

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of The Interest Arbitration Between

ONONDAGA COUNTY DEPUTY SHERIFFS'
POLICE ASSOCIATION

Petitioner,

AND

COUNTY OF ONONDAGA AND ONONDAGA
COUNTY SHERIFF,

Joint Employers.

PERB Case No. IA2005-003; M2004-321

FINAL AND BINDING
OPINION AND AWARD
OF TRIPARTITE
ARBITRATION PANEL

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

The Public Arbitration Panel members are:

PUBLIC PANEL MEMBER AND CHAIRPERSON:

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P. O. Box 5436
Clifton Park, New York 12065

PUBLIC EMPLOYEE PANEL MEMBER:

Edward J. Bragg
President
Onondaga County Deputy Sheriffs' Police Association
P.O. Box 1176
Syracuse, New York 13201

PUBLIC EMPLOYER PANEL MEMBER:

Peter Troiano
Director of Employee Relations
County of Onondaga
Onondaga County Civic Center
421 Montgomery Street
Syracuse, NY 13202

APPEARANCES:

For the Onondaga County Deputy Sheriffs' Police Association

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For Onondaga County and Onondaga County Sheriff

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Pursuant to the provisions of Civil Service Law, Section 209.4, Richard A. Curreri, Esq., Director of Conciliation of the New York State Public Employment Relations Board, designated the undersigned on May 18, 2005, as the Public Arbitration Panel for the purpose of making a just and reasonable determination on the matters in dispute between Onondaga County & County Sheriff ("County") and Onondaga County Deputy Sheriff's' Police Association ("Association" or "Union"). The prior Collective Bargaining Agreement between the parties covered the period from January 1, 2000 to December 31, 2003. Although the Agreement expired, it remains in full force and effect pending this Award.

The Association represents a negotiating unit consisting of 220 deputies, sergeants and lieutenants, who are sworn members of the Onondaga County Sheriffs's Office, and whose primary duties involve criminal law enforcement in the Police Department.

The parties commenced negotiations for a successor agreement on November 14, 2003, using an interest-based approach. The negotiations were facilitated by Mediator Kevin Flanigan of the New York State Public Employment Relations Board. The parties met numerous times, but were unable to reach agreement on all proposals. The Association filed a declaration of impasse with the Public Employment Relations Board on January 17, 2005. The Association then filed petition for compulsory arbitration on April 14, 2005 [Joint Exhibit No. 2]. The County filed its response on April 26, 2005 [Joint Exhibit No. 3].

The County of Onondaga, New York is located in Central New York with a land area of approximately 794 square miles and is approximately 35 miles in length and 30 miles in width. The County contains over 2,600 miles of highways, roads and streets. The County is at the juncture of New York State Thruway and Interstate 81. The County has a population of approximately 459,000 inhabitants.

The Onondaga County Sheriff's Office is a unit of County government and has approximately 650 employees. The Sheriff's Office operates 24 hours per day and has several subdivisions including the Police Department, Civil Department and Custody Department.

A preliminary conference among the Panel and the parties' counsel was held on June 29, 2005. Because of the interest-based approach to negotiations, the parties had not exchanged formal,

The Onondaga County Sheriff's Office
approximately 650 employees. The Sheriff's Office
divisions including the Police Department.

written proposals. Written proposals were exchanged on August 1, 2005 [Joint Exhibit Nos. 6, 7], and responded to on August 23 and 24, 2005 [Joint Exhibit Nos. 7, 8]. Hearings were held in Syracuse, New York on August 30, September 6, October 10, November 9 and 14, December 5 and 21, 2005, and February 14 and 21, 2006, at which all parties were provided opportunity to introduce evidence, present testimony, summon witnesses, cross-examine witnesses, and otherwise support their respective positions on the outstanding issues. The parties filed post hearing briefs which were received in a timely manner on or about April 6, 2006.

The issues submitted to interest arbitration by the Association are described by it as compensation (base salary schedule, longevity pay, on-call pay) and health insurance premium contributions for current employees who retire during or after expiration of the contract being negotiated. The County submitted issues consisting of the assignment and employee use of employer-owned vehicles for personal transportation and commuting to and from work.

All issues which have attendant support submitted by each party were carefully considered, as well as the responses by the opposing party. The Public Arbitration Panel met in executive session on April 24 and May 16, 2006, and deliberated on each of the outstanding issues, carefully and fully considering all the data, exhibits, briefs and testimony of the sworn witnesses who appeared on behalf of both parties. The results of those deliberations are contained in this OPINION AND AWARD, which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse. For each issue, the discussion below presents the positions of the parties and the Panel's analysis and conclusion. The Public Arbitration Panel considered the impact of each item upon the whole, and made its judgment concerning the combination of items that would provide a just and reasonable result for all parties.

In arriving at the determination contained herein, the Public Arbitration Panel has considered the following statutory guidelines with which it was charged by Section 209.4:

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such 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 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.
- (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.

The Panel specifically takes note of Section 209.4(g) of the Civil Service Law, which states:

With regard to members of any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than 50 percentum of their service as certified by the County Sheriff and are police officers pursuant to subdivision 34 of § 1.20 of the Criminal Procedure Law as certified by the Municipal Training Council, the provisions of this section shall only apply to terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefit; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling or issues relating to eligibility for overtime compensation which shall be governed by other provisions by law.

THE PARTIES' POSITIONS ON STATUTORY CRITERIA**WAGES PAID IN COMPARABLE JURISDICTIONS**

Each party presented what it considered the appropriate comparable jurisdictions. The County argues that comparisons of counties is the correct comparison, while the Association argues that towns and villages within the County of Onondaga is the most accurate comparison.

Position of the Association

The Association argues that the most appropriate comparable grouping is the municipal police departments operating within Onondaga County. It also believes that certain other large urban sheriffs' departments in Upstate New York should be included in the comparison.

The Association asserts that in determining comparability, the most relevant considerations are the type work being performed, the levels of proficiency, depth and breadth, the geographic location, and the area's socioeconomic conditions. According to the Association, all of these factors point to the intra-County comparisons.

The Association argues that it is the backbone of law enforcement in Onondaga County. Whereas in most other counties in Upstate New York, the State Police is the agency that handles the bulk of difficult or major cases and provides specialized police services, the Association argues that in Onondaga County it is the Association that plays this role. Witnesses testified to the Association's breadth, depth, professionalism, and sophistication. It is the agency to which towns and villages turn when a serious crime occurs. It is the Association, not town and village police departments, that is the agency that works in tandem with the Syracuse Police Department, the New York State Police, and federal agencies in task forces addressing gangs, drugs, warrant executions, etc. It is the Association, not a town or village police department, that has all manner of specialized and highly trained units to perform forensic services, crime lab analysis, electronic surveillance, helicopter services, hazardous device services, SWAT operations, abused person, and felony crime

investigations. Only the Syracuse Police Department and New York State Police have comparable units.

The Association states that geography and socioeconomic conditions also support its suggested comparables. Association members work in the same communities and face the same range of conditions across the County that city, town and village departments are exposed to in their limited portions of the County. The Panel may fairly assume that Association members live throughout the County as neighbors of the police officers employed by municipal departments.

The Association rejects the County's assertion that municipal departments are inapposite to the comparison and that the Association should be compared only to other sheriffs' departments. It argues that the type of public employer *per se* is irrelevant to comparability determinations, except insofar as it implicates ability to pay considerations. And, the Association is a minor element of the County's billion dollar budget, which suggests a greater ability to absorb or fund the cost of market-based wages. Although counties have more extensive obligations, they also have more extensive resources. Counties are large and diverse enough that if one area of county income declines, other areas may maintain their stability. The County has a flexibility to absorb particular shortfalls.

The Association argues that the Panel also should consider the compensation of the sheriff's departments of Albany, Dutchess, Erie, and Monroe Counties, which, like the Association, are relatively large, urbanized departments. Moreover, the Association asserts that the Panel should reject the County's position that small rural sheriff's departments should be considered in the analysis.

Position of the County

The County contends that comparable communities must consist of counties, and suggests the following counties as comparable to Onondaga County: Albany, Broome, Cayuga, Cortland, Erie, Madison, Monroe, Niagara, Oneida, Oswego and Saratoga. The County states that these counties are in geographic proximity to Onondaga County. Cayuga, Cortland, Madison, and Oswego counties are all contiguous to Onondaga County and benchmark the local labor market.

...The County contends that ...
...Niagara, Oneida, ... 7

Furthermore, argues the County, Albany, Broome, Erie, Monroe, Niagara, Oneida and Saratoga counties are all upstate New York counties located within a 150 mile radius of Onondaga County.

The County contends that the eleven counties are similar to Onondaga County in terms of gross population and/or the suburban/rural mix of population, home ownership costs, and other demographics such as median and per capita income levels, poverty levels, and the availability of federal funds and grants.

The County notes some differences in the comparable counties. Monroe and Erie counties could be viewed as wealthier than Onondaga County when considering their greater population, higher median housing values, and comparable or higher median household and per capita incomes. The County's demographics do, however, fit well within the ranges displayed by the 11 counties on each factor. Accordingly, it is fair and reasonable for the Panel to embrace the County's comparability universe.

The County argues that the Panel should reject any argument of the Association to limit the comparisons to a group of only three or four counties such as Erie, Monroe, Albany and Dutchess. Erie County has twice the population of Onondaga County and, due to an apparent absence of sound financial management and excessive spending, has recently experienced substantial financial problems such as taxpayer revolt and is now subject to a financial control board. Monroe County also has a considerably larger population than Onondaga County and much higher housing costs. Monroe County has also depleted significantly its general fund reserves in recent years, an indication that its financial well-being is suffering. The County argues that the Panel should reject the inclusion of Dutchess County because it is simply not comparable to Onondaga County.

Furthermore, asserts the County, city, town and village police departments should not be included in any universe of comparables or given much weight in that regard. Arbitrator Rinaldo observed in a recent interest arbitration award involving Fulton County and its Sheriff's Department that the "logical choice of comparables must be other County road patrol units."

The County states that it does not dispute that the duties performed by Association members are similar to those performed by municipal police officers; however, it argues that alone does not render it appropriate to include town, village and city police departments in the comparability mix.

Duties alone should not define what constitutes a "comparable community" to Onondaga County. Other economic, geographic and demographic factors identified and discussed must be included in that equation.

Discussion

The Association argues that the appropriate comparable communities are the towns and cities in Onondaga County. It bases its position on the fact that there is a common pool of candidates for sworn positions for both the County and towns and villages in the county. The Association considers the type of work being performed, the levels of proficiency, depth and breadth, the geographic location, and the area's socioeconomic conditions as being the major criteria for making comparisons.

It is acknowledged that there is relationship between Onondaga County Sheriffs's personnel and police officers of towns and village in the County, especially since they come from a common labor pool. However, it was shown that there is no real competition between the County and those towns and villages as far as recruiting sworn personnel. Very few deputy sheriffs leave County employment to take positions with towns or villages within the County. Thus, salary parity is not essential for the County to retain its personnel. This is not to say that deputy sheriffs should not be paid salaries relative to other jurisdictions. Those comparisons cannot be ignored.

The most influential component of comparability is the patterns of income and expenditures of the comparing units. In the instant case, the County has mandated expenditures which towns and villages do not have. For example, the County has a substantial Medicaid burden and is required to pay 25% of most Medicaid services, by far the largest local share in the nation. Costs have been growing 15% on average annually for most counties due to both expanded eligibility for benefits and prescription drug cost escalation. Counties function as an arm of the State and are required to deliver a significant number of other mandated services with fixed costs.

There is agreement that Arbitrator Rinaldo correctly states the basis for comparison:

"The Panel also observes that the logical choice of comparables must be other County road patrol units. It is common knowledge that, particularly under contemporary conditions, counties in New York State face unique fiscal challenges

that are not necessarily of the kind and degree faced by other municipalities in the State. Common sense also supports the conclusion that the best source of comparison is the same type of municipality.”

ABILITY TO PAY

Position of the Association

The Association contends that the County's presentation on financial items highlighted a parade of budget horrors -- high fixed/mandated costs (welfare, foster care, children services, etc.), rising health benefit costs, unionized work forces, high property and sales taxes and cited the decidedly conservative views of the "Citizens Budget Commission" and the State Business Council's Public Policy Institute. The Association agrees that the facts cited by the County are mostly true, but they do not establish that the County cannot afford an award providing the substantial increases sought by the Association. The Association's expert witness, Kevin Decker, debunked the County's sky-is-falling claims. Mr. Decker pointed out that the County's gross real property tax levy in 2006 is a mere 4.5% higher than it was ten years earlier and that the average annual rate of increase in the levy (0.44%) is significantly less than the historical price inflation (2.51%). Indeed, the County's own 2006 budget document reports that 52 of the 57 New York State counties (excluding New York City) had larger percentage increases in property taxes than Onondaga County during the period 1989 to 2005 and that Onondaga County "has one of the lowest property tax rate increases in the State over this period."

The Association points out that the average full value tax rate decreased in both 2005 and 2006; the 2006 rate of \$8.52 (per thousands) is the second lowest rate in the last ten years and is 18.2% lower than the 1996 average full value rate of \$10.41 (per thousand). The County's 2006 budget also showed that the assessed value tax rate for 2006 decreased in 24 of the County's municipalities and was unchanged in another. The County reduced its county-wide property tax rate by 2.90%.

The Association states that Mr. Decker's report also tracked the County's use of its constitutional tax limit over the last ten years and showed that the County currently has \$179.1

million of taxing ability remaining, having exhausted only 36% of the constitutional limit as of December 31, 2006.

Mr. Decker's report also reviews the County's sales tax history and data. Onondaga County was the last of the largest ten counties to raise its sales tax rate to 4%. The County underestimated its 2005 sales tax revenues by nearly \$6 million, collecting approximately \$132.1 million, rather than the budgeted \$126.2 million. The County's adopted 2006 budget forecasts sales tax revenue of \$137.7 million, some \$80 million more than was collected in 1996. This represents a revenue increase of nearly 5% per year, well above the average annual price inflation of 2.3% during the same period.

Mr. Decker modestly concluded that the sales tax and real property tax in Onondaga County are stable and growing sources of revenue. There is no indication of weakness or strain, either in absolute or relative terms in either revenue source.

Regarding the Medicaid issue, Mr. Decker pointed out the inaccuracy of the County's claim that the moderated future growth in its Medicaid bill, amounting to \$2.7 million annually beginning in 2008, equals and thus will simply eat up the annual growth in County sales tax revenue. On the contrary, Mr. Decker correctly states, "The County expects sales tax revenues to be \$132.1 million in 2005 and has budgeted sales revenues at \$137.7 million for 2006, an increase of \$5.6 million."

As Mr. Decker points out and Mr. Mareane conceded, Onondaga County has excellent bond ratings by the investor services. Thus, Standard & Poor's and Fitch each rate the County AA+, their second highest rating, which indicates that bonds sold by the County are "high grade - high quality" bonds. The County is rated Aa2 by Moody's, its third best rating and also considered high grade - high quality. Indeed, the County's 2006 budget notes that only two counties (Westchester and Orange) have higher bond ratings and only six other counties have achieved the Aa2 rating.

The Association's financial expert, Mr. Decker, found that the County could certainly afford to pay an award of consecutive ten percent increases in overall compensation. He stated that there are approximately 225 members of the Onondaga County Deputy Sheriffs' Police Association, accounting for only 5.3% of total County employment.

As Mr. Decker points out and Mr. Mareane

The Association states that the parties in this instant case have been assuming that a 1% increase on the base pay for the members of the Onondaga County Deputy Sheriffs' Police Association costs the County approximately \$100,000 to \$110,000. Thus, a 10% increase would be approximately \$1.1 million. If \$1.1 million were to be raised entirely from the County's real property tax, it would require an increase in the Full Value tax rate of just 5 cents per thousand, the equivalent of a 6/10ths of one percent increase.

If the cost of a 10% increase (\$1.1 million) were to be raised entirely from the County's sales tax, it would require dedicating the equivalent of approximately 3 days of collections.

The Association argues that there is little question that the County could, in the strictest sense, afford to pay the members of the Onondaga County Deputy Sheriffs' Police Association whatever size raise were to be granted by the panel.

Position of the County

The County contends that the statutory factors of the "financial ability of the public employer to pay" and the "interests and welfare of the public" are inextricably linked in this proceeding. The County simply cannot afford to pay the extravagant salary and benefit increases sought by the Union without either raiding its general fund balance, an act that would constitute fiscal imprudence due to the potential for the bond rating agencies to lower the County's credit rating, or by raising real property taxes, something which is clearly not in the best interests of the public.

The County states that the wage and benefit costs of Association members are funded almost entirely by revenues derived from the County real property tax levy and sales tax receipts, and accounted for within the County's General Fund. This is because the Sheriff's Office does not receive significant state or federal aid in support of its activities; nor does it generate substantial revenues from other sources to cover its operating expenses and personnel costs. Therefore, the County must rely almost entirely on "local dollars" to pay the salaries and fringe benefits of the deputy sheriffs of this County. The local tax dollar cost to fund the Sheriff's Office was approximately \$52 million for 2006 of which about \$32 million was budgeted to cover the costs of the Police Department. And within the \$32 million figure, approximately \$26.5 million was

of this County. The award is 12

earmarked for costs directly attributable to Association members, including but not limited to payroll expenses.

The County contends that it will likely have to resort to real property tax increases to cover the cost of the Panel's award in this case. Financing the Association's salary increases via real property tax increases will only place additional strain on the limited financial resources of the individual taxpayers of this County.

The County argues that Medicaid is primarily responsible for the County's impact on the heavy local tax burden. Onondaga County, like the other counties in New York, is mandated to pay 25% of most Medicaid services – by far the largest local share in the nation. In 2001, Medicaid was the most expensive single item in the County's budget. The County's share of the Medicaid bill then stood at \$54.7 million and represented about 35% of the County's property tax levy. In 2005, the Medicaid bill hit about \$89 million, a \$35 million, or 63%, increase in just four years. Half of the property taxes collected by the County now go to pay the local share of Medicaid.

The County states that the new state "cap" on local Medicaid costs will only moderate, but not eliminate, the future dramatic growth in the County's Medicaid bill. Under that "relief" plan, the County's Medicaid costs are still projected to grow by \$3.1 million in 2006, an additional \$2.9 million in 2007, and yet another \$2.7 million, or 3%, every year thereafter. By 2010, the County's Medicaid cost will exceed \$100 million.

The County argues that other non-Medicaid human service programs, mandated by the State but not fully funded, increased the County's costs to deliver these programs by \$15 million, or 35%, between 2001 and 2005.

The County is also expecting significant local dollar spending increases to cover the escalating costs of gasoline, heat and electricity, employee pension programs, health and dental benefits, assigned counsel, wage growth within the County's organized and non-organized workforce, Onondaga Community College activities, the Van Duyn nursing home, inmate medical care, equipment, salt and sand for highway snow and ice control, the Onondaga Lake clean-up, and a myriad of other items.

The County stressed several key points: (1) the high percentage of fixed and mandated costs adversely affects the County's ability or willingness to absorb growing wage and benefit expenditures; (2) health care costs continue to spiral out of control further straining the County's budget; indeed, employee health and dental costs increased from \$32 million to \$45 million, or 48%, from 2001 to 2005; and (3) pension contributions to the state retirement system have increased dramatically in recent years and are expected to remain high.

The County asserts that the sales tax rate increase did not generate a windfall for the County, but rather permitted the County to merely get back on its feet, pay off its 2005 Medicaid bill, help cover the radically higher cost of State pension fund contributions for the County's workforce, and balance its budget without having to impose further property tax increases.

The County also asserts that over the 2001 - 2005 time period, the County spent down 21% of its general fund reserves, from \$64.9 million to \$51.2 million, a level which, when viewed as a percentage of the County's general fund budget of approximately \$520 million, must be maintained and not permitted to be further eroded as a matter of prudent fiscal management.

The County concludes by stating that in reality "the Association's voracious appetite for wage and benefit increases can only be fed by real property tax increases, the inevitable consequences of which are economic stagnation and the outward migration of businesses and individual home owners."

Discussion

In their presentations concerning ability to pay, the Association concentrates on revenues of the County, while the County stresses expenditures. Both present cogent arguments supporting their respective positions.

The Association argues that the County's gross real property tax levy in 2006 is only 4.5% higher than it was ten years earlier and that the average annual rate of increase in the levy (0.44%) is significantly less than historical price inflation. The Association also argues that the County currently has \$179.1 million of taxing ability remaining, having exhausted only 36% of the

constitutional limit as of December 31, 2006. The Association also points out that the County reduced its county-wide property tax rate by 2.90%.

The Association asserts that if the cost of a 10% increase (\$1.1 million) were to be raised entirely from the County's sales tax, it would require dedicating the equivalent of approximately 3 days of collections.

The Association argues that there is little question that the County could, in the strictest sense, afford to pay the members of the Onondaga County Deputy Sheriffs' Police Association whatever size raise were to be granted by the panel.

The County, on the other hand, stresses expenditures, arguing, for example, that Medicaid is primarily responsible for the County's impact on the heavy local tax burden, and is required to pay twenty-five percent of Medicaid services, representing about 35% of the County's property tax levy. It adds that the new cap on Medicaid will only moderate the County's expenditures.

The County argues that health care costs continue to spiral out of control further straining the County's budget; employee health and dental costs increased from \$32 million to \$45 million, or 48%, from 2001 to 2005.

The County argues that it cannot afford to pay the salary and benefit increases sought by the Union without either raiding its general fund balance or by raising real property taxes.

It is clear from the data presented by both parties that the County has the ability to pay wage increases to its deputy sheriffs. It is not at its taxing limits and has other avenues of revenues. However, there is a limit to the wages it can prudently pay to its labor force. So, while technically the County has the ability to pay wage increases, those increases must be relatively moderate to maintain the financial stability of the County. The Awards below take into consideration all arguments made by both parties, and such Awards can be met by the County without tax increases.

THE INTEREST AND WELFARE OF THE PUBLIC

As stated above, while the County has the ability to pay wage increases, there is a reasonable limit that those increases must take.

It is beyond dispute that the public is best served by having a professional, well-trained, well-educated Deputy Sheriff's office staffed with qualified and experienced personnel. Reasonable salaries are necessary to attract qualified individuals to County service and to retain them for a career.

A reasonable increase in salaries for deputy sheriffs will maintain a stable work force and still be financially prudent. The Award below is made consistent with those goals.

Duration of the Award

The parties agree to a two (2) year Award which shall be effective January 1, 2004 through December 31, 2005.

Based on agreement by the parties, the Interest Arbitration Panel makes the following

A reasonable increase in salaries of

shall be financially prudent. The

Duration of the Award

The parties agree to a two (2) year

December 31, 2005

The County Council for

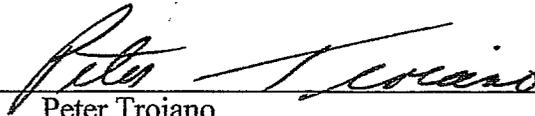
AWARD

The term of this Award shall be from January 1, 2004 through December 31, 2005.

I (concur) ~~(do not concur)~~ with the above Award

Date: _____

9/8/06



Peter Troiano
Employer Panel Member

I (concur) ~~(do not concur)~~ with the above Award

Date: _____

09/06/06



Edward J. Bragg
Employee Organization Panel Member

WAGES

The Association proposed a ten (10.0%) percent base wage increase each year of the two-year Award. The County proposes a wage increase of one and-a-half (1.5%) percent increase effective the first pay period after January 1, 2004, and a one point three (1.3%) percent increase in the 2004 salaries in the second year of the Award, with retroactive payments limited to those employees who are still on the County's active payroll as of the date of the issuance of the Panel's Award.

Both parties presented documentary evidence and argument supporting their positions on the issue, bringing into evidence a comparison of wages and other benefits in other comparable jurisdictions, including those with similar skills, the employer's ability to pay, an analysis of wages and other benefits negotiated by the parties in the past. Their main arguments concerning ability to pay were presented above in the sections on statutory criteria. The same is true concerning wages of police in other jurisdictions.

The Association argues that the discrepancy in base salary between a 15-year Deputy and a Syracuse Police Officer was \$4,657 as of December 31, 2003 (49,008 - 44,351), requiring an 11.2% increase to achieve the equivalent base salary as of that date. The difference in overall compensation was even more striking. There was a difference of \$7,020 (53,418 - 46,398), requiring an immediate increase of 15.13% just to catch up. The Association also makes comparisons with police officer salaries in towns and villages within Onondaga County and concludes that salaries for Association members are substantially below most of officers in those towns and villages.

The Association asserts that in order to achieve parity, this Panel should award an increase amounting to \$11,560 in total compensation as of December 31, 2005. This increase should be achieved by awarding a 10% increase in base salary effective January 1, 2004 and another 10% increase effective January 1, 2005, which would result in a base salary of \$53,665.

The County argues that the New York State Nurses Association ("NYSNA"), a unit of registered professional nurses, recently agreed to a 1.5% base salary increase for 2005, the sole 2005 contract settlement in place for the County's various bargaining units. The County further argues that fairness must be measured in terms of what it is doing for its other employees. The County's salary offer to the Association is fair and reasonable in this regard.

The County avers that as a matter of external equity or "comparability", the effect of the 2004 and 2005 base salary increases proposed for Association unit members will be to keep their salary levels very competitive as compared to their similarly situated colleagues in the comparable counties identified by the County. The County would maintain salary levels that would neither be the highest nor the lowest of the comparable counties.

The County states that it is not experiencing any recruitment or retention problems with regard to its deputy sheriff police officers, and many more candidates have expressed an interest in appointment at announced salary levels than were appointed, and there were very few declinations due to salary considerations.

Based on an analysis of all testimony, exhibits and other documentary evidence, the Interest Arbitration Panel makes the following

AWARD

- a. The 2003 Salary Schedule D set forth in the 2000-2003 Collective Bargaining Agreement shall be increased by three (3.0%) percent and applied retroactively to the first full payroll period of 2004. The increase and retroactive application shall also be made to overtime compensation paid under Article 7 and Holiday Premium paid under Article 11 of the 2000-2003 Collective Bargaining Agreement. Eligibility to receive payment of the retroactive applications shall be limited to those members of the bargaining unit who are employed as of the date of this Award.
- b. The salary schedule rendered under (a) above shall be increased by three (3.0%) percent and applied retroactively to the first full payroll period of 2005. The increase and retroactive application shall also be made to overtime compensation paid under Article 7 and Holiday Premium paid under Article 11 of the 2000-2003 Collective Bargaining Agreement. Eligibility to receive payment of the retroactive applications shall be limited to those members of the bargaining unit who are employed as of the date of this Award.

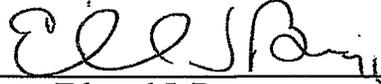
I (concur) ~~(do not concur)~~ with the above Award

Date: 9/8/06


Peter Troiano
Employer Panel Member

I ~~(concur)~~ (do not concur) with the above Award

Date: 09/06/06


Edward J. Bragg
Employee Organization Panel Member

LONGEVITY PAYMENTS

The Association makes the following proposal for a new longevity provision:

After ten years service, members would receive (annually) a \$1,500 longevity payment; after fifteen years the annual longevity payment would rise to \$2,000; after twenty years the annual longevity payment would rise to \$2,500.

The County opposes such a new clause in the Collective Bargaining Agreement.

Discussion

During the Interest Arbitration hearings, the Association made reference to a "total compensation package, but at no time did it present specific items except for the base salary increase. Without sufficient argument supporting the Association's position it is not possible to evaluate the proposal. There is no longevity clause in the current Collective Bargaining Agreement. The Wages Award above takes into consideration all the financial arguments made by the Association. The Association and the County are advised to evaluate longevity payments in the next round of negotiations. The issue is remanded back to the parties for further consideration.

AWARD

There shall be no provision made in the Award which provides for longevity payments.

I (concur) ~~(do not concur)~~ with the above Award

Date: 9/8/06

Peter Troiano
Peter Troiano
Employer Panel Member

I ~~(concur)~~ (do not concur) with the above Award

Date: 09/06/06

Edward J. Bragg
Edward J. Bragg
Employee Organization Panel Member

STEP STRUCTURE

The Association makes the following proposal to shorten the step structure:

Article 29 (Salaries) will be amended to provide a five-year lateral advancement schedule for achieving the maximum rate under grade 4. The column C rate would be reached after three years (rather than four) and the column D rate would be reached after five years (rather than seven).

The County opposes.

Discussion

As with the longevity proposal, the Association presented no justification for a Step Structure change during the Interest Arbitration hearings. In its post-hearing brief, the Association states simply that its proposal would put the unit "in line with its group of comparable agencies."

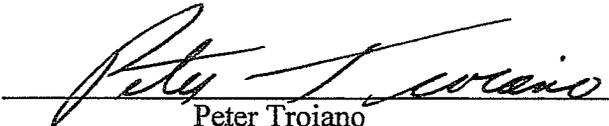
Without further justification and argument, it is not possible for this Panel to adequately evaluate the merits of this proposal. The Panel makes the following

AWARD

There shall be no change in the Step Schedule awarded.

I (concur) ~~(do not concur)~~ with the above Award

Date: 9/8/06


Peter Troiano
Employer Panel Member

I ~~(concur)~~ (do not concur) with the above Award

Date: 09/06/06


Edward J. Bragg
Employee Organization Panel Member

ON-CALL PAY

The Association makes the following proposal for a new provision for on-call pay:

Members who are on call would receive a premium of \$50 per shift.

The County opposes.

Discussion

This is another proposal that was not addressed in the Interest Arbitration hearings. In its brief, the Association states that it makes the proposal in order to "compensate members who are inconvenienced by being on-call."

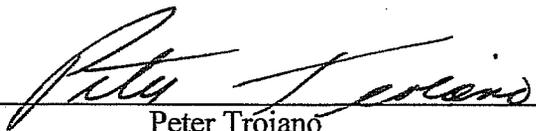
Because no further justification was made by the Association, it is not possible to evaluate the proposal. Therefore, the Panel makes the following

AWARD

The Association's proposal shall not be included in the Award.

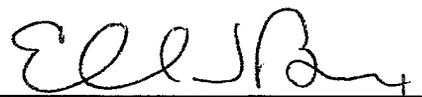
I (concur) ~~(do not concur)~~ with the above Award

Date: 9/8/06


Peter Troiano
Employer Panel Member

I ~~(concur)~~ (do not concur) with the above Award

Date: 09/06/06


Edward J. Bragg
Employee Organization Panel Member

The current contribution rates for Association retirees is as follows:

Such qualified members shall contribute an amount equal to 15% per month of the premium equivalent rate established for the OnPoint Program for individual coverage and the percent per month of the premium equivalent rate established for family coverage corresponding to their completed years of service as follows:

- 65% of the premium equivalent rate with 20 years service or less
- 60% of the premium equivalent rate with 21 years service
- 55% of the premium equivalent rate with 22 years service
- 50% of the premium equivalent rate with 23 years service
- 45% of the premium equivalent rate with 24 years service
- 40% of the premium equivalent rate with 25 years service or more

The Association proposes the reduction of the sliding scale retiree contribution rate for family coverage to 15%.

Position of the Association

The Association states that its proposal seeks to put its retirees in the same position that all other County retirees receive. The current scheme severely discriminates against Association retirees and should be remedied.

The Association rejects the County's various objections to the proposal. Other County employees who have enhanced retirement eligibility plans have a 15% contribution rate for family coverage.

The cost to the County, while not precisely calculable is modest. The Association unit is small and not all retirees will opt for County-provided health insurance, much less family coverage.

The Association argues that in 1997 when the Association achieved the 20-year retirement plan, it did not agree to a permanent 65% contribution rate for family coverage. Although Mr. Mareane contended that this concession was permanent, he could point to nothing supporting such a belief. It is plain that the agreement was not "cast in stone," as the parties revised the formula to the current sliding scale in the 1999-2003 labor agreement. The Association paid for the 20-year retirement with two consecutive zero percent increases in 1996 and 1997, concessions that reverberate and continue to cost Association members to the present day.

The Association contends that its proposal is fair, reasonable, modest in cost, and not precluded by bargaining history. Moreover, the Association's participation in the Health Care

Coalition has led to enormous savings for the County's health insurance costs and should be taken into account. The Panel should grant this request.

Position of the County

The County states that there should be no change to the cost sharing arrangement set forth in the Collective Bargaining Agreement.

The County contends that the cost of providing retiree health benefits has skyrocketed in recent years. During the 1996-2005 time period, the total premium for individual coverage increased from \$156.87 per month or \$1,882 per year, to \$342.18 per month or \$4,106 per year, an increase of 118%. Similarly, the total premium for family coverage increased from \$350.08 per month or \$4,201 per year, to \$844.57 per month or \$10,135 per year, a whopping 141% increase over the same ten-year period. The County has borne the lion's share of the cost increases.

In addition, states the County, there is no immediate relief in sight with respect to the rapid escalation of health care costs.

The County argues that the parties' bargaining history supports maintaining the status quo. As the County stressed during the hearing, the Association agreed during the course of negotiations for the 1996-99 CBA to increase the premium contribution for retiree dependent health coverage from 15% to 65% as one quid pro quo for the County's agreement to implement the special Article 14-B 20-year, half-pay retirement plan for the deputy sheriffs.

According to the County, it would stand to lose 68% of the dollars it would collect under the current arrangement thereby increasing its annual cost by approximately \$94,620.

The County rejects the Association's demand that the Panel permit it to repudiate the quid pro quo agreement it made with the County in 1998, and as ameliorated in the 2000-03 Agreement, to yet again increase the County's contributions for dependent retiree health coverage for future retirees. However, the County must continue to provide the 20-year retirement plan because retirement benefits, once implemented, are required by the New York State Constitution to be permanently maintained.

Discussion

While the Association's argument that previous negotiations in which the Association agreed to the increase in payments for retirees health insurance in exchange for a twenty-year retirement plan is not "set in stone" or made permanent, all factors must be taken into consideration. It is true that health insurance costs have risen dramatically in past years and will most likely continue to rise in the future. But, as the County points out, its annual retirement costs paid to the Retirement System increased from \$136,804 in 2002 to \$576,278 in 2003, and to \$2,077,321, or 18.0% of covered payroll, in 2004.

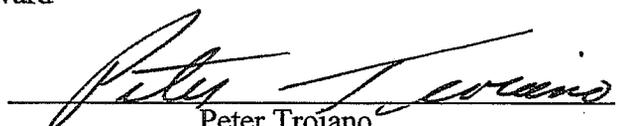
Given the costs incurred by the County for various benefits provided to Association members and, given the fact that the Wage Award above accounts for financial considerations of both the Association and the County, the Association's proposal shall not be adopted. Therefore, the Panel makes the following

AWARD

There shall be no changes in the Retiree Health Insurance contribution rates.

I (concur) ~~(do not concur)~~ with the above Award

Date: 9/8/06


Peter Troiano
Employer Panel Member

I ~~(concur)~~ (do not concur) with the above Award

Date: 09/06/06


Edward J. Bragg
Employee Organization Panel Member

ASSIGNMENT AND USE OF EMPLOYER-OWNED VEHICLES

The County makes the following proposal:

- a. CID detectives presently assigned a vehicle will continue to enjoy the economic benefit of a take-home vehicle on the same terms and conditions as presently exist for commuting to and from work and for job assignments.
- b. The personal use of CID take-home vehicles shall be eliminated subject, however, to reasonable exceptions authorized by the Sheriff or his designee. Any such exception would require written advance approval of the Sheriff or his designee, or be expressly directed by the Sheriff or his designee, and be of direct benefit to a mission of the Sheriff's Office.
- c. Those employees whose positions have been assigned take-home vehicles shall continue to have them made available on the same terms and conditions as presently exist for commuting to and from work and for job assignments. This would be conditioned upon the employee continuing in his/her present assignment. If the employee changed his/her assignment, the Sheriff would have the discretion to determine whether to continue to make a take-home vehicle available to said employee in his/her new assignment, and/or the next employee in the original assignment, for purposes only of commuting to and from work and for job assignments.
- d. The County further proposes to eliminate the personal use of these vehicles subject, however, to reasonable exceptions authorized by the Sheriff or his designee. Any such exception would require written advance approval of the Sheriff or his designee, or be expressly directed by the Sheriff or his designee, and be of direct benefit to a mission of the Sheriff's Office.
- e. Except as noted above, any future assignment of take-home vehicles for commuting to and from work and for job assignments would be subject to the Sheriff's discretion. The exercise of such discretion will include a consideration of whether assignment of a take-home vehicle will benefit the core mission(s) of the Sheriff's Office.
- f. Subject to approval by the Sheriff or his designee, an employee eligible for assignment of a take-home vehicle would be allowed to refuse such benefit.

Position of the County

The County states that its objective is to eliminate personal non-commuting use of the approximately 75 vehicles assigned to Association members and to obtain greater managerial control over the assignment of take-home vehicles.

The County states that the Sheriff's Office logs approximately 3,200,000 miles annually on its fleet of about 200 vehicles, a large portion of which are driven by Association members. In 2005,

the Sheriff's Office spent approximately \$500,000 for fuel, an increase of about \$200,000 from the amount spent in 2003.

The County argues that although quantifying the extent of cost containment that would be derived from eliminating personal, non-commuting use of the Sheriff's vehicles cannot be done readily since Association members are not required to document or log their personal use of the vehicles, it is logical to conclude that the savings would be substantial and inure to the benefit of the taxpayers.

The County avers that although the ability to take vehicles home, and to use them for personal use, was originally in furtherance of a policy of the Sheriff to enhance the visibility of police in the community so as to serve as a crime deterrent, there is no evidence demonstrating that the policy has achieved this goal.

Position of the Association

The Association states that the County offered no support for its proposal other than keeping the status quo would cost money. The current program has been in effect for many years and to alter it in the manner proposed by the County would shift a substantial cost to Association members and eliminate a benefit.

Discussion

As stated by the County, the existing policy that is, the ability to take vehicles home and to use them for personal use was put into effect in furtherance of a policy of the Sheriff to enhance the visibility of police in the community so as to serve as a crime deterrent. The County has not provided any argument or evidence that such a policy is, or has been, ineffective. While costs of maintaining and using automobiles by the Sheriff's Department is rising, especially in the past several months, its total impact on costs is not determined. In balancing the advantages of the policy with the economic costs, this Panel concludes that the current policy shall remain in effect. Therefore, the Panel makes the following

AWARD

The current policy regarding assignment and use of employer-owned vehicles shall remain in effect.

I ~~(concur)~~ (do not concur) with the above Award

Date: 9/8/06

Peter Troiano
Peter Troiano
Employer Panel Member

I (concur) ~~(do not concur)~~ with the above Award

Date: 09/06/06

Edward J. Bragg
Edward J. Bragg
Employee Organization Panel Member

The above issues are all that were presented to this Interest Arbitration Panel for evaluation and decision.

Respectfully submitted,

Date: 9/13/06

Peter A. Prosper
Peter A. Prosper

Public Panel Member and Chair

STATE OF NEW YORK)
COUNTY OF New York) SS:

On this 13th day of September, 2006, before me personally came and appeared PETER A. PROSPER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

KEITH DeMICHELE
Notary Public, State of New York
Reg. 01DE5044220
Qualified in Schenectady County
My Commission Expires May 22, 2007

Keith DeMichele

STATE OF NEW YORK)
COUNTY OF) SS:

On this 8th day of September, 2006, before me personally came and appeared PETER TROIANO, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Diane M. Corsaro

DIANE M. CORSARO
NOTARY PUBLIC, State of New York
Qualified in Onon. Co. No. 4925649
Commission Expires April 4, 2010

STATE OF NEW YORK)
COUNTY OF *Cronulla* SS:

On this 6th day of September, 2006 before me personally came and appeared EDWARD J. BRAGG, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Linda Fielding

LINDA FIELDING
Notary Public, State of New York
Qualified in Onon. Co. No. 4772305
Commission Expires 3/30/2010

STATE OF NEW YORK PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of The Interest Arbitration Between)
ONONDAGA COUNTY DEPUTY SHERIFFS')
POLICE ASSOCIATION)
Petitioner,)
AND)
COUNTY OF ONONDAGA AND ONONDAGA)
COUNTY SHERIFF,)
Joint Employers.)
PERB Case No. IA2005-003; M2004-321)

DISSENTING OPINION
OF ARBITRATOR BRAGG

This first-ever interest arbitration proceeding between the parties presented the Panel with an ideal opportunity to begin the righting of a long-standing wrong -- to put the Police Department unit squarely on the path to an appropriate level of compensation. In my view, the Panel's award utterly fails to reckon with, much less rectify, the plain-as-day undercompensation of OCSA-unit members. Because consecutive 3 percent increases for 2004 and 2005 are not, under the present circumstances, "just and reasonable," I respectfully dissent from all aspects of the award except that concerning vehicle assignment and use.

In New York State, compulsory interest arbitration has been available to resolve impasses in contract negotiations of municipal police departments since 1974. The Taylor Law was amended in 1995 to permit New York State Police units to petition for interest arbitration. Meanwhile, sheriff's departments were excluded

from coverage until 2003, when interest arbitration was extended to deputy sheriff's units that perform mostly police duties.

The change in law was long overdue. In most counties across the State, sheriff's deputies earn significantly less than their fellow police officers employed by villages, towns, and cities. There is no question that the pay disparity existing between these two groups is substantially attributable to their differing treatment under the Taylor Law, rather than any real difference in their marketplace value. Sheriff's deputies have operated under a more onerous set of rules, and their salaries have suffered as a result.

The law has been changed, but inexplicably this Panel saw fit not to improve the OCSPA unit's status as the lowest-paid agency in Onondaga County. It is plain that the Taylor Law was amended so that the unfair discrepancy in deputies' wages could be ameliorated. In 1995, the compensation of State Police troopers and investigators lagged far behind that of comparable police officers and detectives. Eleven years later, their compensation has increased dramatically and they are no longer underpaid in comparison to others. The 2003 amendment ought to, and I believe inevitably will, have a similar effect with respect to the OCSO. Regrettably, however, the decision of this Panel has set that process back two years.

OCSPA clearly met its burden in showing that its members deserved an extraordinary increase: the compensation levels of police officers and detectives working for other law enforcement agencies operating within the County is significantly higher. Depending on their years of service, OCSO deputies receive between 9 and 12 percent less than the average compensation of their counterparts

working for local police departments within the County. To reach the top pay levels at different lengths of service, deputies needed immediate, "catch-up" increases ranging from 14 to 18 percent, plus cost-of-living increases for 2004-2005 to keep pace with other departments. Achieving parity with State Police troopers would have required a two-year award of well over 50 percent. State Police investigators, who perform duties very comparable to those of OCSO detectives, are even further ahead in compensation. That these large discrepancies in pay exist was established by OCSPA's economic expert, Kevin Decker, and went unrefuted by the County.

OCSPA also showed that intra-County local departments are the most relevant comparators. Police services in Onondaga County are provided by fourteen town and village departments, the Syracuse Police Department ("SPD"), and the OCSO. The OCSO provides assistance to town and village departments and is the primary agency in the areas for which there is no local department. In all of these jurisdictions, the work of OCSO deputies is either the very same as that of the local police officers (e.g., routine patrol, vehicle and traffic enforcement, criminal investigations) or performed at a higher level (e.g., sex abuse and other serious crimes that are turned over to the OCSO, sophisticated forensic services, electronic surveillance, specialized equipment services, etc.). In short, the OCSO largely fulfills the comprehensive leadership role the State Police plays in dozens of other, less urbanized counties across Upstate New York.

In the City, the OCSO plays a vital role on multi-agency task forces, working in tandem with the SPD, State Police, and federal law enforcement agencies with respect to gangs, drugs, warrant executions, etc. The OCSO also plays, by far, the

largest role at the Central New York Police Academy, which trains police in a seven county region. Outside witnesses all supported, without contradiction, OCSPA's contention that the OCSO is the backbone of law enforcement in the County.

It cannot be seriously debated that Onondaga County itself is the most relevant community for comparison purposes within the meaning of Civil Service Law Section 209.4(c)(v). OCSO deputies live and work in the very same community in which local police officers live and work. In sum, the type of work, the levels of proficiency, depth and breadth, the geographic location, and the area's socio-economic conditions all pointed to the intra-County comparison urged by OCSPA.

The Panel majority nevertheless rejected this approach, choosing instead to accept the County's position that eleven other counties are the most relevant comparators. This was wrong and unjustifiable. Although the counties of Cayuga, Cortland, Madison, Oneida and Oswego surround Onondaga, their sheriff's departments are much smaller, play a different role within their respective counties, and serve largely rural communities with very different socio-economic characteristics. The County proffered them because their deputies earn less, not because they are truly comparable. The Panel majority's reliance on several lesser-paid and inapposite sheriff's departments skewed its base salary calculations by an average of nearly \$5,000.

Although the Panel majority paid tepid lip service to the intra-County comparables (acknowledging "there is relationship" and the "comparisons cannot be ignored"), it clearly *did* ignore the evidence on this issue. The majority's cited reasons for adopting the County's position -- "the patterns of income and

expenditures of the comparing units,” the “mandated expenditures which towns and villages do not have,” and Arbitrator Rinaldo’s view that “commonsense” indicates “the best source of comparison is the type of municipality” -- are inconsistent with the dictates of the Taylor Law.

Section 209.4(c)(v) specifies the factors that a public arbitration panel must consider in making a just and reasonable determination. The comparability factor is stated in terms solely relating to the employee, the work performed, and the community: Thus, a panel is obligated to make 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*.

§209.4(c)(v)a (emphasis added). The comparability analysis accounts for the type of public employer only insofar as this informs the employee’s duties, working conditions, and community; comparability itself does not, if a panel follows the statute, focus on the differing types of financial resources and obligations of public employers. In my view, therefore, the Panel majority’s approach was plainly inconsistent with the Taylor Law.

Of course, the economic challenges and realities faced by counties are to be considered, but under the statutory scheme this is a separate factor that assesses how much the employer can afford to pay. Thus, panels are instructed to consider “the interests and welfare of the public and the financial ability of the public

employer to pay.” §209.4(c)(v)b. In this proceeding, the evidence demonstrated the County could afford increases substantially higher than 6.1% over two years.

My dissent is directed primarily at the Panel majority’s improper resolution of the comparability issue and the attendant inadequate increase in base salary. I cannot ignore, however, the majority’s incredible contention that OCSPA did not “present specific items” concerning, or argument supporting, its longevity proposal.

OCSPA proposed a longevity schedule consisting of annual payments of \$1500 after ten years of service, \$2000 after fifteen years, and \$2500 after twenty years. OCSPA submitted extensive evidence and argument supporting this proposal, including that every department in its proffered set of sixteen comparable jurisdictions provides longevity pay. Three of those jurisdictions (Albany, Erie, and Monroe) were included in the County’s own set of eleven sheriff’s departments. The County opted to omit evidence concerning whether the remaining eight departments provide for longevity payments, but that cannot properly be held against OCSPA. The County did submit the most recent Delaware and Fulton Sheriff’s Departments awards, both of which provide for longevity pay. Moreover, as my colleagues in the majority are well aware, longevity pay is a standard term in police contracts across the State. Whatever the Panel majority’s reasons for not providing for longevity pay, it is certainly not because OCSPA failed to submit enough supporting evidence.

I also dissent from the Panel’s failure to grant OCSPA’s proposal concerning retiree health insurance. The current retiree contribution for family coverage is, at levels varying from 40 to 65 percent, cost-prohibitive. OCSPA proposed to return to

the 15 percent share that everyone else who retires from County employment pays.

Considerations of basic fairness, OCSPA's participation in the cost-saving Health Care Coalition, the parties' bargaining history, and the relatively modest cost implications all supported this change. I therefore dissent from the majority's denial of this proposal.

In sum, I could not disagree more strongly with the Panel majority's failure to award the higher wage increases deserved by the OCSPA unit. The Panel majority inexplicably ignored a virtual mountain of unrefuted evidence supporting OCSPA's demands for catch-up wage increases, settling instead for a middle-of-the-road increase that was patently designed not to offend. Even the awarded three percent increases are below or barely at the going rate for police units.

For these reasons, I respectfully dissent.

 - 09/06/06
Edward J. Bragg
Employee Organization Panel Member



LINDA FIELDING
Notary Public, State of New York
Qualified in Onon. Co. No. 4772305
Commission Expires 3/30/2010