

HTP  
Notes  
Def. need by 1.6.06

IA 2005-014

PUBLIC EMPLOYMENT RELATIONS BOARD  
STATE OF NEW YORK, CASE NO. IA 2005-014  
X-----X

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
**RECEIVED**  
MAR 19 2009

In the Matter of the Compulsory Interest Arbitration  
Between

SUFFOLK COUNTY DETECTIVE INVESTIGATORS  
POLICE BENEVOLENT ASSOCIATION,  
Employee Organization,  
and

**CONCILIATION**

COUNTY OF SUFFOLK,  
Public Employer, PUBLIC PANELIST'S  
RE: TERMS & CONDITIONS OF EMPLOYMENT OPINION & AWARD  
JANUARY 1, 2004 THROUGH DECEMBER 31, 2007

X-----X  
BEFORE: TRIPARTITE COMPULSORY INTEREST ARBITRATION PANEL

DAVID N. STEIN, ESQ., PUBLIC PANEL MEMBER & CHAIRMAN  
MR. JEFFREY L. TEMPERA, COUNTY PANEL MEMBER  
DAVID A. DAVIS, ESQ., DIPBA PANEL MEMBER

**APPEARANCES:**

FOR THE SUFFOLK COUNTY DETECTIVE INVESTIGATORS  
POLICE BENEVOLENT ASSOCIATION : DAVIS & HERSH, LLP.,  
BY: RON DAVIS, ESQ. & LLOYD M. BERKO, ESQ., OF COUNSEL

FOR SUFFOLK COUNTY: LAMB & BARNOSKY, LLP., BY:  
RICHARD K. ZUCKERMAN, ESQ., OF COUNSEL

TIME, DATES & PLACES OF HEARING: 11 A.M., DECEMBER 9, 2005, 1345  
MOTOR PARKWAY, ISLANDIA, NEW YORK; DECEMBER 15, 2005, 534  
BROADHOLLOW AVE., MELVILLE, N.Y.

**OPINION AND AWARD OF PUBLIC PANEL MEMBER**

*Background*

Pursuant to Section 209 (4)(c)(2) of the *Civil Service Law* (the Taylor or Act) and the  
Rules of the Public Employment Relations Board (the Board), the County of Suffolk (the  
County) and the Suffolk County Detective Investigators Police Benevolent Association

(DIPBA) designated me as the Public Panel Member and Impartial Chairman of a tripartite compulsory interest arbitration panel also consisting of Mr. Jeffery L. Tempera, as the County appointed arbitrator and David Davis, Esq., as the DIPBA appointed arbitrator, convened by the Board at the request of the DIPBA to determine the terms and conditions of employment of employees in the unit of County employees of which the DIPBA is the exclusive representative.

In accordance with the policy set by the Suffolk County Legislature, the County and the DIPBA agreed that the term of the Award to be issued by this compulsory interest arbitration panel (Panel) is four years in keeping with the term covered by the terms and conditions of employment of uniformed employees of the County's Police Department (the Department): rank and file police officers, detectives, and superior officers.

Throughout the course of this proceeding, the parties were represented by counsel and had an opportunity to submit information in the form of documents and testimony, to cross-examine witnesses and to present argument in the form of post-hearing submissions. A transcript of the proceedings before the arbitration panel was made in accordance with law. During the hearing, the parties agreed to the incorporation into the record of the testimony of the expert witnesses on the County's financial health presented by the County and the Suffolk County Superior Officers Association in *County of Suffolk & Suffolk County Superior Officers Association*, Docket No. IA 2003 021. Additionally, an affidavit from the President of the DIPBA was submitted and made a part of the record without objection after the conclusion of the hearing with respect to the DIPBA's proposal for board pay.

Upon the record so produced, I find the following to be relevant.

As will be further detailed below, the collective bargaining history between the County and the employee organizations representing the County's uniformed employees has been traditionally governed by a long established practice in American labor relations known as "pattern bargaining." It is a process designed to create stability and limit strife in the negotiation of labor contracts covering organized employees in both the private and public sectors in the United States and Canada. Essentially, once a contract is reached between an employer and an employee organization covering employees in a particular bargaining unit, the terms and conditions of employment of bargaining units of the same employer's similar employees will follow the "pattern" set by the first group to settle, particularly if the group which makes the initial settlement is one which possesses substantial leverage, often due to its size or other significance.

*More size  
 ability  
 to  
 influence  
 procedure*

Pattern bargaining has characteristically guided interest arbitrators and fact finders designated to resolve impasses arising in the public sector in New York State which arise under the Act or the New York City Collective Bargaining Law. Thus, I will be referring to the text of previous compulsory interest arbitration awards issued by compulsory interest arbitration panels during this round of bargaining, as well as previous rounds, as well as voluntary settlements reached in previous rounds of negotiations, concerning the sworn law enforcement personnel employed by the Department and the Suffolk County District Attorneys Office (DA's Office).

In its compulsory interest arbitration award dated January 6, 2005, the interest arbitration panel in *County of Suffolk & Superior Officers, supra*, chaired by Stanley L.

Aiges, as public member, found as follows:

. . . the population of Suffolk County exceeds 1.4 million people, spread over an area of 911 square miles. Of that, the Police Department is responsible for protecting 1.28 million people in an area of 540 square miles. (Ten county communities have their own police forces.) . . . The Police Department's work is concentrated in the five towns located in the western part of the County. Department operations are divided into seven precincts.

. . . an historical relationship exists as regards pay raises granted to the Suffolk PBA and the Suffolk SOA. [The panel cited each pay increases awarded employees in each group from 1986 through 2003, the particulars of which are omitted here.]

There appears to be, moreover, a relationship between increases granted to police organizations in Nassau and Suffolk Counties. While not always equal, raises granted to those groups have generally been close. On the whole, however, it is fair to say that the salaries in Suffolk County lag somewhat behind those paid in Nassau County.

Award pp. 4-5.

I see no reason to depart from the findings of the *County/SOA* panel quoted above, particularly as the panel in that case had the same information before it as the instant panel possesses.

The investigators in the DIPBA bargaining unit are employed by the Suffolk County District Attorneys Office, and they aid in the investigation, apprehension and prosecution of criminals. The bargaining unit includes five civil service titles: District Attorney Investigator, Detective Investigator, Senior Detective Investigator, Principal Investigator and Detective Investigator (Technical Services).

The Suffolk County Civil Service Commission (the Commission) has established the qualifications for each position in the bargaining unit. A District Attorney Investigator must have a minimum of three years of experience in public law enforcement and all of the other titles require a minimum of eight years prior investigative or detective experience with a municipal police department in New York

State. In addition, one must have actual experience as a police officer within the State and pass physical and mental examinations. The former include standards for visual acuity, color vision, hearing, sense of smell, speech, cardio-vascular, respiratory, gastrointestinal, endocrine and metabolic, neurological, muscular skeletal, and dermatological health. Applicants must all be free of mental illness, serious nervous disorders, alcoholism, drug dependency or abuse and are subject to a psychological screening process. The preceding applies statewide.

The Commission has also established educational qualifications for bargaining unit positions. The minimum educational requirement is the completion of sixty college credits by date of appointment. The prospective investigator may not substitute any other experience and training for the educational requirement.

The County has also set a threshold of 884.5 hours of training, surpassing the minimum of 510 hours set by the New York State Division of Criminal Justice Services for Investigators.

Section 209(4)(C)(v) of the Act establishes the criteria the panel must apply to the record in this case in arriving at an award, as follows:

- a. comparison of the wages, hours and conditions of employment of 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) 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.

*Facts*

The DA Investigators successfully decertified the Association of Municipal Employees (AME), a union of predominantly non-uniformed civilian County employees, in 1986, and negotiated a collective agreement for 1987 and 1988. By the 1989-91 successor, the parties had incorporated many of the provisions of the County's contracts with the PBA, with the notable exception of the work schedule. The successor agreements, through 2000, consisted of wages and benefits common to the bargaining units represented by the PBA, SOA, and the SDA..

The PBA took to compulsory interest arbitration the terms and conditions of employment of the County's police officers which covered the four year period from January 1, 2004 through December 31, 2007. As in the instant dispute, in order to have the arbitration panel convened to hear the case render an award for a four year period, the parties had to concur, with the approval of the County Legislature on the extended term of the agreement. The other employee organizations representing the County's law enforcement personnel, the SDA (detectives) and the SOA (superior officers) also agreed to arbitrate their disputes with the County for four years. The County and the PBA, the SDA and the SOA all received awards covering the four year period from January 1, 2004 through December 31, 2007. All three awards provided for the same 3.75% per year wage increases in each year of the Award together with prorated concessions to the County (based on the proportionate size of the unit when compared to

the size of the unit represented by the PBA). At 43 members, the unit represented by the DIPBA is 2.3 percent the size of the PBA.

The public panel member in both the SDA and the SOA cases both cited the Awards in the PBA case as the controlling pattern in the current round of negotiations and it implemented them in both the SDA and SOA awards for the County's law enforcement employees represented by each employee organization.

### *Positions of the Parties*

#### **The DIPBA's Positions**

##### *Statutory Criteria*

##### **A. Comparison of the Wages, Hours and Conditions of Employment**

The DIPBA cites the opinions in many compulsory interest arbitrations for the proposition that terms and conditions of employment of other County police bargaining units, the police employees units of western Suffolk communities and similar law enforcement personnel employed by the Nassau County are appropriate for comparison to the detective investigators represented by the DIPBA. At the same time, the DIPBA continues, neither private sector employees nor public sector civilian employees are comparable to the detective investigators to be covered by this Award. Simply put, the DIPBA suggests, civilian employees in both sectors do not remotely undertake similar tasks.

As the detective investigators employed by Nassau County have newly selected a bargaining agent, they have not yet reached a collective bargaining agreement with Nassau. The DIPBA reasons therefore, that the only comparable employees are the County law enforcement personnel represented by the PBA, SDA and SOA.

**B. The Interests and Welfare of the Public and the Financial Ability of the of the Public Employer to Pay**

The DIPBA notes that the public expects a seamless transition and interface of public services from the time an arrest is effectuated until a defendant is prosecuted. The DIPBA submits that the detective investigators it represents are central to this process. The incumbents of the series of titles in the investigator unit investigate major crimes for the County's District Attorney, the DIPBA stresses. The members of the unit represented by the DIPBA are frequently part of an investigatory team which includes superior officers, detectives and police officers working together to solve a crime and the successful prosecution of that crime. As such [Opinion at pp. 6,7] the detective investigators have followed the wage increases achieved by the PBA, SBA and SOA for the last eighteen years.

As noted in many compulsory interest awards, public safety employees often construe the value placed upon them as public employees by the citizens they serve through the compensation they receive when compared to that received by their colleagues employed by the same employer or other public employers. Thus, the DIPBA suggests, the members of the unit it represents can only maintain their high morale and professional competence they demonstrate in executing their responsibilities if their compensation is reflected by the improvements in pay and benefits achieved by other law enforcement personnel in the County's police structure. The DIPBA concludes that it is in the public and interest and welfare that the detective investigators be awarded an increase which comports with the pattern created by the PBA, SOA and SDA Awards governing the current round of bargaining. To do less for this elite group would also undermine efforts to retain and recruit these highly trained and sophisticated personnel,

the DIPBA stresses.

In fact, the DIPBA emphasizes, as stated by Arbitrator Stanley Aiges in his recent compulsory interest arbitration opinion governing the County and the SOA, “... once a ‘pattern’ is established within a county, that pattern necessarily becomes the single most relevant factor to which wages, conditions and benefits should be compared. Simply stated, an “internal” county pattern – once in effect – creates a heavy shadow over all other potential settlements and/or awards”.

Similarly, the DIPBA continues, a finding on the County’s ability to pay in a pattern setting award or series of awards, once identified, may not vary simply by virtue of the passage of time. It is not possible to conduct simultaneous hearings, deliberations and issue identical awards simultaneously, it notes. Chaos would result if the employee organizations involved believed that the County could argue that the first award could have the affect of depleting the sums available to fund subsequent awards or settlements. Instead, the DIPBA suggests, a pattern setting panel’s disposition of a public employer’s ability to pay becomes a ‘snapshot’ in time which must be applied to subsequent awards governed by the pattern for a specific round of bargaining. Therefore, the findings in the opinions of Arbitrators Dennis (PBA), Aiges (SOA), and Townley (SDA) must be applied to the instant dispute, despite whatever the County may claim, the DIPBA concludes.

The DIPBA adds that the testimony of the parties’ respective fiscal experts from the SOA hearing, which the parties stipulated to adopt and incorporate into this record as their evidence on the ability to pay, provided ample evidence of the County’s ability to pay for the same raise achieved by the SOA for its 400 members as sought by

the DIPBA for the forty-five or so members of its bargaining unit. It charges that the County, which did not appeal the SOA Award, should not be permitted to make a collateral attack on Arbitrator Aiges' findings on the ability to pay in the context of this proceeding.

The DIPBA cites the testimony of Edward Fennell, an expert on municipal budget analysis, who testified for the SOA, and whose testimony has been made a part of the record before this panel, as supportive of the County's ability to afford to pay its forty-five or so detective investigators the same raise it has already paid to hundreds of its law enforcement personnel in this round of negotiations. (There are 1700 police officers, 400 detectives, and 400 superior officers to whom the pattern increase has already been paid pursuant to the findings of three different compulsory arbitration panels had the ability to fund it, the DIPBA emphasizes.)

First, the DIPBA points out, of the six largest counties in the State, exclusive of the City of New York, only Erie and Monroe have lower taxes *per capita* and Suffolk County taxes are 25% less *per capita* than the downstate sister counties of Nassau and Westchester. On the expense side of the ledger, Fennell continued, Suffolk has successfully controlled its expenses to twelve percent less than the average of Nassau and Westchester, although it has the largest tax base of the six largest counties.

In addition, the DIPBA cites Moody's which found that future cash flow included assumptions for union contracts in the 2004 budget. Furthermore, the DIPBA stresses, the County Executive stated in his 2004 budget message to the County Legislature that tax revenues were hitting record highs and that there would be an increase in collections of 6.15% for 2004.

The DIPBA stresses that the County Executive characterized the County's economy as "strong" and highlighted an actual budget surplus of \$60.5 million for year end 2002 and an estimated \$65.6 million for year end 2003.

The DIPBA rejects the County's effort to tie its ability to pay to the settlement with the union which represents the bulk of County's civilian civil service employees, the Association of Municipal Employees (AME). The DIPBA asserts that the pattern established by a union outside the pattern followed by the County for uniformed employees of the Department is irrelevant, because the civilian employees are not subject to the same provisions of law, such as the compulsory interest arbitration provisions of the Taylor Law. For those very reasons, the DIPBA continues, law enforcement personnel are segregated into discrete units from civilian employees by the Public Employment Relations Board. Simply put, the DIPBA insists, it has long been recognized that uniformed public safety employees have distinct terms and conditions of employment from civilian employees, and that in Suffolk County, the history of negotiations over many, many years reveals the absence of any relationship between the uniformed (police) settlements and civilian settlements.

**C. Comparison of the Peculiarities in Regard to Other Trades or Professions**

The DIPBA stresses that an analysis of the history of bargaining in the County clearly establishes that the terms and conditions relevant to the Department's uniformed employees are unique. Not only are there statutory provisions which apply specifically to these uniformed employees, such as full salary and benefits protection for officers injured in line of duty, but the coverage of law is a function of the

extraordinary risks borne by these employees. The DIPBA stresses that the usual risks faced by the County's Detective Investigators, such as the investigation of environmental crimes, participation on drug task forces, involvement in investigations of organized crime, and assignments to electronic surveillance, are, indeed, unique.

The DIPBA points out that in 2004, there were over 29,000 property crimes in the County, the largest number within the State with the exception, of course, of the City of New York. In addition, the DIPBA notes, there were 24,636 arrests reported in the County which were prosecuted by the County's District Attorney with the assistance of the members of the bargaining unit represented by the DIPBA.

The DIPBA emphasizes that members of the bargaining unit are elite within the DA's Office and when compared to the other sworn law enforcement personnel employed by the Department, from the standpoint of mandated experience, required education and stringent standards for physical and mental acuity.

**D. Terms of Collective Agreements Negotiated Between the Parties in the Past.**

The DIPBA cites as controlling the bargaining history going back to 1986, recited in this Opinion at pages 6,7, which has tied the terms and condition of members of the bargaining unit represented by the DIPBA to the terms and conditions of employment enjoyed by the sworn law enforcement personnel of the Department who are represented by the three other employee organizations representing the Department's sworn law enforcement personnel: SDA, SOA and PBA.

**The DIPBA Maintains Its Proposals Are Just and Reasonable.**

The DIPBA points out that it has modified its proposals to conform to the pattern established by the awards governing the PBA, SOA and SDA, respectively,

and the County. The DIPBA acknowledges that it has done so as that is the likely result herein, given the long established principle in the County's negotiations with employee organizations representing the uniformed employees of the County of following the pattern established by the PBA/County round.

The DIPBA's *rationale* for its proposals is set forth below, as follows.

**1. Wages**

The DIPBA insists that the only appropriate award on wages is a 3.75% increase per year for four years following the pattern set by the County with the PBA, SDA and SOA. These awards covering some 2500 uniformed personnel in the Department, in keeping with the language governing and explaining the awards, mandates that the DIPBA unit comprising 45 employees follow the pattern, the DIPBA concludes.

The arguments pertaining to the DIPBA position on the pattern were summarized at pages six, seven and eight of this Opinion.

As part of the pattern, the DIPBA acknowledges, the bargaining unit it represents must produce savings proportionately equivalent to those generated by the PBA, SOA and SDA awards. Of course, the DIPBA notes, its unit consists of merely 45 detective investigators. The DIPBA explains that the County has traditionally calculated the savings to be produced by the unit it represents by multiplying the estimated dollars which flow from PBA concessions by the fraction the 45 detective investigators comprise of the number of employees in the PBA unit (as denominator). This computes to about fifty-nine thousand dollars, the DIPBA maintains.

The DIPBA submits that its group already produces sufficient savings by virtue

of the fact that the unit of detective investigators consists of many employees who have retired from jobs covered by one of the State or City employment retirement systems. The county is precluded from making a retirement contribution for these 23 employees (about half of the unit). This produces a savings of \$950,000 per year, the DIPBA calculates.

In addition, the DIPBA claims, the County will benefit from a recent ruling by the Social Security Administration which prevents retired police officers who are employed in a law enforcement capacity and their employers from contributing to their social security accounts. Since half the unit falls into this category, the County will save an average of \$130,000 per year for each year of the four years covered by this Award, the DIPBA asserts. Since the County already saves from the unit a sum far greater than the amount which it must save under the pattern, no further savings are required, the DIPBA submits.

## **2. Shift Differential**

The DIPBA notes that the Department's uniformed personnel represented by the PBA, SOA and SDA receive a shift differential of 7.5% of base pay., while the members of the detective investigators bargaining unit are limited to an annual stipend of \$1,100. The DIPBA argues that it is only just and reasonable to equalize the shift differential received by the detective investigators with the shift differential paid by the Department to those uniformed personnel represented by the PBA, SDA and SOA.

## **3. Board Pay**

The DIPBA seeks the award of 3.5 hours of overtime pay weekly for its President.

The primary basis on which this proposal should be granted, the DIPBA submits. is that

all three of the bargaining units of uniformed personnel in the Department have been provided with this benefit for their presidents at the overtime rate of 3.25 hours of overtime (at the straight time rate), the DIPBA acknowledges. The DIPBA allows that it would accept the 3.25 hours of overtime (at straight time rates) if it were awarded on the basis of being bound by the pattern.

The DIPBA rejects the County's characterization of the pattern awards of this right as a 'mistake'. The DIPBA insists that this argument could be made about any pattern setting provision of one or more interest arbitration awards with the consequence of undermining the pattern concept so enthusiastically advanced by the County over the years. The DIPBA submits that the way to test a possibly pattern setting provision of an interest arbitration award which a party finds unpalatable is to appeal it in accordance with law, rather than making a collateral attack upon it in a different proceeding. The County's reasoning, the DIPBA charges, would, if accepted, have a destabilizing impact in the County's relationship with the employee organizations which represent its uniformed personnel.

The DIPBA notes that the entire executive board of each of the employee organizations representing the detectives (SDA), police officers (PBA) and Superior Officers (SOA) are paid. The DIPBA stresses that it is seeking pay for only a single member of its executive board, the President, as he is the only executive board member who is on fulltime release.

The third reason offered by the DIPBA for this demand is that the by virtue of holding his office, the President is denied the opportunity to work overtime. The DIPBA cites the President's affidavit, which the parties made part of the record, as detailing the

large amount of overtime available to bargaining unit members, and the overtime he was able to work prior to assuming the duties of his office. The loss of alternate sources of income, such as overtime, has often been cited by interest arbitrators in police disputes in both Nassau and Suffolk Counties as the basis for granting Board pay, the DIPBA stresses.

A third reason for allowing its proposal, the DIPBA submits, is that its President undertakes many duties outside normal work hours which are of benefit to the County, as well as members of the bargaining unit. For instance, the DIPBA cites the President's attendance at quarterly membership meetings, which are outside normal work hours, and which benefits the County by not interfering with the normal workday; attendance at monthly meetings of the DIPBA Board; calls from members and management concerning matters involving terms and condition of employment at all hours and times (including holidays and vacation time); travel and lobbying concerning legislation and executive actions by government officials; work on the PBA benefit fund which covers unit members and the County/coalition of employee organizations joint health plans -- all of which compute to an annual estimated total of 367 hours annually. By contrast, the DIPBA stresses, its proposal would compensate its President for only half of those hours.

The final reason offered by the DIPBA for its proposal on paid Board time is that the President has been denied promotional opportunities due to his commitments as its President. (The County has adopted a policy of barring promotions to employees on fulltime union release.) For instance, the President's name appeared on a promotional lists in both 2000 and 2003, from which he would have likely been appointed given the history of utilization of these lists, the DIPBA projects. Had he sought the promotions by

resigning his position, the DIPBA submits that its President's salary would far exceed the sum it seeks for Board pay, not to mention the impact on his pension.

#### **4. Tour Changes**

The DIPBA has proposed that bargaining unit members receive 72 hours notice before the Department can implement a tour change. The DIPBA notes that the parties' Agreement currently protects unit members from precipitous tour changes except for "surveillance, witness protection, raids and such other extraordinary circumstances as may receive prior approval from the Director of Labor Relations." With only 45 employees in the bargaining unit, the DIPBA alleges that the exception has become the rule, and that consequently it is just and reasonable to delete the exceptions from the parties' Agreement.

#### **DIPBA's Response to the County's Seventeen Proposals**

The DIPBA charges that the County's proposals are contrary to the pattern established by the awards between the County, on one hand, and the SOA, PBA and SDA on the other and/ or are neither just nor reasonable.

With respect to wages, the DIPBA stresses that the County's offer of an increase of two percent per year for four years falls far short of the pattern. The DIPBA charges that the County's assertion that it lacks the ability to pay for the pattern increase to 45 detective investigators after paying the same increase to some 2500 of its other uniformed personnel is "ludicrous" as well as destructive. The DIPBA submits that to single out 45 elite personnel for such harsh treatment is the essence of an industrial injustice. If the pattern cannot be applied to provide the same increase of a small group of top personnel, then it cannot be applied to limit wage increases to members of units who wish to obtain

increases which exceed the pattern. The DIPBA insists that arbitral ratification of the County's rejection of the pattern would have a destabilizing impact on a system which has been effective for many years.

The DIPBA maintains that the County's proposals on longevity do not comport with the pattern established by the SOA, SDA and PBA Awards. Moreover, the DIPBA adds, there is no evidence that these proposals are just and reasonable, and should be granted.

The DIPBA dismisses the County's proposal to require that unit members be on the payroll on January 1 in order to be eligible for longevity on April 1. The DIPBA maintains that there is no evidence that its proposal reflects a current practice or that if there is such a practice, the DIPBA is precluded from enforcing the current contractual language.

Likewise, the DIPBA dismisses the validity of the County's demand that longevity should not be paid to unit members who are not on the payroll on April 1 until they return to the payroll. The DIPBA insists that the County's proposal does not incorporate a present practice, nor is it part of the police pattern of awards. Consequently, the DIPBA reasons, the County's proposal to condition payment of longevity to presence on the payroll should be rejected.

The DIPBA stresses that the County's proposal to eliminate global overtime represents a concession which is not called for by the pattern. Global longevity is calculated on any prior service in law enforcement in New York State. The DIPBA emphasizes that prior law enforcement experience within the State is a prerequisite to employment by the Department, and global longevity is a recruitment by which the

County can recruit potential detective investigators. The County's proposal to eliminate Global longevity should be rejected as outside the pattern and counterproductive, the DIPBA urges.

The County's proposal to eliminate vacation, sick leave, personal leave, holidays from the calculation of entitlement to overtime compensation is contrary to the pattern, the DIPBA charges. The DIPBA points out that this provision would reduce the entitlement of bargaining unit members to overtime. This is conflict with the provisions of the SDA, SOA and PBA awards, it submits. Moreover, the County's citation of its agreement with the AME is misplaced, the DIPBA reasons, because the unit represented by the AME consists predominantly of civilian employees, rather than police, and is consequently irrelevant.

The DIPBA also urges that the panel reject the County's proposal to delete and/ or modify any practice, rule, regulation and policy to compensate bargaining unit members for overtime and compensatory time except pursuant to the Fair Labor Standards Act (FLSA). The DIPBA stresses that this change was not granted by any of the panels in the PBA, SDA and SOA awards. As such, this proposal on overtime, which will limit the overtime earnings of bargaining unit members, falls outside the pattern, the DIPBA points out. Moreover, the DIPBA continues, the County's reference to the AME settlement is meaningless, as the AME is not part of the police pattern and represents predominantly civilian employees who are subject to different laws.

The DIPBA vigorously opposes the County's proposal to ensure that overtime must be offered to individuals performing the work by each area before it is offered to those outside the work area. The DIPBA notes that this proposal is not part of the pattern

awards established in the SDA, SOA and PBA cases. Secondly, the DIPBA charges, the County failed to offer any proof in support of this proposal. Moreover, the DIPBA adds, the County did not identify any reason why the proposal should be adopted by this panel.

The DIPBA insists that the Panel reject the County's proposal to delete the travel time, recall and stand-by pay benefits and limit compensation to time actually worked. The DIPBA stresses that the alteration of the current benefits and compensation for these items of compensation has never been achieved by the County in its negotiations with any law enforcement or civilian employee organization, by its own admission.

Also absent from the pattern established by the PBA award is the County's proposal to exclude employees out on injury in line of duty leave from vacation pay, night differential, personnel leave, sick leave, clothing allowance and cleaning allowance, after the twelfth continuous month of absence, the DIPBA asserts. Although the County was successful in obtaining this concession in the SOA and SDA Awards, the DIPBA reasons, because it is the PBA which sets the pattern and the concession was not incorporated in that award, they should not be granted by this Panel.

Furthermore, the DIPBA charges that the County's evidence for the need for this concession is less than compelling as the members of its bargaining unit rarely sustain line of duty injuries.

The DIPBA attacks the validity of the County's proposal to increase the work week to forty hours. The County emphasizes that the PBA, SOA and SDA awards do not provide for an increase in the work week to forty hours. Therefore, the DIPBA charges, the County is seeking a concession from it which it did not obtain from the other units of uniformed employees in the Department in the previous three awards rendered during

the current round of negotiations.

The DIPBA adds that the County's proposal is neither just nor reasonable. It notes that detective investigators already work a longer work year and have a longer work day than members of the bargaining units represented by the SOA, SDA and PBA. Were the County's proposal granted, the DIPBA explains that it would increase the disparity between the detective investigators and their uniformed colleagues who work in the Department.

The DIPBA vehemently objects to the County's proposal to delete the floating holiday. The DIPBA points out that the SOA, SDA and PBA currently enjoy 13 fixed holidays, and that, in the last round, at the County's request, it agreed to accept a "floating" holiday in lieu of a thirteenth fixed holiday. Thus, the DIPBA calculates, its members enjoy thirteen paid holidays in accordance with the pattern established by the SDA, SOA and PBA, *albeit* one of which is a floating, rather than a "fixed" holiday.

The DIPBA charges that it would be severely unjust for this Panel to grant the County's proposal to eliminate one of the holidays enjoyed by the detective investigators when it did not obtain the same concession from the other Department's uniformed units represented by employee organizations.

The DIPBA objects to the County's proposal to provide that sick time be accrued by pay periods. The DIPBA notes that under the current system, detective investigators accrue all of their sick leave days at the beginning of the year. Granting the County's proposal would constitute a departure from the pattern, the DIPBA alleges, and also comprise a departure from the practice in the law enforcement community generally.

The DIPBA opposes the County's proposal to adapt the newly incorporated provision regarding sick leave abuse from the AME contract to the detective investigators. The DIPBA reiterates its belief that the AME represents the bulk of the County's civilian employees whose terms and conditions of employment have long been divorced from the terms and conditions of employment of members of the Department's uniformed force.

The DIPBA rejects the County's proposal to incorporate a new provision to control sick leave abuse, which was adapted from the AME settlement and which was awarded to the County in both the SDA and SOA cases, but not in the PBA award. The DIPBA insists that there is no evidence of sick leave abuse by the County's detective investigators and that the proposal is therefore unnecessary and insulting. The DIPBA notes that the AME settlement is irrelevant to the terms and conditions of employment of detective investigators. It also asserts that the absence of this provision from the PBA award must be deemed fatal to its merits, as it is the PBA award, and not the SDA or SOA awards which is the pattern settler for the Department's uniformed employees.

The DIPBA vigorously opposes the County's efforts to delete the disciplinary arbitration provision of the parties' Agreement with a return to Section 75 of the *Civil Service Law* (Section 75). In the first instance, the DIPBA emphasizes, there hasn't been a disciplinary case involving members of the detective investigators bargaining unit in many years. Secondly, this proposal was not awarded in any of the awards governing the other members of the Department's uniformed forces, and is therefore outside the pattern set by the PBA, SDA and SOA awards. Finally, the DIPBA asserts

that the current system which results in an impartial determination is more desirable than Section 75 which is structured in a way which is partial to the public employer.

The DIPBA is against the County's proposal to change the arbitration provisions of the parties' Agreement by deleting the requirement that arbitrators issue their award within thirty days of the closure of the record and that the arbitrators be selected through the creation of a rotating panel to replace to the *ad hoc* selection through the American Arbitration Association.

With regard to the former proposal, the DIPBA argues that it would comprise a change in terms and conditions of employment which was not granted in any of the pattern setting awards governing the other members of the Department's uniformed forces. Secondly, the DIPBA points out, the County has failed to demonstrate a need for this change, and there are no awards which have been vacated due to issuance more than thirty days after closure of the record.

Similarly, although the PBA award replaced the AAA process with a rotating panel, the SDA and SOA awards did not, the DIPBA maintains. Thus, there is no evidence of a pattern requiring a panel, the DIPBA suggests. The rationale which favors the creation of a rotating panel, i.e., a large volume of grievances, is not pertinent here, the DIPBA reasons, as its unit is small and there is no history of any grievances in recent years.

The parties' Agreement currently provides that members of the bargaining unit must be advised of their rights to remain silent and to counsel if they are arrested or are likely to be a target of a criminal investigation. The DIPBA is against the County's proposal to delete this provision from the Agreement. While, the DIPBA concedes that

the County achieved the deletion of this provision in earlier awards governing the SDA and SOA, the DIPBA emphasizes that it was unable to do so with respect to the PBA. Thus, the DIPBA reasons, there is no pattern mandating the approval of this County proposal.

The DIPBA adds that the County has failed to offer any evidence or even an explanation for its proposal to delete the Miranda Rights provision which has been in the parties' Agreement for years, and has never played a role in any dispute between the parties.

The DIPBA is likewise against the County's proposal to add testing for alcohol and steroid use to the drug testing provisions of the Agreement. The DIPBA argues that this provision was not part of the 2004-2007 pattern. Moreover, the DIPBA adds, the County has not articulated its need for its proposal. There is no proof of any overuse or illegal use of either substance by member of the bargaining unit, the DIPBA submits. In addition, the DIPBA maintains, the question of drug use, which is illegal, is a completely separate issue from alcohol use, which is legal. It would be inappropriate, the DIPBA concludes, to include a testing for alcohol use in a procedure governing drug abuse.

The DIPBA opposes the County's proposals to modify contractual provisions governing the personnel files of bargaining unit members. The first proposal is to place a ten day limit on the right of a detective investigator to place a response in his/ her file to material which has been placed there by the Department. The DIPBA stresses that there is no such provision in the SDA, PBA or SOA contracts or awards. Thus, the

DIPBA reasons, the proposal to insert a ten day limit falls outside the pattern and the Panel should deny it.

The DIPBA adds that the County has failed to articulate a rationale for approving this proposal which would have the impact of singling out detective investigators among the other uniformed members of the Department to be limited by the ten day requirement.

The second part of the County's proposal on personnel files – to delete the provision that the files be maintained in accordance with State law – is likewise opposed by the DIPBA. First, the proposal was not awarded in this round and is not reflected in the terms and conditions of employment of any uniformed members of the Department, the DIPBA points out. The DIPBA dismisses the County's citation of the AME Agreement as irrelevant both for reasons discussed above, as well as the fact that the civilians represented by AME are not covered by Section 50-a of the *New York State Civil Rights Law*, contrary to police officers.

The DIPBA argues that the County's proposal to eliminate the seniority aspect governing shift assignment/ changes is unjustified. The DIPBA underscores the fact that this proposal was not granted by the panel in the Award covering the unit represented by the SDA. The DIPBA stresses that detectives and detective investigators work side by side, and that there is no evidence in the record to support different treatment for detectives and detective investigators.

The DIPBA adds that this provision is limited to vacancies only, and that there is no indication that it impedes the Department's operations. The DIPBA concludes that the County's proposal to delete the seniority provision

governing shift assignments/ changes should be denied.

**The County's Position**

The County argues that of the statutory criteria to be applied to compulsory interest arbitrations arising under the Taylor Law, the two most significant to the disposition of the instant dispute are its ability to pay and comparability.

The County insists that this panel should not "blindly adhere" to the pattern which may have been created by the Award governing the terms and conditions of the County's police who are represented by the PBA due to the changed economic circumstances faced by the County as well as the fact that the increases sought by the DIPBA are excessive when compared to increases in the cost of living. Instead, the County submits that a 2% per annum increase in each of the four years of this award would be just and reasonable.

The County maintains that the panel chaired by Arbitrator Rodney Dennis in the PBA case implicitly recognized the county's economic difficulties when it identified some \$2.5 million in savings which was to be produced by members of the bargaining unit under the PBA award, as well as the fact that the increases awarded under the award were the lowest for the County's police in twenty years.

Since the issuance of the PBA award, the County maintains, its financial circumstances have deteriorated and it therefore lacks ability to pay for an award patterned after the PBA Award. Moreover, the County warns that because of legal constraints placed on its ability to raise revenues, the only way to make funds available to support an award to the DIPBA predicated on the PBA Award and its progeny is to reduce services to the public.

The County points out that tax revenues to support the wages and benefits of detective investigators are derived from the County's General Fund, which is also used to support the County's services to all of its residents. The County also places revenue into a Police Fund, which is much more limited than the General Fund. The Police Fund is supported by taxes raised in the five western towns to which the County provides basic police services. The taxpayers of the remaining towns and certain villages, who receive police services from their towns or villages, do not pay taxes to the Police Fund. The revenues in the Police fund are only available to support an award to the PBA, SOA and SDA and may not be used to fund any award to the DIPBA, the County insists.

The County is also constrained by its own statutes from increasing its budget to accommodate an award to the DIPBA, it points out. County laws limit annual budget increases to no more than four percent or the growth in the Gross Domestic Product Chain Price Index, whichever is greater. Similarly, the County adds, the Tax Levy Cap requires that the discretionary tax levy for the adopted budgets' combined General and Police Funds be no greater than 4% or the increase in the GDP Chain Price Index, whichever is greater.

While, the County allows, the DIPBA and the other employee organizations representing bargaining units of the uniformed members of the Department, have always maintained that these local statutes are "trumped" by the Taylor Law's compulsory interest arbitration provisions, the County warns that no court has ever adjudicated the issue.

The County maintains that its Executive Budget Office and the Legislature's

Budget Review Office projected a significant budgetary shortfall for both fiscal 2004 and 2005 in both the Police and General Funds. This means, the County forecasts, that an increase in property taxes will occur.

Over the past ten years, the County calculates, the members of the bargaining Unit represented by DIPBA have received wage increases averaging 4.91% annually, while the cost of living has increased by only 2.3%. Thus, the County concludes, there is no justification for this panel to apply the PBA raises in this case.

The County insists that the panel must consider the impact of the PBA, SDA and SOA awards when ascertaining the County's ability to pay for the DIPBA increase. The County stresses that its Legislature removed funding from the budget for these impending awards and reasons that, consequently, there is no money to pay for any of these awards.

The County continues that the panel must weigh the *pro rata* value of the concessions awarded to the County in the PBA Award, which the County calculates, in accordance with the longstanding methodology employed in its jurisdiction as about \$59,000, predicated on annual increases of 3.75% per the PBA, SDA and SOA Awards.

The County charges that the remaining demands of the DIPBA are both unjustified and unreasonable. The County opposes the DIPBA's proposal to increase the current shift differential of \$1,100 annually to 7.5% of salary. The County calculates this as more than a 400% increase in the shift differential for detective investigators. Not only does the County lack the ability to fund this increase, it maintains, but it insists that this proposal is nothing but a thinly disguised attempt at aggregating this sum to an already bloated request for an across the board raise.

The County vehemently resists the DIPBA's proposal to require that the County's District Attorney provide 72 hours notice prior to changing the tour of a bargaining unit member. The County charges that the DIPBA has failed to provide any *rationale* for this demand. The County insists that this type of notice is not provided to any members of the units of the Department's uniformed employees. It adds that, given the nature of the work performed for the DA by the detective investigators, implementation of this demand would clearly impede the operation of his office.

The County opposes the award of compensation for the DIPBA President for allegedly surrendering overtime opportunities to serve as its president.

The County stresses that the DIPBA President already receives full-time release at County expense in order to carry out his duties. The idea that the County should now compensate the DIPBA President for work he does *not* perform, is nothing short of ludicrous, the County charges. The County cites a recent controversy which has arisen in nearby Nassau County in which Nassau has sought to vacate a compulsory interest arbitration award which provided for a similar benefit for the President of the Nassau County PBA. In connection with petitioning Supreme Court of the State of New York to vacate the Award, Nassau suspended the benefit. As a result, the County points out the benefit has come to the attention of the press which has fanned a public outcry across Long Island against the benefit. The County asserts that it would be counter productive for it to be placed in a similar position to Nassau.

The County dismisses the argument that the DIPBA President should not be compelled to waive opportunities to earn greater compensation through promotion due to the County's policy prohibiting promotion to any employee on fulltime union

release. The County emphasizes that the choice is the employee's alone, and that, in addition, the members of the DIPBA can hold their President harmless by themselves providing him with release in the form of a stipend.

The County asserts that its proposals should be granted because they are reasonable, have been justified and will improve the productivity of the District Attorney's office.

**1. Wages**

For the reasons more fully articulated above, the County insists that the panel Award an increase of two percent per year in each of four years. The County contends that it lacks the ability to pay for the four year increases of 3.75% called for by the awards governing the SOA, the SDA and the PBA. The two percent rate reflects the actual increase in the cost of living, the County submits.

**2. Changes in Timing & Entitlement to Longevity**

The County proposes two changes in longevity. It asserts that the first will merely clarify the parties' existing practice by requiring employees to be on the payroll on January 1 to receive a longevity payment in April. Secondly, the County seeks to require that an employee be on the payroll when the longevity payment is made in April, or that the payment will not be made until the employee returns to the payroll. The purpose here, the County notes, is to provide certainty to both parties without prejudicing anyone.

The other change sought by the County is to limit crediting of service for longevity purposes to experience as a police officer with the County. There is no rational basis to credit employees for their police services elsewhere in the State, the

County submits. Moreover, this change will produce savings for the County to help fund this award.

### **3. Reduction of Overtime**

The County proposes that overtime be earned only in accordance with the Fair Labor Standards Act (FLSA). Currently, detective investigators earn overtime for working more than seven hours per day or 35 hours per week with hours worked including credit for paid leave.

Members of the unit represented by the DIPBA earn in excess of \$100,000 annually, the County stresses. It argues that the taxpayers should not be burdened with paying overtime in excess of federal law to employees who already earn more than six figures. The County points out that the AME agreed during the most recent round of bargaining to the County's proposal for the County's civilian employees.

### **4. Discretion to Offer Overtime to Unit Members Based on Work Area**

This proposal would, the County claims, incorporate current practice into the parties' Agreement. The County cites the testimony of District Attorney Division Chief Robert Kearon that the members of the bargaining unit are dispersed to various sites throughout the County, some as many as fifty miles apart. Thus, the County reasons, it is obviously impractical to assign overtime on a Countywide basis.

The County adds that the contract language dates back to the time when the detective investigators were part of the civilian bargaining unit represented by AME. Since then, the County submits, the nature of the work has evolved and the language should reflect current work necessities.

### **5. Eliminate the Requirement That Employees Receive a Minimum**

**of Six Hours Straight Time Pay for a Recall.**

The County maintains that it has justified this proposal. The County asks that bargaining unit members who are recalled receive premium pay for actual time worked. The County reasons that it makes sense to compensate employees for actual work, rather than for time which is not worked.

**6. Eliminate the Requirement that One Hour of Travel Time At the Overtime Rate Be Paid Whenever an Employee Is Recalled.**

The County stresses that the current provision reimburses employees regardless of the amount of travel time involved. The County charges that the current provision is unreasonable and should be deleted.

**7. Reduce the Notification of the Cancellation of a Court Recall to 24 Hours & Payment Be Based on Actual Time Worked.**

The County emphasizes that the SDA was compelled in the compulsory interest arbitration to reduce from 72 to 48 hours the notification a bargaining unit must receive of the cancellation of a court recall. However, the County insists, twenty-four hours is more than sufficient notice for this purpose and it is reasonable from an operational standpoint.

The County claims that there is no reason to compensate bargaining unit members with a minimum of four hours of work if recalled to be present in court. The County submits, consistent with its position in this case, that it is reasonable to pay employees only for time actually worked.

**8. The Compensation Received By Officers on Line of Duty Injury Pursuant to Section 207-c of the *General Municipal Law* Should Be Limited After Twelve Months to Salary, Health Insurance and Certain Fringes.**

The County notes that Section 207-c requires only that officers on line of duty

injury receive full pay, health insurance and certain fringes. On the other hand, the Collective Bargaining Agreement covering the detective investigators guarantees that employees who have been injured in the line of duty continue to accrue annual leave, sick days, personal leave days, equipment, clothing and cleaning allowance, and night differential among others. The County argues that the continuation of expenditures on these items is unrelated to any need an injured officer might have, as he/she is not working.

The County cites prior compulsory interest arbitration awards governing the SDA and SOA which limited the fringes to which officers covered by Section 207-c should receive. The County asserts that the pattern established by these awards should be applied by the Panel in this case.

**9. Increase the Work Week of Detective Investigators from 35 to 40 Hours.**

The County emphasizes that the productivity savings it can realize from this proposal is close to \$3.8 million. It submits that this savings will add to its ability to fund the wage increase it has offered to the DIPBA.

**10. Delete the Floating Holiday.**

The elimination of this holiday, the County calculates, will save almost seventy thousand dollars.

**11. Amend Applicable Leave Provisions of the Agreement to Conform With Law.**

Current contract language raises legal issues because it distinguishes a disability due to pregnancy/ maternity from other types of medical disabilities, the County points out. The County maintains that its proposal seeks to prevent costly

litigation and eliminate discrimination by making these benefits gender neutral.

This will not reduce existing benefits, the County contends. It stresses that both the SDA and AME have already subscribed to the County's position.

**12. Sick Time Should Be Accrued Each Pay Period.**

The County points out that bargaining unit members currently are credited with 26 days of sick leave annually on January 1. As a result, the County complains, a detective investigator who may leave its employment in the middle of the year can enjoy a windfall. Instead, the County submits, unit members should earn sick days for each period worked. Its proposal would still award each detective investigator with 26 days annually, but the accrual would occur at a steady rate, the County insists. Its proposal is more consistent with the purpose of sick leave than the current contract provision, the County argues.

**13. Implementation of the County's Sick Time Abuse Policy.**

The County has proposed the implementation of a sick leave policy which has already been instituted for the bargaining units represented by the SDA, SOA and AME. The thrust of the County's program is to identify sick leave abusers. Under the program, the County notes, sick leave abusers are ineligible for overtime, to switch tours or for preferred assignments. It continues, that under the plan, sick leave abusers will also be in jeopardy of losing night differential while on vacations and would also confine an employee on sick leave to his/ her home.

The County asserts that its proposal is reasonable because it prevents employees who have abused the system from enjoying the same right to benefits as employees who have abided by the rules and regulations of the District Attorney's Office. Since the

DIPBA has asked for the same wage increase as received by the officers represented by the SDA and SOA, the County reasons that it should have no problem accepting the same sick leave abuse policy created by the pattern, the County reasons.

**14. Replacement of Disciplinary Arbitration With Section 75.**

The County seeks to replace binding arbitration with Section 75 of the *Civil Civil Service Law*. Mr. Kearon testified that the current process is too time consuming and expensive. He conducted an analysis of pending Department disciplinary cases and found that the average case took eighteen months from inception of charges until an arbitral decision is rendered.

The County reasons that Section 75 is a reasonable alternative to binding arbitration, and maintains that its proposal to replace arbitration with it should be granted.

**15. Modify the Grievance Procedure By Deleting the Requirement That Arbitration Awards Be Issued Within 30 Days of Closure of the Record; Replace the American Arbitration Association With a Panel of Rotating Arbitrators.**

The County maintains that the provision requiring arbitrators to issue their awards within thirty days of the closure of the record is outdated and unrealistic, in light of the caliber of arbitrators whom the parties are accustomed to selecting. In fact, the thirty day requirement is frequently ignored by the parties, as well as the arbitrators, the County asserts.

The County stresses that the PBA Award (Dennis) granted the County's request to replace the American Arbitration Association with a rotating panel of arbitrators. The County insists that this is a money saver, as the A.A.A.'s administration fees have

become excessive. Moreover, the County adds, by eliminating the A.A.A., the parties will be able to adjudicate their disputes more rapidly through the elimination of a layer of bureaucracy. By having a panel, the parties are guaranteed that an arbitrator who is mutually acceptable will determine their dispute, rather than be relegated to the acceptance of an arbitrator from a list put together by an A.A.A. case administrator, the County contends.

**16. Eliminate the Provision Regarding Miranda Rights.**

Removal from the contract of the Miranda Rights clause will not harm the members of the bargaining unit represented by the DIPBA, the County argues. It reasons that the United States and New York State Constitutions continue to guarantee Miranda Rights for all citizens.

The County emphasizes that the SDA and SOA Awards granted the proposal to strike the Miranda Rights provision from their respective contracts. Under the pattern bargaining concept, the County submits, its proposal must be granted.

**17. Random Testing for Alcohol Use.**

The County points out that the parties already have in place a provision for random drug testing. The County cites the Award of Arbitrator Martin Scheinman granting the County's proposal for deputy sheriffs, as follows:

On the basis of the record evidence and my consideration of the relevant statutory factors, I have determined that alcohol testing shall be part of the County's random drug testing program for on-duty Deputy Sheriffs as long as the County tests only for levels of blood alcohol concentration that may reasonably be expected to have an actual or potentially adverse effect upon job performance and safety. It cannot now be disputed that as a matter of public safety and health the County has strong justification for adopting a policy which seeks to eliminate any job-related alcohol use by its law enforcement personnel. Deputy Sheriffs carry weapons and drive County vehicles on public roads, sometimes at high speed.

Award pp. 15-16.

The County points out, that this language was followed in the SDA, SOA and PBA awards in which alcohol testing was ordered by the arbitration panels. The panels did this by directing that the phrase " and Alcohol" be inserted after the appearance of the word "Drug(s)." The County insists that the concept of pattern bargaining mandates its adoption of testing for alcohol use on the job by detective investigators.

**Random Testing For Steroid Use.**

The County submits that a random test procedure for steroid use be added to the current procedure for drug testing in the County/DIPBA contract. This proposal was awarded to the County in the PBA Award, the County notes. The County quotes from the Chairman Rodney Dennis in the PBA case, as follows:

I, however, agree with the County that testing for illegal steroid use should be a part of the random test analysis. This is a natural progression following Arbitrator Sands' award of random drug and alcohol testing as part of the last interest arbitration proceeding between the parties. The PBA has presented with no reason why I should find to the contrary, especially in light of the County's unrebutted evidence that steroid abuse has been an issue within the Department.

Award p. 93.

The County emphasizes that the same reasoning was followed in the SDA Award, and it should be followed in this case, as well, citing the concept of pattern bargaining.

**18. Impose a Ten Day Limit on an Employee's Right to Place Responsive Material in His/ Her File to Derogatory Material. Delete the Requirement That Personnel Files Be Maintained in Accordance with Law.**

Currently, the County claims, there is no limit on an employee's right to respond to negative material in his/ her file. This means, the County explains, that an employee can respond seconds before the commencement of a disciplinary proceeding. The County argues that there must be a time limit in order to put disputes to rest and crystallize an employee's position. The County stresses that the DIPBA has not submitted any evidence in opposition to this proposal.

The County adds that the AME has agreed to the deletion of the requirement that personnel files be maintained in accordance with New York State Law.

**19, Delete the Requirement That Seniority Be Considered in Shift Assignment & Change.**

The County cites the testimony of Mr. Kearon that the nature of the work performed by detective investigators, as well as its geographic location, makes assignments by seniority administratively impossible. Moreover, the use of seniority to determine assignments has the potential of disrupting sensitive investigations. Accordingly, the County concludes, seniority as a basis for shift assignment and change should be deleted from the parties' Agreement.

**Discussion**

At this point in my Opinion, it is appropriate to address the statutory factors before turning to the decretal provisions of this compulsory interest arbitration. As in the majority of these cases, the most important factors are the populations of employees to which the detective investigators are most comparable and the County's ability to pay for an award.

**Comparability**

While the terms and conditions of employment of the bargaining units of

police employed in the County's Department have often been compared to each other, they have at times been also found comparable to bargaining units of police employed in the Nassau County Police Department. Detective investigators are an exception, because, until recently, the detective investigators in Nassau were not organized in their own bargaining unit, and, as of the close of the record in this proceeding, were not governed by a separate unit agreement. Thus, the undisputed evidence is that for many years, the DIPBA settlements/ awards have been patterned on other Suffolk County sworn law enforcement personnel employed by the Department such as the PBA, SOA and SDA Awards/settlements.

The first paragraph on page six of this Opinion details the bargaining history of how the bargaining unit of detective investigators represented by the DIPBA has followed the terms and conditions of employment negotiated by, or achieved by the PBA, SOA and SDA since 1986.

It is clear, then, assuming the County's ability to pay for the award, that the material comparable awards/ settlements are those which govern the County's uniformed employees of the Department who enjoy the protections of the Act. In this case, that means a four year package with increases of 3.75% in each year the cost of which is to be offset by concessions which comprise a prorated percentage (based on the product of ratio of the population of the detective investigators unit to the population of the unit represented by the PBA and the size of the value of the concessions awarded against the PBA unit by the Dennis Award). Prorated for the small size of the unit of detective investigators (less than 45), the value of the concessions should be about \$59,000.

*sup AT? within ANNE + PBA  
was applied to SCORBA ? because PBA incorrect  
calculated*

**Ability to Pay & the Public Interest**

The Dennis Panel found that the County had the ability to fund an award basically consisting of four annual increases of 3.75% less an amount in concessions valued at some \$2.5 million. Although the County maintains that its ability to pay has substantially deteriorated since the issuance of the Dennis Award in January, 2003, the panels awarding the same pattern to the County's superior officers (January, 2005) and detectives (March, 2005) held to the contrary. They held that the County had the wherewithal to afford the same package to each group that was awarded to the group of some 1700 officers represented by the PBA. The County has implemented the three awards covering some 2,500 uniformed members of the Department.

The County's claim of an inability to afford the same package for a unit consisting of only 43 members after funding packages affecting 2,500 members cannot be sustained. It amounts to a collateral attack on the PBA, SOA and SDA Awards which were not challenged. Absent some State legislative action or the initiation of judicial proceedings to discharge the wage increases granted in the three pattern awards, the County's position cannot be sustained. There is simply no evidence to support a conclusion that the County has undergone some sudden emergence of a fiscal disaster.

Instead, the same factors cited by Arbitrator Rosemary Townley in her March 29, 2005 Interest Arbitration Award between the County and the SDA, with respect to her conclusion that the County had the ability to pay its detectives the pattern settlement, are present in this proceeding and are adopted.

The essence of the County's position, i.e., that the extension of the pattern to the

award covering detective investigators would be the "straw that broke the camel's back", and would, if accepted be contrary to the public interest and welfare. The Department and the District Attorney's Office are paramilitary organizations, stratified by ranks which reflect the concept that higher ranks are more highly compensated, at least in terms of straight time compensation. To deny officers with the unique duties and extensive training of the elite unit of 43 detective investigators the same raises as those conferred upon the 2500 organized officers employed by the Police Department, given the history of pattern bargaining among these groups, would have a devastating impact on the morale of this group. The significance of the morale and satisfaction of members of a municipalities police department has been cited in compulsory interest arbitration awards including each of those in this round which precede this one (PBA, SOA and SDA).

I therefore conclude that the County has the ability to pay the pattern settlement to its detective investigators, and that it is in the public interest that it do so. The fact that the settlement exceeds the cost of living is not persuasive to me upon this record, as the County implemented three awards covering 2500 sworn law enforcement personnel of the Department which exceeded the increase in the cost of living.

#### **Peculiarities of the Profession or Trade**

Police are unique employees, and the most appropriate group to which they should be compared is police. In Suffolk County, the appropriate police groups to which others are compared are other Suffolk police (PBA, SOA, SDA) and, subject to the internal Suffolk County police pattern that I have discussed, police in comparable titles who are employed by Nassau County. In the case of detective investigators, however,

the employee organization representing Nassau's detective investigators had not negotiated a contract or litigated a compulsory interest arbitration to conclusion at the time the record in this proceeding was closed. For this reason, but more importantly because of the presence of the established internal pattern, Nassau was not relevant to this case of compulsory interest arbitration.

Police are generally unique from organized civilian employees because the latter are not governed by compulsory interest arbitration provisions of the Act, are protected against the hazardous nature of their duties by Section 207-c of the *General Municipal Law* and must meet specialized qualifications of the statutes of the State of New York and the Rules and Regulations of the County's Civil Service Commission. As stated by Arbitrator Townley in her March, 2005 award covering the County's detectives, with whom detective investigators work closely: "There is no private sector employment which would be comparable to that of the bargaining unit members."

#### **Past Results of Collective Bargaining & Compulsory Interest Arbitrations**

The record consists of previous agreements and compulsory interest arbitrations governing the DIPBA and the County. Great deference has been given to that which currently exists and for which no change is mandated by the statutory considerations mandated by law, or changes in the terms and conditions of employment not justified by the record. In other words, I approached my analysis of the parties' respective proposals to alter the *status quo* with the presumption that existing terms and conditions of employment exist for a reason(s) which was acceptable to the parties at the time they came into existence and should not be lightly changed.

After applying the statutory criteria and findings identified above, I issue the

following Compulsory Interest Arbitration

**A W A R D\*:**

1. **Term: This Award shall cover the period January 1, 2004 through December 31, 2007. Rationale:** Stipulated by the parties, and ratified by the County Legislature.
2. **Wages shall be increased, as follows:**
  - Effective May 3, 2004, increase 3.75%**
  - Effective January 1, 2005, increase 3.75%**
  - Effective January 1, 2006, increase 3.75%**
  - Effective January 1, 2007, increase 3.75%**

*Rationale:* The increases follow the pattern established by the PBA, SOA and SDA Awards and in accordance with my finding, detailed above, that the County has the ability to pay for the Award, and the Award is in the public Interest. The delay in the effective date of the first year of the wage increases offsets the DIPBA's obligation to produce \$59,000 in savings consistent with the pattern.
3. **Two Tour Rotating Shift Pay (Sec. 6 of the expired Agreement):**
  - Effective January 1, 2004, increase to 5%**
  - Effective January 1, 2006, increase to 7.5%**

*Rationale:* Gradually increases the shift differential to the level enjoyed by Department uniformed employees under the PBA, SOA and SDA agreements with the County while, at the same time, limiting the immediate cost to the County in a just and reasonable fashion.
4. **The County shall not be required to pay contributions to the Education Fund due on 1/1/04; 1/1/05; 1/1/06 and 1/1/07. Rationale:** This meets offsets requirements of the pattern established by the SDA, SOA and PBA awards in order to produce savings needed to fund other parts of this Award; e.g., the increase in two tour rotating shift pay.
5. **Board Pay: Effective January 1, 2004, the President of the DIPBA shall receive 3.25 hours of overtime per week, at the straight time rate, to be paid bi-weekly. Rationale:** This brings the terms and condition of employment pertaining to detective investigators in line with other bargaining units in keeping with the pattern established in this round of collective bargaining. It also enables bargaining unit members to be serviced at levels commensurate with other organized sworn law enforcement personnel in the Department. This provision is predicated on the detailed information included in the President's

affidavit of the off duty time expended by him on the interests of the unit members and the loss of opportunities to work overtime or to earn more income through a promotion, all of which have served as the basis for granting Board pay for officers of the PBA, SDA and SOA. The County's concern about public reaction, while understandable, is misplaced. The Panel is not obligated to apply anything other than the statutory criteria in deciding whether to grant a proposal before it.

**6. Amend Section 7.2 of the expired Agreement, Injury Determination (C), Benefits During Absence For Line Of Duty to provide the following:**

- (i) Vacation Time: Effective January 1, 2004, an employee shall accrue and/or carry over vacation time only in accordance with Section 8 of the Agreement, regardless of his/ or her leave status.**
- (ii) Night Differential/Rotating Shift: Effective January 1, 2004, Night differential/ rotating shift payments shall cease following the twelfth consecutive month of absence from placement on code 401. Upon return to active duty, the night differential/ rotating shift payments shall only be paid in accordance with the employee's then current work assignment schedule pursuant to Sec. 6.5 (night differential) and 6.6 (rotating shifts), as applicable. Notwithstanding this provision, if the employee applies for a disability retirement pension from the State during the twelve month period, the employee may elect to receive the night differential/rotating shift payments beyond the twelve month cap. However, if the application is finally denied, the employee must repay the County for all night differentials/ rotating shift payments made beyond the twelve month period, even if the employee has been separated from employment with the County. Repayment shall be made to the County upon prior written notice to the employee. Where possible, the preferred method of recoupment shall be deduction of monies from the employee's "accrued termination pay." If the employee is about to separate from the County service and the disability retirement application has not yet been decided, then the County shall be authorized to withhold from the employee's "accrued termination pay" an amount equal to the night differential/rotating shift payments that may have to be repaid. Where the employee's "accrued termination pay" is insufficient to met the employee's actual or potential repayment obligations, the employee shall be deemed to have consented to recoupment based on terms and conditions to be set by the County at the time of recoupment.**

- (iii) **Personal Leave:** Effective January 1, 2004, personal leave entitlement shall cease to accrue following the twelfth consecutive month of absence from the effective date of placement on code 401. Upon return to active duty, the employee shall be credited with prorated personal leave days, up to the contractual maximum, to be determined by dividing the number of complete months remaining in the calendar year by 2.4, rounded to the nearest whole number.
- (iv) **Sick Leave:** Effective January 1, 2004, sick leave entitlement shall cease to accrue following the twelfth consecutive month of absence from the effective date of placement on code 401. Upon return to active duty, the employee shall be credited with prorated sick leave days up to the contractual maximum, to be determined by multiplying the number of complete months remaining in the calendar year by 2.16, rounded to the nearest whole number.
- (v) **Clothing Allowance:** Effective January 1, 2004, clothing Allowance payments shall cease following the twelfth consecutive month of absence from the effective date of placement on code 401. Upon return to active duty, the clothing allowance shall be paid only in accordance with Sec. 15.
- (vi) **Cleaning Allowance:** Effective January 1, 2004, cleaning allowance payments shall cease following the twelfth consecutive month of absence from the effective date of placement on code 401. Upon return to active duty, the cleaning allowance shall only be paid in accordance with Sec. 15.

*Rationale:* This provides relief to the County after the expiration of a reasonable period. It follows the pattern set in the SDA & SOA awards, and helps to fund the savings which the unit must produce in order to meet its obligations according to the pattern.

- 7. Amend Section 12 to provide for the following sick leave management program:

*DIPBA Sick Leave Management Program*

The following Sick Leave Management Program (Program) is Established for all members of the DIPBA. Unless otherwise Stated in this document, any existing Rules and Procedures Relating to sick leave shall remain in full force and effect.

**A. Effective Dates**

1. The program shall be effective January 1, 2007. Only sick time used after that date will be used to implement this Program. Nothing herein limits the District Attorney's Office from taking disciplinary action against any employee as it deems to be appropriate.
2. An employee will be designated a sick leave abuser or a chronic sick leave abuser as determined by the District Attorney's Office in accordance with Section B.

**B. Definitions**

1. **Occurrence:** includes any partial sick day or more than one consecutive sick days. Occurrence excludes workers' compensation and/or General Municipal Law 207-c illnesses and injuries.
2. **Sick Day:** includes full shifts on sick leave. Sick day excludes workers' compensation and/or General Municipal Law 207-c illnesses and injuries.
3. **Sick Leave Abuser:** an employee who has five or more occurrences of sick leave, or eight or more non-consecutive sick days, or a combination of occurrences and non-consecutive sick days that equal eight, during any rolling 12 month period.
4. **Chronic Sick Leave Abuser:** an employee who has either:
  - a. been a sick leave abuser for 18 consecutive months from the date of the first use of sick time during any rolling 12 month period; or



the District Attorney's Office each time the employee calls in on sick leave.

2. An employee who is designated as a sick leave abuser or chronic sick leave abuser will not:

- a. work scheduled overtime, unless approved by the Department Head or his/her designee based on operational needs; and
- b. switch shifts, if permitted (Mutual Tour Change); and
- c. apply for preferred assignments, or designations where applicable; and
- d. apply for a new shift if an opening occurs; and
- e. receive night differential/rotating shift pay while on sick leave; and
- f. chronic sick leave abusers only: receive night differential/rotating shift pay while on vacation.

3. Discipline may be initiated by the District Attorney's Office at any time it deems necessary. Any designation pursuant to this Program will not restrict the imposition of discipline.

**D. Duties**

1. The Designated Representative of the District Attorney's Office will monitor the sick leave system and identify employees who should be designated or relieved as sick leave abusers and chronic sick leave abusers, and will:

- a. **notify an employee and his/her supervisor when an employee is identified as a sick leave abuser and**
- b. **notify an employee and his/her supervisor when an employee is designated or relieved as a sick leave abuser or a chronic sick leave abuser; and**
- c. **inform an employee in writing of his/her rights and restrictions pursuant to this Policy; and**
- d. **notify an employee in writing of final determinations on appeals; and**
- e. **monitor those who are designated as abusers for purposes of:**
  - (1) **removing designations as a sick leave abuser when an employee uses no sick leave during six consecutive months of active duty (i.e., not on vacation or other types of paid or unpaid leave) following the designation as a sick leave abuser;**
  - (2) **removing designation as a chronic sick leave abuser when an employee uses no sick leave during six consecutive months of active duty (i.e., not on vacation or other types of paid or unpaid leave) following the designation as a chronic sick leave abuser.**

The employee will then be designated a sick leave abuser.

2. The representative of the District Attorney's Office will receive and review appeals from employees requesting that shifts of sick leave not be considered when determining designation or removal as a sick leave abuser or chronic sick leave abuser.
3. Supervisors will ensure that the various units within the District Attorney's Office have in place a system to implement and monitor the sick leave management program, and
  - a. ensure that a direct supervisor and the DI PBA are notified when an employee is designated or relieved as a sick leave abuser or a chronic sick leave abuser; and
  - b. prepare written internal correspondence to the District Attorney when ineligible employees receive scheduled overtime; and
  - c. deny applications for preferred assignments, and designations where applicable, from ineligible employees; and
  - d. deny requests for switching shifts or picking new shift schedules from ineligible employees.
4. Supervisors will monitor the Sick Leave List for ineligible employees prior to scheduling overtime, and notify the District Attorney when an ineligible

employee is ordered to work scheduled overtime.

**5. District Attorney Representative(s) will:**

- a. maintain and monitor a list of employees who:**
  - (1) are designated as sick leave abusers or chronic sick leave abusers; and**
  - (2) deduct night differential/rotating shift pay when an employee is not entitled to receive same; and**
  - (3) notify the District Attorney when an ineligible employee receives scheduled overtime.**

**E. Restriction to Residence**

- 1. During a date on which the regularly scheduled shift falls, any employee designated as a sick leave abuser or chronic sick leave abuser shall be confined to the employees residence during the hours of the regularly scheduled shift, except where excused from same by the District Attorney and/or his/her designee due to, for example, attendance at medical appointments, attendance at religious obligations, and/or other attendance at other matters that are approved by the District Attorney and/or his/her designee and/or EMR pursuant to its guidelines regarding same and which cannot be attended to at another time.**

*Rationale:* This procedure was part of the SDA Award and sets a pattern for the DIPBA. It is a concession which may be credited toward the value of the concessions mandated by the PBA Award.

**8. Amend Section 19, Grievance Procedure, for all grievances filed on or after the effective date of this Award, as follows:**

- a. delete the thirty day requirement from paragraph B, Arbitration both times it appears.
- b. Replace the American Arbitration Association with the following rotating panel of arbitrators: Daniel Brent, Jacquelin Drucker, Robert Light, Roger Maher, Martin Scheinman, and Jack Tillem.
- c. The parties shall use the language of the PBA contract to develop procedures for the administration of the rotating panel.

*Rationale:* These changes modernize the arbitration procedure by eliminating an unrealistic provision which requires highly qualified and highly acceptable arbitrators who carry a heavy caseload to issue an award within time limits they cannot meet. The second change is to substitute a panel of highly qualified arbitrators who are familiar with labor relations in Suffolk County involving the Department's uniformed employees. It will supply the parties with a group of arbitrators who are acceptable and it will eliminate expense and time.

**9. Amend Section 23, Drug Testing, effective upon the issuance of this Award, to provide for Alcohol and Steroid testing as per the PBA, SDA and SOA Awards. The parties shall use the same language and procedures employed by the County and the PBA with respect to testing for alcohol and steroids, except that Alcohol testing will not terminate if the PBA agreement terminates pursuant to the agreement between the County and the PBA .**

**See: p. 61, Appendix B, paragraphs 1-13 & p. 46, Sec. 40, para. 5 steroids.**

*Rationale:* These new provisions follow the pattern set by the PBA, SOA and SDA Awards.

**10. Amend Sec. 22 of the Agreement to delete para. H, Miranda warning effective upon the issuance of this Award.**

*Rationale:* This follows a pattern which flowed from an Award covering the detectives represented by the SDA. The elimination of this provision will not deprive any unit member of Miranda rights, which are constitutionally protected. It will change the forum in which the rights are adjudicated from labor arbitration to the State and Federal courts.

**11. Amend Sec. 6.2, Equalization of the Opportunity for and the Obligation to Perform Overtime to clarify that overtime is**

**offered to individuals performing the work by each work area before overtime is offered to individuals outside the work area, effective January 1, 2007.**

*Rationale:* The assignment of detective investigators is countywide, and these employees are widely dispersed. It is highly impractical to offer overtime opportunities over an area as large as the County.

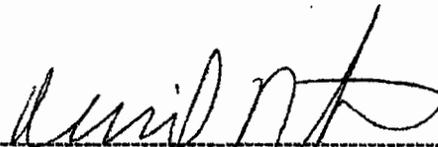
**12. Clarify Section 5.1 Longevity, as follows effective upon the issuance of this Award:**

- **An eligible bargaining unit member must be on the payroll on January 1 in order to receive the longevity payment as per section 5.1 (D) of the Collective Bargaining Agreement. He/she shall otherwise receive the longevity payment within ninety (90) calendar days of their return to the payroll.**

**13. Other Proposals:**

**Any proposal submitted by the County or the DIPBA not specifically granted pursuant to the terms of this Award as provided above are hereby rejected and denied.**

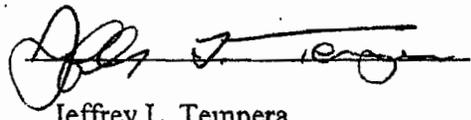
**Dated: Towaco, N.J.  
September 26, 2006**

  
-----  
**DAVID N. STEIN, ESQ.  
PUBLIC MEMBER  
IMPARTIAL CHAIR**

-----  
\* The decretal provisions of the Award are set forth in boldface and any *rationale* in support not set forth above follows the term *rationale*.

I concur with/dissent from the above Award: See attached dissent on item #5, Board Pay.

Dated: 9-25-06  
Hauppauge, New York



Jeffrey L. Tempera  
County Appointed Arbitrator

**Compulsory Interest Arbitration Award  
County of Suffolk  
And  
Suffolk County Detective Investigators Police Benevolent Association**

**Opinion of County Appointed Arbitrator  
Jeffrey L. Tempera**

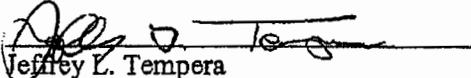
I am compelled to dissent on the issue of Board Pay.

The County is required as a result of this award to subsidize the Union activities of the Suffolk County Detective Investigators PBA President. The President of the Detective Investigators may well have lost overtime as a result of his Union activities. However, this is the path that he chose, and the County should not be penalized for his decision or the decision of any union member who chooses to serve as the President of the Union.

The County made clear its arguments that this demand is nothing short of outrageous and the taxpayers should not have to further subsidize the DIPBA President's non-work related, Union activities.

As witnessed by recent events where awards have granted similar benefits, the public reaction has been one of astonishment that tax dollars would be used for this purpose rather than providing much needed public services. Suffolk County strongly disagrees with this provision and reasserts its position that tax dollars should not be used to subsidize union activities.

For the reasons stated above, I concur with the above Award on all items except for item number 5, Board Pay on which I dissent.

  
Jeffrey L. Tempera  
County Appointed Arbitrator

I concur with/dissent from the above Award:

Dated: 9/29/06  
Hauppauge, New York

A handwritten signature in black ink, appearing to read "D. Davis", written over a horizontal line.

David A. Davis  
Association Appointed Arbitrator