STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

TOWN OF CARMEL POLICE BENEVOLENT ASSOCIATION, INC.

Employee Organization,

-and-

TOWN OF CARMEL

Public Employer,

PERB Case No.: IA 2013-037; M2013-127

OPINION

AND

AWARD

BEFORE: Jay M. Siegel, Esq.
Public Panel Member and Chairman

Richard P. Bunyan, Esq.
Employee Organization Panel Member

Michael R. Hekle, Esq.
Public Employer Panel Member

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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APPEARANCES:

For the Town of Carmel Police Benevolent Association, Inc.
Bunyan & Baumgartner, LLP
By: Joseph P. Baumgartner, Esq.

For the Town of Carmel
Jackson Lewis, P.C.
By: Michael L. Abitabilo, Esq.

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board (PERB) to make a just and reasonable determination of a dispute between the Town of Carmel Police Benevolent Association (PBA) and the Town of Carmel (Town).

The Town is located in the northeast portion of Putnam County. Dutchess County is immediately to its north and Westchester County is a few miles away to the south and to the east. In the 2010 census, the Town had a population of 34,305.

The Town's Police Department operates on a 24/7 basis. The Police Department currently has 32 full-time sworn officers including one chief and one lieutenant who are not represented by the PBA. The 30 bargaining unit members serve as police officers, detectives and police sergeants, all of who are represented by the PBA.

The last collective bargaining agreement (CBA) covering this unit was for four years and expired on December 31, 2012. The parties began negotiations for a successor contract in late 2012, but the negotiations were unsuccessful. Thereafter, acting pursuant to PERB's rules of procedure, a PERB-appointed mediator met with the parties. Mediation was unsuccessful and on February 8, 2014, the PBA filed a Petition for Interest Arbitration pursuant to Section 209.4 of the Civil Service Law.

The Town filed its response to said Petition on March 6, 2014. On April 2, 2014, the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

Hearings were initially scheduled and then postponed by the parties. The parties ultimately conducted hearings before the Panel at the offices of the Town on February 23, 2015 and February 25, 2015. At the hearings, all parties were represented by counsel. The parties submitted numerous and extensive exhibits and documentation, including written closing arguments in which all parties presented extensive arguments in support of their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. After significant discussion and deliberations at Executive Sessions and telephone conference calls, the Panel reached an Award. The Award is a compromise. It does not fulfill the wishes of either party. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chair and at least one other concurring member.

The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, all of which are incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Award setting forth the terms and conditions for the period January 1, 2013 through December 31, 2014.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following criteria, as detailed in Section 209.4 of the Civil Service Law:

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

1. COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities."

PBA Position

The PBA stresses that comparability is the criterion establishing the market to be used to assess how existing terms and conditions of employment compare to similar employees within the relevant market. In other words, it is a search for the market within which a comparison of prevailing wages and benefits is to be made.

The PBA states that there have been no previous arbitration decisions that have identified the comparable jurisdictions for the Town's Police Department. The PBA contends that since the Kent Police Department is the only other full-time town police department in Putnam County, that it is appropriate to utilize all town police departments in Putnam, Rockland, Westchester and Dutchess counties as the group of comparables.

The PBA argues that the Town's argument that Carmel should be compared to a group of jurisdictions that only share economic factors should be rejected. It emphasizes that comparability should be based on a determination of the marketplace within which the Town competes with other police agencies for police officers. In the PBA's view, the Town's group is limiting and incomplete because it selects only some jurisdictions and fails to consider the entire market.

The PBA stresses that Arbitrator Roger Maher was faced with this exact argument in a 2011 Interest Arbitration in the Town of Cornwall. He rejected the Town's argument that comparability should be based on factors of the relative wealth or poverty of governments. In that case, Arbitrator Maher decided that instead of a finite group of jurisdictions that shared some economic similarities, Orange County was the market for comparison of wages and benefits. (NYS PERB Case No. IA 2009-026). For the very same reasons, the PBA urges the Panel to reject the Town's proposed group of comparables and accept its broader group of comparables.

Town Position

The Town contends that its members should be compared with police officers in the following comparable communities:

1. City of Beacon
2. City of Middletown

3. City of Peekskill
4. Town of Bedford
5. Town of East Fishkill
6. Town of Eastchester
7. Town of Harrison
8. Town of Mamaroneck
9. Town of Mount Pleasant
10. Town of New Windsor
11. Town of Stony Point
12. Town of Walkill
13. Town of Warwick
14. Town of Yorktown
15. Village of Mamaroneck
16. Village of Ossining
17. Village of Port Chester

The Town emphasizes that Section 209.4 of the Civil Service Law does not explicitly define the term "comparable communities." For this reason, it argues that it is appropriate for the Panel to consider the dictionary definition of that term, which includes "similar" and "worthy of comparison." In the Town's view, its list of comparables is the appropriate universe because all of its proposed municipalities are similar and worthy of comparison to the Town.

The Town distinguishes its group of comparables as being far more appropriate than the comparables proposed by the PBA. It maintains that its comparables share many similarities and are in geographical proximity to the Town.

The Town points out that its expert, Dr. de Seve, conducted a scientific analysis to identify the comparable municipalities within the relevant labor market. His analysis considered population, police expenditures, median household income and full property

tax base. According to the Town, Dr. de Seve's analysis found the Town to be part of a tightly compacted cluster of communities that appeared to him to be the set of comparables.

The Town maintains that the PBA failed to refute either Dr. de Seve's methodology or his analysis. In stark contrast to the Town, the PBA offered no analysis for its group of comparables. The Town notes that Kevin Decker, the PBA's fiscal expert, conceded that he did not conduct an analysis on comparability.

The Town notes that eight of the jurisdictions proposed by the PBA are included in its list of comparables. It argues that Dr. de Seve logically explained why the other comparables proposed by the PBA should not be included in the list of comparables.

Panel Determination on Comparability

The Panel Chair determines that the eight police agencies that both parties proposed as comparables are the most appropriate group of comparables. These towns are Bedford, East Fishkill, Harrison, Mamaroneck, Mount Pleasant, Stony Point and Yorktown. This group is logical to the Panel Chair because both parties find them to be comparable. All of these towns provide similar services and many of them share many other similar characteristics, including size of department, size of the jurisdiction and wealth.

The Panel Chair finds the Town of East Fishkill and the Town of Yorktown to be most comparable for a number of reasons. Both departments are in close proximity to the Town and far closer geographically than any of the other towns in the group of comparables. Thus, the Town truly competes with these jurisdictions insofar as the

market for police officers is concerned. Since they are geographically proximate, officers working in all of these jurisdictions share similar costs of living.

Equally important, the Town has almost the same population as the Towns of East Fishkill and Yorktown. While the Town's population is 34,305, Yorktown's is 36,081 and East Fishkill's is more than 29,000. All three jurisdictions have similar full value tax bases and expend similar dollars toward police services. Of significant note to the Panel Chair is how similar all three jurisdictions are in terms of median household income. The Town's median household income is $102,457, while East Fishkill's is $98,953 and Yorktown's is $101,074. When the Panel Chair considers these similarities, along with the geographical locations of all three towns, it becomes abundantly clear that they are most comparable for comparative purposes.

2. ABILITY TO PAY

PBA Position

The PBA stresses that the Town's tales of economic gloom and doom are completely unsupported by the record. The PBA maintains that the ability to pay analysis is not a global one. What is relevant here is that the Town is in excellent financial condition. Its residents are not struggling and are not overtaxed. In the PBA's view, the Town's claim that it is suffering financially is a gross exaggeration.

The PBA asserts that its financial expert, labor economist Kevin Decker, wholly supported its contention that the Town's strong financial position allows it to support a fair wage increase and to support the other PBA proposals requiring funding. The PBA stresses that Mr. Decker's analysis is based on the Town's records, including its audited financial statements, adopted and proposed budgets, constitutional tax limit forms,

Moody's Investor Services forms and a variety of other objective documentation that is available for anyone to review.

The PBA notes that Mr. Decker testified that in order to be considered financially healthy, a municipality should have 5-15% of its budget available in its fund balance. The PBA stresses that the Town not only exceeds that target but has also set aside money to pay for retirement costs for employees, including pay for unused sick and vacation time.

The PBA notes that Mr. Decker's analysis demonstrates that the Town had a surplus of more than $800,000 in its 2013 budget, the first year covering this award. As of 2013, Mr. Decker's analysis shows that the Town's unrestricted fund balance as a percentage of expenditures was 16.45% and that its total fund balance and a percentage of expenditures exceeded 26%. In the PBA's view, these are very healthy fund balance figures.

The PBA stresses that the New York State Comptroller's Fiscal Stress Monitoring System analyzes a broad set of fiscal indicators to get a full picture of a municipality's fiscal health. Among other things, the Comptroller reviews local finances for environmental, demographic and economic stressors, such as population loss and property value stagnation. It also considers aging population and the extent to which a municipality has depressed employment, increased foreclosures, reduced property values, fund balance levels and operating surpluses or deficits. The Comptroller then assigns a fiscal score to each municipality. The lower the score, the healthier the municipality.

According to the PBA, the Comptroller's 2013 Fiscal Stress Monitoring System for the Town lists with a score of 6.7%, a score that is indicative of robust fiscal health.

The PBA notes that the Comptroller's threshold score to qualify a community as environmentally stressed is 45%.

In the PBA's estimation, the other objective evidence strongly supporting its ability to pay contention concerns the Town's Moody's Investors Service Bond Ratings. The PBA notes that, as of September 2014, the Town was rated at Aa1, which is considered high grade, high quality. It is the second best rating available.

The PBA maintains that another measure of the Town's ability to pay is its willingness to offer a retirement incentive to the former chief that significantly increased its retirement payments. The PBA stresses that the cost of this "golden parachute" to the retiring chief was $432, 268, which cost the Town more than $98,000 per year for the five year funding plan the Town chose. The PBA maintains that this alone could have supported a 2% salary increase for its members over five years. Beyond the initial contribution, the Town will also be required to spend an additional $12,194.00 per year in additional retirement contribution costs. When this expenditure is considered along with the Town's $35,000.00 minimum expenditure it paid for its financial experts in this proceeding, it becomes abundantly clear that the Town has the ability to pay. The PBA argues that it shows that the Town is in a strong financial position as it spares no expense for items it deems a priority.

Town Position

The Town insists that the Panel cannot ignore the fact that its financial picture is precarious. It stresses that the ability of the Town to provide salary increases must be balanced with the interests and welfare of the public in controlling costs and providing necessary public services.

The Town maintains that Dr. de Seve's unique insight into ability to pay analysis should be given credence. It notes that Dr. de Seve previously served as the Director of Tax and Fiscal Policy for the New York State Assembly and that he also has been involved in the negotiations over elements of the Taylor Law when labor and management have wanted to change it over the years.

The Town points out that Dr. de Seve described ability to pay as a circuit breaker. He opined that ability to pay is not a substitute for the importance of the labor market itself. In other words, if some redress is needed in the market and money is available, there is an ability to pay. However, if redress is not needed, it doesn't stand to reason that the pot of money available automatically goes into salary increases. Hence, the question is whether there is a compelling need to meet the PBA's demands. Since the Town contends that police officers in Carmel receive pay and benefits that are consistent with or above its comparators, there is no compelling reason to find that the Town has the ability to pay for the PBA's proposed salary increases.

The Town emphasizes that its careful management over the past few years has allowed it to go from a very precarious deficit status to a more healthy status. The Town observes that it had operating budget deficits in 2009, 2010 and 2011. In 2012, Moody's Investor Service assigned a negative outlook to the Town's finances, which was attributed to its deteriorating fund balance.

The Town claims that it took proactive steps to increase its fund balance over the past few years. Nonetheless, the Town stresses that its fund balance has yet to reach pre-recession levels. The Town insists that any suggestion that it is prudent for the Town to

deplete its fund balance to pay for the PBA's demands defies logic and is contrary to the interests and welfare of the public.

The Town points to several other discrete and objective facts that show that it lacks the ability to pay and has limitations on revenue growth that cannot be ignored. For example, the Town has realized a steep decline in mortgage tax revenue from a high of just over $2.8 million in 2005 to just $682,000 in 2014. The Town does not receive any sales tax revenue, which is different than the circumstances for towns in most other counties across the State. The number of building permits has steadily declined and per capita income of the Town's residents has declined from $51,000 in 2008 to less than $41,000 in 2013. As a result, the Town has taken steps to downsize its workforce going from 131 full-time employees in 2004 to 109 in 2013.

The Town argues that the 2% tax cap legislation significantly reduces the Town's ability to annually increase revenues. It urges the Panel to be mindful of the 2% tax cap when rendering an Award. The Town maintains that an excessive award will not only increase the tax burden on its citizens but will also limit the other services the Town can provide to its residents.

The Town stresses that it has been diligent in managing its resources to emerge from the Great Recession. It claims that the only reason its fiscal stress score has improved is because it has eliminated its operating deficit and rebuilt its unrestricted fund balance to more prudent levels. The Town asserts that if it is required to start increasing its expenditures beyond the tax cap that it will have to draw on fund balance to pay for the expenditures. Use of fund balance to fund a recurring expense has the potential to put the Town back to being susceptible to fiscal stress.

The Town submits that it simply cannot afford to pay the salary increases and other economic items proposed by the PBA. It urges the Panel to render a fiscally conservative Award that focuses on its precarious financial condition and allows the Town to pay the other costs of government.

Panel Determination on the Town's Ability to Pay

The Panel Chair has carefully considered the statutory criteria regarding ability to pay as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs filed, that form the record in this matter.

The Panel Chair would characterize this as a time of cautious optimism for the Town. The Town's budget is in sound shape from a structural standpoint. It consistently spends less than it budgets to spend and it consistently collects more revenue than it projects receiving. It has had an operating surplus in each of the past three years. Its fund balance is growing and is much healthier than it formerly was.

Objective data demonstrates that the Town is now on solid financial ground. Its fiscal stress score from the State Comptroller is strong and indicates that many of the Town's relevant economic indicators are positive. Equally important, the Town's Moody's Investor data shows a robust rating of Aa1, which is the second best rating available. When Moody's most recently examined the Town's data in 2014, it noted the "Town's trend of improving financial performance, adequate financial reserves and manageable debt burden."

In many ways, the Town's recovery from the great recession has been similar to much of the country's. It has demonstrated growth and stability but it is far from robust. In making this assessment, the Panel Chair specifically notes that housing sales and

building activity in the Town dropped significantly during the recession and have yet to fully recover. In addition, while its fund balance is much healthier than it formerly was it is not as healthy as it once was

Although the Town has managed to recover from the recession, the Town has had to contend with finding additional revenue to fund substantial increases to pensions and health insurance. This is a real challenge for the Town that requires fiscal prudence as it moves forward.

For all of these reasons, the Panel Chair finds that the Town has the ability to pay for this Award and that the wage increases awarded herein constitute a fair and reasonable Award. However, the Panel Chair determines that the original salary proposal of the PBA and its other economic proposals of the PBA cannot be adopted as they would create too much pressure on the Town's financial resources at this time. In addition, salary increases must be offset by new health insurance premium contributions so that the Town has the ability to maintain its recovery.

3. THE INTERESTS AND WELFARE OF THE PUBLIC

PBA Position

In the PBA's view, this consideration encompasses the fact that the Town's taxpayers benefit from having a professional, well-trained police department. In the PBA's estimation, this can only happen when its members' wages and benefits are competitive so that the Town can attract and retain quality employees. The PBA opines that the Panel must issue an Award that allows its members to remain competitive so as to ensure that its members will not leave the Town for other comparable positions outside of the Town.

Town Position

The Town stresses that the Panel is obligated to consider the fact that this Award will directly affect the citizens and taxpayers of the Town and the economic future of the Town for years to come. It must also consider the fact that citizens in the Town are struggling with increased tax burdens and concerns about the ability of its Town government to remain on sound financial footing. These considerations, along with the fact that the economic forecast is guarded, mandate that the Panel exercise its power with great care and caution while fashioning its Award.

The Town emphasizes that the two percent tax cap was adopted by the New York State Legislature to protect the interests and welfare of the public. If the Panel does not impose a modest salary increase the public will not get the benefit of this legislation as the Town may have not choice but to attempt to exceed the tax cap. This is untenable to the Town and contrary to the interests and welfare of the public.

Panel Determination on Interests and Welfare of the Public

The Panel has carefully considered the statutory criteria regarding the interests and the welfare of the public and financial ability of the Town to pay, as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs forming the record in this matter. In looking at this specific issue, the Panel Chair finds that the PBA's argument that the public benefits by having a competitively compensated staff of police officers must be given credence. It influences the Panel Chair's determination that there is a need for a wage adjustment that is consistent with the pattern of salary increases in the group of comparables for both years covered by this Award. The Panel Chair's Award in the area of salary is premised on the recognition that it is

prudent for the Town and beneficial to the public for its police officers to be competitively compensated in the context of the Town's ability to pay.

At the same time, except for salary and longevity, all of the other economic proposals advanced by the PBA have been rejected by the Panel Chair because he is concerned about the detrimental effect that any new long-term financial commitments may have on the Town's bottom line. It is not in the interest of the public to significantly augment the economic package provided to police officers as this could have a detrimental impact on the Town's budget. With the interests and welfare of the public in mind, the Panel Chair is also imposing changes to active employee and retiree health insurance which will offset some of the salary increases imposed by the award and make it much more affordable for the Town over the long term.

4. COMPARISON OF PECULIARITIES OF THE POLICE PROFESSION

The Panel has also carefully considered the statutory criteria regarding the comparison of the police officer profession with other trades or professions, including specifically: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; and (5) job training and skills. The PBA asserts that the police officer profession is so unique, dangerous and demanding that no other useful comparison can be made with other trades or professions.

The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of police officer work and the unique training, skills, pressures and dangers that police officers face each day. The Panel finds that the peculiarities of the profession mandate a direct comparison with police officers.

5. CONSIDERATION OF PREVIOUSLY NEGOTIATED AGREEMENTS

PBA Position

The PBA notes that an examination of past the CBAs shows that its members have been compensated similarly to their counterparts in the past. In the PBA's estimation, this pattern should continue. In other words, the Panel should maintain the status quo that currently exists for the Town of Carmel in relation to other town police departments in the area of salary, longevity, rank differential pay and other benefits.

Town Position

The Town insists that the terms of previously negotiated agreements are highly relevant in this dispute. The Town notes that during the Great Recession, PBA members received wage increases of 4% per year from 2009 to 2012 during the peak of the recession. 4% annual wage increases were also provided to PBA members in 2006, 2007 and 2008. These wage increases have allowed PBA members to strengthen their position relative to other police officers and to widen the gap between PBA members and other Town employees. The robust salary increases received by PBA members in the past seven years should be significantly moderated as there is no compelling reason for PBA members to receive more than the 1% wage increase proposed by the Town.

Panel Consideration of Previously Negotiated Agreements

The Panel has given full consideration to previously negotiated agreements in rendering this Award. The Panel Chair finds that since this is the first time in the many years since the parties have gone to interest arbitration, it is prudent to exercise great caution in rendering this award with the hope that the parties will be able to voluntarily resolve their negotiations disputes in the future.

BASE WAGES

PBA Position

The PBA has proposed a 3.5% salary increase for each year of the Award. It describes its proposal as reasonable. The PBA submitted numerous exhibits showing the salary structure for all police departments in its proposed group of comparables. The PBA insists that the data shows that the PBA members must receive a reasonable salary increase in order to remain competitive with the group of comparables. It contends that the 2012 data shows that 11 of the 16 police departments in the group of comparables had higher first year base salaries than Carmel. According to the PBA, the data firmly shows that Carmel's first year base salaries will drop to 15th out of 16 by 2014 if there are no salary increases provided to its members.

The PBA asserts that its members should be awarded a pay raise that will maintain its officers relative rank within its proposed comparables. In the PBA's view, its proposed raise is also a necessity because its members deserve a salary increase to handle cost of living increases. The PBA contends that its proposal of 3.5% per year is reasonable and will allow its members to maintain their competitive standing on salary.

To the PBA, there is no reason why its proposal should not be granted. It asserts that the economic data demonstrates that the Town has the ability to pay for its proposal without incurring any genuine fiscal stress. The PBA notes that the Town is not designated as being fiscally stressed by the State Comptroller and that it has an excellent rating from Moody's Financial Services. The PBA maintains that the objective analysis of its budget performed by Mr. Decker shows that the Town has the ability to pay for its

proposed salary increase. It has not only set aside certain monies for raises but its fund balance is healthy.

Town Position

The Town maintains that the evidence it presented on ability to pay demonstrates that the PBA's salary proposal of 3.5% salary increases for each of two years is completely untenable. The Town asserts that the PBA's proposal should be wholly rejected because it is completely unaffordable given the Town's fiscal restraints.

In the Town's estimation, the PBA's proposal is also excessive because PBA members are already competitively compensated. The Town notes that Dr. de Seve testified that the PBA's goal should be to be "reasonably situated" among a group of proper comparators. The Town maintains that this is exactly what the Town has been able to achieve through past negotiations. In the Town's view, the financial analysis provided by its economic expert Dr. Bierhanzl demonstrates there is no compelling need for PBA members to receive increases that would compound over 7% during the two years in dispute. To the Town, this is strongly demonstrated by the statistics it submitted into evidence which show that PBA members rank at or above the median across all levels of experience.

The Town contends that the data shows that PBA members will remain competitive if their wages were frozen during 2013 and 2014. However, the Town's offer of a 1% salary increase for each of those years shows that PBA members will be in a strong position on salary. For this reason alone, the Town urges the Panel to adopt its salary proposal of 1% increases for 2013 and 2014.

Even more compelling to the Town is the fact that six of the eight comparable jurisdictions that offer higher base pay and longevity for maximum tenure officers than that offered by the Town also require their police officers to make significant contributions toward health insurance. In other words, since most officers in the group of comparables are required to make significant contributions toward health insurance, the Town stresses that the quid pro quo for salary increases must be requiring officers in the Town to contribute to the cost of health insurance.

The Town maintains that it simply does not have the ability to pay for the PBA's proposal without severely jeopardizing its economic future. The Town notes that the monies it has expended on pension and health insurance increases already put significant pressure on its budget. With the economic picture as precarious as it is, the Town contends that there is no justification for the Panel to impose a salary increase in excess of the Town's salary proposal of a 1% salary increase for 2013 and 2014.

The Town maintains that its arguments have even greater credence because PBA members received wage increases well above the cost of inflation over the past seven years. It notes that during the period of the Great Recession, PBA members received robust wage increases of 4% per year and that, in total, PBA members received 4% wage increases for seven consecutive years prior to years covering this arbitration. The result is that PBA members are well compensated vis-à-vis the comparators. Since Carmel's police officers are at or near the top salary at every conceivable ranking, the Town urges the Panel to reject the PBA's proposal and adopt its proposal.

Panel Determination on Base Wages

The Panel Chair has carefully considered the statutory criteria balancing the reasonable economic needs of the Town's police officers, with the obligations of the Town in the context of what is fair and reasonable in a more challenging economy.

Wages are one of the most important elements in any labor agreement. Employees have the utmost concern about the wages they will be paid and wages represent the greatest expenditure for the Town.

The record contains data that supports both parties' positions. The Town faces some genuine economic concerns. Its economic picture looked bleak in 2011. It had suffered three consecutive years of operating budget deficits. Moody's Investor Service has assigned a negative outlook to the Town's finances. Its fund balance was deteriorating.

Since that time the Town's financial picture has significantly improved. It increased revenue by raising taxes above the 2% tax cap and it became been more prudent with its expenditures. Its fund balance has recovered and is now maintained at a very respectable level according to the assessments of most financial experts. While the Town is undoubtedly emerging well from the Great Recession, the Panel Chair rejects the PBA's proposed salary increase of 3.5% per year because the Town has some genuine limitations on revenue and some real concerns about expenditures it has little control over. For example, the Town does not receive sales tax from Putnam County. Its mortgage tax receipts remain in the doldrums when compared to the pre-recession levels and building permit activity has not reached robust levels. The Town has a sincere desire to stay within the 2% tax cap, which also impact its ability to increase revenue. The

totality of the circumstances as well as the increased costs the Town has been required to absorb in the areas of health insurance and pension convinces the Panel Chair that the Town's improved outlook is tempered by these revenue issues.

At the same time, the Town's proposal is not supported by the record. The record establishes that the Town has some positive economic factors that are objective and support a wage adjustment for police officers that is greater than the amount proposed by the Town. The State Comptroller analyzed a broad set of fiscal indicators and assessed the Town with a fiscal stress score that is indicative of a municipality in good financial health. Moody's Investor Services assessed the Town's financial picture in 2014 and gave the Town a bond rating of Aa1, which is the second best rating available and indicates that the Town's bonds are high grade, high quality. The Town's fund balance now exceeds 15%, which is a strong indicator of fiscal health. In addition, the Town's budgets have had surpluses in all years since 2012, including an $800,000 surplus in 2013.

In the Panel Chair's view, the right balance to strike between the Town's economic concerns and the police officers' desires to be treated fairly and equitably compensated requires an award that is 2.25% per year, along with significant first time contributions toward active employee and retiree health insurance. This will allow the Town to offset some of the salary increases over the long term and limit the impact of this Award on its taxpayers.

The Panel Chair finds that a salary schedule increase of 2.25% in 2013 and 2.25% in 2014 is the most appropriate way to handle salary increases for this unit at this time. This will allow unit members to maintain their relative standing vis-à-vis the list of

comparables. The Panel Chair notes that this increase is right in the range of the increases paid to virtually all of the police officers in the group of comparables and is very consistent with the increases paid to police officers in the Town of Yorktown and the Town of East Fishkill who are the most relevant comparators. Police officers in Yorktown received salary increases of 2.5% in 2013 and 2.5% in 2014 and police officers in East Fishkill received salary increases of 2% in 2013 and 2.25% in 2014.

The Panel Chair finds it important for Town's police officers to maintain their standing relative to other police officers in the universe of comparables. If the Panel awarded the Town's proposal, which is well below the average amount received by other employees in the universe of comparables, the Panel could jeopardize the relative standing of the Town's police officers.

In awarding these salary increases, the Panel finds that the Town has the ability to pay for a fair increase in wages overall.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON BASE WAGES

ARTICLE IV – Base Wages

The salary schedule shall be increased by 2.25% effective January 1, 2013 and an additional 2.25% effective January 1, 2014.

RPB			
Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Michael R. Hekle, Esq.	

HEALTH INSURANCE

Town Position

The Town asserts that aside from salary and pension, health insurance is one of the most expensive personnel costs for the Town. It argues that its health insurance proposal demonstrates its need and desire to adapt to changing economic times. The Town notes that its health insurance costs for police officers have gone up nearly $300,000 between 2005 and 2014. The Town contends that this alarming increase of 63% becomes even more distressing when the cost of retiree health insurance is factored in. The Town also points out that in 2009 the total benefit cost for police officers was approximately $1.4 million and that this figure increased to more than $2.4 million by 2014 which represents an astounding increase of 71%.

The Town maintains that in the era of the 2% tax cap it is simply illogical to believe that public employers can continue to pay the full cost of health insurance for active employees and retirees. In the Town's view, the unsustainable reality of fully funded benefits has been addressed by municipalities throughout the region, state, and country which now routinely require employees to share in the cost of health insurance.

The Town points out that the Panel can even look inside the Town to see this clear trend. The Town notes that CSEA members who work in the Town contribute at varying levels depending on their date of hire. Non-unionized employees and elected officials contribute at a rate of 15%/20%/25% depending on their salary.

The Town insists that its request to ask current police officers to contribute 20% of the cost of health premiums is reasonable when one examines how the Town treats its other employees. It is also fair and reasonable when one considers what is occurring in

the comparable jurisdictions. The Town contends that all but three of the 17 jurisdictions in its proposed list of comparables require some level of contribution with virtually all of those jurisdictions requiring contributions based on a percentage of total healthcare costs with maximum contributions levels ranging from 2% to 35%.

The Town contends that there is precedent from a nearby jurisdiction to support its proposal. The Town notes in the in the 2012 Interest Arbitration Award between the Village of Mount Kisco and the Mount Kisco PBA, the Panel implemented a 15% premium contribution even though officers with four or more years of experience previously were not required to make contributions. The Town stresses that the time has come for a similar contribution to be imposed in Carmel because there are no unit members required to contribute toward health insurance either during their active employment years or in retirement. It urges the Panel to adopt its proposals to provide the Town with greater relief toward health insurance costs.

PBA Position

The PBA strongly objects to the Town's health insurance proposals. It argues that like many of the Town's proposals, these proposals are designed to take benefits away from police officers without any financial justification.

The PBA insists that any analysis of comparable units strongly supports its contention that the Town's proposal should be rejected. It notes that in the towns of Bedford, New Windsor and Stony Point, police officers continue to received fully funded health insurance during active employment and retirement. In many of the other comparable jurisdictions like the Town of Warwick, police officers employed before a certain date continue to receive 100% of their health insurance paid for by the employer.

In other words, since numerous police officers in the comparable jurisdictions do not contribute toward health insurance in active employment or retirement and the Town is in strong financial shape, the Panel has no rational basis under any comparability analysis to impose any contributions on unit members during their active employment or in retirement.

Panel Discussion on Health Insurance

Health insurance continues to be one of the most difficult and contentious labor-management issues due to its importance to employees and their families, and its cost, which has been increasing over the past several years.

The Panel Chair agrees with the Town that the health insurance increases over the past few years have significantly impacted the Town's budget and that there is no reason to believe this will change in the future. There is no doubt that if some form of greater premium contribution is not implemented at some point in the future, it will have an adverse effect on the Town's budget and its ability to deliver services in the future. The Town's arguments are compelling and lead the Panel Chair to conclude the Town's economic data and the comparability analysis supports the imposition of first time contributions toward active employee health insurance and retiree health insurance.

The evidence establishes that a great majority of the municipalities in the group of comparables receive some form of premium contribution for both active employees and retirees. Also, Town employees in non-police titles are all required to contribute toward health insurance during active employment and retirement.

An assessment of the two most relevant comparables also supports premium contributions. Police officers in Yorktown contribute anywhere from 5% to as much as

25% during their time working for the town and also have varying degrees of contributions in retirement depending on their initial date of employment. In the Town of East Fishkill, all police officers are required to contribute 10% toward the cost of premiums. Although most police officers in East Fishkill continue to receive fully paid health insurance in retirement, more recently hired officers (i.e., those hired on or after January 1, 2013) are required to pay 10% toward the cost of health insurance in retirement.

When the Panel Chair considers all of the evidence, he finds that it is prudent to adopt a model for premium contribution that is similar but not identical to the one in East Fishkill. This will allow the Town to receive immediate and genuine financial relief by having all current police officers contribute 10% toward the cost of health insurance. It will also have anyone hired on or after December 31, 2014 contribute 12% toward the cost of health insurance during both active employment and retirement. Finally, similar to East Fishkill, the Panel Chair finds it prudent to preserve retiree health insurance for the roster of police officers who have always expected to receive fully funded retiree health insurance in retirement.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON HEALTH INSURANCE

Article XII – Section 1 (Welfare Benefits)

Add the following:

Effective December 31, 2014, all employees hired on or before December 31, 2014 shall be required to contribute 10% toward the cost of health insurance premiums for family or individual coverage. Employees hired on or after January 1, 2015 shall be required to contribute 12% toward the cost of health insurance premiums for family or individual coverage during both active employment and in retirement in accordance with Article XI, Section 4. It is expressly understood that the section of Article XI, Section 4 regarding retiree health insurance contributions will not be applicable to employees hired on or before December 31, 2014. In other words, employees hired on or before December 31, 2014 shall not be required to contribute toward the cost of health insurance premiums in retirement.

Article XI (Section 4) – Retirement – Add the following:

It is expressly understood that the section of this article regarding retiree health insurance contributions will not be applicable to employees hired on or before December 31, 2014. In other words, employees hired on or before December 31, 2014 shall not be required to contribute toward the cost of health insurance premiums in retirement.

RPB

Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Michael R. Hekle, Esq.	

LONGEVITY

PBA Position

The PBA proposes to adjust the non-cumulative longevity payments by $250 at each level provided in the current longevity structure. For example, under the Union's proposal the current payment of $950 per year after five years of service would increase to $1,200 per year after five years of service.

The Union asserts that longevity payments for its members are not nearly as competitive as they should be. It asserts that its data shows that for the 5th year longevity payment 13 of the 16 departments in its group of comparables, had higher rates of pay than officers in Carmel. It maintains that its proposed increase is reasonable because it will allow it to keep its compensation in line with that of comparable jurisdictions.

Town Position

The Town insists that the PBA has failed to present any support for this demand. It asserts that its police officers receive competitive longevity payments and that there is no compelling reason to further increase these payments. Since longevity payments add up over time, the Town stresses that the Panel should not increase the Town's liability on this already expensive payment

Panel Determination on Longevity

The Panel Chair finds clear support in the record for an increase to longevity. Police officers in Carmel with significant seniority earn the same or slightly less longevity than several of their counterparts in the group of comparables. Thus, a modest increase is warranted so PBA members can maintain their relative standing.

However, in light of the ability to pay criteria, the Panel Chair hereby determines that this benefit should be increased on the last day covering this Award with retroactive payments starting on December 31, 2014. This will allow police officers to receive the increases they deserve while providing the Town relief on the retroactive costs. This is also fair because it is consistent with the time when the Town will start receiving economic relief in the area of premium contributions toward health insurance for active employees.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON LONGEVITY

Article XVI– Longevity will be modified by increasing the amounts paid at all levels by $100.00 effective December 31, 2014.

Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Michael R. Hekle, Esq.	

MINIMUM TOWN SERVICE FOR RETIREE HEALTH INSURANCE

Town Position

The Town proposes that all employees hired on or after January 1, 2013, be required to serve a minimum of fifteen years of service with the Town and be granted bona fide retirement benefits by the New York State Police Retirement System in order to be eligible for continued medical insurance coverage in retirement. This provision is in the current CBA but with a minimum service requirement of ten years.

The Town maintains that this is reasonable because virtually all other employees in the Town, both represented by unions and those not represented by unions, have a 15 year service requirement. The Town emphasizes that employees should be required to commit at least 15 years of time with the Town in order to receive this extraordinary benefit.

PBA Position

The PBA objects to this proposal. It argues that all of the Town's proposals are designed to reduce pay and benefits away from its members. It urges the Panel to reject this proposal.

Panel Determination on Minimum Town Service for Retiree Health Insurance

The Panel Chair agrees with the Town that 15 years of Town service is a reasonable amount of service time for employees to commit to the Town in order to be eligible to receive the benefit of retiree health insurance. The Panel Chair finds that this change should be applicable to employees hired on or after December 31, 2014 so it is consistent with some of the changes made in the health insurance section of this Award.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD - MINIMUM SERVICE TIME FOR RETIREE HEALTH INSURANCE

Article XI (Section 4) – Modify by adding a sentence to reflect that unit members hired on or after December 31, 2014 shall be eligible for medical insurance coverage in retirement upon reaching 15 continuous years of service with the Town and being granted bona fide retirement benefits by the New York State Police Retirement System.

_____	RPB _____	_____	_____
Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Michael R. Hekle, Esq.	

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are resolved, and not all contentions are agreed with. The Panel, in reaching what it has determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.

AWARD ON REMAINING ISSUES

1. Except as set forth in this Award, the Town's demands are hereby rejected.

RPB

Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Michael R. Hekle, Esq.	

2. Except as set forth in this Award, the PBA's demands are hereby rejected.

RPB

Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Michael R. Hekle, Esq.	

RETENTION OF JURISDICTION

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

RPB

Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Michael R. Hekle, Esq.	

DURATION OF AWARD

Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award is for the period commencing January 1, 2013 through December 31, 2014. The terms of this Award shall be effective on such dates as set forth herein.

IMPLEMENTATION AND PAYMENT OF RETROACTIVITY

The Town shall pay retroactivity to each individual who worked during any period on or after January 1, 2013, as soon as possible, but in no event later than 60 calendar days following the date of the signature of the Panel Chair to this Award. Retroactive payments will be reduced by health insurance premium contributions. The new salary increases shall be implemented as soon as possible, but in no event later than 30 calendar days following the date of the signature of the Panel Chair to this Award.

RPB

Concur _____ Dissent _____
Richard P. Bunyan, Esq.

Concur _____ Dissent _____
Michael R. Hekle, Esq.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is our award.

JAY M. SIEGEL, ESQ. — Date 11/23/15
Public Panel Member and Chairman

MICHAEL R. HEKLE, ESQ. — Date 11/23/15
Employer Panel Member

RICHARD P. BUNYAN, ESQ. — Date 11/23/15
Employee Organization Panel Member

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

On this 23rd day of November 2015 before me personally came and appeared Jay M. Siegel, 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 the same.

ROSAURIA FERNANDES
Notary Public, State of New York
No. 01FE6090536
Qualified in Westchester County
Commission Expires 04/14/2019

Notary Public

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

On this 23rd day of November before me personally came and appeared Michael R. Hekle, 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 the same.

ROSAURIA FERNANDES
Notary Public, State of New York
No. 01FE6090536
Qualified in Westchester County
Commission Expires 04/14/2019

Notary Public

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

On this 23rd day of November 2015 before me personally came and appeared Richard P. Bunyan, 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 the same.

ROSAURIA FERNANDES
Notary Public, State of New York
No. 01FE6090536
Qualified in Westchester County
Commission Expires 04/14/2019

Notary Public