

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

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**In the Matter of the Compulsory Interest Arbitration between**

**COLONIE POLICE BENEVOLENT  
ASSOCIATION,**

**Employee Organization,**

**-and-**

**TOWN OF COLONIE,**

**Public Employer.**

**OPINION AND AWARD  
OF PUBLIC ARBITRATION  
PANEL**

**PERB Case No.: IA2012-019; M2012-238**

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**BEFORE:** Louis J. Patack, Esq.  
Public Panel Member and Chairperson

Richard P. Walsh, Jr., Esq.  
Employee Organization Member

James W. Roemer, Jr., Esq.  
Public Employer Member

**APPEARANCES:**

For the Colonie Police Benevolent Association:  
Lombardi, Walsh, Harrison, Amodeo & Davenport, P.C.  
Paul Davenport, Esq., of counsel

For the Town of Colonie:  
Roemer Wallens Gold & Mineaux LLP  
Dionne A. Wheatley, Esq., of counsel

**BACKGROUND**

The Town of Colonie ("Town"), with a population a little over 81,000, is located directly north of the City of Albany. Its police department numbers about 109, including the chief of

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police, two deputy chiefs, five or six lieutenants, and about 100 police officers (including the rank of sergeant). The police officers are in a collective bargaining unit represented by the Colonie Police Benevolent Association ("PBA").

The Town and PBA were parties to a collective bargaining agreement ("Agreement") that covered the period January 1, 2009 through December 31, 2011. They entered into negotiations for a successor agreement, and when they reached an impasse, continued bargaining with the assistance of a mediator assigned by the New York Public Employment Relations Board ("PERB").

When mediation efforts failed to produce an agreement, the PBA, on January 2, 2013, filed a petition for compulsory interest arbitration with PERB. The Town filed its response on January 10, and on February 19 PERB designated the undersigned chairperson, together with Richard P. Walsh, Jr., Esq., employee organization member, and James W. Roemer, Jr., Esq., public employer member, to serve as the public arbitration panel to resolve the dispute.

A hearing was scheduled for June 11 and 12, 2013, to take place at the Town's Public Operations Center, in Latham.

Prior to the hearing taking place, however, the parties, on May 8, entered into a Memorandum of Agreement ("MOA") for a contract covering the period January 1, 2012 through December 31, 2014. The MOA will be discussed below, but for now it is sufficient to note that it was not ratified by the PBA membership. The hearing, therefore, proceeded as scheduled.

At the hearing the parties offered evidence through witnesses and documents, and made arguments in support of their positions. A stenographic record was made, and that record constitutes the official record of the proceeding.

Following the hearing, the panel members met in executive session on July 1, 2013, and thereafter engaged in numerous telephone conversations. During this time the panel members strongly advocated for their respective parties, but at the same time cooperated with the chairperson in an effort to resolve the PBA and Town's differences. Ultimately, however, it was not possible to reach a unanimous award.

What follows, then, are the parties' proposals, the statutory criteria the panel members applied in considering the proposals, a discussion of the evidence and the parties' arguments, and the awards themselves.

### **PBA PROPOSALS**

1. Salary – Rebalance of the Salary Schedule as outlined in Exhibit “A.” Two year cost to Town equivalent to a 2.65% across the board increase under current schedule. (Exhibit A is not included here.)
2. Reform and Clarification of current 207-c Procedure:
  - (a) The Town shall make the initial determination as to whether the police officer has been injured in the performance of his/her duties or taken sick as a result of the performance of his/her duties.
  - (b) The police officer has the right to appeal and request a “de novo” hearing before a neutral arbitrator appointed by PERB. At this “de novo” hearing the police officer is allowed to present any evidence relevant to the determination as to whether the police officer has been injured or taken sick as a result of the performance of his/her duties. The police officer shall have the burden of proof to prove by a preponderance of the evidence that he/she was injured in the performance of his/her duties or taken sick as a result of the performance of his/her duties.
3. Personal Service Time shall be allowed to be taken in 15 minute increments (currently one (1) hour limit).

4. Training Instructors to have the option of receiving overtime in either comp time or cash payment (now just allowed comp time – see, Article 43).
5. Any officer, who is out on a personal day, approved at least 20 days in advance, and who is ordered or receives notice to go to Court on said personal day shall receive a minimum of three (3) hours at time and one half for pay (see Article 26).
6. Police Officers who actually work on any day that all other Town employees are not required to work (i.e. Black Friday, etc.) shall receive Holiday pay (double time) for all hours worked.

### **TOWN PROPOSAL**

1. Effective January 1, 2013, all members of the bargaining unit shall contribute twenty percent (20%) of the premium for the health insurance coverage they have chosen.

### **TAYLOR LAW CRITERIA**

In considering the proposals, and making its awards, the panel members have applied the criteria set forth in Section 209.4(c)(v) of the Taylor Law (New York Civil Service Law, Article 14). They are as follows:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

## COMPARABILITY

Civil Service Law § 209.4(c)(v)(a) instructs interest arbitration panels, in making their awards, to compare items under consideration, such as salaries and health insurance benefits, with those provided in comparably situated communities.

Often this is a contentious issue, with parties suggesting different municipalities as being comparable to the one under consideration, and insisting that the panel consider only the terms and conditions of employees in the places they have offered as comparables.

We do not have that problem here, since the parties both consider the following four towns as comparables: Bethlehem, Guilderland, Niskayuna, and Glenville. Colonie also includes Rotterdam; and the PBA, East Greenbush and North Greenbush.

There is one significant difference, however, between Colonie and the rest of these towns. Colonie has over twice the population of the next two largest towns, Bethlehem and Guilderland, and, as would be expected, has by far the largest police department of any of the comparables.

In terms of wealth, the Town's income figures indicate that per capita, median household and median family income all fall near the bottom of its comparables. And, as might be expected given its large population, the Town also has the highest percentage of individuals and families living below the poverty level (Town Exhibit 1, Exhibit X. The parties' exhibit binders were received into evidence as Town Exhibit 1 and PBA Exhibit 1. Hereafter references to the exhibits in the binders will be referred to only by the exhibit number in the binder.)

PBA figures rank Colonie fourth among its comparables in terms of average family income (PBA Exhibit I). The PBA also points out that in terms of per capita property wealth, in 2013 Colonie had by far the highest market value of taxable real property among its

comparables, and the third highest taxable real property wealth per resident, falling only behind Niskayuna and Bethlehem.

The PBA also notes that over the past five years the Town has enjoyed the lowest increase in tax levies among its comparables, that in 2013 only Guilderland had a lower tax rate, and that also in 2013 the Town had both the second lowest tax bill, and tax bill as a percent of income among the towns it has identified as comparables (PBA Exhibit I).

Finally, addressing comparability, there is one fact that appears not to be in dispute. PBA bargaining unit members at the top step of the salary schedule (which includes most officers) are the highest paid among all their counterparts, even prior to any award made here.

#### **ABILITY TO PAY**

As with comparability parties to interest arbitration proceedings often engage in heated disputes over the issue of the subject municipality's ability to finance the raises sought by its employees. Here, although the economist who testified for the PBA, Kevin Decker, did explain how he believed the Town could fund the PBA's economic proposals, he was quick to acknowledge the serious financial problems faced by the Town in recent years.

Police are paid from the Town's general fund, and Mr. Decker testified that at the end of 2008 the Town had an accumulated general fund deficit of over \$29 million (Transcript, or Tr., 47). He explained that the Town has taken steps to eliminate the deficit, including imposing a one-time deficit reduction tax, and entering into an arrangement with a private concern to operate

its landfill.<sup>1</sup> At the end of 2012, rather than a deficit, the Town had a fund balance of \$569,000, but an unrestricted fund balance of just \$50,000.

Mr. Decker gave his opinion that although the Town's finances have improved significantly in recent years, they are not yet back to where they should be, and that fund balances need to be built up (Tr. 48-49).

Mr. Decker testified about the impact of the raises included in the PBA proposals. He estimated that a 1% salary increase, including associated increases in items such as FICA and pension contributions, would amount to \$120,000 in 2012. The 2.5% increase the PBA seeks for that year, therefore, would amount to a little over \$300,000, or a real property tax increase of about \$7 annually on a single family residence in the Town (Tr. 56-58).

Testifying about where the Town could find the money to finance the PBA raises, he noted that in 2012 the Town was \$430,000 beneath the tax cap, and that in 2013 that figure is \$193,000. His point was that the Town could have raised that much more without exceeding the 2% tax cap (39-40; PBA Exhibit J).

On cross-examination, Mr. Decker agreed that the Town did not simply leave the \$430,000 from 2012 "on the table," but that most of that money was carried over into the 2013 budget. Likewise, the \$193,000 for 2013 may be carried over in future budgets (Tr. 76-77).

Assuming that a total of \$600,000 would be required to finance the proposed PBA raises for 2012 and 2013, Mr. Decker was again asked how it would be possible to pay these, given that the Town has only the \$50,000 unrestricted fund balance, and the possibility of a carryover of the \$193,000 that the Town is under the tax cap in 2013.

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<sup>1</sup> The Town's Comptroller, Craig Blair, testified, and explained that the tax brought in approximately \$5.7 million in 2009 (Tr. 181-184), and, in its first year of operation, 2012, the landfill deal brought in \$23 million (Tr. 188).

Mr. Decker responded that the Town could have taxed the additional \$430,000 in 2012, which money would have gone into the unrestricted fund balance. He also testified that with a \$47 million budget for 2013 there are almost certainly areas where revenues have been understated, and expenditures overestimated – places, that is, where money could be found to fund the increases (Tr. 78-79, 85).

Finally, Mr. Decker referred to Supervisor Mahan’s State of the Town Message delivered in January, 2013, in which she emphasized the recent strength of both the residential and commercial real estate sectors in the Town, and how the total of assessed real property has steadily increased over the past few years (Appendix to PBA Exhibit 1).

When Mr. Blair testified, he certainly echoed Mr. Decker’s comments about how bad the Town’s finances were only five years earlier. He testified in detail about all the steps the Town has taken to alleviate the situation, some of which were testified to by Mr. Decker. It is not necessary to go through those measures here. It is sufficient to note that since 2008 the administration has been focused on eliminating deficits, building up surpluses and reserves, and, in general, improving the Town’s credit rating (Tr. 179-180). The Comptroller’s opinion, however, is that the finances are still “extremely shaky” (Tr. 178).

Mr. Blair explained that the only money not already budgeted for other expenses, and currently available to pay any salary increases, is the \$50,000 unrestricted fund balance.

Mr. Blair pointed to another problem, one not touched on by Mr. Decker, and that is cash flow. Although the Town’s short term borrowing has decreased dramatically, it is still a goal, encouraged by the credit rating agency, Moody’s, to eliminate this type of borrowing altogether. According to Mr. Blair, however, that cannot happen until the Town builds up its reserves.

Mr. Blair testified that the Town has tried to save money by not filling vacancies, eliminating programs, and consolidating services. He said that he now has only \$5.5 million in discretionary funds in the entire budget, that is, money not already committed to fixed costs such as pension and health insurance premium contributions (Tr. 198-201). It should be understood, however, that he was referring to money that has already been budgeted, just not for fixed, recurring expenses. Rather, it is money budgeted for items such as replacing machinery or to be spent on maintenance agreements, or any of the other myriad expenses involved in Town operations.

Asked about the property taxes Mr. Decker suggested the Town could have levied, while still remaining under the 2% tax cap, Mr. Blair testified that the figure was not \$430,000 in 2012, but, when the math was done, only between \$60,000 and \$70,000.

Addressing Mr. Decker's testimony that the Town could likely find money in the budget because of overestimating certain expenses and underestimating revenues, Mr. Blair testified that at least in the area of sales tax revenues, figures at the time of the hearing indicated there would be a shortfall in this area (Tr. 216-218, 225-228).

Mr. Blair concluded his direct examination by emphasizing that the Town has only the \$50,000 in the unrestricted fund balance to spend on salary increases, but that the PBA proposal would cost a total of \$600,000 over two years. When he was asked where the money would come from to fund PBA raises, his opinion was that it would have to come from the police department itself, either through cutting services or layoffs (Tr. 223-224).

On cross-examination Mr. Blair was asked how the Town had intended to fund the 2% raise for 2013 that the parties had agreed to in the May 8, 2013, Memorandum of Agreement (Town Exhibit U). He was quite frank in testifying that he was never in favor of entering into

the MOA since he did not know where he could find the money to fund it, at least not without layoffs, or foregoing planned hires in the police department (Tr. 231-234)

Mr. Blair did agree, however, that it would have been possible for the Town to raise \$430,000 more in property taxes in 2012 than it did without exceeding the 2% tax cap, and that that money could have been used to fund PBA raises. Again, however, he insisted that such action would have been imprudent, and that the Town's goal in budgeting in recent years has been to generate surpluses and increase depleted reserves (Tr. 245).

Questioned again about whether the Town was not underestimating revenues, such as mortgage taxes, in the 2013 budget, Mr. Blair explained that both Moody's and the Office of the State Comptroller have criticized the Town in the past for overestimating revenues, and that notwithstanding a renewed housing market, the Town is engaged in conservative budgeting (Tr. 244-245, 247-251). He also again referred to the possibility that the Town will not realize the sales tax revenue it anticipated, and that there are other areas of possible shortfalls (Tr. 265-270).

Finally on cross-examination Mr. Blair readily conceded that the Town has improved its financial situation in the past few years, and that it no longer has a negative outlook rating from Moody's. He continued to insist, however, that the Town will not be financially sound until it generates adequate surpluses, and enjoys recommended reserves.

Following the hearing both parties submitted additional exhibits. Of particular significance was a report circulated by the Office of the State Comptroller ("OSC") on June 18. The report identifies various municipalities identified by OSC in its "Fiscal Stress Monitoring System" as being in stress for the fiscal year 2012. Colonie is one of six classified as being in "significant stress."

## MEMORANDUM OF AGREEMENT

The MOA entered into by the parties on May 8, 2013, was for the three-year period 2012 through 2014. It provided for 2% raises starting on January 1, 2013 and 2014, and made no changes to any of the health insurance provisions of the expired Agreement. It added a provision allowing personal service time to be taken in 15-minute increments, and amended the "Appeals of Adverse Determination" section of the Agreement's General Municipal Law § 207-C procedure. Other than these provisions the MOA continued all the terms of the expired Agreement.

The MOA contained the following language, certainly not common to most tentative agreements:

Both parties agree that one of the impetuses for the signing of this new agreement is the possibility that the State Legislature may change the law as regards binding arbitration for Police Officers. Therefore, it is imperative that both parties ratify this agreement before there is any change in the law and both parties agree that if there is any change in the law, it will not affect the validity or the parties' acceptance of this agreement.

As already mentioned, the PBA membership failed to ratify the MOA.

## CONSIDERATION OF PROPOSALS

### SALARIES

This is an unusual proceeding, since, only a month prior to the scheduled hearing, the parties believed they had negotiated a three-year contract extension. The panel's determination, of course, can cover a period of only two years (CSL § 209.4(c)(vi)).

Once ratification failed the parties were entitled to, and did, revert to their initial proposals. The PBA proposal calls for a 2.5% across-the-board increase in 2012, and notes that the two-year cost is equivalent to a 2.625% increase in each of the two years of the award.

The Town has not made a salary proposal, its position being that there should be no increases in either year of the award.

The analysis here starts with the fact that the PBA members are higher paid than their counterparts in any of the towns selected by either party as comparables. At the same time, however, it is worth noting that Colonie has long been rated one of the safest communities in the country, and that the Supervisor, in her 2013 State of the Town Message, observed that the police department “has continued to earn top rankings for safety year after year . . .” (Appendix to Town Exhibit 1). This is a first-class department, and PBA members are deserving of their place at the top of the police pay rankings.

What cannot be ignored, however, is the terribly difficult financial situation the Town has been in for several years. It is obviously to be applauded for its successful efforts to eliminate the \$29 million deficit it faced only five years ago, and to budget in a prudent manner so as to end fiscal years with a surplus, but even Mr. Decker acknowledged that there is still work to be done, including the building up of the Town’s reserves.

When Mr. Decker was questioned about where the Town could find the money to finance the PBA’s proposed raises, he pointed out that the Town could have realized \$430,000 more in property taxes than actually levied in 2012, and \$193,000 more in 2013, and still remained under the 2% tax cap. The fact is, however, that the Town was being cautious in dealing with the tax cap for the first time, and it is difficult to fault it for trying to remain under the cap. It should also be said that Mr. Decker was not being critical of the Town for its taxing policy.

Mr. Decker did express the opinion, however, that there are probably items in the Town’s budget that either overestimate expenses or underestimate revenues. Mr. Blair responded that he

is concerned that there might be revenue shortfalls this year, including one in the all important area of sales tax revenues.

Finally, the PBA emphasizes the Supervisor's own forecast that both the residential and commercial real estate sectors are showing strong signs of recovery in Colonie, and reasons that the result will be greater real estate tax revenues.

When Mr. Blair was asked where the money was supposed to come from to finance the 2% salary increase for 2013 agreed to in the MOA, he made it clear that he was not sure where the money could be found, at least not without cutting services and instituting layoffs.

If it were not for the MOA it is not clear what the panel would have arrived at for salary increases. During our executive session discussions the PBA panel member understood that the award would not provide the raises the union was proposing, but strenuously argued that the Town could afford more than just 2% in the second year of the award.

The Town's financial situation, although improving and showing promise, does not justify an award more costly than the 2% pay raise agreed to in the MOA for 2013.

And although the Town panel member made his case that there is no money available for raises in either year of the award, it is obvious that a decision was made that the Town would be able to fund the 2% raise in 2013. The Town might argue that at the time it entered into the MOA it had not yet received the OSC finding that the Town is in "significant stress," but the fact is that its finances were no different when OSC issued its report than they were at the time the MOA was executed. It is obvious that the Town, as cautious as it has been operating over the past several years, understood that it could afford the 2% raise.

The panel, therefore, believes it appropriate to adopt the salary increases negotiated for the first two years of the MOA, and awards as follows:

**AWARD**

2012 0%

2013 Salaries for all bargaining unit members shall be increased by 2% effective January 1, 2013.

                     RPW  
Concur      Dissent  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member  
(dissenting opinion attached)

                     JWR  
Concur      Dissent  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member  
(concurring opinion attached)

**HEALTH INSURANCE**

The Town proposes that effective January 1, 2013, bargaining unit members contribute 20% of the premium for the health insurance plan in which they participate.

Until the interest arbitration award covering the years 2006 and 2007 PBA members had not been required to contribute to their health insurance premiums. That award instituted contributions, but they were based on a percentage of salary, not of the premium.

The rate was one-half of one percent for individual coverage, three-quarters of a percent for two-person coverage, and one percent for the family plan.

Because Town employees in most other bargaining units, and those not represented, were contributing 10% of premium the Town, in negotiations for the 2009-2011 Agreement, sought to have PBA members make that same percentage contribution.

The PBA was adamant about preserving the percent-of-salary formula, but agreed to add dollar payments that would increase the overall unit contribution so that it would be equivalent to almost 10% of the premium. The percentages of salary remained the same, but there would be \$200, \$550 and \$750 added payments respectively for individual, two-person and family coverage.

Recently, the Town negotiated agreements with unions representing two of its bargaining units, both of which increase premium contributions from 10% to 15% for newly hired employees beginning in 2014.

During executive session discussions, the Town's panel member made clear that the Town's primary goal in this proceeding was to have PBA members start contributing 10% of the premium contribution. The Town also very much wanted new hires to begin making 15% premium contributions. The PBA's panel member was equally insistent, however, on preserving the system under which officers contribute a percentage of salary, together with a certain dollar amount.

Because the parties, in the MOA, agreed to leave health insurance plans and contributions unchanged for three years, it is reasonable to preserve the status quo for the two years of the award, especially considering that raises are being limited to those agreed to in the MOA.

The award on health insurance, therefore, is as follows:

**AWARD**

Health insurance plans and percentage of health insurance premiums contributed by bargaining unit members shall remain the same during both 2012 and 2013.

  
\_\_\_\_\_  
Concur      Dissent  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member

  
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Concur      Dissent  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member  
(dissenting opinion attached)

**PERSONAL SERVICE TIME**

Under Article 18 of the expired Agreement personal service time may be taken in one-hour segments, and the PBA has proposed that officers be allowed to take the leave in 15-minute blocks.

James Splonskowski, the PBA treasurer, testified that officers may take compensatory time in 15-minute increments, but that officers without much accumulated compensatory leave now have to use an entire hour of personal service time even if they just need to leave work for only 15 minutes or half an hour. Being able to use personal service time in shorter segments would allow officers to save more of their leave time. The officer explained that there is no cost to the Town associated with this proposal (Tr. 88-89).

Chief of Police Steven Heider testified for the Town. He noted that the Town did not object to this proposal; but made the point that it could result in an officer requesting 15 minutes of leave preventing another officer, needing an entire day, from taking off his or her shift (Tr. 128-129).

Because it is a cost neutral item, and was agreed to in the MOA, the panel believes this change to Article 18 should be included here. The award, therefore, which shall take effect with the execution of the opinion and award, is as follows:

**AWARD**

Effective with the execution of the opinion and award Article 18 of the Agreement is amended to change the units in which officers are allowed to take their personal service time from one hour to fifteen minutes.

  
\_\_\_\_\_  
Concur          Dissent  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member

  
\_\_\_\_\_  
Concur          Dissent  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member

**GENERAL MUNICIPAL LAW § 207-C PROCEDURE**

Article 46 of the Agreement contains the parties' GML § 207-C procedure. This is the procedure the parties follow when an officer claims to be either injured or taken sick as the result

of the performance of his or her duties, and applies for the benefits provided under the statute and Agreement.

The PBA proposed amending the appeals portion of the procedure, and the parties agreed to new language in the MOA.

The panel believes this language should be incorporated here.

### **AWARD**

Effective with the execution of the opinion and award, the "Appeal of Adverse Final Determinations" portion of the expired Agreement is amended to read as follows:

In the event that a police officer disagrees with any final determination regarding a proposed light duty assignment or the initial or continued eligibility for benefits, he or she, within ten (10) days of the receipt of the determination, shall present to the Chief, or the Chief's designee, a written request for a hearing specifying any exceptions to a determination. Within 20 days after receiving such a request for a hearing, the Town and the PBA, if unable to agree upon the designation of a hearing officer, will jointly petition the Public Employment Relations Board for a list or arbitrators pursuant to its grievance arbitration process. Each party can request one new list in accordance with existing practice. The designated individual shall function as a hearing officer. If, during the course of preparing for the hearing, the police officer or his attorney obtains or discovers new evidence not previously submitted to the Town, which evidence they intend to use at the hearing, they shall submit the new evidence to the Town at least 30 days before the date of the hearing. If needed, the Town will have the right to an adjournment of the hearing for a period of not longer than 60 days in order to gather its own evidence relative to the newly submitted evidence. If the Town believes that the new evidence supports a different determination than the original determination, it may make a new determination. At the hearing, the police officer will present medical and other evidence supporting entitlement to 207-c benefits and the Town will likewise present medical or other evidence supporting its denial of the benefits. Based upon the hearing record, the Hearing Officer shall make an independent decision regarding 207-c entitlement, which decision shall constitute a recommendation to the Town Board. The Town Board will either accept the recommendation of the Hearing Officer or make a contrary determination in writing. Such determination shall be based upon the hearing record and shall be conveyed within 45 days of receipt of the Hearing Officer's recommendation. Such a determination shall be based upon the hearing record and shall be promptly conveyed to the police officer.

A judicial challenge to a final determination made pursuant to this procedure may be brought pursuant to Article 78 of the Civil Practice Law and Rules.

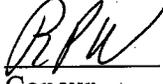
In the event the Department deems it in the best interest of the parties, it may submit to the New York State Retirement System application(s) for disability retirement, consistent with the provisions of Sections 362, 363 and 363-C of the New York State Retirement and Social Security Law.

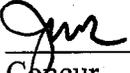
  
\_\_\_\_\_  
Concur      Dissent  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member

  
\_\_\_\_\_  
Concur      Dissent  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member

### AWARD ON REMAINING PBA PROPOSALS

The panel has discussed and considered, but declines to make awards on, the remaining PBA proposals.

  
\_\_\_\_\_  
Concur      Dissent  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member

  
\_\_\_\_\_  
Concur      Dissent  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member

### RETENTION OF JURISDICTION

The panel chairperson retains jurisdiction of any and all disputes arising out of the interpretation of this opinion and award.

  
\_\_\_\_\_  
Concur      Dissent  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member

  
\_\_\_\_\_  
Concur      Dissent  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member

DURATION OF AWARD

Pursuant to the parties' agreement and the provisions of CSL § 209.4(c)(vi) the duration of this opinion and award shall be January 1, 2012, through December 31, 2013.

RPW  
Concur      Dissent  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member

JWR  
Concur      Dissent  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member

In conclusion, the panel makes this its Opinion and Award in this proceeding.

R.P. Walsh Jr.  
Richard P. Walsh, Jr., Esq.  
Employee Organization Panel Member

James W. Roemer Jr.  
James W. Roemer, Jr., Esq.  
Public Employer Panel Member

Louis J. Patack  
Louis J. Patack, Esq.  
Panel Chairperson

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

On this 25<sup>th</sup> day of October, 2013, before me personally came and appeared Richard P. Walsh, Jr., 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.

Wanda I. Torres  
Notary Public

WANDA I. TORRES  
Notary Public, State of New York  
No. 01TO6210966  
Qualified in Albany County  
Commission Expires September 8, 2017

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

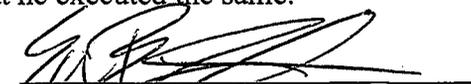
On this 16<sup>th</sup> day of October, 2013, before me personally came and appeared James W. Roemer, Jr., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Karen M. Pelland  
Notary Public

KAREN M. PELLAND  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 01PE6099791  
Commission Expires October 06, 2015

STATE OF NEW YORK     )  
COUNTY OF *Albany*     ) ss.:

On this *21* day of October, 2013, before me personally came and appeared Louis J. Patack, 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.

  
Notary Public

**SEAN THOMAS BAXTER**  
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Commission Expires Oct. 31, 2015

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

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In the Matter of the Compulsory Interest :  
Arbitration between :  
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COLONIE POLICE BENEVOLENT ASSOCIATION, :  
 :  
Employee Organization, :  
 :  
-and- :  
 :  
TOWN OF COLONIE :  
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Public Employer. :  
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PERB Case No.: IA2012-019; M2012-238 :  
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**CONCURRING OPINION  
OF PUBLIC EMPLOYER  
PANEL MEMBER  
JAMES W. ROEMER, JR.**

I am constrained to write a concurring opinion supporting the Public Panel Member's Determination to award salary increases of 0% in 2012 and 2% in 2013. I do so because of the process that has evolved pursuant to the impasse resolution process used here, known as Interest Arbitration. Prior to receiving the Public Panel Member's draft award, I was contemplating writing an extensive analysis of the undisputed record developed at the hearings concerning this matter. Much of what I had intended to write, however, is contained in the Public Panel Member's writings so I will simply elude to those conclusions as support for a different result. A review of the award in the section entitled "COMPARABILITY" demonstrates that, of the five comparables (Niskayuna, Guilderland, Glenville, Bethlehem and Rotterdam) offered by the PBA, Colonie ranks fourth in terms of average family income. As noted in the same section, the Town's undisputed evidence demonstrates that the per capita median household and median family income fall near the bottom of the comparables. The Town also has the highest percentage of individuals and families living below the poverty level than any of its comparables. Of utmost significance, however, and the one factor normally heavily weighted in

this type of proceeding are the salaries paid to bargaining unit members. The Public Panel Member states that it is undisputed that members of the Colonie PBA at the top step of the salary schedule (five years on the job) are the highest paid among all of their counterparts prior to any award here. Stated another way, the record evidence submitted by the PBA shown in a document and marked as "Exhibit A" demonstrates that the 2013 wages of all of the PBA comparables (the Towns noted above), exceed the top wage of a Colonie police officer using the Colonie wage in effect in 2011 (before any adjustments in 2012 and 2013, which are the only years considered in this proceeding). Stated another way, if the award here consisted of a 0 in 2012 and a 0 in 2013, the top salary for a Colonie patrolman would remain at the 2011 rate of \$76,280. That would still be over \$1,000 more than the next highest comparable, Niskayuna, over \$3,000 more than Guilderland, over \$5,000 more than Glenville, almost \$7,000 more than Bethlehem and over \$30,000 more than Rotterdam. As a matter of equity, I would suggest that the top Rotterdam salary of \$46,141 be eliminated from an "average" comparison. In doing that, the average salary for the top grade police officer in the four remaining comparable Towns cited by the PBA for 2013 is \$72,300 or \$4,000 less than the top salary for a Colonie police officer according to the 2011 wage schedule. So on the basis of salary comparability, a key component in the Interest Arbitration process, it is clear that without any adjustment in wages for either 2012 or 2013, Colonie would still rank number 1. With the 2% adjustment awarded by the Public Panel Member, the top salary for a Colonie patrolman in 2013 will become \$77,800, which is more than \$2,500 higher than the next highest comparable (Niskayuna) and \$5,500 higher than the average of all comparables excluding the lowest paid comparable, Rotterdam. The conclusion is simple - based on comparability, the record does not support a salary adjustment for the PBA bargaining unit members in 2012 or 2013.

Another key element which the Panel is responsible for including as part of its ultimate Determination is what is commonly referred to as the Town's "ability to pay." I need to go no further in that section than the section entitled "ABILITY TO PAY" in the Public Panel Member's Determination. Simply put, both the PBA's financial expert and the Town's Comptroller concluded that at the end of 2012, the Town had an unrestricted fund balance of \$50,000. It is practically "common knowledge" in the Capital District that the current Town administration has been working diligently for the past five plus years to overcome a \$23 million fund balance deficit and has made substantial changes to Town operations in order to achieve that goal. It is also beyond the pale that a Town with an X million dollar budget and an unrestricted fund balance of \$50K is still in deep financial trouble. In fact, under the "new definition" of ability to pay now part of the Taylor Law as recently put forth by the Governor and adopted by the Legislature, the Town will be considered "distressed" for the next several years which, according to the amendment, means that the Interest Arbitration Panel must weigh the ability to pay factor at "70%." This particular Interest Arbitration proceeding, however, is not covered by the recent amendment. So what could be the justification for awarding a 2% pay raise in 2013 on the basis of comparability and ability to pay? A review of the section of the Public Panel Member's Award entitled "CONSIDERATION OF PROPOSALS - SALARIES" will quickly reveal that because the Town and the PBA had entered into a Memorandum of Agreement covering a three year period and calling for wage adjustments of 0 in 2012, 2% in 2013 and 2% in 2014, it is assumed that the Town "understood that it could afford the 2% raise" (in 2013). Since I served as the Town's chief negotiator in arriving at the Memorandum of Agreement (which was not ratified by the members of the PBA and led to this Interest Arbitration proceeding), I can unequivocally state that, as with most "negotiations," parties are

free to agree to terms which might otherwise not be achieved in a litigated proceeding, where, as the saying goes, "you take your chances." Even the Town's Comptroller testified that he advised "from a financial point of view" against a contract which called for a 2% pay raise in 2013. While I would concur that a failed Memorandum of Agreement is a document which can be looked at and "taken into account" to some extent in an Interest Arbitration proceeding, it is not one of the statutory criteria that an Interest Arbitration Panel is bound to use in the proceeding. Stated another way, parties often agree to terms and conditions in a negotiated agreement simply to avoid a more drastic outcome as a result of a record in a litigated proceeding that is not favorable to them. Here, for example, I am certain that the PBA felt "it could do better" at Interest Arbitration over the substance of the Memorandum of Agreement. The fact of the matter is, however, once the Interest Arbitration proceeding commences and absent a negotiated unanimous agreement at that level, it is the RECORD that should control the outcome as a matter of law. As I have noted above, on the two key elements of an Interest Arbitration proceeding, comparability and ability to pay, this record does not support a 2% pay raise in 2013.

So why then did I concur with the Public Panel Member? The answer is simple - because of the process. If I did not concur with a 0% pay raise in 2012 and 2% pay raise in 2013, and because the Panel Public Member would not support a second "0" in 2013, the only alternative in order to get two of the three Panel Members to concur on a salary award would have been for the Public Panel Member to increase the amount of the salaries awarded in 2012 and 2013 in order to get the Public Employee Panel Member to "sign on" to the salary portion of the Award, thereby costing the Town and its taxpayers even more than the cost of the 2% award in 2013.

In conclusion, I contend that it is undisputed that the record evidence developed at the hearing offers no support for salary adjustments in either 2012 or 2013. But, for the existence of

a Memorandum of Agreement that was not ratified, there would be absolutely nothing in the record to support a 2% adjustment in 2013.

Dated: Albany, New York  
October 16, 2013

Respectfully submitted,



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STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

In the Matter of the Compulsory Interest  
Arbitration between

COLONIE POLICE BENEVOLENT ASSOCIATION,

Employee Organization,

-and-

TOWN OF COLONIE

Public Employer.

PERB Case No.: IA2012-019; M2012-238

**DISSENTING OPINION  
OF PUBLIC EMPLOYER  
PANEL MEMBER  
JAMES W. ROEMER, JR.**

I am dissenting on the Award (or lack thereof) regarding health insurance premium contributions. The overwhelming record evidence in this case indicates that every comparable jurisdiction (as supplied by the PBA) demonstrates that all police officers are paying more in the way of percentage of premium for their health insurance than the members of the Colonie PBA. In this proceeding, the record shows that using the current formula which calculates Colonie PBA member contributions (a formula based on a percentage of salary plus a flat dollar amount), the PBA members are, for the most part, paying approximately 9.5% of premium. In this proceeding, the Town sought to change the formula to a 10% health insurance premium contribution for current employees, and a 15% health insurance premium contribution for new employees. The record supports both of these changes and the fact that the Memorandum of Agreement, which was reached by the parties but not ratified, did not address this issue is not, in my opinion, relevant in deciding the issue. As noted in my Concurring Opinion on wages, it is the record developed in this proceeding which the arbitration panel should follow.

Dated: Albany, New York  
October 16, 2013

Respectfully submitted,



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In the Matter of the Compulsory Interest  
Arbitration between

COLONIE POLICE BENEVOLENT  
ASSOCIATION,

Employee Organization,

Dissent of Panel Member,  
Richard P. Walsh, Jr.

-and-

THE TOWN OF COLONIE,

Public Employer.

PERB Case No.: IA2012-019; M2012-238

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Respectfully, I dissent from the Panel's Award concerning salaries. I believe that Colonie certainly has the ability to pay some salary increase for its police officers in 2012 as well as 2013 and that there is insufficient justification for giving such an outstanding police force, probably the most professional one in the area, a 0% wage increase in 2012. As the proof was presented, there is no question that Colonie had gotten itself into a difficult fiscal situation five years ago. However, since that time, and without a great deal of real sacrifice, the Town has been able to eliminate a \$29 million deficit in only five years and the Supervisor's own forecast is that both the commercial and residential real estate sections are booming; which should continue to keep Colonie's finances healthy and stable for years to come. Thus, it is the PBA's contention, that as the Town has gotten bigger and more prosperous it is more and more difficult to keep residents and visitors safe. The fact

that during this time Colonie has been chosen as the safest town in America, is a testament to the professionalism and hard work of this very, very fine police force. Thus, I believe that the money was available to the Town for 2012 and some part of it should have gone into Police salaries.

However, while I think it is important to emphasize the inadequacy of the Award as regards to Salaries, I, must, in all candor, admit that well meaning people could come to different conclusions in this case. Which brings me to put forth a thesis that I have long held and which, I believe, is perfectly illustrated by this decision. That thesis is simply that; unlike its reputation, the binding arbitration procedure, which this State has long had in place for Police and Firefighters, actually does work. We hear constant criticism of this procedure, mostly by government officials, who blame it for what are really the shortcomings of their own administration and their political fears when dealing with their police and firefighters unions. These weak administrators (and I'm happy to say this does not apply to Colonie) constantly blame binding arbitration for what they allege are overblown salaries to the Police. All of which is not true; Studies have shown that raises which police and fire units have negotiated "politically" with their municipalities far exceed raises which have been awarded by an arbitration panel. This Award is evidence that the arbitration system works. Although the police are disappointed with the salary award, the Colonie Police are mature enough to understand that there has been proof that the Town of Colonie has had some fiscal problems in the last few years and that an arbitrator could make a decision concerning salaries as he has. Thus, there is no call for dramatic reform of the binding arbitration system here. The process, even though disappointing to us, has worked. Colonie's fiscal future looks bright and we hope to be back bargaining and/or

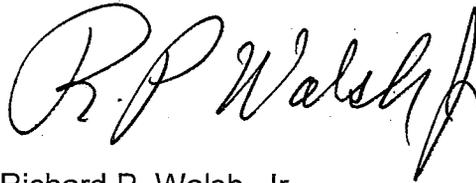
going to arbitration again in the future to get what we really feel we deserved this time.

So, in closing, I would urge the Governor and the Legislature to look at these type of Awards. The binding arbitration system does work and their recent tinkering with it, has not improved it but have rather made it more complex and cumbersome. Despite this binding arbitration is still the fairest and best way for these disputes to be resolved and I would urge that some form of this process continue to be used in this State.

Therefore, I respectfully dissent from my other panel members as regards the Salary Award. However, I do concur with Panel Chair, Louis Patack, as regards the rest of his Award.

Dated:           October 17, 2013

**For the Colonie PBA,**

A handwritten signature in black ink, appearing to read "R.P. Walsh, Jr.", written in a cursive style.

Richard P. Walsh, Jr.