

making a just and reasonable determination of the matters in this dispute. The Panel then proceeded under the applicable statutes, rules and regulations to inquire into the causes and circumstances of this continued dispute and at the conclusion of its inquiry made the findings and Award which follows.

Upon notice duly given hearings were held on October 18 & 19, 2005, in the offices of Jay Jason. Both parties were present and represented by counsel throughout these proceedings as shown in the above List of Appearances. The Parties were afforded full and equal opportunity to be heard and present statements of fact, supporting witnesses and other evidence and arguments, both oral and written, in support of their respective positions regarding the issues in dispute. The Public Interest Arbitration Panel admitted into evidence twenty (20) CIA exhibits and sixteen (16) County exhibits.

The parties mutually agreed on October 19, 2005, that the CIA's financial consultant would submit his analysis of the County's ability to pay by November 14, 2005, the County Commissioner of Finance would submit his rebuttal by December 5, 2005, and if there were questions for either the financial consultant or Commissioner of Finance, a conference call will be held on December 9, 2005. The official record of the impasse would close on December 16, 2005, with the Parties postmarking their post-hearing briefs that date. After their receipt, the Panel would meet in Executive Session.

The CIA's financial consultant analysis was not received until November 18, 2005, because of delays in receiving the County's Official Budgets. As a result, the following new schedule was agreed to: County Commissioner of Finance response by December 19, 2005; possible conference call by December 22, 2005 and post-hearing briefs by January 9, 2006.

The Panel met in Executive Session on December 23, 2005, as originally scheduled, to possibly narrow the issues to be decided. It successfully did so and agreed to extend the submission of post-hearing briefs to January 16, 2006, which date the Parties complied with.

At Executive Sessions on January 27 and February 1, 2006, the Panel Chairman and his fellow Panel Members thoroughly discussed the issues submitted. After due and deliberate consideration of all of the evidence, facts, exhibits and documents submitted and in accordance with the applicable criteria prescribed by P.E.R.B., the Panel arrived at the Determination and Award which follows. The Panel in arriving at such determination based its findings on the mandated statutory criteria which follow: New York Civil Service Law, Section 209.4 (v)

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.

The Panel's objective was to arrive at a fair and reasonable Award which logically considered the statutory criteria previously cited.

The Panel carefully considered each of the outstanding issues and at the urging of the Chairman sought to reach unanimous consensus on each of them. The Chairman commends his fellow Panel Members Messrs. Grosselfinger and Braunfotel for the time and effort they devoted to the process and their sincere attempts to resolve each of the issues submitted to the Panel in accordance with the above stated criteria. It was their hard, realistic and professional bargaining that helped to determine the positions contained in this Award.

The Panel, in its Award, sought to provide a good springboard for the Parties' contract negotiations which should commence for the years beginning 2005, upon receipt of this Award.

BACKGROUND:

The County suffered the loss of taxes from its largest taxpayer (Mirant Energy) who declared bankruptcy in July 2003 and by law the County is responsible for the taxes Mirant failed to pay three (3) Rockland municipalities and one (1) school district. However, according to Moody's Investors Service, a supplement to the Finance

Commissioner's reply to the financial analysts report, "Mirant did recently reach agreement with the Town of Ramapo (Aa3) and paid taxes due the town and Ramapo CSD (Aa3)." (Page 3 of Moody's Investors Service attachment to Mr. Bergman' response to Mr. Decker)

The Rockland County District Attorney at the time of the impasse employed eleven (11) criminal investigators and three (3) senior criminal investigators.

The County has six (6) other bargaining units, some of whom have already concluded negotiations for the years 2003 and 2004.

HISTORY OF THE PARTIES' NEGOTIATIONS:

Adding to the customary difficulties in the negotiation of the terms of a successor Collective Bargaining Agreement in this instance, is the contention of each of the Parties that the other Party has negotiated in bad faith.

The CIA maintains that the County refused to negotiate with its negotiator who had been their spokesperson over the prior ten (10) years, forcing it to engage a new negotiator.

The County, in turn, states that said new negotiator presented it with "a new set of proposals, specifically increasing the demand of the CIA for a salary increase from 4.75% to 15.00% per year." (County exs. 5 & 6)

Eventually, on December 15, 2004, a Memorandum of Agreement (County ex. 7) was reached providing for what amounted to a 20% increase over five (5) years in return for CIA members contribution of 20% of the cost to the Employer of all health, dental and optical plans in which they were enrolled. Said contribution to be phased in during the last two (2) years of the five (5) years of the proposed five (5) year agreement.

The County explained that it was willing to grant increases to CIA members which exceeded those granted to other County employees because they agreed to contribute toward their health, dental and optical plans and this would help the County to negotiate same in future negotiations with other County employee units.

However, the Memorandum of Agreement was rejected by the CIA membership. Negotiations then proceeded with a newly constituted negotiating committee. Since these negotiations and three (3) Mediation Sessions with a P.E.R.B. Mediator were not successful, Interest Arbitration was requested.

CONTENTIONS OF THE PARTIES:

The CIA maintained that the duties performed by its members and their responsibilities paralleled those of

detectives in the various town police departments located in Rockland County (Clarkstown, Haverstraw, Orangetown, Ramapo and Stony Point) in accordance with the Interest Arbitration Statute and, in fact, its members have been given the title of detective and their County identification cards state they are detectives. It pointed out to the Panel, however, that the salaries of its members were lower than those received by detectives in the various cited village and town police departments.

The County noted that the villages and towns had their own taxing authorities and ability to pay and sought to limit comparisons to only other County unions since historically they always did so. Additionally, it maintained that CIA members work was directly comparable to Sheriffs Deputies. The County also contended that the civil service title of the Union's members was that of criminal investigator and senior criminal investigator and not the title of detective that the D.A.'s office has sought to use.

Still another County argument was that there was no way to determine what trade-offs were made by the various town unions for the salaries they were granted.

Furthermore it noted that in the Parties 1994 Interest Arbitration, the Panel on page 8 of its Award stated: "This panel is persuaded that police are an appropriate reference point in assessing comparability. The panel hastens to add, however, that these employees are County employees, and as such, they have certain similarities and community of interest with other County employees represented by other units."

This Panel based on the testimony offered including that of Edward Dolan, Chief of Police Ramapo and James Kralik, Rockland County Sheriff long time law enforcement officers, thirty-nine (39) and forty-three (43) years respectively, and whose staff members work closely with the criminal investigators and the evidence submitted by the CIA, including the opinions expressed in two (2) prior Interest Arbitration Awards for the Parties (Union exs. 2 & 3), finds that the CIA's position of comparability satisfies Civil Service Law 209.4 (v). a.

Union 2, the Weinstock Award page 5 held : "The Panel has carefully considered the positions of the parties with respect to the matter of comparability, and finds that these employees are appropriately compared to police investigators within the County and surrounding towns and municipalities." Union 3, the Douglas Award page 7 states: "In terms of the statutory requirement of comparability the record documents that all major Police Departments in Rockland County receive this benefit." In the next paragraph the Award states: "The Taylor Law requires that the Panel consider "a comparison of peculiarities in regards to other trades or professions, including specifically, (1) hazards of

employment..." Later in the same paragraph the Award has "using the universe of comparable police CBA. "

The County is, however, correct in that the Panel in conformance of Civil Service Law Sec. 209.4 must also take into consideration in fashioning fair and equitable contract terms (V) a "with other employees generally in public and private employment in comparable communities" such as other Rockland County employees.

The CIA while acknowledging that not all monies due from the Mirant bankruptcy filed in June 2003, may not be recovered by the County noted that the impact of any size increase granted by the Panel for its members would have only a very negligible impact on the County's over 500 million dollar budgets for 2003, 2004 and 2005.

IN GENERAL:

1. The dispute involves the continued impasse between the County and the CIA over the terms and conditions of a new contract to be effective as of January 1, 2003, the last two-year contract of the parties having expired on December 31, 2002.

2. A review of the parties negotiating history shows prior resort to Interest Arbitration to obtain successor agreements, their having done so in impasses for January 1, 1992-December 31, 1993 and January 1, 1999-December 31, 2000.

3. The CIA represents eleven (11) criminal investigators and three (3) senior criminal investigators.

4. Prior to the request for the appointment of this Arbitration Panel the parties engaged in numerous negotiating sessions and three (3) mediation sessions with a PERB appointed mediator.

5. The "position" of the parties and the Panel's "discussion" are only summaries and are not intended to be all inclusive.

6. It was agreed by both parties that all terms of the expired Collective Bargaining Agreement not changed by this Award shall be continued "as is" in the new Agreement.

7. The following issues were submitted at the arbitration hearings for Determination and Award by the Panel:

Issues:

1. Duration:

The predecessor collective bargaining agreement expired on December 31, 2002, hence the Parties are without a new agreement for a period of over three (3) years. The Panel, however, is constrained by Section 209.4 (vi) of the Taylor Law to determination of only a two (2) year agreement.

Award:

The term of this Award shall be for the period of January 1, 2003 through December 31, 2004.

2. Salary Increases:
CIA: 15% each year
County: 3.50% in 2003
3.75% in 2004
3. Step Increase:
CIA: Increase "A" step to \$70,616
County: Rejected
4. Increase Sr. Criminal Investigator Differential
CIA: Increase from 17 1/2% to 20%
County: Rejected
5. Chief Sr. Criminal Investigator Differential
CIA: 25%
County: Rejected
6. Add An Additional Step
CIA: After 30 years
County: Rejected
7. Clothing Allowance:
CIA: Increase to \$1.00/hr from \$0.72/hr
County: Rejected

Addressing the Issues:

2. Salary Increases

Positions of the Parties:

The CIA maintained that its members were far behind detectives in the comparable police departments and the County could afford the proposed deserved increases. In 2001-02, CIA members when ranked with those of comparable communities, were the lowest for officers with five (5) or more years of service, 2nd lowest with four (4) years, 3rd lowest with two (2) years and 2nd with one (1) year. (Union ex. 22) Thus, an Award of less than that requested will cause the Union's members to fall further and further behind detectives in the comparable towns. It contended that this was so though they perform identical duties under virtually identical working conditions in terms of level of crime merely steps away from fellow detectives who are making substantially more. It further noted that even if a

generous wage increase was granted to its fourteen (14) members, the impact on the overall County operating budget would be far less than one percent (1%).

Kevin Decker, financial consultant for the Union, claims in his "Review of the Ability to Pay of Rockland County, New York" report that "Rockland County has the ability to pay the members of the Rockland County District Attorney's Criminal Investigators Association any increase that the panel was to deem appropriate." (page 7)

In support of this contention, he notes that the salaries of the 14 members of the Association account for only "0.4% (less than one-half per cent)" of the County's budgeted positions (page 5), so any raise granted by the Panel would have a very minimal impact on the overall budget.

Additionally, he maintained that payment, for instance, of a 10% increase, if paid entirely by an increase in the County's real property tax, "would require an increase in the Assessed Value tax rate of just 2¢ per thousand, the equivalent of a 4/10ths of one per cent increase." Or if it "were to be raised from the County's sales tax, it would require dedicating the equivalent of just 8.5 hours of one day's collection." (page 5) He had previously indicated in his report that Association members are paid out of the County's General Fund (page 1) and the major revenue sources for the General Fund were the County's Sales Tax and Real Property Tax. He noted that "between the March 1996-February 1997 and the March 2001-February 2002 sales tax periods, the sales tax base in Rockland County grew at an average annual increase of 5.8% and was at "144.7 million in 2004". "The County's adopted 2005 budget included \$156.5 million in sales tax revenues and the County's proposed 2006 budget includes \$162.4 million." (page 2) As to the Real Property Tax, he noted that "the real property tax levy in Rockland County is lower than it was 10 years ago", while "the taxable property base increased from \$17.7 billion to \$33.8 billion, an average increase of 6.67%." He pointed to the County Executive's 2006 budget message which states that "County property taxes are now 8.3 per cent lower than they were a dozen years ago..." Furthermore, he stated that: "The State Constitution fixes the tax limits at 1.5% of the five-year average full valuation of real property, but permits the local legislatures to increase the limit to as much as 2%. For Rockland County, the tax limit is set at the constitutionally prescribed 1.5%." (page 3)

Additionally, he contended that: 1. Rockland County "between 1994 and 2004 ranked 5th best in the State in growth and 6th best in just the last 5 years." 2. Its "average full value tax rate of \$1.45 per thousand in 2004 was the lowest in the State." 3. Its "use of the State

Constitutional Tax limit in 2004 was the lowest in the State." (page 4)

In summary, "the Sales Tax and Real Property Tax in Rockland County are vibrant and growing sources of revenue. There is no indication of weakness or strain, either in absolute or relative terms, in either revenue source." Interestingly, "The County's 2006 proposed budget, while calling for total spending to rise by 3.7%, contains a property tax decrease and no increases in any county tax." (page 7)

The County responded that " It must spread its limited resources over a number of public functions and services, of which criminal investigation is but one."

Mr. Bergman, County Commissioner of Finance, in responding to Mr. Decker notes that Decker was correct in pointing out that the County had "been successful in funding county operations from the sales tax. Bergman, however, contended that: "While the bulk of the data presented is accurate and gleaned from public sources, many key facts or relationships have been left out which result in conclusions that are misleading or false." One such example is "sales tax" trends such as growth which "has slowed materially from the past. The 2004 actual growth was only about \$4.6 million or 3.3% over the prior year. Our 2003 actual growth is only up 2.38% over the same period in 2004", which is only half of what was projected and incorporated in the 2005 budget. It is expected that "the growth of salary and fringes for our work force will be twice the current growth of the sales tax and that does not account for all the other costs of operating County government and its services."

"Property tax is the primary revenue source for our schools, towns, villages and many special district services." Since it is and "town property taxes have increased 57% in the last ten years and school taxes have increased 52% during the same period...twice the rate of inflation during the same period" it cannot be considered a "vibrant and growing source(s) of revenue" for the County as Mr. Decker advocates.

Mr. Decker does not quantify the impact of NYS Medicaid reform which will still require "the county to fund over \$2 million in new money for 2006 and an ever increasing amount each year thereafter." (County ex. 12) In summary, after adding in the impact of the Mirant tax dispute, any suggestions "that the county has the ability to pay an excessive settlement demand belies our true financial condition." Additionally, Mr. Bergman disputed Mr. Decker's statement that any above normal increase granted by the Panel will have minimal impact on the County for it would most certainly affect future salary negotiations with other unionized County employees.

The County pointed out that in the period from 1999 through 2002 the CPI increased 10.20% while CIA salaries increased by 13.00%. (County ex. 8) Additionally, during that same period some 80% of the unit would have received a 5.00% longevity raise making a members salary increase almost double that of the CPI.

The County noted it has encountered "rising expenses outside of its control" such as escalating health insurance costs with premiums rising more than 65% (family) between 2000 and 2005 (County ex. 15) and pension costs that saw an increase of over approximately seven fold in the six year period since 2001. (County ex. 14)

The County contended that its budget is neither bloated or excessive and it couldn't afford more than what it gave the County's other bargaining units, i.e. CSEA, RAM, UPSEU and SOC 3.75% at 1/1/03 and CSEA, RAM, UPSEU 3.75% at 1/1/04. (County ex. 6) It noted that the County bargaining units over the years have been granted similar salary increases and there was no need to break the pattern now. (County ex. 9)

Discussion:

It is evident from the oral and written testimony submitted to the Panel in this impasse that the CIA members are paid substantially less than those holding comparable positions in villages and towns of Rockland County and the Rockland County Sheriffs Department.

It is also evident that the County has been struggling financially since the closure of the Mirant bankruptcy, its largest taxpayer, and from the impact of NYS Medicaid reform. The County has and wishes to continue to manage its financial affairs in a prudent and conservative manner and maintain parity in raises granted to its various unionized employee units.

Salary increases in comparable communities for 2003 & 2004 range from 3.0% in Orangetown to 4.00% in Ramapo and Clarkstown. The Rockland County Sheriffs received a split 4% for 2003, i.e. 2% 1/1/03 and 2% 7/1/03. (Union exs. 7-11)

Recognizing the validity of both parties' positions, the Panel has agreed to raise the CIA salaries by more than the raises granted in comparable police departments and the Sheriffs Department to narrow the gaps but at minimal impact to the County.

Award:

For each year 2003 and 2004, a 2.5% at January 1 and 2.5% at July 1. (the equivalent of 3.75% in 2003).

The foregoing increases and retroactive payments shall be implemented as soon as possible.

3. Increase Step "A" to \$70,616

Positions of the Parties:

The CIA maintained that because of the low salary scale of its members as compared to that of the various Rockland County Towns, the District Attorney's Office has had difficulty in hiring new qualified candidates. (Union ex-21) In support of this argument it offered the example of Officer Edward DeVoe who joined the office at a lesser salary because of the uncertainty of his continued position with the Village of Haverstraw. However, because of the financial hardship caused by the lower salary, he elected to return to Haverstraw.

It also contended that the proposed increase was warranted because the County "currently reimburses all police departments for the use of their personnel the approximate sum of \$70,616."

The County while willing to increase Step "A" in the Memorandum of Agreement that the rank and file CIA members rejected, it was conditioned on the members contributing to their health, dental and optical benefits.

It maintained that these reciprocal demands be left to the next round of negotiations to begin immediately after the Panel's Award is rendered.

Discussion:

As noted in the preceding salary increase discussion, some reduction in the disparity of CIA salaries with those of their counterparts in other units is warranted. Therefore, the Panel has agreed to an increase in step "A".

Award:

Starting January 1, 2003, the "A" step of the Parties' contract shall be increased from \$27.88/hr to \$28.00/hr. and all other steps be adjusted accordingly.

4. Additional Step After 30 Years

Positions of the Parties:

The CIA's justification for this additional step was to compensate for the low starting salary.

The County maintained that any longevity increase should be addressed in the negotiations of a total economic package to be determined in the negotiations that are to follow the Panel's Award.

Discussion:

Just in the last contract effective January 1, 1999, the twenty-five (25) year step was added to in the CIA and Sheriff's contracts. (Union exs. 4 & 6) An additional step at thirty years is also not enjoyed by the various Rockland County Police Departments.

The lower CIA salaries after twenty-five (25) years of service as compared to the various Rockland County Police Departments and the Sheriffs Department the Panel has addressed in other contract provisions.

Award:

The CIA demand is rejected.

5. Increase Sr. Criminal Differential from 17 1/2% to 20%

Positions of the Parties:

The CIA claimed that its proposed 20% differential more adequately reflected "the difference in the counterparts at the Towns and Villages."

The County response was to let this be an issue to be decided in the negotiations to follow the issuance of this Award.

Discussion:

In the Parties' last contract effective January 1, 1999, the 17 1/2% was implemented. (Union ex. 4) Any change should be part of a total economic package negotiated by the Parties.

Award:

The CIA demand is rejected.

6. Chief Sr. Criminal Investigator Differential

Positions of the Parties:

The CIA pointed out that the Chief Senior Criminal Investigators receive no increase beyond the ordinary salary of Senior Criminal Investigator. A differential is warranted and 25% would be appropriate.

Again, the County believes the appropriate place to address this issue would be in the negotiations that are to succeed the Panel's Award.

Discussion:

No evidence was submitted to enable the Panel to justify that the title of "Chief" warrants a 25% differential.

Award:

The CIA demand is rejected.

7. Clothing Allowance:Positions of the Parties:

The CIA claiming that "One of the most important aspects of the Criminal Investigator position is prosecutorial enhancement and ultimately testimony. Therefore, the criminal investigators must dress appropriately for court appearances, i.e. suit and tie" which cost more than uniforms. Thus, an increase from \$0.72/hr to \$1.00/hr is warranted.

The County would defer this, too, to the negotiations which must be held by the Parties after the Panel's Award is submitted.

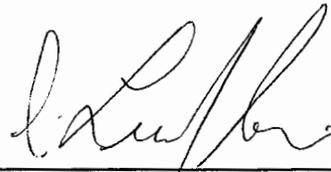
Discussion:

The CIA is correct in their contention that business suits and ties tend to be more expensive than uniforms. However, the increase they seek is almost 40%.

Award:

Effective 1/1/04, the clothing allowance be increased to \$0.90/hr.

Dated: February 6, 2006
Hackensack, New Jersey



I. LEONARD SEILER
Public Member and Panel Chairman

I concur with #s 1, 4, 5+6

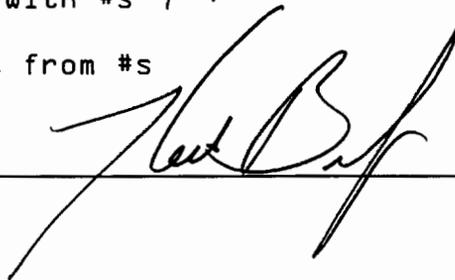
I dissent from #s 2, 3+7



TERRY GROSSELFINGER
County Appointed Arbitrator

I concur with #s 1-7

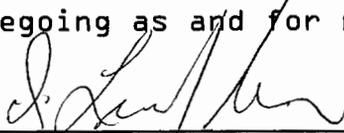
I dissent from #s



KEITH I. BRAUNFOTEL, Esq.
CIA Appointed Arbitrator

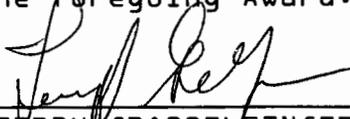
AFFIRMATIONS

Pursuant to CPLR 7507, I hereby affirm that I am the Impartial Arbitrator in the above matter and that I have executed the foregoing as and for my Opinion and Award.



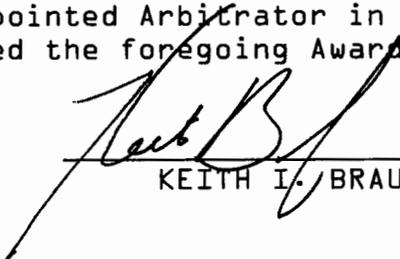
I. LEONARD SEILER

Pursuant to CPLR 7507, I hereby affirm that I am the County appointed Arbitrator in the above matter and that I have executed the foregoing Award.



TERRY GROSSELFINGER

Pursuant to CPLR 7507, I hereby affirm that I am the CIA appointed Arbitrator in the above matter and that I have executed the foregoing Award.



KEITH I. BRAUNFOTEL