

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Compulsory Interest Arbitration

Between:

County of Putnam

and Sheriff of Putnam County

-and-

FINAL AND BINDING OPINION AND AWARD OF
TRIPARTITE ARBITRATION PANEL

Putnam County Sheriff's Department

Police Benevolent Association

Case No: IA 2004-026

M 2004-211

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The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER & CHAIRMAN:

Joel M. Douglas, Ph.D.

PUBLIC EMPLOYEE PANEL MEMBER:

Anthony V. Solfaro

President, New York State Union of Police
Associations [NYSUPA]

PUBLIC EMPLOYER PANEL MEMBER:

James W. Roemer, Jr. Esq.
County Labor Counsel

Appearances:

For the County of Putnam:

William M. Wallens, Esq.
County Labor Counsel

For the PBA:

Law Offices of John K. Grant, P.C.
By: John K. Grant, Esq.

Date

February 15, 2007

Pursuant to the provisions of Section 209.4 of the Civil Service Law, and in accordance with the rules of the Public Employment Relations Board, an Interest Arbitration panel was designated for the purpose of making a just and reasonable determination on the matters in dispute between the County of Putnam ("County") and the Police Benevolent Association of the Putnam County Sheriff's Department ("PBA" or "Association") Hearings were held in Carmel, New York on September 28, 2005 and October 19, 2005 during which time both parties were represented and were afforded full opportunity to present evidence, both oral and written, to examine and cross-examine witnesses and otherwise to set forth their respective positions, arguments and proofs. The hearings were transcribed and a copy given to the undersigned. Executive sessions were held in Newburgh, NY

on June 12, 2006 and December 11, 2006 at which time the Panel deliberated on each issue and carefully and fully considered all the data, exhibits and testimony received from both parties. Additional executive session "conference-calls" were held between the aforementioned three parties. The results of those deliberations are contained in the AWARD that constitutes the Panel's best judgment as to a just and reasonable solution of the impasse.

Those issues presented by the parties that are not specifically addressed in this AWARD were also carefully considered by the Public Arbitration Panel, but rejected in their entirety. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. This Opinion, and its accompanying Award, are based on the record as thus constituted.

In arriving at this Award, the Panel considered the following statutory guidelines contained in Section 209.4 of the Act:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute.

In arriving at its determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, 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 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

BACKGROUND

Putnam County is located in the Hudson Valley and adjoins both Westchester and Dutchess Counties, the Hudson River, and the State of Connecticut. The 2004 population of the County was projected at 100,000. The County may best be described as partly rural and suburban with a small urban component. The County also negotiates with a CSEA unit and a "Sheriffs Corrections Unit." [See PBAX #45 for CSEA CBA] ¹ The Sheriffs Department operates a Police Department twenty-four hours /seven days per week. Other full-time police Departments within the County are found in the Town of Kent and Town of Carmel. [See PBAX # 46 and #46a for Carmel PBA CBA] [See PBAX #47 for Town of Kent CBA and PBAX # 47 for 2003-2005 Interest Arbitration Award for which the undersigned served as PANEL CHAIRMAN]

The Sheriffs Department consists of approximately 78 sworn personnel in the titles of Deputy Sheriff, Sergeant and Criminal and Senior Criminal Investigator. At the time of the instant impasse there were 53 officers in the title of Deputy Sheriff, 8 Sergeants, 13 Criminal Investigators, 3 Senior Criminal Investigators and 1 First Sergeant. Base salary for the bargaining unit in 2003 was \$3,750,000.00. The previous CBA covered the period January 1, 2000 - December 31, 2002. [PBAX #43and # 43a]

ISSUES AT IMPASSE ²

This is the initial IA between the parties. The parties are signatories to a CBA covering the period January 1, 2000 - December 31, 2002. At the outset of the bargaining process the PBA put forward numerous demands for the successor Agreement. The PBA submission was replied to by the County. Additionally the County filed an Improper Practice Charge [IP] challenging several subject matters as not directly related to compensation and/or were non mandatory subjects of negotiations. (See Panel X #4, #4a, and CX tabs #3, #4, #5, and #6)

A PERB ALJ found several PBA demands non-arbitrable. (See CX tab #5) Exceptions were subsequently filed to the PERB Board. With one exception the PERB Board upheld the ALJ. (See Panel Exhibit #4c) Neither party appealed the PERB Board decision. The record should reflect that the undersigned was subsequently designated as PERB fact-finder to inquire into and make *Findings and Recommendations* on those items at impasse held to be nonarbitrable.

At the hearing the following issues were submitted for evaluation and decision by the Panel. Where viable, the aforementioned demands and subsequent recommendations have been consolidated to address the needs of both parties. The *Opinion* constitutes the findings of the Panel, however, the language contained herein is the sole responsibility of the Chairman. The issues at impasse and

¹ It is reported that the 2003 CSEA CBA provided for Year One increases of \$250.00 to each unit member plus 2.5% on schedule. An additional 2.5 % was negotiated in the second year with an additional \$250.00 placed on Step 4. (See, CX Tab #17).

² The numbering of the items at impasse was not sequential but instead conformed to the system submitted to PERB during the SCOPE proceedings. Additionally, the SCOPE numbering is reflected in the transcript. For purposes of consistency these numbers were not changed but kept constant, albeit out of succession.

submitted to the Panel for an Opinion and Award included: ³

1. TERM OF THE AWARD
- 2 a. HEALTH INSURANCE - BUY OUT
- 2 b. HEALTH INSURANCE - CHANGE IN PLAN
3. HEALTH INSURANCE - RETIREES ⁴
4. EDUCATION BENEFITS
5. HOURS OF WORK - OVERTIME AND RECALL
6. BASIC ANNUAL SALARY
7. LONGEVITY
8. HOLIDAY PAY
9. CLOTHING ALLOWANCE
11. MISCELLANEOUS [1] FUNERAL EXPENSES
[2] FIREARMS TRAINING

ISSUE NUMBER ONE
TERM OF THE AWARD
DISCUSSION AND AWARD

The instant **OPINION** and **AWARD** concern a successor Agreement to the previous Collective Bargaining Agreement which covered the period January 1, 2000 - December 31, 2002. Unless agreed to by the parties and Awarded by the Panel, the instant Award would cover the period January 1, 2003 - December 31, 2004. In its determination the Panel was guided by the appropriate statutory criterion:

- (vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining agreement or if there is no

³ The parties had previously agreed to a proposal which would provide for the conversion of all contract articles from Roman to numeric and to re-number and/or re-letter accordingly.

⁴ The County did not place a Health Insurance proposal on the bargaining table proposal until the IA statute went into effect and therefor argued that the issue should be remanded by the Panel to the parties for further negotiations. The PBA rejected this argument and the Panel credited their position.

previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

The arguments in favor of an extended Award are well known to the parties and were set forth by the undersigned in an executive session. However, an extended Award was not authorized and therefore the following is awarded.

TERM OF THE AWARD

1. *The term of this Award is from January 1, 2003 - December 31, 2004.*

ISSUE NUMBER SIX⁵ BASIC ANNUAL SALARY DISCUSSION AND AWARD

The issues of salary and other compensation were directly related to the statutory criteria of “comparability” and “ability to pay.” The Panel has considered all the cited statutory criteria and first addresses the comparability standard. The parties were unable to agree to area comparables with so few in the eligible pool to select from. Geographical proximity is a critical element of comparability. The County argued that comparability must be limited to other Hudson Valley County-wide Sheriffs Departments. These would include the Counties of Columbia, Dutchess, Rockland, Orange and Ulster. The Association seeks comparability with other municipal police departments within the County.

The statute requires that comparability be based on “employees performing similar services or requiring similar skills under similar working conditions.” The argument proffered by the County was focused on County missions as contrasted with the role of Towns and other municipalities. Yet the statute provides that comparability be based on:

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 employees generally in public and private employment in comparable communities.

That law enforcement personnel in general, and road patrols in particular, perform in essence the same duty is beyond dispute. That one officer may be a County employee and another a Town officer is not distinguishable and persuasive to the extent that comparability must be limited to only other Deputy Sheriffs. Comparisons must include all relevant full-time salaried full-service police departments. The time when the Office of the County Sheriff performed limited police duties and was concerned primarily with Civil Duties and the enforcement of administrative tasks has long passed. The record

⁵ Since this salary analysis included a detailed discussion of “comparability” and “ability to pay” it was discussed out of sequence and placed at the beginning of the *Opinion and Award*.

reflects that the Office of the Putnam County Sheriff is a full time professional full-service 24/7 police agency.

Comparability analysis must be based on cross governmental lines and agencies. To restrict the analysis to only road Deputies would be to ignore the larger overall functions of a police agency. The argument put forth by the County was not persuasive and is rejected.⁶ Comparability is also based on job functions and skills performed by those police officers employed in comparable communities. That analysis must include demographic and economic variables and accordingly the Town of Kent and Town of Carmel police departments must be considered as primary comparables.

The comparables offered by the County were limited to County Deputy Sheriffs. While these units may be considered, the comparability factor cannot be so limited. As noted by the Association, Interest Arbitration has been available for more than thirty years to police officers in NYS. Additionally the permissive topics to be arbitrated are extensive and exceed those available to Deputy Sheriffs who only recently received the legislative right to arbitrate. Therefore, one cannot ignore the terms and conditions available to comparable police departments.

The Association relied upon the testimony of its expert financial witness to support their position on “ability to pay.” The testimony of PBA witness Kevin Decker [government finance consultant] was admitted into the record. His report detailed the financial condition of the County and was utilized in the formulation of the instant *Opinion and Award*. [See PBA X#42] Decker concentrated on the County duly adopted budgets, tax margin statements, reports submitted to the Office of the NYS Comptroller, audited financial statements, and County debt statements.⁷ The adopted County Budget for the years 2001 [PBAX #48], 2002 [PBAX #49], 2003 [PBAX #50], 2004 (PBAX #51), and 2004 [PBAX # 51], as well as other related financial documents of the County, were introduced into the record and were used in the formulation of this Award.

The testimony of Decker was also instructive as to comparability.⁸ He noted the differences between jurisdictional missions but in essence endorsed the PBA comparability approach. He acknowledged that Towns have no constitutional tax limit while Counties do. In the instant case, the amount of latitude that the County enjoys in not approaching their constitutional tax limit was noted. As testified to by Decker, Putnam County is the second lowest County in terms of constitutional tax limit usage.⁹

Thus while no comparability consensus was reached, the Panel relied upon the two Towns within the

⁶ The County argued that the CSEA CBA should be afforded significant weight as said unit consists of Putnam County employees. While this position was acknowledged, the Chairman of the Panel noted that police officers are distinct from other Civil Service employees and while the CSEA unit was recognized and their terms and conditions of employment considered in the formulation this Opinion and Award, their CBA was considered instructive but not dispositive.

⁷ For a detailed analysis of Putnam County Comprehensive Fiscal Year Financial Reports, General Obligation Bond and Tax Anticipation notes see PBAX # 53-61.

⁸ He is an economist with Decker Economics and has testified in numerous Interest Arbitration throughout NYS.

⁹ This figure excludes the five countries of NYC.

County with full service police departments as primary comparables to the Putnam Deputy Sheriffs, with the other Hudson Valley Deputy Sheriff County Units as secondary level comparables. The Panel has considered County-area comparables and notes that with respect to wages, settlements and Awards in Putnam County for full-time salaried police departments have ranged in the area of three to four percent. Thus in sum, the PBA position on comparability is adopted with Kent and Carmel Police Departments afforded the most weight. The Sheriffs Departments in the surrounding Counties of Dutchess, Rockland, Columbia, and Orange were given less weight.

The statutory criterion of "ability to pay" was considered by the Panel. The record documents that the County has enjoyed a growth rate that has received national attention. It has been described as one of the national economic leaders and the "growth champ" of NYS. (PBA X# 42) Additionally, as noted by the PBA expert witness, the NYS Comptrollers' Report 5-2006 cites the Hudson Valley region as the strongest economy within NYS. (PBA X# 42) For the period 2000 - 2004 the Putnam County population grew at a rate of 14%, the fastest rate in the State. Other statistics support the phenomenal Putnam County growth record. It has a very low unemployment and had the 4th highest growth rate in NYS in per capita income and property tax base for the period 2000 - 2004. The Association notes that the County did not raise an inability to pay argument but instead stressed prospective and yet unknown problems in its post-hearing brief.

The County derives much of its income from a county-wide sales tax. For the period 1995 - 2004 the revenue has increased by 7.7% annually. The tax rate was recently increased to 3.5% in 2005 and is one of a handful of counties where the sales tax is still below 4%. Putnam collects more from the sales tax as opposed to the property tax and showed a 4.8% average annual increase during the past fifteen years. The County retains 100% of sales tax revenues. In the last two years the average rate of growth was 6.2 % and in the last five years thru 2005 the annual increase was 7.6%. [See testimony of Decker] The following sales tax data as collected are as follows: [See CX exhibits tabs #1 and #11]

1.	Year	2000	Sales tax	\$ 2.2 million surplus
2.	Year	2001	Sales tax	\$ 450,000 deficit
3.	Year	2002	Sales tax	\$ 350,000 surplus
4.	Year	2003	Sales tax	\$ 481,000 surplus
5.	Year	2004	Sales tax	\$ 177,168 surplus
6.	Year	2005	Sales tax	\$ 22 million deficit

For the above stated years sales tax revenue was significant. The accounting reflects actual receipts in cash as contrasted with amended budgets. For example, in 2003 the recorded surplus was \$481,919.31 as measured against sales tax revenue received of some \$33 million dollars. It should be noted that the Award covers the period 2003-2004 and during said time period the County was experiencing significant rates of growth. Although revenue may be projected to decline, the increases for in the aforementioned period were noted.

In terms of the County-wide property tax the record reflects minimal increases or even reductions in the

actual tax paid by homeowners and although the 2006 increase was set at 7.75 % it may be attributable to either catchup or a correction to previous tax decisions. County tax policy appears to be pegged at keeping property tax increases to a minimum. For the period 1997 - 2005 the tax levy, since revaluation increased by some 5.5%. (See PBAX # 42)

Putnam County property values grew significantly within the period 1997 - 2005. Although there are national declines in home prices and sales, during the time period covered by this Award, property sales and prices were near an all time high. For the period 1997 through 2001 there as been an annual increase of 9.3 % in property values and since 2001- forward the increases have averaged 14.8%. Putnam County has the second lowest full value tax rate in NYS outside of NYS and the third lowest use of its constitutional tax limit. (See PBAX #42) The reported 2005 constitutional tax limit as measured as a percent of the tax limit exhausted was 15.09%. [See CX tab #12]

The County general fund has shown high balances and at times has reached 30%of the total budget. The Comptrollers' and bond rating agencies recommends a fund balance range between 5-10% of the total budget. The PBA argues that the recent fund balance deficits are designed to return the accumulated surplus to fund expenditures. The unreserved fund balance for the period 2000-2004, according to Decker has ranged from 20 - 37%. Decker also noted that the County, like many municipalities, underestimates revenue and overestimates expenditures. This can create budget swings which can generate some \$4,000,000.00 to \$5,000,000.00 annually and can be used to offset the previous deficits. The un-designated fund balances for the following years are noted: [see CX Tab # 13]

1. Year 2001 un-designated fund balance \$14million
2. Year 2002 un-designated fund balance \$21 million
3. Year 2003 un-designated fund balance \$16 million
4. Year 2004 un-designated fund balance \$11 million

According to Decker there are additional funds available to resolve the instant impasse.¹⁰ Decker testified that the County set aside some \$400,000.00 to resolve the instant impasse and that the adopted 2005 budget includes a contingency fund of some 2.7 million dollars. The County argues that the financial picture portrayed by the Union is misleading and is no where as bright as claimed. They argue that there is a considerable difference between the ability to pay and the ability to tax. They note that due to the mandates of the federal and State governments they have required obligations which in 2005 resulted in payments from the County tax levy to these programs in the amount of \$23.5 million. (See Tab CX #15) While the County has experienced significant increases in their expenditures; they claim that this was due, in part, to the extraordinary growth rate in the housing market. Yet in spite of this growth record the County argues that they are in financial difficulty with a 2005 projected deficit of some \$9.6 million.

¹⁰ Decker noted the income stream generated by the Office of the Sheriff from an inmate telephone account which generated \$300,000.00 for the period March 2003-April 2005. However, as noted by the County, the jail account is not for the exclusive use of the Sheriff and monies from the fund and not expended are returned to the General Fund.

The County also argues that spiraling retirement costs have had a significant impact. This indeed maybe true but this is virtually universal throughout NYS. Retirement costs for Putnam deputies have increased from some \$167,735.00 in 2002 to a projected 1.04 million in 2006.

The County places a great deal of reliance on their financial problems in 2005-2007; however, that time period is beyond the time-frame addressed in the instant award. While these issues are noted, they may be best addressed in subsequent contract negotiations. The County claims that they have done an excellent job of controlling costs and should not be penalized by an unreasonable Award. In its assertion they are correct; however, the Award sets forth below cannot be construed as excessive and is well within the means of the County to pay.

The PBA was seeking annual wage increases of 4.00 %per year for each year of the successor contract plus an adjustment of \$1,000.00 to the Sergeants salary and adjustments in the longevity schedule. The County proposed raises of two percent per year in each of a two-year successor agreement. It notes that while it retains a certain ability to pay rational and balanced salary increases, and is not arguing an inability to pay, that recent increases to contributions to the retirement system and health care premiums mandate a more cautious approach.

As I have often written in the past, wage and salary determination is far from an exact science; however, the undersigned was guided by the criteria set forth in the Taylor Law. Among other factors these included the:

... 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 employees generally in public and private employment in comparable communities. Section 209.4 of the Act:

Additional criteria included:

... (b) the interests and welfare of the public and the financial ability of the public employer to pay. (Section 209.4 of the Act)

As is so frequently the case, negotiated benefits obtained at the bargaining table by either party were afforded presumptive preservation.¹¹

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. (Section 209.4 of the Act)

The County argues that the wage position of the unit based on 2002 statistics, the end of last CBA, shows that the salaries for Putnam Deputies were lower then their counterparts in Rockland County but higher

¹¹ The issue of health insurance for retirees was discussed under the umbrella of “presumptive preservation.” While retirees health insurance was not included in the CBA, the position of the PBA was that since the benefit was protected by “County practice,” that all negotiations in this area, including retirement, were predicated upon that fact. The County argued that no such presumption existed and that no such entitlement was ever intended.

than those in Orange, Ulster, Dutchess and Columbia County. Additionally, they note that Putnam Deputies at the end of a twenty-five-year career exceed police officers in Kent and Carmel. Previous wage increases for this unit were introduced into the record. For 2000 the wage increase was 3.75%, for 2001 the wage increase was 4%, and for 2002 the wage increase was 4%.

The fund balance was also considered as there was much discussion as to what constitutes a prudent fund balance. The PBA notes that the present balance exceeds recommended percentages. The Panel Chairman further considered the role that CPI has played in negotiations or Interest Arbitration Awards. In recent rounds of bargaining between the parties, they have negotiated increases higher than the CPI. In the instant Award, the awarded increases were greater or in the range of the CPI for the referenced period.

There is no demonstrated inability of the County to pay the awarded increases. Indeed the opposite exists. The record documents that the wage increases of 3.5% and 2.0% and 2.0 are well within the statutory criteria.

It is the opinion of the Panel that based on the record and the statutory criteria, including the County's ability to pay, that the salary AWARD herein is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following salary adjustments for the period of January 1, 2003 to December 31, 2004.

BASIC ANNUAL SALARY

1. For the period January 1, 2003 through December 31, 2003 the current police offices' salary schedule shall be increased by 3.5 percent retroactive to January 1, 2003.
2. For the period January 1, 2004 through June 30, 2004, the current police officers' base wage schedule shall be increased by 2.00 percent retroactive to January 1, 2004.
3. For the period July 1, 2004 through December 31, 2004, the current police officers' base wage schedule shall be increased by 2.00 percent retroactive to July 1, 2004.

***ISSUE NUMBER SEVEN
LONGEVITY***

The present longevity system is activated after the completion of seven years of service. The PBA seeks a revised longevity schedule whereby existing years of service would be reduced by one year in order to obtain the full benefit. In addition the PBA purposes a new longevity step after twenty years which would compensate officers at the new Step Twenty with \$2,450 effective January 1, 2003. The longevity schedule as of 2000 contains a three-step longevity schedule:

1. After 7 years of service \$1,100.00
2. After 12 years of service \$1,500.00
3. After 17 years of service \$1,950.00

The proposed Step 20 “plus” is based primarily on the fact that effective 2007 the 1/60th retirement benefit is activated. The Union argues that for those senior employees not electing retirement at that point in time a salary incentive is needed. The Carmel P.D. has an eight-year longevity step while Kent adds steps annually at five year intervals. The following top longevity steps were noted:

1. Columbia County 20-plus
2. Dutchess County 20-plus, 25-plus, and a 30- plus
3. Orange County 19 plus
4. Rockland County 20 plus, 25 plus
5. Ulster County 20 plus [See County Comparability Study]

The County opposes any change in longevity payments and argues that the cost of the PBA longevity proposal is excessive. They estimate the costs for 2003-2004 to be an additional \$20,150.00. (See CX Tab #22)

Based on the record and the statutory criteria, including the County’s ability to pay, it is the opinion of the Panel that the longevity increase awarded herein is fair and equitable. In full consideration of the evidence submitted and arguments presented, the Panel awards a new longevity amount to be paid after 20 years of service as follows:

LONGEVITY

1. *A new longevity step after year twenty shall be established effective January 1, 2004. The value of the Step shall be set at \$2,400.00.*

**ISSUE NUMBER TWO (A)
HEALTH INSURANCE - BUY OUT
DISCUSSION AND AWARD**

The CBA provides for a “buy -out” payment for those unit members who elect not to participate in the County health insurance program. [See Article V (E). Also, see PBAX # 43a and CX Tab #26] At present those members opting out receive \$800.00 for each year they elect not to participate in the health insurance program. The PBA has proposed that this amount be changed to 25% of the cost of the insurance premium. The PBA argues that a buy-out is cost effective for municipal governments and cites a report from the Office of the NYS Comptroller which recognizes the value of such a plan. (PBA X# 30, #31) They note that certain buy-out plans provide up to 40% of premium cost to the employee electing not to participate.

The County will agree to a buy-out in the amount of \$1500.00 but conditions that proposal with the demand that requires additional members to participate in said plan. Additionally, the member who opts out must accept the plan which results in the greatest savings to the County.

Buy-outs are common in public sector collective bargaining. The present system provides a minimal incentive. The proposed County plan of increasing the buy-out to \$1500.00 is of interest but the accompanying conditions are too uncertain to recommend. The conversion of the buy-out to a percentage and to increase the amount to a more meaningful figure is warranted.

Based on the record and the statutory criteria, including the County ability to pay, and in consideration of the value to be derived by the Employer in offering such a plan, the panel recommends that the buy-out plan be increased, effective December 31, 2004 to 20% of the annual premium cost.

HEALTH INSURANCE - SLIDING PERCENTAGE -- BUY OUT --

1. *Effective December 31, 2004 convert health insurance opt-out to percentage formula. County will pay 20% of annual premium costs for those employees not participating in County Health Insurance plan.*

ISSUE NUMBER TWO (B) HEALTH INSURANCE - CHANGE IN PLAN DISCUSSION AND AWARD

The PBA has also proposed a change in the contract language [Article V] which presently requires that although modifications in the health insurance carriers would still be permitted “. . . so long as substantially similar benefits are provided.” The Association seeks language which would prohibit the implementation of said change of “substantially similar” benefits until such time as an arbitrator decided the issue of “substantial equivalency.” In essence the PBA proposal would require that any “similar” change result in an “equal benefit.” The County opposes this change.

Although there has been some evidence of difficulty in health care insurance implementation, the record does not warrant a change from “substantially similar” to “substantially equal.” The present language contains sufficient protections for unit members. If indeed a change is implemented that does not satisfy the present contractual standards, then the modification will subsequently be rejected. The County has continued the State Empire Plan and Empire Blue Cross/Blue Shield plans which enroll the majority of the bargaining unit.

Based on the record and the statutory criteria, and the evidence and arguments presented, the Panel rejects the PBA proposal in this area.

HEALTH INSURANCE - CHANGE IN PLAN

1. *Reject PBA proposal to insert “substantially equal” in place of “similar.” Maintain present contract language*

ISSUE NUMBER THREE
HEALTH INSURANCE RETIREES

The issue of Health Insurance for retired police officers has become a major area within the Interest Arbitration process. The present CBA does not contain language providing health insurance for retirees. However, the County acknowledges that as of December 31, 2002, Deputy Sheriffs enjoy health insurance coverage upon their retirement with the retiree paying \$125.00 annually for individual coverage, and the County paying the remainder of the premium cost. Those retirees electing the family plan pay \$ 250.00 annually with the County paying the remainder of the premium cost.¹² For certain employees this was subsequently changed in 2004 to \$250.00 and \$450.00 per year.

The PBA is seeking an Award which would codify the retirees' health insurance benefit and would prevent the County from making unilateral changes in same. The Association notes that they have an induced benefit retirement program inasmuch as twenty-years of service are required. In 2004 the County unilaterally changed the retirement eligibility for employees hired after January 1, 2005 from a fifteen-year service eligibility requirement to twenty-five years.

The majority of the PBA is enrolled in the State Empire plan. (CX Tab #9) The County notes that costs have increased by some 64.5% in the period 2002-2005. The costs associated with the HMO Empire Blue Cross/Blue Shield have increased by some 42.6%.

That police officers and Deputy Sheriffs retire at an early age is not disputed. However, due to the uniqueness of the profession and bargaining unit demographics, without codification of existing practice there can be a significant time lag where there is no health insurance protection between the age of an officer's retirement (mid-forties) until they are eligible to collect Medicare at age 65.

What of those deputies who have already retired on or before December 31, 2002? In terms of coverage, the County maintained that legislative action does not create rights for individuals who are not members of bargaining units. In its assertion the County is correct. However, the structure of this Award is such that it is prospective only and impacts on those who were employees or who retired commencing on or after January 1, 2003. Those employees who may have retired before the effective date of this Award are covered by the terms of the applicable County practice and not this Award. Those employees who may retire in subsequent years will be covered by the terms of this Award subject to such terms and conditions as may be set forth in future negotiations between the parties.

In terms of the statutory requirement of comparability the record documents that the Taylor Law requires that the Panel consider a "comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment . . ." While the County argues that CBA's for other Civil Service units [CSEA] do not contain guaranteed retiree health insurance benefits, when using the universe of police CBA's the evidence supports the position of the Association in that employees (Police, Fire, Corrections) covered by Taylor Law Interest Arbitration statutory provisions, this benefit is

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Since 1986 there has been in place a twenty-year retirement plan.

overwhelming provided for.¹³ When coupled with the statutory retirement protections afforded police officers, the CSEA and other civilian groups' comparability argument is rejected. [See PBA X# 21]

The major concern of the Union is rooted in a 1998 N.Y.S. Court of Appeals decision in *Aeneas McDonald PBA, Inc. V., Geneva*, 92.N.Y.2d 326, 680 N.Y.S.2d 887 (1998). As I noted in an IA Award in *Rockland County*:

The central thrust of the [Association's] position is related to a 1998 NYS Court of Appeals decision in Aeneas McDonald Police Benevolent Association, Inc. v. Geneva, 680 NYS2d 887 (1998). In that matter the Court held that in spite of the fact that municipalities (City of Geneva) provided certain health insurance benefits to retirees, there was no prohibition from reducing said benefits without prior collective negotiations with certified bargaining units. Thus, as argued by the Association, the County . . . notwithstanding the provisions of [a] Resolution could unilaterally withdraw all such benefits since there was no continuing obligation to provide benefits which resulted from a legislative act.

Throughout the State the response of Unions to *McDonald* has been to attempt to include health insurance benefit for retirees in the successor CBA. The Union is seeking to continue what they receive to be a benefit guaranteed to them at the commencement of their employment while the County maintains that although they are presently paying the sought-after benefit they cannot guarantee it in perpetuity.

Based on the aforementioned decision, and absent any contractual or otherwise legally enforceable benefit obligation to provide the continued health insurance benefit the County could unilaterally modify or withdraw health insurance coverage to retirees pursuant to law unless said benefits are made part of the CBA.

The main thrust of the County position appears to be an unwillingness to codify this benefit into the CBA. They argue that they have not had the opportunity to negotiate this provision since the IA process was implemented. Had the opportunity to negotiate this issue been available, the County submits that perhaps throughout the bargaining process an arrangement would have been reached and that the inclusion of same into this Award prevents such bargaining. That argument was not credited.

With respect to the immediate comparables given the most weight, police officers in Kent and Carmel, the record documents that Kent provides the same health insurance benefit to retired officers as presently exists for current police officers. The Town of Carmel does not have the benefit contained in the CBA. Thus while the County argues there is no clear-cut position on comparability, one out of two, the record further demonstrates that virtually within all of its comparables, retirees' health insurance benefit is provided and contained in the CBA.

With respect to the County Comparability study the following retirees' health insurance benefits are

¹³

In the case of State Correction Officers, retiree health insurance is provided through the use of unused sick days cashed out at a certain dollar value. Similar plans are in effect for virtually all other state employees.

noted:¹⁴

- Columbia County** **If hired prior to 7/1/05 and after 20 years of employment, County pays 75% of premium cost. If hired post 7/1/05, County pays full cost of individual premium and if unused sick leave is available would pay family premium.**
- Dutchess County**¹⁵ **Sliding scale if retire between 20-24 years of service County pays 30% of individual and 45% of family premium. If retiree with more than 25 years of service, County pays 80% of individual coverage and 65% of dependent coverage.**
- Orange County** **Sliding Scale if retire between 20-24 years of service employee pays 10% and if retired after 25 years of service County pays 100% of premium costs.**
- Ulster County** **Retiree pay 50% of individual and family premiums.**

The record indicates that where retiree health insurance is codified within a CBA, it is expressed as a percentage of the premium and not a flat dollar amount. The present Putnam paradigm of “practice” appears to be expressed as a flat dollar amount; however, the awarding of this benefit into a CBA is done in accordance with the comparables and is to be reflected on a percentage basis.

What is critical in the aforementioned group consisting of the County comparables is that these Counties have contractually codified retirees’ health insurance. While the amounts vary, the fact remains that the record supports the inclusion of the PBA proposal. The Association seeks to continue a prevailing benefit, one that they have continuously enjoyed for many years and one that they wish to perpetuate. With the exception of codification the demand does not increase their benefits’ expectation level.¹⁶

The PBA position that anything less than a contractual 100% retirees’ health insurance plan would constitute a “rollback” was not supported by the record. This contention fails to consider the essential fact that the inclusion of this benefit into the CBA, and removing it from the realm of “County practice,” is appreciable and must be considered when assessing the value of the benefit. If the PBA wished to leave the current practice of retirees health insurance being dependent upon the County, the employer was willing to remove this item from the instant Arbitration and leave it to subsequent negotiations. This offer was refused by the PBA. What may have been in existence as “practice” cannot be equated with clear contract language which will now protect a benefit until subsequent negotiations may alter the status quo. When assessing this issue the value of the “inclusion” must be factored into the thinking of the PBA.

¹⁴ The Rockland County CBA is silent as to retirees health insurance; however, Deputies are covered by County Resolution which apparently provides for 100% employer payment. Pursuant to an Interest Arbitration Award, DA Investigators within Rockland County receive 100 % fully paid health insurance upon retirement.

¹⁵ Dutchess also has a sick leave conversion plan where employees can apply the value of 75% of 300 sick days toward the cost of retiree health insurance.

¹⁶ The Association is seeking the December 31, 2002. retirees’ health insurance benefit.

The Taylor Law also requires an examination of the terms of previous CBA's. With respect to the consideration of "... the terms of collective agreements negotiated between the parties in the past providing for ... retirement benefits ... hospitalization benefits ..." in this area there is no doubt that health insurance and the retirement time frame played a role in such bargaining. The Association notes that the expectation of bargaining unit members was that health insurance for retirees would persist. When the twenty-year retirement plan was negotiated, the anticipation was that retirees' health insurance would continuously be provided.

In terms of the statutory requirement of costs and "... the interests and welfare of the public and the financial ability of the public employer to pay" the codification of health insurance benefits has no immediate financial impact. Indeed, as long as health insurance benefits are paid, there are no additional costs since premium costs are being transferred from a County practice to a CBA. Indeed the awarded payment structure will reduce the cost to the employer while at the same time providing a guaranteed benefit to the employee.

As previously noted in *Rockland* and applicable in the instant matter:

McDonald removed an integral postulate that both parties were operating under. This Award codifies said assumption and places it within the context of a protected CBA. The record must reflect that there is no indication at present that the County intends to alter the provisions of the County Resolution and therefore this entire issue may indeed be moot. However, the focus of the Association is in the event that County initiates a change within the County Resolution they would still be protected.

This Award guarantees that an employee who retires on or after January 1, 2003 the same health insurance benefits and cost to them that they believed they always had and would continue to have. It does nothing more than to codify a long-standing practice.

Based on the record and the statutory criteria, including the County's ability to pay, it is the opinion of the Panel that the retirees' health insurance awarded herein is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following:

HEALTH INSURANCE RETIREES

1. *Effective January 1, 2003 the County shall provide individual and/or family (dependent) health insurance and contribute 90% of the premium with the retiree contributing 10% of the premium for individual and /or family (dependent) coverage for those who retire on or after January 1, 2003.*
-

**ISSUE NUMBER FOUR
EDUCATION BENEFITS
DISCUSSION AND AWARD**

The CBA [Article 6] provides for an annual education benefit based on earned college credits. Officers who earn thirty credits receive \$150.00, sixty credits receive \$300.00, ninety credits receive \$450.00, 120 credits receive \$600.00 and 150 credits receive \$750.00. The PBA proposes to increase each of these levels by \$200.00. The CBA requires that course reimbursement be limited to work in police science, criminal justice or other courses approved by the Sheriff. The PBA notes that Carmel pays for actual degrees earned and awards \$600.00 annually for an Associates degree and \$900.00 annually for a Bachelors degree. Even with the proposed increases the Putnam deputies would lag behind Carmel.

The County opposes any such increase and argues that the present level is adequate. They estimate the cost of the increase would equal some \$10,000.00 per year.

Based on the record and the statutory criteria, including the County's ability to pay, it is the opinion of the Panel that the education benefits Awarded herein are fair and equitable. In full consideration of the evidence and arguments presented, the Panel Awards the following adjustments in Article 6 Education Benefits:

EDUCATION BENEFITS

1. *Effective January 1, 2003, all annual education benefits shall be increased by ten percent retroactive to January 1, 2003. These amounts shall not be cumulative.*

[1]	30 credits	\$165.00
[2]	60 credits	\$330.00
[3]	90 credits	\$495.00
[4]	120 credits	\$660.00
[5]	150 credits	\$825.00

**ISSUE NUMBER FIVE
HOURS OF WORK
OVERTIME AND RECALL
DISCUSSION AND AWARD**

The PBA seeks to modify the contractual definition of overtime contained in Article 8 (D) from overtime being equated with "time worked in excess of the regularly scheduled working hours" to time worked "in excess of eight hours in a work day or forty hours in a workweek." The Association has also proposed a new out-of-title demand which would pay the Sergeant's rate to an officer in charge of a tour when no Sergeant is working that tour. There is also a new Association standby pay proposal designed to compensate BCI personnel covering a tour when an Investigator or Senior Investigator is not

scheduled to work that tour. The rate would be one hour of pay at straight time for each of two hours, or part thereof, of standby coverage. The Association argues that each BCI investigator spends some ten days per month on standby. Each day is calculated at five hours thereby creating some fifty hours per month of standby for which there is no compensation.

The County opposes any modifications in these areas and notes that there is no evidence as to what occurs when a Sergeant is not working on any specific tour. In terms of comparables they note that the Town of Kent does not have any out-of-title provisions and that Carmel requires that an employee work five consecutive days or ten days within a cumulative year before qualifying for out-of-title pay. Additionally the record documents that neither Kent nor Carmel has any provisions for standby pay.

The record does not support the PBA proposal to modify the overtime, recall and standby provisions of the CBA. While several of the PBA's arguments are of interest, the record does not document that a problem of sufficient magnitude to warrant change exists with the present system. Absent any documented issues with the present system, or a compelling reason to modify same, the proposals are rejected. Based on the record and the statutory criteria, and the evidence and arguments presented, the Panel rejects the PBA proposals in these areas.

HOURS OF WORK - OVERTIME AND RECALL

1. *Reject PBA proposals on hours of work, change in definition of overtime, and establishment of BCI recall. Maintain present contract language.*

ISSUE NUMBER EIGHT HOLIDAY PAY DISCUSSION AND AWARD

The PBA is seeking a modification in the Article 10 provision whereby all employees who work rotating shifts including holidays are compensated with an annual \$1500.00 lump sum payment. Their demand calls for an increase from \$1500.00 to \$2500.00. These employees also receive twelve "holidays" off per year; however, the day off may not coincide with the actual holiday and instead may be determined by Departmental manpower needs. The PBA estimates that the present \$1500.00 equals five days of wages while the \$2500.00 would be tantamount to nine days of compensation.

The County opposes any changes and argues that if the proposals were awarded that the County costs would be an additional \$68,000.00 annually. They note that the benefits under other County Sheriffs' units do not support the PBA proposal.

The record documents that the PBA proposal is unique and that any increase in same is not warranted at this time. The record does not support the PBA proposal to modify Holiday Pay. The record does not document that a problem of sufficient magnitude to warrant change exists with the present system. Absent any documented issues with the present system, or a compelling reason to modify same, the proposal is rejected. Based on the record and the statutory criteria, and the evidence and arguments presented, the Panel rejects the PBA proposals in this area.

HOLIDAY PAY

1. *Reject PBA proposal - maintain present contract language*
-

**CLOTHING ALLOWANCE
DISCUSSION AND AWARD
ISSUE NUMBER NINE**

The PBA is seeking to increase the present Article 12 Clothing Allowance from \$900.00 to \$1,200.00 annually for all personnel assigned to the BCI and those assigned to Narcotics. Deputies assigned to Narcotics presently receive an \$800.00 annual clothing allowance after serving thirty-days in that assignment. If a Deputy works less than one year in Narcotics, the \$800 allowance is prorated. The PBA has proposed that this amount also be increased to \$1,200.00. The County has proposed the continuation of the status quo.

Town of Carmel detectives receive an annual clothing allowance of \$650.00 while Kent detectives receive the same. In terms of other Sheriffs' Departments, Ulster Deputies receive \$475.00 with no additional payments to detectives, Columbia County road patrol and Criminal Investigators receive \$900.00 annual payments, Dutchess County grants a \$500.00 allowance while Rockland County grants uniforms and cleaning services with no additional clothing allowance for Detectives or plain clothes officers.

Based on the record and the statutory criteria, including the County's ability to pay, it is the opinion of the Panel that the longevity increase awarded herein is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following adjustments in the Clothing Allowance:

CLOTHING ALLOWANCE

1. *Increase in clothing allowance of \$25.00 per year for all BCI personnel and Deputies assigned to Narcotics effective January 1, 2003 in each year of the two-year agreement. The present payment system shall continue.*
-

**ISSUE NUMBER ELEVEN
MISCELLANEOUS¹⁷**

**[1] FUNERAL EXPENSES
DISCUSSION AND AWARD**

The PBA seeks an increase in the funeral expense for those officers killed in the line of duty from the

¹⁷ As part of their miscellaneous demands, the PBA seeks to substitute the words "CPR-Defibrulator" for "CFR." They base this demand on their desire to keep the nomenclature current. This demand was not opposed by the County.

present \$5,000.00 to \$7,500.00. Funeral costs have risen over the past years and the increase sought by the PBA is well within reason. It is impossible to accurately cost this item out since we can only hope that the expenditure necessity is moot. The County did not oppose this proposal.

Based on the record and the statutory criteria, including the County's ability to pay, it is the opinion of the Panel that the funeral expense increase awarded herein is fair and equitable. In full consideration of the evidence and arguments presented, the Panel awards the following adjustments in Funeral Expenses:

FUNERAL EXPENSES

1. *Increase funeral expenses allowance from \$5,000.00 to \$7,500.00 for officers killed in line of duty.*
-

MISCELLANEOUS

[2] FIREARMS TRAINING DISCUSSION AND AWARD

The CBA has a provision [Article 18 C] whereby the County may schedule firearms training when Deputies are on duty. If said day is scheduled when not on duty the County at its option, may pay overtime or compensatory time. The PBA seeks to remove the optional condition and mandate that when firearms training is to be conducted on an employees' day that they be compensated at the overtime rate or receive compensatory time. The County opposed this proposal and argued that flexibility in scheduling is needed and that unit members, at times, receive extra compensation for this duty. (PBAX #43, #43A, CX Tab #3, Article VIII (F))

The record does not support the PBA proposal to modify payment for Firearms Training. The record does not document that a problem of sufficient magnitude exists to warrant change within the present system. Absent any documented issues with the current system, or a compelling reason to modify same, the proposal is rejected. Based on the record and the statutory criteria, and the evidence and arguments presented, the Panel rejects the PBA proposals in these areas.

FIREARMS TRAINING

1. *Reject PBA proposal. Maintain present contract language.*
-

A-W-A-R-D

1. TERM OF THE AWARD

A. The term of this Award is from January 1, 2003 - December 31, 2004.

CONCUR J.W. Raemy DISSENT _____
CONCUR J.V. [Signature] 2/24/07 DISSENT _____

6. BASIC ANNUAL SALARY

A. For the period January 1, 2003 through December 31, 2003 the current police officers' base wage schedule shall be increased by 3.5 percent retroactive to January 1, 2003.

B. For the period January 1, 2004 through June 30, 2004, the current police officers' base wage schedule shall be increased by 2.00 percent retroactive to January 1, 2004.

C. For the period July 1, 2004 through December 31, 2004, the current police officers' base wage schedule shall be increased by 2.00 percent retroactive to July 1, 2004.

CONCUR J.W. Raemy DISSENT _____
CONCUR _____ DISSENT J.V. [Signature] 2/24/07 *

7. LONGEVITY

- A. A new longevity step is to be paid after Twenty years of service effective January 1, 2004. The value of the Step shall be at \$2,400.00.

CONCUR John R. Rump DISSENT _____

CONCUR _____ DISSENT ATV SJ 2/24/07 *

3. (a) HEALTH INSURANCE "BUY OUT"

- A. Effective a December 31, 2004 convert existing health insurance "buy out" from a dollar amount to percentage. County will pay 20% of annual premium costs for those employees not participating in either individual or family health insurance plan.
- B. Reject PBA proposal to insert "substantially equal" in place of similar. Maintain present contract language.

CONCUR John R. Rump DISSENT _____

CONCUR _____ DISSENT ATV SJ 2/26/07 *

3. (b) HEALTH INSURANCE - CHANGE IN PLAN

- A. Reject PBA proposal to insert "substantially equal" in place of "similar." Maintain present contract language.

CONCUR John R. Rump DISSENT _____

CONCUR _____ DISSENT ATV SJ 2/26/07 *

4. HEALTH INSURANCE RETIREES

A. Effective January 1, 2003 the County shall provide individual and/or family (dependent) health insurance and contribute 90% of the premium with the retiree contributing 10% of the premium for individual and/or family (dependent) coverage for those who retire on or after January 1, 2003.

CONCUR  . DISSENT _____

CONCUR _____ DISSENT  2/26/07

6. EDUCATION BENEFITS

A. Effective January 1, 2003, all annual education benefits shall be increased by ten percent retroactive to January 1, 2003. These amounts shall not be cumulative.

1.	30 credits	\$165.00
2.	60 credits	\$330.00
3.	90 credits	\$495.00
4.	120 credits	\$660.00
5.	150 credits	\$825.00

CONCUR  . DISSENT _____

CONCUR _____ DISSENT  2/26/07

7. HOURS OF WORK - OVERTIME AND RECALL

- A. **Reject PBA proposals on hours of work, change in definition of overtime, and establishment of BCI recall. Maintain present contract language.**

CONCUR J.W. Rumpf. DISSENT _____

CONCUR _____ DISSENT ATV SJ 2/24/07 *

8. **HOLIDAY PAY**

- A. **Reject PBA proposal. Maintain present contract language.**

CONCUR J.W. Rumpf. DISSENT _____

CONCUR _____ DISSENT ATV SJ 2/24/07 *

9. **CLOTHING ALLOWANCE**

- A. **Increase in clothing allowance of \$25.00 per year for all BCI personnel and Deputies assigned to Narcotics effective January 1, 2003 in each year of the two-year agreement. The present payment system shall continue.**

CONCUR J.W. Rumpf. DISSENT _____

CONCUR _____ DISSENT ATV. SJ 2/26/07 *

10. **FUNERAL EXPENSES**

- A. **Increase funeral expenses allowance from \$5,000.00 to \$7,500.00 for officers**

killed in line of duty.

CONCUR Joseph Rump DISSENT _____

CONCUR _____ DISSENT ATV SF 2/24/07 *

11. FIREARMS TRAINING

A. Reject PBA proposal. Maintain present contract language.

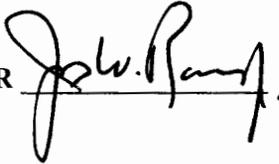
CONCUR Joseph Rump DISSENT _____

CONCUR _____ DISSENT ATV SF 2/24/07 *

SUMMARY

In reaching our findings above, we have carefully considered and weighed all of the relevant statutory criteria, as well as the standards traditionally relied upon in Interest Arbitrations of this kind. In the Panel's view, they balance the rights of the members of the bargaining unit to fair and reasonable improvements in their terms and conditions of employment with the legitimate needs of the County to judiciously apportion its economic resources. Furthermore, all provisions and language contained in the prior Agreements are hereby continued, except as specifically modified in this Award.

THOSE ISSUES PRESENTED AT ARBITRATION BY THE PARTIES THAT ARE NOT SPECIFICALLY ADDRESSED IN THIS AWARD WERE ALSO CAREFULLY CONSIDERED BY THE PUBLIC ARBITRATION PANEL, BUT REJECTED IN THEIR ENTIRETY.

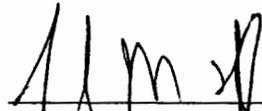
CONCUR , DISSENT _____

CONCUR _____ DISSENT  2/24/07 *



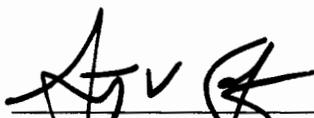
AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Joel M. Douglas, Ph.D.
Public Panel Member and Chairman
Dated: 2/27/07

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



Anthony V. Salfaro
Employee Panel Member
Dated: 2/26/07

** Dissenting Opinion to fellow
within 30 calendar days after
execution by travel cause for
incorporation into Award*

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.



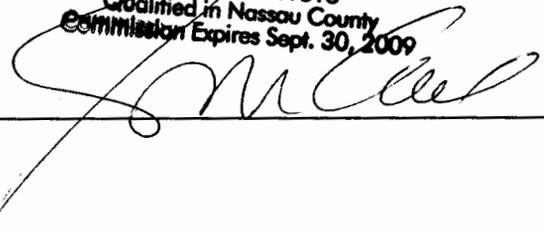
James W. Roemer, Jr. Esq.
Employer Panel Member
Dated: 2/22/2007

AWARD AFFIRMATION

STATE OF NEW YORK
COUNTY OF WESTCHESTER

On this 27th day of Feb 2007 before me personally came Joel M. Douglas to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:

BARBARA M. CARLSSON
Notary Public, State of New York
No. 01CA4741818
Qualified in Nassau County
Commission Expires Sept. 30, 2009



STATE OF NEW YORK
COUNTY OF ORANGE

On this 26th day of Feb 2007 before me personally came Anthony V. Solfaro to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:



NANCY J. MARCOJOHN
Notary Public, State of New York
No. 4988931
Qualified in Dutchess & Ulster Counties
Commission Expires Nov 18, 2009

STATE OF NEW YORK
COUNTY OF ALBANY

On this 27th day of Feb 2007 before me personally came James W. Roemer, Jr. to me personally known and known to me to the same person described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same:



RAYANNE L. SHEEHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 5039263
Commission Expires February 13, 2011

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

-----X
**In the Matter of the Compulsory Interest
Arbitration Between**

**COUNTY OF PUTNAM AND SHERIFF OF
PUTNAM COUNTY,**

Employer,

- and -

**PUTNAM COUNTY SHERIFF'S DEPARTMENT
POLICE BENEVOLENT ASSOCIATION, INC.,**

Petitioner.

PERB Case No.:
IA2004-026; M2004-211

**DISSENTING OPINION
OF PANEL MEMBER
ANTHONY V. SOLFARO**

-----X
I am compelled to dissent from this Award in its entirety, except for that part concerning the two-year duration, but first, some necessary background.

These parties' last collective bargaining agreement expired December 31, 2002. Hearings were held upon a transcribed record on September 28, 2005 and October 19, 2005, which was the official record of the proceedings. The record was closed in May 2006 with the submission of the parties' briefs. An executive session of the Panel was held in June 2006. In September 2006, Panel Chair Joel Douglas (Douglas) circulated for comment by Panel Members an outline of the award that had as a major component a codification of the retiree health insurance benefit as it existed on December 31, 2002 that provided for a flat dollar contribution by retirees of \$125.00 for individual coverage and \$250.00 annually for family coverage.

After the Panel Members' input, Douglas circulated in November 2006, a twenty-four page "draft" which included a detailed rationale for each subject awarded, with a directive for the Panel Members to correct the draft (i.e. typos and the like) and return it to Douglas as a final award for execution. At that time, Douglas was aware that I had concurred with the contents of the November, 2006 "draft" such that a majority vote was achieved on each subject. Indeed, the

Employer's Panel Member stated that he would be filing a dissenting opinion and needed time to draft same for incorporation into the final award. That draft award contained the same health insurance benefit for retirees as was outlined by Douglas in September of 2006.

At the insistence of the Employer's designee to the Panel, and over my objection, Douglas granted a second executive session which occurred on December 11, 2006. The focus of the discussion at that second executive session was retiree health insurance. At that session and thereafter, Douglas was advised by me that the comparability data relied upon by the Employer was inaccurate and misleading. During the discussions at that second executive session about the contents of the record and the exhibits, Douglas abruptly reversed his opinion and the rationale contained in his November "draft", and announced that he had changed his mind and had decided that he was leaning to change the retiree health insurance benefit to require retirees to contribute 10% of the insurance premium. Douglas said he was relying on the comparability study submitted by the Employer which only addressed Deputy Sheriffs with a focus on Rockland County. Douglas was told matter-of-factly by me that the Rockland County comparable was not correctly represented in the Employer's exhibit in that there was no 10% retiree contribution, an assertion later substantiated by the Employer Panel Member. Notwithstanding the admitted accuracy of my assertion, Douglas still incorporated a 10% contribution, totally disregarding the facts and without further in-depth review of the Employer's Deputy Sheriff comparables, or the police comparables submitted by the PBA. Moreover, those same deputy sheriff comparables were known to Douglas when he wrote his September outline and the full text November draft award. They were insignificant to him before, and he stated so, but they suddenly became controlling. Nothing changed factually. Moreover, the Employer's comparables were different from the jurisdictions the Employer had used to fashion the wages and benefits for its management personnel. That management comparability study used the counties of Dutchess, Orange, Rockland and Westchester. The comparables used by the Employer in this proceeding omitted Westchester County and added Ulster and Columbia counties.

No explanation was offered by Douglas as to why he permitted this classic cherry pick by the Employer of comparables, nor was there any explanation offered by him as to why he did not

examine the nature and level of the retiree health insurance benefit in the municipal police departments within either the county comparables offered by the Employer or elsewhere. The PBA offered evidence that retiree health insurance benefits existed in over 50 collective bargaining agreements throughout the Hudson Valley and Northern Westchester County with differing types and levels of contribution Douglas acknowledged he was familiar with based on his experience in various interest arbitration proceedings he has chaired. As the nature and level of the retiree health insurance benefit within the deputy sheriff comparables suddenly became so important to Douglas, he had an obligation to review in detail all of the contracts for these other municipal police departments. Instead, he shut down any discussion, accepted the Employer's cherry-picked deputy sheriff universe of comparables as controlling, and changed the retiree health insurance benefit to require an uncapped and ever-escalating increase in the amounts paid by retirees for their health insurance that starts out four times greater than the then existing flat dollar contribution, with little, if any, change in wages from his original draft award.

Douglas took umbrage to the discussions during the second executive session because I would not negotiate with him and persisted in challenging the Employer's "facts" and his rationale. My subsequent attempts via telephone and e-mails to question both the accuracy and the merit of Douglas' conclusions were rebuffed or ignored by him. When, for example, I asked Douglas what other parts of the award would be changed because he had so greatly reduced what he had twice proposed for the retiree health insurance benefit, I was told that he didn't know, and I would read about it in the final award. When pressed further to determine if he had a majority vote, he didn't respond. When I asked Douglas what rationale would justify the dramatic change between the earlier outline and full text "draft" of November 2006, and the final award on the retiree health insurance issue, I was told the same thing. My hope was to persuade Douglas to maintain in the award what he had twice previously proposed, but I was not afforded the opportunity for any further input because, as he put it to me, he was tired and was moving on. In February 2007, I received the final version of the award for my signature.

In the summary outline and the draft award, Douglas awarded base wage increases of 3.5% and 3.0% effective January 1, 2003 and January 1, 2004, respectively. Douglas painstakingly noted that those base wage increases were "well within the statutory criteria and

indeed are at the low end of what the financial records support. Indeed, the wage Award is below the rate that would have prevailed but for the Award on retirees' health insurance" (i.e. codification of the fixed dollar contribution).

In the February 2007 final Award, the wage increases are the same for 2003 (3.5%) and a small increase to a split 4%, payable 2% effective January 1, 2004 and 2% effective July 1, 2004 was added. These wage awards are also said, in the final Award, to be "well within the statutory criteria." All other terms of the final Award are the same as in the earlier outline and full text "draft" award of November 2006.

Where the final Award differs in major, critical respect and rationale from all that preceded it is in regard to retiree health insurance. This was the most important issue from both parties' perspective, such that it was argued by party counsel in detail and debated extensively by the Panel Members and Douglas. After that thorough airing of views, and in "full consideration of the evidence and arguments presented," Douglas in his outline and his "draft" award codified the retiree health insurance benefit that existed as of December 31, 2002.. Thus, under the draft award retirees would contribute the same fixed, specified, flat dollar amount they were paying for health insurance as of December 31, 2002, in conjunction with and in recognition of the base wage increases that affect the employees' pensions. Those insurance payments, as noted earlier, were \$125.00 for individual coverage and \$250.00. annually for family coverage. Significantly, the flat dollar contribution was continued in the summary and draft award even though Douglas expressly recognized that the deputy sheriff comparables offered by the Employer showed retirees contributing a percentage of premium for their health insurance. Ending his lengthy analysis of the retiree health insurance issue in his November draft, Douglas stated:

"This Award guarantees retirees from January 1, 2003 forward the same health insurance benefits they believed they always had and would continue to have. It does nothing more than to codify a long-standing practice."

Without, obviously, any new evidence or arguments, Douglas changes the existing retiree health insurance benefit in the final Award to require a percentage of premium contribution from

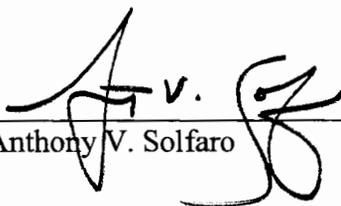
retirees instead of a fixed dollar contribution, even though the Employer did not during negotiations or arbitration have any demand in this respect. None of the rationale for that dramatic “about face” contained in the final Award was even mentioned in the prior draft. How was it that between the outline and first full text “draft” and his final Award, the insignificant suddenly became not only significant but dispositive? Douglas now finds “appreciable value” to the PBA in his “codifying” the Employer’s long-standing retiree insurance benefit into the award. But attaching great weight to this so-called hidden value is completely contrary to Douglas’ repeated observation that a codification of the retiree health insurance benefit merely keeps intact the parties’ mutually shared belief before the Court of Appeals’ decision in Geneva that health insurance continuation on retirement was a vested benefit. Douglas now requires the PBA to purchase for the employees it represents what he himself views to be merely a preservation of the status quo.

To help offset the 10% health insurance premium contribution now required of retirees, Douglas insignificantly increases the base wage in the second year of the Award from 3% to a split 4%. But that 3% contained in his September outline and full text November 2006 draft award was, by Douglas’ own admission, already too low. Increasing slightly what was already too low does not offset or justify the huge change in the retiree health insurance benefit. That small increase in base wage will never come close to off-setting the impact of a retiree health insurance contribution now pegged as a percentage of insurance premium. Moving from a flat dollar health insurance contribution to a percentage of an ever escalating insurance premium over which retirees have no control is a sea change in the nature of the retiree benefit. The effect of a meager increase in base wage for 2004 in the final Award is gutted immediately and Douglas knows this full well. Retirees suffer under this final Award with the imposition of a changed health insurance benefit that is less than warranted upon on the record and less than what had been awarded them in the previous outline and full text draft. For Douglas to even suggest that this final Award maintains the employees’ existing retirement health insurance benefit is untrue, outrageous, and totally disingenuous on his part.

I have been directly involved with the Taylor Law interest arbitration process for many years and have served on a great many panels, including ones chaired by this Chairman. This is

the first time I have been confronted with so consequential and so sudden a reversal of position by a Panel Chair on an issue of such vital importance to employees when, quite literally, there has been no change in material fact, law or argument from initial drafts to final version of the Award. The conclusions I am forced to draw about this Panel Chair's unprecedented change of heart and mind are as damaging to the process as they are for the unit employees who must bear the burden of this imposition. Douglas' final Award on the retiree health insurance issue is far from the "fair and equitable" disposition he believes it to be and is required by law to make. It is very much the product, I fear, of the Employer "getting" something in this Award that has produced internal inconsistencies in the Award, themselves fueled by the Chair's faulty and unprincipled analysis of the issues and the record evidence. I believe Douglas bungled this process, needlessly prolonging the deliberations, and ending with an Award that I consider to be intellectually dishonest, unjustified by the statutory criteria and unfair. These employees deserved far better and I dissent, not only from the substantive contents of the Award, but from the ridiculous rationale used to support it that is not consistent with the record or the statutory criteria.

Dated: March 27, 2007


Anthony V. Solfaro