

# **JOINT EXHIBITS**

**JOINT EXHIBIT LIST**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PERIOD</u></b>	<b><u>IDENT.</u></b>	<b><u>EVIDENCE</u></b>
1	Petition for Interest Arbitration	Dated 8/2/11		
2	Response to Petition for Interest Arbitration	Dated 8/11/11		
3	Stipulation of Settlement Case No. U-31270	Dated 11/2011		
4	Designation of Public Interest Arbitration Panel	Dated 9/22/11		
5	Agreement Between the Town of Orangetown and Orangetown Policemen's Benevolent Association	1/1/02-12/31/05		
6	Martin F. Scheinman Interest Arbitration Award	1/1/06-12/31/07		
7	Memorandum of Agreement between the Town of Orangetown and the Orangetown Policemen's Benevolent Association, Inc.	1/1/08-12/31/10		
8	Memorandum of Agreement re GML §207-c Policy	Dated 6/2009		
8A	GML §207-c Policy			
9	Confirmation of Arbitration Award re GML §207-c Policy	Dated 11/4/09		
10	Jeffrey M. Selchick, Arbitrator's Award re GML §207-c Policy	Dated 8/11/10		
11	Stipulation of Settlement re Sick Time Buyout	Dated 7/9/08		
12	MOA regarding GML §207-c Procedure Notice Requirements	Dated 1/3/11		
13	Stipulation regarding change of arbitrators	Dated 2/12/08		

**1**

NEW YORK STATE  
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X  
ORANGETOWN POLICEMEN'S BENEVOLENT  
ASSOCIATION, INC.

Petitioner,

**PETITION FOR  
INTEREST ARBITRATION**

-and-

Case No. \_\_\_\_\_

TOWN OF ORANGETOWN

Respondent.

-----X

1. This is a Petition filed on behalf of the Orangetown Policemen's Benevolent Association, State of New York, respectfully requesting the appointment of a public arbitration panel to resolve the impasse between the parties.

2. The name and address of the employee organization is the Orangetown Policemen's Benevolent Association, P. O. Box 424, Orangeburg, New York 10962.

3. The address of the public employer is the Town of Orangetown, 26 Orangeburg Road, Orangeburg, NY 10962.

4. The name and address of the representative of the employee organization to whom correspondence should be addressed is Joseph P. Baumgartner, Esq., Bunyan & Baumgartner LLP 500 Bradley Hill Road, Blauvelt, New York 10913 (845) 353-2200.

5. The name and address of the representative of the employer to whom correspondence should be addressed is Richard Zuckerman, Lamb & Barnosky, 534 Broadhollow Road, Suite 210, Melville, NY 11747

6. The contract expiration date was December 31, 2010.

7. The parties have not agreed to incorporate the Association's demands that are set

forth in the attached Exhibit A. It is the Petitioner's position that these proposals should be included in the successor agreement.

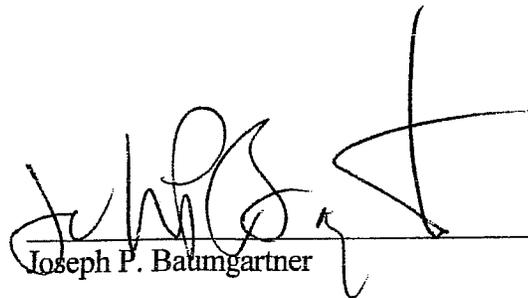
8. The Petitioner, Orangetown Policemen's Benevolent Association Inc., State of New York, requests the designation of Richard P. Bunyan, Esq., Bunyan & Baumgartner LLP, 500 Bradley Hill Road, Blauvelt, New York 10913, as the panel member designated by the employee organization.

9. The Petitioner requests that a list for the selection of the public member of the panel be furnished to the representative of the parties.

Dated: August 2, 2011  
Blauvelt, New York

Respectfully submitted,

BUNYAN & BAUMGARTNER LLP  
500 Bradley Hill Road  
Blauvelt, New York 10913  
(845) 353-2200



Joseph P. Baumgartner

## **ORANGETOWN P.B.A. PROPOSALS**

### **Contract to Commence January 1, 2011**

#### **Article Five – UNION BUSINESS:**

Amend 5.2 as follows:

The Union President and or his/her designee will be granted thirty (30) days per year with pay, to attend to Union related business. The P.B.A. President and or his/her designee shall be entitled to utilize the time off even if the Union related business does not take place during his/her working hours. The President will not be restricted by minimum manpower staffing levels when using this time. In addition, all members of the P.B.A.'s Bargaining and Grievance Committee will be entitled to forty hours (5 days) each per year with pay, to attend to Union related business.

Amend 5.3 as follows:

Subject to the needs of the Employer and on prior written request and approval of the Supervisor, any member of the Union who is on duty will be permitted to attend the regularly scheduled monthly P.B.A. meeting. Any approved attendance shall not exceed one (1) hour of duty time for each monthly meeting.

#### **Schedules A – E SALARIES:**

Amend the current salary schedule to include an four and one quarter (4.25%) percent increase for each of the four (4) years, effective 1/1/11, 1/1/12, 1/1/13 and 1/1/14, across the board for all ranks, grades and designations.

**Article Six – LONGEVITY:**

Amend 6.3 as follows:

Effective January 1, 2011, increase all longevity steps awarded in the interest arbitration award, executed by the neutral arbitrator on June 20, 2007, by two hundred (\$200) dollars.

Effective January 1, 2012 longevity payments shall be restructured. Members of the bargaining unit will cease receiving the longevity steps awarded in the interest arbitration award, executed by the neutral arbitrator on June 20, 2007, increased by two hundred (\$200) dollars a step as stated above. Instead, members of the unit shall receive 2% of their base salary as a longevity payment for every three (3) years of service. Such payment shall be cumulative, however, no such additional longevity steps shall be earned after the completion of 20 years. For the purpose of making this determination, the anniversary date of employment shall be deemed to be the date the member was originally appointed to the Orangetown Police Department, not the date that his/her employment became permanent.

**SHIFT DIFFERENTIAL:**

Amend 6.4 as follows:

Effective January 1, 2011, the shift differential stated in this provision will be increased to seven percent (7.0%). Effective January 1, 2012, the shift differential stated in this provision will be increased to eight percent (8.0%). Effective January 1, 2013, the shift differential stated in this provision will be increased to nine percent (9.0%). Effective January 1, 2014, the shift differential stated in this provision will be increased to ten percent (10.0%). Additionally, all officers who are assigned to work on specialized squads which are assigned to work some of those hours, shall receive a proportionate annual salary increment. Payment of this night shift

differential shall not be reduced when the employees are off on an official paid leave (i.e., sick leave, vacation leave, personal leave, GML§ 207-c.or workers' compensation for up to two (2) years).

**Article Seven – UNIFORMS:**

Amend 7.2 as follows:

The Town shall pay annually to each member of the bargaining unit on January 1, of each year the sum of one thousand (\$1,000.00) dollars to each officer for the maintenance of clothing for uniform officers and those to plain clothes. Plus the Department pays for dry cleaning of uniforms and plain clothes.

Amend 7.3 as follows:

Effective January 1, 2011, members of the bargaining unit shall have the amount received for purchase of equipment raised to five hundred (\$500) dollars. Effective January 1, 2012, members of the bargaining unit shall have the amount received for purchase of equipment raised to seven hundred fifty (\$750) dollars. Effective January 1, 2013, members of the bargaining unit shall have the amount received for purchase of equipment raised to one thousand (\$1,000) dollars. Effective January 1, 2014 members of the bargaining unit shall have the amount received for purchase of equipment raised to twelve hundred fifty (\$1250) dollars. This equipment allowance will apply to all members of the bargaining unit to include those who maintain the designation of detective. Payment for this equipment allowance will be made in the second pay period, on payday, of January of each year, as a separate check.

**Article Nine – HOLIDAYS:**

Amend 9.2 as follows: Delete the current language and substitute the following:

“Lincoln’s Birthday shall be deemed to be February 12<sup>th</sup>; Washington’s Birthday shall be observed on President’s Day. The day after Thanksgiving shall be added as the 13<sup>th</sup> Holiday.

**Article Ten – PERSONAL LEAVE**

Amend 10.1 by adding the following sentence:

Two (2) Emergency Personal leave days shall be granted regardless of the need to pay another member of the bargaining unit overtime to cover the shift. These Emergency Personal leave days can be used on any day except on any of the holidays designated in Article Nine.

**New Article TRAINING**

The PBA intends to provide a proposal on training.

**New Article EMERGENCY SICK LEAVE BANK**

1. Establishment of an Emergency Sick Leave Bank. An Emergency Sick Leave Bank will be established. Each current member will donate one of their sick days each year for the next five years to the bank. Each new member of the bargaining unit will donate one of their sick days each year for the first five years of their employment. Any member can voluntarily donate, at any time, any amount of sick days from the members accruals to the Emergency Sick Leave Bank. Once a sick day is donated to the Bank it becomes the irrevocable property of the Bank
2. Donation of Days from the Emergency Sick Leave Bank.
  - a. Application. When a member has a medical emergency that has caused him to expend his sick time accruals to where he only has fifteen days left in his accruals

and it appears that the member will require the use of more than the remaining fifteen days of his accruals the member may apply to the Orangetown PBA for a grant of sick days from the Emergency Sick Leave Bank.

- b. The Orangetown PBA Executive Board will consider all applications for the use of days from the Emergency Sick Leave Bank. The Orangetown PBA Executive Board will determine, in its absolute discretion, whether a member will be granted the use of sick days from the Emergency Sick Leave Bank. The Orangetown Executive Board will determine, in its absolute discretion, the number of sick days that a member will be granted from the Emergency Sick Leave Bank.
- c. The member making application for the use of days from the Emergency Sick Leave Bank is required to cooperate with the Orangetown PBA Executive Board and to provide all documents requested by the Orangetown PBA Executive Board that will consider the members application. The PBA Executive Board may require all documents, to include all medical records, that it deems necessary to determine the members application. If the member refuses to cooperate with the PBA Executive Board and/or refuses to provide the documents requested by the PBA Executive Board to determine the members application, the Executive Board, may, in its absolute discretion, deny the members application on that basis alone.
- d. A member may make multiple applications for the use of days from the Emergency Sick Leave Bank, however, in no event will a member be granted more than the number of sick days that are required to obtain a years worth of the

member's salary. Additionally, no days from the Emergency Sick Leave Bank will be used until the member has zero (0) sick days accrued.

**New Article DETECTIVE SENIORITY**

Seniority among detectives will be determined by the date of their promotion to detective.

**New Article VACATION SELECTIONS**

Members of the bargaining unit will not be required to pick vacations with members of any other bargaining unit. Members of the bargaining unit will only be required to pick vacations with other members of the bargaining unit.

**2**

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X  
ORANGETOWN POLICEMEN'S BENEVOLENT  
ASSOCIATION,

Petitioner,

- and -

TOWN OF ORANGETOWN,

Respondent.  
----- X

**RESPONSE TO  
PETITION FOR  
COMPULSORY  
INTEREST  
ARBITRATION**

Case No. \_\_\_\_\_

The TOWN OF ORANGETOWN ("the Town"), by its attorneys, LAMB & BARNOSKY, LLP, appears and files this Response to Petition for Compulsory Interest Arbitration as follows:

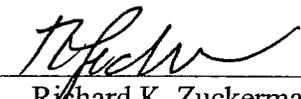
1. The Town designates Richard K. Zuckerman, Esq., Lamb & Barnosky, LLP, 534 Broadhollow Road, Suite 210, P.O. Box 9034, Melville, New York 11747-9034 (631-414-5808), as its representative on the arbitration panel. Alyson Mathews, Esq., Lamb & Barnosky, LLP, 534 Broadhollow Road, Suite 210, P.O. Box 9034, Melville, New York 11747-9034 (631-414-5825), shall be the Town's advocate.
2. There has been no agreement between the parties as to any terms and conditions of employment, including the continuation of any or all of the terms of the parties' expired collective bargaining agreement into the successor agreement.
3. There has been no agreement between the parties as to any of the proposals which were submitted during the negotiations process.
4. The Town's proposals to the PBA which are submitted to interest arbitration are attached as Exhibit "1."

5. An Improper Practice Charge is being submitted simultaneously with this Response pursuant to § 205.6 of PERB's Rules, objecting to the arbitrability of the PBA's demands. The Improper Practice Charge is attached as Exhibit "2."

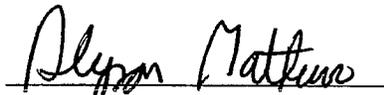
6. A copy of this Response has been mailed this date to the Petitioner's representative, Joseph P. Baumgartner, Esq. An affidavit of service by mail of the Response is enclosed.

Dated: Melville, NY  
August 11, 2011

Respectfully submitted,  
LAMB & BARNOSKY, LLP

By:   
Richard K. Zuckerman  
Attorneys for Respondent  
TOWN OF ORANGETOWN  
534 Broadhollow Road, Suite 210  
P.O. Box 9034  
Melville, NY 11747-9034  
(631) 414-5808

Sworn to before me this  
11th day of August 2011

  
Notary Public

ALYSON MATHEWS  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 02MA6123825  
QUALIFIED IN SUFFOLK COUNTY  
COMMISSION EXPIRES MARCH 14, 20 13

TO: JOSEPH P. BAUMGARTNER, ESQ.  
BUNYAN & BAUMGARTNER LLP  
500 BRADLEY HILL ROAD  
BLAUVELT, NY 10913  
(845) 353-2200

**TOWN OF ORANGETOWN NEGOTIATIONS PROPOSALS  
TO THE ORANGETOWN POLICEMEN'S BENEVOLENT ASSOCIATION  
FOR AN AGREEMENT EFFECTIVE JANUARY 1, 2011**

1. Article THREE (Rights of Employees). Delete (illegal).
2. Article FOUR (Dues Checkoff and Agency Fee Deduction). The Union is requested to provide a copy of its statutorily required agency fee refund procedure.
3. Article 5.2 (last sentence) (Union Business). Change one hundred sixty (160) hours (20 days) to 120 hours (15 days). Add: "The Union shall be entitled to additional days at its own expense."
4. Article 5.2 (2<sup>nd</sup> sentence) (Union Business). Delete.
5. Article 5.4 (3<sup>rd</sup> sentence) (Union Business). Delete.
6. Article 6.1 (Salary Schedules). Freeze the starting salary. Add two new steps to the salary schedule. Make all steps equidistant. Add an Academy Rate of \$10,000 below the starting salary.
7. Article 6.4 (2<sup>nd</sup> sentence) (Shift Differential). Delete.
8. Article 8.3 (Vacation Leave). Delete.
9. Article 8.8 (Vacation Credit). The following vacation schedule shall be effective for all new hires:

<u>COMPLETED YEARS OF CONTINUOUS SERVICE</u>	<u>ADDITIONAL VACATION CREDITED</u>
1 year	5 days
5 years	10 days
10 years	15 days
15 years	20 days
20 years	25 days
10. Article 8.9 (Vacation Schedule). Revise to provide that all vacation time shall be scheduled during the preceding year.
11. Article 9.4 (Holidays/207-c). Delete.
12. Article 10.3 (Personal Leave). Change seven to four.
13. Article 12.1 (Sick Leave). Change 13 and 19.5 to eight and 12. Delete for new hires and replace with so-called unlimited sick leave modeled upon the procedure in effect in New York City.

1/14/11

14. Article 12.1 (2<sup>nd</sup> ¶) (Sick Leave/Advance Credit). Delete.
15. Article 12.9 (2<sup>nd</sup> ¶) (Extended Absence without Pay). In the 2<sup>nd</sup> line, change “an employer” to “an employee” (housekeeping).
16. Article 12.12 (Family Sick Leave). Change 96 hours/12 days to 60 hours/five days.
17. Article 12.13 (Unused Sick Leave Buy-Out). Add that, in order to be eligible, employees must have at least 120 days of unused sick leave as of the date of retirement or resignation.
18. Article 12.13 (Retirement). Delete.
19. Article 13.2 (Overtime). Revise to provide that all overtime and compensatory time entitlements shall be provided solely in accordance with FLSA mandates.
20. Article 13.6 (Meal Allowance). Delete.
21. Article 14.2 (Health Insurance). Revise to require a 25% contribution.
22. Article 14.2 (Health Insurance). Add: “If two persons are currently receiving (or are eligible to receive) family health insurance benefits through the Town, only one will be permitted to continue to receive family level coverage.”
23. Article 14.3 (Dental Insurance). Revise to require a 25% contribution.
24. Article 14.3 (Dental Insurance). Add: “If two persons are currently receiving (or are eligible to receive) family dental benefits through the Town, only one will be permitted to continue to receive family level coverage.”
25. Article 14.4 (Retiree Health Insurance). Change eligibility requirement to 20 years of active Town service.
26. Article 15 (Disciplinary Procedures). Delete (illegal).
27. Article 16 (Section II) (3, 6) (Time to file a Grievance). Change 45 to 10.
28. Article 16 (Arbitration). Clarify the composition of the arbitration panel.
29. Article 16 (Section II) (7) (Election of Remedies). Revise to read that the grievance and arbitration procedure shall constitute a binding election of remedies with regard to the subject matter(s) of the grievance.
30. Article 16 (Section III) (Step 2) (1) (Arbitration Panel). Update.
31. Article 21.2 (Personnel File). Add “, provided that it was received within 10 calendar

1/14/11

days following the employee's being notified that the document is being included in the file" to the end of the paragraph.

32. Appendix A (Drug Testing). Add alcohol and steroids.
33. Medscope (207-c Procedure). Replace with the attached procedure.

BENEFITS"). If no such relationship is found, then the claim shall be treated as an initial injury and the matter shall be processed pursuant to Section III(1-12)) ("INITIAL APPLICATION FOR GML 207-c BENEFITS"). The employee shall submit to the Town Attorney's Office any previously unsubmitted health care provider(s) report(s) upon which the employee intends to rely at the hearing immediately upon receiving same from the health care provider. Likewise, the Town shall submit to the employee any previously unsubmitted health care provider(s) report(s) upon which the Town intends to rely at the hearing immediately upon receiving same from the health care provider.

#### **V. TERMINATION OF BENEFITS/RETURN TO DUTY**

1. Upon receipt of a certification from the Town's designated physician, as set forth in Section III(5) ("INITIAL APPLICATION FOR GML 207-c BENEFITS"), that an employee is able to perform all of the duties of his/her position, the Chief may notify the employee of same and/or the proposed termination of his/her GML 207-c benefit. The Chief shall notify the employee by serving a written notice of proposed termination, setting forth the effective date thereof, which shall be not less than two Town working days from the date of the notice, and enclosing a copy of the physician's certification, upon the employee by regular mail and certified mail, return receipt requested.

2. If the employee disagrees with the Chief's decision, he/she shall commence an appeal pursuant to the procedures outlined in Section III(9) ("INITIAL APPLICATION FOR GML 207-c BENEFITS"). The employee shall submit to the Town Attorney's Office any previously unsubmitted health care provider(s) report(s) upon which the employee intends to rely at the hearing immediately upon receiving same from the health care provider. Likewise, the Town shall submit to the employee any previously unsubmitted health care provider(s) report(s) upon which the Town intends to rely at the hearing immediately upon receiving same from the health care provider. If the employee submits, together with the appeal, a medical opinion contradicting the medical conclusion(s) of the Town's designated physician, the employee's GML 207-c benefits will be continued. Otherwise, the employee shall be immediately placed on sick leave status. If more than 60 calendar days elapse from the effective date of the Town's notification to the employee and the final resolution of the dispute, any time in excess of the 60 day period shall be charged against the employee's accrued leave time, utilizing sick leave first; except that, if the employee in good faith indicates that he/she is ready, willing and able to go forward on a day or days agreed upon by the arbitrator and counsel for the employee and Town and, in fact, goes forward and presents his/her case within that 60 day period, or a scheduled arbitration hearing is adjourned at the request of the Town or the arbitrator, than the 60 day period shall be extended to 90 days. In the event that the employee's GML 207-c status is confirmed when the matter is finally resolved, any leave time used as a result of the operation of this provision shall be recredited to the employee.

#### **VI. OTHER PROVISIONS**

1. In the event that any portion of this procedure is invalidated by a decision of a tribunal

1/14/11

of competent jurisdiction, then that portion shall be of no force and effect, but the remainder of this procedure shall continue in full force and effect. In this event, either the Association or the Town shall have the right immediately to reopen negotiations with respect to a substitute for the invalidated portion.

2. Evidence pertaining to an employee's application for benefits pursuant to the Workers' Compensation Law, including whether or not the application was controverted, granted or denied, shall not be given any preclusive effect in any stage of this procedure, but shall be admissible as evidence to be given the weight deemed appropriate by the arbitrator.

3. This procedure shall take effect on \_\_\_\_\_, 2011 and shall apply to any claim of entitlement to or use of GML 207-c benefits made after that date. In the event a proposed "new" utilization of GML 207-c benefits after this date is based upon an injury that allegedly occurred prior to that date, the employee shall comply with the terms of Section IV ("ALLEGED RECURRENCE OR AGGRAVATION OF PRIOR INJURY") of this procedure within 30 calendar days after the date of the "new" injury. After the filing of the application form, the claim for utilization of GML 207-c based on a pre-\_\_\_\_\_, 2011 injury shall be decided in accordance with Section IV ("ALLEGED RECURRENCE OR AGGRAVATION OF PRIOR INJURY").

4. This procedure shall also apply to any proposed change in an employee's utilization of GML 207-c benefits enjoyed as of the date of the adoption of this procedure. Any employee seeking to change his/her sick leave or GML 207-c leave status enjoyed as of the date of the adoption of this procedure must do so pursuant to the procedures outlined in Section II(1)("APPLICATION FOR BENEFITS") within 30 calendar days of the adoption of this procedure.

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

I M P R O P E R P R A C T I C E C H A R G E

INSTRUCTIONS: File an original and four (4) copies of this charge with the Director of Public Employment Practices and Representation, New York State Public Employment Relations Board, 80 Wolf Road, Albany, NY 12205-2604. If more space is required for any item, attach additional sheets, numbering item accordingly.

DO NOT WRITE IN THIS SPACE

Case No.

Date Received:

1. CHARGING PARTY

- a. Name (If employee organization, give full name, including affiliation and local name and number):

Town of Orangetown

- b. Address (No. & Street, City and Zip Code, County):

26 Orangeburg Road  
Orangeburg, NY 10962

Telephone Number:  
845-359-5100

- c. Name and title of the representative filing charge:

Richard K. Zuckerman, Esq.

- d. Name, address and telephone number of attorney or other representative, if any, to whom correspondence is to be directed:

Richard K. Zuckerman, Esq.  
Lamb & Barnosky, LLP  
534 Broadhollow Rd., Ste. 210  
Melville, NY 11747

Telephone Number:  
631-414-5808

2. PUBLIC EMPLOYER AND/OR EMPLOYEE ORGANIZATION AGAINST WHOM CHARGE IS BROUGHT

- a. Name and Address (No. & Street, City and Zip Code, County):

Town of Orangetown Policemen's Benevolent Association, Inc.  
Joseph P. Baumgartner, Esq.  
Bunyan & Baumgartner, LLP  
500 Bradley Hill Road  
Blauvelt, NY 109136

Telephone Number: (845) 353-2200

If the charge alleges a violation of Section 209-a.1(d) or 209-a.2(b) of the Act, has the charging party notified the Board in writing of the existence of an impasse pursuant to Section 205.1 of the Board's Rules of Procedure?

YES X

NO

VIOLATIONS ALLEGED

4. Pursuant to Article 14 of the Civil Service Law, as amended (Public Employees' Fair Employment Act), the charging party hereby alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in an improper practice within the meaning of the following subsections of Section 209-a of said Act (check the subsection(s) allegedly violated):

If by a public employer

- 209-a.1(a)
- 209-a.1(b)
- 209-a.1(c)
- 209-a.1(d)
- 209-a.1(e)
- 209-a.1(f)
- 209-a.1(g)

If by an employee organization

- 209-a.2(a)
- 209-a.2(b)
- 209-a.2(c)\*

\* If the charge alleges a violation of Section 209-a.2(c) of the Act based on an employee organization's processing of or failure to process a claim that a public employer has breached its agreement with such employee organization, identify the public employer:

a. Name and Address (No. & Street, City and Zip Code, County):

b. Telephone Number:

DETAILS OF CHARGE

5. Specify in detail the alleged violation(s). Include names, dates, times, places and particular actions constituting each violation. Use additional sheet(s), if necessary. Failure to supply sufficient factual detail may result in a delay in processing or dismissal of the charge.

PLEASE SEE ATTACHED

6. Is the charging party available immediately to participate in a pre-hearing conference and a formal hearing?

YES

NO

STATE OF NEW YORK      SS.:  
COUNTY OF SUFFOLK )

Richard K. Zuckerman, being duly sworn deposes and says, that she is the charging party above named, or its representative, and that she has read the above charge consisting of this and 7 additional pages, and is familiar with the facts alleged therein, which facts she knows to be true, except as to those matters alleged on information and belief, which matters she believes to be true.

  
\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
(Title)

Subscribed and sworn to before me  
on 11<sup>th</sup> day of August, 2011.

PERB 579 (2/94)

*Alyson Mathews*

ALYSON MATHEWS  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 02MA6123825

## **5. DETAILS OF CHARGE**

1. The Town of Orangetown (“the Town”) is and was at all times relevant to this charge a “public employer” within the meaning of the Public Employees Fair Employment Act (“the Act”).
2. Upon information and belief, the Orangetown Policemen’s Benevolent Association, Inc. (“the PBA”) is and was at all times relevant to this charge an “employee organization” within the meaning of the Act.
3. The Town and the PBA are parties to a collective bargaining agreement that expired on December 31, 2005, and parties to an interest arbitration award that expired on December 31, 2007. The parties are presently at impasse in their negotiations for a successor collective bargaining agreement.
4. The PBA filed with the Public Employment Relations Board a petition for Compulsory Interest Arbitration dated August 2, 2011.
5. The Town received a copy of the Petition on August 5, 2011.
6. As part of its petition for compulsory interest arbitration, the PBA is seeking over the Town’s objection to submit numerous nonmandatory subjects of bargaining to the interest arbitration panel.
7. Those nonmandatory proposals are set forth as Appendix “1” to this Charge.
8. The PBA’s submission of nonmandatory proposals to interest arbitration constitutes a violation of § 209-a.2(b) of the Act in that it is a violation of the PBA’s duty to negotiate in good faith with the Town.
9. Upon information and belief, the PBA is also insisting that all terms of the expired contract be continued into the successor agreement, including illegal and/or prohibited provisions, except as changes in the expired contract are awarded by the interest arbitration panel.
10. Those illegal and/or prohibited provisions of the expired contract are set forth as Appendix “2” to this Charge.
11. The PBA’s insistence that illegal and/or prohibited provisions of the expired agreement be continued into the parties’ successor agreement constitutes a violation of § 209-a.2(b) of the Act in that it is a violation of the PBA’s duty to negotiate in good faith with the Town.

WHEREFORE, the Town respectfully requests an order that the PBA: 1) has violated § 209-a.2(b) of the Act for the reasons described above; 2) cease and desist

from refusing to negotiate in good faith with the Town; 3) cease and desist from submitting nonmandatory illegal and/or prohibited subjects of bargaining to the interest arbitration panel; 4) cease and desist from insisting upon the continuation of nonmandatory illegal and/or prohibited subjects of bargaining into the parties' successor agreement; and for such other and further relief as may be deemed appropriate and just.

## APPENDIX 1

### Article Five – UNION BUSINESS:

Amend 5.2 as follows:

The Union President and or [sic] his/her designee will be granted thirty (30) days per year with pay, to attend to Union related business. The P.B.A President and or [sic] his/her designee shall be entitled to utilize the time off even if the Union related business does not take place during his/her working hours. *The President will not be restricted by minimum manpower staffing levels when using this time.* In addition, all members of the P.B.A.'s Bargaining and Grievance Committee will be entitled to forty hours (5 days) each per year with pay, to attend to Union related business (emphasis added).

### OK Schedules A – E SALARIES:

Amend the current salary schedule to include a four and on-quarter (4.25%) percent increase for each of the four (4) years, effective 1/1/11, 1/1/12, 1/1/13 and 1/1/14, across the board for all ranks, grades and designations.

### OK SHIFT DIFFERENTIAL:

Amend 6.4 as follows:

Effective January 1, 2011, the shift differential stated in this provision will be increased to seven percent (7.0%). Effective January 1, 2012, the shift differential stated in this provision will be increased to eight percent (8.0%). *Effective January 1, 2013, the shift differential stated in this provision will be increased to nine percent (9.0%). Effective January 1, 2014, the shift differential stated in this provision will be increased to ten percent (10.0%).* Additionally, all officers who are assigned to work on specialized squads which are assigned to work some of those hours, shall receive a proportionate annual salary increment. Payment of this night shift differential shall not be reduced when the employees are off on an official paid leave (i.e., sick leave, vacation leave, personal leave, GML § 207-c or workers' compensation for up to two (2) years) (emphasis added).

### OK Article Seven – UNIFORMS:

Amend 7.3 as follows:

Effective January 1, 2011, members of the bargaining unit shall have the amount received for purchase of equipment raised to five hundred (\$500) dollars. Effective January 1, 2012, members of the bargaining unit shall have the amount received for purchase of equipment raised to seven hundred fifty (\$750) dollars. *Effective January 1, 2013, members of the bargaining unit shall have the amount received for purchase of equipment raised to one thousand (\$1,000) dollars. Effective January 1, 2014, members of the bargaining unit shall have the amount received for purchase of equipment raised to twelve hundred fifty*

*(\$1,250) dollars.* This equipment allowance will apply to all members of the bargaining unit to include those who maintain the designation of detective. Payment for this equipment allowance will be made in the second pay period, on payday, of January of each year, as a separate check (emphasis added).

Article Ten – PERSONAL LEAVE:

Amend 10.1 by adding the following sentence:

Two (2) Emergency Personal leave days shall be granted regardless of the need to pay another member of the bargaining unit overtime to cover the shift. These Emergency Personal leave days can be used on any day except on any of the holidays designated in Article Nine.

New Article TRAINING:

The PBA intends to provide a proposal on training.

New Article EMERGENCY SICK LEAVE BANK:

1. Establishment of an Emergency Sick Leave Bank. An Emergency Sick Leave Bank will be established. Each current member will donate one of their sick days each year for the next five years to the bank. Each new member of the bargaining unit will donate one of their sick days each year for the first five years of their employment. Any member can voluntarily donate, at any time, any amount of sick days from the members' accruals to the Emergency Sick Leave Bank. Once a sick day is donated to the Bank it becomes the irrevocable property of the Bank.
2. Donation of Days from the Emergency Sick Leave Bank.
  - a. Application. When a member has a medical emergency that has caused him to expend his sick time accruals to where he only has fifteen days left in his accruals and it appears that the member will require the use of more than the remaining fifteen days of his accruals the member may apply to the Orangetown PBA for a grant of sick days from the Emergency Sick Leave Bank.
  - b. The Orangetown PBA Executive Board will consider all applications for the use of days from the Emergency Sick Leave Bank. The Orangetown PBA Executive Board will determine, in its absolute discretion, whether a member will be granted the use of sick days from the Emergency Sick Leave Bank. The Orangetown Executive Board will determine, in its absolute discretion, the number of sick days that a member will be granted from the Emergency Sick Leave Bank.

c. The member making application for the use of days from the Emergency Sick Leave Bank is required to cooperate with the Orangetown PBA Executive Board that will consider the members application. *The PBA Executive Board may require all documents, to include all medical records, that it deems necessary to determine the members application. If the member refuses to cooperate with the PBA Executive Board and/or refuses to provide the documents requested by the PBA Executive Board to determine the members application, the Executive Board, may, in its absolute discretion, deny the members application on that basis alone* (emphasis added). - 17 app of complaint alone

d. A member may make multiple applications for the use of days from the Emergency Sick Leave Bank, however, in no event will a member be granted more than the number of sick days that are required to obtain a years' worth of the member's salary. Additionally, no days from the Emergency Sick Leave Bank will be used until the member has zero (0) sick days accrued.

## APPENDIX 2

### ARTICLE THREE – RIGHTS OF EMPLOYEES:

3.1 Employees of the Department hold a unique status as public employees in that the nature of their office and employment involves the exercise of a portion of the police power of the municipality.

The security of the community depends, to a great extent, on the manner in which police officers perform their duty. Their employment is thus in the nature of a public trust.

The wide-ranging powers and duties given to the Department and its members involve them in all manner of contacts and relations with the public. Out of these contacts may come questions concerning the action of the members of the Department. These questions may require investigation by superior officers designated by the Employer. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

- a. The interrogation of an employee shall be at a reasonable hour, preferably when the employee of the Department is on duty, unless the exigencies of the investigation dictate otherwise. If any time is lost, the employee of the Department shall be given compensatory time.
- b. The interrogation shall take place at a location designated by the Department Head, ordinarily at Police Headquarters or a location having a reasonable relationship to the incident alleged.
- c. The employees of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the employee of the allegations should be provided. If it is known that the employee of the Department is being interrogated as a witness only, he/she should be so informed at the initial contact.
- d. The questioning shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
- e. All employees of the Department shall be obligated to answer any questions concerning their conduct as it relates to their employment, except those which violate their Constitutional, legal or contractual rights.
- f. The employee of the Department shall not be subjected to the use of offensive language by the investigating employee, nor shall said employee be threatened

with transfer or disciplinary action unless said employee refuses to answer proper questions as defined in Section e. The foregoing prohibition against threats shall not be construed to prohibit the investigating employee from advising the employee of the Department of the character of the discipline the Department may impose nor from advising the employee of the Department that if said employee refuses to answer proper questions as above, said employee may be subject to additional charges.

- g. The complete interrogation of the employee of the Department shall be recorded mechanically or by a stenographer. There will be no "off the record" questions except by mutual consent by both parties. All recesses called during the questioning shall be recorded.
- h. If an employee of the Department is under arrest or is likely to be, or he/she is a suspect or the target of a criminal investigation, he/she shall be given his/her rights pursuant to the current decisions of the United States Supreme Court.
- i. In non-criminal cases, the employee shall have an opportunity to consult, within 24 hours, with said employees counsel and/or union representative, if said employee so requests, before being questioned. This clause is not to be interpreted in such a manner as to prevent questioning of employees by superiors with respect to their conduct in the normal course of business. No representative provided by the union shall act in such capacity while on duty. It is understood that the rights herein granted will not be used to unduly delay the expeditious disposition of investigations of conduct.
- j. Any disciplinary action taken against an employee of the bargaining unit by the Department shall be subject to the provisions of Article 15 of this Agreement.

#### ARTICLE FIFTEEN – DISCIPLINARY PROCEDURE:

15.1 In the event of a dispute concerning the discipline or discharge imposed upon an employee, the following procedures shall be followed:

Step 1: The Employer shall advise an employee, in writing, that it proposes to commence disciplinary action against him. Such notice shall describe the general circumstances for which discipline is sought and optionally the penalty, which the Employer seeks to impose. Within seven (7) days following service of that notice on the employee and the Union, the parties (the Chief, the employee, the Union and any of their representatives or attorneys) shall meet to discuss voluntary resolution of the charges. If no voluntary resolution can be made at the meeting described above, then within three (3) days after such meeting, the employee must serve written notice as described in Section 15.2 if he desires to follow Step 2 of this Article. Failure to make a timely election shall automatically mean that the procedures of Section 75 of the Civil Service Law shall be followed, and there shall be no right to arbitration under the provisions of this

Agreement. If an employee waives his/her Section 75 rights and makes a timely election for arbitration, then the remaining steps will be followed. If an employee has been suspended without pay, he/she may waive his/her Section 75 rights and demand arbitration immediately. In such a case, within seventy-two (72) hours the Employer shall serve a description of the charges on which it relies for the discipline sought.

Step 2: The parties jointly designate and select the following arbitrators to serve for the life of the Agreement in the matters of discharge and discipline under this Article; as well as grievance arbitrators pursuant to Article Fifteen Earle Wren Zaidins, Howard C. Edelman and Martin Ellenberg. In the event a member of the arbitration panel is no longer available to serve, the remaining two panel members shall jointly select a third Arbitrator from a list of six (6) names, three (3) names submitted by the employer and three (3) names submitted by the Union. As a member of the panel hears a case, his name shall move to the bottom of the list and the next two members shall move up. If the employee has made a timely election in Step 1, the Union may, at its option, ask the next member of the panel for a hearing date; and if he similarly cannot provide a date within twenty (20) calendar days the Union may request, at its option, the third panel member for a hearing date. The Arbitrator shall render his decision within fourteen (14) days following close of the record. The finding of the Arbitrator shall be final and binding upon the parties. There shall be no extensions of the foregoing time limits except by mutual agreement. The Arbitrator may, under appropriate circumstances, issue an interim verbal decision to be followed by a written opinion and award.

15.2 To elect the procedures set forth in Step 2 of Section 15.1, the employee must file a written notice of such election with the Chief of Police within the time limits set forth in Step 1 of Section 15.1. Such election must include a written waiver of all rights under Section 75 including limitations as to type or degree of punishment or to any right to reinstatement under Section 75, or otherwise, pending final determination by the Arbitrator selected, or to the holding of a hearing within a thirty (30) day period of suspension without pay.

15.3 In any arbitration hearing held under the provision of this Article both the Department and the employees involved shall have the right to be represented by counsel and to present witnesses and to engage in the cross-examination of witnesses presented by the other party. The fees of the Arbitrator and necessary expenses of the arbitration shall be shared by the Employer and the Union. Each party shall bear the expense of the preparation and presentation of its own case.

15.4 The Arbitrator shall have no power to add to, subtract from or change any of the provisions of this Agreement, nor shall he have authority to render any decision which conflicts with a law, ruling or regulation binding upon the employer by a higher authority, nor to imply any obligation on the employer which is not specifically set forth in this Agreement.

15.5 If an employee is found not guilty of misconduct or incompetency requiring discipline, there shall be no record kept in the employee's official personnel folder of the disciplinary proceeding.

15.6 Effective October 7, 1999, charges relating to time and attendance shall be brought within eighteen (18) months of the occurrence.

3

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
-----X

In the Matter of the

TOWN OF ORANGETOWN,

Charging Party,

-against-

ROCKLAND COUNTY PATROLMEN'S  
BENEVOLENT ASSOCIATION, INC.

Respondent.  
-----X

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
-----X

In the Matter of the

ROCKLAND COUNTY PATROLMEN'S  
BENEVOLENT ASSOCIATION, INC.

Charging Party,

-against-

TOWN OF ORANGETOWN,

Respondent.  
-----X

**STIPULATION OF  
SETTLEMENT**

Case No. U-31270

**STIPULATION OF  
SETTLEMENT**

Case No. U-31286

Agreement by and between the TOWN OF ORANGETOWN ("the Town"), by its counsel, LAMB & BARNOSKY, LLP, and the ROCKLAND COUNTY PATROLMEN'S BENEVOLENT ASSOCIATION, INC., ("the PBA"), by its counsel, BUNYAN & BAUMGARTNER, LLP, regarding the settlement of PERB Case Nos. U-31270 and U-31286.

1. The PBA modifies its proposal to the arbitration panel regarding Schedules A-E (Salaries) by deleting "1/1/13 and 1/1/14."
2. The PBA modifies its proposal to the arbitration panel regarding Section 6.4 (Shift Differential) by deleting "Effective January 1, 2013, the shift differential stated in this provision will be increased to nine percent (9.0%). Effective January 1, 2014, the shift differential stated in this provision will be increased to ten percent (10.0%)."
3. The PBA modifies its proposal to the arbitration panel regarding Section 7.3 (Uniforms) by deleting "Effective January 1, 2013, members of the bargaining unit shall have the amount received for purchase of equipment raised to one thousand (\$1,000) dollars. Effective January 1, 2014, members of the bargaining unit shall have the amount received for purchase of equipment raised to twelve hundred fifty (\$1,250) dollars."
4. The PBA withdraws its proposal to the arbitration panel regarding emergency personal leave.
5. The PBA withdraws its proposal to the arbitration panel regarding a new article (Training).
6. The PBA modifies its proposal to the arbitration panel regarding a new article (Emergency Sick Leave Bank) by replacing from the second sentence of paragraph 2(c) the phrase "to include all medical records" with "to include HIPAA compliant medical authorizations for all medical records."
7. Article Three (Rights of Employees) shall be deleted from the collective bargaining agreement.

8. Article Fifteen (Disciplinary Procedure) shall be deleted from the collective bargaining agreement.

9. Article Sixteen, Section III (Step 2) (Grievance Procedure) shall be amended by replacing in the second sentence the phrase “, which is found in Article Fifteen (15.1)” with “consisting of Howard C. Edelman, Jeffrey M. Selchick and Jay M. Siegel.”

10. The Town withdraws its objection to the submission of the PBA’s proposal to the arbitration panel regarding Article Five (Union Business).

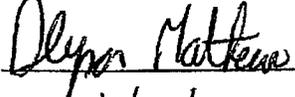
11. The Town modifies its proposal 6 (Salary Schedules) to the arbitration panel to read, “Reduce the starting salary by 15% and recalculate the salary schedule to make steps equidistant.”

12. The PBA hereby withdraws its Improper Practice Charge in Case No. U-31286.

13. The Town hereby withdraws its Improper Practice Charge in Case No. U-31270.

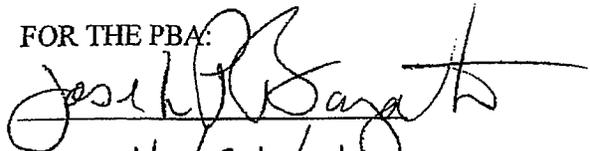
14. This Agreement shall become effective immediately upon its execution by the parties.

FOR THE TOWN:

  
\_\_\_\_\_

Dated: 11/29/11

FOR THE PBA:

  
\_\_\_\_\_

Dated: 11/21/11

4



**STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD**

80 WOLF ROAD, SUITE 500  
Albany, NY 12205-2656  
(518) 457-6014  
(518) 457-2664  
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**JEROME LEFKOWITZ  
CHAIRPERSON**

**RICHARD A. CURRERI  
DIRECTOR**

**OFFICE OF CONCILIATION**

**DESIGNATION OF PUBLIC INTEREST ARBITRATION PANEL**

WHEREAS, the New York State Public Employment Relations Board has determined that a dispute continues to exist in negotiations between

ORANGETOWN, TOWN OF  
and  
ORANGETOWN POLICE BENEVOLENT ASSN.

WHEREAS, this dispute comes under the provisions of Civil Service Law, Section 209.4,

NOW, THEREFORE, under the authority vested in the New York State Public Employment Relations Board under Section 209.4 of the New York Civil Service Law, a Public Arbitration Panel is hereby designated for the purpose of making a just and reasonable determination of this dispute. The statutory provisions and rules of procedure applicable to this arbitration process are attached hereto. The Public Arbitration Panel members designated are:

**PUBLIC PANEL MEMBER AND CHAIRPERSON:**

Jay M. Siegel, Esq.  
12 Rock Street  
Cold Spring, NY 10516  
845-265-3124

**PUBLIC EMPLOYER PANEL MEMBER:**

Richard K. Zuckerman, Esq.  
Lamb & Barnosky, LLP  
534 Broadhollow Road, Suite 210  
P.O. Box 9034  
Melville, NY 11747-9034  
631-694-2300

**EMPLOYEE ORGANIZATION PANEL MEMBER:**

Richard P. Bunyan, Esq.  
Bunyan & Baumgartner, LLP  
500 Bradley Hill Road  
Blauvelt, NY 10913  
845-353-2200

Dated: September 22, 2011

**5**

**AGREEMENT**

**BETWEEN THE**

**TOWN OF ORANGETOWN**

**AND**

**ORANGETOWN POLICEMEN'S BENEVOLENT ASSOCIATION**

**JANUARY 1, 2002 - DECEMBER 31, 2005**

U#6

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## INTRODUCTION

The enclosed collective bargaining agreement is a combination of the following:

1. The 1983-84 contract provisions except where amended or deleted by the parties or by arbitration.
2. Some portions of the sign-off consent document dated August 28, 1984.
3. Compulsory Interest Arbitration Award (Case No. IA 84-36, M84-356) dated December 2, 1985; covering 1985-86.
4. Compulsory Interest Arbitration Award (Case No. IA 87-10, M87-004) dated August 15, 1988; covering 1987-1988.
5. Negotiated settlement for 1989-1990.
6. Compulsory Interest Arbitration Award (Case No. IA 91-01) dated March 28, 1992; covering 1991-1992.
7. Compulsory Interest Arbitration Award (Case No. IA 92-53) dated July 22, 1994; covering 1993-1994.
8. Negotiated settlement(s) for 1995, 1996 and 1997.
9. Compulsory Interest Arbitration Award (Case No. IA98-030) dated October 7, 1999; covering 1998-1999.
10. Negotiated settlement for 2000-2001.
11. Negotiated settlement for 2002-2005.

## **PREAMBLE**

It is the mutual policy and intent of the parties to this Agreement to:

1. Maintain a harmonious and cooperative relationship between the Town of Orangetown and its employees in order to protect the public by assuring at all times the orderly and uninterrupted operations and functions of government.
2. Promote fair and reasonable working conditions.
3. Comply with the New York State Public Employees' Fair Employment Act.

## **ARTICLE ONE**

### **RECOGNITION**

- 1.1 The parties to this Agreement are the Town of Orangetown (hereinafter referred to as the "Employer"), and the Orangetown Policemen's Benevolent Association (hereinafter called the "Union").
- 1.2 The Employer agrees that the Union shall be the sole and exclusive representative for all permanent police officers in the Department of Police in the Town of Orangetown, except the Chief of Police, the Captain of Police, Administrative Lieutenant, school crossing guards, auxiliary police and all civilian employees of the Department.
- 1.3 The Union affirms that it does not assert the right to strike against the Employer, to assist or participate in any such strike or to impose an obligation upon its members to conduct, assist or participate in such a strike.
- 1.4 The Union agrees that it shall not cause or sanction, either directly or indirectly, any strike or

any other stoppage or slowing down of work designed to impede or having the effect of impeding the normal efficient operations of the Department.

1.5 In the event of any such unauthorized activity, the Union shall notify the participating employee(s) that their activities are in violation of the Agreement and shall cease forthwith and the Union shall direct the employees to return to work immediately.

## **ARTICLE TWO**

### **RIGHTS AND RESPONSIBILITIES OF THE EMPLOYER**

2.1 All management functions, rights, powers and authority, whether heretofore or hereafter exercised, shall remain vested exclusively in the Employer. It is expressly recognized that these functions include, but are not limited to:

- (a) full and exclusive control of the management and the operation of the Town;
- (b) direct supervision of the working force;
- (c) scheduling of work;
- (d) the right to introduce new and improved methods or facilities;
- (e) the right to hire, promote, transfer, assign and retain employees and to appraise, train, suspend, charge or take disciplinary action against employee(s);
- (f) the reduction or increase of the working force and work;
- (g) the right to abolish or change existing jobs, including the right to establish new jobs, consistent with the New York State Civil Service Law and Rockland County Civil Service Rules and Regulations;
- (h) the right to formulate any reasonable rules and regulations, not inconsistent with the terms of this Agreement.

2.2 The intent and purpose of the within Article is to set forth the rights and responsibilities of the Employer. Nothing contained herein shall deprive the Employer and the Union of any protection and/or rights they have under this contract, the New York State Civil Service Law and any other applicable law and/or rule or regulation.

### **ARTICLE THREE**

#### **RIGHTS OF EMPLOYEES**

3.1 Employees of the Department hold a unique status as public employees in that the nature of their office and employment involves the exercise of a portion of the police power of the municipality.

The security of the community depends, to a great extent, on the manner in which police officers perform their duty. Their employment is thus in the nature of a public trust.

The wide-ranging powers and duties given to the Department and its members involve them in all manner of contacts and relations with the public. Out of these contacts may come questions concerning the action of the members of the Department. These questions may require investigation by superior officers designated by the Employer. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:

- a. The interrogation of an employee shall be at a reasonable hour, preferably when the employee of the Department is on duty, unless the exigencies of the investigation dictate otherwise. If any time is lost, the employee of the Department shall be given compensatory time.
- b. The interrogation shall take place at a location designated by the Department Head, ordinarily at Police Headquarters or a location having a reasonable relationship to the incident alleged.

- c. The employees of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the employee of the allegations should be provided. If it is known that the employee of the Department is being interrogated as a witness only, he/she should be so informed at the initial contact.
- d. The questioning shall be reasonable in length. Reasonable respites shall be allowed. Time shall also be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
- e. All employees of the Department shall be obligated to answer any questions concerning their conduct as it relates to their employment, except those which violate their Constitutional, legal or contractual rights.
- f. The employee of the Department shall not be subjected to the use of offensive language by the investigating employee, nor shall said employee be threatened with transfer or disciplinary action unless said employee refuses to answer proper questions as defined in Section e. The foregoing prohibition against threats shall not be construed to prohibit the investigating employee from advising the employee of the Department of the character of the discipline the Department may impose nor from advising the employee of the Department that if said employee refuses to answer proper questions as above, said employee may be subject to additional charges.

The employee's consent to the settlement of a disciplinary action (formal or informal) and to any discipline shall not be binding on said employee until 24 hours after the settlement, except in circumstances where there is danger to the public.

- g. The complete interrogation of the employee of the Department shall be recorded mechanically or by a stenographer. There will be no "off the record" questions except by mutual consent by both parties. All recesses called during the questioning shall be recorded.
- h. If an employee of the Department is under arrest or is likely to be, or he/she is a suspect or the target of a criminal investigation, he/she shall be given his/her rights pursuant to the current decisions of the United States Supreme Court.
- i. In non-criminal cases, the employee shall have an opportunity to consult, within 24 hours, with said employee's counsel and/or union representative, if said employee so requests, before being questioned. This clause is not to be interpreted in such a manner as to prevent questioning of employees by superiors with respect to their conduct in the normal course of business. No representative provided by the union shall act in such capacity while on duty.

It is understood that the rights herein granted will not be used to unduly delay the expeditious disposition of investigations of conduct.

- j. Any disciplinary action taken against an employee of the bargaining unit by the Department shall be subject to the provisions of Article 15 of this Agreement.

## **ARTICLE FOUR**

### **DUES CHECKOFF AND AGENCY FEE DEDUCTION**

4.1 The Town agrees to deduct from the salary of all unit members who are not members of the Association, an amount equivalent to the amount of dues payable to the Association, by its members and to deduct dues from the salary of all unit members who are members of the Association; said dues shall be deducted from each paycheck. The Association shall inform the Town of the amount of dues to be deducted, and the individuals from whom dues are to be deducted. Written authorization by the employee shall be furnished to the Town where such employee is an Association member. The Agency Shop Fee deduction shall be made in accordance with the provisions of Section 208.3 of the Civil Service Law. This request for dues deductions must be signed by the employee on a copy of the following authorization form to be provided by the Association.

"TO: Town Board of the Town of Orangetown:

I hereby authorize you to deduct from my pay, on a bi-weekly basis, the amount specified as dues or assessments by the Orangetown Policemen's Benevolent Association and to forward this amount in my name to said Union.

I understand that this checkoff authorization shall remain in effect until revoked by me in the time at which the properly executed checkoff authorization is received".

4.2 Upon receipt by the Employer of an employee's written authorization (in the form set forth in Section 4.1) the Employer shall, while this authorization and this contract remain in effect, deduct from the employee's pay on a biweekly basis, his/her membership dues and assessments in the Union and transmit the money so deducted, together with a list of names of the employees from whose earnings the deductions were made, to the Union on or before the 15th day of the month following that in which the deductions were made. No deduction shall be made for any back dues arrearage nor to recoup any amount not deducted because the employee did not receive pay in any given payroll period.

4.3 The Employer shall be under no obligation to commence such payroll deductions until the second payroll period following the time at which the properly executed checkoff authorization is received. The Employer, however, will supply the Union with the forms specified in Section 4.1 at least sixty (60) days after execution of this Agreement.

4.4 The Union will certify in writing to the Employer the amount of its regular dues and assessments or any changes to be deducted under the provisions of this Article. The dues money is to be made payable to the Union and sent to the Treasurer as certified in writing to the Employer by the Union. Such changes shall become effective as soon as practicable but not later than sixty (60) days following receipt by the Employer of such certification.

4.5 The Union shall indemnify and save the Employer harmless against any and all claims, demands, suits or other forms of liability which may arise out of or by reason of action taken by the Employer for the purpose of complying with any of the provisions of this Article.

## **ARTICLE FIVE**

### **UNION BUSINESS**

5.1 The Union shall forward to the Employer a list of names and titles of its officers and representatives plus changes as they occur.

5.2 Subject to the needs of the Employer and on prior written request (3 business days) and approval of the Department Head or his designee, the Union President and/or his designee will be granted one hundred forty four (144) hours (18 days) per year with pay, to attend to Union related business. The PBA President and/or his designee shall be entitled to utilize the time off, even if the Union related business does not take place during his working hours. Effective January 1, 2005, this leave time shall be increased to one hundred sixty (160) hours (20 days) per year.

5.3 Subject to the needs of the Employer and on prior written request (3 business days) and approval of the Department Head or designee, any member or committee member of the Union who is on duty will be permitted to attend the regularly scheduled monthly union meeting. Any approved attendance shall not exceed one (1) hour of duty time per said monthly meeting.

5.4 Subject to the needs of the Employer and on prior written request (3 business days) and approval of the Department Head or designee, two (2) representatives of the negotiating team who are on duty will be permitted to attend the scheduled negotiations between the Employer and the Union. This subsection shall mean that if the Union President attends such negotiations, he shall either be one (1) of the two (2) representatives or he shall have his Union time (144 hours) reduced accordingly when on duty. Effective January 1, 2005, all representatives of the negotiating team, who are on duty, will be permitted to attend the scheduled negotiations between the employee and the Union.

5.5 No employee designated pursuant to this Article shall be discriminated against or coerced in any way by the Employer because of work performed on behalf of the Union and the employees.

5.6 Authorized spokesmen for the Employer and the Union shall meet, at the request of either party, to discuss issues, questions, or differences of opinion concerning administration of this Agreement as well as other Union concerns. Such requests shall be in writing, addressed to the Office of the Supervisor or the Union President at their respective official addresses, and shall include a statement of the specific subject matter to be discussed. A meeting shall be scheduled by mutual agreement no later than seven (7) working days after receipt of such request. Said meeting shall be adjourned and reconvened by mutual agreement during a thirty (30) day period following the first session. The parties shall make a good faith effort to resolve the specific issues, questions and differences of opinion set forth in the written request of said meeting. Any agreement or understanding between the parties shall be in writing and signed by an authorized representative of each party. In the event that no agreement is reached during the thirty (30) day period described in this Article, the meeting shall be terminated and there shall be no requests for a meeting on substantially the same subject during the term of the Agreement. The operation of this clause shall in no way diminish or impair the Union's right to process grievances pertaining to the same or similar matters, as hereinafter prescribed. The purpose of this subdivision is to provide a vehicle for effective labor-management communications and it is not intended to provide for the renegotiation of this Agreement.

## **ARTICLE SIX**

### **SALARY PLAN AND SCHEDULE**

6.1 Base wage scale for all employees will be in accordance with the schedule attached hereto marked Schedule "A" through "E".

6.2 Effective October 3, 1995 the "Raboni Rule" shall be eliminated. Therefore, any member of the Department hired after October 3, 1995, who has prior police experience, will be hired at the certified fifth grade rate of pay.

6.3 Longevity pay shall be paid to employees who have completed six (6) years of service and on the subsequent three (3) year anniversary date for seven (7) increments, including a twenty-fifth (25th) year, so long as the employee shall continue in the employ of the Town of Orangetown. Said increments shall be in the sum of \$775.00. The determination of the employee's period of service shall be based on the anniversary date of his original appointment to the Orangetown Police Department and not the date that his employment became permanent.

Employees who were originally credited, prior to December 2, 1985, with the additional longevity for patrolman and detective patrolman with fifteen (15) years of service (DeMaio) shall be entitled to continue to receive said longevity increment for as long as the employee remains a patrolman or detective patrolman.

Employees who originally received their first (1st) longevity increment in their fourth (4th) year of service shall continue to be entitled to receive an additional longevity increment every three (3) years.

All increments shall be in the sum of \$775.00. The following cumulative pattern shall exist, effective January 1, 1995:

Years of Service	<u>7</u>	<u>10</u>	<u>13</u>	<u>16</u>	<u>19</u>	<u>22</u>	<u>25</u>
Longevity Payment	775(3)	1550(3)	2325(3)	3100(3)	3875(3)	4650(3)	5425

6.4 Effective January 1, 1994, Officers who are regularly scheduled to work between the hours of 2300 and 0800 shall receive a Shift Differential of six percent (6%) of their regular earnings, including overtime and longevity and for all such time that the Officer is on paid status, such as vacation, holiday and paid sick, personal and bereavement leave. Officers absent while covered by Workers' Compensation shall receive the Shift Differential for a period not to exceed one (1) year.

## **ARTICLE SEVEN**

### **UNIFORMS**

7.1 The Employer will, during the term of this Agreement, furnish uniform and shoes for all unit employees. The uniforms remain the property of the Employer and will be replaced on the basis of normal wear and tear.

7.2 The Employer will during the term of this Agreement provide for the cleaning of uniforms in accordance with regulations approved by the Town Board.

Officers assigned to plain clothes shall have their outer clothing cleaned in lieu of uniforms during the time they are in such plain-clothes assignment. As an alternative, the Town shall pay annually on January 1st the sum of five hundred dollars (\$500.00) to each officer assigned to plain clothes.

7.3 Effective January 1, 1995 members of the bargaining unit shall receive a payment of one hundred dollars (\$100.00) per year for the purchase of equipment. This equipment allowance will not apply to members of the bargaining unit who maintain the designation of detective. Payment for this equipment allowance will be made in the second week of January of each year.

## **ARTICLE EIGHT**

### **VACATION**

8.1 An annual vacation with pay will be granted each employee as hereinafter provided. Vacation leave will be scheduled in accordance with seniority (to be based upon date of hiring) and with individual employee requests. In the event work load or other similar circumstances result in a conflict or if for any reason an adjustment is required, every effort will be made to approve an alternate date acceptable to both the Department Head and the employee.

8.2 All employees are obligated to take their entire vacation entitlement in the year credited, except as set forth below.

However, with the permission of the Employer, the employee may roll over to the following year those days of vacation entitlement he/she was unable to utilize because of the Employer's inability to grant his or her request.

8.3 An employee receiving benefits under the provisions of Section 207-c of the General Municipal Law because of a job related injury shall not be entitled to vacation time during the period of disability and in no event shall such employee receive more than fifty-two (52) weeks pay in any calendar year.

8.4 Vacation leave shall not accrue whenever an Employee is on leave without pay.

8.5 Upon separation from service of one year or more, an employee or his/her estate or beneficiary, as the case may be, shall be paid for his/her unused vacation accrual.

8.6 If an employee must be absent due to illness, but has no sick leave or personal leave available to apply to such absence, the employee shall use his/her available vacation time for such absence.

8.7 Effective October 13, 1995 vacation accruals will be taken in minimum four-hour increments.

8.8 All employees who are hired on or after the effective date of this Agreement, shall earn no vacation credit during the first four (4) calendar months of employment. After completion of four (4) months of service, an employee shall earn one (1) day per completed month for the next eight (8) months and thereafter shall be entitled to vacation as follows:

COMPLETED YEARS  
OF CONTINUOUS SERVICE

ADDITIONAL  
VACATION CREDITED

1 year	12 days
2 years	14 days
3 years	15 days
4 years	20 days
5-9 years	22 days
10-14 years	28 days
15-20 years	30 days
21 years	31 days
22 years	32 days
23 years	33 days
24 years	34 days
25 years	35 days

8.9 Effective October 7, 1999 all unit employees shall schedule one-half (½) of all vacation days to be utilized in the next calendar year, said scheduling to occur by December 31 of each year.

## ARTICLE NINE

### HOLIDAYS

9.1 All holidays enumerated herein shall be granted to eligible employees as a day off with pay, except as hereinafter provided:

- |                               |                      |
|-------------------------------|----------------------|
| 1. New Year's Day             | 7. Labor Day         |
| 2. Martin Luther King Jr. Day | 8. Columbus Day      |
| 3. Lincoln's Birthday         | 9. Election Day      |
| 4. Washington's Birthday      | 10. Veteran's Day    |
| 5. Memorial Day               | 11. Thanksgiving Day |
| 6. Independence Day           | 12. Christmas Day    |

9.2 The New York State designated celebration days will apply in lieu of the former traditional dates of celebration. If any of the above holidays fall on a Sunday, the following Monday shall be observed as such holiday. If any of the above holidays fall on a Saturday, the preceding Friday shall be observed as such holiday.

9.3 An employee may take a holiday as either time off, as they occur, with the approval of the Department Head or his designated representative, or elect to be paid his applicable rate at the time the holiday occurs. Payment of the unused holidays that occurred in the first six (6) months of the year will be paid during the first pay period in July. Those that occur during the second six (6) months of the year, will be paid during the last pay period of December, except that those unpaid holidays occurring in the months of October, November, December may be carried over and used or be paid at

the rate of pay prevailing when they occurred for ninety (90) days or until March 31st of the following year. Those days carried over but not used or paid by March 31st shall be paid at the aforementioned prevailing rate during the first payroll period of April. However, any employee who is separated from service prior to any of the above pay periods shall be compensated for those holidays that occurred and were not taken in time off.

9.4 Employees receiving benefits pursuant to Section 207-c of the General Municipal Law shall be entitled to holiday pay for all holidays which occur during the time the employee is receiving said benefits up to a maximum of eighteen (18) holidays during any one episode. However, any employee who has exhausted such entitlement with the episode continuing shall be entitled to convert unused vacation accruals to holiday pay.

## **ARTICLE TEN**

### **PERSONAL LEAVE**

- 10.1 Personal leave is leave with pay for personal business, including religious observance.
- 10.2 Effective January 1st of each year, each employee will be credited with seven (7) days.
- 10.3 Personal leave may not be used in less than one (1) hour units. Personal leave credits are not cumulative. Unused personal leave at the end of each calendar year shall be credited to sick leave and used to augment the employee's sick leave accrual. Unused personal leave accrual shall not be compensated for in the event of separation of employee, retirement of an employee from service, or death of employee.

## **ARTICLE ELEVEN**

### **BEREAVEMENT LEAVE**

- 11.1 On the occasion of death in the immediate family (which shall include only mother, father, child, spouse, grandparents, brother, sister), employees shall be entitled to five (5) days bereavement leave at full pay.
- 11.2 On the occasion of death of a mother-in-law, father-in-law, grandparent-in-law, brother-in-law, or sister-in-law, employees shall be entitled to three (3) days bereavement leave at full pay.
- 11.3 Bereavement leave may not be chargeable against any other leave.

## **ARTICLE TWELVE**

### **SICK LEAVE**

12.1 Effective January 1st of each year, an employee shall accrue sick leave at the rate of thirteen (13) hours per completed calendar month, which equals nineteen and one-half (19.5) days per year. An employee absent due to an illness or other physical disability or for medical treatment or examination, which cannot be scheduled outside of working hours, shall continue to be paid to the extent of his/her unused sick accruals. This section shall not apply to an employee who is absent due to a disability defined in Section 207-c of the General Municipal Law, as the rights and entitlement of such employee shall be regulated and limited by law.

An employee entering the Department shall be entitled to an advance credit of 156 total cumulative hours which equals nineteen and one-half (19.5) days upon which to draw sick leave for said employee's own illness that prevents said employee from reporting for said employee's regularly

assigned tour of duty. As said employee earns accrued sick leave in accordance with this section, the earned sick leave shall be deducted from said advance credit.

12.2 No employee shall earn sick leave credits during any period when receiving benefits under the provisions of Section 207-c of the General Municipal Law.

12.3 In the event an employee is unable to report to duty, it is required that the employee notify the Department within two (2) hours before the beginning of the work day. This two (2) hour requirement may be waived by the Department Head for cause. In the event an employee neither reports for duty nor informs the Department as herein provided, the absence may result in disciplinary action.

12.4 Sick leave taken for three (3) or more consecutive work days shall be supported by a written statement or certificate from a physician attesting that the illness warranted absence from work. The Department Head may require a doctor's certificate for any absence in the event sick leave appears to indicate evidence of an abnormal use of sick leave. The Department Head may also require the employee to be examined, at the expense of the Employer, by physicians designated by the appointing authority.

12.5 Failure to provide proper notification, failure to submit such proof of illness or disability, as may be required, unsatisfactory evidence of illness or evidence indicating that the physical condition of the employee was not such as to justify absence from work, failure to submit to physical examinations, or any other abuse of sick leave, may be cause for disciplinary action.

12.6 The Department Head may require an employee who has been absent on an extended personal illness or a work-related disability prior to and as a condition of the employee's return to work, to be examined at the expense of the Employer by physicians designated by the appointing authority to

establish that the employee is not disabled from the performance of his/her normal duties and that the return to work will not jeopardize the employee's own health and safety or that of the other employees.

12.7 The Town Board, on written request of the Department Head, may grant sick leave at half-pay for personal illness to a permanent employee having not less than one (1) year of service after all his/her sick leave, vacation and personal leave credits have been used; provided, however, that the cumulative total of all sick leave at one-half (1/2) pay hereinafter granted to any employee during his/her service shall not exceed one (1) month for each completed two (2) years of continuous service. After extended sick leave, upon written request from the employee through the Department Head, the Town Board may grant up to one (1) year absence without pay.

12.8 It is expressly agreed that an employee upon his/her return to full-time duty shall, pursuant to the second sentence hereof, reimburse the employer for any time paid for extended sick leave before separation from the Department. Upon return to full-time duty, all vacation or other paid leave credits, except sick leave, shall be utilized prospectively first to reimburse the employer on an equivalent time basis for any such extended sick leave granted. Employees will not accrue vacation, sick leave, or other paid leave credits while on sick leave with one-half pay or on absence without pay.

12.9 An employee who is out on sick leave with one-half (1/2) pay or extended sick leave absence without pay during the first year of such absence will continue to be provided with health insurance benefits at the employer's expense. Thereafter, an employee who desires to maintain his/her health insurance benefits shall pay the employer's premium rate for that month directly to the employer.

An employee who is out on extended absence without pay (up to one (1) year) shall not have his/her health insurance benefits paid by the Employer. However, an employer who desires to maintain

his/her health insurance benefits shall pay the Employer's premium rate for that month directly to the Employer.

12.10 When an employee is transferred within Town Service, his/her accumulated sick leave credits shall be transferred with him/her. The Department is responsible for notifying, in writing, the new Department of the amount of such transferred credits.

12.11 An employee may, at his/her request, in any six (6) month period (between January 1st and June 30th, and/or July 1st and December 31st), trade in a maximum of four (4) days sick leave for two (2) days of annual leave, provided that such annual leave is used in the same six (6) months in which it was traded.

12.12 In the event of illness or death of a member of an employee's immediate family as defined (mother, father, child, spouse, mother-in-law or father-in-law), said employee, upon notification to the Department Head or his designated representative, shall be authorized up to a maximum of 96 hours which equals twelve (12) days in one (1) calendar year or the amount of accumulated sick leave credits, whichever is less.

12.13 Members of the bargaining unit with 20 years of service with the Orangetown Police Department retiring into the New York State Retirement System will be compensated for three days pay for each completed year of service (to be deducted from accumulated sick leave) if they provide notification of retirement 30 days in advance of retirement to the Chief of Police with the effective date of retirement to be no later than the dates provided for hereafter:

(a) Member with 20 years or more of service on January 1, 2000 may elect to retire and receive this benefit if the effective date of retirement is between January 1, 2000 and March 31, 2000.

(b) For members of the Department with less than 20 years of service as of January 1, 2000, they may elect to retire and receive this benefit if the effective date of retirement is within 30 days after reaching their 20 year anniversary with the Orangetown Police Department.

## **ARTICLE THIRTEEN**

### **OVERTIME**

13.1 The Employer, consistent with operating needs, will schedule the work force for a reasonable period of time in advance in such a manner as to ensure that an employee's overtime opportunities will not be disregarded, save for emergencies or other unusual conditions which cannot be reasonably anticipated. Overtime must be authorized in advance by the Department Head or those so designated. Assignment of overtime shall be on a rotating basis from among those employees having the skills and ability required for the work and who volunteer for such assignment and then from among other such employees on the basis of the inverse order of seniority.

13.2 Required and authorized hours of work in excess of forty (40) hours in an employee's normal work schedule shall be compensated at the rate of one and one-half (1 1/2) times the regular hourly base rate of the employee concerned. The employee, however, may elect to take compensatory time off at the overtime rate instead of each payment, but the employee must request and take the compensatory time off within the calendar quarter earned or the next calendar quarter; if requested and denied within that next calendar quarter the employee will be paid. However, a request will be denied only if the time off is not compatible with the operating needs of the Department. If the compensatory time off is not taken, then the employee will be paid in cash at the rate of pay in effect for that

employee on the date the overtime was earned.

13.3 Nothing herein contained, however, shall require a police officer who may be on duty in the open air, or on the streets or in other public places to work in excess of eight (8) consecutive hours of each consecutive twenty-four (24) hours and no police officer shall be assigned to more than forty (40) hours of duty during any seven (7) consecutive day period, except in an emergency, including mandatory overtime to ensure the adequate manning of a shift.

13.4 An employee who is called back to work or other required appearance for the Department, during his/her time off, shall be entitled to a minimum guarantee of four (4) hours pay at the rate of the employee concerned. This minimum guarantee shall not apply to work which runs into or immediately follows a normal work week, day or shift.

13.5 An employee, who is ordered to be on stand-by shall be paid at the rate of two (2) hours of his/her regular hourly rate for up to every eight (8) hours he/she actually remains on stand-by. The employee's pay for stand-by shall be prorated depending on whether he/she is placed on stand-by for less than eight (8) hours.

The purpose of stand-by time will be for pending strikes and labor controversies or when civil disorders may be suspected, or where a weather emergency has been declared. Stand-by time does not apply to Court proceedings, etc.

The employee is required to ensure his/her availability by furnishing to the officer in charge a place where he/she may be so notified. For the purpose of stand-by time, no employee shall be required to stay at home.

13.6 Employees shall be furnished a meal allowance of five dollars (\$5.00) for each four (4) hours of

overtime worked.

## **ARTICLE FOURTEEN**

### **INSURANCE**

14.1 All employees shall be eligible for membership in the State Insurance Plan; however, the Employer reserves the right to substitute insurance carriers, to self insure or a combination of the two, provided that the schedule of benefits is to be substantially the same as the State Plan.

Before the Employer effectuates such a change, it will submit said anticipated plan or plans to a Union Insurance Committee, who will ascertain whether they think the obligations under this Section have been fulfilled. In the event a dispute arises as to the fulfillment of the obligations under this Section, the matter shall be submitted to binding arbitration pursuant to the arbitration clause of this Agreement. The Employer may not substitute the new carrier or self-insurance program, or a combination of the two, prior to any such arbitration decision.

14.2 The Employer shall contribute one hundred percent (100%) of the health insurance premiums of a family plan for employees and dependents and/or for an individual employee(s).

14.3 The Employer shall contribute one hundred percent (100%) of the dental insurance premiums of a family plan for employees and dependents and/or for an individual employee(s). Effective January 1, 2003 the Town shall adopt the MetLife Dental Plan, which is attached hereto as Appendix 2. Such plan shall include family coverage. The Employer reserves the right to substitute insurance carriers, to self insure, or combination of the two, provided that the schedule of benefits is to be substantially the same as the plan currently in effect.

Before the Employer effectuates such a change, it will submit said anticipated plan or plans to a Union Insurance Committee who will ascertain whether they think the obligations under this Section have been fulfilled. In the event a dispute arises as to the fulfillment of the obligation under this Section, the matter shall be submitted to binding arbitration pursuant to the arbitration clause of this Agreement. The Employer may not substitute the new carrier or self-insurance program, or a combination of the two, prior to any such arbitration decision.

14.4 Retired police officers shall continue to receive the benefits set forth in this Article.

14.5 The Employer will provide, at its own cost and expense and without cost to an employee who is a member of the bargaining unit, life insurance in the amount of \$110,000.00 and shall further provide a double indemnity provision. Effective November 7, 1999, this benefit shall be increased to two (2) times the employee's annual base salary, with a minimum benefit of \$110,000.

14.6 The Employer shall reimburse an employee for the cost of eyeglasses or contact lenses subject to a maximum of one hundred twenty dollars (\$120.00) per pair. Effective October 7, 1999 the maximum benefit shall be one hundred fifty (\$150.00) dollars per pair. Effective January 1, 2000, the maximum benefit shall be increased to two hundred (\$200.00) dollars per pair. Further, members of the bargaining unit shall be reimbursed up to one hundred (\$100.00) dollars per year for an eye examination. If the town and the Union agree that it is mutually beneficial, in substitution for the eyeglass and eye examination reimbursement noted above, the Town will provide an optical plan which covers not only the bargaining unit member, but the bargaining unit member's immediate family.

## **ARTICLE FIFTEEN**

### **DISCIPLINARY PROCEDURE**

15.1 In the event of a dispute concerning the discipline or discharge imposed upon an employee, the following procedures shall be followed:

Step 1: The Employer shall advise an employee, in writing, that it proposes to commence disciplinary action against him. Such notice shall describe the general circumstances for which discipline is sought and optionally the penalty, which the Employer seeks to impose. Within seven (7) days following service of that notice on the employee and the Union, the parties (the Chief, the employee, the Union and any of their representatives or attorneys) shall meet to discuss voluntary resolution of the charges. If no voluntary resolution can be made at the meeting described above, then within three (3) days after such meeting, the employee must serve written notice as described in Section 15.2 if he desires to follow Step 2 of this Article. Failure to make a timely election shall automatically mean that the procedures of Section 75 of the Civil Service Law shall be followed, and there shall be no right to arbitration under the provisions of this Agreement. If an employee waives his/her Section 75 rights and makes a timely election for arbitration, then the remaining steps will be followed. If an employee has been suspended without pay, he/she may waive his/her Section 75 rights and demand arbitration immediately. In such a case, within seventy-two (72) hours the Employer shall serve a description of the charges on which it relies for the discipline sought.

Step 2: The parties jointly designate and select the following arbitrators to serve for the life of the Agreement in the matters of discharge and discipline under this Article; as well as grievance arbitrators pursuant to Article Fifteen Earle Warren Zaidins, Howard C. Edelman and Martin

Ellenberg. In the event a member of the arbitration panel is no longer available to serve, the remaining two panel members shall jointly select a third Arbitrator from a list of six (6) names, three (3) names submitted by the employer and three (3) names submitted by the Union. As a member of the panel hears a case, his name shall move to the bottom of the list and the next two members shall move up. If the employee has made a timely election in Step 1, the Union shall file, in writing, a request for arbitration with the panel member at the head of the list. The arbitration shall be held within twenty (20) calendar days of the date of request. If the Arbitrator at the head of the list cannot provide a hearing date within that time, including weekends, the Union may, at its option, ask the next member of the panel for a hearing date; and if he similarly cannot provide a date within twenty (20) calendar days the Union may request, at its option, the third panel member for a hearing date. The Arbitrator shall render his decision within fourteen (14) days following close of the record. The finding of the Arbitrator shall be final and binding upon the parties. There shall be no extensions of the foregoing time limits except by mutual agreement. The Arbitrator may, under appropriate circumstances, issue an interim verbal decision, to be followed by a written opinion and award.

15.2 To elect the procedures set forth in Step 2 of Section 15.1, the employee must file a written notice of such election with the Chief of Police within the time limits set forth in Step 1 of Section 15.1. Such election must include a written waiver of all rights under Section 75 including limitations as to type or degree of punishment or to any right to reinstatement under Section 75, or otherwise, pending final determination by the Arbitrator selected, or to the holding of a hearing within a thirty (30) day period of suspension without pay.

15.3 In any arbitration hearing held under the provision of this Article both the Department and the employees involved shall have the right to be represented by counsel and to present witnesses and to engage in the cross-examination of witnesses presented by the other party. The fees of the Arbitrator and necessary expenses of the arbitration shall be shared by the Employer and the Union. Each party shall bear the expense of the preparation and presentation of its own case.

15.4 The Arbitrator shall have no power to add to, subtract from or change any of the provisions of this Agreement, nor shall he have authority to render any decision which conflicts with a law, ruling or regulation binding upon the employer by a higher authority, nor to imply any obligation on the employer which is not specifically set forth in this Agreement.

15.5 If an employee is found not guilty of misconduct or incompetency requiring discipline, there shall be no record kept in the employee's official personnel folder of the disciplinary proceeding.

15.6 Effective October 7, 1999, charges relating to time and attendance shall be brought within eighteen (18) months of the occurrence.

## **ARTICLE SIXTEEN**

### **GRIEVANCE PROCEDURE**

#### **SECTION I - DEFINITION**

Definition: As used herein the following terms shall have the following meanings:

1. "EMPLOYER" shall mean the Town of Orangetown or a Department thereof.
2. "UNION" shall mean the Orangetown Policemen's Benevolent Association.

3. "EMPLOYEES" shall mean any person or persons covered by the term of this Agreement.
4. "GRIEVANT" shall mean the employee, group of employees or the Union acting on behalf of same, alleging a grievance.
5. "GRIEVANCE" shall mean any claim, violation, misinterpretation or inequitable application of this agreement or of laws, rules or procedures, regulations, administrative orders or work rules in the Town of Orangetown or the Department thereof, provided however that such term shall not include any matter involving the allocation of a position to a position class or title and the allocation of a position class or salary grade. Neither shall such term include retirement benefits, disciplinary proceedings or any other matter which is otherwise reviewable pursuant to a law or any rule or regulation having the force or effect of law.
6. "BUSINESS DAY" shall mean Monday through Friday.
7. "DEPARTMENT HEAD" shall mean the Chief of Police.
8. "THE FIRST LEVEL OF MANAGEMENT" shall mean the Captain of Police.

## SECTION II - GENERAL

1. Each employee shall have the right to present a grievance in accordance with the procedure herein free from interference, coercion, restraint, discrimination or reprisals; he/she shall have the right to be represented by the Union at all stages of the grievance procedure.
2. A grievance in writing is required from the grievant(s) hereunder and shall be submitted pursuant to Section III, Step I, as set forth herein.
3. No grievance shall be filed later than forty-five (45) business days after the date on which the act or omission giving rise to the grievance occurred.
4. Each grievance shall contain a short, plain statement of the grievance and specific references to the Section(s) of this Agreement which the employee or Union claims has been violated.

5. Settlement of a grievance by mutual agreement, prior to the issuance of an Arbitrator's Award as provided hereinafter, shall constitute precedent.

6. The settlement of, or an award upon, a grievance may or may not be retroactive as the equities of each case demand. In no event, however, shall a resolution be retroactive to a date earlier than forty-five (45) business days prior to the date the grievance was first presented in accordance with this Article.

7. The grievance and arbitration procedure provided for herein shall be in addition to any other means of resolving grievances, disputes and complaints provided for by the statute or administrative procedures applicable to the Employer.

8. Failure by the Employer to meet the various time requirements specified herein shall result in a grievance proceeding to the next step. Failure by the grievant to meet the various time requirements specified herein shall be deemed a waiver of the grievance.

### SECTION III - PROCEDURE

#### STEP 1: FIRST LEVEL OF MANAGEMENT STAGE: Chief of Police

An employee shall present his/her grievance in writing to the Chief of Police or his designee not later than the date described in Section II.3 hereof. The Chief of Police or his designee shall make a good-faith effort to resolve same. An informal hearing shall be held before the Chief or his designee. The employee and/or the Union shall appear at this informal hearing and must present all relevant arguments and evidence so that a full and thorough review of the grievance may occur. The Chief or his designee shall reply to the employee or the Union, in writing, within ten (10) business days following said hearing.

## STEP 2: ARBITRATION STAGE

1. In the event the employee or the Union wishes to appeal the decision in Step 1, a demand for arbitration shall be served upon the Town Attorney within ten (10) business days of receipt of the Step 1 decision. The appeal shall be heard by an Arbitrator, who shall be appointed from the three (3) person rotating panel, which is found in Article Fifteen (15.1). Appointment of an Arbitrator to a specific grievance shall be by rotation. However, the parties may mutually agree upon a specific Arbitrator to hear and decide a specific case and arbitrate said dispute in accordance with the rules and procedures as set forth by the Public Employment Relations Board (P.E.R.B.).

2. The Arbitrator shall have no power to add to, subtract from, or modify the provisions of the Agreement in arriving at a decision of the issue(s) presented.

3. The Arbitrator shall confine himself/herself to the precise issue(s) submitted and his/her determination shall be final and binding.

4. All fees and expenses of the arbitration shall be at the expense of the Union if the grievance is not sustained, or the Employer if the grievance is sustained. Each party shall bear the cost of preparing and presenting its own case. If the grievance is settled in any manner prior to an Arbitrator's Award, all fees and expenses shall be divided equally.

## **ARTICLE SEVENTEEN**

### **RETIREMENT**

17.1 The Employer agrees to provide a retirement plan and related options heretofore in effect, as provided by the New York State Retirement and Social Security Law.

17.2 The Employer agrees to adopt and make available to all members of the bargaining unit, the benefits of Retirement & Social Security Law §384-e prior to April 1, 2002.

## **ARTICLE EIGHTEEN**

### **SAVINGS CLAUSE**

18.1 Should any terms or provisions of this Contract be in conflict with any State or Federal statute or other applicable law or regulation binding upon the Town, such law or regulation shall prevail. In such event, however, the remaining terms and provisions of this Contract will continue in full force and effect.

## **ARTICLE NINETEEN**

### **MANDATED PROVISIONS OF LAW**

19.1 "IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF THE LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL."

## **ARTICLE TWENTY**

### **DURATION**

20.1 This Agreement shall be in effect as of January 1, 2002, except as amended, and shall remain in effect through December 31, 2005.

20.2 Either party to this Agreement may notify the other on or before May 31st prior to the date this Agreement expires, that it wishes to negotiate any or all times contained herein and any items it wishes to propose.

## **ARTICLE TWENTY-ONE**

### **GENERAL PROVISIONS**

21.1 All department vehicles will contain air conditioning.

21.2 There shall be only one (1) official personnel file which shall be maintained by the Employer. Upon written request to the Department Head, an employee, on his/her own time, will be permitted to examine his/her personnel file, excluding pre-employment material deemed confidential. The Department Head may reproduce for the employee, upon reasonable request, items therein. New material derogatory to the conduct, character or personality of an employee shall not be placed in the official personnel file unless the employee has had the opportunity to read said material. Upon reading said material the employee shall sign said material. The signature will not mean the employee agrees with the contents thereof but that the employee is cognizant of the fact. Employees shall have the right to answer any material hereinafter filed in the employee's personnel file and the employee's answer attached to the material so answered.

21.3 Every employee shall be entitled to receive tuition assistance to seventy-five percent (75%) of his/her actual tuition at an accredited undergraduate college for any course required for degree in Police Science or Criminal Justice. Said tuition assistance shall not exceed one hundred dollars (\$100.00) per credit and shall be paid to the employee upon completion of the course with a grade of "C" or better. All employees shall first exhaust all other sources of funding which are available except Veteran's Readjustment Benefits.

21.4 The Town Board agrees that during the term of this Contract, it will continue the office of Police Surgeon and will appoint a licensed doctor of medicine to the position.

The Employer will have the right to require any and all employees covered by this Contract to submit to an annual physical examination by the Police Surgeon of the Town at the cost of the Town. Failure or refusal to submit to such physical examination shall subject the employee to disciplinary action.

21.5 No employee shall be appointed to the position of Detective until he/she has reached the level of First Grade Patrolman.

21.6 In the event that an employee is killed in the line of duty, the Employer will pay up to one hundred dollars (\$100.00) per credit for the college education of all of his/her children, provided that such children are dependent on the deceased employee's family while attending college, and who maintains a "C" average or better for the course. All payments will stop at the end of the semester during which the child attains his/her twenty-second birthday.

21.7 An employee upon retirement will be permitted to keep his/her weapon upon receiving the necessary permit.

21.8 The past practice of reimbursing employees for legitimate losses to personal property shall be continued.

21.9 It is expressly understood and agreed that no generalized or special benefit previously enjoyed by the unit or its members shall be limited solely by the execution of this Agreement and the parties agree that this Contract shall be interpreted in accordance with the practices and policies utilized by the parties in the interpretation of prior agreements.

21.10 The parties negotiated a random drug testing policy, which is attached to the Agreement as the Appendix.

21.11 Effective October 3, 1995 the parties agree to negotiate a ten day voluntary time-for-time school/training policy as expeditiously as possible.

21.11 Effective during calendar year 1999, all unit members will be scheduled to work 243 chart days.

IN WITNESS WHEREOF, the TOWN and the PBA by their duly authorized representatives have executed this CONTRACT on the \_\_\_\_\_ day of \_\_\_\_\_, 2002, at Orangeburg, New York.

FOR THE ORANGETOWN POLICEMEN'S  
BENEVOLENT ASSOCIATION, INC.

FOR THE TOWN OF ORANGETOWN

**SCHEDULE "A"**

Members of the bargaining unit shall be subject to the following salary schedule for years 2002, 2003, 2004 and 2005.

	<u>1/1/02</u>	<u>1/1/03</u>	<u>1/1/04</u>	<u>1/1/05</u>
5 <sup>th</sup> Grade (n)	30,193	31,099	32,032	32,993
(c)	32,938	33,926	34,944	35,992
4 <sup>th</sup> Grade	39,800	40,994	42,224	43,491
3 <sup>rd</sup> Grade	49,407	50,889	52,416	53,988
2 <sup>nd</sup> Grade	59,014	60,785	62,609	64,487
1 <sup>st</sup> Grade	80,193	82,599	85,077	87,630
Detective	88,213	90,859	93,585	96,393
Sergeant	92,223	94,990	97,840	100,775
Detective/Sergeant	101,446	104,490	107,625	110,854
Lieutenant	106,646	109,845	113,140	116,535
Detective/Lieutenant	117,311	120,830	124,455	128,189

NOTE: Sergeants are to be paid at an annual rate of 15% greater than that in effect for First Grade Patrolman; Lieutenants are to be paid at an annual rate of 15% greater than that in effect for Sergeants; Detectives and Youth Officers receive the cash equivalent of an 8.5% differential above First Grade Patrolman, in excess of rank. Effective January 1, 1999, Detectives and Youth Officers receive the cash equivalent of a 10% differential above First Grade Patrolman. In addition, Detective Sergeants and Detective Lieutenants shall receive the cash equivalent of a 10% differential above the base salary of their respective ranks.

## APPENDIX A

### TOWN OF ORANGETOWN POLICE DEPARTMENT DRUG-TESTING POLICY

It is hereby agreed by and between the Town Board of the Town of Orangetown and the Orangetown PBA that a random drug-testing program will be instituted forthwith. It is the intent of the parties hereto to protect and promote the good reputation of the Police Department of the Town of Orangetown and, simultaneously, to insure that all members of the PBA are treated fairly and with respect.

All members of the bargaining unit shall be subject to random drug-testing, for illicit drugs, consistent with the terms set forth herein including but not limited to individuals on L.O. status or on sick leave. No advance notice to those officers selected shall be required to be given by the administration of the Police Department. In order to protect the fairness and integrity of this process, and in recognition of the good faith of the parties to this agreement, the following terms and conditions shall apply to the random drug testing to be performed under this agreement:

1. The selection of the officers to be tested shall be done by drawing balls with numbers from a bingo machine on a random basis or by a different method, which is mutually agreed upon. In the event the bingo ball machine is utilized, each officer shall be assigned a number by the Police Chief and such number shall be placed on a bingo ball in the bingo machine. The machine, containing one (1) ball for each member of the bargaining unit, shall be in the possession of the Chief of Police. The Chief of Police, on the occasion of each drawing permitted hereunder, shall draw up to five (5) numbered balls from the machine. This drawing shall take place in the presence of the P.B.A.

President or his designee, who will be present to verify the randomness of the selection. The P.B.A. President or his designee shall be aware of only the number on the ball drawn, as opposed to the name of the particular police officer involved. The P.B.A. President or his designee shall record the five (5) numbers drawn and the date of the drawing thereof so that the fairness of such drawing procedure may be independently verified by the PBA. Notwithstanding the foregoing, if an officer is notified of a positive result, he shall have the right to verify the randomness of the procedures.

2. The officers whose numbers are drawn at a given drawing shall be tested within thirty (30) days of the date of the drawing. In the event the test is not performed within such thirty (30) day period, the employer shall be deemed to have waived its rights to submit an employee to a test pursuant to that particular drawing.

3. The employer shall be permitted to conduct no more than twelve (12) drawings within each successive twelve (12) month period, which period shall be determined by the commencement of such period from the date of the signing of this agreement.

4. If the member of the bargaining unit is absent when his/her name is selected for testing, such selection shall remain confidential until his/her next regular scheduled tour of duty at which point he/she shall be informed and tested. Should the member be on long-term sick leave or L.O. status which is likely to last beyond the month in which the name is selected he/she will be called in for testing.

5. The employer shall be permitted to conduct no more than one (1) drawing of five (5) names within each calendar month.

6. The method of testing shall be such as to maintain a split sample such that the officer may

request to have a sample tested by a lab of his/her choosing at Town expense should a positive result come from the Town's test results. The split sample will be forwarded to the lab chosen by the officer directly from the lab doing the initial testing. The officer shall receive a copy of the test results immediately upon receipt.

7. Any such employee subjected to such testing shall have the right to contact an attorney of his/her own choosing, or a PBA representative. However, such right must be exercised by the employee within two (2) hours after he/she is notified that he/she will be subjected to such testing. During this two (2) hour period said employee may not leave police headquarters and must remain within a limited area within police headquarters as determined by the Chief of Police or, in his absence, the Captain of Police. Notwithstanding the foregoing, the employee is entitled to a private location to talk to his attorney or PBA representative in a confidential manner. An employee must be given access to an untapped telephone line. Should the officer choose to exercise his/her right to an attorney/representative such exercise will not extend the length of the officer's tour of duty and he/she shall not receive pay beyond the end of the tour notwithstanding any continuing obligation to remain at police headquarters until tested.

8. Refusal of an officer to submit to testing shall constitute a positive test.

9. All results shall remain confidential by the Chief and a representative of the PBA to the extent permitted by law except as required to be disclosed in the context of any disciplinary proceeding. A record of those members of the bargaining unit testing negative will be maintained by the Chief of Police. If the employer by any of its officials, agents or employees, releases such results without the authorization of the Town Attorney or his or her Deputy, the PBA must receive immediate

written notice as to the name of the person, and the reason for the release. This paragraph shall be strictly construed for the benefit of protecting the police officer from unauthorized disclosure of such results and possible harm emanating therefrom. All members of the Town Board, Police Commission, Town Attorney's office and any attorney employed by the Town for police related matters and any other employee who has access to drug-testing results, shall be advised of the confidential nature of the testing procedure and results in writing. The PBA shall be entitled to receive originals of each such writing, containing the original signature of the person acknowledging receipt.

10. Nothing in this paragraph shall be construed to prevent the administration from requiring a member of the PBA to undergo drug testing if the employer has another legal basis to require such testing. The same testing procedures shall be used.

11. Random testing shall consist of the taking of urine samples which shall be handled in strict conformity with the procedures used by Smith/Kline/Beecham Laboratory or a facility of equal certification and quality.

12. The results of any positive test will be forwarded to the Town Board for a disciplinary hearing to be determined on a case-by-case basis.

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## BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired December 31, 2005. When negotiations and mediation efforts failed to produce a successor Agreement, the Union petitioned the New York State Public Employment Relations Board ("PERB") for appointment of a Public Arbitration Panel pursuant to procedures set forth in Section 209.4 of the Civil Service Law of the State of New York ("Taylor Law"). On May 26, 2006, PERB appointed the undersigned as members of the Public Arbitration Panel for the parties' dispute. Hearings before the Panel were held on October 11, 2006, November 8, 2006, and November 14, 2006, at Orangetown Town Hall, Orangeburg, New York. During these hearings, the parties were afforded full opportunity to present evidence in support of their respective positions. They did so. Thereafter, the parties were given opportunity to file post-hearing briefs. On December 18, 2006, the Union filed a Post Hearing Brief. The Town relied upon its presentation during the hearing and did not file a Post-Hearing Brief. Upon receipt of the Union's brief, we declared the record closed. The Panel met in Executive Session.

During the hearings, the parties agreed upon three (3) mutual issues to be addressed by the undersigned panel.

Those issues, discussed in greater detail below, are (1) salaries, (2) General Municipal Law Sec. 207-c procedure, and (3) duration of the award. As well, each party submitted its list of additional proposals for our consideration. The Union did so by letter of October 19, 2006, from its Attorney, Joseph P. Baumgartner, Esq. The Town did so by letter of October 25, 2006, from its Attorney, Teresa M. Kenny, Esq. Those issues are identified and disposed of below.

### **POSITIONS OF THE PARTIES**

#### **Position of the Union**

The Union proposes our Award establish terms and conditions for a three (3) year period, January 1, 2006, through December 31, 2009.

The Union seeks an increase in salary of eight (8%) percent for each year across the board for all ranks, grades and designations. It contends the economic health of the Town remains strong. The Union asserts the Town's finances are stable and warrant these increases as fair compensation for the difficult jobs its members perform. It argues there is no dispute the Town is able to pay these salary increases. The Union cites to the study performed by Decker Economics as establishing the Town's economic strength. It also notes the Town Board's minutes from May 22, 2006,

report the Town is in "outstanding financial condition".

The Union has proposed a procedure for the administration of General Municipal Law Section 207-c. It seeks not only for payment of full salary to employees injured or taken sick as a result of the performance of duties for the Town but also maintaining accruals of all contractual benefits while an 207-c. In addition, the Union seeks an appropriate procedure to address those issues that arise in the administration of 207-c entitlement.

The Union seeks an increase in longevity increments for unit members above the seven hundred seventy five dollars (\$775.00) increment provided by Article 6.3 of the Agreement. It proposes to change the increment to a sum equal to four (4%) percent of the base first grade patrolman salary effective with completion of the fifth (5<sup>th</sup>) year of service, and, thereafter, after completing each additional five (5) years of service. The Union contends this change is required to bring unit compensation more in line with longevity provided by police departments of comparable jurisdictions in the Town of Ramapo and Town of Clarkstown. It contends those Towns have historically been found comparable to Orangetown by prior Interest Arbitration Panels.

The Union urges we find Ramapo and Clarkstown the most

comparable jurisdictions to Orangetown for purposes of reaching a just and reasonable determination of this dispute. It contends existing longevities for its members lag far behind Ramapo and Clarkstown. The Union asserts a comparable employee in Clarkstown will receive \$192,050 in longevity over a twenty five (25) year career. It claims a comparable employee in Ramapo will received \$130,200 for the same measure. In contrast, the Union argues such an employee in Orangetown receives \$54,250 in longevity over the same span of years, leaving its members far below longevity paid by these comparable jurisdictions. It, thus, argues its proposed increases in longevity pay are warranted. The Union also urges there be no cap on the number of longevity increments.

The Union proposes unit members receive an equipment allowance of one thousand (\$1,000.00) dollars under the Uniforms provision of Article 7 of the Agreement. It proposes this allowance apply to all unit members including Detectives. The Union argues this proposal is necessary to enable its members to be fully and properly equipped for performance of their duties. It asserts the existing equipment allowance of one hundred dollars (\$100.00) for the patrol force has not been adjusted in nearly a decade and should be extended to Detectives. The Union argues this

proposal will enable the Town to stay competitive with the terms and conditions of employment in comparable jurisdictions.

Presently, bargaining unit members accrue sick leave at the rate of thirteen (13) hours per completed calendar month under Article 12.1 of the Agreement. As well, unit members who retire with twenty (20) years' service with the Department may receive three (3) days' pay for each completed year of service, i.e., sixty (60) days, to be deducted from accumulated sick leave, under Article 12.13 of the Agreement. The Union contends the allowance of only sixty (60) days' cash out of accumulated sick leave after twenty (20) years is substantially less than that provided by comparable jurisdictions. It asserts Clarkstown Officers may cash out up to four hundred eighty (480) sick days over the course of a career, and Ramapo Officers have no limit on the amount of sick leave they can utilize.

The Union argues this disparity in benefit entitlement should be eliminated. It proposes unit members accrue sick leave credits at the rate of two (2) days per month. The Union also proposes its members be paid for fifty (50%) percent of their unused accumulated sick leave upon resigning or retiring after ten (10) years' service, seventy five (75%) percent of their unused accumulated sick leave

upon resigning or retiring after fifteen (15) years' service, and one hundred (100%) percent of their unused accumulated sick leave upon resigning or retiring after twenty (20) years' service. It requests if an employee retires due to disability, he or she shall be paid one hundred per cent (100%) of his or her unused sick leave without regard to length of service. The Union argues these proposals are fair, reasonable and more in line with terms and conditions in comparable jurisdictions.

The Union proposes a provision be added under Article 17 of the Agreement requiring the Town take all steps needed to allow employees to receive the benefits provided in Section 341-j of the Retirement and Social Security Law, with the Town making all necessary contributions. It contends this provision is fair and reasonable and in line with terms and conditions in comparable jurisdictions.

In short, the Union contends its proposals are reasonable and fair. It argues they are consistent with settlements and Awards issued in comparable jurisdictions. The Union asserts its proposals are affordable by the Town and within the bounds of fiscal responsibility. It insists its proposed contractual improvements will benefit the Town and its residents by enhancing the Town's ability to attract and retain qualified officers who must perform essential

police duties, often under very difficult circumstances.

### Position of the Town

The Town, on the other hand, argues the Union's monetary demands are excessive and out of line with settlements and terms existing in comparable jurisdictions.

The Town proposes a two (2) year agreement, with salary increases for unit members of three (3%) percent in each year. It views these increases as fair and reasonable. The Town acknowledges its finances have been stable. It concedes its recent financial history has been favorable. Nevertheless, the Town argues the Union's proposal of an eight (8%) percent increase each year would almost deplete its police fund balance and leave it in deficit going forward. It maintains even a five (5%) percent raise would wipe out eighty (80%) percent of its police fund and produce a deficit in 2007.

The Town also cites increased costs going forward for sanitary sewer obligations and implementation of GASB 45 accounting standards, as factors that make it difficult to sustain the Union's proposed raises. It insists non-police funds cannot be transferred to the police fund to cover increased costs. In light of these factors, the Town asserts its proposed raises of three (3%) percent per year

are reasonable and in line with settlement terms reached in comparable jurisdictions.

The Town, like the Union, proposes a policy for administration of rights under General Municipal Law Section 207-c. It urges adoption of its policy covering transitional duty assignments for employees classified as partially disabled but with a prognosis of full recovery. The Town urges its policy is reasonable and adequately protects the interests of the Town and its workforce in regard to the continuation of salary when an employee is injured and disabled while performing duties for the Town.

The Town also opposes the Union's proposals for increased longevity pay, arguing such increases are unwarranted and financially burdensome.

The Town proposes to modify Article 13.2's provision for taking compensatory time off in lieu of overtime payments. It proposes to add a requirement employees obtain prior approval from their Department Head to take compensatory leave. The Town would leave intact the existing rule that requests for compensatory time will be denied only if the time off is not compatible with the operating needs of the Department. It argues prior approval of compensatory time is necessary to assure proper planning of coverages.

The Town also proposes to modify Article 13.2 by capping at forty (40) the number of hours an employee may convert into compensatory leave time in any given calendar year, equaling sixty (60) hours of compensatory time. It would also require compensatory leave be used within the calendar year earned. The Town contends these proposals will increase efficiency and establish reasonable control over use of compensatory time.

Presently, the Town is required by Article 14.2 of the Agreement to contribute one hundred (100%) percent of family and individual health insurance premiums for unit members. It proposes to reduce its contribution to ninety eight (98%) percent of the monthly health insurance premiums of family and individual plans effective January 1, 2006. It proposes to reduce its contributions to ninety six (96%) percent of monthly health insurance premiums effective January 1, 2007.

The Town argues these reductions are reasonable and consistent with settlements in comparable jurisdictions.

The Town's initial proposals also included a new provision, to be codified as Article 14.6, by which an employee eligible for medical insurance coverage from the Town may receive a cash buy-out in lieu of receiving medical insurance benefits. The buy-out amount proposed by the Town is forty (40%) percent of the Town's annual premium

contribution for the coverage the employee is eligible for.

The Town puts forth several proposals for retiree medical insurance coverage. It proposes employees hired before January 1, 2006, be eligible for coverage after fifteen (15) years' continuous service with the Town, after retiring directly from the Town and after being granted a retirement from the New York State Employees Retirement System. For employees hired on or after January 1, 2006, they would be eligible after twenty (20) years' continuous service with the Town and meeting the same requirements. The Town proposes to make available to retirees not eligible for Medicare the same medical and prescription drug plan under the same terms and conditions provided for active employees. It proposes to pay the full premium cost of such medical insurance and prescription drug plan for eligible retirees with at least thirty (30) years of service with the Town. For eligible retirees with at least twenty five (25) years, the Town proposes to pay ninety (90%) percent of the premium cost. For those with at least twenty (20) years, it would pay eighty (80%) percent of the premium cost. For retirees with at least fifteen (15) years of service with the Town, the Town proposes to pay seventy (70%) percent of the premium cost. It also proposes an employee may elect, at time of retirement, to apply accumulated sick leave credits

towards monthly premium payments for retiree medical insurance. The Town views these proposals as fair, reasonable and consistent with terms and conditions in comparable jurisdictions.

The Town proposes to modify the existing Personal Leave provisions of Article 10 of the Agreement. It proposes all employees hired before January 1, 2006, be credited on January 1 with fifty six (56) hours (seven (7) days) of paid personal leave, for use during the following twelve (12) months. For employees hired on or after January 1, 2006, forty (40) hours of paid personal leave would be credited as of January 1 of each year. The Town proposes further any employees hired after January 1<sup>st</sup> in a given year will be credited with paid personal leave prorated by the number of months to be worked in the remainder of that calendar year. It argues these proposals are fair and reasonable for all concerned.

The Town asks modification of existing provisions for Vacation accrual according to date of hire. For employees hired before January 1, 2006, the Town proposes crediting of vacation accruals monthly after four (4) months of service, in the number of hours on its proposed schedule. For employees hired on or after January 1, 2006, the Town proposes crediting of vacation accruals according to a

different schedule with the number of accrued hours generally less than those proposed for employees hired before January 1, 2006. It also seeks to "cap" the amount of vacation leave credits an employee may accumulate at a maximum of two hundred (200) hours. The Town proposes employees be allowed to elect to receive cash payment for up to forty (40) hours of accumulated vacation leave credits during any calendar year, payable at the employee's rate of pay at the time of election. It argues these provisions are reasonable, in line with settlements in comparable jurisdictions, and will promote efficiency in the meeting of its manpower needs.

In short, the Town argues its proposals are fair, reasonable and consistent with terms established in comparable jurisdictions and the statutory criteria. It urges they be adopted in the best interests of the citizens of Orangetown, to enable continued delivery of necessary services without undue or inappropriate burden on its taxpayers.

#### **DISCUSSION AND FINDINGS**

Some preliminary comments are appropriate. Our authority and the factors which must guide our decision, are codified in Section 209(4)(c)(v) of the Taylor Law. Both of these provisions require we make a "just and reasonable

determination of the matters in dispute", and consider:

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

We are thus bound to arrive at a just and reasonable determination of the matters in dispute, under the foregoing criteria.

We have fully and thoroughly considered the entire record and the parties' arguments in support of their respective positions. We make the following findings.

**1. Term of Award**

The term of this Award shall be two (2) years from January 1, 2006 through December 31, 2007. While we recognize the validity of the Union's desire for a longer

contract, given the Town's resistance to a contract beyond two (2) years we conclude, on balance, two (2) years is the appropriate term. Under the facts presented, we cannot find adequate basis for a contract term given the Town's position.

## 2. Wages

Base wage scales shall increase by four (4%) percent effective January 1, 2006, and by four (4%) percent effective January 1, 2007, compounded. We reach this conclusion based upon our view the proper wage adjustments fall between the proposals proffered by the Union - 8% and the Town - 3%. We believe the Union's proposal is not justified under the statutory criteria of the Public employer's ability to pay, the interests and welfare of the public and assessing the criterion requiring us to consider the overall economic package received by Officers.

On the other hand, the Town's proposal also cannot be justified under the statutory criteria. Simply put, consideration of the comparison of wages, hours and conditions of employment of the Officers with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills in similar working situations. These criteria justify a wage adjustment beyond the Town's proposal. We reject the

argument the interests and welfare of the Town's citizens are served by an adjustment which is out of line with the communities historically viewed by the parties and Interest Arbitration Panel as comparable - Ramapo and Clarkstown. We also determine the cost of living criteria supports our conclusion here.

Simply stated, considering all of the statutory criteria, a four (4%) percent annual increase over the two (2) years of this Award is just and appropriate in light of those criteria. We also believe the increases granted, herein, will help the Town remain competitive with other jurisdictions in attracting and keeping qualified personnel.

**3. General Municipal Law Sec. 207-c Procedure**

We have considered the parties' proposed procedures for administration of rights granted employees under General Municipal Law Section 207-c. However, we decline to adopt either procedure. Instead, we shall direct the parties implement for all current and future disputes, the General Municipal Law Section 207-c procedure presently in use by the County of Westchester. We find that process has worked satisfactorily in that jurisdiction over a sufficient period of time to justify its application in the Town. We also find that process has adequately protected the rights of

covered personnel to benefits under the statute, and the need for medical review of injury and disability claims. We accept both parties' representations they desired a workable program, properly administered which would resolve disputes expeditiously and fairly and would be cost effective.

We shall direct the parties meet, upon issuance of this Award, to determine the manner in which the Westchester process will be adapted and implemented by the Town. The parties will have forty five (45) calendar days after issuance of this Award to resolve any disputes on how to adapt and implement the Westchester process in the Town. We shall retain jurisdiction to resolve any such disputes.

#### **4. Longevity**

We find an increase in longevity pay is required to enable the Town to stay competitive with terms and conditions in comparable jurisdictions and so the overall compensation of Officers is in line with other Police Departments in relevant communities in Rockland County. However, we decline to adopt the increases proposed by the Union. We find a more modest increase is in order. We shall award the following schedule of longevity increments be implemented effective January 1, 2007:

<u>Longevity</u>	<u>Increment Amount</u>
Start of Year <sup>1</sup> :	
6	\$2,000
7	2,200
8	2,400
9	2,600
10	2,800
11	3,000
12	3,200
13	3,400
14	3,600
15	3,800
16	4,000
17	4,200
18	4,400
19	4,600
20	4,800
21	5,000
22	5,200
23	5,400
24	5,600
25	5,800

#### 5. Uniforms Allowance

We find an increase is needed in payments to employees under Article 7.3 of the Agreement for purchase of equipment. The evidence demonstrates the increased cost of purchasing such items. Such payments shall be increased to one hundred seventy five dollars (\$175.00) as of January 1,

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<sup>1</sup>In order to receive the first longevity and all amounts thereafter, the Officer must have completed the necessary years of service. For example, to receive the longevity at the start of the sixth (6<sup>th</sup>) year of service, the Officer must have completed five (5) years of service.

2006, and to two hundred fifty dollars (\$250.00) as of January 1, 2007. We shall also direct such payments shall apply to all members of the bargaining unit including those maintaining the designation of Detective. These payments shall be made in the second week of January each year.

6. Sick Leave Buyout

We have considered the parties' positions in respect to the Union's proposal for a sick leave buyout when an employee retires or resigns. We conclude a sick leave buyout is fair, reasonable and consistent with conditions existing in comparable jurisdictions. In particular, we note the Town of Clarkstown provides its Police Officers compensation for unused sick leave at the time of resignation or retirement.<sup>2</sup> We also recognize the budgetary impact of such provisions. On balance, we shall Award the following provision be added to Article 12 effective January 1, 2006: Upon an employee's retirement or resignation with twenty (20) or more years of service, or upon disability retirement, the employee shall, in addition to all other benefits due him or her, be paid the value of his unused accumulated sick leave at the then

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<sup>2</sup> Labor Contract Between Town of Clarkstown and Rockland County Patrolmen's Benevolent Association, Inc. For Clarkstown Police Department, January 1, 2005 - December 31, 2008 (Union Hearing Exhibit 15, page 8).

rate of pay up to a maximum of one hundred eighty days (180) days, according to, and as limited by, the following schedule:

Unused Sick Leave  
Days At Retirement

days 0 - 30 get paid at 0%  
days 31- 60 get paid at 50%  
days 61- 120 get paid at 75%  
days 121 - 180 get paid at 100%

This provision rewards Officers who have accrued time over a series of years. In particular, by increasing the value of these days when there is a greater number of accrued sick days, Officers are rewarded for excellent attendance. In turn, the Town benefits by lower overtime costs and increased productivity. Finally, by not compensating Offices for the first thirty (30) days, Officers are encouraged to accrue time and not be entitled to payment unless they have excellent attendance.

**7. Retirement**

We have considered the Union's proposal the Town establish benefits provided by Retirement and Social Security Law Section 341-j. That statute allows employees to receive additional retirement service credit for accumulated unused sick leave. Establishing this benefit in Orangetown will enable the Town to remain competitive in attracting and retaining qualified Police Officers. It

rewards Officers with an improved retirement who have accrued sick leave time on the books. Accordingly, we shall require the Town, as expeditiously as possible, but no longer than ninety (90) calendar days, take all necessary steps to allow employees to receive the benefits provided by that statute from the New York Policemen's and Firemen's Retirement System.<sup>3</sup> We shall also provide any contributions required for employees to participate in such benefits be paid by the Town. Obviously, the cash out of sick leave in No. 6, herein, shall not diminish the benefit entitlement under this provision.

**8. Compensatory Time**

We have considered the Town's proposals to modify Article 13.2's system for taking compensatory time off in lieu of overtime payments. We conclude the Town's proposal to add a requirement of prior approval from the Department Head before taking compensatory leave is reasonable, and will promote efficiency in the Town's administration of assignments and assuring coverage of manpower needs. The employees' interest in having the compensatory time option is protected by existing language, which will continue, by

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<sup>3</sup> We note Retirement and Social Security Law Section 333 authorizes participating employers to elect to provide their employees with the benefits accorded state employees under Section 341-j.

which such requests will be denied only if the time off is not compatible with the operating needs of the Department. Accordingly, we will direct amendment of Article 13.2 to add the proposed requirement of prior approval from the Chief, or his or her designee, before taking compensatory leave.

We have also considered the Town's proposal to cap at forty (40) the number of hours an employee may convert into compensatory leave time in any given calendar year, equaling sixty (60) hours of compensatory time. We agree a cap is proper under the criteria. However, we conclude a cap of eighty (80) overtime hours per calendar year that may be converted, equaling one hundred twenty (120) hours of compensatory time, is appropriate and reasonable. Accordingly, such cap shall be awarded. We also shall require compensatory leave credits must be used within the calendar year earned, or else be paid to the employee in cash. We shall direct Article 13.2 be modified, accordingly.

#### **9. Medical Insurance**

We note the Union's claim regarding the cost of medical insurance and its proposal for Officers to pay a portion of the premium. However, the fact is such a payment is completely at odds with not only Rampao and Clarkstown, but with all of the police jurisdictions in the County.

However, we are persuaded the Town's request for a medical insurance buyout does make sense. We recognize the Union dissents from this proposal. However, we conclude the proposal is fair and reasonable. It will enable the Town to achieve increased economies in controlling its health insurance costs. It will also provide unit members an option to receive increased compensation where they can show they have comparable insurance in place from another source. Accordingly, we shall award a medical insurance buyout in accordance with the Town's proposal. However, we shall modify the proposal by requesting the Officer receive forty (40%) percent of the premium for the coverage he or she is eligible for and declines.

#### **10. Retiree Medical Eligibility**

We have considered the Town's proposals for Retiree Medical Coverage. We find current employees from the bargaining unit who later retire from Town service, should be eligible for Town-provided Medical Coverage upon retiring with ten (10) years' service to the Town and their being granted a retirement benefit from the New York State Retirement System.

However, new unit members hired after the date of this Award who later retire shall not be eligible for Town-provided Retiree Medical Coverage until they retire with

fifteen (15) years' service to the Town and have been granted a retirement benefit from the New York State Retirement System. We conclude these changes will enable the Town to remain competitive with other jurisdictions in attracting and retaining qualified Police Officers but will have a long term positive economic impact upon the Town. Those eligible for Disability Retirement shall continue to be eligible without a years of service requirement. We shall modify current provisions for Retiree Health Insurance, accordingly.

**11. Personal Leave**

We have considered the Town's proposal to modify the existing personal leave provisions of Article 10. We recognize the Union dissents from the Town's proposal. The panel concludes existing provisions should be continued for incumbent unit members, who presently receive seven (7) days' personal leave on January 1<sup>st</sup> of each year. However, for new employees hired after the date of this Award, we shall direct they each be credited with four (4) days' personal leave effective January 1<sup>st</sup> of each year, five (5) days' personal leave at the beginning of the second year of service, six (6) days at the beginning of the third year of service, and seven (7) days personal leave at the beginning of the fourth and subsequent years of service. We conclude

this schedule for new hires will permit the Town to realize reasonable economies, while bringing new Officers up to the same level of personal leave enjoyed by incumbents by their fourth year of service.

## 12. Vacation Accruals

We have considered the several proposals by the Town to revise existing provisions for vacation accruals. On balance, we find the Town's proposal for an annual buy-back opportunity is appropriate. Accordingly, we shall modify Article 8's existing provisions by adding the following provision:

An employee may elect to receive cash payment for up to forty (40) hours of accumulated vacation leave credits during any calendar year (January 1 through December 31). Payment shall be made within the pay period following the date the request was made. Payment shall be at the employee's then current rate of pay.

As to all remaining disputed proposals, we find insufficient record basis to award a change in the status quo. Accordingly, we shall direct all other proposals of the parties, whether or not discussed above, are rejected.

**AWARD**

**1. Term of Award**

The term of this Award shall be from January 1, 2006 through December 31, 2007. Clauses in the existing Agreement shall be amended to reflect these dates.

<u>MAR</u>	_____	<u>RPB</u>	_____
Concur	Dissent	Concur	Dissent

**2. Wages**

Base wage scales shall increase by four percent (4%) effective January 1, 2006, and by four percent (4%) effective January 1, 2007. All steps shall be compounded. These increases shall be paid retroactively.

<u>MAR</u>	_____	<u>RPB</u>	_____
Concur	Dissent	Concur	Dissent

**3. General Municipal Law Sec. 207-c Procedure**

The parties shall implement for all current and future disputes the General Municipal Law Section 207-c procedure presently in use by the County of Westchester. The Town and Union shall meet, upon issuance of this Award, to determine the manner in which the Westchester process will be adapted and implemented. The parties will have forty five (45) calendar days after issuance of this Award to resolve any

disputes on how to adapt and implement the Westchester process in the Town. We shall retain jurisdiction to resolve any such disputes.

_____	<u>MAR</u>	<u>ARB</u>	_____
Concur	Dissent	Concur	Dissent

4. Longevity

Article 6.3 of the Agreement is amended to substitute the following schedule of longevity increments effective January 1, 2007:

<u>Longevity</u>	<u>Increment Amount</u>
Start of Year	
6	\$2,000
7	2,200
8	2,400
9	2,600
10	2,800
11	3,000
12	3,200
13	3,400
14	3,600
15	3,800
16	4,000
17	4,200
18	4,400
19	4,600
20	4,800
21	5,000
22	5,200
23	5,400
24	5,600
25	5,800

However, no Officer shall have their current longevity diminished as a result of this new schedule.

\_\_\_\_\_ MAR  
Concur Dissent

RRB \_\_\_\_\_  
Concur Dissent

5. Uniforms Allowance

Article 7.3 of the Agreement is amended to read as follows:

Effective January 1, 2006, members of the bargaining unit shall receive a payment of one hundred seventy five dollars (\$175.00) per year for purchase of equipment. Such payments shall be increased to two hundred fifty dollars (\$250.00) per year as of January 1, 2007. This equipment allowance will apply to all members of the bargaining unit, including those maintaining the designation of Detective. These payments shall be made in the second week of January each year.

This provision shall be implemented retroactively for 2006 and 2007.

MAR \_\_\_\_\_  
Concur Dissent

RRB \_\_\_\_\_  
Concur Dissent

6. Sick Leave Buyout

The following provision shall be added to Article 12 of the Agreement effective January 1, 2006: Upon an employee's retirement or resignation with twenty (20) or more years of service, or upon disability retirement, the employee shall, in addition to all other benefits due him or her, be paid the value of his unused accumulated sick leave at the then rate of pay up to a maximum of one hundred eighty (180) days, according to, and as limited by, the following schedule:

Unused Sick Leave  
Days At Retirement

Days 0 - 30 shall be paid at 0%  
Days 31- 60 shall be paid at 50%  
Days 61- 120 shall be paid at 75%  
Days 121 - 180 shall be paid at 100%

MAR \_\_\_\_\_

Concur      Dissent

RPB \_\_\_\_\_

Concur      Dissent

7. Retirement

The Town, shall as expeditiously as possible but no more than ninety (90) calendar days, take all necessary steps to allow employees to receive the benefits provided by Section 341-j of the Retirement and Social Security Law from the New York Policemen's and Firemen's Retirement System. Any contributions required for employees to participate in such benefits shall be paid by the Town.

MAR \_\_\_\_\_

Concur      Dissent

RPB \_\_\_\_\_

Concur      Dissent

8. Compensatory Time

Article 13.2 of the Agreement is amended by replacing the existing second and third sentences with the following language:

The employee may elect to take compensatory time off at the overtime rate instead of paid overtime; the employee must receive prior approval from the Chief, or his or her designee, to take compensatory time off. However, a request for

such approval will be denied only if the time off is not compatible with the operating needs of the Department.

Article 13.2 of the Agreement is further amended to add the following provision:

An employee may not convert more than eighty (80) overtime hours per calendar year, equaling one hundred twenty (120) hours of compensatory time. An employee must use all compensatory leave credits within the calendar year in which it is earned. If the compensatory time off is not taken, then the employee will be paid in cash at the rate of pay in effect for that employee on the date the overtime was earned.

MAR

Concur

\_\_\_\_\_ Dissent

RRB

\_\_\_\_\_ Concur

Dissent

**9. Medical Insurance Buyout**

Article 14 of the Agreement is amended to add the following new provision:

An employee who is eligible for medical insurance coverage made available through the Town may receive a cash buy-out in lieu of receiving medical insurance benefits. To be eligible for the buy-out, the employee must provide documentation of comparable medical insurance coverage in a manner and form to be determined by the Town and sign an appropriate waiver of medical insurance coverage and waiver of liability to the Town.

The employee will receive forty (40%) percent of the Town's annual premium contribution for the coverage the employee is eligible for (individual, two-person, or family).

Partial payment of the buy-out will be made in the employee's regular biweekly paycheck for each pay-period the employee is eligible for the buy-out.

In the event the employee loses coverage under the alternate insurance plan, the employee may resume coverage under one of the medical insurance plans made available through the Town. Coverage will begin on the first of the month immediately following the employee giving notice, provided the employee gives such notice at least five (5) business days prior to the first of the month and meets all eligibility requirements of the insurance plan.

MAR \_\_\_\_\_

Concur      Dissent

\_\_\_\_\_ RIB

Concur      Dissent

10. Retiree Medical Eligibility

Article 14.4 of the Agreement is amended to provide as follows: Current employees who later retire from Town service, shall be eligible for Town-provided Medical Coverage upon retiring with ten (10) years' service to the Town and being granted a retirement benefit from the New York State Retirement System. New employees hired after the date of this Award who later retire shall not be eligible for Town-provided Retiree Medical Coverage until they retire with fifteen (15) years' service to the Town and have been granted a retirement benefit from the New York State Retirement System. Those eligible for a disability retirement shall continue to be eligible without a years of service requirement.

MAR \_\_\_\_\_

Concur      Dissent

\_\_\_\_\_ RIB

Concur      Dissent

**11. Personal Leave**

Article 10.2 of the Agreement is amended to provide incumbent unit members shall receive seven (7) days' personal leave on January 1<sup>st</sup> of each year. Employees hired after the date of this Award shall be credited with four (4) days' personal leave effective January 1<sup>st</sup> of their first year, five (5) days' personal leave at the beginning of the second year of service, six (6) days at the beginning of the third year of service and seven (7) days personal leave at the beginning of the fourth and subsequent years of service.

MAR

Concur

\_\_\_\_\_

Dissent

BBB

\_\_\_\_\_

Concur

\_\_\_\_\_

Dissent

**12. Vacation Accruals**

Article 8 of the Agreement is modified by adding the following provision:

An employee may elect to receive cash payment for up to forty (40) hours of accumulated vacation leave credits during any calendar year (January 1 through December 31). Payment shall be made within the pay period following the date the request was made. Payment shall be at the employee's then current rate of pay.

MAR

Concur

\_\_\_\_\_

Dissent

BBB

\_\_\_\_\_

Concur

\_\_\_\_\_

Dissent

13. Other Proposals

All other proposals of the parties, whether or not discussed herein, are rejected.

\_\_\_\_\_  
Concur

\_\_\_\_\_  
Dissent

RBB  
Concur

\_\_\_\_\_  
Dissent

DATED:

M. Richardson  
Michael A. Richardson, ~~Esq.~~ Town Member,  
Interest Arbitration Panel ~~xxx~~

STATE OF NEW YORK )  
                    Rockland ) ss.:  
COUNTY OF NASSAU )

On this 19<sup>th</sup> day of July 2007, before me personally came and appeared Michael A. Richardson, Esq., Town Panel Member, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Donna Morrison  
NOTARY PUBLIC

**DONNA A. MORRISON**  
Notary Public, State of New York  
No. 01MO5081099  
Qualified in Rockland County  
Commission Expires June 30, 2011

DATED: 6/19/07

Richard P. Bunyan  
Richard P. Bunyan, Esq. Union Member,  
Interest Arbitration Panel

STATE OF NEW YORK )  
                  Rockland ) ss.:  
COUNTY OF ~~NASSAU~~ )

On this 19<sup>th</sup> day of June 2007, before me personally came and appeared Richard P. Bunyan, Esq., Union Panel Member, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Julie Roaquin  
Notary Public, State of New York  
No. 01R06113920  
Qualified in Rockland County  
Commission Expires August 9, 2008

Julie Roaquin  
NOTARY PUBLIC

DATED: 6/20/2007

Martin F. Scheinman  
Martin F. Scheinman, Esq., Chairman,  
Interest Arbitration Panel

STATE OF NEW YORK )  
                  Rockland ) ss.:  
COUNTY OF ~~NASSAU~~ )

On this 20 day of June 2007, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., Chairman, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Bruce M. Levine  
NOTARY PUBLIC

**7**

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## MEMORANDUM OF AGREEMENT

WHEREAS, the Orangetown Policemen's Benevolent Association, represents all permanent police officers in the Orangetown Police Department except the Chief of Police, the Captain of Police and the Administrative Lieutenant; and

WHEREAS, there is an expired Collective Bargaining Unit in effect between the Town of Orangetown and Orangetown Policemen's Benevolent Association for the period January 1, 2002 through December 31, 2005 (expired agreement); and

WHEREAS, the terms of the expired agreement were modified by an Arbitration Award issued by Martin Scheinman, Esq. on June 20, 2007 (Arbitration Award); and

WHEREAS, the Arbitration Award was confirmed by the Supreme Court, Rockland County, in a Judgment dated, April 28, 2008, with the exception of that part of the Arbitration Award regarding the imposition of a General Municipal Law §207-c procedure, which was resubmitted to the Public Arbitration Panel for further consideration and which is still outstanding; and

WHEREAS, there is an outstanding grievance with respect to the sick time buy out provision of the Arbitration Award (Sampath Grievance); and

WHEREAS, the Orangetown Policemen's Benevolent Association desires to turn over its bargaining certificate to the Rockland County Patrolmen's Benevolent Association and desires to be represented by the Rockland County Patrolmen's Benevolent Association;

WHEREAS, a bargaining committee of the Orangetown Policemen's Benevolent Association and a bargaining committee of the Town of Orangetown have engaged in negotiations for a successor Collective Bargaining Agreement;

Now, therefore, subject to the ratification/approval by the Orangetown Policemen's Benevolent Association, (PBA) and the Town Board of the Town of Orangetown, with the recommendations of the negotiating committees, the expired agreement and the arbitration award will be modified by the following terms:

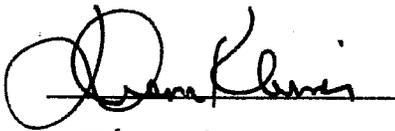
1. The term of the successor agreement will be from January 1, 2008 through December 31, 2010.
2. Effective January 1, 2008, the wage rate in effect December 31, 2007, will be increased by 3.75%; effective January 1, 2009, the wage rate in effect December 31, 2008, will be increased 3.75%; effective January 1, 2010, the wage rate in effect December 31, 2009, will be increased 3.75%.
3. The recognition clause of the successor agreement will be modified to indicate that the Rockland County Patrolmen's Benevolent Association represents all permanent police officers in the Orangetown Police Department except the Chief of Police, the Captain of Police and the Administrative Lieutenant and the Rockland County Patrolmen's Benevolent Association will be substituted for the Orangetown Policemen's Benevolent Association will be substituted in all outstanding legal proceedings between the Town of Orangetown and the Orangetown Policemen's Benevolent Association to include but not limited to grievances, improper practice charges, Article 78 proceedings and other lawsuits and actions.
4. All the terms and conditions of the expired contract as modified by the Arbitration Award will continue in effect with the exception of that part of the Arbitration Award regarding the imposition of a General Municipal Law

§207-c procedure, which was resubmitted to the Public Arbitration Panel for further consideration and which is still outstanding and which will remain outstanding until resolved by the Public Arbitration Panel or settled by the parties.

5. All grievances, improper practice charges and any other legal proceedings filed by the Orangetown Policemen's Benevolent Association will remain outstanding, to include the Sampath Grievance, until resolved through the grievance procedure of the Collective Bargaining Agreement or settlement of the parties or through any other legal means of resolution.

Dated: July 23, 2008

FOR THE TOWN



TOM KLENOW

SUPERVISOR

7/24/08

FOR THE PBA



O PBA President



B & G Chairman

7/23/08

8

## **MEMORANDUM OF AGREEMENT**

**WHEREAS, the Orangetown Policemen's Benevolent Association (the "PBA"), represents all permanent police officers in the Orangetown Police Department except the Chief of Police, the Captain of Police and the Administrative Lieutenant; and**

**WHEREAS, there is an expired Collective Bargaining Unit in effect between the Town of Orangetown (the "Town") and Orangetown Policemen's Benevolent Association for the period January 1, 2002 through December 31, 2005 (expired agreement); and**

**WHEREAS, the terms of the expired agreement were modified by an Arbitration Award issued by Martin Scheinman, Esq. on June 20, 2007 (Arbitration Award); and**

**WHEREAS, the Arbitration Award was confirmed by the Supreme Court, Rockland County, in a Judgment dated, April 28, 2008, with the exception of that part of the Arbitration Award regarding the imposition of a General Municipal Law (GML) §207-c procedure, which was resubmitted to the Public Arbitration Panel for further consideration and which is still outstanding; and**

**WHEREAS, Michael A. Richardson was the Town member of the Arbitration Panel; and**

**WHEREAS, Michael A. Richardson is no longer available to be the Town member of the Arbitration Panel; and**

**WHEREAS, the Town desires to replace Michael A. Richardson on the Arbitration Panel with Lance Klein, Esq.; and**

**WHEREAS, the Town member of the Arbitration Panel and the PBA member of the Arbitration Panel have agreed upon an adaptation of the GML §207-c procedure**

pursuant to the Arbitration Award and also have agreed to have that adaptation made part of that Arbitration Award; and

WHEREAS, the expired Collective Bargaining Agreement and the Arbitration Award were modified by a Memorandum of Agreement between the parties dated July 23, 2008; and

WHEREAS, pursuant to the terms of the July 23, 2008 Memorandum of Agreement, the parties have agreed to recognize the Rockland County Patrolmen's Benevolent Association as the bargaining agent for the all permanent police officers in the Orangetown Police Department except the Chief of Police, Captain of Police and the Administrative Lieutenant; and

Now, therefore, based upon the mutual considerations contained herein, the parties agree as follows:

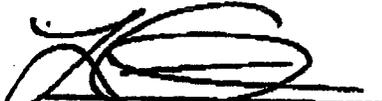
1. The Town and the PBA agree that Lance Klein, Esq., will replace Michael A. Richardson as the Town member of the Arbitration Panel.
2. Upon the execution of this Agreement by the Town and the PBA, the GML §207-c procedure attached hereto as Exhibit "A" will be effective, and pursuant to the Arbitration Award retroactive to January 1, 2006.
3. This Agreement, together with Exhibit "A" is hereby considered part of the Arbitration Award.
4. The GML §207-c procedure, attached hereto as Exhibit "A", will be incorporated in any future revision of the CBA, unless agreed to by the parties or modified in any subsequent interest arbitration award.

  
RB

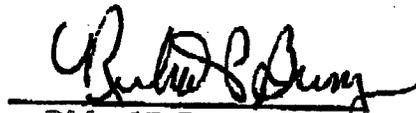
5. All the terms and conditions of the expired contract as modified by the Arbitration Award and as modified by the Memorandum of Agreement dated July 23, 2008 will continue in effect .
6. All grievances, improper practice charges and any other legal proceedings filed by the Orangetown Policemen's Benevolent Association will remain outstanding, until resolved through the grievance procedure of the Collective Bargaining Agreement or settlement of the parties or through any other legal means of resolution. \*
7. The Town and the PBA consent to the confirmation of the GML §207-c procedure, as part of the Arbitration Award, by either the Town or the PBA.

Dated: June , 2009

FOR THE TOWN

  
Lance Klein

FOR THE PBA

  
Richard P. Bunyan

\* except improper practice charge U-26210, which is hereby resolved and accordingly withdrawn.



**8A**

**EXHIBIT "A"**

**ARTICLE**

**LINE OF DUTY INJURY DETERMINATION**

Employees who are injured in the performance of their duties (as defined pursuant to GML §207-c of the General Municipal Law) shall be entitled to the provision of §207-c of the General Municipal Law and Workers' Compensation. Employees injured in the course of their employment (as defined by Workers' Compensation), but not in the performance of their duties (as defined pursuant to §207-c of the General Municipal Law), shall be entitled only to the Workers' Compensation provision of this Collective Bargaining Agreement and state law.

(a) The Town of Orangetown shall be responsible for the initial determination within 10 calendar days as to whether an injury is compensable as defined by GML §207-c and/or Workers' Compensation Law. If the Town fails to render such initial determination within 10 calendar days of notice of injury or illness, at the officer's option she/he may treat the failure as a constructive denial and utilize the dispute resolution procedure in paragraph 6. When the notification of denial is actually received by the officer, the procedure in paragraph 6 regarding election of an option may also be invoked.

(b) In the event that a determination is adverse to the employee in relation to 207-c, the employee shall be entitled to a due process hearing, an arbitration or utilization of the independent medical consulting service (as defined below), at the employee's option, to determine causal relationship. A hearing officer shall

be appointed by the Orangetown Town Board and the employee will be entitled to be represented by counsel, as well as cross-examination of the Town's witnesses and presentation of her/his own evidence.

(c) To resolve disputed cases of illnesses or injuries (physical or mental) resulting from incidents which reportedly occurred while police officers were performing their official duties whether on or off duty, and as GML §207-c of the General Municipal Law requires a due process hearing to resolve such disputes, and as the parties wish to resolve these disputes in a prompt, fair and equitable manner the issues in dispute may be resolved through the use of an employee option to utilize an independent medical consulting service and/or arbitration in lieu of above stated due process hearing.

2. Issues which shall be affected or determined by use of an independent medical consulting service are as follows:

(a) Whether an illness or injury (physical or mental) suffered by a police officer was incurred in the performance of her/his duty.

(b) Whether a current illness or injury (mental or physical) is a reoccurrence or aggravation of a prior illness or injury (mental or physical) which occurred in the performance of her/his duties.

(c) Whether a police officer who incurred an illness or injury (mental or physical) as a result of the performance of her/his duties has sufficiently recovered and is physically and mentally able for either temporary limited duty assignments or full duty. For the purposes of this procedure, temporary limited duty shall be determined by either a hearing officer or the medical consulting

service at the option of the employee.

3. The Town of Orangetown may dispute the validity of a police officer's original illness or injury allegedly incurred in the performance of her/his duties as set forth in paragraph 2(a) above within 10 calendar days of the date the Department is notified of said illness or injury. An employee claiming a job injury or job related illness must notify his/her supervisor as soon as the employee is reasonably able to do so, depending upon the circumstances and the nature of the injury or illness. Said police officer may elect to have the dispute resolved at a due process hearing or by an independent arbitrator selected by the parties at a hearing conducted pursuant to and consistent with General Municipal Law §207-c. Either the hearing or arbitration mandatorily must occur in 20 business days. If the Town asks for and is granted an adjournment, which forces the hearing or arbitration to occur beyond the twenty business days enumerated, the officer shall be entitled to day-for-day full salary, from the twenty-first business day, without the use of his/her accruals until such time as the hearing or arbitration occurs. If the Town prevails at the hearing or the arbitration, it may force the employee to substitute his/her accrual time day for day. The parties select the following as a panel of independent arbitrators: Dennis J. Compagna, Jeffrey Selchek and Howard C. Edelman. In addition, at the request of either the Town of Orangetown or the PBA , such employee may be required to submit on a timely basis (within 7 calendar days) to the designated medical consulting service described hereinafter for a full medical evaluation; the results of said medical evaluation shall be automatically submitted into evidence at the arbitration proceeding or 207-c

hearing established to resolve the causal connection dispute. Said medical-evaluation from the designated medical consulting service shall be admitted into evidence at either the arbitration or the hearing pursuant to §207-c of the General Municipal Law without the need for a witness from the medical consulting service. The decision of the arbitrator designated to conduct the arbitration or hearing officer designated to conduct the GML §207-c hearing (which mandatorily must be issued within 7 business days) from the close of the hearing shall be final and binding on the Town and the police officer with respect to the issue of causal connection.

4. In cases where a police officer alleges a reoccurrence or aggravation of a prior line of duty injury as set forth in paragraph 2(b) above which is disputed by the Town, said police officer may elect to have the dispute resolved at a due process hearing conducted pursuant to General Municipal Law §207-c or by the medical consulting service designated herein. The decision of the hearing officer designated to conduct the §207-c hearing, or the medical consulting service shall be final and binding on the Town and the police officer.
5. In disputed cases where the Town believes that a police officer who has been out of work as a result of a prior line of duty injury or illness (mental or physical) is capable of physically and/or mentally performing either temporary limited duties or full duty as set forth in paragraph 2(c) above, the police officer may elect to have the dispute resolved at a due process hearing conducted pursuant to General Municipal Law §207-c or by the medical consulting service described herein. The decision of the hearing officer designated to conduct the 207-c hearing or the medical consulting service shall be final and binding on the Town and the police officer.

6. Upon the election of the options described in paragraphs 3, 4 and 5, the police officer must waive her/his right to appeal any adverse determination as well as any other right as may be granted by General Municipal Law §207-c. Within 48 hours after notification by the Town to the member and the PBA of the existence of a disputed injury or illness as described above, the police officer or the PBA acting on his behalf must elect an option. If a police officer, or the PBA acting on his behalf fails to elect an option within the required time frame, the matter will proceed either to arbitration or to the designated medical consulting service as enumerated above, not to a due process hearing. Appointments with the medical consulting service shall be scheduled within 7 calendar days following the selection by the police officer. If an officer fails to appear at the scheduled appointment, the employee will be removed from the payroll, unless the parties agree otherwise, until the officer appears for the rescheduled appointment. A police officer, upon written request, shall be granted a delay in the scheduling of such appointment for the purposes of securing medical reports as described in paragraph 11. The parties agree however, that such police officer must submit to examination within 28 calendar days of the date the dispute arose not withstanding whether such records have been obtained. If the medical consulting service determines that an officer can return to work, either full duty or special assignment, or the officer returns to work voluntarily before examination by the medical consulting service, the Town may substitute the officer's own accrued time day for day for any requested and granted delay as specified in this paragraph.

7. The provisions of this procedure shall be fully set forth and incorporated in the Collective Bargaining Agreement currently in existence between the Town and

the PBA. Any pending and future dispute as set forth in paragraph 2 shall be resolved in accordance with the terms of this procedure. However, all officers currently out of work on a line of duty injury are deemed to be on General Municipal Law §207-c.

8. The medical consulting service being utilized to carry out the intent of this procedure may be changed at any time with the consent of both the Town and the PBA.

If the parties are unable to agree on the selection of a medical consulting service, then the parties shall select an arbitrator. At the arbitration of the issue, both parties shall submit the names and qualifications of those medical consulting services. The arbitrator shall conduct a hearing and make a determination regarding the selection of the medical consulting service to be utilized during the existing term of the Collective Bargaining Agreement.

9. The Town of Orangetown shall be solely and exclusively responsible for payment of all sums due and owing the selected medical consulting service for all services performed pursuant to this procedure. The costs of an arbitrator's fee and/or hearing officer's fee, all expenses as well as preparation of transcripts shall be paid by the Town of Orangetown. Further, the Town shall pay for and/or supply transportation from the Orangetown Police Department to the location of the medical consulting service, without charge to the individual officer.

10. The medical consulting service shall determine an employee's inability or fitness to perform temporary limited duty or full duty and whether such condition is of a temporary or permanent nature. If the condition is considered to be of a limited duration, then the medical consultant shall establish a date for that officer's reevaluation.

The examining physician assigned by the medical consultant service shall complete Member's Physical Condition and Restrictions Report, upon completion of the evaluation. The Town shall assign officers limited to restricted duty to duty assignments consistent with the restrictions noted on said report. Disputes concerning restricted duty assignments shall be resolved on an expedited basis (within 14 calendar days) by the first Arbitrator available from the following: Dennis J. Compagna, Jeffrey Selchek or Howard C. Edelman, or an arbitrator agreed to by the parties. During the period of dispute, the officer must utilize her/his accrued time. If the arbitrator resolves the dispute in favor of the officer, the accruals will be restored. This procedure applies to those officers on "extended contractual" Workers' Compensation benefits as defined in paragraph 12(b). If the Town asks for and is granted an adjournment, which forces the hearing or arbitration to occur beyond the fourteen calendar days enumerated, the officer shall be entitled to day-for-day full salary, from the fifteenth calendar day, without the use of his/her accruals until such time as the hearing or arbitration occurs. If the Town prevails at the hearing or the arbitration, it may force the employee to substitute his/her accrual time day-for-day.

11. Medical consultants , prior to making their determination, shall receive copies of the employee's diagnostic reports, x-rays, lab reports, hospital records and such other clinical evidence as the parties may deem relevant which will enable the consultants to render their own objective determination. Records must not be unilaterally submitted to the medical consultants. All records shall be first screened at a joint meeting of the representatives of both parties who will then forward said documents to the medical consulting service. All disputes shall be resolved by a third party chosen by the members

of the joint meeting. Only said third party may directly contact said medical consultants directly.

12. (a) The Town will retain all police officers subject to such medical disputes as described in paragraph 2(c) on full pay, line of duty status until such date as a decision is rendered by the arbitrator, hearing officer, or medical consultant. The parties agree, however, that if the Town prevails on the issue, the police officer shall return to work. Should an employee fail to abide by the arbitrator, hearing officer or medical consulting service's determination to perform either a special assignment or full duty by failing to appear for such duty, the employee will be removed from the payroll. The employee may receive direct compensation payments that he/she may be entitled to as determined by the Workers' Compensation Board.

(b) If a police officer is collecting "extended contractual" Workers' Compensation benefits (39) weeks at full salary pursuant to paragraph 16 of this Procedure, the Department may order an employee to be examined by the medical consulting service regarding the employee's ability to return to work either special assignment or full duty. If the medical consulting service determines that the employee can return to work in either capacity, and the employee fails to abide by the determination by failing to appear for such duty, the employee will be removed from the payroll. The employee may receive only direct Workers' Compensation benefits that he/she may be entitled to as determined by the Workers' Compensation Board. However, if the medical consulting service determines that the officer cannot perform either special assignment or full duty, this determination is final and binding on the Town. If the sole and exclusive

dispute is the nature and severity of the illness or injury, the determination of the medical consulting service is equivalent to that of the Workers' Compensation Board pursuant to paragraph 13 of this Article.

13. Upon a favorable determination to the police officer stemming from a dispute described in paragraphs 2(a) and 2(b) the police officer shall be credited with line of duty illness or injury status retroactive to the date of said illness or injury or recurrence of the same. Further, upon a favorable determination to the officer for Workers' Compensation by the Workers' Compensation Board of the State of New York, the police officer shall be credited with illness or injury, status retroactive to the date of said injury or illness or reoccurrence of the same.

14. Following the return to work by a police officer in a limited or restricted duty capacity, the effect of which subsequently may render the officer incapable of performing limited or restricted duty, the officer shall be re-examined by the medical consultant service provided that the officer presents to the Town at her/his own expense a detailed report from the officer's personal medical doctor specifying the changes that occurred in the officer's condition since her/his prior examination by the medical consultant service and how such changes have resulted in a deterioration of the condition. The police officer shall remain on Workers' Compensation status while out of work and will be charged with a reduction of such leave accruals during the pendency of this reexamination. Should the officer be found unfit for limited duty upon re-examination due to the line of duty injury or illness, then her/his sick leave deductions shall be restored retroactive to the date the Department was notified by the physician of the change in condition.

15. In the event that the Town's initial determination is that the employee is not entitled to benefits under either §207-c or under the Workers' Compensation Law, and if the employee elects one of the three alternatives outlined above (due process hearing, independent medical consulting service or arbitration) to secure 207-c benefits and the final determination is adverse to the employee, the employee is barred from utilizing and/or pursuing Workers' Compensation.

16. In the case of any employee, where it has been determined that the employee is not entitled to GML §207-c benefits, but is entitled to Workers' Compensation, by either initial determination or by the Workers' Compensation-Board, she/he shall continue to receive her/his normal full salary for a period not to exceed 39 weeks ("extended contractual" Workers' Compensation benefits). If it has been determined that the employee is not entitled to GML §207-c benefits, but is entitled to Workers' Compensation benefits, the employee may seek GML §207-c benefits without affecting her/his right to Workers Compensation as outlined in paragraph 15 above. If denied both GML §207-c benefits and Workers' Compensation by the initial determination of the Town, and the employee elects not to seek GML 207-c benefits but Workers' Compensation benefits, a final determination will be made by the Workers' Compensation Board as it affects Workers' Compensation provisions of the statutes and the Collective Bargaining Agreement. In adverse situations, until such a determination is made in controverted cases, employees may utilize all accrued leave time allowances and receive pay for days not worked because of such injury. However, at the employee's option, they may refuse to utilize accrued leave time allowances, and be placed on a leave

without pay status. The Town has the right to send notification that employees be assigned to light duty under the Workers' Compensation provisions of this procedure.

17. Prior to any determination pursuant to GML §207-c, any employee may utilize any accrued leave time allowances. Upon a final determination favorable to the employee, such time allowances used will be reinstated to the employee.

18. In the case of those employees receiving §207-c benefits, where there is a disagreement or difference of opinion between the employee's doctor and that of the Town as to the employee's ability to perform light duty or the specific duties to be performed, the employee shall have the option, in writing, of electing a due process hearing before a hearing officer appointed by the Town or a due process hearing which shall be a review by the medical consulting group as enumerated above agreed upon between the Town and the PBA. In such case, the decision of the medical consulting service or hearing officer as to the ability to perform light duty or the specific duties to be performed shall be binding on the Town and the employee. The employee shall have the right to the option for each difference or disagreement.

19. During a period of compensation disability pursuant to GML §207-c and/or Workers' Compensation of less than a cumulative total of 365 calendar days, from a single cause, there shall be no diminution in the employee's contractual vacation, sick leave, longevity, insurance benefits, welfare fund payments, holiday pay, personal leave or clothing allowance. After a cumulative total of 365 days, only longevity, insurance benefits, welfare fund payments and holiday pay shall continue to be paid in addition to the employee's wages.

20. Should the employee be receiving no GML §207-c benefits and only Workers' Compensation benefits where the Board awards a rate less than the full permanent disability rate, the decision will indicate the employee's capacity to perform special duty during the period of time and no further reimbursement of accruals and/or compensation will be made should the employee not appear for the light duty assignment. If the Board awards a full compensation rate, this will be regarded as a total disability and the individual's salary and/or Workers' Compensation will be adjusted.

21. So long as this procedure is in effect, the Town of Orangetown may not terminate a police officer pursuant to §71 of the New York State Civil Service Law with respect to police officers who are receiving GML §207-c benefits or Workers' Compensation for cumulative total of 365 calendar days or more from a single cause or occurrence.

22. Once an employee receives notification of light duty, the following rules shall apply:

(a) While performing light duty, the employee shall receive her/his normal salary.

(b) Light duty shall be assigned commensurate with the employee's injury.

(c) The employee will accrue all time accruals while on light duty assignment.

(d) Where a police officer is not entitled to 207-c benefits, light duty is included in the 39 week maximum benefit of full salary pursuant to Workers' Compensation.

23. The parties agree that the medical consulting service to be utilized pursuant to this agreement, until changed pursuant to paragraph 8 above, will be Rehabilitation Medicine Associates, located at Southside Hospital, Long Island, New York.

9

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
In the Matter of the Application of the  
ORANGETOWN POLICEMEN'S BENEVOLENT  
ASSOCIATION,

Index No. 2007-09683

Petitioner,

**ORDER AND  
JUDGMENT**

For a Judgment Pursuant to Article 75 of the CPLR  
Confirming a certain Interest Arbitration Award

Assigned to:

TOWN OF ORANGETOWN,

Respondent.

Hon. Alfred J. Weiner

-----X

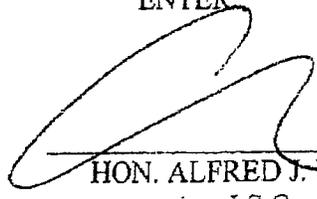
An application having been made by petitioner to confirm the remaining portion of an award of the arbitrators in the arbitration proceeding between the petitioner, ORANGETOWN POLICEMEN'S BENEVOLENT ASSOCIATION, and the respondent, TOWN OF ORANGETOWN, signed and acknowledged by the neutral arbitrator on June 20, 2007, and delivered to petitioner on June 20, 2007, pursuant to Civil Service Law §209 and directing that judgment be entered thereon;

Now upon the reading and filing of the Notice of Motion dated July 6, 2009, and the Affirmation in Support of Joseph P. Baumgartner, duly affirmed July 6, 2009, and the exhibits attached thereto, to include the agreement of the parties, dated June, 2009, and the General Municipal Law §207-c procedure, agreed to by the parties pursuant to the provisions of the aforesaid arbitration award and there being no opposition to the motion, it is hereby,

ORDERED AND ADJUDGED, that the petitioner's application is granted; and it is further

ORDERED AND ADJUDGED, that the arbitration award, to include the General Municipal Law §207-c procedure, agreed to by the parties pursuant to the provisions of the aforesaid arbitration award, is confirmed in its entirety.

ENTER:



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HON. ALFRED J. WERNER

J.S.C.

*November 4, 2009*

**10**

STATE OF NEW YORK  
CONTRACT GRIEVANCE ARBITRATION

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In the Matter of the Arbitration by and between

ROCKLAND COUNTY PATROLMEN'S  
BENEVOLENT ASSOCIATION, INC.

Union,

and

TOWN OF ORANGETOWN,

Employer.

OPINION

AND

AWARD

Grievance: Medical Consulting Service

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BEFORE: Jeffrey M. Selchick, Esq.  
Arbitrator

APPEARANCES:

Rockland County Patrolmen's Benevolent Association, Inc.  
Bunyan & Baumgartner, LLP  
Joseph R. Baumgartner, Esq., of Counsel

Town of Orangetown  
Keane & Beane, PC  
Lance H. Klein, Esq., of Counsel  
Edward J. Phillips, Esq., of Counsel

In accordance with Article Sixteen ("Grievance Procedure") of the Agreement (Joint Exhibit 1) of the parties (hereinafter, "PBA" and "Town"), the undersigned was duly designated Arbitrator. A hearing was held on May 4, 2010 in Orangeburg, New York. The parties were accorded a full and fair hearing including the opportunity to present evidence, examine witnesses, and make arguments in support of their respective positions.

The parties filed post-hearing briefs and reply submissions, and the record was closed on or about July 12, 2010.

## **ISSUES**

The parties stipulated to the following issues:

Did the Town violate the Line of Duty Procedure when the five Grievants submitted their notices of injury and were not sent for a medical consultant exam; and when the Town did not meet, at the request of the PBA, to determine what records would go forward to the medical consultant? If so, what shall the remedy be?

## **RELEVANT CONTRACT PROVISIONS**

### **Line of Injury Determination (hereinafter, "Procedure")**

Employees who are injured in the performance of their duties (as defined pursuant to GML §207-c of the General Municipal Law) shall be entitled to the provision of §207-c of the General Municipal Law and Workers' Compensation. Employees injured in the course of their employment (as defined by Workers' Compensation), but not in the performance of their duties (as defined pursuant to §207-c of the General Municipal Law), shall be entitled only to the Workers' Compensation provision of this Collective Bargaining Agreement and state law.

(a) The Town of Orangetown shall be responsible for the initial determination within 10 calendar days as to whether an injury is compensable as defined by GML §207-c and/or Workers' Compensation Law. If the Town fails to render such initial determination within 10 calendar days of notice of injury or illness, at the officer's option sheltie may treat the failure as a constructive denial and utilize the dispute resolution procedure in paragraph 6. When the notification of denial is actually received by the officer, the procedure in paragraph 6 regarding election of an option may also be invoked.

(b) In the event that a determination is adverse to the employee in relation to 207-c, the employee shall be entitled to a due process hearing, an arbitration or utilization of the independent medical consulting service (as defined below), at the employee's option, to determine causal relationship. A hearing officer shall be appointed by the Orangetown Town Board and the employee will be entitled to be represented by counsel, as well as cross-examination of the Town's witnesses and presentation of her/his own evidence.

(c) To resolve disputed cases of illnesses or injuries (physical or mental) resulting from incidents which reportedly occurred while police officers were performing their official duties whether on or off duty, and as GML §207-c of the General Municipal Law requires a due process hearing to resolve such disputes, and as the parties wish to resolve these disputes in a prompt, fair and equitable manner the issues in dispute may be resolved through the use of an employee option to utilize an independent medical consulting service and/or arbitration in lieu of above stated due process hearing.

2. Issues which shall be affected or determined by use of an independent medical consulting service are as follows:

(a) Whether an illness or injury (physical or mental) suffered by a police officer was incurred in the performance of her/his duty.

(b) Whether a current illness or injury (mental or physical) is a reoccurrence or aggravation of a prior illness or injury (mental or physical) which occurred in the performance of her/his duties.

(c) Whether a police officer who incurred an illness or injury (mental or physical) as a result of the performance of her/his duties has sufficiently recovered and is physically and mentally able for either temporary limited duty assignments or full duty. For the purposes of this procedure, temporary limited duty shall be determined by either a hearing officer or the medical consulting service at the option of the employee.

3. The Town of Orangetown may dispute the validity of a police officer's original illness or injury allegedly incurred in the performance of her/his duties as set forth in paragraph 2(a) above

within 10 calendar days of the date the Department is notified of said illness or injury. An employee claiming a job injury or job related illness must notify his/her supervisor as soon as the employee is reasonably able to do so, depending upon the circumstances and the nature of the injury or illness. Said police officer may elect to have the dispute resolved at a due process hearing or by an independent arbitrator selected by the parties at a hearing conducted pursuant to and consistent with General Municipal Law §207-c. Either the hearing or arbitration mandatorily must occur in 20 business days. If the Town asks for and is granted an adjournment, which forces the hearing or arbitration to occur beyond the twenty business days enumerated, the officer shall be entitled to day-for-day full salary, from the twenty-first business day, without the use of his/her accruals until such time as the hearing or arbitration occurs. If the Town prevails at the hearing or the arbitration, it may force the employee to substitute his/her accrual time day for day. The parties select the following as a panel of independent arbitrators: Dennis J. Compagna, Jeffrey Selchick and Howard C. Edelman. In addition, at the request of either the Town of Orangetown or the PBA, such employee may be required to submit on a timely basis (within 7 calendar days) to the designated medical consulting service described hereinafter for a full medical evaluation; the results of said medical evaluation shall be automatically submitted into evidence at the arbitration proceeding or 207-c hearing established to resolve the causal connection dispute. Said medical-evaluation from the designated medical consulting service shall be admitted into evidence at either the arbitration or the hearing pursuant to §207-c of the General Municipal Law without the need for a witness from the medical consulting service. The decision of the arbitrator designated to conduct the arbitration or hearing officer designated to conduct the GML §207-c hearing (which mandatorily must be issued within 7 business days) from the close of the hearing shall be final and binding on the Town and the police officer with respect to the issue of causal connection.

4. In cases where a police officer alleges a reoccurrence or aggravation of a prior line of duty injury as set forth in paragraph 2(b) above which is disputed by the Town, said police officer may elect to have the dispute resolved at a due process hearing conducted pursuant to General Municipal Law §207-c or by the medical consulting service designated herein. The decision of the hearing officer designated to conduct the

§207-c hearing, or the medical consulting shall be final and binding on the Town and the police officer.

5. In disputed cases where the Town believes that a police officer who has been out of work as a result of a prior line of duty injury or illness (mental or physical) is capable of physically and/or mentally performing either temporary limited duties or full duty as set forth in paragraph 2(c) above, the police officer may elect to have the dispute resolved at a due process hearing conducted pursuant to General Municipal Law §207-c or by the medical consulting service described herein. The decision of the hearing officer designated to conduct the 207-c hearing or the medical consulting service shall be final and binding on the Town and the police officer.

6. Upon the election of the options described in paragraphs 3, 4 and 5, the police officer must waive her/his right to appeal any adverse determination as well as any other right as may be granted by General Municipal Law §207 notification by the Town to the member and the PBA of the existence of a disputed injury or illness as described above, the police officer or the PBA acting on his behalf must elect an option. If a police officer, or the PBA acting on his behalf fails to elect an option within the required time frame, the matter will proceed either to arbitration or to the designated medical consulting service as enumerated above, not to a due process hearing. Appointments with the medical consulting service shall be scheduled within 7 calendar days following the selection by the police officer. If an officer fails to appear at the scheduled appointment, the employee will be removed from the payroll, unless the parties agree otherwise, until the officer appears for the rescheduled appointment. A police officer, upon written request, shall be granted a delay in the scheduling of such appointment for the purposes of securing medical reports as described in paragraph 11. The parties agree however, that such police officer must submit to examination within 28 calendar days of the date the dispute arose notwithstanding whether such records have been obtained. If the medical consulting service determines that an officer can return to work, either full duty or special assignment, or the officer returns to work voluntarily before examination by the medical consulting service, the Town may substitute the officer's own accrued time day for day for any requested and granted delay as specified in this paragraph.

7. The provisions of this procedure shall be fully set forth and incorporated in the Collective Bargaining Agreement currently in existence between the Town and the PBA. Any pending and future dispute as set forth in paragraph 2 shall be resolved in accordance with the terms of this procedure. However, all officers currently out of work on a line of duty injury are deemed to be on General Municipal Law §207-c.

8. The medical consulting service being utilized to carry out the intent of this procedure may be changed at any time with the consent of both the Town and the PBA. If the parties are unable to agree on the selection of a medical consulting service, then the parties shall select an arbitrator. At the arbitration of the issue, both parties shall submit the names and qualifications of those medical consulting services. The arbitrator shall conduct a hearing and make a determination regarding the selection of the medical consulting service to be utilized during the existing term of the Collective Bargaining Agreement.

9. The Town of Orangetown shall be solely and exclusively responsible for payment of all sums due and owing the selected medical consulting service for all services performed pursuant to this procedure. The costs of an arbitrator's fee and/or hearing officer's fee, all expenses as well as preparation of transcripts shall be paid by the Town of Orangetown. Further, the Town shall pay for and/or supply transportation from the Orangetown Police Department to the location of the medical consulting service, without charge to the individual officer.

10. The medical consulting service shall determine an employee's inability or fitness to perform temporary limited duty or full duty and whether such condition is of a temporary or permanent nature. If the condition is considered to be of a limited duration, then the medical consultant shall establish a date for that officer's reevaluation. The examining physician assigned by the medical consultant service shall complete Member's Physical Condition and Restrictions Report, upon completion of the evaluation. The Town shall assign officers limited to restricted duty to duty assignments consistent with the restrictions noted on said report. Disputes concerning restricted duty assignments shall be resolved on an

expedited basis (within 14 calendar days) by the first Arbitrator available from the following: Dennis J. Compagna, Jeffrey Selchek [sic] or Howard C. Edelman, or an arbitrator agreed to by the parties. During the period of dispute, the officer must utilize her/his accrued time. If the arbitrator resolves the dispute in favor of the officer, the accruals will be restored. This procedure applies to those officers on "extended contractual" Workers' Compensation benefits as defined in paragraph 12(b). If the Town asks for and is granted an adjournment, which forces the hearing or arbitration to occur beyond the fourteen calendar days enumerated, the officer shall be entitled to day-for-day full salary, from the fifteenth calendar day, without the use of his/her accruals until such time as the hearing or arbitration occurs. If the Town prevails at the hearing or the arbitration, it may force the employee to substitute his/her accrual time day-for-day.

11. Medical consultants, prior to making their determination, shall receive copies of the employee's diagnostic reports, x-rays, lab reports, hospital records and such other clinical evidence as the parties may deem relevant which will enable the consultants to render their own objective determination. Records must not be unilaterally submitted to the medical consultants. All records shall be first screened at a joint meeting of the representatives of both parties who will then forward said documents to the medical consulting service. All disputes shall be resolved by a third party chosen by the members of the joint meeting. Only said third party may directly contact said medical consultants directly.

12. (a) The Town will retain all police officers subject to such medical disputes as described in paragraph 2(c) on full pay, line of duty status until such date as a decision is rendered by the arbitrator, hearing officer, or medical consultant. The parties agree, however, that if the Town prevails on the issue, the police officer shall return to work. Should an employee fail to abide by the arbitrator, hearing officer or medical consulting service's determination to perform either a special assignment or full duty by failing to appear for such duty, the employee will be removed from the payroll. The employee may receive direct compensation payments that he/she may be entitled to as determined by the Workers' Compensation Board.

(b) If a police officer is collecting "extended contractual" Workers' Compensation benefits (39) weeks at full salary pursuant to paragraph 16 of this Procedure, the Department may order an employee to be examined by the medical consulting service regarding the employee's ability to return to work either special assignment or full duty. If the medical consulting service determines that the employee can return to work in either capacity, and the employee fails to abide by the determination by failing to appear for such duty, the employee will be removed from the payroll. The employee may receive only direct Workers' Compensation benefits that he/she may be entitled to as determined by the Workers' Compensation Board. However, if the medical consulting service determines that the officer cannot perform either special assignment or full duty, this determination is final and binding on the Town. If the sole and exclusive dispute is the nature and severity of the illness or injury, the determination of the medical consulting service is equivalent to that of the Workers' Compensation Board pursuant to paragraph 13 of this Article.

13. Upon a favorable determination to the police officer stemming from a dispute described in paragraphs 2(a) and 2(b) the police officer shall be credited with line of duty illness or injury status retroactive to the date of said illness or injury or recurrence of the same. Further, upon a favorable determination to the officer for Workers' Compensation by the Workers' Compensation Board of the State of New York, the police officer shall be credited with illness or injury, status retroactive to the date of said injury or illness or reoccurrence of the same.

14. Following the return to work by a police officer in a limited or restricted duty capacity, the effect of which subsequently may render the officer incapable of performing limited or restricted duty, the officer shall be re-examined by the medical consultant service provided that the officer presents to the Town at her/his own expense a detailed report from the officer's personal medical doctor specifying the changes that occurred in the officer's condition since her/his prior examination by the medical consultant service and how such changes have resulted in a deterioration of the condition. The police officer shall remain on Workers' Compensation status while out of work and will be charged with a reduction of such leave accruals during the pendency of this reexamination. Should the

officer be found unfit for limited duty upon re-examination due to the line of duty injury or illness, then his/her sick leave deductions shall be restored retroactive to the date the Department was notified by the physician of the change in condition.

15. In the event that the Town's initial determination is that the employee is not entitled to benefits under either §207-c or under the Workers' Compensation Law, and if the employee elects one of the three alternatives outlined above (due process hearing, independent medical consulting service or arbitration) to secure 207-c benefits and the final determination is adverse to the employee, the employee is barred from utilizing and/or pursuing Workers' Compensation.

16. In the case of any employee, where it has been determined that the employee is not entitled to GML §207-c benefits, but is entitled to Workers' Compensation, by either initial determination or by the Workers' Compensation-Board, she/he shall continue to receive her/his normal full salary for a period not to exceed 39 weeks ("extended contractual" Workers' Compensation benefits). If it has been determined that the employee is not entitled to GML §207-c benefits, but is entitled to Workers' Compensation benefits, the employee may seek GML §207-c benefits without affecting her/his right to Workers' Compensation as outlined in paragraph 15 above. If denied both GML §207-c benefits and Workers' Compensation by the initial determination of the Town, and the employee elects not to seek GML 207-c benefits but Workers' Compensation benefits, a final determination will be made by the Workers' Compensation Board as it affects Workers' Compensation provisions of the statutes and the Collective Bargaining Agreement. In adverse situations, until such a determination is made in controverted cases, employees may utilize all accrued leave time allowances and receive pay for days not worked because of such injury. However, at the employee's option, they may refuse to utilize accrued leave time allowances, and be placed on a leave without pay status. The Town has the right to send notification that employees be assigned to light duty under the Workers' Compensation provisions of this procedure.

17. Prior to any determination pursuant to GML §207-c, any employee may utilize any accrued leave time allowances. Upon a final determination favorable to the employee, such time allowances used will be reinstated to the employee.

18. In the case of those employees receiving §207-c benefits, where there is a disagreement or difference of opinion between the employee's doctor and that of the Town as to the employee's ability to perform light duty or the specific duties to be performed, the employee shall have the option, in writing, of electing a due process hearing before a hearing officer appointed by the Town or a due process hearing which shall be a review by the medical consulting group as enumerated above agreed upon between the Town and the PBA. In such case, the decision of the medical consulting service or hearing officer as to the ability to perform light duty or the specific duties to be performed shall be binding on the Town and the employee. The employee shall have the right to the option for each difference or disagreement.

19. During a period of compensation disability pursuant to GML §207-c and/or Workers' Compensation of less than a cumulative total of 365 calendar days, from a single cause, there shall be no diminution in the employee's contractual vacation, sick leave, longevity, insurance benefits, welfare fund payments, holiday pay, personal leave or clothing allowance. After a cumulative total of 365 days, only longevity, insurance benefits, welfare fund payments and holiday pay shall continue to be paid in addition to the employee's wages.

20. Should the employee be receiving no GML §207-c benefits and only Workers' Compensation benefits where the Board awards a rate less than the full permanent disability rate, the decision will indicate the employee's capacity to perform special duty during the period of time and no further reimbursement of accruals and/or compensation will be made should the employee not appear for the light duty assignment. If the Board awards a full compensation rate, this will be regarded as a total disability and the individual's salary and/or Workers' Compensation will be adjusted.

21. So long as this procedure is in effect, the Town of Orangetown may not terminate a police officer pursuant to §71 of the New York State Civil Service Law with respect to police officers who are receiving GML §207-c benefits or Workers' Compensation for cumulative total of 365 calendar days or more from a single cause or occurrence.

22. Once an employee receives notification of light duty, the following rules shall apply:

(a) While performing light duty, the employee shall receive her/his normal salary.

(b) Light duty shall be assigned commensurate with the employee's injury.

(c) The employee will accrue all time accruals while on light duty assignment.

(d) Where a police officer is not entitled to 207-c benefits, light duty is included in the 39 week maximum benefit of full salary pursuant to Workers' Compensation.

23. The parties agree that the medical consulting service to be utilized pursuant to this agreement, until changed pursuant to paragraph 8 above, will be Rehabilitation Medicine Associates, located at Southside Hospital, Long Island, New York. (Joint Exhibit 5)

### **BACKGROUND FACTS**

There are five grievances before the Arbitrator that the parties have combined for purposes of this proceeding. (Joint Exhibits 8, 10, 13, 16, 19). The Grievants are Police Officers Gonzalez, Purcell, Kelly, Maher, and Hewitt. The factual record consists of the following stipulated facts and exhibits:

1. Gonzalez injured 5/25/09 on duty. Application for 207-c benefits. After more than 10 calendar days, letter 7/16/09 sent to Town (Jt. 7) electing to deem it a denial and requested medical consultant exam within 7 days. Not sent to medical consultant. On

8/25/09 grievance filed (Jt. 8). Town made initial determination as to 207-c status and granted 207-c status and returned his time on 9/3/09. (Jt 8A).

2. Purcell injured 6/29/09 on duty. Application for 207-c benefits. After more than 10 calendar days, letter 7/16/09 sent to Town (Jt 9) electing to deem it a denial and requested medical consultant exam within 7 days. Not sent to medical consultant. On 8/25/09 grievance filed (Jt 10). Town made initial determination as to 207-c status and granted 207-c status and returned his time on 1/28/10 (Jt 11).

3. Kelly injured 7/3/09 on duty. Application for 207-c benefits. After more than 10 calendar days, letter 7/15/09 sent to Town (Jt 12) electing to deem it a denial and requested medical consultant exam within 7 days. Not sent to medical consultant. On 8/25/09 grievance filed (Jt 13). Town made initial determination as to 207-c status and granted 207-c status and returned his time on 9/9/09 (Jt 14).

4. Maher injured 7/15/09 on duty. Application for 207-c benefits. After more than 10 calendar days, letter 8/6/09 sent to Town (Jt 15) electing to deem it a denial and requested medical consultant exam within 7 days. Not sent to medical consultant. On 8/25/09 grievance filed (Jt 16). Town made initial determination as to 207-c status and granted 207-c status and returned his time on 9/4/09 (Jt 17).

5. Hewitt injured 1/1/09 injured on duty. Did not go out with injury till 5/22/09. Application for 207-c benefits on 5/22/09. After more than 10 calendar days, letter 7/16/09 sent to Town (Jt 18) electing to deem it a denial and requested medical consultant exam within 7 days. Not sent to medical consultant. On 8/25/09 grievance filed (Jt 19). No determination made.

6. Town established relationship with Rehabilitation Medical Associates prior to June 08.

## POSITION OF THE PBA

According to the PBA, its position is supported by the language of the Procedure, which it labels as "clear and unambiguous." Focusing on Paragraph 1 (a) of the Procedure, the PBA notes that, if the Town makes no "initial determination within 10 calendar days", the affected officer can "treat the failure as a constructive denial and utilize the dispute resolution procedure in paragraph 6." In each of the grievances, the PBA contends that the Town did not make any initial determination within ten calendar days, so each Grievant elected to treat the Town's failure to make a timely determination as a "constructive denial" under paragraph 1(a) of the Procedure.

The PBA points to paragraph 1(b) of the Procedure and the language therein that if there is a determination by the Town "adverse to the employee ... the employee shall be entitled to a due process hearing, an arbitration or utilization of the independent medical consulting service ... at the employee's option." The Grievants in this proceeding, the PBA puts forth, by treating the Town's omission as a constructive denial, were under paragraph 1(b) because the constructive denial was "adverse" to the Grievants, which gave them the right to select from the options set forth in 1(b). The PBA notes that each of the five Grievants opted for the independent medical consulting service.

It is the PBA's position that, after the "elections" by the Grievants under paragraphs 1(a) and (b) of the Procedure, "the dispute resolution procedure in

paragraph 6 is then utilized.” In the PBA’s estimation, the relevant language in paragraph 6 also must be considered “unambiguous”, calling therefore for an appointment to be made with the medical consulting service within seven calendar days after the Town receives notification of the Officer’s determination to opt for the medical consulting services. Paragraph 11 of the Procedure, the PBA further notes, provides that when the medical consulting service is selected to resolve a dispute, the parties’ representatives must meet to agree as to what records are to be forwarded to the consulting service. The PBA observes that the Grievants’ attorney requested a meeting with the Town for this purpose. In short, the PBA claims that Grievants “meticulously followed the requirements of the Line of Duty Injury Determination procedure with respect to invoking the dispute resolution option of having the dispute, as to whether the members’ injuries were compensable pursuant to GML §207-c, determined by the medical consulting service.” The Town, however, the PBA argues, did not appropriately respond.

Moreover the PBA observes that a reading of the Procedure indicates that the utilization of the medical consulting service is an option to allow disputes to be resolved in a “prompt, fair and equitable manner”, as the parties recognize in paragraph 1(c) of the Procedure. According to the PBA, the Town’s refusal to comply with the appropriate steps of the procedure underscores its clear violation of the Procedure. Further, the PBA claims that the Town never provided the PBA

or the Grievants any valid reason for its refusal to honor the Procedure. The parties' stipulation that the medical consulting service has had a relationship with the Town since June, 2008, the PBA alleges, discloses that the claim by the Chief of Police in a July 21, 2009, letter to the PBA's attorney that the Town was contracting with the medical consulting service shows an act of "deception" and a "stalling tactic." Further, the PBA claims that the record evidence shows that the Town had the ability to send a person to medical consulting as disclosed in the January 11, 2010 letter regarding another member of the PBA.

The PBA rejects the Town's proffered interpretation of the Procedure, calling the Town's interpretation a "flawed" reading of the Procedure. As the PBA views the Procedure, there are "four specific situations of potential conflict with respect to an officer's injuries, and, in each case, the Procedure states how those conflicts will be resolved." These four situations, according to the PBA, are set forth in paragraph 1, when the Town has not made an initial determination within ten calendar days; paragraph 3, when the Town has disputed the validity of the Officer's injury or illness within ten calendar days of notification; paragraph 4, when the officer has claimed an recurrence of a previous injury; and paragraph 5, when a dispute has arisen about an Officer's capability to perform light duty. The PBA claims that, in each paragraph, the parties have set forth "the mechanisms that are to be used to resolve the disputes." The PBA reads

paragraph 6 of the Procedure as simply providing "the procedure that is used to implement the mechanisms that arise under each of paragraphs 1, 3, 4, and 5."

The PBA accuses the Town of completely ignoring paragraph 1(b) in the Procedure whereby it is made "clear" that an "officer, who has deemed the Town's failure to render a decision as a constructive denial, has the option of selecting either a due process hearing, an arbitration or the independent medical consulting service to determine the causal relationship of his illness or injury to the performance of his duties." In setting forth its opposition to the Town's interpretation of the Procedure, the PBA emphasizes that the procedures in paragraph 6 apply to a police officer who deems a failure to make a determination as a constructive denial pursuant to paragraph 1. This is evident, the PBA puts forth, because of the "specific reference to paragraph 6 that is contained in paragraph 1."

The PBA also states that the first sentence in paragraph 6 also shows that paragraph 6 applies to the "resolution mechanisms addressed in paragraphs 3, 4, and 5." The Town is incorrect in stating that the first sentence of paragraph 6 limits the application of paragraph 6 to paragraphs 3, 4, and 5, the PBA asserts, because "the opening sentence of paragraph 6 merely shows that the provisions of paragraph 6 are applicable to paragraphs 3, 4, and 5, just as it is applicable to the options contained in paragraph 1."

Not only has the Town ignored the provisions of paragraph 1(a) and (b), the PBA maintains, but it has also ignored the provisions of paragraph 1(c) and 2(a) of the Procedure. Paragraph 1(c), the PBA contends, can only be read as providing that an employee has the option to select the medical consulting service instead of a due process hearing when there is a disputed case of injury or illness. Paragraph 2(a), the PBA claims, supports its position by stating what issues can be resolved by the medical consulting services, namely, "to determine whether a police officer has incurred an injury in the performance of his duties." Paragraphs 1 and 3 of the Procedure, the PBA further notes, address resolutions of disputes concerning "casual relationship"; paragraphs 4 and 5, do not apply to determinations of causality. Since paragraph 3 explicitly limits the officer's options to a due process hearing or arbitration, the PBA concludes that "there can only be one situation to which the provisions of paragraph 2(a) apply", which "is the situation addressed in paragraph 1 where the officer has deemed the Town's failure to make a determination within ten days as a constructive denial."

The PBA also claims the Town has ignored the language of paragraph 3, since the PBA maintains that the language therein only applies when the Town has disputed the validity of an officer's injuries within ten calendar days. The grievances herein reflect, according to the PBA, the Town's failure to make any determination within ten days of notification. In addition, the PBA alleges that the Town has also relied on "facts" not in evidence and that the Town set forth a

different "issues" for resolution when it made its written arguments before the Arbitrator. Further, the PBA claims that the Town "has not and cannot explain its treatment of Officer Hewitt," who had the ability under paragraph 4 of the Procedure to select either a due process hearing or a determination by the medical consulting services. The PBA also rejects any claim by the Town that the issues raised herein are moot because a number of the Grievants have ultimately received a determination from the Town. The doctrine of mootness does not apply to any of the Grievants, according to the PBA, particularly when future disputes of the same nature can be expected without an arbitral resolution of the instant grievances.

For a remedy, the PBA seeks an Award sustaining the grievances and a declaration that the Town violated the Procedure and, with respect to Grievant Hewitt, the PBA seeks a further award that her injury is compensable under GML §207-c. According to the PBA, "[t]he only way to ensure that Officer Hewitt is not penalized by these actions of the Town is to award her GML §207-c benefits for the time she was out of work due to her injuries." In this regard, the PBA asserts that the Town made it impossible for the medical consulting service to make a timely examination and evaluation of Officer Hewitt's injuries and the Town should not be allowed to "profit" thereby.

## POSITION OF THE TOWN

The Town indicates that the fact of the matter is that the Procedure was imposed on the parties by way of Interest Arbitration, and the Procedure must be considered "deeply flawed" in that it requires the Town to make all initial eligibility determination within the exceedingly short period of *ten (10) calendar days*. (Emphasis in original). The Town calls the ten day deadline "unrealistic", and it identifies the deadline as being the cause of the instant grievances. It notes that four of the Officers who filed grievances were granted 207-c benefits, and only the 207-c application set forth in the grievance of Officer Hewitt, "remains outstanding."

The Town does not dispute that under paragraph 1(a) of the Procedure, its failure to make an initial determination can be treated as a "constructive denial" and that the Officer in turn can "utilize the dispute resolution procedure in paragraph 6." It is the Town's position "that if/when a constructive denial occurs, the Policy [Procedure] (including but not limited to paragraph 6) must be read in its entirety, so that all of its provisions are given effect." The Town reads paragraph 6, by focusing on the first sentence, which speaks to "the election of the options described in paragraphs 3, 4, and 5," as directing that, "in the event of a constructive denial, an officer must elect one of the dispute resolution options set forth in Paragraphs 3, 4, and 5 of the Policy [Procedure]."

The Town reads paragraph 3 as applying to initial eligibility determinations, and one that allows the Officer to have the dispute resolved at either a due process hearing or by an Arbitrator. Paragraph 4, as read by the Town, refers to reoccurrences of previous 207-c injuries wherein the Officer is allowed to have any dispute resolved at a due process hearing or by the designated medical consulting service. Under paragraph 5, the Town notes, fitness for light duty disputes can be resolved at a due process hearing or by a designated medical consulting service. These observations allow the Town to conclude that paragraph 3 controls because the grievances herein reflect "initial eligibility" questions, and, under paragraph 3, "the officer may not simply have his eligibility determined by the designated medical consulting service, and thus bypass either a hearing or arbitration." (Emphasis in original). Indeed, under paragraph 3, the Town observes, either the Town or the PBA can request an examination by the medical consulting service to be used as evidence at the due process or arbitration hearing. The PBA's reading of the Procedure, the Town argues, would deprive the Town of its "opportunity under Paragraph 3 to contest eligibility disputes at an arbitration or due process hearing simply by failing to render an initial determination within the 10-day deadline prescribed by Paragraph 1(a) of the Policy [Procedure]."

There is no part of the procedure, according to the Town, that mandates that constructive denials be treated differently than a denial made by the Town:

within ten calendar days. The PBA's reading of the Procedure, the Town puts forth, "renders paragraphs 3-5 superfluous and inoperative" and also results in "ignoring the clear language of Paragraph 6."

Its interpretation of the Procedure, the Town claims, is one that reads the Procedure as a whole whereas the PBA's reading renders a number of the provisions meaningless. All disputes arising under the procedure when there has been a constructive denial, under the PBA's reading, the Town asserts, in effect, renders paragraphs 3 to 5 meaningless. The first sentence of paragraph 6 is described by the Town as making its "abundantly clear that 'the election of the options described in paragraphs 3, 4, and 5' is still required in the event of a constructive denial." (Emphasis in original). Additionally, the PBA's interpretation, as understood by the Town, "effectively deprives the Town from making an initial eligibility determination and places that responsibility in the hands of a medical consulting service." Such a result would constitute a denial of its right to make initial eligibility determinations, the Town argues, as seen in various judicial decisions.

Further, the Town maintains that Officer Hewitt is not automatically entitled to 207-c benefits. The Town claims that it has not ignored her application for benefits and had her examined by its physicians on at least two occasions in 2009, resulting in a light duty assignment, as requested by her over various dates. The Town also claims that it communicated its willingness on previous

occasions to send Officer Hewitt to be examined by the medical consulting service and therefore the PBA has "no grounds for demanding that Officer Hewitt be granted Section 207-c benefits without even being examined by the parties' designated medical consultant." The "extraordinary relief," as labeled by the Town, sought by the PBA for Grievant Hewitt should be denied.

In responding to the PBA's position, the Town emphasizes that "the 10-day deadline prescribed by the Policy for making an initial eligibility determination is absurdly short." Further, the Town argues that the PBA's interpretation would result in the Town forfeiting the opportunity under paragraph 3 of the Procedure to contest eligibility disputes. Thus, the Town claims that the "PBA's interpretation of the Policy [Procedure] should be rejected because it fails to construe the Policy as a whole and renders a number of its provisions meaningless."

### **OPINION**

In the instant case, the Arbitrator is called upon to interpret and apply the Line of Duty Injury Determination Agreement [{"Procedure"}] that emerged from the parties' Interest Arbitration Award in 2008. (Joint Exhibit 5). Thus, the Arbitrator is bound by the language of the Procedure. As both parties recognize in their submissions, the Arbitrator must read the Procedure "as a whole" and give effect to all its parts. "If an arbitrator finds that alternative interpretations of a clause are possible, one of which would give meaning and effect to another

provision of the contract, while the other would render the other provision meaningless or ineffective, the inclination is to choose the interpretation that would give effect to all provisions.” Elkouri & Elkouri: How Arbitration Works, 463 (6<sup>th</sup> ed. A. Ruben, 2003).

Initially, the Arbitrator would note that the Procedure is not particularly a model of clarity. This observation is reflected in the differing interpretations offered of the Procedure by the parties. Neither interpretation, the Arbitrator would note, is divorced from reason, and the Arbitrator has had to closely examine the different interpretations offered in light of the language of the Procedure. It must also be noted that this Arbitrator can only deal with the Procedure placed in front of him, and has no information to provide insight as to the thought process of the Interest Arbitration Panel in employing the specifics of this procedure. In other words, I didn't create this problem but have put forth my best efforts to interpret what has been placed before me.

For the reasons that follow, the Arbitrator accepts the interpretation offered by the PBA as that interpretation that best gives effect to all parts of the Procedure. Both parties agree that paragraph 1(a) of the Procedure allows an Officer seeking benefits under §207-c of the General Municipal Law to “treat” the Town’s failure to make an “initial determination within 10 calendar days of notice of injury or illness ... as a constructive denial and utilize the dispute resolution procedure in paragraph 6.” (Joint Exhibit 5). The parties’ dispute centers on

whether, as the PBA claims, an Officer, in the wake of a “constructive denial”, can seek a determination by the “independent medical consulting service,” or, as the Town has argued, the Officer’s options are limited to either a “due process hearing” or a decision “by an independent arbitrator.”

The Town’s interpretation focuses chiefly on the first language of paragraph 6 of the Procedure. This sentence reads: “Upon the election of the options described in paragraphs 3, 4, and 5, the police officer must waive her/his right to appeal any adverse determination as well as any other right as may be granted by General Municipal Law §207-c.” (Id.). The Town then claims that the grievances in the instant case involve the language of paragraph 3 that refers to “the validity of a police officer’s original illness or injury allegedly incurred in the performance of her/his duties.” (Id). Thus, the Town is able to maintain that it is the determination options set forth in paragraph 3 that should govern. These options in paragraph 3 are limited to a “due process hearing” and a determination “by an independent arbitrator.” (“Said police officer may elect to have the dispute resolved at a due process hearing or by an independent arbitrator ...”).

As noted above, the Town’s proffered interpretation is not devoid of reason, but, the Arbitrator would observe, it is an interpretation that does not take into account the language of paragraphs 1(b), 1(c), and 2(a) of the Procedure. Paragraph 1(b) states that “where a determination is adverse to the employee in relation to 207-c, the employee shall be entitled to a due process hearing, an

arbitration or utilization of the independent medical consulting service ... at the employee's option, to determine causal relationship." (Id., emphasis added). Paragraph 1(c), consistent with paragraph 1(b), expressly provides that, where there is a dispute involving 207-c of eligibility, the "dispute may be resolved through the use of an employee option to utilize an independent medical consulting service and/or arbitration in lieu of above stated due process hearing." (Id.). Consistent with both paragraphs 1(b) and 1(c), paragraph 2(a) states that the "independent medical consulting service" can be utilized to assess "[w]hether an illness or injury (physical or mental) suffered by a police officer was incurred in the performance of her/his duty." (Id.).

Thus, there is language outside of paragraph 3 that explicitly contemplates that the independent medical consulting service can be utilized to assess the validity of an Officer's initial claim that he or she is entitled to 207-c benefits. In paragraph 1(b), following paragraph 1(a) that allows an Officer to treat the Town's failure to make an initial determination as a "constructive denial", which is clearly an "adverse determination", the parties state that an "independent medical consulting service ... at the employee's option" can be utilized if there is an "adverse" determination. The Arbitrator does not understand the Town's proffered interpretation to address the existence of the language in paragraphs 1(a), 1(b), and 2(a) that explicitly authorizes an Officer to choose the independent

medical service, no less one that seeks to harmonize the language therein with the Town's interpretation.

Insofar as the Town's reliance on the first sentence of paragraph 6 in the Procedure is concerned, the Arbitrator would note that paragraph 6, beginning with the second sentence therein, describes the time limit for an Officer exercising a determination option; the time limit for scheduling an appointment with a medical consultant service if that is the option selected; setting forth a procedure for an Officer who does not appear for his scheduled appointment, and setting forth an agreement as to how time should be charged based on a determination that the Officer can or has voluntarily returned to work. This portion of paragraph 6, beginning with the second sentence, is nowhere mentioned in the language of paragraphs 3, 4, and 5, and thus it is reasonable to conclude that there was a need to explicitly identify paragraphs 3, 4, and 5 in the first sentence of paragraph 6. There was no need, however, to identify paragraph 1 in the first sentence of paragraph 6 because paragraph 1(a) itself refers to "paragraph 6." (Id.). Unlike the Town's interpretation that has been advanced, the PBA's interpretation, the Arbitrator finds, squares with all relevant parts of the Procedure.

The Arbitrator concludes therefore that the grievances must be sustained in light of the fact that, for each Grievant, the Town did not "render" an "initial determination within 10 calendar days of notice of injury or illness", which in turn

gave the Officer the choice to treat the Town's "failure as a constructive denial" and, in turn, to opt for "utilization of the independent medical consulting service." The Arbitrator notes that, if the Town does "dispute the validity of a police officer's original illness or injury allegedly incurred in the performance of her/his duties ... within 10 calendar days of the date the Department is notified of said illness or injury", then the provisions of paragraph 3 of the Procedure apply, and the Officer can only "elect to have the dispute resolved at a due process hearing or by an independent arbitrator." (Id.). The result reached in this proceeding is solely contingent on the fact that the Town made no initial determination.

In offering the above interpretation of the Procedure, the Arbitrator has been mindful of the Town's claim that four of the five grievances have been rendered moot because the Officers were found to be eligible for 207-c benefits. The Arbitrator, on the state of the instant record, need not wrestle with the mootness question given the fact that there was a genuine need to offer the parties a declaration of their rights and duties under the Procedure. The Arbitrator declines to issue the remedy sought by the PBA regarding Grievant Hewitt and declare that her injury is compensable under 207-c. There is insufficient evidence in the record for the Arbitrator to render such a determination, and the grievances as submitted to the Arbitrator did not allow for the creation of a record for such evidence to be introduced. It is axiomatic that remedies cannot be based on speculation, but it would be speculation that would

provide the basis for the Arbitrator to issue the remedy sought by the PBA especially on behalf of Grievant Hewitt. That is not to say that Grievant Hewitt does not have other alternatives, be they arbitral or otherwise, to pursue this remedy, and no finding is made herein that there has been any waiver on the PBA's part or Grievant Hewitt's part to pursue such a remedy.

Accordingly, and based on the foregoing, I find and make the following:

**AWARD**

The Town violated the Line of Injury Duty Procedure when it did not grant the Grievants' request for independent medical consultant to determine 207-c eligibility, and when the Town failed to comply with the request of the PBA to meet to determine what records would be forwarded to the independent medical consultant service. Accordingly, to the extent indicated, the grievances are sustained.

STATE OF NEW YORK )

COUNTY OF ALBANY ) ss:

I, Jeffrey M. Selchick, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument, which is my Opinion and Award.

Dated: August 11, 2010  
Albany, New York

  
JEFFREY M. SELCHICK, ESQ.  
ARBITRATOR

**11**

*Sick Time Buyout Stipulation 7/9/08*

STATE OF NEW YORK  
TOWN OF ORANGETOWN

In the Matter of the Arbitration between  
The Orangetown Policemen's Benevolent  
Association and the Town of Orangetown

**STIPULATION OF  
SETTLEMENT**

Index No.

WHEREAS, the Orangetown Policemen's Benevolent Association, Inc. (the "PBA") has filed a Demand for Arbitration dated October 18, 2007, claiming a violation of the Collective Bargaining Agreement between the PBA and the Town of Orangetown ("Town") relating to Police Officer Cathy Sampath and all other similarly situated members; and

WHEREAS, an interest arbitration award was rendered by the Honorable Martin F. Scheinman, Esq., Chairman of the Panel of Arbitrators dated on or about June 19, 2007, which award contained a provision regarding retiree sick leave buyout; and

WHEREAS, the Town and the PBA have had discussions relative to the settlement of the matter and seek to resolve the matter without further litigation;

**NOW, IT IS HEREBY AGREED**, by and between the parties that the following shall constitute an agreement between them with regard to the following:

1. The Demand for Arbitration dated October 18, 2007 is hereby withdrawn with prejudice subject to the terms set forth herein, *and subject to PO Sampath being paid the sick time buyout referred to herein.*
2. It is understood and agreed by and between the Town and the PBA that Article 12 of the Collective Bargaining Agreement, in conjunction with Paragraph No. 6 of the Interest Arbitration Award, dated on or about June 19, 2007, entitled "Sick Leave Buyout" is amended to provide as follows: Current employees who retire from Town service with not less than ten (10) years of Town of Orangetown Police Department service shall be eligible for, in addition to all

other benefits due him or her, the value of his/her unused accumulated sick leave at the then rate of pay up to a maximum of 180 days, according to, and as limited by, the following schedule:

Days 0-30 shall be paid at 0%

Days 31-60 shall be paid at 50%

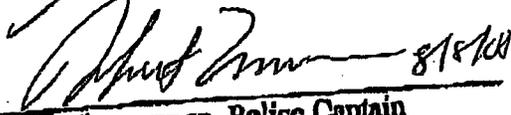
Days 61-120 shall be paid at 75%

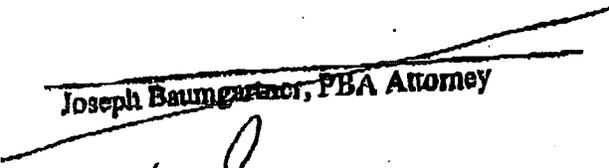
Days 120-180 shall be paid at 100%.

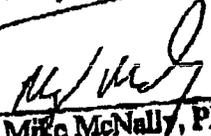
Employees hired after the date of the interest arbitration award (June 19, 2008) who later retire shall not be eligible for Town provided sick leave buyout describe above unless they retire with 15 years of service to the Town of Orangetown Police Department. Those eligible for a disability retirement shall continue to be eligible for a sick leave buyout without a years of service requirement.

Dated: White Plains, New York  
July 9, 2008

  
Lance Klein, Labor Counsel

  
Robert Zimmerman, Police Captain

  
Joseph Baumgartner, PBA Attorney

  
Mike McNally, PBA President

**12**

## MEMORANDUM OF AGREEMENT

WHEREAS, the Rockland County Patrolmen's Benevolent Association (the "PBA"), represents all permanent police officers in the Orangetown Police Department except the Chief of Police, the Captain of Police and the Administrative Lieutenant; and

WHEREAS, there is an expired Collective Bargaining Unit in effect between the Town of Orangetown (the "Town") and PBA for the period January 1, 2002 through December 31, 2005 (expired agreement); and

WHEREAS, the terms of the expired agreement were modified by an Arbitration Award issued by Martin Scheinman, Esq. on June 20, 2007 (Arbitration Award); and

WHEREAS, the Arbitration Award imposed a GML §207-c procedure on the parties hereto; and

WHEREAS, the Town member of the Arbitration Panel and the PBA member of the Arbitration Panel, agreed upon an adaptation of the GML §207-c procedure pursuant to the Arbitration Award and also agreed that the adaptation is made part of that Arbitration Award; and

WHEREAS, the Arbitration Award was confirmed by the Supreme Court, Rockland County; and

WHEREAS, there are several other Agreements between the parties that affect the expired Collective Bargaining Agreement and the Arbitration Award but they are not recited herein; and

WHEREAS, the parties had a dispute pertaining to the manner in which notice, required by the GML §207-c procedure, is provided to a member of the PBA and the PBA; and

WHEREAS, the PBA filed an Improper Practice Charge with respect to the aforesaid dispute which was given PERB Docket Number U 30445; and

WHEREAS, the parties desire to settle the aforesaid dispute;

Now, therefore, based upon the mutual considerations contained herein, the parties agree as follows:

1. Any and all notices, required to be provided by the Town pursuant to the GML §207-c procedure to include, but not limited to notice of denial of GML §207-c benefits, will be provided by the Town as follows:

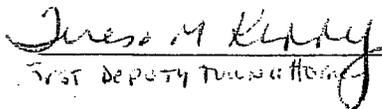
- A. The member will be notified by first class mail sent to the member's residence. In addition, a copy of the notification will be placed in the member's work mailbox located in the Police Department. Such notice will be sent and placed on the date the notification is prepared by the police administration.
- B. A copy of the notification will also be provided to the PBA officer on duty on the date the notification is prepared by the police administration. Additionally, copies of the notification will be placed in the work mailbox located in the Police Department of both the Orangetown PBA President and the Chairman of the Orangetown Bargaining and Grievance Committee on the date the notification is prepared by the police administration.

2. Upon the complete execution of this agreement the PBA will withdraw Improper Practice Charge PERB Docket Number U 30445.

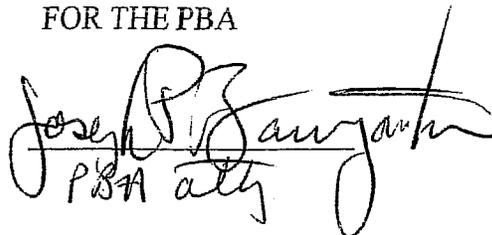
3. The Town admits no fault with respect to any of the matters underlying Improper Practice Charge PERB Docket Number U 30445.
4. This agreement will be effective upon the complete execution of this Agreement by the Town and the PBA.
5. This Agreement will be incorporated in any future revision of the GML §207-c procedure and/or the CBA.
6. All the terms and conditions of the expired contract as modified by the Arbitration Award and as modified by the various agreements of the parties will continue in effect.
7. All grievances, improper practice charges and any other legal proceedings filed by the Rockland County Patrolmen's Benevolent Association will remain outstanding, until resolved through the grievance procedure of the Collective Bargaining Agreement or settlement of the parties or through any other legal means of resolution.
8. Any dispute with respect to the interpretation of this Agreement will be addressed through the grievance procedure in effect between the parties.

Dated: <sup>Jan. 3, 2011</sup>  
~~2010~~

FOR THE TOWN

  
James M. Kelly  
First Deputy Town Clerk

FOR THE PBA

  
Joseph P. Zangar  
PBA atty

**13**

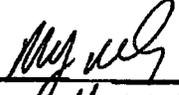
**ADDENDUM TO COLLECTIVE BARGAINING AGREEMENT  
BETWEEN THE TOWN OF ORANGETOWN AND THE ORANGETOWN  
POLICEMEN'S BENEVOLENT ASSOCIATION EFFECTIVE  
JANUARY 1, 2002 THROUGH DECEMBER 31, 2005**

**WHEREAS** the Town of Orangetown ("Town") and the Orangetown  
Policemen's Benevolent Association ("PBA") mutually desire to change some of the  
arbitrators designated in Article Fifteen (15.1, Step 2) of the Collective Bargaining  
Agreement effective January 1, 2002, through December 31, 2005 ("CBA"),

**NOW, THEREFORE**, it is mutually agreed by and between the parties that,

1. Earle Warren Zaidins and Martin Ellenberg will be deleted from those persons designated as arbitrators in Article Fifteen (15.1, Step 2) of the CBA.
2. Jeffrey Selchek will be added to those persons designated as arbitrators in Article Fifteen (15.1, Step 2) of the CBA.
3. This change to the CBA will be effective on the date it is fully executed by the parties.
4. This agreement will be incorporated in any future revision of the CBA.

Dated: Blauvelt, New York  
February 12, 2008

  
\_\_\_\_\_  
MICHAEL J. McNALLY  
For the PBA

Date of Execution 3/31/08

  
\_\_\_\_\_  
LANCE H. K. C. W.  
For the Town

Date of Execution 3.24.08

ATTN

**PBA**

**EXHIBITS**

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**PBA EXHIBIT LIST**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PERIOD</u></b>	<b><u>IDENT.</u></b>	<b><u>EVIDENCE</u></b>
1	Introduction			
2	Map of Rockland County			
3	Personnel Chart			
4	Compact Disc with Rockland County Contracts:			
	4A: Clarkstown Douglas IA Award	2009-2010		
	4B: Clarkstown Contract	2005-2008		
	4C: Haverstraw Shapiro IA Award	2009-2010		
	4D: Haverstraw Patack IA Award	2007-2008		
	4E: Haverstraw Prosper IA Award	2005-2006		
	4F: Haverstraw Edelman IA Award	2003-2004		
	4G: Haverstraw Contract	2000-2002		
	4H: Piermont Contract	2008-2012		
	4I: Ramapo Contract	2011-2014		
	4J: S. Nyack/Grandview Contract	2011-2014		
	4K: Spring Valley MOA	2009-2012		
	4L: Spring Valley Scheinman IA Award	2006-2008		
	4M: Spring Valley Contract	2002-2006		
	4N: Stony Point MOA	2008-2010		
	4O: Stony Point Contract	2006-2007		
	4P: Suffern MOA	2008-2012		
	4Q: Suffern Contract	2004-2008		
5	Rockland County Police Act for Towns			
6	Rockland County Police Act for Villages			
7	Interest Arbitration Award – Orangetown – Jeffrey Selchick	1998-1999		
8	Interest Arbitration Award – Orangetown – Martin Ellenberg	1993-1994		
9	Interest Arbitration Award – Orangetown – Sumner Shapiro	1991-1992		

**1**

## INTRODUCTION

The Orangetown Police Department is located in Rockland County, New York. The Orangetown Town Hall is located only 23 miles north of midtown Manhattan in New York City (Columbus Circle).

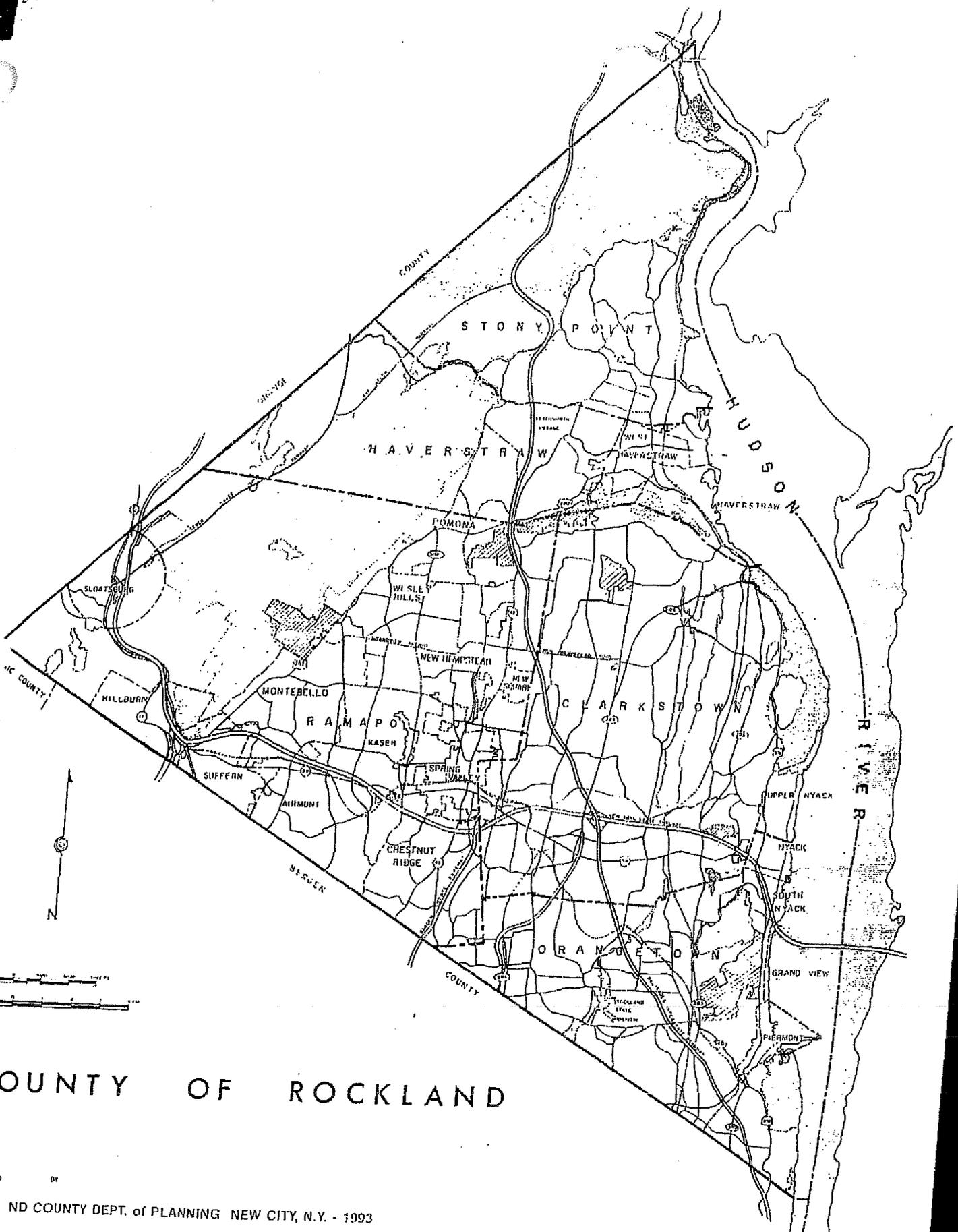
The County of Rockland has five town police departments namely, Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point. The Town of Orangetown is the southern most town in the County. Much of the area of the Towns of Stony Point, Haverstraw, and Ramapo is parkland.

There are four full time village police forces; namely, Piermont, Spring Valley, Suffern and the South Nyack-Grandview police force. The Village of Nyack maintained a police department until December 31, 1990, when it was abolished. Most of the Nyack police officers were transferred to the Town of Orangetown Police Department; six went to the Town of Clarkstown Police Department.

Orangetown is adjoined on the west by the Town of Ramapo and on the north by the Town of Clarkstown. All three of the towns have police forces that are among the largest town police forces in New York State. All three have a similar rank structure. The Town of Orangetown and the Town of Ramapo have police forces of approximately 80 - 100 officers; Clarkstown has approximately 160.

It is submitted to this panel that Clarkstown and Ramapo, are the most appropriate comparables for use by this arbitration panel. Prior arbitration panels have found that Clarkstown and Ramapo are appropriate comparables.

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# COUNTY OF ROCKLAND

PREPARED BY

ROCKLAND COUNTY DEPT. of PLANNING NEW CITY, N.Y. - 1993

**3**

ORANGETOWN POLICE DEPARTMENT PERSONNEL

<b>Lieutenants</b>	4
<b>Detective Lieutenant</b>	1
<b>Sergeants</b>	11
<b>Detective Sergeant</b>	1
<b>Detectives</b>	8
<b>Patrolmen</b>	58
<b>Bargaining Unit Total</b>	83

ef 3/5/12

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**PBA EXHIBIT 4**

Rockland County Contracts

**Clarkstown:**

- A. Douglas IA Award 2009-2010
- B. Contract 2005-2008

**T/Haverstraw:**

- C. Shapiro IA Award 2009-2010
- D. Patack IA Award 2007-2008
- E. Prosper IA Award 2005-2006
- F. Edelman IA Award 2003-2004
- G. Contract 2000-2002

**Piermont**

- H. Contract 2008-2012

**Ramapo**

- I. Contract 2011-2014

**S.Nyack**

- J. Contract 2011-2014

**Spring Valley**

- K. MOA 2009-2012
- L. Scheinman IA award 2006-2008
- M. Contract 2002-2006

**Stony Point**

- N. MOA 2008-2010
- O. Contract 2006-2007

**Suffern**

- P. MOA 2008-2012
- Q. Contract 2004-2008

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ROCKLAND COUNTY POLICE ACT

AS AMENDED FOR TOWN POLICE DEPARTMENT

CHAPTER 526

AN ACT providing for the establishment, organization and operation of police departments in town of the first class in Rockland county.

Became a law May 11, 1936, with the approval of the Governor.  
Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

**Section 1. Establishment, organization and operation of police departments in towns of the first class in the County of Rockland.** Notwithstanding any other provisions of law, the establishment, organization and operation and all matters concerning police or police departments in all towns of the first class in the County of Rockland shall be governed by the provisions of this act. The employment of such policemen and special policemen shall continue to be in accordance with the rules of the state civil service commission as heretofore extended to the employment of policemen in such towns of Rockland County.

**Section 2. A. Establishment of town police departments.** The town board of any town of the first class in Rockland County which now has a police force or police department, or employs police officers or policemen or which hereafter employs such policemen or police officers, shall establish a police department and appoint a chief of police, and such captains, lieutenants, sergeants and patrolmen as may be needed and fix their compensation, except that it shall not be mandatory for a town which employs special policemen only for temporary periods of time in accordance with this act to establish a police department. The compensation of such policemen shall be a town charge, except that the town board of such town may enter into an agreement with any village within it or partially within it which maintains a police department of four or more policemen on an annual full-time basis, established and maintained under the rules of civil service, and determine therein what part of the cost thereof shall be assessed against the property in the village and what part thereof shall be assessed against the property in the town outside of the village. Thereafter such portion of the cost thereof determined to be assessed outside of the village shall be a charge against that part of the town outside of any such village and assessed, levied and collected from the taxable property of that part of the town outside of the village. The town board may, at its option, determine that the town shall pay all or part of the cost of the uniforms and necessary equipment of its policemen. When appointed, such policemen shall be peace officers and shall have all the powers and be subject to all the duties and liabilities of a constable of such town in all criminal actions and proceedings and special proceedings of a criminal nature.

Town policemen who were serving as such in all towns of the first class in the County of Rockland on May sixteenth, nineteen hundred thirty-five or who have been appointed to permanent positions pursuant to law since such date, and who are lawfully entitled to continue in such positions at the time this act takes effect, shall continue to be members of the town police department without further civil service examination regardless of their age and shall retain their present lawful rank. All appointments made hereafter to any such police department shall be made in accordance with the provisions of section three of this act.

B. The town board of a town in which such a police department has been established at any time by resolution may establish a board of police commissioners for such town and appoint one or three police commissioners who shall at the time of their appointment and throughout their term of office be owners of record of real property in and electors of such town, and who shall serve without compensation, and at the pleasure of the town board. If the town board shall appoint only one such police commissioner, it shall in addition designate two members of the town board to serve as members of such police commission. When either of such boards of police commissioners shall have been established, such board of police commissioners shall have and exercise all the powers relative to police matters conferred upon the town board pursuant to this article. The town board may by resolution at any time abolish such police commission and thereupon the town board only shall exercise the powers conferred upon it by this article.

**Section 3. Qualifications.** No person shall be eligible to appointment or reappointment to such police department, nor continue as a member thereof, who shall not be a citizen of the United States, who has been convicted of a felony, who shall be unable to read and write understandingly the English language or who shall not have resided within the State of New York one year and in any town or village in Rockland County for six months next preceding his appointment. No person shall be appointed a member of such police force who is over the age of thirty-five years; provided, however, that a person who is serving as a town policeman who is over the age of thirty-five years and who possesses the above qualifications shall be eligible for appointment in such department, at the time of its organization only. No person shall be appointed a member of such police force unless he shall have passed an examination, held by the state civil service department, and unless at the time of his appointment his name shall be on the eligible list of the state civil service department.

**Section 4. Promotion.** Promotion of officers and members of such police department shall be made, and all vacancies above the grade of patrolmen filled whenever possible by promotion from among persons holding position in a lower grade in the department in which the vacancy exists, by the town board on the basis of seniority, meritorious police service and superior capacity as shown by competitive examination, such examination to be conducted by the state civil service department. Individual acts of personal bravery may be treated as an element of meritorious service in such examination. The town board shall keep a complete service record of each member of such police department in accordance with the rules and regulations of the state civil service department and shall transmit the record of each candidate for promotion to the state civil service department in advance of such examination. Notwithstanding any other special or general laws to the contrary, such promotion examination shall be competitive examinations held by the state civil service commission regardless of the number of candidates eligible for such promotion, and if the number of candidates is restricted to

less than four by the action of the town board, and if the names of one or more candidates are certified as having passed such examination, such name or names shall constitute an eligible list under the civil service law. In no case shall the requirements for service for the respective offices be for longer periods than the following periods of time: for the office of chief, one year as captain or two years as lieutenant or three years as sergeant or ten years as patrolman; for the office of captain, one year as lieutenant or two years as sergeant or seven years as patrolman; for the office of lieutenant, one year as sergeant or five years as patrolman; for the office of sergeant, three years as patrolman. No person shall be eligible to take such promotion examination unless he is serving as a policeman on the police force of a town or village in Rockland County. (as amended 1941, 1963)

**Section 5. Transfers.** Transfers from one town police department to another town or village police department in the county may be made upon the mutual consent of the appointing officers of the departments affected. Any member of such police force who is or has been transferred shall receive credit with the town department to which he is transferred for time served on the police force or in the department of any village or town within the county, as though the full time had been served with the department to which he has been transferred, for purposes of seniority, promotion, pensions and general administration.

**Section 6. Administration.** The town board may make, adopt and enforce rules, order and regulations for the government, discipline, administration and disposition of the police department and of the members thereof. Such rules and regulations and all amendments thereto shall be in writing and shall be posted in a conspicuous place in the police headquarters. Each member of the department shall receive a copy thereof and of all amendments thereto.

**Section 7. Discipline and charges.** Except as otherwise provided by law, a member of such police department shall continue in office unless suspended or dismissed in the manner hereinafter provided. The town board shall have the power and authority to adopt and make rules and regulations for the examination, hearing investigation and determination of charges, made or preferred against any member or members of such police department. Except as otherwise provided by law, no member or members of such police department shall be fined, reprimanded, removed or dismissed until written charges shall have been examined, heard and investigated in such manner or by such procedure, practice, examination and investigation as the board, by rules and regulations from time to time, may prescribe. Such charges shall not be brought more than sixty days after the time when the facts upon which such charges are based are known to the town board. Any member of such police department at the time of the hearing or trial of such charges shall have the right to a public hearing and trial and to be represented by counsel; no person who shall have preferred such charges or any part of the same shall sit as judge upon such hearing or trial. Witnesses upon the trial of such charges shall testify thereto under oath. No member of such department who shall have been dismissed shall be reinstated unless he shall, within twelve months of his dismissal, file with such board a written application for a rehearing of the charges upon which he was dismissed. Such board shall have the power to rehear such charges and, in its discretion, may reinstate a member of the force after he has filed such written application therefor.

Any member of such department found guilty upon charges, after five days' notice and an opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or of an act of delinquency seriously affecting his general character or fitness for office, may be punished by the town board having jurisdiction, by reprimand, by forfeiture and withholding of salary or compensation for a specified time not exceeding twenty days, by extra tours or hours of duty during a specified period not exceeding twenty days, by suspension from duty for a specified time not exceeding twenty days and the withholding of salary or compensation during such suspension or by dismissal from the department. Such boards shall have the power to suspend, without pay, pending the trial of charges, any member of such police department. If any member of such police department so suspended shall not be convicted of the charges so preferred, he shall be entitled to full pay from the date of suspension. The conviction of member of such police department by the town board shall be subject to review by certiorari to the supreme court in the judicial district in which such town is located, provided that application therefor be made within thirty days from the determination of such conviction by the town board.

**Section 8. Effect of resignation.** Any member of such department who shall resign shall not be reinstated by such board unless he shall make written application, within twelve months of his resignation, for reappointment as a member of such department.

**Section 9. Absentee leave.** Every member of such police department shall be entitled, in addition to any vacation or absentee leave now prescribed by law, to one day of rest in seven. The chief or acting chief of the police department shall keep a time book showing the name and shield number of each member of the department and the hours worked by each of such policemen in each day. The town board may make a variation from the above prescribed hours of vacation, provided the member shall receive during each year the actual number of days absentee leave to which he is entitled. The town board, at its option, may, in addition to the days of rest hereinbefore provided, grant an annual vacation with pay. Whenever the town board shall designate any policeman to attend police school, such attendance shall be deemed in the course of duty and when so attending he shall receive his usual pay and reimbursement for actual and necessary expenses. Sick leave with full pay may be granted whenever such sickness or disability has been incurred without the delinquency of the policeman.

**Section 10. Special policemen.** The town board of any such town, whether there be a police department in and for such town or not, may employ temporary police officers from time to time as the town board may determine their services necessary. Such police officers shall be known as "special policemen" and shall have all the power and authority conferred upon constables by the general laws of the state and such additional powers, not inconsistent with law, as shall be conferred upon them by the town board. They shall be subject to the general authority and direction of the town board and to such orders and regulations as the town board may prescribe, not inconsistent with law. Such special policemen shall serve at the pleasure of the town board and the town board shall fix their compensation and may purchase uniforms and equipment therefor but no such special policemen shall be appointed nor any expense incurred by reason thereof unless said town board shall have provided therefor in its annual budget, previously adopted, and no expenditure shall be made in excess of the budget appropriation therefor. Such special police shall not be eligible to appointment unless they shall have passed

an examination held by the state civil service commission, and unless their names shall be on the eligible list of the said commission at the time of their appointment, and unless such special policemen possess the qualifications set forth in section three of this act.

**Section 11. Vacations.** Every member of such police department shall be allowed an annual vacation of not less than fourteen consecutive days without diminution of salary or compensation as fixed by or pursuant to law, except in case of public emergency. In the event of a public emergency during which the vacation or portion of a vacation of a member shall have been withheld upon the cessation of such emergency, such member shall then receive with pay the number of days of such vacation withheld.

**Section 12. Grades of policemen.** The annual salary and compensation of the members of such police department shall be uniform in accordance with their rank and grade except as provided by section thirteen of this chapter and a copy of such salary scale and any changes made therein shall be filed with the state civil service commission. All patrolmen who shall have served four years or upwards on such police force shall be patrolmen of the first grade. All patrolmen who shall have served for less than four years and more than three years shall be patrolmen of the second grade. All patrolmen who shall have served for less than three years and more than two years shall be patrolmen of the third grade. All patrolmen who shall have served for less than two years and more than one year shall be patrolmen of the fourth grade. All patrolmen who shall have served for less than one year shall be patrolmen of the fifth grade. Whenever any patrolmen of the fifth grade shall have served therein for one year, he shall be advanced to the fourth grade and whenever any patrolman of the fourth grade shall have served therein for one year, he shall be advanced to the third grade and whenever any patrolman of the third grade shall have served therein for one year, he shall be advanced to the second grade and whenever any patrolman of the second grade shall have served therein for one year, he shall be advanced to the first grade. (as amended 1946)

**Section 13. Detective service.** The chief of police after consent and approval of the town board and board of police commissioners, if any, may from time to time, detail to detective duty as many members of the force as he may deem necessary to make the service efficient and he may at any time revoke such detail. Any policeman who may be so assigned by the chief of police to detective duty may be paid a salary in excess of that paid a member of his rank and grade. Any policeman detailed to detective duty, while so detailed, shall retain his rank and shall be eligible for promotion, the same as if serving in the uniformed force and the time during which he serves in detective duty shall be counted for all purposes as if served in his rank or grade in the uniformed force. (added 1946)

**Section 14. Reservation.** Nothing in this chapter contained shall deprive any person or persons of any of the benefits of any other provisions of law unless the same shall be inconsistent with the provisions of this chapter, and no other provision of law which may be inconsistent shall prevent the operation of the provisions of this chapter. (added 1946)

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ROCKLAND COUNTY POLICE ACT

VILLAGE POLICE DEPARTMENTS

AS AMENDED

CHAPTER 524

AN ACT providing for the employment of village policeman and the establishment, organization and operation of police departments in the village of Rockland County.

Became a law May 11, 1936, with the approval of the Governor, Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

**Section 1. Employment of village policemen and establishment, organization and operation of police departments in the villages of Rockland County. Applicability of laws.**

Notwithstanding any other provisions of law, the employment of village policemen and the establishment, organization and operation and all matters concerning police or police departments in all villages in the County of Rockland shall be governed by the provisions of this act. The employment of such policemen shall continue to be in accordance with the rules of the state civil service commission as heretofore extended to the employment of policemen who were serving as such in all villages of the first, second and third class in the County of Rockland on May sixteenth, nineteen hundred thirty-five or who have been appointed to permanent positions pursuant to law since such date, and who are lawfully entitled to continue in such positions at the time this act takes effect, shall continue to be members of the village police department without further civil service examination regardless of their age, and shall retain their present lawful rank. All appointments made hereafter to any such police department shall be made in accordance with the provisions of section four of this act.

Village policemen who were serving as such in all villages of the fourth class in the County of Rockland on May sixteenth, nineteen hundred thirty-five or who were appointed to such provisions pursuant to law since such date, and who are lawfully entitled to continue to such positions at the time this act takes effect, shall continue to be members of the village police department without further civil service examination regardless of their age, and shall retain their present lawful rank. All appointments made hereafter to any such police department shall be made in accordance with the provisions of section two of this act.

**Section 2. Village policemen.** The mayor, each trustee, street commissioner and the superintendent of public works are ex-officio members of the police department, and have all the powers conferred upon policemen by this article. In any village of the fourth class in said County, the board of trustees, or if a municipal board now acts as police commissioners, such may appoint and fix the terms not extended beyond the current official year, of one or more

village policemen, one of whom may be designated as chief of police. No person shall be eligible to appointment or reappointment on such police force, or continue as a member thereof, who shall not be a citizen of the United States, who has been or shall have been convicted of a felony, who shall be unable to read and write understandingly the English language, or who shall not have resided within the State of New York one year, and within any village or town in Rockland County six months next preceding his appointment. No person shall be appointed a member of such police force unless he shall have passed an examination held by the state civil service commission, unless at the time of his appointment his name shall be on the eligible list of the state civil service commission. No person shall be eligible for appointment on such village police force who is over the age of thirty-five years, unless he shall have been previously appointed a member of a village or town police force in Rockland County.

**Section 3. Police departments.** The board of trustees or municipal board acting as police commissioners of each village of the first, second and third class shall, and of any other village may, instead of appointing policemen for fixed terms, by resolution, establish a police department in such village and appoint a chief of police, and such lieutenants of police, sergeants of police, and patrolmen as may be needed, and fix the compensation. The board of trustees may, at their option determine that the village shall pay all or part of the cost of the uniforms and other necessary equipment of its policemen, and the expense of same, if any, shall be deemed part of the cost of maintenance of the village police department. The board of trustees may submit to the qualified voters of the village at a general or special election a proposition to abolish a police department established pursuant to this section and upon the adoption thereof by a majority of the qualified voters of the village voting upon the proposition, the department shall be deemed abolished. (Amended by laws of 1941 Ch. 431)

**Section 4. Qualifications.** No person shall be eligible to appointment or reappointment on such police force of a village or continue as a member thereof, who shall not be a citizen of the United States, who has been or shall have been convicted of a felony, who shall be unable to read and write understandingly the English language or who shall not have resided within the State of New York one year, and within any village or town in Rockland County six months next preceding his appointment. No person shall be appointed a member of such police force who is over the age of thirty-five years. In the case of a village establishing a police department by resolution, village policemen who are over the age of thirty-five years and who are at that time serving as policemen in the village establishing the department shall be eligible for appointment as members of such village police department only. No person shall be appointed a member of such police forces unless he shall have passed an examination held by the state civil service commission, and unless at the time of his appointment his name shall be on the eligible list of the state civil service commission.

**Section 5. Promotions.** Promotions of officers and members of such police forces shall be made, and all vacancies above the grade of patrolmen filled whenever possible by promotion from among persons holding positions in a lower grade in the department in which the vacancy exists, by the board of trustees or municipal board on the basis of seniority, meritorious police service and superior capacity, as shown by competitive examination, such examination to be conducted by the state civil service commission. Individual acts of personal bravery may be treated as an element of meritorious service in such examination by the commission or board

holding the examination. The board of trustees or municipal board shall keep a complete service record of each member of such police force in accordance with the rules and regulations of the state civil service commission and shall transmit the record of each candidate for promotion to the state civil service commission in advance of such examination. (Amended By Laws of 1941 Ch.429)

**Section 6. Transfers.** Transfers from one village police department to another village or town police department in Rockland County may be made upon the mutual consent of the appointing officers of the departments affected. Any member of such police force who has been or who shall hereafter be so transferred shall receive credit with the village department to which he is transferred for time served on the police force of any village or town within Rockland County, as though the full time was served with the department to which he has been transferred, for the purposes of seniority, promotions, pensions and general administration.

**Section 7. Administration.** The board of trustees or municipal board acting as police commissioners of any such village, may make, adopt and enforce rules, orders and regulations for the government, discipline, administration and disposition of the police department of such village, and the members thereof. Any such rules and regulations or any amendment thereto shall be in written form and a copy of the same distributed to each member of the police department and posted in a conspicuous place in the police headquarters.

**Section 8. Discipline and charges.** Except as otherwise provided by law, a member of such police force shall continue in office unless suspended or dismissed. The board of trustees or municipal board shall have power and is authorized to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred, against any member or members of such police force. Except as otherwise provided, no member or members of such police force shall be fined, reprimanded, suspended, removed or dismissed until written charges shall have been examined, heard and investigated in such manner or procedure, practice, examination and investigation as such board may by rules and regulations from time to time prescribe. Such charges shall not be brought more than sixty days after the time when the facts upon which such charges are based are known to the board of trustees or municipal board. Any member of such police force at the time of the hearing or trial of such charges shall have the right to a public hearing and trial and to be represented by counsel at any such hearing or trial, and any person who shall have preferred such charges or any part of the same shall not sit as judge upon such hearing or trial. Any and all witnesses produced in support of all or any part of such charges shall testify thereto under oath. Any member of such force who shall have been so dismissed shall not be reinstated as a member of such force unless he shall within twelve months of his dismissal file with such board a written application for a rehearing of the charges upon which he was dismissed. Such board shall have the power to rehear such charges and, in its discretion, reinstate a member of the force after he has filed such written application therefor. Any member of such force found guilty upon charges, after five days' notice and an opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or violation of rule and regulations, or disobedience, or incompetency to perform official duty, or an act of delinquency seriously affecting his general character or fitness for office, may be punished by the board of trustees or other municipal board having jurisdiction, by reprimand, forfeiture and the withholding of salary or compensation for a specified time not

exceeding twenty days and the withholding of salary or compensation during such suspension, or by dismissal from the department. Such board shall have the power to suspend, without pay, pending the trial of charges, any member of such police force. If any member of such police force so suspended shall not be convicted by such board of the charges so preferred, he shall be entitled to full pay from the date of suspension, notwithstanding such charges and suspension.

**Section 9. Certiorari.** The conviction of any member of such police force shall be subject to review by certiorari to the supreme court in the judicial district in which such village is located, provided a verified petition for such a review setting forth that said conviction is illegal and specifying the grounds of illegality, be presented to the court within sixty days after the conviction.

**Section 10. REPEALED BY LAWS OF 1951, CHAPTER 825**

**Section 11. Absentee leave.** Every member of such police department shall be entitled, in addition to any vacation or absentee leave now prescribed by law, to one day of rest in seven, and the chief or acting chief of the police department shall keep a time book showing the name and shield number of each member of the department and the hours worked by each of such policemen in each day. In case of a public emergency the board of trustees may make a variation from the above hours of vacation, provided the member shall receive during each year the actual number of days' absentee leave to which he is entitled. The determination of the board as to the number of days' leave to which a member is entitled during any given period shall be subject to review by certiorari. Whenever the board of trustees or municipality shall designate any policemen to attend police school, such attendance shall be deemed in the cause of duty and when so attending he shall receive his usual pay and reimbursement for actual and necessary expenses. Sick leave with full pay may be granted whenever such sickness or disability has been incurred without the delinquency of the policeman. (Amended By Laws of 1941 Ch. 430)

**Section 12. Vacations.** Every member of such police departments shall be allowed an annual vacation of not less than fourteen consecutive days without diminution of salary or compensation as fixed by or pursuant to law, except in case of public emergency. In the event of a public emergency during which the vacation or portion of a vacation of a member shall have been withheld, upon the cessation of such emergency, such member shall then receive with pay the number of days such vacation withheld.

**Section 13. Powers and duties of policemen.** The policemen so appointed shall have all the powers and be subject to the duties and liabilities of constables of towns in serving process in any civil action or proceeding. Said policemen shall have power to execute any warrant or process issued by justices of the peace of Rockland County.

**Section 14. Fees, salaries and expenses of policemen.** The board of trustees shall fix the amount of the salary of each village police officer. All fees collected or received by such officer belong to the village and he must account therefor to the village, except those fees received for the execution of all process, civil or criminal, outside of the corporate limits of the said village, and for the execution of all civil process within the village while not on duty as a police officer. A village policeman shall not receive any present or reward for his service other

## CHAPTER 825

AN ACT to repeal section ten of chapter five hundred twenty-four of the laws of nineteen hundred thirty-six, entitled "An act providing for the employment of village policemen and the establishment, organization and operation of police departments in the villages of Rockland County," relating to the reinstatement of patrolmen after resignation

Became a law April 13, 1951, with the approval of the Governor. Passed, on two village messages, pursuant to article IX, section 16 of the Constitution, by two-thirds vote

**The People of the State of New York, represented in Senate and Assembly, to enact as follows:**

**Section 1.** Section ten of chapter five hundred twenty-four of the laws of nineteen hundred thirty-six, entitled "An act providing for the employment of village policemen and the establishment, organization, and operation of police departments in the villages of Rockland County," is hereby repealed.

**Section 2.** This act shall take effect immediately.

**7**

U-8  
Joe B

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

In the Matter of the Arbitration  
between  
THE TOWN OF ORANGETOWN,  
Public Employer,  
-and-  
TOWN OF ORANGETOWN POLICEMEN'S  
BENEVOLENT ASSOCIATION,  
Employee Organization.  
PERB Case No. IA98-030; M98-009

OPINION  
AND  
AWARD

BEFORE: Jeffrey M. Selchick, Esq.  
Public Panel Member and Chairman  
  
Ronald A. Longo, Esq.  
Public Employer Panel Member  
  
Richard P. Bunyan, Esq.  
Employee Organization Panel Member

APPEARANCES:

For Town of Orangetown:

Keane & Beane, P.C.  
Stephanie M. Orefice, Esq., of Counsel

For Town of Orangetown Policemen's Benevolent Association:

Bunyan & Baumgartner, LLP  
Joseph P. Baumgartner, Esq., of Counsel

'98-99

BACKGROUND

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

The Town of Orangetown is located in the southeastern portion of Rockland County, approximately 20 miles north of New York City and encompasses about 25 square miles. It includes the incorporated villages of Grandview, Nyack, Piermont and South Nyack. The Town has a population of approximately 48,500 and the Town is primarily residential in character, consisting mostly of single family, two family and apartment houses. There is some commercial development which includes International Business Machines, a Hilton International Hotel and Conference Center, and the facilities of Lederle Laboratories, a pharmaceutical maker and the Town's largest employer.

The PBA is the certified bargaining agent for all Police Officers, Sergeants, Lieutenants and Detectives employed by the Town, exclusive of the Chief of Police, the Captain and one Administrative Lieutenant. There are approximately 100 sworn Department members in the bargaining unit.

The last collective bargaining agreement between the parties covered the period which commenced January 1, 1995 and ended December 31, 1997 ("Agreement"; Joint Exhibit 5). Prior to the expiration of the 1995-97 Agreement, the parties began negotiations for a successor contract, but such negotiations were unsuccessful, and thereafter, the parties reached impasse. Subsequent mediation by a PERB Mediator was unsuccessful, and on November 16, 1998, the PBA filed a Petition for Interest Arbitration, pursuant to Section 209.4 of the Civil Service Law (see Petition, Joint Exhibit 1). Said Petition included the PBA proposals to be submitted to interest arbitration.

The Town filed a Response to said Petition on December 7, 1998 (see Response, Joint Exhibit 2), which Response included the Town's proposals to be submitted to interest arbitration.

On January 21, 1999, the Public Employment Relations Board, acting pursuant to Section 209.4 of the NYS Civil Service Law, designated a Public Arbitration Panel (Joint Exhibit 3), which included the undersigned Chairman. Thereafter, by Amended Designation dated April 9, 1999, the undersigned Panel was designated (Joint Exhibit 4).

Hearings were conducted before the undersigned Panel at Town Hall in Orangetown on April 13 and 27, 1999. At all hearings, both parties were represented by Counsel and by other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented argument on their respective positions. After the hearing process was completed, both parties submitted additional exhibits and post-hearing briefs to the Panel.

Thereafter, the undersigned Panel met and engaged in discussions in several Executive Sessions, and reviewed all data, evidence, argument and issues. After significant discussion and deliberations at the Executive Sessions, this Panel reached overall agreement on this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing briefs, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

Set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' contract for the period January 1, 1998 through December 31, 1999.

In arriving at such determination, the Panel has considered the following factors, as specified in Section 209.4 of the Civil Service Law:

a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b) the interests and welfare of the public and the financial ability of the public employer to pay;

c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;

d) the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

### COMPARABILITY

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

The Orangetown Police Department is located in Rockland County, and is about 20-25 miles from mid-town Manhattan. Orangetown is considered a suburb and is within the New York City metropolitan area. Together with Westchester, Nassau and Suffolk counties, Rockland is viewed by PERB as part of the "downstate" area for comparison purposes.

Rockland County has five (5) Town police departments: Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point. There are also five (5) full time Village police departments: Haverstraw Village, Piermont, Spring Valley, Suffern and South Nyack-Grandview.

Geographically, Orangetown is adjoined on the west by the Town of Ramapo and on the north by the Town of Clarkstown. These three Towns have police departments which are among the largest Town police forces in New York State. All three departments have a

departments of approximately 100 sworn members while Clarkstown is larger with approximately 160 sworn members.

The PBA has argued that the most appropriate comparables for Orangetown are Clarkstown and Ramapo and have offered their recent collective bargaining agreements into evidence in this interest arbitration (Union Exhibits 9 and 11). The PBA has also offered, for additional comparison purposes, the current collective bargaining agreements for the other Town and Village police departments in Rockland County. All have similar grades of police officers since all Rockland County police departments are subject to the Rockland County Police Acts, as amended (Joint Exhibits 6A and 6B). The Rockland County Police Act, as applicable to Town and Village police departments within the County, sets forth the length of time required for each grade as well as other provisions applicable to Rockland County police. The PBA also notes that Rockland County implemented a County-wide 911 system in 1993 which provides a further linkage of all of Rockland County's police departments.

The Town argues that the proper comparables should not be limited to Clarkstown and Ramapo and for that matter should not be limited to Rockland County. The Town maintains that in addition to Rockland County police departments, and the Rockland County Sheriff's Department, the Panel should also consider selected comparable towns and villages in the area.

communities are comparable in terms of financial position and overall economic conditions. Many residents of Orangetown commute to work in Westchester County and parts of New York City. Further, along with Rockland County, PERB has designated Westchester County as part of the "downstate" area for comparison purposes. The Town has submitted the current collective bargaining agreements of the Rockland County Sheriff's Department (Town Exhibit 10) and the other cited Westchester County communities (Town Exhibits 11, 12, 13 and 14) for consideration by the Panel.

#### Panel Determination

The Panel finds that the natural comparison to be made with the Clarkstown and Ramapo police departments has been a matter of long standing tradition in Orangetown police negotiations. In the Interest Arbitration Award for the term which commenced January 1, 1993 and continued through December 31, 1994 [see Joint Exhibit 9: *Town of Orangetown and Orangetown Policemen's Benevolent Association*, IA92-053, Interest Arbitration Award, 7/22/94; Ellenburg, Panel Chair] the Panel noted that the parties acknowledged that they traditionally compared Orangetown to Clarkstown and Ramapo. The Panel then found that:

"...the most meaningful comparisons, based on the evidence and exhibits, would appear to continue to be with the Clarkstown and Ramapo Police. For at least the last decade, these communities have paid their police personnel at a generally

The appropriate comparison of Orangetown with Clarkstown and Ramapo was accepted by the Interest Arbitration Panel for the term which commenced January 1, 1991 and continued through December 31, 1992 [see Joint Exhibit 8: *Town of Orangetown and Orangetown Policemen's Benevolent Association*, IA91-001, Interest Arbitration Award, 12/24/91; Shapiro, Panel Chair] and was also accepted by the Interest Arbitration Panel for the term which commenced January 1, 1987 and continued through December 31, 1988 [see Joint Exhibit 7: *Town of Orangetown and Orangetown Policemen's Benevolent Association*, IA87-010, Interest Arbitration Award, 8/15/88; Simmelkjaer, Panel Chair].

Accordingly, based on the long standing history which exists, and the similarities which are numerous, the Panel finds that the most appropriate comparables for Orangetown is in fact the towns of Clarkstown and Ramapo. That historical tradition shall remain undisturbed by this Panel's determination herein.

**ABILITY TO PAY**

PBA Position

The PBA maintains that the Town clearly has the financial ability to pay for fair and equitable increases, which it has requested in the nature of a 9% salary increase for each of the two (2) years to be covered by this Interest Arbitration Award. The PBA contends that the evidence presented at the arbitration clearly establishes that the Town is in excellent financial health and in fact has attained a Aaa bond rating from Moodys (see Joint Exhibit 11).

The PBA asserts that the Town itself has recognized that it enjoys an excellent financial situation, and in the Town's Comprehensive Annual Financial Report for the fiscal year ended December 31, 1997, it indicated that:

"Overall, fiscal year 1997 was an extremely successful year. Revenues for the General, Special Revenue and Debt Service funds exceeded budget estimates by \$1.854 million (\$800,000 of that from an insurance settlement). Effective budget controls and spending resulted in General Fund operations exceeding anticipated results by \$1.1 million. This produced a year-end unreserved fund balance of \$1.58 million in the General Fund. The total unreserved fund balance at December 31, 1997 for all governmental fund types was approximately \$6.763 million (or 18% of the Town Budget), up from \$4.6 million at the end of 1996. The fund balance in the governmental funds allowed a 1998 property tax rate decrease of 1.9%." (Joint Exhibit 11 at p.vi of Town's Comprehensive Annual Financial Report)

The PBA argues that this clear ability to pay on the part of the Town is further supported by the testimony of Gregg R. Pavitt, the Director of Finance for the Town. Pavitt testified that the Town had budgeted for 2.5% for each of the two (2) years covered by this Interest Arbitration Award and had set aside \$680,000 in the budget to fund any costs for salary and other terms and conditions of employment provided by the Award. The PBA contends that the amount set aside in the budget is actually \$800,000 (see Town Exhibit 1, 1999 Town budget, p.71). As each 1% of salary increase costs the Town approximately \$86,000 it is clear that there is sufficient money already budgeted to fund the salary increases sought by the PBA.

#### Town Position

The Town first indicates that since the period of time to be covered by this Interest Arbitration Award is 1998 and 1999, the economic impact for any retroactive consideration must take into account the fact that 1998 salary increases, as a result of a compounding effect, will impact salaries in 1999 as well as 1998, and thus will further increase the cost to the Town of such retroactive salary increases. This compounding effect greatly increases the cost to the Town of the 1998 salary increases which may be provided by this Award.

The Town maintains that it has budgeted \$680,000 in the 1999 Budget to pay for any retroactive salary increases for police in 1998 and 1999. According to Director of Finance Pavitt, that would properly fund a 2.5% increase for the bargaining unit for each of the two (2) years covered by this Award. The \$800,000 figure suggested by the PBA is incorrect, and includes \$120,000 which is earmarked for Parks and Recreation for that portion of the Town outside the villages. This is the other department, besides the Police Department, which services that portion of the Town outside of the villages.

The Town asserts that it cannot use money budgeted into other funds to pay for salary increases for police. In addition to the budgeted amount of \$680,000 the Town has \$314,000 in the Police Fund which is unreserved. This is a reserve fund to deal with cash flow problems and other unanticipated emergencies. Historically, the Town has needed monies in this fund to pay the annual overage in overtime costs for the Police Department, which are high and continue to increase. In 1998, while the Town budgeted \$515,000 in overtime for police, the actual expenditure was \$867,902, which represents a significant difference of \$352,902. The Police Department continues to have increased overtime expenses, and the Town argues that if it spends the unreserved fund balance in the Police Fund on retroactive salary increases for police, it will of necessity have to borrow in order to meet increased expenditures.

The Town also indicates that since 1994, the Town's percentage tax increase has totaled 19.3% while the consumer price index for the same period has increased only 11.2% (Town Exhibit 4). In 1999, the Town increased taxes by 6.1%, while the CPI has remained at about 2% for the past few years. The Town argues that it will continue to have an increased tax burden due to tax certiorari proceedings. Specifically, the Town stands to lose significant income due to a recent tax certiorari proceeding involving Lederle, a large commercial employer located within the Town. As the Lederle property represents 10% of the total tax base for the Town, it has a major impact upon the Town's ability to pay beyond the amount budgeted for police salary increases (see Town Exhibit 6).

Additionally, the Town expects to be negatively impacted by a certiorari proceeding involving the Blue Hill property, which it expects will result in a reduced assessment on the property of \$25 million for the years 1993-96. The repayment of back taxes due to the over assessment of this property will cost the Town \$164,819 annually for the years 1993 through 1996. The Town is further projecting a repayment obligation for 1997 and 1998 of an additional \$73,829 (see Town Exhibit 6). As a result of all tax certiorari proceedings, the Town is projecting a decrease in the tax rolls of \$1,392,648 for next year. Nor does the Town project any increase through new construction. New building permits issues

In summary, the Town maintains that it has a limited ability to pay, based on the fact that it must control tax increases to remain competitive with other communities in Rockland County and the surrounding area in attracting residents and business. Nor does the Town believe that the excessive wage increases sought by the PBA are warranted when compared with the salaries of other police in comparable communities, including Clarkstown and Ramapo. The Town further maintains that a total increase of 2.5% per year, inclusive of wages and benefits, is fair and is supported by the Town's limited ability to pay.

Panel Determination

In reaching the salary and other economic determinations herein, the Panel has considered the current state of the Town's economic situation, the economic situation of the surrounding Rockland County area, the overall rate of inflation, raises and salaries received by police in comparable jurisdictions within Rockland County (particularly Clarkstown and Ramapo), the population of the Town, the status of business within the Town, as well as revenues from State aid, sales tax and mortgage taxes.

The Panel has also reviewed the Town's budgets for 1998 and 1999 (Town Exhibit 1), as well as other financial data submitted by the Town (Town Exhibits 2, 3, 4 and 5). The Panel has also reviewed the Official Statement which

of \$2.04 million dollars of General Obligation Serial Bonds in July 1998 (Joint Exhibit 11).

The official statement for the General Obligation Serial Bond issuance in July 1998 is particularly relevant. That document indicates *inter alia* that: the Town's population increased by 3.9% since 1990; the median household income in 1990 was \$51,493 and per capital income was \$21,325, both well above the State income levels; the unemployment level is significantly below State levels; the bonds, with insurance, were rated Aaa, the highest Moody's rating; and that the Town enjoys an overall positive financial situation and is in excellent financial health.

Further, the Panel is aware that the Town has budgeted approximately 2.5% for each of the two years covered by this Award. With the additional benefit of having had such funds for the past two years, the Town has reaped some interest benefit by the delay in resolving the instant dispute. Such earned interest can also help offset the financial impact of this Award.

In terms of ability to pay, the Panel has carefully reviewed all of the financial documents presented herein, as well as the testimony of Town Director of Finance Pavitt, and concludes that there are ample funds within the Town budget to pay the salary increases and other economic items determined as appropriate by this Award.

Simply stated, it is the finding of this Panel that the Town has the ability to pay, as that term is used in the Taylor Law, the salary increases and other economic items awarded herein.

### **SALARY**

#### PBA Position

The paramount issue as articulated by the PBA is the award of an appropriate wage increase so that Orangetown police may maintain their relative position in comparison with police officers in the greater downstate area, and in particular, with police in Clarkstown and Ramapo. The PBA is seeking a 9% salary increase for each of the two years to be covered by this Award.

The PBA argues that for many years the Orangetown Police were the highest paid police in Rockland County, specifically in 1988-90 and later in 1991-92. Orangetown has fallen below Clarkstown and Ramapo in recent years, with Ramapo now being the highest paid department. According to the PBA, there is no justification for Orangetown Police to receive less pay than Clarkstown or Ramapo police. The PBA maintains that Orangetown Police should once again be the highest paid in Rockland County, particularly since the Town has the ability to pay such increases.

Town Position on Salary

The Town has offered the Orangetown police a 2.5% wage increase for each year of a 2 year contract. According to the Town, a 2.5% salary increase in 1998 and another in 1999 would continue to place Orangetown police at or near the top of all comparable jurisdictions, which must include more than just Clarkstown and Ramapo police. Such increases would maintain comparability with other Town employees as well. The average compensation for Town employees, calculated since 1987, shows that the police have been the highest paid Town employees, even when such compensation has been adjusted for inflation (Town Exhibit 2).

The Town further maintains that the police are not entitled to salary increases beyond what other comparable police departments have received in 1998 and 1999. No other police department has received a 9% salary increase in either year. Since 1992, Orangetown police have received annual salary increases in excess of the increase in the CPI; resulting in a real gain of 1.7% on average each year (see Town Exhibit 3).

The Town also indicates that tax increases for Town residents have averaged 4.6% over the same period (Town Exhibit 4) and Town residents should not have to shoulder an additional tax burden to provide Orangetown police with excessive salary increases. The Town maintains that based on existing taxes, it could not now raise taxes to fund police salary increases.

Panel Determination

In determining the appropriate salary increases for Orangetown police, the Panel has carefully reviewed salaries and other terms and conditions of employment for police officers working in other Towns and Villages within Rockland County. However, as previously stated *supra* in this Award, the Panel finds that the historical comparables of Clarkstown and Ramapo remain the most appropriate comparable jurisdictions under the statutory criteria.

At the expiration of the Orangetown police contract on 12/31/97, a First Grade Police Officer in Orangetown had a base salary of \$68,513, compared with \$68,588 for a First Grade Police officer in Clarkstown, and \$68,323 for a First Grade Police Officer in Ramapo.<sup>1</sup>

For 1998, Clarkstown police received a 3.5% general salary increase, bringing the salary of a First Grade Police Officer to \$70,989 effective 1/98 (see Union Exhibit 9). For 1998, Ramapo police received a 4% general salary increase, bringing the salary of a First Grade Police Officer to \$71,056 effective 1/98 (see Union Exhibit 11). However, it is important to note that Ramapo police made significant changes in health insurance coverage to help fund the 4% salary increase in 1998.

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<sup>1</sup> The parties agree that the proper comparison is among First Grade Police Officers, as all are governed by the Rockland

Further, a review of the salary increases provided in 1998 to other police in Towns and Villages within Rockland County indicates that they range from a low of 3% (Stony Point) to a high of 4% (Ramapo) and a split 4% (Piermont and South Nyack). (Union Exhibit 15).

Based on the overall package provided in this Award, further aspects which are detailed *infra*, the Panel finds that the appropriate salary increase for Orangetown police for 1998 is a 3.5% increase. This will bring the base salary of a First Grade Police Officer in Orangetown to \$70,911 effective 1/1/98. That places the Orangetown First Grade Police Officer almost equal to his/her counterpart in Clarkstown (at \$70,989) and only slightly behind the Ramapo First Grade Police Officer (at \$71,056). As to 1998, the Panel finds that a 3.5% increase for Orangetown police, effective 1/1/98 and fully retroactive to that date, is fair and appropriate, and is within the Town's ability to pay.

For 1999, Clarkstown police received a 3.5% general salary increase, bringing the salary of a First Grade Police Officer to \$73,474 effective 1/99 (see Union Exhibit 9). For 1999, Ramapo police received a 3.5% general salary increase, bringing the salary of a First Grade Police Officer to \$73,543 effective 1/99 (see Union Exhibit 11). There are insufficient agreements in the Towns and Villages of Rockland County for 1999 to make any further comparisons.

Again, based on the overall package provided in this Award, further aspects which are detailed *infra*, the Panel finds that the appropriate salary increase for Orangetown police for 1999 is a 3.5% increase. This will bring the base salary of a First Grade Police Officer in Orangetown to \$73,393 effective 1/1/99. That places the Orangetown First Grade Police Officer almost equal to his/her counterpart in Clarkstown (at \$73,474) and only slightly behind the Ramapo First Grade Police Officer (at \$73,543). As to 1999, the Panel finds that a 3.5% increase for Orangetown police, effective 1/1/99 and fully retroactive to that date, is fair and appropriate, and is within the Town's ability to pay.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following

AWARD ON SALARY

1. Effective 1/1/98, and fully retroactive to that date, salaries shall be increased by 3.5%.
2. Effective 1/1/99, and fully retroactive to that date, salaries shall be increased by 3.5%.

3. The 1998 and 1999 salary increases are specifically intended to be retroactive, with such retroactive payment to be made to eligible members of the unit in a lump sum payment check, to be issued within sixty (60) days of the date of this Award.

### **DETECTIVE DIFFERENTIALS**

#### Background

Under the expired 1995-97 collective bargaining agreement, Detectives and Youth Officers receive the cash equivalent of a 8.5% differential above First Grade Police Officer, in excess of rank. This provision results in a Detective and Youth Officer receiving an additional 8.5% over a First Grade Police Officer. A Detective Sergeant or Lieutenant only receives an additional 8.5% over a First Grade Police Officer.

This method of providing additional compensation to Detectives is different than that provided to Detectives in Clarkstown and Ramapo, which have been previously determined to be the appropriate comparables to Orangetown police. Clarkstown Detectives receive 10% more than the base salary of a First Grade Police Officer (see Union Exhibit 9) while Ramapo Detectives receive 14% above the base salary of a First Grade Police Officer (see Union Exhibit 11).

The PBA seeks an increase in the additional compensation provided to Detectives, Youth Officers, Detective Sergeants and

Panel Determination

Upon review, the Panel finds that an adjustment in the Detective differential is warranted, based on that being provided to Clarkstown and Ramapo detectives (also see Town Exhibit 25).

Accordingly, effective 1/1/99, Detectives and Youth Officers shall receive the cash equivalent of a 10% differential above the base salary of a First Grade Police Officer, and Detective Sergeants and Lieutenants shall receive the cash equivalent of a 10% differential above the base salary of their respective ranks.

AWARD ON DETECTIVE DIFFERENTIALS

1. Effective 1/1/99, and retroactive to that date, all unit members serving in the positions of Detectives and Youth Officers shall receive the cash equivalent of a 10% differential above the base salary of a First Grade Police Officer.

2. Effective 1/1/99, and retroactive to that date, all unit members serving in the positions of Detective Sergeant and Detective Lieutenant shall receive the cash equivalent of a 10% differential above the base salary of their respective ranks.

## TIME AND ATTENDANCE DISCIPLINARY ACTIONS

### Background

Article 15 of the expired 1995-97 collective bargaining agreement provides for a detailed disciplinary procedure. That procedure, which may result in the dismissal of a member of the unit, provides for notice of charges, a review process in order to discuss voluntary resolutions, and then, subject to the employee's election, either the procedure contained in Section 75 of the Civil Service Law or final and binding arbitration before an agreed upon panel of arbitrators.

Civil Service Law Section 75(4) provides that:

"Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges..."

While Article 15 incorporates the statutory Section 75 procedure into the contract,<sup>2</sup> the provision does not indicate the period of time for which an employee may be subject to disciplinary charges.

The Town indicates that in reviewing time and attendance records, it is difficult to detect a chronic pattern of problem absenteeism or tardiness in less than eighteen months. Accordingly, the Town desires to expressly adopt the eighteen month limitation on bringing charges against members charged with time

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<sup>2</sup> Subject to the...

and attendance abuse. In this manner, the Town asserts, it may more effectively control time and attendance violations and in turn, reduce the high overtime costs incurred annually to provide coverage upon the absence of scheduled officers.

Panel Determination

The Panel notes the high overtime costs incurred by the Town during the past several years in order to maintain required staffing. Overtime expenditures for the Police Department has gone from \$477,706 in 1993 to \$867,902 in 1998 (Town Exhibit 20). As Orangetown Police Chief Kevin Nulty testified, a large amount of the annual overtime cost can be attributed to high absenteeism.

A majority of the Panel is of the view that if the Town believes it can more efficiently control attendance abuse and thus reduce overtime costs by the adoption of an 18 month statute of limitations to charge officers with time and attendance abuse, it should be allowed to do so. Such 18 month statute of limitation is consistent with the provisions of Section 75 of the Civil Service Law and is expressly adopted into Article 15 for all charges brought against an officer relating to time and attendance.

AWARD ON TIME AND ATTENDANCE DISCIPLINE

1. Effective on the Date of this Award, Article 15 shall be amended to provide that charges relating to time and attendance

shall be brought within 18 months of the date of the alleged

## VACATION SCHEDULING

### Background

Currently, under the expired 1995-97 collective bargaining agreement, employees may earn up to 35 days of annual vacation dependent on the continuous years of service completed. An officer can now take single days off and is not required to schedule with sufficient time in advance the days when he/she desires to be off. The result is that the Department further incurs high overtime costs in providing necessary staffing and coverage.

The Town seeks to require that an employee's vacation schedule be set by January 1 of each year, to allow the Department to properly manage and schedule for proper staffing and coverage without the unnecessary use of overtime.

### Panel Determination

The Panel has previously noted the high overtime costs incurred by the Department to provide proper staffing and coverage. Clearly, the advance scheduling of all or part of an employee's use of annual vacation time would be helpful to the management of the Department in reducing overtime costs. Balanced against the desire for such managerial tool must be the inconvenience to the employee of having to elect when he/she will use all or any of his vacation days long in advance of such date. Circumstances relating to families and vacation do change, and it might be burdensome on

However, the Panel finds that it would not be overly burdensome on unit employees to schedule one-half (1/2) of all earned vacation days by a date certain of each year. Such advance scheduling would provide the Department with some ability to reduce overtime costs through advance shift scheduling while at the same time reserve to the unit member a fair number of vacation days to be utilized at the employee's choice and as circumstances require.

AWARD ON VACATION SCHEDULING

1. Effective on the date of this Award, all unit employees shall schedule one-half (1/2) of all vacation days to be utilized in the next calendar year, said scheduling to occur by December 31 of each year. The Department shall develop an appropriate procedure to accomplish such advance vacation scheduling.

## WORK SCHEDULE

### Background

Currently, Orangetown police work a schedule of 242 chart days per year. Subtracted from the 242 chart days are the 12 holidays and the 7 personal leave days provided to all members of the unit. The Orangetown schedule of 242 chart days is one (1) less day worked than either Clarkstown or Ramapo, which both work 243 chart days. In fact, all other Police Departments in Rockland County are scheduled to work 243 chart days per year (Town Exhibit 22).

This anomaly for Orangetown police is the result of a grievance arbitration Award issued on 2/12/99 by Arbitrator Randall Kelly (see *Orangetown Policemen's Benevolent Association and Town of Orangetown*, PERB Case No. A94-577, Award dated 2/12/99, Arb. Kelly). Without going into the substantive arguments, it can be simply said that in that Award, Arbitrator Kelly found that Patrol Officers were wrongly working more hours per year than Detectives, and ordered that all Patrol Officers receive one (1) Additional Day Off (ADO) for 1997 and forward therefrom.

The Town now seeks five (5) additional training days to be worked by all unit members without compensation, and bases such proposal on the fact that Orangetown police currently work less scheduled days than any other police department in Rockland County.

Panel Determination

The Panel has determined *supra* that the proper comparables for Orangetown police are the Clarkstown and Ramapo police. In doing so, the Panel has awarded the Orangetown police substantially the same salaries as those enjoyed by the Clarkstown and Ramapo police. It is logical to further provide that Orangetown police should work as much as their comparable counterparts, particularly if they enjoy substantially similar terms and conditions of employment. Without commenting on the appropriateness of the Kelly Award, a majority of the Panel is of the view that there is no rational basis to support the continuation of a 242 chart day schedule, when all other Rockland County police departments, including Clarkstown and Ramapo, work 243 chart days.

Accordingly, the Panel finds that the Additional Day Off awarded by Arbitrator Kelly in 1999 shall be restored to the work schedule effective on the Date of this Award. This shall result in a work schedule of 243 days for calendar year 1999 and continuing thereafter. Due to the date upon which this Award is being issued, it is clearly impractical to change work schedules for calendar year 1999, and therefore, the restoration of the ADO for calendar year 1999 shall be accomplished by the loss of one (1) day of either an ADO, compensatory day, personal leave day or vacation day by each member.

The intent of this change is to provide that all unit members are now on a 243 day work schedule, and shall be actually scheduled to work 243 chart days commencing calendar year 2000 and thereafter.

In order to minimize disruption to all parties, the ADO which must be restored for calendar year 1999 shall be satisfied by each unit member through the loss of an accrued ADO, compensatory day, personal leave day or vacation day. Each unit member shall notify the Chief or his designee no later than 11/1/99, on a form to be created by the Department, his/her election as to the specific leave to be utilized to satisfy the restoration of the ADO for 1999. In the event a unit member does not desire to satisfy the additional ADO for 1999 through loss of accrued time, he/she may elect to work an additional day during 1999 on any regular day off. Such election must be indicated on the aforesaid form.

#### AWARD ON WORK SCHEDULE

1. All unit members shall be scheduled to work 243 chart days during calendar year 1999 and thereafter. As more fully discussed *supra*, in order to satisfy the restoration of an ADO for calendar year 1999, each unit member may either lose one (1) day of ADO, compensatory time, personal leave time, or vacation time or may elect to work a regular day off before 12/31/99. Such election must be made in writing no later than 11/1/99.

## **LIFE INSURANCE**

### Background

Currently, under the expired 1995-97 collective bargaining agreement, Article 14.5 provides that the Town provides life insurance in the amount of \$110,000 for all unit members.

The PBA is seeking an increase in such life insurance provided without cost to Union members, in an amount of two (2) times an employee's annual base salary, with a minimum benefit of \$110,000.

### Panel Determination

The Panel notes that Clarkstown provides its police with life insurance in an amount equal to twice the annual salary of each member, plus a payment of \$14,000, without cost to the member (Union Exhibit 9). Ramapo provides its officers with three (3) times the annual salary of each member, with a maximum benefit of \$200,000 (see Union Exhibit 22). The families of Orangetown police are entitled to be protected and provided for in a comparable manner. In view of the continuing rising expenses inherent and attendant to the death of anyone, the Panel agrees that the life insurance provided by the Town should be increased as requested by the PBA. Recognizing that the Town must arrange for the increase in life insurance coverage with its insurance carrier, the Panel directs that such increased benefit apply within 30 days of the

AWARD ON LIFE INSURANCE

1. Effective within 30 days of the Date of this Award, the life insurance benefit provided by Article 14.5 shall be increased to two (2) times the employee's annual base salary, with a minimum benefit of \$110,000.

**VISION CARE**

Background

Currently, under the expired 1995-97 collective bargaining agreement, Article 14.6 provides for the reimbursement for the cost of eyeglasses or contact lenses subject to a maximum of \$120 per pair.

The PBA seeks an increase in such benefit to \$175 per pair and requests that the benefit be extended to the unit member's family.

Panel Determination

The Panel notes that there are a variety of benefits provided to Rockland County police regarding vision care (see Union Exhibit 23). Most relevant for purposes herein is Clarkstown, which reimburses unit members for the cost of eyeglasses or contact lenses up to a limit of \$150 per year. A majority of the Panel believes that a comparable increase should be made for Orangetown police.

AWARD ON VISION CARE

1. Effective within 30 days of the Date of this Award, the eyeglass and contact lense reimbursement benefit provided by Article 14.6 shall be increased to a maximum of one hundred fifty dollars (\$150.00) per pair.

**DISCIPLINE AND GRIEVANCE PROCEDURES**

Background

Currently, under the expired 1995-97 collective bargaining agreement, Article 15 provides for the Disciplinary Procedure and Article 16 provides for the Grievance Procedure. Article 15 currently provides for arbitration of disciplinary grievances before a panel of three (3) arbitrators previously agreed upon. Article 16 provides for a three (3) step grievance procedure, with the grievance being heard at Step 1 by the Captain of Police, at Step 2 by the Chief of Police and at Step 3 before an Arbitrator named through the PERB selection procedure.

The parties have significant experience with the existing procedure, and have discussed modifications in such procedures which will result in the more expeditious processing of grievances, and will provide a more thorough review of the grievance before arbitration. Further, the changes in the arbitration selection process should result in a less expensive and less time consuming arbitration step in both procedures.

Panel Determination

In an effort to create a more efficient and timely grievance procedure, the Panel agrees that modifications to Article 16 should be made. The three step grievance procedure shall be reduced to two steps to provide a more efficient process. Specifically, Step 1 of the Article 16 grievance procedure will now be heard by the Chief of Police or his designee. At Step 1, an informal hearing shall be held before the Chief of Police or his designee. The employee and/or the Union shall appear at this informal hearing and must present all relevant arguments and evidence, so that a full and thorough review of the grievance may occur. All other aspects of the Step 1 procedure shall continue unchanged.

The current Step 2 procedure shall be deleted, and the Step 3 procedure, providing for arbitration, shall now become Step 2 of the grievance procedure.

If appealed, the grievance shall be heard by an Arbitrator at Step 2 of the procedure, who shall be appointed from a three (3) person rotating panel. The Arbitrators shall be agreed upon by the parties within 30 days of the Date of this Award, and shall serve on said panel unless removed by the mutual agreement of the parties. Appointment of an Arbitrator to a specific grievance shall be by rotation, initially determined alphabetically by last name. However, the parties may mutually agree upon a specific Arbitrator to hear and decide a specific case.

Further, the three (3) person panel of Arbitrators, and the procedure of appointment to hear individual grievances as discussed supra, shall also apply to Step 2 of the Article 15 Disciplinary Procedure. That is, the same panel of Arbitrators shall be utilized to hear and decide disciplinary cases.

The parties shall draft and agree upon appropriate contract language to effectuate the above discussed changes in Article 15 and 16 of the expired 1995-97 collective bargaining agreement.

AWARD ON DISCIPLINE AND GRIEVANCE PROCEDURES

1. The above discussed changed to Article 15, Disciplinary Procedure, and Article 16, Grievance Procedure, shall be effective on the Date of this Award.

**RETENTION OF JURISDICTION**

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

**REMAINING ISSUES**

Discussion on Remaining Issues

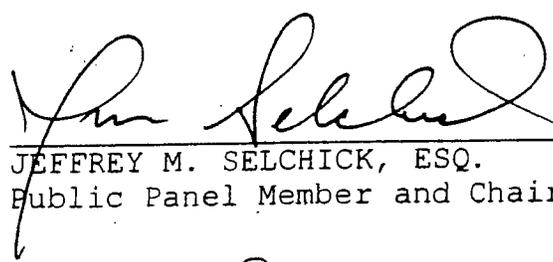
The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on many of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Any proposals and/or items other than those specifically modified by this Award are hereby rejected.

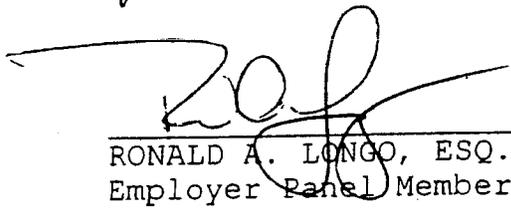
**DURATION OF AWARD**

This Interest Arbitration Award covers the period commencing 1/1/98 and continuing through 12/31/99, as provided by the Taylor Law in Section 209.4(c) (vi).

  
\_\_\_\_\_  
JEFFREY M. SELCHICK, ESQ.  
Public Panel Member and Chairman

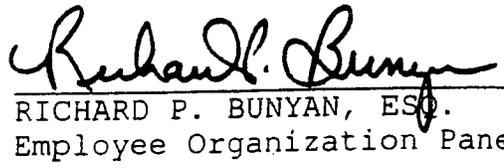
10/7/99  
Date  
of Award

(Concur)  
(Dissent)

  
\_\_\_\_\_  
RONALD A. LONGO, ESQ.  
Employer Panel Member

10/7/99  
Date

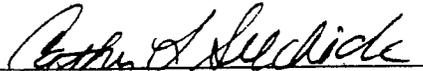
(Concur)  
(Dissent)

  
\_\_\_\_\_  
RICHARD P. BUNYAN, ESQ.  
Employee Organization Panel Member

10/7/99  
Date

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

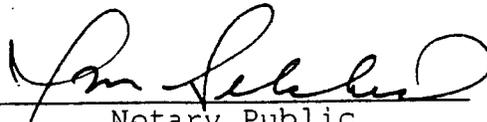
On this 7<sup>TH</sup> day of October, 1999, before me personally came and appeared Jeffrey M. Selchick, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

  
Notary Public

CATHY L. SELCHICK  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 4800518  
QUALIFIED IN ALBANY COUNTY  
COMMISSION EXPIRES NOVEMBER 30 1999

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

On this 7<sup>TH</sup> day of October, 1999, before me personally came and appeared Ronald A. Longo, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

  
Notary Public

JEFFREY M. SELCHICK  
Notary Public, State of New York  
Registration No. 4643951  
Qualified in Albany County  
Commission Expires March 30, 2001

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

On this 7<sup>TH</sup> day of October, 1999, before me personally came and appeared Richard P. Bunyan, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

  
Notary Public

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Relations Board, by letter dated May 17, 1994, designated Mr. Schloss as the Public Employer Panel Member. The Board's letter permitted Mr. Schloss to be substituted due to, "the fact that seven hearing days have already been held and the consequent gross waste of time and tax-payer money which would be caused by a re-hearing, the fact that Mr. Schloss is the only person now associated with the Town who was present all seven days of hearing and above all, because the Union respectfully consented to the designation of Mr. Schloss despite his having presented the Towns' case."

APPEARANCES (CONTINUED):

For the Association: Richard P. Bunyan, Esq.  
Attorney

Tim Sheridan  
President

Michelle Killian  
Legal Assistant

Having determined that a dispute continued to exist in the negotiations between the Town of Orangetown and the Orangetown Policemen's Benevolent Association, Inc. ("PBA"), and that such dispute was within the provisions of Civil Service Law Section 209.4, the New York State Public Employment Relations Board, under the authority vested in it by Section 209.4, designated this Panel of Arbitrators for the purpose of rendering a just and reasonable determination in this Matter.

The dispute submitted to this Panel is the culmination of the failure by the Parties to reach agreement in their negotiations for a new collective bargaining agreement as of January 1, 1993.

By mutual agreement of the Parties, seven hearings were held, commencing on August 10, 1993 and concluding on January 19, 1994, at the Town Hall, in Orangeburg, New York. Each Party, by its representatives, had full opportunity to present its position through witnesses, testimony, evidence, exhibits and argument and briefs, made in the presence of, and subject to cross-examination and rebuttal by, the opposing Party.

Both Parties waived their rights to a copy of a transcript of the hearings.

The Panel met in executive session on January 25, 1994; Paul Melone resigned from the Panel before an award was issued and, following the designation, on May 17, 1994 of Jack Schloss as his replacement, the Panel met, again, in executive session on May 26, 1994.

The Association submitted forty-four exhibits, in support of more than fifteen demands for revision of the collective bargaining agreement which expired December 31, 1992. Many of the proposals and exhibits had multiple sections and provisions.

Demands included provisions regarding salary increases, longevity pay, night shift differential, uniform allowance, vacations, holidays, paid time for Union business, sick leave, meal allow-

ance, computation of overtime, life insurance, reimbursement for eye glasses, tuition reimbursement, etc.

The Town submitted eighty-one exhibits and offered seventeen proposals concerning wage increases, longevity pay, vacation, personal, sick and bereavement leaves, contribution by new employees toward health insurance premiums, overtime scheduling, grievance procedure, disciplinary arbitration, drug testing, holidays, etc.

A review of the bargaining history between the Parties indicated that their Agreements for the periods 1985-86, 1987-88 and 1991-92 were all the products of Interest Arbitration. The exception was the 1989-90 Agreement which was the result of a negotiated settlement.

Now, once again the Parties did not reach agreement and this Panel has, for seven full-day sessions, listened to their proposals and argument, their testimony and cross-examination and scanned their exhibits. Clearly, with the number of issues and demands submitted, this Panel has the authority, by law, to rewrite virtually their entire labor agreement. To do so, however, at least in the opinion of this Panel Chairperson, would be to substitute interest arbitration for collective bargaining.

Accordingly, following study and review of the testimony and exhibits, and recognizing that the Parties will enter, shortly, their negotiations for the contract period commencing January 1995, this Award will address only those issues for which adjustment during the 1993-94 contract period is required in order to permit the Parties to enter negotiations under stabilized conditions.

**TERM OF AGREEMENT:**

The Parties have both stated that they have no objection to an award covering a two year period and, accordingly, the term of the collective bargaining agreement, under this Award, shall be for the period January 1, 1993 through December 31, 1994.

**SALARY:**

**POSITIONS AND ARGUMENT OF THE PARTIES:**

The Town proposed that the salary schedule for 1993 should be the same as in 1992. It argued that other unions in the Town and County had recently accepted contracts which provided for no salary increases for one year and which, in addition, called for contributions by new employees to medical insurance costs.

The Town stated that the Orangetown Police were among the best paid departments and had the highest starting salary in the County. It argued that expenditures for the Police Department

constituted 40% of the Town Budget, and that the Town was facing financial difficulties and could not continue to maintain its historical position in comparison to the salaries paid by other communities.

Ron Hansen, the Town's Director of Finance through December 1993, and John Slattery, Director of Finance as of January 1994, both testified and stressed the Town's concern that its future tax revenues will be reduced due to the settlement of a matter concerning earlier over-assessment of certain properties and the number of tax certiorari cases still pending. It stressed, also, the expense, to the Town, of a law suit, still in the courts, concerning a zoning matter and the still undetermined, but substantial liability, which may result. The Town noted, also, the costs of required improvements to the sewer system and to the Town Hall, where the additional space also provides improved working conditions for Police Department employees.

The Town also emphasized that economic conditions in the County and in the Town were unfavorable, with local employers reducing employment.

The PBA asked for an increase of eight per cent in the salary schedule for 1993 and for a "fair and equitable" increase for 1994.

The PBA agreed that the Town of Orangetown Police Department salary schedule was among the highest in Rockland County, that it traditionally compared to the salaries paid by the Towns of Clarkstown and Ramapo, although, it argued, that the collective bargaining agreements between those Towns and their police unions provided for benefits superior to those enjoyed by the Orangetown Police.

The PBA placed in evidence the salary schedules for 1992, 1993 and 1994 for the Towns of Clarkstown, Ramapo, Haverstraw and Stony Point, which with Orangetown, are the five towns in Rockland County.

It noted that for 1992 the rate for a First Grade Police Officer in Orangetown was \$54,800, in Clarkstown \$54,341 in Ramapo \$53,998, in Haverstraw \$51,604 (7/92) and in Stony Point \$52,787 (7/92). It stressed the traditional relationship to Clarkstown and Ramapo and noted that in Clarkstown, as a result of a negotiated settlement, that salaries were increased by five percent (5%) in 1993 (to \$57,058 for First Grade) and by six percent (6%) in 1994 (to \$60,482). It noted, similarly, that in Ramapo, where salaries through 1994 were also established by negotiated settlement, that the increases for 1993 and 1994 were five and one half percent (5.5%) for each year, to \$56,968 and \$60,101.

The PBA argued that Orangetown could afford to maintain the traditional relationships with Clarkstown and Ramapo, that the Town's Mood's Bond Rating was A-1 and that it had the strongest financial condition in the County. It argued, also, that the zoning case was still in the courts, that appeals were pending and that it would be several years before any judgment would be final. On cross-examination, Ron Hansen testified that an adverse judgment could be paid via bonding and, as such, would represent less than one percent (1%) of the Town's annual budget.

The PBA noted, also, that more recent economic news in the County was more favorable and that a major employer, in Orangetown, had announced significant plans for expansion of its facility.

In rebuttal, the Town's Counsel stressed that Moody's rating was evidence of good past financial management by the Town but that such a rating would not be maintained if the Town didn't control its costs and that it could not continue to pay top salaries.

**OPINION:**

Although the Town has demonstrated that salary increases for non-police employees were settled at significantly lower levels

and that settlements for police in some communities (e.g. New York City and Yonkers) were also curtailed, the most meaningful comparisons, based on the evidence and exhibits, would appear to continue to be with the Clarkstown and Ramapo Police. For at least the last decade, these communities have paid their police personnel at a generally comparable level, which is also clearly among the most favorable in the County.

While the Town is appropriately concerned about a number of events which may, potentially, reduce its ability to continue to offer such favorable salaries, the evidence is not convincing that such negative influences will impact the Town's revenues imminently or as severely as it suggested. The evidence and exhibits do not sustain the argument that Orangetown is experiencing events or circumstances noticeably different from other communities in the area.

We might note, as well, that for the Town of Haverstraw, in 1993, the rate for First Grade Police Officers was increased, via Interest Arbitration, by four percent (4%) effective January 1st and, again, by four percent (4%) effective July 1st to \$55,815. A negotiated settlement in the Town of Stony Point increased rates by five percent (5%) on January 1, 1993 to \$55,426 and, by the same percentages, on January 1, 1994 to \$58,198 and on January 1, 1995 to \$61,108.

The data, cited above, indicates that all towns in Rockland County increased the rates for their Police Department by no less than five percent (5%) for 1993 and for 1994. In addition, these agreements all contained improvements in employee benefits, as well.

Consistent with the foregoing, and recognizing both the fiscal concerns of the Town as well as the established relationships of the Orangetown Police Department to Clarkstown and Ramapo as well as the clearly prevailing increases granted in the other four Rockland Towns, we make the following

**AWARD:** Effective January 1, 1993, except for the Fifth Grade Police Officer rate, which shall remain unchanged, all rates in the Salary Schedule shall be increased by five percent (5%).

Effective January 1, 1994 All rates in the Salary Schedule shall be increased by five percent (5%).

(See Appendix A.)

Employees' salaries and retroactive payments shall be adjusted in accordance with their positions on the Schedule.

**NIGHT SHIFT DIFFERENTIAL:**

**POSITIONS AND ARGUMENT OF THE PARTIES:**

The Union asked that the salary differential for Officers who are regularly scheduled to work between the hours of 2300 and 0800, presently at \$2,650 per year, shall be increased to ten

percent (10%) of their normal salary while assigned to that shift.

It explained that the differential had been six percent (6%) until December 1985 when it was set at a flat rate, by an Interest Arbitration Award. The PBA noted that \$2,650 is only 4.8% of the First Grade rate, 4.2% for Sergeants and 3.6% for Lieutenants.

The PBA presented exhibits to show that the differential in Ramapo is 8% and that in Clarkstown, it had also been 8% but was increased to 10% effective January 1, 1994.

The PBA seeks to reestablish a percentage relationship for night shift differential to "facilitate having enough officers volunteer for the midnight shift and provide reasonable compensation for the disruption in their family lives."

The Town argued that it had no difficulty in getting Police Officers to volunteer for midnight shift positions, although it acknowledged that the Sergeants and Lieutenants on the shift were not volunteers. It argued that there was no need to add financial incentives for employees and expense for the Town in order to staff the midnight shift.

**OPINION:**

While the staffing of the midnight shift does not appear, presently, to be a critical matter for the Parties, the PBA did clearly establish the existence of an inequity, between Orangetown and Clarkstown and Ramapo, with regard to the night shift differential. This Award seeks to eliminate, now, prior to the onset of the 1995 negotiations, what will obviously become a more significant problem.

Although recognizing that this Award will not meet the Clarkstown - Ramapo levels, it is deemed appropriate to re-establish the earlier differential that existed in Orangetown. No overriding need to award retroactive pay for 1993 was established.

**AWARD:**

Effective January 1, 1994, Officers who are regularly scheduled to work between the hours of 2300 and 0800 shall receive a Shift Differential of six percent (6%) of their regular earnings, including overtime and longevity and for all such time that the Officer is on paid status, such as vacation, holiday and paid sick, personal and bereavement leave. Officers absent while covered by Workers' Compensation shall receive the Shift Differential for a period not to exceed one (1) year.

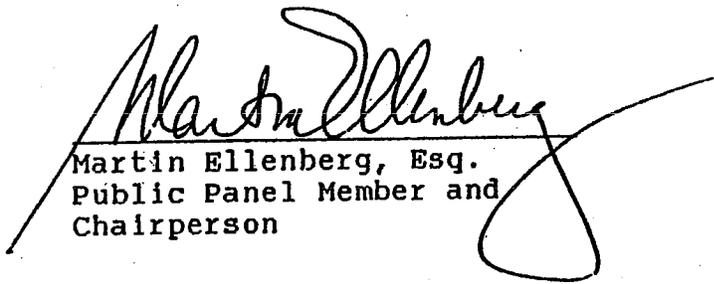
ALL DEMANDS AND PROPOSALS by the Parties, which are not awarded, above, or which were not settled, mutually, by the Parties, shall be deemed to have been denied and, except as revised by this Award, the terms and conditions of the 1991-92 Agreement

shall be extended and maintained in the 1993-94 Agreement.

Finally, consistent with discussion, in Executive Session, to determine a reasonable period for the Employer to implement revised salaries and to compute and issue retroactive payments, the Employer is directed, upon receipt of this Award, to commence payment of current rates as soon as reasonably practicable and to complete retroactive payments by August 5, 1994. In the event that retroactive payment is not issued by that date, interest at the rate of nine percent (9%) per year, on unpaid retroactive pay, shall be payable to the employee from that date.

Respectfully submitted,

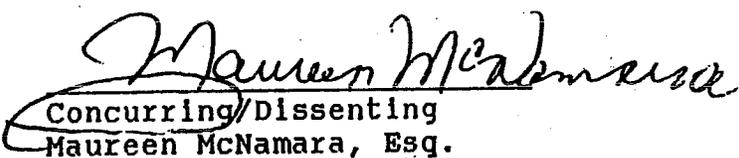
July 22, 1994



Martin Ellenberg, Esq.  
Public Panel Member and  
Chairperson

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Concurring/Dissenting  
Jack Schloss, Esq.  
Public Employer Panel Member



Maureen McNamara, Esq.  
Public Employee Organization  
Panel Member

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0-9

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In the Matter of Interest Arbitration between

ORANGETOWN POLICEMEN'S BENEVOLENT  
ASSOCIATION, INC.,

Petitioner

AND

TOWN OF ORANGETOWN, NEW YORK

Respondent

Opinion and Award

PERB Case No. IA91-01  
M90-438

Reissue of Award and  
Issue of Opinion

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Before: The Public Arbitration Panel  
Sumner Shapiro, Public Member & Chairperson  
Arthur J. Ferraro, Esq., Employer Designated Panel Member  
Maureen McNamara, Esq., Union Designated Panel Member

I. INTRODUCTION

This document constitutes the Opinion and Award<sup>1</sup> of a public arbitration panel designated by the New York State Public Employment Relations Board pursuant to Civil Service Law 209.4 on June 28, 1991. The petitioner is the Orangetown Policemen's Benevolent Association, Inc.,; hereinafter referred to as "the Petitioner," "the PBA," "the Union", or "the Employees". The respondent is the Town of Orangetown, New York; hereinafter referred to as "the Respondent," "the Town," or "the Employer."

The Petitioner and Respondent were parties to a Collective Bargaining Agreement which expired on December 31, 1990 without concurrence on the terms of a successor agreement. Following unfruitful effort to resolve their differences through mediation under the aegis of the New York State Public Employment Relations

<sup>1</sup>See Background Information, II herein.

91-92

Board (PERB), the Union on March 26, 1991, petitioned PERB for Interest Arbitration setting forth 26 proposals which it sought to have implemented. The Employer responded on April 3, 1991, submitting on its behalf 37 proposals for changes in the expired Agreement.

Hearings convened in the conference room at the Orangetown Town Hall on August 28 and 29 and October 23, 1991 in which the parties were afforded unrestricted opportunity to present testimony and documentary evidence, examine and cross-examine witnesses and offer arguments in support of their respective positions. Both parties were represented by counsel and neither raised any objection to the fairness or completeness of the hearings.

The Panel is charged with making a just and reasonable determination of all issues before it. It is obligated to take into consideration, in addition to any other relevant factors, the following:

- A. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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 qualification; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- D. the terms of collective agreements negotiated 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 Public Arbitration Panel was constituted as follows:

Chairperson	Sumner Shapiro 64 Darroch Road Delmar, New York 12054
Union Designated Arbitrator:	Maureen McNamara, Esq. 2 Congers Road New City, New York 10956
Employer Designated Arbitrator:	Arthur Ferraro, Esq. One Calvary Drive P.O. Box 626 New City, New York 10956

Appearances were as follows:

For the Union:

Maureen McNamara, Esq.

Richard Bunyan  
Law Clerk to Maureen McNamara

Steve Megdanis  
Local PBA President

Jerry Bottari  
Bargaining Team Member

Steve Fitzgerald  
Bargaining Team Member

Edward Fitzgerald  
Bargaining Team Member  
James Casey  
Bargaining Team Member

Robert VanCura  
Rockland County PBA President

For the Employer:

Arthur Ferraro, Esq.

John Slattery\*  
J. Slattery & Co.  
165 Forest Avenue  
Pearl River, NY 10965

Roger Pellegrini\*  
Supervisor  
Orangetown, New York

\*Witness

The following exhibits were placed in evidence:

Joint Exhibits:

J1:

Collective Bargaining Agreement between the parties 1/1/89 -  
12/31/90.

J2:

Petition for Interest Arbitration 3/26/91.

J3:

Respondent's answer to petition 4/3/91.

J4:

Copy of contract between Town of Clarkstown and Rockland County PBA for Clarkstown Police Department, 1/1/89 - 12/31/91.

J5:

Copy of Collective Bargaining Agreement between Town of Ramapo and Ramapo PBA, 1/1/89 - 12/31/91.

J6:

Copy of Agreement between Town of Stony Point, New York and Stony Point PBA, 1/1/90 - 12/31/92.

J7:

Copy of Agreement between Town of Haverstraw, New York and Haverstraw PBA, 1/1/87 - 12/31/89 and copy of Opinion and Award of Interest Arbitration Panel Case No.A89-31 modifying and extending agreement to 12/31/91.

J8:

Actuarial data relating to retirement.

J9:

Copy of Agreement between South Nyack - Grandview Joint Police Admin. Board and Rockland County PBA, 1/1/91 - 5/31/92.

J10:

Copy of Opinion and Award, Interest Arbitration Panel, Case No.IA84-36, Town of Orangetown and Orangetown PBA, 12/2/85.

J11:

Copy of Opinion and Award of Interest Arbitration Panel Case No.IA87-10, Orangetown PBA and Town of Orangetown, 8/15/88.

J12:

Copy of Agreement between Village of Suffern and Suffern PBA, 6/1/88 - 5/31/91.

Union Exhibits:

U1:

PBA presentation packet summarizing positions and arguments.

U2:

Copy of Clarkstown PD Monthly Report, July 1991, Squad 1, Compensatory Time Summary.

U3:

Copy of 1990 Census, Rockland County.

U4:

Copy of excerpt from Rockland Journal, October 2, 1991.

U5:

Copy of excerpt from Rockland Journal, October 6, 1991.

U6:

Copy of excerpt from Rockland Journal, October 3, 1991.

U7:

Information re: New York State Retirement System.

U8:

1990 Full Value Taxable Property per Capita, Clarkstown, Orangetown and Ramapo.

Town Exhibits:

T1:

Employer summary packet prepared by J. Slattery & Co.

T2:

Chart of Funds.

T3:

Chart of Assessment Methodology.

T4:

Chart of Time Off impact.

T5:

Orangetown Police Personnel Manpower Allocations 1991.

T6:

Orangetown's supplemental package to T1, dated November 24, 1991.

T7:

Calculation of financial impact of adopting 1946 hours per annum base for Overtime Payment calculations.

T8:

Copy of Town Resolution 609.

T9:

Packet of 7 sheets relating to 1991 negotiations and agreement between the Town of Orangetown and CSEA Unit.

T10:

Four sheets, Salary Schedule, Orangetown CSEA Bargaining Unit, 1991 - 1992.

T11:

Five sheets regarding Rockland County and Orange County, Aid concerning Housing Contingency Costs, 90-91-92.

T12:

Year-to-date budget summary, Orangetown, Town Outside of Village 1991 (Fund Two) as of September 1991.

T13:

Copy of a letter Ronald Longo, Plunkett & Jaffe, P.C. to Arthur Ferraro, 10/16/91 re: Suffern PBA and the Village of Suffern, contract renewal for 6/1/91 - 5/31/94.

## II. POSITIONS OF THE PARTIES AND OPINION

A. Background. In order to provide the parties with an executed Award in advance of the expiration of the calendar year 1991, the Panel agreed to defer submission of the Opinion portion of this document to be incorporated in a subsequent reissue of the entire Opinion and Award at a later date. The anticipated date was in February of 1992, but regrettably, we were unable to meet that schedule.

1. Article 3.1 (c). Article three outlines rights of employees and 3.1 (c) requires the Department to advise employees of the nature of any investigation before commencing interrogation, making known the specific allegation and further requiring that employees who are being interrogated only as witnesses be so informed at the initial contact. The Employer proposed language changes explicitly indicating the term "Employee" to mean only the person under investigation and the objective of the proposal was to enable routine administrative questioning to proceed without undue encumbrance. The Union opposed the change on the basis that an individual's status as a witness may become subject to change in the course of the investigation and that other provisions of the article do address and recognize the Employer's administrative needs and prerogatives.

The Panel found that there was no showing of unreasonable ~~past encumbrance and that proceeding on a hypothetical projection~~ would be unwise. Therefore, the proposal is denied.

2. Article 3.1 (f). This provision of the agreement imposes certain constraints upon investigators in treating with an employee under investigation specifically prohibiting the use of offensive language or threats of transfer or disciplinary action, but it did provide an exception from this prohibition; namely, the right to advise the Employee under investigation of the "...character of the discipline the Department intends to impose..." The Employer argued that it is inaccurate to state that the Department "intends" to impose as the matter would still be under investigation at that juncture.

The Panel adopted the Employer's view and awarded a change in language. Term "...intends to impose ..." shall be altered to state "...may impose..." in the successor Agreement.

3. Article 3.1 (i). This Article provides the Employee with an opportunity to consult within 24 hours with his/her counsel or Union representative in non-criminal matters before being questioned. It explicitly states that the provision is not to be interpreted to prevent questioning of employees by their superiors about their conduct in the normal course of business. This subdivision further explicitly provided that it "...will not generally apply to questioning by employees below the third level of supervision, e.g., Sergeants and Platoon Commanders. "The Employer proposed deletion of the entire subdivision and the Union agreed that the language was confusing since in practice it is a Sergeant who normally is assigned to question employees during investigation.

The Panel supported the Employer's proposal to the extent of

upholding the deletion of the caveat "...and will not generally apply to questioning by employees below the third level of supervision, e.g., Sergeants and Platoon Commanders" from the successor Agreement.

4. Article 4.1. Article four relates to dues checkoffs and Agency fee deductions. The Employer proposed several language changes designed to more exactly classify the nature and limits of the understandings between the parties. The first of these relates to the Agency fee deduction wherein the expired Agreement obligated the Employer to deduct from all persons in the Bargaining Unit who are not members of the Association, an amount equivalent to the dues payable to the Association. The Employer proposed further to define the amount to be deducted by stipulating it was to be the equivalent of dues payable to the Association by its members.

As the Employer's proposal was merely to articulate established practice, which in itself is not in controversy, the proposal is awarded.

Article 4.1 of the expired Agreement further required the Employer, to provide the dues checkoff authorization forms. The Employer, arguing that dues checkoff is performed on behalf of the PBA, proposed that the Union be required to provide the payroll deduction authorization forms which the individuals sign and return to the Employer authorizing the Employer to withhold Union dues and remit same to the Union.

The Panel subscribes to the Employer's view and awards the

inclusion of contract language revisions and deletions which will achieve the sought after results.

5. Article 4.2. The expired Agreement made reference to "...a list of names of the officers..." The Employer proposes it would be more consistent and accurate to refer to these people as "...employees..."

The Panel subscribes to the Employer's view and the requisite language revision is awarded.

6. Article 4.4 required the Union to certify in writing to the Employer the amount of dues and assessments to be deducted under the checkoff provisions. While it also required the Union to notify of changes and provides that such changes "shall not become effective until sixty (60) days following the receipt of notice by the Employer," the Town proposed some editorial changes and deletions which it argued would make the intent more explicit.

The Panel subscribed to the Employer's position with the further proviso that the contract be altered or revised to state that changes (in deductions) shall become effective "...as soon as practicable but not later than sixty (60) days..." as opposed to the prior provision which required that they "...shall not become effective until sixty (60) days..." Language provisions to achieve both objectives were awarded.

6'. Article 5.2. The provisions of this Article in the ~~expired Agreement granted the Union President and/or his designee~~ one hundred and twenty (120) hours fifteen (15) days per year

subject to certain restrictions to attend to Union related business. The Union proposed increasing this allowance to thirty (30) days and allowing, in addition fifteen (15) days for the Vice President. In consideration of the absorption of the Nyack police operations into the Orangetown Department which added some occasional travel time requirements in dealing with Union business, the President's time allowance was increased to one hundred forty-four (144) hours, eighteen (18) days per year and the proposal relating to the Vice President is denied.

7. Article 5.6 relates to Union business and contained a language anomaly when it stated "...differences of option..." where the clear intent was to state "...differences of opinion..." It further begins the next sentence with the word "such" where the first letter was not capitalized and the Employer proposed that this deficiency also be remedied in the successor Agreement.

Neither Employer proposal relating to Article 5.6 was controversial and both were awarded.

8. Article Six (6.1, 6.2 and 6.3). Article Six defines the salary plan and schedule. It includes specifically the base wage structure which appears as Schedule "A" in the Agreement, longevity pay which appears in subdivision 6.2 of the Agreement and night differentials which appear in subdivision 6.3. These define the totality of the direct compensation received by Employees all of which were at issue in the present proceeding where they constitute the parties' gravamina. We at this

uncture address and analyze their respective general positions relating to the economic aspects of the impasse following which we treat with the specific issues of Salary, Longevity, and Night Differential pays.

A. Union Position

The Union's position is simply that it is seeking to maintain the traditional compensation position of the Orangetown PBA relative to other departments in Rockland County. It acknowledges that it is seeking the nominally highest direct salaries in Rockland County, which it maintains it has historically enjoyed under recent contracts. The PBA insists its demands are justified both by the Employer's ample ability to pay and the fact that it has not received a level of fringe benefits comparable to those provided fellow Rockland County law enforcement officers even by less affluent communities. The Union further asserts that the Employer has historically understated its affluence and ability to pay by overstating anticipated expenses and understating likely forthcoming revenues. This practice allegedly persists in the present impasse. These differences accrue into putatively large Contingency and Surplus accounts where, in the Union view, there already resides sufficient monies to meet its wage and salary demands as well as further to substantially equalize fringe benefits where its members believe they are among the underprivileged. The PBA vigorously questions the depth of the Employer's own commitment to the proposals it advanced in the

present proceeding on the basis of charges that they fall measurably short of their offerings in negotiations which the Union considered and rejected as being inadequate.

B. Town Position

The Employer concedes that it did in fact offer to settle at a higher level at an earlier juncture in the present chain of events. It concedes also that it negotiated wage increases of 5 percent in each of two years with another Union representing the Town's office and clerical workers. However, the Employer advises, it arrived at its present posture in this proceeding after sustaining some substantial unanticipated cost increases and that, had it been aware of those added costs, it would not have agreed to the settlement it made with another Union at so high a level and that it certainly would not have offered the PBA the generous settlement which, in the Employer's view, was unrealistically and unwisely rejected by the Union. These developments, the Town claims, plunged it into relatively humble circumstances under which it has had to ferret out every possible saving. With the exception of a few very special circumstances where modest increases were granted, Town elected officials and professional administrators have seen their compensation level frozen for the time being. While it does not expect the PBA to ingest a dose of such drastic medicine, it does urge that the proposal advanced in the present proceedings are fair and equitable under the circumstances now prevailing as they place

the Town at or possibly even slightly beyond the limits of its present ability to pay.

The resources available for salaries and benefits of the Employer advises have been precipitously and drastically reduced by substantial and unanticipated cost increases. One very significant element is increases in the required contributions to the Employee Retirement Plan. New York State Retirement System actuaries had at first advised the Town that its contributions for 1991 would be nominally \$523,000 and the Town budgeted at that level. Subsequently after the budget and tax levy had been fixed, the actuaries notified that the 1991 contribution would have to be nominally \$773,000 for an increase of about 48 percent or nominally \$250,000. Further, that amount would increase by nearly 100 percent or nominally \$760,000 for the calendar year 1992. The Town has similarly been advised that its Workers' Compensation Insurance costs, budgeted at nominally \$240,000 for 1991 would rise to nominally \$400,000 in 1992, and although the respondent has been advised of this in advance of drawing up the 1992 budget, it nonetheless represents a substantial cost which must be provided for in the tax levy. Orangetown's allocation under State Aid to Localities which was at just under \$1 million in 1990, was reduced by 66 percent to just under \$330,000 in 1991 as it is expected to fall further to \$275,000 in 1992. The Employer emphasizes that in coping with both the unforeseen rise in expenses and reductions in revenues, it was compelled sharply to decrease the reserves in the surplus fund of the Town outside

of Village, with whose budget we are here concerned. The Employer claims the prudent minimum surplus defined by its auditors and recommended by the State Controller going into 1991 is 5% of a projected 11.3 million dollar budget or nominally 566 thousand dollars. The unanticipated cost increases reduced an anticipated 593 thousand dollar surplus to about 326 thousand dollars. In effect, the respondent argues, it unknowingly entered fiscal 1991 with a surplus account shortfall of nominally 250 thousand dollars. The Town eschews the Union assertion that it is concealing within the surplus account monies which are available for police salaries and benefits. In fact, it responds, its 1991 surplus account is in a negative position relative to the reasonable minimum requirement. Thus the dictated future fiscal strategy is continuing acute commitment to "sharp pencil" budgeting.

The Town pleads an exacerbating further stress of yet undetermined magnitude on its revenue source. This arises out of a certiorari action by the Lederle Drug Company which owns one of the jurisdiction's major non-homestead taxable properties. Pending the determination by the court it has reserved an undisclosed sum in its Contingency account to cover possible retroactive rebates. Any decision adverse to the Town's position will as a continuing consequence, diminish the levy payable by the Lederle properties.

The Employer proceeds beyond the argument that recent ~~developments have impaired its past ability to pay to questioning~~

the appropriateness of relying upon the prevailing practice among the larger Rockland County communities for comparison purposes. It asserts reference to broader geographic areas would be in order and further proposes that a responsible analysis should weigh in the balance other measures of equity to the taxpayers. Many among them it is urged, despite lengthy professional training and diligent devotion to their various careers, putatively do not enjoy compensation and fringe benefit packages matching or in reasonable proportion to those of an Orangetown Police Officer in his fifth year of service.

C. OPINION:

The Employer has raised a very meaningful, fundamental and long pondered question about the determinants of an equitable wage. Philosophers and theologians, including Aristotle and St. Thomas Aquinas, pondered the question of what constitutes a fair exchange though their concerns were primarily with goods rather than human labor for which there was no truly free market in their times. The birth of the Industrial Revolution gave rise for the first time, to a fully free class of labor in which the worker was no longer compelled as a matter of status to serve any lord or master. Rather he was as a matter of law, permitted to work or not work, to bargain, in theory at least, to arrive at an agreed upon rate of exchange of rewards for services. There evolved therefrom, a largely unstructured labor market wherein supply and demand were the arbiter of wages. From Adam Smith the

first of the formal "gloomy philosophers"; economists, popes, parsons, princes, politicians, philanthropists and social reformers, have with varying degrees of approbation or approval, pondered the workings of that marketplace. Society, in an effort to address perceived inequities, has sanctioned numbers of interventions into the marketplace to bring about more equitable balances among employers, employees and the general public. A succession of laws dealing with workers' compensation, child labor, unemployment insurance, social security, have all diminished laissez faire influence. The promulgation of statutes supporting the rights of workers to organize and bargain collectively with their employers, builds on the assumption that the practice will establish a balance of power between labor and management wherein equitable resolutions of conflicts will be realized. In the real world, both parties at the bargaining table, may yield to the realities of power without either believing his interests has been fairly or favorably considered.

Public employment bargaining, which has only relatively recently achieved maturity, presents special problems in that the consequences of contract bargaining tend to be less immediately identifiable in a product marketplace. The product here is services and the purchasers are the taxpayers of the community. While they may not in the short run readily opt to patronize others to obtain less costly service or determine that they will not subscribe to such a service at all, as they might with a consumer product, they may in the longer run, demand reductions,

relocate, or decline to locate or expand in the community. In the final analysis, public employers, like manufacturers, must deal with market constraints and the unions with whom they negotiate, cannot in the long run immunize themselves against the strictures of the marketplace. Somehow, a balance must be struck among conflicting interests. While we support the Employer's view that the equity concept is a two edged sword, we cannot escape the notion that it is subjectively determined. Indeed, it devolves upon the public member of an interest arbitration panel to attempt to maximize the thrust of objective input to the decision making process.

Students of compensation theory have been particularly energetic in attempting to develop rationalized, and hopefully more objective, instruments for determining equitable compensation. High levels of skills and education have not always correlated with higher levels of compensation. Occupations and professions in which the incumbents were most frequently women, such as nurses, librarians and social workers, have been notoriously less well compensated than predominantly male public safety employees. Some government jurisdictions have adopted comparable worth programs where compensation entitlement for each job is determined on the basis of defined levels of skill, education, working conditions and responsibilities inherent in positions. In some cases, past differentials between accountants and social workers or executive secretaries and park groundskeepers have been narrowed or reversed. But there is no

universal agreement that these outcomes are necessarily equitable as those who demure from the outcome argue against the factors employed and the weightings assigned. The late George Meany, who rose from a Bronx plumber ultimately to become President of the AFL-CIO, responded to critics of what they perceived to be exorbitantly high plumbers' salaries by noting that potential exposure to contagious diseases and other illnesses is particularly severe in crowded urban environments. In his view, it is in the final analysis, only good plumbing and good medical facilities that make urban life at all tolerable and possible. Since good plumbers and good doctors are required to provide these resources, one should, he explained, expect to find their respective compensations to compare favorably one with the other. Teachers who labor to lift the veil of ignorance from each generation scoff at this rationale citing their labors in acquiring and disseminating education as the critical underpinning without which there could be neither physicians or plumbers.

Typically, police officers citing comparable worth criteria may argue that their working conditions regularly entail exposure to injury and even death and that their compensation should reflect this inherent risk. They may further assert that they, under trying circumstances, bear a responsibility to deal with the public in a diplomatic and restrained manner to preserve respect for the employer and foreclose its exposure to damaging lawsuits charging unwarranted and abusive application of police

power. These are all tenable arguments and to each there is a rational counter argument. In the final analysis, the wisdom of the legislature is vindicated. We are admonished to look to the marketplace for guidelines by the statute which explicitly obligates us to consider a comparison of wages, hours and conditions of employment of similarly employed persons in comparable communities. We are further instructed to consider the interest and welfare of the public and explicitly its financial ability to pay which may create a basis for exception from prevailing practice in otherwise comparable jurisdictions. The selection of appropriate comparison standards is judgmental. However, in the matter at hand, we are aided by historical precedence as outlined in the award of the arbitration panel which provided the Opinion and Award in the interest arbitration between these parties, setting the terms of their agreement for the calendar years 1985 and 1986 respectively. In that proceeding, the Town implicitly recognized a basis for wage parity between the Orangetown First Grade Patrolman and those in the neighboring Town of Clarkstown. In conceding that point, the Town did, however, assert that it could not also equalize certain fringe benefits and paid leave provisions and sought to establish fixed dollar differentials between top level Patrolmen, Sergeants and Lieutenants. The panel in that arbitration did award such fixed differences fixing Sergeants' and Lieutenants' salaries within a range of \$50 to \$200 less than the top county levels by the midpoint of the first year of the contract. In the next

interest arbitration, IA87-10, another panel set the terms of the successor contract, reinstating percentage differentials by specifically stipulating that Sergeant's salaries would be 115 percent of a First Grade Patrolman and that Lieutenant's salaries would be 115 percent of those of Sergeants. Detectives and Youth Officers became entitled to 107 percent of a First Grade Patrolman's salary. Thus, the instant panel was provided established criteria for formulating the salary comparisons which we have relied upon preliminary to determine appropriate salaries, subject to possible modification in deference to ability to pay considerations.

The advocate members of the Panel were unyielding in their respective postures on the ability to pay question. The writer as Chairperson commends them for their diligence and acknowledges that concurrence in the award constitutes more of a recognition of reality than agreement with the writer's inferences and rationale.

We find the Employer's claim that its 1991 budget was thrown into disarray by unanticipated substantial added costs to be most persuasive. We accept also the urging that the earlier offer, which the Union rejected, would not in fact have been forthcoming had the Employer been aware of the impending fiscal surprise at the time. Even though the Chairperson was unaware of the amount of that offer when analyzing the evidence in the record, we note that we in this proceeding view the positions of the parties ~~de novo and would not under any condition consider the Employer's~~

rejected offer to constitute a minimum, tenable award. If a rejected offer, or one which was advanced contingent upon the acceptance of other provisions which were rejected, were to become a floor in the ultimate settlement, the ability freely to explore and bargain would become so severely hobbled as to discourage settlement without resort to interest arbitration. Interest arbitration is intended to supplement rather than supplant meaningful direct negotiations between the parties. The Taylor Act bestows both privileges and responsibilities and encourages unfettered good faith bargaining. The amendment which subsequently provided interest arbitration as the final stage in public safety impasses, did not abrogate preexisting provisions.

The present matter came before the Panel in Executive Session virtually at the conclusion of the 1991 calendar year. We in fact, issued an expedited award only in an effort to facilitate payment of retroactive entitlements prior to the expiration of the 1991 fiscal and calendar year. This circumstance alone persuaded that an award covering two years, 1991 and 1992 respectively, was in order. While the issue of ability to pay was relevant to both years, 1991 in addition presented a special dimension arising out of the unanticipated cost increases, which because of timing anomalies, were unprovided for in the budget. Independent of any endemic inability-to-pay constraints, the Town was compelled to face up to a cash flow problem in the 1991 fiscal year. The impact of this development was to reduce the anticipated surplus carry

forward into 1992 from 593 thousand to 326 thousand dollars, which as previously noted, was nominally 240 thousand dollars shy of the recommended minimum surplus. It is, as the Employer asserts, true that surplus funds are not as a practical matter available to fund permanent salary increases as they would then have to be replenished to serve the need with which they are designed to cope. Those needs are to cover the costs of both certain forthcoming and predictable designated projects and unforeseen needs which may arise, the costs of which may be defrayed out of the undesignated portion of the surplus. The surplus fund, therefore, is a financial reservoir into which funds flow, sometimes slowly, to be accumulated to cover the costs of certain projects as the need for payment arises. In this case, the late August notification of the added pension plan premium put the undesignated 593 thousand dollar surplus precisely to the intended end use leaving an additional 326 thousand dollars available in that category. Presumably at that late point in the fiscal year, the Town could have deferred replenishment of the undesignated surplus into the next fiscal year and if it had done so, its ability to pay in fiscal 91 would not have been reduced by a 204 thousand dollar sum set forth in the Employer's pleadings. We are not, however, sufficiently knowledgeable or competent to pass judgment on the management options chosen by the jurisdictions elected officials. They undoubtedly involve parameters residing outside of the purview of this proceeding. ~~We have, therefore, resolved the 1991 economic~~

issue after allowing for the Employer's election to replenish the undesignated surplus in 1991, but having done so factored consideration thereof into the 1992 determination.

In the matter of salaries the Employer had proposed a three year Agreement under which Employees would have received increases of 4 percent for the calendar and contract year of 1991 with an additional 4 1/2 percent in the succeeding year with a third increment of 5 percent being forthcoming in the third and final year. The Union proposed only a one year contract with an 11 percent increase, indicating it was willing to accede to a 2 year agreement, which is the maximum the Panel is legally permitted to award, if it were to receive 11 percent in the first year and something more than 8 percent in the second. Similar divisions were extant in the matter of longevity increments and shift differentials.

Our 1991 determinations were made on the basis of imputed direct salary costs for the Orangetown Bargaining Unit of a nominally 6 million dollars per annum at a staffing level of 100 members. On this basis we estimated potential costs to be as follows:

<u>Cost Basis</u>	<u>Nominal Added Annual Costs</u>
To establish parity with Clarkstown	\$377,000
To deplete amount Employer reported in reserve for full force of 100 persons	\$240,000
<u>To meet requirements of award for full force of 100 persons</u>	<u>\$280,000</u>

In actuality, the force has been operating at a reduced level of about 97 people and though there is some dispute about offsets against the savings attributable to disability pay, a Panel majority is persuaded that the cost of the award may be comfortably accommodated within limits of available salary designated resources. Our comparison, based on First Grade Patrolman's salaries as a benchmark, indicate that Orangetown officers will not overtake Clarkstown until December of 1991 at which point they will move into the lead by nominally 1.8 percent for a one month period. Since the Clarkstown 1992 salary schedule had not been agreed upon at the time of the Panel's deliberations, we were unable to make comparisons as of January 1, 1992.

The award brings Orangetown First Grade Patrolman up to and ahead of equivalently graded Ramapo colleagues by nominally 1 percent as of July 1991. Prior to that point in time, they lagged Ramapo by nominally 5 percent. Thus, the award establishes as of December 1991, a relative salary distribution among Orangetown, Clarkstown and Ramapo, which is generally in keeping with that established by the Public Arbitration Panel in IA87-10 (Joint Exhibit 11) wherein nominal parity prevailed between Clarkstown and Orangetown and Orangetown led Ramapo by an average of about 3.75 percent over the 1987 and 1988 calendar years. The actual salary values awarded by the present Panel are set forth in "Schedule A" of the Award Section of this document.

We approach the determination of the appropriate 1992

homestead category exceeds the rate of increase in the budget, that sector will be able not only to absorb the added levy burden out of new revenues but in fact, will have a surplus of new revenues which will inure to the benefit of all taxpayers in the category in the form of actual tax reductions. This phenomenon has significantly impacted Orangetown where full valuation from 1988-89 through 1990-91 increased by nominally 40 percent on homestead property and 146 percent on commercial property. The ratio of Non-homestead values to total full values also rose by 50 percent over that period (Town Exhibit 6, page 54). The Employer (Town Exhibit 1, pp 21-22) acknowledges that there has been "...a limited increase in the assessment for homesteads over the years versus the expansion of commercial ratables which has pushed the Non-homestead rate below that of 1988." and it graphically illustrates that the homestead tax rate per 100 have, since 1988, risen roughly at the same rate as the increase in police expenses. We note that this correlation would change drastically if the ratio of the division of burden between commercial and homestead burden sharing were altered so that each individual commercial payor continued to shoulder its proportionate share of the rising expenses. The Employer established that the ratio of division currently in place is fixed by the New York State Board of Equalization and Assessment, but it was unable to indicate if and how these ratios may be changed if a jurisdiction wishes to do so. It is of course ~~possible that the Town wishes to preserve the existing~~

arrangement as an inducement to continuing commercial expansion within its borders. If that is in fact the case, it is clearly a matter which lies within the purview of the electorate and its chosen officials and is of concern to this Panel only in connection with the weights to be accorded in assessing ability to pay.

One further observation relating to the graphic correlation between rising Homestead tax rates and the rising rate of increase in police expense (Town Exhibit 1, p. 22) is in order. Specifically, one should note that the zero point for the Homestead tax rate was chosen as 1988. Had 1987 been selected as the point of departure, the geometrical configuration would have been drastically altered with the rate of rise of Homestead tax rate being much less steep than that for police expenses.

The relationship between Homestead and Non-homestead taxables bears also on the Employer's argument that it is faced with a possible further impairment in ability to pay as a result of the Lederle certiorari action. In point of fact, the Lederle property is a non-homestead element and a reduction in the annual tax bill on the property would, it seems, merely increase or slow the decrease in the individual tax payments of others in that Non-homestead population. This adverse impact on the tax base as a whole would apparently be to deplete the reserves set aside for rebate purposes. If the excess pay out, if any, were to be recovered across the entire tax base, Homestead rates would be affected.

The respondent argues that Orangetown is a bedroom community and is not at the apex of per capita income in Rockland County and should not therefore, be expected to pay salaries and benefits which might be paid by jurisdictions in that category (Employer Exhibit 6, pp. 46, 46A, 47, 47B). In support of its contention it cites a table attributed to the Rockland County Department of Planning which for the most recent year, 1987, indicated the following:

<u>Community</u>	<u>Per Capita Income 1987</u>
Rockland County	\$15,917
Clarkstown	\$17,590
Haverstraw	\$13,148
Orangetown	\$17,517
Ramapo	\$14,902
Stony Point	\$13,746

The Employer argues that Ramapo, which is listed at \$14,902 per annum or nominally \$2600 less than Orangetown arrived at that position because included within its boundaries is the Village of New Square which is reported to have a per capita income of only \$2,515, New Square is a religious enclave with a population consisting of disproportionately large numbers of children and women who are not employed outside of the home. These factors alone would tend to depress per capita income. However, the Employer's exhibit listing 1988 population figures shows Ramapo with a population of 92,000 and the Village of New Square with a population of 2,620. Thus, with a per capita income of \$14,902, the Town would have had a gross income of 1,370,984,000 dollars. In New Square, with a population of 2,620 at a per capita level

of 2,515 it contributed only 6,589,300 dollars to the gross sum, the difference of 1,364,394,700 dollars would be attributable to the 92,000 minus 2,620 New Square residents or the other 89,380 residents of Ramapo. The per capita income excluding New Square would therefore be  $1,364,394,700/89,380 = \$15,265$ . This would place Ramapo slightly below the Rockland County average and would leave it entrenched in third position as the elimination of New Square would raise its per capita average by only 365 dollars per annum. Thus, the per capita income comparison taking Clarkstown as 100 percent would be as follows:

<u>Community</u>	<u>Per Capita Income as Percent of Clarkstown 1987</u>
Clarkstown	100
Orangetown	99.6
Rockland County	90.5
Ramapo without New Square	86.8
Ramapo inclusive of New Square	84.7
Stony Point	78.5
Haverstraw	74.8

We conclude from the Employer's statistics that there was no practically distinguishable difference in per capita income between Clarkstown and Orangetown in 1987 and that both exceeded that of Rockland County as a whole by more than 9 percent. Moreover with respect to Ramapo, even excluding New Square, Orangetown enjoyed an approximately 13 percent higher per capita income in 1987. The respondent further argued that Clarkstown or Ramapo are distinguishable from Orangetown in that they enjoy certain economies of scale because of their larger populations and dissimilar school districts, but none were cited and the

claim must be viewed merely as an allegation.

In further support of its position, the Employer cites the percentage ratio of taxes on Homesteads to their current selling prices in various Rockland County communities. The data indicates the following:

<u>Jurisdiction</u>	<u>Percent Ratio Combined Taxes to Selling Price</u>	<u>Percent of Ramapo Ratio</u>
Ramapo	2.02969	100-
Clarkstown	1.865479	91.9
Orangetown	1.667630	82.2
Haverstraw	1.384759	68.2
Stony Point	1.233057	60.8

This, as the Employer notes, indicates that a house selling for \$200,000 in Ramapo would pay approximately \$4,059 in combined taxes. However, that same house would pay a combined tax of only about \$3,335 per annum in Orangetown. Moreover these data are of interest in connection with the Employer's allegation about economies of scale and dissimilar school districts benefitting both Clarkstown and Ramapo. That is certainly not evident from these data which indicate that both have higher effective tax burden than Orangetown running nearly 10 percent for Clarkstown and 18 percent for Ramapo. The respondent explains this by introducing another argument, to wit, that Orangetown does not have swimming pools or community centers in response to the dictates of its prudent and frugal taxpayers. As a result, the Town advises "our taxes are low because we do without". This reduces the argument to one of asserting that the Town does have the resources to pay but would not have them had they chosen to enjoy what are implicitly characterized as certain luxuries or

comforts provided by other communities. Of course it is always true that the community once it appropriates a sum of money for some identified project, may not appropriate the same money for another project. But, public safety is a first priority responsibility of local government and the evidence does not persuade that the taxpayers of Orangetown are enduring hardships or making sacrifices disproportionate to those being made in comparable communities in meeting this vital need.

We think it of significant moment that Orangetown which already apparently enjoys a favorable tax rate structure, entered the 1992 fiscal year with a projected decrease of about 15 percent in the Non-homestead category and for Homesteads, a minimum of 1.6 percent to as much as 20 percent depending the individual village involved. The prudent management of expenditures and services has made this commendable action possible but it is clearly not supportive of an argument of inability to pay. Moreover, it seems likely that this was achievable to some extent in 1992 because the surplus deficit was erased in 1991. The impact of that action was reflected in 1991 in the rationale and determinations relating to 1991 as it was against this backdrop and with the defined objective of generally preserving the established relationship among Clarkstown, Orangetown and Ramapo in particular that our determinations were made. As these jurisdictions were in the process of negotiation at the time of our deliberations, we must infer likely outcomes

and we are hypothesizing that Clarkstown in particular, will fix the 1992 First Grade Patrolman salary at somewhere between \$54,500 and \$54,850 per annum. A Panel majority concluded the most equitable award for Orangetown would be achieved by fixing the 1992 First Grade Patrolman salary near the upper limit and adjusting all other 1992 salaries in Schedule "A" proportionately. If the Panel has erred on the high side, appropriate adjustments may be implemented in the negotiating process relating to the 1993 agreement. Any extra monies received from December 1991 through December of 1992 will partially offset the differential adverse to Orangetown which prevailed from January to December, 1991. The salaries awarded for the years 1991 and 1992 are both set forth in Schedule A of the Award Section of this document.

9. Article 6.2 deals with Longevity Pay. Under the terms of the expired Agreement employees earned longevity pay entitlements after the completion of six years of service and the first increment in the sum of \$575 became payable. Additional increments in like amount became payable at three year intervals providing a total of 7 increments with the last becoming effective on the 25th year of service.

The Union proposes the addition of a \$450 increment at the fourth year of service with retention of the prior schedule for providing additional increments except that it would increase the increment value from \$575 to \$775. The Employer sought retention of the existing increment structure with the elimination of the

25th year longevity entitlement except for current recipients who would be "grandfathered-in".

Our analysis of the longevity issue is summarized on Table I herein (page 36). We have summarized the total for 25 years of service ignoring the time value of money. The calculation of present or future value on the basis of some assumed interest rate would provide a different distribution. Our analysis indicates the following:

<u>Jurisdiction and Condition</u>	<u>Total for 25 Years of Service</u>	<u>Percentage of Orangetown With Orangetown Prevailing Practice Taken as 100</u>
Clarkstown	\$55,200	137
Ramapo	\$45,500	113
Orangetown Prevailing Practice	\$ 4,250	100
Orangetown Employer Proposal	\$38,525	96
Orangetown Union Proposal	\$64,150	159
Orangetown Award	\$43,750	109

The Orangetown award will add a total of \$3,500 to an Employee's compensation over a 25 year period, which again, ignoring the time value of money, would amount to approximately 1/4 of 1 percent of salary. In awarding this adjustment the Panel recognized that Orangetown has lagged behind comparable practice in Clarkstown and Ramapo. It has in fact lagged behind the Rockland County unweighted average which was found to be at about \$45,850. We are, however, influenced most by the

Table I

Longevity Issue

Summary of Practice, Proposal, & Award<sup>1</sup>

<u>Jurisdiction</u>	<u>Years of Service</u>											<u>Total for 25 yrs. Service</u>			
	4	7	10	13	16	19	22	25							
Clarkstown															
Increment	450	600	600	600	750	750	750	750	750	750	750	750	750		
Total \$ paid	450	1050	1650	2250	3000	3750	4500	5250	6000	6750	7500	8250	9000	\$55,200	
Ramapo															
Increment	500	500	500	500	500	500	500	500	500	500	500	500	500		
Total \$ paid	500	1000	1500	2000	2500	3000	3500	4000	4500	5000	5500	6000	6500	\$45,500	
Orangetown Present	--	575	575	575	575	575	575	575	575	575	575	575	575		
Increment	--	575	1150	1725	2300	2875	3450	4025	4600	5175	5750	6325	6900	\$40,250	
Total \$ paid	--	575	1150	1725	2300	2875	3450	4025	4600	5175	5750	6325	6900	\$38,525	
Orangetown Employer Proposal															
Increment	--	575	575	575	575	575	575	575	575	575	575	575	575		
Total \$ paid	--	575	1150	1725	2300	2875	3450	4025	4600	5175	5750	6325	6900	\$64,150	
Orangetown Union Proposal															
Increment	450	775	775	775	775	775	775	775	775	775	775	775	775		
Total \$ paid	450	1225	2000	2775	3550	4325	5100	5875	6650	7425	8200	8975	9750	\$64,150	
Orangetown Award															
Increment	--	625	625	625	625	625	625	625	625	625	625	625	625		
Total \$ paid	--	625	1250	1875	2500	3125	3750	4375	5000	5625	6250	6875	7500	\$43,750	

<sup>1</sup>Orangetown 25 yr. career difference Award - Present = \$3500

relationship among Clarkstown, Ramapo and Orangetown. Orangetown has, as previously noted, provided a lesser level of fringe benefits than Clarkstown. The Union proposal would have placed that benefit level at 16 percent above Clarkstown and 41 percent above Ramapo. The Employer's proposal placed the Orangetown benefit 16 percent below Ramapo rather than at the prevailing 11.5 percent. This reduction of nominally 3 1/2 percent would be imposed entirely at the expense of the most senior members of the Department in their final years of service prior to retirement. We are provided with no justification for such action other than a general commitment to cost containment. We believe retention of the 25 year increment is appropriate and that a narrowing of the longevity differentials between Orangetown and Ramapo is justified. The Panel has therefore awarded retention of the longevity eligibility increments of the expired Agreement with the increments being increased from \$575 to \$625. A revised schedule "A" so providing appears in the Award.

10. Article 6.3. Article 6.3 of the expired Agreement stipulated that persons assigned to the night shift which is defined as between the hours of 2300 and 0800 be paid \$1.05 per hour over the normal base salary for all hours worked which were defined to include periods when employees were off duty due to sick leave, vacation leave, personal leave and worker's compensation for up to one year. The Union proposed retention of the clause subject to a modification which would fix the pay rate at 10 percent of the hourly rate which would provide a night

shift differential of approximately \$2.50 per hour. The Employer sought retention of the existing rate, but modification of the contract language which would entitle employees to the night differential only for those hours during which they actually worked. Thus, the night shift differential would not be paid for personal days, sick days, vacation days and the like.

The Union sought to reestablish the night shift differential payment on a percentage basis as it existed up until 1985 when an interest arbitration panel upheld the Employer's petition for conversion to a fixed hourly rate and at that time awarded the present \$1.05 per hour. The Union urged that if only the 6 percent differential had been retained, the present differential would be more than \$1.50 per hour and that the percentage rate in force in effect in comparable jurisdictions are at about the 10 percent level.

The Employer argued that many jurisdictions do not even pay night differentials, but that where they are paid, it is in recognition of the disruption in normal living schedules occasioned by one's being absent from the home and on duty during conventional sleeping hours. In its view, when the Employee is off duty for any reason, he or she is not sustaining that inconvenience and should not be entitled to differential payments intended to compensate for such sacrifices.

This matter was extensively discussed and vigorously debated in Executive Session. What emerged from that dialogue was the determination that the appropriate method of payment was an

annual salary increment, calculated on a days worked basis to be paid to persons on the night shift without reduction for time off on official paid leave as the amounts involved were estimated and factored into the compensation determination. In a balancing of the parties' respective interests and positions on this among other issues, the Panel awarded an annual salary increment of \$2,650 to become effective in the second year of the Agreement commencing January 1, 1992. The specific awarded contract language appears in the Award Section of this document.

11. Article 7.2 Article 7.2 of the expired Agreement obligates the Employer to provide for the cleaning of uniforms or plain clothes in lieu of uniforms for those so assigned. The Agreement provides the Employer with the alternative of paying what is in effect a clothing allowance in lieu of dry cleaning costs to persons assigned to plain clothes positions and that sum was set at \$400 per annum. In the case of uniformed employees, the Employer pays for uniform replacement on the basis of normal wear and tear. The Union sought an increase in this allowance to \$600 per annum, citing the practice in Ramapo where plain clothes people received a \$425 clothing allowance plus compensated dry cleaning and a \$150 equipment allowance for sox, shoes and the like, raising the total to \$575 per annum plus dry cleaning services. Clarkstown pays a flat allowance of \$500 per annum to detectives and \$750 per annum to all other plain clothes personnel. Other Rockland County communities pay as much as \$1500 per annum (Suffern) and reportedly none pay less than \$560

(Town of Haverstraw).

The Town argued that clothing allowance may not be viewed in isolation. Other communities which pay more may do so for fewer people, but more importantly, frequently fall far behind Orangetown in other more important and costly benefits.

In weighing this issue, we were constrained to conclude that the respondent's allowances do lag behind even modest allowances in other Rockland County Departments generally, as well as falling short of those in place in both Clarkstown and Ramapo. We have therefore awarded an increase of \$50 per annum, raising the allowance to \$450 commencing January 1, 1991 with a second increase of \$50, raising the total to \$500 per annum becoming effective January 1, 1992. The contractual language providing for this modification appears in the Award Section of this document.

12. Article 8.3 This provision of the Agreement deals with vacation time entitlements and specifically excludes persons on job related injury leave pursuant to the provisions of Section 207-c of the General Municipal Law from entitlement to vacation time during the period of disability. It further provides that no employee may receive more than fifty-two (52) weeks pay in a calendar year. The Panel's disposition in this matter is set forth in the Award Section of the document and further discussion at this juncture would be redundant and unproductive.

13. Article 8.6 Article 8.6 which deals with absences due to illness by persons who have depleted their sick leave

allowances contains a typographical error. It has been corrected in the modified language appearing in the Award Section hereof.

14. Article 8.7 This Article deals with the rate at which vacation credits are earned and both parties submitted proposals for modification. The Panel determined that it was inappropriate for it to continue further debate at that point in time and both parties' proposals are denied.

15. Article 9.2 The Union proposed a revision in this Article designed specifically to identify the dates on which holidays would be observed. The purpose of this proposal was to define the conditions under which employees would be eligible to receive premium pay, which was the object of a second Union proposal. Denial of that proposal rendered consideration of this matter moot and the proposal is denied.

16. Article 9.3 The Union proposed a modification to the provision of this Article which would have provided time and one half pay for holidays in lieu of straight time. A view of the supporting data indicated that this was not the practice in larger comparable jurisdictions and the proposal is denied.

The Employer also proposed changes in the language of this provision. It specifically sought to strike the phrase "of the preceding year" in the language specifying entitlements to holiday compensation in time or money, for worked holidays occurring in the last quarter of the calendar year which is carried over into the next year. The Panel found the phrase to ~~be somewhat redundant but did not view it as a seed for potential~~

misinterpretation of the Agreement and the proposal relating thereto is therefore denied. The Employer further urged correction of a grammatical or typographical error which resulted in the omission of the word "be" and language implementing this correction is provided in the Award Section hereof.

17. Article 9.4 Article 9.4 of the expired Agreement provided that police receiving benefits under the provisions of the Section 207-c of the General Municipal Law which provides for salary continuation in the event of illness or injury incurred in the line of duty, are to be denied compensation for any holidays which occur during the time period for which 207-c benefits are being paid.

The Union sought pay for all such holidays arguing that in effect, a person on 207-c disability is assigned to non-active duty to facilitate recuperation and which should not impair entitlements which would accrue to the individual's benefit if he or she had been otherwise assigned to work on the holiday in some other Departmental capacity. The Employer's position is that an individual on sick leave is already off duty for the holiday, that they should not be paid twice for that day. In the Town's analysis, an Employee on active duty who elects to take a contractually specified holiday off is granted permission to do so, receives only one day's pay. In effect, he or she is permitted to take that day off without penalty and in the Employer's view that is precisely the prevailing situation for a ~~person being compensated pursuant to the provisions of Section~~

207-c of the General Municipal Law.

In the Panel's discussion of this matter, attention focused on the situation of persons on 207-c leave who may ultimately be placed on disability retirement due to the persistence and/or severity of their job-related illness or injury. If these persons had been on active duty prior to retirement and had worked the holidays, the additional pay received would have been reflected in their annual earnings thereby contributing to a higher pension entitlement. Loss of this pay, therefore, adversely impacts the amount of pension which will be paid to persons whose job incurred injuries or illnesses make retirement imminent. The Panel was further persuaded that any special provision attempting to restrict a benefit to persons facing imminent retirement, would result, under the retirement pension regulations, in exclusion of those monies from the earnings record on the basis of which benefits are calculated. A Panel majority shared in the concern expressed on behalf of these people and, in deference thereto, formulated a revised Article 9.4 attempting to address that specific need while minimizing general impact upon the Employer's costs. The awarded contractual language appears in the Award Section of this document.

18. Article 10.2 Article 10.2 deals with the increments in which Personal Day eligibility may be earned. Under the expired Agreement, the Employee was credited with six days on January 1 of each year. The Employer's proposal was to change this

language to provide that the Employee would accrue Personal Day entitlements at the rate of 1/2 day per month. The Panel, in its review of the implementation complexities which would result from such a change, found them to embody numerous potential complications and the proposal is therefore denied.

19. Article 10.3 Under the terms of the expired Agreement, Personal Leave cannot be used in increments of less than 1 hour duration and only in 1 hour units. The Employer proposed altering this to 1/2 day or 4 hour units. In the exploration of this matter, the Panel found that there were numbers of situations in which the adoption of such a provision would result in the unproductive use of personal time. The proposal was therefore denied.

20. Article 12.1 This Article relates to the rate at which sick leave credits are earned. The Panel's findings and determination are set forth in the Award Section of this document.

21. Article 12.2 Article 12.2 was a Union proposal to permit persons on 207-c leave to earn sick credits as if they were on active duty. The philosophy of the parties relating to this is summarized in the discussion of Holiday Pay entitlement (see No. 17 above) and repetition would here serve no useful purpose. The proposal was denied as set forth in the Awards Section of this document.

The Employer also proposed a change in Article 12.2 which ~~stated that 207-c benefit recipients would not be entitled to~~

sick leave credits "except as may be permitted in the future under section 207-c of the General Municipal Law." It is the Employer's position that even if permitted under the law, the payments would be improper because as was previously noted, persons on sick leave should not be earning further sick leave. The Panel in balancing the interests and concessions of the parties, sustained the Employer's proposal and contractual language implementing the revision in the successor Agreement appears in the Awards Section hereof.

22. Article 12.3 Article 12.3 deals with Employee notification of inability to report to duty and in the expired Agreement stated that it is "essential" that the Employee notify the Department. The Employer urges that the term "required" better describes the Employee's obligation. The Panel concurred and the required implementing revision is set forth in the Award segment of this document.

23. Article 12.11 Article 12.11 was a Union proposal to alter the ratio employed in crediting and converting unused Sick Days into Annual Leave Days. The Panel denied this proposal for reasons set forth in the Awards Section of this document.

24. Article 13.2 This Article deals with compensatory time off where the expired Agreement required that it be taken within the calendar quarter earned. The Union sought to extend the time limit to the calendar year as opposed to the quarter in which the entitlement was earned. The Employer sought to retain the existing limit, but suggested it might, at its option, extend the

allowance by one month beyond the quarter but that if the time were not taken by the end of that month, to then discharge the entitlement by payment.

The Union's position sought greater flexibility for its members, while the Employer attempted to avoid or minimize record keeping complexities. The Panel arrived at what it believes to be an equitable balance of interest and has awarded language consistent with that objective which appears in the Awards Section of this document.

25. Article 13.6 This Article relates to meal allowances paid when working overtime which the Union proposed to increase. The Union proposal was denied for reasons set forth in the Award segment of this document.

26. Article 13.7 This Article relates to the annual hours base employed in computing overtime where the Union proposed a reduction in the hours used. The proposal was denied for reasons set forth in the Award segment of this document.

27. Article 14.1 Article 14.1 is the subject of an Employer proposal to delete certain restrictions on its latitude in selecting insurance carriers. The proposal was denied for reasons set forth in the Awards segment of this document.

28. Article 14.2 This Article deals with Health Insurance premium payments where the Employer proposed cost sharing. The proposal was denied in conjunction with the denial of the proposal relating to Article 14.1 above.

29. Article 14.3 This Article relates to Dental Insurance

where both parties submitted proposals, both of which were denied in conjunction with the denial of the Article 14.1 proposal.

30. Article 14.5 Under the provisions of this Article in the expired Agreement, the Employer subscribed to life insurance on behalf of the Employee in the amount of twice the annual salary plus \$10,000 with an additional \$10,000 coverage in the even of accidental death or dismemberment with a ceiling of \$85,000. The Union proposed an increase in the \$85,000 ceiling to \$185,000. In support of its proposal it presented a summary of policies in effect in other Rockland County jurisdictions which indicated that Orangetown was at a somewhat lower level than others, probably because the existing provision was one of longstanding and had not been adjusted for inflationary and salary increases over the years. The Panel concluded that a life insurance policy in the amount of \$110,000 with a double indemnity provision would be equitable and contractual language effecting such a change appears in the Awards segment of this document.

The parties further committed to the institution of the change as promptly as practicable, but in any event by February 28, 1992.

31. Article 14.6 This Article in the expired Agreement provided for reimbursement to the Employee of expenses incurred in purchase of eyeglasses or contact lenses up to a maximum of \$60 per year. The Union sought to increase this ceiling to \$200 per year per person and to extend the benefit to the Employee and

his or her dependents. The Employer proposed retention of entitlement limitation to the Employee only with the annual ceiling being raised to \$120. A review of the evidence setting forth comparable practice in Rockland County, supported the Employer's position and the language implementing same appears in the Awards Section of this document.

32. Article 20.1 Article 20.1 dealing with the term of the Agreement was revised as set forth in the Award Section of this document.

33. Article 21.7 This Article in the expired Agreement stipulated that a retired employee would be permitted to retain and to receiving the necessary permit for his or her service revolver. The Union proposed changing the terminology of "revolver" to "weapon" reflecting recognition of changing technology. The proposal was sustained and appropriate language is set forth in the Awards segment of this document.

34. Article 21.9 This is a new provision, the inclusion of which was proposed by the Employer and which treats with random drug testing. The proposal was denied for reasons set forth in the Awards Section of this document.

### III. AWARD:

The undersigned, constituting the duly designated Public Arbitration Panel in the above captioned Interest Arbitration having achieved majority concurrence, award as follows:

1. ~~Article 3.1 c of the expired Agreement shall be~~

retained without modification in the successor Agreement and the proposal relating thereto is denied.

2. Article 3.1 f. The language of this provision in the expired Agreement stating ". . .of the discipline the Department intends to impose. . ." shall be redacted to state:

" . . .of the discipline the Department may impose. . ." in the successor Agreement. No further changes in this provision are before the Panel.

3. Article 3.1 i. The language of this provision in the expired Agreement stating ". . .and will not generally apply to question by employees below the third level of supervision, e.g., sergeants and platoon commanders." shall be deleted. The successor Agreement will then state:

"This clause is not to be interpreted in such a manner as to prevent questioning of employees by superiors with respect to their conduct in the normal course of business."

4. Article 4.1. The language of this provision in the expired Agreement shall be redacted for inclusion in the successor Agreement as follows: the portion stating ". . . equivalent to the amount of dues payable to the Association." shall be altered to state:

". . .the amount of dues payable to the Association by its members."

The sentence in the expired Agreement stating: "this request for dues deductions must be signed by the employee and the following authorization form shall be utilized:" shall be

altered for inclusion in the successor Agreement, to read:

**"This request for dues deductions must be signed by the employee on a copy of the following authorization form to be provided by the Association."**

The sentence in the expired Agreement stating "The Employer, however, will supply the Union with the forms specified in Section 4.1 at least sixty (60) days after execution of this Agreement." shall be deleted in its entirety.

5. Article 4.2. That portion in the expired Agreement stating, ". . . a list of names of the officers. . ." shall be altered for inclusion in the successor Agreement, to read:

**". . . a list of names of the employees. . ."**

6. Article 4.4. This Article as it appears in the expired Agreement shall be redacted for inclusion in the successor Agreement, as follows: that portion reading ". . . regular dues and assessment to be deducted under. . ." shall be altered to read

**". . . regular dues and assessments or any changes to be deducted. . ."**

That portion of the expired Agreement stating: "Any changes in the amount of Union dues to be deducted or assessments made must be similarly certified by the Union, in writing to the Employer." shall be deleted. The immediately following sentence stating such changes shall not become effective until sixty (60) days. . ." shall be altered for inclusion in the successor Agreement, to read:

"changes shall become effective as soon as practicable but not later than sixty (60) days. . ."

7. Article 5.6. This provision appearing in the expired Agreement shall be altered for inclusion in the successor Agreement, as follows: that portion stating ". . .differences of opinion concerning. . ." shall be altered to read:

". . .differences of opinion. . ." That portion reading "such requests. . ." shall be altered to read:

"Such requests. . .".

8. Article 6.1 of the expired Agreement shall be deleted and replaced with the following:

6.1 Base wage scale for all employees will be in accordance with the schedule attached hereto marked schedule A. (see page 11).

6'. Article 5.2. This provision appearing in the expired Agreement shall be altered for inclusion in the successor Agreement as follows: that portion stating "...one hundred twenty (120) hours (15 days) per year...." shall be altered to read:

"...one hundred forty four (144) hours (18) days per year..."

Schedule "A"

	<u>1/1/91</u>	<u>7/1/91</u>	<u>12/1/91</u>	<u>1/1/92</u>
5th Grade	33383	34368	35073	36475
4th Grade	39549	40735	41550	43212
3rd Grade	42443	43716	44591	46374
2nd Grade	45176	46531	47462	49360
1st Grade	50155	51659	52693	54800
Sergeant	57678	59408	60596	63020
Lieutenant	66330	68320	69686	72474
Detective	53666	55276	56382	58637
Detective Sergeant	61189	63025	64285	66857
Detective Lieutenant	69841	71936	73375	76310

## NOTE:

Sergeants are to be paid at an annual rate of 15% greater than that in effect for First Grade Patrolman;

Lieutenants are to be paid at an annual rate of 15% greater than that in effect for Sergeants;

Detectives and Youth Officers receive the cash equivalent of a 7% differential above First Grade Patrolman, in excess of rank.

9. Article 6.2. Article 6.2 of the expired Agreement shall be altered for inclusion in the successor Agreement, to state as follows:

"said increments shall be in the sum of dollars, \$625.00."

That portion of the provision commencing with "All increments shall be in the sum of \$575.00 through the end of Article 6.2 shall be deleted and replaced with the following in the successor Agreement:

"All increments shall be in the sum of \$625.00.

The following cumulative pattern shall exist, effective January 1, 1992:

Years of Service	<u>7</u>	<u>10</u>	<u>13</u>	<u>16</u>
Longevity Payment	625 (3)	1250 (3)	1875 (3)	2500 (3)
	<u>19</u>	<u>22</u>	<u>25</u>	
	3125 (3)	3750 (3)	4375	

10. Article 6.3. Article 6.3 of the expired Agreement shall be deleted and replaced in the successor Agreement, by the following:

"6.3 Effective January 1, 1992 officers who are regularly scheduled to work between the hours of 2300 and 0800 shall received an additional annual salary increment of \$2650 over their normal base salary while assigned to that shift. Payment of this night shift increments shall not be reduced when employees are off on official paid leave (i.e., sick leave, vacation leave, personal leave, etc. and worker's compensation up to one year), nominal deductions for such time having been made

in the calculation of this annualized increment."

11. Article 7.2. Article 7.2 of the expired Agreement shall be altered for inclusion in the successor Agreement as follows. Delete the portion reading "As an alternative, the Town shall pay annually on January 1, the sum of four hundred (\$400.00) dollars to each officer assigned to plain clothes." The following shall be substituted for the deleted language:

"As an alternative, the Town shall pay annually retroactive to January 1, 1991, the sum of four hundred and fifty (\$450.00) dollars for the calendar year 1991 and thereafter commencing with January 1, 1992 shall pay five hundred (\$500.00) dollars to each officer assigned to plain clothes."

12. Article 8.3. The provision of the expired Agreement treats with ineligibility with employees receiving benefits under the provisions of Section 207-c of the General Municipal Law on vacation time. The Panel has determined that consideration of this and a number of other vacation time proposals to be best deferred to a more propitious time. The proposal is therefore denied.

13. Article 8.6. Article 8.6 of the expired Agreement shall be modified for inclusion in the successor Agreement as follows: that portion which reads ". . .to illness, but as no sick leave. . ." shall be modified to read:

". . .to illness, but has no sick leave. . ."

14. Article 8.7. This article in the expired Agreement relates to the rate at which vacation credits may be earned.

Both parties submitted proposal and the Panel determined that consideration of either or both was inappropriate at the present time juncture and both are therefore denied.

15. Article 9.2. This proposal was to identify observation dates for holidays for the purpose of determining premium time pay eligibility. As the Panel denied the Union pay eligibility proposal, it denied also its petition to revise Article 9.2.

16. Article 9.3. This proposal was to modify the provisions of this Article to provide time and one-half pay for holidays in lieu of straight time. The Panel majority denied the proposal. A further proposal for a language revision of Article 9.3 was sustained to the effect that the language of the expired Agreement stating ". . .December of the preceding may be carried over and used, or paid at the rate. . ." shall be altered for inclusion in the successor Agreement to read:

". . .December may be carried over and used or be paid at the rate. . .".

17. Article 9.4. Article 9.4 of the expired Agreement shall be deleted and the following should be substituted:

"Article 9.4. Employees receiving benefits pursuant to Section 207-C of the General Municipal Law, shall be entitled to holiday pay for all holidays which occur during the time the employee is receiving said benefits up to a maximum of eighteen (18) holidays during any one episode. However, any employee who has exhausted such entitlement with the episode continuing shall be entitled to convert unused vacation accruals to holiday pay."

18. Article 10.2. This proposal was to alter the Agreement to provide Personal Leave Day eligibility in half day increments as earned and was deemed to embody undesirable complications. It is therefore denied.

19. Article 10.3. This proposal was to alter the language of the Agreement to provide that Personal Leave could not be used in less than 4 hour increments. The Panel inferred that such an arrangement would compel unproductive depletion of Personal Leave credits and the proposal is therefore denied.

20. Article 12.1. This was a proposal to alter the language of the Agreement stipulating the rate at which Sick Leave is earned. It was found to be inconsistent with certain other established practices and is denied.

21. Article 12.2. The Union proposal relating to this Article of the expired Agreement was to permit employees to earn Sick Leave credits while receiving benefits under Section 207-C of the General Municipal Law. That proposal was denied on the basis of past practice and potential cost.

There was a further proposal relating to 12.2 which was sustained. Consequently, Article 12.2 of the expired Agreement which currently reads in part ". . .207-C of the General Municipal Law, except as may be permitted in the future under Section 207-C of the General Municipal Law." shall be modified for inclusion in the successor Agreement, to read:

**". . .under the provisions of Section 207-C of the General Municipal Law."**

22. Article 12.3. Article 12.3 of the expired Agreement shall be modified for inclusion in the successor Agreement to the effect that that portion stating

". . .it is essential that. . ." shall be revised to read:

". . .it is required. . ."

23. Article 12.11. The Union proposal relating to this Article in the expired Agreement, was to alter the ratio employed in crediting traded unused sick leave days for annual leave days. The Panel found this proposed ratio to be inconsistent with other established provisions of the Agreement and the proposal is denied.

24. Article 13.2. Article 13.2 of the expired Agreement shall be redacted for inclusion in the successor Agreement as follows: that portion stating ". . .compensatory time off within the calendar quarter earned. If the compensatory time off. . ." shall be revised to read:

". . .compensatory time off within the calendar quarter earned or the next calendar quarter; if requested and denied within that next calendar quarter, the employee will be paid. However, a request will be denied only if the time off is not compatible with the operating needs of the Department. If the compensatory time off. . ."

25. Article 13.6. A Union proposal for an increase in the meal allowance when working overtime was deemed to be unjustified in light of the minor increases in the price of meals outside the home since the expired Agreement allowance was instituted and the

proposal is denied:

26. Article 13.7. A Union proposal to reduce the annual hour base employed in computing overtime rates was found to be in conflict with other established practices and to entail a potentially large cost and is denied.

27. Article 14.1. The Employer proposed deletion of restrictions on its latitude in selecting an insurance carrier for its Health Insurance coverage. A similar proposal was made relating to Article 14.3 which treats with dental insurance coverage. In view of the point in time at which this Panel was deliberating and the fact that retroactive implementation would be impracticable, it is deemed appropriate to hold that the parties should defer consideration of these matters to impending negotiations and the proposal is therefore denied.

28. Article 14.2. This Article deals with payment of Health Insurance premiums where the Employer proposed cost sharing by the Employee. For reasons stated in treating with Article 14.1 above, the Panel deemed it appropriate to suggest deferral and the proposal is denied.

29. Article 14.3. This Article relates to Dental Insurance. The issues correspond to those addressed in dealing with Article 14.1 and 14.2 respectively. The proposal is denied.

30. Article 14.5. Article 14.5 of the expired Agreement shall be deleted and the successor Agreement shall state as follows:

~~"Article 14.5. The Employer will provide, at its own cost~~

and expense and without cost to an Employee who is a member of the bargaining unit, life insurance in the amount of \$110,000 and shall further provide a Double Indemnity provision."

This provision shall be instituted as soon as administratively practicable before February 28, 1992.

31. Article 14.6. Article 14.6 of the expired Agreement shall be revised for inclusion in the successor Agreement, as follows: that portion stating ". . . maximum of sixty (\$60) dollars per pair." shall be revised to read:

". . . a maximum of one hundred and twenty (\$120) dollars per pair."

32. Article 20.1 of the expired Agreement shall be deleted and a substitute shall appear in the successor Agreement as follows:

"20.1 This Agreement shall be in effect as of January 1, 1991, except as amended, and shall remain in effect through December 31, 1992."

33. Article 21.7. Article 21.7 of the expired Agreement shall be revised as follows: that portion stating ". . . his/her service revolver. . ." shall be altered to read:

". . . his/her weapon. . ."

34. New Provision - Random Drug Testing

To be Article 21.9. New provision - random drug testing.  
The Employer has proposed the adoption of a draft agreement drawn up for the nearby Stony Point jurisdiction. In view of the fact that the final form has not been definitively fixed and the time

juncture at which the Panel's deliberations took place, it was deemed appropriate to defer further consideration in this matter to future negotiations and the proposal is denied.

Delmar, New York  
March 28, 1992

Respectfully Submitted,

Sumner Shapiro  
Chairperson  
(Award portion previously signed  
17, December, 1991)

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ALBANY )

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

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

*Maureen McNamara*  
Maureen McNamara, Esq.  
Union Designated Panel Member  
Concurring  
(Award portion previously signed  
20, December, 1991)

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ROCKLAND )

Sworn to before me this 11 day of August, 1992.

*Richard P. Bunyan*  
\_\_\_\_\_  
Notary Public

**RICHARD P. BUNYAN**  
Notary Public, State of New York  
No. 4981530  
Qualified in Westchester County  
Commission Expires 02/03/94



There are a few other points that I should make:

1. The name of the Union is the Orangetown Policemen's Benevolent Association. It does not contain an "Inc.", and there is an "Inc." in both the caption and on the fifth-line of the introduction. Perhaps you could just white out the "Inc." I apologize that I did not catch this in the Award itself.

2. Page two in the third line of Section A: an "a" is missing from the word wages.

Thank you for your courtesies.

Very truly yours,

  
Maureen McNamara

MM/mk

Enclosure

**10**



## INTRODUCTION

The Town of Orangetown and the Orangetown Police Benevolent Association began negotiations prior to the expiration of their current agreement on December 31, 1986. The PBA, following an unsuccessful mediation effort, filed a Petition for Compulsory Interest Arbitration on June 23, 1987 (Ex.A #1). Improper Practice charges filed by the parties (i.e., U-9596 and U-9630) and Stay of Arbitration proceedings delayed the appointment of an Arbitration Panel. On September 2, 1987, the Public Arbitration Panel was designated. Subsequently, scheduling problems of the Employer representative further delayed the resumption of the process following an informal session on October 13th, 1987, until January 7th, 1988.

Pursuant to the provisions of the Civil Service Law, Section, 209.4, the Chairman, Employer and Employee members of the Public Interest Arbitration Panel were charged to heed, inter alia, the following statutory guidelines:

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

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

### **BACKGROUND**

The Town of Orangetown in Rockland County maintains a fully paid police department. The Town of Orangetown (hereinafter "Orangetown") is located in the southern part of Rockland County, adjoined on the north by the Town of Clarkstown and on the west by the Town of Ramapo. The Town consists of 22 square miles and has a population of 36,397, excluding the population of three incorporated villages, namely Nyack, Piermont and South Nyack/Grandview which employ their own police departments.

The Orangetown PBA bargaining currently consists of approximately 79 uniformed police officers, including patrolmen, sergeants, lieutenants and detectives, excluding radio operators, the Captain and Chief of Police. Orangetown ranks third with 79 employees behind Ramapo with 96 employees and Clarkstown with 124 employees. The current contract of the parties, determined by an arbitration award (Ex. T #4), expired on December 31, 1986. Thus, the instant Interest Arbitration Award will commence on January 1, 1987.

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PROCEDURE

The Panel held an informal, organizational meeting on October 13, 1987 and subsequently conducted a formal hearing which was transcribed on January 7th and 13th, 1988. The Panel voted 2-1, Employee member dissenting, to adopt the stenographic transcript as the official record of the proceedings with the costs shared equally by the parties. (T, 173). The Town and the PBA were represented by counsel throughout these proceedings and afforded full opportunity to present evidence, witnesses and argument in support of their respective positions. The Public Interest Arbitration Panel admitted as evidence eighteen (18) Town Exhibits, five (5) PBA Exhibits and one (1) Arbitrator's Exhibit and one (1) Joint Exhibit. In addition, the parties submitted post-hearing briefs and reply briefs in support of their positions. All of the evidence submitted has been carefully considered in the preparation of this opinion and its accompanying award.

At the close of the hearing, the Panel met extensively in executive session and deliberated on each of the outstanding issues presented to it in the PBA petition and the Town response thereto. Although the representatives and the Chairman diligently sought to reach consensus on the numerous outstanding issues, this did not occur consequently complicating and prolonging the Chairman's task in the instant matter. Nevertheless, the Chairman commends Ms. McNamara and Mr. Solfaro for the time and effort they devoted to the process while recognizing their diametrically opposing positions on virtual all issues.

In reaching its conclusions, the Panel has been bound by the standards enunciated in Section 209.4(c)(v) of the Taylor Law with particular emphasis given to comparison of wages, hours, conditions of employment, ability to pay, overall costs, etc.

**PBA PROPOSALS**

In its Petition for Interest Arbitration, the PBA made several demands summarized as follows:

**SCHEDULE A**

Effective January 1, 1987, the base salaries of the patrolmen and officers shall be increased to the rates applicable for their designated rank as set forth in the base salary schedule set forth below:

Probationary	30,000
4th Grade	32,875
3rd Grade	35,750
2nd Grade	38,625
1st Grade	41,500
Detective	44,613
Sergeant	47,725
Lieutenant	54,884

Detective - 7.5% above 1st Grade

Sergeant - 15% above 1st Grade

Lieutenant - 15% above Sergeant

- (2) Sergeants and Lieutenants - A 15% differential between the ranks.
- (3) Detectives 7.5% differential and the cleaning of detectives of detectives clothing.
- (4) Longevity - every three (3) years without a CAP at \$550.00 per increment. Restoration of the "De Maio" increment after 15 years. All longevity payments on the anniversary date.
- (5) Night Shift Differential - Restoration of 6% night shift differential.
- (6) Agency Fee
- (7) Sick Leave (a) sick leave credits shall accrue at rate of two (2) days per month  
(b) sick leave buy out  
(c) separate accruals for family sick leave  
(d) sick leave accruals during any period receiving benefits under Section 207-C General Municipal Law.  
(e) Amend Section 12.8 to allow officer to pay municipality back with leave credits followings extended sick leave.
- (8) Overtime (a) triple time for working special events events while scheduled to be off-duty.  
(b) other language changes
- (9) Vacation (a) increase number of vacation days as follows:

	<u>CURRENT</u>	<u>PROPOSED</u>
1 year	12 days	15 days
2 years	14 days	15 days

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3 years	15 days	20 days
4 years	20 days	30 days
5-20 years	20 days (5-9 yrs.)	30 days
	22 days (9-10 yrs.)	
	25 days (10-15 yrs.)	
	30 days (15 yrs.+)	
After 20 yrs		35 days

b) officers who use five or less days of sick shall be credited with up to five vacation days on a pro rata basis.

- 10) Holidays (a) payment of holidays in January and July.
- (b) employee receiving benefits pursuant to GML 207-C shall receive holidays.
- (c) officers who work on a holiday shall receive time and one-half in addition to other compensation.

11) Health Insurance

- (a) clause providing "retired officers shall continue to receive health insurance benefits".
- (b) delete clause permitting Town to charge insurance carriers at its discretion subject to arbitration.
- (c) new optical plan.

12) Grievance Procedure

- (a) extensive language changes

13) General Provisions (Tuition Reimbursement)

- (a) delete \$45.00 cap and provide 75% tuition reimbursement for officers and children of officers killed in action.

TOWN OF ORANGETOWN PROPOSALS

(IN SUMMARY)

TERM: 2 Year Contract 1987-1988

1) SALARIES	<u>1/1/87</u>	<u>7/1/87</u>	<u>1/1/88</u>
PROBATIONARY	\$22,048	\$23,712	\$26,416
4TH GRADE	28,912	29,640	30,368
3RD GRADE	31,096	31,928	32,760
2ND GRADE	33,072	34,112	35,152
1ST GRADE	38,168	39,624	42,120
SERGEANT +4500 above 1st grade	42,668	44,124	46,620
LIEUTENANT +5000 above Sgt.	47,668	49,124	51,620
2) DETECTIVE/YOUTH OFFICER DIFFERENTIAL	- \$2,200		
3) NIGHT DIFFERENTIAL	- \$.80/hour w/current language.		
4) TUITION ASSISTANCE	- \$75.00 maximum per credit hour.		
5) SICK LEAVE	- Language modifications; reduced family sick leave usage from 96 hrs. to 78 hrs. per year.		
6) VACATION	- After 21 years of service - 31 days After 22 years of service - 32 days After 23 years of service - 33 days After 24 years of service - 34 days After 25 years of service - 35 days		
7) Implement the Blue Cross/Blue Shield Dental program at no cost to the PBA members.			
8. Longevity - Increase current \$475.00 to \$500.00.			
9. Disciplinary Procedure - Language modifications; elimination of named arbitrator's and use of PERB.			

I. Salaries  
PBA Position

The PBA salary proposal, if awarded, would increase the base salary of first grade Orangetown patrolmen and officers from the current \$36,769 to \$41,500 on January 1, 1987 -- an increase of 12.87%. The base salaries for 2nd grade through 4th grade officers would be increased by 7% in 1987 (e.g.  $35,750 \times .07 = \$38,253$ ). [PBA Post Hearing Brief, p. 5a (Schedule A)]. The PBA did not provide a 1988 salary proposal in its petition for Compulsory Interest Arbitration to PERB, but submitted one in its post hearing brief, p. 5a.

In support of its salary proposal, the PBA has made direct comparisons with Clarkstown salaries and other compensation. According to the PBA, Clarkstown is the jurisdiction with which Orangetown should be compared in determining equitable salaries and related economic benefits. In this connection, the PBA states "since the time many of the current police officers started their careers in Orangetown, the Orangetown salary scale has been progressively falling behind the Town of Clarkstown" (PBA Ex. #1, p.5). In addition, the PBA maintains that if the Town's current proposals for 1987/1988 were compared with Clarkstown's over a five year period (holding constant these salaries) the Orangetown police officer would earn \$21,371 less than his/her counterpart. Moreover, the PBA contends the compensation gap increases when longevity steps (i.e., beginning at 3 years in Clarkstown) are factored in the equation.

The PBA maintains its salary proposal addresses a problem which was "exacerbated by the last arbitration award." Unlike the 1978 period where the Orangetown police officer fared better than his/her Clarkstown counterpart, the 1985 Arbitration Award caused severe retrogression. A comparative analysis of Orangetown Officers before and after the award (assuming a certain career path) found a 1984 wage gap at \$21,000 with Clarkstown and \$37,079 less in 1986 (PBA, Post Hearing Brief, p.5). Despite the panel's intent to equalized 1st grade Orangetown police officers with 1st grade Clarkstown police officers, the PBA argues that the 5% awarded for 1986 was soon eclipsed by a 7% Clarkstown settlement for 1986. The economic gap was compounded by reductions in night shift differentials, longevity, and other compensation so that the 5% was not totally realized and in fact the goal of Clarkstown "parity" diminished. An analysis of the wage differentials between Clarkstown and Orangetown prior to the last arbitration award (1984) and the effect after the award appears in the PBA Post Hearing Brief, p.3a.

#### Ability to Pay

According to the PBA, the ability to pay statutory criterion is a "non-issue" in the instant case. Citing a 6/87 letter from the Town supervisor that "Orangetown is the most financially sound community in Rockland County "and that" we spend large amounts of money to insure we have the most modern and well-equipped Police Department and among the highest paid police officers in the State. . .", the PBA claims the only issue is the Town's desire to pay fair wages. In contrast to these public statements, the PBA notes that the Town has spent thousands of dollars in litigation with the PBA, collected interest on

police wages for 1987 and 1988 during the pendency of the instant interest arbitration and authorized the hiring of nine (9) police officers prior to the issuance of the award, providing evidence of minimal concern over its ability to pay.

#### Conclusion

The PBA's proposed salary for 1st grade officers of \$41,500 would surpass Clarkstown's \$38,780 effective January, 1987. This overage is necessary in the PBA's judgment to rectify the detriment of the prior award which included other fringe benefit losses and, at the same time, restore Orangetown's higher paid ranking in Rockland County which existed prior to the award. The Town proposal of \$42,120 in 1988 (a reduction from \$42,640 previously offered for settlement) is deemed insufficient because Clarkstown officers would still receive more in 1988 -- \$42,997. Not only would 1st grade patrolmen receive less at the end of 1988 but so would officers in grades 2, 3, 4, and 5. Although the PBA did not provide 1988 salary proposal in its petition, it belatedly offered one in its Post Hearing Brief which, if awarded, would increase 1st grade officer's salaries to \$44,405 effective 1/1/88 (Post Hearing Brief, p.3a).

#### Town of Orangetown Position

The Town has submitted a salary proposal which would increase for 1st grade police officers base wages \$2855.00 or 7.75% above the 1986 wages and increase base wages \$2,496.00 or 6.30% above the 1987 wages. The total increase of \$5351.00 over the two year period, including compounding and a split wage increase in 1987, would result in 1st grade officer net wages of \$38,896 in 1987 and \$42,120 in 1988. The Town specifically has offered split wage increases of 3.8% on 1/1/87

and 3.8% on 7/1/87 resulting in a net increase of 5.7% or \$2127 for 1987, with 1.9% or \$728 rolling over into 1988. In 1988, the Town offers an additional 6.3% or \$2496, increasing base wages from \$39,624 to \$42,120. The net increase in base wages over 2 years is therefore \$5351 or 14.55%. The Town calculates that these wage increases for 1st grade officers through 1988 would compare favorably with Clarkstown. "The net result is that during the year 1988 a first grade patrolman in the Town of Orangetown will earn a total of only One Hundred Fifty (\$150.00) Dollars less or point zero (.04%) four percent less than his counterpart in the Town of Clarkstown. . ." (Town Post Hearing Brief, p.31). It is also noted that Clarkstown's 1st grade officer base wages received for 1987 will exceed Orangetown by \$563.00 or 1.45%. In addition, the Town deems its offer retains Orangetown's superiority over Ramapo 38,896 vs. 37,829 in 1987 and other Rockland County towns. The Ramapo wage offer of 15.73% over two years (1987-88) is discounted by the purported institution of a "voluntary drug testing program."

In contrast to the PBA 1987 wage proposal averaging 18% increases for ranks 2nd, 3rd and 4th, the Town has made offers ranging from 7.5% over 2 years for 4th grade officers to 8.8% over 2 years for 2nd grade officers. The Town justifies its lower offers to these ranks by noting that traditionally emphasis has been given to 1st grade officer salaries as opposed to the lower ranks. Eighty three (83%) percent of the officers in Orangetown are 1st grade or above and the Town ranks 1st among all Towns from 4th and 2nd grade patrolmen with its 1987 proposal, except Clarkstown which it considers abberational. For example, the Town argues that its 1987 wage proposal for 4th grade resulting in base wages of 29,640 will still exceed Ramapo's 4th grade

salary of 26,937 by \$2703 or 10.04%. Similar base wage advantages are cited for 3rd grade and 2nd grade officers vis a' vis Ramapo, Stony Point and Haverstraw, however, the gap between Orangetown and Clarkstown remains substantial (Town Post Hearing Brief, pp. 37-38). These statistical relationships continue in 1988 comparisons.

The Town further maintains that since police officers progress through the ranks over five years ultimately attaining 1st grade rank where they remain for most of their careers, 1st grade salaries are far more important than the lower ranks. In rejecting the PBA assertion that over a five year period beginning in January, 1984 (assuming grades 5 through 2 (4 years), 6 years at 1st grade, 5 years as a sergeant and 5 years as a lieutenant) that an Orangetown officer would earn \$21,100 less than a comparable Clarkstown officer, the Town contends "It can hardly be argued that officers during their 2nd, 3rd, and 4th years are denied fair and reasonable salary increases." Comparing Orangetown to itself from 1983 to 1988 prospectively, the Town finds percentage increases ranging from 51.43% for probationary to 4th grade in 1983-84 to 23.00% for the officer who was 2nd grade (\$32,214) at the end of the expired agreement and who would move to 1st grade on 1/1/87 and receive a base wage increase to \$39,624. (Town Brief, p.35).

The Town considers its wage proposal for probationary officers particularly generous. Under the Town's proposal the current \$20,313 salary for probationary officers would increase as follows:

1/1/87	22,048	+1735	= + 8.54%
7/1/87	23,712	+1664	= + 7.02%
1/1/88	26,416	+2704	= +11.40%
		2 year total	= +30.05%

Were the Panel to award the Town's proposal, the Town is confident that its starting salaries would be competitive with surrounding Towns, again except Clarkstown.

#### Ability to Pay

The Town presented a relative ability to pay position, preferring to shift the burden to the PBA to demonstrate its adherence to the statutory criterion. On the one hand, the Town provided no data, such as budgetary status or financial constraints, which would significantly limit its ability to pay. However, on the other hand, the Town argued that its ability to pay would become a factor if the PBA's wage and fringe benefit demands were awarded. According to the Town, in advancing its wage and related demands the PBA has not provided evidence of the Town's ability to pay or, for that matter, how the public interest would be served by awarding the PBA proposals. Equally distressing from the Town's perspective was the failure of the PBA to provide cost analyses for its various economic proposals singularly or collectively which in the Town's judgment "ignores the welfare of the public, the financial ability of the public employer to pay."

#### Comparability

The Town takes issue with the PBA's focus on Clarkstown as the jurisdiction most comparable to Orangetown. Clarkstown has a larger population than Orangetown 72,519 vs. 36,697 and is larger in area 39 square miles vs. 22 square miles. Orangetown also has the third largest or third smallest police force after Clarkstown and Ramapo. Given these facts, the Town argues that comparability should not be viewed exclusively in terms of Clarkstown standards but should include

all towns in Rockland County. When this is done, the Town contends, the superior wage and benefits package enjoyed by Orangetown police officers becomes evident. In short, the Town maintains that it "should not be compelled to provide salary and benefits disproportionate to those provided to other workers within the region simply because one municipality has chosen to be overly generous to its PBA."

### Bargaining History

Referring to the predecessor Interest Arbitration Award (1985-86), the Town renewed its position then as one where it offered a 13% base wage increase for 1985, equalizing Orangetown with Clarkstown at that time for 1st grade police officers, in exchange for fringe benefit concessions in longevity, sick leave, night differential, and overtime. Although the 1986 wage increase contained in the award of 5% was surpassed by a 7% Clarkstown increase, the Town insists that 18.66% in base wage increases over two years constituted a substantial improvement in the salary structure and only could have been accomplished with the fringe benefit givebacks. "This increase was markedly higher than that provided to any other town police force in Rockland County, the average percentage increase for the years 1985 and 1986 being approximately six (6%) percent per annum." In the Town's view, the exchange of fringe benefits for wages concessions in 1985-86 "represented recognition by the Panel that Orangetown and Clarkstown were not true comparables. . ."

Unlike the PBA, the Town contends that an accurate reading of the 1985-86 award indicates that the Panel's intent was to equalize 1st grade officers in Orangetown and Clarkstown for 1985 only and not to establish parity in perpetuity. The "give and take" the Town considered critical in reaching the 1985-86 award should be preserved in the instant award. Benefits received for concessions made are an integral part of the bargaining process and should remain in balance during subsequent awards barring unforeseen circumstances.

Finally, the Town reviewed as illustration the sick leave buy out collective bargaining history, concluding that the Panel's award accelerated the buyout of "frozen accumulated sick leave" to minimize the impact of the 1985-86 wage increase. Having relinquished this benefit for a "substantial increase realized directly in their pockets," the PBA should not be allowed to reinstitute the same benefit through the instant Arbitration Panel.

#### Discussion/Analysis

The Panel's objective in the instant interest arbitration is to arrive at an equitable and reasonable award which logically considers the statutory criteria. This task has been complicated by the number of issues, the absence of consensus on either the conceptual or the substantive aspects of the process and the significant differences in the weight each party assigns to the statutory criteria.

The Town has been adamant with respect to the sanctity of the 1985-86 Interest Arbitration Award which clearly reduced several fringe benefits in order to equalize briefly 1st grade police officers in Orangetown with their Clarkstown counterparts. Although Clarkstown was viewed as the police department to emulate in 1985 insofar as 1st

grade patrolmen were concerned, the Town insists that parity over time was not the objective. According to the Town, the ability of Orangetown to pay mitigated against direct comparisons with Clarkstown and only via substantial adjustments in fringe benefits was the 1985 equalization effected.

The PBA has been equally exorcised over the 1985-86 award, considering it as extremely detrimental to the police department. Not only were salary increases, particularly in ranks other than 1st grade, considered "ridiculously low" but also the large reductions in fringe benefits deemed disasterous. According to the PBA, even the alleged express intent of the parties to "grant Orangetown 1st grade police officers the same salaries as Clarkstown" was not realized as Clarkstown surpassed Orangetown again in 1986. The PBA also challenges the Town's strict adherence to the prior award since negotiated agreements rather than imposed awards is the statutory criterion which the Panel is charged to heed.

From the outset, it should be stated that each interest arbitration is a de novo process. That is, while consideration of the statutory criteria is mandatory, an independent judgment must be made as to which combination of factors, accorded what weight shall constitute the final determination. Absent a severe ability to pay problem, in most interest arbitrations the comparability criterion seems to emerge as the first among equals. While the parties in negotiating their own agreements may preserve or expand disparities, engage in equitable or inequitable trade-offs and/or reinforce or suspend traditional wage patterns, the Arbitration Panel is accountable for the result of its award. As a de novo proceeding, the

Arbitration Panel need not be controlled by one criterion such as bargaining history but is obliged to evaluate each criterion to produce an equitable result for the period of the award. Needless to say, if one party made major concessions to achieve a particular objective both those concessions and that objective in current terms would be assessed.

The Panel Chairman is persuaded that there is no tangible ability to pay issue in the instant case. Neither party produced any evidence that the wage and fringe benefit offers promulgated would fiscally impair Orangetown. For the most part, the Public Employer, rather than the employee organization, initiates the ability to pay defense usually resulting in alternative financial analysis by the PBA. Clearly, sound fiscal management can be undermined by excessive compensation to employees, however, the data necessary for an ability to pay analysis has been omitted.

In reviewing the wage patterns since 1983, the Chairman notes that 1st grade police officers in Clarkstown except for 1985 have always been paid more than 1st grade police officers in Orangetown. The gap in 1983 and 1984 exceeded \$2000 and is currently \$1300. According to the Town, the major trade-off of fringe benefits for salaries was necessary in 1985 to close a \$1235 gap (32,221-30,986) which existed prior to the award. Despite the fact the Town contends a one time closure was the parties intent, the Chairman notes that the \$1300 gap has returned while the fringe benefits lost have not.

The prior arbitration award essentially accepts the Town's argument that the Town's desire "to manage its financial affairs in a prudent, conservative manner", given a 19% wage increase over 2 years,

justified the minimization of this cost impact through fringe benefit concessions. Having established this premise, the award addresses all other issues accordingly. Absent the data relied upon by the Panel, namely the comparative analysis between wages gained and fringe benefits lost, the instant Panel is constrained to focus on the pre and post salary patterns and the current condition.

In the Chairman's judgment, Clarkstown and Ramapo have police departments comparable to Orangetown. Although Stony Point and Haverstraw have some characteristics in common with Orangetown, as smaller departments comparisons with Orangetown, except for certain fringe benefits, is not useful.

The salary objective sought in the instant case is to maintain the relative position of Orangetown vis a vis Clarkstown and Ramapo and also correct any clear inequities discerned. The primary focus of this effort is 1st grade police officer's salaries, but not to the exclusion of other ranks. At the expiration of the current agreement (12-31-86), the three (3) towns listed below were positioned as follows:

Clarkstown	37,469	-700
Orangetown	36,769	
Ramapo	35,661	+1108

The Town's proposal for 1987, resulting in a net wage increase to \$38,896 would have the following effect:

Clarkstown	39,459	-563
Orangetown	38,896	
Ramapo	37,826	+1067

The Towns proposal for 1988, a 6.3% increase following 7.6% split raises in 1987 would along with Ramapos 15.73% over two years leave the Towns as follows:

Clarkstown	42,270 (net)	42,997 base
Orangetown	42,120 (net)	42,120 base
Ramapo	41,271 (net)	41,271 base

Although in terms of net wages Orangetown's 1st grade police officers would receive under the Town's proposal during 1987-88 \$713 less (563 + 150) than Clarkstown, 1st grade police officers, when the rollover of \$727 into 1989 is factored in the difference is \$1440 or over twice the base wage difference in 1986. Commencing 1989 negotiations, Orangetown officers at 42,120 would receive \$827 less in base wages than Clarkstown. In addition, Ramapo 1st grade patrolmen who in 1986 were \$1108 behind Orangetown would be closer at \$849 -- a \$259 gain.

The PBA proposal of 12.87% or 41,500 in 1987 appears excessive to the Panel majority. Were the PBA proposal awarded, Orangetown for the first time would surpass Clarkstown in base wages. That the Clarkstown public employer has chosen to retain leadership in police officer compensation does not mandate that Orangetown keep pace -- only that a fair and reasonable salary is paid. To the extent that the PBA proposal seeks retroactive compensation for the perceived inequities of the prior award, the Panel faces a dilemma. While the Panel can and will address current inequities to some extent, it cannot obliterate the effects of the prior award as if it never occurred.

Accordingly, with respect to first grade police officers, effective January 1, 1987 the following salaries are awarded retroactively as follows:

	<u>1/1/87</u>	<u>1/1/88</u>
<u>1st grade</u>	\$39,527	\$42,492

The above wage increase represents a 7.5% wage increase in 1987 followed by a 7.5% wage increase in 1988. The relationship among the three towns resulting therefrom is as follows:

	<u>1/1/87</u>	<u>7/1/87</u>	<u>NET</u>	<u>1/1/88</u>	<u>7/1/88</u> (base)	<u>NET</u>
Clarkstown	38,780	40,138	(39,459)	41,543	42,997	(42,270)
Ramapo	37,087	38,571	(37,829)	41,271		(41,271)
Orangetown (7.5%)	39,527		(39,527) 7.5%	42,492		(42,492)

Whereas Orangetown 1st grade police officers will receive \$68 more than Clarkstown in 1987 and \$222 more in 1988, the 1989 rollover of \$729 in Clarkstown exceeds the Orangetown temporary net wage advantage. In addition, the base wage of Clarkstown of \$42,997 will continue to exceed Orangetown at \$42,492 thus maintaining a traditional pattern -- albeit \$505 more. Moreover, the Ramapo/Orangetown equilibrium is maintained commencing 1989 as a \$1221 advantage for Orangetown proportionally consistent with the \$1108 differential which prevailed prior to the instant award. The awarded increase of 15.56% over two years keeps pace with the 15.73% allocated in Ramapo for 1987-88.

At this juncture, with only six months remaining for this contract period and absent any adverse fiscal evidence which split raises are normally designed to address, the panel has opted to award straight annual retroactive salary increases. Finally, the slight wage advantage obtained by Orangetown 1st grade police officers over Clarkstown in net 1987/88 wages is partial recognition of the net present value of money received in the future.

Grades - Probationary through 4th

With respect to probationary police officers, the Panel majority notes that prior to the last arbitration award Orangetown paid salaries approximately \$4700 less than Clarkstown and \$400 - \$500 more than Ramapo. After the award, the gap increased to \$6300 vs. Clarkstown and fell \$1000 behind Ramapo -- a clear reversal of pre-existing patterns. Again, the Town maintains that this \$1570 difference was the probationary officers contribution to equalizing 1st grade salaries for one year.

The Town is proposing to increase probationary salaries 30.05% over two years as follows:

<u>Year</u>	<u>Salary</u>	<u>Increase</u>	<u>Net Increase</u>
1986 Current	20,313		
1/1/87	22,048	+1735	+8.54%
7/1/87	23,712	+1664	+7.02%
1/1/88	26,416	+2704	+11.40%

In so doing, the Town contends Orangetown probationary officers salaries will be competitive with all other Towns, except Clarkstown. A \$6300 gap with Clarkstown would be reduced to \$5575 whereas the advantage over Ramapo would be restored to \$600.

The PBA, on the other hand, seeks parity with Clarkstown in its probationary officers proposal of \$30,000 beginning 1/1/87.

In the Panel majority's judgment, restoration of the relationship that existed prior to the last award seems equitable given the absence of data in the award explaining how the probationary reduction of \$1570 (1984-1986) contributed to the \$2600 1st grade increase. Implementation of the Town's proposal after 1988 will leave a \$5730 gap (32,146-26,416) with Clarkstown, but a \$1751 (26,416 -24,665) advantage over Ramapo.

The Chairman concurs with the parties in their mutual intent to significantly increase the salaries of probationary officers. To accomplish this end and to maintain Orangetown's traditional strong second place standing, we award 18% salary increases for the probationary officers rank effective 1/1/87 and 1/1/88 as follows:

	<u>Salary</u>	<u>(+) or (-)</u>	<u>Pct.</u>
1986 current	20,313		
1/1/87	23,969	+3656	18.00%
1/1/88	28,283	+4313	18.0%
			(20.40% compounded)
Clarkstown	32,146	-3836	
Ramapo	24,665	+4199	

2nd - 4th grades

The PBA has argued that the Orangetown pay scale was closer to Clarkstown salaries prior to the last award than it was afterwards. Although in 1/1/84 Orangetown officers at every rank were paid somewhat less than Clarkstown officers, the differences increased in every category. Specifically, 4th grade increased from \$1,511 to \$5,076 (>\$3,565); 3rd grade increased from \$1,277 to \$4,410 (>\$3,133); and 2nd grade increased from \$1,164 to \$3,858 (>\$2,694). To rectify this situation, the PBA has proposed the following 1987 increases:

<u>Current</u>	<u>PBA 1/1/87</u>	<u>Pct. Increase</u>	<u>Amt.</u>
4th 28,202	32,875	16.6%	4673
3rd 30,265	35,750	18.5%	5605
2nd 32,214	38,625	19.90%	6411

The Town has proposed more modest increases, maintaining that "Orangetown ranks first to all Towns from 4th grade through 2nd grade with its 1987 proposal except for that aberration, the Town of Clarkstown". The Town proposes as follows for 1987/88.

<u>Current</u>	<u>Town 1/1/87 Pct</u>	<u>7/1/87</u>	<u>1/1/88</u>	<u>Total Pct.</u>
4th 28,202 +710	28,912 (2.5%)	29,640	30,368	7.68
3rd 30,265	31,096 (2.7%)	31,928	32,760	8.24
2nd 32,214	33,072 (2.7%)	34,112	35,152	9.12

The differences between Orangetown and its comparable Towns of Clarkstown and Ramapo would change as follows from 12/31/86 to 12/31/88 under the Town's offer.

<u>Orangetown</u>	<u>1/1/86</u>	<u>Ramapo</u>	<u>Clarkstown</u>
4th	28,202	24,905 (+3297)	33,278 (-5076)
3rd	30,265	28,930 (+1335)	34,625 (-4410)
2nd	32,214	31,400 (+814)	36,072 (-3858)
		(+5446)	(-13,344)

<u>Orangetown</u>	<u>12/31/88</u>	<u>Ramapo</u>	<u>Clarkstown</u>
4th	30,368	28,823 (+1545)	38,806 (-8438)
3rd	32,760	33,481 (+721)	40,203 (-7443)
2nd	35,152	36,340 (+1188)	41,600 (-6448)
		(+3454)	(-22,329)

Were the Panel to award the Town's proposal for grades 2-4 not only would Ramapo draw \$2000 closer to Orangetown but also the distance from Clarkstown would increase by \$9000 over the 3 years -- a substantial sum. Even the Town's calculations which show an advantage

over in Ramapo in 1987 of +2703 for 4th grade, +637 for 3rd grade and +150 for 2nd grade represent significant declines from the 1986 equivalent numbers and substantial differences from the pre 1985 period.

Prior to the last award, the 2nd - 4th grade gap with Clarkstown in 7/84 was \$4258 (\$ 88,281 - \$84,023) as compared to the 1/86 gap of \$13,344 and the Town's proposal which would create a \$22,329 differential. While the panel is reluctant to eliminate the effects of the prior award as the PBA proposes -- giving the award some precedential value and assuming some quid pro quo between the parties -- it is similarly reluctant to allow the 1986 gap in grades 2nd - 4th to increase dramatically as the Town proposes. Under the circumstances to stabilize this negative trend, the Panel majority awards as follows:

Effective 1/1/87 and 1/1/88 respectively, police officers in ranks 2nd, 3rd and 4th shall receive retroactive wages of 9.0% per annum as follows:

<u>Orangetown</u>	<u>Salary</u>	<u>Increase</u>	<u>Salary</u>	<u>Increase</u>
Current 1/1/86	1/1/87		1/1/88	
4th 28,202	30,740	+2538	33,507	+2767
3rd 30,265	32,989	+2724	35,958	+2969
2nd 32,214	35,113	+2899	38,273	+3160

The resulting comparisons with the two comparable Towns are as follows:

<u>12/31/88</u>	<u>Orangetown</u>	<u>Ramapo</u>	<u>Clarkstown</u>
4th	33,507	28,823 (+4684)	38,806 (-5299)
3rd	35,958	33,481 (+2477)	40,203 (-4245)
2nd	38,273	36,340 (+1933)	41,600 (-3327)
		(+9094)	(-12,871)

In conclusion, the foregoing award for police officer grades 2nd, 3rd, and 4th slightly decreases the negative wage differential vis a vis Clarkstown (\$73) from 1/1/86 while significantly increasing the positive wage differential vis a vis Ramapo (\$9094-5446=3648). The effects of the 1985-86 Award are carried forward with respect to Clarkstown but the instant award, as opposed to the Town's offer, holds constant the Orangetown/Clarkstown relationship thereafter.

In summarizing the salary award at this stage, probationary to 2nd grade, it should also be noted that Clarkstown police officers will receive 152,755 vs. the \$136,602 receive in Orangetown -- a difference of \$16,153. This sum clearly exceeds the pre-awarded differential of \$8993 (\$112,102 - 103,109) but is an improvement over the current differential of \$19,649 (\$130,643-110,994). Assuming 1st grade police officers receive salaries from years 5-20 approximately one thousand (\$1,000) greater than would have received without the 1985-86 award, the difference is technically made up, although Orangetown police officers remain \$16,153 behind Clarkstown but increasingly ahead of Ramapo.

2. Detectives/Youth Officer

Town Position

The Town proposed a flat dollar differential for detectives/youth officer of \$2200.00 above grade and rank. On an annualized basis, the salary received thereby would increase to \$40,368 on 1/1/87; \$41,824 on 7/1/87 and \$44,320 1/1/88. According to the Town, this annual increase of \$200.00 represents a 10.0% increase over the current \$2,000 paid.

The Town rejects the PBA contention that the 7.5% differential for detectives is the norm in Rockland County since only Clarkstown and Stony Point have it. With respect to Clarkstown, the Town asserts that a 6.5% differential was paid in 1986; 7.0% differential in 1987 and will reach 7.5% in 1988.

In addition, the predecessor award is cited which eliminated all percentage differentials on the ground that "increased responsibilities for supervision have not increased significantly over the years "and therefore the differentials should not geometrically increase sergeants and lieutenantants wages. The \$2,000 differential above grade and rank of 1st grade would be increased as follows:

Current Detective/Youth Officer

<u>12/31/86</u>	<u>1/1/87</u>	<u>7/1/87</u>	<u>Net</u>	<u>1/1/88</u>	<u>Net</u>
38,769	40,368	41,824	(41,096)	44,320	44,320

The Town's \$2200 or \$200 increase over the current \$2000 is based on its wage proposals (e.g., \$2200 + 39624 = \$41,824) (7/1/87).

PBA Position

The PBA seeks a 7.5% differential and the cleaning of detectives clothing (A#1, Article Seven). In this connection the PBA notes that Clarkstown pays a 7.5% differential plus \$500 clothing allowance in 1988, 7% in 1987 plus a clothing allowances of \$400. Ramapo has 3 grades of detectives and pays flat salary differentials of \$300 below Sergeant, First Grade and Second Grade detective (PBA #3, p.24). The PBA maintains that these salary differentials range from 12% for 1st year detectives to 14% for 1st grade detectives (PBA #1 p. 18).

Analysis/Discussion

The logic utilized by the Town, derived from the prior award, is that a fixed relationship should exist between detectives and 1st grade police officers salaries. The \$2000 flat sum represented 5.4% of the 1st grade salary of \$36,769 as of 12/31/86. The Town's offer to increase this amount 10.0% to \$2200 would represent 5.76% of its 1/1/87 wage offer. Unlike the Town and prior arbitration panel, the instant Panel majority maintains that a dollar sum if not increased proportionally loses relative value over time. That is, the relationship between \$40,000 and \$2000 is not the same as the relationship between \$45,000 and \$2000.

Given the fact 3 of the 5 Towns, except Orangetown, use or rely upon a percentage differential to compensate detectives, an adjustment is appropriate.

Accordingly based on the instant award for 1st grade salaries, the cash equivalent of a 7% detectives differential is awarded as follows:

<u>1st Grade</u>	<u>1/1/87</u>	<u>Detectives</u>		<u>1/1/88</u>	<u>Detectives</u>
	39,527	+2769 = 42,294		42,492 + 2974 =	\$45,466

The Panel chairman credits the Town argument that it may choose to negotiate this compensation rather than have it automatically increase, however, the panel is obliged to award a fair sum comparable to similarly situated Towns.

The majority further awards that the Town shall provide for the cleaning of detectives' clothing used while serving in plainclothes or, in the alternative, pay each detective the sum of \$400 per annum for said purposes. Together, the detectives compensation and the cleaning service or clothing allowance approximate the wage increases granted 1st grade patrolmen. The language proposed by the PBA will suffice and is thus awarded as follows:

Add a new sentence for Article 7.2 "Officers assigned to plain-clothes shall have their outer clothing cleaned in lieu of uniforms during the time they are in such plain-clothes assignment".

As an alternative, the Town shall pay annually on January 1st, the sum of four hundred (\$400.00) dollars to each officer assigned in plain clothes.

### 3. Sergeants and Lieutenants

The prior panel eliminated the 15% rank differentials for sergeants and lieutenants, rationalizing these reductions as necessary to assist the Town in sustaining its 1st grade wage increases. In lieu

of the 15% differential, a flat dollar increase for sergeants of \$4,500 above 1st grade and a flat dollar increase for lieutenants of \$5000 above sergeants were established.

Discussion/Analysis

Clearly, the Town's proposal if enacted would further diminish the relative value of the sergeants' and lieutenants' wage differentials. With the Town's proposals, the \$4500 for sergeants and \$5000 for lieutenants becomes a progressively smaller percentage of their total salaries. Were this process to continue at some point the sergeant's/lieutenant's differential would become a nullity. Inasmuch as the parties placed a specific value on sergeant and lieutenant services over and above the rank below, logic and equity suggest that they should intend to preserve this relationship -- not erode it.

Given the fact that the comparable towns of Clarkstown and Ramapo as well as Stony Point will have a 14-15% differential for sergeants and lieutenants effective during 1988, the Panel majority discerns no plausible reason for denying this benefit to Orangetown officers. The 5% differential between the Town's offer and that paid by other police departments is not explainable, in the Chairman's opinion, by the reductions accompanying the 1985/86 award. I calculate an additional 5% for the (13) sergeants and the (5) lieutenants, exclusive of base wage increases to approximate \$65,000 over two years.  $1400 \times (13) + 1900 \times (13) + 1200 \times (5) + 2200 \times (5) = 65,000$ .

Accordingly, the Panel awards that effective 1/1/87, the rank differentials of fifteen (15%) percent between 1st grade police officers and sergeants and fifteen (15%) percent between sergeants and lieutenants shall be reinstated as follows:

Sergeants

current	1/1/87		1/1/88
41,269	45,456	(39,527 x .15) or 5929	48,866 (42,492 x .15) or 6374

Lieutenants

current	1/1/87		1/1/88
46,269	52,274	45,456 X .15 or 6818	\$56,196 (48,866 x .15) (or 7330)

Summary

The summary of base salaries and differentials awarded for police officers, effective January 1, 1987 is as follows:

	<u>1/1/87</u>	<u>1/1/88</u>
Probationary	23,969	28,283
4th Grade	30,740	33,507
3rd Grade	32,989	35,958
2nd Grade	35,113	38,273
1st Grade	39,527	42,492
Sergeant	45,456	48,866
Lieutenant	52,274	56,196
Detective	42,294	45,466
Detective Sgt.	48,225	51,840
Detective Lt.	55,043	59,170

4. Longevity

PBA POSITION

The PBA maintains that Orangetown police officers receive longevity payments substantially below the rest of the County. The removal of a special increment known as the "DeMaio" during the prior arbitration award exacerbated the problem. The "DeMaio" was paid to a patrolman or detective patrolman who attained fifteen years of service in those ranks.

The parties are currently litigating the interpretation of award language concerning longevity payments. The Town has removed the "DeMaio" increments from those patrolmen who received the increment prior to the issuance date of the award 12/85 as opposed to the effective date of the contract period covered by the award 1/1/85.

In addition, since Orangetown commences longevity at the seventh (7th) year whereas virtually all other towns and villages begin at step 4, Orangetown is least favored. "When Orangetown police officers received their first \$475 longevity payment for their 7th year of service, Clarkstown, Ramapo and Nyack police officers were receiving \$950 and had already received a total of \$2250 in longevity payments..."

To rectify the situation, the PBA proposes as follows:

6.2 Longevity pay shall be paid to employees who have completed three (3) years of service and on the subsequent three year anniversary date so long as the employee shall continue in the employ of Orangetown, said increments shall be in the sum of \$550.00.

All patrolmen shall reach the grade of first grade patrolmen after the completion of four years of service. The determination of the employee's period of service shall be based on the anniversary date of his original appointment to the Orangetown Police Department and not the date that his employment became permanent.

#### Town Position

The Town proposes to increase the existing longevity increment to \$500.00 at each existing longevity step of which there are six (6) steps. The Town further reiterated its argument during the prior interest arbitration that longevity is a recognition of knowledge and experience gained and eventually this compensation "maxes out" making

it "economically unsound to continue to pay an employee above the general wage increase. . . "Therefore, the Town believes the cap after six (6) longevity steps should be retained.

The Town further opposes the restoration of the "DeMaio" increment, declaring there is no justification for rewarding a patrolman for simply achieving 15 years on the force without being promoted. The Town also considers it inappropriate to grant a longevity increment (ie. Step 4) while the patrolman is moving through the incremental structure which itself is recognition of increased experience."

The Town contends its proposal will rank Orangetown "second only with Haverstraw with respect to the dollar equivalent paid to its police officers". Finally, the Town rejects the PBA proposal as insufficiently costed out. The Town calculates the PBA demands would cost an additional \$23,875 over 25 years.

#### Analysis/Discussion

The Panel Chairman can delineate areas of agreement and disagreement within the parties respective positions. The Chairman is persuaded that the PBA lost significant longevity benefits as a result of the prior award, particularly the "De Maio" increment. The PBA also documented the substantial longevity deficit existing in Orangetown as compared to other Rockland County police departments. For example, the Towns of Clarkstown, Ramapo, and Haverstraw pay \$8,000 to \$15,000 more over 25 years with Stony Point over \$20,000 more in longevity increments.

The Chair also agrees with the Town in its view that the "De Maio" increment lacked a rationale basis for its existence and probably, in the Chair's opinion constituted political largesse. If "De Maio" represented a substitute for the 4th year increment paid by virtually every Town, it also is problematic since the Town is correct in asserting that longevity cannot logically be paid while police officers are below 1st grade. And, finally, unrestricted longevity steps would seem to be pointless at some juncture.

Nevertheless, there is a discernible deficit which should be addressed. At the same time, the Panel majority awards that existing longevity benefits be retained. Therefore, the Panel majority awards as follows:

#### Article Six

##### 6.2 Amend to read as follows:

Longevity pay shall be paid to employees who have completed six (6) years of service and on the subsequent three year anniversary date for seven (7) increments, including a twenty-fifth year, so long as the employee shall continue in the employ of the Town of Orangetown. Said increments shall be in the sum of \$525.00. The determination of the employee's period of service shall be based on the anniversary date of his original appointment to the Orangetown Police Department and not the date that his employment became permanent.

Employees who were originally credited, prior to December 2, 1985, with the additional longevity for patrolman and detective patrolman with fifteen (15) years of service (DeMaio) shall be entitled to continue to receive said longevity increment for as long as the employee remains a patrolman or detective patrolman.

Employees who originally received their first longevity increment in their fourth year of service shall continue to be entitled to receive an additional longevity increment every three (3) years, except that no such employee shall be entitled to receive additional increments after their twenty-fifth (25) year of service (8th increment), unless such employee had already attained their twenty-fifth (25) year of service prior to the December 1985 arbitration award. If an employee had already attained his twenty-fifth (25) year of service prior to the December 1985

arbitration award, he shall be entitled to all longevity increments he had at that time, but shall not be entitled to accrue any further longevity increments.

All increments shall be in the sum of \$525.

To summarize, as a result of the foregoing longevity award, the following cumulative pattern shall exist, effective January 1, 1987.

Years of service	<u>7</u>	<u>10</u>	<u>13</u>	<u>16</u>	<u>19</u>	<u>22</u>
longevity pymt.	525(3)	1050(3)	1575(3)	2100(3)	2625(3)	3150(3)
					<u>25</u>	
					3675	

#### 5. Night Shift Differential

##### Town Position

The Town has proposed an increase to the night shift differential from 75 cents per hour to 80 cents per hour. The Town notes that only two (2) towns in Rockland County pay night differential, namely Orangetown and recently Clarkstown. In the Town's opinion, night differential should be paid "only when the officer works a night shift on a full-time basis as opposed to a rotating basis". Moreover, the Town contends, the night differential should not be a percentage -- as existed prior to the 1985-86 award -- but a flat sum reflecting the fact all officers are equally inconvenienced by the assignment.

"An officer who will receive the night differential of 80 cents per hour will earn a guaranteed amount of \$1,664.00 above base salary." Prior to 1985 the Town states night differential was paid only to officers who worked the hours and not while on leave, however, its current proposal guarantees the differential to the officers every pay period rather than quarterly "whether he works or not every pay period." (Town Brief, p.54).

PBA Position

According to the PBA, Clarkstown and Orangetown operate steady midnight tours where officers only work the night shift hours of 2300 to 0700 or 2400 to 0800. Clarkstown pays a 6% night shift differential to these officers and so did Orangetown prior to the last award which reduced the compensation to 75 cents per hour.

The award, in the PBA's judgment, also created a problem in that it distinguished the night differential to be included in the base pay rate for overtime computations under the Fair Labor Standards Act paid at 60 cents from the night differential not part of FLSA overtime computations paid at 75 cents. The Town has been paying 75 cents since the award, however, the PBA submits that FLSA "does require that night shift differential be included in overtime computations."

Analysis/Discussion

In the Panel Chairman's opinion, the stress factors associated with night work impact directly on those officers who work these shifts on a regular basis, irrespective of rank. The night shift differential should therefore reflect in economic terms the burden of such work. Although there is no evidence as to what the relationship of 75 cents was to the average hourly rate of Orangetown police officers during the prior award, the Town's offer of a 5 cents increase seems inadequate. An increase of 10 cents to 85 cents seems appropriate and commensurate with the 15% increase in base wages. The Chairman is also persuaded by the PBA's argument that the Fair Labor Standards Act requires that night shift differential be included in overtime computations.

Accordingly, it is awarded that Article 6.3 be amended to read as follows:

6.3 Effective January 1, 1987 Officers who are regularly scheduled to work between the hours of 2300 and 0800 shall receive an additional (\$.85) per hour over their normal base salary for all hours worked during such time. Payment for the night shift differential shall include shifts where the employees are off on any official paid leave (i.e., sick leave, vacation leave, personal leave, etc. and worker's compensation up to one (1) year).

#### 6. Agency Fee

The PBA has proposed that an agency shop fee clause be added to the contract. Currently, all members of the bargaining unit, except one, are members of the PBA. The majority of Towns, except Orangetown and Ramapo have this provision.

The Town did not address the agency fee issue in its written submissions. In any event, the Chairman concludes the PBA has met the criteria usually required to incorporate an agency fee clause in an agreement. With 99% of the unit members enrolled in the PBA, the agency fee will not impinge significantly on the rights of those employees who choose not to join.

Accordingly, Article Four, Section 4.1 shall be deleted and replaced with the following clause:

#### ARTICLE FOUR

##### DUES CHECKOFF AND AGENCY SHOP FEE DEDUCTION

The Town agrees to deduct from the salary of all unit members who are not members of the Association, effective 9/1/88, an amount equivalent to the amount of dues payable to the Association, and to deduct from the salary of all unit members who are members of the Association, Said dues shall be deducted from each paycheck. The Association shall inform the Town of the amounts of dues to be deducted, and the individuals from whom dues are to be deducted. Written authorization by the employee shall be furnished to the Town

where such employee is an Association member. The Agency Shop Fee deduction shall be made in accordance with the provisions of Section 208.3 of the Civil Service Law.

The first sentence of Article 4.1 shall be deleted and replaced with the above.

7) Sick Leave  
PBA Position

The PBA proposes to add a new Article 12.1 which would provide that sick leave credits shall accrue at the rate of 2 days per month comparable to other Rockland County Towns. The PBA further proposes that a new Article 12.2 be added that would provide for a sick leave buyout as in Clarkstown. According to the PBA, of the five Towns, "Orangetown is the only one without sick leave buyout or unlimited sick leave." In addition, the PBA proposes a Section 12.3 that would provide for separate accruals for family sick leave which would not be counted against the employee's accumulated sick leave.

The PBA proposes a Section 12.4 which would provide that sick leave credits shall continue to accrue while an employee is receiving benefits under Section 207c of the General Municipal Law. "Nothing in Section 207c prevents police officers from receiving sick leave accruals while receiving their salaries pursuant to Section 207-C." The PBA contends the Town unilaterally drafted contract language in Article 12.2 which denies employees sick leave accruals" during any month on leave of absence without pay or receiving benefits under Section 207c GML for one-half (1/2) or more of the month. This constitutes an inequity because officers injured on-the-job do not accrue sick leave while those injured off the job receive this benefit".

In addition, the PBA seeks to amend Section 12.8 to provide that after an employee reimburses the employer for any money paid while he was out on extended sick leave, he will be credited with his vacation, sick leave and other paid leave accruals. Finally, it is proposed that Section 12.8 permit the officer returning from extended sick leave to pay the municipality back with leave credits for vacation, etc. rather than immediately with money.

#### Town Position

The Town opposes reinstatement of a "sick leave buyout" program. Pursuant to the prior award, the Town accelerated its payment for all accumulated sick leave at a cost of \$750,000. (Ex. T#6). The elimination of the accumulated sick leave benefit began with the 1981-82 agreement.

The Town similarly opposes the PBA demand to add 4 1/2 days of sick leave per year to twenty four (24). According to the Town, the 4 1/2 reduction during the last award was another component of the contributions necessary to pay the 18.66% base wage increase. This demand along with a request for 24 family sick/bereavement days per year convinces the Town that cost impact is irrelevant to the Union.

Finally, the Town has a proposal to modify Section 12.15 to make it consistent with the prior award. The award reduced sick leave to 19.5 days or 156 hours per year from 24 days or 192 hours; therefore the 12 day family sick leave benefit should be proportionately reduced to 78 hours of the 156 hour total.

#### Analysis/Discussion

Despite the fact the vast majority of Rockland County Towns and Villages provide either unlimited sick leave or an accumulated sick leave buyout plan, the Panel majority concludes that Orangetown having

initiated a phase out of accumulated sick leave in the 1981-82 agreement which was finalized by the 1985-86 award shall not reinstitute the benefits via the instant arbitration award.

In addition, despite the fact a case can be made that it is inequitable for Orangetown not to allow its officers to accrue sick leave credits while they are receiving benefits under Section 207c of the General Municipal Law as do virtually all other Rockland County Towns it did not provide this benefit under Section 7.4 II of the 1983-84 agreement (Ex. T #1). This language while not identical to language contained in Section 12.2 of the current agreement (derived from the 1985/86 Award (T#4) and Town's additions) denied officers accruals in sick leave, vacation and other credits while receiving benefits under Section 207 (c) of the G.M.L. To resolve differences in this area, the parties should ultimately negotiate directly.\*

\* It should also be noted that the Clarkstown contract does not permit employees to accrue vacation, sick leave, or other credits while on sick leave or extended sick leave. (PBA #2).

However, Sections 12.7 and 12.8 are ambiguous in some respects. While 12.7 requires the employee to exhaust all his/her sick leave, vacation and personal leave credits in order to become eligible for sick leave at half-pay, Section 12.8 requires the employee, who cannot accrue vacation leave, etc. while on sick leave at one-half pay, to reimburse the Employer for any money paid for sick leave before separation from the department.

In the Panel majority's judgment, credits acquired after the employees return to work should be used to prospectively reimburse the employer. Otherwise, upon return to work the employee would not have any credits or money to reimburse the employer. With respect to the Town's proposal to reduce family sick leave to 78 hours, the Panel majority opts for the status quo despite the arithmetical imbalance.

PBA proposals to clarify existing contract language, correct an inequity or delete obsolete language shall be awarded as feasible.

Accordingly, it is awarded that Article Twelve shall be amended as follows:

Section 12.1	No change
Section 12.2	No change
Section 12.3	No change
Section 12.4	No change
Section 12.5	No change
Section 12.6	No change
Section 12.7	No change

**12.8 Amend to read as follows:**

"It is expressly agreed that any employee upon his/her returned to full-time duty shall, pursuant to the second sentence hereof, reimburse the employer for any time paid for extended sick leave before separation from the Department. Upon return to full-time duty, all vacation or other paid leave credits, except sick leave, shall be utilized prospectively first to reimburse the employer on an equivalent time basis for any such extended sick leave granted."

Employees will not accrue vacation, sick leave or other paid leave credits while on sick leave with one-half pay or on absence without pay.

**12.9 Amend the first paragraph to read as follows:**

"An employee who is out on sick leave with one-half (1/2) pay or extended sick leave absence without pay during the first year of such absence will continue to be provided with health insurance benefits at the employer's expense. Thereafter, an employee who desires to maintain his/her health insurance benefits shall pay the employer's premium rate for that month directly to the employer."

**12.9 Paragraph #2**

No Change: (Refers to leaves of absence without pay for personal or non-sick related absences).

- 12.10 No change
- 12.11 No change
- 12.12 Delete
- 12.13 Delete
- 12.14 Delete
- 12.15 No change (renumber to 12.12)

**8) Overtime**

**PBA Position**

The PBA proposes to replace current Articles 13.1 to 13.4 so as to conform the Orangetown overtime provisions to those found in Clarkstown, Ramapo et al. The PBA further proposes to add a Section 13.6 which address a problem considered unique to Orangetown, namely a triple time provision for those employees who are required to work a special event (e.g., parades) on scheduled days off. According to the PBA, the escalation of special events deprives these officers of their infrequent holidays and weekends off.

Town Position

In Executive Sessions, the Town objected to the proposed payment of triple time, indicating that no other Towns pay this rate. The Town's representative also stated that there is exclusivity with respect to Orangetown unit work and the hiring of outsiders would violate this concept as well as pose insurance liability problems.

Analysis/Discussion

The payment of time and one-half for overtime is the norm, therefore the Panel majority denies the PBA demand for double time. The Panel majority further notes that police officers who work in Orangetown assume both the advantages and disadvantages of employment in that community upon hiring. Parades apparently are a fact of life in Orangetown. Further documentation of the officer's hardships would be necessary to consider the PBA proposal. Neither importing the Clarkstown overtime provisions wholesale or severely restricting the management of the Orangetown Police Department serves the best interests of the parties. At the same time, the Panel majority notes that working conditions should be reasonable, fair and comparable to similiary situated communities.

In this connection, the Panel majority awards that a new Section 13.3 be added to Article 13, a modification of the PBA proposal, guaranteeing rights under Section 971 of the Unconsolidated Laws as follows:

13.3 Nothing herein contained, however, shall require a police officer who may be on duty in the open air, or on the streets or in other public places to work in excess of eight (8) consecutive hours of each consecutive twenty-four (24) hours and no police officer shall

be assigned to more than forty (40) hours of duty during any seven (7) consecutive day period, except in an emergency, including mandatory overtime to insure the adequate manning of a shift.

Prior Article 13.3 shall be renumbered as Article 13.4 and so forth. All other PBA demands for revisions in the Overtime Article are Denied.

9) Vacation

PBA Position

The PBA contends the Orangetown vacation schedule is inadequate at all levels. Specifically, "in his 10th year of service, an Orangetown Police Officer receives only 22 days although both Ramapo and Clarkstown receive 30 days." Similarly, during his 15th year the Orangetown police officer receives 25 days while the Ramapo officer receive 35 days and the Clarkstown officer 30 days.

The PBA proposal to amend Article 8.7 is offered to remedy the problem as follows:

<u>Length of Service</u>	<u>Vacation Days</u>
1 year	15 days
2 years	15 days
3 years	20 days
4 years	30 days
5 - 20 years	30 days
After 20 years	35 days

The vacation schedule for the employees herein shall include all fifty-two (52) weeks of the year.

The PBA further proposes that contract language substituted for Article 8.3 permit employees to accrue vacation credits while receiving benefits pursuant to Section 207c of the General Municipal Law.

Town Position

The Town has proposed that an additional day be added for each year of service for years twenty one (21) through twenty five (25), resulting in the following vacation scheduled.

<u>Years of Service</u>	<u>Present</u>	<u>Proposed</u>
21	30	31
22	30	32
23	30	33
24	30	34
25	30	35

According to the Town, if awarded, their proposal would provide PBA members with "more vacation leave than any other officer in Rockland County." The Town also rejects the PBA effort to arbitrarily select "unique characteristics of contracts" tailored to meet the needs of various municipalities" as the basis for comparison.

In this connection, the Town cites the 243.5 day work schedule as the "premier schedule" within the County thus providing the Town with proportionately lower police coverage per officer. When the work schedule, holidays, and personal leave days are combined, the annual net days worked in Orangetown under the Town's proposal (199.78) compare favorably to other Towns (eg. Ramapo, 256 days).

In its Reply Brief, the PBA refuted the Town contentions and provided Exhibit D which sets forth the vacation entitlements of Ramapo and Clarkstown vis a vis Orangetown." The Orangetown police officers (over a 20 year career) would have receive a total of 109 days less than the Ramapo officer and 121 days less than the Clarkstown officer. (Reply Brief, p.11).

With respect to the Town's work chart data, the PBA contends the 243.5 day work year is inaccurate since Orangetown officers work 8.25 hours per day yielding 250 days for patrolmen and 261 days for some supervisors. Discrepancies were also found in the Ramapo schedule, specifically the omission of ten compensatory days.

Analysis/Discussion

The Panel majority is persuaded that a significant discrepancy in vacation benefits exists between Orangetown and the comparable police departments of Clarkstown and Ramapo -- not offset by other benefits. The current vacation schedule has not been adjusted in at least 5 years. The awarded adjustment combines aspects of the PBA and Town proposals. To rectify the discrepancies the following changes are awarded, effective January 1, 1988.

**Amend Article 8.7 to read as follows:**

For completed years of continuous service, year 1 through year 4 - no change in vacation credited.

For years five (5) through eight (8) increase from 20 days to 22, days, leaving year nine (9) at 22 days.

For years ten (10) through fourteen (14), increase from 25 days to 28 days.

For years fifteen (15) through twenty (20); no change; shall remain at 30 days.

For years 21 through year 25, one day per year as per the Town proposal.

Finally, the PBA demand to add an Article 8.3 is Denied.

10) Holidays

PBA Position

The PBA proposes to Amend Article 9.3 to provide for payment of holidays in January and July as was the practice prior to the last Arbitration Award. A Section 9.4 is sought which would permit holiday accrual under Section 207c GML. Again, the PBA argues that a police officer injured on the job should not be unfairly penalized. In addition, a Section 9.5 is proposed which would pay officers who work on a holiday time and one half.

Town Position

The Town opposes holiday accruals for Section 207c injuries because the matter is negotiable and the current provision has been in the contract since 1981-82. The Town also opposes time and one-half for working a holiday. In the Town's view the rotating work schedule which allocates manpower necessitates that certain officers will work holidays. On such occasions, the officers are paid for the holiday and given a compensatory day off -- a total of two days compensation.

Analysis/Discussion

In proposed Section 9.3, the PBA seeks return to the practice of posting holidays in advance of their occurrence. Under this system a patrolman could take a "holiday vacation" once the holidays were posted. Currently, the officers can only use those holidays which have occurred, but not posted, and if unused in the first or second six months of the year they are paid for the holidays.

The Panel majority concurs with the existing practice, as administratively defensible, and will therefore deny the PBA proposal to change that aspect of Section 9.3. However, the second sentence of

Section 9.3 (i.e., Payment of the unused holidays . . . etc.) should be changed to reflect the fact several holidays occur in November and December which the employee may have insufficient time to use.

Accordingly, the Panel majority awards the following:

### Section 9.3

An employee may take a holiday as either time off, as they occur, with the approval of the Department Head or his designated representative, or elect to be paid his applicable rate at the time the holiday occurs. Payment of the unused holidays that occurred in the first six (6) months of the year will be paid during the first pay period in July. Those that occur during the second six (6) months of the year, will be paid during the last pay period of December, except that commencing 10/1/88 those unpaid holidays occurring in the months of October, November, December of the preceding year may be carried over and used, or paid at the rate of pay prevailing when they occurred for ninety (90) days or until March 31st of the following year. Those days carried over but not used or paid by March 31st shall be paid at the forementioned prevailing rate during the first payroll period in April. However, any employee who is separated from service prior to any of the above pay periods shall be compensated for those holidays that occurred and were not taken in time off.

Delete the last sentence: "No holiday credits shall be carried forward into the next year".

The balance of Article 9.3 shall be retained beginning with the sentence; "However, any employee . . . forward into the next year."

The PBA requests for a new Section 9.4 and Section 9.5 are denied. The Panel majority notes that, with respect to proposed Section 9.5, total compensation of one and one half days for working a holiday is not the practice in the comparable Towns.

11) Health Insurance

PBA Position

The PBA has proposed a revision of Article 14.4. According to the PBA, the prior arbitration panel added the existing Section due to a misconstrual of Orangetown's health insurance benefits. Nassau County, unlike Orangetown, is self insured thereby permitting return to the plan if an employee leaves. The State Health Insurance Plan of which Orangetown is a member denies reentry to a retired employee who has not been covered for a year. To avoid future grievances and restore the parties' original intent, contract language revisions are proposed. The PBA further notes that "every police department in Rockland County covers retired police officers under their health insurance policy."

The PBA further proposes to substitute new Sections 14.2 and 14.3 which would respectively insure that the "Town shall pay the full premium for employees" health benefits and eliminate the arbitration clause should the employer opt to effectuate change.

Town Position

In Executive Sessions, the Town representative agreed that the current Empire Plan prohibited the reentry of the retirees once they left the State Plan. This issue was not addressed directly in the Town's briefs.

Analysis/Discussion

The Panel majority is persuaded that the parties did not intend to "diminish coverage for retirees." (Ex.T#4). The prior award noted the PBA concern at the time that benefits might be reduced. It appears that the arbitration panel may have inadvertently omitted certain Town

language while adopting other Town language permitting retirees to continue coverage (i.e., "If such duplication coverage is received, the individual shall either lose his Town coverage or pay to the Town the proportion of the cost of the premiums for the benefits otherwise being received, as same may be reasonably determined by the Town") Ex. T#2, p.41, Ex. T#4, p.40.

To rectify this oversight for police retirees, many of whom retired with the expectation that their health insurance premiums would be paid, the Panel majority awards the inclusion of the following Section 14.4 as a substitute for the current language.

14.4 Amend to read as follows:

Retired police officers shall continue to receive the benefits set forth in this article.

To rectify problems which may arise if the Town opts to substitute insurance carriers before an arbitrator has determined the plan substituted to be substantially the same as the plan currently in effect, the Panel majority awards the following changes in Sections 14.1 and 14.3.

In Section 14.1, Paragraph #2, Sentence #3, substitute:

The Employer may not substitute the new carrier or self-insurance program, or a combination of the two, prior to any such arbitration decision.

Delete the last sentence.

In Section 14.3, Paragraph #2, sentence #3.

The Employer may not substitute . . . etc. (as indicated above for Section 14.1).

Section 14.5 - No changes

The PBA demand for an Optical Plan is Denied. Evidence that only one police department, namely Clarkstown, provides an optical plan comparable to that requested by the PBA was insufficient.

12) General Provisions (Tuition Reimbursement)

PBA Position

The PBA contends that Articles 21.3 and 21.6 be amended to reflect the increased cost of tuition over the past decade. The \$45.00 maximum limitation on the 75% reimbursement ratio is deemed insufficient for police officers and the children of officers killed and disabled in the line of duty. The PBA would remove the \$45.00 cap as a solution. The PBA further notes that few officers use the benefit and therefore the approximate annual cost to the Town is \$1000.

Town Position

The Town notes that the tuition reimbursement benefit does not exist in the Towns of Clarkstown and Stony Point and in Ramapo and Haverstraw there are restrictions on its use such as prior course approval. The Town proposes to increase to \$75.00 the tuition reimbursement maximums -- a \$30.00 or 67% increase.

Analysis/Discussion

The tuition reimbursement cap rather than the 75% reimbursement rate is the actual determinant of tuition benefits. The ideal solution to this issue is to determine what the relationship was in 1978 (the last time the rate was increased) between \$45.00 and the average tuition paid and to upwardly adjust the reimbursement to reflect 1988 costs. This would ensure preservation of the parties original intent.

According to the PBA, tuition at Mercy College for 9/87-9/88 is \$165.00 and at Pace University \$195.00 (PBA Reply Brief p.28). If \$45.00 represented 75% of tuition costs in 1978 (assuming the Cap was set proportionately), then average tuition costs at that time were approximately \$60.00. According to the PBA, current tuition costs range from a low of \$145 at St. Thomas Aquinas and Dominican to a high of \$195 at Pace University based on 1987-88 data. Therefore, tuition costs have increased approximately threefold and a corresponding increase in the Cap would yield \$135.00. A reasonable adjustment under the circumstances is to increase the maximum tuition reimbursement to one hundred (\$100.00) dollars.

Accordingly, it is awarded that effective 9/1/88 Sections 21.3 and 21.6 be amended to increase the maximum tuition reimbursement from \$45.00 per credit to one hundred (\$100.00) per credit.

13) Grievance Procedure, Article Sixteen

The parties in order to resolve various differences concerning the grievance procedure, reflected in the submission of two versions of the Collective Bargaining Agreement (i.e T #5 and T #6), have mutually consented to changes in the grievance procedure. These agreed upon changes, together with changes determined by the Panel majority, constitute the arbitration award as follows:

Section I - Definitions

5. "Grievance" . . .etc. Delete the clause "which relate to or involve employee health or safety, physical facilities, equipment furnished to employees or supervisors of employees"

Discussion

The Panel majority holds that the foregoing limitation on the subject matter for grievances inhibits the use of the grievance procedure to resolve differences and ensure positive labor-management relations.

Paragraph No. 6 - No change

Add new Paragraph No.7

7. Department Head shall mean the Chief of Police.

Add new Section No. 8

8) The first level of management shall mean the Captain of Police.

Section II - General

Paragraph No. 1 - No change

Paragraph No. 2 - Change as follows:

A grievance in writing is required from the grievants hereunder and shall be submitted pursuant to the Section III - Step 1 as set forth herein.

Paragraph No. 3 - Change as follows: "thirty (30) business days" to forty-five (45) business days.

Paragraph No. 4 - No change

Paragraph No. 5 - No change

Paragraph No. 6 - Change thirty (30) business days to forty-five (45) business days.

Paragraph No. 7 - No change

Paragraph No. 8 - Change as follows:

8. Failure by the Employer to meet the various time requirements specified herein shall result in a grievance proceeding to the next step. Failure by the grievant to meet the various time requirements specified herein shall be deemed a waiver of the grievance. These requirements shall be effective 10/1/88.

Discussion

Given the fact paragraph No. 8 is contested by the PBA and sentence No. 2 of paragraph No. 8 is punitive (a waiver of rights), to balance the equities in grievance filing an increase to forty-five (45) days in paragraphs No. 2 and No. 3 is warranted.

Section III - Procedure

Step 1: No change

Step 2: No change

Step 3: Arbitration stage. Add the following to Paragraph No. 1  
" . . . as set forth by the Public Employment Relations Board (P.E.R.B.),"

including its procedures for the selection of an arbitrator.

Delete Section No. 2. Discussion: Adherence to P.E.R.B. procedural rules renders this paragraph redundant or conflictual.

Paragraphs No. 3, No. 4 and No. 5 - No change except to renumber as No. 2, No. 3 and No. 4.

14) Article Fifteen - Disciplinary Procedure

In Section 15.1, Step 2, the name of Jerome Rubenstein who is deceased shall be deleted. Following sentence one of 15.1, Step 2 shall be added a sentence as follows:

In the event a member of the arbitration panel is no longer available to serve, the remaining two panel members shall jointly select a third arbitrator from a list of six (6) names, three names submitted by the employer and three names submitted by the Union.

The parties have consented to delete Section 15.3 in its entirety.

The parties have agreed to delete the second sentence of Section 15.4 beginning with: "The arbitration hearing . . ."

Renumber 15.4, 15.5, 15.6 as 15.3, 15.4 and 15.5.

Conclusion

In the Panel majority's opinion, as a result of the prior interest arbitration award, the pendulum swung too far in order to achieve the short term objective of equalizing the salaries of first grade police officers. Although the parties may not have known it at the time, in retrospect it is patent that the Town was awarded too many concessions for the salary benefits it bestowed. The instant award, while recognizing that certain decisions are irrevocable without the mutual consent of the parties, has attempted to partially rectify the imbalance. In so doing, the Panel majority has expectations that the collective bargaining process and constructive labor-management relations can be restored and the parties can hopefully negotiate successor agreements.

Concurring/Dissenting  
Concurring as to Issues Nos. \_\_\_\_\_  
Dissenting as to Issues Nos. ALL

Anthony V. Solfaro  
Anthony V. Solfaro  
Employer Member

State of New York } SS:  
County of \_\_\_\_\_ }

On this 26<sup>th</sup> day of AUGUST, 1988 before me came Anthony V. Solfaro to me known to be the person who executed the foregoing Arbitration Award and he duly represented to me he executed the same.

Bessie A. Bullock  
BESSIE A. BULLOCK  
Notary Public, State of New York  
No. 4939568  
Qualified in Rockland County  
Commission Expires July 25, 1990

Concurring/Dissenting  
Concurring as to Issues Nos. ALL  
Dissenting as to Issues Nos. \_\_\_\_\_

Maureen McNamara  
Maureen McNamara, Esq.  
Employee Member

State of New York } SS:  
County of Rockland }

On this 19<sup>th</sup> day of August, 1988 before me came Maureen McNamara to me known to be the person who executed the foregoing Arbitration Award and she duly represented to me she executed the same.

Deborah Steincolor

DERORAH STEINCOLOR  
Notary Public, State of New York  
No. 41-122579  
Qualified in Orange County  
Commission Expires March 16, 1989

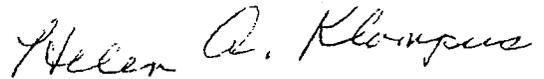
Concurring/Dissenting  
Concurring as to Issues Nos. \_\_\_\_\_  
Concurring as to Issues Nos. \_\_\_\_\_



\_\_\_\_\_  
Professor Robert T. Simmelkjaer, Esq.  
Panel Chairman

State of New York )SS:  
County of New York }

On this 15th day of August, 1988 before me came Robert T. Simmelkjaer to me known to be the person who executed the foregoing Arbitration Award and he duly represented to me he executed the same.



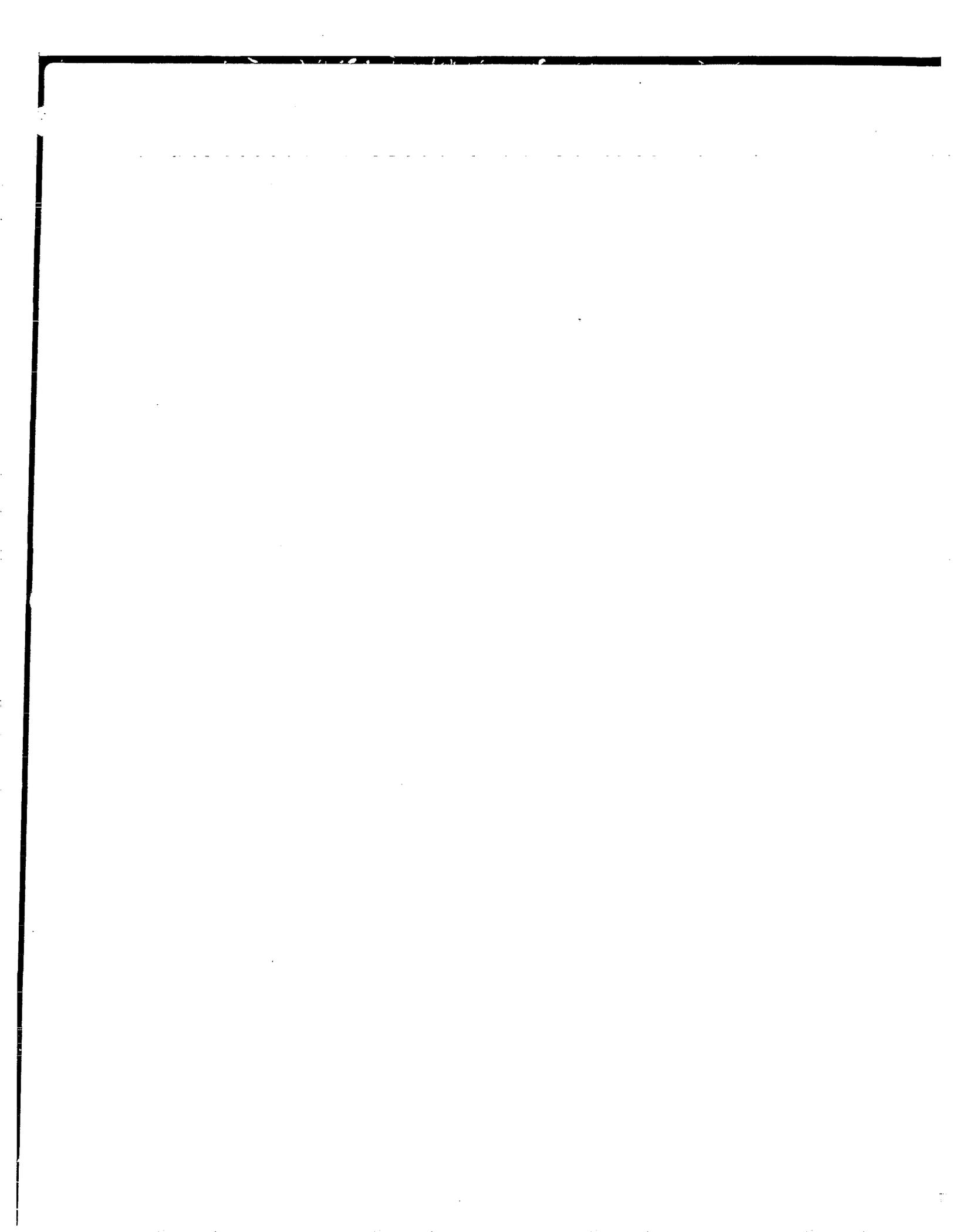
HELEN A. KLOMPUS  
Notary Public, State of New York  
No. 31-4504933  
Qualified in New York County  
Commission Expires 12/31/89

CONCURRING OPINION OF THE EMPLOYEE PANEL MEMBER

Under the Taylor Law a public arbitration panel's function is to make a just and reasonable determination of the matters in dispute. The attached award has been written by the Panel's Chairman. I would not have reached an identical determination on each individual item, nor do I agree with the rationale offered for the determination on every individual item. However, when the award is considered as a whole, I believe that the Chairman has reached a just and reasonable determination of the matters in dispute. Consequently, I accept the Chairman's determination and I concur in the entire award.

One item deserves further comment; the Chairman has awarded, under Article 13.3 "...no police officer shall be assigned to more than forty (40) hours of duty during any seven (7) consecutive day period, except in an emergency, including mandatory overtime to insure the adequate manning of a shift." In Orangetown, if an unusual number of officers unexpectedly phoned in sick, a volunteer(s) would be solicited to work the succeeding shift. If there were no volunteers, the overtime would be assigned in the reverse order of seniority, in order to insure sufficient manning. During executive sessions, I expressed the PBA's willingness to work ordered overtime under these circumstances. Although technically not an "emergency", this type of situation cannot be anticipated. The language "including mandatory overtime to insure the adequate manning of a shift" is included on consent of the PBA under these limited circumstances, but is not in any way meant to include manning for pre-planned events.

  
MAUREEN MCNAMARA



STATE OF NEW YORK, PUBLIC EMPLOYMENT RELATIONS BOARD  
CASE NO.: IA 87-10; M 87-004

-----X  
IN THE MATTER OF COMPULSORY INTEREST ARBITRATION

BETWEEN

ORANGETOWN POLICE BENEVOLENT ASSOCIATION,

Petitioner,

AND

TOWN OF ORANGETOWN,

Respondent.  
-----X

I write this separate opinion in order to dissent from the entire award which denied the Town of Orangetown a just and reasonable determination based upon the mandated criteria as set forth in Section 209.4 of the Civil Service Law, which reads as follows:

"(iii) the public arbitration panel shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The parties may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The panel shall have authority to require the production of such additional evidence, either oral or

written as it may desire from the parties and shall provide at the request of either party that a full and complete record be kept of any such hearings, the cost of such record to be shared equally by the parties;

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

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

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring

similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

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

the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority."

The chairman has ruled in twelve (12) areas. They are as follows:

1. Base salary - probationary through first grade patrolman, detective/youth officer, sergeants and lieutenants.
2. Longevity
3. Night differential
4. Agency shop fee
5. Sick leave
6. Overtime
7. Vacation
8. Holidays
9. Health Insurance
10. Tuition reimbursement
11. Grievance procedure
12. Disciplinary procedure

During the proceedings, the petitioner failed to present the required evidence to support its positions as contained in its petition for compulsory interest arbitration with P.E.R.B. other than to state that a particular salary and/or benefit exists elsewhere in Rockland County. The chairman incorrectly shifted the burden to the Town by requiring it to defend why the laundry list of demands

made by the PBA should not be granted, instead of why not?

It is apparent to the employer panel member, that the reinstatement of benefits originally addressed in the 1985/1986 award as well as the outrageous expansion of other benefits demanded, reflects an unconscionable determination by the chairman while recreating an imbalance in the contract between the parties favoring the petitioner. The interest and welfare of the public has not been served by the panel chairman's determination in the areas addressed in the award.

The employer panel member takes a very strong exception to the total award as a package. The PBA received extraordinary increases in the probationary through fourth grade patrolman and only a little less for the first grade patrolman as proposed by the Town. It must be noted that the PBA never made a demand in its petition to P.E.R.B. for any 1988 salary or benefit considerations. Additionally, in the area of base salary, the detective/youth officer was increased for the first time ever to a cash equivalent of seven percent (7%). The sergeants are to receive fifteen percent (15%) above the first grade patrolman and the lieutenant is to receive fifteen percent (15%) above the sergeant which had been deleted in the most recent award of 1985/1986. In the area of longevity, the chairman took it upon himself to not only increase the current longevity for the second award in a row, but expanded the length of time in which a PBA member is entitled to receive longevity which was diminished most recently in the 1985/1986 award. In the area of night differential, the PBA received

an increase that the chairman thought was appropriate and commensurate with the fifteen percent (15%) increase in base wages for the first (1st) grade patrolman. The chairman provided an agency shop fee deduction for this unit even though it was acknowledged that only one member is not an active dues paying member and that one (1) of the two (2) comparables used by the chairman for the significant majority of the award, does not have this benefit. In the area of overtime, the chairman grants rights under Section 971 of the Unconsolidated Laws as proposed by the PBA which will place the parties in a confrontational mode with the potential of limiting the Town's rights in this area. On the subject of vacation, the chairman grants the PBA excessive increases by awarding vacation increases in the fifth, sixth, seventh, eighth, tenth, eleventh, twelfth, thirteenth, fourteenth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-fifth year of service. In addressing the area of health insurance, the chairman has awarded that retired police officers shall continue to receive health insurance coverage at no cost to that employee which was diminished in the last award (1985-1986). The chairman's obvious lack of understanding of what was accomplished in the last arbitration award in this area has now placed this Town in the untenable position of paying for an additional twenty (20) years, if not modified by either future agreement or arbitration award, the excessive cost of health insurance for those retired employees who are still eligible to seek and have other employment upon retirement in their middle forties. In the same area, the chairman has exercised excessive

power and authority by modifying the ability of the Town to seek a substitute or self-insured program prior to the arbitration proceeding of that article by requiring the Town to file and go through the process of arbitration before it may seek to save the taxpayers the ever increasing cost of health insurance. Again, this is a significant modification from the current benefit. In the area of tuition reimbursement, there was absolutely no evidence provided by the PBA in its demand, but instead the chairman decided to create evidence and propose increases which were in excess of even the large increases proposed by the Town. In the area of the grievance procedure, the major thrust was to expand the right of the PBA to file a grievance within forty-five (45) business days rather than thirty (30) business days which was the current benefit. In the last significant area to be addressed by the chairman, he insisted on keeping the current system of named arbitrators rather than allowing the Town and the PBA to use the good offices of the Public Employment Relations Board (P.E.R.B.) which the record indicates was acceptable even to the PBA but not incorporated into the award by this chairman. The employer panel member reiterates his very strong exception to the total award as a package and firmly believes the chairman abused his power and authority as set forth in the statutory criteria.

The employer panel member, as stated in his July 22, 1988 letter to the chairman, which is also to be attached and be considered

a part of the official dissenting opinion, believes that the chairman ruled in areas which were either not before him nor the required evidence presented for him to rule on; therefore, by rendering his decision, he does not reflect a just and reasonable determination based upon the mandated criteria as set forth in the statute.

DATED: AUGUST 29, 1988

*Anthony V. Solearo*  
\_\_\_\_\_  
ANTHONY V. SOLEARO  
EMPLOYER PANEL MEMBER

Sworn to before me this  
29th day of August, 1988

*Nancy Jacaruso*  
\_\_\_\_\_  
NOTARY PUBLIC STATE OF NEW YORK

**NANCY JACARUSO**  
Notary Public, State of N.Y.  
No. 4854478  
Qualified in Rockland County *90*  
Commission Expires March 10, 19\_\_

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**FIRST GRADE POLICE OFFICER SALARY 2006-2014**

	2/06	6/06	7/07	6/07	1/08	6/08	7/09	6/09	1/10	6/10	7/11	6/11	7/12	6/12	7/13	6/13	1/14	6/14	
Clarkstown	96,038	96,038	99,687	99,687	103,176	103,176	106,684	106,684	110,311	110,311	113,069	113,069	115,896	115,896	Exp.				
Haverstraw(T)	90,774	90,774	94,042	94,042	97,428	97,428	100,351	100,351	103,362	103,362	Exp.								
Orangetown	91,135	91,135	94,781	94,781	98,335	98,335	102,023	102,023	105,849	105,849	Exp.								
Piermont	88,762	90,537	92,800	94,656	97,022	100,448	100,448	102,457	102,457	105,531	105,531	108,697	108,697	Exp.					
Ramapo	95,159	95,159	98,965	98,965	102,924	102,924	107,041	107,041	111,323	111,323	115,776	115,776	120,407	120,407	125,223	125,223	130,232	130,232	
South Nyack	91,829	95,273	95,273	96,608	96,608	102,059	102,059	106,141	106,141	110,387	110,387	113,147	113,147	115,976	115,976	118,875	118,875	Exp.	
Spring Valley	87,634	90,482	90,482	93,875	93,875	95,987	98,387	100,355	100,355	102,362	102,362	104,409	104,409	Exp.					
Stony Point	92,058	93,899	95,777	97,693	97,693	99,647	99,647	101,640	101,640	103,679	Exp.								
		7/06		7/07:		12/08		7/09		7/10									
Suffern	89,314	92,887	92,887	96,602	96,602	99,983	99,983	103,483	103,483	107,105	107,105	110,853	110,853	Exp.					

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**THIRD GRADE POLICE OFFICER SALARY 2006-2014**

	1/06	6/06	1/07	6/07	1/08	6/08	1/09	6/09	1/10	6/10	1/11	6/11	1/12	6/12	1/13	6/13	1/14	6/14	
Clarkstown * new hires after 1/1/98	76,829	76,829	79,749	79,749	82,540	82,540	85,346	85,346	88,248	88,248	90,454	90,454	92,715	92,715	Exp.				
Haverstraw (T)	65,921	65,921	68,294	68,294	70,753	70,753	72,876	72,876	75,062	75,062	Exp.								
Orangetown * new hires after 12/31/99	56,148	56,148	58,394	58,394	60,584	60,584	62,856	62,856	65,213	65,213	Exp.								
Piermont	74,475 12/05	75,965	77,864 12/06	79,421	81,407 12/07	82,832	84,282 12/08	85,968	85,968	88,547	88,547	91,203	91,203	Exp.					
Ramapo	77,199	77,199	80,287	80,287	83,498	83,498	86,838	86,838	90,312	90,312	93,924	93,924	97,681	97,981	101,588	101,588	105,652	105,652	105,652
South Nyack	72,329	75,041	75,041	77,670	77,670	80,388	80,388	83,603	83,603	86,948	86,948	89,121	89,121	91,349	91,349	93,633	93,633	93,633	Exp.
Spring Valley	68,648	70,879	70,879	73,537	73,537	75,192	75,192	78,612	78,612	80,185	80,185	81,789	81,789	Exp.					
Stony Point * new hires after 1/1/99	58,831	7/06 60,008	61,208	62,432	62,432	63,681	63,681	64,955	64,955	7/10 66,254	Exp.								
Suffern * hires after Aug. 2009	(12/06) 75,752 *64,503	75,752 *64,503	75,752 *64,503	78,782 *67,083	78,782 *67,083	81,539 *69,431	81,539 *69,431	67,084 *71,861	67,084 *71,861	69,432 *74,376	69,432 *74,376	71,862 *76,980	71,862 *76,980	Exp.					

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**FOURTH GRADE POLICE OFFICER SALARY 2006-2014**

	1/06	6/06	1/07	6/07	1/08	6/08	1/09	6/09	1/10	6/10	1/11	6/11	1/12	6/12	1/13	6/13	1/14	6/14	
Clarkstown	67,226	67,226	69,781	69,781	72,223	72,223	74,679	74,679	77,218	77,218	79,148	79,148	81,127	81,127	Exp.	69,610	72,394	72,394	
Haverstraw (T)	67,262	67,262	69,883	69,883	72,399	72,399	74,571	74,571	76,808	76,808	Exp.	Exp.							
Orangetown	45,231	45,231	47,040	47,040	48,804	48,804	50,634	50,634	52,533	52,533	Exp.	Exp.							
Piermont	63,278 12/05	64,544	66,158 12/06	67,481	69,168 12/07	70,378	71,610 12/08	73,042	73,042	75,233	75,223	77,450	77,450	Exp.					
Ramapo	52,898	52,898	55,014	55,014	57,215	57,215	59,504	59,504	61,884	61,884	64,359	64,359	66,933	66,933	69,610	69,610	72,394	72,394	
South Nyack	65,096	67,537	67,537	69,901	69,901	72,347	72,347	75,241	75,241	78,251	78,251	80,207	80,207	82,212	82,212	84,267	84,267	Exp.	
Spring Valley	62,431	64,460	64,460	66,877	66,877	68,382	70,092	71,494	71,494	72,924	72,924	74,382	74,382	Exp.					
Stony Point	47,517	48,467	49,436	50,425	50,425	51,434	51,434	52,463	52,463	53,512	Exp.								
Suffern	54,953	54,953	57,151	59,437	59,437	61,517	61,517	63,670	63,670	65,899	*61,518	*63,671	*63,671	Exp.					
*hires after August 2009											65,899	68,206	68,206						

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FIFTH GRADE POLICE OFFICER SALARY 2006-2014

	1/06	6/06	1/07	6/07	1/08	6/08	1/09	6/09	1/10	6/10	1/11	6/11	1/12	6/12	1/13	6/13	1/14	6/14	
Clarkstown	57,622c 48,019n	57,622c 48,019n	59,811c 49,844n	59,811c 49,844n	61,904c 51,588n	61,904c 51,588n	64,009c 53,342n	64,009c 53,342n	66,185c 55,156n	66,185c 55,156n	67,840c 56,535n	67,840c 56,535n	69,536c 57,948n	69,536c 57,948n	Expired				
Haverstraw (T)	41,099	41,099	42,579	42,579	44,112	44,112	45,435	45,435	46,799	46,799	Expired	Expired							
Orangetown	37,432c 34,313n	37,432c 34,313n	38,929c 35,685n	38,929c 35,685n	40,389c 37,023n	40,389c 37,023n	41,904c 38,411n	41,904c 38,411n	43,475c 39,851n	43,475c 39,851n	Expired	Expired							
Piermont	51,763 12/05	53,057	54,383 12/06	55,470	56,857 12/07	57,852	58,864 12/08	60,041	60,041	61,842	61,842	63,697	63,697	Expired					
Ramapo	42,205c 35,931n	42,205c 35,931n	43,893c 37,368n	43,893c 37,368n	45,649c 38,863n	45,649c 38,863n	47,475c 40,418n	47,475c 40,418n	49,374c 42,035n	49,374c 42,035n	51,349c 43,716n	51,349c 43,716n	53,403c 45,464n	53,403c 45,464n	55,539c 47,283n	55,539c 47,283n	57,761c 49,174n	57,761c 49,174n	
South Nyack	51,068	52,983	52,983	54,837	54,837	56,757	56,757	59,027	59,027	61,388	61,388	62,873	62,873	64,449	64,449	66,060	66,060	Exp.	
Spring Valley	46,169c 41,972n	47,669c 43,336n	47,669c 43,336n	49,457c 44,961n	49,457c 44,961n	50,570c 45,973n	51,834c 47,122n	52,871c 48,064n	52,871c 48,064n	53,928c 49,025n	53,928c 49,025n	55,007c 50,006n	55,007c 50,006n	Expired	Expired				
Stony Point	40,732	7/06 41,543	42,373	7/07 43,222	43,222	44,086	44,086	44,968	44,968	7/10 45,867	Expired	Expired							
Suffern * hires after August 2009	40,740	42,370	42,370	44,065	44,065	45,608	45,608	*44,065 47,204	*44,065 47,204	*45,608 48,856	*45,608 48,856	*47,204 50,566	*47,204 50,566	Expired	Expired				

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**PERCENTAGE INCREASE – TOWNS & VILLAGES 2006-2014**

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Clarkstown	3.8	3.8	3.5	3.4	3.4	2.5	2.5	Expired	
Haverstraw (T)	3	3.6	3.6	3	3	Expired			
Orangetown	4	4	3.75	3.75	3.75	Expired			
Piermont	4.5 2-2.5	4.5 2-2.5	3.5 1.75-1.75	2	3	3	Expired		
Ramapo	3.5	4	4	4	4	4	4	4	4
South Nyack	3.75	3.5	3.5	4	4	2.5	2.5	2.5	Expired
Spring Valley	3.25	3.75	4.75 (2.25/2.50)	2	2	2	Expired		
Stony Point	4 2-2	4 2-2	2	2	2	Expired			
Suffern	4	4	3.5	3.5	3.5	3.5	Expired		

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**TOWNS AND VILLAGES  
LONGEVITY INCREMENTS**

Years of Service	4	5	6	7	10	13	15	16	19	20	22	25	28	Total - 30 Years Service
Clarkstown (4%)														
2011		4523			9046		13,569			18,092				316,610
2012		4636			9272		13,900			18,544				324,480
Haverstraw														
2010 (1 %)		1034		2067	3102	4136		5170	6204		7238	8272		128,213
Orangetown			2000	2200	2800	3400	3800	4000	4600	4800	5200	5800		107,000
Piermont														
2010	900			1800	2700	3600		4500	5400		6300	7200	8100	113,400
2011	925			1850	2775	3700		4625	5550		6475	7400	8375	116,550
Ramapo	2800			4200	5600	7000		8400	9800		9800			201,600
South Nyack	975			1950	2925	3900		4875	5850		6825	7800		120,900
Spring Valley (2%)	1754			4176	6265	8353		10,441	12,529		12,529			243,316
Stony Point	1200			2400	3600	4800		6000	7200		8400	9600	10,800	151,200
Suffern	1200			2400	3600	4800		6000	7200		8400	9600	10,800	162,000

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**NIGHT SHIFT DIFFERENTIAL**

Clarkstown	10%
Haverstraw	8%
Orangetown	6%
Piermont	5%
Ramapo	10%
South Nyack	7%
Spring Valley	5%
Stony Point	12 x 8 – 8% 4 x 12 – 4%
Suffern	10%

**19**

**P.B.A. BUSINESS**

Town of Clarkstown Haverstraw	Seven (7) PBA officers receive 40 working hours off during the calendar year for PBA business (with pay) N/A
Stony Point	Any member of the Stony Point P.D. who is required to attend a negotiation meeting for the Town, and is on duty at the time, will be relieved of his duty for such time as is necessary in order to attend to his committee duties and will be paid full compensation for the time spent at the negotiation meeting
Suffern	Only when negotiations are scheduled, any member of the negotiating committee shall be afforded sufficient time off to attend negotiation meetings and such time is considered as time worked. Also Suffern PBA President and or a designee may attend meetings of the Suffern PBA police organizations which they are affiliated with, P.E.R.B. conferences and hearing and other meetings for PBA business, subject to prior approval of the Chief which approval shall not be unreasonably withheld and such time shall be considered time worked if a meeting is scheduled during scheduled work shifts
South Nyack/ Grandview	Any member of the P.D. on a negotiating committee and on duty the day of a meeting may attend the meeting and be paid in full for the time at the committee meeting
Ramapo	The President of the PBA shall be granted relief from all police duties for a period of fourteen (14) days per year with pay. The President at his option may transfer any of those 14 days to another PBA official at attend PBA business. Two (2) police officers from the negotiating team shall be entitled to a tour off during the time negotiating sessions are being conducted
Spring Valley	The Chairman of the bargaining unit, shall be granted reasonable time off for the negotiating process including negotiations, mediation, fact finding and arbitration
Orangetown	PBA President or his designee will be granted eighteen (18) days per year with pay to attend to union related business. Also PBA President or designee are entitled to utilize the time off even if the union related business does not take place during his working hours
Piermont	Any member of the PBA negotiating committee who is scheduled to work when a negotiating session is scheduled shall be permitted to attend the negotiating session

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**ROCKLAND COUNTY POLICE HOLIDAY COMPARISON**

Clarkstown	12
Haverstraw	13
Orangetown	12
Piermont	13
Ramapo	12
South Nyack	13
Spring Valley	12
Stony Point	13
Suffern	12

Charts/2012/Rockland/Holiday/2.21.12

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**ROCKLAND COUNTY POLICE PERSONAL DAY COMPARISON**

Clarkstown	7 DAYS
Haverstraw	5 DAYS
Orangetown	7 DAYS
Piermont	7 DAYS
Ramapo	6 DAYS
South Nyack	6 DAYS
Spring Valley	5 DAYS TO 8 DAYS
Stony Point	7 DAYS
Suffern	6 DAYS

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## ROCKLAND COUNTY POLICE VACATION COMPARISON

Clarkstown	1-2 yrs=15 days, 3-20 yrs=30 days, After 20 yrs=35 days
Haverstraw	5 <sup>th</sup> grade=10 days, 4 <sup>th</sup> grade=18 days, 3 <sup>rd</sup> grade=18 days, 2 <sup>nd</sup> grade=18 days, 1 <sup>st</sup> grade (up to 10 yrs. of svc)=25 days, 1 <sup>st</sup> grade (after 10 yrs. of svc)=30 days, Detective/Sergeant/Det.Sergeant=30 days
Orangetown	1 yr=12 days, 2 yrs=14 days, 3 yrs=15 days, 4 yrs=20 days, 5-9 yrs=22 days, 10-14 yrs=28 days, 15-20 yrs=30 days, 21 yrs=31 days, 22 yrs=32 days, 23 yrs=33 days, 24 yrs=34 days, 25 yrs=35 days
Piermont	0-1 yr=10 days, Over 1 yr-5 yrs=15 days, Over 5 yrs-8 yrs=20 days, Over 8 yrs-14 yrs=25 days, Over 14 yrs-25 yrs=30 days
Ramapo	0-1 yr=None, 1-2 yrs=15 days, 2-6 yrs=20 days, 6-10 yrs=25 days, 10-15 yrs=30 days, 15+ yrs=35 days
South Nyack	Grade 5=5 days, Grade 4=10 days, Grade 3=15 days, Grade 2=17 days, Grade 1=20 days. After 9 yrs=25 days, after 13 yrs=30 days
Spring Valley	1-3 yrs=12 days, 4-5 yrs=15 days, 6-7 yrs=20 days, 8-10 yrs=25 days, 11+ yrs=30 days
Stony Point	4 <sup>th</sup> & 5 <sup>th</sup> grade=12 days, 2 <sup>nd</sup> & 3 <sup>rd</sup> grade=20 days, All above 2 <sup>nd</sup> grade= 30 days
Suffern	1-3 yrs=10 days, 4-5 yrs=15 days, 6-7 yrs=20 days, 8-10 years=25 days, 11-20 years=30 days

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**ROCKLAND COUNTY POLICE SICK LEAVE COMPARISON**

Clarkstown	Accrue at the rate of 2 days/month, Max accumulation is 240 days
Haverstraw	Employees hired on or after 1/87 accrue sick leave at the rate of 12 hours per completed calendar month, which equals 144 total cumulative hrs/year. Employees hired on or before 12/31/86 shall accrue sick leave at the rate of 14 hours per completed calendar month, which equals 168 total cumulative hrs/year.
Orangetown	Accrue at the rate of 13 hours/month which equals 19 ½ days/year
Piermont	Max of 24 days/calendar year or the extent of accumulated sick leave credits
Ramapo	Unlimited
South Nyack	Employees earn sick leave credits at a rate of 2 days per complete month of continuous service to be credited on the last day of each month.
Spring Valley	Unlimited
Stony Point	Employees earn sick leave credits at the rate of 2 working days for each completed month of continuous service to be credited on the first day of each month.
Suffern	Employee shall be entitled to one and one-half (1 ½) sick days per month and upon commencement of the second year of employment and each year thereafter, shall be entitled to an additional seventeen (17) days of sick leave per year. No more than 180 days of sick leave may be accumulated.

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**27**

PBA Ex 27

**Orangetown Policemen's Benevolent Association  
& The Town of Orangetown, NY**

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**Interest Arbitration**

**March, 2012**

***Ability-to-Pay Analysis of Town of Orangetown, NY  
Prepared on Behalf of PBA***

**Prepared by:** Decker Economics  
20 Carolyn Road  
Valatie, NY 12184  
(518) 766-3938

*Exhibit A*  
**TOWN OF ORANGETOWN FUND STRUCTURE**  
**GOVERNMENTAL FUNDS**

<u>Fund</u>	<u>2010 Expenditures*</u>	<u>Percent of Total</u>
General Fund, Town Outside Villages	\$26,341,211	39.8%
General Fund, Townwide	\$10,936,809	16.5%
Sewer Fund	\$8,398,508	12.7%
Capital Projects Fund	\$5,235,332	7.9%
Highway Fund, Part-Town	\$5,172,898	7.8%
Highway Fund, Townwide	\$4,197,907	6.3%
Debt Service Fund	\$4,042,309	6.1%
Other Governmental Funds**	\$1,934,249	2.9%
<b>Total</b>	<b>\$66,259,223</b>	

Town's Fiscal Year Extends From January 1st to December 31st.

The Last Year for Which Actual Year-End Information is Available is the  
Fiscal Year Ending December 31, 2010.

The Town Outside Villages General Fund is the Fund  
from Which the Members of the Orangetown PBA are Compensated.

\*Net of Interfund Transfers

\*\*Special Districts; Pearl River Parking; Special Purpose Funds

NOTE: In addition to the Governmental Funds listed above, the Town maintains Enterprise  
Funds for the Operation of the Blue Hill and Broad Acres Golf Courses

*Source: Town of Orangetown Comprehensive Annual Financial Report for Fiscal Year Ended  
December 31, 2010*

**Exhibit B**  
**COMPOSITION OF REVENUES, 2010**  
**Town of Orangetown**

**General Fund, Town Outside Village (TOV)**

<u>Revenue</u>	<u>2010 Revenues</u>	<u>Percent of Total</u>
Real Property Tax	\$23,651,402	91.2%
Departmental Income	\$1,171,672	4.5%
Miscellaneous	\$614,500	2.4%
Fines & Forfeitures	\$244,167	0.9%
State Aid	\$150,335	0.6%
Miscellaneous Tax Items	\$110,353	0.4%
<b>Total</b>	<b>\$25,942,429</b>	

**General Funds (Townwide & TOV) and Highway Funds (Townwide & TOV)**

<u>Revenue</u>	<u>2010 Revenues</u>	<u>Percent of Total</u>
Real Property Tax	\$35,630,899	75.1%
Interfund Revenues	\$3,736,089	7.9%
State Aid	\$2,187,705	4.6%
Departmental Income	\$1,837,652	3.9%
Sales Tax	\$1,437,366	3.0%
Miscellaneous	\$1,141,217	2.4%
Miscellaneous Tax Items	\$747,398	1.6%
Fines & Forfeitures	\$712,550	1.5%
<b>Total</b>	<b>\$47,430,876</b>	

*Source: Town of Orangetown Comprehensive Annual Financial Report for Fiscal Year Ended December 31, 2010; Annual Financial Report Update Document for Fiscal Year Ended December 31, 2010 Submitted to the New York State Comptroller's Office*

**Exhibit C**  
**REAL PROPERTY TAX INFORMATION**  
**Town of Orangetown**

[1] Fiscal Year End 31-Dec	[2] Townwide		[3] Real Property Tax Levy		[4] TOV - Other (\$ Millions)	[5] Total (\$ Millions)	[6] Change in Tax Levy (%)	[7] Total Taxable Assessed Value (\$ Millions)	[8] Total Taxable Full Value (\$ Millions)
	TOV - Police (\$ Millions)	TOV - Other (\$ Millions)	TOV - Police (\$ Millions)	TOV - Other (\$ Millions)					
2007	\$7.14	\$6.00	\$19.03	\$6.00	\$32.16		\$4,000.28	\$8,939.18	
2008	\$7.69	\$6.42	\$19.56	\$6.42	\$33.67	4.72%	\$3,980.93	\$9,627.40	
2009	\$7.36	\$6.60	\$20.15	\$6.60	\$34.10	1.28%	\$4,006.74	\$9,253.45	
2010	\$7.91	\$7.17	\$21.27	\$7.17	\$36.35	6.59%	\$4,036.01	\$9,225.18	
2011	\$8.16	\$7.30	\$21.06	\$7.30	\$36.52	0.45%	\$4,035.50	\$8,244.13	
2012	\$5.90	\$7.43	\$21.83	\$7.43	\$35.16	-3.71%	\$4,009.63	\$7,939.86	
<b>Avg. Annual Change 2007-2012:</b>								0.05%	-2.34%

[1] Fiscal Year End 31-Dec	[2] Homestead		[3] Change in		[4] Non-Homestead		[5] Change in		[6] Tax Rate for Police		[7] Non-Homestead (\$ Per Thous)	
	Home Rate (\$ Per Thous)	Rate (\$ Per Thous)	Change in Tax Rate (%)	Change in Tax Rate (%)	Home Rate (\$ Per Thous)	Rate (\$ Per Thous)	Change in Tax Rate (%)	Change in Tax Rate (%)	Home Rate (\$ Per Thous)	Rate (\$ Per Thous)		
2007	\$9.03	\$9.07	2.44%	10.14%	\$5.40	\$5.33	-0.80%	9.08%	\$5.40	\$5.33	\$5.33	
2008	\$9.25	\$9.99	2.44%	10.14%	\$5.45	\$5.73	-0.80%	9.08%	\$5.45	\$5.73	\$5.73	
2009	\$9.40	\$9.91	1.62%	-0.80%	\$5.61	\$5.81	9.08%	-0.37%	\$5.61	\$5.81	\$5.81	
2010	\$9.79	\$10.81	4.15%	9.08%	\$5.78	\$6.26	0.92%	-0.37%	\$5.78	\$6.26	\$6.26	
2011	\$9.88	\$10.77	0.92%	-0.37%	\$5.75	\$6.17	-3.85%	0.56%	\$5.75	\$6.17	\$6.17	
2012	\$9.50	\$10.83	-3.85%	0.56%	\$5.91	\$6.62			\$5.91	\$6.62	\$6.62	
<b>Avg. Annual Change 2007-2012:</b>									1.82%			4.43%

Source: Town of Orangetown Finance Department; New York State Comptroller's Office; New York State Office of Real Property Services

**Exhibit D**  
**PER CAPITA PROPERTY WEALTH**  
**Town of Orangetown & Other Rockland County Municipalities\***

<u>Municipality</u>	<u>FY 2011 Market Value of Taxable Real Property (\$ Millions)</u>	<u>2010 Census Population</u>	<u>Taxable Real Property Wealth Per Resident</u>
1 Piermont [V]	\$661.7	2,510	\$263,609
2 Orangetown [T]	\$8,244.1	49,212	\$167,523
3 Clarkstown [T]	\$13,707.5	84,187	\$162,822
4 Stony Point [T]	\$2,125.2	15,059	\$141,125
5 Suffern [V]	\$1,126.7	10,723	\$105,071
6 South Nyack [V]	\$326.3	3,510	\$92,974
7 Ramapo [T]	\$11,535.3	126,595	\$91,119
8 Haverstraw [T]	\$3,125.8	36,634	\$85,326
9 Spring Valley [V]	\$1,397.9	31,347	\$44,594
Grand View-on-Hudson [V]	NA	285	NA

*\*Rockland County Municipalities with Full Time Police Agencies*

*Source: Rockland County MA-144 Schedule of Real Property Taxes and Assessments, 2011; FY 2010-11 Village Tax Limit Forms; NYS Office of Real Property Services; U.S. Census Bureau NYS Comptroller's Office*

**Exhibit E**  
**COMPARISON OF COMBINED COUNTY, MUNICIPAL, SCHOOL**  
**& SPECIAL DISTRICT TAX RATES, FY 2011:**  
**Town of Orangetown & Other Rockland County Municipalities\***

	<u>Full Value Tax Rates (Per \$1,000 of Full Valuation)</u>							<u>Total</u>
	<u>(Weighted Homestead/Non-Homestead Rates Where Applicable)</u>							
<u>Municipality</u>	<u>County</u>	<u>Town</u>	<u>Village</u>	<u>School District</u>	<u>Special District</u>			
1 Haverstraw [T]	\$1.74	\$7.82	\$0.00	\$26.15	\$3.25		\$38.96	
2 Stony Point [T]	\$1.60	\$5.73	\$0.00	\$26.24	\$1.84		\$35.41	
3 Ramapo [T]	\$1.74	\$2.12	\$0.00	\$18.12	\$13.34		\$35.32	
4 Spring Valley [V], Clarkstown	\$1.63	\$3.15	\$14.55	\$15.64	\$0.00		\$34.97	
5 Spring Valley [V], Ramapo	\$1.74	\$1.38	\$14.55	\$15.64	\$0.00		\$33.31	
6 Suffern [V]	\$1.74	\$1.38	\$7.38	\$22.40	\$0.00		\$32.90	
7 South Nyack [V]	\$1.62	\$0.99	\$6.92	\$21.18	\$0.00		\$30.71	
8 Piermont [V]	\$1.62	\$0.99	\$6.23	\$21.18	\$0.00		\$30.02	
<b>9 Orangetown [T]</b>	<b>\$1.62</b>	<b>\$4.98</b>	<b>\$0.00</b>	<b>\$19.67</b>	<b>\$3.03</b>		<b>\$29.30</b>	
10 Clarkstown [T]	\$1.63	\$6.21	\$0.00	\$16.63	\$1.71		\$26.18	
11 Grand View-on-Hudson [V]	\$1.62	\$0.99	\$0.00	\$18.03	\$0.00		\$20.64	

\*Rockland County Municipalities with Full Time Police Agencies

NOTES: School District Tax Rates for Towns are Weighted Rates Based on Percent of Town in School District

Source: NYS Comptroller's Office

**Exhibit F**  
**TAX ILLUSTRATION FOR AVERAGE SINGLE FAMILY HOME**  
**Town of Orangetown, Fiscal Years Ending in 2012**

**South Orangetown School District (44% of Town):**

	Assessed Value <u>Tax Rate</u> (\$ Per Thous)	<u>Tax Bill*</u>	Percent of <u>Total Tax Bill</u>
School Tax (w/ Library)	\$34.66	\$6,231.90	59.3%
Town Tax	\$9.50	\$1,970.47	18.7%
Town Special Districts**	\$6.18	\$1,281.67	12.2%
County Tax	\$4.98	\$1,032.95	9.8%
<b>Total</b>	<b>\$55.32</b>	<b>\$10,516.99</b>	<b>100%</b>

**Pearl River School District (29% of Town):**

	Assessed Value <u>Tax Rate</u> (\$ Per Thous)	<u>Tax Bill*</u>	Percent of <u>Total Tax Bill</u>
School Tax (w/ Library)	\$39.10	\$7,029.67	62.1%
Town Tax	\$9.50	\$1,970.47	17.4%
Town Special Districts**	\$6.18	\$1,281.67	11.3%
County Tax	\$4.98	\$1,032.95	9.1%
<b>Total</b>	<b>\$59.76</b>	<b>\$11,314.76</b>	<b>100%</b>

\*Based on Average Taxable Assessed Value of \$207,390 for Town and County Purposes;  
and \$179,800 for School Purposes.

\*\*2011 Weighted Rate Calculated by State Comptroller's Office

Of the Town's \$9.50 per thousand homestead tax rate in 2012, \$5.91 is for "Town and Nyack Police." Thus, the owner of an average single family home pays \$1,225.67 to support the Police Department, or \$3.36 per day. Approximately 10.8% to 11.7% of a taxpayer's total real property tax bill in 2012 is attributable to the Police Department.

Source: FY 2012 Real Property Tax Rates (Homestead); NYS Office of Real Property Services;  
NYS Comptroller's Office

**Exhibit G**  
**HISTORY OF SELECTED OTHER REVENUES**  
**Town of Orangetown**

	Actual			Preliminary 2011	Budgeted 2012	
	2006	2007	2008			2009
Sales Tax	\$660,000	\$972,519	\$1,454,460	\$1,425,954	\$1,437,366	\$1,477,891
<i>(100% Assigned to Townwide General Fund - Except for 2007 When \$299,285 Was Recorded in TOV General Fund)</i>						
Earnings on Investments (Combined Townwide & TOV General Funds & Highway Funds)	\$946,773	\$1,129,288	\$510,519	\$122,418	\$101,656	\$46,040
<u>Departmental Income:</u>						
Parks & Recreation (Townwide General Fund)	\$534,257	\$570,181	\$536,859	\$595,925	\$630,457	\$695,302
Safety Inspection (TOV General Fund)	\$988,144	\$597,353	\$798,328	\$764,492	\$940,764	\$741,013
Police Fees (TOV General Fund)	\$152,751	\$69,170	\$142,388	\$68,901	\$81,151	\$80,000
<u>State Aid:</u>						
Mortgage Tax (Townwide General Fund)	\$3,205,352	\$2,524,483	\$1,849,229	\$1,245,963	\$1,305,450	\$1,634,535
General Purpose (Combined General Funds)	\$272,013	\$280,173	\$288,578	\$288,578	\$271,133	\$265,710

Sources: Town of Orangetown Comprehensive Annual Financial Reports for 2006-2010; Adopted Town Budget for 2012;  
Revenue Comparison Control Report Dated January 23, 2012

*Exhibit H*  
**COMPOSITION OF EXPENDITURES, 2010**  
**Town of Orangetown**

**Spending by Object:**

	<u>General Fund, Town Outside Village</u>		<u>Combined General &amp; Highway Funds</u>	
	<u>2010 Expenditures</u>	<u>Percent of Total</u>	<u>2010 Expenditures</u>	<u>Percent of Total</u>
Personal Services	\$14,041,836	53.3%	\$23,993,178	51.4%
Contractual Expenses	\$5,458,308	20.7%	\$11,204,712	24.0%
Employee Benefits	\$6,628,155	25.2%	\$10,685,497	22.9%
Equipment & Capital	\$212,912	0.8%	\$590,201	1.3%
Debt Service	\$0	0.0%	\$175,237	0.4%
<b>Total</b>	<b>\$26,341,211</b>		<b>\$46,648,825</b>	

**Spending by Function:**

	<u>General Fund, Town Outside Village</u>		<u>Combined General &amp; Highway Funds</u>	
	<u>2010 Expenditures</u>	<u>Percent of Total</u>	<u>2010 Expenditures</u>	<u>Percent of Total</u>
Public Safety	\$14,794,688	56.2%	\$15,058,626	32.3%
Employee Benefits	\$6,628,155	25.2%	\$10,685,497	22.9%
General Government Support	\$3,303,903	12.5%	\$9,232,340	19.8%
Transportation	\$543,361	2.1%	\$7,834,734	16.8%
Culture & Recreation	\$0	0.0%	\$2,214,644	4.7%
Home & Community Services	\$1,071,104	4.1%	\$1,233,804	2.6%
Debt Service	\$0	0.0%	\$175,237	0.4%
Economic Opportunity & Dev.	\$0	0.0%	\$150,763	0.3%
Health	\$0	0.0%	\$63,180	0.1%
<b>Total</b>	<b>\$26,341,211</b>		<b>\$46,648,825</b>	

**Police Department:**

Personal Services	\$12,714,213
Employee Benefits	\$6,114,322
Equipment & Capital	\$212,912
Contractual Expenses	\$866,656

Source: Town of Orangetown Annual Financial Report Update Document for Fiscal Year Ended December 31, 2010  
 Filed with the New York State Comptroller's Office; 2010 Comprehensive Annual Financial Report; 2012 Adopted Budget

**Exhibit I**  
**GROWTH IN TOWN OF ORANGETOWN SPENDING**

	<u>2006</u>	<u>2010</u>	<u>Increase: 2006-2010</u> <u>Dollars</u>	<u>Percent</u>	<u>Preliminary</u> <u>2011</u>	<u>Budget</u> <u>2012</u>
General Fund, Townwide	\$10,960,901	\$11,470,774	\$509,873	4.7%	\$11,166,988	\$10,874,388
General Fund, Town Outside Village	\$21,565,613	\$26,341,211	\$4,775,598	22.1%	\$26,564,163	\$26,556,315
Highway Funds (Townwide & TOV)	\$7,271,818	\$9,389,914	\$2,118,096	29.1%	\$10,213,020	\$9,653,466
<i>Total (General and Highway Fund)</i>	<i>\$39,798,332</i>	<i>\$47,201,899</i>	<i>\$7,403,567</i>	<i>18.6%</i>	<i>\$47,944,171</i>	<i>\$47,084,169</i>
Police Department, Total	\$12,223,400	\$13,793,781	\$1,570,381	12.8%	\$13,864,884	\$13,866,330
Police Department, Personal Services	\$10,792,763	\$12,714,213	\$1,921,450	17.8%	\$12,582,113	\$12,768,998
Other (Non-Police) Personal Services (All General and Highway Funds)	\$9,098,519	\$11,278,965	\$2,180,446	24.0%	\$11,252,976	\$11,195,743
ERS & PFRS Retirement (All General and Highway Funds)	\$2,758,514	\$3,484,110	\$725,596	26.3%	\$3,875,262	\$3,771,993
Hospital & Medical Insurance (All General and Highway Funds)	\$3,985,613	\$5,199,281	\$1,203,668	30.2%	\$5,768,320	\$6,613,320

Sources: Town of Orangetown Comprehensive Annual Financial Reports for 2006 & 2010; Adopted Town Budget for 2012;  
Expense Comparison Control Report Dated January 23, 2012; Annual Financial Reports Submitted to NYS Comptroller's Office



**Exhibit K**  
**COMPARISON OF ORIGINAL BUDGET WITH ACTUAL RESULTS**  
**Town of Orangetown**

[1] Fiscal Year End Dec. 31	[2] REVENUES		[4] EXPENDITURES		[6] EXPENDITURES		[7] EXPENDITURES		[8] SURPLUS/DEFICIT*		[10]
	Budget**	Actual	Budget**	Variance	Budget**	Actual	Variance	Budget	Actual	Variance	Variance
2006	\$22,447,762	\$23,261,785	\$22,447,762	\$814,023	\$21,565,613	\$22,447,762	(\$882,149)	\$0	\$1,696,172	\$1,696,172	\$1,696,172
2007	\$22,981,352	\$23,544,140	\$22,981,352	\$562,788	\$22,580,863	\$22,981,352	(\$400,489)	\$0	\$963,277	\$963,277	\$963,277
2008	\$23,807,196	\$23,963,401	\$23,807,196	\$156,205	\$24,032,503	\$23,807,196	\$225,307	\$0	(\$69,102)	(\$69,102)	(\$69,102)
2009	\$24,259,455	\$24,621,174	\$24,259,455	\$361,719	\$23,999,833	\$24,559,455	(\$559,622)	(\$300,000)	\$621,341	\$921,341	\$921,341
2010	\$25,408,118	\$25,942,429	\$25,908,118	\$534,311	\$26,341,211	\$25,908,118	\$433,093	(\$500,000)	(\$398,782)	\$101,218	\$101,218
Average, 2006 -2010				\$485,809			(\$236,772)				\$722,581
2011 (Prelim.)	\$24,879,723	\$27,423,853	\$25,879,723	\$2,544,130	\$26,564,163	\$25,879,723	\$684,440	(\$1,000,000)	\$859,690	\$1,859,690	\$1,859,690

**Combined General Funds and Highway Funds:**

[1] Fiscal Year End Dec. 31	[2] REVENUES		[4] EXPENDITURES		[6] EXPENDITURES		[7] EXPENDITURES		[8] SURPLUS/DEFICIT*		[10]
	Budget**	Actual	Budget**	Variance	Budget**	Actual	Variance	Budget	Actual	Variance	Variance
2006	\$39,728,106	\$41,593,101	\$42,153,106	\$1,864,995	\$39,798,332	\$42,153,106	(\$2,354,774)	(\$2,425,000)	\$1,794,769	\$4,219,769	\$4,219,769
2007	\$42,162,258	\$42,911,239	\$42,962,258	\$748,981	\$41,623,530	\$42,962,258	(\$1,338,728)	(\$800,000)	\$1,287,709	\$2,087,709	\$2,087,709
2008	\$44,429,950	\$44,505,047	\$44,729,950	\$75,097	\$43,786,484	\$44,729,950	(\$943,466)	(\$300,000)	\$718,563	\$1,018,563	\$1,018,563
2009	\$45,015,651	\$45,499,939	\$45,315,651	\$484,288	\$44,428,068	\$45,315,651	(\$887,583)	(\$300,000)	\$1,071,871	\$1,371,871	\$1,371,871
2010	\$46,225,318	\$47,458,314	\$47,225,318	\$1,232,996	\$47,201,899	\$47,225,318	(\$23,419)	(\$1,000,000)	\$256,415	\$1,256,415	\$1,256,415
Average, 2006 -2010				\$881,271			(\$1,109,594)				\$1,990,865
2011 (Prelim.)	\$46,097,273	\$49,305,241	\$47,297,273	\$3,207,968	\$47,944,171	\$47,297,273	\$646,898	(\$1,200,000)	\$1,361,070	\$2,561,070	\$2,561,070

\*Planned/Actual Use of Fund Balance  
\*\*Original Adopted Budget

Sources: Comprehensive Annual Financial Reports for 2006 through 2010; Adopted Town Budgets for 2006 through 2010; Expense and Revenue Comparison Control Reports Dated January 23, 2012

*Exhibit L*  
**IMPACT OF PBA PAY RAISE**

	<u>2011</u>
Total Reported Gross Pay to PBA Members	\$11,751,519
1% on Total Pay Equals	\$117,515
With Roll-Ups* for FICA, MTA Mobility Tax, & Pension, 1% Equals:	\$150,349

If a 3.5% raise (for example) was to be financed entirely through the Town's real property tax, it would result in the tax levy being increased by approximately \$526,200. Using levy and valuation data from 2012, the "Town & Nyack Police" tax rate would need to be increased from \$5.91 per thousand of assessed value to \$6.05 per thousand. Using \$207,390 as the average assessed value of a single family residence, the tax increase on the average Town homeowner resulting from a 3.5% raise for the PBA is \$29.03 annually (or 56 cents per week).

\*Total Value Calculated at 27.94%. Comprised of:

FICA: 2.1%

Most PBA Members Earn in Excess of the Maximum Taxable Earnings of \$110,000 for Social Security

MTA Mobility Tax: 0.34%

New York State Pension: 25.5% (Tier 2 384-e Rate with 341-j)

Source: PBA Member Pay Information Provided by Town; New York State Retirement System;  
Social Security Administration; NYS Dept. of Tax & Finance, Office of Real Property Services;  
Levy and Valuation Data Provided by Orangetown Finance Department

**Exhibit M**

**TOWN OUTSIDE VILLAGES BUDGET**

THE ADOPTED 2012 TOWN OUTSIDE VILLAGES BUDGET INCLUDES A CONTINGENT ACCOUNT "RESERVE FOR LIABILITIES, POLICE" IN THE AMOUNT OF \$410,000.

THE APPROPRIATION FOR PERSONAL SERVICE SPENDING FOR POLICE IN 2012 IS \$11,784,981. THIS IS \$206,167 (1.7%) HIGHER THAN THE PRELIMINARY ACTUAL SPENDING FOR PERSONAL SERVICE SPENDING IN 2011 OF \$11,578,814.

THE FOLLOWING REVENUE ITEMS ARE ATTRIBUTED TO THE POLICE DEPARTMENT:

	<u>2011 Budget</u>	<u>2011 Prelim Actual</u>	<u>2012 Budget</u>
County Grant - Narcotics	\$170,000	\$391,333	\$180,000
Cops - School Resource Officer	\$98,000	\$96,500	\$96,500
Bulletproof Vest Grant (Fed)	\$0	\$5,790	\$0
County Grant - Intel	\$0	\$185,695	\$0
Gasoline, Police	\$0	\$16,663	\$0
Police Fees	\$65,000	\$162,859	\$80,000
Sale of Equipment, Police	\$13,000	\$34,775	\$20,000
DARE/Youth Academy Gifts	\$10,000	\$10,435	\$0
Other Revenue, Police	\$0	\$45,690	\$0
Federal Grants, Police	\$0	\$31,918	\$0
Total	\$356,000	\$981,658	\$376,500

*Source: Adopted 2012 Town Budget; Expense and Revenue Comparison Control Reports  
Dated January 23, 2012*

**Exhibit N**

**COMPARISON OF ORANGETOWN TO CLARKSTOWN AND RAMAPO:  
SELECTED ECONOMIC AND DEMOGRAPHIC INDICATORS**

**Moody's Bond Rating**

Clarkstown: Aa2

Orangetown: Aa2

Ramapo: Aa2 w/ Negative Outlook

Source: Moody's Website: 2/15/2012

**Population Growth, 2000 to 2010**

Clarkstown: 2.6%

Orangetown: 3.0%

Ramapo: 16.3%

Source: U.S. Census Bureau

**Average Family Income, 2010**

Clarkstown: \$133,813

Orangetown: \$139,932

Ramapo: \$104,104

Source: U.S. Census Bureau  
American Community Survey

**Median Value of Owner Occupied Housing Units, 2010**

Clarkstown: \$501,500

Orangetown: \$528,800

Ramapo: \$468,500

Source: U.S. Census Bureau, American Community Survey

**Unemployment Rate, December 2011**

Clarkstown: 5.9%

Orangetown: 5.8%

Ramapo: 6.3%

Source: NYS Dept. of Labor

**Occupied Housing Units, % Owner Occupied, 2010**

Clarkstown: 79.5%

Orangetown: 72.1%

Ramapo: 59.8%

Source: U.S. Census Bureau

**Percent of Population Over Age 65**

Clarkstown: 15.9%

Orangetown: 17.2%

Ramapo: 10.4%

Source: U.S. Census Bureau

# MOODY'S

## INVESTORS SERVICE

**New Issue: MOODY'S ASSIGNS Aa2 RATING TO THE TOWN OF ORANGETOWN'S (NY) \$2.3 MILLION GO BONDS, SERIES 2011 A & B; ASSIGNS MIG 1 TO \$1.8 MILLION NOTES SERIES 2011**

Global Credit Research - 14 Sep 2011

### **Aa2 RATINGS AFFIRMED ON \$68.7 MILLION OF OUTSTANDING LONG-TERM G.O. DEBT**

Municipality  
NY

#### **Moody's Rating**

<b>ISSUE</b>	<b>RATING</b>
Public Improvement (Serial) Bonds, Series 2011A	Aa2
<b>Sale Amount</b>	\$1,500,000
<b>Expected Sale Date</b>	09/19/11
<b>Rating Description</b>	General Obligation
Public Improvement Refunding (Serial) Bonds, Series 2011B	Aa2
<b>Sale Amount</b>	\$820,000
<b>Expected Sale Date</b>	09/19/11
<b>Rating Description</b>	General Obligation
Bond Anticipation Notes, Series 2011	MIG 1
<b>Sale Amount</b>	\$1,800,000
<b>Expected Sale Date</b>	09/19/11
<b>Rating Description</b>	Bond Anticipation Notes

#### **Opinion**

NEW YORK, Sep 14, 2011 -- Moody's Investors Service has assigned a Aa2 rating to the Town of Orangetown's (NY) \$2.3 million Public Improvement Serial Bonds, 2011 A & B and a MIG 1 rating to \$1.8 million of Bond Anticipation Notes, 2011. Concurrently, Moody's has affirmed the Aa2 rating on the town's \$68.7 million of previously issued long-term parity debt. The bonds and notes are secured by the town's unlimited general obligation tax pledge.

#### **SUMMARY RATINGS RATIONALE**

The Aa2 rating reflects the town's healthy financial operations with solid reserve levels, sizable and wealthy tax base marked, and favorable debt position. The MIG 1 rating additionally incorporates the town's demonstrated market access and strong underlying credit quality. Bond proceeds will be used to finance a \$1.5 million landfill remediation and to refund \$820,000 million of currently outstanding Series 2000 bonds. Proceeds from the sale of the notes will finance new sewer projects.

#### **DETAILED CREDIT DISCUSSION**

##### **STRENGTHS**

- Balanced financial operations with strong reserves
- History of strong financial management
- Sizeable tax base with proximity to New York City and Westchester County

#### CHALLENGES

- Continued expenditure growth in employee pension and health benefits
- Ongoing tax appeals, shrinking tax base
- Declining mortgage revenues
- Enterprise risk in the town's golf course operations

#### EXPECTATION OF MARKET ACCESS

The MIG 1 rating assigned to the bond anticipation notes incorporates the town's long-term credit characteristics and history of market access. Orangetown is a frequent market participant with a satisfactory record of market access for both its long-term and short-term obligations. Most recently, the town received four bids on its September 2010 note sale and four bids on its November 2009 notes. All bids were received from major regional and national financial institutions.

#### STABLE FINANCIAL OPERATIONS WITH HEALTHY RESERVES

Orangetown's financial operations are expected to remain healthy due to structurally balanced operations and conservative budgeting despite recent pressures stemming from declining state aid revenues, increasing employee pension and benefit costs and enterprise risk in the town's golf operations. During the seven fiscal years from 2004 through 2010, the town's combined Operating Funds (General Fund, Town Outside Villages Fund, Highway Fund and Debt Service Fund) generated a series of consecutive surpluses of varying sizes, increasing reserves to \$14.7 million, equal to a strong 31.1% of combined revenues in fiscal 2010, up from \$6.4 million or 17% of revenues in fiscal 2004.

The General Fund ended fiscal 2010 with a \$700,000 surplus due to conservative budgeting of expenditures, although the Town Outside Village Fund produced a \$400,000 deficit primarily due to an unbudgeted \$770,000 payment for a state mandated landfill project, contributing to a \$300,000 Operating Fund surplus. Mortgage tax revenues, reported as state aid, were up slightly from fiscal 2009 although they are still \$500,000 below 2008 levels and \$1.9 million below 2006 levels due to continued weakness in the regional real estate market. The loss of this revenue source has contributed to the various challenges facing the town; however, economically sensitive sales and mortgage taxes compose a relatively modest portion of operating revenues (4.3% and 4% respectively). The majority of the town's operating revenues are stable, composed primarily of property taxes (77% of 2010 operating revenues).

The town is further challenged by a golf course enterprise operation, which has produced consecutive deficits in recent years. In fiscal 2003, the town purchased a large 350 acre parcel of land from the State of New York, including the private golf course Broad Acres, which continued to operate as a private club while paying the town rent. During fiscal 2004, the club filed for bankruptcy and the operations were assumed by the town after converting the course from private to public, and thereby competing with the town's existing golf course, Blue Hill. Although Broad Acres does not have any outstanding debt, they have required over \$2 million of transfers from the General Fund to cover operating costs, including over \$200,000 in fiscal 2010 alone. The Town has implemented a number of improvements to the enterprise operations, including the hiring of new management at the Blue Hill Golf Course.

The fiscal 2011 (ending December 31) total operating budget grew by \$900,000 or 1.3% year-over-year, primarily due to significant increases in employee related benefits. From 2010 to 2011 the annual pension

arc increased to a budgeted \$4.5 million in fiscal 2011 from \$3.9 million in fiscal 2010, a 15% increase in a line item that makes up a significant portion (8.8%) of total budgeted operating expenditures. Similarly, health insurance costs grew from \$5.9 million in 2010 to a budgeted level of \$6.6 million in 2011, a 13% increase. The budgeted expenditure growth was offset by a 1.8% increase in the property tax levy, a \$200,000 appropriation of General Fund reserves and \$1 million Town Outside Village Fund appropriation to balance the budget. Management expects a \$400,000 surplus in the General Fund and \$400,000 deficit in the combined Operating Funds. Although the town's financial reserves remain healthy, declining mortgage revenues, employee pension and health benefit expenditure pressures and structural imbalance in the enterprise funds present challenges that will be considered in future ratings.

#### **SIZABLE, WEALTHY SUBURB OF NEW YORK CITY; RECENT LOSS OF MAJOR TAX PAYER**

The town's sizeable (\$8.2 billion) tax base is expected to remain stable, despite a stagnating regional real estate market and continued assessed value deterioration due to the loss of a major employer and taxpayer. Over the medium term, the village is expected to continue to benefit from its accessibility to local and regional employment centers as well as a limited number of high impact development projects. Residents benefit from convenient commutability to jobs throughout Rockland County (G.O. rated A1/negative outlook) and in the New York City (G.O. rated Aa2/stable outlook) metropolitan area. Local employment is bolstered by the presence of several medical institutions, as well as Pfizer (acquired Wyeth in 2009) (Sr. Unsec. rated A1/Stable) which is the town's largest taxpayer (9.6% of assessed valuation). Early in 2010 the company restructured offices resulting in 2,000 fewer positions in the region, some of which will be relocated to Ireland through 2014. Job losses are expected to impact the town, as Pfizer was the largest private employer in the county in 2009.

Reflecting the regional trend of a softening housing market, Orangetown experienced a 15.4% cumulative decline in full value from 2008 through 2010. As a result, the town's full valuation has grown at an average annual rate of 0.3% over the last five years. Over the past five years, the town's assessed values have remained essentially flat, reflecting ongoing tax appeals and limited commercial and residential development. During fiscal 2010 the town settled a Pfizer (previously Wyeth) tax appeal, resulting in the refund of \$2.4 million in taxes which will be paid in 2012 from the county's General Fund but derived from a special one time tax levy which only applies to town residents. As part of the settlement, the town will decrease the assessed value of Pfizer's campus by 45% in annual increments through 2016, resulting in average \$500,000 losses of property tax revenues per year for that site. Officials expect future tax base growth to be modest given this recent settlement and the canceled plans for residential development on 120 acres of the 350 acres of land purchased by the town from the State of New York (rated Aa2/stable outlook) in 2003. Recent development includes construction of office and warehouse facilities in office parks by Crestron Electronics and FedEx (Baa2/positive outlook), which will add \$8 million and \$16 million respectively to taxable property in future tax rolls upon completion in fiscal 2012. Wealth indicators for the town approximate metro New York regional medians (well above state medians) and full value per capita is a high \$170,289.

#### **DEBT PROFILE TO REMAIN MANAGEABLE WITH ADDITIONAL BORROWING**

The town's debt position is expected to remain manageable given limited debt issuance plans, despite below-average debt retirement. The town's direct debt burden is a modest 1% of full valuation and remains average at 2.9% of full valuation when overlapping obligations are taken into account. Principal amortization is slow with only 45.9% retired within 10 years, representing the longer useful life of the large 2005 and 2008 sewer project financings. The town has no exposure to variable rate debt or derivative products.

#### **WHAT COULD MAKE THE RATING GO UP:**

- Sustained increases in size of tax base or increases in socioeconomic wealth indicators
- Growth of financial reserves through a continuation of structurally balanced operations

-Decrease in the debt burden

#### WHAT COULD MAKE THE RATING GO DOWN:

- Inability to manage continued expenditure growth in employee pension and health benefits
- Significant declines in financial reserves or inability to address the structural deficits in the golf course enterprise
- Further successful tax appeals that continue to deteriorate assessed valuation or drain financial resources

#### KEY STATISTICS:

2010 Population: 49,212

2010 Full value: \$8.2 billion

2010 Full value per capita: \$170,289

1999 Per Capita Income (as a % of State, as a % of U.S.): \$33,170 (142%, 154%)

1999 Median Family Income (as a % of State, as a % of U.S.): \$87,341 (169%, 175%)

Direct debt burden: 1%

Overall debt burden: 2.9%

Payout of Principal (10 years): 45.9%

2010 General Fund balance: \$6.6 million (55.7% of Combined General Fund revenues)

2010 Operating Fund balance: \$14.7 million (31.1% of Operating Fund revenues)

Post-Sale Long-Term Debt Outstanding: \$71 million

#### PRINCIPAL METHODOLOGY

The principal methodology used in this rating was General Obligation Bonds Issued by U.S. Local Governments published in October 2009. Please see the Credit Policy page on [www.moodys.com](http://www.moodys.com) for a copy of this methodology.

#### REGULATORY DISCLOSURES

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