

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

Docket #IA-2007-025

Between

Hearings: July 23, 2008

October 29, 2008

COUNTY OF SUFFOLK,

November 26, 2008

December 17, 2008

“County”

January 7, 2009

-and-

March 31, 2009

April 28, 2010

SUFFOLK COUNTY SUPERIOR
OFFICERS’ ASSOCIATION,

Executive Sessions:

June 2, 2010

June 23, 2010

“Union”

July 21, 2010

BEFORE THE PUBLIC ARBITRATION PANEL

Stanley L. Aiges, Chairman and Public Member

Jeffrey L. Tempera, Public Employer Member

Gerald Gilmore, Employee Organization Member

APPEARANCES

For the County:

LAMB & BARNOSKY, LLP

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Alyson K. Matthews, Esq.

For the Union:

CERTILMAN, BALIN, ADLER & HYMAN, LLP

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BACKGROUND

The parties here are signatories to a collective bargaining agreement which expired on December 31, 2007. (Its basic financial terms were established by an Award of an Interest Arbitration Panel, chaired by S.L. Aiges, dated January 6, 2005.) Negotiations for a successor agreement were not successful. An impasse was reached.

Section 209(4)(c)(vi) of the New York Civil Service Law authorizes binding arbitration for collective bargaining agreements between a county government and a police employee organization when an impasse in negotiations is deemed to exist.

On February 20, 2008, the Union filed a Petition for Arbitration with the New York State Public Employment Relations Board ("PERB").

The County replied on March 7, 2008. (It interposed no objection.) On April 14, 2008, Richard A. Curreri, PERB's Director of the Office of Conciliation, designated a Public Arbitration Panel for "the purpose of making a just and reasonable determination" of the parties' dispute. I was appointed to serve as Public Panel Member and Chairman. Jeffrey L. Tempera was appointed to serve as the Public Employer Panel Member. Gerald Gilmore was appointed to serve as the Employee Organization Panel Member.

Hearings were conducted on July 23, October 29, November 26 and December 17, 2008; January 7 and March 31, 2009; and April 28, 2010. A stenographic record was made of all hearings. Each party was afforded a full opportunity to call witnesses, to present documentary evidence and to cross-examine witnesses called by the other. Post-hearing briefs were filed. Thereafter, the Panel met in executive session on June 2, 23 and July 21, 2010.

Suffice it to say, both sides presented voluminous exhibits, numerous proposals and extensive testimony. Throughout the proceedings, a parallel Public Arbitration Panel conducted hearings in the Interest Arbitration involving the County and the Police Benevolent Association. All were interested in the outcome of that matter. For historically the PBA interest arbitrations have set a pattern for the SOA, as well as other County employee organizations.

Under ordinary circumstances, a Public Arbitration Panel lacks the authority to issue an award which exceeds a term of two years from the termination date of the previous collective bargaining agreement. The County and the PBA agreed to allow their Public Arbitration Panel to issue an award covering a span of three years. The County and the SOA, on April 12, 2010, followed suit. They entered into a Memorandum of Agreement which

specifically authorized this Public Arbitration Panel to “issue an award of three years covering the period January 1, 2008 through December 31, 2010.”*

In the interim, the Public Arbitration Panel in the PBA dispute issued its award (the “Riegel Award”). (It is 139 pages in length.) Its impact upon this matter is heavy. All recognize that it forms a base for a “pattern.”

It is fair to state that the issuance of the Riegel Award created a sense of urgency for us to complete this case and to expedite issuance of our award. (Indeed, the parties – in an attempt to expedite resolution of this impasse – agreed to address some, but not all, of their proposals as part of their post-hearing briefs.**

It is important to note that we must be guided here by the criteria established in Section 209.4(v) of the Taylor Law, which are designed to help us make a “just and reasonable” determination. They are:

- 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 employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

* In addition, the parties agreed that if they are unable to negotiate an agreement covering the terms and conditions of a successor agreement, the resulting Interest Arbitration Panel will be authorized to issue an award covering the three year period January 1, 2011 through December 31, 2013. (See Joint Exhibit 3, Para. 4)

** They agreed the omission of a proposal in the brief “should not be interpreted as an acknowledgement that the proposal is of any less importance than those which are addressed.” (See County Brief, p.27, FN8.)

- 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) education qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

OPEN ISSUES

In an effort to attempt to expedite the resolution of this impasse, the parties agreed to address some – but not all – of their respective proposals in their post-hearing briefs. They agreed that the omission of a proposal therein “should not be interpreted as an acknowledgement that [it] is of any less importance...then those which are addressed.”*

Our focus here, then, is upon the issues they focused upon in their respective briefs. To wit:

A. The SOA Proposals and Arguments

The SOA took what it calls a “unique position” in this dispute. Rather than submit the usual long “laundry list” of proposals – which it insists were “quite needed and justifiable” – it submitted “simple” proposals which matched the

* See County Brief, FN No. 8 on p.27.

2008-2010 PBA Award by the Riegel Panel. Thus, it seeks increases in each year “comparable to the increases awarded to the PBA,” including but not limited to increased longevity pay.

It also proposes a re-opener so that if the Suffolk County Detective Association or the Suffolk County Detective Investigators Association employees receive any economic improvements, it could seek to reopen negotiations.

The SOA’s basic rationale for its position is based upon the Taylor Law’s statutory criteria and arguments raised throughout its brief, as well as the past bargaining history of providing all Suffolk County Police Officers, Detectives, Supervisors and Detective Investigators with the same wage increases and contract changes. In a word, it relies heavily upon the “pattern” argument.

The SOA also relies heavily upon a “comparability” argument. It sets forth an analysis of wages/benefits received by its members and those received by those employed by the Nassau County Police Department. It argues that supervisors in both counties work similar types of tours with the same general demographics, and are the only county police departments of similar size, stature and responsibility in New York State. Hence, their comparison is suitable. That, it notes, is a finding prior arbitration panels have reached. We should as well.

The SOA has set out the history between 1981 and 2007 between Suffolk County PBA and Suffolk County SOA as regards the maintenance of the status quo between those groups.

The SOA asserts that an analysis of the Nassau County SOA contract, when coupled with the Riegel Panel's Award, more than justifies the reasonableness of its position. What the PBA received, it contends, would be "fair and reasonable" to Suffolk's superior officers.

And since it seeks to match the Reigel Award, it is prepared to make a financial concession which equals the savings generated by the PBA's concessions.

The SOA stresses that the County has made no claim of an inability to pay the SOA the PBA increases. On the contrary, it argues it has established that its members are entitled to a wage package and contract "which will not jeopardize morale and which provides the same wage and benefit increases awarded to Suffolk PBA members." Accordingly, it asks that its proposals be awarded.

B. The County Proposals

1. Wage Freeze

The County proposes that a wage freeze be awarded by the Panel. It argues that SOA unit members are "already more than adequately compensated." Nor, in this economic climate, are wage increases feasible. In each year to be covered by

our award, the County contends its financial outlook has “deteriorated even more than the dismal predictions it made as part of its budgetary process.” A wage freeze, it argues, is the “only sensible solution.” It simply is “unfair” to taxpayers who are content to take a pay cut to keep their jobs to pay for more employees whose base pay is already in six figures.

It notes the Riegel Panel awarded 3.5 percent increases. But they were funded in large part by numerous concessions. The SOA has put forth no wage-related proposal to fund its wage demand. Thus, it is reasonable and consistent with the “pattern” to grant its wage freeze proposal.

2. Reimbursement for Union Activities

The County proposes that the SOA reimburse it for all taxpayer-funded union activities, including release time. It argues that there is no reason why taxpayers should fund activities which do not enhance public safety, especially when those activities often result in cost to taxpayers greater than they would otherwise be responsible for funding.

The County notes that union activities now represent a cost of over \$1 million per year. If the Panel grants its proposal, the County anticipates possible savings equivalent to more than a 4.1 percent wage increase.

The County recognizes that a similar proposal was rejected by the PBA Panel. However, it suggests, that should not prevent this panel from awarding it here.

3. FLSA Rules

The County seeks to modify the contractual overtime provisions so that overtime entitlements are in compliance with, but not in excess of, those required by the federal Fair Labor Standards Act. Employees, it states, now receive more than the law requires.

Federal law requires that overtime be paid in an equitable manner that would not bleed the County and its taxpayers dry. It mandates that an employee be paid overtime for time actually worked in excess of that specified by law for the relevant work cycle. For example, federal law requires the payment of overtime (i.e., payments at time and one-half the employee's hourly rate) for a Superior Officer assigned to a 28 day work cycle only after he/she has actually worked 171 hours during that time period. 29 C.F.R. §553.230. This is unlike the current contract, which allows a Superior Officer to be paid time and one-half for any time worked over his/her scheduled eight or 10 hour work day. The contract even allows an employee's use of sick, personal and/or vacation time to count towards his/her daily amount. Thus, County taxpayers are, at times, paying

a premium for days not worked. This is unnecessarily costly, not to mention inequitable.

Indeed, the annual cost of overtime for SOA unit members in the SCPD was at least \$4 million in 2006 and over \$4 million in 2007 and will only continue to rise. The FLSA provides the appropriate relief. For example, the SOA members assigned to the two four rotating schedule work FLSA cycles of 7, 21 or 28 days. These unit members would receive overtime only after they have actually worked 43 hours (7-day chart), 128 hours (21-day chart) or 171 hours (28-day chart) during that time period. 29 C.F.R. §553.230. Implementing these work cycles would obviously go a long way towards lowering the overtime costs in the SCPD, as employees would earn straight time, instead of time and one-half, until they reach the applicable cap.

These kinds of overtime restrictions are appearing more frequently in the County's collective bargaining agreements. The Park Police, POA and AME units agreed to a modified version of the County's FLSA proposal as part of their most recent contract settlements. The same was awarded by the 2005 DSBA and 2006 COA interest arbitration panels. That the 2008-2010 PBA panel did not award this proposal should not and cannot be the end of the story, as is demonstrated by the County's success with its other bargaining units.

Moreover, the County's FLSA proposal has been implemented, in part, in non-County police contracts. For example, the 2007 Nassau County PBA interest arbitration awarded restrictions on overtime. (An officer's first 24, 48 and 36 hours of overtime worked in 2007, 2008 and 2009, respectively, are to be paid at the straight time rate).

4. Divisor of Calculating Terminal Pay, Holiday Pay and Overtime

The County proposes to increase the divisor for calculating terminal pay, holiday pay and overtime from 232 to 261. When compared to external jurisdictions, the County is at the low end, with most divisors at 243. Moreover, these jurisdictions provide for a higher divisor for new employees who are required to appear more frequently than their senior counterparts. For example, Riverhead officers have a divisor of 260 for the first two years of their employment. South Hampton has a divisor of 240 for first and second year Officers and 236 for third year Officers. Likewise, Southold has a divisor of 260 for first year Officers. East Hampton has a similar structure for its overtime divisor. The 207-2010 Nassau PBA Panel awarded an increase in the divisor from 1,985 to 2,088 for purposes of calculating a PBA unit member's terminal leave. There is no reason why a similar adjustment should not be awarded here.

While not included in the 2008-2010 PBA award, this Panel may still award the County some relief in this area. Considering the fact that the 2007

Nassau PBA award increased the divisor for termination pay, and given the other evidence in this record, there is an ample basis for the Panel to award the County's proposal.

In 2006 and 2007, SOA unit members collectively earned \$3,756,549 and \$4,063,419, respectively, in overtime pay (SOA Ex. 2. Tab L). Increasing the divisor would go a long way towards containing those extravagant overtime costs. Indeed, if the Panel awards the County's proposal, the County would save approximately between \$386,739 (a 0.63% wage increase) and \$1,579,169 (a 2.59% wage increase) (County Ex. 67, Book 3). For these reasons, the County requests that the Panel award this proposal.

5. Sick Leave

(a) Eliminating the Payout for Unused Accumulated Sick Leave upon Retirement Is Fiscally Responsible.

The County proposes to delete the requirement that employees be paid for their unused, accumulated sick leave upon retirement. The County has paid a tremendous amount of money to employees in the form of unused accrued sick days, amounts that tend to be plastered across the front page of Newsday. Employees blessed with good health should not realize a financial windfall because they did not need to utilize extensive amounts of sick leave.

This is a bill taxpayers simply can no longer afford to pay, especially when most do not enjoy the luxury of stockpiling their sick leave in exchange for a

“golden parachute” upon retirement. The public does not understand why employees receive this benefit, especially when few taxpayers, if any, receive a similar benefit from their employers. The County should not have to answer to these taxpayers, who are already struggling to make ends meet, when Newsday prints another article on a payout that exceeds the County Executive’s annual salary. There is simply nothing that the County can say to satisfy angry taxpayers who foot the bill for a benefit they will never have the opportunity to enjoy. The time has come for these kinds of perks to be eliminated from the contract.

Although denied by the 2008-2010 PBA panel, there is precedent in the County for awarding this proposal. Indeed, all units in the Sheriff’s and AME patterns have this provision in their contracts for certain employees. There is no reason why this cannot be extended to a police pattern unit.

If the Panel awards this proposal, the County could realize a savings of between \$6,423,622 and \$7,180,325 over the course of the award, the equivalent of a 10.53% to 11.77% wage increase (County Ex. 79, Book 3). For these reasons, the Panel should award this proposal.

(b) The County Has Justified its Proposal to Require that Vacation Time Cease to Accrue following an Employee’s Twelfth Consecutive Month of Absence.

The County seeks to expand upon the last SOA panel’s steps toward eliminating contractual provisions granting an employee injured in the line of

duty greater benefits than those required by General Municipal Law §207-c. While well-established case law makes it clear that an employer need only pay salary, health insurance and certain fringe benefits to law enforcement personnel who are injured on the job (N.Y. Gen. Mun. Law §207-c; Benson v. County of Nassau, 137 A.D.2d 642, 524 N.Y.S.2d 733 (2d Dep't 1988)), an SOA unit member continues to accrue vacation time and other benefits even though he/she is not working (SOA Ex. 1 at Tab E at CBA Section 41(E)(1)). In many instances, this means that a Superior Officer on §207-c status is making more money, after taxes, than those employees who are actually working. This results in an obvious disincentive for employees to return to work, not to mention possible adverse effects on employee morale.

Recognizing the unfairness of the situation, prior SOA, SDA, DIPBA, DSBA and COA interest arbitration panels significantly cut back on injured employees' rights to continue to accrue benefits while absent from work, most recently, during the last round of interest arbitration (see, e.g., SOA Ex. 1 at Tab G). The 2008-2010 PBA panel followed this trend and awarded the same concessions in its award. That trend should continue.

Here, the County is proposing to restrict SOA unit members who have been placed on Section 207-c status for 12 consecutive months from continuing to accrue vacation time. During the last round of interest arbitration, this Panel

restricted these employees from continuing to receive night differential and cleaning, clothing and maintenance allowances and from accruing personal and sick leave following an absence for 12 consecutive months (id.). There is no reason why the Panel should not expand upon the previous steps it took during the last round of interest arbitration and restrict these SOA unit members from accruing vacation time.

Given the fact that most of the taxpayers who fund SOA unit members' wages and benefits will never realize this kind of benefit, it is unfair to require them to pay for it. This is especially true in light of the fact that taxpayers are not being benefited by SOA unit members who are not working.

6. Changing Tours Without Penalty

Currently, the collective bargaining agreement permits tours of duty to be changed for the purpose of supervision but requires that the tour change be for at least one week. Employees are paid time and a half for the first day of a tour change and then work that tour for the whole week. Presently, the contract significantly restricts the SCPD's ability to cover personnel shortages, special events and/or court appearances without calling in employees on overtime. The County proposes amending Section 45© so that it can change tours at any time without penalty rather than only on a weekly basis.

The SCPD has the ability to change tours without penalty for required schools, seminars and in-service training (SOA Ex. 1 at Tab E, CBA §45(D)). There is no reason why it should be unable to do so when additional staff members are needed for supervisory purposes.

Moreover, eliminating the restrictions on tour changes is consistent with what is done elsewhere. For example, New York City has the unfettered right to reschedule up to 15 tours per employee per year without paying overtime, provided 24 hours' notice has been given (County Ex. 88, Book 3). The City also enjoys the authority to reschedule tours by up to three hours without incurring overtime or recall pay charges on New Year's Eve, St. Patrick's Day, Thanksgiving, Puerto Rican Day, West Indies Day and Christopher Street Liberation Day (id.). Moreover, there are no restrictions on the Towns of Riverhead, Shelter Island and Southold, and so they enjoy the right to change an employee's tour at any time without penalty (i.d. at Ex. 89). East Hampton merely requires 14 days' notice, except for training purposes, where only seven days' notice is required. (i.d.).

The County argues it needs flexibility to place more employees on duty without paying steep costs. This proposal, if awarded, will promote the cost-effective operation of the Police Department.

7. Vehicle Assignments

Since July 1, 1994, the County has had the discretion to reassign County vehicles being used by SOA unit members, except for those who had already been assigned a County car as of that date (T. 101, 12/17/08). The County is proposing to extend its discretion to cover all SOA unit members. While this is a financial issue, it is also a public perception issue in that County taxpayers do not understand why public employees are permitted to take their work car home (i.d.). The public perceives this as using a County car for personal business, which places management in the tough position of having to explain the rationale behind the practice. The County does not dispute that there will be times when SOA unit members require the use of a County vehicle. It simply believes that it is in the best position to determine when that will be.

8. PERB Case No. U-28208

The parties agreed to settle this case by adopting certain amendments to the Agreement which were made effective as of the date of settlement. They involved Sections 23H, 29C, 32, 41J and 46K. The County asks that those changes be incorporated in our award.

OPINION

The parties' prior collective bargaining agreement expired on December 31, 2007 – a full two and one-half years ago. Thus, it is appropriate that we issue our award expeditiously.

Before doing so, certain comments are appropriate.

First, it is important to remember that we are duty-bound to apply to statutory criteria contained in Section 209 of the Taylor Law. To paraphrase, they concern:

- a) a comparison of wages, hours and conditions of employment of the employees involved here with those of other employees performing similar services;
- b) the interest and welfare of the public and the financial ability of the County to pay;
- c) comparisons of particularities in regard to other trades and professions; and
- d) the terms of collective agreements negotiated between the parties in the past.

Second, there is the “pattern” to consider. We are highly mindful of the fact Public Arbitration Panels in both Nassau and Suffolk County have over the years consistently upheld the principle that when a “pattern” has been established by the largest employee organization, that pattern becomes the single most important factor to which wages, conditions and benefits should be compared.

Once an "internal" county pattern is established, it has consistently been held to be largely controlling. Once in effect, the pattern casts a heavy shadow over all other considerations.

That is, we are convinced, as it should be. For from a statutory standpoint, the most relevant comparison of wages, conditions and benefits is between employees performing the same or similar services, or requiring similar skills, under similar working conditions. It necessarily follows, then, that the recent PBA award must be given heavy weight in assessing what we should here award.

With this in mind, we make the following AWARD:

1. **TERM**

We note that the parties have entered into an agreement – which the County Legislature approved – which extended our jurisdiction to fashion an award of two years' duration to one of three years' duration. We also note that the Riegel Panel issued an award covering a three year term. Given these facts, we are convinced that an award of a three year term is fully justified. At the very least, it will help to foster stability in the parties' relationship. Thus, we award a Term of three years covering the period January 1, 2008 to December 31, 2010.

2. **WAGE INCREASES**

We are obliged under the Taylor aw to give heavy weight to a pattern once it is established. Here, the Riegel Panel clearly set a pattern for police settlements

in Suffolk County. It awarded across-the-board salary increases of 3.5 percent in each of three years for all officers in service as of January 1, 2008. (See Riegel Award, p.99.) We shall award the same. However, the Riegel Award also called for economic concessions to be made by the PBA. The SOA must accept that as well. Since its unit (496 employees) is 27.46 percent of the PBA's (1806 employees) size, its concessions should reflect that ratio. The PBA's concessions totaled \$4,805,500. Thus, the SOA's concessions should total 27.46 percent of that figure, or \$1,319,590.

We believe that figure can be reached by deferring the first year wage increase, and by deferring Longevity Pay increases. (See below.) If we delay implementation of the first year's 3.5 percent increase to March 10, 2008, the County will realize a savings of \$463,208.

Thus, we AWARD the following wage increases to all covered ranks:

Effective March 1, 2008:	3.5%
Effective January 1, 2009:	3.5%
Effective January 1, 2010:	3.5%

3. LONGEVITY PAY

We agree with the Riegel Panel (see p. 104) that "an increase in longevity payments is appropriate at this time."* It decided to continue the payment of longevity increases in flat dollar amounts. It granted an increase of \$25 to those

* The Riegel Panel rejected the PBA's proposal to calculate longevity payments on a percentage formula rather than a flat dollar amount.

payments in each year of the three years of its award. (That increase, it said, is “comparable to the annual increase in Nassau.” (See p.105.)

We are prepared to follow the basic pattern established by the Riegel Panel in this area. But we are mindful that the SOA must provide an additional economic concession to the County to match that given by the PBA. As noted above, the SOA’s concession should total 27.46 percent of \$4,805,500, or \$1,319,590. In view of the fact the first year wage increase of 3.5 percent was deferred to March 10, 2008, a savings of \$463,208 is achieved. To fund the balance of \$856,382, we have decided to defer the three \$25 longevity payments (which would otherwise be paid on January 1, 2008, January 1, 2009 and January 1, 2010) to December 31, 2010. We so award.

4. FAMILY SICK DAYS

The expired Agreement provided for the use of five of an Officer’s individual sick days for the care of spouses or members of their immediate family living in his/her household.

The Riegel Panel awarded an increase in the number of days used for those purposes from five days to seven days. Apart from the pattern argument, we believe such a change is warranted. There is, after all, no showing that Officers have abused this benefit. Nor can it be said that the increase creates a true cost increase to the County. That is particularly so give the fact the

Riegel Panel did not make the increase of two days (to seven) effective until July 1, 2010.

We award, therefore, an increase in two family sick leave days (from five to seven) effective as of the issuance hereof.

5. REOPENER

We note that the Riegel Panel granted the PBA the right to reopen negotiations relative to its AWARD (including the right to return to the Panel in an Interest Arbitration proceeding.) (It did so, it appears, because a Nassau PBA award allowed for that.) We see no reason not to honor that pattern.

Thus, we direct that a new clause be added to the Agreement which shall read:

The SOA proposal relative to its right to reopen negotiations in the event that other units in the Suffolk County police pattern obtain economic benefits either through bargaining or award that are greater than those awarded herein, as follows:

The SOA shall be entitled to re-open negotiations over terms and conditions of employment, including the right to return to this Panel in an Interest Arbitration proceeding, in the event that any current or future law enforcement bargaining unit agrees or is awarded a change in overall terms and conditions of employment for the period 2008-2010 inconsistent with the pattern set forth in this Award. For purposes of this provision, current law enforcement units are the SDA and DIPBA.

This provision will sunset with the conclusion of the current round of bargaining involving the other units in the police pattern.

We shall retain jurisdiction of this matter in the event the SOA moves to reopen negotiations.

6. **CANINE**

The Riegel Panel noted that the PBA proposed improvements in this area in two elements: the pay received by Canine Officers for the off-duty care and maintenance of dogs; and the one-time cost of building a kennel to house the dogs when the Officers are off-duty. It found that only the second element has merit. We agree. We find that the current reimbursement Canine Officers receive does not cover the cost of building a kennel. The Riegel Panel prospectively granted an award wherein the County will arrange for the construction of a kennel when a new officer is added to the canine unit. We see no reason not to follow suit. Thus, we direct that Section 39H be amended by adding the following text:

Effective with the date of the Public Arbitration Panel award in Case No. IA 2007-025, the County will be responsible for the cost and construction of kennels used to house canines while they are off-duty for any superior officer assigned to the Canine Unit who is responsible for the care of a canine after the date of this Award.

7. **MATERNITY LEAVE**

Currently, the Agreement makes maternity leaves available only to women. On its face, that is discriminatory. And it clearly seems to be inconsistent with legal requirements now in place. To remedy this, the Riegel Panel granted a

County proposal to amend the Agreement to remedy the inconsistency with the law.

We concur. We believe the County's position must be sustained. For it is fundamental that contract language must conform to existing legal standards.

Thus, we award that Section 19B and Appendix "A" of the SOA Agreement be amended as follows to adopt the County's proposal to have its text conform to applicable legal requirements:

SECTION 19 LEAVES OF ABSENCE

(B) A superior officer will be granted child care leave in accordance with Appendix "A".

APPENDIX "A"

CHILD CARE LEAVE

1. A child care leave shall be granted upon application in accordance with these guidelines to a natural or adoptive parent of either sex. A child care leave will be granted in the case of any individual and/or multiple births in accordance with the following:
 2. Only one parent may be on a child care leave at any given time.
 3. A child care leave may commence no earlier than the date of the birth of the child.
 - a. The commencement of a child care leave in connection with an adopted child shall be directly related to the date the child is placed in the home.
 4. Child care leaves may be granted for a maximum of nine (9) months.

- a. An employee who does not commence child care leave upon the birth of the child and/or any adoptive parent employee, shall have the length of child care leave computed as follows:

<u>Age of Child Upon Start of Leave</u>	<u>Maximum Permissible Child Care Leave</u>
Birth to two months	9 months
3 months	8 months
4 months	7 months
5 months	6 months
6 months	5 months
7 months	4 months
8 months	4 months
9 months	4 months
10 months	4 months
11 months	4 months

- (b) No child care leave shall be permitted for a child one year or older, except:

- (1) Where there are mitigating circumstances (such as an infant who has required extensive hospitalization) and where the employee has returned to work and did not avail herself/himself of a child care leave, the employee may make application to the Office of Personnel and Labor Relations for special consideration for a child care leave extending beyond the child's first birthday.
- (2) Where an adoptive parent can show that an adoption agency necessitates the adoptive parent to be at home with an adoptive child over the age of one (1) year, the adoptive parent may make application to the Office of Personnel and Labor Relations for a child care leave of a four (4) week period. A minimum of four (4) weeks will be granted in the adoption of a child over one (1) year of age. Where an adoptive agency necessitates more than a four (4) week leave period, the employee shall be responsible for

documenting same at the Office of Personnel and Labor Relations in order to have the four week leave period extended.

- (c) No employee shall be permitted to use any type of leave accruals during a child care leave falling within the time period for which they have been granted a child care leave.

This change shall be effective for employees seeking the benefits of Appendix "A" on or after the date of our AWARD.

8. NEGOTIATIONS

Section 23D of the Agreement currently provides certain stipends for the President of the SOA, as well as the First and Second Vice Presidents. The Riegel Panel reviewed – and rejected – a number of PBA proposals in this area. However, it found an increase in stipends justified. We reach the same conclusion. We therefore award that the Present of the SOA's stipend be increased from 3.25 straight-time hours a week to 6.5 straight-time hours a week, and that the stipends now given the First and Second Vice Presidents be increased from 1.5 straight-time hours to 3.0 straight-time hours. These changes in stipends shall be effective as of January 1, 2008.

9. VACATION ACCRUAL

The current (now expired) Agreement places no limit on the length of time Officers on Section 207-c leave may continue to accrue vacation days. The County seeks to place a limit on that. We find the County's proposal is fully

justified. After all, other police units have more restrictive clauses. Therefore, we award that Section 41E(1)(A) be amended to read:

Employees who have been on Section 207-c status for 12 consecutive months shall not continue to accrue vacation time after the 12th consecutive month of absence.

We award the foregoing as of July 1, 2010.

10. GRIEVANCE PROCEDURE

A. Currently, Section 14J provides that if an arbitrator listed on the parties' Grievance Arbitration Panel is not available to schedule a hearing within 60 days of notification, he/she "shall lose his/her turn and the next arbitrator shall be selected." It also provides that for an arbitrator to become a member of the Arbitration Panel, he/she "will have to agree in advance to making themselves available within 60 days of assignment."

We find that these 60 day requirements are unrealistic and can unduly delay hearing of a case. They simply do not recognize the degree to which mutually acceptable arbitrators' schedules are booked. They should, therefore, be deleted. We so AWARD.

B. Section 14M provides that "only the [SOA] and the County shall have the right to invoke and utilize the arbitration procedure provided in this Agreement."

The County has asked that the phrase "and the County" be deleted. We find that proposal reasonable. For there is no doubt the Grievance Procedure was adopted to allow the SOA to file grievances. The County, given its inherent managerial authority to act, needs no such protection. The County's proposal is awarded.

C. Section 14C refers to the "authority delegated by the head of the Department or agency...." The County proposes the phrase "Department or agency" be replaced by "Suffolk County Police Department." We find that to be a perfectly reasonable proposal. It clarifies the original intent of the parties. Thus, we award the proposal.

11. WITNESSTH CLAUSE

Paragraph B of this Witnessst provision provides that "During the life of the Agreement, no attempt will be made by the County to decertify any job titles presently represented by the Association."

We find this provision unnecessarily restricts the County. We agree that its deletion is appropriate. We so AWARD.

12. PERB CASE NO. U-28208

We are advised by the parties that they have agreed to settle this case by adopting certain amendments to Sections 23H, 29C, 32, 41J and 46K of the Agreement which were made effective with the date of their settlement. We,

therefore, believe that those changes should be included as part of this AWARD.

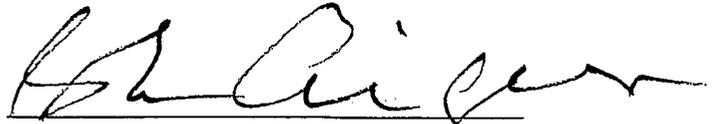
We so AWARD.

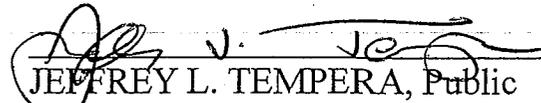
13. ALL OTHER PROPOSALS

We have carefully considered all of the other proposals submitted by the parties. We find them not to have merit. They are, therefore, denied.

* * *

PUBLIC ARBITRATION PANEL


STANLEY L. AIGES, Chairman


JEFFREY L. TEMPERA, Public
Employer Member*


GERALD GILMORE, Employee
Organization Member

DATED: July 30, 2010

*See Attached

Compulsory Interest Arbitration Award
Suffolk County
And
Suffolk County Superior Officers Association

Dissenting Opinion of County Appointed Arbitrator
Jeffrey L. Tempera

I am compelled to comment on this award with regards to the increased wages and various benefits when the County is struggling to emerge from one of the worst economic periods. To award a 3.5% wage increase on top of salaries that are already listed as some of the highest in the Country, just seems to go against logic. While I applaud the savings generated through the delay in the 2008 wage increase, the increases in salaries for Superior Officers is not justified in this economy.

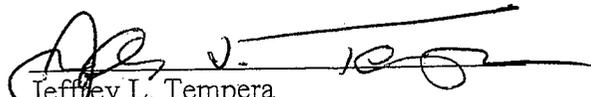
For the same reasons I have dissented on the increase in the longevity benefit.

With regards to the re-opener, I believe the County is entitled to complete negotiations with the SOA upon the issuance of this Award. To allow the SOA to re-open negotiations because another bargaining unit in the police pattern receives a change in their overall terms and conditions of employment is unfair to the County.

When the arbitration panel issued the award to the SOA for the period 2004 through 2007 and it contained for the first time a new benefit granting pay to SOA officers for lost overtime opportunities, I dissented. Why should the County have to subsidize these union activities? If a Superior Officer decides he or she wants to serve as a union official that is fine. To require the County and the taxpayers to pay them for overtime that they have not worked because of their decision to become a union official is wrong. To double the pay that these SOA officials receive for not working overtime is unconscionable.

Finally, the County presented many proposals with back up documentation and testimony with regards to increased management prerogatives or to eliminate union perks that were not awarded. I understand the arbitrator must balance the needs of the membership based upon the legal criteria versus the County taxpayers needs in this unprecedented economy. This is a difficult task to say the least, but I believe many of the County proposals if granted would have resulted in much needed relief to the taxpayers and residents of Suffolk County.

For the reasons stated above, I dissent from the Wage increase, Longevity Payments increase, Re-Opener Clause, Negotiations- SOA Proposal 5 (amend Section 23 (D)) of the priority demands for the Interest Arbitration hearing and all the rejected County proposals.


Jeffrey L. Tempera
County Appointed Arbitrator