

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between

County of Suffolk

and

Suffolk County Superior
Officers Association

Opinion of

Chairperson

and

Award of Panel

PERB Case No. IA 200-015

Before: Maurice C. Benewitz, Public Panel Member and Chairperson

David Greene, Public Employer Panel Member

Arthur Cliff, Employee Organization Panel Member

Appearances:

For Suffolk County: Richard K. Zuckerman, Esq., Attorney
Tara L. Eyer, Esq., Attorney

For the Association: Michael C. Axelrod, Esq., Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

By notice of September 25, 2000, Richard A. Curreri, Director of Conciliation of the New York State Public Employment Relations Board designated the above panel to hear and adjudicate an impasse between the parties concerning the terms and conditions for a collective agreement to cover the period January 1, 2000 to December 31, 2001. (A longer period can

only be considered if both parties agree. Suffolk County elected to abide by the two year compulsory maximum set by statute.)

Six hearings were held before the panel at Hauppauge, New York on December 7, 2000, January 19, March 16, March 26, April 13 and April 20, 2001. An executive session convened on June 7, 2001. The parties submitted extensive testimony and documentary exhibits. Thereafter, written briefs were presented to the panel.

This opinion is that of the chair only. The award is that of the panel members who have signed as adopting it.

Preliminary Statement

When the Taylor Law made collective bargaining available to New York's government employees, it barred any kind of withholding of services. For specific subgroups of employees in the public safety area, however, the statute (Civil Service Law, Section 209.4) provided compulsory interest arbitration. This was to assure that police and firefighter personnel, in return for the surrender of their ability to strike, would be fairly treated in the process of coming to an evaluation of their services.

The law imposes a set of criteria which the arbitration panel must consider and must discuss in its findings. Those criteria which appear in Section 209.4(v) read:

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

The criteria establish an inevitable tension between what condition a. above dictates and what condition b. requires. Parts c. and d. note further conditions which the parties embroiled in the conflict arising out of the juxtaposition of criteria a. and b. must consider in resolving their differences. In the close geographical area of Westchester, Nassau, and Suffolk and in the broader area covering the New York State troopers, the criteria have led to widely divergent results as County Exhibit 58 shows. For example, in 1999, the top steps for the ranks of sergeant, lieutenant and captain were as follows. (New York City is also on the chart, but its salaries were established pursuant to the City's collective bargaining law and arguably could have been different than the wages of groups covered by the Taylor law.)

SOA SALARIES
COMPARED TO OTHER TOP STEP
SUPERIOR OFFICERS

1999	SUFFOLK	NYS		NASSAU	WESTCHESTER	NYC
SGT.	\$83,358	\$55,410	4/1	\$ 84,273	\$71,460	\$59,299
			10/1	85,959		
LT.	92,793	67,273	4/1	92,629		68,067
			10/1	94,482		
CAP.	99,790	71,927	4/1	100,232		88,630
			10/1	102,237		

As can be seen, the pay scale of Long Island superior officers (as well as of detectives and members of the PBA) are significantly higher than those in the other jurisdictions. This reflects the findings of arbitration panels from the earliest period in which the law was applied that the Long Island counties are able to pay the higher rates and that these two counties (and some of their town and village forces) are the most appropriate comparisons to each other. As Arbitrator Howard Edelman wrote in his September 1997 award resolving the Suffolk County Superior Officers 1996 contract impasse (SOA Ex.18)

The single most comparable jurisdiction outside of Suffolk County is Nassau County. It is a contiguous County with similar demographics. Moreover, Nassau has been traditionally compared to Suffolk as the jurisdiction with the greatest commonality of relevant factors. For example, in the 1993 Suffolk PBA Award, the Arbitrator concluded:

However, I agree with the County that the size of the forces in these [Suffolk County] towns and villages makes it improper to view them as absolutely comparable.

Instead, I find that the most relevant basis for comparison is Nassau County. This is so not only because it is the only other County police force on Long Island, but because of the past bargaining history between the parties which has often used Nassau County Police as an important basis for comparison. The record evidence indicates that Nassau County and Suffolk County have historically been used, during the course of negotiations, as comparisons.

This comparison has been objectionable to county executives who have found that it has led over the years to "leapfrogging" between the counties. The level of compensation in both Suffolk and Nassau has been attributed in part to the tendency of arbitration panels to consider the Nassau-Suffolk complex and not other comparisons (which allegedly would have led to slower rates of compensation progression.)

County Executive Gaffney said as follows in his March 20, 2001 state of the County address, "We need arbitration reform. . .and we need it now."

Statutory panels are not able to resolve these difficulties. If both counties bargained and arbitrated as a unit, the alleged leapfrogging would be contained. But the governmental units (including the cities, towns and villages with separate forces) would, in the opinion of the chairperson, never agree to bargain in such a coalition. Some localities have greater ability to pay. Others have differing governing philosophies, and the like. Furthermore, if the governmental unit were, arguendo, willing to bargain as a unit, the seven or eight unions

involved (PBA, detectives, superior officers, detective investigators, and others) would almost certainly conclude that a coalition even in one county - let alone two - was not to the advantage of most of them.

It is not completely true that Nassau and Suffolk Counties each are inevitably swept along by whatever happens in all the bargaining units of the other county. As Arbitrator Edelman also found in the 1996 SOA award, once a pattern has been established in a county, the most relevant wage, condition, and benefit comparisons are comparisons to the internal county pattern and not to the wages and conditions in the neighboring county. Of course, this finding overlooks how the first contract in the pattern was set. In the Suffolk County pattern for the period beginning with January 1, 2000, the award setting the PBA wages and conditions in Suffolk was heavily influenced by wages and conditions in Nassau. The award of Arbitrator John Sands concerning the 2000-2003 PBA contract finds Nassau and the three western towns of Suffolk to be the most appropriate comparisons. The wages and benefits awarded were closely related to those received by the Nassau officers.

However, after the PBA award, the county was able to come to a bargained contract with its 40 member Detective Investigator PBA unit which, as will be seen below, mirrored all of the benefits and concessions awarded to the PBA (a union with 1868 members as of June 1, 2001). [To arrive at the DI result, the unit agreed to a lower annual wage increase than that received by the PBA. The PBA award provided for a \$10,000 lower salary for officers entering police academy which resulted in an annual saving of \$1,000,000 for the unit. The DI - as shown in a computation created for the chairman during the executive session - by accepting 3.95% in each

of four years instead of 4.6, 4.75, 4.5 and 4.5 percent for four years created a savings of \$95,200 for the first two years.]

It not only is significant that the DI PBA unit entered into this voluntarily negotiated settlement. It is equally significant that the Suffolk County entered into it. For the agreement recognized and included a necessary part of any bargain confirming to the pattern. The first two years of the PBA award established a \$2,200,000 offset - or 2% for those years. This arose from the \$10,000 reduction in entry wage. The Sands panel concluded that with this offset, the awarded amounts lay within the county's ability to pay.

Apparently, with the wage percentage concessions made by the DI unit, the county believed the settlement lay within its ability to pay. The county voluntarily accepted a settlement containing for all other items precisely the same terms and conditions as those given to the PBA.

A pattern now exists which covers a greater period than will be awarded for the SOA but which encompasses the period this award shall cover. The chairman shall find in this award that the PBA-DI Suffolk pattern is the best comparison for the analysis required by part a. of the Section 209.4 criteria. And the fact that Suffolk entered into the DI contract voluntarily is a strong indication that the pattern established lies within the county's ability to pay, a major consideration under the Section 209.4 criteria.

[The chairman did not mention another possible solution to problems for both the governmental units and their employee unions under the compulsory arbitration provisions of the Taylor Law. That possible solution is to adopt some form of "last best offer" procedure. Parties would each offer a comprehensive proposal which the statutory panel, applying the Section 209.4

criteria, would either accept in full or reject in full. But that is a solution upon which the state legislature would have to decide.]

The Proceeding

On August 4, 2000, the Suffolk County Superior Officers Association filed with the New York State Public Employment Relations board a petition for arbitration. This followed a May 8, 2000 declaration of impasse and subsequent mediation sessions (Ex. U-2). The county filed a response to the petition for compulsory arbitration on August 17, 2000 (County Exhibits 1, 2).

A subsequent county scope charge (Case No. U-2 1898) was partially settled in November, 2000,. Of major importance was an amendment of the SOA duration proposal to reflect a demand for a two (2) year award.

The union represents sergeants, detective sergeants, lieutenants, detective lieutenants, captains, deputy inspectors, inspectors, assistant chiefs and the chief.

The SOA and the county appended proposals to their petition and response petition. The chairman has concluded that except for purposes of historical record, there exists no sound reason to list and examine in detail all of these proposals. Each set has, for the most part, been placed outside the scope of a possible award by the pattern established in the Suffolk Police Benevolent Association award issued by the Sands panel and by the subsequent bargain reached between the county and the Detective Investigator PBA. The DI unit is the county's smallest police force group numbering 41 individuals on June 1, 2001. The PBA on June 1, 2001 had 1848 officers. On that date, the SOA unit had 469 filled positions.

A review of the Sands panel award shows that it was significantly influenced by data from Nassau County and the three western Suffolk towns. Thus, while the instant chairman believes that the Suffolk County police agreement pattern provides the most powerful data concerning the criteria set forth in the Taylor law, to the extent that this pattern was established by substantial consideration of what occurred in Nassau, any award based on the pattern is not hermetically sealed from the influence of neighboring areas. On the other hand, consideration of the pattern acknowledges for Suffolk, the ability-to-pay criterion (iii) since the county voluntarily entered into an agreement with the DI staff which adheres to the pattern. And the pattern addresses compensation and other income items of criterion (ii). When Suffolk County voluntarily executed the pattern bargain with the DI unit, it assured that the interest and welfare of the public had been met (iv). This was not an imposition of an arbitration panel.

The pattern set by the Sands award has the following elements as set forth in the issued document (Ex.U-2). This discussion will not consider the reasons the Sands panel selected items or justified them. That was covered in the PBA award of a panel which had the responsibility for the decision. Once that binding award was issued, the precise items ordered were adopted by the county and the DI union - with an adjustment for a monetary item which had to be handled in a different way.

1. Wages, Benefit Fund Contribution, Education Allowance and Canine Pay:

Wages, Benefit Fund contribution, Education Allowance and Canine Pay shall be increased as follows:

- | | | |
|-----|--------------------|-------|
| (a) | Effective 1/1/2000 | 4.6% |
| (b) | Effective 1/1/2001 | 4.75% |
| (c) | Effective 1/1/2002 | 4.5% |
| (d) | Effective 1/1/2003 | 4.5% |

In accordance with past practice, wage increases for each step shall be calculated based on the top step police officer's dollar increase.

2. Longevity:

Longevity shall be increased as follows:

- (a) Effective 1/1/2000, longevity payments shall be increased by fifty (\$50.00) dollars per year.
- (b) Effective 1/1/2001, longevity payments shall be increased by an additional fifty (\$50.00) dollars per year.

3. Night Differential:

Effective 1/1/2000 night differential shall be increased as follows:

- (a) Steady night differential shall be increased to twelve (12%) percent of base pay.
- (b) Two (2) tour night differential shall be increased to seven and a half (7.5%) percent of base pay.

4. Assignment Pay:

Effective 1/1/200 assignment pay shall be increased to four and one-half (4.5%) percent of base pay.

5. Clothing Allowance:

Clothing allowance shall be increased by twenty-five (\$25.00) dollars in each year of this Award.

6. Cleaning Allowance:

Cleaning allowance shall be increased by seventy-five (\$75.00) dollars in each year of this Award.

7. Starting Wages:

Effective July 1, 2000 starting wages for employees hired after that date shall be reduced ten thousand (\$10,000) below the January 1, 2000 start rate.

8. Drug and Alcohol Testing:

The title and substance of Section 40 ("Drug Testing") and Appendix B ("Substance Abuse Testing") of the parties' collective bargaining agreement should be amended to add the words, "and alcohol" after every appearance of the words, "drug" or "drugs." Appendix B's references to NIDA should also be modified to reflect NIDA's replacement by SAMHSA. The parties shall meet after execution of this Award to develop procedures to carry out the intent of this paragraph. I specifically retain jurisdiction to resolve disputes concerning this paragraph if they fail to agree within 180 days.

(A possible reopening clause, which was to become effective if the pattern established by the award was changed in later bargains, has been omitted.)

Two elements of this four year award are of particular interest. First, all of the money improvements set forth in items 1 through 6 are accompanied by a significant economic concession imposed on the PBA. In item 7, the award provides that starting wages for persons hired after July 1, 2000 shall be \$10,000 below the January 1, 2000 start rate. The parties were entirely aware that this reduction applied to the wages of the officers entering training at the police academy. Mr. Sands wrote that the PBA estimated a savings of \$3,000,000 for each class of 100 recruits (p.44). In the instant SOA proceeding, the record places the first two years of savings from the \$10,000 first year salary reduction at \$2,200,000 or two per cent of wages for the first two years.

The other significant county demand granted in the Sands award is a non-economic item which adds alcohol to drugs as an item subject to testing. The title set forth in the contract for the testing procedure also is changed.

As noted previously, a memorandum of agreement between Suffolk County and the Suffolk County Detective Investigator's PBA was executed on March 27, 2001 (Ex. County 9).

This DI contract was for the same four period as was covered by the Sands panel award for the PBA. In this agreement, wages of the DI unit are increased by 3.95% on January 1, 2000; January 1, 2001; January 1, 2002; and January 1, 2003.

Beyond the wage adjustments, the Detective Investigator unit received all of the following increases as in the PBA award or as in the prior PBA contract:

<u>Item</u>	<u>Date</u>	<u>Amount</u>	<u>Remark</u>
Longevity	1/1/00	\$250 per year	same as PBA
	1/1/01	\$300 per year	same as PBA
Night Differential	1/1/00	12%	same as PBA
Clothing Allowance	yearly	\$25 increase	same as PBA
Cleaning Allowance	yearly	\$75 increase	same as PBA
Holidays		a 13 th holiday	same as in prior PBA contract
Travel Pay for Training			same as in prior PBA contract
Benefit Fund			automatic tie to PBA amount
Hazardous Duty Pay	1/1/00	4.5%	same as PBA

In the opinion of the chairman, these two police contracts now represent the best comparative information for satisfying the Taylor Law criteria. [Furthermore, in a veto message of November 17, 2000, County Executive Gaffney wrote that it was unrealistic to expect any award substantially different than the 4.6% awarded the PBA for the year 2000 (Fennell Ex. 5).]

The Taylor Law wage and benefit criterion, therefore, is met by examination of the Suffolk County pattern. And certainly the county police and detective investigator conditions are excellent sources for satisfying the criterion concerning comparison to other groups doing similar work.

However, the highly trained superior officers cannot be compared easily to employment groups other than similar officers. The hazards of police work both for line officers and for superior officers are unique. Except for the fire fighters, the work requires physical qualifications which are not the same as for other highly placed employees of the county. And the superior officers have educational requirements which compare favorably with those of other professionals in the county government.

It is possible and necessary, however, to consider the proofs presented by both sides with regard to criterion b. of the statute:

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

Fortunately, in this proceeding the financial data were presented by informed and careful analysts. The SOA called Edward Fennell, whose resume (Ex. U-31) shows that he was previously chief fiscal officer of Cohoes, New York and that for 25 years he has consulted public sector unions on questions of government financial statement analysis.

The county financial analysis was presented by County Budget Director Ken Weiss who entered the budget office in 1974 and has been budget director since 1996 (Ex. C-10).

The analysis offered in these discussions came to different conclusions because the presenters viewed the data differently. The chairman was able to reconcile a number of these differences. And he notes that both Mr. Fennell and Mr. Weiss are agreed that Suffolk County has the ability to pay for fair and reasonable contract improvements to the SOA unit.

This testimony arises amid a particular fund and taxing structure. The Suffolk County Police Department provides most of its services in the five western towns of the county (excluding certain villages with their own departments). Some assistance and coverage, as for instance in headquarters, is provided to the five eastern towns. Among the taxing funds received by the county, the general fund of \$1.45 billion in 2001 provides services, including some headquarter services, to all county residents. The police district fund of \$374 million covers most police costs and is financed mainly by property taxes from the covered towns plus 1/4 percent of the sales tax. (See Exhibit C-13 and 15.) [According to the county, if the sales tax money was removed, police district taxes would have to increase more than 20% (Ex. C-15).]

The county presentation emphasizes unique referendum-imposed caps on expenditures and tax levies. The chairman notes that while it would be desirable to arrive at a decision which could be financed within the limits set by the county caps, the Taylor Law requires a "just and reasonable" result not only for the governmental unit but also for the employee group. If arriving at this result must lead to an award which requires a piercing of the caps, then that must be done. The expenditure cap sets a 4 percent limit of aggregate growth or a defined index, whichever is greater, on discretionary expense increases. A supermajority vote may pierce the cap.

The tax levy cap, to quote the county language (Ex. C-16),

requires that the recommended and adopted budget's discretionary tax levied for the combined General Fund and Police District not increase by more than 4% or the GDP Chain Price Index, whichever is greater.

A larger increase requires a vote of 14 of the 18 legislators.

The Fennell testimony and the documents set forth in SOA Exhibit 32 most strongly stressed the fact that Suffolk County has not used most of its constitutional tax margin. Witness Fennell also found in his examination of the county finances the presence of surpluses in various fund accounts which allegedly could be used to pay for improvements in the SOA economic package. (See Fennell Ex. 3.)

Budget Director Weiss took issue with the view that there were surpluses available to finance any award of improvements. Mr. Weiss testified that by county law, any surplus in an account could not be carried over into the next budget year but instead had to be used to decrease the property tax in that next year. Since the tax warrant which was reduced was based on expected expenditures, the reduction creates a problem for financing in the next year. If any surplus was allocated to future benefits, future tax increases would be needed.

Mr. Fennell was aware that county taxes do not represent all of the taxes paid by Suffolk County residents. Fennell Exhibit 6 shows however, that as a percentage of all taxes included those to towns and school districts, the county percentage of the total decreased from 19.1% to 15.7% between 1990 and 1999. In the same period county debt has decreased 20.1%.

To show that funds exist which can be used to finance an increase awarded by this panel,

the SOA expert witness showed that revenues have been underestimated and expenses overestimated in recent budgets.

(Several other sources of revenue discussed by this expert yield small amounts which are less regular from year to year. So the chairman shall not consider them in an analysis of Suffolk's basic ability to pay.)

Sales taxes are a major source of county finance. They represented 41.5 percent of the total in 1999 (Fennell Ex. 15). However, the amount which may be apportioned to payment for police services, as already noted, is small. The real property tax is the basic financing source for police costs.

Fennell Exhibits 16 and 17 show that only 9.4 percent of the county debt limit has been exhausted and that a very large part of the county's constitutional tax limit has been left untapped. Suffolk is 49th lowest among 58 counties in use of the tax limit. (If, however, town and school taxes were also considered, the limit would be more closely approached.)

Fennell Ex. 3 shows the growth of the surpluses, and notes that the average increase in the police district taxes has been .83% per year since 1993. Total taxes have fallen by \$10 million since 1995 and general fund taxes have fallen by two thirds since 1993.

Though the sales tax on clothing was reduced, the witness nevertheless believes that the county could meet the SOA demands.

Estimates of the cost for the major SOA demands were included in this presentation. The chairman has already determined that the wage index based on police unit salaries does not fit within the pattern established by the PBA and DI awards. there is no reason, therefore, to set forth the Fennell estimates of cost and his suggestion for meeting this indexing demand.

The expert witness's conclusions were that the county has the financial ability to meet the SOA demands. That would indicate that in this witness's opinion, Suffolk county also could meet the lesser costs arising from the pattern which has been established.

Budget Director Weiss, after describing the budget entities and financing sources, testified that the county's general fund is in a weakening condition in part because of decline in sales tax revenue. (the chairman notes that this element of the picture at least has been changed by 1/4 percent sales tax increase recently enacted. It took effect on June 1, 2001.)

The budget director noted that the 4 percent cap on the growth of the expense budget relates to the discretionary budget. The police department expense is part of the discretionary budget because the county has the power to vary the size of the department. (In the sense that an award of police department wage increases is compulsory, the arbitrator noted during the Weiss testimony, that a portion of the budget, at least is not discretionary.)

The witness stressed that the Sands award costs heavily affected the county's ability to pay (Ex. C-19, p. 45). The cost of living increased 2.3 percent over the last four years but police salaries increased by 4.91 percent and will increase further in years 2000 to 2003. Furthermore, police costs are the largest component of the county budget.

At the same time, Mr. Weiss noted decreased in sales tax and other revenue to the general fund. Actual cuts in some services at nine county health centers became necessary. Potential increases of more than 300 percent in the property tax levy were anticipated.

Mr. Weiss testified that positive fund balances are not available to pay for any salary increases awarded here. As set forth above, the surpluses must be used to reduce the next year's property tax levy, so that the resulting tax warrant would be too low to operate county

government.

The police district fund also cannot easily meet large increases in costs, the budget director stated. The real property taxes are capped. The sales tax transfer of a quarter percent could at any time be withdrawn. And the county charter requires 10.3 percent of the sales tax monies to be distributed outside of the police district.

Police district costs, largely salary and fringe benefits, have increased 63.28 percent since 1993. In this period, police district property taxes have increased more than 60 percent (T. 4/13/01, p. 169).

In the opinion of the county administration, these data show that Suffolk's ability to pay an award ordered by this panel would be limited.

The SOA notes the Weiss testimony that the portion of his property tax bill attributable to the police district is 10 percent. From this, the union draws the conclusion that any award would increase the Weiss total property tax by only a small percentage. The SOA stresses the availability of tax margin allowing a property tax increase to meet any cost increases imposed by this panel.

However, in the opinion of the chairman, this argument is not totally correct. The reason Suffolk has so much unutilized tax margin is that many of the expenses of government are borne by school districts, towns and other special districts. It really does not matter to the tax payer that the county taxes lesser amounts in Suffolk and that school districts take more. The total still must be paid.

Having said this, the chairman also notes that the state legislature was fully aware of the structure of local taxes. When it imposed compulsory arbitration for police, the state legislature

knew that police expenses would be added to those which must be paid to finance schools and other governmental functions. No limitation beyond the general ability of the county to pay was imposed. The county must meet reasonable increases in public unit wages and salaries and must do so out of revenue sources which are also used to pay for other services. But the police force cost increases must be reasonable in comparison to those for other groups performing similar, as well as for groups performing different, services; and those costs cannot exceed the county's ability to pay.

The chairman comes to the following conclusions after a review of the ability to pay presentations. The county has a great deal of room for tax increases if only the constitutional tax limit is considered. That availability is significantly narrowed when additional real property taxes borne by rate payers are added to the county tax. In recent years, there has been some decrease in business activity so that the sales tax and additional sources of revenue have diminished. This makes it more difficult to cover costs from sources of revenue other than the real property tax (which already meets 80 percent of police force costs.)

These considerations lead to the conclusion that the county would not have been able to pay without great effort increases of the size which the original SOA demands would have required. [And in the opinion of the chairman, whatever the county's debt structure may be, it is not permissible to impose increases which must be met by borrowing. Since any increases ordered here will continue year after year, such increases only can be financed out of continuing streams of income and not by debt which must be repaid.]

The original SOA demands are not realistically before the panel any longer. The comparisons of wages, hours, training and other characteristics required by the Taylor Law

criteria led to the conclusion that a pattern had been established in the Sands award. This pattern was followed when the county and detective investigators voluntarily agreed. The pattern, as the chairman previously ruled, falls within the county's ability to pay since the Sands award has been financed, and the DI contract with similar terms was adopted.

It is necessary now to consider the various aspects of the established pattern and to explain why some requested items similar to those which were awarded were not included.

The demands of the county largely were composed of requests for changes in duty charts in order to increase flexibility. One of these demands which did not appear in the Sands award has been adopted in this SOA finding. Another change which alters a supervisor's chart when a subordinate's tour is changed also is adopted.

In addition, a major change in the county's right to test for substance abuse which did appear in the Sands award and in the DI agreement has been included. The chairman does not order other chart changes requested. In general, supervisors must work the same hours (charts) as their subordinates. The county demands which are not granted appear to guarantee not only flexibility but also possible disruption.

We now turn to the pattern which has been established; to the fitting of SOA increases within that pattern; and to the reasons why a number of other demands which might be thought to be reasonable were not approved.

Finally, we shall discuss a change unique to the SOA contract which, in the area of review of discipline, will bring the SOA membership protections which are closer than in the current agreement to the rights which have been granted to members of the PBA and detective units.

The Wage Package

To receive increases of 4.6 percent effective January 1, 2000 and of 4.75 percent effective January 1, 2001, this unit would have to provide an offset equivalent to the \$2,200,000 represented by the \$10,000 reduction in academy pay set forth in the Sands award.

On June 1, 2001, the SOA had 469 members as opposed to 1848 in the PBA unit. Thus, an equivalent offset to the PBA \$2,200,000 would be somewhat greater than 25 percent of the \$2,200,000 or approximately \$550,000.

Such an offset could be provided in any number of ways. The percentage wage increase in each year could be reduced. That was the method by which the detective investigator wages were conformed to the agreed upon pattern.

Another method would be to retain the same percentage increases as provided to the PBA but to have them take effect later in the year. Though the index wage structure at the end of the two years (calendar 2000 and 2001) would be the same, the dollars received by the SOA would be less. This method of providing the offsets is important for the SOA unit since the wage relationship between unit members and their PBA subordinates shaped the way in which this union presented its initial financial demands. Furthermore, if this method of computing the offset is adopted, it is possible to combine it with certain tour changes which provide some of the flexibility requested by the county at the same time that some of the required savings can be found.

Agreed upon costing shows that if the increase of 4.6 percent is directed to take effect on April 1, 2000 (instead of January 1, 2000) and the January 1, 2001 increase remains unchanged, the savings in outlay to the county would be \$480,000. (This does not take into account savings

in wages and benefits for persons who retired between January 1 and March 30, 2000.)

Granting a request of the county to allow tour changes at premium pay for court appearances would yield a further savings of \$71,000.

These two offsets totaling \$551,000 equal the required savings fitting the SOA contract into the salary pattern adopted for the PBA and DI units. The chairman shall direct payment of salary increases to the SOA unit of 4.6 percent effective April 1, 2000 and of 4.75 percent effective January 1, 2001. He further shall order changes in Section 45(c) to allow changes in duty charts (with appropriate premium pay) for court attendance.

Other Economic Benefits

The SOA is entitled to receive the same benefit and special payment increases under the wage pattern as the other county police service units received. Except where, as in hazard pay, choices are required, the chairman shall list these items without further comment:

1. Benefit Fund: increase county contribution by 4.6 percent on January 1, 2000 and by 4.75 percent on January 1, 2001.
2. Cleaning Allowance shall be increased by \$75 effective January 1, 2000 and by another \$75 effective January 1, 2001.
3. Clothing Allowance shall be increased by \$25 effective January 1, 2000 and by another \$25 effective January 1, 2001.
4. Life Insurance contributions shall be increased by \$3,450 effective January 1, 2000 and by another \$3,500 effective January 1, 2001.
5. Longevity payments shall be increased by \$50 per year effective January 1, 2000 and by

additional \$50 per year effective January 1, 2001.

6. Night Differentials shall be increased effective January 1, 2000 as follows:
 - a) The two tour differential shall be increased to 7.5 percent of base pay.
 - b) The extraordinary night chart differential shall be increased to 12 percent of base pay.

Other Pay Changes

1. The contract sets forth compensation for the president and two officers chosen to administer the agreement. They shall receive "the highest base pay shift differential."
2. Members of the board of directors of the association shall receive "the highest base pay shift differential."
3. The agreement in Section 29(E) sets forth a stipend to be paid to ranks above detective captain as compensation for overtime. Those stipends are increased yearly and shall be as follows:
 - effective January 1, 2000: \$2,118
 - effective January 1, 2001: \$2,219
4. Section 39 H of the agreement bases the annual sergeant's stipend for canine care on the sergeant's annual pay. That stipend shall change in the 2000-2001 agreement as follows:
 - effective January 1, 2000: \$6,958 annually.
 - effective January 1, 2001: \$7,285 annually.
5. The pattern settlement set forth an assignment pay increase of 4.5 percent. Section 39 G(1) provides such pay to members of the emergency service

unit, aviation unit, and marine bureau dive team. Effective January 1, 2000 their base pay increase shall be 4.5 percent.

In the course of the hearings, data was offered to show that such assignment pay should be received by members of a number of other units including but not limited to the firearms training supervisors, arson squad, and identification officers.

The chairman has decided that the pattern assignment pay increase of 4.5 percent of base pay shall be awarded to firearms training officers effective April 1, 2000. The choice was dictated by the consideration that these supervisors are in contact with and train all members of the police department. This is not to denigrate the special and hazardous activities of other specialized units about which testimony entered.

Since it is possible that subordinates in other bargaining units may, during the life of this SOA agreement, receive assignment pay not now authorized, the chairman shall include a reopener whose sole purpose shall be to allow negotiations concerning the possible impact of such subordinate's assignment pay on the SOA unit.

6. To increase the flexibility of personnel available to the county, Section 49 A.2. (k) shall provide for three additional tours instead of for three (3) additional 10-hour tours.
7. A reopener shall be included for the sole purpose of negotiating the impact of any change of a subordinate unit's

duty chart on the SOA unit.

Other Contract Changes

1. Section 4 H. requires that superior officers charged with certain specified types of offenses must, pursuant to the Section H, be read their Miranda rights. Entitlement to a reading of Miranda rights is a United States constitutional right which provides protections superior to those which can be guaranteed by any collective bargaining agreement. Since Section 4 H. provides nothing to association members which they do not already have under law, it is duplicative and ineffective. The county asks that the provision be removed from the contract and the chairman shall so recommend.
2. Section 11 and Appendix "B" deal with drug testing and substance abuse testing. "The title and substance of Section 11 ("Drug Testing") and Appendix "B" ("Substance Abuse Testing") shall be amended to add the words "and alcohol" after every appearance of the words "drug" or "drugs." Appendix "B's" references to NIDA shall be modified to reflect NIDA's replacement by SAMHSA. The parties shall meet after execution of this Award to develop procedures to carry out the intent of this paragraph. I specifically retain jurisdiction to resolve disputes concerning this paragraph if the parties fail to agree within 90 days."

The chairman finds that the county has a right, pursuant to the same conditions under which it tests for the presence of

drugs, to test superior officers for the possibility that they are under the influence of alcohol. He shall direct the parties to negotiate such procedures and changes of contract language as will implement this process but shall retain jurisdiction to resolve disputes arising from such negotiations if the parties fail to agree within 90 days.

Discipline

At present, superior officers charged with any infractions up to and including those which may lead to separation from the service are tried and disciplined pursuant to Sections 75 and 76 of the Civil Service Law. The Police Commissioner therefore has final authority in this process subject to review by the courts.

The department cites studies which seem to show that independent arbitrators have lessened disciplines imposed by other police departments and have done so in ways which undermine departmental order.

The association notes that independent arbitrators bring to the disciplinary process the stamp not only of fairness but also of the appearance of fairness. This is of great importance to charged officers and their colleagues when rights and careers are at stake.

It is of interest that detectives in the Suffolk County department have the right to appeal proposed discharges to independent arbitrators and that members of the PBA unit may appeal all serious disciplines to arbitration. (When an officer elects to place a proposed discipline before an arbitrator, the officer is required by each of the collective bargaining contracts to waive his Civil Service Law rights to appeal. He still may seek under the procedures of the Civil Practice Law

and Rules to vacate an adverse award.)

In the course of the instant arbitration proceeding, the department did not argue that the PBA and detective procedures have led to disciplinary deficiencies in Suffolk County. That is not surprising because studies of grievance arbitration have shown that employers have significant success in disciplinary proceedings.

It would be highly inappropriate in an agency which depends upon chain of command and obedience to orders for success in its mission to undermine the control of the commanding authority. However, the chairman is confident that arbitrators understand the requirements of police departments and that arbitrators can be selected, now and in the future, who will at the same time adhere to the rules of due process for the employee and to the rights and authority of management to control the department by promulgation and enforcement of reasonable rules.

At the least, a superior officer whose continuing career is challenged by a proposal to discharge should have the same protections as the department already has afforded to members of the detective unit. The chairman shall direct that Section 10 shall be amended to provide binding arbitration and therefore the appearance as well as the fact of fairness for superior officers whom the department proposes to discharge.

The chairman revealed this decision to the parties in executive session. They directed that he set down his own name as the contract arbitrator in the revised Section 10.

AWARD

In light of the above discussion, I, the undersigned impartial chairman, having been duly appointed on September 25, 2000, and having been duly sworn, and those panel members signing as adhering to this decision, issue the following award.

1. This contract shall cover the period January 1, 2000 to December 31, 2001.
2. Salary. Amend Section 39(a). Effective 4/1/00, increase each title by 4.6%. Effective 1/1/01, increase each title by an additional 4.75%.
3. Benefit Fund. Amend Section 3(a). Effective 1/1/00, increase contribution by 4.6%. Effective 1/1/01, increase contribution by an additional 4.75%.
4. Bill of Rights-Miranda Rights. Delete Section 4 (H).
5. Cleaning Allowance. Amend Section 6(a). Effective 1/1/00, increase by \$75. Effective 1/1/01, increase by an additional \$75.
6. Clothing Allowance. Amend Section 6(b). Effective 1/1/00, increase by \$25. Effective 1/1/01, increase by an additional \$25.
7. Binding Arbitration for Discipline
Amend Section 10 to provide for binding arbitration of cases where the County seeks discharge. This constitutes a waiver of the employee's rights pursuant to the Civil Service Law Sections 75 and 76. The parties shall designate a single arbitrator to hear these cases (Maurice Benewitz).

8. Drug and Alcohol Testing. "The title and substance of Section 11 ("Drug Testing") and Appendix "B" ("Substance Abuse Testing") shall be amended to add the words "and alcohol" after every appearance of the words "drug" or "drugs." Appendix "B's" references to NIDA shall be modified to reflect NIDA's replacement by SAMHSA. The parties shall meet after execution of this Award to develop procedures to carry out the intent of this paragraph. I specifically retain jurisdiction to resolve disputes concerning this paragraph if the parties fail to agree within 90 days."
9. Life Insurance. Amend Section 17(D). Effective 1/1/00, increase contribution by \$3,450. Effective 1/1/01, increase contribution by an additional \$3,500.
10. Longevity. Amend Section 21 (C). Effective 1/1/00, increase by \$50. Effective 1/1/01, increase by an additional \$50.
11. SOA Stipends. Amend Section 23(D). Effective 1/1/00, change "10.5% of" to "the highest."
12. SOA Stipends. Amend Section 23(E). Effective 1/1/00, change "10.5% of" to "the highest."
13. Two Tour Shift Differential. Amend Section 24. Effective 1/1/00, increase to 7.5%.
14. Extraordinary Night Chart Differential Compensation. Amend Section 24, 1st ¶, 2nd sentence. Effective 1/1/00, increase to 12%.

15. Rank Stipend. Amend Section 26(E).
Effective 1/1/00, the rate shall be \$2,118.
Effective 1/1/01, the rate shall be \$2,219.

16. Assignment Pay. Amend Section 39(G)(1). Effective 1/1/00, increase to 4.5% of base pay. Effective 4/1/00, include Firearms Training. Also, add: "In the event that a subordinate in another bargaining unit becomes entitled to assignment pay for which the assignment pay is not covered by this Agreement, then the County and the SOA shall reopen the Agreement for the sole purpose of negotiating about the impact of the subordinate unit's assignment pay upon SOA unit members."

17. Canine Pay. Amend Section 39 (H).
Effective 1/1/00, increase to \$6,955 annually. Effective 1/1/01, increase to \$7,285 annually.

18. Tour Change. Effective upon the date of the issuance of the Award, renumber Section 45(C) to 45(C)(1) and delete "only" in the 1st line. Effective upon the date of the issuance of the Award, add a new Section 45(C)(2) as follows: "In addition, a Superior Officer's tour of duty may be changed for one or more tours for the purpose of attending court, in which case the Superior Officer shall be paid the overtime rate of 1½ the regular rate for all hours of the changed tour, except as is set forth in Section 49(A)(3)."

19. Duty Charts. Effective upon the date of the issuance of the Award, add to Section 49: "If the Department changes the duty chart of a member of a subordinate unit, then the County and the SOA shall reopen the Agreement for the sole purpose of

negotiating about the impact of the subordinate unit's duty chart change upon SOA unit members."

20. Duty Charts. Amend Section 49(A)(2)(k) by changing "three (3) additional ten (10) hour tours" to read, "three (3) additional tours."

Maurice C. Benewitz
Public Panel Member and
Chairperson

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

I, Maurice C. Benewitz, do affirm upon my oath as public panel member and chairperson that I am the individual described in and who executed this statement, which is my award.

Maurice C. Benewitz
Public Panel Member and
Chairperson

Dated: Manhasset, New York
August 6, 2001

I (adhere to) (dissent from) the above award.

David Greene
Public Employer Panel
Member

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

I, David Greene, do affirm upon my oath as public panel member and chairperson that I am the individual described in and who executed this statement, which is my award.

David Greene
Public Employer Panel
Member

Dated: Hauppauge, New York
August 6, 2001

I (adhere to) (~~dissent from~~) the above award.



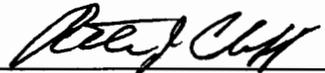
Arthur Cliff
Employee Organization
Panel Member

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

I, Arthur Cliff, do affirm upon my oath as employee organization panel member and chairperson that I am the individual described in and who executed this statement, which is my award.



Arthur Cliff
Employee Organization
Panel Member

Dated: Hauppauge, New York
August 6, 2001