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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration

CONCILIATION

-between-

Compulsory Interest Arbitration

THE LYNBROOK POLICE BENEVOLENT
ASSOCIATION, INC.

PERB Case No. IA2012-008;
M2012-061

“Petitioner or PBA”

-and-

THE INCORPORATED VILLAGE OF LYNBROOK

“Respondent or Village”

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BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
WILIAM DIEBOLD, PETITIONER MEMBER
PETER A. BEE, ESQ., RESPONDENT MEMBER

APPEARANCES:

FOR THE PETITIONER:

CERTILMAN, BALIN, ADLER & HYMAN, LLP by PAUL S. LINZER & STEPHEN
McQUADE, ESQS.

FOR THE RESPONDENT:

BEE READY FISHBEIN HATTER & DONOVAN, LLP by KENETH A. GRAY, ESQ.

BACKGROUND

The parties are signatories to the collective bargaining agreement between the Village of Lynbrook (Respondent) and The Village of Lynbrook Police Benevolent Association (Petitioner or PBA) that expired on May 31, 2012. Negotiations for a successor agreement were held on March 7, 21, 30 and May 16, 2012. The bargaining proved to be unsuccessful.

The dispute was submitted for mediation by a mediator assigned by New York State Public Employment Relations Board (PERB). A mediation session was conducted by PERB

Mediator Karen Kenney on August 16, 2012. Despite best efforts by Mediator Kenny, this session proved to be unproductive.

Accordingly, on September 13, 2012, the PBA filed a Petition for Compulsory Interest Arbitration with PERB (UX21). The Village filed a Response on October 1, 2012 (UX22). Included in the Response was an Improper Practice Charge that alleged that three of the PBA proposals involved non-mandatory subjects of bargaining. The PBA withdrew these three proposals (UX23).

On October 10, 2012, I was designated as the Chair and Neutral Member of the Interest Arbitration Panel. William Diebold was designated as the Employee Panelist and Peter A. Bee was designated as the Employer Panelist (UX24). Thus, the arbitration panel was established to hear and finally decide all relevant issues

Pre-hearing conferences were held on December 12, 2012 and January 11, 2013. During the course of the pre-hearing conferences, the parties agreed to reduce the number of their proposals. The revised lists of proposals were submitted and exchanged (VX1, UX29). It must be added that the proposals were not renumbered and not designated as a sequentially numbered set of items.

Hearings on this matter were held on February 26, March 13 and 27, 2013. Executive sessions were held on April 4, 22 and 24, 2013.

The parties were directed to submit post-hearing briefs on May 1, 2013. I received them in a timely manner.

The parties were ably represented by counsel and had a full and fair opportunity to present testimonial and documentary evidence in support of their respective positions. The following is a discussion of the record created by the parties.

THE UNRESOLVED PROPOSALS

The following is a listing of each party's unresolved proposals. I should point out that, at my request, the parties substantially reduced the number of proposals. When they did so, the PBA did not renumber their proposals. Thus, the PBA proposals are numbered as they were initially and are not sequentially numbered. The Village renumbered its proposals and they are numbered sequentially.

PBA

1. Increase base salary by 4% each fiscal year of the collective bargaining agreement (CBA) for all ranks within and represented by the Union.
3. Increase Longevity payments according to the following schedule:
 - After 6 years of service- Increase by \$150 each fiscal year by the CBA.
 - After 10 years of service- Increase by \$150 each fiscal year by the CBA.
 - After 15 years of service- Increase by \$150 each fiscal year by the CBA.
 - Every year thereafter to retirement- Increase by \$50 each fiscal year by the CBA.
4. Employees shall receive full Supplemental Pay (17 days) starting in the first year of employment.
11. Increase the number of Sick Leave Incentive Payout days received by Employees by two days for each fiscal year of the CBA.
15. With respect to termination pay, remove the 175 day cap on the maximum accumulation.

VILLAGE

1. Wages
 - A. Eliminate "Supplemental Pay". (Article III, Section D(4)- page 9)

B. The maximum payout for all accumulated leave and termination pay shall not exceed 50% of the final base salary for any new officers hired after June 1, 2012. For existing employees, maximum payout for all accumulated leave and termination pay shall not exceed 100% of final base salary effective June 1, 2013. All such payouts shall be spread out in three (3) equal payments over three (3) years. (Article VII and all related sections concerning leave accumulations.

2. Health Insurance (Article IV)

A. Amend Article so that all members shall contribute 25% of the cost of all health/dental/optical insurance.

3. Leave Time

A. Prorate sick leave by month to avoid new hires being entitled to “full years” paid unused sick leave. (Article VI-pages 20 & 21)

B. Vacation Leave- For new hires, amend “20 days after 1 year” to read “10 days after 1 year”, and amend “27 days after 5 years” to read “20 years after 10 years”. (Article V-pages 18-20).

C. Eliminate Clause re:...on a day observed by Village as a holiday...” (Article III, Section F(2)- page 11

POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

The PBA argued as follows:

The PBA initiated the instant compulsory interest arbitration in order to secure an interest arbitration award, pursuant to New York Civil Service Law, Article 14 (“The Taylor Law”) §209(4), which will serve as the *de facto* successor collective bargaining agreement to the

parties' expired collective bargaining agreement which covered the period from June 1, 2008 to May 31, 2012.

Based on the relevant provisions of the Taylor Law, the Panel must issue an award that adopts most, if not all, of the Union's proposals because the PBA has unquestionably demonstrated that the Lynbrook Police Department (hereinafter "Department") must be compared to the other municipal police departments within the County of Nassau, as well as the Nassau County Police Department; that the Village's strong economic position indicates the Village has the financial ability to pay; that members of the PBA are required to, exhibit, and perform their duties as police officers, detectives, sergeants and lieutenants at the highest level of professionalism bespeaking of their collective qualifications and training; that the members of the PBA generate a significant amount of revenue for the Village; and that the historical context between the Village and PBA indicates that the Union's proposals are aligned with the parties' prior collective bargaining agreements and interest arbitration awards.

In sharp contrast, the Village's proposals are anathema to the statutory criteria set forth in § 209(4) (c) (3) of the Taylor Law. The limited testimony and documentary evidence presented by the Village in connection with the instant matter often did not contradict any of the evidence submitted by the Union, and when it did, such conflicting evidence was unreliable at best. The Village's evidence failed to support their own contentions, and clearly did not demonstrate that the members of the PBA should be saddled with sub-par wages, benefits, and terms and conditions of employment. Moreover, the Village failed to demonstrate that the Village lacks the ability to pay for an equitable interest arbitration award, or that the Union's members should be unfairly distinguished from the other municipal police departments within the County of Nassau. Finally, the Village has not proffered any reliable evidence that would require the Panel to issue

an award that deviates from the historical agreements and awards that have existed in this municipality.

Accordingly, based on the record in the instant matter, as well as its relevant factual and legal arguments, the PBA respectfully requests that the Panel issue an interest arbitration award that encompasses most, if not all, of the Union's proposals.

The Village has a full-time police force, the Lynbrook Police Department (hereinafter "Department"), which employs, at the time of the conclusion of the instant record, 47 uniformed employees. There are 31 Police Officers, three Detectives, six Sergeants, one Detective Sergeant, four Lieutenants, and one Inspector, who serves as the executive officer for the Department (hereinafter "Employees"). There is a Chief of Police who is not part of the bargaining unit. Generally, Police Officers assigned to patrol duty work either a day tour, 0700-1900, or night tour, 1900-0700, while the supervisors of the patrol unit work either a day tour, 0600-1800, or night tour, 1800-0600. During each tour, the Department has traditionally and consistently staffed each tour with at least five Police Officers on patrol and one supervisor. In addition to the patrol unit, the three Detectives work ten hour tours, and they work at the discretion of the Inspector and the needs of the Department.

The Department utilizes a special detail unit and a highway patrol unit, each of which are under the command of a unit supervisor. These specialized units, generally, work twelve-hour tours at the discretion of the Inspector, and the hours these specialized units work are contingent upon the needs of the Department.

The Department employs "highly trained law enforcement officers" and is in the process of becoming an accredited police department pursuant to the guidelines established by the New York State Department of Criminal Justice Services. This accreditation process requires the

employees of the Department to complete training courses in Cardio Pulmonary Resuscitation, firearms, use of force, computer training, and Emergency Vehicle Operations Course. According to the record in the instant matter, the training of the employees of the Department is well-implemented and greatly benefits the Village.

A clear indication of such dogged pursuit of justice is the number of tickets/summons issued by the Department pursuant to the New York Vehicle and Traffic Law (hereinafter "VTL") and the resulting revenue generated therefrom. The economic significance of the revenue generated by the employees of the Department is truly highlighted when viewing the above data in context with the municipalities in the rest of the State of New York (Union Exhibit [UX] 35).

It is also important to note that the number of arrests made by the Department involving crimes committed in the Village has increased, with a significant spike in arrests in the last two years from 176 to 329. (UX 31). One of the reasons for this recent spike in arrests was due to the recent migration of a motorcycle gang called the Demon Knights, who have opened up their "clubhouse" within the geographic boundaries of the Village. This increase in arrests further bespeaks to the employees' vigilance and level of service provided to the Village.

In addition to the significant revenue stream created by the members of the PBA through their dedicated service to the Village, this particular municipality has maintained a strong economic position. According to the Mayor of the Village, the Village's finances were sound and "[their] accomplishments in 2011 and those of previous years have put Lynbrook in a good position to thrive in 2012." (UX 7). Furthermore, the Mayor, in an attempt to attract new businesses to the Village, indicated that the Village "enjoys an AA Bond rating by Standard and Poors, which is the best bond rating ever in the history of Lynbrook." (UX 8). Due to this

advantageous bond rating, the Village is able to “refinance and reduce interest rates to record low levels on our bonds, saving our taxpayers several hundred thousand of dollars.” (UX9). Accordingly, the Village stands in a sound economic position, and awarding raises and increases consistent with the proposals set forth in UX 29 is rational, based on empirical evidence, and supported by the law.

The Village, through the extremely limited and rushed testimony of its Village Administrator, portrays a Village in dire economic straits. He testified that the Village was saddled with unmanageable payments for severance owed to its municipal employees. As a result of these future, speculative payments, the Village pursued and obtained legislation through the State of New York to allow this municipality to issue municipal bonds in order to have sufficient liquidity to satisfy these severance payments. (Village Exhibit [VX]. 2). Although such payments constitute a significant monetary obligation, the Village, in a blatant mischaracterization, bonded the severance payments of all expectant, departing municipal Village employees, not just employees of the Department (VX3). Village Exhibit 3 is speculative because it is based on the assumption by the Village that the individuals set forth therein will in fact retire. Further, this document enunciates a total of 21 Village employees, while only ten of these individuals are employees of the Department and members of the Union. As such, the Village’s allusion that the PBA members’ severance benefits necessitated the need for such legislation and the bonding of such payments is misguided.

Based upon the record created, it is clear that the Village has the financial capability to apportion monetary funds for raises for the members of the PBA.

With respect to the current terms and conditions of employment for the members of the PBA, their current base salary rate for a Police Officer at top step is \$121,138, with nine steps to

top pay over the course of seven years, including an academy step. In addition, they participate in non-contributory health, dental and optical insurance plans. Unlike every other Nassau Police Conference police job, and the Nassau County Police Department (hereinafter "Nassau County PD"), members of the PBA must work at least 25 years in order to retire without having their retirement benefits penalized. This 25-Year Retirement leads to an older police force for the Department and makes this particular job less attractive to prospective applicants, in comparison to all the other police jobs within the County of Nassau that have a 20-Year Retirement. Additionally, members of the Union are contractually required to work 1,992 hours per year, which is colloquially referred to as a 249 Chart. In comparison, most police jobs within the County of Nassau work 1,856 hours per year, which is colloquially referenced as a 232 Chart. This disparity between the differing work charts also makes this particular job less attractive to prospective applicants, in comparison to other police jobs within the County of Nassau.

One of the most impactful and unique aspects of the terms and conditions of employment for the PBA members is the inclusion of, and forfeiture of, payment for Supplemental Days. Prior to 1975, the Department departed from the 232 Chart and began working the 249 Chart, thereby requiring all members of the Union to work an additional 17 extra days. Pursuant to the parties' collective bargaining agreements for the period from June 1, 1982 to May 31, 1987, "employees hired after June 1, 1978" did not receive any remuneration for working these additional hours. (UX12). Then, the June 1, 1987 to May 31, 1990 contract between the Village and PBA provided for a graduated scale upon which employees hired after June 1, 1978 could receive compensation for working Supplemental Days.

Currently, the Agreement provides that members of the PBA with three years or less of completed service with the Department must work all 17 Supplemental Days each year, but

receive remuneration for none of this extra work (UX20). Between the fourth and seventh years of service, employees receive increasing amounts of compensation for these days.

This economic windfall creates a significant amount of savings for the Village and no other police department within the County of Nassau has anything remotely similar to the concept of Supplemental Days/Pay. Furthermore, these additional hours worked by the PBA members allows the Department to save on hiring an additional “three to four officers to fill in those blanks” if the Department still worked the customary 232 Chart.

The members of the Union are also unique within the County of Nassau as it relates to Sick Leave. Employees do not earn or accrue Sick Leave days over the course of the year; rather, these employees receive 12 Sick Leave Incentive Days for not calling in sick during their respective tours of duty.

Despite the fact that the members of the PBA can utilize an unlimited amount of Sick Leave throughout the course of one year, according to Sergeant Cipolla, sick leave usage is extremely low in the Department because members of the Union want to receive the full complement of their Sick Leave Incentive Days. Although Employees who are brought in to fill vacant slots in a tour due to Sick Leave usage are paid at the overtime rate of pay, the low number of sick leave usage translates into the Department saving on overtime expenditures.

Moreover, the mathematical fact that the PBA members are remunerated for Sick Leave Incentive Days at the rate of pay in effect for a particular year, as opposed to the rate of pay upon retirement, creates a tremendous amount of savings, which is only generated by the members of the Union.

The members of the PBA earn Longevity, which is a common monetary benefit enjoyed by Police Officers throughout the County of Nassau and is designed, in part, to dissuade

members from leaving a specific police department for a more economically lucrative position elsewhere. Further, longevity payments encourage employees who have worked within a specific department to remain at said department thereby allowing these employees to utilize and pass-on the wealth of experience and knowledge they have attained while working in said department. Such knowledge and experience inures to the benefit of the Department, because members of the PBA are intimately involved with and knowledgeable of the Village in which they patrol, leading to a more efficient and effective police force.

The Union members earn longevity in the amount of \$1,550 annually upon completing six years of service with the Department, earn \$2,700 annually upon completing ten years of service with the Department, earn \$3,700 annually upon completing 15 years of service with the Department, earn \$5,075 annually upon completing 20 years of service with the Department, earn \$6,450 annually upon completing 25 years of service with the Department, earn \$7,825 annually upon completing 30 years of service with the Department, and earn \$9,200 annually upon completing 35 years of service with the Department (UX20). The documentary evidence proffered by the Union demonstrates that the PBA members' Longevity payments and increments are below the median amongst NPC police jobs and Nassau County PD (UX40 and 41). Furthermore, according to Sergeant Cipolla, the difference between Longevity payments for Union members and those received in other comparable jurisdictions has increased over the passage of time.

Members of the Union also receive Termination Pay, which is another tool for a municipality to ensure that it retains employees who have attained a level of knowledge, familiarity and experience, thereby ensuring a more efficient and effective police force. Currently, employees of the Department receive "five (5) days' pay for each year of service

completed after June 1, 1977, with a maximum accumulation [of] . . . 175 Days.” (UX 20). The limit of 175 Termination Days indicates that members of the PBA with more than 35 years of service with the Department are penalized for dutifully performing their duties for the Village. Additionally, at this time, members of the PBA receive a single payment for these days upon retirement, and such payment is not spread out over a number of years. Moreover, since Union members do not receive accumulated Sick Leave as part of their retirement from the Department, Termination Days represent the sole source of severance, which greatly differs from other NPC police jobs and Nassau County PD. As such, any attempt to curtail this severance payment would be a significant deviation from the comparable police jobs in this geographical region.

The municipal police departments within the County of Nassau, as well as the Nassau County PD, have been traditionally held to be the appropriate and equitable comparators for other police jobs in this geographic region. These police jobs “have traditionally been considered the comparators to be utilized when making economic modifications.” (UX 46). Therefore, the Panel must look to “the village and cities in Nassau County, as well as Nassau County per se.” as the appropriate comparators to Lynbrook’s police department.

CSL § 209(4) (c) (3) provides the statutory criteria that governs the instant proceedings and the mandate which limits the Panel in the issuance of the award related hereto. This provision states, in pertinent part:

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

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

The following is a discussion of the parties' individual proposals

Union Proposal #1:

Increase base salary by 4% each fiscal year of the Agreement for all ranks within and represented by the Union. (UX29).

The evidence in the instant record supports the Panel's awarding of wage increases in conformance with the Union's demand set forth above. The median percentage increase for base wages in 2012 and 2013 was 3.5% (UX 38 & 39).

The Village, in an attempt to rebut the statistical basis for the Union evidence regarding wage increases, provided documentary evidence indicating that members of the PBA already enjoy one of the highest base salaries amongst NPC police jobs and Nassau County PD (VX 9 & 10). However, this argument is made in a vacuum and ignores the overall values and monetary worth of these other NPC and Nassau County PD agreements. Further, the Village's attempt to distort the true economic value of the base salaries paid to members of the PBA ignores the transparent empirical data provided by the Union with respect to the tremendous revenue generated by the Department as a result of their productivity.

As such, the Union's proposed increases in base wages of 4.0% for the life of the award are appropriate because of the overwhelming amount of testimony, documentary evidence, and empirical data.

Union Proposal #3:

Increase Longevity payments according to the following schedule:

After 6 years of service	Increase by \$150 each fiscal year by the CBA
After 10 years of service	Increase by \$150 each fiscal year by the CBA
After 15 years of service	Increase by \$150 each fiscal year by the CBA
Each year thereafter to Retirement	Increase by \$50 each fiscal year by the CBA

(UX29).

As set forth above, Longevity is a common monetary benefit enjoyed by Police Officers throughout the County of Nassau and is designed, in part, to dissuade members from leaving a specific police department for a more economically lucrative position elsewhere. According to UX 40 & 41, the Union members' Longevity payments are below the median level for NPC police jobs and the Nassau County PD in 2012 and 2013. The median amount received by employees with six to ten years of service is \$1,700, which is \$150 more than the amount received by employees within the Department. The median amount received by employees with 11 to 15 years of service is \$3,100, which is \$400 more than the amount received by employees within the Department. The median amount received by employees with 16 to 20 years of service is \$4,600, which is \$900 more than the amount received by employees within the Department. The median amount received by employees with 21 to 25 years of service is \$6,550, which is \$1,475 more than the amount received by employees within the Department. The median amount received by employees with 26 to 30 years of service is \$8,850, which is \$2,400 more than the amount received by employees within the Department. The median

amount received by employees with 31 to 35 years of service is \$10,000, which is \$2,175 more than the amount received by employees within the Department. Finally, the median amount received by employees with over 35 years of service is \$11,550, which is \$2,350 more than the amount received by employees within the Department.

This discrepancy between the Longevity payments received from the Village's comparators and the Longevity payments received members of the PBA increases at an increasing percentage over the duration of a PBA member's service with the Department. As such, the documentary evidence and the unrebutted testimony of Sergeant Cipolla demonstrates that PBA members receive Longevity payments and increments at a level that is below the median amongst NPC police jobs and the Nassau County PD, and the difference between Longevity payments for Union members and those received in other comparable jurisdictions increase over the passage of time. Accordingly, the Union's instant proposal is designed to equalize this disparity. Under the PBA's proposed system, employees will be encouraged to remain with the Department, thereby allowing these employees to utilize and pass-on the wealth of experience and knowledge they have gained.

Therefore, the Panel should award the Union's proposal as it relates to Longevity.

Union Proposal #4:

Employees shall receive full Supplemental Pay (17 days) starting in the first year of employment. (UX 29). The Village proposed the elimination of Supplemental Pay. (VX1)

Supplemental Days and Supplemental Pay is a concept that is unique to the Department. As stated above in greater detail, the Agreement requires that members of the Union work a 249 Chart, while the comparators that have been discussed herein work a 232 Chart. As such, members of the PBA work an additional 17 days per year in comparison with the police jobs in

this geographic region. In addition, certain members of the PBA do not receive remuneration for all of these extra days worked. As stated above, newly hired employees of the Department must work seven full years before they receive payment for all 17 Supplemental Days worked in a year.

This free labor generates a significant savings for the Village. These savings come in the form of reduced overtime payments and in the avoidance of the need to hire additional officers. Such an economic windfall to the Village provided by the members of the PBA cannot be overlooked or undervalued, especially in light of the undisputed facts that no other NPC police job or Nassau County PD work a 249 Chart, has Supplemental Pay, or receives free labor from its newest employees for a period of six years.

The Union's proposal herein is simply designed to ensure that all of its members receive remuneration for all of the hours its works. Although the Village attempted to obfuscate the issues contained in these competing proposals by averring that the PBA was seeking to increase its current staffing level by three or four individuals, and to shift from a 249 Chart to a 232 Chart, Sergeant Cipolla best summarized the Union's proposal: "The PBA is looking to have all members paid all supplemental days from the date of hire, not gradually phased in over the course of six years."

In sharp contrast to the reasonable and rational proposal put forth by the Union, the Village demands that the Panel eliminate all compensation for Supplemental Days for all employees. This proposal attempts to secure 17 days' worth of free labor from the entire bargaining unit of 46 individuals *ad infinitum*. This blatant attempt to shift the employer-employee relationship to a dynamic mirroring indentured servitude has no basis in fact and/or empirical data.

Union Proposal #17

Increase the number of Sick Leave Incentive Payout days received by Employees by two days for each fiscal year of the CBA. (UX 29). The Village proposed the proration of sick leave incentive by month, to avoid new hires being entitled to “full years” paid unused sick leave. (VX1).

Sick Leave Incentive Days is another contractual provision exclusive to the Village and PBA. It is a means of compensating members of the Union who do not utilize Sick Leave, of discouraging absenteeism, and of providing the Village with a financial savings. As previously stated, members of the Union receive unlimited Sick Leave and receive 12 Sick Leave Incentive Days per year. According to the unrebutted testimony of Sergeant Cipolla, “If they use a sick day, they receive 11 days at the end of the fiscal year from the sick leave incentive fund.” These days cannot be accrued, and are paid at the respective employee’s rate of pay for that particular year. In other NPC police jobs and the Nassau County PD, employees receive, on average, 26 Sick Leave days per year, and these days, if unused at the end of a particular year, are accrued and, upon retirement, these employees receive payment for half of their accrued Sick Leave days. This accrual is paid out at the rate of pay in effect upon the respective employee’s retirement. In short, the financial obligation on the Village is lessened by the fact that Sick Leave Incentive Days are remunerated at the current rate of pay, and not at the rate of pay upon retirement.

The Union’s proposal herein is requesting an extremely modest increase of Sick Leave Incentive Days from 12 to 13. Based upon the fact that the comparators to the Village provide 26 Sick Leave days and pay employees for half of such days over the course of a career, the PBA’s proposal seeks to receive a similar, comparable benefit by seeking compensation for 13

Sick Leave Incentive Days per year. Additionally, it should be noted the Village did not directly oppose this PBA proposal and did not present any evidence to dissuade the Panel from awarding this particular request.

The Village demands that Sick Leave Incentive Days be earned on a prorated basis, “to avoid new hires being entitled to ‘full years’ paid unused sick leave.” (Village Ex. 1). As testified by the Village Administrator, several Police Officers were hired two weeks prior to the conclusion of the Village’s fiscal year in 2012; and as such, those employees were contractually required to receive the full complement of Sick Leave Incentive Days. Even though the Village was contractually bound to provide these days to the new hires, the Union, in the interest of fair and amicable labor/management relations, decided to reach a compromise with the Village on this particular matter (VX 15).

The Union opposes the implementation of such a proposal because the Village, again, has proffered no evidence that the awarding of Sick Leave Incentive Days on a non-prorated basis is economically deleterious to the Village. Moreover, the general vagueness of the Village’s demand renders it impossible to institute because the Village has not proposed over what period of time proration should occur. Finally, if the Village would like to prevent the events of 2012 repeating, it should not hire individuals so close to the end of a fiscal year.

Union Proposal #15:

With respect to Termination Pay, remove the 175 day cap on the maximum accumulation. The Village proposed a maximum payout for severance checks, i.e. the payment at severance all accumulated leave and termination pay such that they shall not exceed 50% of final year base salary for any new officers hired after June 1, 2012. It added that, for existing employees, maximum payout for all accumulated leave and termination pay shall not exceed

100% of final year base salary effective June 1, 2013. Finally, it proposed that all such payouts shall be spread out in three (3) equal payments over three (3) years. (VX1).

Termination Pay is a common monetary benefit enjoyed by Police Officers throughout the County of Nassau County and is designed, in part, to dissuade members from leaving a specific police department for a more economically lucrative position elsewhere and to ensure that it retains employees who have attained a level of knowledge, familiarity and experience, thereby ensuring a more efficient and effective police force. Currently, PBA members receive five Termination Days for each year of service with the Department, with a maximum of 35 years equaling 175 total Termination Days. These days are paid upon an employees' retirement at the respective employee's rate of pay in effect at retirement. (UX20).

Termination Pay represents the sole source of severance received by employees of the Department. Moreover, Union members receive a single payment for these days upon retirement, and such payment is not spread out over a number of years.

In comparison with the other NPC police jobs, as well as Nassau County PD, that have an unexpired collective bargaining agreement for 2012, 2013, and 2014, the Union has proposed that the 35 years-of-service cap be removed, thereby allowing members of the PBA to accrue more than 175 Termination Days. Such a proposal would be aligned with an equitable and appropriate application of the statutory criteria by which the Panel is bound.

The Village, in its counter proposal related to Termination Pay, demanded restrictions of such remuneration that are unprecedented in this geographical region and are not found in any other contracts of the established comparators for the Village. As justification for its proposal, the Village claims that these onerous restrictions must be installed because the Village is not financially capable of satisfying these future monetary obligations.

However, as previously stated, this argument is belied by the inconsistent facts contained in the documents, and the empirical data demonstrating the fiscal strength of the Village. Furthermore, the Village's fiscal position is sound. It has elected to override the two percent property tax cap, imposed by this State, thereby allowing the Village to generate greater revenue for municipal services, such as the Department. Also, as stated above, the Village is enjoying its highest municipal bond rating in 40 years, possesses \$6,200,000 in reserve funds, and the members of the Union generate approximately \$2,060,000 in additional annual revenue for the Village.

Additionally, the Village's proposal to cap Termination Pay stands in stark contrast to the contracts existing currently with the Village's comparators. The only tangential equivalent that can be found is in the current collective bargaining agreements between Nassau County and the three unions in the Nassau County Police Department, which provide for a cap on Termination Pay. However, the Termination Pay cap in the Nassau County PD contracts provides that Termination Pay shall not exceed double an employee's final average salary accounting for Longevity, Night Differential, Holiday Pay, and overtime.

Village Proposal #2:

Amend Article so that all members shall contribute 25% of the cost of all health/dental/optical insurance. (VX1). The PBA proposed no change to the current contractual provision set forth in the Agreement as it relates to health, dental, and optical insurance.

The issue of health care contributions is a "hot-button" topic that is omnipresent in any discussion related to the terms and conditions of employment in both the private and public sector. Due to the increasing cost of health care, many employers are seeking contributions from its employees in order to defray the cost of this necessary medical benefit.

Although the Union is not oblivious to this problem, the Union takes the position that the costs of this benefit should not be saddled upon the backs of its membership at this time, especially considering the low cost of operations enjoyed by the Village with maintaining a full-time police force. The Village enjoys a strong financial position

In addition, the Village's proposal is completely contradictory to the current status of all of the established comparators for the Village (UX 43-50; VX 13 & 14). An examination of the current collective bargaining agreements for these comparators demonstrates that none of the employees of these police forces contribute toward their health care costs. It cannot be emphasized enough that, from June 1, 2012 to May 31, 2014, not one single NPC police job or Nassau County PD burdened its employees with its respective health care costs. As such, the Village is not in such dire economic straits that would necessitate the Panel to award the Village's proposal for health care contributions from its current and future employees; and therefore, this proposal from the Village must be rejected in its entirety.

Therefore, the Village's proposal seeking health care, dental, and optical contributions for all employees of the Department must be summarily rejected.

Village Proposal #3(B):

Vacation Leave – For new hires, amend “20 Days after 1 year” to read “10 Days after 1 year,” and amend “27 Days after 5 years to read “20 Days after 10 years.” (VX1).

The Union proposed no changes to the manner in which and duration of the earning, accrual and/or calculation of Vacation Leave for new hires of the Department.

Vacation is a benefit that is enjoyed by most, if not all, unionized employees. Time away from the job provides individuals with a necessary respite from the rigors of their respective job duties and responsibilities. As this benefit applies to employees of police departments, vacations

serve as a valuable physical, mental and psychological break from the taxing requirements of their position. The Village's proposal is an attempt to fracture the Union and grossly penalize the "unborn". If this proposal were to be instituted by the Panel, new hires would become second-class employees because the incumbent employees of the Department would always enjoy a greater vacation benefit than those hired after June 1, 2013. This type of potential dissension amongst the employees has been traditionally disfavored, especially in police departments which are paramilitary organizations where unity and morale are crucial to fluid, effective, and efficient operations.

Undermining the Village's position that a change in vacation accrual and calculation is needed is the extremely relevant and salient fact that the Village enjoys a sound fiscal position. The Village's bond ratings and its election to override and exceed the two percent property tax cap speaks to its financial health.

Accordingly, based upon the record in the instant matter, the Panel must summarily reject the Village's proposal with respect to vacation.

Village Proposal #3(C):

Eliminate Clause re: ". . . on a day observed as a Holiday . . ." (VX1). The Union opposed this proposal in its entirety.

Article III, § F(5) of the CBA states, in pertinent part: " When the Mayor . . . declares a holiday for Village employees due to an emergency or for other reasons, employees who have reported to work prior to such declaration or actually worked thereafter shall be paid time and one half in cash or compensatory time at the option of the Village." (UX20). This particular provision has been in the parties' various collective bargaining agreements for nearly 30 years. (UX12). In the extremely rare instances when an event occurs that necessitates the Village to

close its operations temporarily, members of the Union must still report for duty and execute their professional responsibilities in the face of potentially grave danger because the Department is a 24-hour-a-day/7-days-a-week agency. An example of such an event was when Super Storm Sandy decimated significant portions of the New York City metropolitan area, including Long Island. During this catastrophe, members of the PBA performed their duties “protecting life and property” of the Village, while all other employees of this municipality were excused from work.

The Village’s proposal herein seeks to eliminate this language, even though the Village has proffered no evidence that this particular provision creates a drastic economic condition which would be deleterious to the Village if the Panel left it untouched. Instead, as justification for this proposal, the Village claims that the unilateral declaration of holidays by the Village and potential “Me-Too” clauses in other bargaining unit contracts would inequitably trigger this provision. However, these contentions strip a potential benefit from the Union, even though the Village itself is the party that has complete control regarding whether the municipality’s offices are temporarily closed. This attempt to shift the burden of the Village onto the PBA is consistent and characteristic of these proceedings.

Therefore, based upon the foregoing testimony and documentation, the Panel must reject the Village’s proposal with respect to the elimination of the language set forth above because it is factually unfounded and legally unsound.

The PBA concludes that, for the reasons stated above, its proposals should be granted in their entirety. The Panel should issue an award consistent with the statutory criteria providing the Union with the benefits sought herein.

CONTENTIONS OF THE VILLAGE

The Village argued as follows:

The Village did not submit a wage proposal that called for increases to the base wage. This reflects a proposal to freeze base wages.

The Salary Comparison Chart (VX10) shows that in 2011 the Lynbrook PBA had a base pay (\$121,138) that was higher than the police units that had contracts covering 2012 and 2013. The average base pay of nine police departments with contracts covering 2012 was \$118,532. If a wage freeze were imposed for 2012, the Lynbrook Police Department would have the third highest base pay in Nassau County and would be \$2,500 above the average for that year.

There are seven police departments with contracts covering 2013. The average of those salaries is \$121,920. A wage freeze for both years of this Award would still keep the Lynbrook Police Department as third highest in the County.

If the requested increase of 4% were to be granted, the top base salary in Lynbrook would exceed \$130,000 and would leave it as the department with the highest base pay. Such an increase would be inconsistent with comparable jurisdictions and foster the continued "leap frogging" to the top of the salary scale.

While the top base salary in Lynbrook is \$121,138, in 2011 the members averaged \$172,461 in total wages and \$160,681 in 2012. The top base pay salary does not include the 17 days of "Supplemental Pay" received by members of the Lynbrook PBA. The "Supplemental Pay" provision has outlived its usefulness and should be eliminated from the CBA.

The expired CBA provides for unlimited sick leave and for generous vacation leave. These benefits make the base pay provision even more attractive.

The Village seeks relief relative to payouts upon retirement and separation from service. The financial pressure resulting from these payouts necessitated the need for the Village to seek legislative relief in the form of authority to bond for the financial costs related to retiree

severance payments. The placement of caps on retiree severance payments would help to relieve future tax payers for past service.

As to health insurance, the day of fully paid health is over. The rate of increase in this area is well documented (VX 6&7). Non-police municipal employees have paid for a portion of their health insurance for years. Police personnel need to contribute their fair share of the burden being currently borne by municipalities and tax payers.

Other police units on Long Island already contribute to the cost of this benefit. The Suffolk County police (VX11), the Rockville Center police (VX 12 & 13) and the Glen Cove police (UX43) are three such departments.

The Village proposed a few reasonable changes to Leave Time allowances. It is clear that PBA members have unlimited sick leave. They also receive 12 days of Sick Leave Incentive. They are paid for some or all of the "incentive" days if they use 12 or fewer sick leave days during the course of the year.

A problem arose in 2011 when new officers were hired within weeks of the end of the fiscal year. A grievance was filed demanding that these newly hired officers be paid for all 12 of the "incentive" days even though they could not even work 12 days before the end of the fiscal year. The grievance was ultimately settled (VX15). This grievance prompted the proposal to have the "incentive" days prorated on a monthly basis.

As to vacation leave, the Village submits that 20 vacation days after one year of service and 27 days after five years are excessive. Ten vacation days after one year and 20 such days after ten years is more reasonable.

A third issue for the consideration of the Panel concerns Article III (F) of the CBA (UX20). This provision is entitled "Holiday Pay".

The contract language appears to indicate that, if the Village closes Village Hall for any reason, it might be considered the equivalent of the declaration of a "holiday". In that case, the argument could be made that police officers would be entitled to "holiday pay". Thus, if the Village were to close Village Hall due to a snow emergency, the PBA could request "holiday pay" for its members on the theory that the Village declared a "snow holiday" for clerical employees.

During the hearing, it was indicated that that during Hurricane Sandy, police officers who were scheduled to work their regular tours were paid "holiday pay" or "emergency pay" because the Village closed Village Hall. Police officers are expected to provide service during emergencies and it is unfair to have to pay them "premium pay" during their regular tours when an emergency arises.

With respect to the PBA proposal, the Village urges the Panel to deny their proposals. It requests the granting of the Village proposals.

OPINION

§209 of the New York State Civil Service Law (*Taylor Law*) sets forth the parameters which an Interest Arbitrator must utilize in deciding terms and conditions of employment. These criteria are as follows:

- a. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

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

With these criteria in mind, I turn to the specific issues before me. The first such matter is the initial criterion.

The parties were in relative agreement relative to the appropriate comparators. They concurred that the most comparable police departments are found within the Nassau Police Conference (NPC).

Criterion (b) concerns the interests and welfare of the public and the financial ability of the public employer to pay for the costs associated with increases in wages and improvements in benefits. I will first address the interests and welfare of the public.

It is unquestioned that the needs of the public are met by a well-paid and well maintained police force that operates safely and efficiently. It is also clear that good morale within these units is essential. Positive morale results in higher productivity and a flow of high quality candidates for the positions available.

The issue of the Village's ability to pay requires a different kind of analysis. I must first acknowledge the quality of the presentations made by the representatives of the PBA and the Village.

The PBA argued that the Village's bond rating is at a 40 year high and that the Village has been engaging in various capital projects. It concluded that the Village has the ability to pay for the cost of the PBA proposals.

The Village produced its Village Administrator to testify about the fiscal condition of the Village. He pointed out that the Village was required to get legislative approval to issue bonds in

order to fund severance agreements for employees. He otherwise suggested that the Village suffered from the same economic malaise that has gripped the region.

After considering the arguments and relevant data, I am persuaded that *the ability to pay* is not measured in absolute terms. In short, it is not necessarily true that the inability to pay for the PBA proposals connotes that the Village is unable to fund more modest improvements in wages and benefits.

Despite the severity of the economic recession that has impacted the country and the region, I am persuaded that the Village does have the ability to pay for smaller increases in salaries and other benefits than those proposed by the PBA. I recognize the seriousness and the scope of the economic downturn in recent years. That being said, I conclude that the Village has the ability to pay for reasonable improvements in the wages and benefits of Lynbrook PBA members.

Criterion (c) is based upon a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. It is clear that police personnel are faced with serious and unique hazards. Law enforcement personnel, in general, and, in this case, police officers, risk death and serious injuries regularly. There is a strong similarity between police officers and other law enforcement units relative to the specific considerations in this criterion. Law enforcement is unique and those employed in this field can only be compared with others in that field.

The final statutory criterion, statutory criterion (d), requires a consideration of past collective bargaining agreements between the parties with respect to compensation and fringe benefits. This criterion mandates that the instant proceeding not be viewed in a vacuum, but

rather in the context of prior negotiations and awards between the PBA and the Village. The record is replete with relevant data. This history was given appropriate consideration.

Having discussed the relevant statutory criteria, I now turn to the parties' specific proposals.

TERM OF THE AWARD

In the absence of an agreement between the parties, interest arbitration awards are limited to terms of two years. There is no such agreement in this case. Thus, this award is a two year award that covers the period June 1, 2012-May 31, 2014.

WAGES- PBA Proposal 1

To sum up the parties' positions, the PBA requested a 4% increase in each year of the Award. The Village sought a two year wage freeze.

Before engaging in the actual analysis of what that wage increase should be, I am compelled to point out that *comparability* can be assessed in two ways, by percentage increases of comparators during the relevant years or by the range of top salaries during that same period.

The parties agreed that there are nine police departments in the NPC with contracts in place covering FY 2012 (the first year of this Award). The PBA focused on the percentage increases received by those departments. The average rate of increase was 3.5% (UX38).

Six of those units have CBAs covering FY 2013. The average percentage increase in those departments remains 3.5%.

The parties stipulated that an Interest Arbitration Award concerning the Village of Rockville Center was issued in February 2013 (VX13). That award covered FY 2010 and 2011 and called for increases of 3.25%. I will comment on that Award below.

For its part, the Village emphasized the top base pay salaries for the departments in question. VX10 sets forth the top base pay salaries for the relevant police departments for FY 2011, FY 2012 and FY 2013.

In 2011, the average top salary for the nine departments discussed below was \$115,473 while the top base pay in Lynbrook was \$121,138 (\$5660 above the mean). The range of top salaries in the nine units (other than Lynbrook) was \$110,130-\$119,619.

As noted above, the two years covered by the Award are FY 2012 and FY 2013. In FY 2012, the average top salary of the nine police units referenced above was \$118,532. The top salary in Lynbrook remained \$121,148 because no increase had as yet been determined. Except for Lynbrook, the range of the top salaries in FY2012 was a low of \$113,709 and a high of \$124,844.

Finally, in FY 2013 (the second year of this Award), seven police departments had CBAs. The average top base pay wage was \$121,920. The range of top salaries was \$118,595-\$125,357. For reasons stated above, the top salary in Lynbrook continues to be \$121,138.

It is necessary to comment about the discussions concerning the evolution of the salary schedules in various places. It may well be that wage scales may have been influenced over time by varying factors. Among those factors may be retirement plans that were adopted outside of the interest arbitration process.

I hasten to add that each of the bargaining units in the NPC has a long bargaining history with the political jurisdictions in which they are found. Some may have bargained for more vacation time or health insurance contributions or, as is the case here, unlimited sick leave.

It is impossible to quantify the impact and to develop a method of determining what the increases might have been absent such factors. Furthermore, embarking on such an analysis

would necessitate a review of the bargaining history of each member of the NPC. It is neither practical nor even possible to marshal the needed data so that a cogent analysis can be done.

What is available is the data concerning wage scales and percentage increases. Such data is common to all of the NPC units. That information is sufficient such that determinations can be made as to the question of whether, based on comparables, consideration of wage increases in Lynbrook should be increased and, if so, what the size of the increases should be.

I am persuaded that in a case like this one it is more valid to consider the placement of the top salary within the range of the comparators than it is to look at the percentage increases of the comparators. At the risk of being simplistic, based on a large number of other factors, there may be reason to consider a higher percentage increase for a jurisdiction in which the wage scale is relatively low. Such an approach can be useful in bringing a police department with a relatively low wage scale closer to the average.

On the other hand, when the wage scale is at the top or near the top, a *going rate* increase of a *bigger number* is a *bigger number*. For example, if the average wage increase for a police department with a top salary of about \$114,000 in FY 2012 was about 3.5%, the increase in top salary would just under \$4,000 while that same percentage increase in a department like Lynbrook would be about \$250 higher. Therefore, considering the percentage of increase as the relevant measurement tends to accentuate and expand upon the differences in wage scale among the comparators. I must add that such an approach would result in the higher paid departments getting increases which are not comparable to those of the lower paid departments.

Put another way, if the bargaining history has historically led to a department being among the best paid, there is little reason to reduce that status. However, nor is there a rationale for increasing the gap among the comparators.

I must note that the Lynbrook PBA had the benefit of excellent representation for many years. The result of that leadership is a wage scale at the top of the NPC. As noted above, there is no valid basis for attempting to reduce its ranking within the NPC. On the other hand, it is appropriate to employ the principal of comparability in such a way that acknowledges the ranking without increasing the separation between the average top salary within the NPC and that of the police departments at the top of that range.

To complete the record, the wage increases in the Rockville Center Interest Arbitration Award (VX13) covered the period January 1, 2010-December 31, 2011. The top salary for police officers in Rockville Center as of December 31, 2011 was raised there to \$106,757. This placed that top salary well below the average of other NPC units and significantly below that of the Lynbrook Police Department.

This data further persuades me that considering the rate of increase in a case such as this one is not as revealing as is a review of the actual top salaries of the comparators.

Having worked through the underlying principles, I am persuaded that increases of 2.25% in each year of this Award is reasonable and fair. With such increases, the top salary in Lynbrook in FY 2012 would be \$123,863 or in excess of \$5,300 above the average of the nine NPC comparators. Similarly, the top salary in Lynbrook for FY 2013 will be \$126,651. There are seven NPC comparators with an average salary of \$121,920. The Lynbrook top salary will be \$4,731 above the average of the comparators. As it turns out, even with the modest increases awarded, in FY 2013, the differential between Lynbrook and the average of the other NPC comparators actually grew by almost \$250.

I note that the only police department with a CBA for FY 2013 that has a higher top salary than Lynbrook is Old Westbury. The top base pay in Old Westbury is less than \$1,000

higher than that of Lynbrook. Old Westbury reached that wage after having been given 3.85% raises in FY 2012 and 2013. Those increases are significantly higher than the average NPC increase and, absent more information about the bargaining and its timing, will not be the subject of further discussion.

I opined earlier that the Village's *ability to pay* does not include 4% increases but does include more modest ones. This Award is consistent with that assessment.

Thus, the PBA is awarded increases of 2.25% in each of FY 2012 and FY 2013. These increases are effective June 1, 2012. See Appendix A for the wage scales effective June 1, 2012 and June 1, 2013 respectively.

LONGEVITY – PBA Proposal 3

The PBA proposed increases in Longevity payments of \$150 per year in Years 6-15 and \$50 per year every year thereafter in each year of the Award. In the absence of a proposal, I conclude that the Village intended for there to be no change to the Longevity payments.

I have reviewed the data concerning the NPC comparators (VX40). The Longevity payments in Lynbrook are below the average and an increase at each step of the Longevity schedule would bring them closer to the mean. Regardless of the method of analysis, I am persuaded that an increase in Longevity payments is justified.

Therefore, the increase in Longevity payments in Years (of service) 6-15 will be \$125 per year. The increase in Year 16 and beyond will be \$50. Effective May 31, 2014, after 35 years of service, the cap on Longevity payments will be \$11,450. This increase will apply to each year of the Award.

I recognize that senior members of the department have not had the benefit of these increases during the years leading to the present. Therefore, to address this situation, there will

be no cap on Longevity payments until May 31, 2014, the last day of the period covered by this Award. This provision is effective as of June 1, 2012. See Appendix B for Longevity Pay Chart as of June 1, 2012 and June 1, 2013.

SUPPLEMENTAL PAY- PBA Proposal 4, Village Proposal 1(A)

The current language in the CBA includes a staging in of payments for 17 Supplemental Days over the first six years of service (UX20- Article III (D)(4)). The PBA proposed full payment for Supplemental Days in the first year of service. The Village proposed the elimination of Supplemental Pay.

I have considered this matter carefully and find limited evidence to support either proposal. Therefore, both proposals are denied.

SICK LEAVE INCENTIVE PAYOUT- PBA Proposal 11, Village Proposal 3(A)

The proposals of the parties dealt with different aspects of this contract provision. Article VI(F) provides PBA members with 12 days of *Sick Leave Incentive*. The PBA proposed increasing the number of such days from 12 to 14.

The Village proposal sought to modify the language such that officers in their first year of service accrue the *Sick Leave Incentive* one day per month rather than receive credit for the 12 days on the date on which they are hired. This proposal emanated from a grievance arbitration related to this matter.

I will first explain the underlying issue of *Sick Leave Incentive*. At some point in the history of the bargaining between the parties, they agreed to a provision that granted unlimited sick leave to police officers. They subsequently concluded that it would be effective to incentivize the officers to avoid the unnecessary use of sick leave. Therefore, the parties

negotiated the terms of Article VI(F)(1) which as of June 1, 2011 provides for 12 days of *Sick Leave Incentive*.

Simply put, if an officer uses no sick leave in a particular contract year, s/he is paid for 12 days of *Sick Leave Incentive*. The number of such days is proportionately decreased by the number of sick leave days used during the course of the year.

Anecdotally, the police officers in Lynbrook have used a small number of sick leave days. I would infer that the incentive is at least partially responsible for the limited use of sick leave.

A final element of this approach is that the officers get paid for the *Sick Leave Incentive* at the end of the year in which it is earned. I recognize that some might prefer to get paid for these days at retirement. However, it is mutually beneficial to have the payments made on a current basis. The Village avoids an accrued liability that is paid at the wage rate in place at the time of retirement and the police officer has access to the money at a time when his/her salary may be lower and can use the money to meet current needs.

The PBA sought to expand the number of *Sick Leave Incentive* days from 12 to 14. I find no evidence to suggest that the current formula is in some way inadequate. The system appears to be working well and does not require change. Thus, the PBA proposal is denied.

The Village proposal also requires a review of the history of the implementation of Article VI(F)(1). The specific issue concerns the implementation of this provision relative to police officers in their first year of service.

The record indicates that a grievance was filed on behalf of a number of officers in their first year of service but had been hired shortly before the end of the contract year, May 31, 2011.

The grievance alleged that Article VI(F)(1) provided for *Sick Leave Incentive Payout* of 12 days irrespective of the date of hire.

The parties resolved the matter by Stipulation and Agreement (VX15). For its part, the Village proposed the modification of the terms of Article VI(F)(1) through bargaining. When an impasse in bargaining developed, the matter was placed before the Panel for adjudication.

It is commonly held that sick leave is accrued on a monthly basis. The current contract language can be read to indicate that the 12 days of *Sick Leave Incentive* are accrued on the first day of the contract year. That interpretation of the contract language has not proven to be problematical for officers employed beyond their first year of service because they are expected to work the full year and have unlimited sick leave.

However, a problem did arise for police officers in their first year of service. Unless they were hired on June 1 of a contract year, they could not have worked long enough to have earned the benefit that was designed to cover the full year. For example, if someone is hired in May of a particular year, s/he might work less than a month during the fiscal/contract year in which they were hired and could allege entitlement to the full 12 days of *Sick Leave Incentive Payout*.

I am persuaded that the solution can be found in a change in the terms of Article VI(F)(1). This change will only affect officers in their first year of service. They should be afforded the *Sick Leave Incentive*. However, their benefit should be limited to eight hours of *Sick Leave Incentive* for each full month of service they are employed between their date of hire and the end of the fiscal year, May 31. As is true of all other members of the PBA, the *Sick Leave Incentive Payout* will be reduced by the number of sick leave days actually used during that time frame.

This modification is effective January 1, 2013.

TERMINATION PAY & ACCUMULATED LEAVE- PBA Proposal 15, Village Proposal

1(B)

In PBA Proposal 15, the PBA proposed the elimination of a cap of 175 days of *Termination Pay*. Article VII(C)(1) provides for five days of *Termination Pay* (for police officers who have worked at least 20 years) for each year of service. As of June 1, 2011, there has been a cap, after 35 years of service, of 175 days on such payments. It is this aspect of the CBA that the PBA seeks to modify.

The Village's proposal seeks, effective June 1, 2013, to reduce the payout for all accumulated leave and Termination Pay to 100% of the final year's base salary for all existing employees. I point out that Termination Pay is the subject of Article VII (C) (1) and is also one of the items enumerated in Article IX (I). Article IX (I) details the payout received by a PBA member when s/he separates from service. The Village's proposal sought to limit this payout to 100% of the officers' final base pay.

Focusing now on the two proposals concerning existing personnel, PBA Proposal 15 seeks the removal of the 175 day cap on *Termination Pay*. I have calculated the cost of granting this proposal and conclude that the increased cost for existing employees is modest and affordable. Therefore, as of June 1, 2012, PBA Proposal 15 is granted.

However, the Village's request to limit payout for Termination Pay and other accumulated leave for existing employees is a too great a change in light of the change granted for new employees. This change will be discussed below. Thus, this aspect of Village Proposal 1(B) is denied.

The Village also proposed the reduction of the maximum payout for all accumulated leave and termination pay to 50% of the final year's base salary for officers hired after June 1, 2012. I have addressed the relevant provisions in the CBA above and need not repeat it.

The record indicates that the Village has needed to seek legislative authority to bond the cost of these payouts and has argued that relief in this area is needed. In order to properly address this issue, there needs to be a discussion of new hires as an element that is separate from existing personnel.

When a significant change in benefits is contemplated, it frequently is put into effect with respect to new or recently hired employees. Such an approach is appropriate here.

Given the Village's duress in this area, I am persuaded that employees hired since January 1, 2013 should have their maximum payout at separation from service limited to 50% of the combination of base pay, longevity and night differential. I note that this formula is greater than was proposed by the Village and defines newly hired officers in a manner consistent with other aspects of this Award but, in light of the underlying change in this area, it is appropriate.

This will provide ongoing relief for the Village. The part of Village Proposal 1(B) concerning officers hired after January 1, 2013 is granted effective January 1, 2013.

VACATION LEAVE- Village Proposal 3(B)

Article V(A) of the predecessor agreement provides for 20 vacation days after one year of service and 27 such days after five years of service. The Village proposed reducing the number of vacation days for newly hired officers to 10 days (after the first year of service) and to 20 vacation days after ten years. The PBA opposed this proposal.

Since vacation days are measured as eight hour units, I will refer to vacation accruals in terms of hours. For example, newly hired officers currently get 20 vacation days after the first year. I will refer to 20 vacation days as 160 hours.

At a time of shrinking budgets and an emphasis on increased productivity, it is not unreasonable to seek a diminution of vacation leave. I am persuaded, however, that the Village's proposal is more extensive than may be appropriate. With that in mind, I recognize that a more modest reduction in vacation leave is appropriate.

As part of that construct, I limit to the reduction in vacation leave to officers hired since January 1, 2013. The actual reduction will be as follows:

After the first year of service through the fifth year of service- 128 hours of vacation leave (16 eight hour days).

Beginning with the sixth year of service- 184 hours of vacation leave (23 eight hour days).

This provision will be effective as June 1, 2013.

CHANGE IN TERMS OF ARTICLE III(F)- Village Proposal 3(C)

The language of Article III(F) has been interpreted to mean that the closing of Village Hall due to events such as weather emergencies is to viewed as the declaration of a Village holiday. The Village proposed the deletion of the portion of the provision that refers to a *Village holiday*.

An improper reading of Article III(F) could result in police officers being paid at the overtime rate for a regular tour on which there is a weather emergency. A fair reading of the contract language suggests that it was not the intent of the language to have emergency personnel, i.e. police officers, paid at an overtime rate under the above stated circumstances.

The language of Article III (F) is ambiguous. Therefore, it would be prudent to grant the Village proposal and to modify the language as follows:

Article III (F)(2)- In the first sentence- delete *...a day observed by the Village as a holiday which is his/her regularly scheduled work day* and replace it with *...one or more of the thirteen holidays.*

Article III (F) (5) - Delete this section in its entirety.

This change is effective the date of this Award.

HEALTH INSURANCE- Village Proposal 2

The issue of employee contributions for part of the cost of health insurance has been a significant one for many years. It is undisputed that the cost of health insurance has been growing at a rapid rate for an extended period of time.

Furthermore, when the discussions about health insurance began in general, there were no or at most very few police officers contributing to the cost of that benefit. With the passage of time, increasing numbers of police departments have negotiated contract provisions that require the payment of part of the cost of health insurance by some or all of the police officers. The sizes of the police departments that have done so range from the largest or second largest police department on Long Island to much smaller ones.

In short, the issue is not *if* Lynbrook PBA members may pay for a portion of their health insurance coverage. The real question is *when* they may begin to do so.

A major change concerning a historically significant employee benefit is best accomplished through direct negotiations of the parties. The results of such negotiations are frequently preferable to those imposed by a third party.

For various reasons, in advance of the instant impasse, the record indicates that the parties have not engaged in serious negotiations over health insurance. While I am persuaded that the issue of health insurance is not ripe for resolution through this proceeding at this time, I am convinced that the parties need to address this matter through bilateral discussions.

I cannot and will not predict what the results of such negotiations will be. That is for the parties to determine. However, a failure to reach a meeting of the minds could well result in the matter being ripe for resolution through an impasse resolution process.

Thus, for the reasons stated above, the Village proposal must be denied at this time.

CONCLUSION

These are exceedingly difficult times. This Award is reflective of the need to balance the needs of employees who render valuable and quality service against the financial pressures experienced by the City and the requirement for the Village to operate its police force in an efficient and appropriate manner. This is particularly true in a case such as this one in which there is objective data that demonstrates the efficiency of the police force in the area of traffic control.

With that in mind, I have calculated the cost of this award. The costs are: wage increases that are retroactive to June 1, 2012, increases in longevity payments, retroactive to June 1, 2012, the lifting of the 175 day cap on Termination Pay for officers in service before January 1, 2013 and the lifting of the cap on longevity payments from June 1, 2012 until May 31, 2014.

In the course of the discussion of the parties' proposals, I indicated that the costs of the award would be offset by certain concessions awarded to the Village. The concessions are: the restructuring of the Sick Leave Incentive Payout for officers hired after January 1, 2013, the

reduction in Severance Pay for officers hired after January 1, 2013 and the reduction in Vacation Leave for officers hired after January 1, 2013.

In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent prior interest arbitration awards in arriving at my findings. I believe that this Award properly balances the rights of the members of the PBA to improved wages and benefits with the village's obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests. Thus, based on the above, I make the following:

AWARD

1. **TERM OF THE AWARD-** The term of the Award shall be June 1, 2012-May 31, 2014.
2. **BASE SALARIES-** Amend Article III(A)(1-5) to include the following increases:
 - Effective June 1, 2012- 2.25%
 - Effective June 1, 2013- 2.25%
 - Officers will receive retroactive increases for FY 2012.
 - See Appendix A
3. **LONGEVITY PAYMENTS-** Amend Article III(C) to include the following increases:
 - After 6 years, an additional \$125
 - After 10 years, an additional \$125
 - After 15 years, an additional \$125
 - Thereafter, an additional \$50
 - Longevity will be capped after 35 years of service.
 - This cap will be lifted during the term of this Award.
 - These increases will be effective June 1, 2012 and June 1, 2013.
 - See Appendix B.
4. **TERMINATION PAY-** Amend Article VII(C) and Article IX (I) as follows:
 - (2) For police officers hired on or after January 1, 2013, the maximum payout for Termination Pay and other accumulated leaves will be limited to 50% of Annual Base Pay, Longevity, and Night Differential.
 - (3) For officers in service prior to January 1, 2013, the 175 day cap on Termination Pay shall be lifted.
5. **SICK LEAVE INCENTIVE-** Amend Article VI(F) to include:
 - (5) In their first year of service, employees will accrue eight hours of Sick Leave Incentive time for each full month of service between the date of hire and the end of the fiscal year less the amount of sick leave actually used.

- 6. VACATION LEAVE**- Amend Article V(A) to include:
(3) For officers hired after January 1, 2013, after one year of service- 128 hours (16 eight hour days).
(4) For officers hired after January 1, 2013, after five years of service- 184 hours (23 eight hour days).
- 7. VILLAGE HOLIDAYS**- Amend Article III (F)(2) as follows:
Article III (F)(2)- Delete *on a day observed by the Village as a holiday on his regularly scheduled work day* and replace it with *one or more of the thirteen holidays*.
Article III (F) (5) - Delete in its entirety
- 8.** All other PBA proposals, whether or not discussed, are expressly denied.
- 9.** All other Village proposals, whether or not discussed, are expressly denied.

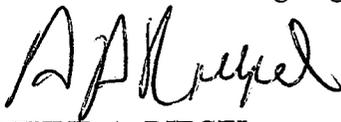
Dated: May 27, 2013


ARTHUR A. RIEGEL, ESQ.
PANEL CHAIR

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

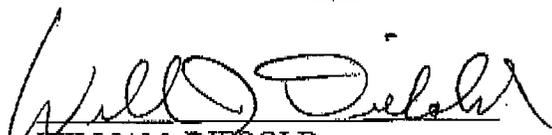
I, Arthur A. Riegel, am the individual described herein and who executed the foregoing instrument which is my Compulsory Interest Arbitration Award.


ARTHUR A. RIEGEL

EMPLOYEE PANELIST

I, William Diebold, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|--------------|--------|---------|
| 1. Item # 1 | Concur | Dissent |
| 2. Item # 2 | Concur | Dissent |
| 3. Item # 3 | Concur | Dissent |
| 4. Item # 4A | Concur | Dissent |
| 5. Item # 4B | Concur | Dissent |
| 6. Item # 5 | Concur | Dissent |
| 7. Item # 6 | Concur | Dissent |
| 8. Item # 7 | Concur | Dissent |
| 9. Item # 8 | Concur | Dissent |
| 10. Item # 9 | Concur | Dissent |


WILLIAM DIEBOLD,
EMPLOYEE PANELIST

EMPLOYER PANELIST

I, Peter A. Bee, Esq., Employer member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|--------------|--------|---------|
| 1. Item # 1 | Concur | Dissent |
| 2. Item # 2 | Concur | Dissent |
| 3. Item # 3 | Concur | Dissent |
| 4. Item # 4A | Concur | Dissent |
| 5. Item # 4B | Concur | Dissent |
| 6. Item # 5 | Concur | Dissent |
| 7. Item # 6 | Concur | Dissent |
| 8. Item # 7 | Concur | Dissent |
| 9. Item # 8 | Concur | Dissent |
| 10. Item # 9 | Concur | Dissent |



PETER A. BEE, ESQ.
EMPLOYER PANELIST

Police Officers shall receive base salaries as follows:

Step	Departmental Years of Service	Effective 6/1/2011		Effective 6/1/2012		Effective 6/1/2013	
		Prior CBA Base Salary	2.25% Raise	Base Salary	2.25% Raise	Base Salary	2.25% Raise
1	Start	\$ 41,037.80	\$ 923.35	\$ 41,961.15	\$ 944.13	\$ 42,905.28	
2	Upon graduation from the academy	\$ 47,221.57	\$ 1,062.49	\$ 48,284.06	\$ 1,086.39	\$ 49,370.45	
3	One year after graduation from the academy	\$ 54,947.30	\$ 1,236.31	\$ 56,183.61	\$ 1,264.13	\$ 57,447.75	
4	Two years after graduation from the academy	\$ 66,806.60	\$ 1,503.15	\$ 68,309.75	\$ 1,536.97	\$ 69,846.72	
5	Three years after graduation from the academy	\$ 77,672.78	\$ 1,747.64	\$ 79,420.42	\$ 1,786.96	\$ 81,207.38	
6	Four years after graduation from the academy	\$ 88,539.00	\$ 1,992.13	\$ 90,531.13	\$ 2,036.95	\$ 92,568.08	
7	Five years after graduation from the academy	\$ 99,405.18	\$ 2,236.62	\$ 101,641.80	\$ 2,286.94	\$ 103,928.74	
8	Six years after graduation from the academy	\$ 110,271.39	\$ 2,481.11	\$ 112,752.50	\$ 2,536.93	\$ 115,289.43	
9	Seven years after graduation from the academy	\$ 121,137.60	\$ 2,725.60	\$ 123,863.20	\$ 2,786.92	\$ 126,650.12	

Detectives shall receive base salaries as follows:

APPENDIX A

Step	Departmental Years of Service	Effective 6/1/2011		Effective 6/1/2012		Effective 6/1/2013	
		Prior CBA Base Salary	2.25% Raise	Base Salary	2.25% Raise	Base Salary	2.25% Raise
2	1	\$ 72,401.27	\$ 1,629.03	\$ 74,030.30	\$ 1,665.68	\$ 75,695.98	
3	2	\$ 84,388.07	\$ 1,898.73	\$ 86,286.80	\$ 1,941.45	\$ 88,228.25	
4	3	\$ 96,374.86	\$ 2,168.43	\$ 98,543.29	\$ 2,217.22	\$ 100,760.52	
5	4	\$ 108,361.70	\$ 2,438.14	\$ 110,799.84	\$ 2,493.00	\$ 113,292.83	
6	5	\$ 125,611.59	\$ 2,826.26	\$ 128,437.85	\$ 2,889.85	\$ 131,327.70	

Superior Officers shall receive base salaries as follows:

Step	Title	Effective 6/1/2011		Effective 6/1/2012		Effective 6/1/2013	
		Prior CBA Base Salary	2.25% Raise	Base Salary	2.25% Raise	Base Salary	2.25% Raise
	Sergeant	\$ 142,136.20	\$ 3,198.06	\$ 145,334.26	\$ 3,270.02	\$ 148,604.29	
	Detective Sergeant	\$ 146,610.23	\$ 3,298.73	\$ 149,908.96	\$ 3,372.95	\$ 153,281.91	
	Lieutenant	\$ 156,986.07	\$ 3,532.19	\$ 160,518.26	\$ 3,611.66	\$ 164,129.92	
	Executive Officer	\$ 163,562.20	\$ 3,680.15	\$ 167,242.35	\$ 3,762.95	\$ 171,005.30	

APPENDIX B

Longevity Pay Chart

Completed Departmental Years of Service	<i>Current Contract</i>		<i>Effective 6/1/12</i>		<i>Effective 6/1/13</i>	
	Add \$	Annual Longevity Pay	Add \$	Annual Longevity Pay	Add \$	Annual Longevity Pay
After 6	\$ 1,550	\$ 1,550	\$ 1,675	\$ 1,675	\$ 1,800	\$ 1,800
7	\$ -	\$ 1,550	\$ -	\$ 1,675	\$ -	\$ 1,800
8	\$ -	\$ 1,550	\$ -	\$ 1,675	\$ -	\$ 1,800
9	\$ -	\$ 1,550	\$ -	\$ 1,675	\$ -	\$ 1,800
10	\$ 1,150	\$ 2,700	\$ 1,150	\$ 2,825	\$ 1,150	\$ 2,950
11	\$ -	\$ 2,700	\$ -	\$ 2,825	\$ -	\$ 2,950
12	\$ -	\$ 2,700	\$ -	\$ 2,825	\$ -	\$ 2,950
13	\$ -	\$ 2,700	\$ -	\$ 2,825	\$ -	\$ 2,950
14	\$ -	\$ 2,700	\$ -	\$ 2,825	\$ -	\$ 2,950
15	\$ 1,000	\$ 3,700	\$ 1,000	\$ 3,825	\$ 1,000	\$ 3,950
16	\$ 275	\$ 3,975	\$ 325	\$ 4,150	\$ 375	\$ 4,325
17	\$ 275	\$ 4,250	\$ 325	\$ 4,475	\$ 375	\$ 4,700
18	\$ 275	\$ 4,525	\$ 325	\$ 4,800	\$ 375	\$ 5,075
19	\$ 275	\$ 4,800	\$ 325	\$ 5,125	\$ 375	\$ 5,450
20	\$ 275	\$ 5,075	\$ 325	\$ 5,450	\$ 375	\$ 5,825
21	\$ 275	\$ 5,350	\$ 325	\$ 5,775	\$ 375	\$ 6,200
22	\$ 275	\$ 5,625	\$ 325	\$ 6,100	\$ 375	\$ 6,575
23	\$ 275	\$ 5,900	\$ 325	\$ 6,425	\$ 375	\$ 6,950
24	\$ 275	\$ 6,175	\$ 325	\$ 6,750	\$ 375	\$ 7,325
25	\$ 275	\$ 6,450	\$ 325	\$ 7,075	\$ 375	\$ 7,700
26	\$ 275	\$ 6,725	\$ 325	\$ 7,400	\$ 375	\$ 8,075
27	\$ 275	\$ 7,000	\$ 325	\$ 7,725	\$ 375	\$ 8,450
28	\$ 275	\$ 7,275	\$ 325	\$ 8,050	\$ 375	\$ 8,825
29	\$ 275	\$ 7,550	\$ 325	\$ 8,375	\$ 375	\$ 9,200
30	\$ 275	\$ 7,825	\$ 325	\$ 8,700	\$ 375	\$ 9,575
31	\$ 275	\$ 8,100	\$ 325	\$ 9,025	\$ 375	\$ 9,950
32	\$ 275	\$ 8,375	\$ 325	\$ 9,350	\$ 375	\$ 10,325
33	\$ 275	\$ 8,650	\$ 325	\$ 9,675	\$ 375	\$ 10,700
34	\$ 275	\$ 8,925	\$ 325	\$ 10,000	\$ 375	\$ 11,075
35	\$ 275	\$ 9,200	\$ 325	\$ 10,325	\$ 375	\$ 11,450

**35 Year longevity cap removed for life of contract. Annual longevity increments continue until retirement.*