

STATE OF NEW JERSEY  
PUBLIC EMPLOYEE RELATIONS COMMISSION

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In the Matter of the Arbitration  
:  
    - Between -  
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Borough of Kinnelon  
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    "Employer" or "Borough"  
:  
    - and -  
:  
PBA, LOCAL 341  
:  
    "Union" or "PBA"  
:  
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Case No. IA 2002-053  
Re: Interest  
Arbitration

APPEARANCES

For the Employer  
LAUFER, KNAPP, TORZEWSKI & DALENA LLC  
Frederic M. Knapp, Esq.

For the Union  
COHEN, LEDER, MONTALBANO & GROSSMAN  
Bruce D. Leder, Esq.

BEFORE: HOWARD C. EDELMAN, ESQ., ARBITRATOR

## BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired on December 31, 2001. Negotiations for a new agreement proved unsuccessful. Consequently, and pursuant to New Jersey Police and Fire Compulsory Arbitration Act, NJSA 34:13A-16, Interest Arbitration procedures were invoked and I was appointed as the Interest Arbitrator. Prior to holding a hearing in this matter I attempted to mediate the dispute; said mediation was not successful.

Hearings were held. Numerous documents were entered into evidence and subsequent to the hearings the parties submitted briefs. Upon my receipt of same, the record was closed.<sup>1</sup> This Opinion and Award follows.

## POSITIONS OF THE PARTIES<sup>2</sup>

### PBA

#### 1. Term of the Contract

The Union seeks a three year contract, from January 1, 2002 to December 31, 2004.

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<sup>1</sup>I did consider certain documents submitted after the filing of briefs. See letter dated January 9, 2004.

<sup>2</sup>In the interest of expediting these findings, I have summarized the parties' positions.

2. Salary

Effective and retroactive to January 1, 2002	5.5%
Effective and retroactive to January 1, 2003	5.5%
Effective January 1, 2004	5.5%

In the Union's view, its salary proposal is justified because other employees in the Borough received larger increase than the police in 1999 and have already been granted a 4% increase in the year 2002 which is ½ % greater than the Borough is offering to the PBA for 2002. In addition, the PBA asserts that wages paid to its members are in the bottom half of police salaries in Morris County, while the Borough is in the upper half of communities in the County in terms of population, size and income. Moreover, Kinnelon has the 14<sup>th</sup> lowest crime rate in the County out of 39 communities surveyed, the PBA notes.

The PBA argues that the average income of those living in the County is \$90,314.00 and that the median house was valued at \$355,000.00; and that property values increased by 9.3% in the County and 11.4% in the Borough in the year 2000. The Union notes that the Borough spent \$124.00 per capita for local police services in 2001 which was the fourth lowest per capita expenditure in the County, for police services.

The PBA contends that the Borough is in good fiscal

health because it has generated a surplus at an average of \$1,283,754.00 over the last six years and that it has been able to generate excess revenues averaging \$874,392.00 over the same period. It claims that tax rates declined from 1994 to 2000, though conceding that the tax rate increased in 2001 and 2002 . Nevertheless, Kinnelon's general tax rate ranked 35<sup>th</sup> out of 38 communities in Morris County in 2001, the PBA notes. Not only have property values been climbing steadily, the Borough collected 98% of its taxes from 1998 through 2001, while the Statewide average was 93%, the PBA points out.

Regarding the Borough's debt, the Union maintains that Kinnelon has only borrowed 25% of its statutory limit, which is reflected in the Borough's Aa2 rating from Moody's. Finally, the Union states that the Borough is well below the allowable CAP. Consequently, the PBA argues, the Borough can well afford the raises it seeks.

In addition, the PBA maintains that it is in the interest and welfare of the public to have a safe and secure environment, which is manifested in public demand for an ever-growing presence of Police Officers. The Union contends that its members are providing superior

performance to the residents of the Borough at a cost to the homeowners that is only 70% of the County average.

In the PBA's view, the most relevant salary comparison is with Police Officers in similar jurisdictions. The Union contends that Kinnelon Police Officers are underpaid, compared to their peers in other communities in Morris County. For example, Kinnelon Police Officers' 2002 wages are lower than the salary of ten neighboring communities, the PBA suggests. In addition, the clothing allowance and the longevity allowance are sub par, it urges. The Union maintains that continuity and stability of employment is enhanced by a reasonable and adequate compensation and conversely, citizens of a community will suffer if seasoned police officers leave the department because compensation is inadequate. The Union claims that one officer recently resigned from the Police force to join the Police Department in a neighboring town, which has higher salaries and a dental plan.

Finally, as to wages, the Union asserts that the Borough enjoys an overwhelmingly positive economic status, and that it generates revenues in excess of its expenditures. Moreover, in the Union's view, there is nothing in its final offer which would cause the Employer

to violate its lawful authority because it was under the statutory limits in 2001, 2002 and 2003 and it also had a "CAP Bank" from 2001 and 2002.

3. Dental Plan

The Borough shall provide, at no cost to the employees, Delta Dental Premier Program with a maximum of \$1,500.00 annually and a waiver of the deductible for preventative and diagnostic services.

The Union states the approximate cost of its dental plan proposal is \$16,896.00, which, it believes, would cost one-tenth of one cent in increased taxes. The PBA claims that 34 out of 39 communities in Morris County, and all ten of the surrounding communities, provide dental benefits.

In the PBA's view, the lack of a dental benefit combined with the fact that police salaries in the Borough are at the low end of the scale compared to other police departments in Morris County, means that Kinnelon Police Officers have fallen well behind their counterparts in the County.

4. Convention Leave

Leave of Absence with pay shall be given to duly authorized representatives of the PBA to attend any State or National Convention of that organization, provided, however, that no more than ten (10%) per cent of the bargaining unit shall be permitted such leave of absence with pay except no less than two (2) and no more than ten (10) authorized representatives shall be entitled to such leave.

This paid leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention provided that such leave shall be for no more than seven (7) days. Certification of attendance at the convention shall, upon request, be submitted by the representatives so attending.

Concerning its proposal, the PBA asserts it is the exact language of the statute, while, it notes, the Employer has proposed to incorporate the statute by reference. The Union believes that its proposal is more appropriate because if the Employer's proposal were adopted, and at a later date the statute were changed or modified, the parties would be stuck with such change and/or modification.

In sum, the Union asserts that its proposals are fair, reasonable and within the bounds established by N.J.S.A. 34:13A -16g. Accordingly, it asks that they be awarded.

### **The Employer**

#### 1. Duration

Three (3) years, January 1, 2002 through December 31, 2004.

#### 2. Wages

Effective January 1, 2002	3.5%
Effective January 1, 2003	4%
Effective January 1, 2004	4%

The Employer submits that its offer provides an equitable compensation plan and is also in the interest

of the public and furthers the general welfare. It further argues that its salary proposal exceeds the cost-of-living increases over the past few years; and is consistent with increases enjoyed by many other Police Officers in Morris County.

According to the Employer, the Union's proposals, if awarded, would cost the Borough \$137,775.64 more, over the life of the contract, than its final offer. It also suggests that my Award will have a financial impact beyond the life of the Agreement because the new compensation levels will become permanent; and, further, that an increase having more than a modest cost impact will force the Borough to reduce other services in future years.

The Employer is concerned that the Union's proposal, if awarded, would have the effect of whipsawing the Borough by repeatedly increasing salaries, and would compound the disparity between Police Officers and other Borough employees. The Employer claims that it has sought to negotiate wage increases as close as possible to its CAP constraints for 2002 through 2004.

It is the Employer's position that the average salary increase for all Interest Arbitration Awards in 2001 was 3.75% and in 2002 was 3.83%; well below the



Union's proposal of 5.5%. Likewise, the average percentage wage increase for Police Officers in Morris County was 3.92% in 2002 of the twenty-seven (27) municipalities reporting, the Borough argues. These factors warrant increases of less than four per cent in 2002, in its view.

The Employer acknowledges that there are few, if any, private sector jobs which are comparable to those of Police Officer. Nevertheless, it argues, wage increases in the private sector are considerably less than the Union's proposal. It further asserts that wages paid to Kinnelon's Police Officers are substantially above those paid to Police and Sheriffs Officers throughout the United States.

According to the Employer, if its salary proposal were awarded, Kinnelon Police Officers' relative position, as compared with Morris County Towns and neighboring municipalities, would neither decline nor rise significantly. Also, in the Borough's view, the overall compensation of its Police Officers is extremely favorable.

The Employer further contends that it is constrained by the CAP Law and that its proposal is more in line with the CAP Law than is the PBA's proposal, which the

Employer argues, is in excess of the CAP and thus should be denied.

Other evidence justifies its proposal, the Borough maintains. It notes that in 2001, it transferred \$1,233,000.00 to the Board of Education, which, according to the Employer, compelled it to increase taxes. In addition, the Borough has faced other increased costs, and rising taxes from 1995 to 2002, it alleges. Despite these factors, Police Officers have received salary increases greater than the increase in the rate of inflation, the Borough urges.

Also, the Borough maintains, as a consequence of the transfer to the Board of Education, it had to defer several projects including a road project, a new recreation field and the purchase of two vehicles. Furthermore, the purchase of a truck and some police equipment was effectuated through a bond ordinance to defer payment beyond 2002, the Borough notes.

It is the opinion of the Employer's auditor that anticipated revenues in the municipal budget will be declining significantly commencing in 2002 and through 2009. The Police Department expenses, however, have increased from \$1,190,532.11 in 1995 to \$1,482,873.38 in 2002, it points out. Thus, the Borough concludes that

its cash flow is declining while expenses, particularly those in the Police Department, are increasing. The cash flow problem has been exacerbated by the transfer of funds to the Board of Education, the Borough submits.

The Employer postulates that its financial circumstances are further constrained by tax reductions as the result of Tax Appeals of \$240,050.94 in 2001 and \$368,653.55 in 2002; the Tax Assessor estimates that Tax Appeals will further reduce tax revenues in 2003 by another \$368,653.55.

In addition, Police Officers, the Borough argues, have received salary increases far in excess of the increase in the cost-of-living over the past several years. Nevertheless, the Employer proposes to increase salaries by 3.5% for the year 2002 while the increase in the cost-of-living in 2002 was only 2.8%.

There has been a high level of continuity and stability of employment among Police Officers, the Employer declares; and the only employees who leave the department do so to retire, it insists. In addition, the Borough states there have not been any layoffs in the Police Department. Finally, three recent hires in the Department came from other towns, it notes. The Employer believes its salary proposal will maintain this stability

within its workforce.

### 3. Dental Plan

Effective January 1, 2003 or as soon thereafter as practicable, bargaining unit members shall be eligible for dental insurance, individual coverage, for employees only. The cost of the premium for dental insurance, individual coverage shall be shared equally between the Borough and the employee. In the event that an employee requests coverage for a spouse or other dependants, the employee shall bear the entire cost of that coverage.

Effective January 1, 2004, all participating bargaining unit members shall share equally in the cost of any increase in the premiums for the dental plan. Accordingly, employees participating in the dental plan shall also pay fifty percent (50%) of any increases in the dental insurance premiums for individual coverage above the base year of January 1, 2003, as well as sharing equally with the Borough for the base year premium cost. Employees requesting dependant coverage shall continue to be responsible for payment of the entire (100%) premium for such dependant coverage.

It is the Employer's position that the PBA's dental plan proposal is very expensive and serves to further inflate the economic cost of the entire proposal. The Borough believes the Officers should be willing to share equally in the cost of the dental premiums if they want dental insurance; and further that the employees should pay the entire premium for spouses and dependents.

The Employer submits that its proposal would cost \$4,638.60 per year while the PBA's proposal would cost \$18,454.08 per year. The Employer further argues that

Police officers in other Police Departments within Morris County have provisions in their contracts requiring any increases in dental premiums to be shared equally by the employees and the employer.

Sharing the costs of a dental plan, in the Employer's view, is equitable to both employees and the Borough and is most comparable to other labor contracts and to the State's Plan. Moreover, there is a statewide trend of employees paying a greater share of the costs of insurance premiums, the Borough suggests. Consequently, the Employer believes the Union's proposal is inconsistent with recent economic trends.

#### 4. Convention Leave

Convention leave shall be granted to eligible bargaining unit members in accordance with applicable provisions of the laws of the state of New Jersey, specifically N.J.S.A. 40A:14-177.

It is the Employer's perception that its proposal on Convention Leave is consistent with the mandates of the Attorney General and is comparable with terms and conditions of employment for other Borough employees.

#### 5. Scheduling

The Borough agrees to implement a new schedule in accordance with a separate side bar agreement on a trial period only. The terms of the schedule shall be set forth in a separate side bar agreement.

The Employer states that it had previously agreed to

implement a new schedule agreement on a trial period only and that a side bar agreement was so implemented on September 23, 2002.

In sum, the Borough asserts that its proposals are fair, reasonable and within the pattern of settlements already established . Accordingly, its asks that they be awarded as presented.

### **DISCUSSION AND FINDINGS**

Several introductory comments are appropriate. My determination is limited to evidence contained in the record. I am precluded from considering any other factors and my findings below are based strictly on the record.

Moreover, arbitrators are also limited by the criteria established pursuant to the New Jersey Police and Fire Compulsory Arbitration Act, NJSA 34:13A-16, Subsection d(2) which requires an arbitrator to;

"separately determine whether the total net annual economic changes for each year of the agreement are reasonable under eight statutory requirements set forth in subsection g of this section."

The eight criteria set forth in subsection g are:

- 1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are limitations imposed on the employer by P.L. 1976, c. 68

(C.40A:4-45.1 et seq.)

- 2) Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator=s consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator=s consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2); provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator=s consideration.
- 3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- 4) Stipulations of the parties.
- 5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.)
- 6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award

will affect the municipality or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees= contact in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or ©) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

- 7) The cost of living.
- 8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

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

**1. Duration of the Agreement**

The duration of this Award is from January 1, 2002 through December 31, 2004, as the parties proposed. There is no basis for an Award for another duration, I conclude. Thus, the Award shall extend from January 1, 2002 through December 31, 2004.

**2. Salary**

After reviewing the record, I order the following



increases:

Effective January 1, 2002	4.00%
Effective January 1, 2003	4.25%
Effective January 1, 2004	3.75%

I estimate that this Award herein will result in the following additional annual costs to the employer:

2002 - salary \$32,827.00

2003 - salary \$36,274.00

2004 - salary \$33,367.00;

In addition, the cost of the dental plan as awarded below is a maximum of \$13,387.00 for 2004 if the dental plan is implemented on February 1, 2004, and if all employees who are eligible for dependant coverage, so choose.

Thus, the total cost, over the three (3) years of the agreement, is \$115,856.00<sup>3</sup>, if the dental plan is implemented on February 1, 2004, and, if all employees who are eligible for dependant coverage, so choose. This is approximately \$13,181.00 more than the cost of the Borough's final offer.

I make these findings based on the following factors. First, I shall consider the Union's contention that its members' salaries are low compared to the rest of the County. In my comparison of Police Officer salaries in Kinnelon to the surrounding communities in

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<sup>3</sup> I have provided the full details of my cost estimates on pages 28-29.

Morris County. I reviewed and combined Union Exhibit 2-b-4 and Employer Exhibit B-9. Union Exhibit 2-b-4 is a table showing the top Patrolman's pay for the years 2001 through 2004 for communities in Morris County. The Union's table does not include data for each community, for each year. The Employer's table includes data for two communities, Rockaway Township and Pequannock, that was not in the Union's table, and my analysis includes these two communities. The Union's table included data for two communities, West Milford and Wanaque, that are not in Morris County; therefore I left those two communities out of the comparisons that follow. The resulting combined data includes top pay rate for Police Officers in 35 communities in 2001; 33 communities in 2002; 19 communities in 2003; and 14 communities in 2004; Kinnelon was included in the data for all four years. For the year 2001, the top salary for the Borough's Police Officers was \$62,007.73. For the years 2002, 2003 and 2004, I have calculated the top rate of pay for the Kinnelon Police Officers based on my Award, (e.g. 4%, 4.25% and 3.75%). Thus, the 2002 adjusted rate is \$64,488.04; the 2003 adjusted rate is \$67,228.78; and the 2004 adjusted rate is \$69,749.86 . The table below summarizes the data.

YEAR	2001	2002	2003	2004
Number of communities reporting	35	33	19	14
Number higher than Kinnelon	23	22	18	13
Number lower than Kinnelon	11	10	0	0
Number lower in 2001, but higher in later year		0	2	2
Number higher in 2001, but lower in later year		0	0	0
This table based on Union Exhibit 2-b-4 and Employer B-9				

For 2001, twenty-three (23) municipalities in Morris County paid a higher salary than did Kinnelon; eleven (11) paid less; and two, East Hanover and Chatham, were not reported. The adjusted top pay rate for Kinnelon Police in 2002, is \$64,488.04. Twenty-two (22) of the twenty-three (23) municipalities that reported police salaries in 2001, and which were higher than Kinnelon's, also reported salaries for 2002. All twenty-two (22) paid salaries higher than the adjusted salary of \$64,488.04 for Kinnelon's officers. Ten (10) of the eleven (11) municipalities that reported lower salaries than Kinnelon's for 2001, also reported salaries for 2002; all ten (10) paid less than \$64,488.04 in 2002. Thus, a four percent (4%) increase for 2002 does not change the relative position of the Kinnelon Police Officers with respect to their counterparts in the County for the year 2002.

In 2003, there were reports from nineteen communities, including my adjusted salary for Kinnelon. The other eighteen (18) reporting communities all had higher police salaries in 2003 than the adjusted salary of \$67,228.78, for Kinnelon's police. Sixteen (16) of the eighteen (18), had reported higher salaries in 2001 than had Kinnelon. The other two (2) communities - Florham Park and Morris Plains - reported salaries higher than \$67,228.78 in 2003, but had reported a lower police salary than Kinnelon's in 2001.

The other nine municipalities that had reported lower police salaries than Kinnelon's in 2001, did not report a salary for 2003.

In 2004 there were reports from 14 communities, including my adjusted salary for Kinnelon. The other thirteen (13) all reported salaries higher than the adjusted rate of \$69,749.86 for the Kinnelon police. Eleven (11) of the thirteen (13) had reported higher salaries in 2001 than Kinnelon. The other two (2) communities - Florham Park and Morris Plains - reported salaries higher than \$69,749.86 in 2004, but had reported a lower police salary than Kinnelon's in 2001.

In spite of the fact that the number of reporting communities significantly decreased in the years 2003 and 2004, it appears that this Award will not change the

relative ranking of the Borough's salaries compared to those communities that have reported police salaries for 2003 and 2004. While there is not enough data for the years 2003 and 2004 to conclude that the Borough's Officers have dropped to the bottom of the County, there is enough data to conclude that they have not, and will not, jump into the top half of the County. Further, there is sufficient data to strongly suggest that the wages here have not increased faster than in any of the communities that reported; and that Kinnelon's position has worsened compared to both Florham Park and Morris Plains, who had lower salaries than Kinnelon's in 2001, but went ahead in 2003.

The Employer argued, at page 17 in its brief, that the Florham Park Police salary increase of 11% in 2003 was an "aberration" and should be excluded from consideration. Even if Florham Park were excluded, Morris Plains would still have overtaken and passed the Kinnelon Police in 2003 and 2004. Assuming, however, that the Florham Park police had only received the 3.69% increase that the Employer contended was the average increase for the other municipalities in Morris County for 2003, it would result in an imputed salary of \$67,398.50, which is still greater than the adjusted 2003 salary of \$67,228.78 the Kinnelon Police will receive

under this Award.

Another way to compare salaries is to examine the percentage increases that other Police Officers have negotiated or been awarded. Employer Exhibit B-35 is a table showing the percentage increases in salary for Police Departments in Morris County for the years 2000 through 2003. The table includes data for 37 communities in 2000 and 2001, 31 communities in 2002 and 19 communities in 2003. In 2002, the lowest increase was 2.0%, the largest was 5.3%, and the average was 3.91%. In 2003, the lowest was 2.0%, the highest was 11% and the average was 4.16%. The 11% increase was received by the Florham Park Police. I noted above that the Employer argued the 11% increase in 2003 was an "aberration" and should be excluded from consideration. I decline to exclude the Florham Park because it is the salary that was negotiated. It is the rate of pay in effect. However, I also note that the Borough did calculate the average without including Florham Park and arrived at an average increase of 3.89%, which is not dramatically different from the actual average and from my Award.

Employer Exhibit B-36 is a compilation, prepared by PERC, of wage increases achieved in Interest Arbitration and in Voluntary Settlements. In 2001 there were seventeen (17) Arbitration Awards with an average

increase of 3.75% and thirty-five (35) Voluntary settlements with an average increase of 3.91%. In 2002, there were ten (10) Arbitration Awards, at an average increase of 3.84% and twenty-eight (28) voluntary settlements averaging 4.06%.

Consequently, I find that the increases awarded herein are very close to the increases that have been negotiated and/or awarded both in Morris County and throughout the State; and, further that the raises awarded herein do not change the relative ranking of the Kinnelon Police Officers as compared to their counterparts in Morris County. I make this finding even though the wages of Kinnelon's Officers are relatively low when compared to other Morris County municipalities. I do so because, as noted below, the cost of dental insurance will result in a higher overall cost than that granted elsewhere.

I now turn to the Employer's argument that it cannot afford the Union's proposal. The Employer's proposal would raise salaries by a total of 11.95%, on a compounded basis, over the life of the Award. This Award will raise salaries by a total of 12.22%, on a compounded basis, for the period 2002-2004, an increase of 27/100 of one percent over the cost of the Employer's proposal which amounts to approximately \$4,433.00 over

the three (3) year life of the Award, or \$1,478.7.00 per year. The awarded salary increase of 3.75% in 2004, is intended to ameliorate the cost of the new dental plan. As noted above, the dental plan will cost the Borough a maximum of \$13,387.00, if the plan is implemented on February 1, 2004, and, if all employees who are eligible for dependent coverage, so choose. Thus, the difference in cost of the Award herein, and the Employer's proposal, is \$4,433.00 for salary and \$8,749.00 for dental; or a total of \$13,181.00 more than the cost of implementing its last offer to the PBA. This difference, though meaningful, is not so great as to justify awarding the Employer's economic proposal, I am convinced.

It is true the Borough's transfer of \$1,233,000.00 to the Board of Education, did in fact, create financial problems, not the least of which was a sixteen percent (16%) increase in taxes in 2002. (Employer Ex. B-14, 16 & 39 ) The tax increase was "mainly due to the transfer of \$1,233,000.00 to the Board of Education." (Employer Exhibit B-39) However, the transfer to the Board of Education was a one-time event. The Spring 2002 Newsletter for the Borough of Kinnelon, Vol. 10 / Number 2, stated that the transfer was contingent on several conditions, which provided,



"a level of comfort to the Governing Body and to the residents that such an incident will not recur in the future" (Employer Ex. #B-28)

In spite of the large transfer to the Board of Education in 2001, the Borough appears to be fiscally sound. Moody's rated the Borough as Aa2, which is Moody's second highest rating and is equivalent to "high quality". The Moody's rating (Employer Exhibit B-24) includes the following comments:

"The Aa2 rating reflects the borough's healthy reserve levels, manageable debt burden, and moderately sized, very affluent tax base in Morris County - rated Aaa."

And further,

"The borough's moderately sized \$1.26 billion tax base has seen an average annual increase of 5.8% between 1998 and 2001 due to on-going renovations and additions to the housing stock of this primarily residential, affluent tax base in Morris County. The borough went through revaluation effective 2001 increasing its assessed values (A.V.) to \$1.52 billion."

And finally,

"The borough's wealth levels significantly exceed those of the state and the nation, reflected in a strong full value per capita of \$134,982."

Thus, I conclude, despite the large transfer, the Borough remains fiscally strong even in light of the cost of my Award.

Notwithstanding the Borough's good financial condition, Borough residents did endure a 16.4% increase in their taxes in 2002 which was much greater than they had experienced in previous years. (Employer Exhibit B-24) I have taken that into account in fashioning the Award herein. I believe the Award represents a balance between the needs of the police officers and the needs of the residents of the community. While this Award, when fully implemented, will cost the Borough more than it would have paid if its last offer had been accepted by the Union, the additional cost, over and above what the Borough was willing to pay, is \$13,181.00. Employer Exhibit B-28 states that a tax point has a value of \$155,000.00. Thus, the additional cost, over and above what the Borough was willing to pay, is slightly less than 1/10 of a tax point; more precisely, .085 of 1 tax point.

Given this analysis, there is no doubt that the wage increase maintains Kinnelon's relative position among comparable communities. While an argument has been made that "catch up" increases beyond the going rate would be justified, the dental plan I have awarded below raises the overall cost of the economic package beyond what appears to have been awarded elsewhere. To add to that further wage improvements would unduly burden the

Borough, I am convinced, especially in light of the large 2002 tax increase. Thus, I conclude, the economic package is fair to both the PBA and Borough.

The New Jersey Police and Fire Compulsory Arbitration Act, requires an arbitrator to determine whether the total net annual economic changes for each year of the agreement are reasonable under eight statutory criteria and I shall analyze my findings in light of these criteria.

**The interests and welfare of the public**

The first criterion under New Jersey Police and Fire Compulsory Arbitration Act is the interests and welfare of the public, including the limitations imposed on the employer by the CAP law.

The public has an obvious interest in having an effective police force. The public also has an obvious interest in stable taxes which needs to be balanced with the Borough's need to be able to attract and retain qualified individuals to provide the services the public demands. Reasonable levels of compensation are necessary to ensure such stability and effectiveness.

As I stated above, I am not unmindful of the fact that the Borough transferred \$1,233,000.00 to the Board of Education, in 2001, which, in large part forced the Borough to increase taxes by sixteen percent (16%)

increase in taxes in 2002. Nevertheless, the Borough appears to be fiscally sound. Moody's rated the Borough as Aa2, which is Moody's second highest rating and is equivalent to "high quality" (Employer Exhibit B-24).

Kinnelon's 2000 market value was \$1.260 billion. Eighteen (18) municipalities in Morris County had a lower market value and twenty (20) had a greater market value; thus the Borough is almost exactly at the median of the County. (Union Exhibit 2-C-3). Clearly then, it can afford median wage increases, as awarded above.

In considering the public interest, the Statute explicitly requires the Arbitrator to consider limitations imposed on the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.), also known as the CAP law. The Union contended that the Borough was below the CAP in 2001 and 2002 and will be below the CAP in 2003. The Employer asserted that its CAP limitation, known as the Municipal Budget Cap Index Rate, was one (1) per cent for Calendar Year 2003. (Employer Exhibit 30).

The table below summarizes the annual differences in cost between the Employer's salary proposal and my Award.

	2002	2003	2004	Total
Cost of Employer's Salary Proposal	\$28,723.89	\$33,976.26	\$35,335.31	\$98,035.47
Cost of Arbitrator's Salary Award	\$32,827.31	\$36,274.18	\$33,366.91	\$102,468.39
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Difference	\$4,103.41	\$2,297.91	-\$1,968.41	\$4,432.92

With respect to salary, this Award will cost the Borough \$4,433.00 more than the cost of its final salary offer. The difference in cost of the dental plan is \$8,748.57<sup>4</sup>. Accordingly, the total difference between the cost of the Employer's final proposal and the cost to implement this award is, \$13,181.00. It is clear that, based upon the data submitted, this extra amount of money will not cause the Borough to exceed the CAP limitation. Thus, I conclude that it is in the public interest to increase the compensation of the Police Officers, and further, that such increases will not unduly burden the Borough, nor will it cause the Borough to exceed its CAP limitation.

#### **Comparisons**

The Statute requires the Arbitrator to compare the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of

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<sup>4</sup>I have provided the full details of my cost estimate for dental on pages 43-44 below.

other employees performing the same or similar services and with other employees generally and specifically with employees (a) in private employment in general; (b) in public employment in general; and, c) in public employment in the same or similar comparable jurisdictions.

#### **Private Sector in General**

Both parties submitted evidence concerning private sector wages. Employer Exhibit B-37 showed selected state-wide private sector wages for the years 1999 and 2000. The lowest annual wage in the year 2000 was earned in retail trade, \$21,738.00 and the highest in Fiance/Insurance/Real Estate, \$69,128.00; the average for the entire state was \$43,671.00. The average increase from 1999 to 2000 was 6.4%.

In addition, the Borough submitted Exhibit B-7 dealing with weekly earning of manufacturing production workers in New Jersey. The increases in manufacturing wages in 2000, 2001 and 2002 were 4%, 4% and 3.5% respectively.

Employer's Exhibits B-8b, 8c and 8e detailed the change in the private sector Employment Cost Index (ECI) throughout the entire United States and also just the Northeast. A review of these documents reveals that the 12 month ECI, in the Northeast, increased between 3.2%

and 4.4%.

The Union presented similar evidence concerning increases in the private sector. The Union argued that it received increases totaling 8% for 1999 and 2000, while private sector wages increased by a total of 11.2% in the same time. Thus, from the PBA's perspective, its members fell behind private sector employees.

The raises I have awarded fall within the parameters detailed above. Increases of 4%, 4.25% and 3.75% are slightly higher than the data indicated on the Borough's exhibits, but less than that suggested by the PBA. Thus, these improvements comport with this criterion in the statute.

#### **Public Employment in General**

Employer Exhibit B-8a is a table showing the increase in the Employment Cost Index (ECI) for State and local government employees from 1999 to 2001. In 1999 the ECI was 3.4%, in 2000 it was 4.4% and in 2001 it was 4.2%. The Union submitted evidence demonstrating that other employees of the Borough received wage increases of 5% in 1999, which was higher than that received by Police Officers. Other Borough employees received the same increase as the Police Officers in 2000 and 2001. In 2002, the other Borough employees received a 4% increase, which is consistent with my findings.

As with private sector wages, the figures I have implemented fall within the data relevant to this criterion. Thus, here too, my findings are consistent with the statute.

**Public Employment in the Same or Similar Comparable Jurisdictions**

I previously analyzed evidence provided by both parties concerning the relative ranking of Police salaries in Morris County<sup>5</sup>. In 2001, the last year of the expired Collective Bargaining Agreement, the Borough's Police Officers ranked 24<sup>th</sup> out of the 35 communities for whom a salary rate was reported. For the years 2002, 2003 and 2004, I calculated a new salary for the Kinnelon Police Officers using the percentage increase in the award herein, i.e., 4.0%, 4.25% and 3.75% respectively. Applying these adjusted rates to the table, which included actual rates for other communities, I determined the ranking of the Kinnelon Police Officers in each year.

In 2002, the Borough's police ranked twenty-third (23) out of thirty-three (33) communities reporting. In 2003, the Kinnelon Police ranked nineteenth (19) out of nineteen (19) reporting. Moreover, two (2) police departments that had been below Kinnelon in 2001, moved

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<sup>5</sup>See pages 17-23 above.



ahead of the Borough in 2003. Fourteen(14) police departments reported salaries for the year 2004, and Kinnelon again ranked near the bottom. Two (2) departments that ranked below the Borough in 2001, and who jumped ahead in 2003, remained ahead in 2004.

There is not enough data for the years 2003 and 2004 to conclude that the Borough's Police officers have dropped to the bottom of the County, in terms of salary, but there is enough data to conclude that they have not, and cannot, jump into the top half of the County. Further, there is sufficient data to strongly suggest the Police Officers' relative ranking remains close to where it was in 2001.

Based on all the data that was submitted to me, I conclude that the salary increases awarded herein are in line with the increases that have been negotiated and/or awarded in the other Police Departments in Morris County, while at the same time they will not unduly burden the Borough.

In summary, I believe the salary increases I have awarded are reasonable when compared to all the statutory criteria. This award does not change the relative position of Police Officers when compared to their counterparts in other Morris County Police Departments, or, to other public employees in the Borough and the

surrounding County, or to private sector employees.

### **Overall Compensation**

In addition to salary increases, I have awarded a dental plan which will result in an increase in overall compensation, when it becomes effective. The Borough's Police Officers were one of only five (5) out of thirty-seven (37) communities in Morris County that did not have a dental plan. Taken together, the wage and dental package are well within the Borough's ability to pay. This package, though slightly higher than the Borough's proposal, reflects the addition of a dental insurance program for Police Officers, which virtually all other jurisdictions enjoy. Thus, I conclude, the entire package is reasonable and consistent with the statutory criteria, as delineated above.

There were no other changes in Police Officers' overall compensation.

### **Stipulations**

There were no stipulations of the parties.

### **Lawful Authority**

The total difference between the cost of the Employer's final proposal and the cost to implement this award is, \$13,181.00. The extra cost, over and above what the Borough was willing to pay, is slightly less than 1/10 of a tax point; more precisely, .085 of 1 tax point.

I do not believe this extra amount of money will cause the Borough to exceed the CAP limitation. Therefore, there are no statutory limitations to this Award.

I conclude this Award can be implemented without conflicting with any statute, including the CAP law; thus this factor has no bearing on the award in this case.

**Financial Impact**

The cost of this Award for each year of the Agreement is as follows:

2002 - salary \$32,827.00

2003 - salary \$36,274.00

2004 - salary \$33,367.00; .

2004 - dental, a maximum of \$13,387.00, or a total, maximum cost of \$115,855.00 over the life of the Award.

The maximum cost of the dental plan<sup>6</sup> is dependent on two conditions: 1) that the plan is implemented on February 1, 2004, and; 2) that all employees who are eligible for dependent coverage, so choose. Unless both of those conditions are met, the cost of the dental plan will be less than \$13,387.17 for 2004. In that event, the total cost of this Award would be less than

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<sup>6</sup> The cost calculations for the dental plan are on pages 41-44.

\$115,856.00. The total cost of the Employer's final salary offer was \$98,035.00 plus, \$4,639.00 for dental, which equals a total cost of \$102,674.00. That is \$13,181.00, less than the maximum cost of the Award herein. As noted above, the difference in cost of this award is slightly less than 1/10 of a tax point, more precisely, .085 of 1 tax point.

The above salary cost estimates were calculated on the assumption that the base year salary cost, before any increases were added in, was \$820,687.70, which was determined by extrapolation from both Union and Employer exhibits. The Union's apparent base year cost was \$823,808.30 and the Employer's apparent base year cost was \$817,557.02. The average of those two sums is \$820,687.70.

The annual salary calculations, using \$820,687.70, as the base year cost are shown in the following table:

Year	Increase %	Increase \$	Cost of Salaries
2001			\$820,682.70
2002	4.00%	\$32,827.31	\$853,510.01
2003	4.25%	\$36,274.18	\$889,784/18
2004	3.75%	\$33,366.91	\$923,151.09
		-----	
<b>TOTAL</b>		\$102,468.39	

By my calculation, if all eligible employees chose dependent coverage, such coverage would account for approximately 85% of the total plan premiums. Using those estimates, the cost to the Employer would be a maximum of \$13,387.17 in the year 2004; provided that: A) all employees who have eligible dependents choose to cover those dependents; and, B) the dental plan is implemented on February 1, 2004.

The Borough's credit ratings from Moody's is Aa2. There is no evidence that this award will have any effect on the Borough's credit rating.

The Employer introduced evidence, Employer Exhibit B-39, that several expenditures which had been planned for 2002, were deferred, because of the transfer of \$1,233,000.00 to the Board of Education in 2001. That transfer was a one-time event. (Employer Exhibit -B-28)

Since the cost of this Award at most is only \$13,181.49 more than the cost of the Employer's final offer, I conclude this Award will not impact the Borough's ability to (a) maintain existing programs and services, (b) expand existing programs and services, or (c) initiate any new programs and services. Based on the above considerations, I find this Award represents a balance between the interests of the Borough and those of the Police Officers and that it will have a small impact

on the residents and taxpayers. I conclude that the net annual economic changes for each year of this award are reasonable under the eight statutory criteria.

**The Cost of Living.**

The cost of living as measured by the United States Bureau of Labor Statistics for the New York-Northern New Jersey-Long Island area, All Urban Consumers, is as follows:

Twelve months ending in January 2001 - 3.1%

Twelve months ending in January 2002 - 1.9%

Twelve months ending in January 2003 - 3.3%

(Employer Exhibit B-6c)

There is no doubt that the raises I have awarded exceed increases in the cost-of-living. The three year difference is 3.45 per cent. However, in light of the other criteria analyzed above, I find that the cost-of-living criterion should not result in lower increases than those I have granted. Indeed, wage improvements generally exceed the rise in the Consumer Price Index in times of low inflation. That is what is occurring now. Thus, this criterion does not alter my findings, above.

**The Continuity and Stability of Employment**

While there was some disagreement between the parties about employee dissatisfaction with terms and conditions of employment, I find there has been a

relatively high level of continuity and stability of employment. The fact that unit members have gone almost two years without a new contract and concomitant pay increases might well have led to some dissatisfaction. However, there is no evidence that large numbers of Police Officers have left the Borough to seek higher pay and better benefits elsewhere. I am confident that this Award will return labor stability to this jurisdiction.

In sum, I find that the annual economic changes for the period 2002-2004 are reasonable under the eight statutory criteria specified in the New Jersey Police and Fire Compulsory Arbitration Act. I believe the Award represents a balancing of the interests of the Borough, the residents and taxpayers and the Police Officers; and its financial impact on Borough finances is within the CAP limits. I believe these increases in pay and the new dental benefit are warranted by all the evidence presented. I conclude this Award will retain, or slightly improve, the relative ranking of Police Officers' conditions of employment as compared to their counterparts in Morris County, while, at the same time, it will not unduly burden the residents of the Borough. Consequently, I make the findings indicated above.

### 3. Dental Plan

Effective February 1, 2004, or as soon thereafter as practicable, and within sixty (60) days after receipt of this award, bargaining unit members shall be eligible for dental insurance in the Delta Dental Premier Program, with a maximum of \$1,500.00 annually and a waiver of the deductible for preventive and diagnostic services. The employer shall pay the full cost of the premium for employees. The employer shall pay 75% of the cost of the premium for the spouse or other dependents of the employee, should the employee request said coverage; and the employee shall pay the remaining 25% of spouse/dependent coverage.

The parties disagreed as to who should pay for a dental plan, if one were awarded. The Employer asserted that if Police Officers desired a dental plan, they should share equally in the cost of individual coverage and pay the entire cost of dependent coverage. The PBA, on the other hand, believed the Borough should pay the entire cost of plan. Neither position is persuasive. Instead, I conclude that Police Officers should pay part of the cost of dependent coverage but should not have to pay for individual coverage.

This conclusion is supported by relevant comparisons to other jurisdictions. Employer's Exhibit 2B is a collection of excerpts from settlements involving law enforcement bargaining units in the immediate vicinity of Kinnelon. A review of these documents reveals a wide variety of funding arrangements for dental coverage. There are contracts for two bargaining units in the town



of Boontown. In each case, the employee receives his/her coverage at no cost, but must pay full cost of dependent coverage. In the Borough of Butler, Police Officers pay fifty dollars (\$50) for family dental coverage. The three contracts covering law enforcement personnel in the Township of Chatham, call for employees to pay twenty five percent (25%) of the cost of family coverage: the Employer pays the remaining seventy five percent (75%). There are three (3) agreements covering various police groups in the Township of Morris Plains. All three provide that employees will share equally in the cost of premium increases above the 1991 rates for dental coverage. In the Borough of Morris Plains, Police Officers pay one hundred dollars (\$100) per year towards the cost of health and dental insurance.

Borough of Netcong Officers receive their dental coverage at no cost, but the employees and the employer split evenly the cost of coverage over and above the cost of single coverage. Two separate bargaining units in the Township of Rockaway require the employees to pay fifteen dollars (\$15) per month for health and dental coverage. In the Town of Randolph, the Employer pays a maximum of six hundred dollars (\$600) per year towards dental coverage. Finally, there are contracts covering six (6) separate bargaining units of law enforcement employees of

Morris County. Each contract specifies that the employer will pay nine dollars and eighty three cents (\$9.83) per month towards employee health insurance and the employee will pay the full cost of dependent coverage.

These data make it impossible to determine precisely the percentage of premium Police Officers pay for dependent coverage elsewhere. However, they do indicate that full coverage by employers for individual coverage is generally the norm, while payment for dependent coverage varies substantially. In my view, a twenty five percent (25%) employee payment strikes a reasonable balance between full and no payments and falls within the mid-range of what is granted elsewhere.

Other evidence warrants this finding. Employees in both public and private sector frequently pay a portion of the cost of dental insurance. (Employer Exhibits B-4, 40 & 41). The Borough noted that benefit costs have increased in the past and that such increases can be expected in the future; and that, therefore, employees should bear part of any future increases in premium costs. By requiring employees to pay twenty five percent (25%) of the cost of dependent coverage, this Award ensures that employees will pay part of any future premium increases. It also ensures that only those who truly need dependent coverage will elect it. Thus,

requiring a 25% contribution for dependents is fair to all concerned, I am convinced.

It should also be noted that the bulk of the cost of the dental plan in Kinnelon will be for dependent coverage. By my calculation, if all eligible employees chose dependent coverage, such coverage would account for approximately 85% of the total plan premiums. The Employer estimated that the Union's dental plan proposal (which called for the employer to bear the full cost of the plan for both employee and dependents) to be \$18,545.00 in 2004. In order to compute cost of the dental plan that I have awarded, I will use the Union's estimate of the cost breakdown between employees and dependents and the Employer's estimate of the total plan cost in 2004.

Using those estimates, the cost to the Employer, would be a maximum of \$13,387.17 in the year 2004; provided that: A) all employees who have eligible dependents, choose to cover those dependents; and, B) the dental plan is implemented on February 1, 2004.

I have arrived at the above cost estimate as follows:

Full year

Cost of providing dental coverage to the employees is	\$2,782.00
Cost of paying seventy-five percent (75%) for employees' eligible dependents, if all employees choose such coverage, is	\$11,822.00
Total cost (full year)	\$14,604.00

Starting February 1, 2004 (Eleven months)

Cost of providing dental coverage to the employees is	\$2,550.03
Cost of paying seventy-five percent (75%) for employees' eligible dependents, if all employees choose such coverage, is	\$10,837.14
Total cost (eleven months)	\$13,387.17

As noted above, a maximum cost of \$13,387.17 is well within the parameters of a reasonable economic package. Since the cost will be less than that amount and since most comparable jurisdictions provide dental insurance, my Award in this regard is reasonable, I find.

**4. Convention Leave**

Leave of Absence with pay shall be given to duly authorized representatives of the PBA to attend any State or National Convention of that organization, provided, however, that no more than ten (10%) per cent of the bargaining unit shall be permitted such leave of absence with pay except no less than two (2) and no more than ten (10) authorized representatives shall be entitled to such leave. This paid

leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention provided that such leave shall be for no more than seven (7) days. Certification of attendance at the convention shall, upon request, be submitted by the representatives so attending.

The parties' differences concerning the Convention Leave issue are with the form of the provision in the Agreement, rather than the leave entitlement, per se. Both proposals would provide exactly the same number of convention leave days, because both proposals rely on relevant statutory language.

The Employer's proposal states that members of the bargaining unit would be eligible for leave in accordance with N.J.S.A. 40A:14-177. Thus, one is required to refer to the statute to know the extent and conditions of said leave. Moreover, any changes in the statute in the future would alter the leave entitlement.

The Union's proposal, on the other hand, would mirror the current statutory language. Therefore, an individual need only refer to the Agreement to know his/her Convention Leave entitlement. Furthermore, and perhaps more important, Convention Leave entitlement could be changed only through collective bargaining, not as the result of a change in the statute.

The Union argued, and I concur, that its proposal

would eliminate any "unforeseen consequences" if the statute is changed in the future (Union Brief, p. 24). Since the leave entitlement is exactly the same under either proposal, unless and until there is some change in the statute, granting the Union's request does not result in any extra cost to the Borough.

The Employer's proposal, on the other hand, left both parties vulnerable to future statutory change. If at some future date the Legislature decided to increase the amount of leave to attend a PBA convention, the Borough would be insulated from such change by virtue of this contractual requirement. Likewise, if the Legislature should decide to reduce such leave, the Union would be protected. Thus, I conclude, this entitlement should be anchored in the Collective Bargaining Agreement itself, subject to change through the collective bargaining process. Accordingly, the Union's proposal is granted.

#### **5. Scheduling**

The parties shall comply with the provisions of their sidebar agreement concerning scheduling.

The parties have indicated that they signed a sidebar agreement with respect to the issue of scheduling. Thus, this item is awarded.

In sum, I conclude, the Award represents a balancing of the interests of the Borough, its residents and taxpayers and its Police Officers. I believe these findings are warranted by all the evidence presented. Accordingly, the Award is to be implemented in conformity with my determination herein. It is so ordered.

**AWARD**

1. Term

The Term of the Award shall be three (3) years, January 1, 2002 through December 31, 2004.

2. Salary Increases:

Effective January 1, 2002	4.00%
Effective January 1, 2003	4.25%
Effective January 1, 2004	3.75%

3. Dental Plan

Effective February 1, 2004, or as soon thereafter as practicable, bargaining unit members shall be eligible for dental insurance in the Delta Dental Premier Program, with a maximum of \$1,500.00 annually and a waiver of the deductible for preventive and diagnostic services. The Borough shall pay the full cost of the premium for employees. The Borough shall pay 75% of the cost of the premium for the spouse or other dependents of the employee, should the employee request said coverage; the employee shall pay the remaining 25% of spouse/dependent coverage.

4. Convention Leave

Leave of Absence with pay shall be given to duly authorized representatives of the PBA to attend any State or National Convention of that organization, provided, however, that no more than ten (10%) per cent of the bargaining unit shall be permitted such leave of absence with pay except no less than two (2) and no more than ten (10) authorized representatives shall be entitled to such leave. This paid leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention provided that such leave shall be for no more than seven (7) days. Certification of attendance at the convention shall, upon request, be submitted by the representatives so attending.



5. Scheduling

The parties shall comply with the provisions of their sidebar agreement concerning scheduling.

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

DATED: January 27, 2004 Howard C. Edelman  
HOWARD C. EDELMAN, ESQ., ARBITRATOR

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

On this 27<sup>th</sup> day of January 2004, before me personally came and appeared Howard C. Edelman to me known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

MARY HALBERSTADT  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01H6101768  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES NOVEMBER 17, 2007

Mary Halberstadt  
NOTARY PUBLIC