

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Fact-Finding	X	
between	X	
VILLAGE OF WESTHAMPTON DUNES	X	Case No. M2016-175
	X	Findings and
	X	Recommendations
	X	
"Village"	X	
-and-	X	
	X	
WESTHAMPTON DUNES POLICE		
CONSTABULALRY ASSOCIATION		
	X	
"Association"		
-----	X	

APPEARANCES

For the Village

BEE READY FISHBEIN HATTER & DONOVAN, L.L.P.
William C. DeWitt, Esq.

For the Association

Reynold A. Mauro, Esq.

BEFORE: Barry J. Peek, Esq., Fact-Finder

BACKGROUND

The Village is located on a barrier island on the south shore of Suffolk County Long Island in the Town of Southampton. For over twenty (20) years, the Village has employed Constables.

According to the Suffolk County Civil Service job specifications, a Village Constable is identified as a "peace officer", who is "involved in the enforcement of New York State Laws and codes, the laws and regulations of the Village of Westhampton Dunes, and the other local laws and regulations, within the Village of Westhampton Dunes". (A. 12).¹

At the present time, the Village employs five (5) full time Constables and approximately five (5) part-time Constables. The Village Mayor, Gary Vegliante, serves as the Commissioner of the Constabulary and is also referred to as the Village's Police Commissioner.

The typical duties of a Village Constable include answering calls for assistance involving accidents and emergencies in the Village. In addition, Village Constables may direct pedestrian and vehicular traffic, investigate violations of law, issue summonses and appearance tickets and file activity reports. (A. 12). Village Constables also have the authority to make arrests.

¹ A. refers to Association Exhibits introduced at the fact-finding hearing held on November 14, 2017. V. refers to Village Exhibits attached to its brief submitted at the November 14, 2017, hearing.

The minimum qualifications for the position of Village Constable are "Graduation from high school or the possession of a high school equivalency diploma, and four (4) years of law enforcement experience as either a police officer or peace officer". (A. 12). The job specifications for the title Village Constable also require that an applicant pass a psychological examination, possess a valid New York State motor vehicle license and obtain certification by the Municipal Police Training Council as a peace officer. (A. 12).

On or about June 11, 2015, the Public Employment Relations Board ("PERB") certified the Association as the exclusive bargaining agent for "All Full-Time Constables" employed by the Village. (V. 1).

The Village and the Association held several meetings in an attempt to arrive at a first Collective Bargaining Agreement ("Agreement"). Those meetings were not successful and on October 20, 2016, the Association filed a Declaration of Impasse with PERB. (A. 3). By letter dated November 16, 2016, PERB appointed Thomas J. Linden as the Mediator. (A. 3).

Meetings were held with Mediator Linden on January 11, 2017, January 24, 2017, February 16, 2017 and March 28, 2017. The mediation ended without agreement.

Thereafter, on May 25, 2017, the Association requested PERB appoint a fact-finder. (A. 3). On June 14, 2017, PERB issued a letter appointing me as Fact Finder in this matter. (V. 9).

A hearing was held before me at the Office of the Association's Attorney, Reynold A. Mauro, in Commack, New York, on November 14, 2017.² During the course of this hearing, the parties were given full opportunity to present evidence and arguments in support of their respective positions. They did so. I declared the record closed pending my receipt of further written arguments on behalf of the parties.

On December 18, 2017, I received the closing brief submitted on behalf of the Association and on January 26, 2018, I received the Village's written submission.

THE UNRESOLVED PROPOSALS

ASSOCIATION: The Association attached its original list of unresolved proposals as Exhibit 3 to the Petition For Designation Of Fact Finder. (A. 3). These proposals were as follows:

I. WAGES AND OTHER RELATED BENEFITS.

A. Salary Schedule to be created as follows:

Step 1	\$ 47,500	Newly hired employees.
Step 2	\$ 50,000	After 1 year of service.
Step 3	\$ 60,000	After 2 years of service.
Step 4	\$ 66,000	After 3 years of service.

²At the hearing held before me on November 14, 2017, the Association modified and reduced the proposals it originally submitted with its Declaration of Impasse. The Village did not object to these modifications. (A. 18A and 18B).

Step 5	\$ 73,000	After 4 years of service.
Step 6	\$ 79,000	After 5 years of service.
Step 7	\$ 85,000	After 6 years of service.
Step 8	\$ 93,000	
Step 9	\$100,000	
Step 10	\$110,000	
Supervisor's differential: 15%		

B. Longevity. Member shall receive longevity payments as follows:

After 6 yrs. of service	3% of salary base
After 10 yrs. of service	5% of salary base
After 15 yrs. of service	7% of salary base
After 20 yrs. of service	10% of salary base
After 20 years and thereafter	1% for every year of service

C. Duration. Open to multiyear contract.

D. Holiday Pay.

(i) Officers to receive one day's pay for the following holidays. New Year's Eve, New Year's Day, MLK Day, Lincoln's Birthday, Washington's Birthday, Easter Sunday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day.

(ii) Officers actually working on a holiday shall receive double time and a half.

E. Night Differential. Officers who work more than half of their duty between the hours of 4:00 p.m. and 8:00 p.m. shall receive night differential calculated at ten percent (10%) of pay.

F. Officers who are recalled to duty or being subpoenaed or called to testify in court proceedings shall be entitled to a minimum of 4 hours pay.

G. Overtime. All Officers shall be compensated at the rate of time and a half for all work performed in excess of 8 hours in any given day and 40 hours in any work week. This will include training time.

H. Recall - Training Time. If an Officer is scheduled for training on a scheduled day off, then that Officer shall be

compensated for a minimum of 8 hours for said training. Compensation shall be pay or compensatory time at the Officer's option.

I. Tours of Duty shall not be changed so as to avoid overtime.

II. TIME OFF AND OTHER RELATED BENEFITS

A. Personal Leave. Officers shall receive 5 personal days per year. Officers who have completed 7 years of service, shall receive 7 personal leave days.

B. Sick Leave. Officers shall receive 24 sick days per year with unlimited accumulation.

C. Bereavement Leave. Officers shall receive up to 5 days bereavement leave for the death of close relatives.

D. Vacation Leave. Officers shall receive 27 paid working days vacation.

E. Duty Chart. 12 hour duty chart, 3 on, 4 off for officers, 2 officers on for patrol.

III. RETIREMENT, INSURANCE AND OTHER RELATED BENEFITS.

A. Payment of Accumulated Leave Time. Officer shall be paid for all accumulated sick leave time to a maximum of one (1) year's pay. (Rate??)

B. Disability Retirement. In the event that an Officer receives a disability retirement, that Officer shall be deemed to be a retired employee who has retired with a normal service retirement.

C. Village to continue payment of Officers' health insurance into retirement until the age of 65.

D. Optical Insurance.

IV. MISCELLANEOUS.

A. Discipline and Discharge. All discipline for permanent employees who completed their probation) shall be ultimately determined by binding arbitration in accordance with the rules of the NYS PERB.

- B. Grievance Procedure. Grievance procedure to be developed with the last step being binding arbitration pursuant to the rules of the NYS PERB.
- C. Outside Employment. The current practice of permissible outside employment shall be incorporated into the contract.
- D. Health Insurance. The current healthcare and dental insurance program shall continue at no cost to the members.
- E. Line of Duty Injury. Employees actually injured in the line of duty shall not be deducted sick leave. Any workers compensation payments for lost time shall be reimbursed to the employer. Employees injured in the line of duty shall be treated as Police Officers as defined in §207-c of the General Municipal Law.
- F. Compensatory Time. Officers shall be entitled to accumulate overtime as compensatory time to maximum of 400 hours, excluding vacation, sick or personal leave time that employees have cashed out.
- G. Shift Swaps. Members can provide for an exchange of shifts, provided said exchanges are approved by a supervisor and any such swapped shift shall not be treated as overtime, except for any tours that may be extended.
- H. Uniforms. The employer shall provide all uniforms and equipment.
- I. Officer's health insurance shall continue at the employer's expense into retirement.
- J. Officers to be permitted to cash out vacation, sick or personal time, that is, cash out at the officer's option vacation or personal time.
- K. Any Officer who has not used or cashed out the allotted sick time for the budget year will be awarded one additional sick day placed in the Officer's accumulated sick leave bank.

The Association's modified wage proposals were submitted as

separate exhibits during the November 14, 2017, fact-finding hearing. (A. 18A and 18B).

A. 18A

- A. Wages. Separately proposed.
- B. Tours of Duty. - be posted on annual basis and shall not be changed to avoid overtime. This will not apply to mutually agreed upon changes made with or between employees.
- C. Grievance Procedure.
Grievance procedure to be developed with the last step being binding arbitration pursuant to the rules of NYS PERB.
- D. Line of Duty Injury.
Employees actually injured in the line of duty while performing "heightened risk" activity, shall not be deducted sick leave during recovery time. Any workers compensation benefits to the employee shall be reimbursed to the employer.
- E. Night Differential. Officers who work more than half of their duty between the hours of 4:00 p.m. and 8:00 a.m. shall receive night differential calculated at ten percent 10% of pay.
- F. Village to continue payment of Officers' health insurance into retirement until the age of 65.
- G. Continue handbook except or modified by Union proposals.

A. 18B

Wages.

Employees are currently compensated on an hourly basis that converted to an annual wage pre-certification as follows:

- A. Employee 1 \$45,766 (3 yrs. of service)
- Employee 2 \$48,850 (5 yrs. of service)
- Employee 3 \$59,280 (8 yrs. of service)
- Two confidential employees: \$88 192 (more than 10 yrs. of service)

- B. After certification on 7/1/15, the Village voluntary gave all employees a pay raise of one dollar (\$1.00) an hour, or a \$2,080.00 raise a year.
- C. Proposed retroactive to June 1, 2016. All employees to receive an additional two dollar (\$2.00) an hour raise.
- D. Proposed, effective June 1, 2017. An annual salary schedule to be placed into effect as follow:

Hire	\$55,000
After 1 yr.	\$57,750
After 2 yrs.	\$60,637
After 3 yrs.	\$63,668
After 4 yrs.	\$66,581
After 5 yrs.	\$70,193
After 6 yrs.	\$73,702
After 7 yrs.	\$81,256
After 8 yrs.	\$85,318
After 10 yrs. of service,	additional 3% a year.

VILLAGE PROPOSALS

1. Term.

Three years.

2. Coverage.

The provisions of this agreement shall apply to all full time Constables of the Village of Westhampton Dunes.

3. Residency.

Each Constable shall maintain his/her principal residence or domicile, within the territorial boundaries of Nassau County, Suffolk County or Queens County.

4. Salaries.

The Village shall have the discretion to determine the salary for newly hired Constables.

5. A Constable who is on sick leave, for a period of ten seven (7) consecutive days, shall be subject to having his or her regular schedule of work changed to meet the needs of the Village.
6. The work week shall be seven days starting on Sunday and ending on Saturday. A Constable who actually works in excess of forty hours during a work week shall be paid at a rate for time and half for all hours worked in excess of forty hours.
7. A Constable ordered to report for a physical examination while on sick leave, shall receive credit for time worked as straight time for any hours directly or indirectly involved herein.
8. A Constable out sick or injured for more than three (3) consecutive scheduled work days may be directed to a medical examination without incurring overtime provided said medical appointment occurs during what would have been the Constable's regularly scheduled tour were he not out sick or injured. The Village reserves the right to send a member for evaluation at any time.
9. The Village shall set the regularly scheduled hours to be worked each day by a Constable and shall provide 30 days' notice of a change to such schedule. The Village shall have the right to schedule Constables up to 2,088 hours per year (adjusted for 365 variations) with such schedules as the Village deems appropriate. The Village shall provide at least one-week notice to the Constable of any rescheduling.
10. Each Constable shall be entitled to receive eleven paid holidays, payable at the rate of eight (8) hours, as follows: discuss which holidays.
11. Each Constable shall be entitled to receive five sick days which shall not be accumulated.
12. Each Constable shall be entitled to receive ten vacation days which shall be accumulated.
13. Each Constable shall be entitled to receive two personal days which shall not be accumulated.
14. Management Rights Clause.

Except as expressly limited by this Agreement, the Village reserves all management rights, including without limitation the right to determine the standards of service to be offered, to set the standards of selection for employment; to direct its Constables; to create, alter, abolish and otherwise regulate work schedules; to take disciplinary action; to relieve its Constables from duty because of lack of work or for other legitimate reasons; to maintain the efficiency of operations; to determine the methods, means and personnel (including whether by contractor or non-unit Constable) by which operations are to be conducted; to determine the content of job classifications; to take all necessary actions to carry out its mission, and to exercise complete control and discretion over its organization and the technology of performing its work.

15. "Zipper" Clause.

The Village and the Union, for the life of this Agreement, each voluntary and unqualifiedly agree that the other shall not be obligated to negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, each voluntarily and unqualifiedly agree that the other shall not be obligated to negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, or the impact of exercising any right, and/or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

16. "Past Practice" Clause.

This contract contains all of the terms and conditions of employment to which a Constable is entitled. Any benefit which exists outside this contract is not a Constable entitlement, but continues solely in the discretion of the Village.

17. "No Conversion" Clause.

The parties agree that the inclusion of subject matter in this agreement shall not be deemed to "convert" a non-mandatory subject to bargaining into a mandatory subject of bargaining, and the parties agree that either side may refuse to bargain over any topic included in this agreement

which would, absent this clause, have been "converted" into mandatory subject of bargaining.

18. The Village shall have the right to set such payroll schedules and methodologies as it deems fit so long as such payroll schedules and methodologies are not in violation of federal and state law.

19. Rate of Compensation & Benefit Computation.

Base hourly rates (or "hourly rate") shall be calculated at the rate of annual salary divided by the number of work hours for which a Constable is regularly scheduled to annually work (inclusive of leaves taken).

20. Employees shall contribute twenty percent (20%) toward individual health insurance coverage and thirty-five percent toward dependent health insurance coverage.

21. Discuss with Village the benefits, if any, that will be provided upon retirement (health insurance, pay out of unused sick/vacation).

Position of the Parties

The Association after modifying its proposals seeks an agreement retroactive to June 1, 2016. It proposes a wage increase of (\$2.00) dollars per hour effective June 1, 2017, retroactive to June 1, 2016. The Association also proposes an eight (8) step salary plan with a starting salary of fifty-five thousand (\$55,000) dollars per year and the top step being eighty-five thousand three hundred eighteen (\$85,318.00) dollars).

The Association also maintains a provision providing for a longevity payment of three (3%) percent after a member of the bargaining unit has completed ten (10) years of service should be

included in the Agreement. Its other economic proposals call for line of duty injury pay and night differential pay.

In addition, the Association asserts the members of the bargaining unit are entitled to continue to receive the benefits set forth in the Employment Handbook for The Members Of The West Hampton Dunes Police Constabulary. ("Employment Handbook"). (A. 17). The Employment Handbook provides for such benefits as sick leave, vacation leave, personal leave, health insurance. It also provides for rules, procedures, and accepted past practices for members of the bargaining unit.

The Association maintains its proposals are reasonable. It argues the Village has the ability to pay for reasonable increases in wages and benefits. It also insists the Village has not offered evidence sufficient to warrant to a reduction of any of the benefits, such as sick leave, holidays, vacation, personal leave, its members currently enjoy as set forth in the Employment Handbook. The Association argues any reduction in those benefits would result in a pay cut, rather than an increase in salary which is due its members.

In support of its position, the Association offers the collective bargaining between the neighboring Village of Westhampton Beach and the Westhampton Beach PBA covering the period June 1, 2013, through May 31, 2017. (A. 19). The Association points out that the salary schedule for Police

Officers employed at Westhampton Beach provides for a starting salary of fifty-five thousand thirty-six dollars and forty one cents (\$55,036.41) and a top salary after five (5) years of one hundred fourteen thousand thirty six dollars and ninety eight cents (\$114,036.98).

The Association argues the salary disparity between Police Officers of Westhampton Beach and the members of its bargaining unit is dramatic. This is based upon the fact that the lowest salary for a member of the Association's bargaining unit forty-five thousand seven hundred sixty (\$45,760.00) dollars and the top salary is eighty-six thousand one hundred and twelve (\$86,112.00) dollars.

The Association insists the Westhampton Beach PBA Agreement is a proper comparator because the position of Constable and Police Officer are almost identical. In support of this argument it relies on the testimony of Constable John Jacobs who explained how the job Constable is comparable to that of a Police Officer.

Jacobs testified the resolution of the Village which established the Village Constabulary in 1996, evidenced a clear intent to treat members of the bargaining as police officers. (A. 8). Jacobs pointed out that the resolution stated in pertinent part as follows:

RESOLVED... Village Constables shall have all powers of a police officer as designated under the Criminal Law of the State of New York,...

The Association insists, if the Village considers Constables to be Police Officers, they should be treated similarly in their terms and conditions of employment.

According to the Association, Jacobs' testimony establishes that the duties regularly performed by Constables are "remarkably similar" to those performed by Police Officers. The Association insists both categories enforce New York State penal laws. Police Officers and Constables perform routine patrols and they both answer calls for assistance in emergency situations. Jacobs also testified Constables and Police Officers direct traffic, issue summonses, administer first aide and make arrests.

The Association contends Jacobs' testimony is supported by comparing the civil service job descriptions pertaining to Police Officers and Constables. (A. 12A and 12). It also insists the police certifications maintained by members of the bargaining unit are another indication Constables should be compared to Police Officers. (A. 13, 14, and 14A).

The Association also insists its line of duty injury proposal is a reasonable one. It maintains that since Section 207-c of the General Municipal Law does not cover Constables for the loss of salary due to a line of duty injury, this provision is very necessary. It argues since the hazards of the job of Constable are directly comparable to that of a Police Officer there is no

reason why members of the bargaining unit should not be protected if they are injured in the line of duty. According to the Association, this is not a monetary issue, it is about the hazards of the job and protecting the Constables and their families in the event they are injured on the job.

Concerning health insurance, the Association insists the Village continue to pay the health insurance premiums upon retirement until age sixty-five (65). It argues this proposal is reasonable, again, in light of the hazards of the job.

Finally, the Association maintains that it is generally accepted that the Agreement should contain a grievance procedure that has final and binding arbitration before a neutral third party as a final step. Otherwise, according to the Association, the Village will have complete discretion to disregard the provisions of the Agreement with impunity.

The Village argues that the economic demands being made by the Association are excessive and unreasonable. It maintains the bargaining unit members have recently received a one (\$1.00) dollar per hour wage increase effective June 1, 2017. The Village argues that amounts to an average raise of approximately three (3%) percent for each member of the bargaining unit based on an average hourly rate of thirty-one dollars forty-six cents (\$31.46).

The Village argues the total salary paid to the five (5) members of the bargaining unit totals three hundred twenty-seven

thousand one hundred eighty-four (\$327,184.00) dollars. It also provides dental and optical insurance at a cost of four thousand three hundred fifty-one dollars and ninety-two cents (\$4,351.92) per year and health insurance at a cost of twenty-four thousand (\$24,000.00) dollars annually for family coverage and eight thousand (\$8,000.00) dollars for individual coverage for a total of eighty-eight thousand (\$88,000.00) dollars. Further, the Village pays nineteen thousand one hundred and seventy (\$19,170.00) dollars for uniforms and equipment.

According to the Village, the cost of the five (5) members of the bargaining unit, without FICA, Disability and Pensions costs, totals four hundred thirty-eight thousand seven hundred five dollars ninety-two cents (\$438,705.92). The Village argues this cost represents approximately fifty (50%) percent of its annual budget.

The Village also argues the salary schedule proposed by the Association would result in a twenty-six thousand (\$26,000.00) dollar wage increase for Jacobs, a six thousand (\$6,000.00) increase for Constable Jason Luhrs, and a ten thousand dollar (\$10,000.00) increase for Constable Michael Tessitore. According to the Village, those increases would average over fifteen (15%) percent.

The Village also points out that those percentages do not include the three (3%) percent longevity increase the Association

has proposed. It insists the Association's proposed salary increases are far too rich given the general financial climate and the two (2%) percent Property Levy Tax Cap signed into law on June 24, 2011.

The Village maintains its tax base is extremely small. It argues the Village has a total of two hundred seventy-two (272) housing units, twenty-four (24) of which are occupied year-round. The remaining two hundred forty-eight (248) are mainly occupied during the summer months.

In the Village's view, the Association's comparison to the Westhampton Beach Police Officers Agreement is misplaced. Simply stated, the Village argues Constables are not Police Officers. Their duties may be similar, however, in many respects they are not treated the same and they do not have the same powers by law. Further, the Village maintains the Police Officers in Westhampton Beach have a long history of collective bargaining as compared with the Village Constables who are seeking an initial Agreement.

As to health insurance, the Village rejects the Association's proposal as inadequate. The Village argues it is now commonplace for public sector employees to pay a portion of health insurance premiums.

In support of its position, the Village refers to the December 2016 Interest Arbitration Award for Police Officers in

the Village of Muttontown. (V. A).³ The Village maintains though the award of an initial contract in that instance set forth the salary range for a certified Police Officer from a starting salary of fifty-five thousand (\$55,000.00) dollars to top pay of one hundred five thousand (\$105,000.00) dollars, those Police Officers are required to pay twenty (20%) percent towards health insurance. In the Village's view, its proposal that members of the bargaining unit contribute twenty (20%) percent toward individual health insurance coverage and thirty-five (35%) percent toward dependent health insurance is a reasonable one which should be recommended.

As far as the Employment Handbook is concerned, the Village argues many of the benefits are too rich for its budget and should be reduced. The Village maintains there should be a reduction in the number of sick days, holidays and personal leave days members of the unit should be entitled to.

The Village also insists the Agreement should include a broad Management Rights clause. According to the Village, this is needed to ensure the important services it needs to deliver to the public are done so in the most efficient and professional way. It insists a strong Management Rights provision is necessary to control the costs of the operation as well.

³This award is attached as Exhibit A to the Village's written submission dated January 26, 2018.

The Village agrees to include a grievance procedure in the Agreement. Contrary to the Association, it argues the grievance procedure should end in non-binding arbitration. It also points to various provisions of the Agreement that should be excluded from the grievance procedure.

According to the Village, the initial Agreement should not include a Night Differential provision. It insists such a provision would result in higher costs to the Village which it cannot afford.

In short, the Village argues the Association's proposals should be rejected and asks me to adopt its proposals as presented.

Opinion

In accordance with Section 209 (3) (b) of the New York State Public Employees' Fair Employment Act (the "Taylor Law"), a fact-finder shall have the power to "make public recommendations for the resolution of the dispute". However, Section 209 does not set forth specific standards to be applied by the duly designated fact-finder in making a recommendation.

As a result, fact finders generally follow the standards in Section 209 (4) (c) (v) which sets forth the criteria utilized in disputes under the compulsory interest arbitration section of the Taylor. The criteria are as follows:

- 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
- d. the terms of collective bargaining 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, paid time off and job security.

Comparability, ability to pay and the interests and welfare of the public are the factors set forth in Section 209 (4) (c) (v) which are routinely utilized in fact-findings by neutrals. I agree that these are the relevant criteria and my recommendations are reached upon an evaluation of comparability, ability to pay and the interests of the public welfare.

With these principles in mind, I turn to the issues presented.

As to the issue of comparability, the Association points to the collective bargaining between the Village of

Westhampton Beach and Westhampton Beach Police Benevolent Association for the period June 1, 2013 to May 31, 2017. The Association argues this is a proper comparison in that the Village of Westhampton Beach abuts the Village, and as testified by to by Jacobs, the two (2) departments back each other up on a regular basis. Jacobs also testified the duties of Constables and Police Officers are practically identical.

On the other hand, the Village argues there are no proper comparators since there are no other certified collective bargaining units consisting of Constables in the relevant geographical region of Long Island.⁴ The Village also contends since this is an initial contract for an entirely new unit of employees, it is not readily comparable to other contracts which involved parties with a long bargaining history.

In support of its position, the Village relies upon the Interest Arbitration Award issued in the *Mattontown and Mattontown PBA, Inc.*, IA-2015-008, (Arthur Riegel, Esq., Chairman, December 7, 2016). (V. A). The Village argues the Mattontown Panel placed great reliance on the fact that the issue before them was an initial contract

⁴Neither party offered a collective bargaining which included a unit of Constables as a comparison.

and, as a result many of the proposals submitted by the PBA were rejected.

After much consideration, I am convinced Arbitrator Riegel's approach toward an initial collective bargaining agreement should be adopted in this instance. Arbitrator Riegel explained his approach when dealing with an initial contract as follows:

"...comparables may have had to go through several rounds of bargaining before achieving certain contact improvements. There is no evidence that any of the proposals considered critical to the Muttowntown PBA were successfully negotiated in the first contract.

Contract negotiations are a long-term process. The bargaining relationship develops over time and improvements that may have been sought in the first round of bargaining may not be gained until the bargaining relationship matures".

The fact this is an initial Agreement for a new bargaining unit is significant and will receive much consideration in regard to my recommendation.

I agree with the Association that the welfare of the public is best served by a Constabulary force that is stable and its morale is high. The Village must provide a well-paid, well-trained and well-maintained Constabulary. The interests and welfare of the public are not just limited solely to the public's financial interests and welfare. It must also involve the community's interests and welfare in having its workforce

continuing to provide the essential services required to insure the safety of the community.

As well, the public welfare is best served when the Village can attract the best candidates for the position. In order for that to happen, the Village must maintain a highly professional Constabulary which fosters a positive morale among its employees.

I turn next to the criterion involving ability to pay. The representatives of both the Village and the Association were persuasive and presented me with a very complete record on the issue of ability to pay.

The Association argued that the Village clearly has the ability to provide a reasonable wage increase for the members of the bargaining unit. As well, the Association made a very strong case for the implementation of a salary schedule which would serve as an incentive for the current members of the bargaining unit to continue their career in the Village and to provide for a stable work force going forward. As well, the Association argued a salary schedule would put the Village in line with other similarly situated municipalities on Long Island which would help to attract and retain the best candidates for the position.

The Village argues the proposed wage increases are excessive. It insists it has the ability to pay for a reasonable wage increase. The Village points out that effective June 1,

2017, members of the bargaining unit received a wage increase of one dollar (\$1.00) per hour.

According to the Village, if the Association's wage schedule is adopted, some members of the bargaining unit will receive raises of approximately twenty-six thousand (\$26,000.00) dollars, while others will receive an annual increase of ten thousand (\$10,000.00) dollars. The Village argues such raises far exceed the norm, especially in light of the two (2%) percent tax cap imposed state wide.

The Village also argues its demographics do not provide for the financial resources to support the increases being sought by the Association in this initial Agreement. According to the Village there are only twenty-four (24) housing units that are occupied year-round. The remaining two hundred seventy-two (272) are occupied during the summer season.

The Village contends the cost of maintaining five (5) full-time Constables, without disability and pension payments, amounts to approximately fifty (50%) percent of its annual budget. According to the Village, this percentage would increase significantly if it accepted the Association's economic proposals. The Village also points out the members of the bargaining unit do not pay for any of the cost of health insurance and are unwilling to do so.

Thus, I conclude that applying the statutory criterion of ability to pay I do not find the Village has the ability to pay the wage increases proposed by the Association, which also includes longevity pay and night shift differential pay. However, I do find the Village has the ability to pay for reasonable financial improvements in the terms and conditions of employment for members of the bargaining unit.

Section 209 requires that I compare the work performed for the Village by the Constables to other trades and professions. In making this comparison I must consider the (1) hazards of employment; (2) physical requirements; (3) educational requirements; (4) mental qualifications; and (5) training and skills.

I find based upon the record evidence before me that the position of Constable is, in almost all respects, equivalent to that of a Police Officer. The resolution passed by the Village establishing the Village Constabulary clearly supports my conclusion. The resolution, which was passed on February 20, 1996, stated in pertinent part as follows:

RESOLVED that the Board of Trustees of the Incorporated Village of West Hampton Dunes hereby creates a Village Constabulary, and the position of Constable within the Village, and that the individuals in that Department or appointed to serve or act as Village Constables, shall have all powers of a police officer as designated under the Criminal Law of the State of New York.. (A. 8).

As well, an examination of the Civil Service specifications for the positions of Constable and Police Officer are very similar. (A. 12 and 12A). In particular, both positions perform similar law enforcement duties.

I also credit the testimony of Jacobs who established the qualifications he possesses for the position of Constable. For example, Jacobs testified he completed the basic course for Police Officers provided by the Municipal Police Training Council (A. 13). Jacobs also offered his official certificates in DWI detection and testing (A. 14), radar-lidar operation (A. 14A) and in the basic part-time Police Officer course (A. 14).

According to Jacobs all members of the bargaining unit are similarly certified and qualified. Constables are also faced with the same serious hazards faced by Police Officers in general. As such, the unique position of Constable can only be compared with other similar law enforcement positions, such as Police Officers. However, that does not mean the benefits must be identical.

Since this is an initial Agreement between the parties, Section 209 (4)(c)(v)(d) is not readily applicable. However, I will be guided by the Employment Handbook which sets forth rules and procedures and the accepted practices of the Police Constabulary and the Village. Many of those rules and procedures appear to impact terms and conditions of employment.

Analysis Of Proposals

I. PBA PROPOSALS

The Association is seeking to include, with certain modifications, the benefits set forth in the Employment Handbook. As such I will start my analysis with those provisions.

A. HANDBOOK

Section 1. Members Rights: The Village and its members agree that job security is an important aspect of a productive work environment and that no member will be dismissed from employment in accordance with Suffolk/New York State Civil Service Law and procedures. The Village further agrees to provide all members with a safe and harmonious work environment free of harassment and/or intimidation.

I am persuaded the Village is correct in that the first portion of this provision is merely a restatement of the New York State Civil Service Law due process protections afforded members of the bargaining unit regarding dismissal from service. The last sentence is also a general restatement of local, state and federal law which provide members of the bargaining unit with a safe work environment free from harassment and intimidation.

Recommendation: This provision is more appropriate to be included in a handbook and not in a traditional collective bargaining agreement. As such, I reject the Association's proposal and I do not recommend its inclusion in this Agreement.

Section 2. Management Rights: The members agree to abide by the terms and conditions set forth in this handbook in its entirety. The members further agree to serve the Village, the citizens of the community and the

general public with respect and in a professional and courteous manner.

This is not a typical Management Rights Clause found in collective bargaining agreements. The Village has proposed the inclusion of a traditional Management Rights provision in its proposal No. 14. I will respond to that specific proposal when I address the Village's individual proposals.

Recommendation: I do recommend the inclusion of a fair and reasonable Management Rights Clause. However, since the provision set forth in the Employment Handbook as proposed by the Association is lacking in traditional language, I hereby reject the Association's proposal that this particular Management Rights Clause be included in the Agreement.

Section 3. Prohibition of Strikes: No member shall organize or participate in a strike or stop work in accordance with the Public Employees Fair Employment Act commonly known as the Taylor Law.

The Village is correct that strikes by public sector employees, which includes members of the bargaining unit, are specifically prohibited by the Taylor Law. I do agree with the Association that language prohibiting strikes should be included in the Agreement.

Recommendation: I accept the Association's proposal except as modified, herein. I recommend that the parties shall include the language of the strike prohibition as specifically set forth in Section 210 of the Taylor Law.

Section 4. Discharge and Discipline: No member shall be terminated or suspended without cause in accordance with Suffolk/New York State Civil Service Laws and procedures.

In respect to this provision, the Village is correct in that it is merely a restatement of Section 1, Members' Rights, as well as the New York State Civil Service Law. Since the due process rights of permanent civil servants, such as Constables, are guaranteed by statute there is no compelling reason to have this section of the Employment Handbook included in the Agreement.

Recommendation: For the reasons stated above, and as set forth in regard to Section 1, the Association's proposal that this section be included in the Agreement is rejected.

Section 5. Appeal Procedure: Members are entitled to appeal decisions in accordance with Suffolk/New York State Civil Service Laws and Procedures.

Recommendation: For the reasons stated in regard to Section 1 and 4 above, the Association's proposal that this section of the Employment Handbook be included in the Agreement is rejected.

Section 6. Ranks: The following ranks are recognized in this agreement and shall be the ONLY ranks within the department:

- A. **Sergeant: Members holding the position of Sergeant shall report directly to the Village. The Village shall assign responsibilities and duties to sergeants at their discretion.**

- B. **Police Constable F/T (Full-Time): Members who hold the position of Police Constable F/T shall answer directly to the Sergeants in accordance with their responsibilities/duties assigned by the Village. Police Constables F/T shall be**

considered a rank above Police Constable P/T members.

C. Police Constable P/T (Part-Time): Police Constable P/T members shall answer directly to the Sergeants or in their absence the full-time member on duty in accordance with their responsibilities/duties assigned by the sergeants.

The responsibility for establishing recognized job titles in the public sector lies within the exclusive jurisdiction of the state and local Civil Service Commissions. As such, it is not appropriate to include this provision in the initial Agreement between the parties. Further, since the Association is not certified to represent the Part-Time Constables it would clearly be improper to include subsection (C) in the Agreement.

Recommendation: For the reasons set forth above, the Association's proposal to include this section of the Employment Handbook in the Agreement is rejected.

Section 7. Probationary Members: Any member newly hired member shall be placed on probation for a period of eighteen (18) months. During the first six (6) months the member is unable to use any personal/vacation/sick time and not be entitled to any medical/health insurance. This member may be terminated without cause during this period of time in accordance with Suffolk County/New York Civil Service Laws.

Once again, the Village argues since the length of the probationary period for a Constable specifically falls under the jurisdiction of the state and/or local Civil Service Commission,

there is no need to have this provision in the Agreement. While I agree with the Village's position regarding the length of the probation period and right to a due process hearing prior to termination, I do agree with the Association that the provision prohibiting a member of the bargaining unit from using any personal leave, vacation time or sick time during the first six (6) months of employment should be specifically included in the provisions governing those benefits. The same should hold for eligibility for health insurance.

Recommendation: For the reasons set forth above, I recommend that the portion of this section of the Employment Handbook which sets forth the length of the probation period and the eligibility for a due process hearing not be included in the Agreement. I do recommend the sections dealing with personal leave, vacation time, sick leave and eligibility for insurance, include a specific provision that a member of the bargaining unit will not be entitled to receive any of those benefits until employed for six (6) months.

Section 8. Part-Time Members Benefits: Members who are Police Constable P/T shall not be entitled to any of the following benefits:

- A. Personal Leave**
- B. Vacation Leave**
- C. Sick Leave**
- D. Bereavement Leave**
- E. Compensation (Comp) Time**
- F. Health/Medical Benefits**

Police Constable P/T members are permitted to participate in the New York State Retirement System. These members cannot work full-time hours except during the summer season. The summer season. The summer season is defined as the period starting two weeks prior to Memorial Day through Columbus Day.

As I explained earlier, since the Association does not represent Part-Time Constables, any specific references to their general terms and conditions of employment would not be appropriate in this Agreement. However, I do believe, as argued by the Association, it is appropriate to include the provision which prohibits part-time employees from working a full-time schedule except during the summer season since that particular provision does have a direct impact on the terms and conditions of employment of the members of the bargaining unit.

Recommendation: For the reasons set forth above, I do not recommend this section of the Employment Handbook be included, except as to the provision which allows Part-Time Constables to work a full-time schedule only during the summer season.

Section 9. Outside Employment and Employment Duties.
The village agrees that members may seek outside employment while employed by the Village. Members agree that this outside employment cannot conflict with or disrupt employment with the department/village. If outside employment is found to be a conflict or disruptive to the performance of their duties the village shall in writing state the reason(s) that such employment is conflicting/disrupting thereby possibly resolving the matter. If this outside employment continues without resolution, the member agrees to terminate such employment.

The Village agrees to the Association's proposal that this section be included in the Agreement. However, the Village insists it not be subject to the grievance procedure. On the other hand, the Association maintains if the provision is included in the Agreement, it should be subject to the full protection of the grievance procedure. The Association argues it is unreasonable for the Village to pick and choose provisions that may and may not be subject to the grievance procedure.

Recommendation: I agree with the Association that if the Village is willing to include this section of the Employment Handbook in the Agreement it should be subject to the grievance procedure. However, I believe deference should be given to the Village's position in regard to a member's outside employment. Therefore, I recommend language be included to provide if a grievance is filed concerning an alleged violation of this provision, the Association must prove the Village's decision to deny a request for outside employment was "arbitrary and capricious".

Section 10. Attendance in Court, Conferences, Training & Other Meetings. Members assign to Court Officer duties or called to testify in a court matter shall be entitled to a minimum of four (4) hours pay. Members assigned to training and other meetings shall be entitled to pay or overtime if they will exceed forty hours within a week. The work week starts on Monday and ends on Sunday every week. If the training is less than four (4) hours the member shall be paid for four hours and if its less than eight (8) hours but more than four (4) hours the member shall be paid for eight (8) hours.

The Village argues members of the bargaining unit should only be paid for time actually worked. It also contends since training is required to maintain qualifications, the Village should not have to compensate the members for mandated training that is required.

On the other hand, the Association insists there is no reason its members should not continue to receive this benefit. Further, the Association correctly points out that the required training also benefits the Village and the public it serves by continuing to employ highly qualified Constables.

Recommendation: I agree with the Association that there is no compelling reason on the record that would persuade me not to continue this benefit. As a result, I recommend this provision of the Employment Handbook be included in the Agreement.

Section 11. Shifts & Schedules: The department supervisor(s) (Sergeants) shall be responsible for the member duty schedule and assign department members accordingly. The schedule will change from month-to-month based on seasons, holidays, special events, vacations, seniority and member availability. The Department shall determine the number of members assigned to any shift. Members who require a change in the schedule shall follow the rank section outlined in this handbook.

The Village agrees to include this section of the Employment Handbook in the Agreement with two (2) modifications. It argues the first sentence should not be included because it places the authority to assign and schedule constables in the hands of the

bargaining unit members. The Village insists this is a managerial decision that must be maintained by the Department. Further, the Village argues the last sentence should not be included because it is unclear and again refers to Section 6 of the Employment Handbook, "Ranks", which I recommended not be included in the Agreement.

The Association argues this section of the Employment Handbook should be included in the Agreement. It also proposes that the duty schedule be posted annually and not be changed to avoid overtime. The Village insists this proposal is not acceptable since management should be able to modify the work schedule to meet its needs.

Recommendation: I agree with the Village the first and last sentences should not be included in the Agreement. As a result, I recommend that the parties commence the second sentence with the words "The Department..." to clarify the meaning of provision and that the rights thereunder belong to management.

I do not recommend the Agreement contain the Association's proposal that the schedule be posted annually and not be changed to avoid overtime. That, too, is a management function.

Section 12: Overtime & Call-In Pay: Members exceeding (40) forty hours during the work week shall be entitled to overtime pay. The work week is defined from Monday through Sunday. Overtime pay is defined as normal pay plus ½ of regular pay. Members may choose to place overtime in compensation (Comp) time. This compensation time must be taken as pay in accordance with this

agreement. Members who are called in for coverage shall be entitled to a minimum of four (4) hours pay. The Department will determine which member is assigned to an overtime shift. Overtime shall be assigned on a rotating list. When a member is notified of an overtime shift and is unavailable the next person on the list will be called.

The Village does not reject the Association's proposal that this section of the Employment Handbook be included in the Agreement. It argues if included, the section should not be subject to the grievance procedure. The Village also contends the sole remedy for not being assigned to an overtime slot should be limited to being provided with the next available overtime slot.

The Association insists this provision should be subject to the grievance procedure. It argues unless there is some procedure available to review a decision to assign overtime, the Department's discretion will go unchecked. The Association also maintains that the remedy should be left to a duly assigned arbitrator and not be limited in any way.

Recommendation: As I explained previously, I do not find any compelling reason to exclude any of the terms and conditions set forth in the Agreement from being subject to the grievance procedure. Therefore, I recommend that this section of the Employment Handbook be included in the Agreement and that it be subject to the grievance procedure.

As far as the remedy is concerned, I do agree with the Village's position that in this initial Agreement, the remedy

should be limited as it proposed. Therefore, I recommend that the sole remedy available for a Constable found not to have been properly assigned overtime shall be limited to being provided with the next available overtime slot.

Section 13. Mandated Shifts (Emergency Call-In): In event of an emergency/natural disaster, the full-time members understand that the MUST report for duty at Request of the village and/or department. Members who fail to report for a mandated shift (without reasonable cause) shall be subject to disciplinary action in accordance with section (4) of this handbook.

Recommendation: The Village accepts the Association's proposal that this section of the Employment Handbook be included in the Agreement with one (1) slight modification. It proposes that the reference to Section 4 of the Employment Handbook be removed.

Since I have recommended that Section 4 of the Employment Handbook not be included in the Agreement, I recommend that the Village's proposed modification to this provision be accepted and the reference to Section 4 be removed.

Section 14. Health Care: The Village shall provide full-time members who have completed their first six (6) months of their probationary with health/medical and dental insurance. The village further agrees to provide these at no cost to the members.

In addition to proposing that this section of the Employment Handbook be included in the Agreement, the Association proposed that the Village continue payment of health insurance premiums into retirement until age sixty-five (65). (A. 18A).

The Village argues this proposal should be rejected. The Village maintains the New York State Health Insurance Program ("NYSHIP") governs the payment of health of health insurance premiums into retirement. Therefore, the Village insists it is unnecessary to include the provision in the Agreement.

The Village also argues its proposal that the members of the bargaining unit begin paying for a portion of the health insurance premiums should be accepted. The Village proposes that members of the bargaining unit contribute twenty (20%) percent of the premium toward individual health insurance coverage and thirty-five (35%) toward dependent health insurance coverage. In support of its position, the Village points out that the Muttontown Police Officers pay twenty (20%) percent of the cost of their health insurance.

On the other hand, the Union insists its members should continue to receive health insurance on the same basis as it has been provided for years. The Association argues if its members were required to pay the premiums as proposed by the Village, the result would be a net decrease in their wages.

Recommendation: I shall deal with this proposal in more detail when I issue my recommendations in regard to the Village's proposals. As far as the portion of this section which relates to

the reference to probationary period in concerned, I refer the parties to my recommendation concerning Section 7 of the Employment Handbook.

I agree with the Village that since the requirement to continue the payment of health insurance premiums in retirement is covered by NYSHIP, there is no need to include such a provision in the Agreement. As such, the Association's proposal that the Village continue to pay health insurance premiums into retirement until age sixty-five (65) is rejected.

Section 15. Injuries In the Line of Duty-Temporary Disability. The village understands that due to the dangerous nature of law enforcement work a member may be injured during their tour of duty. The village agrees that such member will be assisted in a manner which is in accordance with New York State and federal laws. No additional compensation is offered or promised in this handbook.

Recommendation: The Association has proposed that this section of the Employment Handbook be replaced by a new provision that covers injuries incurred in the line of duty. (A. 18A).⁵ Constables are not entitled to the benefits set forth in Section 207-c of the General Municipal Law for injuries incurred in the line of duty. The law must be amended to include them. Since the matter of Section 207-c coverage for Constables is a matter of

⁵I will make a specification recommendation in regard to the Association's Proposal D further on in this report.

law, I do not recommend that this section of the Employment Handbook be included in the Agreement.

Section 16. Limited Duty: In the event a member has an off-duty related injury/illness the village may assign that member to a light-duty position. due to the size of the village the members understand that this might not be possible.

The Village agrees to the inclusion of this section of the Employment Handbook as proposed by the Association, but insists it not be subject to the grievance procedure. The Association argues there is no rationale offered by the Village to warrant that the proposal be excluded from being subject to the grievance procedure.

Recommendation: I recommend that the Association's proposal be included in the Agreement. Further, I recommend that the provision be subject to a higher standard of proof in that the Association must prove the Village's decision to deny a light duty assignment was arbitrary and capricious.

Section 17. Pensions/Retirement. The New York State Retirement System shall be the sole retirement/pension plan offered by the village. The member shall only have to contribute to this plan for the period which is required by this retirement plan and the village agrees to cover the cost entirely thereafter.

Recommendation: The parties both agree this section of the Employment Handbook is merely a restatement of the law. As a result, there is no need for it to be included in the Agreement.

I recommend the Association's proposal that it be included in the Agreement be rejected.

Section 18. Indemnity: The village agrees that all the department members are indemnified. The indemnity provided by the village shall be permitted to the extent, and only the extent permitted by New York Law.

The Association argues this is a benefit that has been historically enjoyed by members of the bargaining unit and that the Village has not offered a valid argument for excluding it from the Agreement. The Association insists this is not a benefit but rather protection for its members from frivolous claims they may be subject to while carrying out their duties and responsibilities on behalf of the Village and the public it serves.

Recommendation: Since the parties agree members of the bargaining unit are entitled to indemnification when the circumstances warrant it in accordance with the law, I agree it does not have to be specifically spelled out in the Agreement. Therefore, I recommend that the Association's proposal that this section of the Employment Handbook be included in the Agreement be rejected.

Section 19. Drug Testing. The members and the village agree that due to the sensitive nature Of law enforcement work no member shall partake in any illegal drugs or arrive at work unfit for duty. No member shall report for duty having consumed any alcoholic beverages or prescription drugs, which could impair their ability to perform their duties appropriately. The village shall have the right to have any member of the department drug/alcohol

tested ANYTIME. Members who are called in for such testing shall be paid the minimum call-in pay in accordance with this agreement. Members refusing to comply with a request for a drug/alcohol test shall be subject to disciplinary action in accordance with section four (4) of this agreement.

Recommendation: Since the Association did not propose any changes to the language of this section of the Employment Handbook, and the Village does not oppose its inclusion in the Agreement, I recommend the Association's proposal be accepted. I recommend this section of the Employment Handbook be included in the Agreement, except as modified by eliminating any reference to section 4 of the Employment Handbook.

Section 20. Compensatory (Comp. Pay: All full-time department members shall be entitled to place overtime pay in the compensation (Comp.) time bank. This time must be taken in pay twice a year. The village shall choose the dates in May and November when this time will be taken in pay. Member can accumulate a maximum of two hundred forty (240) hours. This total includes any remaining vacation, sick or personal leave the member chooses to cash out. No comp. time can be carried over the following year.

Recommendation: The Village does not object to the Association's proposal that this section of the Employment Handbook be included in the Agreement. Therefore, I recommend that this section be included and combined with Section 12 in accordance with my recommendation set forth above.

Section 21. Holidays: The following holidays are recognized by the village:

New Year's Day

Labor Day

Dr. Martin Luther King, Jr. Birthday	Columbus Day
Lincoln's Birthday	Election
Washington's Birthday	Veterans Day
Easter	Thanksgiving
Memorial Day	Christmas Day
Independence Day	

Members both full and part-time who work during these holidays shall be entitled to holiday pay (1 hour + ½ hour). Full-time members shall receive eight (8) hours regardless if they are assigned to work that day. Full-time members who are assigned to work on a holiday receive the holiday pay plus the number of hours at the one (1) and ½ overtime rate.

The Village proposed that the number of holidays be reduced to eleven (11) and that members of the bargaining unit will not be entitled to receive premium pay for actually working on a holiday. (V. 10, Proposal No. 10). The Association argues it received this benefit for many years and the Village has not offered sufficient evidence to warrant that it not be included in the Agreement. The Association contends the Village's proposal would result in another reduction in wages for the members of the bargaining unit which is not warranted based upon the record evidence.

Recommendation: I do not find sufficient evidence in the record to support the Village's proposal not to include this section of the Employment Handbook in the Agreement. The members of the bargaining unit should not suffer the loss of two (2) paid holidays or the right to receive premium pay if they actually work on a listed holiday. As such, I recommend that the Village's

Proposal No. 10 be rejected and that this section of the Employment Handbook be included in the Agreement.

Section 22. Shift Swaps: Members can choose to swap shifts provided it was approved by a supervisor and it won't put them past 40 hours in a work week. The work week is defined as Monday through Sunday.

The Village does not oppose the inclusion of this provision in the Agreement. It argues this is a managerial prerogative that should not be subject to the grievance procedure.

The Association insists this section of the Employment Handbook should be included in the Agreement. It argues there is no credible evidence in the record to warrant that it be excluded from the grievance procedure.

Recommendation: I recommend this section of the Employment Handbook be included in the Agreement and that it be subject to the grievance procedure. I do, however, also recommend that it be subject to the arbitrary and capricious standard of proof.

Section 23. Use of Vacation, Personal, Sick Time: Members may use Personal, Vacation and Sick time (after the first six months of employment) at the discretion of the supervisor responsible for writing the schedule. The allowed use of this time is done on a seniority basis. Personal Time cannot be used on any of the (13) holidays listed in this handbook.

The Village's only objection to this proposal by the Association that this section of the Employment Handbook be included in the Agreement is that it not be subject to the

grievance procedure. Since this is a provision which is traditionally subject to the grievance procedure I find no reason to exclude it in this instance.

Recommendation: I recommend that the Association's proposal be granted and that this section of the Employment Handbook be included in the Agreement and that it be subject to the grievance procedure.

Section 24. Sick Leave: Members who have completed their probationary period in accordance with this agreement are entitled to Sick Leave in the following manner:

- A. Five (5) days upon start.**
- B. Ten (10) days upon completing (5) years of service**
- C. Twelve (12) days upon competing seven (7) years of service.**

Members may accumulate sick time over the course of their employment. Sick Leave can be carried over to the following calendar year provided it doesn't exceed 320 hours combined sick and vacation.

The Village's counter proposal to the Association is set forth in its proposal No. 11. (V. 10). The Village proposes a reduction in sick leave to a total of five (5) days which shall not be accumulated.

On the other hand, the Association strongly opposes any reduction in this benefit. The Association argues the record is devoid of any evidence that there has been an abuse of sick leave by members of the bargaining unit or that its use has interfered with the operation of the Department in any way.

Recommendation: I agree with the position of the Association regarding this section of the Employment Handbook and, as a result, I recommend this section of the Employment Handbook be included in the Agreement without any changes.

Section 25. Personal Leave. Members who have completed their probationary period in accordance with this agreement are entitled to Personal Leave in the following manner:

- A. Three (3) days upon start (after probationary period)
- B. Five (5) days upon completing seven (7) years of service.
- C. Seven (7) upon completing fourteen (14) years of service.

Personal leave CANNOT be carried over to another calendar year and requests to use personal time must be made to the supervisor responsible for writing the schedule.

The Village proposed a reduction in the amount of personal days a member of the bargaining unit would be entitled to. The Village proposed that each member of the bargaining unit will be entitled to no more than two (2) personal days, which shall not be accumulated. (V. 10, Proposal No. 13).

The Association argues its proposal should be accepted and that this section of the Employment Handbook be included in the Agreement unchanged. Further, the Association insists the Village has not produced a credible argument to reduce this benefit.

Recommendation: I agree with the Association that there is no evidence in the record to warrant the number of personal days be reduced as proposed by the Village. As such, I recommend this

section of the Employment Handbook be included in the Agreement without any changes in the number of personal days or the right to carry over personal days to the following calendar year.

Section 26. Vacation Leave: Members who completed their probationary period in accordance with this agreement are entitled to Vacation Leave in the following manner:

- A. Ten (10) days upon start (after probationary period)**
- B. Twelve (12) days upon completing three (3) years of service**
- C. Fifteen (15) days upon completing six (6) years of service**
- D. Twenty (20) days upon completing (10) years of service**
- E. Twenty (25) days upon completing (15) years of service**

Vacation leave can be carried over the following calendar year provided it doesn't exceed 320 hours total combined sick & vacation.

The Village proposed a reduction in the amount of vacation days a member of the bargaining unit would be entitled to. The Village proposed that each member of the bargaining unit will be entitled to no more than ten (10) vacation days, which shall not be accumulated. (V. 10, Proposal No. 12).

The Association argues its proposal should be accepted and that this section of the Employment Handbook be included in the Agreement unchanged. Further, the Association insists the Village has not produced a credible argument to reduce this benefit.

Recommendation: I agree with the Association that there is no evidence in the record to warrant the number of vacation days

being reduced as proposed by the Village. As such, I recommend this section of the Employment Handbook be included in the Agreement without any changes in the number of vacation days or the right to carry over personal days to the following calendar year subject to the three hundred twenty (320) hour limitation.

Section 27. Bereavement Leave: Members who experience an immediate family member death shall be entitled to five (5) days bereavement leave. Immediate family member is defined as a spouse, sibling, child, parent, father-in-law, mother-in-law or grandparent.

The Village does not reject the Association's proposal that this section of the Employment Handbook be included in the Agreement. It does propose the following language modification:

"Members shall be provided with a total of five bereavement days per year which can be used for the death of a spouse, sibling, child, parent, father-in-law, mother-in-law, or grandparent. The annual allotment of bereavement days are available for use during the immediate five days after the aforementioned family member passed away and shall not be accumulated".

The Association does not oppose the Village's proposal of the additional language set forth above.

Recommendation: Since the Association does not oppose the Village's counter proposal, I recommend this section of the Employment Handbook be included in the Agreement along with the

additional language as proposed by the Village. I also recommend the parties consider adding domestic partner to the provision.

28. Change of Title: Reserved.

Recommendation: Since the function of changing titles of public sector employees is specifically falls within the jurisdiction of the local and state Civil Service Commissions I do not recommend that this provision of the Employment Handbook be included in the Agreement.

29. Duration of Terms: These terms and policies shall be in effect indefinitely UNTIL a written agreement is completed and signed between all parties involved.

Recommendation: The parties have agreed that the term of this initial Agreement shall be for the period June 1, 2016, through May 31, 2018. Under the *Triboro Doctrine* the mandatory subjects of bargaining set forth in the Agreement remain in full force and effect until a new Agreement is negotiated. Therefore, there is no need to include this provision in the Agreement since it is governed by PERB law. I recommend this proposal by the Association be rejected.

30. Salary: Salary increases are negotiated on an annual basis. The Department shall Present the request for additional compensation for members in the proposed annual budget for the department.

The Association's last wage proposal (A. 18B), which was submitted during the fact-finding hearing held before me on

November 14, 2017, seeks a two (\$2.00) dollar an hour increase retroactive to June 1, 2016. The Association also proposes an eight (8) step salary plan effective June 1, 2017, with a starting salary of fifty-five thousand (\$55,000.00) dollars and a top step of eighty-five three hundred eighteen (\$85,318.00) dollars. The Association is also seeking a longevity increase of three (3%) percent after ten (10) years of service with the Village.

According to the Association, the Village has the ability to pay these increases. It also argues the salary increases it is seeking are comparable to other Police Officers.

The Village insists the Association's proposals would place an undue economic burden on its budget. It argues the cost of the five (5) full-time Constables constitutes approximately fifty (50%) percent of its budget as of December 31, 2017. That calculation does not include FICA, Disability or Pension payments.

In addition, the Village argues only twenty-four (24) out of two hundred seventy-two (272) housing units are occupied year-round. According to the Village, the total population of persons occupying the twenty-four (24) is fifty-five (55) of which only eight (8) are younger than eighteen (18) years of age. The remaining housing units are occupied during the summer months only. The Village insists this results in an extremely small tax base.

The Village points out it gave a one (\$1.00) dollar an hour wage increase to members of the bargaining unit. As such, the Village maintains it does not have the ability to pay any additional wage increases to members of the bargaining unit. The Village argues this is especially so in light of the fact members of the bargaining unit do not presently pay for any portion of the health benefits.

In short, the Village proposes Section 30 of the Employment Handbook be included in the Agreement without modification.

Recommendation: Upon consideration of the Village's ability to pay and the arguments of the parties, I recommend the members of the bargaining unit receive a 2.75% wage increase effective the final day of the Agreement, May 31, 2018. I do not recommend a further increase for the period June 1, 2016 through May 31, 2018, due to the fact the members of the bargaining unit received a one (\$1.00) dollar per hour wage increase effective June 1, 2017.

B. ADDITIONAL PBA PROPOSALS

- 1. Tours of Duty. (Proposal B): Duty schedule to be posted on annual basis and not to be changed to avoid overtime (the Association suggests that this not apply to mutually agreed upon changes or swaps).**

The Village argues this proposal unduly interferes with its right to modify work schedules to meet the needs of the Department as they arise during the work year. It insists this is a right

that needs to be included in the management rights clause it proposed.

On the hand, the Association maintains its proposal merely requires the Village post the duty schedule and that the only restriction on the Village's right to modify it is that it not be changed to avoid overtime. It insists this proposal does not unduly restrict the right of management to change the schedule.

Recommendation: It is recommended that the Association's proposal be granted in part. The requirement that the Village post the duty schedule on an annual basis will have no impact, whatsoever, on its right to manage the Department, including the right to modify the schedule. Therefore, I recommend the following language be included in the Agreement:

Duty Schedule: The duty schedule shall be posted by the Department on an annual basis.

2. Grievance Procedure. (Proposal C): Two or Three step grievance procedure to be developed with the last step being binding arbitration pursuant to the rules of the NYS PERB.

The Village does not oppose the Association's proposal that the Agreement contain a stated grievance procedure. It proposes a three (3) step procedure with Step 1 requiring the grievance be filed with the Sergeant Constable who would discuss the grievance with the Commissioner of Constables. If not resolved at this step, there would be a right to file a Step 2 appeal directly to the Commissioner of Constables. If not resolved at Step 2, the

grievance would proceed to non-binding arbitration proceeding. According to the Village's proposal, the arbitrator would issue a non-binding report to the Village Board for a final determination. The Village also insists that since discipline is covered by statute, it be explicitly excluded from the grievance procedure.

The Association maintains the Village's proposal does not provide for a fair and objective grievance procedure. The Association argues that since the Commissioner also serves as the Mayor, each step as proposed by the Village has a bias in favor of the Village's position. It maintains that there must be a neutral third party, experienced in public sector labor relations, available to the parties with the authority to render a final and binding decision. Otherwise, according to the Association, filing a grievance procedure would amount to nothing more than an act of futility.

Recommendation: After considering the positions of both parties, I recommend that the Association's proposal be granted and the Agreement contain a two (2) or three (3) step grievance which ends in final and binding arbitration before a neutral third party. I also recommend the grievance procedure set forth the following basic requirements: 1) the grievance be filed in writing; 2) a time limit for filing the grievance; 3) time limits that a decision is to be rendered at each preliminary step of the grievance procedure; 4) an agreed upon procedure for choosing the

arbitrator. I trust that the parties will be able to agree upon the most effective and efficient procedure that will adequately meet the needs of both the Department and the Association.

3. Line of Duty Injury. (Proposal D): Employees are not covered by Section 207-c of the General Municipal Law; that would require statutory amendment based upon the job title of constable. The Association recommends that a provision be added to the CBA that any employee actually injured in the line of duty while performing "heightened risk" activity, shall not have any sick leave deducted during absences resulting from the injuries. The Association agrees that workers compensation benefits, if received by the employee, shall be reimbursed to the employer for the period of time that pay is received without sick leave deduction. The term "heightened risk" should be defined in such a way as to cover fortuitous circumstances that may cause injury while employees are performing their duties.

The Village argues this proposal should be rejected because it would guarantee members of the bargaining unit Section 207-c benefits even though they are not covered by that section of law. The Village maintains Constables are not covered by 207-c because they are not considered Police Officers. It insists that the proper procedure for the Association to secure this benefit for the bargaining it to seek an amendment to Section 207-c to include the position of Constable. The Village also argues the economic impact of this benefit would be great in that it would be required to pay the full salary and benefits for an injured member while at the same having to fill that member's position with overtime or a new hire. The Village contends it cannot afford such a benefit.

The Association insists since Constables are comparable to Police Officers, there is no reason why they should not receive the benefit. It argues the dangers of the job mandate that this benefit be included in the Agreement to protect the members of the bargaining unit and their families.

Recommendation: For the reasons set forth in my discussion of the Section 15 of the Employment Handbook, and because of the economic impact on the Village, I recommend that the Association's proposal be rejected.

4. Night Differential. (Proposal E): Employees suggest that those Officers who work more than half of their duty between the hours of 4:00 pm and 8:00 am, shall receive a night differential calculated at ten percent (10%) of pay.

The Village argues this proposal should be rejected since members of the bargaining do not presently receive night differential and the granting of such a benefit would place an additional economic burden on the Village which it cannot afford. It maintains this proposal should not be included in an initial Agreement between the parties.

On the other hand, the Association maintains night differential provisions are typically provided in collective bargaining agreements covering law enforcement. It also argues the Village has the ability to pay for this benefit and that economic impact is not as great as the Village contends.

Recommendation: I recommend the Association's proposal be rejected given that there is an economic cost associated with the proposal and the instant Agreement is the initial Agreement between the parties.

II. VILLAGE PROPOSALS

1. Term. Three Years.

Recommendation: As per the parties agreement and my prior recommendation above, I recommend the term of the Agreement be for a period of two (2) years covering the period June 1, 2016 through May 31, 2018.

2. Coverage.

The provisions of this agreement shall apply to all full time Constables of the Village of Westhampton Dunes.

Recommendation: Since PERB has certified the Association as the exclusive bargaining agent for the position of full-time Constables of the Village I recommend the Agreement contain a traditional recognition clause that mirrors the language of PERB's certification.

3. Residency.

Each Constable shall maintain his/her principal residence or domicile, within the territorial boundaries of Nassau, Suffolk County or Queens County.

Recommendation: It is not unusual for a municipality to place reasonable residency restrictions on its employees. It is a

generally accepted principle, employees who live where they work have a greater stake in the community. As long as the requirement does not run afoul of any duly promulgated civil service rules and regulations, I recommend this proposal by the Village be accepted and included in the Agreement.

4. Salaries.

The Village shall have the discretion to determine the salary for newly hired constables.

The Village insists it should have the reserved right to set the salary for new hired Constables. It argues that is a traditional right of management.

The Association argues the matter of setting the salary for new hires is a mandatory subject of bargaining and cannot be unilaterally determined by management. It maintains the Village's proposal can lead to a situation where favoritism becomes a problem which could have a negative impact on morale.

Recommendation: I agree with the Association's position that salaries for new hires should be subject to the collective bargaining process. Once a minimum hiring salary is established, it should be memorialized in the Agreement. If the parties cannot agree on a minimum hiring salary, I recommend the Village's proposal be rejected and the matter be subject to future negotiations.

5. A Constable who is on sick leave, for a period of seven (7) consecutive days, shall be subject to having

his or her regular schedule of work changed to meet the needs of the Village.

The Village argues this proposal is necessary for the Department to operate efficiently when a member of the bargaining unit is out sick for an extended period of time. According to the Village, in order to control the cost of overtime this proposal must be included in the Agreement.

The Association maintains a member of the bargaining unit who is legitimately unable to work while on sick leave, should not be penalized by a change in his or her work schedule. In the alternative, the Association argues the proposed time period, seven (7) consecutive days, is too short. It contends if the proposal is recommended, the number of days be greater than that which the Village proposed.

Recommendation: I do accept the Village's reasoning that the Village should have the ability to change schedules when a member of the bargaining unit is out work on sick leave for an extended period of time. However, I also accept the Association's position that seven (7) consecutive days is not long enough. Instead, I recommend that the Village's proposal be accepted, but triggered only after the member of the bargaining unit is on sick leave for a period of fourteen (14) consecutive days.

6. The work week shall be seven days starting on Sunday and ending on Saturday. A constable who actually works in excess of forty hours during a work week shall

be paid at a rate of time and a half for all hours worked in excess of forty.

Recommendation: This proposal seems to be similar to the Association's proposal that section 12 of the Employment Handbook be included in the Agreement. I refer the parties to my recommendations regarding that proposal. I recommend this proposal be included in the Agreement and combined with Section 12 of the Employment Handbook.

7. A Constable ordered to report for a physical examination while on sick leave, shall receive credit for time worded as straight pay for any hours directly or indirectly involved therein.

Recommendation: I recommend this provision be combined with eight (8) below and included in the Agreement.

8. A Constable out sick or injured for more than three (3) consecutive scheduled work days may be directed to a medical examination without incurring overtime provided said medical appointment occurs during what would have been the Constable's regularly scheduled tour were he not out sick or injured. The Village reserves the right to send a member for evaluation at any time.

Recommendation: Based upon the fact that there is no evidence in the record in opposition to Village proposals 7 and 8, I recommend that they be combined and included in the Agreement.

9. The Village shall set the regularly scheduled hours to be worked each day by a Constable and

shall provide 30 days' notice of a change to such schedule. The Village shall the right to schedule Constables up to 2088 hours per year (adjusted for 365 variations) with such schedules as the Village deems appropriate. The Village shall provide at least one week notice to the Constable of any rescheduling.

Recommendation: Since the Association did not oppose this proposal, there is no reason not to include it in the Agreement. As such, I recommend it be included in the Agreement.

10. Each Constable shall be entitled to receive eleven paid holidays, payable at the rate of eight (8) hours, as follows: discuss which holidays.

Recommendation: As set forth in my discussion of the Association's proposal that Section 21 of the Employment Handbook be included in the Agreement, I reject the Village's proposal to reduce holidays from thirteen (13) to eleven (11) days. I refer the parties to my entire recommendation that Section 21 of the Employment Handbook be included in the Agreement.

11. Each Constable shall be entitled to five sick days which shall not be accumulated.

Recommendation: As set forth in my discussion of the Association's proposal that Section 24 of the Employment Handbook be included in the Agreement, I reject the Village's proposal to reduce the number of sick days members of the bargaining unit will be entitled to from a maximum of twelve (12) to five (5) days. I

also recommend rejection of that portion of the proposal which no longer would allow any accumulation of sick days from year to year. I refer the parties to my entire recommendation that Section 24 of the Employment Handbook be included in the Agreement.

12. Each Constable shall be entitled to ten vacation days which shall not be accumulated.

Recommendation: As set forth in my discussion of the Association's proposal that Section 26 of the Employment Handbook be included in the Agreement, I reject the Village's proposal to reduce the number of vacation days members of the bargaining unit will be entitled to from a maximum of twenty-five (25) to ten (10) days. I also recommend rejection of that portion of the proposal which no longer would allow any accumulation of vacation days from year to year. I refer the parties to my entire recommendation that Section 26 of the Employment Handbook be included in the Agreement.

13. Each Constable shall be entitled to two personal days which shall not be accumulated.

As set forth in my discussion of the Association's proposal that Section 25 of the Employment Handbook be included in the Agreement, I reject the Village's proposal to reduce the number of personal days members of the bargaining unit will be entitled to from a maximum of seven (7) to two (2) days. I also recommend

rejection of that portion of the proposal which no longer would allow any accumulation of personal days from year to year. I refer the parties to my entire recommendation that Section 25 of the Employment Handbook be included in the Agreement.

14. Management Right Clause:

Except as expressly limited by this Agreement, the Village reserves all management rights, including without limitation the right to determine the standards of services to be offered, to set the standards of selection for employment; to direct its Constables; to create, alter, abolish and otherwise regulate work schedules; to take disciplinary action; to relieve its Constables from day work because of lack of work or for other legitimate reasons; to maintain efficiency of operations; to determine the methods, means and personnel (including whether by contractor or non-unit Constable) by which operations are to be conducted; to determine the content of job classifications; to take all necessary actions to carry out its mission, and to exercise complete control and discretion over its organization and the technology of performing its work.

Recommendation: Since it is typical for a collective bargaining agreement to include a Management Rights Clause I do recommend that the Village's proposal be accepted with one (1) exception. I do not recommend the Management Rights Clause include the phrase "(including whether by contractor or non-unit Constable)" as that would give the Village the right to subcontract out the work of a constable to non-bargaining unit personnel. Since neither party submitted any argument in regard

to such a provision I cannot recommend it be included in this initial Agreement.

15. "Zipper" Clause

The Village and the Union, for the life of this Agreement, each voluntarily and unqualified agree that the other shall not be obligated to negotiate collectively with respect to any subject or matter referred to, or covered in this Agreement, or the impact of exercising any right, and/or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties

Recommendation: Since the Association did not object to this proposal, I recommend it be accept and included in the Agreement.

16. "Past Practice" Clause

This contract contains all of the terms and conditions of employment to which a Constable is entitled. Any benefit which exists outside this contract is not a Constable entitlement, but continues solely in the discretion of the Village.

Recommendation: The parties agreed that there are no past practices that are not contained in the Employment Handbook or the proposals presented to me during this proceeding. Therefore, I recommend that this Village proposal be accepted and included in the Agreement.

17. "No Conversion" Clause

The parties agree that the inclusion of subject matter in this agreement shall not be deemed to "convert" a non-mandatory subject of bargaining into a mandatory subject of bargaining, and the parties agree that either side may refuse to bargain over any topic included in this agreement which would, absent this clause, have been "converted" into a mandatory subject of bargaining.

Recommendation: Since the Association did not object to this proposal, I recommend it be accept and included in the Agreement.

18. The Village shall have the right to set such payroll schedules and methodologies as it deems fit so long as such payroll schedules and methodologies are not in violation of federal and state law.

Recommendation: Since the Association did not specifically object this proposal, I recommend it be accepted and included in the Agreement.

19. Rate of Compensation & Benefit Computation - Base hourly rates (or "hourly rate") shall be calculated at the rate of annual salary divided by the number of work hours for which a Constable is regularly scheduled to annually work (inclusive of leaves taken).

Recommendation: Since the Association did not specifically oppose this proposal, I recommend it be accepted and included in the Agreement.

20. Employees shall contribute twenty percent (20%) toward individual health insurance and thirty-five (35%) percent toward dependent health insurance coverage.

According to the Village, it provides dental and optical insurance at a cost of four thousand three hundred fifty-one

dollars and ninety-two cents (\$4,351.92) per year. It also provides health insurance at a cost of twenty-four thousand (\$24,000.00) dollars per year for family coverage and eight thousand (\$8,000.00) dollars for individual coverage. The members of the bargaining unit presently do not pay any of the costs toward these premiums.

The Village is proposing that members of the bargaining unit pay twenty (20%) percent of the cost of providing individual health insurance and thirty-five (35%) percent toward family health insurance. The Village is not proposing any contributions toward the dental or optical insurance.

The Association insists the Village should maintain the status quo whereby members of the bargaining unit are not required to pay for any portion of their dental, optical or health insurance. It argues the Village's proposal would amount to a decrease in salary for its members.

Recommendation: Since the Village has not proposed any changes for the payment of dental and optical insurance, I recommend that the status quo continue and the Village provide those benefits at no cost to the bargaining unit members.

As far as the health insurance is concerned, I do recommend that the members of the bargaining unit begin to pay for some of the cost. Therefore, I recommend that upon ratification of the Agreement by both parties, members of the bargaining unit pay five

(5%) toward health insurance. This will apply to both individual and dependent coverage.

21. Discuss with Village the benefits, if any, that will be provided upon retirement (health insurance, pay out of unused sick/vacation).

Recommendation: Since these issues have been addressed throughout these recommendations, there is no need to include this proposal in the Agreement. This proposal is rejected.

Conclusion:

It is my opinion that the foregoing recommendations represent a reasonable and fair balance between the needs of the Association and its members and the rights and responsibilities of the Village. As such, I urge both parties to adopt the recommendations presented as soon as practicable.

April , 2018

Barry J. Peek, Esq.
Fact-Finder

STATE OF NEW YORK

COUNTY OF NASSAUS ss.:

I, BARRY J. PEEK, ESQ., do hereby affirm upon my oath as Fact-Finder that I am the individual described herein and who executed this instrument, which is my Fact-Finder's Report and Recommendations.

April, , 2018

Barry J. Peek, Esq.
Fact-Finder

stonybrook.1199.rodgers.awd

(5%) toward health insurance. This will apply to both individual and dependent coverage.

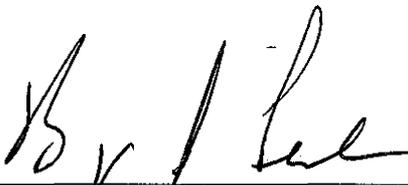
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Recommendation: Since these issues have been addressed throughout these recommendations, there is no need to include this proposal in the Agreement. This proposal is rejected.

Conclusion:

It is my opinion that the foregoing recommendations represent a reasonable and fair balance between the needs of the Association and its members and the rights and responsibilities of the Village. As such, I urge both parties to adopt the recommendations presented as soon as practicable.

April 30, 2018


Barry J. Peek, Esq.
Fact-Finder

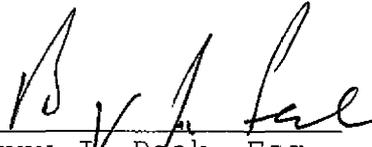
STATE OF NEW YORK

COUNTY OF NASSAUS ss.:

I, BARRY J. PEEK, ESQ., do hereby affirm upon my oath as Fact-Finder that I am the individual described herein and who

executed this instrument, which is my Fact-Finder's Report and
Recommendations.

April 20, 2018


Barry J. Peek, Esq.
Fact-Finder