STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between

BLOOMING GROVE POLICE
BENEVOLENT ASSOCIATION, INC. (PBA), AND THE
TOWN OF BLOOMING GROVE SUPERIOR
OFFICER'S COUNCIL (SOC),

Petitioner,

-and-

TOWN OF BLOOMING GROVE,

Respondent

Compulsory Interest
Arbitration Award
PERB Case No. IA2016-008;
M2015-031 (PBA) AND
PERB Case No. IA2016-007;
M2015-030 (SOC)
For the Period of
January 1, 2015 – December 31, 2016

BEFORE:

PHILIP L. MAIER, PUBLIC PANEL MEMBER AND CHAIRPERSON
ANTHONY V. SOLFARO, EMPLOYEE ORGANIZATION MEMBER
DONALD J. FEEРИCK, Jr. ESQ., PUBLIC EMPLOYER PANEL MEMBER

APPEARANCES:

FOR THE PETITIONER:
THE LAW OFFICES OF JOHN K. GRANT, P.C.
JOHN K. GRANT, ESQ.

FOR THE RESPONDENT:
FEERICK NUGENT MacCARTNEY PLLC
(BRIAN D. NUGENT ESQ. and JOHN J. KOLSAR III, ESQ. of counsel)
OPINION AND AWARD

The Town of Blooming Grove (Town) and the Blooming Grove Police Benevolent Association, Inc., and the Town of Blooming Grove Superior Officer's Association (PBA/SOC) are signatories to separate collective bargaining agreements (CBAs), the terms of which are January 1, 2012 to December 31, 2014. The PBA/SOC and the Town attempted unsuccessfully to reach 'successor collectively bargaining agreements. The PBA/SOC then filed separate Declarations of Impasses on May 11, 2015 pursuant to the impasse resolution process under the Public Employees' Fair Employment Act (Taylor Law) for the appointment of a Mediator. The same Mediator was appointed for the PBA and SOC. The parties did not resolve the collective bargaining dispute in mediation. Thereafter, the PBA/SOC filed its Petitions For Compulsory Interest Arbitration dated August 31, 2016, and the Town filed its Response To Petitions For Compulsory Interest Arbitration on September 19, 2016.

Philip L. Maier was designated by the New York State Public Employment Relations Board (PERB) as the Public Panel Member and Chairperson on October 17, 2016, for both the PBA and SOC, with the PBA and SOC designating Anthony V. Solfaro, and the Town designating Donald J. Feerick, Jr., Esq. as their panel representatives to comprise the Public Arbitration Panel (Panel).

By a decision dated October 23, 2018, PERB issued a decision holding that the PBA/SOC demands concerning minimum staffing and a GML 207-c demand, were properly submitted to the Panel. It also held that the PBA/SOC's disciplinary demand was

\[1\] PBA Exhibit 2 to 4.
a prohibited subject of bargaining and not properly submitted to the Panel.\textsuperscript{2}

Telephonic pre-hearing conferences were conducted on November 10, 2016, March 30, 2017, August 4, 2017. A hearing for both the PBA/SOC was held before the Panel on June 26, 2017, at which time the parties presented witnesses and documentary evidence in support of their respective positions. The hearing had a transcribed record, which was the official record of the proceeding, pursuant to Section 209.5(b) of the Civil Service Law. Both parties filed post-hearing briefs dated October 6, 2017. Thereafter, Executive Sessions were conducted on October 11, 2017, May 28, 2019, and telephone sessions on October 24 and November 25, 2019.

\textbf{STATUTORY CRITERIA – CIVIL SERVICE LAW §209(4)}

This Panel is charged with rendering a determination in accordance with Civil Service Law §209(4)(c)(v)(a)-(d) of the Public Employees' Fair Employment Act (Taylor Law).

That provision states, in full, that:

The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such a determination, the panel shall specify the basis for the 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 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

\textsuperscript{2} PBERB (U-35303; U-35324) (2018).
qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills; and
d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The parties' position regarding these criteria is set forth below.

PBA/SOC'S POSITIONS

The PBA/SOC asserts that the comparable jurisdictions are those municipalities within Orange County with similar size police departments with the greatest emphasis on those Towns or Villages that are contiguous and in close proximity to the Town, and have similar socioeconomic experiences. It cites Village of Bronxville, (IA 95-001, Chair Douglas) in support of this type of analytical approach.

The application of this standard, as asserted by the PBA/SOC, leads to the conclusion that the neighboring towns of Chester, Cornwall, New Windsor, Woodbury and Goshen, and the Villages of Chester, Monroe and Washingtonville, located within the Town, are the most comparable. These communities are substantially similar in that they are contiguous and 1) are in close proximity to each other, 2) have a common form of Town government, and similar in 3) population, population per square mile and police officer 4) number of sworn officers 5) number of reported crimes 6) property values 7) size of the jurisdiction 8) total housing units 9) constitutional tax limits and 10) overall tax rates and commercial and retail taxpayers.

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3 Except for Goshen all are primarily full time with 13 to 38 officers.
4 PBA Exhibits 63, 64, 65 and 66. PBA brief p. 29.
The PBA/SOC also assert that the Town has the financial ability to pay for its demands. It relies primarily on the report of its municipal financial expert, Kevin Decker (Decker), his testimony and supporting documentation (PBA/SOC Exhibit 70). Additionally, it relies upon the fact that the Town did not attempt to introduce any contrary testimony. Decker testified that the Town is in very strong financial shape, and has the ability to pay for a retroactive raise of 3.5%, and to pay those raises going forward. In support of that position, Decker testified that the property tax is guaranteed by Orange County, and between 2012 and 2017, the average tax rate increase was between 2.3% and 2.5%. During this period, the Town added to its fund balance. Sales tax revenue, which is the second largest share of the Town's revenue, has increased every year since 2009, and actual receipts in 2017 showed an increase of almost 7%. The Town has a high-grade bond rating in recognition of its strong financial condition, and has amassed a very substantial fund balance. Its unrestricted fund balance grew to over $1.805 million, which is 60.9% of the total budget for the Town outside Village Fund, and South Blooming Grove Police Fund, and over $5,052 million of the Combined General Funds.

In four (4) of the past five (5) years, the Town had budget surpluses, and its total fund balance increased by $549,707 from 2011 through fiscal year ending 2016. In 2016, the total fund balance as a percentage of expenditures was 67%. The PBA/SOC argues that the Town clearly has the ability to pay for its wage and benefit demands.

The PBA/SOC also assert that the interests and welfare of the public warrant granting its demands. This interest is best served by having a well-trained and

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1 Transcript, p. 60.
2 PBA 70, PBA brief 32-33.
professional police department, with an attractive benefit package. The Town is in a very sound financial position, and it is in the interest of the public to maintain a level of terms and conditions of employment which will attract and retain employees. An Award which advances the employees is consistent with this interest.

The PBA/SOC also assert that the peculiarities of the police profession support its position. This criterion has been interpreted as looking at the unique characteristics of the Police profession itself. Appropriate weight must be given to the hazardous nature of police work and their special qualifications, training and skills. They are subject to public scrutiny, and from various public officials. The Town does not recognize the significance of these distinctions, comparing the police instead to clerical staff. For example, the police have different work schedules, wear bulletproof vests, carry weapons, work weekends, holidays, and are a twenty-four (24) hour a day operation.

Lastly, the PBA/SOC asserts that the terms of past collective agreements support its position. From its perspective, a review of past agreements confirms that the PBA has historically accepted lower base wages at Steps 1, 2, 3 and 4, and that this was done to retain the current level of health insurance benefits. The PBA agreed to a reduction in salary for the first (1st) four (4) steps in the January 1, 2005 through December 31, 2008 Memorandum of Agreement. It also did so for the January 1, 2009 to December 31, 2011 Agreement. The value of these concessions is substantial, and the Town has benefited from these savings which leads to savings in other roll up areas such as overtime, Workers’ Compensation payments, MTA tax payment, Social Security payments, Medicare payments, and pension costs.

\* PBA Exhibits 16-31.
TOWN'S POSITION

The Town asserts that all Town and Village Police Departments in Orange County constitute the comparable jurisdictions. It asserts that in other proceedings, the PBA/SOC representative argued that all police departments in the County are comparable municipalities citing, In the Matter of the Compulsory Interest Arbitration between the Town of Cornwall Police Benevolent Association, Inc. and the Town of Cornwall, Case No. IA 2009-026; M2008-335, at 30 (2011); in the Matter of the Compulsory Interest Arbitration between the Village of Washingtonville Police Benevolent Association, Inc. and the Village of Washingtonville, Case No. IA 2008-23; M2008-185 at 5, 7 (2010).

The Town cites also an Award between the parties issued in a prior proceeding quoting the following "...the Chairman suggests to the parties that it is reasonable to compare the Town to all the local governmental units in the County, separately, and also to a subset of towns of those with full-time police, contiguous to the Town." In the Matter of the Compulsory Interest Arbitration between the Town of Blooming Grove and Blooming Grove Superior Offices; Council, Case No. IA98-002; M97-106 at 5 (1999); and In the Matter of the Compulsory Interest Arbitration between the Town of Blooming Grove and Blooming Grove Police Benevolent Association, Inc., Case No. IA98-001; M97-107 at 5 (1999).

The Town also argues that application of the criteria regarding the interest and welfare of the public and financial ability to pay support granting its demands. The Town asserts that while it may have the ability to pay a just and reasonable wage increase, the

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* Town brief pp. 11-13.
property tax cap, increasing costs of the Town's long-term liabilities, especially health insurance, combined with the pressure to maintain a balanced budget imposes additional constraints on the Town's ability to pay. The Town asserts that these factors demonstrate that it is in the public interest to award its health insurance contribution demand, a just and reasonable wage increase, and to deny all the other PBA/SOC demands.

The Town has a variety of matters which affect its budget, such as roads, schools and other basic services, including a Justice Court, Recreation Facilities and Programs, and the Water and Sewer Districts. Prudent fiscal management requires that all these responsibilities be taken into consideration. Being the highest compensated department has no bearing to the quality of the services provided. There is no basis to grant more than a just and reasonable wage increase.

The Town states that both parties have agreed that the Town has the ability to pay a just and reasonable wage increase. This does not mean, however, that an unreasonable wage increase should be awarded. The Town asserts that the PBA/SOC's financial expert concluded that the Town is in excellent financial standing, and has the ability to pay the 3.5% wage increase demanded. It also asserts that his analysis is flawed for several reasons. The Town states that since it acknowledges that it has the ability to pay, such expert testimony was not required. Once produced, however, it is entitled to challenge it and it is proper to have done so.

The Town argues that there is a significant error in Decker's financial report, specifically Exhibit M, Column 4. This leads to a significant miscalculation which favors the PBA/SOC. This miscalculation significantly affects the remainder of the exhibit leading

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9 Town brief, P. 15.
to the presentation of inaccurate information to the Panel. Additionally, as an example of the unreliability of the report, it states that there is a blatant contradiction affecting the Full Cost of Retroactively of a 3.5% increase. The Total Pay calculation to members excludes certain items, but appears to be included on Exhibit L entitled "Total PBA Personal Services Spending (Actual)." The Town does not assert that it is in poor financial condition, or that it is financially distressed. It points out that though it has the ability to pay, this does not lead to the conclusion that an unreasonable Award is warranted. It must function within the tax cap, has increasing long term liabilities such as health insurance and a variety of other matters which it must finance. It argues that the financial impact of the Award upon the Town residents must be recognized. The Town asserts that it has prudently managed its finances and in effect asserts that it should be able to continue to do so. It has other financial responsibilities and though it has a fund balance, not all of those funds should be spent toward this Award.

Decker does not testify on behalf of municipalities, and the Town cites cases which it asserts concluded that Decker’s expert conclusion lacked credibility, or were based upon erroneous assumptions. His ability to pay analysis relies on the assumption that the Town fund balance will be spent entirely on retroactive payments. His assertion that raising taxes fails to take into consideration the Town’s financial standing. The Town’s ability to pay must be viewed in light of the resident taxpayer’s ability to pay for all government services. The awarding of the PBA/SOC’s demands would put further pressure on the Town to balance a budget either by raising taxes, or cutting services, placing an additional burden on taxpayers.
The Town concluded this portion of its argument by asserting that if the Panel awards any wage increase, it must be just and reasonable to establish market parity and stability within the Department.10

**DISCUSSION**

Both the PBA/SOC and Town have briefed their demands presented to the Panel for an Award. The following discussion sets forth the salient aspects of those arguments, together with their reference to any evidence from comparable communities they relied upon in support of their respective demands. 11 The application of the statutory criteria, which is the basis for the Panel’s determination are applied in light of these arguments and the record evidence. As the below sections indicate, as agreed to by the parties, the terms of the Award are limited to the two (2) year period of January 1, 2015 to December 31, 2016.

This Award is based upon the statutory criteria in Civil Service Law §209(4)(c)(v)(a)-(d). While the parties in their briefs vigorously present their positions and contest those in opposition, as Panel Chair, I find that there is not much material distinction in their positions regarding the statutory criteria. As stated above, the Town asserts that all Town and Village police departments in Orange County constitute the comparable jurisdictions. The PBA/SOC, in contrast, asserts that the comparable jurisdictions are those municipalities within Orange County with similar size police departments with the greatest emphasis on those Towns or Villages that are contiguous and in close proximity to the Town, and have similar socioeconomic experiences.

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10 Town’s brief p. 20.

11 PBA/SOC Exhibits 7, 8, 9, 16, 17, 19, 20 and 23. See also Town Exhibits 2 and 3.
The PBA/SOC asserts that the Town has the ability to pay for the demands it seeks. It relies upon Decker's report and testimony, and the Town's own position. During the hearing and in its brief, the Town acknowledges that it has an ability to pay what it calls a just and reasonable wage increase. It does not assert that it is a financially distressed municipality, which is recognized by the Taylor Law as a factor having a bearing upon an Award.

The Town asserts that Decker's report is unreliable and that he is not a credible witness. I do not agree with these assertions. In any event, given the Town's acknowledgement that it has the ability and apparent willingness to pay a just and reasonable wage increase, the only question before the Panel Chair on this issue is the amount of the wage increases to be awarded. This issue is specifically addressed below.

As Panel Chair, I have taken into account the statutory criteria, the sworn testimony, documentary evidence, and post-hearing briefs submitted, in fashioning this Award. Additionally, the nature of the Interest Arbitration proceeding itself is a factor in this determination. Interest Arbitration is not meant to be a substitute for negotiations between the parties themselves. It provides a finality to a round of bargaining in accordance with the procedures in, and the policies adopted by the Taylor Law. The numerous demands presented by both parties would greatly change the terms and conditions of employment of both unit members, and have an impact upon the Town's ability to manage and operate the Police Department. I do not find it reasonable, necessary or appropriate to effectuate such wide-ranging changes as a result of this Award.
THE PARTIES' DEMANDS AND PANEL AWARD

PBA/SOC DEMANDS AND TOWN RESPONSE

1. ARTICLE 3 – PBA/SOC'S BASE WAGE AND LONGEVIITY DEMANDS

The PBA/SOC seeks to adjust their respective Base Wage schedules on January 1st of 2015 and 2016 by 3.5% for the PBA unit members on the existing schedule, and increase the existing differential percentages for the SOC members. The PBA/SOC argue that the increases are justified and warranted based upon a comparison of wages between those units, and what it argues are the appropriate municipal comparators. This comparison is set forth in PBA/SOC Exhibits 39 and 40. It asserts that for 2013 and 2014 the Town ranked 6th and 9th in the comparable municipalities. If the 3.5% increases are awarded in full to the PBA, it would be ranked 5th out of 9 in 2015, 2016 and 2017 and drop to 6th for 2018. Exhibit 39 shows that even if the PBA/SOC’s demands are awarded, there is no advancement compared to other comparable communities.

These increases only serve to maintain the relative ranking of the PBA/SOC and should be granted. The Town’s demand of 0%, 1% and 1% for the years 2015, 2016, and 2017, would result in a downward spiral in wages relative to other communities, and harm employee morale. There was no explanation offered by the Town for this demand, and should be rejected.\(^{12}\)

The PBA/SOC also seek an increase in the amount of longevity paid. Starting 5th year to completion of the 9th year it seeks a $100 increase effective January 1, 2015 and January 1, 2016. Starting 10th year to completion of the 13th year it seeks a $150 increase

\(^{12}\) PBA/SOC brief p. 45.
effective January 1, 2015 and January 1, 2016. Starting 14th year to completion of the 17th year it seeks a $200 increase effective January 1, 2015 and January 1, 2016. Starting 18th year and above it seeks a $250 increase effective January 1, 2015 and January 1, 2016. The PBA/SOC asserts that this longevity increase will not substantially alter the basic compensation package paid to the PBA/SOC members', and serves to maintain the relative standing. The PBA also seeks to increase the Detective/Investigator differential above Step 6 by ¾% effective January 1, 2015 and ¾% effective January 1, 2016, which has not been increased since January 1, 2008.

The Town asserts that it is not reasonable to grant a demand that would make unit members the highest paid in the County. The increases should maintain the stability and parity with the comparable market. The PBA/SOC’s demands would unrealistically and unsustainably compensate those members beyond what is reasonable and just. The Town asserts in its brief that it is not objecting to a reasonable and just wage increase.13 It affirmed that at the hearing that, despite its original demand on wages of 0, 1% and 1% for the years 2015, 2016, and 2017, it has the ability to pay a reasonable and just increase based upon an examination of the evidence and comparable communities. It states that the average annual percentage wage increase in Orange County is approximately 2.25%, and that it believes that such average increase is just and reasonable.14 It also states that longevity increases should be commensurate with wage increases with a maximum of a 2% increase in longevity payments.

13 Town brief page. 24.
14 Town brief page 3.
The basic distinction between these positions is that the PBA/SOC places more emphasis on the Towns, while the Town itself considers all types of municipalities to be comparable. The difficulty with both positions, however, is that there is no clear wage pattern which is discernible from either position. Neither party specifically illustrates in their briefs the wage increases from other municipalities which form the basis of their wage demands. The Town cites a prior Interest Arbitration Award between the parties in this matter, and as Panel Chair, I have given that Award some weight in my consideration. It is a twenty (20) year-old Award, and there is no authoritative statement from any other Award that this is a current statement of comparability in the County. Additionally, the Award itself states that while it is reasonable to compare the Town to all local governments in the County, it is not clear from the Town brief that it did so. The Award also notes that it is reasonable to compare the Town to a “subset of towns of those with full-time police, contiguous to the Town.” Given these factors, and the parties’ arguments, and as Panel Chair, I find that the comparable communities are those which are a subset of towns of those with full-time police, contiguous to the Town, but also have considered the Town’s arguments concerning other municipalities in Orange County.

The record does not demonstrate that any police organization received a 3.5% wage increase for this period. The Town’s 2.25% approximate calculation is more in line with the wage rates in the comparable departments. As Panel Chair, I find, however, that given the PBA/SOC’s argument about maintaining relative rank compared to the Town’s, which is echoed by the Town, and the fact that the Town agrees that it has the financial ability to pay, the base wage increases Awarded are as set forth below.
PANEL AWARD ON THE FULL-TIME POLICE OFFICERS BASE WAGE

SCHEDULES FOR THE PBA/SOC

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair Awards that the PBA Base Wage Schedule shall be increased by 2.5% effective January 1, 2015, and 2.5% January 1, 2016. The Base Wage Schedule in Appendix "A" of the PBA's CBA shall reflect the following:

Effective as of the dates below, the following Base Wage shall be paid, followed with service construed to mean continuous employment in the Blooming Grove Police Department. (N/C)

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<td>1</td>
<td>Starting</td>
<td>$53,782</td>
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<td>After 1 Year</td>
<td>$58,906</td>
<td>$60,379</td>
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<td>3</td>
<td>After 2 Years</td>
<td>$63,962</td>
<td>$65,561</td>
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<td>4</td>
<td>After 3 Years</td>
<td>$68,049</td>
<td>$69,750</td>
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<td>5</td>
<td>After 4 Years</td>
<td>$72,544</td>
<td>$74,358</td>
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<td>6</td>
<td>After 5 Years</td>
<td>$76,216</td>
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CONCUR

DISSENT

Donald J. Feerick, Jr. Date
Public Employer Panel Member

CONCUR

DISSENT

Anthony V. Solfar Date
Employee Organization Panel Member

As Panel Chair, I do not find that the record supports an increase in the Detective/Investigator differential, and it is denied. Appendix "A" of the PBA's CBA shall reflect the following:
A. The Detective/Investigator shall be paid a differential above Step 6 as follows:

(N/C)  

\[
\begin{array}{ll}
1/1/15 & 1/1/16 \\
(\text{N/C}) 7.0\% & (\text{N/C}) 7.0\% \\
$81,551 & $83,589 \\
\end{array}
\]

\checkmark CONCUR  

DISSENT  

Donald J. Faerick, Jr. Date  
Public Employer Panel Member  

\checkmark DISSENT  

Anthony V. Solfajo Date  
Employee Organization Panel Member  

Based on the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair Awards that the SOC Base Wage Schedule differentials remain unchanged for the period of January 1, 2015 and January 1, 2016.

The Base Wage Schedule in Appendix "A" of the SOC CBA shall reflect the following:

**APPENDIX "A" (p. 25)**

Effective as of the dates below, the Base Wage shall be computed by applying the percentages below to the Step 6 "After 5 year" Base Wage of the Police Officer in the Town of Blooming Grove as follows: (N/C)

A. Definitions:

**Probation Sergeant** – Shall be a superior officer who has not completed the probationary period and has not successfully completed the police supervisor's course, and shall be paid a differential pursuant to the above as follows: (N/C)
Sergeant – Shall be a superior officer who has successfully completed the probationary period and successfully completed the police supervisor’s course, and shall be paid a differential pursuant to the above as follows: (N/C)

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<td>$88,411</td>
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<td>$91,402</td>
<td>$92,935</td>
<td>$92,183</td>
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Senior and/or Detective Sergeant – Shall be a superior officer who has completed three (3) years as a Sergeant and shall, on his/her anniversary date starting his/her 4th year, be paid a differential pursuant to the above as follows: (N/C)

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<td>$93,982</td>
<td>$96,331</td>
<td>$96,835</td>
<td>$99,183</td>
<td>$101,531</td>
<td>$103,883</td>
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Detective Sergeant – Shall be paid a differential above the Senior Sergeant’s Step as follows: (N/C)

2. PBA/SOC’S LONGEVITY DEMANDS

The PBA/SOC’s longevity demands are as follows:

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<td>Step</td>
<td>Length of Service</td>
<td>1/1/15</td>
<td>1/1/16</td>
<td>1/1/15</td>
<td>1/1/16</td>
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<tr>
<td>7</td>
<td>starting 5th year to completion of 8th year (+$100)</td>
<td>$2,225 (+$100)</td>
<td>$2,325</td>
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<tr>
<td>8</td>
<td>starting 10th year to completion of 13th year (+$150)</td>
<td>$2,525 (+$150)</td>
<td>$2,675</td>
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starting 14th year to completion of 17th year (+$200) $2,825 (+$200) $3,025
starting 18th year and above (+$250) $3,275 (+$250) $3,525

All longevity shall be paid at the end of the calendar year. (N/C)

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<th>1/1/15</th>
<th>1/1/16</th>
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<tr>
<td>Step</td>
<td>Years of Service</td>
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<tr>
<td>7</td>
<td>Starting 5th year to completion of 9th year (+$100.00) $2,375.00 (+$100.00) $2,475.00</td>
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<tr>
<td>8</td>
<td>Starting 10th year to completion of 13th year (+$150.00) $2,675.00 (+$150.00) $2,825.00</td>
<td></td>
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</tr>
<tr>
<td>9</td>
<td>Starting 14th year to completion of 17th year (+$200.00) $2,975.00 (+$200.00) $3,175.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Starting 18th year and Above (+$250.00) $3,425.00 (+$250.00) $3,675.00</td>
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</tbody>
</table>

All longevity shall be paid at the end of the calendar year. (N/C)

The PBA/SOC asserts that the longevity increases are appropriate and will not serve to change the relative ranking with the comparators. The Town asserts that there should be a maximum longevity increase of 2%. As Panel Chair, I find, however, that a compromise between the two (2) positions is the most appropriate for this Award. The PBA/SOC’s demand is needed to retain the relative rank with the comparators. The Town, on the other hand, does have the ability to pay, and is offering in effect a $20 increase on each Step every year of the Award. As Panel Chair, I find that $50.00 on each Step of the respective schedules is warranted, is more reasonable, and consistent with the statutory criteria.

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair Awards that the PBA longevity schedule and amounts at each Step shall be increased by $50.00 effective January 1, 2015, and $50.00 January 1, 2016. The longevity schedule in Appendix "A" of the PBA CBA shall reflect the following:
B. The Longevity schedule is as follows: (N/C)

(N/C) (N/C) (+$50.00) (+$50.00)
Step Length of Service 1/1/15 1/1/16
7 Starting 5th Year to completion of 9th Year $2,175.00 $2,225.00
8 Starting 10th Year to completion of 13th Year $2,425.00 $2,475.00
9 Starting 14th Year to completion of 17th Year $2,675.00 $2,725.00
10 Starting 18th Year and Above $3,075.00 $3,125.00

All longevity pay shall be paid at the end of the calendar year. (N/C)

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair Awards that the SOC longevity schedule and amounts at each Step shall be increased by $50.00 effective January 1, 2015, and January 1, 2016. The longevity schedule in Appendix "A" of the SOC CBA shall reflect the following:

SOC APPENDIX "A" (p. 26)

B. Each Sergeant shall be entitled to Longevity pay in accordance with the following schedule based on years of continuous service in the Town of Blooming Grove Police Department (N/C):

(N/C) (N/C) (+$50.00) (+$50.00)
Step Length of Service 1/1/15 1/1/16
7 Starting 5th Year to completion of 9th Year $2,325.00 $2,375.00
8 Starting 10th Year to completion of 13th Year $2,575.00 $2,625.00
9 Starting 14th Year to completion of 17th Year $2,825.00 $2,875.00
10 Starting 18th Year and Above $3,225.00 $3,275.00

All longevity pay shall be paid at the end of the calendar year. (N/C)

CONCUR

DISSENT

Donald J. Feechel, Jr. Date
Public Employer Panel Member

CONCUR

X

DISSENT

Anthony V. Solfaro Date
Employee Organization Panel Member
3. ARTICLE 9 – PBA/SOC’S HEALTH INSURANCE BUY OUT AND DENTAL

DEMANDS

A. Health Insurance Buy-Out

Insert “fifty percent (50%)” where “thirty percent (30%)” appears in the 2nd paragraph.

As applicable here, Article 9 in both the PBA/SOC CBA’s state:

"An employee who declines and waives health insurance coverage as provided in "A" above, shall be compensated at thirty percent (30%) of the premium cost in effect payable in equal installments in the first (1st) payroll at the end of each quarter.

Dental – Amend to read as follows:

The Town shall provide at its expense the (insert actual plan name here) dental insurance plan for each employee and eligible dependent(s).

The existing language provides that the Town shall provide, at its expense, a dental insurance plan for each employee. The employee who opts for family coverage will pay the difference in the cost of family coverage.

The PBA/SOC asserts that the Town admits that it has the financial ability to pay for its increased health insurance buyout demands, and that dental be provided to include eligible dependents is a just and reasonable demand. The PBA/SOC further asserts that a health insurance buyout provision is mutually beneficial, and the higher the buyout, the greater the participation. Of the 8 communities it considers comparable, 5 have a 50% percent buyout. Only Cornwall has a lower buyout at 20%. The PBA/SOC offers an example of a specific member who receives the buyout, and as a result he can supplement the plan provided through his spouse’s employer, and the Town saves money as a result. The Town asserts that the buyout should be reduced from 30% to 20% or

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15 PBA/SOC brief p. 49.
16 PBA/SOC brief p. 53; PBA Exhibit 46.
a flat fee buyout. It asserts that the Town should not be obligated to pay a member just because the member has existing health insurance coverage. The Town objects to the PBA/SOC’s demand.

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the PBA/SOC’s health insurance buy out demand be increased to 50% of the premium, from 30%, and providing dental coverage to eligible dependents, and does not find that the PBA/SOC has demonstrated a sufficient basis for these, and concurs with the Town’s contentions that these demands be denied.

PANEL AWARD ON THE PBA/SOC’S HEALTH INSURANCE BUY OUT AND DENTAL DEMANDS

CONCUR DISSENT

Donald J. Feenick, Jr. Date
Public Employer Panel Member

CONCUR X DISSENT

Anthony V. Solfare Date
Employee Organization Panel Member

4. MINIMUM STAFFING (NEW)

There shall be a minimum of three (3) police officers, which may include one (1) Sergeant, scheduled and working on each tour of duty. When an additional employee(s) is required to fill the minimum staffing level, full-time employees shall be offered the opportunity first (1st), using the canvassing procedure in Article 5 – Overtime.

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17 Town brief p. 21.

18 PBA/SOC Exhibit 54.
The PBA in support of this demand relies upon its assertion that minimum staffing provisions are common in Orange County, and that more than half of the comparable communities have CBAs with such provisions.19

The Town argues that this is a new provision which would impose a significant burden upon the Town and infringes on its right to manage staffing. For these reasons the demand should be denied.

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies this demand and does not find that the PBA has sufficiently demonstrated the need for a change in the parties CBA in this regard. In light of this, I agree with the Town's contentions and deny the demands.

PANEL AWARD ON THE PBA MINIMUM STAFFING DEMAND

CONCUR

DISSENT

Donald J. Feenick, Jr. Date
Public Employer Panel Member

CONCUR

DISSENT

Anthony V. Solfaro Date
Employee Organization Panel Member

5. MUTUAL TOUR OF DUTY SWITCHING (NEW)20

(Withdrawn by PBA)

19 PBA/SOC Exhibit 50.

20 PBA/SOC brief 54.
6. ARTICLE 11 – PBA/SOC PAID LEAVE DEMANDS

A. HOLIDAYS - Insert “thirteen (13)” where “twelve (12)” appears in the 1st paragraph.

B. Sick Leave – Delete “which leave may be accumulated to a maximum of one hundred and eighty (180) days,” and insert “with no limitation on accumulation.”

C. Non-Accumulated Personal Leave – Change heading to Personal Leave and add the following paragraphs to read as follows:

All unused personal leave at the end of each calendar year shall be converted and placed into the employee’s unused sick leave accumulation.

An employee shall be entitled each year to use up to two (2) personal leave days on less than twenty-four (24) hours’ notice to the Chief of Police or designees, based on exigent circumstances. An exigent circumstance shall be, but is not limited to, an unforeseen or unlined event (Example: taking a family member to the hospital, loss of heat at home, etc.)

The PBA/SOC argues that an increase in one (1) holiday is modest and brings the Town in line with the number of holidays recognized by New York State in General Construction Law 24 and the comparators. Removing the cap of sick leave would encourage employees to save sick time instead of using it or losing it. The leave demand would provide a similar incentive, and likely reduce the Town’s overtime costs. The exigent leave portion of the demand addresses the situation in which an employee cannot be expected to provide 24-hour advanced notice which is what is currently required.

The Town asserts that these demands should be rejected. An extra holiday is beyond the standard twelve which most organizations receive, and would exacerbate staffing issues. The sick leave demand will have an adverse effect on Town finances. The sick leave conversion demand and emergency personal leave days demand should also

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21 PBA/SOC brief p. 55.
22 Town brief pp. 32-33.
be rejected. The demands defeat the purpose for which the benefit was intended, and would have an adverse financial consequence for the Town. Accordingly, they should be rejected.

**PANEL AWARD ON THE PBA/SOC’S PAID LEAVE DEMANDS**

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies these demands, and does not find that the PBA/SOC has demonstrated a sufficient basis for this change, and concurs with the Town’s contentions that these demands should be denied.

**CONCUR**

Donald J. Feenick, Jr. Date
Public Employer Panel Member

**CONCUR** X  

Anthony V. Soffaro Date
Employee Organization Panel Member

7. ARTICLE 7 – PBA/SOC NIGHT DIFFERENTIAL DEMANDS

Amend the 3rd paragraph’s night differential hourly rates as follows:

**PBA/SOC**

<table>
<thead>
<tr>
<th></th>
<th>(+$.25/hr)</th>
<th>(+$.25/hr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/16</td>
<td>1/1/16</td>
<td></td>
</tr>
<tr>
<td>“A” Line</td>
<td>+$.95/hr</td>
<td>+$.120/hr</td>
</tr>
<tr>
<td>“C” Line</td>
<td>+$.70/hr</td>
<td>+$.95/hr</td>
</tr>
</tbody>
</table>

Delete “not” in the 1st line and “not” in the 2nd line of the 4th paragraph. (NOTE: Refers to not being included in the overtime rate, and paid when out on paid leave).

The Town asserts that there is no justification or evidence provided, and that this demand should be rejected. Based upon the parties’ arguments, the record evidence and
application of the statutory criteria, the Panel Chair denies the demand, and does not find that the PBA/SOC has sufficiently demonstrated the need for a change, and concurs with the Town's contentions that the demands be denied.

**PANEL AWARD ON THE PBA/SOC'S NIGHT DIFFERENTIAL DEMANDS**

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<td>Anthony V. Solfaro Date</td>
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<td>Employee Organization Panel Member</td>
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8. ARTICLES 8 – PBA/SOC UNIFORMS AND EQUIPMENT DEMANDS

A. Clothing Allowance – Amend heading to read as follows: Clothing and Cleaning” and add “and cleaning” after clothing on the 1st line.

Amend amounts as follows:

<table>
<thead>
<tr>
<th></th>
<th>PBA</th>
<th>SOC</th>
</tr>
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<tbody>
<tr>
<td>(+$50.00)</td>
<td>1/1/15</td>
<td>(+$50.00)</td>
</tr>
<tr>
<td>$1,250.00</td>
<td>$1,300.00</td>
<td></td>
</tr>
<tr>
<td>(+$50.00)</td>
<td>1/1/15</td>
<td>(+$50.00)</td>
</tr>
<tr>
<td>$1,375.00</td>
<td>$1,425.00</td>
<td></td>
</tr>
</tbody>
</table>

The Town asserts that there is no justification or evidence provided to find that the increases sought in the demands are just and reasonable, and should be rejected.

**PANEL AWARD ON THE PBA'S UNIFORMS AND EQUIPMENT DEMANDS**

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair Awards a $25 increase effective January 1, 2015 to the
existing amounts; and to add "cleaning" after "clothing" in the 1st line of "A" in both the
PBA/SOC CBA's. The increases shall reflect the following:

PBA

(+$25.00)   (N/C)
1/1/15       1/1/16
$1,225.00    $1,225.00

SOC

(+$25.00)   (N/C)
1/1/15       1/1/16
$1,350.00    $1,350.00

\checkmark CONCUR

DISSENT

Donald J. Feenick, Jr. Date
Public Employer Panel Member

\xmark CONCUR

DISSENT

Anthony V. Solfano Date
Employee Organization Panel Member

9. ARTICLES 1 – PBA/SOC DEFINITIONS DEMAND

D. Length of Service – Add the following "including years of prior police service, or any part thereof, as applied in Article 3 – Base Wage and Longevity, Section D."
The Town asserts that this improperly seeks to incorporate police service from
other jurisdictions, and has an impact on pay, and should be denied. The taxpayers
should not bear this additional expense.

PANEL AWARD ON THE PBA/SOC'S DEFINITIONS DEMAND

Based upon the parties' arguments, the record evidence and application of the
statutory criteria, the Panel Chair denies the demand, and finds that the PBA/SOC has
not demonstrated a sufficient basis for this change.
10. ARTICLE 4 – PAID OUT-OF-TITLE DEMAND

The PBA demand is that when police officer who performs the work of a Detective/Investigator shall be paid the differential as set forth in Appendix “A” for all hours, or any part thereof, while performing that work. Additionally, when there is no Sergeant working on a tour of duty, or any part thereof, the senior police officer shall be paid the Probationary Sergeant’s differential for all hours, or any part thereof for those hours.

The Town asserts that provisions for out-of-title pay are covered by New York Civil Service Law 61(2). The demand should be rejected.

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies this demand since I do not find that the PBA has demonstrated a sufficient basis for this change.

PANEL AWARD ON THE PBA’S OUT-OF-TITLE DEMAND
11. ARTICLE 6 – PBA'S TOURS OF DUTY DEMANDS

A. Delete "D" line – 6:00 p.m. to 2:00 a.m.
Amend the 2nd paragraph to read as follows:

Insert "Monday through Friday" where "Tuesday through Saturday" appears (Note: refers to Detective/Investigator work week).
The Town asserts that these proposals seek to delete an existing shift and to change the detective schedule. They infringe on the Town's right to determine staffing needs and should be rejected.

PANEL AWARD ON THE PBA'S TOUR OF DUTY DEMANDS

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies both demands, and does not find that the PBA has demonstrated a sufficient basis for the changes, and concurs with the Town's contentions that these demands should be denied.

[Signatures]

CONCUR DISSENT

Donald J. Feenick, Jr. Date
Public Employer Panel Member

CONCUR DISSENT

Anthony V. Soffaro Date
Employee Organization Panel Member

12. ARTICLES 14 – PBA/SOC'S IN-SERVICE SCHOOLING DEMANDS

- Increase the meal allowance from $12.00 to $15.00 in the 3rd paragraph.
Add new paragraph to read as follows:
The Town shall provide a minimum of forty hours (40) hours every year of training to each employee. The training shall consist of the following:

1. Legal updates
2. Article 35
3. Blood Borne Pathogens
4. Domestic Violence
5. Advanced First Aid

The Town asserts the meal allowance is sufficient, and that it has the right to determine the types of training needed, and the demand should be denied.

PANEL AWARD ON THE PBA/SOC'S IN-SERVICE SCHOOLING DEMANDS

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies both demands, and does not find that the PBA/SOC has demonstrated a sufficient basis for the changes, and concurs with the Town's contentions that the demands should be denied.

[Signatures]

CONCUR DISSENT

[Signatures]

CONCUR DISSENT

13. ARTICLES 15 – PBA/SOC HEALTH INSURANCE ON RETIREMENT DEMANDS

A. Insert name of actual health insurance plan (i.e., New York State Health Insurance Plan Core Plus Medical and Psychiatric Enhancements – Empire Plan). (Note: Not substantive).

B. Insert name of actual health insurance plan (i.e., New York State health Insurance Plan Core Plus Medical and Psychiatric Enhancements – Empire plan. (NOTE: Not Substantive).

The Town asserts that the retirees are not clearly entitled to the same plan as active employees, and that the demands are substantive, and should be denied.
PANEL AWARD ON THE PBA/SOC’S HEALTH INSURANCE ON RETIREMENT DEMANDS

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands and does not find that the PBA has demonstrated a sufficient basis for the change, and concurs with the Town’s contentions that the demands should be denied.

☐ CONCUR ☒ DISSENT

Donald J. Fearick, Jr.  Date
Public Employer Panel Member

☐ CONCUR ☒ DISSENT

Anthony V. Solfaro  Date
Employee Organization Panel Member

14. ARTICLES 16 – PBA/SOC’S GRIEVANCE PROCEDURE DEMANDS

The PBA/SOC seeks to delete A, the informal Stage and C, the Town Board Stage. It also seeks to amend D, mainly to permit the parties to agree on a mutually acceptable arbitrator, and in the event there is not such agreement to file a Demand for Arbitration with the New York State Public Employment Relations Board, rather than the American Arbitration Association.

The Town asserts that the PBA/SOC seeks to eliminate as an option the Town Board from the grievance procedure. The demand serves no interest in resolving disputes and should be denied.

PANEL AWARD ON THE PBA/SOC’S GRIEVANCE PROCEDURE DEMANDS

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair rejects the demand, and does not find that the
PBA/SOC has demonstrated the need for the change, and concurs with the Town's contentions that those demands should be denied.

☑ CONCUR ☐ DISSENT

Donald J. Feenick, Jr. Date
Public Employer Panel Member

☑ CONCUR ☒ DISSENT

Anthony V. Solfer Date
Employee Organization Panel Member

15. ARTICLES 17 AND 19 — PBA/SOC’S MANAGEMENT RIGHTS DEMANDS

Add at the end of the paragraph the following: “Except as modified by this Agreement.”

The Town asserts that the demands seek to eviscerate the existing Management Rights Article. The blanket language proposed by the PBA/SOC creates ambiguity and vagueness, and should be denied.

PANEL AWARD ON THE PBA/SOC’S MANAGEMENT RIGHTS DEMANDS

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and does not find that the PBA/SOC has demonstrated a sufficient basis for a change, and concurs with the Town’s contentions that the demands be denied.

☑ CONCUR ☐ DISSENT

Donald J. Feenick, Jr. Date
Public Employer Panel Member

☑ CONCUR ☒ DISSENT

Anthony V. Solfer Date
Employee Organization Panel Member
16. ARTICLES 17 AND 19 – PBA/SOC GENERAL MUNICIPAL LAW SECTION 207-C
PROCEDURE DEMANDS

The PBA/SOC seek a number of changes to the GML 207-c Procedure. These
include that in the event an initial determination is not made within fifteen (15) days of an
Application for Benefits, the employee will be placed on administrative leave with full pay
without charge to any paid leave until a determination is provided. A Recipient who returns
to full duty and reinjures or aggravates the prior injury or illness "shall be subject to the
same application process for an initial injury or illness. The Town shall not withhold, in
accordance with IRS regulation, moneys from a Recipient’s wages, which include federal,
state income taxes, Social Security and Medicare payments, and other remedial changes.

The PBA/SOC also proposed the following:

Section 2. Definitions- (D) Claim Manager: Add the following to read as
follows: The Town Supervisor shall notify the PBA/SOC President, in
writing, the individual designated as the Claims Manager, and changes as
they occur.

The Town has no objection to the proposal on Section 2(D). It also does not object
to PBA/SOC demand in Section 14(3) – Miscellaneous to the extent that it does not object
to requiring a member to follow the GML 207-c application process when a member
returns to full duty and reaggravates or reinjures a prior injury. The Town objects to the
balance of the demand. It asserts that there is no basis to pay an officer his/her night
differential who is not working, and that the Claims Manager now has fifteen (15) days to
render a determination, and other elements in the demand. The Town asserts that it has
the right to determine light duty, and that the demand is not clear and that the demand
interferes with its rights to administer GML 207-c. The demand should be rejected.

\[^{13} \text{Town brief p. 34-5}\]
The extent to which a partial change in the GML 207-c Procedure could have an effect on the entire procedure is not apparent from the record. Given the significant nature of this statutory and contractual provision, as Panel Chair I do not believe it is appropriate to make changes without further information as to the effect change(s) may have. Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and does not find that the PBA/SOC has demonstrated a sufficient basis for the changes. Additionally, given that the parties are able to negotiate after the issuance of this Award, the Panel Chair urges the parties to address mutual concerns in the next round of bargaining.

PANEL AWARD ON THE PBA/SOC'S GENERAL MUNICIPAL LAW SECTION 207-C PROCEDURE DEMANDS

Concur

DisSent

Donald J. Peetick, Jr. Date
Public Employer Panel Member

Concur

DisSent

Anthony V. Solfarq Date
Employee Organization Panel Member

17. ARTICLE 24 - PBA/SOC CONCLUSION OF AGREEMENT DEMANDS

B. Delete the 1st and last sentence. The first (1st) sentence reads in part, "This Agreement is the entire Agreement between the Town ... and terminates all prior agreements... during its term". The last sentence reads in part, "The parties acknowledge that they have fully negotiated ... the term of this Agreement ... with the provisions thereof."
The Town asserts that the demands should be rejected and there is no justification for these demands.

PANEL AWARD ON THE PBA'S CONCLUSION OF AGREEMENT DEMAND

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and finds that the PBA/SOC has not demonstrated a sufficient basis for the changes, and concurs with the Town's contentions that these demands be denied.

CONCUR

DISSENT

Donald J. Feeley Jr. Date
Public Employer Panel Member

CONCUR

X

DISSENT

Anthony V. Solfaro Date
Employee Organization Panel Member

18. PROPOSED PBA/SOC NEW ARTICLE – DEFERRED COMPENSATION PLAN DEMAND

The PBA/SOC demands that the Town provide a qualified deferred compensation plan pursuant to Section 457 of the IRS Code.

The Town asserts that it already provides a deferred compensation plan and there is no need for a contract provision, and the demand should be rejected.

PANEL AWARD ON THE PBA/SOC'S DEFERRED COMPENSATION PLAN DEMAND

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demand.

CONCUR

DISSENT

Donald J. Feeley Jr. Date
Public Employer Panel Member
TOWN'S DEMANDS AND PBA/SOC'S RESPONSES

1. ARTICLE 9: INSURANCE PROPOSALS

(a) All members contribute 10% health insurance premiums for duration of employment or until otherwise negotiated.

(b) Reduce the insurance buyout percentage from 30% to 20% (or implement flat fee buyout instead of using percentage).

(c) Require a minimum of 15 years with Town for health insurance benefits after retirement.

The Town asserts that the cost of providing health insurance continues to significantly increase. It asserts that premiums for family coverage have increased 68% between 2009 and 2017 and 58% for individual coverage. Contributing towards the cost of health insurance is not a new concept between parties, and the Town states that contributions for retirees under Article 15 are based upon a percentage of health insurance premiums. The Town contends that the PBA/SOC, however, objects to contributing towards a health insurance contribution based on the same method. The necessity of contributing to health insurance has been recognized by the arbitration panel in the Town of Warwick, in which a 10% contribution for new hires was awarded. Town of Warwick, PERB Case No. IA2014-008; M2011-010 (2015). The Town here demands a

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24 Town brief p. 20. The Town's demands are set forth in an Attachment to the Town's Improper Practice charge in Case No. U-35323.

25 Town Exhibit 7.
10% contribution, which it asserts is a fair and reasonable amount, in line with the current trend in Orange County.

The Town also demands a reduction in the health insurance buyout from 30% to 20% of the premium. The Town asserts that a reduction is warranted because it should not be obligated to pay because the member has health insurance from a different source.

It also demands that employees should have at least fifteen (15) years of service before being eligible for health insurance after retirement. It asserts that the existing CBA’s do not require a minimum period of employment with the Town in order for a member to be eligible for this benefit. It asserts that a member with ten (10) years of service with another police agency who is hired by the Town could receive Town paid health insurance in retirement, even though such member only served 10 years or less with the Town. Granting this demand would rectify this inequity on the taxpayers and also promote stability.

The PBA/SOC asserts that the Town does not deny that it has the ability to pay for the non-contributory health insurance it currently provides. The Town’s justification for seeking this demand is that most other jurisdictions are doing so. The PBA/SOC asserts that the evidence submitted in support of this argument is replete with errors and misrepresentations. The PBA/SOC also asserts, in contrast, that very few employees in comparable communities are making any contributions to health insurance. Additionally, the Town provides non-contributory health insurance to most, if not all, of its other represented and non-represented employees.

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25 PBA brief p. 50.
26 Hearing Tr. Pp 195-96; 199-200.
Specifically, the PBA/SOC asserts that of the 27 communities listed on the exhibit introduced into evidence by the Town, two (2) part-time agencies do not offer insurance, 9 require a limited contribution, but only for a limited time from new hires, after which there is no required contribution, or require no contribution at all. Only three (3) require a contribution for an employee’s entire career. The exhibit also does not reveal the circumstances under which these contributions are being made. It further asserts that requiring a contribution is neither fair nor reasonable based on the history of the parties’ negotiations, and the record evidence in this proceeding.

**PANEL AWARD ON THE TOWN'S HEALTH INSURANCE DEMAND**

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, and for the reasons below, the Panel Chair denies the Town’s demands.

Health Insurance is a major issue in almost all bargaining relationships in the public sector. The Town has steadfastly maintained throughout this entire proceeding that its health insurance demand seeking a 10% contribution of the cost of premium from all unit members should be awarded. The PBA/SOC, at the same time, argues that no such contribution is warranted at all. Based upon these two (2) positions, and as discussed below, I do not find that this demand should be awarded.

In order to alleviate the financial burden of health insurance costs upon both unit members and employers, cost sharing proposals are often phased into collective bargaining agreements. In this matter, however, the Town has maintained its position that all members be required to make a 10% contribution toward the cost of health insurance.

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28 PBA’s brief p. 61.
The Town does not point to any other municipality in Orange County in which such a demand has either been accepted or awarded as an initial contribution for those employees who had not been contributing. The Town agrees that a just and reasonable wage increase is warranted. Granting its health insurance demand would, however, eviscerate the wage increases and lead to a number of employees making less money. For example, as of January 1, 2015, the effective date of this Award, an employee at Step 4 earned $66,389.\textsuperscript{29} A 2.5% increase on January 1, 2015 for that employee amounts to $1,659 for the year. As of as of January 1, 2015, the effective date of this Award, an employee at Step 6, the highest Step, earned $74,357. A 2.5% increase on January 1, 2015 for that employee amounts to $1,859 for the year. According to Town Exhibit 7, the cost of a family health plan per year was $25,928 as of 2017. While the record does not reflect the present cost of health insurance, it is apparent that the cost has risen since 2017. Even using the outdated costs presented in this record, however, the cost for a family health insurance plan to an employee would be $2,592.\textsuperscript{30} Under the Town's demand, since even the highest paid employees would lose money, all unit members would be losing moneys were it to be awarded. I therefore do not find that the Town's demand should be awarded.

The above factors, especially given the Town's admitted ability to pay, persuades the Panel Chair to conclude that granting its demand is not consistent with the statutory

\textsuperscript{29} PBA Exhibit 4, p. 27

\textsuperscript{30} The cost of an Individual plan was $11,333.
criteria upon which the Award is based. I also find persuasive, the PBA's arguments that 10% is not the standard contribution among the comparable communities.

I do not find it appropriate, necessary, or consistent with the statutory criteria to alter the existing buy-out or change the vesting requirements for health insurance in retirement. The Town seeks to lower the buy-out while the PBA/SOC seeks to increase it. As Panel Chair I deny the Town’s demand to reduce the existing buy out of 30% to 20%. The effect of changing the vesting requirements could have a great impact on the units, and as Panel Chair I also do not find that such an award has been shown to be necessary or demonstrated that it would be consistent with the statutory criteria. Therefore, based on the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and finds that the Town has not demonstrated a sufficient basis for the changes, and concurs with the PBA/SOC’s contentions that these demands be denied.

CONCUR

DISSENT

Donald J. Feehick, Jr. Date
Public Employer Panel Member

Anthony V. Solfaro Date
Employee Organization Panel Member

2. REDUCE GRANTING OF OVERTIME FOR TIME NOT WORKED

The Town demands a reduction of minimum overtime to one (1) hour when an employee stays past the end of a tour of duty from the current two (2) hours. The Town asserts that there is no rational reason for an employee to be paid two (2) hours when,

31 Town brief p. 25.
for example, the officer stays thirty (30) minutes past the end of a tour. The employee should be paid for time actually worked, but the Town demands that at the least the pay be reduced to an hour overtime. The Town similarly demands a reduction in the minimum overtime payment for attending court from four (4) hours to two (2) hours. The Town asserts this is excessive and should be reduced.

The PBA/SOC points out that there was no testimony at the hearing demonstrating the need for the demands to be awarded. It would reduce the negotiated benefit, and to below that which is provided in neighboring communities and should be denied.

PANEL AWARD ON THE TOWN’S REDUCTION OF OVERTIME PAY DEMANDS

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and finds that the Town has not demonstrated a sufficient basis for the changes, and concurs with the PBA/SOC’s contentions that these demands be denied.

CONCUR    DISSENT

Donald J. Feehick, Jr.  Date
Public Employer Panel Member

x

CONCUR    DISSENT

Anthony V. Solfare, Date
Employee Organization Panel Member

3. ARTICLE 6 – TOWN’S TOURS OF DUTY CHANGES DEMAND

Add: Chief or designee may change shift upon three days’ notice up to 14 times per year.

Add: Chief may reassign detective to uniformed patrol as necessary, including overtime/personnel levels.

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Add: Clarifying language to Article 6 (A) that Chief determines flexing of detective shift and if detective needs adjustment in shift (3 hours), must be approved by Chief.

Add: Provision implementing a maximum number of members that may be off per tour (2 members, 3 members, if one is on Personal Leave)

Add: Language providing that members of the department being promoted must attend supervisory school, regardless or current schedule, shall not receive any additional compensation and shall be deemed to be on such school schedule during training.

The Town asserts that the demands are intended to give the Chief the needed flexibility to effectively manage personnel and provide police coverage to the residents. The demands allow the Chief to shift personnel consistent with the needs of the Police Department.

The PBA/SOC asserts that these demands seek to make substantial changes to the current CBAs. The practical effect of the demands would be to eliminate the negotiated permanent shifts, and to constructively demote a Detective without recourse and should be denied.

PANEL AWARD ON THE TOWN’S TOURS OF DUTY CHANGES DEMANDS

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and finds that the Town has not demonstrated a sufficient basis for the changes, and concurs with the PBA/SOC’s contentions that these demands be denied.

CONCUR

DISSENT

Donald J. Feenick, Jr. Date Public Employer Panel Member

Anthony V. Solfaro Date Employee Organization Panel Member
4. UNIFORMS

The Town demands to pay the uniform allowance after eighteen (18) months after an employees' date of hire. New hires are provided with a full uniform allotment upon being hired, and it makes little sense to grant a uniform allowance after six (6) months of hire. It also demands that a voucher system be implemented under which employees purchase uniforms from a vendor under such system.

The PBA/SOC asserts that there has been no justification provided by the Town for these demands. It would reduce and delay payment to the lowest paid employees, and should be denied. (See section A.3 above for the PBA/SOC's position).

PANEL AWARD ON THE TOWN’S UNIFORMS DEMANDS

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies these demands, and finds that the Town has not demonstrated a sufficient basis for the changes, and concurs with the PBA/SOC's contentions that these demands be denied.

CONCUR

Dissent

Donald J. Feenick, Jr. Date
Public Employer Panel Member

X

CONCUR

Dissent

Anthony V. Solfaro Date
Employee Organization Panel Member

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33 Town brief p. 27.
5. RETIREMENT

The Town demands that Article 10 be eliminated from both CBA’s since retirement provisions are statutory and are set forth in the New York Retirement and Social Security Law.

The PBA/SOC asserts that this is not a prohibited subject of bargaining and should not be deleted.

PANEL AWARD ON THE TOWN’S RETIREMENT DEMAND

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demand, and finds that the Town has not demonstrated a sufficient basis for the change, and concurs with the PBA/SOC’s contentions that the demand be denied.

CONCUR

Dissent

Donald J. Feerick, Jr. Date
Public Employer Panel Member

X

CONCUR

Dissent

Anthony V. Solfano Date
Employee Organization Panel Member

6. PAID LEAVE – ARTICLE 11

Add: No paid time off to be granted when two or more members already off using paid time off, except that three members may be off when one member is utilizing a PL day.

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34 Town brief p. 27.
35 Town brief p. 27.
Add: Paid Time Off requests: Require minimum 3 days' notice/approval prior to start of tour requested. May be denied if more than 2 members would be off (or 3 where PL has been utilized – see above)

Add: Sick time: Add Clarifying language that officer only entitled to get paid for maximum of twelve (12) days per year assuming officer did not take any sick days during year AND has at least 30 days on the books after the sell-back. Otherwise, no payout for sick time.

Add clarifying language to be consistent with 2013 grievance decision that paid leave for new employees is prorated in first year.

The Town asserts that an appropriate limit on the number of employees off at any time will ensure proper police coverage for the Town.

(See PBA/SOC demands section for the PBA/SOC position.)

PANEL AWARD ON THE TOWN’S PAID LEAVE DEMANDS

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and finds that the Town has not demonstrated a sufficient basis for the changes, and concurs with the PBA/SOC's contentions that these demands be denied.

CONCUR

DISSENT

Donald J. Feenick, Jr. Date
Public Employer Panel Member

X

CONCUR

DISSENT

Anthony V. Solfaro Date
Employee Organization Panel Member

7. VACATION – ARTICLE 1236

The Town's demands are the following:

36 Town brief pp. 27-8.
Clarify Vacation Selection: Vacation selection in November preceding calendar year – pick by rank then seniority within rank.

Remove vacation "carry over" provision use it or lose it.

The Town asserts that these demands would ensure an orderly and predictable selection of vacation, and avoid stockpiling days for carry over purposes. It asserts it is not seeking a new term.

(See PBA/SOC demands section for the PBA/SOC position.)

PANEL AWARD ON THE TOWN'S VACATION DEMANDS

Based upon the parties' arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and finds that the Town has not demonstrated a sufficient basis for the changes, and concurs with the PBA/SOC's contentions that these demands be denied.

CONCUR DISSENT

Donald J. Peenick, Jr. Date
Public Employer Panel Member

Anthony V. Solfaro Date
Employee Organization Panel Member

8. POLICE ORIENTED EDUCATION\footnote{Town brief p. 28.}

The Town in this demand seeks to add a provision which would ensure that there is a minimum of five (5) years of service following the funding of formal education for employees. This would promote stability within the Police Department, and incentivize a long-term commitment to the Town.
(See PBA/SOC demands section for the PBA/SOC position.)

PANEL AWARD ON THE TOWN’S POLICE ORIENTED EDUCATION DEMAND

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies this demand, and finds that the Town has not demonstrated a sufficient basis for the change and concurs with the PBA/SOC’s contentions that this demand be denied.

CONCUR  DISSENT

Donald J. Feenick, Jr.  Date
Public Employer Panel Member

Anthony V. Soltarj  3/17/20
Employee Organization Panel Member

9. GRIEVANCE PROCEDURE: ARTICLE 16\textsuperscript{38}

C. Modify Town Board stage to clarify that matter shall be heard at next ensuing regular Town Board meeting scheduled at least 5 or more days after receipt of written request.

The Town asserts that this is clarification. It is meant to ensure that the matter will be heard at the next Town Board meeting at least five (5) or more days after the written request.

(See PBA/SOC demands section for the PBA/SOC position.)

PANEL AWARD ON THE TOWN’S GRIEVANCE PROCEDURE DEMAND

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies this demand, and finds that the Town has not demonstrated a sufficient basis for the change, and concurs with the PBA/SOC’s contention that this demand be denied.

CONCUR  DISSENT

Donald J. Feenick, Jr.  Date
Public Employer Panel Member

\textsuperscript{38} Town brief p. 29.
10. GML 207-c, ARTICLES 17 AND 19 OF PBA/SOC CONTRACT

The Town demands that:

Members out of GML 207-c (line of duty leave) will have all leave time reduced by 1/12th per month (or prorated equivalent for partial month). Provision would not take effect unless and until member is on 207-c status for at least 30 calendar days (applied retroactively where 207-c status granted after first month has passed). Remove Employer discretion provision allowing any extension.

The Town asserts that its demands are intended to avoid a situation in which an employee who is out on GML 207-c leave continues to accrue leave time for only the first (1st) twelve (12) months.

(See PBA/SOC demands section for the PBA/SOC position.)

PANEL AWARD ON THE TOWN’S GML 207-c DEMANDS

Based upon the parties’ arguments, the record evidence and application of the statutory criteria, the Panel Chair denies the demands, and finds that the Town has not demonstrated a sufficient basis for the changes, and concurs with the PBA/SOC’s contentions that these demands be denied.

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39 Town brief p. 29.
11. DISCIPLINARY PROCEDURE, ARTICLE 18

The Town proposes to eliminate provisions concerning police discipline in the CBA. Based upon Matter of Wallkill, 19 NY3d 1066 (2012) police discipline is a prohibited subject of bargaining. The Town has adopted rules and regulations governing police discipline and the demand should be granted.

The PBA/SOC asserts that this is not a prohibited subject of bargaining and should not be deleted. It also asserts that there is legislative pending and the demand should not be awarded.40

PANEL AWARD ON THE DISCIPLINARY DEMAND

Discipline is a prohibited subject of bargaining. As Panel Chair, I decline, however, to change the CBAs since the parties both can assert their positions regarding this provision at a later date in another forum if the matter arises.

CONCUR       DISSENT

Donald J. Feerick, Jr. Date
Public Employer Panel Member

X

CONCUR       DISSENT

Anthony V. Solfaro Date
Employee Organization Panel Member

DURATION – This Award shall be effective January 1, 2015 through December 31, 2016.

CONCUR       DISSENT

Donald J. Feerick, Jr. Date
Public Employer Panel Member

40 PBA brief. P. 62.
Any demand and/or terms other than those specifically modified by this Award submitted by the Town, are denied.

Any demand and/or terms other than those specifically modified by this Award submitted by the PBA/SOC, are denied.

RETENTION OF JURISDICTION AND RETROACTIVITY

RETROACTIVITY – The Panel awards retroactivity to any unit member who worked during any period incorporated by the term of the Award. The terms of this Award shall be implemented as soon as possible, but no later than the second (2nd) full pay period after the signature of the Panel Chair to this Award. The Town shall provide a worksheet for all unit members detailing by pay period, the basis of the calculation of his/her compensation, including any retroactive amounts that may be due pursuant to the
terms of this Award, and will make every effort to do so as soon as possible, but not later than sixty (60) calendar days after the signature of the Panel Chair to this Award.

JURISDICTION – The Panel hereby retains jurisdiction of any and all disputes arising out of the interpretation, implementation and payment of retroactivity of this Award for adjudication, which disputes have to be submitted to the Panel Chair, no later than one hundred and eighty (180) calendar days after the payment of retroactivity is made, who will then convene the Panel for its determination.

[Signature]
Donald J. Date  
Public Employer Panel Member

[Signature]
Anthony V. Solfaro  
Employee Organization Panel Member

3/17/20
STATE OF NEW YORK:
COUNTY OF ROCKLAND:

On this 4th day of March, 2020 before me personally came and appeared Donald J. Feerick, Jr., Esq. known to me as the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

KELLY MOREtti
Notary Public, State of New York
Registration #01MO6348797
Qualified in Rockland County
Commission Expires Oct. 3, 2020

STATE OF NEW YORK:
COUNTY OF ORANGE:

On this 17th day of March, 2020 before me personally came and appeared Anthony V. Solfaro known to me as the individual described in the foregoing instrument, and he acknowledged the same to me that he executed same.

MEGAN MAXWELL
Notary Public, State of New York
Qualified in Orange County
Reg. No. 01MA6278664
Commission Expires March 25, 2021
STATE OF NEW YORK:
COUNTY OF NEW YORK:

I, Philip L. Maier, hereby affirm upon my Oath as arbitrator that I am the individual herein who executed this instrument which is my Opinion and Interest Arbitration Award.

Date: March 17, 2020

Philip L. Maier
Panel Chair
The following constitutes the dissenting opinion of the duly appointed Public Employer Panel Member in the above-captioned matter.

**DISSENT**

My dissent centers on two findings made by the majority. One, I dissent from the majority’s decision that “the comparable communities are those which are a subset of towns with full-time police, contiguous to the Town.” Two, I dissent from the majority’s decision to deny the Town’s proposal to require a 10% contribution toward health insurance premiums from bargaining unit members. I explain my stance below.

**Comparability**

I respectfully dissent from the majority’s decision finding that “the comparable communities are those which are a subset of towns of those with full-time police, contiguous to the Town.” Although the majority considers all municipalities in Orange County, the majority’s finding to favor only those municipalities contiguous to the Town is fundamentally flawed. In making this finding the majority reasoned that “there is no
authoritative statement from any other Award that this is a current statement of comparability in the County." I disagree with this statement.

The modern approach to comparability in Orange County is outlined in three pertinent Awards, and in two of the Awards the Union advocated for the entire Orange County to be used as the comparable. The Town cited and relied upon these three pertinent Awards in its argument. I credit the Town’s citations and arguments.

Indeed, In the Matter of Compulsory Interest Arbitration between the Village of Washingtonville Police Benevolent Association and the Village of Washingtonville, Case No. IA2008-23 (2008), the Panel expressly concluded that “Orange County is the market for comparison of wages and benefits, not just a few town government [sic] within Orange County.” Id. at 6. Importantly, it was the Union’s Counsel here that advocated in the Village of Washingtonville case that all of the departments and agencies within Orange County be used as comparables. Id. Even more to the point, Panel member Solfaro plainly adopted the Panel’s conclusion in the Village of Washingtonville case, that the “Panel Chairman concludes correctly that the relevant comparables are police departments within Orange County.” Id. at Op. of Anthony Solfaro at 1. Moreover, it must be noted that the Village of Washingtonville is located entirely within the Town of Blooming Grove. It is difficult for me to draw any distinction between the reasoning applied in the Village of Washingtonville case to a village that is perhaps the most comparable community as the Town.

If the Village of Washingtonville case is deemed to be unpersuasive, In the Matter of Compulsory Interest Arbitration between the Town of Cornwall Police Benevolent Association, Inc. and the Town of Cornwall, the Union again advocated
successfully that Orange County as a whole is the appropriate market in which to compare salaries and benefits. There, the Panel concluded that "[t]he market is broader and it is properly all departments within Orange County." Case No. IA 2009-026 at 31.

Likewise, in the Matter of Compulsory Interest Arbitration between the Town of Warwick Police Department, Inc. and the Town of Warwick, the Panel concluded that Orange County, as a whole, comprise the most appropriate group of comparables because "it was the best indicator of the market for police work in the County" and it "provides the broadest and most comprehensive way to assess salaries and benefits." Case No. IA 2014-008 (2015).

I agree with the reasoning outlined in the foregoing Awards, which adopts the current modern approach to comparability in rendering Interest Arbitration Awards for police departments in Orange County. I find that there is no need to stray from the modern approach to comparability to return to a twenty-year-old Award for guiding authority, especially in light of the Union's arguments and Panel member Solfaro's findings in Village of Washingtonville and Town of Comwall. I find the majority's decision that "the comparable communities are those which are a subset of towns with full-time police, contiguous to the Town" is wrong, fails to apply the proper modern approach, and leads to an incorrect decision on health insurance contributions by excluding the Village of Washingtonville from consideration as a comparable community, which I discuss below.

Health Insurance Contribution

The proposal for health insurance contributions cannot be viewed in a vacuum. On March 23, 2010, President Barrack Obama signed the Affordable Care Act ("ACA")
into law. The ACA aimed to limit increases in health insurance premiums and costs, expand the number of people covered by health insurance, and provide people with new health care rights and benefits. In large part, the impetus behind the ACA’s passage was that state and local governments tend to offer more expensive health care plans than private businesses, with commensurate runaway health insurance premiums and costs. The goal of limiting increases in health insurance premiums and costs came at the advice of economists who argued that expensive health insurance, with employees bearing little costs, made people insensitive to the costs of care.

Under the ACA, employer-sponsored health benefits whose value exceeds specified thresholds were to be subject to an excise tax starting in 2022. This so-called “Cadillac tax” was originally scheduled to take effect in 2018 but was delayed twice by legislation, most recently by the Extension of Continuing Appropriations Act of January 2018. This Cadillac tax would equal 40 percent of the premium costs of health benefits exceeding thresholds projected to be $11,200 for single coverage and $30,150 for family coverage in 2022. (The thresholds will be indexed to growth in the consumer price index in subsequent years and thresholds will be higher for plans with more-expensive-than-average demographics, retirees ages 55 to 64, and workers in high-risk professions.) The Cadillac tax applies was to apply not only to employers’ and employees’ contributions to health insurance premiums, but also to contributions to health saving accounts, health reimbursement arrangements, and medical flexible spending accounts.

There are no signs showing that the anticipated Cadillac tax thresholds will not be breached. Health insurance premiums for single coverage increased 58% between
2009 and 2017 and 68% for family coverage, as detailed in Town Exhibit 7; and that upward trend continues in 2018 and 2019. These costs have escalated dramatically since the ACA’s enactment; hence, the ACA’s mandate to rein in health insurance premiums and costs is something every local government must address. Fortunately, on December 19, 2019, President Donald Trump signed a bill repealing the ACA’s Cadillac tax, lifting the Cadillac tax from local governments as the excise tax which only made things financially worse for local governments without necessarily advancing the cause of reining in costs.

Here, the Town proposed a reasonable health insurance premium contribution from the bargaining unit consistent with the ACA’s mandate to rein in health care costs. According to the Kaiser Family Foundation survey, in 2018, the average contribution by public employees throughout the country is 13% for individual plans and 22% for family plans, with covered workers in private for-profit firms on average having higher contribution rates for both single coverage of 19% and family coverage of 31%, respectively. See http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2018. The Town proposed a 10% contribution of the cost of the premium from all bargaining unit members, which is less than the national average contribution by public employees, to avoid having the taxpayers bear the entire burden of all increases and the looming excise tax. The bargaining unit, whose members

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1 The numbers go up year over year. They also go up decade over decade. For analysis purposes, the costs of NYSHIP single coverage was $7,183 in 2009, $7,348 in 2010 (up 2.3%), $8,327 in 2011 (up 13.3%), $8,553 in 2012 (up 2.7%), $9,216 in 2013 (up 7.7%), $9,258 in 2014 (0.5%), $9,661 in 2015 (up 4.3%), $10,166 in 2016 (up $5%), $11,333 in 2017 (up 11%), $12,130 in 2018 (up 7%) and $12,514 in 2019 (up 3%). Likewise, the costs of NYSHIP family coverage was $15,386 in 2009, $15,971 in 2015 (up 3.8%), $18,167 in 2011 (up 13.7%), $18,754 in 2012 (up 3.2%), $20,239 in 2013 (up 7.9%), $20,570 in 2014 (up 0.5%), $21,706 in 2015 (up 5.6%), $23,115 in 2016 (up 6%), $25,928 in 2017 (up 12%), $28,178 in 2018 (up 9%) and $28,953 in 2019 (up 3%).
contribute nothing toward their health care coverage, argued that no such contribution was warranted at all.

In resolving the dispute, the majority’s decision on this Award states, that “[i]n order to alleviate the financial burden of health insurance costs upon both unit members and employers, cost sharing proposals are often phased into collective bargaining agreements. In this matter, however, the Town has maintained its position that all members be required to make a 10% contribution toward the cost of health insurance. The Town does not point to any other municipality in Orange County in which such a proposal has either been accepted or awarded as an initial contribution....”

In making this statement, the majority ignores both the realities of life under the ACA, as highlighted by the Kaiser Foundation survey, and the proof submitted at hearing that, out of 28 police departments in Orange County, the officers contribute to health care in 17 different departments. Of the 17 contributing police departments, the officers in 14 departments contribute based on premium. This information was detailed in Town Exhibit #13.

The Town further cited the holding and reasoning set forth in Town of Warwick, PERB Case No. IA2014-008; M2011-10 (2015) and the Town of Newburgh, PERB Case No. IA2010-29; M2010-117 (2012), to demonstrate that other Panels have recognized the import of members contributing to health insurance and awarded a 10% contribution from Town of Warwick police officers and a 15% from Town of Newburgh police officers. And, the Town also cited to the Village of Washingtonville police officers, which village is located entirely within the same Town, as a comparable example of a contributing municipality.
I credit the Town's proof and citations as providing suitable comparables and compelling reasoning for imposing an obligation to contribute to health care premiums. I further note that only in a post-hearing objection did the bargaining unit challenge the Town's proof to suggest that initial contributions have not matched the 10% contributions to premium sought by the Town. The post-hearing objection does not change my analysis or conclusion that a contribution to health insurance premiums is warranted.

In making the statement that the proof does not support the proposal for initial contributions of 10%, the majority rejects the Town's proposal without crediting any other contribution alternative such as limiting contributions to new hires, installing tiers based on longevity, or phasing contributions in over time. Elsewhere in the Award, by contrast, proposals are reduced or cut by half; so discretion could have been exercised to require some initial contribution. I believe that the majority has conflated the import of the Town's statement that a just and reasonable wage increase is warranted, which the Town has repeatedly made, with some willingness to singularly absorb the escalating costs, which I believe to be unwarranted, unsustainable, and unfair to the Town and its taxpayers. Preserving wage increases is not the way through this matrix.

I write this dissent because the economics are so basic and have been openly discussed over the past few years as the motivation for why public employers must rein in health care costs. Switching to cheaper plans through bargaining is difficult to impossible, and costs will continue to escalate, year over year and decade over decade. Ability to pay cannot be the only driving factor, as the Town and its taxpayers

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2 This is most-likely a by-product of the reality that lower-cost employer-sponsored health plans are likely to involve greater out-of-pocket costs and more limited networks of doctors, which are not preferred by bargaining units or their members.
are the only ones who will suffer as a result of the decision to have the Town bear all increases in the costs of its employer-sponsored health plan, now and into the future, under the majority's construct. Increasing wages will not alleviate the Town's costs. More likely than not, increasing wages to cover the costs would require the Town to pay the bargaining unit enough money to cover both the premium increases and the income tax thereon (which is not paid to the Town, but the federal or state governments), or the cash equivalent necessary to pay the increased premium costs would not be available to the members. The bargaining unit would not likely accept any proposal in negotiations if members believed they would not experience any positive effect from such a wage increase. Without any relief, the Town will over pay to cover the premium costs if preserving wage increases is the driving consideration, and that threatens future raises and possibly jobs more substantially than any initial contribution here.

Having heard no proposal from the bargaining unit, and measuring and crediting the proof adduced by the Town at hearing that supports having members contribute toward health care costs at a rate commensurate with comparable local departments, I am compelled to respectfully dissent from the majority decision on this aspect of the Award. The ACA's mandate is directed at corralling escalating health care costs, especially those for state and local governments, and this Award does nothing in furtherance of that mandate. Based on the foregoing, I respectfully dissent and would grant the Town's proposal.
In short, I dissent from the Award on the issues of comparable communities and the health insurance contribution for current employees.

DONALD L. FEERICK JR.

Sworn to before me this 4th day of January, 2020

KELLY MORESI
Notary Public, State of New York
Registration #01MO6348797
Qualified in Rockland County
Commission Expires Oct. 3, 2020
STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

-Between-

BLOOMING GROVE POLICE BENEVOLENT ASSOCIATION, INC. (PBA) AND THE TOWN OF BLOOMING GROVE SUPERIOR OFFICER'S COUNCIL (SOC)

Petitioners,

-and-

TOWN OF BLOOMING GROVE,

Respondent.

COMPULSORY INTEREST ARBITRATION AWARD

PERB CASE NOS.: IA 2016-007; M2015-030 (PBA) IA 2016-008; M2015-031 (SOC)

For the period of January 1, 2015 - December 31, 2016

Dissenting/Concurring Opinion ofAnthony V. Solfaro

Employee Organization Panel Member
I dissent from the majority as set forth in this Opinion and Award. I concur with the Chairman on the issue of denying a health insurance contribution.

Though this Chairman put substantial effort into this Award, it misses the mark regarding critical monetary issues. The Town did not contest its ability to pay. It could not, based on the PBA/SOC’s municipal finance expert’s testimony, and as contained in his report (Exhibit 70). In summary, the Town’s total fund balance as a percentage of expenditures was 67.0%. Its unrestricted fund balance as a percentage of expenditures was 69.0%. Those percentages exceed, by a significant margin, the recommended levels from the various rating entities. The Town does not meet the statutory criteria to be a Fiscally Eligible Municipality by applying either the tax rate, or the fund balance criterion. The New York State Comptroller’s Fiscal Stress monitoring system has the Town with No Designation, the best designation possible. With all of that, and other major factors contained in the expert testimony, report, and record evidence, the Base Wage and longevity increases sought by the PBA/SOC were fair and warranted. In light of the foregoing, the Base Wage and longevity increases awarded were far less than they should have been. This Award should have increased the Detective and Sergeant’s differentials, but failed to do so. Also concerning is the failure to increase night differential for PBA/SOC members, which is an integral component negotiated between the parties as a part of compensation.

When you view the comparables that the parties have used for at least the last dozen or more years to fashion its negotiated settlements, the Award once again misses the mark on the economics. The parties have used the Towns of Chester, Cornwall, Goshen, New Windsor and Woodbury, and the Villages of Chester, Monroe and Washingtonville within the Town, and all the others are contiguous to the Town. Had these comparables been applied, the economics awarded would have been significantly increased, and the PBA/SOC unit members would have maintained its relative position regarding the contiguous municipalities. Instead, it did not, and the unit members have fallen farther behind.
However, the Chairman did get it right regarding the issue of health insurance contribution. No increase was warranted, and none was awarded. On this record, the Chairman saw the position of the Town for what it was, ridiculous. The PBA/SOC unit members, past and present, have worked diligently with this Town, going back to the year 2005 to address health insurance, long before it was the hot button issue it is today. The PBA/SOC addressed this health insurance issue in a creative and unique way, which was incorporated into the contract with the Town. By incorporating into the contract, the Town reaped the benefits of permanent structural savings in direct and indirect compensation from the reduced “roll up costs”. This quid pro quo for the structural savings was no contribution for health insurance. These savings began in 2005, continue through today, and with this Award, will continue into the future. This was persuasively demonstrated in the PBA/SOC exhibits and post hearing brief. A contribution was not warranted based not only on the record evidence, but also on the history of negotiations between the PBA/SOC and Town, and the benefit received by the Town.

The simple fact is the Town created and forced this unnecessary arbitration. This arbitration Award now leaves the parties, as of December 31, 2016, the last day of this Award, with over three (3) years to become current. The task going forward will not be easy, especially if this Town does not see the forest for the trees, and continues with its unfounded positions compared to the comparables.

Anthony V. Solfaro
Employee Organization Panel Member

STATE OF NEW YORK
COUNTY OF ORANGE ) ss.:

On this 17\textsuperscript{th} day of March, 2020, before me personally came and appeared Anthony V. Solfaro to me know and known to me to be the individual described in the foregoing instrument and he acknowledged to me that he executed the same.

MEGAN MAXWELL
Notary Public

NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Orange County
Reg. No. 01MA6278664
Commission Expires March 25, 2021