

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration

-between-

TOWN OF WARWICK POLICE BENEVOLENT  
ASSOCIATION, INC.

Employee Organization,

-and-

TOWN OF WARWICK

Public Employer,

**OPINION**

**AND**

**AWARD**

PERB Case No.: IA 2014-008; M2011-010

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

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

Stuart S. Waxman, Esq.  
Public Employer Panel Member

APPEARANCES:

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

For the Town of Warwick  
Thomas, Drohan, Waxman, Petigrow & Mayle, LLP  
By: Melissa N. Knapp, 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 Warwick Police Benevolent Association (PBA) and the Town of Warwick (Town).

The Town is located in Orange County, New York in the Hudson Valley Region. In the 2010 census, it had a population of 32,065.

The Town's Police Department operates on a 24/7 basis. The Police Department bargaining unit currently has 28 unit members comprised of Police Officers, Detectives and Police Sergeants, all of whom are represented by the PBA.

The last collective bargaining agreement (CBA) covering this unit was for three years and expired on December 31, 2013. The parties began negotiations for a successor contract 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 August 6, 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 August 13, 2014. On August 25, 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 conducted before the Panel at the offices of the Town on February 6, 2015 and February 11, 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 two Executive Sessions, the majority of the Panel reached an Award. Although the Town is concurring on the 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, 2014 through December 31, 2015.

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.

### 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 contends that its members should be compared with police officers in Orange County with the most emphasis placed on those jurisdictions that are in geographical proximity to the Town. The PBA contends that past interest arbitrators hearing cases in Orange County have reached this conclusion and there is no justification for the Panel to deviate from these rulings.

The PBA emphasizes that the jurisdictions with the most similar characteristics in terms of geographic area and home values are the Town of Tuxedo, Town of Woodbury, Town of Goshen, Town of Chester, Village of Monroe, Village of Goshen, Village of Chester, Village of Greenwood Lake, Village of Harriman and Village of Tuxedo Park. The PBA maintains that these jurisdictions share similar economic challenges and opportunities and draw on similar workforces.

The PBA argues that the Town's argument that Warwick should be compared only with other town police departments in Orange County should be rejected by this Panel. It notes that Arbitrator Roger Maher was faced with this exact argument in a 2011 Interest Arbitration in the Town of Cornwall. He decided that Orange County is the market for comparison of wages and benefits, not just a few town governments within Orange County. (NYS PERB Case No. IA 2009-026). Similarly, the PBA notes that the Panel Chair has previously ruled in a case involving the Village of Washingtonville in Orange County that "all police jurisdictions within Orange County are the appropriate comparables." (NYS PERB Case No. IA 2008-023).

The PBA claims that the prior interest arbitration awards satisfy the Taylor Law's comparability criteria and that the Town's proposed universe of comparables does not. It argues that if the Panel considers only police officers employed in other towns in Orange County it will fail to make the required comparison between the Town's police officers and other employees similarly situated, i.e., other police officers "performing similar services or requiring similar skills under similar working conditions."

### **Town Position**

The Town asserts that the Panel should compare the Town's police officers to other police agencies within Orange County towns, as well as other employees working for the Town. The Town notes that during his testimony, Sergeant Mullins, the PBA President, conceded that in his preparation for negotiations he compared benefits his members received to the benefits received by other Town employees.

The Town notes that its financial expert, Dr. Kennett, also weighed in on the comparability criteria. The Town stresses that Dr. Kennett opined that towns are the appropriate comparators to the Town because all towns provide the same type and level of services to community members. In stark contrast, villages have little consistency insofar as the services they provide. Finally, Dr. Kennett testified that cities were not appropriate to compare to towns because cities generally have greater population in a smaller urban geographic area.

The Town urges this Panel to determine that towns within Orange County are most relevant because all towns provide similar services and they are all within the same labor market.

### **Panel Determination on Comparability**

The Panel Chair determines police agencies in Orange County to be the most appropriate group of comparables. Although there is some logic to limiting the group of comparators to towns within the County because those jurisdictions provide similar services, the Panel Chair finds that grouping to be too limited. Some of the towns in

Orange County have much smaller police departments and population than Warwick and some of them are located in entirely different parts of the County.

The Panel Chair recognizes that there are similar differences that can be found if one compares the Town to certain cities and villages in Orange County. However, the Panel Chair finds the larger group of comparables to be most appropriate because that is the best indicator of the market for police work in the County. This provides the broadest and most comprehensive way to assess salaries and benefits provided to police officers in the market that the Town competes with.

The Panel Chair sees little justification to deviate from his prior determination in the Village of Washingtonville where he determined that all police agencies within the County were the most appropriate comparators. The rationale for that finding continues to be logical as it was based on a number of factors, including geographic location, similarity of the work, comparability of the cost of living, etc.

## 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 property taxes are very low in Warwick compared to other Orange County towns. It stresses that the tax burden for residents is 14<sup>th</sup> out of 16 for residents of the Village of Warwick if the tax bill as a percentage of family income is compared. For residents living outside the Village of Warwick, the tax burden is 16 out of 16 if the tax bill as a percentage of family income is compared.

The PBA stresses that all of the traditional economic indicators present favorably for the Town. It has maintained low and stable tax increases for the past four years, coming under the tax cap in each of those years. It has received 100% of its real property tax levy and has no issue with collections. Its sales tax revenues continue to grow, albeit at a slower growth rate than may have been anticipated. It has operated with an operating surplus in each of the past three years and has a long history of collecting more revenue than is budgeted and spending less than was budgeted. All indicators in the Town's budget point to the Town's fund balance growing even stronger in 2015.

The PBA points out that the Town presents as being in a strong financial condition under the State Comptroller's Fiscal Monitoring System. The PBA argues that this must be considered an objective and comprehensive assessment of fiscal stress. It notes that the Town's score of 15.8% falls within the "No Designation" category which is a strong statement that the Town is not in any fiscal stress.

The PBA surmises that the Town's financial management has been so prudent that it has even set aside significant money in its budget for police raises. It notes that the Town's General Fund budget includes a contingency account of \$90,000 and that there is an additional appropriation of \$117,400 set aside for the MTA payroll tax which is expected to cost approximately \$12,000. In other words, the Town has the ability to pay for the PBA's proposed increase as a 3% raise would cost the Town less than \$110,000, inclusive of roll-ups for FICA, NYS pension and the MTA payroll tax.

The PBA stresses that the Town is one of the wealthier municipalities in the County. It has the 5<sup>th</sup> highest property wealth in the County. When this is considered along with the County's strong employment data and the Town's healthy budget, it is abundantly clear that the Town has the ability to pay for the PBA's proposals.

For all of the reasons above, the PBA urges the Panel to find that the Town has the ability to pay for its economic proposals.

#### **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 both Dr. Kennett and Mr. Decker testified that the Town has finite sources of revenue available to it and that the major sources of revenue are flat. It notes that sales tax accounted for 17.7% of its revenue in 2013 and that sales tax only increased by .8% in 2014. It stresses that Dr. Kennett testified that mortgage tax collections in Orange County fell sharply from 2013 to 2014. According to the Town, its

revenues from the inter-municipal agreement it has with the Village of Warwick to provide police services to the Town have also decreased due to the Villages request for less police services. In the Town's view, since all of its major revenue sources are flat, its only option is to look at the property tax as the major source of revenue to fund salary and benefit increases.

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 claims that the property tax cap in 2014 was 1.66%. It argues that much of these increases are swallowed up by the cost of step increment and other increases required under the existing CBA. Moreover, while the Town concedes that it can override the cap with a simple majority vote of the Town Board, it maintains that this would be economically irresponsible.

The Town notes that its citizens would be required to shoulder much of the tax burden as only 12% of the Town's tax base is covered by commercial property. The Town has the largest number of agricultural parcels and acres in the County, which is relevant because agricultural properties are taxed at a lower rate than other properties.

The Town argues that the residential taxpayer cannot afford any salary increases in excess of the tax cap. It points out that Dr. Kennett testified that median household income dropped from \$84,104 during the period of 2006-2010 to \$79,441 during the period of 2009-2013. During the same general time period, the Town's residents have

seen significant decreases in the values of their homes. Dr. Kennett testified that between 2007 and 2012 the average sales price decreased by approximately \$108,638.

Although the Town concedes that it is not in fiscal stress at this time, it argues that it was on the verge of being susceptible to fiscal stress in 2011 when it had a fiscal stress score of 40%. In the Town's view, the only reason its fiscal stress score has improved is because since the adoption of the tax cap in 2012, 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. On the positive side, its sales tax revenues increased by approximately \$100,000 per year from 2009 to 2013. Overall sales tax revenues exceeded \$2.9 million in 2013 and those revenues are expected to continue to increase.

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.

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 values in the Town dropped significantly during the recession and have yet to fully recover. Since taxpayers usually have much of their wealth tied up in their residence this economic factor cannot be ignored as it impacts revenue insofar as tax collection and mortgage tax collection is concerned. In addition, while its fund balance is much healthier than it formerly was it is not as healthy as it could be.

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, health insurance and Triborough costs related to step increment that will be more fully discussed in the Salary section of this Award. 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 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.

## **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.

### **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 Orange County 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, 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.

#### **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.

## BASE WAGES

### PBA Position

The PBA has proposed a 3% salary increase for each year of the Award. It describes its proposal as “modest.” The PBA submitted numerous exhibits showing the salary structure for all police departments in Orange County from year 1 through 25. The PBA insists that the data shows that the PBA comparables have maintained stability with respect to their salary rankings. It contends that from 2011 to 2013, the data firmly shows that Warwick’s police officers have been paid 5<sup>th</sup> to 7<sup>th</sup> highest countywide at all areas of the salary schedule.

The PBA asserts that its members should be awarded a pay raise that will maintain its officers relative rank within Orange County and its proposed comparables that are in closer proximity to the Town. The PBA contends that its proposal of 3% 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 an analysis of its budget shows that the Town has the ability to pay for the Award. It has not only set aside certain monies for raises but its fund balance is healthy and has been growing over the past few years.

The PBA contends that its proposal is consistent with the salary increases provided to police officers in Orange County during 2014 and 2015. The PBA notes that

its Exhibit 13 shows that the average percentage raise for police officers in Orange County was 2.619% in 2014 and was 2.696% in 2015. The PBA contends that when one analyzes the raises provided to its proposed comparables that are the closest jurisdictions to the Town, the salary increases are even higher. It notes that police officers in the Town of Chester, the town that borders Warwick, received 3% salary increases in both 2014 and 2015.

To the PBA, there is a clear pattern of Orange County municipalities providing salary increases in the range of 3% to police officers for the years 2014 and 2015. The PBA maintains that the record strongly supports a salary increase at the same level for its members. Since the comparability data strongly supports the PBA's proposal and the Town has the ability to pay for the PBA's proposal, the PBA urges the Panel to adopt its proposal.

### **Town Position**

The Town maintains that the Panel should deny the PBA's salary proposal. While acknowledging the tremendous public safety work that police officers perform, 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 to increase salaries by 3% per year is completely excessive in this economic climate. The Town reaches this conclusion, in part, because of the significant money it has already expended on wages pursuant to step increases received by police officers under Triborough. The Town explains that unlike many police units that have a five step schedule, police officers in Warwick have a 20 step schedule, although some of the steps are frozen. In 2014, 13 of 28 police officers

received a salary increase attributable to step movement, with the average increase being 4.67%. Of significant note to the Town is the fact that the step increment movement cost the Town an additional 2.06% in 2014. In 2015, the Town concedes that the statistics were not as troubling. However, step increment movement still ended up costing the Town 1.14% in 2015, a very significant cost in the Town's view.

The Town maintains that the step increment costs cannot be ignored by the Panel. These costs had to be funded by the Town and numerous PBA members received significant salary increases as a result of the step movement.

When the costs of step movement are added to the PBA's proposal, the Town notes that the PBA's proposal would cost the Town in excess of 5% in 2014 and in excess of 4% in 2015. The Town stresses that it is not aware of any comparables who have received wage increases of 5% in 2014 followed by more than 4% in 2015.

The Town asserts that 5% increases to the PBA's payroll in 2014 would adversely affect the Town's economic picture. It contends that in 2014 the Town has already absorbed an increase of 3.3% for pension costs, which cost the Town \$83,939. It also had to expend additional monies for 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 if the Panel awarded no salary increase to the salary schedule in 2014, the monies the Town has expended on pension, step increment and health insurance increases already exceed the tax cap. 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 the property tax cap minus .5%, which would amount to 1.16% in 2014 and 1.06% in 2015.

The Town maintains that its arguments have even greater credence because PBA members are highly compensated vis-à-vis the comparators. The Town notes that in 2013, the Town's police officers had the highest starting salary by more than \$2,800. According to the Town, the competitiveness of the PBA salary schedule is also evident by the fact that its officers have the highest twenty year salary compared to other towns in Orange County by more than \$3,500. They also have the third highest twenty year earnings with officers in Warwick earning more than approximately \$1.5 million over twenty years.

The Town contends that when differential payments are added such as the detective differential and the sergeant differential that Warwick's police officers maintain their very high salary rankings. Since Warwick'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. Since that time it has been more prudent with its expenditures and increased its fund balance to respectable levels. At the same time, it has some limitations on revenue and some real concerns about expenditures it has little control over. For example, while sales tax increases have rebounded very well since 2009, mortgage tax receipts and the value of homes in Warwick have not rebounded and remain a real concern going forward. The Town has a limited commercial tax base of only 12%. Since the Town is forced to rely on the residential taxpayer to increase its revenues and the data shows that the residential taxpayer has seen decreases in median household income in Warwick and the value of homes in Warwick, the Panel Chair is convinced that the Town's improved outlook is tempered by these other factors.

The Panel Chair is also influenced by the fact that the Town has had to absorb significant increases in health insurance and pension costs over the past few years. Over the two year period covered by this Award, the Town absorbed over \$50,000 in increases in health insurance costs for unit members. In 2014, the Town was required to absorb over \$89,000 in increases in pension costs. Although pension costs slightly dipped for the Town in 2015, the Town's pension costs represent a 2.2% increase in payroll over the two years covered by this Award.

After assessing the overall financial picture of the Town, the Panel Chair is convinced that the wage proposal made by the PBA must be significantly moderated. The Town's limited ability to increase revenue, attributable in part to the 2% tax cap, coupled

with the Town's limited ability to control certain mandated expenses, requires a much more moderate economic settlement than the one proposed by the PBA.

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. Between 2009 and 2013, sales tax revenues increased from \$2.5 million in 2009 to \$2.9 million in 2013 and were expected to increase again in 2014 once all of the data was collected. The Town's TOV (Town Outside Village) Fund has had an operating surplus in each of the last three years and the Town's combined General and Highway Funds have had an operating surplus in each of the last two years. 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% per year. This allows the Town to manage its resources carefully and limit the impact of this Award on its taxpayers.

The Panel Chair finds that a wage increase of 2% plus increment in 2014 and 2% plus increment in 2015 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 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 8 – Compensation, Education and Training**

The salary schedule shall be increased by 2% effective January 1, 2014 and an additional 2% effective January 1, 2015.

_____	<del>_____</del>	<del>_____</del>	_____
Concur	Dissent	Concur	Dissent
Richard P. Bunyan, Esq.		Stuart S. Waxman, 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 stresses that over the two year period covered by this Award, the Town has already absorbed over \$50,000 in increases in health insurance costs for unit members. It argues that there must be some relief provided in the area of health insurance to assist the Town with defraying some of the exorbitant costs.

The Town contends that the health insurance benefits offered to unit members are extremely generous. It notes that in the last contract the parties agreed that new

employees would pay 10% toward the cost of health insurance but that this cost would revert back to 0% in retirement. The Town stresses that it is getting absolutely no relief from this provision because it has hired no new employees. Hence, at this time there are no unit members required to contribute toward health insurance either during their active employment years or in retirement.

The Town observes that PBA members are the only employee group in the Town that has no premium contribution requirements. It notes that employees represented by CSEA, the Town's other union, have senior staff members contributing during their active employment years. CSEA members hired after August 11, 2012 also contribute the same as active employees in retirement, i.e., 15%. Town employees who were appointed after July 21, 2011 and who are not represented by a union will be obligated to contribute 10% of the health insurance premiums in retirement. Finally, the Chief of Police and the two Lieutenants contribute 10% toward health insurance.

The Town insists that its premium contribution proposal for active employees and retirees (i.e., 15% for existing members and 20% for new hires with retirees contributing the same amount in retirement as they did in active employment) is reasonable. It concedes that it is not as common for police officers in Orange County to be contributing to health insurance as it is for other public and private sector employees in the County and beyond. However, it stresses that this trend is starting to end and that municipalities in the County are requiring police officers to contribute toward health insurance during active employment or retirement more and more frequently. 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 contends that there is no need for it to make further sacrifices toward health insurance because it already pays its fair share. The PBA notes that in the last round of negotiations, the PBA agreed that new unit members would pay 10% of the cost of health insurance. The PBA stresses that it is not its fault that the Town has decided not to hire any new full-time unit members. Indeed, the PBA contends that the Town continues to decrease full-time jobs through attrition and then has the audacity to complain that it has no unit members contributing toward health insurance. The PBA argues that this approach should not be given any credence.

The PBA notes that its existing unit members have already contributed toward health insurance under a provision in the CBA that formerly was in existence. Under that provision, every current member of the PBA contributed toward the cost of health insurance during their first three years of employment. When these costs are added to the \$115,712.35 that unit members have collectively contributed between 2004 and 2013 toward the cost of their dental, optical and life insurance needs, it becomes abundantly clear that all of the Town's health insurance proposals should be rejected.

The PBA insists that any analysis of comparable units in Orange County strongly supports its contention that the Town's proposal should be rejected. It notes that of the 26 departments in the PBA list of comparables, 9 of 26 pay 100% for individual and family plans for active employees and that 10 other departments have some contribution during an officers first few years of employment followed by the officer receiving a 100%

contribution for the rest of his career. Similar statistics are shown for retiree health insurance. In other words, since the vast majority of police officers in Orange County do not contribute toward health insurance in active employment or retirement, 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 been 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 that extending premium contributions for new hires into retirement is reasonable.

Although this change will not provide the Town with any financial relief in the foreseeable future, the change is reasonable in the context of the overall Award. The Panel Chair notes that while a vast majority of Orange County police officers continue to enjoy fully funded health insurance in retirement, there are some units that require new hires to contribute toward health insurance both in active employment (as is currently the case in Warwick) as well as retirement. This is the status quo in the Village of Harriman,

the City of Middletown, the Town of Montgomery, the Town of New Windsor, the Village of Tuxedo Park and the Village of Walden.

The Panel Chair finds that this Award is also consistent with the way the Town is approaching its labor relations with its new hires who are not police officers, all of whom are now required contribute toward the cost of health insurance.

Notwithstanding the Panel's ruling on retiree health insurance, there are compelling factors that persuade the Panel Chair that it is not just and reasonable to impose the premium contributions that are proposed by the Town for active employees. First and foremost is the fact that the Panel is obligated under Section 209.4 of the Civil Service Law to look at the benefits that comparables are receiving.

The fact is that a vast majority of police officers in Orange County are not required to contribute toward the cost of health insurance in active employment. The data submitted by the PBA strongly supports its argument that there should be no requirement for existing unit members to contribute toward health insurance either in active employment or 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 16 – Medical Benefits**

Paragraph C of Article 16 shall be amended to reflect that employees hired on or after ratification of the Memorandum of Agreement dated November 3, 2011 will be required to contribute ten percent (10%) of the cost of health insurance premiums during

retirement in addition being required to contribute ten percent (10%) of the cost of health insurance premiums during their employment.

\_\_\_\_\_  
Concur  
Richard P. Bunyan, Esq.

~~\_\_\_\_\_~~  
Dissent

\_\_\_\_\_  
Concur  
Stuart S. Waxman, Esq.

~~\_\_\_\_\_~~  
Dissent

### NOTICE OF SCHEDULING CHANGE FOR TRAINING

#### Town Position

The Town is currently required to provide unit members with thirty days notice before it implements a schedule change for the purpose of having a unit member attend a training session. The Town proposes to reduce the notice to change the schedule for training purposes from thirty days to fifteen days.

The Town stresses that the evidence established that it often does not have thirty days' notice of training opportunities. When it receives less than thirty days notice, it is required to either have police officers forego the training or it is required to pay officers overtime to attend the training for failing to comply with the thirty day notice provision. Since many trainings go multiple days, the Town asserts that the current provision is unduly burdensome and detrimental to both the Town and its officers.

#### PBA Position

The PBA urges the Panel to reject this proposal. It contends that its officers should be compensated at the overtime rate when they receive less than thirty days notice of a scheduling change. It argues that changing schedules is burdensome to police officers and extremely disruptive for them and their families.

#### Panel Discussion on Notice of Scheduling Change for Training

The Panel Chair determines that changing the notice of scheduling changes from thirty days to twenty days for training purposes only is appropriate. The Town frequently receives less than thirty days notice of training opportunities. Hence, a reduction in the notice requirement from thirty days to twenty days strikes the right balance. It should give the Town greater flexibility in changing police officers' schedules for training purposes without incurring overtime while still providing police officers with substantial notice prior to the time their schedules will be changed.

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 NOTICE OF SCHEDULING CHANGE FOR TRAINING**

**Article 8(5)-Training**

Paragraph B of Article 8(5) shall be amended effective July 16, 2015 to reflect that the notice of scheduling changes for training shall be reduced from thirty (30) days to twenty (20) days.

\_\_\_\_\_  
Concur  
Richard P. Bunyan, Esq.

~~\_\_\_\_\_~~  
Dissent

~~\_\_\_\_\_~~  
Concur  
Stuart S. Waxman, Esq.

\_\_\_\_\_  
Dissent

**PART-TIME OFFICERS' MINIMUM HOURS**

**Town Position**

The Town currently utilizes part-time police officers to fill holes in shifts or supplement officers on shifts. However, there is no minimum number of hours a part-

time officer needs to commit to work. The Town proposes that part-time officers be required to work a minimum of 128 hours for each quarter of the year.

The Town notes that that there are many part-time officers who have little availability and are rarely assigned to work by the Town. The Town is concerned because these officers are not benefitting the Department. The Town opines that it is logical for an officer to be required to make a basic commitment to work for the Town.

### **PBA Position**

The PBA does not strongly object to this proposal. It expresses concern that part-time officers be treated fairly if there are extenuating circumstances that prevent them from upholding a basic commitment.

### **Panel Discussion on Part-Time Officers' Minimum Hours**

The Panel Chair determines that it is prudent for there to be a 110 hour per quarter minimum number of hours for part-time officers to work for the Town. The Town needs to rely on these officers to cover its needs. In addition, it is better for the entire Department if part-time officers have some regularity of employment. This will allow part-time officers to be conversant with all Department procedures and to be used to working with their colleagues.

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 PART-TIME OFFICERS' MINIMUM HOURS**

#### **Article 5**

Add a new section to reflect that part-time officers hired on or after July 16, 2015 will be required to work a minimum of 110 hours per quarter. Failure to comply may be grounds for disciplinary proceedings.

\_\_\_\_\_  
Concur  
Richard P. Bunyan, Esq.

~~\_\_\_\_\_~~  
Dissent

~~\_\_\_\_\_~~  
Concur  
Stuart S. Waxman, Esq.

\_\_\_\_\_  
Dissent

**PART-TIME OFFICERS' SECTION 75 CIVIL SERVICE LAW RIGHTS**

**Town Position**

Part-time police officers currently receive the right to a Section 75 Civil Service Law Disciplinary Hearing after working for the Town for 12 months. The Town proposes to change this provision from 12 months to three years. The Town maintains that it does not have sufficient time to evaluate a part-time employee in 12 months due to their limited work schedules.

**PBA Position**

The PBA objects to this proposal. It argues that one year is sufficient to evaluate employees and that there is no compelling reason for this proposal to be granted.

**Panel Discussion on Part-Time Officers' Civil Service Law Section 75 Rights**

The Panel Chair determines that it is prudent for the Town's proposal to be granted for new hires. In almost all instances, a part-time employee will have worked fewer hours in three years than a full-time employee works in one year. The Town has a legitimate and compelling reason to want sufficient time to evaluate part-time employees before they are granted disciplinary rights under Section 75 of the Civil Service Law.

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 PART-TIME OFFICERS' CIVIL SERVICE LAW SECTION 75**

**RIGHTS**

**Article 24 - Tenure**

Add a new section to reflect that part-time officers hired on or after July 16, 2015 will be required to work for three years of continuous service prior to being granted disciplinary rights under Section 75 of the Civil Service Law.

\_\_\_\_\_  
Concur  
Richard P. Bunyan, Esq.

~~\_\_\_\_\_~~  
Dissent

~~\_\_\_\_\_~~  
Concur  
Stuart S. Waxman, Esq.

\_\_\_\_\_  
Dissent

**STEADY SHIFTS**

**PBA Position**

The PBA proposes to change the current schedule of shifts that rotate each week for officers to steady shifts. It notes that the Town adopted steady shifts in 2012 and 2013. However, since the parties' agreement on steady shifts had a sunset provision that allowed the Town to revert back to rotating shifts after December 31, 2013, the PBA proposes to have steady shifts permanently implemented in this round of negotiations.

The PBA insists that the down side of working rotating shifts has been recognized for decades. It asserts that numerous studies show that rotating shifts adversely affect sleep, mood and performance of workers. It contends that rotating shift workers suffer a high degree of sleep related disorders, gastrointestinal abnormalities and have an

evidence severely undermined the PBA's claim that overtime increased in 2012 and 2013 because of the way the Town chose to staff unit members those years.

The Town objects to steady shifts because police officers working on the overnight shift will have little or no interaction with the Chief of Police and/or Lieutenants who work day or afternoon tours. The Town contends that police officers with steady overnight shifts complained that they felt disassociated with the Department when they had a steady overnight tour.

The Town also pointed out that since there are few restrictions on what an officer can do during his/her off-duty time, the implementation of steady shifts does not necessarily mean that officers will be more rested.

In the end analysis, the Town urges the Panel to reject the PBA's steady shift proposal because it adversely affects its operation and it did not work when it was operating on an experimental basis.

#### **Panel Discussion on Steady Shifts**

Many of the arguments raised by the PBA on this issue are persuasive to the Panel Chair. However, since this proposal is so important to the Department's operation, the Panel Chair does not feel it is appropriate to substitute his judgment for the individuals charged with the authority to run the Town's Police Department at this time.

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 STEADY SHIFT PROPOSAL**



**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, 2014 through December 31, 2015. 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, 2014, 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. 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.

X  
Concur \_\_\_\_\_  
Richard P. Bunyan, Esq.

X  
Concur \_\_\_\_\_  
Stuart S. Waxman, 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.

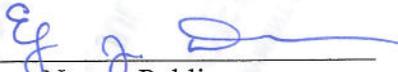
Jay M. Siegel 7/16/15  
JAY M. SIEGEL, ESQ. Date  
Public Panel Member and Chairman

Stuart S. Waxman 7/16/15  
STUART S. WAXMAN, ESQ. Date  
Employer Panel Member

Richard P. Bunyan 7/16/15  
RICHARD P. BUNYAN, ESQ. Date  
Employee Organization Panel Member

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

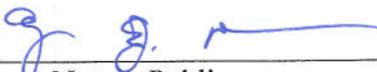
On this 16<sup>th</sup> day of July 2015 before me personally came and appeared Jay M. Siegel, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

  
\_\_\_\_\_  
Notary Public

ELIZABETH J. DUNDA  
Notary Public, State of New York  
No. 01DU6267280  
Qualified in Dutchess County  
Commission Expires 08/13/20 14

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

On this 16<sup>th</sup> day of July before me personally came and appeared Stuart S. Waxman, 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.

  
\_\_\_\_\_  
Notary Public

ELIZABETH J. DUNDA  
Notary Public, State of New York  
No. 01DU6267280  
Qualified in Dutchess County  
Commission Expires 08/13/20 14

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

On this 16<sup>th</sup> day of July 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.

  
\_\_\_\_\_  
Notary Public

ELIZABETH J. DUNDA  
Notary Public, State of New York  
No. 01DU6267280  
Qualified in Dutchess County  
Commission Expires 08/13/20 14