Proposal. Village Proposals 13, 15. Village Proposal 14 withdrawn.

²⁰ No PBA Proposal. Village Proposal 19.

PBA POSITION: The PBA urges that such a limitation is in effect punishing a member for service, particularly if the injury is serious requiring more than three months of recovery time. PBA members should not be required to operate under this type of "threat." T 48.

PANEL CONCLUSIONS ON INJURY IN THE LINE OF DUTY: The record sets forth no evidence of any abuse or any particularized need that would warrant imposition of such a significant change of a long-standing benefit. The Village proposal is denied.

XIX. DRUG TESTING²¹

VILLAGE POSITION: The Village proposes the addition of a new provision on "random" hair drug testing and alcohol testing, "reasonable suspicion" hair drug testing and alcohol testing, and "post accident" hair drug testing and alcohol testing.

PBA POSITION: The PBA views the attempt to institute a variety of drug and alcohol testing policies as not only an intrusion into privacy rights of members but also without any basis for such an intrusion among the dedicated professionals on the force, labeling the proposal "offensive". T 50.

PANEL CONCLUSIONS ON DRUG TESTING: While the parties might mutually elect to put in place reasonable drug and alcohol testing procedures, there is no demonstration on the record of prior experiences or specific concerns that would warrant the imposition of such a potentially intrusive procedure. The Village proposal is denied.

²¹ No PBA Proposal. Village Proposal 22.



PANEL SUMMARY:

In summary, the Panel awards the following, and all other proposals, whether or not specifically addressed herein, are denied:

- The contract term is January 1, 2010-December 31, 2011.
- Section 10.1: A 3.25% base salary increase in each of the two contract years, effective January 1, 2010 and January 1, 2011.
- Section 10.1: The addition of one step to the current salary schedule and realignment of step amounts for bargaining unit members hired after December 31, 2011:

SCHEDULE for New Hires (effective December 31, 2011)	
Training - on hiring (NCPD Academy)	\$33,900
Police Experience - on hiring (NCPD Academy exempt)	\$45,321
Step 1 - start of 13th month	\$52,141
Step 2 - start of 25th month	\$61,244
Step 3 - start of 37th month	\$70,346
Step 4 - start of 49th month	\$79,449
Step 5 - start of 61st month	\$88,552
Step 6 - start of 73rd month	\$97,654
Step 7 - start of 85th month	\$106,757
Sergeants	\$123,896
Lieutenants	\$136,289

- Section 10.3: Effective January 1, 2010, the longevity amount payable after six years of completed service is increased to \$1,500.00.
- Section 10.5: An increase in the additional payment to bargaining unit members assigned as Desk Duty Officer to \$24.16, effective January 1, 2010, and an increase to \$24.95, effective December 31, 2011.

- Section 10.11.3: Effective January 1, 2011, the equipment/uniform allowance is increased to \$1,000.00.
- Section 8.4.5: The 90-day time limit on internal investigations shall apply only upon completion of any investigation that involves criminal or potentially criminal matters or the District Attorney's office.
- Section 16.3: At the Village's option, the benefits payable under this Section may be paid over a three (3) year period, with a minimum of one-third (1/3) payable upon the commencement of the event set forth in 16.1, another one-third (1/3) payable within the next 12 months, and the final one-third (1/3) payable within the following 12 months.
- Section 9: Initial grievances shall be filed within 30 days; Step 1 grievances shall be filed directly to the Police Commissioner or his designee; the Police Commissioner shall be afforded 21 days to respond to an initial grievance at Step 1.
- Other Language changes previously agreed to by the parties are to be incorporated into the new Agreement.



AWARD:

The Panel, pursuant to its obligation under Section 209.4 of the
New York Civil Service Law, hereby Awards:

1. CONTRACT TERM: The contract term is January 1, 2010-December 31, 2011.

February 9, 2013 Impartial Panel Chair: [Signature]
Susan T. Mackenzie

Date: 2/20/13 PBA Panel Member: [Signature] Concur:
James Carty Dissent:

Date: 2/27/13 Village Panel Member: [Signature] Concur:
Terence O'Neil Dissent:

2. SALARY

Section 10.1:

Year I: (January 1, 2010-December 31, 2010): a 3.25% increase on all (current and
new hire) salary schedule steps.
Year II: (January 1, 2011-December 31, 2011): a 3.25% increase on all (current and
new) 2010 salary schedule steps.

February 9, 2013 Impartial Panel Chair: [Signature]
Susan T. Mackenzie

Date: 2/20/13 PBA Panel Member: [Signature] Concur:
James Carty Dissent:

Date: 2/27/13 Village Panel Member: [Signature] Concur:
Terence O'Neil Dissent:

3. SALARY SCHEDULE

Section 10: Introduction of a new salary schedule for New Hires, effective December 31, 2011:

SCHEDULE for New Hires after December 31, 2011	
Training - on hiring (NCPD Academy)	\$33,900
Police Experience - on hiring (NCPD Academy exempt)	\$45,321
Step 1 - start of 13th month	\$52,141
Step 2 - start of 25th month	\$61,244
Step 3 - start of 37th month	\$70,346
Step 4 - start of 49th month	\$79,449
Step 5 - start of 61st month	\$88,552
Step 6 - start of 73rd month	\$97,654
Step 7 - start of 85th month	\$106,757
Sergeants	\$123,896
Lieutenants	\$136,289

February 19, 2013

Impartial Panel Chair: [Signature]
 Susan T. Mackenzie

Date: 2/20/13

PBA Panel Member: [Signature] Concur:
 James Carty Dissent:

Date: 2/21/13

Village Panel Member: [Signature] Concur:
 Terence O'Neil Dissent:

4. LONGEVITY

Section 10.3: Effective January 1, 2010, the longevity amount payable after six years of completed service is increased to \$1,500.00.

February 19, 2013 Impartial Panel Chair: [Signature]
Susan T. Mackenzie

Date: 2/20/13 PBA Panel Member: [Signature] Concur:
James Carty Dissent:

Date: 2/27/13 Village Panel Member: [Signature] Concur:
Terence O'Neil Dissent:

5. DESK DUTY OFFICER

Section 10.5: An increase in the additional payment to bargaining unit members assigned as Desk Duty Officer to \$24.16, effective January 1, 2010, and an increase to \$24.95, effective December 31, 2011.

February 19, 2013 Impartial Panel Chair: [Signature]
Susan T. Mackenzie

Date: 2/20/13 PBA Panel Member: [Signature] Concur:
James Carty Dissent:

Date: 2/27/13 Village Panel Member: [Signature] Concur:
Terence O'Neil Dissent:

6. CLOTHING/EQUIPMENT ALLOWANCE

Section 10.11.3: Effective January 1, 2011, the equipment/uniform allowance is increased to \$1,000.00.

February 19, 2013 Impartial Panel Chair: [Signature]
Susan T. Mackenzie

Date: 2/20/13 PBA Panel Member: [Signature] Concur:
James Carty Dissent:

Date: 2/27/13 Village Panel Member: [Signature] Concur:
Terence O'Neil Dissent:

7. DISCIPLINARY PROCEDURE

Section 8.4.5: The 90-day time limit on internal investigations shall apply only upon completion of any investigation that involves criminal or potentially criminal matters or the District Attorney's office.

February ¹⁹/₇, 2013 Impartial Panel Chair: *[Signature]*
Susan T. Mackenzie

Date: 2/20/13 PBA Panel Member: *[Signature]* Concur:
James Carty Dissent: ✓

Date: 2/27/13 Village Panel Member: *[Signature]* Concur: ✓
Terence O'Neil Dissent:

8. TERMINATION PAY

Section 16.3: At the Village's option, the benefits payable under this Section may be paid over a three (3) year period, with a minimum of one-third (1/3) payable upon the commencement of the event set forth in 16.1, another one-third (1/3) payable within the next 12 months, and the final one-third (1/3) payable within the following 12 months.

February ¹⁹/₇, 2013 Impartial Panel Chair: *[Signature]*
Susan T. Mackenzie

Date: 2/20/13 PBA Panel Member: *[Signature]* Concur:
James Carty Dissent: ✓

Date: 2/27/13 Village Panel Member: *[Signature]* Concur: ✓
Terence O'Neil Dissent:

- 1(r). Pg. 21, Section 11.4.1 - Payback Hours - change "met" to "meet" in the first sentence.
- 1(s). Pg. 22, Section 11.4.1(a) - Payback Hours - change "If less than 24-hour cancellation is given..." to "If less than 24 hours notice of the cancellation is given..."
- 1(t). Pg. 22, Section 11.4.1 (c) - Payback Hours - delete (applicable only to schedules in 2003-05).
- 1(u). Pg. 23, Section 11.6 - Court Appearances, etc. - change "appearance" to "appearances".
- 1(v). Pg. 23, Section 11.7 - Conferences - change from "... attendance be authorized" to "if attendance is authorized..." in the first sentence.
- 1(w). Pg. 25, Section 12.3 - Overtime and Comp Time - change first word of (a) and (b) from "The" to "the".
- 1(x). Pg. 26, Section 12.5 - Overtime and Comp Time - change as follows: "... employees to perform overtime."
- 1(y). Pg. 29, Section 13.5 - Bereavement Leave - clarify that "days" mean "calendar days".
- 1(z). Pg. 33, Section 16.2(a) - Termination Pay - delete reference to benefits for "...service during World War II."
- 1(aa). Pg. 34, Section 16.2(c) - Termination Pay - delete last sentence that begins: "Notwithstanding the above..."
- 1(bb). Pg. 38, Section 17.10.4 - Health Insurance - change "representations" to "representatives" in the last sentence of the first paragraph.
- 1(cc). Pg. 40, Section 17.15 - Subpoena: Appearances Outside Village - delete "Effective September 1, 1983, ..."
- 1(dd). Pg. 41, Section, 17.15 (c) - Subpoena: Appearances Outside Village - change to: "lodging, should be necessary, in the City, Town or Village where the employee..."

February 19, 2013

Impartial Panel Chair: [Signature]
Susan T. Mackenzie

Date: 2/20/13

PBA Panel Member: [Signature]
James Carty

Concur:
Dissent:

Date: 2/21/13

Village Panel Member: [Signature]
Terence O'Neil

Concur:
Dissent:

February 19, 2013

Impartial Panel Chair:

[Signature]
Susan T. Mackenzie

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

ELIZABETH A. TURNOCK
Notary Public, State of New York
No. 01TU5010434
Qualified in New York County
Commission Expires May 4, 2015
[Signature]

Appeared before me this 19th day of February 2013, Susan T. Mackenzie, to me known, who did swear and affirm that she has executed the above and that all statements herein are true and correct to the best of her knowledge and belief.

Date:

2/20/13

PBA Panel Member:

[Signature]
James Carty

Concur:

Dissent:

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

LOIS TINGHITELLA
Notary Public, State of New York
No. 01T16185298
Qualified in Nassau County
Commission Expires April 14, 2018
[Signature]

Appeared before me this 20th day of February 2013, James Carty, to me known, who did swear and affirm that he has executed the above and that all statements herein are true and correct to the best of his knowledge and belief.

Date:

2/21/13

Village Panel Member:

[Signature]
Terence O'Neil

Concur:

Dissent:

13, 7, 8, 9, 10
24, 5, 6

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

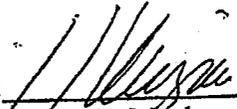
Appeared before me this 21th day of February 2013, Terence O'Neil, to me known, who did swear and affirm that he has executed the above and that all statements herein are true and correct to the best of his knowledge and belief.

[Signature]
Susan M. Majikas

SUSAN M. MAJIKAS
Notary Public, State of New York
No. 01MA5040164
Qualified in Nassau County
Commission Expires March 6, 2015

February 19, 2013

Impartial Panel Chair:


Susan T. Mackenzie

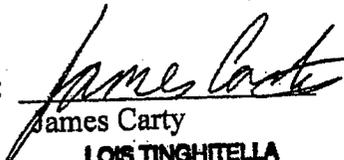
STATE OF NEW YORK
COUNTY OF NEW YORK SS:

ELIZABETH A. TURNOCK
Notary Public, State of New York
No. 01TU5010434
Qualified in New York County
Commission Expires May 4, 2015

Appeared before me this 19th day of February 2013, Susan T. Mackenzie, to me known, who did swear and affirm that she has executed the above and that all statements herein are true and correct to the best of her knowledge and belief.

Date: 2/20/13

PBA Panel Member:


James Carty

Concur: 1, 2, 4, 5, 6, 10
Dissent: 3, 7, 8, 9

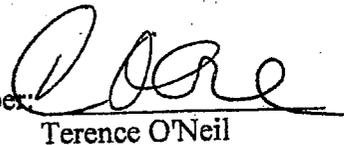
STATE OF NEW YORK
COUNTY OF NEW YORK SS:

LOIS TINGHITELLA
Notary Public, State of New York
No. 01TI6185296
Qualified in Nassau County
Commission Expires April 14, 2018

Appeared before me this 20th day of February 2013, James Carty, to me known, who did swear and affirm that he has executed the above and that all statements herein are true and correct to the best of his knowledge and belief.

Date: 2/21/13

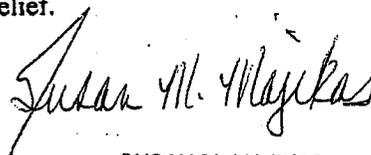
Village Panel Member:


Terence O'Neil

Concur: 1, 3, 7, 8, 9, 10
Dissent: 2, 4, 5, 6

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

Appeared before me this 21st day of February 2013, Terence O'Neil, to me known, who did swear and affirm that he has executed the above and that all statements herein are true and correct to the best of his knowledge and belief.



SUSAN M. MAJIKAS
Notary Public, State of New York
No. 01MA5040164
Qualified in Nassau County
Commission Expires March 6, 20 15

Inc. Village of Rockville Centre – Police Interest Arbitration (IA2010-037)

DISSENT¹ OF THE PUBLIC EMPLOYER PANEL MEMBER

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February 27, 2013

INTRODUCTION

The opinion of the Panel's majority, which constitutes the Interest Arbitration Award (hereinafter "Award") herein, is a microcosm of all that is wrong with the Interest Arbitration process. This process has consistently failed, especially on Long Island, and never more so than in this Award. This is the kind of Award that has caused public employers to believe the process is "hopeless." Such a thought-process provides an inherent bargaining advantage to police unions and creates an imbalance of power that was neither contemplated by the authors of the original Taylor Law nor the authors of the Interest Arbitration amendments.

For all of the problems associated with Interest Arbitration, it is not the actual language of the Taylor Law that is at fault. As will be demonstrated in this Dissent, had the language of the statute been properly applied by the Panel, a "just and reasonable determination of the matter in dispute" would have been forthcoming. Instead, a "neutral"² arbitrator, someone charged by statute as the "public" member and Chairperson of the Panel (hereinafter "Chairperson"), and an understandably biased Rockville Centre PBA (hereinafter "PBA") President (serving as the Employee Organization Panel member) (collectively hereinafter "the Majority") joined forces to

¹ Every statement contained herein is supported by evidence in the Record. The arguments presented were made in very similar fashion verbally and with exhibits during the parties' executive sessions and in the Village's 2/1/13 memo to the Panel and a 2/19/13 e-mail to the Panel.

² Issues of bias are addressed *infra*.

silently produce an Award that is irrational, arbitrary and capricious, and in many ways, beyond the scope of their power.

It is baffling how police unions on Long Island have mesmerized "neutral" arbitrators to such an extent that they continue to "fork over" higher wages and improved benefits to police, even during the worst economic times since the passage of the Taylor Law. This also occurs in an environment where residents and business owners have been taxed well beyond any comparative measure in the rest of the country, and at a time when almost every other public sector union (critically, that is not subject to binding arbitration) understands and shares the public employer's burden of drastically reduced revenue and exploding expenditures. Somehow – and it was not for a lack of advocacy on my part or evidence in the Record – the Majority either "didn't get it," or more likely and troublingly, "chose to ignore it."

If left intact, this Award will harm not only the Inc. Village of Rockville Centre ("RVC" or "Village") taxpayers, but also any other community on Long Island that attempts to "stop the madness." Given the evidence in the Record, the totality of this Award can only be labeled as such "madness."

To be clear, this is NOT a case where:

1. the Employer granted salary increases to other units and nonunion employees; and/or
2. the Employer asked the PBA to be the only or first group of employees to contribute to health insurance; and/or
3. other public employees in the same Village were receiving raises; and/or
4. other public employees in the same Village were NOT contributing towards health insurance; and/or



5. the overall economic climate did not cry out for moderation and rollbacks; and/or
6. the Employer had not already significantly taxed its residents and businesses to address its economic needs; and/or
7. the Employer agreed to give an arbitrator the power to issue an award beyond the two-year statutory jurisdiction.

This Award is – by the Majority's design – based almost entirely upon wage and benefits comparisons with other village police departments in Nassau County. Yet somehow, the Majority took only the "good" and ignored all of the "bad" for the PBA. The Award impossibly ignored the concessions made by the Nassau County PBA over the last seven (7) years – the period covered by the PBA's last contract and this Award. It is fair to say that none of these concessions were awarded by the Majority. The Majority ignored these concessions, even though there is unrebutted Record evidence that the Nassau County PBA contract has traditionally served as the foundation for the RVC PBA contract (Village Exhibit ("V. Ex.") U).

The Majority also ignored a very recent Suffolk County PBA settlement, even though there is Record evidence that Suffolk County is the closest comparable to Nassau County (PBA Exhibit ("PBA Ex.") 32). The most recent Suffolk County PBA settlement, which includes the years at issue herein – while mentioned by the Majority in its rationale for the Award – was totally disregarded in substance by the Majority (see *infra*).



The Majority Failed to Consider All of the Statutory Criteria Necessary For the Award

The Award was improperly and illegally based – in large part – upon only ONE HALF of one (1) prong of the statutory criteria applicable to Interest Arbitration awards – Civil Service Law (“CSL”) Section 209.4(c)(v).

Section 209.4(c)(v) provides, in relevant part (with emphasis added), that the “panel shall make a just and reasonable determination of the matters in dispute.” The statute continues: “... 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 wages, hours and conditions of employment of the PBA unit members with those of other employees “performing similar services or requiring similar skills under similar conditions [*i.e.*, police]” AND “with other employees generally in public and private employment in comparable communities [*i.e.*, non-police];
- b. “the interests and welfare of the public” and the financial ability of the Village to pay;
- c. comparison of peculiarities between police and other trades/professions³;
- d. the terms of agreements negotiated between the Village and PBA in the past.

The Majority justified its Award on only the FIRST HALF of Subsection (a). The Majority either totally ignored the SECOND HALF of Subsection (a) above, or applied Subsection (a) in such an irrational and arbitrary manner that it exceeded their authority and power.

As noted above, Section 209.4(c)(v) requires the Panel to take into consideration:

³ This criteria is not addressed herein as it was neither a source of dispute between the parties, nor was any evidence on this factor provided in the Record. It was not “an issue.”

a. comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding [*i.e.*, PBA members] with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions [Long Island police departments]

However, this is only ONE HALF of one (1) prong in the statutory criteria at issue that must be addressed by the Majority. The remainder/second-half of Subsection (a) provides:

... and with other employees generally in public and private employment in comparable communities [non-police].

While there are, in fact, other statutory criteria, the Majority also failed to apply them in the Award. These criteria may be found in Subsections (b) and (d) of Section 209.4(c)(v). It is most clear, however, that the Majority's results-oriented decision entirely ignored the SECOND HALF of Subsection (a).

Initially, I will concede the Majority did to some extent – at least not irrationally – review and compare the “wages, hours, and conditions of employment of the [Rockville Centre PBA] . . . with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions [*i.e.*, other Nassau County Village Police Departments].”⁴ However, this very limited review is insufficient to pass statutory muster.

The Interest Arbitration provisions of the Taylor Law were amended in 1977 to prevent a catastrophic award such as this. Since then, Interest Arbitration Panels have been mandated to consider all of the listed statutory criteria that are placed in issue by the parties, and to specify the basis for their findings on those criteria. Governor

⁴ I take exception to the Majority's refusal to consider relevant the Nassau County Interest Arbitration Awards and the recent Suffolk County settlement. The Majority purportedly did so solely because these comparators were now experiencing economic problems, which may have resulted in layoffs.

Carey's memorandum accompanying that amending legislation was specifically intended to narrow the earlier expansive authority granted to Interest Arbitration Panels (really the "neutral" public member/arbitrator) by earlier court decisions and to clarify:

[T]hat arbitrators must make findings with respect to every statutory criteria which the parties put in issue, that each such finding must have an evidentiary basis in the Record, and that the arbitrators must specify in their final determination what weight was given to each finding and why.

Governor Carey's Memorandum in Support of the 1977 Amendments, as quoted in *Greenwald v. County of Nassau*, 14 PERB ¶ 7529 (Sup. Ct. Nassau County, 1981).

With the exception of Subsection (c) above, the Village put all other Subsections – (a), (b) and (d) – in issue. It also submitted evidence (that was ignored) related to "other relevant factors" as contemplated by Section 209.4(c)(v).

The courts have required that the decisions of Interest Arbitration Panels be rational and not arbitrary or capricious. Interest Arbitration awards have been vacated or remanded when they were not sufficiently explicit and/or neglected to analyze one or more of the statutory criteria. See, e.g., *City of Yonkers*, 80 A.D.2d 597 (2d Dept. 1981); *City of Buffalo*, 82 A.D.2d 635 (4th Dept. 1981); *Greenwald v. County of Nassau*, *supra*; *City of Batavia*, 19 PERB ¶ 7510 (Sup. Ct. Genesee County, 1986); *Village of Pelham Manor*, 22 PERB ¶ 7522 (Sup. Ct. Westchester County, 1989); and *Buffalo Professional Firefighters v. Masiello* (Sup. Ct. Erie County, January 12, 2012).

The Majority's opinion fails to satisfy the statutory criteria deemed applicable and necessary in Interest Arbitration proceedings.

The Chairperson's Unilateral Cancellation of a Scheduled Final Panel Executive Session Was Unconscionable In Light of the One-Sided Award and Evidenced Bias

While perhaps this is an unusual second argument, it is placed here since this background may provide some context to the remainder of the Dissent.

The Chairperson indicated in the Award that in lieu of post-hearing written briefs, the parties deferred to their respective Panel advocates to make presentations on their positions in the Panel's Executive Sessions. This method was utilized to shorten an inherently lengthy process.

Following receipt of a "very rough" initial draft, the Panel held its first Executive Session meeting on November 21, 2012.⁵ At that Executive Session the undersigned spent many hours presenting the Village's case. The presentation included an "Oral Argument Outline," numerous highlighted Exhibits and oral argument. The PBA President made a brief presentation lasting only approximately 30 minutes. Other than clarification questions, the Chairperson said very little during the lengthy Executive Session about her feelings on the merits of the case.

Another Executive Session was held on December 6, 2012. Again, extensive additional oral argument was presented by the undersigned. This was done despite the fact that a very limited amount of time (approximately 36 hours) was available between receipt of the Chairperson's first substantive Draft Award and the actual Executive Session. My reaction to this first real draft was "shock and disappointment." The Chairperson, again, had very little to say with regard to her Draft Award. The PBA President also said very little.

⁵ The Award indicates that the Panel members met in Executive Session on November 5, 2012. That date is incorrect. Given that error, I cannot vouch for any of the other dates contained in the Award relating to negotiations, mediation, arbitration sessions or Panel sessions.

The Panel also met on January 17, 2013. Despite a five (5) week gap, there were no substantive changes in the Draft Award. I again presented hours of oral argument – all supported by the Record and exhibits – in support of the Village's position. Eerily, the Chairperson and PBA President, again, had very little to say.

Despite being disappointed and confused by the lack of interaction and communication from the other Panel members, there were no raised voices, accusations or recriminations made at any of the Executive Sessions. The Panel members were all civil to each other.

Following the January 17, 2013 Executive Session, the Chairperson said she was going to take into account what was presented and prepare a "close to final" Draft. The Chairperson further advised that she would set up a Final Executive Session so as to give the advocate Panel members an opportunity to react to the Chairperson's "close to final" Draft. The Chairperson subsequently scheduled this Final Executive Session for 9:30 a.m. on Tuesday, February 19, 2013 – the day after Presidents Day.

As Presidents Day weekend approached, the Panel members still did not have the Chairperson's "close to final" Draft. We were advised by her that we would have the "close to final" Draft by the MORNING of Friday, February 15, 2013. I left my office at 2:00 p.m. that Friday and the "close to final" Draft still had not been sent to me by the Chairperson. Upon leaving, I e-mailed the Chairperson and advised her not to send the "close to final" Draft until myself and the PBA President could receive it at the same time. I started to drive to Vermont when I left the office. Nonetheless, the Chairperson sent the "close to final" Draft approximately fifteen (15) minutes after my e-mail. Consequently, while the PBA President had the "close to final" Draft in hand – I was

driving to Vermont without it. Given the time gap, I do not believe they "crossed in cyberspace." I did not receive my "close to final" Draft until Saturday, February 16th via FedEx from my office. Despite another one (1) month passage of time, there were no substantive changes in the "close to final" Draft.

Although e-mails were exchanged amongst the Panel members on Friday, Saturday and Sunday (February 15th, 16th and 17th), I indicated that I was looking forward to our previously scheduled Tuesday, February, 19th meeting on the "close to final" Draft in a face-to-face Executive Session. This was especially important to me since I wanted to hear the Chairperson explain her "close to final" Draft face-to-face – something she had not done at any of our prior Executive Sessions.

At approximately 6:00 p.m. on Monday, February 18th (Presidents Day), the Chairperson via e-mail unilaterally "cancelled" the Executive Session scheduled for the next morning at 9:30 a.m. The Chairperson indicated that she saw no need for an additional Executive Session and ruled that any reactions to the "close to final" Draft would have to be made in writing and received by her by 11:00 a.m. the next day. She indicated that a final Award would be issued by Noon! I sent e-mails requesting she reconsider her cancellation and proceed with the meeting she had scheduled. As of 3:00 a.m., I had received no response and assumed the Executive Session was off. I spent the remaining hours trying to gather "written arguments" to help my client avoid this impending disaster. I received no e-mail response from the Chairperson until Tuesday morning. The Chairperson had apparently spent "a long night at the opera."

In my many years of experience, I have never had a "neutral" Panel Chairperson conduct herself/himself in such a manner. In all of the prior Executive Sessions, I had

used many hours and many exhibits to "argue" the Village's case. The PBA President used very little time to "argue" the PBA's case. Moreover, the Chairperson gave few, if any, face-to-face verbal responses to my presentation and rationale in opposition to her various DRAFTS. She never explained her thought processes or rationale for her written words. I expected such – at a minimum – at our final Executive Session scheduled for February 19th. I even stressed in the Panel's weekend e-mails my desire to "be quiet" when we met and to just listen in person to the Chairperson's rationale in defense of the contents of her Award. Perhaps this request to defend the indefensible prompted the Chairperson to cancel the final Executive Session despite my urgings to proceed. My requests were denied. The final Executive Session was never held. Instead, I was relegated to doing the best I could to convey my concerns to the Chairperson in writing (overnight on a Holiday) by 11:00 a.m. the next morning.

I was not only disappointed that I did not have an opportunity to hear the Chairperson's rationale and perhaps have "one last shot" to present the Village's position, but I was personally shocked by her treatment. Indeed, I have never had a neutral Panel member refuse a fellow Panel member's request for a face-to-face Executive Session. Not only did she refuse such a request, she unilaterally cancelled a meeting she had arranged and that had been previously agreed upon by the other Panel members. The only change I recall in the final Award was, at my urging, the correction of the spelling of my name.

The Chairperson's conduct was inconsistent with her obligation to be impartial and neutral, but, in retrospect, entirely consistent with her results-oriented Award.



POINT I

THE MAJORITY IGNORED THE PARTIES' PRIOR AGREEMENTS

Civil Service Law § 209.4(c)(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:

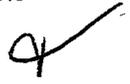
[* * *]

"d. THE TERMS OF COLLECTIVE BARGAINING 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 (emphasis added)."

Subsection (d) is one (1) of only four (4) criteria in the Taylor Law that the Panel is required to apply in reaching its Award. For purposes of this Dissent, since both the Village and the PBA did not submit evidence regarding comparative factors addressed in Subsection (c), the Panel was required to apply only Subsections (a), (b) and (d). Critically, the Taylor Law does not assign any different weight or import to any of these three (3) criteria.

The Majority entirely failed to "take into consideration" Subsection (d) as required by law.

Village Exhibits L, M, and N, provide a dramatic summary of most of the terms negotiated between the parties in the past. They address salary, longevity, differentials, holidays, clothing allowance, work chart, termination pay, insurance, retirement benefits,



medical and hospitalization benefits, and paid time off.⁶ The overwhelming majority of police officers receive:

- \$106,757 in base pay (2009 "top step") (superior officer salaries are higher);⁷
- Annual longevities ranging from \$1,000 to \$6,000;
- 100% health insurance coverage; retirees contribute \$375 per YEAR;
- 100% dental insurance coverage;
- Night differential ranging from \$9,835 to \$2,148;
- Additional differentials for detectives and desk officers;
- \$850 Clothing allowance;
- Overtime (some of the unit members' one (1) year overtime figures were \$46,244; \$41,057; \$36,797; \$36,393; \$27,414)
- 20-27 days vacation;
- The equivalent of close to 15 holidays' pay on average (e.g., \$7,150; \$5,720);
- Five (5) "floating" (personal) days;
- Four (4) bereavement leave days;
- Twenty-six (26) sick days (in contrast, "blue collar" workers represented by the CSEA who were hired after 2001 must work more than six (6) years to earn sixteen (16) sick days a year (V. Ex. Y));
- Traumatic leave;
- Generally over \$100,000 in termination pay; and
- The "best" defined benefit police pension plan available in the State.

⁶ With regard to job security, it is clear from the Record that RVC police officers were not laid off during the two (2) years covered by the Award (2010 and 2011). In fact, police officers were hired by the Village during this period: (V. Ex. O).

⁷ This figure does not include longevity, detective differentials, desk officer differentials, night differentials, holiday pay, clothing and equipment allowance, overtime, and termination pay.

The average 2011 earnings for "top step" members was over \$155,000 per person (V. Ex. N). The average Fiscal Year 2011-12 cost to the Village for all unit members was over \$200,000 per officer (V. Ex. M).

The PBA's bargaining unit members receive all of the above for being scheduled to work (minus vacation, sick and other leave) an average of:

12-hour shifts (31 officers) - 2.6 days per week⁸

10-hour shifts (16 officers) - 3.1 days per week

8-hour shifts (3 officers) - 3.9 days per week

(V. Exs. K, L, S).

The cost to the Village for these salaries and benefits is dramatically illustrated in Village Exhibit M – ranging from a LOW of \$100,632 (new hiree) to a high of \$256,624, with all but 19 unit members costing over \$200,000. (V. Ex. M).

In 2011 only nine (9) members of the PBA bargaining unit (those not on "top step") earned less than the Village median HOUSEHOLD income of \$107,000. (V. Exs. E, N). 44 members earned more than the \$107,000 Village median HOUSEHOLD income in just salary alone. (V. Exs. E, N).

In addition, under the existing collective bargaining agreement, seventeen (17) members of the bargaining unit have already received in-grade salary increases for 2010, and fourteen (14) have already received in-grade salary increases in 2011. (V. Ex. SSS). These raises are IN ADDITION TO the percentage raises now being awarded by the Panel. These increases have already cost the Village 1.5% of total base payroll in 2010 and 1.4% in 2011. This cost to the Village was totally ignored by

⁸ Thirty-one (31) bargaining unit members worked 12-hour tours; sixteen (16) worked 10-hour tours; and only four (4) (and two (2) additional on GML § 207-c) worked 8-hour tours. (V. Ex. K).

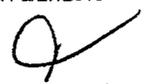
the Majority and never addressed in the Award. It should be noted that the evidence established that recent Nassau County PBA Interest Arbitration awards provided far lower percentage increases for those receiving in-grade increases than those at "top step." (V. Ex. V).

Utilizing the \$106,757 "top step" base salary in effect on the last date the PBA received an increase (January 1, 2009), the PBA ranked third (3rd) highest out of eight (8) comparable Villages, plus the County. (V. Ex. P). However, because of the rapid accelerated movement to "top step" over the first twenty (20) years of employment, a RVC police officer exceeds – in total cumulative compensation over twenty (20) years – the village with the highest annual salary (Village of Lynbrook), by approximately \$50,000. (V. Ex. Q). Apparently, RVC's police receive the highest cumulative base salaries of all comparable villages. This critical point was conveniently ignored by the Majority.

While I have voted with the Chairperson for a new salary schedule that will affect new, as-of-yet unhired, bargaining unit members, I note that the number of steps for new hires to reach "top step" will still be fewer than Nassau (beginning of 9th year) and Suffolk Counties (12th year). (V. Ex. R).

The benefits above – which include the most expensive pension option available for police in the State of New York (RSSL § 384-e) – have taken a heavy toll on the Village's resources. Since 2004 the cost of pension and health insurance alone has increased 145%. (V. Ex. YY).

During that same period, a Family health insurance plan has risen from \$11,097 (2004) to \$18,754 (2012). (V. Ex. ZZ).



During that same period, annual pension contributions have increased from 4.6% (2004) to 25.4% (2013) of total payroll. (V. Ex. BBB).⁹

During that same period, total overtime has increased from \$341,603 to \$1,100,532. (V. Ex. FFF). Since 2009 – the last year a contract was in effect – overtime has increased from \$691,886 to a high of \$1,100,532 in 2011. (V. Ex. FFF).

A review of the terms of the prior agreements negotiated with the PBA makes it clear that they are by far the highest-paid organized employees in the Village – by tens of thousands of dollars. The PBA members' salaries and benefits far exceed the salary and benefits in effect for the Village's unionized white and blue collar employees. (V. Ex. Y). Moreover, the PBA bargaining unit members' average total income (without fringes) is almost \$50,000 above the Village's median Household income.

The PBA members have fringe benefits that clearly cry out for reductions, or MINIMALLY, a new tier. Yet, the only reference in the entire Award to the parties' prior agreements by the Majority (Award, p. 11) is limited to a recitation of the raises given in the 2005-09 agreement. There is no analysis in the Award of insurance, retirement benefits, medical and hospitalization benefits, paid time off or job security. Given the "one sentence" treatment afforded this Subsection (d) criteria, I must conclude that it was ignored by the Majority. Given the level of salaries, the "Cadillac plans" in health insurance (with no member contributions) and retirement benefits (with no contributions for the overwhelming majority of the bargaining unit) and the twenty-six (26) sick days, etc., these criteria should have been an important factor analyzed by the Majority. Such an analysis may have supported a conclusion that the PBA members are "pretty well

⁹ Next year the rate will increase to 28.8%. (V. Ex. QQQ).



off" in this economy. Perhaps even one (1) 0% wage increase for 2010 may have been awarded. But in no way could it support the two (2) raises awarded for 2010 and 2011.

The Majority's failure to take this factor into consideration was irrational, arbitrary and capricious, and exceeded its authority.

POINT II

**THE MAJORITY MISAPPLIED AND/OR IGNORED
KEY LANGUAGE IN CSL § 209.4(c)(v)(a)**

Civil Service Law § 209.4(c)(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 [RVC PBA] with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions [other Police Departments] AND WITH OTHER EMPLOYEES GENERALLY IN PUBLIC AND PRIVATE EMPLOYMENT IN COMPARABLE COMMUNITIES (emphasis added)."

[* * *]

As mentioned in my Introduction, the Majority improperly considered only the FIRST HALF of Subsection (a) in crafting the Award. I recognize the logic of the Majority's analysis with regard to "average" police increases in 2010 and 2011 on pages 6-7 of the Award. I do not concede, however, that they are the most appropriate comparators. The Majority excluded both Nassau and Suffolk Counties – at least when such a comparison would help the Village's case. Also, I believe the totality of the statutory criteria supersedes any perception of the Majority that village police departments are the most appropriate or only comparators. There is no citation in the Record or provision in the statute that supports the conclusion that the FIRST HALF of



Subsection (a) carries more weight than the SECOND HALF of Subsection (a) or Subsections (b) and/or (d).

On page 14 of the Award, the Majority concludes:

Only in the context of jurisdictions with severe financial circumstances have no wage increases been awarded to law enforcement officers in the appropriate comparator jurisdictions, and the Village has in fact provided for wage increases for PBA members in its budgets.

This quote demonstrates the Majority's failure to take into account all of the statutory criteria. It evidences the Majority's limitation of its findings to "law enforcement officers in the appropriate comparator jurisdictions" and also its heavy reliance – as the Majority often did in Executive Sessions and in prior draft awards – and numerous times in this Award – on the fact that the Village "has it in the budget."¹⁰

The Majority Misapplied and Misinterpreted the FIRST HALF of Subsection (a)

An initial assessment of the FIRST HALF of Subsection (a) is warranted because of the Majority's over-reliance on misinterpreted statutory language and evidence. In assessing "similar services" performed by other police departments, the Majority comments that RVC "is considered the third busiest police department of the nineteen (19) villages in the Nassau County Police Conference." (Award pp. 2-3). While this statement may be factually accurate, if the term "busiest" is used only for crimes¹¹, it is misleading. To be certain, the hazards of any police job in any community – wealthy, poor, high-crime or low-crime – should not be trivialized. It is a job where officers put their lives on the line. This is why they have 20-year pensions, unlimited § 207-c

¹⁰ The Majority has harped on the fact that the "money is in the budget" throughout this process. I submit even if true, that is not the end of the statutorily-mandated analysis. See *infra*.

¹¹ Indeed, "busiest" would appear to be a misnomer if the over 50 members of the PBA addressed 339 total crimes in 2011, less than seven (7) per person for the year.

coverage at full pay when injured in the line of duty, and the highest salaries in the Village. But for the Majority to create the impression that RVC is a "busy" police department to justify their Award is disingenuous. For example, a comparison of the three (3) "busiest" Nassau County village police departments reveals the following crime statistics:

Police Department/Communities	2011 Total Number of Crimes
Village of Hempstead	1,488
Village of Freeport	1,088
Village of Rockville Centre	339

(V. Ex. T). To give an even broader perspective, the Village provided evidence of the crime statistics for Nassau County's contiguous 1st and 5th Precincts:

Nassau County Police: 5 th Precinct (includes: Elmont, Franklin Square, Lakeview, North Valley Stream, South Valley Stream, Valley Stream, West Hempstead)	3,321 (during the <u>7 month</u> period from 12/28/10 – 07/25/11)
Nassau County Police: 1 st Precinct (includes: Baldwin, Baldwin Harbor, East Meadow, North Bellmore, North Merrick, Roosevelt, South Hempstead, Uniondale)	2,587 (during the <u>7 month</u> period from 12/28/10 – 07/25/11)

These crime statistics must be placed in the proper context as consistently argued by the Village – a context that was unfortunately ignored by the Majority.

The Majority continued its analysis of the FIRST HALF of Subsection (a) by acknowledging on page 10 of the Award:

Historically, Nassau County and other police jurisdictions within Nassau County have been the primary comparators used under the statutory criteria, related not just to geography but also to the uniqueness of police work as against other public sector and private sector occupations.

Yet, when it comes to accepting the effects of having Nassau County (and even Suffolk County) as a "primary comparator," *i.e.*, applying some of the key concessions faced by the County PBAs, the Majority quickly minimizes and dismisses the comparison stating:

The Panel must also take note of the fact that Nassau County, previously the "trend setter" for municipal and village jurisdictions within the County, as well as Suffolk County, Nassau County's primary comparator in the past, are both "in very serious financial condition."

The Majority failed to adopt in its Award even one (1) of the numerous concessions made by Nassau County (or Suffolk County) over the period of time covered by the PBA's last contract (2005-09) and the current Award (2010-11). This list includes the following:

- A Ten(10) Step Schedule since 2006;
- Flag Day eliminated as Holiday in 2004 to a total of 12 Holidays;
- Travel Time eliminated in 2004;
- Steps frozen or lower increases than those at "top step" in 2007;
- Divisor for holidays/O.T./Shift Differential 1,985 hours (RVC = 1,872);
- Termination Pay Divisor Raised to 2,088 in 2009;
- 48 Hours overtime at "straight time" pay rate in 2004; and
- Steroids Testing in 2008

(V. Ex. V).

In addition, although it is currently the subject of litigation, the Nassau Interim Finance Authority (NIFA) has frozen Nassau County police officers' salaries for a number of years. (V. Ex. FF).

Nassau County's PBA contract served as the foundation and rationale for the generous salaries and fringe benefits received by the RVC PBA. (V. Ex. U). But, now, as the County and its PBA contract evolve with the difficult economic times, the Panel irrationally ignores the County PBA's concessions so that the RVC PBA members are not required to make any of the same.

As part of its case, the PBA submitted Suffolk County Awards and settlements and Nassau County Awards that recognized Suffolk County as its comparable. (PBA Exs. 24, 32, 37, 38). Indeed, Suffolk County's most recent police settlement (V. Ex. DD, EE) – negotiated in the current economic climate (signed September 6, 2012 and covering at least one of the years at issue herein (2011)) – will inevitably be followed in substantive part by Nassau County. Some relevant provisions of the Suffolk County deal include:

		2011	2012	2013
(V. Exs. DD, EE)	Wages	0%	0%	6/1/13 - 1.5%
	New Employees	12 Years to Top Step		
	Health	New Employees - 15% Contribution as an Active & into Retirement		
	Training Days	2 additional days in 2013-2015		
	No layoffs	<u>Note:</u> No PBA unit members were laid off in 2010, 2011 or 2012 for that matter		

The concessions and changes to the Nassau and Suffolk County police contracts were totally ignored in the Award. While it is recognized that the Nassau awards and Suffolk settlement involved public employers that were suffering some severe financial problems, their police settlements clearly contributed in large part to getting them to that point. The Village should not have to wait until it needs a financial oversight board before it reigns in its police salaries and benefits. Yet, this Award virtually mandates just such an absurd premise. The Panel should have awarded some of the cost-saving measures seen in those Counties responsible for getting the PBA's salaries and benefits to the levels they presently occupy. While this may not rise to the level of the Majority's other total disregard of the applicable criteria, it clearly is a misapplication of the FIRST HALF criteria of Subsection (a).

The Majority also seems to imply there is something "unique" about the nature of police work in the Village (Award p. 11).

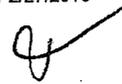
The peculiarities of police work in the Village require bargaining unit members to handle matters associated with an active night-time commercial center, a hospital and public housing as well as routine matters associated with a primarily residential community.

Frankly, the police duties described above do not appear to be "peculiarities" limited to RVC. Rather, they are indicative of the type of police work that takes place in any other village in Nassau County, other than perhaps the North Shore's "Gold Coast" communities that the Village continuously distinguished from RVC. Nonetheless, it is all speculation because there is nothing in the Record that compares RVC's night life, facilities, or work responsibilities with any other villages.

The Majority Completely Ignored the SECOND HALF of Subsection (a)

The mandate from the State Legislature found in the SECOND HALF of Subsection (a) is clear. The Panel is NOT to simply compare police with police. Yes, it must do that part, but not to the exclusion of comparing the RVC police with "other employees generally in public ... employment in comparable communities." The Majority clearly ignored this mandate.

While the Majority states in the Award (p. 10) that the Village "focused" on the settlement between the State of New York and the CSEA, that is not accurate. Certainly, however, such a settlement must be deemed relevant under the SECOND HALF of Subsection (a). Indeed, New York State employees work and live everywhere in the State – some of these locations are necessarily in "comparable communities." The State CSEA represents approximately 66,000 employees. I submit this settlement MUST be deemed relevant under the SECOND HALF of Subsection (a). An analysis of its economic terms demonstrates just how out of touch the Majority is:



	2011-12	2012-13	2013-14	2014-15	2015-16
Wages	0%	0%	0%	2%	2%
	5 days unpaid furlough	4 days unpaid furlough repaid in 2015-16	\$775 lump sum	\$225 lump sum	
Health Insurance Contributions					
Grade 10+	Indiv.= 10% to 16%				
	Family= 25% to 31%				

The Majority (Award, p. 10) dismisses this crucial template settlement thusly:

While appropriately a consideration, reliance on non-law enforcement bargaining units in jurisdictions not in the Village's labor market rather than police units in the local labor market from which the Village police force is drawn would be inconsistent with the statutory criteria that must guide this Panel's determination.

No wonder Governor Cuomo has proposed a 2% cap on arbitration award increases for certain jurisdictions! Arbitrators are ignoring the statutory mandates and all the 0%'s negotiated in non-uniformed services and relying solely on police settlements to whipsaw municipalities into exorbitant raises on top of exorbitant bases.

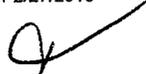
The Majority could not be MORE wrong. First, while the Majority mentions the State CSEA settlement, they do not include or analyze its terms. Moreover, they do not even give the State CSEA settlement "consideration." Secondly, the State bargaining unit is in virtually every labor market in the State. Third, the Majority wanted to – and

did – focus only on local police units. This analysis is clearly contrary to the statute's specific guidelines.

The Majority also argued (Award, p. 10) that the Village “focused” on a PBA Interest Arbitration Award for the Village of Mount Kisco, New York. The Village did not “focus” on that Award – it merely used it to demonstrate that police were no longer immune from health insurance contributions (the Award therein awarded a 15% contribution for those at “top step” RETROACTIVE to June 1, 2008) and to demonstrate the most reasonable way to introduce health insurance contributions for new hires placed on a new lower-paying (for a few years) schedule. This method would impose the employee contribution in the year the officer reaches “top step” when they would be receiving an approximately \$10,000 step wage increase and, thus, not feel the impact of a required contribution.

Under the SECOND HALF of Subsection (a), the Panel is CLEARLY required to take into account the “comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding [RVC PBA] with the wages, hours, and conditions of employment [of] . . . OTHER EMPLOYEES GENERALLY IN PUBLIC . . . EMPLOYMENT IN COMPARABLE COMMUNITIES (emphasis added).” I submit the Village made its case to do so, and yet the Majority either irrationally distinguished, or totally ignored, the facts.

The Majority ignored the unignorable – the additional requirement to compare the PBA “with other employees . . . in public . . . employment in comparable communities.” The majority gave no relevance to the Village's settlement with its CSEA unit; the treatment of the Village's non-union employees; the settlement by the Teachers in the



RVC School District; and the settlements of Teachers in "comparable communities" on Long Island.

A review of the evidence on these "other employees generally," reveals the following relevant data:

	2009	2010	2011	2012
(V. Ex. Z) RVC Non Union	0%	0%	0%	0%
(V. Ex. X) RVC CSEA		0%	0%	2% (also in 2013-15)
(V. Ex. AA) RVC Teachers		0%	1.25%	2.5% (2.75% in 2013-14)
(V. Ex. BB) Long Island Teachers			Below 1% Avg.	

A close review of Village Exhibit BB demonstrates that salary raises anywhere near the percentage increases in the Award for the years in issue were actually negotiated years before the economic crisis!

Thus, every public employee working for the Village, as well as the RVC School District's highest paid bargaining unit (Teachers), negotiated or was given a 0% for 2010. This crucial point was ignored by the Majority.

The Majority attempts to dismiss the Teachers' 0% by stating that the Teachers did so "facing the prospect of imminent layoffs." (Award, p. 12). This constitutes an absolute misrepresentation of the Record. There is NOTHING in the School District's Stipulation of Agreement with its Teachers that mentions anything about layoffs or job security for the applicable period. (V. Ex. AA).

While there is a comment by the RVC School Board President in a newspaper article that the Teachers contract "protects jobs for several years," and the Superintendent is quoted in reference to "staffing levels," the settlement does not

contain a "no layoff" clause. Moreover, during the Interest Arbitration hearing, the Chairperson indicated that she gave little or no weight to newspaper articles as evidence. Yet, when "grasping for straws" to support the indefensible, the Chairperson used a newspaper article to support her conclusion that the RVC Teachers took a 0% to preserve jobs. This is just another example of the Chairperson struggling to find anything to support a pre-conceived/determined Award.

The Majority simply ignored the fact that the RVC Teachers, the Village's CSEA employees, and the Village's nonunion employees ALL took zero (0%) percent in 2010. These employees shared the burden of the public employer while the Majority permits the more highly compensated PBA members to look with pity upon the plight of their non-Interest Arbitration brothers and sisters.

Moreover, as demonstrated by the chart above, the Village's CSEA and non-union employees took another 0% percent in 2011. While the RVC Teachers received an increase of 1.25% in 2011, they correspondingly increased their health insurance contributions for ACTIVE employees to 15%. (V. Ex. P). This analysis by the Majority was result driven and irrational.

In terms of comparable communities, in 2011 the following school districts in Nassau County took a 0% percent increase (V. Ex. BB):

Baldwin	Locust Valley	Roslyn
East Meadow	Lynbrook	Seaford
East Rockaway	Malverne	Syosset
East Williston	North Merrick	Uniondale
Great Neck	Oyster Bay	Wantagh

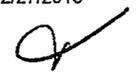
In 2010 and 2011, the Majority awarded the PBA almost "business as usual" wage increases. I submit that under the applicable statutory criteria, the Majority's Award is irrational, arbitrary and capricious.

The Majority sought to "rationalize" its approach to the "facts" above by indicating on page 12 of its Award:

... [T]he parties [who received 0%'s] entered into longer-term contracts that could accommodate cost-savings over an extended period of time that cannot be accommodated in the circumstance of imposed terms for a two-year contract covering a period of time in the past.

This analysis is nonsensical. This "philosophy" has, and will, produce the chaos of Interest Arbitration that is Long Island. The Majority reasoned that, because the Award may only cover two (2) years, an Employer cannot accomplish any of the cost savings or concessions that are made in longer-term deals. This makes no sense. Assuming the Majority came up with a "rational" two (2) year Award consistent with the criteria of the Taylor Law that included one (1) 0%, the PBA could address in the next negotiations, or again in its next Interest Arbitration, what would be "fair" for 2012 and 2013. The facts would be the facts, and they could be applied by the parties or the next Panel. With this Award, the PBA is way ahead of everyone else in RVC – a "head start" impossible to catch up with because of "front loading."

While the Award's new salary schedule for future hirees is helpful and will save substantial money "down the road," it provides no immediate relief during the worst economy in over 75 years. This is exchange for two raises imposed on the Village by the Majority that are "off the charts" when compared to the rest of Long Island – except police departments.



POINT III

HEALTH INSURANCE

The best example of the Majority's failure to properly apply the Subsection (a) criteria can be found in the Award's treatment of the critical issue of Health Insurance. Other than a 0% wage increase, or otherwise very low salary increases, the only substantive area where public employers can achieve meaningful cost savings is through employee contributions to health insurance premiums. Nonetheless, the Majority continues the irrational Nassau County trend of police officers (who make the most money of all unionized public employees) not being required to contribute to their own health insurance, while most other public employees make meaningful contributions.

The VERY RECENT (September 6, 2012, V. Ex. EE) Suffolk County PBA settlement includes a 15% health insurance contribution for new hirees while active and into retirement. The PBA in this case submitted Suffolk County Interest Arbitration Awards as comparables. (PBA Exs. 37, 38). Moreover, Nassau County neutral Interest Arbitrators stated as follows on this issue: "Numerous Award panels have noted Nassau's similarity to Suffolk County ... [T]he best comparator for Nassau is Suffolk County." (PBA Ex. 32, p. 19).

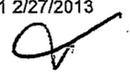
It is inevitable that Nassau County will – in the near future – be forced to follow Suffolk's lead and obtain at least a 15% health insurance contribution for new hirees. I believe the Award herein should have included the same contribution. In fact, I made a suggestion at an Executive Session which was even less draconian. I suggested that

the 15% contribution not be effective until those hired after December 31, 2011 (the last day of the Award) reached "top step" pay. Under the new schedule in the Award, a post-December 31, 2011 hiree moving on to "top step" would receive an approximately \$9,000 raise that year in step increase alone. He/she would not feel the impact of the impending 15% contribution (approximately \$2,700 for a Family Plan) at that time. He/she would only experience a \$6,300 raise for that year. Given the lower salaries on the earlier steps, I argued it would be unfair to impose this contribution at these lower steps as was done in Suffolk County. However, it certainly is not unfair to have a "top step" police officer – with a W-2 likely by then to be in excess of \$175,000 – contribute 15% towards health insurance. Cf. Arb. Seiler's Mount Kisco Award (V Ex. II) wherein he awarded a similar "top step" analysis but made it applicable to all bargaining unit members and retroactive to 2008.

With regard to health insurance, the Majority ignored the shared sacrifice of other RVC and RVC School District employees:

	<u>2010</u>	<u>2011</u>
(Ex. Z) RVC Non Union	-	10% Actives
(Ex. AA) RVC Teachers	14% Actives	15% - goes to 17% in 2013 Actives

Although the RVC CSEA settlement did not include a health insurance contribution, they did take 0% increases for 2010 and 2011, the two (2) years covered by this Award.



Moreover, the 66,000 State CSEA employees – receiving far lower salaries than the Village's \$155,000 per year police officers – negotiated for the following health insurance obligation:

	<u>2010</u>	<u>2011</u>
(Ex. JJ) Active NY State Employees	25% Family	31% Family

Despite all of the above, and the critical role that Health Insurance plays in any negotiations and Interest Arbitration, the Majority saw fit to dedicate only fifteen (15) lines of rationale in the Award (approximately one-half (1/2) of one (1) page) to reach its nonsensical justification (“... the issue ... is not ripe for decision ...”) for not having the guts to do the right thing. The Majority stated:

There is no question that health care costs have increased dramatically in the recent past, far exceeding earlier projections and actuarial assumptions, and that some employee contribution to overall health care costs is an emerging trend.

However, an award that would only impact new hires as proposed by the Village would be of little or no immediate financial consequence to the Village. The Panel takes note of the fact that the parties have already negotiated for retiree participation in health insurance premiums costs, although not a substantial amount [\$375 per year!], and the Village is the only jurisdiction in Nassau County where police officers have done so. Alternative plans or other cost-sharing alternatives, such as participation by bargaining unit employees at higher steps or as part of a retirement incentive package, might better foster more long-term, mutual goals and interests of the parties. The parties jointly can better explore the viability of and where best to introduce any further assumption of the burden of healthcare costs by employees.

In the context of the overall Award, the Panel concludes that the issue of changes to Section 17 on health insurance is not ripe for decision, and the proposal is denied.

To summarize the Majority's conclusions:

1. The Village's health insurance proposal does not go far enough because it only impacts the new hires and would be "of little or no immediate financial consequence to the Village"!

2. The PBA gets "credit" for being the only police jurisdiction in Nassau County where retirees contribute – albeit \$375 – a year.

3. After going through this arduous process for over 3-1/4 years (negotiations commenced in November of 2009 (Award, p. 1)), the Majority concludes that the parties "jointly can better explore the viability of and where best to introduce any further examination of the burden of health care costs by employees."

4. The majority's ultimate conclusion is that the issue of changes to "health insurance" is not "ripe" for decision. This conclusion is not only irrational, it is unconscionable and inconsistent with the Record.

The Majority's rationale on Health Insurance is proof that Interest Arbitration in this case was a total failure, or that the Majority was simply too lazy or too weak to do its job. If the issue has not "ripened" over the last 3-1/4 years with all of the compelling evidence in the Record, presumably it never will.



POINT IV

THE MAJORITY IGNORED "THE INTERESTS AND WELFARE OF THE PUBLIC"

Civil Service Law § 209.4(c)(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:

[* * *]

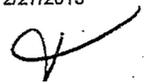
b. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE PUBLIC EMPLOYER TO PAY (emphasis added).

Subsection (b) of CSL § 209.4(c)(v) contains two (2) distinct elements: (1) the interests and welfare of the public; and (2) the financial ability of the public employer to pay. While listing these elements as one (1) of the statutory criteria in various parts of the Award, the Majority merely pays "lip service" to "the interests and welfare of the public."

I admit the Majority's conclusion with regard to the Village's "ability to pay" may not be irrational and/or arbitrary and capricious and/or outside the scope of its authority. Instead, the Majority's conclusion is just plain WRONG.

Beginning with the Village's financial issues, it is uncontroverted that each of the following is true:

- State Aid has been reduced (V. Ex. VV);
- Interest Income revenue is down (V. Ex. WW);
- Tax Certiorari filings and refunds are up (V. Ex. EEE);
- Pension costs have skyrocketed (V. Ex. YY);
- Health insurance costs have skyrocketed (V. Ex. ZZ);
- Mortgage Tax revenue is down significantly (V. Ex. UU);



- The Economy has "strained" the Village's finances (Schussheim's testimony);
- Assessed home values are down (V. Ex. SS);
- There is now a 2% Tax Cap Law; and
- Real estate values have declined

Despite the economic realities above, the Majority concluded that the Village has the ability to pay the exceedingly generous raises issued in the Award. Why? The Majority highlighted the Village's:

- Increasing Fund Balance;
- Favorable Bond Rating;
- Favorable Controller's Audit;
- Favorable financial condition compared to Nassau County;
- Favorable financial condition compared to other municipalities;
- Slight decline in unemployment from recent highs; and
- Stable commercial base

Despite the two (2) competing trends above, the Majority concluded the Village has the "ability to pay" because – IT HAS BUDGETED FOR THE RAISES. The Majority mentions this numerous times in the Award. For the sake of argument, assume this is a rational conclusion by the Majority. It nonetheless begs the question as to whether this satisfies the Majority's obligations under the statutory criteria. "Ability to pay" is only ONE-HALF of Subsection (b)¹². The OTHER HALF – THE FIRST HALF – is the "interest and welfare of the public." When this FIRST HALF is considered, there is NO

¹² To demonstrate a total inability to pay, a public employer would have to demonstrate it had exhausted its constitutional tax limit – a threshold few public employers are even approaching.

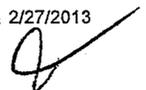
WAY to justify two (2) raises awarded by the Majority without any health insurance contributions from those receiving the raises.

What is in the Record on the PBA's side to support the Award's raises under Subsection (b)? Try:

- Morale is being adversely affected according to the Commissioner;
- Police are highly regarded according to the Commissioner – raises would help?;
- The PBA gave the Commissioner fifteen (15) minutes of "flex" time in the schedule;
- The Village is exploring new revenue sources – fines and fees and the Mayor's efforts to eliminate the "headquarters tax" – almost irrational as a factor;
- Unit members have not had a raise in three (3) years – in light of their past history – this impacts morale even more – according to the Commissioner

Alternatively, what is in the Record on the Village's side to support its 0% / 2% wage proposal and 15% new hire health insurance contribution proposal? Try:

- The unit members' incomes (over \$155,000 on average) far exceed the Village's residents' median household incomes;
- Unit members contribute 0% to health insurance – while almost EVERY other non-police public employee does contribute and they earn far less and work more days/hours;
- Every other Village employee has taken at least two (2) 0% for wages;
- Real estate values have declined;
- The credit rating agencies want the Village to build up reserves;
- Unemployment rates are still high and CPI rates are still low;
- In terms of median household income, RVC ranks in the middle of comparable Villages;



--There is no evidence of recruitment or retention problems; and

--The Village's residents' tax increases over the last five (5) years have been more than double their neighbors in surrounding communities. The Village's last 5 tax increases have totaled 40.7%. The neighboring communities for the same period have increased:

Garden City	- 15.0%
Lynbrook	- 23.2%
Malverne	- 13.11%
Hempstead	- 16.8%
Freeport	- 13.33%

I submit that the above tax increase disparity, which generated the money in the Budget to pay for a portion of the Award's raises, is far from being in "the interests and welfare of the public." (V. Ex. RRR). The Village taxpayers deserve a break – not increased police salaries.

While it is difficult to convince a Panel that the two (2) factors in Subsection (b) are "at issue" when some of the money for the raises are "in the budget," such an approach is too simplistic. If that were the case, then public employers would get 0% in Interest Arbitration just by not budgeting for any increases. While perhaps there is technically an "ability to pay" the package awarded by the Majority, the real issue is, given all the other statutory criteria, is this the best use of the Village's limited resources at this time – is it in the "interests and welfare of the public?" I submit it is not.

POINT V

THE MAJORITY IGNORED THE EXISTENCE OF "OTHER RELEVANT FACTORS" WHEN CRAFTING THE AWARD

Civil Service Law § 209.4(c)(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 ... (emphasis added).

Village Exhibits NN, OO, and PP clearly support the conclusion that there exists a fiscal crisis in our Nation, New York State, Nassau and Suffolk Counties, and local municipalities, that started in 2008. While these are secondary comparators, the fiscal crises experienced by these governments is very real and beyond dispute. The Village showed, yet the Majority ignored, how the impact of the fiscal crisis faced by the State “trickled down” to the municipalities in the form of less State aid; greatly increased pension contributions; and other unfunded mandates. The Village does not operate in a “bubble,” immune from the realities of the County, the State and the Nation. To ignore this fact is incredibly shortsighted.

As mentioned above, the Taylor Law, in addition to the specific criteria listed therein, also states that “any other relevant factors” are to be considered in order to arrive at a “just and reasonable” determination. The Award ignored many of these other critical relevant factors raised by the Village: the national economy; fiscal problems around the State; fiscal problems in Nassau County. (V. Ex. OO).

POINT VI

THE MAJORITY TOOK AN IRRATIONAL APPROACH TO THE REMAINING VILLAGE PROPOSALS

In addition to the above analysis regarding the factors to be considered involving the major items addressed in the Award (e.g., salary, health insurance), there are also other specific items covered by the Award that highlight the Majority’s irrational and arbitrary and capricious treatment of the issues.

Night Differential – p. 18 of the Award.

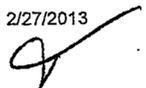
The Majority rejected the Village's proposal to make pay for a "night shift" consistent with the hours of nighttime.

Changing the hours of what constitutes a "night shift" is an issue requiring more input by the parties.

Basically, the Village's proposal was that officers should not be paid a "night shift" differential starting at 3:00 p.m. in the AFTERNOON. Apparently, "logic need not apply" for the Majority. I cannot imagine what "more input" is needed. At one Executive Session when this issue came up for discussion I asked the Chairperson what time it was. She answered – 4:45 p.m. I said "Look outside ... it's still light!" This was in December – I rest my case.

Desk Duty Officer – p. 19 of the Award.

The Majority's decision to award increases to the PBA in this area was supported by the testimony of Lt. Vafeades who "described the range of duties different from more traditional police officers' duties" The only support or rationale provided to increase the differential was that the "additional compensation for the desk duty officer assignment has been increased by the same percentage as annual salary increases . . . [and] does not represent a significant cost to the Village." Other than that, there is no basis in the Record to demonstrate why officers who sit behind a desk, regardless of their range of duties, should be paid more than police officers performing traditional police duties in the streets. In fact, in many police departments, the duties of this position are performed by officers on "light duty" who are too injured to do the job at full duty, but need transitional "light duty" to get back up to speed. Any work that can be performed as "light duty" should not warrant an additional stipend/differential. While this is a more minor issue, it is just another example of the Majority's irrational conclusions.



Sick Leave – p. 20 of the Award.

The Majority's conclusion as to why the current astounding annual contractual entitlement of twenty-six (26) sick days should not be reduced, even for new hirees, is unsupportable. According to the Panel's logic:

In the performance of their duties on behalf of the public, unit members work long hours, at times in much less controlled circumstances than other employees. While sick pay usage has been high at times, there is no evidence on the Record of any abuse. The Village's proposed change is not supported on the Record in the context of other adjustments awarded [like what?] and is denied.

The Record indicates that the overwhelming majority of PBA bargaining unit members are only SCHEDULED to work 2.6 days per week (exclusive of vacation and other leave time). While these are 12-hour shifts (with two (2) hours of meal periods and other breaks, *see infra.*), there are many weeks where unit members work only two (2) such shifts out of seven (7) days. If ever there was a time to start a second tier to reduce the twenty-six (26) days of sick leave to something more "rational," it is now! The Village invested 3-1/4 years to accomplish something! After all, it is not enough to simply provide this sick leave to unit members, the Village must also pay them out upon retirement in tribute for them not abusing all of it.

Termination Pay – p. 21 of the Award.

The Village proposed that, effective December 31, 2011, the annual divisor used to calculate the hourly rate for payment of accumulated but unused sick leave amounts on retirement be changed from 1,872 to 2,088. The Majority admitted "the current divisor ... is higher than that in certain comparator contracts more recently negotiated, but there is insufficient demonstration on the Record of a basis warranting imposition of

such a change” The Majority went on to state: “It is best left to direct negotiations between the parties.”

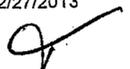
There is undoubtedly sufficient evidence in the Record to support the Village's suggested change, e.g., Nassau County having gone to the 2,088 divisor in January of 2009. (V. Ex. V). The Panel could have imposed an award, effective December 31, 2011, wherein the Village could implement such a divisor, but would be required to give the PBA one year's notice of its intent to do so. This would give current members who are eligible to retire a sufficient amount of time to make such a decision and take advantage of the higher rate. It would have no impact on this long-serving group of employees. The concept is akin to a retirement incentive, as was done in Nassau County, which resulted in numerous retirements. Financially, retirements are important to the Village in light of the Award's new salary schedule which will generate savings as officers retire and are replaced.

Simply saying there was insufficient evidence on the Record to support a proposal and that it is best for the parties to do this in direct negotiations does not make it so. It was the Panel's obligation to finish this 3-1/4 year project by resolving the issues in front of them that had support in the Record. The Majority failed miserably in this task.

Drug Testing – p. 30 of the Award.

This is the Majority's second-most indefensible irrational determination:

While the parties might mutually elect to put in place reasonable drug and alcohol testing procedures, there is no demonstration on the Record of prior experiences or specific concerns that would warrant the imposition of such a potentially intrusive procedure.



First, how would the Department demonstrate on the Record "prior experience or specific concerns" without having a drug testing procedure in place?

Second, there is no evidence that a drug test – whether through a urine sample or hair testing – is "a potentially-intrusive procedure." Individuals who drive Village trucks are mandated by federal law to undergo such testing, but yet the Village's police officers, who are so quick to point to the special "peculiarities" of their jobs that require so much greater pay and benefits, cannot be made to undergo similar testing? Frankly, it says a lot that the PBA would even oppose such a proposal. You would think those officers sworn to uphold the law would have no problem proving that they themselves are not violating it. Apparently not. There is also evidence in the Record – ignored by the Majority – that at least three (3) police departments in the County have drug testing in their contracts (many others may have them in their Rules and Regulations), including Nassau County. (V. Ex. V; PBA Exs. 28, 35).

The Majority also improperly ignored the evidence provided by Police Commissioner Gennario in support of the Village's other proposals, *i.e.*, those that do not have a major direct impact on financial considerations. Many of these proposals do have a significant operational impact on the Police Department. Without changes to these provisions, the day-to-day operations of the Police Department will continue to be unwieldy in certain areas and unnecessarily expensive. These changes would have helped balance an imbalanced Award and provided at least some justification for the generous raises and benefits provided to the PBA. Yet, the Majority conveniently avoided all of the evidence provided by Commissioner Gennario in a transparent effort

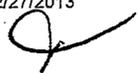
to avoid having current bargaining unit members make a SINGLE meaningful concession in the Award.

Village Proposal # 8 – change to a work year predicated on 2,088 hours instead of 1,872 hours. (R. 738-45).

According to the Commissioner, this change: “would have an operational impact ... more police officers on the street performing more work.” (R. 738); would have an impact on public safety (R. 741); “... they would be more productive.” (R. 741); “Any more time that the officers worked the Village would reap a benefit, absolutely.” (R. 742). All of this evidence was uncontroverted by the PBA.

Most importantly, the Village sought to change this “divisor” to 2,088 for payment of unused sick leave in the unit member’s termination pay. It would have had no impact on the day-to-day lives of the officers, only in how the final calculation of their \$100,000+ unused sick leave was paid out. It is an accounting change that would have saved the Village significant sums of money while forcing retiring members to “get by” on only: 1) a generous “defined benefit” pension plan guaranteed by the State of New York for the rest of their lives; 2) hundreds of hours (e.g., 800 hours for an employee who retired at 20 years) of free pay for no work in the form of terminal leave; and 3) a reduced, but still sizeable unused sick leave payout (i.e., thank you for not abusing sick leave). Final payouts would likely still have exceeded \$100,000 at retirement.

The Majority basically ignored this issue and when it was addressed, the Majority, tellingly, got it wrong. The Award (p. 21) states: “The current divisor for calculating retirement payouts is higher than in certain comparator contracts more recently negotiated, ... (emphasis added).” Rather, the PBA’s divisor (1,872) is much lower than that used by say – Nassau County (2,088) – a comparator that was



acceptable to the Majority for other pro-PBA issues (e.g., salary), but not when it came to any issues that required PBA concessions (as made by, or issued to, the County PBA to justify the salary increases).

Village Proposal # 9 - change meal periods for those on 8-hour tours (from 60 to 30 mins.); for those on 10-hour tours (from 75 to 45 mins.) and those on 12-hour tours (from 90 to 60 mins.).

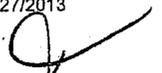
According to the Commissioner, the 90 minute "lunch break" for those working 12-hour tours:

... creates a little bit of a problem, because we have to start our meals at 9:30 in the morning so that each member can get a meal period in and we finish at ... 5:00 p.m. What that does is that takes a police officer or two off the street from that time, from 9:30 in the morning to 5:00 in the afternoon. And it creates, I feel it creates a safety issue and I don't really see a need for an hour and a half meal period.

(R. 745-46).

The absurdity of the operational quagmire faced by the Commissioner is that he must schedule officers who came on duty at 7:00 a.m. for "lunch" at 9:30 a.m., just so he can squeeze in 90 minutes for each 12-hour tour officer. On the other end, he must schedule an officer working the same shift (7:00 a.m. – 7:00 p.m.) for his 90 minute "lunch" starting at 5:00 p.m. As stated by the Commissioner without contradiction, "... it creates a safety issue...." (R. 746).

In addition to these 90 minute meal periods, officers receive two (2) "10-5" breaks. (R. 746-49). These "10-5" breaks were originally approximately 15 minutes in duration and meant the officer was off post and could not be given an assignment. This did not prevent officers from eating, or getting coffee, or using a restroom, while on duty. It was just more time off. As testified to by the Commissioner (R. 746-49), the "10-5"



breaks started as one (1) 15 minute break in the morning and one (1) 15 minute break in the afternoon. Since they were not contractually-permitted, they came off of the 90 minute meal period. Thus, an officer working the 12-hour day shift received a 60 minute "meal" and two official 15 minute "10-5" breaks. That process, of course, devolved to the benefit of the PBA, with its members getting the full 90 minute "meal" and two "10-5" breaks. The big PBA "concession" though (for breaks and time that are not contractually supported) according to the Commissioner (and probably agreed with by the Majority) was that if the members get a call on their "10-5" then "they go." (R. 747)

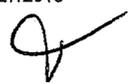
The Majority, in a blatant and irrational sidestep of this confounding contractual problem, threw the matter back on the parties (Award, p. 25) stating:

The record also supports that certain practices, such as an extension of the contractually-mandated lunch hour ..., have developed over time independent of the provisions themselves, and enforcement of those provisions now in place would result in increased productivity.

Village Proposal #10 – change so that the start/end time of the 10-hour tour "day" shift may be changed to start/end up to 2 hours later than present upon 30 days notice.

Village Proposal #11 – The Commissioner shall have the discretion to change the Supplemental work chart upon 1 week notice to the affected individuals and PBA.

According to Commissioner Gennario, Proposal #10: "... would have a huge operational impact." (R. 750); and "... would enable me to have an extra body during the evening rush hour. Right now oftentimes I'm short and we have to pay two hours overtime to have a four man minimum, which really isn't even enough. But it would give me more flexibility to have four or five members at 5:00 o'clock" (R. 751); and more members on the evening rush hour is important because it: "... is much busier than the



morning rush hour: (R. 751-52); and the proposal would probably save about "500 hours annually" in overtime for the day shift. (R. 752).

According to the Commissioner, Proposal #11: "Operationally, ... would let me assign personnel where I needed them the most." (R. 755); "...it would give me the flexibility in my plainclothes investigative detail to place them at the ... have them work when they're most needed" (R. 755); "It would also give me the freedom to change my management personnel ... [s]o I could change their tours to include a Saturday" (756); right now, the highest ranking officer supervising on the weekends is only a Sergeant on weekend, "... so we've done things with the chart to get a little bit of supervision on the weekends, but not enough. Not nearly enough to my satisfaction." (R. 757).

The Award did not recognize any contrary evidence provided by the PBA to the Commissioner's testimony above. Moreover, the Award (p. 25) states:

The Village made a demonstration [sic.] that the introduction of the 12-hour tour resulted in unrecognized consequences to other contract provisions, and that improving operations through certain changes in the work chart and assignment provisions are reasonable and could result in significant operational improvements and cost savings.

Nonetheless, the Village's proposal is denied in the Award (p. 25) as "not ripe for decision." This phrase makes no sense, unless viewed in the context of the Chairperson's results-oriented Award.

Village Proposal #13 – If called in for "non-contiguous" overtime, the member does not receive a 60 minute meal period unless he has actually worked or will work at least 7 hours in connection with the OT assignment.

According to the Commissioner, currently, "... with six hours overtime we're only getting five hours work." (R. 766); "It's a pet peeve of mine. I don't think an individual needs to have an hour rest for a six hour day" (R. 767); just because they don't get a

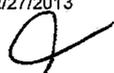
meal period, "doesn't mean they're not going to eat ... [n]othing stops them from eating a quick sandwich during their tour of duty." (R. 767-68); "We spend about \$30,000 a year for missed meals during noncontiguous overtime, contiguous overtime and regular tour. \$30,000 is a substantial cost expense." (R. 768).

With "non-contiguous" overtime, *i.e.*, overtime that does not lead into, or carryover from, a regularly-scheduled tour, members are – by contract – receiving a minimum of six (6) hours pay no matter how far they travel or how many hours they actually work below six (6) hours. Moreover, these members are actually only working five (5) hours because they get a 60 minute meal period after five (5) hours. If the member is needed to actually work the entire time, then they are getting paid for missed meal periods, even though they are actually, in most instances, getting an opportunity to eat. The Village's proposal would have provided the meal period, but only after the individual worked past the minimum call-in time.

Despite the above uncontroverted evidence, and the Majority's recognition that: "[w]ithout question, the Village experiences significant overtime costs" (Award, p. 29), the Majority denied the Village's proposal (Award, p. 29), concluding:

As previously noted, however, the record indicates that certain provisions on use of time have not been enforced. Additionally, the Commissioner's testimony indicates that there may have been an inadvertent "blurring" of certain categories of overtime, and that part of the operational measures could be resolved by other measures such as hiring additional officers.

Of course, nothing cures financial concerns about overtime like adding the even greater costs associated with additional salaries and costly benefits. Considering the



contents of the rest of the Award, this probably did seem like a reasonable financial proposition to the Majority.

The Majority's unsavory habit of referring many of the Village's proposals back to negotiations between the parties shows the complete and utter disconnect between an "ivory tower" mentality and those who actually have to collectively bargain at the table. Far from causing the subjects of the Village's proposals to be re-considered by the PBA at negotiations, the Chairperson has virtually ensured that they will never be agreed to by the PBA for they will not be concerned about potentially having them awarded in a future Interest Arbitration. Awards of this nature have a debilitating effect on future negotiations. The PBA has been universally rewarded for its irrational confidence that Interest Arbitration will mean "business as usual" and the perpetuation of "leapfrogging" salaries and benefits in Nassau County police departments – despite the worst economic environment since the Great Depression.



CONCLUSION

Through this Award, the PBA remains, somehow, immune from the realities that all others face in their jobs – whether in the private or public sector. The PBA, somehow, remains immune from the burden-sharing called for and recognized by other unions (including the State CSEA and RVC Teachers) and the Village's CSEA and non-union employees. The Award is, for all of the reasons set forth above, an insult to all of these other employees who work many more days per year for MUCH less money. The Chairperson should be made to look these other employees in the eyes and explain her insulting Award.

The irrational confidence that exists generally amongst police unions, but most specifically and destructively amongst Nassau County police unions, including the RVC PBA will only be emboldened by this Award if it stands. The Award “shocks the conscience” of not only myself, but undoubtedly also the Village's residents and business owners. It is my sincere hope that once this Award becomes public and makes it way around Long Island and the rest of the State (as it surely will), that it proves to be the “straw that broke the camel's back” when it comes to meaningful reform of Interest Arbitration. To borrow a phrase from Malcolm Gladwell that has become a part of our current lexicon, this Award should prove to be Interest Arbitration's “tipping point.”



Terry O'Neil
February 27, 2013