

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X  
IN THE MATTER OF THE INTEREST ARBITRATION

-between-

TOWN OF SOUTHOLD  
("TOWN")

PERB CASE NO.  
M2012-265  
IA 2013-007;  
Opinion and  
Reissued Award

-and-

SOUTHOLD POLICE BENEVOLENT  
ASSOCIATION  
("PBA")

-----X  
APPEARANCES

For the Village

Alyson Mathews, Esq.  
Martin Finnegan, Esq., Town Attorney  
John Cushman, Town Comptroller  
Martin Flatley, Chief of Police

For the PBA

Fred Richman, Esq., Counsel

**BEFORE:**

STEPHEN M. BLUTH, PUBLIC PANEL MEMBER  
RICHARD K. ZUCKERMAN, ESQ., EMPLOYER PANEL MEMBER  
RICHARD BUONAIUTO, EMPLOYEE PANEL MEMBER

On or about November 5, 2014, I issued an Award in this matter without an Opinion. I did so at the parties' request to expedite my findings so that the parties would know, in a timely fashion, what the terms and conditions of employment would be for the PBA bargaining unit covering the period in dispute. I also indicated that a reasoned Opinion would be rendered thereafter. This document constitutes that Opinion and Reissued Award.

#### **POSITIONS OF THE PARTIES**

##### **PBA**

The PBA argues that the statutory criteria requires a comparison of wages, hours, and conditions of employment of the Towns' police officers with the wages, hours, and conditions of employment of other employee and with other employees generally ins performing similar services or requiring similar skills under similar working conditions in public and private employment in comparable communities. The PBA emphasizes is simply not true that during bargaining the Town continued to ignore it was in good or better fiscal condition than the best comparables, that it enjoys the lower real property taxes than the comparables and that all the best comparables provide 100% fully paid health insurance. The PBA stresses once it became clear the Town was insisting on reaping

savings from the Suffolk County Agreement. In the PBA's view, the Town's version of the negotiations is simply a ploy to influence the Panel.

The PBA argues the statutory criteria require a comparison of wages, hours, and conditions of employment of the Towns' police officers 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.

The PBA claims, further, the appropriate comparable jurisdiction given the statutory criteria are Southampton Town, East Hampton Town, Riverhead Town, Shelter Island Town and Suffolk County. It rejects the Town's position Suffolk County is not a statutorily appropriate comparable jurisdiction. The PBA reports the Town made the same arguments before both the Scheinman and Riegel panels in the parties' last two impasse arbitrations. The PBA advises both panels determined, although Suffolk County is not identical in all respects to the Town, the County was, in fact, a comparable jurisdiction. Therefore, the comparisons by the Town's police officers and those employed by Suffolk County are relevant to this dispute (PBA Exs. 9,10). Nevertheless, the PBA acknowledges the four East End Towns are the best comparators, but

insists the Scheinman and Riegel panels ensure Suffolk County is also included in the comparisons.

Further, the PBA cites a second statutory criterion to be considered. That statute requires the panel must take into account the interest and welfare of the public employer to pay for the costs associated with increases in wages and improvement to benefits. Therefore, it is obvious, the PBA reasons, a well-paid and well-maintained core of police officers that operates safely and efficiently is of great benefit to the Town.

The PBA also claims the Town has the ability to pay its proposals, which should be granted in their entirety. Here, the PBA relies on the Ability to Pay Report prepared by Kevin Decker, its expert on municipal costs and analysis. In that report, the PBA advises, Decker concluded the Town had the ability to pay for the PBA wage proposals. It relates Decker based his conclusions on the availability of local tax and revenue sources, historical results, emerging trends regarding expenditures/tax revenue rates and the underlying economics and demographics of the Town. Also, the PBA stresses, Decker's analysis was based on reviews of the Town's Audited Financial Statements for 2010, 2011 and 2012, the Town budgets for 2012, 2013 and 2014 along with other documents referred to in his report.

Further, according to the PBA, Decker's analysis focuses on the town-wide general fund out of which PBA members' salaries are paid. His analysis concentrates on revenue sources as long-term spending can only be supported to the extent there are available revenues. It emphasizes Decker's analysis acknowledges a decline in the full value of taxable real estate properties in the Town over the last five years. However, the PBA avers, with the exception of Southampton, the decrease of the Town's real property value was less than the other comparable communities.

Moreover, this report demonstrates the Town's levy increased at an annual rate of 2.59% from 2009-2014 and the property tax rates increased 1.6% in 2014 which is the second consecutive increase that was less than 2%, the PBA declares. Also, the Town paid the second lowest tax bill of all comparable jurisdictions among all east end towns according to the Decker.

With regard to the State imposed Property Tax Cap, the PBA relates that calculations performed by the Town and submitted to the State Comptroller's Office demonstrate the Town was under the tax cap by \$605,414 in 2012 and \$624,383 in 2013. The PBA emphasizes the Town is approximately \$890,000 under the 2014 tax limit.

As for mortgage tax revenues, the PBA asserts, while there was a decline in these revenues from 2008-

2012, mortgage tax revenues increased from 2011 to 2012 and the Town's adopted budget projects an additional increase in the upcoming year.

The PBA posits a 3% salary increase based on the parties agreed upon 1% number of \$46,453 amounts to \$139,359, which would result in an increase in the annual tax bill to the individual home owner of \$8.64 if the entire amount was funded from an increase in the property tax.

The Town's 2014 adopted budget for police officers wages and salaries provides for a 3.44% increase (\$261,700) over the previous year. This suggests the Town has set aside funds for an increase in PBA wages. Moreover, the Town's general fund budget includes a contingency account of \$353,000, the PBA reports.

Also, an analysis of general funds is critical to any analysis of the Town's ability to pay. The PBA points out fund balance is defined as the difference between assets and liabilities. A review of the Decker report, it declares, demonstrates that on average between 2010 and 2012 the Town was able to achieve a favorable budget variance of over \$2,500,000.

Also, the PBA notes, the Town passed the New York State Comptroller's Economic Stress Tests for the Town with flying colors. It also avers the recession is behind us as evidenced by the fact the Suffolk County unemployment rate was 5.6%, the lowest rate since 2008,

and tax collections were 6.9% higher in 2013 than 2012. In sum, the PBA argues the Town is in solid financial shape. It enjoys low real property taxes compared to other East End municipalities, and four consecutive years of operating surpluses. This has led to the Town having a healthy fund balance and demonstrates it can meet the wage demands of the PBA without doing any damage to the public, the PBA concludes.

As a result of the Decker report, the PBA believes an increase of 4.5% in base salaries, effective January 1, 2012 and 2013 is warranted. According to the PBA such an award is reasonable if one takes into account the relevant statutory criteria set forth in the New York Civil Service Law. It contends its salary proposal, if awarded, would place its members in an economic position comparable to police officers in the appropriate comparable positions. According to the PBA, when comparing wages to the appropriate comparables, the proposed increase in salaries would maintain the Southold Police Department in line with the appropriate comparables in both wages and increases. It emphasizes, for the years under consideration, the increases in 2012 and 2013 range from 0% to 3% for all of the comparable jurisdictions with an average of 1.9%.

Moreover, the PBA reports, three of the five comparables have contract settlements. Suffolk County received a 1.5% increase effective June 1, 2013 for a

five-year period, while Riverhead and Shelter Island received 2% increases. The PBA stress that even a 3% salary increase would not alter the top-step base salary of a Southold police officer relative to surrounding communities which have higher real property taxes than does Southold, which is in better financial condition than its neighbors. Given those facts, and given the statutory criteria as detailed in the Taylor Law, its wage proposal is just as fair and should be granted, the PBA asserts.

In addition to its salary proposals, the PBA seeks to increase the number of vacation days its members receive. It points out these increases would vary depending upon seniority, and range from an additional two days for a first-year employee to six additional days for an officer with eleven through fifteen years. The PBA argues an increase in vacation days would result in a decrease in the use of sick, personal and compensation days by members of the Department.

In addition to increasing the number of vacation days, the PBA seeks to provide more flexibility in the use of vacation days without imposing an additional financial burden on the Town. It reasons the need for increased flexibility is due to the fact the Town has a significant increase in population during the summer months in both population and police activity. This coincides with the time families traditionally take

their vacation. By eliminating the maximum number of one-day vacation segments, officers could coordinate their vacations days with their RDO's, thereby allowing for family vacations without the Town incurring any financial detriment or disrupting the operation of the Department, the PBA posits. To buttress this position, the PBA cites the testimony of Sergeant Richard Perkins who declared this proposal would have no economic or operational effect on the Department.

Additionally, the PBA seeks to amend Section 6.7(e) by providing for the possibility of more than one employee from a particular squad being on vacation at the same time another squad member is on vacation. It emphasizes this would not mandate granting of vacation time from the same squad at the same time minimum staffing levels were met. The PBA again cites the testimony of Perkins that this proposal to allow two members from the same squad to be on vacation at the same time within the discretion of the Chief.

Also, the PBA proposes an amendment for added flexibility and utilization of vacation picks during the summer season without financial or operational impact on the Department. The amendment would increase the number of total vacation picks from seven to ten. The PBA again cites the testimony of Sergeant Perkins there would not be any additional cost or impact utilization as a result of this proposal. Accordingly,

the PBA insists all its proposals in the vacation clause should be granted.

The PBA also proposes an amendment to the Sick Leave Clause that would allow an employee to utilize sick leave to care for a member of the employee's immediate family whether or not the individual resides in the employee's household. It makes this proposal because a divorced/separated member may have a child/parent who requires care due to an illness even if the child/parent resides outside the employee's household. The PBA emphasizes this proposal, if implemented, would require proof of incapacitating illness and of the employee's responsibility as parent or guardian. According to the PBA, this proposal carries no cost because the expansion of this benefit would apply only to members of the Department who have children living outside the household.

With regard to Personal Leave, the PBA proposes a sixth personal day. While it concedes the current CBA provides one more day than the comparable jurisdictions, the Southold Police Department has historically approved this type of request regardless of even if there is an overtime cost to the Department. The PBA points out as well the additional day would provide additional flexibility for members during the summer months.

Further, the PBA seeks to add an additional day for bereavement leave in the event of the death of a member's grand-parent, brother/sister-in-law, foster parent, foster child, niece, nephew, aunt, uncle, half-brother or half-sister. According to the PBA this proposal would have only a nominal effect on the utilization of bereavement leave.

The PBA seeks, as well to amend the current CBA with regard to the PBA leave provision to provide additional days in excess of the current twenty-five (25) for the PBA president to attend the PCNY and SCPC conferences and negotiations. These conference days would not be included in the current twenty-five (25) day allocation, it advises. The PBA stresses the above referenced conferences provide attendees with important information to be communicated to PBA members relative to the day-to-day business of policing. Further, the PBA seeks to eliminate the restriction that, if the President is unable to attend a function, he/she can designate any member rather than be restricted to the vice-president or secretary/ treasurer. According to the PBA this proposal would have no impact either financially or operationally, but would simply give it more flexibility in selecting individuals to represent them if both those officers were unable to attend a conference or other function.

Additionally, the PBA asks the CBA be amended to allow four (4) members to attend formal negotiations with the Town rather than the two (2) members currently able to attend these sessions. Since the Town routinely attends negotiating sessions with three (3) or four (4) representatives, this would ensure a fair and balanced negotiating session. According to the PBA, this proposal would have a minimal financial impact.

Also, the PBA seeks to create a new section that would provide, in the event the Town Hall is closed and Town Employees are not working due to inclement weather, or other unforeseen circumstances, police officers assigned to work during that period of time would be compensated by the payment of four (4) hours of compensatory time in recognition of services performed above and beyond the call of duty. Since this proposal is in the form of comp time as opposed to cash, this proposal does not have a significant financial impact on the Department. Thus, the PBA maintains, this proposal should be awarded in its entirety.

Moreover, the PBA proposes an increase of \$400 to a total of \$4,450 in 2012 and an increase to \$4,850 in 2013 for those officers assigned a Rotating Three Tour Schedule. It reports the first adjustment to the Tour Differential was in January 2007. The PBA emphasizes, compared to the appropriate comparators, the Three Tour

Differential is tied for last place for the lowest compensation. It reports that Riegel adjusted the Tour Differential in the last award between the parties. The PBA posits, therefore, the time is ripe to adjust this differential again so as to maintain Southold's position in the middle of the appropriate comparables. The PBA relates this would place Southold ahead of Shelter Island, but still well behind Suffolk County and East Hampton. It asserts the cost of this proposal is minimal and is appropriate for the difficulties inherent in working a Three Tour Schedule.

Further, the PBA proposes that K-9 officers' stipend increases reflect the same increases awarded the PBA members when contracts are renegotiated or as a result of Impasse Awards. It avers when the parties first negotiated the stipend in 2004, the Agreement did not address this proposed escalation clause. It notes, too, that Agreement provided for the same percentage increases in base wages in 2005, 2006 and 2007, but the stipend remained the same for the last seven years. According to the PBA this proposal would have a minimal financial impact and address an ongoing inequity at the same time. It declares, therefore, this proposal should be granted.

The PBA also proposes a new section for Emergency Medical Technician Stipend. Its proposal would provide a \$1,000 stipend to members of the Department who

complete the educational requirements and successfully pass all certification examinations to become a Certified Medical Technician.

Also, the PBA proposes the current \$600 stipend for dive-team members be increased by \$400 to \$1000 per year. The team consists of no more than five members, the PBA declares. Thus the annual cost could not exceed \$2,000 per year.

Moreover, the PBA asks a new provision be added that would reward members whose absences total less than three days in a calendar year. It posits any costs sustained by this bonus would be offset by savings in compensation costs and overtime pay. The PBA stresses three of the four comparables have such a provision. Given the cost savings, the PBA claims this proposal is revenue neutral and should be awarded in its entirety.

Additionally, with regard to the Town's proposal on vacation/one day blocks, the PBA claims this would reduce utilization time from ten to five days. Given the difficulty of members gaining access to vacation days during the summer season, the Town's proposal would compound the problem by moving in the opposite direction that is needed. The PBA opines the operational needs of the Department would not be enhanced and there would be no economic benefit to the Town. For these reasons, this proposal should be denied in its entirety, the PBA insists.

The PBA also urges the rejection of the Town's proposal on summer/vacation period. It relates this would further impair the ability of members to utilize vacation days during the summer. The PBA maintains the Town's proposal would have a minimal beneficial effect on the Department's operations and has no economic significance. It emphasizes the parties have operated under this provision for over two decades without any noticeable impediments to its operations. Therefore, the PBA argues, this proposal should be rejected in its entirety.

In like manner, the PBA urges the rejection of the Town's proposal on the Presidential Leave Bank. It does so because seven years ago the parties increased the number of days from eighteen to twenty-five days. This was done because the parties recognized the increase of duties and responsibilities incumbent on the President or designee. It advises the former PBA President was on 207C leave the last few years. This created the false impression the leave bank had not been utilized. However, the years from 2007 through 2010 demonstrate the time is necessary and utilized, the PBA declares. For these reasons, the PBA urges rejection of this proposal in its entirety.

The PBA opposes the Town's proposal to eliminate the Leave of Absence clause in the CBA. This provision provides that negotiating team members are granted

leave if scheduled to work the midnight tour immediately preceding or following a negotiation session. The reason for this is the recognition by the Town working a shift without proper rest or recuperation or to work a full tour and then attend a negotiating session is not advisable. This proposal would have the deleterious effect on the negotiating process without significantly benefiting the Town financially or the Department operationally. Therefore, the PBA urges this proposal be rejected in its entirety.

The PBA opposes the Town's proposal on the Duty Chart. It points out the proposal would require all employees to work a 260 day work chart as opposed to the current 239 day chart. Importantly, the PBA stresses, this proposal would result in its members working far in excess of any comparable jurisdiction and, as such, would constitute a deviation contrary to the statutory criteria. Finally, the PBA reports, in the last impasse situation, Arbitrator Arthur Riegel found the comparable jurisdictions had duty charts that did not even approach 260 days. Thus, if awarded, this would deviate from the established statutory standards and as such should be denied, the PBA argues.

Moreover, the PBA opposes the Town's proposal on retirement benefits as it alters the current language in two regards. First, it incorporates the payment of

vacation days and changes the 45-day notice from one's "intent" to retire to an irrevocable retirement. The PBA rejects the Town's claim these modifications are necessary to assist in its annual budgeting process. However, the PBA declares, with an operating fund of approximately thirteen million dollars, it is difficult to believe if a member withdrew his intention to retire within forty-five days this would create a budget crisis. Conversely, it could have a serious impact on an individual who would have to modify his/her plans due to a change in circumstances. Also, the PBA relates, Arthur Riegel rejected the same proposal in the last Impasse Award. Therefore, the PBA urges, this proposal be rejected in its entirety.

Additionally, the PBA rejects the Town's proposal that would reduce compensation for Detectives on call from 1.5 hours of straight time for every 8 hours on call to 1 hour for each call, a reduction in benefit of 33%. It reports this clause has been in the CBA for many years. According to the Town's own comparability study, the current level of compensation rests in the middle of the appropriate comparators. Therefore, based on the minimal cost and the hardship this would create for the Detectives, the PBA urges its rejection.

Also, the PBA urges rejection of the Town's proposal for a 15% Employee Premium contribution. It acknowledges the rising cost of health insurance, but

relates that every one of the best comparators provides 100% Employer paid Health Insurance. Moreover, the PBA rejects as untenable any comparison to the CSEA as a statutory comparator for purposes of health insurance contribution. In fact, the PBA explains, Arbitrator Riegel grappled with the identical issue and determined, under the circumstances as they exist today, the "applicable standards" required the denial of the Town's proposal for health insurance. Additionally, he found the Taylor Law standards supported the maintenance of the status quo in this matter. The PBA also points to the fact both Riegel and Arbitrator Martin Scheinman determined the best comparators are the East End Towns, all of which provide 100% Employer paid health insurance coverage. Therefore, based on these factors, the PBA argues the Town should continue to pay 100% of health insurance coverage.

In a related matter, the PBA urges the discontinuance of the elimination of dual coverage clause. It advises in the past two years this clause has resulted in zero savings for the Town. Given the fact this provision could possibly result in an economic hardship to a member's family, the PBA suggests the proposal be denied in its entirety.

Further, the PBA asserts, the Town's proposal would dramatically alter the long-standing practice of

awarding overtime compensation at one and one-half times the normal rate of pay. It points out the Town's proposal would replace those standards with applicable FLSA Section 207(k) work cycles designated by the Town. The PBA maintains, again, the statutory standards mandate the denial of this proposal. It relates not one of the applicable comparable jurisdictions relied on by the Town provides for overtime compensation using this method. It stresses the Town relies upon comparables found in Town Exhibit 111 are the agreed upon comparables. Also, the Town has not demonstrated any meaningful analysis concerning what, if any, savings would be achieved. Finally, the PBA reports Arbitrator Riegel rejected this same idea. Now, as when Riegel wrote his award, not one of the comparable jurisdictions calculated overtime payments based on the FLSA language. Consequently, based on the Taylor Law standards, this issue is precluded and should be denied in its entirety.

With regard to the Town's proposal to decrease the rate of pay deviser for overtime work, court attendance and other purposes from 239 days to 260 days, the PBA avers none of the applicable comparable jurisdictions uses this methodology. As such, the proposal is contrary to the Taylor Law standard and must be denied in its entirety, the PBA concludes.

Additionally, the PBA avers, the Town's proposal for staff meetings should be denied. It relates that currently the CBA provides for up to three staff meetings per year for those members with the rank of Sergeant or above, with no compensation. Now, the PBA advises, the Town wishes to expand that to an annual all-department meeting with no compensation. The PBA stresses, given the size of the Southold Police Department, the Chief has ample opportunity to meet with members to discuss police matters that need to be considered. Furthermore, it explains, using those meetings provides the supervisory staff with ample opportunity to discuss matters and convey information to the members. In the PBA's view, there is neither economic nor operational need for this proposal. Finally, it reports, Riegel considered this proposal at the last Impasse Award and determined there were no communication problems within the Department. The PBA argues there is no evidence that between the time of Riegel's Award and the present day there has been any change in this situation. Therefore, it concludes, the proposal should be rejected in its entirety.

Moreover, the PBA claims, the Town proposal for mandatory direct deposit should be rejected. It relates there are no savings for the town to support this modification and it should be rejected in its entirety.

**TOWN**

The Town avers it has limited ability to pay for the PBA's demands. It declares it had negotiated a reasonable wage improvement funded by concessions from potential new hires. The Town claims it is now inappropriate for the PBA to claim the Town can pay more. The Town rejects this PBA argument in its entirety for several reasons.

First, according to the Town, the PBA cannot and should not be rewarded for walking away (in the Town's opinion) from a deal that it negotiated in good faith. Any Award must place the parties in the same (or, for the PBA, worse) position than what it negotiated. The Town cites several other Arbitrators' and Fact Finders' opinions supporting this position and urges the panel to reach the same conclusion.<sup>1</sup>

Next, the Town asserts its budget cannot accommodate an increase in police department expenditures beyond that already negotiated by the parties. Moreover, the Town stresses, nearly all of its revenues are derived from residential property taxes. The Town explains 83% of the entire property base is residential. This creates a direct correlation between tax increases and amount of money that homeowners must

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<sup>1</sup> I have addressed this issue in the Discussion and Findings section of this Award.

pay. This is especially true in light of declining residential home values, it advises.

Moreover, there is almost no major commercial or industrial tax base in the Town. None of Long Island's largest advertising agencies, commercial printers, direct mail companies, architectural companies, public relations firms and a host of other commercial enterprises is located in the Town. Instead, as an agricultural community, it depends on seasonal tourism.

Also, the impact of tax increases is borne most heavily by the Town's permanent residents, including those who can least afford them, it reports. The Town stresses the median annual household income is \$72,005. That amount is approximately one-half the average income of the PBA's members, it declares. Additionally, while income rates declined across Long Island during the 2008 through 2012, PBA members' wages steadily increased, the Town reminds.

The Town advises, as well, during the period of this award (2012-2013), it has continued and will continue to face substantial increases in expenditures and falling revenues. It relates since 2009 the Town's General Fund budget expenses have increased by over 27%, and Health insurance costs by 35%. The Town explains that since 2009 pension costs for PBA members increased by over 140%. Additionally, the Town's debt burden has increased by 49% since 2007, it explains.

Also, it points out there are other expenses such as the MTA payroll tax, which has increased by 112.2% since 2009.

Also, the Town has faced staggering decreases in vital revenue streams that have had a negative impact on its financial health, it avers. For example, the Town relates, it saw a 60.12% decrease in the vital revenue streams from 2004 to 2013, and General Fund revenues are still below the amount received in 2008.

According to the Town, it had an operating deficit of \$1,721,466 in 2008 as well as deficits in 2006 and 2007. By exercising fiscal prudence, it reports, it ended with an operating surplus of \$674,762 in 2012, the Town advises. However, it emphasizes, this is still less than 25% of the surplus it had in 2010. Consequently, this Award will have a major impact on its ability to endure the stagnant economy within the strict confines of the 2% cap levy legislation and to avoid relapsing in the bad times of the past years, the Town opines.

Moreover, the Town insists the PBA has failed to show it has the resources to fund its demands. Even though the PBA asserted the Town could meet the PBA demands because it ended the past two years with a positive fund balance, the Town relates it had to use an even greater portion of that fund balance in order to prepare budgets its residents could afford.

Also, the Town reports, even though the PBA claimed its budget for 2014 accounted for a 3.44% increase in police spending, or a total of \$261,700, the Town's expenses for police benefits alone, such as health insurance, pension, benefit and FICA have increased by an average of approximately 10% from 2008 through 2013. Those costs amount to an additional \$278,658 for fiscal year 2014. This dollar amount is more than what has purportedly added to the budget, the Town contends. Therefore, it maintains, the \$261,700 has already been spent and is unavailable to fund this award.

The same is true, the Town opines, with regard to the so-called other hidden monies the PBA believes have been stockpiled for the use of its members. It insists the PBA's own evidence demonstrates the Town has used its reserves, in part, to avoid a tax cap levy-busting budget.

Also, the Town reflects, while the PBA argued once the economy improves, the Town budget will improve, this does not mean there are currently monies available to fund the PBA's demands. Further, the Town argues, there is no reason to believe the PBA's predictions will, in fact, occur, and it would be irrational to issue an award based on hopes and wishes and self-serving predictions, rather than the facts.

Additionally, the PBA did not account for the Town's actual financial priorities, which include repairing and replacing Highway equipment, constructing a shop for the Highway Department equipment, replacing the fuel system, replacing the Bay Avenue bridge in East Marion, funding health insurance increases and funding pension increases. In sum, the Town argues, the PBA did little, if anything, to show the Town can afford to meet the PBA demands. Additionally, it finds the PBA suggestion the Town raise property taxes in order to fund an award to be unacceptable beyond the limits of reality.

Moreover, despite the PBA's claims the recession is over, the average Long Island resident has seen his/her income remain stagnant since 2012. The Town stresses the purported Wall Street recovery has not translated to so-called good times on Main Street. In fact, it points out, the PBA's own evidence demonstrates the average Southold family has only earned an additional \$.60 per week since December 31, 2011. The Town stresses this amounts to only a \$31.20 increase in both 2012 and 2013. Awarding the PBA demands, the Town maintains, would erase these minimal gains.

Finally, the Town maintains, the PBA evidence failed to take into account the fact households, and not families, have property tax bills, and it is the

household income that should be considered. That income of \$72,005 is far less than the average family income of \$121,834. Therefore, in its opinion the PBA estimates are, at worst, inapplicable. Based on these facts the Town maintains, the Panel should reject the PBA's claim the Town can afford to pay for its demands.

With regard to the PBA's demand that any employee who attends a staff meeting should receive four hours of compensatory time, the Town emphasizes no other external jurisdiction has this type of benefit in police contracts. It asserts PBA unit members do not receive any compensation for attending these meetings. Moreover, the cost of this proposal is \$61,048. Consequently, this demand is unnecessarily costly and should be rejected, the Town insists. Additionally, the Panel rejected this proposal during the last round of interest arbitration, the Town observes.

Beyond rejecting the PBA proposals, the Town asserts the Panel should award the Town's proposal to eliminate guaranteed time off to Employees taking promotional examinations. It stresses a PBA unit member, who is scheduled to take a promotional examination, is currently entitled to eight consecutive hours of paid time off prior to the examination. The Town seeks to eliminate this provision. Only one of the five comparable jurisdictions has this type of provision in its police contract, the Town reports. The

Town argues there is simply no reason why the Town should provide paid time off for a promotional examination when members have adequate accruals and when the Town may not have any intention of promoting employees. The Town asserts there is no reason awarding this proposal would save thousands of dollars. For these reasons, it declares, this proposal should be awarded.

The Town asserts as well, it would be reasonable to award its proposal to decrease time off to attend negotiations. It reports members of the PBA's negotiating team are guaranteed time off on the day of a negotiating session as well as on the midnight tour before or after that session. The Town claims Police unions in every other comparable jurisdiction are only guaranteed time off on the day of negotiations, and some receive time off only to attend that session, not the full day. The Town declares there is no reason a negotiating team member needs an additional shift to "prepare for" or "recover from" a two or three hour session, especially when other leave accruals are available should the need arise. According to the Town, this proposal would save several thousands of dollars. Therefore, it contends, it should be awarded.

Moreover, with regard to its proposal to increase the work year from 239 to 260 hours, the Town emphasizes the work chart for the PBA unit is 260 days

for the first two years of employment. Thereafter, the work year is reduced to 239 days per year, the Town declares. Therefore, it seeks to increase the work year to 260-261 days per year. The Town reports police officers appear at work on an average of only 195 days per year. It avers increasing the number of appearances is more than reasonable in an environment where the Town has to do more with less. Had this been implemented at the start of the contract the Town would have saved \$885,290 in overtime costs. Implementing this change would still provide the Town with substantial future savings. Accordingly, the Town declares, this proposal should be awarded.

Also, the Town asserts its proposal to decrease the compensation a detective receives from 1.5 hours to one hour is viable. By so doing, the Town informs, the PBA members would receive the same standby benefit provided to Southampton police officers and would still be more generous than that provided to East Hampton and Shelter Island officers. This would save the Town \$27,272 it reports.

With regard to health insurance, the Town seeks a 15% contribution from each unit member retroactive to January 1, 2012. It explains the Town has historically paid the full cost of employees' health insurance during both employment and retirement. The Town underlines the fact health insurance costs are

increasing at a record-breaking pace. It emphasizes over the past seven years it has paid \$8,293,137 toward the unit's insurance, which constitutes an increase of 46% over that period. The Town avers it can no longer afford to pay the same health benefits it has paid in the past.

Moreover, police officers on Long Island have received full paid health insurance premiums during active employment for years. However, the Town stresses, Suffolk County recently broke that pattern by negotiating a 15% contribution from employees hired on or after January 1, 2013. The Town declares it offered the same arrangement to the Southold PBA, but that offer was rejected. In so doing, the PBA insisted Suffolk County is not comparable to the Town. This position stood in direct opposition taken by the PBA in its last interest arbitration, the Town avers. Rather, it pointed to the fact no East End police officers contribute to their health insurance. However, the Town reports East Hampton, Riverhead, and Shelter Island require contributions from employees in retirement. Further, only two East End towns have contracts in place for 2013. Thus, the pattern is still inconclusive regarding this matter, according to the Town. That being the case, it asks this panel to write the ending to what has become the inevitable end to this story, that is, negotiated contributions must be part of this

award. In so doing this would save it \$238,333 if implemented retroactive to January 1, 2012.

Also, in a related matter, the Town asks for the elimination of dual enrollment of health insurance. Under the current plan, the Town explains, two married Town employees can each enroll in the family plan. This "dual coverage" is costly. The Town opines it is unnecessary to allow two married Town employees to both obtain family coverage. It asserts Riverhead, Shelter Island, and Suffolk County have already done away with this practice. Moreover, the Town claims, awarding this proposal will have no impact on any current PBA member. Thus, the Panel should award this item.

Additionally, the Town asks its proposal seeking to implement the Fair Labor Standards Act (FLSA) regarding overtime should be awarded. Presently, it explains, employees receive overtime for all hours worked in excess of their workday, pursuant to the CBA. Further, any time off for vacation, sick leave, personal leave, holidays or other paid leave is considered time worked, the Town emphasizes. The Town seeks, therefore, to modify the contractual overtime provision so that overtime entitlements are in compliance with, but not in excess of, those required by the FLSA.

The Town explains unlike the PBA contract, federal law requires overtime be paid in a more equitable

manner that would not impose such a financial burden on the Town and its taxpayers. The FLSA mandates an employee be paid overtime for time actually worked in excess of that specified by law for the relevant work cycle. According to the Town, most PBA members work a 20-day cycle. Federal law requires the payment of overtime for a police officer assigned to a 20-day cycle only after the employee has worked 122 hours during that 20-day period.

Further, the Town declares, restrictions on overtime are appearing more frequently in collective bargaining agreements such as the Suffolk County AME units, Park Police, and Probation Officers. The Town also advises, in an interest arbitration involving the Suffolk County Deputy Sheriffs and County Corrections Officers, the panel made such an award.

The Town insists implementing the FLSA work cycles for all police officers would go a long way toward limiting overtime costs as an employee would be paid straight time instead of time and one-half until the employee reached the threshold set forth in the law. Also, the Town explains, this proposal would have saved \$547,117, if it had been implemented retroactively to the first day of this award. If it only applied to the summer months, the Town would have saved \$182,396. Since the PBA produced no evidence why this proposal

should not be awarded, the Town insists the panel do so.

Moreover, the Town asks its proposal to change the divisor for additional compensation should be granted. It advises the contract sets forth a divisor for calculating the compensation employees receive for court attendance, overtime or other purposes. That compensation is based on a work year of 239 days. However, the Town reminds, another of its proposals seeks to increase that number to 260 days. Thus, the divisor should be changed to be in conformance with its work year proposal, it avers.

Also, the Town seeks to allow the Chief of Police to schedule a staff meeting without increasing overtime costs. In this, the Town declares, the contract currently permits the Chief to schedule up to three meetings of up to three hours for employees who hold the rank of sergeant or above. In this proposal, the Town seeks to give the Chief the right to schedule an annual meeting with all police officers for which no additional compensation would have to be paid. The purpose of this meeting, the Town explains, would be to discuss important policy issues, safety concerns and new initiatives. The Town informs the Chief currently has three slots for him to meet with senior staff. Expanding this to all unit members would help the Town

more efficiently manage the workforce and improve Town-wide policing.

Additionally, the Town advises, the East Hampton contract allows the police chief to schedule up to four meetings per year with no additional compensation. Also, Southampton's chief can schedule two meetings with all employees. According to the Town, those contacts demonstrate employees are required to perform work that, in the private sector, is part of their jobs. For these reasons, the Town urges the adoption of this proposal.

Finally, the Town complains, having to produce bi-weekly payrolls is inefficient and costly. Therefore, it seeks an award that would mandate direct deposit of paychecks. This would move the PBA into the 21<sup>st</sup> century, the Town claims. For the reasons stated above, the Town maintains its proposal should be awarded.

In conclusion, the Town asks the Panel award the first two years of the parties' agreed upon December 4, 2012 settlement. In the alternative, the Panel should adopt the Town's proposals and reject those of the PBA, the Town insists.

## DISCUSSION AND FINDINGS

Before addressing the parties' specific proposals, several introductory comments are appropriate. First, the Town has asserted the PBA reneged on a previous contract settlement and should not now be rewarded for doing so. For its part, the PBA insisted no such agreement was ever reached due to the Town's intransigence regarding the award of better salary and benefits to its employees, even though it sought significant decreases in PBA member benefits. Thus, the evidence is not so clear and unequivocal as to the Town's assertion the PBA reneged on an agreement. Had it been so, it would have weighed heavily in my findings. Therefore, after examining the Town's claim on what the parties had agreed to, I determine my findings in this matter closely mirror the Town's most significant bargaining proposals. Consequently, I find no need to comment further on this issue.

According to Section 209.4(c)(3) the panel is required to analyze the factors listed below plus other relevant factors in reaching its Award. It has done so. Additionally, this Panel's determination is based solely on the evidence adduced at the hearings. Per Taylor Law requirements, our findings are in accordance with Section 209.4(c)(3). That section, it should be noted, requires us to analyze the factors listed below, plus any other relevant factors. However, certain

elements may be entitled to greater weight than others. To the extent relevant, the balancing of these is also discussed. It is with these principles in mind we turn to the facts of the dispute.

The Taylor Law contains four criteria. These are:

a) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and other conditions of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally 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 bargaining agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and

hospitalization benefits, paid time off and job security.

What, with regard to the comparability criterion, are the comparators most relevant to this dispute? Southold is a town on the East End of Long Island. It is most similar to the conditions outlined in the Taylor Law to Southampton Town, East Hampton Town, Riverhead Town, Shelter Island Town and Suffolk County. The PBA reminds that both Arbitrators Scheinman and Riegel found, although Suffolk County is not identical in all respects to the Town, it is clearly a comparable jurisdiction. Thus, those panels found that the comparisons drawn by the PBA between the Town's police and the police officers of Suffolk County are relevant to the dispute. The PBA stresses the four East End Towns are the best comparators, and the Town agrees, and both concur with Scheinman and Riegel that Suffolk County is also relevant.

During its deliberations the Panel Chair decided to limit his award to four items. I did so for several reasons. First, the disputed contract expired on December 31, 2011. Thus, the parties are, or will be negotiating a successor agreement. I find an Award that is more extensive than the one we have selected could well have a negative impact on that process. This, I believed, was in the interest of neither party. Moreover, those items awarded herein were of great

import, such as contributions for health insurance for new employees. Therefore, the Award contains four items only. These deal with the items I believe were the most significant.

1. **SALARY (Section 9.1)**

The first item with which the Panel grappled was that of salary increases. The PBA submitted a detailed report entitled "Ability to Pay Report" that purported to show the Town could afford the PBA's salary proposal. That report, written by the PBA's Kevin Decker, its expert on municipal cost and analysis, concentrated on the Town's tax revenue, income, expenses and a myriad of other factors. For its part, the Town focused on the agreement it believed it had reached with the PBA as defining its ability to pay for this Award. It also cited several factors about the Town's revenue, including the source of its revenue (primarily residential property taxes) and the fact there are no major industries or large commercial endeavors. The Town also argues the PBA's ability to pay analysis did virtually nothing to show the Town could afford its demands. After analyzing the financial data, the Panel Chair looked to the usual comparators, and, based on the terms of my financial analysis and the settlements in the comparator municipalities, I find the appropriate wage increase for January 2012 is

that 2% be added to the January 1, 2011 salary schedule.<sup>1</sup> Thereafter, effective January 1, 2013, each step on the 2012 salary schedule shall be increased by an additional 2%.

## **2. Salary Schedule**

After extensive deliberation, I also determined Employees hired on or after December 31, 2013, shall be placed on a new salary schedule consisting of seven equidistant steps. Such a move would be consistent with the then new Riverhead PBA settlement, and will increase funds needed by the Town to support its operational needs such as paying for this award. Also, no current employee will suffer any harm by this proposal. Therefore, I award it to the Town.

## **3. Hospitalization** (Section 12.1)

Employees hired on or after the date on or after December 31, 2013, will contribute 15% toward the premium for individual or family health coverage, as applicable, including during their retirement. While this is a bitter pill to swallow, it must be noted that many municipalities (including school districts) now require an insurance contribution from their employees in some form. In fact, in his Award, Arthur Riegel noted the days of fully paid premiums by the Employer

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<sup>1</sup> There is a source of contention between the parties as to whether or not there was a partially executed proposed agreement. The Town claims there was an agreement and the PBA denies this was so. I have addressed this issue on pages 34-35 of this document.

was a dying concept. We also observe one of the comparators, Suffolk County, recently obtained this concession from the Suffolk PBA, and that other municipalities have followed suit.

4. **Hospitalization** (Section 12.1)

Effective December 31, 2013, each employee will be entitled to enter into an individual contract with the Town (and to be prepared consistent with the provisions of this paragraph) immediately prior to the effective date of the employees retirement into the New York State Police and Fire Retirement System guaranteeing, consistent with the then applicable NYSHIP Plan Rules and Regulations, the Town's percentage contribution to the premium cost of the employee's retirement health insurance benefit will be at the same percentage that was in effect for the employee immediately prior to the effective date of the employee's retirement, until Medicare becomes the employee's primary insurance coverage by operation of law. This concept brings forth some form of protection for potential retirees about the impact of health premium costs after retirement.

5. **Term of the Agreement** (Section 28.1)

The parties agreed that the Award should be for two years (January 1, 2012 - December 31, 2013).



**COMPULSORY INTEREST ARBITRATION AWARD**

**(WITH OPINION TO FOLLOW)**

1. Section 9.1 (Salaries) (p. 14): Effective January 1, 2012, each step on the January 1, 2011 salary schedule will be increased by 2%. Effective January 1, 2013, each step on the 2012 salary schedule will be increased by an additional 2%.

<u><i>RB</i></u> CONCUR	<u>DISSENT</u>	<u><i>[Signature]</i></u> RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	<u><i>11/7/14</i></u> DATE
<u><i>RB</i></u> CONCUR	<u>DISSENT</u>	<u><i>[Signature]</i></u> RICHARD J. BUONAIUTO, ESQ. EMPLOYEE PANEL MEMBER	<u><i>11/06/14</i></u> DATE

2. Section 9.1 (Salaries) (p. 14): Employees hired on or after December 31, 2013 will be placed on a new salary schedule that will consist of seven equidistant steps.

<u><i>RB</i></u> CONCUR	<u>DISSENT</u>	<u><i>[Signature]</i></u> RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	<u><i>11/7/14</i></u> DATE
<u>CONCUR</u>	<u><i>RB</i></u> DISSENT	<u><i>[Signature]</i></u> RICHARD J. BUONAIUTO, ESQ. EMPLOYEE PANEL MEMBER	<u><i>11/06/14</i></u> DATE

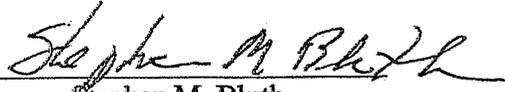
3. Section 12.1 (Hospitalization) (p. 17): Employees hired on or after December 31, 2013 will contribute 15% toward the premium cost for individual or family health insurance coverage, as applicable, including during their retirement.

<u><i>RB</i></u> CONCUR	<u>DISSENT</u>	<u><i>[Signature]</i></u> RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	<u><i>11/7/14</i></u> DATE
<u>CONCUR</u>	<u><i>RB</i></u> DISSENT	<u><i>[Signature]</i></u> RICHARD J. BUONAIUTO, ESQ. EMPLOYEE PANEL MEMBER	<u><i>11/06/14</i></u> DATE



, as Chairperson of the Panel, as the Award.

Dated: November 5, 2014

  
Stephen M. Bluth  
Panel Chairman

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

On this 5 day of November 2014 before me personally came and appeared **Stephen M. Bluth**, to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

  
Notary Public

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

CHERIE L. BLUTH  
Notary Public, State of New York  
No. 01BL6253737  
Qualified in Nassau County  
Commission Expires Jan. 03, 2016

On this 7 day of November 2014 before me personally came and appeared **Richard K. Zuckerman, Esq.** to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

  
Notary Public

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

SUSAN J. ROLLINS  
Notary Public State of New York  
No. 01RO6112024 - Suffolk County  
Commission Expires June 28, 2016

On this 6<sup>th</sup> day of November 2014 before me personally came and appeared **Richard Buonaiuto**, to be known and known to me to be the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

  
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FREDRICK J. RICHMAN  
Notary Public, State of New York  
No. 02R16233848  
Qualified in Nassau County  
Commission Expires January 3, 2015

Notary Public