

PUBLIC EMPLOYMENT RELATIONS BOARD  
STATE OF NEW YORK, CASE NO. IA-2006-029

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In the Matter of the Compulsory Interest Arbitration

Between the

**SUFFOLK COUNTY CORRECTION OFFICERS  
ASSOCIATION, INC.,**

Employee Organization,

**PUBLIC MEMBER'S  
OPINION & AWARD**

and the

**COUNTY OF SUFFOLK & the SUFFOLK COUNTY  
SHERIFF,**

Joint Public Employers,

**RE: TERMS & CONDITIONS OF EMPLOYMENT  
FOR CORRECTION OFFICERS FROM January 1,  
2004 to December 31, 2005.**

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**BEFORE: TRIPARTITE INTEREST ARBITRATION PANEL:**

DAVID N. STEIN, ESQ., PUBLIC MEMBER, CHAIR  
MR. JEFFREY L. TEMPERA, COUNTY MEMBER (DIRECTOR  
OF LABOR RELATIONS)  
THOMAS F. HARTNETT, ESQ., SCCOA (ASSOCIATION) MEMBER

**APPEARANCES:**

**FOR THE SUFFOLK COUNTY CORRECTION OFFICERS  
ASSOCIATION: MEYER, SUOZZI, ENGLISH & KLEIN, P.C.,  
BY: BARRY J. PEEK, ESQ., OF COUNSEL**

**FOR SUFFOLK COUNTY & THE SUFFOLK COUNTY SHERIFF:  
LAMB & BARNOSKY, LLP, BY: RICHARD K. ZUCKERMAN, ESQ.,  
& ALYSON MATHEWS, ESQ., OF COUNSEL**

**DATES OF HEARING: OCTOBER 10, 12, 24, & 31, 2007; NOVEMBER 9 & 26,  
2007; DECEMBER 7, 2007**

**PUBLIC MEMBER'S COMPULSORY INTEREST ARBITRATION OPINION  
AND AWARD**

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*Preliminary Statement*

Pursuant to Section 209(4)(h) of the *New York Civil Service Law* (the Taylor

NYS PUBLIC EMPLOYMENT RELATIONS BOARD  
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**CONCILIATION**

Law or the Act), and in accordance with the Rules and Procedures of the New York Public Employment Relations Board (the Board), the Suffolk County Correction Officers Association (the Association) and the County of Suffolk/ Suffolk County Sheriff (the County) designated me to serve as the Public Member/ Chair of a tripartite interest arbitration which was also comprised of Thomas F. Hartnett, Esq., who was designated by the Association and Mr. Jeffrey L. Tempera, who was designated by the County.

This panel's charge was to hear testimony, gather facts and consider argument by the respective parties to this dispute, in order to resolve, by majority vote, the remaining issues between the County and the Association, about terms and conditions of employment which shall govern correction officers in the bargaining unit represented by the Association for the period January 1, 2004 through December 31, 2005. The panel's vote had to be determined by applying the statutory criteria set forth in the Act. The parties' respective proposals are annexed to this Opinion.

“ . . . in addition to any other relevant factors . . .”, the applicable statutory are, as follows:

- a. comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employee performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills; and

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 investment benefits, medical and hospitalization benefits, paid time off and job security.

The amendment to the Act which permitted the Association to bring this dispute to compulsory interest arbitration also precludes the arbitration panel from exercising jurisdiction over proposals falling within the following areas: “. . .disciplinary procedures and investigations or eligibility and assignments to details and positions, which shall be governed by other provisions prescribed by law.” (Section 209(4)(h) of the *New York Civil Service Law*.)

Throughout the course of this proceeding, both the County and the Association were represented by counsel and had the opportunity to present information in the form of documents, testimony and argument. The parties were afforded the opportunity to question each other’s presenters and witnesses. A transcript of the hearings was made in accordance with law. Subsequent to the conclusion of the hearings, each party submitted a memorandum of law, neither of which can be described as brief. Executive sessions were conducted both before and after the submission of memoranda. Upon the record so produced, I find the following to be relevant.

#### ***Unit & Bargaining History***

The Association is the exclusive negotiating representative of certain employees of the Suffolk County Sheriff who occupy the titles of Correction Officer I, Correction Officer II Sergeant, Correction Officer III Lieutenant, Correction Officer IV Captain, Deputy Warden and Warden. Employees in these titles are members of Suffolk County Unit Number 10. In contrast to Suffolk police officers who share the same rank and who are not organized in the same bargaining unit, employees employed by the Sheriff’s

Office in either the deputy sheriffs or correction officers series of titles are each organized into discrete bargaining units which include all ranks.

Correction officers and deputy sheriffs were initially placed in a wall-to-wall unit represented by the Civil Service Employees Association (CSEA) from January 1, 1971. Employees in both series of titles remained in the same until through December 31, 1981. Naturally, as members of the same unit, members of both groups received the same wage increases.

Effective January 1, 1982, correction officers and deputy sheriffs were placed together in a bargaining unit which was severed from the wall-to-wall unit of which CSEA had been the exclusive representative. The Association of Deputy Sheriffs and Correction Officers (ADSCO) became the exclusive bargaining agent of the new unit. The new unit quickly descended into dissonance because the correction officers comprised a substantial majority, and the deputies believed that their special needs could not be addressed by a labor organization which was dominated by the more numerous presence of the correction officers. Effective January, 1985, the unit was divided into two and the correction officers were represented by the Association and the deputies were represented by the DSBA. The number of employees in the unit represented by the Association exceeded the number of employees represented by DSBA.

By that time, the Association of Municipal Employees (AME) had replaced CSEA as the bargaining agent for the County's so-called non-uniformed employees.

The major issues in this dispute arise from the historical relationships between the County and the employee organizations representing County employees in the following units: white and blue collar employees, police officers, deputy

sheriffs and correction officers as expressed in collective bargaining agreements or interest arbitration awards covering the periods beginning January 1, 1985 through December 31, 2005.

From January 1, 1985 through December 31, 1986, all four bargaining units received a six percent wage increases. Historically, employee organizations representing detectives (upon their decertification from the PBA), sergeants and superior officers in the County's police department and investigatory positions in the District Attorney's office (upon the decertification from the CSEA) receive the same increases awarded to police officers.

For the period January 1, 1987 to December 31, 1988: County employees in all four bargaining units whose settlements are at issue in this proceeding received a six percent increase in the second year (1988), but employees in the unit represented by AME received a 5.5% increase in the second year, while employees in the other three units received a 5.75%. In the 1989 through December 31, 1991 round employees represented by the Association, DSBA and AME received the same increases for 1989, but the PBA obtained a 5% increase. For the second year of the agreements (1990) correction officers and deputy sheriffs received a 5.5% increase, County employees represented by the PBA received a 5.75% increase and employees represented by AME received a 5% increase. For the third year of the agreements (1991), employees in the unit represented by AME received an increase of 5.25%, the DSBA and the Association obtained a 5.5% increase for their respective constituencies and police officers represented by the PBA were awarded a 5.75% increase.

For 1992, employees in the bargaining units represented by AME, DSBA, and the

Association were subject to a wage freeze, while the units subject to the police pattern of settlements and/ or awards received a 4,75% wage adjustment effective April 1, 1993. For 1994, both employees in units represented by DSBA and the Association received five percent wage increases, employees in the unit re[resented by AME received a four percent increase and the police officers in the PBA unit, as well as in the higher ranks received a split increase of 3% effective January 1, and 3.5%, effective July 1, 1994.

For 1995 and 1996, correction officers and deputy sheriffs received the same increases: 2.5% effective January 1 and 2.25% effective July 1 each year. Employees in the unit represented by AME received increases of 2.5% effective April 1, 1995 and October , 1995 and 2% for 1996. Police officers traditionally subject to the police pattern received increases of 3% effective January 30, 1995, 3.5% July 1, 1995, 3.5% effective February 28, 1996 and 3% effective July 1, 1996.

The Association executed its 1992-1996 collective bargaining agreement with the County and the Sheriff on July 6, 1994 and the DSBA executed its agreement with the County covering the same period on June 6, 1996.

On July 23, 1996, a twenty year retirement bill was implemented for members of the unit represented by DSBA. The County calculates that this was worth an additional 2.75% annually to unit members. Pensions are not negotiable under the provisions of the Act, and must be enacted by the State Legislature. However, as a practical matter, the Legislature will not approve pension enhancements without the approval and support of the local government involved, which is often secured through a labor organization's forbearance of increases and benefits sufficient to comprise the additional cost to the

municipality for the pension enhancement. Although there is no questions that the DSBA accepted lower net wage increases and less cash for the 1997 through 2001 period than did the Association for its members, there is no financial evidence tha the lower settlement did or did not pay for the County's increased costs as a result of the implementation of the twenty year retirement for Deputies.

The County concedes that the Association and the DSBA negotiated different settlements for the period from 1997 through 2003. The Association negotiated a 4% increase for correction officers effective January 1 1997, 3% effective January 1, 1998 and 1999, respectively while , the deputy sheriffs 4% increase was effective March 1, 1997 and 3% in 1998 and 1999, effective March 1 of each year . The police officers represented by the PBA received the same 4 % increase for 1997 as received by the correction officers, effective January 1, and AME negotiated a 2.75% increase. Members of the employee organizations subject to the police pattern received increases of 4% in 1998 and 1999, with the second increase effective on April 1, 1999. Employees represented by AME negotiated 2% increases for 1998 and 1999, respectively.

For 2000, police officers received an increase of 4.6% and AME bargained a raise of 3% for the employees it represented..

The Association's contract with the County for 1997 through 1999 was signed by the Association on December 8, 1997. The DSBA's agreement with the County, which extended from 1997 through December 31, 2001, was executed in December, 2000. Deputy sheriffs received an increase of 3%. effective March 1, 2000.

A major change in the County's contract with DSBA occurred in 2001. In that

year, the DSBA had agreed to an increase in the length of the workweek of the Deputies from 37.5 to forty hours. Concurrently, members of the unit represented by DSBA received a five percent wage adjustment.

The Association negotiated a contract with the County covering correction officers from 2000 through December 31, 2003. That agreement called for increases of 3.75% on January 1 of 2000 and 2001; and 3.5%, effective January 1, 2002 and 3.25%, effective January 1, 2003. It was executed on November 28, 2001.

The members of the unit represented by DSBA received the same increases for 2002 and 2003 in a deal signed on September 13, 2002. Officers subject to the PBA pattern were awarded two 4.5% increases in each of two years, and the County's employees represented by AME received two increases of 3.25%

Over the period of time that the Association and the DSBA conducted negotiation as the exclusive negotiating agent of the respective units they represented, they have negotiated the same, similar and different terms and conditions of employment which reflect the similarities and disparities between the duties performed by their respective constituents. Some of the differences are significant, such as: work week, overtime eligibility rotation, the impact of pension enhancements achieved for Deputies, standby and line-up provisions unique to terms and conditions of each title, stipends of various types and the impact of separate amendments to the Act which created the distinct rights of correction officers and deputy sheriffs to invoke interest arbitration.

There is no dispute that over the period of time that the deputies and .correction officers have negotiated separately, employees in both groups have received

improvements in terms and conditions of employment which have exceeded those bargained by AME and other County employees covered by “civilian settlements”, but that neither group has matched the level of improvements awarded to officers represented by the PBA and other law enforcement officers subject to the “police pattern.”

The same relationship can be said to exist for the 2004 through 2005 for the police pattern awards, the civilian settlements and the compulsory interest arbitration award covering the deputy sheriffs issued in December, 2005.

**SUMMARY OF ECONOMIC PROVISION OF (“TOWNLEY”) AWARD:**

1. Effective January 1, 2004, a bonus of \$1925.00 for employees continuously on the payroll prior to January 1, 2004 in a lump sum less withholding taxes. As a direct result of the 40 hour work week scheduled for bargaining unit members, each full-time employee who was continuously employed before January 1, 2004, receives \$313.20 (\$12 bi-weekly) in a single lump sum for 2004 less withholding taxes for each 80 hour bi-weekly period for which they were compensated for eighty hours.
2. Effective January 1, 2005, the \$1,925 bonus and the \$313.20 bonus stipend was added to each step of the salary schedule except the entry step. Each step of the salary schedule , except the entry step, was increased 3%.for each employee on the payroll on January 1, 2005 as a full-time employee. In addition, each full-time employee continuously on the payroll since January 1, 2005, received a \$16 bi-weekly (\$417.60 annually) stipend less applicable taxes and withholdings and which was added to the salary schedule for each 80 hours bi-weekly period for which they were compensated.

Effective December 31, 2005, the Deputy Sheriff’s III (Lieutenant) base salary was made equidistant between Deputy Sheriff’s II (Sergeant) and Deputy Sheriff’s IV (Captain) base salary.

3. **Night Differential** – Increased to 10%, effective December 31, 2005. The differential was extended to shifts starting at 6 PM. or later or ending at 6 AM. or earlier, after 12/31/05.
4. **Rotating Shift Differential (Section 6.2)** Effective December 31, 2005, this differential was increased to 7.5%.

5. **Stipend in Lieu of Overtime** Effective January 1, 2004, was increased for all fulltime employees on the payroll as of the date of issuance of the Award, the stipend was increased by 3% to \$9,499. Effective January 1, 2005, for all full-time employees on the payroll as of the issuance of the Award received an additional 3% increase to \$9,784.
6. **Overtime Compensatory Time** Notwithstanding any inconsistent contract provision or or practice to the contrary , all employees not covered by the FLSA, Section 207(k), who were hired on or after December 31, 2005 were held to be entitled to overtime at time and one-half after actually working forty hours (Monday through Sunday).

Notwithstanding any inconsistent contract provision or practice to the contrary, all employees covered by the FLSA Section 207(k) who were hired on or after December 31, 2005 are to be paid overtime at straight time for all hours worked after actually working 40 hours during the applicable FLSA work cycle as designated by the County, and at time and one-half for all hours worked after actually working the maximum number of hours in the applicable FLSA work cycle as designated by the County.

In addition, Section 9.1 Overtime (1<sup>st</sup> paragraph, 4<sup>th</sup> sentence) was revised to read, as follows: “ For all employees who are hired prior to December 31, 2005, any time off for vacation, sick leave, personal leave, holidays, or other leave with pay are to be considered as days worked under this paragraph.”

6. **Longevity** Effective December 31, 2005, longevity was increased by fifty dollars per step.
7. **Stand-By (Section 9.6)** Effective on the date of the Award was issued, Section 9.6 was revised in a manner which provided additional compensation to bargaining unit members designated in writing by the Sheriff as eligible for stand-by pay.
8. **Imposition of Sick Leave Reporting & Monitoring Policy** Similar to that used by the County under several contracts with employee organizations .

The County also achieved a sick leave management program with disciplinary consequences which PERB held was not statutorily arbitrable in this forum.

9. **Conversion of current sick leave program to unlimited sick leave**  
This eliminates the current program of a defined grant of sick leave for each month of service and accumulation of unused sick leave with rights to cash in upon retirement to an unlimited sick leave program. Applicable to new employees.
10. **207-c** Imposes time limits (generally of one year) on certain benefits, such

such as, but not limited to, uniform allowance and vacation for employees on paid leave due to injury in line of duty.

11. **Benefit Fund** A one time payment of \$158.08 per bargaining unit member to the Suffolk County Municipal Employees Benefit Fund. (No request for a welfare fund contribution increase from the SCCOA appears in the record..

There is no dispute that the police pattern, initially awarded to the PBA, provided for two wage increases of 3.75% for 2004 and 2005, plus an adjustment to longevity, in exchange for concessions worth \$1.29 million which was prorated and applied on a *per capita pro rata* basis to the DSBA represented unit by the Townley panel and additionally was used on the same basis to conclude the settlement for AME and the rest of the unions subject to the “civilian” pattern.

The full-time employees subject to the AME negotiated pattern received, for 2004 and 2005, the period to be covered by the Award in this case, a bonus of \$1,925 effective January 1, 2004, which was *not incorporated* into the base salaries of unit members and 3% increase effective January 1, 2005. The overtime provisions of the Agreement were similar to those reflected in the DSBA Award for new employees, with the exception that their work weeks remained the same. Thus, the changes provide that new employees earn overtime at straight time rates until the *Fair Labor Standards Act* becomes applicable. Employees subject to the civilian pattern also received adjustments for longevity similar to the police and deputy sheriffs and differentials were also adjusted.

The proposals and arguments of the parties are addressed in the context of the multiplicity of measures presented by this dispute.

### ***Pattern Bargaining***

Certainly, since the onset of the fiscal crisis in the Cities of New York and the City of Yonkers in the mid-seventies, the concept of pattern bargaining has become

institutionalized in negotiations conducted by parties covered by the Taylor. Pattern bargaining is a key component of interest arbitration and fact-finding arising under the Taylor and *New York City Collective Bargaining Laws (Act)*, as well as in negotiations.

As I have written in prior decision, pattern bargaining is not a novel concept. It finds its roots in the private sector bargaining practice which long predates public sector bargaining. Pattern bargaining promotes stability, controls costs and creates equity by ensuring that employers are not “whipsawed” by the various employees organizations with which they must negotiate, while constraining employers from either rewarding or prejudicing a particular union. It also deters any party from feeling aggrieved, hastens the conclusion of collective bargaining in most cases and limits the fluctuations which might otherwise occur due to the operation of market forces. Pattern bargaining also permits employers and employees to plan by setting forth clear guidelines and, for all of the reasons set forth above, is therefore in the public welfare and interest.

Pattern bargaining does not, as the County urges, require (although it may result in) that each group settling after the group which sets the pattern be bound to accept each and every provision of an award or voluntary settlement which sets the pattern. Rather, the pattern setting agreement, at a minimum, sets the cost constraints on the subsequent agreements or awards. Cost may be ascertained by a number of measures: cost, rates, and future costs and savings. However, to impose the terms of any pattern setting settlement or award on subsequent negotiations impacting non-unit employees would undermine the very purpose of the Act, although a bargaining agent may agree, or be compelled in

compulsory interest arbitration to make productivity concessions which result in savings which can be added to the sum available from a pattern settlement or award.

Of course, this does not preclude an interests arbitrator or a fact finder from Ordering or recommending, as the case may be, the same or substantially the incorporation of the same or some of the same terms and conditions from the pattern setting settlement or award in agreements or award which follow if he/ she finds all or some of these same terms and conditions satisfy the criteria of the Act.

Under the statutes governing both public and private sector employees, employees eligible for collective bargaining are divided into bargaining units by such factors as community of interest, conflicts of interest, status in the hierarchy of employees and the possession of unique knowledge or discretion. For instance, in Suffolk County, police officers are divided by rank. However, all ranks of both Deputy Sheriffs and Correction Officers are included in each bargaining unit represented by the respective employee organizations which represent the two groups. The difference between the manner in which employees organizations are organized by rank of necessity impacts the application of the pattern set in the Police Department and related employers, such as the District Attorney, the Sheriffs' Office and groups subject to the "civilian" pattern.

To automatically subject each group to every provision in a pattern setting agreement would negate the public policy promulgated in the Taylor Law that related groups of employees through their employee organizations possess the right, together with their employer, to set priorities and design systems which meet their special

needs and priorities. To allow the terms and conditions affecting employees in a bargaining unit to be determined by employees in another unit would effectively disenfranchise the former group, and could potentially undermine morale in both units..

Nonetheless, a provision from a pattern settlement may be incorporated in another agreement, fact finding or interest award only where the relevant information available to the adjudicator(s) demonstrates that such adoption would be consistent with the application of the statutory criteria, *supra*. At the same time, I stress that there is no presumption created by the mere appearance of an item or provision in a pattern setting agreement or award that the same or substantially the same item or term and condition appear in an agreement or award which is subject to that pattern.

The provisions governing compulsory interest arbitration in New York State mandate that bargaining history be weighed by the arbiters in shaping an award. This includes the application of pattern bargaining in a particular jurisdiction, if any. Thus, in deciding whether pattern bargaining has been employed in a given jurisdiction, and how its has been applied, if at all, is central to the interests process. Of course, if a practice has developed which is contrary to the Act, it should not be continued.

(Pattern bargaining may be imposed or tightened in the absence of bargaining history where warranted by extreme conditions, such as a legislatively or judicially declared fiscal crisis, an example of the latter being bankruptcy. Neither factor is present in this case.)

In Suffolk County, all agree, the history of pattern bargaining is to create

boundaries for the settlements or awards governing units of employees through the AME and PBA results. As can be discerned from the bargaining history in Suffolk outlined earlier in this Opinion, the police pattern has consistently exceeded the pattern governing employees whose units have followed the pattern set by the County's agreement with AME (the so-called "civilian pattern."). The bargaining history in Suffolk, all concur, also demonstrates that the employees exclusive to the Sheriff's Office, specifically deputy sheriffs and correction officers, have traditionally received increases which have fallen somewhere between the police and civilian patterns. Whether there has been a pattern relationship between the settlements, and affecting employees represented by the Association and the DSBA, respectively, and how it may have been applied, is a significant issue in dispute in this proceeding. It arises in the context of productivity concessions which appear in the settlements and award applicable to both the PBA and AME settlements.

In contrast to the costs of wage increases called for in the police and civilian agreements or awards in the County, the history of concessions, whether voluntary or mandated by Award, have been set forth in dollar amounts. They have been calculated and applied on a *per capita* basis. In other words, the gross amount of the productivity gains achieved by the County is pro-rated by the number of employees who are members of the bargaining unit. If a particular union provides concessions valued more than the value of the concessions valued, on a *per capita* basis, by the pattern setting agreement, the members of the bargaining unit would be entitled to a credit, in terms of the value of the wage package, which would not cause the net value of the pattern setting agreement or award to be exceeded. Of course, the calculation of the

relative value of the productivity enhancements presents a complex and controversial process, a process which presented a substantial controversy in this proceeding.

When compared to the employee organizations representing units subject to the police patterns, the units comprised of deputy sheriffs and correction officers are dissimilar to the employee organizations consisting of police officers and similar to each other. With police, each group of ranks is segregated into discrete ranks, while all ranks subject to collective bargaining are included in the correction officers units and deputy sheriffs. This difference has resulted in the imposition of productivity savings in cash on the ranking officers in the form of lags in wage increases in order to preserve the differences in compensation by rank. The productivity improvements imposed on correction officers and deputies have not been limited to cash as a result of broader unit composition.

My analysis reveals that there has been a relationship over the years, between the negotiated increases achieved by the deputy sheriffs and the correction officers. Initially, the record reveals, both groups were included in a wall to wall unit represented by the Civil Service Employees Association (CSEA), and received the same increases the County provided to all of its employees in that unit. Later, the employees in two series of titles were severed from the wall to wall unit, and were included in a single unit represented by an employee organization known as ADSCO. However, ADSCO broke up because the deputies and the correction officers perceived a conflict of interest between them.

Apparently, this brief alliance was characterized by discord and had a fleeting shelf life. The correction officers and deputy sheriffs titles were

segregated into discrete units which would be justified under the case law developed by the Public Employment Relations Board (PERB) regarding employee groups which have a demonstrated conflict of interest between them.

The County has conceded that there were some differences between the settlements (all voluntary) achieved by the DSBA and the Association, respectively, with the County over the years which would justify some “wobble” room between the DSBA (Townley) Award and this one. The County asserts such differences should be minimal due to the historical pattern between the two groups during the years they have been divided into two bargaining units, represented by two different employee organizations.

Whether under ADSCO or separately, the employees in the two unit received the same increases with the exception of the period between 1997 and 2003. During this period, the DSBA accepted a workweek which was increased from 37.5 hours to forty hours, representing a 2.5 diminution of contractual overtime each week with no commensurate increase in compensation for the additional 2.5 hours of work (the bargaining unit members did receive a small increase for the additional time).

Although the Association sought to infer from the relative value of the settlements between 1997 and 2003, that the deputies characteristically received a smaller increase when its settlements preceded the settlements bargained by the Association from the relative value of settlements between 1997 and 2003, I am persuaded by Mr. Zuckerman’s explanation that the less favorable settlements accepted by the DSBA during that period served, in large part, as consideration for the County’s support for legislation which approved a substantial pension enhancement for

deputy sheriffs reducing their eligibility for a full pension from from 25 to twenty years of service. As pensions are not negotiable under the Act, pension improvements approved by the local and State legislators are often secured by union concessions which are, at times, are produced through collective bargaining. The Association did not offer any evidence to contravene Zuckerman's presentation.

Nonetheless, there is no evidence that either the County or the DSBA made any calculations to support the proposition that the less generous increases received by the deputies when compared to the correction officers "paid" for the costs of the pension enhancement received by members of the DSBA.

The Association, as it has insistently asserted, presents a different view of the bargaining history since the two groups severed their relationship. First, its overview of the process calculates that it, as a larger, and therefore more influential group, has consistently achieved earlier and more generous settlements from the County, and that, as a smaller unit, the DSBA has usually settled later, and for less. The Association argues that this relationship is consistent with the history of pattern bargaining, in both private and public sector labor relations. The Association reasons that it is improper, as well as impractical, to permit a smaller unit to set the pattern with a public employer because it possesses inherently less leverage and that its settlements will not effectively set a pattern for the larger unit.

For the above reasons, the Association maintains that if a pattern applies to this Award, it should be the Award covering the County and the PBA. The Association presents two arguments in support of its position. The first is that the new statute providing for the right of the employee organization to take a dispute over successor

terms and conditions of employment virtually tracks the preexisting law governing police safety compulsory arbitration, while the new statute governing the right of deputy sheriffs to arbitrate successor terms and conditions of employment to an expired contract are far less similar, limiting the scope of arbitration to matters affecting salary driven issues and mandating a one year waiting period before the parties may proceed to actual arbitration.

The second basis for the Association's position was an arbitration between *Westchester County and the Westchester County COBA* authored by Arbitrator Howard Edelman which tied the police and correction settlements together as a pattern. However, there is an important distinction between Westchester and Suffolk Counties in that the former does not employ deputy sheriffs. Thus, Arbitrator Edelman did not have the bargaining history before him which ties the deputy sheriffs and correction officers as it has in Suffolk, nor did he have the choice of whether to tie a pattern covering deputy sheriffs to correction officers, as opposed to police because the deputy sheriff title is not utilized in Westchester.

While statutory similarities and differences may be evidence of the existence of differences or similarities between two groups, in this case the similarity of the new statute providing for compulsory interest arbitration for the correction officers' contract disputes with police and fire units is insufficient to provide legislative intent to overcome the bargaining history outlined above, including the similarities in unit composition between correction officers and deputy sheriffs when compared to the groups subject to the police pattern.. In addition, the Act itself makes actual bargaining history one of the statutory criteria to be weighed by a compulsory interest arbitration panel. The evidence

shows the existence of a relationship between settlements affecting correction officers and deputy sheriffs, rather than correction officers and police units, as enumerated above..

The history of public sector bargaining does not support the Association's argument that the largest employee group, or the larger of two employee groups, always sets the pattern from the smaller group. In fact, during 2008, Local 237 of the Teamsters set the pattern for a civilian settlement in New York City which the far larger District Council 37 followed. This was not the first time this occurred in the City of New York, which has had the longest and most precise history of pattern bargaining, particularly since the State Legislature's 1975 declaration of a fiscal crisis and the creation of a Financial Control Board to monitor whether there were sufficient funds available to support a collectively negotiated agreement. (The Control Board's authority has long since expired.)

During the 1982 round of negotiations Local 237 of the Teamster settled first, and achieved a package of 7.5% during the first year and 7% in the second year. District Council 37 settled subsequently receiving a package which provided slightly less cash, but a minimally greater "going out" rate (7% in the first year and 8 percent in the second year). Nevertheless, the cost of the two packages was substantially the same, despite the fact that Local 237 was far smaller than District Council 37. In fact, the disparity in members was far greater than the difference between the number of correction officers and the number of deputy sheriffs employed by the County, **See:** *In the Matter of the Impasse Between the City of New York & the Health & Hospitals Corp. and Licensed Practical Nurses Ass'n. Local 721 SEIU,*

OCB Docket No. I 195/89 (Arbitrator David N. Stein, 1/16/90).

In its September 12, 2005 fact finders' report and recommendations, a panel consisting of three neutral members noted that during the 1995-2000 round of negotiations, the United Federation of Teachers settled the pattern for the civilian unions, despite the fact that the UFT was smaller by about one third than District Council 37, *United Federation of Teachers & City of New York/ New York City Department of Education*, p. 16, PERB Case Nos. M2004-253, 268-279 (Wittenberg, Berger, Tillem).

Clearly, it would be more accurate to say that much of the time, the larger union sets the pattern, but there have been notable exceptions to this principle.

Based on my review of the above facts, I conclude that there is a so-called "Sheriff's pattern" which link the settlements achieved by the DSBA and the Association with the County. However, I would not characterize it as a "lock-step" pattern in each and every round. In those years which the DSBA settled first and the Association received a more generous settlement, the difference did not occur from the order of settlement or the relative bargaining power of the two groups, but from the DSBA's choice to invest its efforts in an enhanced pension benefit outside the bargaining process. Which group fared better in the long haul, if either, is not apparent from available data, nor is it this panel's responsibility to offer its opinion on this question. ..

#### ***Application of the DSBA Award to the SCCOA***

As discussed above, pattern bargaining does not require that any employee organization or employer confined by the existence of a pattern settling award or settlement is bound by each and every term of the pattern setting award or settlement. Rather the employer employee organization whose negotiations and arbitration follows a

pattern setting, in this case, award, is merely confined to an award or settlement which has the same or substantially the same costs.

There are many tools available to measure the cost of the pattern setting award set by the DSBA Award, such as rate, cash, and the current value of future savings, whether historically used by the County or other public employers and employee organizations.

The County, the Association and the DSBA have also traditionally reached agreements which, when a percentage increase has been applied to an existing salary schedule, produce more cash per hour for members of the correction officers bargaining unit than for the deputy sheriffs unit. This is because the higher a base to which a percentage is applied, the greater the result. This cash disparity is not predicated on any finding that one group has historically been more or less effective in the conduct of collective bargaining than the other from 1997 through 2003, but rather on the priority of benefits each has chosen on behalf of its constituency. DSBA effectively lowered its hourly rate by switching to the forty hour work week for less than a *pro rata* increase in exchange for an enhanced pension which allows deputy sheriffs to retire earlier than they had previously. The Association adhered to its 37.5 hour work week during the same period. Consequently, the correction officers hourly rate was not lessened, although the hourly rate of deputy sheriffs was reduced to less than it would have been had it not traded in 2.5 hours of work at premium rates for straight time compensation for enhanced deferred compensation.

The first year of the DSBA (Townley) Award provided for a cash bonus which was not incorporated into the base for any purpose. While this was the first time that

either the DSBA or the Association units had received a wage enhancement in flat dollars, the bonus, was consistent with the first year of the settlement which was applied to those units which follow the County's civilian pattern. This included the unit consisting of probation officers who earn a higher hourly wage than correction officers.

It is the second year of the DSBA Award where a clear break with the civilian pattern occurs. In contrast to those groups who traditionally follow the AME pattern, the DSBA achieved a roll in of the bonus to the salaries of deputy sheriffs at the outset of the second year, prior to the application of a three percent salary increase. Based on the traditional pattern between the deputies and the correction officers, the latter would be entitled to the provisions for the second year which appear in the DSBA Award.

The other benefits arising from the 2004-05 round which was unique to the deputy sheriffs are the 40 hour stipends. These stipends were reserved for the deputy sheriffs, apparently, because they, unlike correction officers have been scheduled to work a forty hour work week. However, the DSBA Award characterized the stipends, they represent a cost of the Award to which a group bound by the pattern created by the Award is entitled to lay claim. An employer which asserts that an employee organization is bound by a pattern set by it and another group is itself by that pattern in all respects. A cost of the pattern may not be denied to another group, any more than another group is entitled to more than the cost created by the pattern, absent the showing of additional productivity.

The two stipends were rolled into the salaries of the deputy sheriffs during the second year of the contract in the form of sums of money. As with the bonuses, as a benefit provided in a flat dollar amount, the stipends represent a higher percentage

increase to a deputy sheriff than the same stipends would represent to a correction officer.

Based on past relationships, the differences between going out rates of deputy sheriffs and correction officers would be closer and a traditional practice in the application of the "sheriff's pattern" would be disrupted. In order to avoid this, the going out rates applicable to correction officers should be adjusted on December 31, 2005, the final day of the Award. As a result of deferring the adjustment to the going out rate of the raise accorded to the correction officers under this Award, the cash received by the correction officers during the two years covered by the Award will be closer than in previous negotiations. (It is the use of the three percent increase in the second year which partially tracks the customary past practice). This result represents a compromise between the use of flat dollar increases and the past practice of the County and both groups which used percentages. This approach is not applicable to wage benefits which have traditionally provided for a flat dollar amount, such as longevity.

The most controversial issue presented in this case revolves around the viability and value of the concessions ordered by the Townley Panel in the DSBA arbitration, the most difficult of which is the elimination of contractual overtime. This is a savings which was imposed upon new members of the deputy sheriffs' bargaining unit in the Townley Award.

Initially, I rejected the Association's argument that the members of the the Correction officers unit hired after the issuance of this Award should not be subject to the loss of contractual overtime imposed by the Townley panel in the DSBA Award. Instead, I concluded that the County's presentation of the same compelling information it had made to the Townley panel. Moreover, the County has successfully bargained the

same concession with the employee organizations subject to the civilian pattern, including employees represented by AME and the Probation Officers. For these reasons, the County's FLSA proposal for employees hired on and after the effective date of this Award.

By losing contractual overtime, the new members of the deputy sheriffs unit ceased to earn overtime after forty hours each week, and could be placed on a fifteen day cycle which provided the sheriff with the right to assign them as much as 92 hours of straight time during such fifteen day cycle.

One of the surprises presented by the Sheriff's Employee Relations Director during his testimony under cross-examination during the hearing was an admission that he had not taken advantage of the right to place the deputies on the fifteen day cycle because of what he perceived as insurmountable administrative difficulties and maintained the deputies on the fourteen day cycle. The result is that the deputies could not be worked more than 86 hours at straight time while they remained on a fourteen day cycle, rather than 96 hours if they had been assigned to the fifteen day cycle.

The Association has prudently raised its concern of placement of newly employed correction officers on a fifteen day (or other statutorily appropriate) cycle for overtime purposes while the deputies are retained on a fourteen day cycle. In order to preclude such an inequitable result, this Award will provide that if the Sheriff's Office allows newly hired deputies to remain on the fourteen day cycle for a period in excess of thirty days after placing newly employed correction officers on a fifteen or other statutorily appropriate cycle, then the Association can pursue a claim for a sum representing additional productivity beyond the actually *implemented* pattern

arising from the DSBA Award. Pattern bargaining precludes any discrimination and requires equity in the employers administration of the pattern awards and settlements..

Another parameter of the conversion from contractual to FLSA overtime is that the new deputies must actually work forty hours before qualifying for overtime. This means that if an employee is on vacation, enjoys a paid holiday or is out ill during a week, he is not credited for working the day he is out and cannot receive overtime for working on a regular day off. Instead, he is compensated at straight time.

Because the DSBA previously “cashed in” the 37.5 hour work week for enhanced pension benefits, the value of the change to FLSA overtime does not produce the savings for the County that a similar conversion by the Association would, as the correction officers have retained, until now, the 37.5 hour work week coupled with contractual overtime at a premium rate.. This additional difference in savings produced by the elimination of contractual overtime for newly employed correction officers when compared to the savings produced by implementation of the Townley panel’s award must be credited to the former’s package.

To convert newly hired correction officers from contractual to FLSA overtime, the County would be eliminating 2.5 hours per week at overtime (premium) rates. This represents a potential loss of 1.25 hours per week of compensation for each new correction officer who works at least forty hours. This loss to newly employed correction officers could not be anticipated in the Townley Award affecting newly minted deputy sheriffs’ overtime rights, as the Association was not a party to that proceeding..

Before turning to the value of any conversion to FLSA overtime for newly hired

correction officers, one must evaluate the needs for the conversion. First, both the deputies and the correction officers are titles exclusive to the Sheriff's Office. Second, the negotiating history for the two titles is strongly linked. If the Sheriff's Employee Relations Director can overcome his perceived administrative difficulties with the fifteen day cycle he currently views as overwhelming, the Sheriff's Office can enjoy the efficiency of a single overtime policy for its two largest bargaining units. The elimination of contractual overtime for new titles in both bargaining units also contributes to morale in that one group is not singled out for this change, while the other is held somewhat harmless. After all, it is apparent from the record that there is a longstanding rivalry between the two groups. The impact of exempting newly employed correction officers from the elimination of contractual overtime, given the earlier result with the deputies, would be extraordinarily destabilizing, in my view.

The lengthy process which often accompanies compulsory interest arbitration in the public sector (it is built into the statute governing deputy sheriffs) makes it impossible to deliver the type of change sought by the County during the two year period over which an arbitration panel has jurisdiction., as the period covered by the Award has often expired by the time the Award is promulgated. This is the case here. Both parties wisely wish to avoid the destabilization and anger which would surely ensue if correction officers who were hired before the effective date of this Award were to retroactively suffer the loss of the contractual overtime they had received. This would involve the imposition of some draconian system to recapture the payments they had received since their date of hire. Thus, the only way to reasonably impose the loss of contractual overtime would be to do so prospectively.

This raises the dilemma of imposing the change after the Panel's jurisdiction has expired, or providing for it retroactively, which is not desirable. The sole way of avoiding this dilemma is to credit the bargaining unit for future savings. This is a concept to which Arbitrator Townley referred and used in her Award covering the deputies, with regard to the switch to a sick leave management system, although she did not explicitly quantify the credit she was according the DSBA for the savings attributable to the change..

There are two hurdles which must be accommodated to calculate the additional credit due to the members of the unit above the pattern set by the Townley Award.. One (but not the only) method available commonly used is a formula which can be located at [http:// en wikipedia org/Net present value](http://en.wikipedia.org/Net%20present%20value).. Since the savings which accrue in the future are not valued at their face value in the present, they must be discounted in the present to account for lost interest and inflation. This concept has been employed in impasse awards governing the City of New York and the new York City PBA. Those parties lengthened the length of service required to reach maximum and used the savings to fund current increases.

The second hurdle is to identify at which point the major savings begin to accrue. Neither party introduced a completely persuasive documentation to show the projected overtime use by seniority for correction officers over a period of years from which future use might be extrapolated. The Association presented, I found, an assumption that created the strong possibility that the period when most of the savings would logically appear was premature, and thus overvalued..

At the same time, the County presented an assessment of when savings might

be significantly realized which was overly pessimistic, thereby creating an estimate of savings which was unrealistically low. (The earlier savings are realized, the greater the credit to employees in the bargaining unit for the 2004-05 round.) The parties were not able to reconcile their respective analyses.

Calculation of these estimates is made more difficult by the complex operation of the seniority wheel which entitles more senior employees to bid for overtime opportunities on a system more strongly weighted for seniority than the one used for deputy sheriffs. This system retards the period when major savings can be realized by the County when compared to the system used for deputy sheriffs, and must be considered in the calculation of when major savings to the County begin to accrue, as it will take the passage of more time for newly hired deputies to exercise seniority rights to overtime than it will for newly employed deputies who no longer enjoy the right to contractual overtime at premium rates.

However, it was possible to develop a sum to be delivered on the last date of the period governed by this Award as consideration from the County for the productivity savings generated by the loss of contractual overtime for officers hired during 2009 and thereafter by making use of both views advanced by the parties. This methodology was designed, as well to account for the length of time consumed by the parties' negotiations and the conclusion of this matter.

I rejected an earlier argument favored by the County that the correction officers were not entitled to any credit for the conversion to the FLSA because no savings were realized by the County during the period governed by the Award because the switch occurred on the last day of period – December 31, 2005. The change sought by the

County could not be accomplished if not accompanied by a benefit during the statutory two year period governed by the panel's jurisdiction, 2004 and 2005. By providing consideration on the last date of the period for future savings generated by the County, the County can accomplish its goals of limiting overtime expense in the long run and fairness can be afforded to the members of the bargaining unit, both current and prospective.

The Townley panel in the DSBA Award for a sick leave management plan with disciplinary consequences, which PERB has held outside the statutory scope of arbitrability for correction officers, and which the County has calculated as worth .6 %, This sum must, the County has insisted, be accounted for in the Association's package. However, the Association responds, the County's calculation was not supported by actual data, but it was arrived at by crediting the savings realized from the overtime concessions in the DSBA Award and subtracting the remaining savings due as a *per capita* valuation of the PBA productivity required under the Award of the Dennis Panel (the compulsory award applicable to the PBA represented unit during the 2004-2005 round). The County insists that this concession be matched by the Association, while the Association insists that the County's calculation is mere speculation.

In the fact finding report authored by the three member neutral panel consisting of three neutrals governing the *UFT and the NYC Dept. of Education, supra.*, the UFT received credit above the value of the pattern for productivity improvements in the grievance and disciplinary procedures affecting licensed pedagogical employees, although the savings for such could not be quantified. Similarly, in the *Health & Hospital Corp. v. the LPN Association, Local*

721, *SEIU, supra*, I provided the LPN group an adjustment to prevent a logically projected retention and recruitment problem if the disparity between LPN salaries in the City's private voluntary hospitals and the HHC LPNs persisted, although there was no evidence of the existence of a current problem at the time. I also I rejected the employer's testimony that it intended to phase out LPNs as it switched to a staffing its facilities with all RNs as unrealistic given its personnel needs and the high demand for RNs. Thus. I was not convinced of HHC's assertion that it would cease to have any demand for LPNs.

Clearly, then, this panel has the authority to accept a reasonable rationale for according credit in a prior pattern setting award for productivity improvements which are logically apparent, although not capable of precise calculation, and I am persuaded that such is just and reasonable in this case, as other interests adjudicators have done.

In this case, therefore, I am prepared to sustain the estimate placed on the value of the sick leave management program by the County and to debit the value to be credited to any amount awarded the Association for the additional value of the productivity improvements of the 2.5 hour loss of contractual overtime.

The Townley Panel, in awarding, for newly employed correction officers, the conversion from a limited number of sick leave days with accumulation of unused days to unlimited sick leave, was unable to conclude whether the County would save any sum as a result of the switch. However, the change will ultimately eliminate the accumulation of unused sick days which are ultimately "cashed in " upon retirement. This elimination can positively impact the County's bond and credit ratings,

with a coincident decrease in the interest rates with which it is charged, as the County's obligation to pay out accumulated benefits is now carried on its books as a contingent liability under generally accepted accounting principles.

Other reasons favoring the conversion to unlimited sick leave are uniform personnel rules in the Sheriff's Department, and adherence to the pattern established by the DSBA Award. The County was awarded with new rules applicable to the administration of unlimited sick leave by the Townley panel. The same plan should be implemented in the instant award in the interests of consistency and uniformity in the application of the pattern created by the DSBA Award.

Another anomaly which must be addressed is the Association's decision to refrain from requesting, in its proposals, the \$158.08 *per capita* non-recurring contribution to the County/ AME Benefit Fund (Fund), which was either negotiated by or awarded to AME, the PBA, Probation Officers and the Park Police units.. The County argues persuasively that the Association's election not to include a demand for this benefit divests the panel of jurisdiction to award it, despite its presence in the DSBA Award. The impact of failing to award this contribution could be a charge to the paychecks of bargaining unit members. In order to avoid such an unfair result and considering the legal impediments suggested by the County at the same time, I will debit the additional savings generated by the correction officers by the elimination of contractual overtime for new employees. Of course, this does not "zero out" the entire savings reflected in the additional sum provided for in the Award.

Finally, there are additional items required by the pattern agreement which do not mandate an adjustments, but will be included in this Award .such as, but not limited to

Stand-by Pay (as sought by the Association in its brief and agreed to by the County), shift differentials, rank differentials and limitations on leaves and allowances for officers on Section 207-c paid leave (such benefits cease to be rational for employees on paid leave).

My reconciliation of the additional savings produced by the conversion of newly employed deputy sheriffs from contractual to FLSA overtime when compared to the savings produced by a similar conversion for deputy sheriffs, the adjustment for percentage of the bonus and stipends as applied to the corrections unit in accordance with bargaining history and the debits to those amounts (such as the savings not produced by a sick leave management program) and the charge to the package of a \$158 dollar contribution per employee to the Fund resulted in a finding that each bargaining unit member, sav those on the entry level step, should receive an adjustment to salary of \$425 annually, effective December 31, 2005 under the same terms and conditions applicable to the other wage adjustments called for in this Award, such as continuous presence on the payroll on or before January 1, 2004 as a fulltime employee on the date of issuance of this Award.

Any remaining economic demand which have the effect of adding to, or diminishing the cost of this Award when compared to the cost of the DSBA Award are rejected as a departure from the pattern set by the DSBA Award.

### ***Statutory Criteria***

The Act mandates that the Panel weigh the statutory criteria set forth below. Some of the criteria have been fully discussed in the topics “ Pattern Bargaining” and “ Unit and Bargaining History” above and will not be reiterated here.

### **Comparability**

A pattern bargaining relationship, such as the one which exists between the Association and the DSBA often supersedes the other comparable terms and conditions of employment which exist in the same or other jurisdictions. As discussed above, I did not accord the Westchester COBA award as entitled to substantial weight because Westchester does not use deputy sheriffs. In this round, I weighed the DSBA Award as the predominant comparable by virtue of the longstanding relationship[ which has existed between the settlements achieved by the Association and the DSBA for their respective constituents.

### **Ability To Pay**

The traditional patterns applicable to the settlements and awards between Suffolk County and the employee organizations representing its employees have been characterized by the “police pattern” s the most costly resolutions and the “ AME pattern” as the least costly, per employee. Thus, the best the Association Could hope to achieve in t his round would be the wage and benefit increases awarded to the members of the bargaining units covered by the “police pattern” In fact, the “police pattern” was the pattern by which the Association sought to be governed in this arbitration.

As I wrote in my Opinion in the *Suffolk County Detective Investigators PBA & the County of Suffolk* , PERB Case No. IA-2005-014, decided 9/29/06:

The Dennis [PBA} Panel found that the County had the ability to fund an award basically consisting of 3.75% less concessions valued at \$2.5 million. Although the County contends that its ability to pay has substantially deteriorated since the issuance of the Denna 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.

To permit an alleged change in the County's ability to pay to affect the Award of a subsequent group by either decreasing or increasing the amount available would alter the validity of its stand on pattern bargaining, which stands for the proposition that each award or settlement which follows the pattern setter must reflect the cost of the pattern setting award or agreement. In this case, the Dennis panel found that the county had the ability to pay for its Award covering the PBA. As the instant award will not exceed the cost of the PBA Award, the County has the ability to pay for it.

The Association's argument that the County has the ability to afford a Richer agreement is immaterial as the cost of this Award will not exceed the cost of the pattern set by the Dennis Award, as the Association's settlements have never exceeded the cost set by the police pattern.

### **Public Interest**

It is in the public interest for the County's correction officers to receive an Award of an improvement in wages and benefits enjoyed by comparable employees of the Sheriff's Department, the deputy sheriffs. It is inherently demoralizing and destabilizing for the latter to receive a favorable adjustment in terms and conditions of employment and not afford the same or similar improvement to their co-employees.

Settlements in the private sector do not pertain to this award as there are no such comparable employees in the private sector. The County operates its own correctional facilities.

### **The County's Non-Economic Proposals**

The County submitted a number of non-cost items. Some of them I found to be just and reasonable, and these should be incorporated into the terms and conditions of employment governing the members of the collective bargaining unit represented by the Association. They are set forth below. The others are returned to the parties for future rounds of bargaining.

**Deletion of the requirement that an arbitrator hear and dispose of any Grievance submitted to her/ him within thirty days of submission.**

The County correctly points out that the arbitrators customarily used by the parties, as well as their attorneys, are incredibly busy and cannot be expected to meet this mandate. While complete elimination of time limits may be unacceptable to the Association, some realistic modification should be devised to reflect reality. An arbitrator should reasonably be expected to resolve a rights arbitration with a sixty day period following closing of the record, which includes the receipt of briefs and transcripts, if any. It is completely unrealistic for the parties' representatives and the arbitrator to schedule any but the most urgent hearings within thirty days and arbitration provisions which have such a requirement are not only, rare, but usually ignored. I will direct the deletion from the agreement of the provision mandating that a hearing be held within thirty days of an arbitrator's designation.

**Personnel Files (Section 18(E))**

The County seeks to place a ten day limit on an employee's right to respond to Material placed in his/ her file. The County points out that an employee can presently place such responsive material in his/ her file at anytime, thereby creating the possibility of surprise in a disciplinary proceeding.

I concur with the County's reasoning. The ten day time limit is reasonable

and in line with similar provisions in the County's contracts with other employee organizations.

**Amend drug testing procedures to include both alcohol & steroids.**

The County proposal seeks the addition of alcohol and steroids and substances which can be tested pursuant to Section 20 (), Appendix E. The County's reasoning is that the members of the deputy sheriffs unit are now subject to such testing. It stresses both the deputies and correction officers exclusively work for the Sheriff's Office.

An employee who is under the influence of alcohol in a prison setting is not under maximum control and is a danger to himself and his colleagues if he is not alert and coordinated at all times. An employee under the influence of steroids can be irritable to the point of rage. A person whose mind has been potentially altered into such a state does not belong in a prison where his duties include, in part, inmate control and where he is subject to provocation. The County's proposal makes sense in the context of a correction officer's responsibilities and the potential volatility of the work environment.

**Elimination of the maximums and minimums applicable to drug testing.**

Drug testing has become a costly process for an employer. An employer should not be required to randomly test more employees than it believes necessary. By the same token, the employer may decide that it is periodically desirable to test more employees than called for in a contract for reasons relating to employee safety and law enforcement requirements. I cannot think of any reason to limit this employer's discretion. I believe that cost considerations will do so, in any event.

**Deletion of the requirement that the County must select a Section 75 Hearing Officer from a list of five names selected by it. (Section 15.A.4)**

The Association concedes that the County has the right to select the five names, as well as the ultimate hearing officer. There is no rational explanation which ties this process to a meaningful due process right. Instead, the existing contract provision appears to be a futile exercise in the creation of paperwork. I shall grant this proposal.

**County's proposal to enjoy discretion of selection of life insurance carrier.**

This County proposal should be awarded as part of the pattern created by the DSBA Award. It will enable the County to expeditiously move toward the purchase of the best value for the largest group. Scale itself should lessen the cost of this benefit.

**Preparation of salary schedules**

Because the first year of the Award provides for a bonus and stipend which are not incorporated into the salary schedule, the salary schedule which was in effect on December 31, 2003 remains in effect until January 1, 2004. The schedule to be implemented on January 1, 2004 follows the same principles applied under the DSBA Award until December 31, 2005. On December 31, 2005, the salary of each bargaining unit member, save those on entry level, is to be increased at the rate of \$425 per annum under the same terms and condition applicable to the earlier increases provided for on and after January 1, 2004.

All other terms and condition explicitly memorialized in prior agreements and/or memoranda of agreements in effect on December 31, 2003 and not altered by this Award shall remain in full force and effect.

Consistent with this Opinion, I therefore issue my Public Member's

Compulsory Interest Arbitration Award as follows:

**AWARD**

1. Term. 2 years: 1/1/2004-12/31/2005

2. Salary (Section 5).

Each full-time employee who has been continuously on the payroll since on or before January 1, 2004 as a full-time employee and is on the payroll as of the date of the issuance of this Award as a full-time employee shall receive a \$1,925 one-time lump sum payment for 2004, minus applicable taxes and withholdings. Employees who are on the payroll as a full-time employee as of the date of the issuance of this Award but who were added or restored as a full-time employee to the payroll after January 1, 2004 and prior to December 31, 2004 shall have the bonus prorated based on the numbers of complete months on the payroll.

In addition, each full-time employee who has been continuously on the payroll since on or before January 1, 2004 as a full-time employee and is on the payroll as of the date of the issuance of this Award as a full-time employee shall receive an additional \$313.20 (\$12 bi-weekly) one-time lump sum bonus stipend for 2004, minus applicable taxes and withholdings, for each bi-weekly payroll period in 2004 in which they worked and/or used accruals equal to the regular unit bi-weekly work week. Employees who are on the payroll as a full-time employee as of the date of the issuance of this Award, but who were added or restored as a full-time employee to the payroll after January 1, 2004 and prior to December 31, 2004, shall have the additional bonus stipend prorated based on the numbers of bi-weekly payroll periods in 2004 in which they worked and/or used accruals equal to the regular bargaining unit bi-weekly work week.

Effective January 1, 2005, the \$1,925 bonus and the \$313.20 bonus stipend shall be added to each step of the salary schedule except the entry step. Each step of the salary schedule except the entry step shall then be increased by 3%.

In addition, each full-time employee who has been on the payroll since on or before January 1, 2005 as a full-time employee and is on the payroll as of the date of the issuance of this Award as a full-time employee shall receive a \$16 bi-weekly (\$417.60 annual) stipend, minus applicable taxes and withholdings, and which shall be added to the salary schedule, except for the entry step, for each bi-weekly payroll period in 2005 and thereafter in which they worked and/or used accruals equal to the regular bargaining unit bi-weekly work week.

In addition, effective December 31, 2005, an additional \$425 shall be added to each step of the salary schedule except the entry level step only for each full-time employee who has been continuously on the payroll since on or before January 1, 2004 as a full-time

employee and is on the payroll as of the date of the issuance of this Award as a full-time employee.

3. Night Differential (Section 6.5). Effective December 31, 2005, the differential shall be increased to 10%. In addition, effective December 31, 2005, the differential shall apply for any shift starting at 6:00 p.m. or later, or ending at 6:00 a.m. or earlier.

4. Rotating Shift Differential (Section 6.6). Effective December 31, 2005, the differential shall be increased to 7.5%.

5. Overtime/Compensatory Time (Section 6.1, NEW paragraph 3). Notwithstanding any inconsistent contract provision or practice to the contrary, all employees not covered by FLSA Section 207(k) who are hired on or after the date of the issuance of this Award shall be entitled to overtime as follows: at time and one-half after actually working 40 hours during the work week (Monday-Sunday).

(Section 6.1, NEW paragraph 4). Notwithstanding any inconsistent contract provision or practice to the contrary, all employees covered by FLSA Section 207(k) who are hired on or after the date of the issuance of this Award shall be entitled to overtime as follows: at straight time for all hours worked after actually working 37.5 hours during the applicable FLSA work cycle as designated by the County; and at time and one-half for all hours worked after actually working the maximum number of hours in the applicable FLSA work cycle as designated by the County.

In addition, Section 6.1, Overtime (NEW paragraph 4, last sentence) shall be revised to read as follows: "For all employees who are hired prior to the date of the issuance of this Award, any time off for vacation, sick leave, personal leave, holidays, or other leave with pay shall be considered as days worked under this paragraph."

The Association can seek, in the appropriate round of negotiations, including in interest arbitration related to that round, an additional sum to be paid to affected correction officers for the additional productivity provided by them if they are assigned by the Sheriff to the fifteen day (or other applicable non-14 day) cycle while the deputy sheriffs remain on a 14 day cycle.

6. Compensatory Time. Change "December 1<sup>st</sup>" to "the last payroll period in November."

7. Longevity (Section 5.1(A)).

Effective December 31, 2005, longevity shall be increased by \$50 per step.

Add: "An employee must be on the payroll on January 1 to be eligible for a longevity payment in April. An eligible employee who is not on the payroll in April when the longevity payment is made will be paid the appropriate amount upon his/her return to the payroll."

8. Stand-By (NEW). Effective on the date of the issuance of this Award, any employee designated in writing by the Sheriff or designee to be on stand-by shall be eligible for stand-by pay (two hours pay for eight hours of stand-by, or part thereof not less than six hours).

9. General Municipal Law Section 207-c and Workers' Compensation (Section 7.4 and Appendix C). Effective the date of the issuance of this Award:

Vacation Time (Section 8.2, NEW last paragraph): Shall be revised to, "An employee who has been absent for one or more consecutive years on 207-c prior to December 31, and who has reached the cap on accumulated vacation time, shall thereafter no longer accrue additional vacation time until the employee returns to active duty, at which time the employee will be credited with prorated vacation time for the then current year (the calculation to be based on the number of complete months the employee is scheduled to work in the remainder of the year as a factor of the annual vacation days entitlement for the affected employee)."

Night Differential (Section 6.5, NEW last paragraph): Add: "Night differential payments shall cease following the 12<sup>th</sup> consecutive month of absence from the effective date of placement on 207-c. Upon return to active duty, the night differential shall only be paid in accordance with the employee's then currently assigned work schedule pursuant to § 6.5."

Personal Leave (Section 8.5(A), end of first paragraph): Add: "Personal leave entitlement shall cease to accrue following the 12<sup>th</sup> consecutive month of absence from the effective date of placement on 207-c. Upon return to active duty, the employee shall be credited with one personal leave day after every two complete months of work during that calendar year up to the contractual maximum."

Sick Leave (Section 8.7, end of first paragraph): Add: "Sick leave entitlement shall cease to accrue following the 12<sup>th</sup> consecutive month of absence from the effective date of placement on 207-c. Upon return to active duty, the employee shall be credited with 1.1 sick leave days after each complete month of work during that calendar year up to the contractual maximum."

Clothing Allowance (Section 10(B)): Add: "Clothing allowance payments shall cease following the 12<sup>th</sup> consecutive month of absence from the effective date of placement on 207-c. Upon return to active duty, the clothing allowance shall only be paid in accordance with § 10(B)."

Cleaning Allowance (Section 10(B)): "Cleaning allowance payments shall cease following the 12<sup>th</sup> consecutive month of absence from the effective date of placement on 207-c. Upon return to active duty, the cleaning allowance employee shall only be paid in accordance with § 10(B)."

10. Life Insurance (Section 7.2, second sentence). Add: "The County shall be the sole determinant of the carrier."
11. Sick Time (Section 8.7, NEW last paragraph). Add: "Employees hired on or after the date of the issuance of this Award shall be credited with sick time for each day on which they are actually ill and unable to work as determined by the Sheriff or designee. A sick leave usage and monitoring procedure, modeled upon the Sheriff's Office's procedure, is issued by the Panel together with its formal Opinion."
12. Unused Sick Time (Section 8.8, last sentence). Add: "There shall be no such payment for unused accumulated sick time for any employee who is hired on or after the date of the issuance of this Award."
13. Arbitration (Section 13(2), first paragraph, last sentence; Section 13(2)(B)). In Section 13(2), first paragraph, last sentence, replace "thirty (30) days from the date of its 'submission to arbitration' with "60 days from the close of the record". In Section 13(2)(B), delete the 30 day requirement.
14. Protection of Employees (Section 15(A)(4)). Delete "The Section 75 Hearing Officer will be selected by the County from a list of not less than five names."
15. Personnel Files (Section 18 (E)). Amend to provide that when material is placed in the personnel file, the employee has 10 calendar days within which to answer, if he/she so chooses.
16. Drug Testing (Section 20(Q), Appendix E). The contract is hereby amended to provide for the same procedures for Alcohol and for Steroid Testing as are set forth for the PBA unit, with the County authorized to make all revisions necessary to reflect that the Sheriff is the employer of these employees rather than the Police Department. Any disputes with regard to the implementation of this provision shall be referred to Arbitrator David N. Stein for a final and binding determination.
17. Drug Testing (Appendix E, Selection of Personnel for Random Drug Testing, paragraph 2, third sentence). The contract is hereby amended to delete the language pertaining to the minimum/maximum percentage of C.O.'s to be tested.
18. Other Proposals. All other Association and County proposals are denied. Except as explicitly provided in this Award, all terms and conditions which are set forth in the expired Agreement and successor MOA shall remain unchanged.

Dated: February 27, 2009  
Towaco, NJ



DAVID N. STEIN, ESQ.  
ARBITRATOR  
PUBLIC MEMBER  
COMPULSORY INTEREST ARBITRATION PANEL

**AFFIRMATION**

STATE OF NEW JERSEY)  
COUNTY OF MORRIS )

I, David N. Stein Esq., affirm, in accordance with Article 75 **CPLR** that I am the individual described in and who executed the foregoing instrument which is my Opinion and Award.

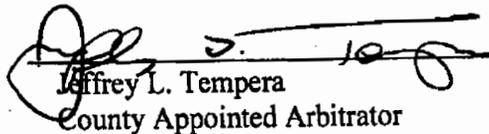


DAVID N. STEIN, ESQ

I concur with the following paragraphs of the above Award:

~~I dissent from the following paragraphs of the above Award:~~

Dated: 3-3-09  
Hauppauge, New York

  
Jeffrey L. Tempera  
County Appointed Arbitrator

I concur with the entire award as it reinforces and justifies the County's position throughout this entire negotiations that the Correction Officers Association must adhere to the bargaining patterns that have existed for decades within the County. Specifically, this award confirms that the Correction Officers Association terms and conditions of employment for 2004 and 2005 must be tied to those of the Deputy Sheriffs because the Deputy Sheriffs "went first" during this round of bargaining.

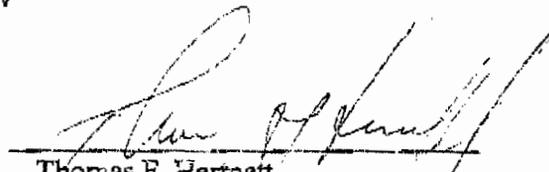
At the end of the day, while all the terms are not and need not be identical, no Correction Officers Association unit member can truthfully claim to have "done better" than his or her DSPBA unit counterpart notwithstanding the unnecessary prolonged amount of time that it took to resolve this contract. As a result, I concur in this award.

I concur with the following paragraphs of the above Award:

I dissent from the following paragraphs of the above Award:

- 1) the imposition of the FLSA on new employees.
- 2) the value attached to imposition of FLSA & the value of the stipends
- 3) Drug testing

Dated: 3/5/09  
Albany, New York

  
 Thomas F. Hartnett  
 Association Appointed Arbitrator

**SUFFOLK COUNTY CORRECTION OFFICERS ASSOCIATION, INC.**

**2004/2005 CONTRACT PROPOSALS**

**I. DURATION: 2 year contract covering the period January 1, 2004 through December 31, 2005.**

**II. WAGES**

**A. Salary**

1. Effective January 1, 2004, the salary schedule shall be increased by 5% compounded.
2. Effective January 1, 2005, the salary schedule shall be increased by 5% compounded.

**B. Longevity**

1. Amend Section 5.1 to reflect that longevity shall be \$1,000 paid after five (5) years of service.
2. Each year thereafter, longevity shall be increased by \$200.
3. For purposes of longevity, years of service shall mean service within the County.

**C. Supervisor Differential: Amend Section 5.g to continue the equalization of the pay differential index between all ranks. (Bi-weekly salaries of all C.O., IV's, Deputy Wardens and Wardens shall also be indexed at 16% greater than their next junior rank).**

**D. Investigator Increments/Steps: Amend Section 5.i to reflect that in lieu of fixed money stipends, the C.O. Investigator's salary shall be indexed as follows:**

- |                                       |                                 |
|---------------------------------------|---------------------------------|
| 1 <sup>st</sup> year Investigator I:  | 4% greater salary differential  |
| 2 <sup>nd</sup> year Investigator II  | 6% greater salary differential  |
| 3 <sup>rd</sup> year Investigator III | 8% greater salary differential. |

**REVISED SUFFOLK COUNTY PROPOSALS  
FOR THE 2004-2005 CORRECTION OFFICERS ASSOC.  
COMPULSORY INTEREST ARBITRATION PROCEEDING**

1. Section 5, Wages:
  - (a) Wage Increases:
    - 2004: Each full time employee who has been continuously on the payroll since on or before January 1, 2004 as a full time employee and is on the payroll as of the date of the issuance of the Compulsory Interest Arbitration Award as a full time employee shall receive a \$1,925 one-time lump sum payment for 2004, minus applicable taxes and withholdings. Employees who are on the payroll as a full time employee as of the date of the issuance of the Compulsory Interest Arbitration Award but who were added or restored as a full time employee to the payroll after January 1, 2004 and prior to December 31, 2004 shall have the bonus prorated based on the number of complete months on the payroll.
    - 2005: Effective January 1, 2005, for each full time employee who has been continuously on the payroll since on or before January 1, 2005 as a full time employee and is on the payroll as of the date of the issuance of the Compulsory Interest Arbitration Award as a full time employee the \$1,925 bonus shall be added to each step of the salary schedule except the entry step. Each step of the salary schedule except the entry level step shall then be increased by 3%. Employees who are on the payroll as a full time employee as of the date of the issuance of the Compulsory Interest Arbitration Award but who were added or restored as a full time employee to the payroll after January 1, 2005 and prior to December 31, 2005 shall have the 2005 salary prorated based on the number of complete months on the payroll.
  - (b) Delete indexing for CO II & III.
2. Section 5.1, Longevity:
  - (a) Clarify contract language to conform with practice that an employee must be on the payroll on January 1<sup>st</sup> to be eligible for a longevity payment in April.
  - (b) Clarify contract language to conform with practice that any eligible employee who is off the payroll in April when the longevity payment is made will be paid upon his return to the payroll.
3. Section 6.1, Overtime and all other relevant contract provisions:
  - (a) Delete provision allowing time for vacation, sick leave, holidays, etc., being considered as time worked in determining eligibility for overtime.
  - (b) Amend Appendix D, 11(F) to delete rotation every other day.
  - (d) FLSA: Modify and/or delete each relevant contract provision, policy and practice so that overtime and compensatory time entitlements are provided solely in accordance with FLSA mandates.
  - (e) Amend to provide that employees shall not be eligible for voluntary overtime on both any day they are absent on leave as well as the next calendar day.
4. Section 6.4, Recall, "Called-in" Work, Planned Overtime and Stand-by Pay: In no instance will the recall provision be paid or grievable if the officer does not report for work.
5. Section 7.2, Life Insurance: Add: "The County shall be the sole determinant of the carrier."

**REVISED SUFFOLK COUNTY PROPOSALS  
FOR THE 2004-2005 CORRECTION OFFICERS ASSOC.  
COMPULSORY INTEREST ARBITRATION PROCEEDING**

6. Section 7.3, Disability Insurance: Amend to provide for a 90-day waiting period for illnesses that last in excess of 90 days.
7. Section 7.4 and Appendix C, Workers Compensation:
  - (b) Provide that time spent performing light duty will not be considered as part of an employee's probationary period.
  - (c) Provide only the statutory benefits as required by Section 207-C of the General Municipal Law.
8. Section 7.5(a), Benefit Fund Options: Delete.
9. Section 8.1, Work Week/Work Day: Amend to provide that the Sheriff shall have the discretion to assign employees working in the housing areas (as defined in Arbitration Award # 97-14) to a steady 5 on 2 off schedule.
10. Section 8.3, Vacation Accruals:
  - (a) Delete requirement for hold harmless on carryover due to workers compensation injury.
11. Section 8.5, Leave With Pay -- (C) Administrative Leave: Delete stipend for pay in lieu of overtime for full time release officers.
13. Section 8.8, Unused Accumulated Sick Time: Delete entire section.
14. Section 9, Job Description: Delete.
15. Section 12, Retirement: Delete paragraph A(2).
16. Section 13, Arbitration: Delete 30-day requirement.
17. Section 15, Protection of Employees: Amend (A4) -- Delete "The Section 75 Hearing Officer will be selected by the County from a list of not less than five names."
18. Section 18, Personnel Files:
  - (a) Amend (E) to provide that when material is placed in the personnel file, the Officer has 10 days within which to answer, if he/she so chooses.
  - (b) Delete (F).
19. Section 20 (A) Miscellaneous (Shift Change) Notification: Reduce to 48 hours.
21. Section 20(O), Drug Testing:
  - (a) Amend contract language to provide for PBA procedures for Alcohol and for Steroid Testing.
  - (b) Delete minimum/maximum percentage of C.O.'s to be tested.
22. Vehicle Assignment: Sole discretion of County for commutation purposes.

## **CORRECTION OFFICERS ASSOCIATION**

### **2/18/2009 REPORTING SICK POLICY**

Employees hired on or after the date of this Award must follow the following sick leave usage and monitoring procedure:

#### **PURPOSE**

To notify the Sheriff's Office when a member is unable to perform duty due to illness, injury or any other condition.

#### **DEFINITION**

**Sick Excusal** – A sick excusal for one tour, when the Office determines that it does not require a visit to the Office-designated Physician. A request for sick excusal must be made at least two hours prior to the start of the tour for which the leave will be granted. A member must report for duty on the next scheduled tour following the excusal. However, if the sickness continues into the next day, the member may request a second sick excusal at least two hours prior to the next scheduled tour. The first and second sick excusals will count as one sick incident.

Sick Excusal is NOT authorized for:

- a. Injuries;
- b. Members designated as an abuser/chronic abuser in accordance with the Sick Leave Management Program;
- c. Dental problems
- d. Major illness;
- e. When, in the judgment of the supervisor, it is appropriate.

#### **PROCEDURE**

When sickness, injury or any other condition prevents the performance of duty:

##### **All Employees**

1. Report sick, by telephone, in person, or by competent messenger, at least two hours before the start of a scheduled tour, unless disability prohibiting same occurs during such period, as follows:
  - a. All members will report sick to the designated supervisory officer at their assigned command;
  - b. Members designated as sick abusers will report sick directly to Medical Evaluation.

***NOTE:*** When reporting sick within two hours of commencement of the tour, the member must notify their assigned command before notifying Medical Evaluation. In all cases,

*the member will immediately, after reporting sick, notify his/her assigned command and supply the sick serial number.*

2. Have a responsible person make telephone call if physically unable to call.
3. Inform member to whom reporting sick of any pending assignment.
4. Remain at residence or other authorized location unless permission to leave is granted by the Office-designated Physician or Medical Evaluation supervisor.
5. Advise Medical Evaluation and Office-designated Physician of any change of address/location or telephone number.
  - a. Obtain name of Medical Evaluation supervisor and time notified.

#### **SUPERVISOR ACCEPTING SICK REPORT**

6. Makes return telephone call to verify that the member is at the stated location.
  - a. Desk officer/supervisor shall record such verification on **SICK REPORT FORM**.

**NOTE:** *If a member is not at the stated location, notification of same shall be made to a Medical Evaluation supervisor for referral to Internal Affairs.*

7. Notify Medical Evaluation when:
  - a. A member is confined and the Office requests a visit because of urgent need for medical attention; OR
  - b. A member is suspected of malingering.

#### **SICK EXCUSAL FROM SICK LEAVE (SEE DEFINITION, PAGE**

**1):**

#### **MEDICAL EVALUATION UNIT**

8. Offer the member a Sick Leave Excusal in cases of minor non-line-of-duty illness, if qualified.
  - a. Advise member concerned:
    - (1) That each administrative excusal is for one tour;
    - (2) To comply with step 4 for each sick excusal.

#### **SUPERVISOR OFFERING SICK EXCUSAL**

9. Notify Medical Evaluation that the member has accepted Sick Excusal.
10. Indicate on pertinent records that the member has accepted Sick Excusal.
11. Prepare **SICK REPORT FORM**.
  - a. Indicate if the member has accepted Sick Excusal.

#### **MEMBER ON SICK EXCUSAL**

12. Notify command and Medical Evaluation at least two hours before scheduled return to duty if unable to report due to continuation of illness.

### SUPERVISORY MEMBER

13. Direct member on Sick Excusal who is unable to report for duty as scheduled to visit the Office-designated Physician at next office hours.

14. Notify Medical Evaluation to cancel Sick Excusal.

*NOTE: A member will continue on sick report (this counts as one sick time).*

### MEDICAL EVALUATION

15. Notify the permanent and temporary commands of a member reporting sick and obtain the name of the supervisor notified if notification is made by telephone.

### SUPERVISOR RECEIVING SICK REPORT

16. Telephone information on **SICK REPORT FORM** to Medical Evaluation and obtain serial number for entry on **SICK REPORT FORM**.

a. **SICK REPORT FORM** will be kept at command and placed in the member's personal file when the member returns to duty.

### REPORTING TO OFFICE-DESIGNATED PHYSICIAN:

#### ALL MEMBERS

17. Report to Medical Evaluation or other location to see designated Office Physician at the designated time at next regular office hours if ineligible for, or declining, Sick Excusal, EXCEPT:

a. A member unable to travel will remain at place of confinement and phone Medical Evaluation.

*NOTE: When a member reporting sick informs Medical Evaluation of an inability to visit Medical Evaluation or the designated Physician, Medical Evaluation will direct the member to notify the member's commanding officer of the fact. The commanding officer will make an entry on **TIME AND ACCRUAL RECORD** and caption it "Investigation Interview" concerning the interview and probable date of visit to Medical Evaluation or Office physician. When a member reports sick to an assigned command, the supervisor accepting the sick report shall make required entries.*

*Members are NOT to bring their children to Medical Evaluation or the Office physician, out of consideration of the fact that children and members present in the waiting room can be susceptible to illness.*

### COMMANDING OFFICER

18. Telephone Medical Evaluation, in all cases, if a member has been on sick report for five work days, ascertain estimated date of return, and enter information on **TIME AND ACCRUAL RECORD**.

**UPON BEING DIRECTED TO RETURN TO DUTY BY MEDICAL EVALUATION OR OFFICE-DESIGNATED PHYSICIAN:**

**ALL MEMBERS**

19. Immediately contact their Command Supervisor, by telephone, and determine the time and date to report for duty.

*NOTE: All members shall notify a supervisory officer assigned to the command at the first available opportunity. The supervisory officer will document the notification as provided for by the commanding officer.*

20. Report for duty when ordered.

**DESK OFFICER/SUPERVISOR**

21. Make entry indicating the member's return to duty:

*NOTE: Verify return of duty with Medical Evaluation if the message has not been received and the member has reported for duty.*

**ADDITIONAL DATA**

Members who have not been classified as abusers/chronic abusers, or who have not been referred for supervision, and who have any of the following medical conditions, as per the designated Office Physician, will NOT be the subject of routine supervisory visits or telephone calls:

- a. Heart condition;
- b. Broken limbs;
- c. Post-surgical convalescence;
- d. Illnesses diagnosed by designated Office Physician as likely to be of a duration in excess of six months, after conferral with Medical Evaluation Supervisor;
- e. Pregnancy.

Correction Officers on sick leave in any of the above categories may be given a 16 hour pass. However, should the Office-designated Physician determine that issuance of such a pass would adversely affect the member's health or impede the member's recovery; the pass may be reduced accordingly. Once the pass is issued, it shall not be revoked unless the member:

- a. Engages in activities which would tend to prolong or aggravate the disability;
- b. Fails to cooperate with a physician or Medical Evaluation;

- c. Fails to comply with orders or directions or violates any provision of the Office Rules and Procedures relative to sick leave.

Members whose medical condition is NOT listed in paragraph 1, subdivisions "a" through "e" above may also be granted permission to leave their residence while on sick report for a period of time as determined by Medical Evaluation. Prior to granting such permission, the Medical Evaluation must certify that:

- a. It will not adversely affect the member's health;
- b. It will not prolong or impede the member's return to duty.

The permission granted may be revoked at any time by Medical Evaluation upon appropriate notice to the member.

In case of serious need or emergency, a member may request permission to leave his/her residence at a time other than that specified by Medical Evaluation. This request should be directed to the Warden or designee. In addition, requests to leave residence to obtain medical services, food, household necessities or religious observance, voting, etc. are routinely granted by Medical Evaluation. Permission to leave residence should be denied or revoked only if a violation of the guidelines takes place or if activities requested would hinder recovery. Medical Evaluation shall notify the Designated Office Physician when permission is granted, to ensure that leaving residence is not inconsistent with the member's medical condition and/or had not previously been denied. Designated Office Physicians are responsible for notifying Medical Evaluation of the identities of members granted:

**Section: Personal Matters**

- a. Non-supervisory privileges;
- b. Permission to leave his/her residence on specific dates and times which will be indicated on **PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT**, a copy of which will be given to the sick member

A member on sick leave may not leave the confines of Suffolk County, or the County of residence if it is not Suffolk County, without the approval of the Warden or designee. Request for this permission is made through Medical Evaluation on **ABSENCE FROM COUNTY WHILE ON SICK LEAVE FORM**. Members will be contacted on a weekly basis by Medical Evaluation during absence from residence counties.

Correction Officers will not be permitted to report sick with a self-claimed diagnosis of "reoccurrence of injury/illness" for absence. Designation of "reoccurrence of injury/illness" for a specific sick event will be granted only upon examination and interview of the requesting member by a Designated Office Physician. This will in no way hinder a member's ability to report sick. It merely places the determination, and

subsequent approval or disapproval of "reoccurrence of injury/illness" designation, within the purview of the Designated Office Physician.

**FORMS AND REPORTS**

***ABSENCE FROM COUNTY WHILE ON SICK LEAVE  
TIME AND ACCRUAL RECORD  
PERMISSION TO LEAVE RESIDENCE WHILE ON SICK REPORT  
SICK REPORT FORM***