

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Interest Arbitration Between:

THE TOWN OF TUXEDO POLICE  
BENEVOLENT ASSOCIATION,

Employee Organization

-And-

THE TOWN OF TUXEDO,

Public Employer

PERB Case No.  
IA2011-024; M2011-037

For the Period  
January 1, 2011-  
December 31, 2015

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

RECEIVED

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CONCILIATION

**BEFORE:**

Dennis J. Campagna, Esq.  
Public Panel Member and Chairman

Anthony V. Solfaro, President,  
N.Y.S. Union of Police Associations, Inc. ("NYSUPA")  
Employee Organization Panel Member

Michael A. Richardson  
Labor Relations Consultant  
Employer Panel Member

**APPEARANCES:**

**For the Town of Tuxedo**

Donald G. Nichol, Esq. – Jacobowitz & Gubits, LLP  
Peter Dolan – Supervisor

**For the Town of Tuxedo Police Benevolent Association,  
Affiliated with the New York State Union of Police Associations, Inc.**

John M. Crotty, Esq. – Law Offices of John M. Crotty  
Anthony D'Elia – PBA President

## **BACKGROUND**

Pursuant to N.Y. Civil Service Law Section 209.4, the above tripartite Panel was designated by the New York State Public Employment Relations Board (“PERB”) to make a just and reasonable determination as to open items that exist in an impasse in negotiations between the Town of Tuxedo (“Town”) and the Town of Tuxedo Police Benevolent Association, (“PBA”), whose last collective bargaining agreement (“CBA”) covered the period of January 1, 2008 through December 31, 2010.

The Town is located in Orange County, New York. As of the 2010 census, the Town had a total population of 3,624. The Town is in the southeastern part of Orange County. New York Route 17, the New York State Thruway (Interstate 87) pass through the Town. The Town is one of 20 Towns located in Orange County, and is governed by a Town Board consisting of four Councilpersons and the Town Supervisor.

Both parties used the Village of Monroe, located in the Town of Monroe, which is north of the Town, the Town of Woodbury, and Village of Harriman, located in the Town of Woodbury, which is northeast and are all contiguous to the Town as comparables for this proceeding. It should be noted that the Town of Monroe does not have a police department. In addition, the Town suggests adding the following as comparables:

- Town of Chester
- Village of Chester, located in the Town of Chester;
- Town of Goshen;
- Village of Goshen, located in the Town of Goshen;
- Town of Blooming Grove; and
- Village of Washingtonville, located in the Town of Blooming Grove

The Town is served by the Tuxedo Union Free School District. Firefighting services in the Town are provided by volunteer Fire Departments.

The PBA is the sole and exclusive bargaining agent for all Police Officers of the Town, except for the Chief or Acting Chief of Police. At all relevant times associated with this proceeding, the Town's Police Department consisted of a Chief of Police, and an eleven (11) person bargaining unit consisting of six full-time Police Officers, two Sergeants, one Lieutenant and two working uniformed Detectives.

The Town and the PBA are parties to a Collective Bargaining Agreement with effective dates January 1, 2008 through December 31, 2010. ("CBA", Joint Exhibit 8) The parties commenced negotiations for a successor Agreement, but reached a state of impasse over the issues subject to these proceedings as detailed below. There were no agreements reached on proposed terms and conditions of employment. Following an unsuccessful mediation, the impasse continued resulting in the filing of a Petition for Compulsory Interest Arbitration with PERB on November 10, 2011. (Joint Exhibit 1) The Town's response to the PBA's petition was filed on or about December 9, 2011. (Joint Exhibit 2)

A one-day hearing commenced and concluded on June 13, 2012. At such hearing, the parties were represented by experienced Counsel who were afforded and took full advantage of their right to call and examine witnesses, as well as their right to introduce relevant evidence. At the conclusion of the hearing, the parties rested on the record and an Executive Session immediately followed. Following extensive discussions and deliberations during the Executive Session, this Panel, consisting of the Panel Chair, the Employee Organization Panel Member and the Employer Panel member reached a consensus on the terms of this Interest Arbitration Award, as set forth in this Award. Among such consensus was agreement on the terms of a five (5) year Award covering the period of January 1, 2011 through December 31, 2015. Legal authority for the Panel to exceed the statutory two-year limit was achieved by separate approvals from the PBA as well as from the Town, consisting of separate approval by the Town Supervisor as the Chief Executive Officer, as well as all four Town Board members, including the Town Supervisor, as the legislative body. Thus, by letter dated August 6, 2012, PBA President Anthony D'Elia advised the Panel Chair as follows:

The Town of Tuxedo Police Benevolent Association (PBA) hereby authorizes the interest arbitration panel, consisting of you, Michael Richardson for the Town, and Anthony V. Solfaro for the PBA, to issue an award covering the period from January 1, 2011 through December 31, 2015. (Attached hereto as Panel Exhibit A).

Following a unanimous vote by the Town Board, Peter Dolan, the Town's Supervisor, sent a letter to the Panel Chair as follows:

The Town Board of the Town of Tuxedo hereby acknowledges the Town Board's right under the Taylor Law to approve the additional funds to permit implementation of a collective bargaining agreement, but notwithstanding these rights, the Town Board consents to allow the interest arbitration panel consisting of Dennis J. Campagna, Michael A. Richardson for the Town of Tuxedo, and Anthony V. Solfaro for the Town of Tuxedo Police Benevolent Association, to issue an award covering the period from January 1, 2011 through December 31, 2015. (Attached hereto as Panel Exhibit B)

The Town's letter of authorization was signed by the Town Supervisor as well as Town Board Members Loncar, Matthews, Phelps and Spivak.

As a result of the foregoing authorizations, this Award covers the five-year period January 1, 2011 through December 31, 2015. Accordingly, the following represents the Panel's Award as to what it constitutes a just and reasonable determination of the terms and conditions of employment at issue. In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Taylor Law:

- a) Comparison of wages, hours and conditions of employment involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment in comparable communities;
- b) The interest and welfare of the public and the financial ability of the public employer to pay;

- c) Comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;
  
- d) The terms of collective 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.

## **COMPARABILITY**

Section 209.4 requires the Panel to engage in a comparative analysis of terms and conditions of employment with “other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.” Since this is the first interest arbitration engaged in by the parties during the course of their Labor/Management relationship, the parties have not had the chance or need, until now, to determine a list of comparable communities. However, for the purpose of this proceeding, the Panel recognizes the following neighboring communities as comparables:

- The Village of Monroe
- The Village of Harriman, and
- The Town of Woodbury

The above comparables do not limit either party in the future to what it deems to be the appropriate universe in presenting its respective cases.

## **ABILITY TO PAY AND INTEREST AND WELFARE OF THE PUBLIC**

The parties mutually agreed to forego testimony and data from respective financial experts on “Ability to Pay”, which was based on the following statement from the Town relative to their ability to pay:

The Town admits that it has the 'ability to pay' the costs associated with the PBA demands as set forth in its Petition for Compulsory Interest Arbitration as that quoted term is commonly applied. (See Joint Exhibits 4 & 5)

In addition to the foregoing, the Town and the PBA agree that the interest and welfare of the public are best served by a consistently stable Police Department that has demonstrated the ability to attract and retain qualified police officers with a competitive economic and fringe benefit package. Given the perilous nature of a police officer's duties, the required training (PBA Exhibit 32), the commitment required to be an effective police officer, the need of a municipality to attract and retain police officers for a high quality force, a competitive economic and fringe benefit package directly serves the interest and welfare of the public. In this regard, the Town has witnessed more than half of its trained police officers submit their resignations in order to work for other Police Departments in Orange County, Rockland County and the State of New Jersey due to what these departing police officers deemed as substantially inadequate pay and benefits. As a result, the Town has placed great emphasis in achieving, based on a fair and reasonable basis, a competitive economic and fringe benefit package for its police officers.

## **THE OPEN ISSUES**

### **A. PBA Demands:**

**HOUSEKEEPING:** Delete all dates mutually agreed upon that are no longer applicable. Correct spelling and grammatical errors mutually agreed upon that are not substantive.

#### **1. ARTICLE 2 - HOURS OF EMPLOYMENT: (pp. 6-8)**

##### **Section 3: Shift Differential**

- Amend paragraph 1 percentage as follows:

<b>(+1/4%)</b>	<b>(+1/4%)</b>
<u>1/1/11</u>	<u>1/1/12</u>
5.25%	5.25%

- Add a new paragraph under paragraph 1 to read as follows:

Any employee who rotates in the "C" line tour of duty as follows (4:00 p.m. to 12:00 midnight) shall be paid a shift differential above their Base Wage rate of pay, inclusive of longevity, if applicable, as follows:

	(+1/4%)
	<u>1/1/12</u>
2.5%	2.75%

**NEW Section 5: Detective(s) Work Schedule**

The Detective(s) shall be uniformed police officers and work the patrol schedule set forth in Section 1 above. The Chief of Police or designee, as needed, may "call in" the Detective(s) when not regularly scheduled as set forth herein to perform additional work related to their duties and be paid pursuant to Article 13 - Overtime.

**2. ARTICLE 4 - BASE WAGE: (p. 10)**

**Section 1: Calculations**

- Increase existing schedule as follows:

<u>1/1/11</u>	<u>1/1/12</u>
4.25% on each Step	4.25% on each Step

**NEW** - The Detective(s) shall be paid a differential in Base Wage over and above the Step 6 Base Wage of a police officer as follows:

6.0%	6.50%
------	-------

- Increase Sergeant's differential as follows:

(+1/4%)	(+1/4%)
<u>1/1/11</u>	<u>1/1/12</u>
15.25%	15.5%

- Increase Lieutenant's differential as follows:

(+1/4%)	(+1/4%)
<u>1/1/11</u>	<u>1/1/12</u>
10.25%	10.5%

3. **ARTICLE 5 — LONGEVITY:** (pp. 10-11)

Paragraph 2 - Amend all the parenthetical(s) to read as follows:

(Detective, Sergeant or Lieutenant)

Paragraph 3 — Amend the example.

4. **ARTICLE 6 — HOLIDAYS:** (p. 11)

**Section 1: Recognized Holidays** Insert appropriate dates accordingly.

5. **ARTICLE 8 - INCIDENTAL EXPENSES:** (pp. 13-15)

**Section 1: Equipment Expense** Amend uniform equipment list to reflect current issue, if necessary.

Paragraph 3 — Amend the amounts as follows: **(NOTE: Refers to amount to purchase uniforms.)**

(+ <b>\$25.00</b> )	(+ <b>\$50.00</b> )
<u>1/1/11</u>	<u>1/1/12</u>
\$725.00	\$775.00

6. **ARTICLE 9 — MEDICAL INSURANCE** (pp. 15-16) — Change Heading to **HEALTH INSURANCE**

**Section 1: Insurance Plan and Premiums**

Paragraph 3 — Delete in its entirety.

**Section 3: Medical Insurance Buy-Out** — Change Heading to **Health Insurance Buy-Out Payment** **(NOTE: NOT SUBSTANTIVE- HOUSEKEEPING)**

Insert "fifty percent (50%)" where "thirty percent (30%)" appears.

7. **ARTICLE 10 — RETIREMENT BENEFITS:** (pp. 16-18)

**Section 2: Retiree Medical Insurance** — Change Heading to **Retiree Health Insurance.** **(NOTE: NOT SUBSTANTIVE- HOUSEKEEPING)**

**Coverage:** Delete "For an employee who is hired on or before March 21, 2006" in the 1<sup>st</sup> sentence. Delete the 2<sup>nd</sup> sentence in its entirety.

**Eligibility:** Add the following to read as follows:

In the event an employee has less than twelve (12) years of service with the Town as set forth herein, and is granted a disability retirement from the New York State Police and Fire Retirement System, the years of service shall be waived.

8. **ARTICLE 12 - DENTAL AND VISION INSURANCE:** (p. 18)

**Eligibility:** Insert the existing plan names. (NOTE: NOT SUBSTANTIVE)

9. **ARTICLE 25 - DISCIPLINARY PROCEDURE:** (pp. 25-26)

**Section 2: Formal Stage**

**Discipline For Just Cause** — Delete in its entirety.

**Notice of Discipline** — Amend to read as follows:

The Town shall provide an employee who has completed his/her probationary period with a written Notice of Discipline, which shall contain all charges, specifications, and the penalty sought. Simultaneously, a copy of the Notice of Discipline shall be sent to the PBA President.

**Civil Service Rights** — Amend to read as follows:

The procedure set forth above regarding Notice of Discipline and hearing before an arbitrator, shall replace Section 75 and/or Section 75 of the New York State Civil Service Law. All other relevant provisions of Section 75 and/or Section 76 shall remain in full force and effect.

10. **ARTICLE 26 — GENERAL MUNICIPAL LAW SECTION 207-c PROCEDURE:** (pp. 26-33)

**Section 2: Definitions**

NEW 6. **Section 207-c Benefits** — Effective January 1, 2011, the regular salary or wages (BASE WAGE AND LONGEVITY) and medical treatment and hospital care payable to a Recipient pursuant to General Municipal Law Section 207-c. In addition to receiving his/her regular salary or wages and payment of medical treatment and hospital care as set forth herein, an employee receiving General Municipal Law Section 207-c benefits shall be additionally entitled as set forth in the collective bargaining agreement to the following:

- a) Health, dental, vision and life insurance in the same manner in which and to the same extent as the Recipient was receiving same when working;
- b) Health Insurance Buy-Out;
- c) Shift Differential; and
- d) Holiday payment that falls on employees scheduled days off (pass days).
- e) Upon return to work, the employee shall be credited with his/her paid leave (i.e., sick leave, vacation and Holidays not paid for as set forth herein. Any personal leave credits shall be placed in the employee's sick leave as set forth in Article 15 — Personal Leave). An employee who does not return to work, and retires, shall not be credited with any of his/her paid leave as set forth herein during the time out of work on General Municipal Law Section 207-c.

**11. ARTICLE 28 - TERM OF AGREEMENT: (p. 24)**

This Award shall take effect as of January 1, 2011 through December 31, 2012. The Town shall pay retroactivity to all unit members who worked during the expired Agreement, with a worksheet setting forth how the calculation(s) were made and what they represent.

**ARTICLE 29 — CONDITIONS COVERING THE ENTIRE AGREEMENT: (p. 34)**

**Section 1: Merger of Prior Understandings - Delete in its entirety.**

**B. The Town's Demands**

The Town had no formal demands submitted to arbitration.

**DISCUSSION & ANALYSIS**

**A. BASE WAGES**

The Panel has carefully considered the statutory criteria, balancing reasonable economic improvements of the PBA unit members, with the needs and obligations of the Town, in the context of what must be considered fair and reasonable, with particular emphasis on the Town's expressed concern regarding its requirement to attract and retain qualified police officers. In reaching its determination as to fair base wage increases, the Panel finds it instructive to consider the relative standing of Town police officers with those comparables applied by the Panel. In this regard, Town police officers are paid pursuant to a Base Wage schedule consisting of the

following Steps: Academy, Starting (Step 1), starting 2<sup>nd</sup> through and including starting 6<sup>th</sup> year (Steps 2 through 6), with the Sergeants paid a percentage differential over and above a Step 6 police officer, and the Lieutenant paid a percentage differential over and above the Sergeant's differential.

Based on an extract of several of the exhibits submitted, the following provides the five (5) year earnings comparison of the comparables applied to the Town's police officer's:

<b>Municipality</b>	<b>Step</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Town of Tuxedo</b>	1	42,232	43,921	45,678
	5	59,848	62,242	64,732
	6	68,226	70,955	73,793
	<b>5-year total</b>	<b>259,140</b>	<b>269,505</b>	<b>280,286</b>
<b>Village of Harriman</b>	1	44,261	45,589	47,185
	5	68,498	70,553	73,022
	6	68,498	70,553	73,022
	<b>5-year total</b>	<b>285,466</b>	<b>294,031</b>	<b>304,322</b>
<b>Village of Monroe</b>	1	42,396	44,039	45,746
	5	68,826	71,493	74,263
	6	68,826	71,493	74,263
	<b>5-year total</b>	<b>296,177</b>	<b>307,654</b>	<b>319,575</b>
<b>Town of Woodbury</b>	1	48,594	50,052	51,804
	5	62,458	64,332	66,584
	6	65,929	67,907	70,284
	<b>5-year total</b>	<b>277,620</b>	<b>285,950</b>	<b>295,960</b>

The above demonstrates that PBA unit members fall substantially behind in the 5 year cumulative earnings of their comparable counterparts, which also occurred at the 10, 15, and 20 year cumulative earnings within those same exhibits.

Given the foregoing, together with the Town's primary goal of achieving a Base Wage that is competitive, and attracts and retains qualified police officers, the Panel finds the following to be fair, reasonable and competitive, and Award's the following to the existing schedule:

<b>STEP</b>	<b>1/1/11</b>	<b>1/1/12</b>	<b>1/1/13</b>	<b>1/1/14</b>	<b>1/1/15</b>
	<b>3.25%</b>	<b>3.50%</b>	<b>3.75%</b>	<b>4.0%</b>	<b>4.0%</b>
<b>Academy</b>	43,339	44,856	46,538	48,400	50,336
<b>1 (Starting)</b>	50,987	52,772	54,751	56,941	59,219
<b>2</b>	54,557	56,467	58,585	60,928	63,365
<b>3</b>	58,378	60,421	62,687	65,194	67,802

4	62,462	64,648	67,072	69,755	72,545
5	66,836	69,175	71,769	74,640	77,626
6	76,191	78,858	81,815	85,088	88,492
**Sergeant	87,620	90,687	94,087	97,851	101,766
***Lieutenant	96,382	99,756	103,496	107,636	111,943

\* Academy rate is 85% of Step 1 for the period in basic MPTC course. Upon graduation, that employee shall move to Step 1. (N/C)

\*\* Sergeant(s) shall be paid a differential in Base Wage of 15% over and above the Step 6 Base Wage of a Police Officer as follows: (N/C)

\*\*\* The Lieutenant(s) shall be paid a differential in Base Wage of 10% above Sergeant's differential. (N/C)

All employees shall receive a step or increment as set forth above, on their anniversary date. All employees hired on or before December 31, 1989 shall have an anniversary date of January 1st. All employees hired on or after January 1, 1990 shall have an anniversary date which shall be their date of hire. (N/C)

✓  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

*M. Richardson* 11-1-12  
\_\_\_\_\_  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

x  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

*A.V. Solafo* 11/1/12  
\_\_\_\_\_  
ANTHONY V. SOLAFO DATE  
EMPLOYEE PANEL MEMBER

**B. ARTICLE 2, HOURS OF EMPLOYMENT**

**Section 3: Shift Differential**

The current shift differential for the "A" Line Tour of Duty (11:00 p.m. to 7:00 a.m.) is 5%.  
The current shift differential for the "C" Line Tour of Duty (3:00 p.m. to 11:00 p.m.) is 1%.  
The rate of 5% for the A Line Tour currently represents the highest of the comparable municipalities with the Town of Woodbury placing second at 4.5%. In addition, the Town of Woodbury pays a 2.5% differential for officers assigned to the "C" Line Tour of Duty, a rate

of 1.5% above Tuxedo. Viewed in this fashion, the Panel believes that the current rate of 5% for the "A" Line Tour and 1% for the "C" Line Tour is sufficient for the first four years of this Award, but that a modest increase of 1% in the fifth and final year of the Award is appropriate. Accordingly, the Panel Awards as follows:

**Section 3: Shift Differential**

- Amend paragraph 1 percentage as follows: (NOTE: Refers to "A" Line)

(N/C)	(N/C)	(N/C)	(N/C)	(+1.0%)
<u>1/1/11</u>	<u>1/1/12</u>	<u>1/1/13</u>	<u>1/1/14</u>	<u>1/1/15</u>
5.0%	5.0%	5.0%	5.0%	6.0%

✓	_____	<i>M. Richardson</i>	<u>11-1-12</u>
CONCUR	DISSENT	MICHAEL A. RICHARDSON	DATE
		EMPLOYER PANEL MEMBER	

X	_____	<i>A.V. Solfaro</i>	<u>11/1/12</u>
CONCUR	DISSENT	ANTHONY V. SOLFARO	DATE
		EMPLOYEE PANEL MEMBER	

- Amend paragraph 2 percentage as follows: (NOTE: Refers to "C" Line)

(N/C)	(N/C)	(N/C)	(N/C)	(+1.0%)
<u>1/1/11</u>	<u>1/1/12</u>	<u>1/1/13</u>	<u>1/1/14</u>	<u>1/1/15</u>
1.0%	1.0%	1.0%	1.0%	2.0%

✓	_____	<i>M. Richardson</i>	<u>11-1-12</u>
CONCUR	DISSENT	MICHAEL A. RICHARDSON	DATE
		EMPLOYER PANEL MEMBER	

X	_____	<i>A.V. Solfaro</i>	<u>11/1/12</u>
CONCUR	DISSENT	ANTHONY V. SOLFARO	DATE
		EMPLOYEE PANEL MEMBER	

**C. THE DETECTIVE DIFFERENTIAL (New)**

The PBA has proposed that Detectives receive a differential calculated by applying a percentage over and above the Step 6 police officer's Base Wage, which would be the same concept of pay for the Sergeant and Lieutenant, proposed at 6%, effective January 1, 2011, and 6.5% effective January 1, 2012. Of those comparables noted, the Village of Monroe applies an 8.5% differential over and above the Starting 5<sup>th</sup> year Police Officer's base wage. The Town of Woodbury applies 7% above the Step 6 Base Wage to calculate its Detective differential. The Panel finds the following to be a fair and reasonable differential and Awards the following:

The Detective(s) shall be paid a differential in Base Wage over and above the Step 6 Base Wage of a police officer as follows:

	(+\$1,500.00)	(N/C)	(N/C)	(N/C)
January 1, 2011	January 1, 2012	January 1, 2013	January 1, 2014	January 1, 2015
+\$ 1000.00	+\$ 2500.00	+\$ 2500.00	+\$ 2500.00	+\$ 2500.00

\_\_\_\_\_  
 CONCUR

✓  
 \_\_\_\_\_  
 DISSENT

*M. Richardson* 11-1-12  
 \_\_\_\_\_  
 MICHAEL A. RICHARDSON DATE  
 EMPLOYER PANEL MEMBER

x  
 \_\_\_\_\_  
 CONCUR

\_\_\_\_\_  
 DISSENT

*A.V. Solfaro* 11/1/12  
 \_\_\_\_\_  
 ANTHONY V. SOLFARO DATE  
 EMPLOYEE PANEL MEMBER

**D. DETECTIVE WORK SCHEDULE**

There is little guidance among the comparable communities listed above relative to the Detective Work Schedule. In this regard, while all comparable communities have agreed-upon work schedules for uniformed patrol officers, only the Village of Monroe provides a specific work schedule for Detectives. Monroe provides for a straight 5-2 eight (8) hour schedule for its Detective division with staggered shift assignments in those cases where there are two Police

Officers who are assigned as Detectives. In this later regard, one Detective would work a 8:00 a.m. to 4:00 p.m. shift, while the second Detective worked a 12 Noon to 8:00 p.m. shift. In addition, Monroe Detectives are entitled to five (5) executive days per year to be taken off with the mutual consent of the Chief of Police.

In the instant matter, the proposed language is consistent with the Town's position when it initially created these positions at the end of 2011. While the PBA's proposed language raises the possibility of overtime payment, such payment would only occur when the Chief of Police or designee determines a need for a Detective(s), and provides that a Detective(s) can be "called in" based on their specialty training without going through the overtime distribution procedure when not regularly scheduled and working. Accordingly, the panel finds the language fair and reasonable, and Awards the following:

Section 5, Detective(s) Work Schedule shall read as follows:

The Detective(s) shall be uniformed police officers and work the patrol schedule set forth in Section 1 above. The Chief of Police or designee, as needed, may "call in" the Detective(s) when not regularly scheduled as set forth herein to perform additional work related to their duties and be paid pursuant to Article 3 – Overtime.

✓  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

*M. Richardson* 11-1-12  
\_\_\_\_\_  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

x  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

*A.V. Solfaro* 11/1/12  
\_\_\_\_\_  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**E. LONGEVITY (Editorial Changes Only)**

Paragraph 2: Amend all the parenthetical(s) to read as follows:

(Detective, Sergeant or Lieutenant)

Paragraph 3: Amend the "e.g." example as follows: (e.g. Start 6<sup>th</sup> through 8<sup>th</sup> years of service, the amount paid on January 1, 2010 for a Police Officer would be \$ 762.00 in each year, etc.).



**G. ARTICLE 8- INCIDENTAL EXPENSES (pp. 13-15)**

**Section 1: Equipment Expenses (Uniform Purchase Amounts)**

A comparison of the Town of Tuxedo with the three comparables reveals that the Town provides the least amount for its police officers for uniform purchases as set forth below:

MUNICIPALITY	2008	2009	2010	2011
<b>Village of Harriman</b>	\$775	\$800	\$825	\$850
<b>Village of Monroe</b>	\$ 950 (Plus Annual Maintenance of \$875). Sgts receive \$1050, Detectives receive \$1125.	\$ 975 (Plus Annual Maintenance of \$900) Sgts receive \$1075, Detectives receive \$1150.	\$ 1000 (Plus Annual Maintenance of \$925) Sgts receive \$1100, Detectives receive \$1175.	\$ 1050 (Plus Annual Maintenance of \$975) Sgts receive \$1150, Detectives receive \$1225.
<b>Town of Woodbury</b>	P.O. \$725; Investigator \$ 1050	P.O. \$725; Investigator \$ 1050	P.O. \$750; Investigator \$ 1075	P.O. \$775; Investigator \$ 1100 <sup>1</sup>
<b>Town of Tuxedo</b>	\$ 650	\$ 650	\$ 700	Expired

Notwithstanding the foregoing differences among the comparables when viewed in comparison to the Town, the Panel finds the following amounts to be fair and reasonable, particularly in light of those Base Wage increases awarded above, Awards the following:

1. Amend Paragraph 3 amounts as follows (**NOTE: Refers to amount to purchase uniforms**)

(N/C)	(N/C)	(N/C)	(N/C)	(+\$25.00)
January 1, 2011	January 1, 2012	January 1, 2013	January 1, 2014	January 1, 2015
+\$ 700.00	+\$ 700.00	+\$ 700.00	+\$ 700.00	+\$ 725.00

✓  
CONCUR

DISSENT

M. Richardson 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

CONCUR

X  
DISSENT

AV. S. 11/1/12  
ANTHONY V. SOLIARO DATE  
EMPLOYEE PANEL MEMBER

<sup>1</sup> For 2012, Town of Woodbury provides an annual Uniform Allowance of \$ 825 for Police Officers and \$ 1150 for Investigators. (See Joint Exhibit 28)

H. ARTICLE 9 – MEDICAL INSURANCE (pp. 15-16)

EDITORIAL CHANGE ONLY – Change this Article’s Heading to “HEALTH INSURANCE” (Editorial Change Only)

✓  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

*M. Richardson* 11-1-12  
\_\_\_\_\_  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

x  
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

*Anthony V. Solfaro* 11/1/12  
\_\_\_\_\_  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

OVERVIEW ON REMAINING HEALTH INSURANCE DEMANDS

The current CBA provides for a two-tiered health insurance benefit for active police officers. Employees hired prior to April 1, 2006 have health insurance provided at no cost for single, two-person, or family plan coverage. Those employees hired on or after April 1, 2006 to receive single coverage at 100% of the premium paid by the Town, while those electing for a two-person or family plan, pay 25% of the premium cost, and the Town funds the remaining 75% of the premium cost. At the time of this proceeding, the New York State Health Insurance Plan (“NYSHIP”) represents the only choice for health insurance coverage. The PBA seeks to delete all references to two tiering and those who contribute, to the Town paying 100% of the health insurance premium.

The PBA also seeks to increase the current “Buy Out” option from 30% to 50% of the premium. And finally, the PBA seeks the twelve (12) year service requirement with the Town to be waived for health insurance on retirement in the event the employee is granted a disability retirement from the NYS Police and Fire Retirement System. The Town has proposed no changes to the health insurance Article. However, the Town notes that as a quid pro quo for employee contribution to those hired on or after April 1, 2006, it increased the Base Wage schedule by



Add the following to the end of the 3<sup>rd</sup> paragraph to read as follows:

In no event shall the employee's family contribution, if enrolled in the Plan described in the first (1<sup>st</sup>) paragraph, exceed five thousand dollars (\$5000.00) annually during the term of this Award or subsequent collective bargaining agreement, with the amounts being deducted as set forth herein.

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CONCUR

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DISSENT

 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

 11/1/12  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**Section 3: Medical Insurance Buy-Out Change Heading to Health Insurance Buy-Out Payment. (Editorial Change Only)**

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CONCUR

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DISSENT

 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

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CONCUR

\_\_\_\_\_  
DISSENT

 11/1/12  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**Payment of Buyout** – Add the following to read as follows:

The buyout amount of thirty percent (30%) shall be based upon the premium of the New York State Health Insurance Plan (NYSHIP) at that time.

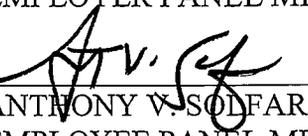
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

 11/1/12  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

I. ARTICLE 10- RETIREMENT BENEFITS (pp. 16-18)

**Section 2: Retiree Medical Insurance.** Change Heading to **Retiree Health Insurance.**  
(Editorial Change Only)

**Coverage:** Amend the 2<sup>nd</sup> sentence of the 2<sup>nd</sup> paragraph to read as follows:

For an employee who his hired on or after April 1, 2006, and in the event the retiree predeceases the retiree's spouse and/or eligible dependent(s), the spouse and/or eligible dependent(s) may continue with health insurance and prescription coverage at the Town's expense for a period of twelve (12) months following the loss of coverage provided for in the health insurance plan after the retiree's death, provided the spouse does not remarry during this period of time. After the coverage period herein, the spouse and/or eligible dependent(s) may continue health and prescription coverage provided they pay the full cost of the premium to the Town.

\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

 11-1-12  
\_\_\_\_\_  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

 11/1/12  
\_\_\_\_\_  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**Eligibility:** Add the following to read s follows:

In the event an employee has less than twelve (12) years of service with the Town as set forth herein, and is granted a disability retirement from the New York State Police and Fire Retirement System, the years of service shall be waived.

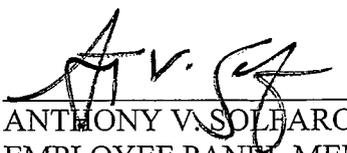
\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

 11-1-12  
\_\_\_\_\_  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

\_\_\_\_\_  
CONCUR

\_\_\_\_\_  
DISSENT

 11/1/12  
\_\_\_\_\_  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**J. ARTICLE 25 – DISCIPLINARY PROCEDURE (pp. 25)**

In its demands, the PBA seeks clarification on what it deems a part of the Disciplinary Procedure to be ambiguous. While it is fortunate that the parties have not had the need to utilize the Formal Stage of the disciplinary process, and recognizing the general consensus that the current procedures were designed to replace Civil Service Law Section 75, such is not the case with regard to other statutory protections offered by CSL §75. For example, the PBA notes that while CSL §75 permits an unpaid suspension of up to thirty (30) days, Article 25, as currently written, is silent on this matter, leaving open the question of an indefinite unpaid suspension while the disciplinary proceedings are ongoing. The PBA makes a similar argument regarding benefits afforded an employee subject to disciplinary proceedings. Aside from a pledge to move any disciplinary proceeding along expeditiously, the Town had no comment, proposal or position on the PBA's demand.

Having carefully reviewed the record, the Panel Chair finds that the PBA has asserted a reasonable and cogent argument. Accordingly, the Panel Awards as follows:

**ARTICLE 25 – DISCIPLINARY PROCEDURE**

**Section 2: Formal Stage**

**Discipline for Just Cause** – Add the following to read as follows:

During the period pending an arbitrator's decision, or agreement of the parties, including if termination is sought, and the employee is placed on an unpaid status or suspended without pay, he/she shall continue to and be provided with the following by the Town at the level set forth in those Articles:

- a. Article 10 – Health Insurance – Sections 1, 2 and 3
- b. Article 11 – Life Insurance
- c. Article 12 – Dental and Vision Insurance

In the event the penalty sought by the Town is termination, or suspension without pay, that employee may be placed on unpaid status or suspension without pay for no more than ninety (90) calendar days. Thereafter, the employee shall be reinstated to the payroll with pay pending the determination of the arbitrator's decision, or agreement of the parties.

✓  
CONCUR

DISSENT

M. Richardson 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

X  
CONCUR

DISSENT

Anthony V. Solfaro 11/1/12  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**Civil Service Rights – Amend to read as follows:**

The procedure set forth above regarding Notice of Discipline and hearing before an arbitrator, shall replace Section 75 and/or Section 76 of the N.Y.S. Civil Service Law. All other relevant provisions of Sections 75 and 76 shall remain in full force and effect.

CONCUR

✓  
DISSENT

M. Richardson 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

X  
CONCUR

DISSENT

Anthony V. Solfaro 11/1/12  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**K. ARTICLE 26 – GENERAL MUNICIPAL LAW (“GML”) SECTION 207-c**  
**PROCEDURE** (pp. 26-33)

The PBA seeks to extend all contractual benefits received by a working police officer to those police officers who become disabled as a result of the performance of their duties, including but not limited to the continuation of health insurance coverage for the employee and his/her family. While the PBA believed that these benefits would be extended to employees subject to GML 207-c as a result of “past practice”, a recent decision from the NYS Supreme Court, Appellate Division, Second Department dismissed the notion of any claim of a “past practice.” The case arose when, following the Town’s denial of a PBA grievance seeking accrued leave benefits during the time associated with an employee’s GML 207-c leave period, the PBA sought to resolve the matter by proceeding to arbitration. The Town commenced a proceeding to permanently stay arbitration. The Supreme Court denied the Town’s petition, and the Town

appealed. In reversing the Supreme Court and issuing a ruling in the Town's favor, the Second Department noted, in relevant part:

Benefits provided to a police officer pursuant to General Municipal Law § 207-c, like the benefits provided to a firefighter pursuant to General Municipal Law § 207-a, are exclusive, and a collective bargaining agreement will not be construed to implicitly expand such benefits since a disabled individual's continued status as an employee, even after disability, is "strictly a matter of statutory right". Unless a collective bargaining agreement expressly provides for compensation rights to disabled officers in addition to those provided by General Municipal Law § 207-c, there is no entitlement to such additional compensation.

*(Matter of Tuxedo PBA, Index Nos. 4601/09, 5390/09; See PBA Exhibit 46, citations omitted.)*

The Panel, taking note of the Town's financial concerns as well as the interest and welfare of the public criteria, certainly understands the Town's concerns. However, the Panel also understands and appreciates the importance of employees receiving more than just salary during the period on GML 207-c leave. Thus, in light of all statutory criteria, the Panel agrees with the Town's position on the accumulation of leave credits during the period of an employee's GML§ 207-c leave, but feels that the continuation of health related benefits, shift differential and Holiday pay are warranted. In this later regard, the PBA notes and the Town does not dispute the fact that employees on any other type of paid leave continue to receive their shift differential as well as Holiday pay for any of the recognized Holidays that might fall within the employee's paid leave period. Accordingly, the Panel Awards the following to be added to Section 2- Definitions:

- NEW**
6. **Section 207-c Benefits** – Effective January 1, 2011, the regular salary or wages (BASE WAGE AND LONGEVITY) and medical treatment and hospital care payable to a Recipient pursuant to General Municipal Law Section 207-c. In addition to receiving his/her regular salary or wages and payment of medical treatment and hospital care as set forth herein, an employee receiving General Municipal Law Section 207-c benefits shall be additionally entitled as set forth in the collective bargaining agreement to the following:
    - a) Health, dental, vision and life insurance in the same manner in which and to the same extent as the Recipient was receiving same when working;
    - b) Health Insurance Buy-Out;
    - c) Shift Differential; and
    - d) Holiday payment that falls on employees scheduled days off (pass days).

- e) Upon return to work, the employee shall be credited with his/her paid leave (i.e., sick leave, vacation and Holidays not paid for as set forth herein. Any personal leave credits shall be placed in the employee's sick leave as set forth in Article 15 – Personal Leave). An employee who does not return to work, and retires, shall not be credited with any of his/her paid leave as set forth herein during the time out of work on General Municipal Law Section 207-c.

In exchange for the above, the Town reserves the right to hire a “replacement” or “temporary” full time employee, pursuant to Civil Service Law to replace the employee who is out of work and on Section 207-c leave status, and placed in the employees actual work schedule for the duration of the leave. The “replacement” or “temporary” full time employee shall receive all rights and benefits of the collective bargaining agreement, except the Town maximum obligation for health insurance for this employee shall be to pay one hundred (100%) percent of the individual health insurance premium, with the “replacement” or “temporary” employee paying any additional amount of the premium for two (2) person, or dependent coverage if elected.

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CONCUR	DISSENT
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 MICHAEL A. RICHARDSON      11-1-12  
 EMPLOYER PANEL MEMBER      DATE

X

CONCUR	DISSENT
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 ANTHONY V. SCIFARO      11/1/12  
 EMPLOYEE PANEL MEMBER      DATE

**RETROACTIVITY AND IMPLEMENTATION OF THE AWARD**

It is the PBA's position that full retroactivity to any unit member who worked during any period incorporated by this Award is due and owing. The Panel finds support for the PBA's position in the Appellate Division, Third Department's decision in *Baker vs. Hoosick Falls Central School District*, 3 AD 3d 678 (3<sup>rd</sup> Dept. 2004). aff'g 194 Misc. 2d 116 (Sup. Ct. Rensselaer County, 2002).

Based on the foregoing, the Panel makes the following Award:

The Panel awards full retroactivity to any unit member who worked during any period incorporated by the term of this Award. The Town shall pay all retroactivity no later than thirty (30) calendar days after the date of the Panel Chair's execution of this Award. The Town shall provide a worksheet to anyone receiving retroactivity setting forth how the calculation(s) was/were made and what it represents. The Town shall implement the Award the first full pay period after the date of the Panel Chair's execution of this Award.

✓  
CONCUR

\_\_\_\_\_  
DISSENT

M. Richardson 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

X  
CONCUR

\_\_\_\_\_  
DISSENT

AVS 11/1/12  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

**AWARD ON REMAINING PBA ISSUES**

Any demands and/or terms other than those specifically modified and set forth in this Award are hereby denied.

✓  
CONCUR

\_\_\_\_\_  
DISSENT

M. Richardson 11-1-12  
MICHAEL A. RICHARDSON DATE  
EMPLOYER PANEL MEMBER

\_\_\_\_\_  
CONCUR

X  
DISSENT

AVS 11/1/12  
ANTHONY V. SOLFARO DATE  
EMPLOYEE PANEL MEMBER

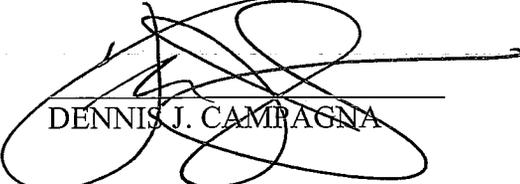
**RETENTION OF JURISDICTION**

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



STATE OF NEW YORK)  
COUNTY OF ~~DUTCHESS~~) ss.:  
ORANGE

On this 1<sup>ST</sup> day of November, 2012 before me personally came and appeared Dennis J. Campagna, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

  
DENNIS J. CAMPAGNA

Lorraine J. Mc Guinness  
Notary Public

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

STATE OF NEW YORK)  
COUNTY OF ~~ULSTER~~) ss.:  
ORANGE

On this 1<sup>ST</sup> day of November, 2012 before me personally came and appeared Michael A. Richardson, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

  
MICHAEL A. RICHARDSON

Lorraine J. Mc Guinness  
Notary Public

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

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

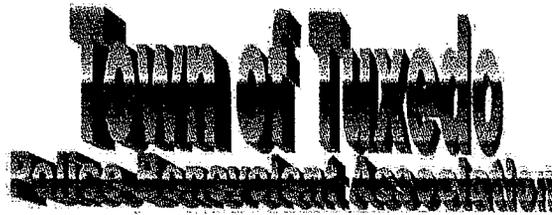
On this 1<sup>ST</sup> day of November, 2012 before me personally came and appeared Anthony V. Solfaro, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

  
ANTHONY V. SOLFARO

Lorraine J. Mc Guinness  
Notary Public

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

**PANEL EXHIBIT A**



August 6, 2012.

Dennis J. Campagna, Esq.  
50 Main Street, Suite 1000  
White Plains, NY 10606

Re: PERB Case Nos. IA2011-024; M2011-037  
Town of Tuxedo and Town of Tuxedo Police Benevolent Association

Dear Panel Chair Campagna:

The Town of Tuxedo Police Benevolent Association (PBA) hereby authorizes the interest arbitration panel, consisting of you, Michael Richardson for the Town, and Anthony V. Solfaro for the PBA, to issue an award covering the period from January 1, 2011 through December 31, 2015.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anthony D'Elia".

Anthony D'Elia  
President

**PANEL EXHIBIT B**



One Temple Drive, Tuxedo Park, New York 10987

[www.tuxedogov.org](http://www.tuxedogov.org)

August 27, 2012.

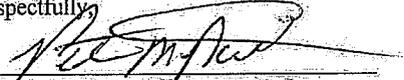
Dennis J. Campagna, Esq.  
50 Main Street, Suite 1000  
White Plains, NY 10606

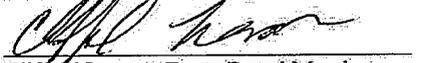
Subject: PERB Case Nos. IA2011-024; M2011-037  
Town of Tuxedo and Town of Tuxedo Police Benevolent Association.

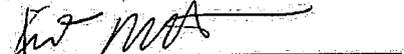
Dear Panel Chair Campagna:

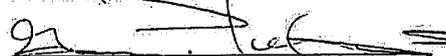
The Town Board of the Town of Tuxedo hereby acknowledges the Town Board's right under the Taylor Law to approve the additional funds to permit the implementation of a collective bargaining agreement, but notwithstanding these rights, the Town Board consents to allow the interest arbitration panel, consisting of Dennis J. Campagna, Michael A. Richardson for the Town of Tuxedo, and Anthony V. Solfaro for the Town of Tuxedo Police Benevolent Association, to issue an award covering the period from January 1, 2011 through December 31, 2015.

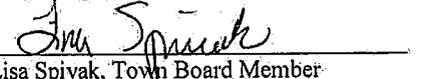
Respectfully,

  
Peter M. Dejan, Town Supervisor

  
Clifford Loncar, Town Board Member

  
Kristian Matthews, Town Board Member

  
Gary Phelps, Town Board Member

  
Lisa Spivak, Town Board Member

**Area Code 845**

Town Supervisor - 351-2265  
Fax - 351-2190

Building & Highway - 351-4421  
Fax - 351-2190

Town Assessor - 351-5602  
Fax - 351-2190

Town Court - 351-5655  
Fax - 351-2018

Town Clerk - 351-4411  
Fax - 351-5593

Highway Garage - 351-2594  
Fax - 351-4147

Receiver of Taxes - 351-5658  
Fax - 351-5662

Recreation - 351-5598  
Fax - 351-2190