IA97-004; M96-394

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD, ADMINISTRATOR
Interest Arbitration Panel

In the Matter of the Arbitration

-between-

North Tarrytown Police Benevolent Association, Inc.

-and-

Village of Sleepy Hollow

OPINION AND AWARD
Case No. IA97-004

In accordance with Section 209.4 of the New York Civil Service Law of the State of New York, the Undersigned were designated as a Public Arbitration Panel to make a just and reasonable determination of the dispute that continues in the negotiations between the parties over a successor agreement to the agreement between the parties that expired on May 31, 1996. Although the parties had negotiated over a successor agreement, an impasse occurred. As a result, the Union filed a Petition for Compulsory Interest Arbitration, dated April 17, 1997. In accordance with the authority of the Public Employment Relations Board, Robert L. Douglas was designated as the Public Panel Member and Chairperson of the Panel; Terrence M. O'Neil was designated as the Public Employer Panel Member; and Anthony V. Solfaro was designated as the Employee Organization Panel Member.

Hearings were held before the Public Interest Arbitration Panel at the offices of the Employer on September 4, 1997; October 6, 1997; November 21, 1997; and April 15, 1998 at which time the representatives of the parties appeared. All concerned

were afforded a full opportunity to offer evidence and argument and to examine and cross-examine witnesses. The parties introduced evidence and argument concerning the applicable statutory provisions. The Arbitrator's Oath was waived. All witnesses were sworn. The parties filed post-hearing briefs. The Public Arbitration Panel thereafter met in Executive Session.

The record indicates that certain improper practice charges existed involving the present dispute. The Employer indicated that Section 205.d of the Rules and Regulations of the Public Employment Relations Board provide that the "public arbitration panel shall not make any award on issues, the arbitrability of which is the subject of an improper practice charge . . . until a final determination thereof by the board or withdrawal of such charge or petition . . . ." The Union advised the Panel in letters dated October 15, 1998 and November 18, 1998 that all of the pending charges had become withdrawn or decided. As a result, the procedural impediments to render the present Opinion and Award have ended.

PERTINENT STATUTORY PROVISIONS

Civil Service Law, Section 209.4

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

> a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

The Employer, which became incorporated in 1874, is a public employer located in the Town of Mount Pleasant in Westchester County on the eastern bank of the Hudson River. The Employer's jurisdiction covers approximately 2.30 square miles and contains an estimated population of 7,659. (Union Exhibit 12 at 995.) The Union is an employee organization that represents a unit of approximately 24 police officers, sergeants, lieutenants and detectives employed by the Employer. (Union Exhibit 16.)

The Petition for Compulsory Interest Arbitration filed by the Union, the Response to Petition for Compulsory Interest Arbitration filed by the Employer, the exhibits submitted by the

parties during the hearing, and the post-hearing briefs filed by the parties set forth in great detail the positions of the parties in the present proceeding. The Opinion and Award contains a summary of the positions of the parties, however, the official record of the proceeding includes all of the information provided by the parties.

CONTENTIONS OF THE UNION

The Union asserts that the parties recognize that the members of the bargaining unit share the same hazards of employment, physical qualifications, educational qualifications, mental qualifications, job training, and skills of police officers in other jurisdictions in the State of New York and in the villages adjacent to the Hudson River in the County of Westchester. The Union maintains that the communities of Buchanan, Tarrytown, Irvington, Croton-on-Hudson, Ossining, Dobbs Ferry, and Hastings-on-Hudson constitute the appropriate comparable communities pursuant to the statutory provisions that govern the present proceeding. The Union emphasizes that these jurisdictions have a close physical proximity and therefore have similar socio and economic experiences. The Union discerns that these communities have a common macroeconomic environment, a common village form of government, and similar demographics such as population, population per square mile, sworn police officers, population per police officer, and total housing units.

It is the position of the Union that the contractual benefits for the members of the bargaining unit rank at or near

the bottom of the comparable jurisdictions even though the Employer ranks in the middle with respect to the key demographic factors. The Union highlights that the base salary ranks last or next to last for the members of the bargaining unit when compared to the other jurisdictions. The Union relates that the personnel in the next lowest jurisdiction, the Village of Ossining, earn 6.7% more than the members of the bargaining unit even though the Employer possesses a greater ability to pay than the Village of Ossining as reflected in the relative statistics of population, median value of single homes, and per capita income. The Union urges that the disparity in earnings must end and should not continue to grow. The Union observes that the other contractual benefits, such as longevity, perpetuate the disparity between the Employer and other comparable communities. The Union indicates that the members of the bargaining unit receive $675 as a uniform and clothing allowance, which constitutes a smaller amount than every jurisdiction other than Hastings-on-Hudson, which provides the actual uniforms and $540 for maintenance of the uniforms and other clothing.

The Union argues that the Employer possesses the ability to pay an Award. The Union stresses that the Employer imposes comparatively low property taxes, has a healthy tax margin, has the second lowest tax level in the County of Westchester, accumulated a large fund balance as of May 1996, and set aside funds for a 3% base wage increase for 1996 and 4% for 1997. The Union points out that other employees of the Employer received

greater increases during the same periods.

The Union contests the repeated forecasts by the Employer of impending disasters due to the uncertain status of the General Motors property. The Union claims that the Employer improperly attempts to place a disproportionate and continuing burden on the members of the bargaining unit for the uncertainties arising from the General Motors property. The Union faults the Employer for failing to prepare for the changes that the General Motors situation necessitated. In the absence of such timely changes such as austerity, the Union attacks the validity of the Employer's dire predictions. The Union reveals that alternate sources of income to the Employer exist such as the results of ongoing negotiations with General Motors; changes in the appraisal of the property; and certain demolition fees, building permit fees, and planning fees.

The Union recounts that the Employer succeeded in placing a heavy burden on the members of this bargaining unit during the last interest arbitration proceeding and then granted the highway employees a 9% increase during six months in 1996, granted certain highway department employees title changes that increased their earnings, granted management employees a 5% increase for 1996 and a 4% increase for 1997, granted certain department heads either additional compensation or the right to use official vehicles for commuting, and contributed $18,000 per year for the Police Chief to attend law school. Although the Employer unilaterally reserved funds for a 3% increase for members of the

bargaining unit for 1996, the Union questions the propriety of the Employer granting a 5% increase for 1996 to members of the administrative staff. The Union adds that the Employer did not increase taxes in 1996, mounted a capital improvement plan in 1996-1997, and increased its number of employees. The Union elaborates that the Employer accumulated a snow removal fund of $240,000.

The Union views the municipality as having a potential to experience growth and enlargement of the tax base through the development of the General Motors property. The Union denounces the Employer for failing to adjust the compensation of the members of the bargaining unit in the same way as members of management. The Union notes that some non-taxable property may become taxable because one tax exempt hospital may convert some property to condominiums. The Union comments that projected construction will generate various municipal fees.

The Union discredits the Employer for disingenuously communicating information about financial difficulties for this interest arbitration to avoid paying a fair and reasonable award.

The Union finds that the parties consider the members of the bargaining unit to be comparable to police officers in other departments in the State of New York. The Union refers to the negotiating history between the parties to substantiate the propriety of evaluating the members of the bargaining unit with the police officers in the referenced comparable departments. The Union discloses that a relationship of parity existed in the

past with the neighboring departments. Nevertheless, the Union deplores the Employer's ongoing effort to avoid making appropriate adjustments in the compensation of the members of the bargaining unit while granting substantial improvements to other employees of the Employer.

The Union concludes that the Panel should render a fair and reasonable increase. The Union specifies that the statutory criteria warrant such an outcome.

CONTENTIONS OF THE EMPLOYER

The Employer asserts that many factors differentiate public employment from private employment. The Employer maintains that a public employer lacks the range of choices that exist for a private employer because a public employer possesses an ongoing responsibility to provide certain municipal services, such as police protection, to the citizens and the taxpayers. It is the position of the Employer that taxpayers demonstrate their support for governmental decisions concerning the level of taxation by voting, by defeating local budgets, by hindering tax collection, and by general taxpayer resistance.

The Employer emphasizes that the applicable statute identifies the public as the true party in interest in this proceeding. The Employer stresses that the statute requires a just and reasonable determination based on detailed standards. For every demand proposed by the Union, the Employer highlights that the Panel must consider the interests and welfare of the public; the financial ability of the Employer to pay; and the

wages, hours, and conditions of employment in similar communities. According to the Employer, the Panel possesses much authority over the citizens and taxpayers in the jurisdiction of the Employer for the present and for the future. The Employer cautions that the Panel's decision will determine the allocation of the limited municipal resources and therefore the Panel, in effect, performs the role of elected officials, who traditionally make such judgments.

The Employer underscores the importance of identifying the appropriate comparable communities to conform to the statutory requirement of comparing the wages, hours, and conditions of employment of the members of the bargaining unit with other similarly situated employees. The Employer shares the Union's view that the riverfront villages in Westchester constitute appropriate comparable communities, but also believes that other villages in Westchester County exhibit certain similarities that warrant including them in the comparison. The Employer notes the appropriateness of the factor of geographic proximity and adds that quantitative factors, qualitative factors, and especially economic factors provide important information for the comparison. In this regard the Employer points out that the Employer has the largest percentage of tax exempt property, the largest decline in population, the second lowest median household income, the second lowest median family income, and the third highest poverty rate. The Employer finds that the General Motors property situation creates a potential disaster for the Employer.

The Employer challenges the Union's use of data from the Village of Ossining to attempt to prove that the Village of Ossining provides better benefits than the Employer provides to the members of the bargaining unit.

The Employer relates that the equalized tax rate involves the market value of property and therefore fails to pinpoint whether the property owners have the ability to pay increased taxes because a property owner only realizes the benefit of an increase in property value when the sale of the property occurs. Instead, the Employer explains that the proper measure of ability to pay increased taxes depends on the housing characteristics and the income of the residents. The Employer contends that 40% of the population of the Employer lack the ability to pay any increased taxes. The Employer reasons that the population of the Employer constitutes one of the poorest communities in Westchester County and therefore the Union's claim that the population ranks in the middle of the comparable communities lacks accuracy.

The Employer insists that the population of the Employer lacks the ability to pay the demands of the Union. The Employer reiterates that the economic effect of the General Motors situation creates the prospect of reductions of service, the lay off of employees, a disincentive for persons and businesses to move into the community or remain in the community, and a vicious cycle of a poor municipal credit rating and increased costs of borrowing money.

The Employer disputes the financial information relied on by the Union. The Employer criticizes the Union for failing to recognize that 92.24% of the taxpayers pay the higher tax rates to the Tarrytown School District rather than the lower tax rates to the Pocantico Hills School District. In addition to the misleading aspect of using the market value of property as a way to measure the ability to pay of the taxpayers, the Employer further faults the Union for citing the per capita tax comparison because the use of statistics computed by averaging numbers misrepresents the circumstances of individual taxpayers. The Employer attacks the Union for mentioning the constitutional tax margin because such a theoretical factor fails to address the ability to pay of the taxpayers.

The Employer disagrees with the Union's analysis of the fund balance because the Employer must apply the entire fund balance to the 1998-1999 budget to avoid further tax increases. The Employer refutes the Union's reliance on the funds allocated for wage increases because the Employer must divert such set asides due to the changed circumstances caused by the General Motors situation. The Employer evaluates the present situation to mandate a two year wage freeze to avoid layoffs and severe reductions in service. The Employer calculates the cost of a 1% increase in the salary of the members of the bargaining unit as $18,335 rather than $16,412, which the Union computed.

The Employer acknowledges that the bargaining unit represented by the International Brotherhood of Teamsters and

certain non-union personnel received a 9% increase during 1995-1996 and 1996-1997 as did the members of the police bargaining unit during 1994-1995 and 1995-1996. The Employer contests the Union's declaration that a $240,000 unused snow removal fund exists and reveals that no such information exists in the record in the present proceeding. The Employer denies that an expansion of the tax base will occur before the passage of five to ten years so that such potential growth fails to alter the inability to pay that currently exists. The Employer minimizes the amount and the significance of any municipal fees and comments that certain dedicated fees do not become available for financing wage increases.

The Employer elaborates that the absence of the General Motors plant has created a precarious situation. The Employer discerns that any wage increase will cause an increase in taxes or a cut in services.

The Employer depicts the citizens as lacking an ability to pay more taxes, which have increased for homestead properties by 109.23% from 1986 to 1997 and which have increased for non-homestead properties by 136.83% from 1986 to 1997. The Employer explains that such increases occurred even though the Employer limited the tax increases during the last five years to less than 2% while inflation increased by 43.06% between 1986 and 1997. The Employer submits that the municipality properly used sales tax revenues, engaged in proper fiscal management, and properly used the fund balance. The Employer repeats that the only way

to fund the increases sought by the Union would involve an increase in taxes.

The Employer portrays the dispute with General Motors as ongoing and involving potential litigation in the context of a serious disagreement about the proper valuation of the property and the ultimate taxes to be generated by the property. The Employer clarifies that General Motors may prevail, owe only $185,000 payments each year in lieu of taxes, and create financial havoc for the municipality in the form of a 36.9% tax increase. If the Employer prevails against General Motors, the Employer discloses that a 26.8% tax increase may occur.

The Employer therefore repeats that the Panel should reject the Union's demands. The Employer also urges the Panel to grant all of the Employer's demands.

OPINION

I. Introduction

The Public Arbitration Panel exists pursuant to a carefully drafted statutory scheme that reflects the policy of the State of New York to provide a mechanism to resolve certain impasses that arise during the collective bargaining process in public employment. The Panel is mindful of the important responsibility for the Panel to develop a just and reasonable determination of the matters in dispute. The Panel developed the determinations set forth below after carefully considering all of the relevant statutory factors. In doing so, the Panel understands that the statute omits any language for the Panel to consider a particular

factor to be controlling. As a result, the Panel evaluated all of the statutory factors to identify a just and reasonable determination of the matters in dispute.

In accordance with the statutory scheme that limits the duration of such an Award to two years and in accordance with the agreement between the parties, the Opinion and Award covers the period from June 1, 1996 to May 31, 1998.

II. General Observations

Section 209.4 of the Civil Service Law sets forth the relevant factors for the Panel to consider, in addition to any other relevant factors, in making a reasonable determination concerning the disputed issues. In reviewing the record developed by the parties, the Panel considered the following factors.

A. Comparative Data

A careful review of the record indicates that substantial evidence exists concerning the wages, hours, and conditions of employment of employees in other comparable police departments. Although the parties disagree about some of the specific departments that the Panel should treat as comparable departments, the Panel has considered with care the documentary evidence submitted by the parties concerning the jurisdictions of the riverfront communities in Westchester County and the other jurisdictions in Westchester County.

The Panel underscores that the statute does not require that the comparison involve similar employees in "identical"

communities. On the contrary, the statute directs the Panel to consider the treatment of similar employees in "comparable" communities. Consistent with the evidence submitted by the parties, the Panel considered the referenced departments with an awareness of the following demographic factors: the location of the entity, the form of government, the income levels of the residents, the number of housing units, the number of reported crimes, the property values in the jurisdiction, the size of the department, the size of the jurisdiction, the size of the population, the tax rates (to the extent the parties furnished such information), and other general socio-economic data.

In particular, the Panel notes that Sleepy Hollow has experienced the highest percentage decline in population (-6.05%) of the villages located in Westchester County during the period from 1990 to 1995. (Employer Exhibit 3.) At the same time Sleepy Hollow has the fifth lowest per capita income, the second lowest median household income, the second lowest median family income, and the third highest poverty rate among the 23 villages in Westchester County as reflected in the data generated from the 1990 census. (Employer Exhibit 4.) Sleepy Hollow also has a high percentage of tax exempt property (39%) within its boundaries and this places a higher proportionate burden on the taxable properties. (Employer Exhibit 2.)

B. The Public Interest and the Employer's Financial Ability

A careful review of the record indicates that the interests and welfare of the public affected by the present proceeding

include a compelling need to have essential police services provided by competent personnel. The delivery of police services in an appropriate, efficient, and financially responsible manner requires--among other things--the presence of trained professionals. To attract and to retain such individuals in a department of government that must have an unquestioned reputation for integrity, the public interest requires that such personnel receive an appropriate level of compensation. As a result, the important decision by the Employer to establish an independent police department and the ongoing determination by the Employer to continue operating the police department as an independent entity perforce necessitates just and reasonable wages, hours, and conditions of employment for the members of the bargaining unit. The Panel has considered these factors involving the public interest in reaching a just and reasonable determination of the dispute.

In doing so, the Panel bears an important responsibility to consider--as one factor in the overall determination--the financial ability of the Employer to pay the costs that arise in connection with such wages, hours, and conditions of employment. The record indicates that the Employer confronts ongoing financial pressures to balance the costs of operating a municipality with the ability of the taxpayers to meet their financial obligations to local government while also preserving their financial ability to live within the jurisdiction of the Employer. At the same time, the Employer possesses the ability

to generate revenue through the continuing exercise of the governmental power to levy taxes, through the receipt of revenue generated by local sales taxes, and through the receipt of certain state aid. In developing a just and reasonable determination of the matters in dispute, the Panel has considered these circumstances.

The Panel is acutely aware of the ongoing uncertainty generated by the decision in 1995 by the General Motors Corporation to close the plant that occupies approximately 97 acres within the jurisdiction of the Employer. As the largest taxpayer within the jurisdiction of the Employer, the impact of the decision by the General Motors Corporation constitutes a particularly significant factor in evaluating the Employer's ability to pay. The decision by General Motors created additional uncertainty because General Motors entered an agreement in 1985 for 30 years that included certain payments in lieu of taxes. The 1995 decision by General Motors and certain aspects of the so-called PILOT agreement have created additional uncertainty about the amount of future payments that General Motors will make to the Employer. In addition, the future of the riverfront property occupied by General Motors remains unclear.

The record omits any objective factual basis for determining how the Employer and General Motors will resolve this situation in the future. As a result, any effort to predict the ultimate resolution of this ongoing murky situation would require speculation. At the same time, however, the Panel recognizes the

need to consider this important aspect of the record in the present proceeding.

Nevertheless, as noted in the official newspaper of the Employer in March 1998:

> Despite the current legal disputes, Sleepy Hollow's future is sound and has never presented more opportunities. We have the opportunity to redevelop our entire riverfront and infuse new life into our community. The steps are already in place to ensure that the property is developed in a responsible and deliberative manner. The zoning is in place, the Boards are in place and we are keenly waiting for GM to present its plans.
>
> . . . .
>
> The long term outlook is very positive. Because of strategic planning by the Village, we are in a financially stable situation.

(Union Exhibit 32.) Thus the official position of the Employer as communicated to the members of the community evaluates the condition of the Village in a "very positive" way. This official position--outside of the rhetoric that oftentimes becomes introduced during the collective bargaining process and the interest arbitration process--provides an important perspective and a key insight into the ongoing financial condition of the Employer.

C. Comparison of Job Characteristics

A careful review of the record indicates that the combination of the hazards of employment, physical qualifications, educational qualifications, mental qualifications, and job training and skills of police personnel

require especially talented individuals when compared to the positions that exist in other trades or professions. Unlike many other positions that require either physical qualifications and skills or mental qualifications and skills, the members of the bargaining unit must possess all of these attributes to perform their police functions in a proper manner. As a result, the treatment of employees who perform other municipal functions lacks the same degree of relevance as the treatment of police personnel. In developing a just and reasonable determination of the matters in dispute, the Panel has considered these factors.

D. Past Negotiated Agreements Between the Parties

A careful review of the record indicates that the parties have negotiated collective bargaining agreements for many years. It is unfortunate that the parties in the past have resorted to interest arbitration to end their impasses for the period from June 1, 1990 to May 31, 1992 and for the period from June 1, 1994 to May 31, 1996. As a consequence, the substantive provisions of the expired collective bargaining agreement reflect the results of the history of the bilateral negotiations between the parties and, to a lesser extent, the consequences of the parties proceeding to interest arbitration on prior occasions.

An interest arbitration panel must consider the public policy that favors collective bargaining and therefore must act with prudence before disturbing the decisions that the parties have made over an extended period of time during the collective bargaining process to fix the compensation and fringe benefits

for the members of the bargaining unit. Similarly, an interest arbitration panel must respect the determinations by the parties with respect to provisions that affect the terms and conditions of employment of the members of the bargaining unit. The record omits any evidence that the public policy of the State of New York prefers interest arbitration as a permanent replacement for the collective bargaining process. An interest arbitration panel therefore must exercise considerable restraint before altering, changing, or disturbing the results of the actual agreements between the parties during successive rounds of successful collective bargaining.

III. The Union Proposals

The introductory paragraph of the collective bargaining agreement sets forth the duration of the collective bargaining agreement. The parties agree that the Award shall cover the period from June 1, 1996 to May 31 1998. In the absence of an agreement between the parties, this two year term of the collective bargaining agreement constitutes the maximum period of time authorized by the statute for an interest arbitration panel to address. The Award shall so provide.

The Union seeks salary adjustments so that the base wages for the members of the bargaining unit shall be:

	6/1/96	6/1/97
Police Officer V	$27,390	$28,896
Police Officer IV	$34,000	$35,870
Police Officer III	$40,611	$42,845
Police Officer II	$47,221	$49,818
Police Officer I	$53,830	$56,791
Detective, DARE and/or Youth Officer	$60,290	$63,606

	6/1/96	6/1/97
Sergeant	$61,905	$65,310
Detective Sergeant	$64,596	$68,149
Lieutenant	$67,288	$70,989

The record indicates that the current base wages for the members of the bargaining unit are:

Police Officer V	$25,962
Police Officer IV	$32,227
Police Officer III	$38,494
Police Officer II	$44,759
Police Officer I	$51,024
Detective	$57,147
Sergeant	$57,912
Detective Sergeant	$61,229
Lieutenant	$61,994

(Union Exhibit 7(e).)

The Employer proposes to freeze for both years the salary schedules set forth in Article III, Section 1-6 due to the adverse economic developments confronting the Employer.

The record contains significant conflicting evidence concerning the propriety of increasing the base wages of the members of the bargaining unit. The Employer has submitted probative evidence that the uncertain disposition of the General Motors property has imperiled the economic condition of the Employer to such an extent that no ability to pay exists for any increase in wages.

In developing this record, however, the Employer has acted in an inconsistent and perplexing manner. On the one hand, most recently the Employer actually has imposed some layoffs of municipal employees and moved to reduce certain other expenses. On the other hand, the Employer recently has entered into a collective bargaining agreement with the employees of the Highway

Department represented by the International Brotherhood of Teamsters that froze wages for two years and then provided for wage increases of 6% during each of the last two years of the four year contract. This four year contract covers the period from June 1, 1997 to May 31, 2001 and therefore is not coextensive with the period covered by the present interest arbitration, which relates back only to the period from June 1, 1996 to May 31, 1998. (Employer Exhibit 47.) This approach is similar to the interest arbitration award involving the employees in the Police Department for the period from June 1, 1990 to May 31, 1992 in which the employees received no wage increase during the first year covered by the award and a 6% increase on the first day of the second year covered by the award. (Union Exhibit 7(b).)

The voluntary agreement by the Employer to increase the wages of employees in the Highway Department at such an allegedly critical juncture to such an unusually high level undermines the ultimate impact of the wage freeze during the first two years of the four years of the collective bargaining agreement for the employees in the Highway Department. This approach by the Employer also materially undermines the Employer's ongoing effort to prove that a disastrous financial situation exists in the municipality and to plead an inability to pay for the reasonable costs of providing police services as an essential part and arguably the most essential part of the role of the government of the Village.

The four year length of the collective bargaining agreement for the employees in the Highway Department fails to establish a relevant pattern or precedent for the present proceeding. In the absence of a special agreement between the parties, the statute limits the Panel to a maximum award for only two years. The Panel lacks statutory jurisdiction beyond two years and also lacks any binding authority to address the terms of the collective bargaining agreement beyond the two years. Any effort to do so would exceed the authority of the Panel.

Furthermore, a careful evaluation of the collective bargaining agreement for the employees of the Highway Department reflects that the effect of the freeze in the first two years saves the Employer some money during the first two years. Over time, however, the effect of the backloading of the unusually large wage increases in the final two years of the four year contract, which ends in 2001, essentially results in a level of wages at the end of the four year term of the collective bargaining agreement as if the employees had received four wage increases of three percent per year. Thus the Employer's reliance on the collective bargaining agreement for the employees of the Highway Department is rather misplaced given the two year time limitation that exists in the present interest arbitration proceeding.

With respect to the pending dispute involving the members of the Police Department, the record further reflects that problems existed since at least 1985 with the decreasing revenue generated

from the General Motors plant and that the Employer knew for some time about the decision by General Motors to close the plant in 1995. The record also indicates that the Employer unilaterally set aside funds for a 3% lump sum wage increase for the period of June 1, 1996 to May 31, 1997 and had set aside funds for a 4% wage increase for the period of June 1, 1997 to May 31, 1998. The record omits any persuasive evidence that the parties had negotiated merely lump sum adjustments in the past. As a consequence, the Employer's unilateral decision to anticipate a lump sum payment lacked justification. Although the Employer has retained the 3% set aside, the Employer explained during the present proceeding that changed economic circumstances caused the Employer to use the 4% set aside for other purposes.

Notwithstanding these factors, a fair evaluation of the record indicates that the Employer failed to engage in comprehensive and long-term strategic planning at the most appropriate time to adjust to the changed circumstances in a measured and meaningful manner. The Employer knew or should have known that the Moody's Investors Service cautioned in the Daily Rating Recap on October 25, 1994 that the Employer confronted significant uncertainty due to the anticipated closing of the General Motors facility in 1996 and the accompanying uncertainty about the size of future payments in lieu of taxes to the Village by General Motors. (Employer Exhibit 20.) Despite these warnings, the record fails to prove that the Employer initiated aggressive actions at the time to prepare for the predicted lean

years by evaluating all of its expenditures and determining the most efficient way to operate the Village.

The record is unclear whether the Employer budgeted funds for a possible interest arbitration award that would involve an adjustment to the base wage rate of the members of the bargaining unit. The record contains some indications that the Employer may have the ability to transfer funds from different accounts under the ultimate control of the Employer to fund the costs of adjustments to the base wage rates of the members of the bargaining unit. In the absence of such strategic planning, the Employer will have acted at its peril in failing to anticipate such a predictable result rather than planning for the distinct possibility that an interest arbitration panel might conclude that the members of the bargaining unit should receive an adjustment to the base wage rate. The fact that a prior interest arbitration panel incorporated a wage freeze into its award (followed by a 6% wage increase in the second year) certainly did not preordain that the present interest arbitration panel would reach the same conclusion under the record developed in the present case. (Union Exhibit 7(b).)

The record substantiates that the Employer elected to maintain the level of services and to freeze the tax rate for the 1997-1998 fiscal year. This effort to stabilize the effect of taxes on the taxpayers who reside within the jurisdiction of the Employer occurred even though the Employer knew about the pending interest arbitration and the ongoing dispute with General Motors.

(Union Exhibit 30(a).) The laudable effort to freeze taxes fails to justify placing a disproportionate burden on the members of the police bargaining unit to forego appropriate adjustments to their base wage rate.

The record also contains the findings and recommendation of Westchester 2000, which constituted a public and private effort to plan for the future, that the Employer should merge its police department with the Town of Mount Pleasant Police Department to improve cost efficiency. (Employer Exhibit 28.) The record omits any credible evidence that the Employer has sought to evaluate and/or implement this recommendation, which would presumably result in certain cost savings.

The effort by the Union to obtain wage increases for the members of the bargaining unit exists against this backdrop. The Union points to the range of increases that members of the police departments in the jurisdictions along the riverfront of the Hudson River and throughout Westchester County have received. The Employer failed to dispute such increases and, instead, reiterated the inability of the Employer to pay any increase to the members of the bargaining unit.

The Panel is sensitive to the genuine concerns of the parties. In applying the statutory factors to identify a just and reasonable determination, the Panel finds that the Employer lacks an ability to pay a wage increase that reflects all of the increases that have occurred in other comparable jurisdictions. Based on all of the available economic data contained in the

record, however, the Panel finds that a sufficient ability to pay exists to provide for measured, modest, and responsible wage adjustments that will enable the members of the bargaining unit to remain competitive with police personnel in other departments while not unjustly or unreasonably burdening the taxpayers, who ultimately must fund such limited increases.

Under all of these special circumstances, the Panel finds that the base wages for the members of the bargaining unit shall be increased as follows: a 1.5% retroactive increase to the base wages in effect on June 1, 1996; a 1.5% retroactive increase to the base wages in effect on March 1, 1997; a 1.5% retroactive increase to the base wages in effect on June 1, 1997; and a 1.5% retroactive increase to the base wages in effect on February 1, 1998. The members of the bargaining unit who worked at any time during the period covered by this Award shall be eligible for the retroactive payments for the time that they worked.

The carefully staggered timing and the specific percentages of these adjustments provide significant and appropriate recognition of the Employer's financial pressures by substantially reducing--but not eliminating--the actual costs to the Employer during the years covered by the Award. Within the confines and restrictions of the limited jurisdiction of the interest arbitration Panel to render an award that covers a maximum of two years, this approach parallels the effort that the Employer made with respect to the employees of the Highway Department by reducing the immediate costs to the Employer on a

temporary basis without unduly penalizing the employees in the future.

Notwithstanding this effort, the Employer must recognize that providing police services to the taxpayers and members of the community unavoidably involves a major cost item for the Employer. Under the statutory factors the ability of the Employer to pay does not constitute the controlling factor to determine a proper resolution of the dispute. The needs of the members of the bargaining unit also must receive appropriate consideration. As a result, the adjustment to base wages occurs within the context of all of the required statutory factors within the Panel's limited authority to develop an award that covers a maximum of two years. In reaching this conclusion, the record omits justification to create through the interest arbitration process a second tier salary schedule for new hires. The Award shall reflect all of these conclusions.

Article III, Section 7 of the collective bargaining agreement provides for certain longevity payments. The Union proposes to increase the amounts of the payments. The Employer opposes any modification as being unaffordable. The Panel finds that Article III, Section 7 shall remain unchanged. The Award shall so indicate.

Article IV involves tours of duty. The Union proposes to add a new section to provide for certain shift differentials. The Employer opposes this proposal as being unaffordable and unwarranted. The Panel finds that Article IV shall remain

unchanged. The Award shall so indicate.

Article VIII, titled "Welfare Benefits", contains provisions about health insurance. The Union seeks to re-title Article VIII as "Health Insurance"; to amend Section 1 so that the Employer pays "100% of the premium or cost for all employees and dependents for coverage under the existing plan (plan to be inserted); and to amend Section 6 so that the Union receives specified notice of any proposed changes by the Employer regarding health insurance carrier, plan, and/or benefits and so that an expedited arbitration proceeding may occur to resolve any disputes between the parties concerning such changes.

The Employer opposes these changes and submits several proposals regarding Article VIII. The Employer proposes that Section 1 be changed to indicate: "The Village shall provide the MEBCO Alternative Plan. All members of the unit shall contribute 25% towards such coverage." The Employer urges that Sections 2 through Section 4, which relate to an employee having an option to withdraw from such coverage, be deleted; that all of the references to "New York State Government Employees Health Insurance Plan" in Section 5 be changed to "Village"; and that Section 6, which provides that the Village "shall have the right to change hospitalization insurance to benefits at least comparable to those benefits being provided to members" be changed to the following:

> The Village shall have the right to change carriers, plans or to self-insure, provided the alternative coverage provides benefits substantially equivalent to the Empire Plan

> at the time of such change. Thereafter, the Village shall retain the right to alter such benefits provided they maintain levels substantially equivalent to those provided under the Empire Plan.

The Panel finds that Article VIII shall remain unchanged. The Award shall so indicate.

The Union seeks to increase the Employer contributions to the welfare fund in Article X; to the retirement incentive in Article XII, Section 2; to the uniform allowance in Article XIII, Section 1; to the cleaning and maintenance of apparel provision in Article XIII, Section 2; and the sick leave incentive set forth in Article XVI, Section 2(b). The Employer opposes all of these requests and further seeks the elimination of the retirement incentive in Article XII, Section 2; the elimination of the cleaning and maintenance allowance in Article XIII, Section 2; the reduction of the uniform allowance in Article XIII, Section 1; and a change in the eligibility requirements for the sick leave incentive in Article XVI, Section 2. The Panel finds that these provisions shall remain unchanged. The Award shall so indicate.

The Union seeks to add a new article concerning jury duty. The Employer opposes the addition of this provision. In the absence of an agreement between the parties, the Panel finds that a new article shall not be included in this Award. The Award shall so indicate.

The Union proposes to add a new article concerning out-of-title pay. The Employer opposes the addition of this provision.

In the absence of an agreement between the parties, the Panel finds that a new article shall not be included in this Award. The Award shall so indicate.

IV. The Employer Proposals

With respect to the Employer's first proposal, the Employer submits that the parties tentatively agreed to certain housekeeping and/or clarifications of the 1992-1994 collective bargaining agreement as amended by the interest arbitration award covering the period from 1994 to 1996. The Union did not oppose this position of the Employer. The specified changes include: a) all dates shall be conformed to the duration of the collective bargaining agreement; b) section 1 shall be deleted from all articles that do not include a section 2 (Article IX, Article XVII, Article XIX, and Article XX); c) the introductory paragraph on page 1, line 3 shall indicate "Employer or Village" rather than merely "Employer"; d) Article I, Section 3, line 2 shall indicate "individual employees" rather than Individual Employees"; e) Article V, Section 3, line 3 shall indicate "hours pay at normal rate or" rather than "hours pay at normal rate of"; f) Article VII, Section 2, line 1 shall be deleted to indicate "Police are eligible" rather than "Police and department heads are eligible"; and g) Article XXII, Section 2(b)(ii) shall indicate "Westchester." rather than "Westchester;". The Award shall so indicate.

With respect to the Employer's second proposal, the Employer proposes to replace Article I, Section 6, which concerns time for

Union negotiations, as follows:

> If members of the negotiating team bargain during their regularly scheduled work time, they shall receive their regular pay for such period of time, but such hours shall be deducted from either comp time, personal leave, or vacation time.

Article I, Section 6 currently provides:

> Compensatory time for PBA members participating in labor contract negotiations will be limited to three (3) individuals with a maximum of eight (8) hours per person credited at straight time, not time and one half. In no instance will monetary payments be made in lieu of compensatory time off.

The Employer maintains that the Employer should not subsidize the negotiation process for labor contract. The Union opposes this modification. The Panel finds that Article I, Section 6, which provides for a limited amount of compensatory time for labor contract negotiations, shall remain unchanged. The Award shall so indicate.

As set forth above, the Panel has addressed the Employer's third proposal concerning the salary schedules set forth in Article III, Section 1-6.

With respect to the Employer's demand concerning tuition reimbursement, Article XV currently provides:

TUITION

Section 1: The Village will pay the tuition for courses of study to be approved by the Chief of Police and the Board of Trustees and passed by the Employee directly related to a Criminal Justice Program approved in advance by the Chief of Police and Board of Trustees and passed in a satisfactory manner by the Employee.

Section 2: An Employee who receives a tuition refund for courses completed within 12 months prior to voluntary termination

from the employ of the Village shall return said money. This section shall not apply to a member retiring within said 12 month period.

The Employer proposes to add the following language to this provision:

> In order to be eligible for such payments, the employee must receive the prior written approval of the Board of Trustees. The classes must be taken at an accredited school leading to a Criminal Justice Degree. To receive credit for such payments the employee must receive a B grade or B average for the courses taken, or a passing or "P" grade if the course is pass/fail. No individual shall receive more than $1000 in any one year under this provision. No more than $3000 shall be available under this provision for the entire Department in any one year.

The Union strenuously opposes any change to the current provision.

The record indicates that the parties have acknowledged the importance of encouraging members of the bargaining unit to further their education. The Employer introduced into evidence a Demand for Arbitration concerning a grievance dispute that arose during the term of the expired collective bargaining agreement over an alleged violation of Article XVI, the Previous Practice Clause, in which the Union claimed that the Employer improperly "denied tuition reimbursement for a course of study other than Criminal Justice." (Employer Exhibit 37.) Under this circumstance a need exists to clarify Article XV.

The evidence concerning the present challenges confronting the Employer substantiates that Article XV should contain appropriate limitations about the eligible educational

institutions, the course of studies, the timing of the approval from the Board of Trustees, and the maximum annual cost to the Employer for tuition reimbursements. A comparison of other villages indicates that Buchanan, Irvington, Ossining, and Tarrytown have no limit on the amount of tuition reimbursement whereas Croton has a limit of $1000 per employee per year and $3000 for the entire unit and Hastings on Hudson has a limit of $600 per employee per year and $2500 for the entire unit. (Employer Exhibit 35(b).) This comparative data justifies a change in the existing provision, which lacks any appropriate ceiling for tuition reimbursement. As a consequence, Article XV shall be revised to add the following language at the end of Section 1:

> In order to be eligible for such payments, the employee must receive the prior written approval of the Board of Trustees, which shall act in an expeditious manner. The Board of Trustees shall not act in an arbitrary, capricious, discriminatory, or unreasonable manner in deciding whether to provide such approval. The classes to be reimbursed must be directly related to a Criminal Justice Program at an accredited school and the employee must receive a passing grade of C+ or better to receive the tuition payment. No more than $12,000 shall be available under this provision for the entire Department in any one year. If the total of the approved eligible payments exceeds $12,000 during any one year for the entire Department, the employees shall receive a pro rata portion of the $12,000.

The Award shall so provide.

With respect to the Employer's proposal to change Article XXII, Section 2, Step III by replacing the Public Employees [sic]

Relations Board with the American Arbitration Association, the Employer argued that such a change will improve the process of selecting arbitrators pursuant to Step III of the grievance procedure. The Union opposed the proposal because such a change will cost the Union more money to initiate arbitration because of the difference in filing fees between the Board and the Association. Due to the financial impact on the Union, the Panel finds that Article XXII, Section shall remain unchanged except to the extent that "Public Employees Relations Board" shall be corrected to read "Public Employment Relations Board" in the two instances in which the inadvertent error appears.

The Employer has proposed additional changes to Article IV, Section 1 concerning tours of duty; Article IV, Section 2 concerning the posting of tours and tour changes; Article V, Section 1 concerning the use of compensatory time; Article VI concerning the reduction of the number of holidays and the approval needed to take time off in lieu of cash payment for any portion of a paid holiday; Article VII, Section 2 concerning a reduction in the number of weeks of vacation, the treatment of holidays that occur during a vacation, and the authorization necessary for the carrying over of vacation from one year to a succeeding year; Article XIV concerning a reduction in the number of personal leave days; Article XVI concerning a change in the wording of the previous practice clause; and a request to incorporate the provisions of Schedule B of the collective bargaining agreement, titled "Leave of Absence", into the

collective bargaining agreement. The Union opposes the changes except with respect to the request concerning the incorporation of the Leave of Absence provision into the collective bargaining agreement. The Panel finds that all of these provisions shall remain unchanged except that the Leave of Absence provision set forth in Schedule B of the collective bargaining agreement shall be incorporated into the collective bargaining agreement.

V. Additional Comments

The Public Employer Panel Member has elected to file a Dissenting Opinion as is his right to do.

The Dissent, however, misconstrues the Taylor Law in a self-serving and overly zealous effort of advocacy to achieve through interest arbitration a result that ignores the statutory requirements identified by the New York State Legislature as appropriate for developing a just and reasonable determination. Of special significance, interest arbitration under the Taylor Law exists as a last resort when the parties fail to reach an agreement through the collective bargaining process. The rendition of an interest arbitration award ends an impasse between parties for up to a two-year term and positions the parties to attempt during the next round of collective bargaining to reach a settlement on their own without the need for intervention by a third party. The Dissent mistakenly clings to an apparent unfounded hope for a one-sided interest arbitration award based on its own imbalanced and faulty interpretation of the Taylor Law without consideration of all of the interests

addressed by the statute.

Interest arbitration does not exist as a substitute for the collective bargaining process to enable a party to achieve a lopsided result. A party must justify its position pursuant to a fair and impartial analysis of all of the statutory standards. To permit a party to obtain a disproportionate outcome in interest arbitration would undermine the collective bargaining process on a permanent basis and would undermine direct negotiations as the preferred method of resolving disagreements pursuant to the Taylor Law.

The Dissent mischaracterizes and conveniently exaggerates the wage adjustment set forth in the Award. The carefully crafted split wage increases for the first year and for the second year constitute a substantial effort to recognize the financial pressures on the Employer. The Dissent, through hyperbole, cleverly minimizes the importance of the splits, which cause the members of the bargaining unit to receive significantly lower real earnings than they would otherwise receive based on the other statutory factors. Thus the Dissent's repeated reference to a 6% increase inaccurately and misleadingly describes the actual cost of the Award and the actual earnings that the members of the bargaining unit will receive during the two years covered by the Award. As set forth in great detail above, the Award represents a just and reasonable determination in accordance with the statutory standards and the record developed by the parties.

With respect to the statutory standards, the Dissent elevates in disproportionate importance the ability to pay standard while ignoring the standards concerning the agreements actually negotiated by the parties in the past, comparability, and the public interest in having police services delivered in a proper manner. The Panel has a statutory responsibility to consider all of the statutory standards and other relevant factors. Unfortunately, the Dissent prefers to spotlight only the ability to pay factor in an effort to eclipse the rest of the statutory factors, which do not necessarily support the Dissent's point of view. To follow the Dissent would require a change in the clear and plain meaning of the statute. The Panel lacks the authority to do so.

The Dissent adheres to this same faulty reasoning in criticizing the determination of the Panel with respect to the comparison between the police unit and the unit of employees in the Highway Department represented by the Teamsters. Thus the Dissent's effort to portray a complete wage freeze as preordained due to the actions of the Teamsters seriously misapplies and misconstrues the pattern bargaining concept. The action of another single unit covering four years, which are not coextensive with the two years covered by the interest arbitration Award and authorized by the Taylor Law, without more, fails to meet the requirements of establishing a true pattern. The pattern setter normally constitutes the unit with the most bargaining power. The record fails to prove that the Teamsters,

rather than the unit of police personnel, historically have fulfilled this role in this municipality. As a result, the record fails to warrant permitting the so-called tail of the highway unit to wag the dog of the police unit.

The Dissent's ongoing complaints about the New York State Legislature's effort to achieve the delicate balance between the taxpayers, municipalities, and police personnel disregards the preferred method for achieving what the Employer considers to be an acceptable collective bargaining agreement: the collective bargaining process. The parties will undoubtedly revisit this issue during the next round of collective bargaining. After further negotiations occur, the parties may be able to reach an acceptable solution. As time passes and in the absence of a negotiated agreement between the parties, the Employer's financial position and financial management may present a change in the circumstances that substantiates a different arrangement that is just and reasonable. At the present time, however, the record fails to justify the extreme measure of a complete wage freeze for two years without any assurance whatsoever beyond mere speculation and conjecture about the future.

Several points in the Dissent require comments:

First, the Dissent acknowledges that some police personnel have left the Department to work in other jurisdictions.

Second, the Dissent criticizes the Panel's observation that the Teamster agreement "essentially results in a level of wages at the end of the four year term of the collective bargaining

agreement as if the employees had received four wage increases of three percent per year." The Dissent's own calculations, however, confirm that the Teamster approach would produce an annual salary in the final year of $57,329 whereas four increases of three percent would produce an annual salary in the last year of $57,427. The monetary difference with respect to the level of wages at the end of the four year term is $98, which represents a difference of .0017 percent!

Third, the possible merger of the Department with the Town of Mount Pleasant Police Department did not originate with the Panel but arose as a finding and recommendation of Westchester 2000 as a public and private effort to plan for the future in a cost effective manner.

Fourth, the Dissent fails to address any efforts to increase the efficiency of the delivery of municipal services and the elimination of possible waste to generate cost savings to the taxpayers. Instead, the Dissent presupposes that the only method for the Employer to deal with its structural problems involve layoffs, other extreme measures, and an extraction of wages of police officers.

Fifth, the Dissent seeks to disavow the Employer's own newsletter distributed to its own taxpayers that describes the financial condition of the municipality in much more positive terms than apparently suits the purpose of the Dissent.

Sixth, the Dissent fails to recognize the legitimate concern--as recognized under the Taylor Law--for the members of

the bargaining unit to maintain the traditional relationships among comparable--not identical--jurisdictions.

Lastly, fundamental fairness dictates that personnel who worked in the Department during the period covered by the Award should receive the same level of compensation as their co-workers ultimately receive for the same period of time.

The Dissent conveniently obscures the total statutory framework that applies to the special facts and circumstances set forth in the record. As a result and after a careful evaluation, the Dissent lacks persuasiveness.

VI. Conclusion

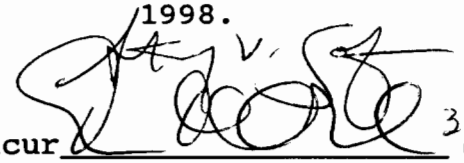
The Public Arbitration Panel has considered the relevant statutory factors set forth in the Civil Service Law to develop a just and reasonable Award based on the precise record in the present matter with appropriate restraint, detachment, and impartiality. In doing so, the Panel carefully evaluated and followed the relevant statutory factors with a sensitivity to the concerns of the members of the bargaining unit about their terms and conditions of employment; with a sensitivity to the concerns of the Employer to operate a municipality; and with a particular sensitivity to the taxpayers, who ultimately provide the economic wherewithal to fund a collective bargaining agreement. The Panel also recognizes that a collective bargaining agreement generates an overall economic cost to the Employer and provides an overall economic value to the members of the bargaining unit. The Award therefore reflects the judgment of the Panel with respect to all

of the provisions of the collective bargaining agreement taken as a whole.

The Public Arbitration Panel specifically rejects any proposal by either party that the Opinion and Award fails to address. All terms and conditions of employment set forth in the expired collective bargaining agreement and interest award that the Opinion and Award do not affect shall remain unchanged. The Public Panel Member prepared this Opinion.

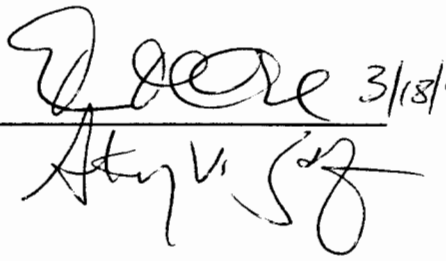
Accordingly, the Undersigned, duly designated as the Public Interest Arbitration Panel and having heard the proofs and allegations of the above-named parties, makes the following AWARD:

1. The duration of the interest arbitration award shall be from June 1, 1996 to May 31, 1998.

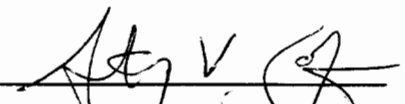
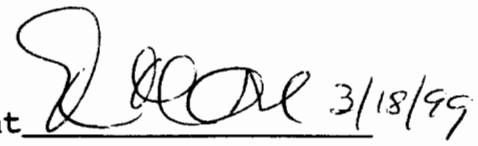
Concur  3/18/99 Dissent_____

2. The following ministerial changes shall be made to the collective bargaining agreement: a) all dates shall be conformed to the duration of the collective bargaining agreement; b) section 1 shall be deleted from all articles that do not include a section 2 (Article IX, Article XVII, Article XIX, and Article XX); c) the introductory paragraph on page 1, line 3 shall indicate "Employer or Village" rather than merely "Employer"; d) Article I, Section 3, line 2 shall indicate "individual employees" rather than Individual Employees"; e) Article V, Section 3, line 3 shall indicate "hours pay at normal rate or" rather than "hours pay at normal rate of"; f) Article VII, Section 2, line 1 shall be deleted to indicate "Police are eligible" rather than "Police and department heads are eligible"; and g) Article XXII, Section 2(b)(ii) shall indicate "Westchester." rather

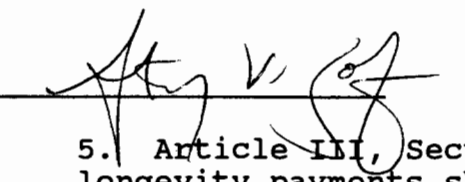
than "Westchester;".

Concur  3/18/99 Dissent_____

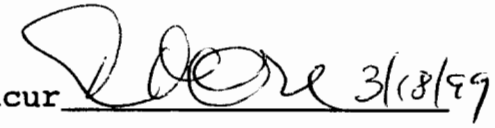
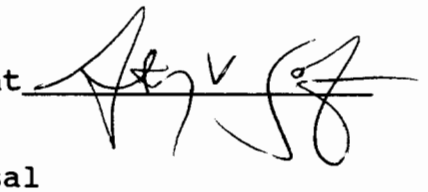
3. Article I, Section 6, which concerns limited compensatory time for labor contract negotiations, shall remain unchanged.

Concur  Dissent 

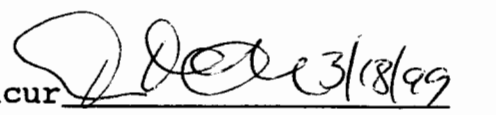
4. Article III, which concerns wages, shall be modified to reflect a 1.5% retroactive increase to the base wages in effect on June 1, 1996; a 1.5% retroactive increase to the base wages in effect on March 1, 1997; a 1.5% retroactive increase to the base wages in effect on June 1, 1997; and a 1.5% retroactive increase to the base wages in effect on February 1, 1998. The members of the bargaining unit who worked at any time during the period covered by this Award shall be eligible for retroactive payments for the time that they worked.

Concur  Dissent 

5. Article III, Section 7 concerning longevity payments shall remain unchanged.

Concur  Dissent 

6. With respect to the Union proposal concerning Article IV relating to tours of duty, no change shall occur.

Concur  Dissent 

7. With respect to the Union proposal concerning Article VIII relating to welfare benefits, no change shall occur.

Concur 3/18/99 Dissent

8. With respect to the Employer proposal concerning Article VIII relating to welfare benefits, no change shall occur.

Concur Dissent 3/18/99

9. With respect to the Union proposals concerning Article X (welfare fund contributions), Article XII, Section 2 (retirement incentive), Article XIII, Section 1 (uniform allowance), Article XIII, Section 2 (maintenance of apparel), and Article XVI, Section 2(b) (sick leave incentive), no changes shall occur.

Concur 3/18/99 Dissent

10. With respect to the Employer proposals concerning Article XII, Section 2 (retirement incentive), Article XIII, Section 2 (cleaning and maintenance allowance), Article XIII, Section 1 (uniform allowance), and Article XVI, Section 2 (sick leave incentive), no changes shall occur.

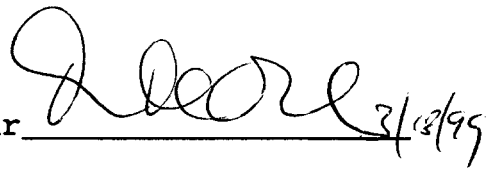
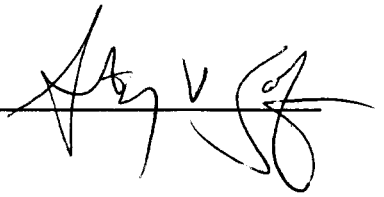
Concur Dissent 3/18/99

11. No new provision concerning jury duty shall be added.

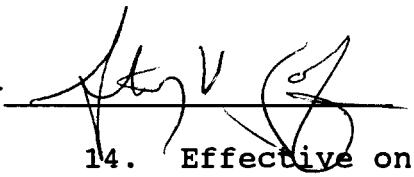
Concur Dissent

12. No new provision concerning out-of-title

work shall be added.

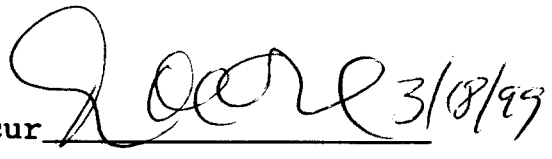
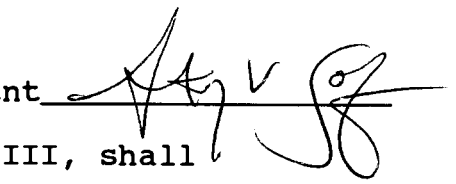
Concur  Dissent 

13. Article I, Section 6 concerning labor contract negotiations shall remain unchanged.

Concur  Dissent 

14. Effective on May 31, 1998, Article XV (Tuition) the following language shall be added to the end of Section 1:

> In order to be eligible for such payments, the employee must receive the prior written approval of the Board of Trustees, which shall act in an expeditious manner. The Board of Trustees shall not act in an arbitrary, capricious, discriminatory, or unreasonable manner in deciding whether to provide such approval. The classes to be reimbursed must be directly related to a Criminal Justice Program at an accredited school and the employee must receive a passing grade of C+ or better to receive the tuition payment. No more than $12,000 shall be available under this provision for the entire Department in any one year. If the total of the approved eligible payments exceeds $12,000 during any one year for the entire Department, the employees shall receive a pro rata portion of the $12,000.

Concur  Dissent 

15. Article XXII, Section 2, Step III, shall

remain unchanged except to the extent that "Public Employees Relations Board" shall be changed to "Public Employment Relations Board".

Concur _____ Dissent _____ 3/18/99

16. With respect to the Employer's proposals concerning Article IV, Section 1 (tours of duty); Article IV, Section 2 (posting of tours and tour changes); Article V, Section 1 (compensatory time); Article VI (holidays and cash payments); Article VII, Section 2 (vacation); Article XIV (personal leave days); and Article XVI (previous practice clause), no changes shall occur.

Concur _____ Dissent _____ 3/18/99

17. With respect to the Employer's proposal to incorporate the provisions of Schedule B of the collective bargaining agreement, titled "Leave of Absence", into the collective bargaining agreement, the parties shall do so into an appropriate article.

Concur _____ 3/18/99 Dissent _____

Robert L. Douglas
Public Panel Member

DATED: ~~February~~ MARCH 24, 1999
STATE of New York)ss:
COUNTY of)

On this 24th day of ~~February~~ MARCH 1999, before me personally came and appeared Robert L. Douglas, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Barbara T. Milazzo

BARBARA T. MILAZZO
Notary Public, State of New York
No. 4843253
Qualified in Nassau County
Commission Expires January 31, 2000

3/18/99

Terence M. O'Neil
Public Employer Panel Member

DATED: ~~February~~ March 18, 1999
STATE of New York)ss:
COUNTY of Nassau) March

On this 18th day of ~~February~~ 1999, before me personally came and appeared Terence M. O'Neil, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Florence A. Funk

FLORENCE A FUNK
Notary Public, State of New York
No. 30-4816126
Qualified in Nassau County
Commission Expires September 30, 20 00

Anthony V. Solfaro
Employee Organization Panel Member

DATED: February 9, 1999
STATE of New York)ss:
COUNTY of ORANGE)

On this 9th day of February 1999, before me personally came and appeared Anthony V. Solfaro, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Lorraine J. McGuinness

LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 19 99

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

----------X

In the Matter of the Compulsory Interest Arbitration between

NORTH TARRYTOWN POLICE BENEVOLENT ASSOCIATION, INC.,

Petitioner,

- and -

VILLAGE OF SLEEPY HOLLOW,

Respondent.

----------X

DISSENTING OPINION OF TERENCE M. O'NEIL

Case No.IA97-004

The instant proceeding presents the classic case to demonstrate how destructive Interest Arbitration can be. This proceeding is not like a grievance arbitration. The Majority wields enormous power. It sets essentially all the crucial terms and conditions by which the Village and the PBA must abide for a two (2) year term. The Majority's award directly affects the taxpayers of the Village and the economic future of the Village for years to come.

In my opinion, the Majority has unwisely allocated the Village's limited financial resources. They have compromised the interests of competing municipal services, other groups of public employees and the public interest. The Majority has exercised a function traditionally reserved to elected representatives and abused its power. Its determination is difficult to overturn and will bind not just the Village as an employing entity, but the citizens and residents of Sleepy Hollow as well. The public, the real party in interest in this arbitration, has been ignored.

The Panel is obligated under the Taylor Law to take into account the "interests and welfare of the public and the financial ability of the" municipality to pay. I submit that this criteria deserves at least equal, if not greater weight, than the wages and conditions of employment in similar communities. In fact, given what is currently happening to Sleepy Hollow's tax base, I submit there are no "similar" communities. In evaluating each and every demand made by the PBA, the Village's fiscal crisis as described herein was not given sufficient weight. The Majority has unabashedly neglected the statutory criteria and sacrificed the interests of the public for its police officers.

The Panel is charged with making a "just and reasonable determination of the matters in dispute." Civil Service Law § 209.4(c)(v). The statute specifically sets forth the following criteria which the Panel must consider in making its determination:

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.

Civil Service Law § 209.4(c)(v) (emphasis added).

The statute is silent as to the weight to be given to any one of these criteria. While I agree that each of these criterion should be considered in some manner, it is left to the Panel to determine if the specific circumstances of the parties in interest justify giving more weight to one criterion than to another. The Majority apparently believes that no matter what the circumstances, each of these criteria must be given somewhat equal weight (Award at 38). However, to do so in a case involving a municipality in the economic condition Sleepy Hollow finds itself would make it impossible to render a "just and reasonable determination of the matters in dispute." Thus, rather than lacking "the authority" to give more emphasis to ability to pay over the other statutory criteria, in fact the Majority has an obligation to do so in order to reach a "just and reasonable" result.

To argue that I "misconstrue" the Taylor Law in this area is somewhat insulting. I have negotiated collective bargaining agreements in the public sector since 1970. I have been involved with the interest arbitration process covering police and fire units since its inception in the late 1970's. The reality is that ability to pay is generally the most important (not the only) factor in negotiations and/or interest arbitration. It is the reason police officers in Mount Vernon, Port Chester and Ossining are not paid the same as those in Scarsdale, Bronxville and Rye. When you elect to work in a poorer municipality, lower pay and lesser benefits are almost taken for granted. When a community that is relatively poor already is burdened with a fiscal crises like the General Motors ("G.M.") issue, I submit that community does deserve special treatment. It happens whenever "real" collective bargaining takes place, and I submit it even takes

place where interest arbitration is substituted as the last step substitute for collective bargaining.

I have been on interest arbitration panels that have awarded 0%'s - indeed in communities in far less fiscal peril than Sleepy Hollow is currently! I have negotiated 0%'s in numerous situations where it was warranted. I have never seen a record more suited for at least one 0% than this case. If Sleepy Hollow were a private employer (absent the transitional aid provided by the State), we would be bordering on bankruptcy, or looking to move our operations. To award a 6% raise in rates over two years under these circumstances is unconscionable. If these characterizations appear to the Panel Majority to be "overly zealous advocacy," so be it. However, it pains me to see public employers abused in this fashion and then accuse me of "misconstruing the Taylor Law." With all due respect, if the Panel Majority is properly "construing" the Taylor Law, then the law should be changed. Our elected representatives and the Governor could not have intended this ridiculous result - i.e., a 6% rate increase over two years at a time when the State believed there was a justification for transitional aid to save our taxpayers from a disaster.

Anyone who is involved in public sector labor relations realizes that ability to pay is an "elevated factor" in negotiations. Oftentimes it does "eclipse" other factors. It is why lawyers in large Wall Street firms make more than those in small firms; why auto workers at Ford or Chrysler (or even G.M. if they still have jobs) make more than those at "Joe's Auto Body"; why police in Nassau and Suffolk counties make more than those in

New York City; and why police in Scarsdale and Bronxville should make more than police in Sleepy Hollow. It is also the reason the raises for the Sleepy Hollow police - AT LEAST TEMPORARILY - should be 0%.

The Majority states in its "Additional Comments" that my interpretation of the Taylor Law and its application in the instant arbitration is "imbalanced and faulty" and that my dissenting opinion is a "self-serving and overly zealous effort of advocacy". Apparently the Majority would have preferred that I remain silent in the face of the most unsupportable interest arbitration award with which I have ever had the displeasure of participating during my almost 30 years of practice. I find it especially troubling that the Panel Chair can argue with a straight face that it is I who have ignored the statutory requirements identified in the Taylor Law.

The Majority's decision illustrates better than any other in which I have been involved since the inception of interest arbitration why this process is not in the best interests of the public. While comparisons among proximate communities, the use of averages, means and other arithmetic sleight of hand and the notion that "we should get the same as them" has self-perpetuated with little substantive impact in most situations since the inception of interest arbitration, these intellectually dishonest principles have little applicability in a municipality in Sleepy Hollow's economic condition. It is for this reason that I respectfully dissent from the Panel Majority's award.

I agree with the Majority's statement that interest arbitration neither exists as a substitute for the collective bargaining process, nor to enable one party to obtain a

disproportionate outcome. However, I respectfully submit that an award such as that of the Majority will do more to undermine the collective bargaining process than had the Majority adopted my arguments. By providing salary rate increases totaling 6% at a time when the Village is faced with one of the most serious fiscal crises in its history, the Majority cannot reasonably argue that it has not undermined the collective bargaining process. The PBA and the Village have not reached a negotiated settlement by utilizing the collective bargaining process in almost a decade. Instead, the parties have been forced to rely upon interest arbitration to reach some conclusion. The Majority's award makes it likely that the PBA will not come to the bargaining table with an interest in reaching a negotiated resolution in the future. Why should they, when they know that they may get salary increases equal to the going rate in "comparable communities" regardless of the financial or fiscal condition of the Village?! Does the Majority truly believe that its award is other than a "disproportionate outcome" for the PBA given the Village's financial condition?

Economic Background of the Village of Sleepy Hollow

As Village Exhibits 2-5 illustrate, far from being "squarely in the middle," Sleepy Hollow ranks at or near the bottom in those statistical categories which truly demonstrate the financial and economic health of a community. A review of pertinent statistical comparisons clearly underscores the legitimacy of these conclusions.

Sleepy Hollow has the largest percentage of tax exempt property among those Villages in Westchester for whom such information was available (V. Ex. 2). Sleepy

Hollow has the largest percentage decline in population among all 23 Westchester Villages (V. Ex. 3). Among all 23 Westchester Villages, Sleepy Hollow has the 2nd lowest median household income, the 2nd lowest median family income and the 3rd highest poverty rate (V. Ex. 4). If only the riverfront communities are examined, it has the lowest income in these categories and the highest poverty rate (Id.).

These statistics clearly demonstrate that far from being "average," the Village is among the poorest communities in all of Westchester County in terms of its taxpayer's ability to pay, and probably the poorest of the riverfront communities. Given the disaster related to the loss of the G. M. facility, the present economic condition of the Village was not given sufficient weight.

The PBA muddied the water by pointing to statistics that fail to provide an accurate indicator of a community's ability to pay. Most notable is the fact that the PBA relies heavily on the median value of homes. As the Village's Treasurer, Sanjay Shah, pointed out in his testimony, these statistics are among the poorest indicators of a community's ability to pay higher taxes. The equalized tax rate which is used in these calculations is based on market value which bares no relation to ability to pay. For example, a resident who purchased a home in 1990 for $100,000 but whose market value has increased today to $200,000, may have no better ability to pay higher taxes than s/he did 8 years ago. The resident will realize a benefit from the increased market value only if their home is sold. In fact, some citizens may not even be able to purchase their homes at current values.

As Mr. Shah's unrebutted testimony indicated, the more appropriate indicator of the ability of a community to pay increased taxes is an examination of the community's housing characteristics and its residents' income. Village Exhibit 6 indicates that in Sleepy Hollow, 49% of the population would likely face significant hardship in paying any additional taxes due to their fixed or single income status.

Thus, the PBA was wrong in suggesting that the Village ranks "squarely in the middle" of such Villages. As the appropriate statistical indicators suggest, Sleepy Hollow is among the poorest communities in Westchester and probably the poorest among the riverfront communities. Worse yet, the situation will get bleaker - at least temporarily. Accordingly, in terms of ability to pay, utilization of comparables should have been given little weight in the outcome of the instant arbitration.

The Practical Limitations of Sleepy Hollow's Ability to Pay

The Taylor Law lists the ability of a municipality to pay for an award as a criterion for the Panel to consider. Civil Service Law § 209.4(c)(v). This does not refer to a theoretical legal ability to pay, which will almost always exist, but rather to the practical ability of a municipality to shoulder increased costs. Clearly, in theory, Sleepy Hollow's ability to pay is unlimited except to the extent of its legal constitutional taxation limit. This, however, is only theory. A village could not and should not tax its citizens to the highest legal limit. Thus, the issue of ability to pay should be governed by what a village can reasonably afford, given its constituency, tax base, economic status and the need to expend monies in order to maintain and provide other services as well as to maintain a

stable infrastructure. In fact, the Court of Appeals has made clear that "ability to pay" must be considered without resort to an increase in taxes. See City of Buffalo v. Rinaldo, 41 N.Y.2d 764, 768, 396 N.Y.S.2d 152, 154 (1977). The Majority's award, however, appears content to reject reality and to force the citizens of Sleepy Hollow to live in its theoretical world of unlimited resources.

The Majority did not use a rational process in determining ability to pay. The Village should not be forced to jeopardize its financial future or engage in fiscal irresponsibility to meet PBA bargaining demands. It has already laid off police officers and other workers as a result of its fiscal crisis. When was the last time a Westchester community laid off police officers?!

Careful attention has not been paid to the economic reality that the loss of the G.M. plant caused. This economic disaster will at least temporarily adversely affect the Village. Moreover, the Village is currently in litigation with G.M. with regard to its tax liability. If G.M. is successful in that litigation, the situation will be much worse. Indifference to the Village's precarious economic reality has thus resulted in an award that could eventually be harmful to both the public and the employees themselves.

An overextended municipality could well find itself unable to meet its obligations--and thus be forced to reduce services to the public even further and make additional layoffs. Layoffs and reduced services would serve in turn to drive out taxpayers and discourage commercial enterprises from moving in. As part of the vicious cycle, overextension would lead to a lowering of a public employer's credit rating (e.g.,

the current Baa bond rating), making money more costly to borrow. The remaining taxpayers would be taxed more even though they would receive fewer services, thus making the municipality a less attractive place in which to reside and do business. The Majority's award increases the possibility that such a scenario will occur. The Award represents the height of arrogance and irresponsibility.

The Village's inability to pay for any wage increases.

The loss of the G.M. plant has hit Sleepy Hollow particularly hard. The Village's economic condition can be described at best as "precarious," at least temporarily. The only way for the Village to fund the exorbitant wage increase awarded by the Majority is to raise taxes or cut services.[1]

The citizens of Sleepy Hollow cannot afford any additional tax increases. As the housing characteristics in Village Exhibit 6 indicate, there clearly are a great number of people who cannot afford any further increase in taxes.

The G.M. PILOT agreement has already taken its toll on the taxpayers of Sleepy Hollow. For homestead properties, the total property taxes grew by 109.23% between 1986 and 1997. Taxes grew by 136.83% for non-homestead properties over the same period. By comparison, inflation grew by only 43.06% for this period (Village Exhibit 7). Moreover, taxes grew despite the fact that the Village kept tax increases under 2% in the last 5 years due to prudent financial management, use of sales tax receipts and use of

[1] The Village respectfully declines the Majority's shocking suggestion (Award at 26) to eliminate its own police department and merge with some other department.

the fund balance. Yet, it already has the 8th highest Village tax rate in the County (Village Exhibit 29).

Taxes have also grown despite the Village's receipt of $400,000 in transitional aid from the State in October of 1998. Municipalities receive such aid only when they are facing dire economic conditions like the situation with which Sleepy Hollow is faced. Such aid cannot be used to fund salary increases according to the terms set by the State. Instead, it can only be used for tax relief, i.e., to offset tax increases. Despite such aid and seven (7) layoffs, the Village still experienced an 18.51% tax increase in 1998-99! Accordingly, while such aid has helped the Village keep taxes down to lower levels than they would otherwise have been, it will not help pay for the Majority's unreasonable award.

The Majority is wrong to believe that its award can be met within existing revenues without more "pain." There is no magic fountain of funds with which to do so. Any increase will have to be paid for through increased taxes, fewer services, or more layoffs, thus worsening the Village's already precarious economy.

The Village has survived without more exorbitant tax increases to date only by transferring funds from the Water Fund, keeping some positions within the Village vacant following layoffs, retirement or resignation, and filling some positions after the layoffs, retirement or resignation with new employees at a much lower salary than their predecessor. These "band-aid fixes," however, provide only short term relief and may eventually jeopardize the "health" of the Water Fund from which funds have been

transferred, cause the need for the Village to raise water rates in the future, and negatively impact the quality of services provided to the citizens of the Village as positions are left vacant in an attempt to save money.

The financial impact of G.M.' PILOT payments and its impact on the Village is graphically illustrated in Village Exhibits 11-17. The dramatic result is demonstrated by its current "Baa" bond rating - down from an "A" rating in 1983 (Village Exhibit 20). Only Port Chester among Westchester villages has as low a rating (Id.). Yet, the Majority award mentions the worsening bond rating only in passing. Instead it chooses to note and rely upon a promotional newsletter distributed by the Village as a marketing tool (Award at 18) to support "good times" or "business as usual." Does the Majority truly believe that the real financial experts (Moody's) don't know what they are talking about?

Moreover, the newsletter to which the Majority points speaks not about the present economic condition of the Village, but rather suggests that there is hope for the future if all goes well with the G.M. property's redevelopment. If things do work out favorably for the Village in the future, then a future panel could award appropriate salary increases at that time. Indeed, they could be negotiated. In fact, when a previous panel awarded a salary freeze during one year of its award, the Village made up for that later with larger than normal increases when times were better. For the Majority to award such increases at a time when disaster looms, is irresponsible.

The Majority claims that I seek to disavow the Village newsletter (U. Ex. 32) because it does not support my argument that the Village currently faces devastating

financial issues (Award at 40). Again, nothing could be further from the truth. This was a promotional newsletter distributed by the Village as a marketing tool to focus on a "bright future." On the other hand, the Majority conveniently gives short shrift to the bond rating reduction undertaken by the true financial experts in favor of reliance upon promotional material such as the newsletter. Moreover, the focus of the newsletter is not even on the current financial condition of the Village, but rather on the "hope for the future" due to the Village's herculean efforts to counterbalance the devastating loss of the G.M. PILOT payments. It is an error, therefore, for the Majority to focus on the newsletter's statements regarding finances, as they speak to hope for the future and not to the reality of today.

The Majority also suggests (Award at 24) that the Village "failed to engage in comprehensive and long-term strategic planning" regarding the G.M. situation. Again, nothing could be further from the truth. In fact, as the record clearly illustrates, over the past several years the Village negotiated an extension of G.M.'s PILOT payments and was engaged in negotiations for a long term solution. Accordingly, there was no need to burden the taxpayers any more than necessary at that time. It has only been since early 1998 that negotiations regarding the G.M. property have broken down and this situation has worsened significantly.

The Majority criticizes the Village for not having taken steps to "increase the efficiency of the delivery of municipal services and the elimination of possible waste to generate cost savings" (Award at 40). First, there is no evidence in the record whatsoever

that the delivery of services by the Village was inefficient to begin with! What waste? Second, as noted in the Village's newsletter (U. Ex. 32), to which the Majority seems to give so much credence, the Village has attempted to generate cost savings by: (1) reducing Village spending through staffing cuts; (2) attrition of employment positions; (3) early retirement programs; (4) freezing all capital budgets; (5) actively seeking grant money; (6) negotiating pay freezes with the Teamsters; (7) freezing non union salaries; and, (8) actively seeking transitional aid from the State. Despite such efforts, however, the Village was still forced to undertake layoffs. What more does the Majority want the Village to do?!

While the Majority claims that the Village has presupposed the necessity of "extreme" measures such as layoffs and wage freezes for the PBA, the only alternative it has been able to come up with to fund its exorbitant award is that the Village raise its taxes even further than it has already been required to do because of the G.M. situation. Is this truly an answer?

Despite this situation, the Majority has awarded salary rate increases totaling 6% over two years. Its attempt to "soften the blow" by staggering the timing of the increases saves some money in the short run, but does not change the fact that as of May 31, 1998, the Village will be faced with a 6% increase in the salary base of the police department and a rollover impact into the future. The Majority's claim that the utilization of "splits" somehow "parallels the efforts that the [Village] made with respect to the employees of the Highway Department by reducing the immediate costs to the [Village]" completely

misconstrues the facts and demonstrates a shocking inability to comprehend the importance of properly structuring wage increases.

During this proceeding, the Village negotiated a 4-year deal with the blue-collar workers represented by the Teamsters. This settlement was back loaded and called for two 0% followed by two 6% raises. The examples below illustrate the difference between front loading and back loading salary increases. As these examples illustrate, even if the Village could be assured that the next interest arbitration panel were going to freeze salaries for police in 1998-99 and 1999-00 (which is completely unrealistic if this award is any indication) the Village would still have been better off if the Panel had frozen salaries during 1996-97 and 1997-98 and then the next Panel had awarded 6% raises in 1998-99 and 1999-00.

Example #1 - Majority's Award and Assumption of Two Zeros Thereafter in Percents

The fiscal and contract year begins on June 1st.

	6/1/96	3/1/97	6/1/97	2/1/98	99-00	00-01
Rate Increase	1.5%	1.5%	1.5%	1.5%	0%	0%

	'96-97	'97-98	'98-99	'99-00
% Cost of Rate Increase	1.875%*	3.125%**	1%***	0%

- Represents a 1.5% rate increase for 12 months + an additional 1.5% rate increase for 3 months = 1.5 + 1.5(3/12) = 1.5 + .375 = 1.875 %

** Represents a 1.5% rate increase for 12 months + an additional 1.5 % rate increase for 4 months + the rollover for 9 months from the previous year's 1.5% 3/1/97 increase = 1.5 + 1.5 (4/12) + 1.5 (9/12) = 1.5 + .5 + 1.125 = 3.125 %

*** Despite the 0% rate increase for this year, there is a rollover for 8 months from the previous year's 1.5% 2/1/98 increase = 1.5(8/12) = 1%

Example #2 - Teamster Settlement Increases in Percents

	'97-98	'98-99	'99-00	'00-01
Rate Increase	0%	0%	6%	6%
% Cost of Rate Increase	0%	0%	6%	6%

Example #3 - Majority Award Increases + Two Subsequent Zeroes in Dollars

Top Grade Base salary as of 5/31/96 = $51,023

	6/1/96	3/1/97	6/1/97	2/1/98	'98-99	'99-00
Rate Increase	1.5%	1.5%	1.5%	1.5%	0%	0%

	'96-97	'97-98	'98-99	'99-00
Actual Salary Paid*	$51,982	$53,584	$54,154	$54,154

Total Paid = $213,874

* Applying the % increases shown to a base of $51,023 yields the following salary rates:

1.5% increase = $51,788 — in effect for 9 months.
1.5% increase = $52,565 — in effect for 3 months.
1.5% increase = $53,354 — in effect for 8 months.
1.5% increase = $54,154 — in effect for 4 months.
As of 6/1/98 the new base salary = $54,154.

Example #4 - Teamster Settlement Increases Applied to Police Rates

Top Grade Base salary as of 5/31/96 = $51,023

	'96-97	'97-98	'98-99	'99-00
Rate Increases	0%	0%	6%	6%
Actual Salary Paid	$51,023	$51,023	$54,084	$57,329

Total Paid = $213,459

As the above examples illustrate, back loading wage increases can have a significant impact on the expenditure required of the Village. Thus, even if the Village were now to either negotiate or get an interest arbitration award with two zeroes for 1998-99 and 1999-2000, the police raises will give their members more than the other workers in the Village! What do you suppose are the chances of the PBA agreeing to two 0%'s now! Why would they?

It should not be "perplexing" (see Award at 21-22) to the Majority, therefore, that the Village would enter into a contract with the Teamsters **freezing wages for two years**, 1997-98 and 1998-99, but agreeing to wage increases of 6% for them in 1999-00 and 2000-01. The Teamsters agreement saves money for the Village now and gives it some "breathing room" during a time when the G.M. crisis is at or near its peak, while granting relatively generous make-up wage increases in the future when the Village anticipates its financial condition will improve. In fact, as a comparison of Examples # 3 and #4 illustrates, the Majority's award costs more than if members of the police department had been given two raises of 6% structured in the same manner as the Teamsters deal! Thus, for the Majority to claim that by camouflaging its salary increases in the sheep's clothing of "splits" it somehow "parallels the effort that the [Village] made with respect to the [Teamsters]" is disingenuous at best, and naive and factually inaccurate at worst.

The Majority's fundamental misunderstanding of these basic concepts is further illustrated by its statement that the back loaded structure of the Teamsters deal "essentially results in a level of wages at the end of the four year term of the collective

bargaining agreement as if the employees had received four wage increases of three percent per year" (Award at 23). As the example below illustrates, an award consisting of four increases of 3% would in fact result in a total expenditure that is $6,000 higher than either the Majority's award or the Teamsters deal!

Example #5 - Four Increases of 3%

Top Grade Base salary as of 5/31/96 = $51,023

	'96-97	'97-98	'98-99	'99-00
Rate Inc.	3%	3%	3%	3%
Salary	$52,554	$54,130	$55,754	$57,427
				Total = $219,865

Moreover, the Teamsters also agreed to significant concessions involving health insurance. This Award is devoid of any meaningful concessions by the PBA.

The Majority states that "the Dissent's repeated reference to a 6% increase inaccurately and misleadingly describes the actual cost of the Award and the actual earnings that the members of the bargaining unit will receive during the two years covered by the Award" (Award at 37). This is nothing but a complete misunderstanding of my argument and misstatement of the facts. The Majority apparently refuses to acknowledge that at the end of the term of its Award the Village will still be left with a 6% increase in the base wages of its police department, whether the percentage increases contributing to that 6% increase are disguised in splits or not.

The Majority also objects to my argument criticizing its claim that the Teamsters settlement resulted in a level of wages essentially the same as if the employees had received four wage increases of 3% (Award at 39-40). While the final salary rates in effect at the end of the term are, as the Majority notes, very similar, what the Majority conveniently fails to either appreciate or acknowledge is that the total expenditure over this period would be $6000 higher if four increases of 3% were given, as opposed to the two 0%'s followed by two 6% increases contained in the Teamsters settlement (see Dissent Examples #4 and #5). The Majority's award, therefore, does not "parallel the effort" that the Village made with the Teamsters - it is not even close!

For the Majority to argue (Award at 19) that "the treatment of employees who perform other municipal functions lacks the same degree of relevance as the treatment of . . . police personnel" also spanks of arrogance. Members of the police department certainly perform an important, even crucial function. The difference in pay for that job is already built into their higher rates and better pension system. It does not mean police deserve a larger raise (as opposed to salary) than the Village's other municipal workers. Compensation for their "special skills" is already reflected in their rate of pay and fringe benefits (e.g., 20 year pension, § 207-c benefits). Accordingly, they should receive no better treatment than other municipal employees with regard to salary increases during a crisis. Otherwise, they will build a higher base salary and will move further and further ahead of such other workers. This will undo traditional relationships among a municipality's employees and is not fair to the Village's other more cooperative units.

The Majority also contradicts its own rationale for the "split" increases it has awarded by making all individuals who were on the payroll at any time during the period covered by the award eligible for retroactive increases. If the Majority remained true to its own rhetoric, it would have provided retroactive increases only to those individuals who were both employed during the period covered by the award and were still employed on the date of the issuance of the award. In a time of serious financial crisis for the Village, the Majority is giving money to individuals who no longer work for the Village - employees who have in fact resigned to go to work for other departments[2]. Does this make sense? It won't "attract" them or retain them - they're already gone! The majority cites "fairness" in defense of the award on this topic. Fairness has nothing to do with this argument - fiscal reality does. It makes absolutely no sense to provide retroactive wage adjustments to any individuals who have chosen to go work somewhere else. The Majority is fortunate that it does not have to answer directly to the citizen taxpayers of the Village to explain why such a use of their tax dollars is "the fair thing to do."

Moreover, the Majority also refused to adopt the Village's reasonable demands for a second salary tier for new hires; to reduce the currently uncapped tuition reimbursement benefit to realistic levels; and to eliminate the payment for holidays that occur during an employee's vacation. These proposals represented an effort to reduce expenditures in the short term.

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[2]An argument could be made to grant the retroactive raise to retirees so as not to adversely effect their pension and because they did not leave to go work for another employer.

Instead, the Majority rejected the request for a second salary tier without explanation (Award at 28); capped the tuition reimbursement benefit at an incredible $12,000 per year (Award at 34) - despite the fact that the Village introduced evidence that the members of the PBA had recently sought and pursued to arbitration reimbursement for classes such as cooking and also that there were many Villages with much lower amounts set aside; and outright rejected the request regarding holidays (Award at 35).

Accordingly, in this time of financial crisis for the Village, it could still be faced with a tuition bill of up to $12,000.

Even more ludicrous is that the Village will still have to pay officers twice for the same day if a holiday falls during their scheduled vacation. Does this make any sense even in the best of times?

The above provides graphic examples of the Majority's disregard for the necessity of prioritizing expenditures given the current fiscal situation of the Village and the associated danger of allowing interest arbitration to dictate how the Village and its citizens must spend its scarce resources.

The information cited by the Majority in support of its award is either inaccurate or irrelevant.

In addition to the above, some information relied upon by the Majority in support of the Award is inaccurate, irrelevant and/or misleading. A few of these arguments will be addressed below.

1. Attract and Retain Officers - In support of its Award, the Majority argues that its 6% rate increase is necessary in order to attract and retain qualified

individuals (Award at 16). There was NO evidence presented during the hearings to suggest that the Village has had any difficulty attracting or retaining officers. Even if there had been, such a problem is a concern the municipality would address if need be. Does the Majority think these raises will improve the quality or performance of the Village's police officers? We saw no evidence of this during the hearings.

While some officers may have left the Village's police department over the past several years, there is no evidence that such attrition was other than typical, or that it occurred because of the financial crisis with which the Village is faced. There is also no evidence in the record that the Village has had difficulty attracting qualified individuals to serve in its police department. Moreover, in an effort to engage in just the kind of "efforts to increase the efficiency of the delivery of municipal services and the elimination of possible waste" (Award at 40) that the Majority accuses the Village of neglecting, the Village has in fact allowed many positions, both within and outside the police department, to remain vacant in an effort to streamline the provision of services and save money in the short term.

2. Set asides — While the Village did set aside funds for a 3% lump sum increase for the FY 1996-97 and budgeted a 4% increase for the FY 1997-98 as a prudent financial practice to protect itself, the Village did not anticipate the G.M. situation would have gotten as bad as it has. Unfortunately, the Village had to utilize these funds to prevent large tax increases over the past few years. Thus, the Village needed a two year salary freeze from its police, like it got from all other Village employees, to balance the

budget. The Majority's award could force it to resort to more layoffs and drastic cuts in services (Village Exhibits 28-29). Unfortunately, the Majority's award fails to recognize this.

The Majority states that my Dissent fails to recognize the Taylor Law's legitimate concern for members of "the bargaining unit to maintain the traditional relationships among comparable - not identical - jurisdictions " (Award at 41). The Majority again mischaracterizes the facts. Far from requiring that the Village "maintain" any relationship with "comparable" communities, the Taylor Law in fact requires only that the Panel "compare" the Village with "comparable" communities. Nothing requires the maintenance of any relationship between or among such "comparables." To argue that the law so requires, completely obscures and misapplies the statutory framework within which the Panel must operate. In addition, given the Village's dire financial status, I submit there are no true comparables at this time.

3. Prior interest arbitration award - the Panel defensively states that just because a prior Panel awarded a wage freeze in the first year of its award during another G.M. crisis, does not "preordain that the present interest arbitration panel would reach the same conclusion under the record developed in the present case" (Award at 25). In a sense I agree - a single year's wage freeze should not be preordained. Instead, the record in this case supports and justifies a need for a 2 year wage freeze! Indeed, the only raise that could have been rationally supported would have been a lump sum payment equal to

3% for the two year period — an amount Mr. Shah testified was still available in the budget.

For the Majority to also suggest that given this record it "must exercise considerable restraint before altering, or disturbing" the terms of the present collective bargaining agreement is ludicrous (Award at 20). When the facts demonstrate a financial situation as poor as that faced by Sleepy Hollow today, coupled with a history of 3 interest arbitrations in the past decade, it is the Majority's obligation, not just its right under the law, to make those changes which are required based on the compelling needs of the party in interest - the citizens of Sleepy Hollow.

Conclusion

If a private employer cannot afford, or does not wish to absorb, the increased costs of labor contracts, it has many options. It can sell its business, discontinue unprofitable lines, spin off subsidiaries, move, or simply go out of business completely. A public employer has none of these options. It must spread its limited resources over a number of public functions and services, of which police protection is but one - albeit an important one.

The consumer in the private sector also has choices, e.g., to buy goods elsewhere or to forego a purchase completely. Citizens and taxpayers do not have these options. They cannot forego police protection, do without services, or seek these services

elsewhere. Their concern over the increased tax burden is voiced through the ballot box, budget defeats, uncollected taxes and taxpayer resistance.

The Award that has been issued by this Majority demonstrates a complete disregard for such realities. It demonstrates, more clearly than any other award with which I am familiar, the dangers that are inherent in the interest arbitration process. If this Award does not support the need for the elimination of interest arbitration as we know it, I don't know what ever will.

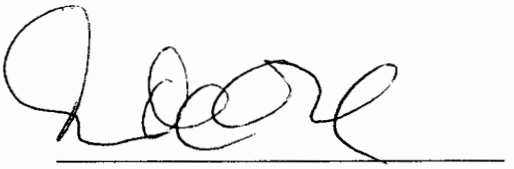
Yet, if you factor in these percentage raises awarded by the Majority with all the other police settlements and/or interest arbitrations in Westchester, the 6% rate does not appear to be "out of line." However, it is so out of line with the economic realities of Sleepy Hollow as to be arbitrary and capricious. A community that has exhausted its fund balance, raised its taxes by 18.51% because of the G.M. situation, and received $400,000 in transitional aid from the State to keep the increase at 18.51%, must now come up with a 6% raise at a time when the cost of living was about one-half of that figure! The system simply has not worked for Sleepy Hollow's taxpayers.

The Majority's characterization of the dissent as "overly zealous advocacy" highlights the problem with Interest Arbitration as a final step in negotiation. While I admit to "advocacy" and "zealousness," they are well placed. The award rapes the Village when it is most vulnerable. It's financial situation is presently dire. The money for the increases were not budgeted. It will result in a diminution of other services - for what - a 6% raise for its police officers. The money is given by someone who is not

elected by our taxpayers, a virtual stranger to Sleepy Hollow, and not responsible to anyone. I submit it gives this person far too much influence over the Village's financial condition with no accountability. Clearly, in his view, a fiscal crisis simply means your employees get pretty much the same raises as surrounding departments, but doled out in splits.

This Award cries out for the Legislature not to renew the Interest Arbitration provision of this Taylor Law.

For the reasons I have outlined above, I respectfully dissent from the Majority's Award on the items so indicated.



Terence M. O'Neil