

NASSAU COUNTY PUBLIC EMPLOYMENT RELATIONS BOARD

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 In the Matter of the Impasse :
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 between :
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 Nassau County : O P I N I O N
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 and : a n d
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 Nassau County Superior Officers Association : A W A R D
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X

FINAL AND BINDING OPINION AND AWARD
 OF TRIPARTITE PUBLIC ARBITRATION PANEL
 PURSUANT TO SECTION 209.4 OF
 ARTICLE 14 OF THE CIVIL SERVICE LAW

The Public Arbitration Panel members are:

- PUBLIC PANEL MEMBER AND CHAIRMAN: Professor Theodore H. Lang
 Baruch College
 The City University
 17 Lexington Avenue
 New York, N. Y. 10010
- EMPLOYER PANEL MEMBER: Honorable Bernard J. O'Reilly, Deputy Commissioner, Nassau County Department of Labor
- EMPLOYEE ORGANIZATION PANEL MEMBER: Sergeant William Pattison, President, Superior Officers Association

Appearances:

For the County: Edward S. McCabe, Esq.
 Nassau County Attorney
 by Peter Bee, Esq.,
 Deputy County Attorney

Vito Competiello,
 Negotiator

and others.

For the Association:

Jack B. Solerwitz, Esq., Attorney

Michael Peco, Second Vice President
of the Association

Leslie R. Andretta, Secretary of the
Association

The Nassau County Public Employment Relations Board (hereinafter, Board) on or about March 16, 1978, invoked the provisions of Article 14 of the Civil Service Law, Section 209.4 and designated the undersigned as the Public Arbitration Panel (hereinafter, the Panel) for the purpose of making a just and reasonable determination of this impasse. This Opinion and Award were prepared by the Public Panel Member and Chairman of the Panel, Professor Theodore H. Lang of Baruch College.

1. HISTORY OF THE IMPASSE

This impasse exists between Nassau County (hereinafter, County) and the Nassau County Superior Officers Association (hereinafter, Association), as bargaining agent for all superior officers of the Nassau County Police Department (hereinafter, Department) from the rank of Sergeant through the rank of Detective Captain. The contract year for the parties herein runs from January 1, 1977 through December 31, 1977. The prior contract expired with no agreement having been reached on a new contract.

Hearings were conducted by the Panel on April 6, 8, 14, 20 and 26 and May 5, 11 and 29, 1978 at which the County and the Association had ample and full opportunity to present exhibits and testimony. There was an official transcript of the hearings. There were three joint exhibits, 17 Association exhibits and 16 County exhibits. Some of the exhibits consisted of multiple documents. The Association called eight witnesses and the County three.

The Panel met in private session to discuss this arbitration on March 20, June 7, June 16 and July 13.

In issuing this award the Panel has carefully reviewed the stenographic record and all other evidence. The Panel also gave serious consideration, in addition to any other relevant factors, to the following:

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

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

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

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

2. OPEN ISSUES

While, at the initial executive session of the Panel, both parties had a number of open items, the County withdrew its proposals (Tr. 4) and by stipulation (Ex. J3) the parties settled or withdrew all the Association's open items except the matters of duration of agreement and salary, which, therefore, are the sole items before this Panel.

3. TERM OF AGREEMENT

The formal demand of the Association in this regard is open-ended. Under Civil Service Law, Article 14, § 209, paragraph 4 (vi), the Panel may not make an award for a longer term than two years. In the course of the hearing, the Association indicated its interest in a two year agreement (Tr. 163). At an executive meeting of the Panel, Commissioner O'Reilly, on behalf of the County, proposed a two year duration. It is now mid-year 1978. The commencement date of the Agreement resulting from this award is January 1, 1977. A one year agreement will cover the period from

January 1 to December 31, 1977 which is now six months past, and would make no sense. A two year agreement will cover a period from January 1, 1977 through December 31, 1978 and is, on its face, the better choice. Furthermore, the agreement for the subordinate uniformed ranks in the Police Department of Nassau County (hereinafter, the Department) expires December 31, 1978.

Accordingly, it is our Award that the term of the agreement be for the period from January 1, 1977 through December 31, 1978.

4. SALARIES

Positions and Contentions of the Parties.

All salaries listed herein are basic maximum salaries, excluding longevity pay, holiday pay, overtime pay, if any, uniform allowances and other fringes.

The latest formal salary position of the Association (Ex. J2, Demand No. 11) is for a one year increase in salaries (see Table 1 below).

Table 1. Association Demand for One Year Contract
Effective January 1, 1977

<u>Rank</u>	<u>From</u>	<u>To</u>	<u>Amount of Increase</u>
* Sergeant	\$19,956	\$24,945	\$4,989
* Lieutenant	\$22,431	\$28,039	\$5,608
* Captain	\$24,688	\$30,860	\$6,172

* The \$1,000 of additional compensation to a member who has received a "Detective" designation remains unchanged.

The latest formal position of the County, presented by Commissioner O'Reilly in an executive meeting of the Panel, is for a two year agreement providing flat semi-annual increases, the same for all three ranks (see Table 2 on page 7).

Thus, the County would stagger the increases over a two year period, and would grant a flat dollar amount to all unit members regardless of rank.

Table 3 (on page 8) compares the final positions of the parties on salary.

Table 2. County Salary Proposal for Two Year Contract

Rank	<u>12/31/76</u> Salary	<u>1/1/77</u> Increase--to Salary	<u>7/1/77</u> Increase--to Salary	<u>1/1/78</u> Increase--to Salary	<u>7/1/78</u> Increase--to Salary	Total Increase				
* Sergeant	\$19,956	\$684	\$20,640	\$683	\$21,323	\$672	\$21,995	\$672	\$22,667	\$2,711
* Lieutenant	\$22,431	\$684	\$23,115	\$683	\$23,798	\$672	\$24,470	\$672	\$25,142	\$2,711
* Captain	\$24,688	\$684	\$25,372	\$683	\$26,055	\$672	\$26,727	\$672	\$27,399	\$2,711

* The \$1,000 of additional compensation to a member who has received a "Detective" designation remains unchanged.

Table 3. Comparison of County and Association Proposals

Rank	<u>Association for One Year</u>		<u>County for Two Years</u>		
	12/31/76 Salary	Total Increase	To Salary	Total Increase To Salary	
Sergeant	\$19,956	\$4,989	\$24,945	\$2,711	\$22,667
Lieutenant	\$22,431	\$5,608	\$28,039	\$2,711	\$25,142
Captain	\$24,688	\$6,172	\$30,860	\$2,711	\$27,399

The Association

In support of its position, the Association describes the duties, responsibilities, educational and experience requirements, examination requirements of Sergeants, Lieutenants and Captains, with emphasis on the supervisory responsibilities of Sergeants; and points to the high professional quality of the County Police Department; presents testimony concerning: the superiority in rank, status and authority of the Sergeant over the Detective, the historical wage difference between Sergeants and Detectives, Sergeants and Police Officers; the general practice in New York State police departments that Sergeants receive more pay than Detectives; cites the February, 1978 Arbitration Award for Police Officers and Detectives of the County which, over a three year period, from January 1, 1976 through December 31, 1978 grants Detectives a total raise of \$4,787 from \$19,585 to \$24,372; the comparison of

Sergeant's salaries in Nassau and Suffolk Counties, in New York City and in local jurisdictions in Nassau County, namely Kensington, Hempstead, Kings Point and Port Washington, demonstrating that a substantial increase in pay is justified; and the promotional salary differential between the ranks in the County, indicating that the differential between Sergeant and Detective as of December 31, 1975 is only \$371, compared to salary differentials ranging from \$1,702 to \$4,432 in other ranks.

The Association points to the fact that it became seriously disadvantaged because of the disparity in treatment it received as compared to Police Officers and Detectives for the years 1975 and 1976 (see Table 4 below).

Table 4. Comparison of Salary Treatment:
Sergeants and Detectives

Year	<u>Association</u> <u>Sergeants</u>		<u>Police Benevolent Association</u> <u>Detectives</u>	
	Increase	to Salary	Increase	to Salary
1975	8½%	\$19,956	9½%	\$19,585
1976	None	\$19,956	\$1,610	\$21,205

In regard to 1975, the Association points to a series of events in which the County Executive, Ralph Caso, (Tr. 607, 608) ordered an equitable pay adjustment, approximating 1%,

to be made to Sergeants, Lieutenants and Captains; but this was not effectuated because of a ruling by the then Nassau County Attorney that such an adjustment would be illegal. In regard to 1976, the Association claims that it cooperated with the County in accepting a "salary freeze," that it had an understanding with the County that it would be protected against a situation where others got increases for 1976; and presents a letter of February 11, 1976 (Ex. A 15) from Thomas G. De Vivo, Acting County Executive, to Sergeant Robert Burdewick, then President of the Association, reading as follows:

This will confirm our conversation of Thursday, February 5 at which time I advised you that in the event any of the other employee bargaining units should secure a wage increase for calendar year 1976, we would give you the opportunity to sit down and talk about this matter.

This alleged "promise" was never honored.

The Association points to the highly disturbing fact that, as a result of the 1976 raise, the subordinate class, Detectives, received retroactively for 1976, salaries in excess of the supervisory class, Sergeants; and that, therefore, Sergeants and higher officers suffered financial losses which cannot be retrieved, all resulting from their cooperation with the County, and the unwillingness or inability of the County to make changes in the 1975-1976 Association contract with the County.

The Association argues the gross inequity of present salary relationships both internally and externally and cites the traumatic effect on the morale of Sergeants and higher officers, who are key to the effectiveness of public safety in the County, which, at present, pending adjustment of salaries of the officers, would require a Detective promoted to Sergeant to take a cut in pay from over \$24,372 to \$19,956 or a cut of \$4,416, which is detrimental to the public and their welfare.

In regard to ability to pay, the Association relies largely on the testimony of Horace Z. Kramer who gave testimony at a hearing conducted in April and May, 1977 before Thomas F. Carey, Fact Finder "In the Matter of Fact Finding in the Impasse between the Patrolmen's Benevolent Association and the County of Nassau" (Ex. A 16). On page 28 of Volume I of the Transcript of the said hearing, which has been incorporated into this hearing by stipulation of the parties, Mr. Kramer summarizes as follows:

It is my considered opinion that Nassau County has a strong fiscal position and could easily afford reasonable salary increases for its public employees including police officers. It is also my opinion that the average Nassau County taxpayer could easily afford any additional tax increases if needed to support these pay increases.

Furthermore, at the time of hearing, the Moody's rating of the County's bonds was "A", whereas as late as April 25, 1978 the County has regained and then retained the Moody rating of "A-1" (Ex. A 17), which means it is in better financial shape than at the time of Mr. Kramer's testimony. Yet now, according to Budget Director Richard Camp's testimony, the County is only taxing \$232,000,000 of a maximum taxing power of \$401,000,000.

In summation for the Association, Sergeant Peco stated in conclusion:

Sir, we have shown here during these hearings, to the point of being redundant, that the sergeant works efficiently. This police department equates to that of the sergeant. His professionalism depends not only on his training and experience but, also, on his morale.

Gentlemen, his morale is at rock bottom and can anyone doubt that with the figures we have presented here.

We ask you to take a stand for what is right and to disregard the pleadings of a few dissidents who want the police to revert to the days of the roundsman.

Gentlemen, this wrong must be corrected, and time is of the essence. You have the best police department in the country right here. Please don't degrade it. Thank you.

The County

In support of its position, the County presents evidence that the Sergeants, Lieutenants and Captains receive fringes raising their base salaries significantly (Ex. E 1, 3, 4, 5 and 6), greater fringes in fact than the civilian employees of the County; health insurance rates are high and increasing (Ex. E 2); comparisons of rates of Detectives, Sergeants, Lieutenants and Captains in New York City, Suffolk County and Nassau County (Ex. E 7 and 9 to 15) do not justify the kind of raise requested by the Association; the historical salary differential between Sergeant and Detective salaries between

1959 and 1968 averages at 1.5% of Sergeant's salary or approximately \$128, and from 1969 to 1974 averages 2.1% or approximately \$342 and even less for 1975 and 1976, much less than the unreasonable Association demand of a \$2,525 differential (Ex. 8 c); the Association's demand is also unreasonable because it results in a differential for Sergeant over Police Officer of \$5,621, which is a far cry from the historical differential ranging from \$900 in 1960 to a maximum of \$3,082 in 1975 (Ex. E 8 b); and the Consumer Price Index rose only 6.7% from January, 1975 to January, 1976, and 4.5% from January, 1976 to January, 1977, and that salary increases should not exceed these figures.

The County argues that the Panel should not tie the Award in these proceedings to the February, 1978 Policemen's Benevolent Association Award covering the three year period from January 1, 1976 through December 31, 1978; that Detectives are carefully selected for their technical knowledge and skills; that Detectives exercise considerable independent judgment justifying their rates of pay as compared to Sergeants; that Detectives have their own separate chain of command; that the comparison with the Police Department of Kensington is ludicrous in that Kensington has one Sergeant and five or six Police Officers; neither are the other local jurisdictions cited comparable, namely Great Neck, Hempstead and Port Washington; that many Association unit members are

on special details with a minimization of police responsibility; and that compared with police departments throughout New York State, Nassau Sergeants are well paid.

In regard to ability to pay, the County indicates that it has the ability to pay a fair and reasonable increase but not an excessive increase; it is stated that the County's cash position is difficult at present; certain warnings are pointed out as possibly creating problems, namely the 860 Executive Towers Case (a Court of Appeals decision) relating to over-assessment of commercial properties (Tr. 862); the County's responsibility for uncollected school taxes (Tr. 862), the Levittown Case contesting the constitutionality of property tax on the schools (Tr. 863-864). The County also points to the fact that the Kramer testimony was given in April or May, 1977 whereas here we are fixing salaries for 1977 and 1978, and to Mr. Kramer's testimony (Ex. A 16, p. 149), "Statistics may develop that out of four hundred thousand property owners in Nassau County, four hundred or five hundred may have had their houses foreclosed on them." Also cited is Mr. Kramer's judgment (Ex. A 16, p. 157) that "...salaries should reflect the cost of living increases so that...spendable income is no less than it was the previous year..." to justify limiting the Award to the Consumer Price Index increases cited above.

In summation, Mr. Bee stated for the County (Tr. 1167-1168):

With that, Dr. Lang and members of the panel, I conclude, because I feel that, in reviewing the evidence of the SOA, you will find a lack of persuasiveness in their case to show any reason whatsoever for the kind of increase they have demanded; and in reviewing the evidence of the County, you will find a very clear pattern, over the years, of wage differentials between uniform sergeants, patrol detail detectives, patrolman and amongst the various police jurisdictions that are comparable to the County of Nassau; that that evidence shows nothing of the kind of increase which has been asked for by the SOA in these proceedings.

Findings

It will be helpful before approaching a discussion of this matter and a decision on an Award, to make certain useful findings.

1. There is no question about the ability of Nassau County to pay just and reasonable increases to Sergeants, Lieutenants and Captains.

Thus, Mr. Bee stated (Tr. 807), "We do intend ...to offer evidence as to the fiscal state of the County on the theory that the County has the ability to pay reasonable salary increases. It is up to this Panel to determine what is

reasonable." But (Tr. 803), "....(we) are contesting the ability to pay exorbitant pay increases." And Mr. Camp, the County's Budget Director, stated (Tr. 934), "I am not arguing that these men don't deserve a raise; they do deserve a raise." It is noted that since the Kramer testimony and the Patrolmen's Benevolent Association Award the County's credit rating by Moody moved up from "A" to "A-1". Mr. Camp also testified to the fact that the County still had substantial taxing power on real estate unused. Although Mr. Camp pointed to some temporary problems, he testified, in agreement with Mr. Kramer, (Tr. 871), "This County is in good financial shape," and agreed that public employees are due a reasonable salary adjustment. Further, in regard to the year 1978, Mr. Camp testified (Tr. 930) that the County could issue up to \$6,000,000 in budget notes on account of deficiencies in appropriations, that the problem this year is not on the expenditure side, namely spending over budgeted appropriate, stating, "The levels of expenditures that we have appropriated are fairly good."

2. There is a virtual consensus that Sergeants have higher rank and greater status and authority than Detectives.

This is supported by testimony of all the Association's witnesses and by some of the County's witnesses. No witness has stated that Detectives have greater responsibility than

Sergeants. Thus, Deputy Police Commissioner Charles Spahr, the County's witness, testified to the greater responsibility of the Sergeants (Tr. 663). In response to the question by Panel Member William Pattison (Tr. 671), "....(would) you say that the ultimate responsibility of a Sergeant compared to a Detective is much greater or are they similar," Commissioner Spahr testified, "I wouldn't want to put it on a scale, but it is greater." It is clear that although the uniformed Sergeant is not the line supervisor of the Detective, under certain circumstances, the Detective takes orders directly from a uniformed Sergeant (Tr. 76, 130, 140, 647 and 649).

3. There is a virtual consensus that Sergeants, as a result of higher rank, status and authority, have traditionally received higher pay than Detectives and should continue to do so.

This is supported by testimony of the Association's witnesses and by some of the County's witnesses. No one has testified in contradiction to this relationship. Thus, Association witness Francis M. Connolly, retired full Inspector of the New York City Police Department, testified (Tr. 258), "A Police Sergeant should make more money than a Police Detective." Association witness, Captain Joseph P. Chambers of Nassau County, testified (Tr. 344 and 360) that a Ser-

geant should make more money than a Detective, and (Tr. 363) that, "....(it) should be substantial enough...as to not interfere with many of these detectives' career paths. Many of them seem to...get stuck in that detective rank who should really go on...because of the narrow difference between the two ranks." The Panel Chairman asked Mr. Competiello, ~~County~~ ^{County} witness (Tr. 1081), "Essentially, it seems to me that you have indicated that you believe that uniformed Sergeants should receive more than a Detective; is that correct?" Answer, "That is correct. I have stated that. I think what we are here (for is) to determine...the spread."

This finding is confirmed by the fact that the line of promotion is from Detective to Sergeant, by the general practice throughout the State of New York, with a few exceptions, and by the history of salary relationships in Nassau County.

4. On or about March 26, 1976, the Association entered into an agreement with the County for calendar years 1975-1976. which, because of subsequent events, particularly the Patrolmen's Benevolent Association Arbitration Award of February, 1978, proved to be financially disastrous to Sergeants, Lieutenants and Captains.

The effects of this sequence of events is apparent in the comparison of salary treatment accorded to Sergeants and Detectives in Table 4 on page 9.

For the first time in the history of salaries in Nassau County, and apparently without intent on the part of either party, Sergeants received less pay than Detectives.

5. The Association claims that an understanding existed between it and the County that it would be protected against a situation where others would get increases in 1976.

There is no firm commitment to this effect on the record. However, there is a letter of February 11, 1976 (Ex. A 15) from Acting County Executive Thomas G. De Vivo that, "...in the event any of the other bargaining units should secure a wage increase for calendar year 1976," the Association would be given "...the opportunity to sit down and talk about this matter." There is also the testimony, uncontroverted, of a putative effort by the County, apparently early in 1977 after the 1975 Patrolmen's Benevolent Association salary determination, to adjust the 1975 salary of the Association members by an additional 1%. For Sergeants, 1% of the 1974 rate of \$18,349 would be \$183. The 1975 differential between Sergeants and Detectives would then become \$371 plus \$183 or \$554. In this connection, Sergeant Peco quoted Mr. Caso as saying, when told by his associates that the 1975-76 Agreement was firm, "Yes, I understand that it is, but I do have a moral obligation to you people, a moral obligation because you

had taken a freeze from the County. I will not punish the SOA." However, this effort was aborted by an Opinion of the then County Attorney. In explanation of the sequence of events, Mr. Bee, Counsel for the County, stated:

Dr. Lang and members of the panel, there has now been testimony that there was an executed collective bargaining agreement for the years '75 and '76. Further testimony that subsequently there were certain oral promises or oral directions or oral indications that some kind of an additional compensation would be paid.

The office of the County Attorney took the position, and takes the position, that to give additional compensation for services, which have already been rendered, constitutes an unconstitutional gift of funds, and accordingly the office of the County Attorney gave and gives the legal advice that such a retroactive wage increase could not be paid, which explains the otherwise questionable record indicating that some kind of assurance was given and then not delivered.

. . . .

By way of explanation of that opinion, the County, as a municipal corporation, is prevented from voluntarily handing over more money than it is under an obligation to pay, since there is a prohibition against the gift of County funds in the New York State Constitution. We did not reach that opinion, the issue of whether or not an enforceable arbitration award could direct a retroactive increase in salary or whether, in the instance where there had been prior agreement, that an incidentally arrived at wage increase would be retroactively applied would constitute a valid payment of moneys.

6. For the foregoing reasons, no adjustments of 1975 and 1976 rates for Sergeants, Lieutenants and Captains could be made.

7. The letter from the Acting County Executive, Mr. De Vivo, the testimony concerning the meeting of the Association with their County Executive, Mr. Caso, and the County Attorney's opinion as set forth by Mr. Bee, taken together, lead to a finding that the Association and its members were unintentionally misled by the County and suffered a financial loss for 1975 and 1976, which is not retrievable.

8. Internal to the Department, the key comparison is between Sergeant and Detective rates. An historical comparison of Sergeant and Detective rates for the period from December 31, 1974 to date indicates that substantial increases are unavoidable if we are to restore a reasonable differential between these ranks (see Table 5 below).

Table 5. Historical Comparison of Base Maximum Salaries of Nassau County Detectives and Sergeants

Date	Detective	Sergeant	Difference-Sgt. Rate minus Det. Rate
12/31/74	\$17,816	\$18,349	\$463
1/1/75	\$19,585	\$19,956	\$371
7/1/75	\$19,585	\$19,956	\$371
1/1/76	\$20,395	\$19,956	(\$439)
7/1/76	\$21,205	\$19,956	(\$1,249)
1/1/77	\$22,015	N.A.	N.A.
7/1/77	\$22,825	N.A.	N.A.
1/1/78	\$23,635	N.A.	N.A.
7/1/78	\$24,372	N.A.	N.A.

Notes:

N.A. - Salary rate to be determined by this Award.

() - Negative differential.

9. External to the Department, the key comparisons are with Suffolk County and New York City.

Both parties cite these comparisons frequently. Comparisons with police departments in towns and villages within Nassau County and elsewhere in the State are of less value.

10. There is conflicting testimony concerning salaries paid by New York City, and there are conflicts between the testimony and the latest New York City Contract (Ex. E 11) for Sergeants which challenge the validity of these figures.

Thus, in Exhibit A 9 the Association gives a figure of \$24,035, probably for December 31, 1976. The County gives a salary of \$22,675 plus a Cost-of-Living Adjustment (hereinafter, COLA) (not included in base pay) of \$441 which totals \$23,116 for January 1, 1978 to June 30, 1978. A study of the contract between the Sergeants' Benevolent Association and the City of New York for the period July 1, 1976 to June 30, 1978, indicates a base pay for Sergeants at maximum of \$22,675, plus an "old COLA" of \$441, plus additional "new COLA" * of approximately

* Page 10 of the said Agreement (Exhibit E 11) defines the "new COLA" for the period from April 1, 1978 to June 30, 1978 as follows:

(d) If the Index (Editor's Note: Consumer Price Index for Urban Wage Earners and Clerical Workers, New York, N. Y., Northeastern New Jersey, Base Year 1967 = 100) published for February, 1978 exceeds by more than four-tenths (0.4) of a point the Index for March, 1976 the employer shall pay, effective from April 1, 1978 to June 30, 1978 a per annum cost-of-living adjustment consisting of the product of multiplying twenty-one dollars (\$21) times each full four-tenths of a point increase in the Index.

(e) An additional amount representing the difference between the amounts resulting from the above calculations and the amount that would result if the rate were twenty-one dollars (\$21) per annum for each full three-tenths (0.3) of a point increase in the Consumer Price Index is deferred.

\$900, plus a deferred "new COLA" of approximately \$300. Ignoring the deferred COLA, the salary becomes \$22,675 plus \$441, plus \$900, or approximately \$24,016 from April 1, 1978 through June 30, 1978. For January 1, 1978 the total is \$22,675, plus \$441 old COLA, plus \$699 new COLA, or a total of \$23,815.

11. Table 6 below (page 24) is a comparison of base salaries of Sergeants, Lieutenants and Captains in Suffolk County, New York City and Nassau County.

This table demonstrates that substantial increases must be granted to Sergeants, Lieutenants and Captains if they are to receive a just and reasonable determination of this dispute with the County.

12. Although the salaries for the Suffolk County Sergeants and higher police officers have not yet been fixed for 1978, it is noted that Detectives in Suffolk County received a salary increase of \$926 on January 1, 1978 and another of \$926 on July 1, 1978.

13. It is in the interests and the welfare of the public that this dispute be resolved; that a reasonable differential be restored between salaries of Sergeants and Detectives; and

Table 6. Comparison of Base Maximum Salaries in Suffolk County, Nassau County and New York City for Sergeants, Lieutenants and Captains--December 31, 1974 - December 31, 1978

<u>Salary Date</u>	<u>Sergeants</u>			<u>Lieutenants</u>			<u>Captains</u>		
	<u>Suffolk</u>	<u>Nassau</u>	<u>N.Y.C.</u>	<u>Suffolk</u>	<u>Nassau</u>	<u>N.Y.C.</u>	<u>Suffolk</u>	<u>Nassau</u>	<u>N.Y.C.</u>
12/31/74	\$18,349	\$18,349	\$21,325	\$20,720	\$20,720	\$24,525	\$23,091	\$22,744	\$32,717
1/1/75	\$20,422	\$19,956	\$21,325	\$23,346	\$22,431	\$24,525	\$25,489	\$24,688	\$32,717
7/1/75	\$20,422	\$19,956	*\$22,675 (23,116)	\$23,346	\$22,431	\$26,175	\$25,489	\$24,688	\$34,392
1/1/76	\$20,922	\$19,956	*\$22,675 (23,116)	\$23,846	\$22,431	\$26,175	\$25,989	\$24,688	\$34,392
7/1/76	\$21,822	\$19,956	*\$22,675 (23,116)	\$24,746	\$22,431	\$26,175	\$26,889	\$24,688	\$34,392
1/1/77	\$22,422	N.A.	*\$22,675 (23,305)	\$25,446	N.A.	\$26,175	\$27,689	N.A.	\$34,392
7/1/77	\$23,222	N.A.	*\$22,675 (23,557)	\$26,246	N.A.	\$26,175	\$28,489	N.A.	\$34,392
1/1/78	N.A.	N.A.	*\$22,675 ** (23,815)	N.A.	N.A.	\$26,175	N.A.	N.A.	\$34,392
7/1/78	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.

NOTES:

* For New York City parenthetic salaries for Sergeants include old and new COLA's but exclude "deferred" COLA. However, payment of new COLA money is conditional on "independently measured savings or other revenues, and in accordance with the general wage and salaries policies issued by the Emergency Financial Control Board." No testimony was presented as to whether or not new COLA was, in fact, paid. Applicability of the COLA's to Lieutenant and Captain salaries not established in the evidence.

** On April 1, 1978, the new COLA is increased, and the total salary becomes \$24,016.
N.A. Salaries for these dates are not available because contract not yet settled.

that the County and the Sergeants, Lieutenants and Captains receive a just and reasonable settlement of this dispute; and that they perceive this Award as being just and reasonable.

14. The record is replete with testimony concerning the peculiarities of police supervisory and police command work, particularly educational qualifications, mental qualifications and job training and skills, which, together with internal and external comparisons, justify substantial raises for these personnel.

Discussion and Award

It has been determined that the Agreement resulting from this Award be for a two year period commencing January 1, 1977.

Let us test the salary proposals of the parties by internal and external comparisons.

The Association demands are indicated on page 6 of this Opinion. If granted, as of January 1, 1977, Nassau Sergeants would receive \$24,945 as compared to Suffolk Sergeants at \$22,422, and as compared to \$21,205 for Detectives, or a \$3,740 differential. Similarly, Lieutenants would receive \$28,039 compared to Suffolk Lieutenants at \$25,446 and Captains

\$30,860 compared to Suffolk Captains at \$27,689. These demands are ridiculously high, and the case made by the County against them is sustained.

In its turn, the County offers increases (see page 7 of Opinion). If granted, on January 1, 1977 Sergeants would receive \$20,640 as compared to \$22,015 for Detectives, or \$1,375 less, and as compared to Suffolk Sergeants at \$22,422. Lieutenants on January 1, 1977 would receive \$23,115 compared to Suffolk's at \$24,861 and Captains \$25,372 compared to Suffolk's at \$27,118. From this already untenable salary position, over the years 1977 and 1978, the relative salary positions of Nassau superior officers would worsen with each proposed raise. The County's proposed raises would not constitute a just and reasonable settlement of the issue under dispute. The Association's arguments against the County's proposals are sustained.

If one inserts the salary rates proposed by the parties in Tables 2 and 3 into Tables 5 and 6, the unjustness and unreasonableness of the rates proposed by both parties becomes evident.

The proposals of both parties having been rejected by the Panel, it must address the structuring of a just and reasonable Award. In the making of this Award, no reliance

is placed on New York City rates, which are not reliably established in the Record for reasons cited above.

As of January 1, 1977, Sergeants were still receiving the old January 1, 1975 rate of \$19,956; Detectives received \$22,015. Merely to bring Sergeants up to the Detective salary would require a \$2,059 raise. Minimum decency, much less justice and reasonableness, requires that as soon as legally permissible, or effective January 1, 1977, at least the differential in existence during 1975 be restored. This would require an increase of \$2,430, effective January 1, 1977. Such an increase would bring Nassau Sergeants to within \$36 of the January 1, 1977 salary earned by Suffolk Sergeants, but it would still be significantly below the salaries of New York City Sergeants. Such a large increase of \$2,430 would still leave Sergeants short the \$183 increase promised them by then County Executive Caso for 1975; and, while they would catch up on the increase granted to Detectives effective January 1, 1976 by the February, 1978 Award, it would not be retroactive to January 1, 1976, but merely to January 1, 1977, so that Sergeants, as distinct from Detectives, will not receive any back pay for the 1976 year. Thus, because of the extremely poor relative rates of pay for these titles in the County, an increase of 6% or 6½%, normal by other standards for government employees in these times, is clearly

insufficient to solve the salary problem in the County. The \$2,430 increase, Draconian as it may appear, will be just sufficient for this purpose.

Nevertheless, although fully justified and reasonable, this \$2,430 increase is a costly wage increase. It is noted that a similar increase for Lieutenants and Captains will maintain unchanged the sizable differentials between Lieutenants and Sergeants and between Captains and Lieutenants. Also, it will bring these ranks reasonably close to similar ranks in Suffolk County. Valid comparisons to New York City in these ranks cannot be made because the contract for these ranks was not made available in the Record; and the existence of COLA's, while probable, is not established in the Record.

Similarly, on July 1, 1977, Detectives received an \$810 increase. In Suffolk County, Sergeants received an \$800 increase. For Nassau Sergeants, an \$810 increase is easily justified. Because of the fiscal impact of the 1977 increases here discussed, an increase in the salary differential between Sergeants and Detectives above \$371 could hardly be justified. Neither can larger increases be justified for the higher ranks for the same reason.

Mr. Camp, County Budget Director, testified that the Patrolmen's Benevolent Association Award cost the County 3×10^6 above moneys budgeted in 1977, where enough was

provided for a 6½% increase. The total cash cost in 1977 to provide 484 superior officers with a \$2,430 raise on January 1, 1977, is \$1,176,120; and to provide \$810 for six months is \$196,020, or a total expenditure of \$1,372,140. But 6½% of the 1976 total expenditure (\$10,175,468) for these three ranks is \$661,405. Thus, the "unanticipated" expenditure in 1977 on account of these employees is \$710,735, which, insofar as the County is concerned, compares favorably with the \$3,000,000 expenditure on behalf of Police Officers and Detectives. This adds to the cash problem of the County, but not unreasonably, if justice is to be done to these worthy employees who have not received a change in pay since January 1, 1975.

In regard to 1978, it is noted that Detectives received \$810 on January 1, 1978 and \$737 on July 1, 1978. Detectives in Suffolk County received \$926 on January 1, 1978 and \$926 on July 1, 1978. Salaries of Suffolk Sergeants and higher officers are now being reviewed by an arbitration panel under Article 14, § 209 of the Civil Service Law; it is reasonable to anticipate a comparable increase for Sergeants and at least the same for higher officers in Suffolk County. Also, in 1978, the first steps should be taken to establish a reasonable differential between Nassau Detectives and Sergeants.

Historically, since the onset of collective bargaining in 1969, the most common differential, in statistical terms, the mode, and it happens also to be the median, is precisely 2.5% of Sergeants' salary. This is not overly generous and should be restored. This can be done by granting Nassau Sergeants a \$900 increase retroactive to January 1, 1978 and a \$900 increase retroactive to July 1, 1978. This is justified by comparison with anticipated increases in Suffolk County. New York City is sui generis in its fiscal problems, and data is unclear.

The same increases are uniformly justified for Lieutenants and Captains.

As to cost, the new money cost for these: \$900 for one year and another \$900 for six months for 484 officers, is \$653,400, which is within the budget allotment for a 6% increase for superior officers. There will be a carryover cost in 1978 of the 1977 raises. This is similar to the carryover costs of the Patrolmen's Benevolent Association settlement and proportionate to it. The County has adequate flexibility to implement this Award within a one billion dollar total County budget, and with the ability to issue budget notes and to budget for it in the future. In any event, this obligation is a direct result of internal comparisons

and external comparisons required by the Law. To give these employees less would be unjust and unreasonable.

The comparison chart of base maximum salaries of Sergeants and Detectives in Nassau County (Table 5 above) is here repeated (in Table 7 below) incorporating therein, underlined, the new rates. Table 7 demonstrates the reasonableness of the new rates.

Table 7. Comparison of Base Maximum Salaries: Nassau County Detectives and Sergeants (with New Recommended Rates for Sergeants Underlined)

Date	Detective	Sergeant	Difference-Sgt. Rate minus Det. Rate
12/31/74	\$17,816	\$18,349	\$463
1/1/75	\$19,585	\$19,956	\$371
7/1/75	\$19,585	\$19,956	\$371
1/1/76	\$20,395	\$19,956	(\$439)
7/7/76	\$21,205	\$19,956	(\$1,249)
1/1/77	\$22,015	\$22,386	\$371
7/1/77	\$22,825	<u>\$23,196</u>	<u>\$371</u>
1/1/78	\$23,635	<u>\$24,096</u>	<u>\$461</u>
7/1/78	\$24,372	<u>\$24,996</u>	<u>\$624</u>

The Comparison of Basic Maximum Salaries in Suffolk County, Nassau County and New York City for Sergeants, Lieutenants and Captains (Table 6 above) incorporating therein, underlined, the new rates and demonstrating the reasonableness of the new rates is shown as Table 8 on page 32.

Accordingly, taking into consideration all the afore-said relevant criteria prescribed in the Law, and requirements essential to the public interest and welfare and well within

Table 8. Comparison of Base Maximum Salaries in Suffolk County, Nassau County and New York City for Sergeants, Lieutenants and Captains--December 31, 1974-December 31, 1978 and Incorporating (Underlined) the New Rates

<u>Salary Date</u>	<u>Sergeants</u>			<u>Lieutenants</u>			<u>Captains</u>		
	Suffolk	Nassau	N.Y.C.	Suffolk	Nassau	N.Y.C.	Suffolk	Nassau	N.Y.C.
12/31/74	\$18,349	\$18,349	\$21,325	\$20,720	\$20,720	\$24,525	\$23,091	\$22,744	\$32,717
1/1/75	\$20,422	\$19,956	\$21,325	\$23,346	\$22,431	\$24,525	\$25,489	\$24,688	\$32,717
7/1/75	\$20,422	\$19,956	*\$22,675 (23,116)	\$23,346	\$22,431	\$26,175	\$25,489	\$24,688	\$34,392
1/1/76	\$20,922	\$19,956	*\$22,675 (23,116)	\$23,846	\$22,431	\$26,175	\$25,989	\$24,688	\$34,392
7/1/76	\$21,822	\$19,956	*\$22,675 (23,116)	\$24,746	\$22,431	\$26,175	\$26,889	\$24,688	\$34,392
1/1/77	\$22,422	<u>\$22,386</u>	*\$22,675 (23,305)	\$25,446	<u>\$24,861</u>	\$26,175	\$27,689	<u>\$27,118</u>	\$34,392
7/1/77	\$23,222	<u>\$23,196</u>	*\$22,675 (23,557)	\$26,246	<u>\$25,671</u>	\$26,175	\$28,489	<u>\$27,928</u>	\$34,392
1/1/78	N.A.	<u>\$24,096</u>	*\$22,675 ** (23,815)	N.A.	<u>\$26,571</u>	\$26,175	N.A.	<u>\$28,828</u>	\$34,392
7/1/78	N.A.	<u>\$24,996</u>	N.A.	N.A.	<u>\$27,471</u>	N.A.	N.A.	<u>\$29,728</u>	N.A.

NOTES:

* For New York City parenthetic salaries for Sergeants include old and new COLA's but exclude "deferred" COLA. However, payment of new COLA money is conditional on "independently measured savings or other revenues, and in accordance with the general wage and salaries policies issued by the Emergency Financial Control Board." No testimony was presented as to whether or not new COLA was, in fact, paid. Applicability of the COLA's to Lieutenant and Captain salaries not established in the evidence.

** On April 1, 1978, the new COLA is increased, and the total salary becomes \$24,016.

N.A. Salaries for these dates are not available because contract not yet settled.

the financial ability of the County to pay, and taking into consideration the entire voluminous record, this Panel AWARDS as follows:

AWARD

1. This AWARD is for a two year period from January 1, 1977 through December 31, 1978.

2. The salary increases herein recommended are flat rates to be added to the basic salaries of Sergeants, Detective Sergeants, Lieutenants, Detective Lieutenants, Captains and Detective Captains.

3. These classes shall receive the increases on the dates indicated to the salaries indicated below:

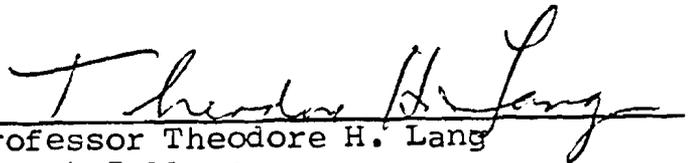
<u>Date</u>	<u>Amount of Increase</u>	<u>To Base Salary</u>		
		<u>Sergeant</u>	<u>Lieutenant</u>	<u>Captain</u>
1/1/77	\$2,430	\$22,386	\$24,861	\$27,118
7/1/77	\$810	\$23,196	\$25,671	\$27,928
1/1/78	\$900	\$24,096	\$26,571	\$28,828
7/1/78	\$900	\$24,996	\$27,471	\$29,728

4. The differentials currently paid to Detective Sergeants, Detective Lieutenants and Detective Captains shall remain unchanged.

CONCLUSION

The fixing of salaries of superior officers in the County of Nassau for 1977 and 1978 is long overdue. The period of contract and the salaries are hereby fixed by this Opinion and Award, pursuant to Article 14, § 209.4 of the Civil Service Law. Police protection is a most essential governmental function, and speedy implementation of this Award is in the best interests of the parties and the citizens of the County.

Respectfully submitted,



Professor Theodore H. Lang
Baruch College
The City University
17 Lexington Avenue
New York, N. Y. 10010

Honorable Bernard J. O'Reilly
Deputy Commissioner
Nassau County Department of Labor

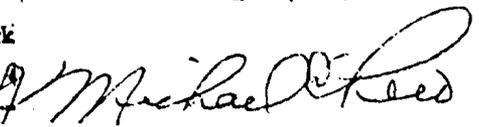


Sergeant William Pattison, President
Superior Officers Association

STATE OF N.Y.
COUNTY OF NASSAU.

ON THIS 13 DAY OF JULY 1978, CAME AND APPEARED BEFORE ME THEODORE LANG AND WILLIAM PATTISON, KNOWN TO ME TO BE THE INDIVIDUALS WHO EXECUTED THE FOREGOING INSTRUMENT, & THEY ACKNOWLEDGED TO ME THAT THEY EXECUTED THE

MICHAEL E. PECO
Notary Public, State of New York
No. 20-3048317
Qualified in Nassau County
Rehabilitation Expires March 30, 19...



NASSAU COUNTY PUBLIC EMPLOYMENT RELATIONS BOARD

----- :
In the Matter of the Impasse :
 :
between :
 :
NASSAU COUNTY : D I S S E N T I N G
 :
and : A W A R D
 :
NASSAU COUNTY SUPERIOR OFFICERS :
ASSOCIATION :
----- :

FINAL AND BINDING OPINION AND AWARD
OF TRIPARTITE PUBLIC ARBITRATION PANEL
PURSUANT TO SECTION 209.4 OF
ARTICLE 14 OF THE CIVIL SERVICE LAW

The Public Arbitration Panel Members are:

PUBLIC PANEL MEMBER AND CHAIRMAN: Professor Theodore H. Lang
Baruch College
The City University
17 Lexington Avenue
New York, N.Y. 10010

EMPLOYER PANEL MEMBER: Hon. Bernard J. O'Reilly
Deputy Commissioner
Nassau County Department
of Labor

EMPLOYEE ORGANIZATION PANEL MEMBER: Sergeant William Pattison
President
Superior Officers Assoc.

Appearances:

For the County: Edward S. McCabe, Esq.
Nassau County Attorney
by Peter Bee, Esq.,
Deputy County Attorney

Vito Competiello
Negotiator

and others

For the Association:

Jack B. Solerwitz, Esq., Attorney
Michael Peco, Second Vice President
of the Association

Leslie R. Andretta, Secretary of
th Association

I vote to dissent from the majority report because of the excessive nature of the majority recommendation.

While the Taylor Law does not mandate that the dissenting member write a minority opinion at all, the excessive nature of this award morally compels me to make known my feelings and some of the reasons for my dissent.

This panel is charged with making the delicate choice involved in balancing the legitimate needs of public employees with the legitimate needs of the public. This task is ordinarily performed (for all public employees in the County except police employees) by elected governing officials who are responsible to their constituency for the balancing of the fiscal priorities so inherently involved. However, in the case of police employees, this panel is empowered to reorder the priorities of elected officials and to raise the taxes of County citizenry. While this grant of power may be said to be unwise it is in fact the law and it is presumably designed to prevent strikes or major work stoppages. Panel members who assume to exercise these powers under the law must do so with the understanding that they usurp what is ordinarily the public employer's function and they do so without the public employer's consent. In other words, salary increases are traditionally a matter of mutual consent between the public employers and their employees. In

the case of police arbitration awards the salary increase is not a matter of mutual consent.

The County Budget Director offered uncontradicted testimony that the alleged County surpluses did not exist and that the public of Nassau County is faced with seriously escalating tax bills which can only be worsened by this Award.

Accordingly, to minimize its interference in the responsibilities of public officials and to interfere in the collective bargaining process to the least extent the panel should award salary increases of an amount that will be at an absolute minimum necessary to prevent a serious interference of public services because of the unwillingness of the employees to continue to work for a lesser amount.

Pursuant to our statutory mandate, therefore, I conclude that more weight should be given to the welfare of the public than to any other statutory criteria; that certain relevant factors such as the present tax burden of our citizenry and the growing public sentiment that the salaries of public employees are increasing at too fast a rate are more relevant to an award than are the desires of Superior Officers Association members for more money in a time of economic crises of public employers.

I would, therefore, vote to award a two-year contract providing for the following minimum increases:

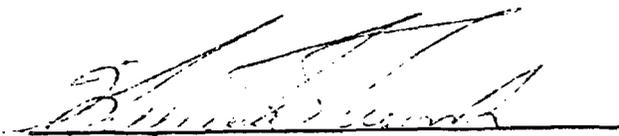
1/1/77 - \$684.00 increase for all SOA members
7/1/77 - \$683.00 increase for all SOA members
1/1/78 - \$672.00 increase for all SOA members
7/1/78 - \$672.00 increase for all SOA members

Respectfully submitted,


Bernard J. O'Reilly
Dissenting Member

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

On this 17th day of July 1978, before me personally came and appeared Bernard J. O'Reilly, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



WILLIAM HARRIS JR.
NOTARY PUBLIC, State of New York
No. 30-4656700
Qualified in Nassau County
Commission Expires March 31, 1979