

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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In the Matter of the Interest Arbitration between

TOWN OF EVANS POLICE  
BENEVOLENT ASSOCIATION, INC.,

**CONCILIATION**

Petitioner,

**AWARD**

- and -

**For the Period:**

**January 1, 2021 thru December 31, 2022**

TOWN OF EVANS, NEW YORK,

Employer.

PERB Case No.: IA2021-008; M2021-077  
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**BEFORE:** Michael S. Lewandowski  
Public Panel Member and Chairman  
  
Edward W. Guzdek, Jr.  
Employee Organization Panel Member  
  
Jeffrey F. Swiatek, Esq.  
Public Employer Panel Member

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairman of the New York State Public Employment Relations Board ("PERB") to make a just and reasonable determination of an impasse and dispute between the Town of Evans Police Benevolent Association, Inc. ("Association") and the Town of Evans, New York ("Town"). PERB made this designation by letter dated February 7, 2022.

In arriving at each determination, the Panel has specifically reviewed and considered the following factors, 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 collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel determined that the members of this unit performed the full duties of police officers as referenced in §209 of the Law.

The Panel also gave notice to the fact that the Town is classified as a “fiscally eligible municipality” pursuant to CSL §209(6). As such, the Panel is required to assign a 70% weight to the Town’s ability to pay and if further directed by Law to consider constraints and limitations of New York’s real property tax cap pursuant to CSL § 209(6)e; General Municipal Law § 3-c.

An arbitration hearing was conducted before the Panel on June 15, 2022; June 16, 2022 and September 27, 2022 at the Town’s offices. The Panel received a significant number of exhibits, contracts, demonstrative evidence and testimony that was admitted into evidence.

Thereafter, the Panel convened an Executive Session on December 8, 2022 and December 19, 2022. The panel engaged in discussions concerning the issues raised by the parties. Subsequently, the majority of the Panel was able to reach agreement on a just and reasonable Award for the period commencing January 1, 2021 thru December 31, 2022. The Employee Organization Panel member dissented.

It is necessary for the record to reflect that the unit affected by this award is comprised of 18, employees including 4 Lieutenants; 2 Detectives, 11 Patrol officers and 1 Patrol/School Resource Officer.

The total base annual salaries of the unit members subject to this interest arbitration is \$1,895,976 (Hynes 2020 Base Salary Exhibit) therefore a one percent (1%) increase in base salary would cost the Town \$18,896 (base salaries only). Of course, this figure is significantly increased as the base wage is used to compute benefits such as overtime.

The Panel considered the proposed list of comparable employers submitted by both the PBA and the Town and concluded that it could accept neither list. Instead, the Panel reached its positions considering select municipalities utilizing data contained in both lists where the panel deemed appropriate.

The Panel agreed that the data presented shows the Town has the ability to pay the items awarded here without undue strain on cost to the taxpayers of the Town. The Panel was split on whether the Town had the ability to pay increases higher than awarded here. While the majority of the Panel noted that the Town's fiscal position has improved over past years, the majority of the Panel concluded that it is too soon to declare that the Town will not face continuing fiscal distress as factors such as inflation and the rising costs of benefits, particularly health insurance, increase at an alarming rate. It is important to also note that retirement contribution rates set by the State of New York are subject to the condition of a stock market that has suffered a significant pull back these past two years and is subject to a projected recession.

The Panel chose not to accept the majority of the proposal presented for consideration. The items rejected here reflect the Majority of the Panel's determination that to provide the items would impose an undue cost or burdensome restraints on the Town and the Police Department

**ABILITY TO PAY:** The Town operates on a fiscal year that runs from January 1<sup>st</sup> to December 31<sup>st</sup>. The last full fiscal year for which budget information was available to be used by the panel was for the year ending December 31, 2021. The Town had adopted a budget for fiscal year 2022 however that fiscal year was not yet completed at the time the Panel made its determinations.

The record shows that the Town now has an increasingly healthy financial position however that financial position follows a recent period wherein the Town's financial health was in serious danger. The Town had adopted a conservative approach to its budget in 2016 and to its credit, it has made significant strides in turning its financial situation around. The majority of the panel concludes that it would not be appropriate to now provide an award that would set the Town back in its goal to continue on the path of sound budgetary positions. As shown above, the path going forward is certainly not clear and rosy.

While the Association advances that the Town could use a number of approaches to fund this Award such as a tax increase or reduction in the Town's fund balance, such approaches, if extreme, would potentially return the Town to fiscal instability. It is here again important to note that the Town is a "fiscally eligible municipality" as shown above. It is also important to note that as part of the Town digging itself out of the financial hole the then new Town Supervisor found herself in, the Town had to impose a 20% tax increase on its taxpayers in 2016 and 2017. The data presented shows that the Town's tax base is primarily composed of a significant number of rural, residential properties as opposed to a more generous mix of residential and business properties as exists in the communities deemed as comparable to the Town. As pointed out by the Town in its brief, "consideration of the interests and welfare of the public requires the exercise of restraint by the panel with regard to consideration of whether to impose any additional financial burdens on the Town and its taxpayers." This is especially true given the significant tax increases imposed by the Town on its taxpayers in the not too distant past.

While it is true and recognized that the members of the Association (as documents and testimony presented show) must also face increasing costs of living due to inflation, it is also true that the Town

faces the very same inflation perhaps on a grander scale. The record shows that individuals must indeed pay more for gas, bread, milk and eggs along with increases in rents however the Town also must pay more for gas, supplies, health insurance and many other needed supplies including the purchase and repair of vehicles. The Panel here attempts to provide some relief in that regard by awarding base pay increases in excess of the percentages paid by the municipalities deemed comparable to the Town of Evans police but not do such financial harm as to return the Town to financial distress.

As stated above, considering all of the criteria contained in the Law and the fiscal and other related data presented to the panel, the panel concluded the Town has the ability to pay the increases in salaries and benefits found appropriate by the majority of the Panel in this award. The Panel noted sufficient funds to provide for the percentage increases specified below.

Anthony Hynes Exhibit 1 shows that at the end of Fiscal Year Ended December 31, 2021, the Town had a General Fund Operating Surplus of 1.5 million dollars although the Town advances that this surplus is not available for wage increases. The Town's General Fund cash and cash equivalents on hand at the end of fiscal year 2021 was \$3,793, 347 nearly 5 times its total liabilities. Unassigned Fund Balance increased more than 5.5 million from January 2017 thru the end of fiscal year 2021. In fact, Town Supervisor Hosler testified that the Town is "really, really financially strong. This data shows that the Town has the ability to pay the increases found appropriate by the majority of the Panel here however caution must be exercised so as not to put the Town on track towards the financial deficits it has had in the past. A "fair" and justified wage increase is one that provides the members of this bargaining unit with salary increases in line with or slightly higher wage increases paid to officers in

comparable municipalities as detailed below. Slightly higher since the majority of the panel agrees that the Association members, on average, are paid less than their counterpart officers.

The Panel took notice of the positions of the parties in that the Town initially took the position that it could only support a 1% per year wage increase particularly since the Town had not budgeted any monies for Police pay increases in the two years covered by this Award. That position is simply not supported by the data presented into evidence here. Further, a municipality cannot seriously offer as a defense that it has an inability to pay since it chose not to put money in the budget when in fact, it has sufficient resources to reasonably increase wages. If this were to be a viable defense, all municipalities could avoid pay increases for police and fire personnel simply by choosing not to allocate their financial resources for such increases.

The Panel also took notice of the Association's position that it should receive a \$9,000.00 per employee retroactive wage base increase along with another 2.5% wage increase in each year of the 2 years covered by this Award. When asked at the hearing as to how the \$9,000.00 increase was arrived at, the Association's witness said he did not know the methodology used to come up with that figure. Although the Association attempted to justify this huge salary increase in its brief by saying it would bring its members more in line with the salaries paid to comparable police, the amount is so large and unprecedented as to call into question the seriousness of the proposal.

The Panel of course, recognized that the positions of the parties might simply have been a "negotiations tactic" designed to serve as throw aways as the Panel deliberated on the proper outcome to become the Award.

The bottom line for the majority of the Panel is that while the Town has a significantly better financial position that it has had in the past, the Town (as is the case with the members of the Association albeit on a much grander scale for the Town) is faced with having to fund wage increases for police and other Town employees in the face of increasing costs and an uncertain future including the potential that a mild recession as is predicted.

As will be detailed below, the Panel ultimately decided to grant a base wage increase slightly in excess of the percentage increases (exclusive of the \$9,000 per officer) sought by the Association and significantly more than that proposed by the Town.

**COMPARABLES:** The lists of comparable units offered by the parties was overall rejected by the Panel. Instead, the Panel agreed that the following constitutes a proper list of comparable officers based on facts such as size of the unit; size and location of the municipality and the demographics of the community such as household income. Typically, in Interest Arbitrations, a perfect match is not found since no two communities and police departments are exactly the same. The following is, in the Panel's estimation, the closest match that can be found.

Municipality	Year 1 Salary	Year 25 Salary
	2021	2021
City of Tonawanda	\$50,420	\$77,890
Village of Depew	\$46,175	\$77,573
East Aurora	\$47,160	\$90,529
Town of Lancaster	\$61,159	\$75,813
Town of Orchard Park	\$57,835	\$92,892
Town of Tonawanda	\$65,084	\$84,551



For the same year Town of Evans officers' year one base wage is \$46,818. Year 25 base salary for Town of Evans Patrol Officers is \$76,987.

Comparing Town of Evans patrol officers to listed in the above chart shows that Evans' salaries while not the lowest are the second lowest salaries paid comparable police department officers at the one-year salary level. Evans officers are the lowest paid at the 25-year level within the same group. There is a difference of opinion among the Panel members as to whether comparing average salaries is a valid comparison given that to do so would ultimately result in police department wages continually pulling up in effect bouncing off each other to the exclusion of other municipal employees and in a never ending upward spiral. Such an attempt to compare wages to the average also would not take into account the fact that no two communities are exactly the same. Despite this difference of opinion, the majority of the Panel did conclude that it was appropriate to advance the members of this Association at a slightly greater percentage than the percentage increases provided to the comparable police departments. However, the majority of the panel does not find it appropriate when considering all of the criteria provided by Law and the overall financial picture including the demographics of the Evans community to make up the difference in one Award or even to significantly advance the salaries of the Town of Evans officers considering the Town's fiscal situation having just pulled itself out of a dire financial situation. Perhaps a greater step forward would be appropriate should the Town's fiscal health continue on the path it is now on and if the Town does not suffer from the projected recession or other financial setbacks.

The data presented shows that the comparable units received base wage increases averaging 2.5 % during the two-year period covered by this Award. The Town of Evans police will receive base wage

increases of 3% for each year for the period of this Award. As noted below, this percentage increase is magnified by the Panels' rejection of the Town's proposal to increase employee contribution to health insurance premiums. Had the Panel accepted the Town's proposal to increase Health Insurance contributions, the increased contributions would have eroded officer salaries by in excess of 1%.

By virtue of this Award, the majority of the Panel determined that base wage increases of 1.5% retroactive to January 1, 2021 and a 1.5% base wage increase retroactive to July 1, 2021 is appropriate for the first year of this Award. Further, a 1.5% base wage increase retroactive to January 1, 2022 and a 1.5% increase retroactive to July 1, 2022 is appropriate for the second year of this Award.

The data reflected above shows a justification for the increases in salary awarded here and shows the ability, on the part of the Town, to pay these increases.

The majority of the Panel determined that with the exception of the following, all other proposals were either withdrawn, lacking sufficient evidence to support or were items that had just recently been added in prior negotiations.

**TOWN PROPOSAL #8**, ARTICLE XV: Section 15:02: Health Insurance.

The majority of the Panel adopted the language only in part. Added to the Agreement will be the provision that "Employees who retire effective (modified date) December 31, 2022, and who are eligible for retiree coverage under this section shall be permitted to select from the coverage options available to

active employees, as may be modified from time to time, or will be provided coverage comparable on an overall basis to such plans (including with regard to Medicare coverage).”

Further, under the same Health Insurance provision, the Panel accepted the provision regarding switching to different carriers. The added language follows. “The Town may provide the coverage specified in this Section, or any portion of that coverage, through a different carrier or administrator, and/or a different method of funding, so long as the coverage, benefits, co-pays, and deductibles are, on an overall basis, substantially the same as the current coverage, benefits, co-pays and deductibles. Any such change, shall be implemented no sooner than 60 days following written notice to the PBA in order to provide the PBA with the opportunity to consult with the Town regarding any such changes and/or alternatives to any such changes.”

The balance of the Town’s proposals on Health Insurance including increases in employee contributions are rejected. We particularly note that while the Town had sought to increase Association member contributions to health insurance premiums, that proposal is rejected. This is particularly proper given the base wage increase provided here. It is estimated that the Town’s proposal would have cost the police officers affected in excess of 1% of their base salary.

The above is accepted by the majority of the Panel due to the ever-increasing cost of health coverage and is intended to provide the Town with some ability to address increase costs without increasing the cost to the Association’s members. The provisions adopted here by the majority of the Panel provide the Town some potential future address to the projected significant and continuing

premium increases without increasing the cost of health insurance that members of the Association must bear.

It is in consideration of this data that we grant the following Award.

**AWARD**

**PERB CASE NO.: IA2021-008; M2021-077**

**TOWN OF EVANS AND THE TOWN OF EVANS PBA**

**FOR THE PERIOD OF 1/1/2020 – 12/31/2022**

The Award in this matter is as follows.

**Award: Base Salaries; Article VI:**

Base Salaries are to be increased 1.5% retroactive to January 1, 2021 and an additional 1.5% increase retroactive to July 1, 2021. Base salaries are to be further, increased 1.5%, retroactive to January 1, 2022 and an additional 1.5% increase retroactive to July 1, 2022.

**Award: Article XV: Section 15.02: Health Insurance**

Add the following language and revise any inconsistent current language to align with this new language.

Employees who retire after December 31, 2022, and who are eligible for retiree coverage under this section shall be permitted to select from the coverage options available to active employees, as may be modified from time to time, or will be provided coverage comparable on an overall basis to such plans (including with regard to Medicare coverage).”

This language was modified from the proposed language only to push back the effective date.

Also add the following language.




The Town may provide the coverage specified in this Section, or any portion of that coverage, through a different carrier or administrator, and/or a different method of funding, so long as the coverage, benefits, co-pays, and deductibles are, on an overall basis, substantially the same as the current coverage, benefits, co-pays and deductibles. Any such change, shall be implemented no sooner than 60 days

following written notice to the PBA in order to provide the PBA with the opportunity to consult with the Town regarding any such changes and/or alternatives to any such changes."

Award on Remaining Demands of the Town and PBA:

Any demands and/or terms other than those specifically set forth in this Award by the Town and the Association, are hereby denied.

Term of Award : The duration of this Award shall be January 1, 2021 through December 31, 2022.

✓ _____ Concur	_____ Dissent	 _____ Jeffrey Swiatek Employer Panel Member	11/17/2023 _____ Date
_____ Concur	✓ _____ Dissent	 _____ Edward Guzdek Employee Panel Member	11/10/2023 _____ Date
✓ _____ Concur	_____ Dissent	 _____ Michael Lewandowski	11/14/23 _____ Date

**PANEL MEMBER AFFIRMATIONS**

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
MICHAEL S. LEWANDOWSKI

Public Panel Member and Chair

Dated: 1/10/23

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
EDWARD GUZDEK

Employee Organization Panel Member

Dated: 1/10/2023

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
JEFFREY SWIATEK

Employer Panel Member

Dated: 1/17/2023

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

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In the Matter of the Interest Arbitration between

TOWN OF EVANS POLICE  
BENEVOLENT ASSOCIATION, INC..

Petitioner,

- and -

**Public Employer  
Panel Member**

**Concurring Opinion**

TOWN OF EVANS, NEW YORK,

Employer.

PERB Case No.: IA2021-008; M2021-077  
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At the outset, I wish to recognize that the Panel Chair exercised his duties in a most professional manner, and that he permitted each party a full and fair opportunity to present evidence and arguments. I have no doubt that the Award reflects his genuine efforts to reach the most just and reasonable result possible, based upon careful consideration of the required statutory factors. I likewise wish to recognize the courteous and productive efforts of the Employee Organization Panel Member.

I hereby reluctantly concur with the Award in this matter. The Panel deliberations in a compulsory interest arbitration proceeding necessarily involve discussion, persuasion and even a measure of "bargaining" among the Panel members. The interest arbitration process is imperfect, and has proven to be strikingly unresponsive to the fiscal realities faced by municipalities in both the short and long term. As a result, a Public Employer Panel Member must often support the least damaging - even if still undesirable - alternative when participating in this process. Simply put, I recognize that if I rejected the proposed terms of this interest arbitration Award, an alternative final award could have been even more costly to the Town.

Nonetheless, despite my concurrence, I am compelled to recognize the ever-increasing burdens that have been placed on the Town's taxpayers from recent tax levy increases, the unprecedented financial and economic issues raised by the COVID-19 pandemic, historical inflation rates, significant stock market declines and the growing risk of a recession. These burdens must be placed in the context of the current generous compensation and benefit levels enjoyed by Town employees. Indeed, this comparison should be given no less statutory weight than comparisons with other comparable law enforcement units. Further, the Town will continue to face the need to address its significant liability for unfunded post-retirement benefits, the ever growing-costs of providing employee health insurance coverage and the impacts of the current and future economic environment. The wage increases in this Award will no doubt make it more difficult for the Town to respond to these and other economic challenges.



4/17/2023

Jeffrey F. Swiatek, Esq.  
Public Employer Panel Member



**STATE OF NEW YORK  
PUBLIC EMPLOYMENT ARBITRATION**

**In the Matter of the Interest Arbitration Between**

**TOWN OF EVANS,**

**Employer**

**PERB CASE NO.  
IA 2021-008  
M 2021-077**

**-and the-**

**TOWN OF EVANS POLICE BENEVOLENT  
ASSOCIATION,**

**Union.**

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**Before the Interest Arbitration Panel:  
Michael S. Lewandowski, Public Panel Member and Chairperson  
Jeffrey F. Swiatek, Esq., Public Employer Panel Member  
Edward W. Guzdek, Jr., Employee Organization Panel Member**

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**Dissenting Opinion**

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**Edward W. Guzdek, Jr.  
Employee Organization Panel Member**

After having little meaningful input into the majority's decision, and after a careful and thorough review of said majority opinion, on behalf of the Town of Evans Police Benevolent Association, Inc. (hereinafter, "PBA" or "Union"), this Panel member is left with no choice but to strongly dissent.

Under the Public Employee's Fair Employment Act, (Article 14 of the New York State Civil Service Law, commonly referred to as the "Taylor Law") an Interest Arbitration Panel is charged with the responsibility to "make a just and reasonable determination of the matters in dispute, taking into account certain enumerated factors." CSL § 209(4)(c)(v); Matter of Buffalo Professional Firefighters Assn., Inc., Local 282, IAFF, AFL-CIO CLC (Masiello), 13, N.Y.3d 803, 804 (2009). The majority's Opinion and Award (hereinafter, "Award") is neither "just or reasonable" for reasons including, but not limited to, that the record evidence conclusively proved that the Town of Evans (hereinafter, "Town") has the ability to pay PBA members a reasonable wage and benefit increase despite its political unwillingness to do so and the majority's refusal to weigh the statutory criteria in good faith. The Panel Majority exceeded its authority by adopting an Award based upon conjecture and speculation regarding events that could happen in the future instead of focusing upon the reality of what is happening in the present.

The record evidence adduced at the hearing clearly shows that the Town has the ability to fund fair salary increases. The Panel Majority's tortured reasoning for disregarding this clear ability to pay will not stand the test of time. Despite the Panel Majority's recognition that Evans Police Officers are paid the second lowest salaries at the one-year level and are the lowest paid at the 25-year level within the universe of the comparable communities, it refused to issue a just and reasonable award that advances their relative position among its contemporaries in the

comparable bargaining unit. I will note that the Panel Chair avers that “[p]erhaps a greater step forward would be appropriate should the Town’s fiscal health continue on the path it is now on and if the Town does not suffer from the *projected recession or other financial setbacks*” (Award, p. 9, emphasis added). However, that statement fails to acknowledge the prior voluntary financial sacrifice of PBA members that benefited the Town, and which renders such a statement hollow, signifying nothing.

Contract resolution for police officers who risk their lives on a daily basis should never be considered lightly. The Panel Majority’s Award for salary is far below what is justified in order to bring PBA members to a level of compensation on par with the community of Police Officers in the area; it institutionally relegates these officers to second class status. It is my fear that this second-class status will be a yoke that will never be thrown off by the dedicated men and women of the Evans Police Department. There is no justifiable basis assigned to the Panel Majority’s wage determination based upon the data available to the Panel. The Panel Majority’s failure to reach a just and reasonable determination compels me to dissent from this Award.

At the outset, the Panel’s determination is not grounded in the record.

Here, the Panel Chair cites to the PBA’s consultant, Anthony J. Hynes (“Hynes”), 2020 Base Salary Exhibit. Award, p. 3. The Award then states that PBA unit members subject to this interest arbitration base annual salaries totals \$1,895,976 and that therefore a one percent (1%) increase in base salary only would cost the Town “\$18,896 (base salaries only).” Award at p. 3. The Panel Chair’s citation is to Hynes Exhibit, 32 (modified on 10/25/22), page 1. Per the exhibit, the \$1,895,976 represents the aggregate total that an Evans PBA member holding the rank of police officer makes over his or her 26-year working career absent any raises. The \$1,895,976 is the column total for the 26-year period and is not the annual base salaries of the

unit members subject to this interest Arbitration. According to the record evidence presented at the hearing, the appropriate Hynes Exhibit is AHX-12 (modified 10/12/2022), page 1. Based upon actual base salary figures for the year ended 2021 provided to the PBA by the Town and that includes all PBA member ranks, the total, actual base annual salaries of unit members subject to this interest arbitration is \$1,216,766 and therefore a 1% increase to base is \$12,167 and not \$18,896<sup>1</sup>. This overestimates the cost of a 1% raise by approximately 50%.

The Panel Majority further improperly relies upon information that is outside the record, belied by the record evidence, outside of the relevant time period, or is based upon what can only be described as prognostications of future events. Specifically, the Award covers the two-year period from January 1, 2021 to December 31, 2022. In support of the Award, the Panel's majority states:

"While the majority of the panel noted that the Town's fiscal position has improved over past years, the majority of the Panel concluded that it is too soon to declare that the Town will not face continuing fiscal distress as factors such as inflation and the rising costs of benefits, particularly health insurance, increase at an alarming rate. It is important to also note that retirement contribution rates set by the State of New York are subject to the condition of a stock market that has suffered a significant pull back these past two years and is *subject to a projected recession*." Award, p. 4. (Emphasis added).

Notwithstanding the fact that the Panel Majority's assertion that the "stock market has suffered a significant pull back these *past two years*" is outside the record, it is contrary to fact (emphasis added). The stock market turned in a solid performance in 2021. According to Forbes, "[e]xcept for a few brief sell-offs, the S&P 500 gained 26.9% for the year. The Dow Jones Industrial Average (DJIA) gained 18.7% in 2021, while the Nasdaq Composite gained 21.4%."<sup>2</sup> Although there was market volatility in 2022, according to Comptroller DiNapoli, the State

<sup>1</sup> Per the PBA's consultant, Anthony J. Hynes, Exhibit 12, ("AHX-12, modified 10/12/2022) derived from Joint Exhibit 13.

<sup>2</sup> See, Anna-Louise Jackson, John Schmidt, January 3, 2022, *2021 Stock Market Year In Review*, accessed January 5, 2022, <https://www.forbes.com/advisor/investing/stock-market-year-in-review-2021/>

Pension Fund posted 9.5% annual investment return for its fiscal year ended March 31, 2022 and return on investments increased the Fund's value to \$272.1 billion.<sup>3</sup> Furthermore, the Panel Majority's reliance on conjecture regarding a "projected recession" that is outside the relevant time period of the Award is inconsistent with the statutory criteria and prejudicial to the Union. Furthermore, the testimony and record evidence presented at the hearing also demonstrates that the Town is not facing any "fiscal distress." The Town of Evans has a "no designation" score from the New York State Comptroller's 2021, Fiscal Stress Monitoring System and has had two consecutive years of zero scores on fiscal stress. Also, contrary to the Panel Majority's assertion, the Town's total health insurance costs are not increasing "at an alarming rate" but declined by more than \$700,000 or 40.4% over the period 2018 through 2021. Nor does the Town anticipate any increase in 2023 as its budgeted line item for health insurance cost remains the same as it budgeted in 2021 and 2022.

In crafting this Award, the Panel Majority places far too much emphasis on the Town's past fiscal crisis, dwells on speculation as to what events may occur in the future that could impact future Town budgets while ignoring the Town's current, strong financial condition that proves it has the ability to pay a just and reasonable financial award for the years under question.

This Award denies PBA members a just and reasonable financial award based upon the Panel Majority's flawed argument that the Town is still recovering from a fiscal crisis that requires them to exercise restraint. Five (5) years ago, the Town was in a state of fiscal crisis based upon its own imprudent mismanagement of the public finances. Over the past five (5) years, the Town has adopted reforms in order to avoid conditions that contributed to the fiscal

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<sup>3</sup> Union Exhibit 39 (UX-39), DiNapoli, August 1, 2022, *DiNapoli: State Pension Fund Posts 9.5% Annual Investment Return*, accessed September 22, 2022, <https://www.osc.state.ny.us/press/releases/2022/08/dinapoli-state-pension-fund-posts-9-point-5-annual-investment-return>.

crisis and, as Supervisor Hosler, testified, the Town's current financial condition is "really, really financially strong." The testimony of Anthony J. Hynes was complete and built upon the Town's own published reports including finalized budgets, annual financial update documents, and comprehensive audited financial statements. Hynes testified that the Town's General Fund cash and cash equivalents on hand at the end of fiscal year 2021 of \$3,793,347 was nearly 5 times its total liabilities of \$768,673 exclusive of \$428,981 in unearned revenue. The \$428,981 represents the unspent portion of the first \$717,000, American Rescue Plan Act "ARPA" grant received in or about Summer 2021. Hynes testified, this sum is cash in the bank but has not met the revenue recognition criteria for fund financial purposes. The Town received an additional \$717,000 ARPA grant in or about summer, 2022. The Town has also experienced operational surpluses in its General Fund in each of the years 2017 through 2021. The Unassigned Fund Balance increased more than \$5.5 million from January 1, 2017 the end of fiscal year 2021. At the end of fiscal year 2021, unassigned fund balance for the General Fund, from which the Town police are paid, was \$4.3 million, or approximately 44.9% of General Fund expenditures and transfers out. This total amount is available for spending at the Town's discretion and constitutes 51.6% of the General Fund's total fund balance of \$8.3 million. As Mr. Hynes testified, just one of the two \$717,000 ARPA grant payments will pay the cost of police raises plus all associated fringes.

The Panel Majority also assessed far too much weight to the Town's turnaround to the 20% increase in real property taxes in 2016 and 2017. The evidence clearly indicated that the Town grew its fund balances, in part, off the backs of its workers. In order to assist the Town's recovery, PBA members accepted 0% increases for the years 2017 and 2018. There are four (4) other bargaining units in the Town. The Town has failed to reach agreement with any of the other bargaining units two of which have contracts that expired December 31, 2017 and two of

which expired December 31, 2019. The Panel Majority's consideration of the Town having to fund wage increases for other Town employees who are not parties to this proceeding, rewards the Town for not settling and fails the statutory mandate.

There is no justifiable logic assigned to the Panel Majority's wage determination. The Panel Majority further failed to grant the appropriate weight to the PBA's evidence that members of the PBA fell far behind their counterparts during the covered years. The PBA presented evidence that clearly indicates that its members' base salary is over 10% behind the average of all the comparable units. PBA members total compensation lags the average of the other municipalities by 11.5% in 2021. The record evidence also showed that PBA members regardless of date of hire work more hours over the course of their careers than any of the other comparable units. The record evidence also proved that the Town could fund the PBA's wage and salary proposals without exceeding the tax cap.

The Panel Majority also misapprehends the consequences of the Town's designation as a fiscally eligible community and its role in its ability to pay analysis. While this Panel is now required to give greater weight to the Town's ability to pay, the "Town's designation as a fiscally eligible municipality *does not alter the ability to pay analysis as this continues to be an assessment on the merits of whether a given municipality has the ability to pay.*" See, Jay M. Siegel, Esq., Panel Chair, the Lancaster Cayuga Club Police Benevolent Association on October 1, 2015, PERB Case No.: IA 2014-010; M 2013-303 (emphasis added). In the Lancaster case, the Siegel Panel-determined that the objective data in the record proved that the economic conditions in the Town of Lancaster were "strong" and that the Town had the ability to pay despite its designation as a fiscally eligible municipality. Here, the PBA has proven with objective data that the Town's financial condition is strong, and "on the merits" that it has the ability to pay.

The PBA also feels strongly that the Panel Majority lacks understanding when considering the economic realities of the current inflationary period on PBA members and their families. The award on wages will not allow the PBA members to be competitively compensated when compared to their contemporaries in the comparable communities and falls far short when you consider the current inflation rate of 7.1%.

Instead of paying its employees a just and reasonable salary, the record evidence and testimony indicates that the Town plans to spend all \$1.2 million in remaining ARPA funds and to deplete its \$4.3 million General Fund, fund balance by spending \$1.6 million on a capital projects wish list even though the Town Engineer cautions the Town to expect 30% to 40% cost overruns on the proposed projects. The testimony and record evidence proves that granting the PBA's wage and salary proposals will not create a fiscal crisis. The Town has grown its fund balances to significant levels so it is clear that it is managing its finances well enough and that the size of the fund balances indicate that it could well handle a significant wage increase to PBA members.

The members of the PBA have bravely sacrificed in service to the citizens of the Town of Evans and have been disregarded by this award. Instead of narrowing the gap between the PBA members and the comparable universe, the Panel Majority widened it. This will leave PBA members further behind their counter parts and less likely to ever catch up despite the Town's sound and stable finances. This award is neither just nor equitable and this Panel member respectfully dissents.



Edward W. Guzdek, Jr.  
Employee Organization Panel Member

Dated: 1/10/2023