

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

1A2008-013

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In the Matter of the Interest Arbitration

between

X PERB Case No.

~~M2004-250~~

M2007-307

THE COUNTY OF ORANGE  
AND SHERIFF OF ORANGE COUNTY

X  
X  
X

"County"

X  
X

-and-

X

ORANGE COUNTY DEPUTY SHERIFFS'  
POLICE BENEVOLENT ASSOCIATION, INC.

X

"Association"

X

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**APPEARANCES:**

**For the County**

LAMB & BARNOSKY, L.L.P.  
Sharon N. Berlin, Esq.

**For the Association**

JOHN K. GRANT, P.C.  
John K. Grant, Esq

**Before: PUBLIC ARBITRATION PANEL**

Richard K. Zuckerman, Esq., Public Employer  
Panel Member  
Richard P. Bunyan, Esq., Employee Organization  
Panel Member  
Martin F. Scheinman, Esq., Chairman and  
Public Panel Member

## **BACKGROUND**

The parties are signatories to a Collective Bargaining Agreement ("Agreement") which expired on December 31, 2006. Sometime prior thereto, they entered into negotiations for a successor Agreement. Those negotiations proved unsuccessful, whereupon the Association, on October 6, 2008, requested the New York State Public Employment Relations Board ("PERB") refer the impasse existing between the parties to Compulsory Interest Arbitration before a Public Arbitration Panel.

On October 24, 2008, the County filed an Improper Practice Charge with PERB, alleging the Association was violating the Act by seeking, over the County's objection, to submit certain nonarbitrable subjects of bargaining to the public arbitration panel. On November 10, 2008, the Association filed a similar Charge with PERB, alleging the County was violating the Act by seeking, over the Association's objection, to submit certain proposals to Interest Arbitration not directly related to compensation or which were new demands not previously the subject of negotiations.

On December 24, 2008, pursuant to the Rules and Regulations of PERB, Martin F. Scheinman, Esq., was selected and appointed as the Public Member and Chairman of the Panel assigned to hear and adjudicate this dispute. Richard K. Zuckerman, Esq. was designated

as the Public Employer Panel Member and Anthony V. Solfaro was designated as the Employee Organization Panel Member.<sup>1</sup>

On April 22, 2009, Martin F. Scheinman, Esq. was appointed Fact Finder as to those proposals tendered to the Panel which are not properly the subject of Interest Arbitration.

Hearings were held before the Panel on June 30, 2009, and July 13, 2009. During the hearings the parties were afforded full opportunity to present evidence and argument in support of their respective positions. They did so. Each side introduced extensive evidence concerning the relevant statutory criteria. This evidence included testimony from financial experts, budgetary and financial information as well as charts, tables, reports and data addressing the relevant statutory criteria.

At the conclusion of the hearings, the parties filed post-hearing briefs. Upon receipt of same, the record was declared closed. The Panel then went into Executive Session at which time the positions of the parties were deliberated and the exhibits and testimony examined. Executive Sessions were held on December 9, 2009, February 8, 2010, June 10, 2010 and December 16, 2010.<sup>2</sup>

The parties agree the term of our Award should be two (2) years, from January 1, 2007, through December 31, 2008.

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<sup>1</sup> On December 7, 2010, Richard P. Bunyan, Esq. was designated by PERB as the Employee Organization Panelist, in substitution for Anthony V. Solfaro.

<sup>2</sup> The June 10, 2010, and December 16, 2010, Executive Sessions were conducted via conference call.

The parties also agree certain of the proposals pending fact finding and discussed below, concerning 1) the running of sick leave concurrent with Family and Medical Leave Act leave and 2) drug and alcohol policy, shall be considered by this Panel and incorporated into our Award as terms and conditions of employment, conditioned upon their executing a separate letter agreeing these items are arbitrable in this proceeding and in future interest arbitration proceedings. They also agree certain tentative accords were, earlier, reached between them and request those accords be deemed incorporated into our Award.

The decision below represents the findings of the Panel. Mr. Scheinman is responsible for the language selected in this Opinion and Award.

### **Positions of the Parties**

The Association argues its members are jointly employed by the County and Carl E. Dubois, the elected Sheriff of Orange County, as full time law enforcement officers and should be considered comparable to Police Officers employed by other full time, full service municipal Police Departments throughout Orange County, New York. It claims there are twenty seven (27) such Departments throughout the County and insists they provide the most meaningful basis for comparison.

The Association contends its members perform the same duties as are performed by Police Officers in municipal Departments throughout the County. It claims they often work side by side with Officers from these municipal Police Departments. The Association points to testimony from Orange County Sheriff's Sergeant, Paul Arteta, as establishing numerous task forces exist in the County on which Association members serve alongside Officers from other law enforcement agencies including the FBI and local law enforcement agencies of towns and villages, performing the same duties as Officers from those other jurisdictions. It asserts such task forces include a Narcotics Task Force on which Officers from the County's Sheriff's Department are assigned together with Officers from other municipal law enforcement Departments. The Association claims the County's Emergency Services Unit is comprised of unit members from the County Sheriff's Department and Police Officers from other municipal jurisdictions located in the County. It contends its members in the Emergency Services Unit may be sent into municipalities throughout the County to assist local Police Officers with violent situations that may arise. The Association also asserts its members serve on a Joint Gangs Task Force together with state and local Police Officers and federal law enforcement agents.

As further support for its comparability argument, the Association argues the New York State Legislature, in 2004,

extended Interest Arbitration to Deputy Sheriff contractual disputes, some thirty (30) years after Interest Arbitration was first provided for municipal police contract disputes. It asserts by doing so, the Legislature permitted Deputy Sheriff bargaining units consisting of those Sheriff's Department employees certified as ~~Police Officers~~ as defined by state law, to invoke interest arbitration. The Association contends the Legislature did so to assure access to Interest Arbitration would be available to those performing police services. In its view, this requirement recognizes Deputy Sheriffs perform the same duties as Police Officers and compels a comparison between its members and Police Officers.

The Association points to a recent Award in *Matter of Interest Arbitration Between the County of Rockland and the Rockland County Sheriff's Deputy Association* (Scheinman, Panel Chairman), as supporting its position comparison to terms and conditions of employment enjoyed by Police Officers in towns and villages located within a county is appropriate in determining terms and conditions of employment for Deputy Sheriffs. It argues such comparison is particularly appropriate, here, because its members operate within the same geographical area and socioeconomic context as municipal Police Officers working for other jurisdictions within the County.

The Association rejects the County's proposed comparisons with agencies outside of Orange County, as unnecessary and contrary to the policies of the Act.

The Association contends the County is financially strong and well able to pay for increases and improvements to the terms and conditions of employment proposed for its members. It claims the County enjoys a growing population, favorable job growth rate and low unemployment rates and has large growth potential because of expansion projects at Stewart Airport and the Woodbury Commons retail outlet. The Association asserts significant federal stimulus aid and expanded federal aid for housing of prisoners will continue to protect the County against the effects of the recent economic recession.

The Association argues basic indicators demonstrate the County's sound fiscal and economic condition. It contends County taxes and debt are low and fund balances are strong. The Association asserts the County's bond rating is excellent.

The Association contends the County enjoys superior revenue flows from the sales tax. It asserts sales tax revenues to the County grew at an average rate of almost ten (10%) percent per year from 1999 to 2008, generating some one hundred sixty four million (\$164,000,000.00) dollars in 2008. While the Association acknowledges the County's 2009 sales tax revenues dropped by almost two (2%) percent, it expects a new hotel tax established for the

County will add four million (\$4,000,000.00) dollars of revenue per year to County coffers.

The Association argues the County is well able to afford the base wage adjustments and longevity changes it seeks for the 2007 - 2008 term at issue in this proceeding. It contends the County's General Fund, from which salaries and benefits for its members are paid, is in excellent condition. The Association claims more than forty four (44%) percent of the 2008 operating revenues of the County's General Fund came from the sales tax, with only sixteen (16%) percent coming from taxes upon real property. It asserts the County's unreserved Fund balance is substantial, amounting to more than one hundred eighteen million (\$118,000,000) dollars in 2008.

The Association insists the County is able to afford the five (5%) percent per year base wage adjustments and the longevity changes sought by the Association for 2007 and 2008. It contends the cost of each one (1%) percent adjustment to its members' base wages is forty nine thousand five hundred twenty nine (\$49,529.00) dollars. The Association asserts the County has already set aside more than seven hundred forty thousand (\$740,000.00) dollars for the expected Award of this Panel and has an additional contingency fund available for unanticipated expenses.

According to the Association, the County is the fastest growing county in all of New York State and one of the fiscally

strongest. In its view, the County is well able to manage the proposed improvements sought by its members.

The Association urges the interests and welfare of the citizens of Orange County are best served when wages and benefits for law enforcement employees are at a level sufficient to attract and retain, qualified experienced Officers. On the other hand, it insists a wage package that deviates dramatically from the salary and salary increases provided other Police Officers in comparable jurisdictions, does not serve the interests or welfare of the public.

The Association contends the interests of the citizens of the County will best be served by raising the salaries and benefits of its members to a level more in line with compensation being paid Police Officers in other jurisdictions within the County. Doing so will, in its view, attract qualified persons to become and remain County Deputy Sheriffs. The Association asserts morale amongst its members will be raised by increasing wages and benefits and will help assure a sufficient corps of qualified and experienced Deputies continues in service toward the goal of keeping the County's relative crime rate at low levels.

The Association argues the peculiarities of the police profession in which its members are engaged are not comparable to other non-police trades or professions. It maintains Public Interest Arbitration panels have long considered policing a unique

and hazardous endeavor requiring special qualifications, training and skills.

In this regard, the Association insists comparing its Deputy Sheriffs with municipal Police Officers is appropriate. It claims the Civil Service job descriptions, qualifying examinations and course of study and police academy training are identical. From all of the evidence presented, the Association insists direct comparison can and should be made between municipal Police Officers and the County's Deputies, without resort to distant municipalities outside the County.

The Association recognizes this Panel must also consider the parties' bargaining history. It argues past bargaining attempts to move unit members from an outdated wage system to terms more comparable to local municipal agencies were laudable but led to unanticipated problems with the salary schedule and other issues. The Association urges aspects of the parties' bargaining history inform its specific proposals and should be considered as this Panel engages in its review.

The Association argues its proposals, discussed below, are appropriate and should be granted in order to bring its members in line with salaries and benefits enjoyed by Police Officers performing similar duties throughout the County.

The Association's proposals are as follows:

**Flex Time (Subject of a Pending Improper Practice Charge)**

The Association demands elimination of "flex time". As this proposal is the subject of a pending improper practice charge, it is beyond this Panel's purview.

**Sick Leave (Subject of Pending Improper Practice Charge)**

The Association seeks to modify existing provisions so as to give its members the option, upon separation or retirement, of being paid at their then current rate of pay for all accumulated unused sick leave, or to apply any portion thereof to pay for health, dental or optical insurance. As this proposal is the subject of a pending improper practice charge, it is beyond this Panel's purview.

**Overtime**

The Association contends the expired Agreement abolished the right of overtime compensation for its members until an employee worked one hundred seventy one (171) hours in each twenty eight (28) day work cycle, effective January 3, 2004, exclusive of sick leave. It asserts effective December 31, 2005, the right to receive overtime was provided for all hours worked in excess of one hundred sixty eight (168) hours in a twenty eight (28) day work cycle, exclusive of sick leave. The Association proposes effective January 1, 2007, employees will be paid at time and one half (1/2)

for all hours in excess of an eight (8) hour scheduled tour or over forty (40) hours in a week, inclusive of sick time.

The Association claims all other comparable bargaining units working eight (8) hour tours are paid overtime at time and one half (1/2) for all hours beyond eight (8) in a day and forty (40) in a week. It insists its proposal is necessary to remedy the disparity in pay between its members and other law enforcement Officers throughout the County.

**Compensatory Time (Subject of Pending Improper Practice Charge)**

The Association seeks an increase in the number of hours of compensatory time a member may accumulate, from the current forty (40) hour cap to one hundred twenty (120) hours. It proposes to allow the use of such accumulated compensatory time upon retirement, toward the cost of a retiree's health insurance contributions.

As this proposal is the subject of a pending improper practice charge, it is beyond this Panel's purview.

**Call-In Pay**

The Association contends enhancements to provisions in the expired Agreement are needed to bridge the gap between call in pay received by municipal Police Officers in comparable jurisdictions and call in pay received by its members. It argues under the expired Agreement, members placed on "call in" status who are then directed to report for duty beyond their regular tour receive a

minimum of four (4) hours pay at time and one half (1/2), but Deputies ordered to attend meetings or conferences beyond their regular tour are paid time and one half (1/2) only for actual time expended at the meeting or conference. As well, the Association asserts Deputies called to testify in Court or before Grand Juries receive only a minimum of two (2) hours at time and one half (1/2).

The Association proposes a uniform four (4) hour minimum of pay at time and one half (1/2) for all situations where Deputies are called in beyond their regular tour. It claims the vast majority of law enforcement Departments throughout the County provide at least three (3) hours call in pay at time and one half (1/2) and several provide a minimum four (4) hours at time and one half (1/2) for such circumstances. The Association maintains the proposed four (4) hour minimum should be adopted for all call ins to fairly compensate its members for the inconvenience and personal costs inherent in having to report when directed beyond their regular tours.

### **On-Call**

The Association asserts that under the expired Agreement Deputies may be required to carry paging devices or cell phones while off duty but receive no extra pay for doing so. The Association concedes it now has contractual protection against discipline for not responding or declining to report in response to a call. It notes the County has now proposed eliminating the

protection against Deputies being disciplined and establishing, instead, the right to impose discipline for failure to respond to a call within a reasonable period of time.

The Association argues if its members are going to be required to stand by while off duty, they should be compensated for doing so. It insists there can be no dispute being placed on stand by while off duty restricts employees from engaging in personal or family activities they might otherwise pursue while off duty. The Association claims compensation for stand by time is warranted as a matter of fairness.

The Association contends other agencies provide stand by pay to law enforcement officers. It claims the Rockland County Sheriff's Department provides one (1) hour of pay for every eight (8) hours on standby and Westchester County provides two (2) hours of pay for every eight (8) hours on standby. The Association insists if the County is given the ability to restrict Deputies' off duty time with stand by requirements enforceable by discipline, compensation must be awarded for Officers placed on standby during time that would otherwise be their own.

**Holidays, Vacation Leave, Personal Leave (Subject of Pending Improper Practice Charge**

The Association proposes its members be allowed to accumulate, without limitation, all unused leave time under these categories into a leave bank to pay contributions for health insurance, dental

and optical coverage upon retirement. As this proposal is the subject of a pending improper practice charge, it is beyond this Panel's purview.

**Base Wage and Longevity**

The Association proposes a five (5%) percent increase to the base wage Deputy and Sergeant schedules for each year of the two (2) year term of this Award. It also proposes, for Deputies, a compressed longevity schedule and six (6%) percent longevity increment at years eight (8), eleven (11), fourteen (14), seventeen (17), twenty (20) and twenty three (23) and above, and for Sergeants, a compressed longevity schedule and longevity increment at years seven (7), nine (9), eleven (11) and above.

The Association argues the County Sheriff's Department has experienced a high turnover rate with forty (40%) percent of its Deputies leaving over the last six (6) years. It contends many members left their jobs because they worked longer but were paid less than their counterparts in other law enforcement agencies throughout the County. It insists the County's Deputy Sheriffs are amongst the lowest paid of all comparable Police Officers working for jurisdictions in Orange County.

The Association maintains existing longevity schedules are in need of adjustment. It asserts the present structure allows a Deputy with twenty (20) years experience to earn more money than a Supervising Sergeant promoted from the Deputy ranks. It claims

this situation can arise because Sergeants' increments for longevity are addressed in a schedule independent of the Deputy salary and longevity schedule and do not occur until years five (5) and ten (10) in title. In the Association's view, the current system allows the untenable situation of a newly promoted Sergeant suffering a loss of pay upon promotion.

The Association contends even with the granting of its wage and longevity proposals in full, its members will still remain near the bottom of wage levels prevailing in the law enforcement community within the County. Nevertheless, it insists the progress inherent in its proposal is justified and appropriate.

As to the County's proposal of a two and one half (2.5%) percent base increase in each of the two (2) years of this Award, the Association contends such proposal is inadequate and well below the level of increases provided other County employees. It claims CSEA members received an average yearly base wage adjustment of three and six hundred twenty five thousandths (3.625%) percent for 2007 through 2011. The Association asserts the proposal of two and one half (2.5%) percent for Deputies, who perform dangerous, specialized law enforcement duties, is well below increases already granted to clerical employees. It insists the County's proposal is below the average base wage increases granted comparable law enforcement officers throughout Orange County since 2005.

The Association argues its wage proposals, if granted, will help correct internal problems and the disparity between Deputy Sergeants and county wide Police Sergeants. It contends its proposals will also improve the compensation package for the County's most experienced Deputies and Sergeants, leading to ~~increased retention of qualified and experienced employees and~~ helping to stem the exodus of Deputies from County service.

The Association insists its base wage and longevity proposals should be granted to keep pace with annual wage increases in comparable jurisdictions within the County, which it claims averaged three and ninety seven one hundredths (3.97%) percent for 2007 - 2008. The Association argues a compelling need exists to grant its proposals in order to achieve progress toward closing the gap between County Deputy Sheriff salaries and Police Officer salary schedules throughout the County.

The Association contends its members' salary schedules incorporate a holiday component and clothing allowance into base pay. It claims the clothing allowance component reflects an allowance of six hundred (\$600.00) dollars incorporated into bi-weekly paychecks and has not been increased since 2003. The Association insists the current amount of this allowance is below prevailing levels in the County for this benefit. It asks the clothing allowance component of the base salary schedule be increased to one thousand (\$1,000.00) dollars.

The Association asserts the clothing allowance has historically been incorporated into base wages for its members in order to add value to the overtime compensation rate. However, with the advent of flex time, it contends the amount of overtime opportunities for its members has decreased to the point of rarity, with its members averaging slightly more than six thousand (\$6,000.00) dollars additional compensation. The time has come, in the Association's view, to increase the clothing allowance to one thousand (\$1,000.00) dollars along with the adjustments it proposes for unit members' base wages and longevity.

### **Insurance**

Presently, the Association's unit members are enrolled in the Empire Plan. The Association asserts members with less than ten (10) years' service contribute two thousand two hundred ninety (\$2,290.00) dollars per year for individual coverage and two thousand five hundred forty (\$2,540.00) dollars per year for dependent coverage. It claims members with more than ten (10) years' service contribute one thousand seven hundred ninety (\$1,790.00) dollars per year for individual coverage and one thousand seven hundred ninety (\$1,790.00) dollars per year for dependent coverage. The Association contends these contributions are scheduled to sunset by December 31, 2013, or before then if and when contributions from all unit members equal one million five hundred thirty nine thousand and four hundred (\$1,539,400.00)

dollars. It asserts dental and optical benefits are provided on an individual basis only.

Against this backdrop, the Association proposes dental and optical coverage be made available to eligible dependents, effective January 1, 2007. It contends a number of agencies within the County provide family dental and optical coverage. The Association insists this enhancement is needed toward the goal of narrowing the gap in wages and benefits between the County's Deputy Sheriffs and municipal Police Officers employed by comparable jurisdictions within the County.

The Association also proposes the existing health insurance buy-out be increased from one thousand five hundred (\$1,500.00) dollars to fifty (50%) percent of premium. It contends all other bargaining units have a buy-out of two thousand (\$2,000.00) dollars. However, the Association asserts more than two thirds (2/3) of municipalities within the County have a health insurance buy-out incentive in place, to induce employees to consider alternative coverage through a spouse's employer and to forego double coverage. Of those municipalities, it contends almost all employ a sharing of savings on a percentage basis with half of the municipalities sharing premium savings on a fifty (50%) percent basis with the employee. In the Association's view, a fifty fifty (50-50) sharing of premium savings is equitable and will benefit both the County and the employee.

### **In-Service Training Days**

The Association contends at present, the Sheriff may require its members attend four (4) in-service training days per year, outside of the employees' work schedule, with employees receiving a stipend of four hundred (\$400.00) dollars per training day. It proposes the stipend be increased to six hundred (\$600.00) dollars per day, to ensure the training day pay rate bears a continued relationship to base wage and longevity increases to be granted for the two (2) years of this Award.

### **Tour Differential**

The Association proposes a ten (10%) percent night differential for all members regularly assigned to work the "A" or "C" lines and a twenty five (\$25.00) dollar tour of duty differential for all temporary tour changes. It asserts these terms are needed to establish an appropriate relationship to base wages and to avoid the need to constantly revisit the issue.

The Association asserts the present differential of one thousand five hundred sixty (\$1,560.00) dollars per year for Deputies regularly assigned to a tour starting after 2:00 p.m., or six (\$6.00) dollars per shift for a temporary shift change, is inadequate to compensate members working the most disfavored shifts. It contends the annual differential amounts to less than the six (\$6.00) dollar temporary rate and must be increased to bear a relationship to base wages. The Association asserts a percentage

based formula will provide a long term solution to the problem by making the differential self adjusting and will eliminate the need for constantly revisiting the issue.

### **Education Reimbursement Fund**

The Association has argued for an increase in yearly Education Reimbursement funding from five thousand (\$5,000.00) dollars, to ten thousand (\$10,000.00) dollars.<sup>3</sup> It contends such an increase is reasonable and within the ability of the County to pay.

### **Meal Allowance**

The Association has proposed an increase in the Meal Allowance currently provided to members working overtime. It asks the Allowance be increased from eight (\$8.00) dollars to ten (\$10.00) dollars and asserts such increase is reasonable and warranted in order to provide its members a proper level of compensation when working under overtime conditions.

### **Retroactivity**

The Association proposes any enhancements granted by this Panel shall be paid retroactively to any employee who worked during the term of the expired Agreement. It urges such proposal is necessary to compensate such employees for services rendered in accordance with the terms and conditions being awarded herein.

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<sup>3</sup> Transcript at 185-186.

### **Association Response Concerning County's Proposals**

As to the County's proposals, the Association identifies six (6) proposals put forth by the County and maintains they are generally directed toward restricting its members' access to a level of leave and benefits comparable to those prevailing throughout the County. Overall, it argues the County's proposals will only serve to make a bad situation worse and will not advance the public's interest in trying to stem the loss of qualified, experienced Deputies from County service.

### **Change of Hours Notification (Fact Finding)**

The Association opposes the County's proposal to reduce the amount of advance notice given a Deputy before his or her start or end time may be advanced by up to two (2) hours. Presently, it contends, the amount of such required advance notice is forty eight (48) hours. The Association asserts the County's proposal for a right to change a Deputy's start or end time on only twelve (12) hours notice, without any compensation and without any limit on how frequently such a change may be made, would wreak havoc upon a Deputy and his or her family and should be rejected as wholly without justification or precedent.

For similar reasons, the Association opposes the County's proposal to reduce the amount of notice of shift assignment or regular pass day from at least twenty one (21) days advance notice

to only seven (7) days. It insists such a change is without justification and will impose an unnecessary burden upon Deputies.

The Association claims neither of these proposals finds support in Collective Bargaining Agreements from comparable jurisdictions. It contends no good reason exists to impose them upon Deputies who, in its view, already have one of the least favorable work schedules in all of Orange County and earn less than virtually all other municipal Police Officers. The Association argues granting the County open ended shift and tour change discretion would create an unnecessary opportunity for abuse of its members and should be rejected as unwarranted.

**Sick Leave (Fact Finding)**

The Association asserts the County is, without justification, demanding its members use Family and Medical Leave concurrently with sick leave. It opposes the County's demand as unduly curtailing Deputies' access to FMLA time in dire circumstances, when such leave is most needed.

The Association also contends the County is demanding discretion to require a doctor's certification any time a unit member is out sick, even for one (1) day's illness. It opposes such demand as unreasonable and because it will require a costly doctor visit even for a single day out due to a cold or stomach virus. The Association maintains no pattern of sick leave abuse exists as might otherwise justify imposition of such a requirement.

### **Restriction of Access to Overtime**

The Association opposes what it views as County efforts to curtail access by its members to overtime. It contends County proposals to eliminate accrual of compensatory time find no support in the record. The Association insists exclusion of chart days and paid leave time from the relevant calculation is contrary to any method employed by comparable agencies. It claims the County's proposal to require Deputies carry cell phones without compensation and to be subjected to discipline for failure to report, amounts to an effort to place Deputies on duty twenty four (24) hours a day, seven (7) days a week, without extra compensation.

The Association urges all of these proposals be rejected as not serious and an unwarranted restriction of overtime opportunities.

### **Longevity Due Date**

The Association opposes the County's proposal to move the date when longevity payments are due from the beginning of service years ten (10), fifteen (15) and twenty (20), to the end of those years. It contends such proposal will reduce the incentive longevity provides to encourage experienced employees to remain in County service and will not help stem the exodus of qualified Deputies.

The Association argues clear language in the expired Agreement requires longevity be paid at the beginning of the trigger years. In its view, the County's proposal makes existing problems larger

by failing to close the gap between Deputies and their counterparts throughout the County. The Association urges the County's proposal to move the due date for longevity payments to the end of each trigger year, be rejected.

**Disciplinary Procedure (Fact Finding)**

The Association opposes proposals put forth by the County to revise contractual disciplinary procedures, as unnecessary and unwarranted. It contends the County's demand to limit access to contractual arbitration to only those employees entitled to the protections of Civil Service Law Section 75, is unjustified and unfairly excludes employees in the noncompetitive or labor classes not otherwise covered by protections of that statute. The Association also opposes the County's demand to expand the potential penalties a Deputy could face as punishment for misconduct. In particular, it opposes the County's demand to increase from five (5) to no more than ten (10), the number of accrual days an employee could lose as a disciplinary penalty. The Association also opposes the County's demand to permit a disciplinary suspension without pay of up to sixty (60) work days, up from the current provision permitting a suspension without pay of up to thirty (30) calendar days.

The Association contends these proposed changes are unnecessary and out of step with alternative disciplinary

procedures adopted in the vast majority of municipalities throughout the County.

The Association opposes the County's demand to reduce, from seven (7) days to five (5) days, the amount of time the County must wait before taking action against an employee alleged to be absent without authorization. It likewise opposes the County's proposal to reduce from fourteen (14) days to ten (10) days, the amount of time an employee has to contact the Sheriff and explain his or her failure to appear or initiate contact, before being deemed to have resigned his or her position. The Association asserts no justification exists to support these proposed changes, which could potentially lead to an unwarranted forfeiture of employment. It urges these proposals be rejected.

The Association acknowledges the County has demanded a bench panel of arbitrators be instituted. It claims it supports establishing a bench panel but asserts the parties have been unable to agree upon the arbitrators who shall comprise such list. The Association argues absent such an agreement, there is no alternative but to resort to the services of the American Arbitration Association or PERB for selection of arbitrators.

### **Health Insurance**

The Association opposes the County's demand that all unit members, as of January 1, 2007, pay two thousand five hundred forty (\$2,540.00) dollars per year toward the cost of individual health

insurance premiums and two thousand nine hundred sixty five (\$2,965.00) dollars toward the cost of dependent coverage. It also opposes the County's demand that all employee contributions be increased by the same percentage of increases charged to the County by the Empire Plan.

~~The Association notes under the expired Agreement, employees~~ with less than ten (10) years of service contribute two thousand two hundred ninety (\$2,290.00) dollars for individual coverage and two thousand five hundred forty (\$2,540.00) dollars for dependent coverage, while unit members with more than ten (10) years' service contribute one thousand seven hundred ninety (\$1,790.00) dollars for individual and dependent coverage.

The Association points out the County's demand, if granted, would increase the health insurance contribution in 2007 for unit members with ten (10) years of service by seven hundred fifty (\$750.00) dollars for individual coverage and by one thousand one hundred seventy five (\$1,175.00) dollars for dependent coverage. It also contends the County's demand for increases in 2008 would raise unit member contributions by whatever rate of premium increase is charged by the Empire Plan to the County.

The Association opposes these proposed contribution increases as unwarranted and out of line with terms and conditions of employment existing for law enforcement personnel working in comparable jurisdictions.

The Association acknowledges the County's proposal calls for reduction of an employee's individual or family contribution rate by the sum of one thousand seven hundred ninety (\$1,790.00) dollars provided the cumulative total of the first one thousand seven hundred ninety (\$1,790.00) dollars of annual payments made by all employees totals one million five hundred thirty nine thousand and four hundred (\$1,539,400.00) dollars. It contends this demand maintains the parties' understanding, reached as part of their 2003 - 2006 Agreement, one thousand seven hundred ninety (\$1,790.00) dollars of the contributions by all employees is, actually, a *quid pro quo* payment toward the buy-in cost of the twenty (20) year retirement plan. The Association claims the buy-in cost of one million five hundred thirty nine thousand four hundred (\$1,539,400.00) dollars, is being paid in full by employee contributions in the form of health insurance contributions.

Nevertheless, the Association opposes the rate increases demanded by the County for health insurance contributions. It contends the increases proposed for 2007 impose contributions upon unit members who have not been required to contribute previously. The Association insists the proposal of an open ended rate increase predicated upon whatever increases are charged to the County by the Empire Plan is untenable because it is not tied to any corresponding increase in wages for future years. It contends the

result will be a diminution of benefits otherwise flowing to unit members.

The Association argues the County's demands for increased contributions and for increases as of 2008 at open ended rates tied to those charged by Empire Plan, will forever damage efforts to move Deputy compensation to a level approaching wages and benefits enjoyed by other law enforcement Officers in the County.

The Association maintains law enforcement agencies throughout the County have historically provided employer paid health insurance coverage, with employee contributions being only of limited duration and for Officers only during the early stages of their careers. It insists further damage will be done to an already low wage and benefit package, as compared to comparable agencies in the County, should the increased contributions sought by the County be implemented.

The Association asserts the County has made additional demands for health insurance coverage. It points out under the expired Agreement, an employee who retires with ten (10) continuous years of employment by the County, as of January 3, 2004, as a Corrections Officer or Deputy, is eligible for retiree medical insurance at no cost, while all other employees, upon retirement, may receive retiree medical insurance by paying a percentage of the premium cost depending upon how many years of service they have. The Association asserts under the expired Agreement, such other

employees with ten (10) to fourteen (14) years of service pay fifty (50%) percent of the premium cost to obtain retiree medical insurance. Those with fifteen (15) to nineteen (19) years of service pay twenty five (25%) percent of the premium cost. Those with twenty (20) to twenty four (24) years of service pay ten (10%) percent and those with twenty five (25) or more years of service pay zero (0%) percent.

The Association opposes the County's demand to add language requiring completion of the first listed amount of years of service (e.g., completion of ten (10), fifteen (15), twenty (20) and twenty five (25) years) for all other employees to receive retiree coverage by paying in the designated premium percentages. It contends such proposal improperly delays a unit member's entitlement to retiree coverage under the existing contractual scheme.

The Association contends the County has proposed retirees be barred from switching from individual coverage to dependent coverage in the Empire Plan after retirement. It opposes such demand as unwarranted and without justification.<sup>4</sup>

The Association asserts the County has demanded any employees electing a buyout of employer-provided health insurance coverage remain obligated to continue paying the one thousand seven hundred

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<sup>4</sup> The County withdrew this portion of its proposals, during the July 13, 2009, hearing (Transcript at 192 - 193).

ninety (\$1,790.00) dollar health insurance contribution which the County applies to the buy-in for the twenty (20) year retirement plan. It insists such proposal is problematic, not appropriate and should be rejected.

The Association argues all of the proposals put forth by the County concerning health insurance coverage are regressive and have, as their purpose, the reduction in value of unit members' overall wage and benefit package. In its view, such proposals are ill advised, given the County's need to improve the Deputies' wage and benefit package to become more competitive with other law enforcement agencies. The Association urges the overall benefit package for Deputies serving the County's citizens should be enhanced in order to assure the County's ability to attract and retain qualified personnel.

In short, the Association argues its proposals are justified by the relevant statutory criteria and should be awarded.

The County, on the other hand, opposes the Association's proposals as being unwarranted according to relevant statutory criteria. It insists its own proposals are in accordance with those criteria and should be granted.

Initially, the County contended many proposals exchanged by the parties were either the subject of Improper Practice charges pending at PERB or were not arbitrable. However, we note the parties agreed to present evidence concerning those proposals not

the subject of scope of bargaining charges and which were subject to fact finding, during this proceeding and have now agreed to incorporation into our Award of those proposals we have determined to grant.

As to the Association's proposals, the County contends, ~~generally, they are unjustified and not supported by relevant~~ statutory criteria.

As to comparability, the County argues an internal comparison with other bargaining units in the County is the most appropriate comparison. It maintains an historical pattern exists demonstrating a significant relationship amongst the several bargaining units within County government. The County contends such pattern arose over a period of years. It insists any differences between terms and conditions of employment for particular bargaining units came about because of unique improvements bargained in exchange for corresponding concessions.

In particular, the County claims an internal pattern exists between members of the Association and members of the Correction Officers Benevolent Association ("COBA") and also the unit represented by the Civil Service Employees Association ("CSEA"). It contends the Association's members were in a single unit with COBA members until 1999 and received identical wage increases to employees in the CSEA unit. It asserts the only variation from this pattern occurred during 2003 - 2006, when differences occurred

which the County attributes to improvements made to the Association's retirement plan which were not bargained by COBA. The County contends the Association and COBA units both received identical salary increases of three (3%) percent in 2005 and 2006. It maintains the CSEA unit received a higher wage increase in 2006 ~~in exchange for an offsetting reduction in the paid lunch for new~~ hires.

The County asserts base health insurance contributions by Association members have historically been consistent with contributions made by the other County units. It contends the only exception has been the Association's additional per capita contribution of one thousand seven hundred ninety (\$1,790.00) dollars to offset the cost of the improved retirement plan negotiated for its members. The County claims the Superior Officers Association ("SOA") unit also negotiated an improved retirement plan in 2004, paid for by increased health insurance contributions beyond levels required by the existing pattern. It contends despite these special increased contributions, the SOA members' base contribution amounts for health insurance remained the same as CSEA.

The County contends the internal pattern existing between its bargaining units is supported by other similarities in terms and conditions of employment. It asserts the COBA and SOA units receive the same amounts of sick leave, pay for unused vacation upon

separation from service and stipend training days as Association Members. The County maintains the Association also shares other terms and conditions with COBA, SOA and CSEA, including the amount of meal allowance, formulas and caps concerning payments for unused sick leave upon retirement, ability to transfer unused vacation leave when moving to another County Government Office and other provisions affecting use of vacation, personal and sick leave.

The County maintains such internal pattern was established through negotiation of contracts over a period of years. It insists the pattern should not be disturbed.

Beyond the internal pattern asserted as most appropriate, the County urges should the Panel look outside the County for comparability, we should look first to Dutchess County's Deputy Sheriffs and then to Ulster County's Deputy Sheriffs. The County maintains those counties are, in that order, most comparable to the County in size, population, cost of living, household income, home prices, number of Deputy Sheriffs employed and other characteristics.

In the County's view, the Association's argument for a comparison with municipal Police Officers within Orange County, is flawed and based upon erroneous assumptions and interpretations of fact. It disputes, as untrue, the Association's claim Deputy Sheriffs and Police Officers share identical job duties and qualifications. It asserts a more limited patrol jurisdiction and

absence of civil duties distinguish Police Officer duties from those of Deputy Sheriffs. The County also contends its Sheriff's Office is far larger than most Police Departments located within the County. It claims it employed ninety two (92) full time Deputy Sheriffs in 2007, much more than the twenty five (25) or fewer full time Police Officers it asserts were employed by most of the towns and villages in the County.

The County argues other differences warrant rejecting the Association's position that comparison should be made to those other municipalities' Police Departments. It claims the County's governmental structure, constitutional tax and debt limits and governing laws are different from other municipalities.

The County maintains its Deputy Sheriffs do not share similar terms and conditions of employment with Police Officers. It claims its Deputy Sheriffs have a special enhanced retirement plan pursuant to the Retirement Law which is not available to Police Officers in municipalities and also receive deferred compensation not enjoyed by a majority of Police units within the County. The County asserts its Deputy Sheriffs have overtime eligibility different from most of the Police units within the County and receive more total vacation leave than almost all of those Police units.

Given these asserted differences, the County maintains no compelling reason has been shown for disturbing the internal

bargaining pattern it claims is established with its several bargaining units. The County urges we use the internal pattern for purposes of comparability and not draw comparison to Police units of other jurisdictions.

The County disputes, as without evidentiary support, the Association's contention the Legislature extended Interest Arbitration to Deputy Sheriffs to remedy a perceived disparity between their wages and benefits and those enjoyed by Police Officers. It claims Interest Arbitration was extended to Deputy Sheriffs because the Legislature wanted to avoid the interruption of public safety services provided by Deputies to counties that might flow from an unresolved bargaining impasse.

The County argues its ability to pay for proposals put forth by the Association is limited. It insists it cannot afford them.

The County maintains the recent economic downturn was unprecedented and left it with significant budget shortfalls. In particular, it claims in 2008, five (5) million (\$5,000,000.00) dollars had to be allocated from its fund balances to offset budget shortfalls, with another twenty (20) million (\$20,000,000.00) dollars used to cover 2009 budget shortfalls. The County asserts continued use of such funds to balance its budget will completely eliminate its fund surplus by 2012.

The County claims substantial shortfalls for 2009 are expected because of lower than expected revenues from the sales tax, real

property tax and hotel tax. It contends sales tax revenues, which comprised more than forty four (44%) percent of its total 2008 General Fund revenues, have been in decline since 2007. The County asserts it experienced a sales tax shortfall of seven million seven hundred thousand (\$7,700,000.00) dollars in 2008 and expects a ~~total shortfall of more than ten million (\$10,000,000.00) dollars~~ for 2009.

At the same time, the County claims real property tax revenues, which comprised more than sixteen (16%) percent of its General Fund revenues in 2008, will generate a revenue loss of almost nine million (\$9,000,000.00) dollars for 2009, with greater losses projected by 2011, assuming the tax rate remains at two dollars and ninety six cents (\$2.96). It expects foreclosure rates will continue to rise.

The County maintains home sales are down more than thirty percent (30%) from 2007 - 2008 while tax delinquencies have risen from twenty five percent (25%) in 2007 to forty percent (40%) in 2009. In its view, these factors suggest continued deterioration in the amount of revenues from the real property tax.

The County acknowledges hotel tax revenues were anticipated as of July 1, 2009. However, it contends collection has been delayed, causing a revenue shortfall from this tax of approximately one million (\$1,000,000.00) dollars as compared to what was anticipated in the 2009 budget.

The County argues these revenue shortfalls are compounded by increased expenses for operating its Valley View facility and an increase in the number of County residents receiving welfare and public assistance. It claims its social service costs for 2009 are more than three million (\$3,000,000.00) dollars over budget, with a ~~ten million (\$10,000,000.00) dollar increase in such costs~~ projected for 2010.

The County claims additional budgetary problems are presented by the new MTA Payroll tax implemented by the State in mid-2009. It contends this tax will cost the County more than four hundred eighty thousand (\$480,000.00) dollars in 2009, none of which was included in its budget, with an additional cost of five hundred thirty thousand (\$530,000.00) dollars expected in 2010.

To make matters worse, the County argues its pension costs are predicted to increase exponentially over the next several years. It claims the New York State Comptroller announced a jump in Employee Retirement System contribution rates from seven and one half percent (7.5%) to eleven and nine tenths percent (11.9%) and for the Police and Fire Retirement Systems, an increase from fifteen and one tenth percent (15.1%) to eighteen and two tenths percent (18.2%) in 2011, with further increases expected thereafter.

For all these factors, the County anticipates a 2009 deficit of twenty million eight hundred thousand (\$20,800,000.00) dollars

and a forty three million (\$43,000,000.00) dollar shortfall in its 2010 budget. It claims the property tax rate would have to increase from two and ninety six one hundredths percent (2.96%) to four and eighteen one hundredths percent (4.18%), or an increase of more than forty one percent (41%), to offset this shortfall. The County maintains any increase in personnel costs would only add to its difficult fiscal burdens and would impact the County's ability to meet these challenges in a profoundly negative way.

The County argues its taxpayers are not able to absorb the increased costs attendant to paying for the Association's demands. It contends its unemployment rate was the highest of the entire Hudson Valley region and rose to eight and two tenths percent (8.2%) in September 2009, up from five and four tenths percent (5.4%) the year before.

The County asserts the Association's view of its ability to pay for an enhanced wage and benefit package is flawed and suffers from a failure to recognize current economic realities. It rejects, as based upon outdated data, the Association's claim the County enjoys a low unemployment rate. It insists such claim is based upon data gathered in 2007 before the recession affecting New York State and the country at large, occurred.

The County argues the Association's rosy view of sales tax revenues is outdated and inaccurate. It claims the Association has

ignored current sales tax revenue data showing significant shortfalls in sales tax revenues since 2007.

The County challenges, as inaccurate, the Association's contention a reserve of more than seven hundred forty thousand (\$740,000.00) dollars has been set aside to fund this Award. It ~~points to testimony from its Budget Director, Neil Blair, as~~ establishing such monies were designed for raises for everyone in the Sheriff's Office, including appointed Officers and members of other bargaining units as well as Deputies represented by the Association.

In light of the foregoing budgetary constraints, the County argues the Association's demands will cost more than four million (\$4,000,000.00) additional dollars over the two (2) year term of this Award. It insists the record does not demonstrate monies are available to pay for these demands. In the County's view, awarding the proposals of the Association will have a significant negative impact upon the stability of its budget.

The County recognizes the valuable work performed by Deputy Sheriffs, but contends they are more than adequately compensated. It, therefore, insists the Association's demands be rejected as excessive and without justification.

## Wages

The County argues the Association's proposal for a five (5%) percent per year wage increase plus longevity, cannot be objectively defended under current economic conditions. It asserts such proposal cannot be justified by a need to keep up with the cost of living because previous wage increases granted Association members have substantially exceeded corresponding increases in the Consumer Price Index.

The County claims its Deputy Sheriffs, during the first few years of employment, earn salaries similar to those paid Deputies working for Dutchess or Ulster Counties and more than their counterparts in those Counties as their years of seniority increase.

In the County's view, the Association's wage proposal is unreasonable and far exceeds increases granted other bargaining units within the County government. For example, it asserts CSEA members received raises in the range of three (3%) percent to three and nine tenths (3.9%) percent from 2007 to 2011, only after agreeing to increases in health insurance contributions and to an unpaid lunch hour for new hires. The County insists the Association's demand for a five (5%) percent increase exceeds the existing internal pattern and should not be granted.

The County argues the Association's wage demand is out of line with raises reflected in recent Police contracts cited as

comparable by the Association. It contends four (4) of five (5) PBA settlements since August 2008 in towns and villages within the County are in the three (3%) to four (4%) percent range. The County recognizes the four (4%) percent wage adjustment paid to its CSEA unit members in 2006 was larger than the three (3%) percent adjustment paid to the Association's members, but claims there were cost savings agreed to which funded the increase, particularly, the CSEA's agreement to change the paid work week for new hires. It maintains such wage increases should not be considered without corresponding offsets, e.g., establishing an Academy wage rate below Step 1 of the salary schedule.

The County insists it is unable to provide the wage increases demanded by the Association. It contends the cost of the Association's wage demand is the equivalent of a twenty one percent (21%) wage increase over two (2) years, or sixteen percent (16%) more than if the County's wage proposal of two and one half percent (2.5%) per year was granted.

#### **Overtime Proposals by Association**

The County rejects, as unnecessary, the Association's demand sick leave be counted as time worked for purposes of calculating overtime. It asserts time spent on sick leave is already included in the overtime calculation.

The County opposes the Association's demand to change to an overtime system by which its members receive overtime for hours

worked in excess of a regularly scheduled eighty (80) hour tour or more than forty (40) hours per week. It contends its Deputy Sheriffs are presently paid overtime after working more than one hundred sixty eight (168) hours in a twenty eight (28) day work cycle. The County asserts during the last round of negotiations, ~~the parties agreed the present overtime eligibility standard would~~ be followed. It urges granting the Association's demanded change in overtime would require restructuring the overtime system recently implemented by the parties. The County insists granting this demand also will cause overtime costs to skyrocket and increase its labor costs by the equivalent of a wage increase of almost eighteen percent (18%) over the term of this Award, at a time when the County is struggling to reduce costs.

#### **On-Call Pay**

The County opposes the Association's demand for a weekly payment to employees who are placed on call. It asserts this would be a new benefit not enjoyed by employees in other County bargaining units who are also on call. The County maintains a majority of Police jurisdictions cited by the Association as comparable, do not provide any on call pay. It contends this demand is not prudent and would cost the County the equivalent of an additional wage increase of more than three percent (3%) over the term of this Award.

### Insurance Demands by the Association

The County opposes the Association's demand for extension of dental and optical coverage to dependents of covered employees. It asserts adding dependent coverage to the existing individual benefit would be fiscally irresponsible and would provide a benefit not enjoyed by any other County bargaining units. The County claims Deputy Sheriffs in Dutchess and Ulster Counties do not receive dependent dental or optical coverage at employer expense.

The County also opposes the Association's demand to provide paid optical and dental coverage to retirees and their dependents. It maintains no other County employees enjoy such a benefit, nor do employees of other municipalities within the County or employees of Counties within the Mid-Hudson Valley Region.

The County opposes the Association's proposal to increase the health insurance opt-out payment from one thousand five hundred (\$1,500.00) dollars per year to fifty (50%) percent of the cost of the insurance premium. It contends the proposed increase is excessive and if granted, would exceed the highest opt-out payments enjoyed by other County units and other units of Counties within the Mid-Hudson Valley Region.

The County claims the Association's argument for an increased health insurance buyout incentive is based upon erroneous information and a flawed assumption. It contends the assertion all other labor units within the County have a buyout of two thousand

(\$2,000.00) dollars is not accurate and asserts the COBA bargaining unit has a buyout of one thousand five hundred (\$1,500.). The County maintains the Association's proposal for an increased buyout incentive incorrectly assumes an increase in the incentive amount will generate a higher number of employees deciding to opt out of County-provided health insurance. In the County's view, such assumption is unsubstantiated as the Association offers no guarantee even a single additional member will opt out if the incentive is increased.

#### **Education Reimbursement Fund**

The County opposes the Association's demand to increase the Education Reimbursement Fund from five thousand (\$5,000.00) dollars per year to ten thousand (\$10,000.00) per year. It contends no members of the bargaining unit have used this fund. The County insists no need or justification for this demand has been presented. It maintains eleven (11) out of twenty eight (28) police units within the County do not receive any education reimbursement and of the remaining seventeen (17), most provide a level of reimbursement lower than that enjoyed by the Association's members.

#### **In Service Training Stipend**

The County opposes the Association's demand to increase the stipend for In Service training from four hundred (\$400.00) dollars per day to six hundred (\$600.00) dollars per day. It asserts this

stipend exists to compensate unit members for training scheduled on days off and is adequate for such purpose. The County argues the Association's demand is without justification and exceeds stipend levels presently enjoyed by the COBA and SOA bargaining units. It contends if granted, this demand would cost the County the equivalent of a wage increase of two and seventy nine one hundredths percent (2.79%).

### **Meal Allowance**

The County opposes the Association's demand to increase, from eight (\$8.00) dollars to ten (\$10.00) dollars, the meal allowance for Deputy Sheriffs working four (4) consecutive hours of overtime. It argues such an increase is excessive and out of line with the allowance paid to COBA, SOA and CSEA unit members, all of whom receive the same eight (\$8.00) dollar allowance paid to Association members. The County also contends the existing eight (\$8.00) dollar allowance is higher than that paid to Deputy Sheriffs working for Rockland County and those working for Dutchess, Ulster or Putnam Counties.

### **Clothing Allowance**

The County opposes the Association's demand to increase the clothing allowance from six hundred (\$600.00) dollars to one thousand (\$1,000.00) dollars per year. It contends such an increase is unwarranted and would cost the equivalent of a wage increase of one and fifty seven one hundredths percent (1.57%).

The County asserts such an increase would give Association members a clothing allowance greater than any other County bargaining unit including the SOA. It maintains no evidence has been presented justifying such an increase.

### **Tour of Duty Differentials**

The County opposes the Association's demand to increase the tour of duty differential for working the "A" or "C" tours from one thousand five hundred sixty (\$1,560.00) dollars to ten percent (10%) of the employee's straight time rate of pay for all hours worked. It claims the SOA, COBA and Association units all presently receive the same differential of one thousand five hundred sixty (\$1,560.00) dollars. The County asserts granting this proposal will cost the equivalent of more than a four percent (4%) wage increase.

The County opposes the Association's demand to increase the differential paid for a temporary shift change, from six (\$6.00) dollars per shift to twenty five (\$25.00) dollars per shift. It claims the current six (\$6.00) dollar differential is the same as that paid to SOA and COBA members and no other Mid-Hudson Valley Region County unit receives a differential for temporary shift changes.

### **Physical Fitness Stipend**

The County opposes the Association's demand to increase this stipend from six hundred (\$600.00) dollars per year to one thousand

(\$1,000.00) dollars per year. It argues no justification exists for this proposed increase. The County claims no other comparable internal or external units currently receive such a stipend. It asserts granting the increase would impose the equivalent of a one and forty one hundredths percent (1.41%) wage increase upon the County, as ninety percent (90%) of the Deputy Sheriffs have already qualified for and received this stipend.

### **Sick Leave**

The County contends existing Sick Leave provisions for members of its CSEA bargaining unit do not support the Association's proposals. It asserts no additional Sick Leave was given to the CSEA unit and claims their formula for accruing Sick Leave was actually reduced to reflect their reduced work week. As well, the County maintains its CSEA unit already runs FMLA leave concurrently with Sick Leave. It argues this fact undermines the Association's position those leaves should not run concurrently for Deputy Sheriffs.

### **Retroactive Pay**

The County opposes the Association's demand for retroactive pay for any employee who worked during the term of the expired Agreement, regardless of whether the employee still works for the County or the reasons why his or her employment ended. It insists only Association members on the payroll of the County at time the Award is issued should receive retroactive pay, if awarded.

The County asserts a past practice exists by which retroactive pay is only paid to unit members if they are on payroll when an Agreement is ratified by the County. It contends granting this demand will cost the County the equivalent of a three and six tenths percent (3.6%) wage increase to pay the twenty (20) unit members who have separated or retired from County service between 2007 and June 30, 2009.

Beyond the Association's proposals, the County has made demands it urges should be granted by this Panel. It contends they are reasonable, appropriate and constitute a fair and reasonable package during challenging economic times.

**Overtime Reduction**

The County proposes existing overtime provisions be modified to bring them into compliance with, but not go beyond, federal overtime provisions of the Fair Labor Standards Act. It contends federal law requires law enforcement personnel assigned to a twenty eight (28) day work cycle be paid overtime after working one hundred seventy one (171) hours. The County maintains the parties previously agreed, as of December 31, 2005, Deputy Sheriffs would receive overtime after working one hundred sixty eight (168) hours in a twenty eight (28) day cycle.

The County now proposes to eliminate the one hundred sixty eight (168) hours provision and restore the threshold of one hundred seventy one (171) hours of actual work for overtime

eligibility. It also demands paid leave time and chart days not count toward meeting this overtime threshold. The County maintains these two (2) changes will end the costly practice by which County taxpayers pay an overtime premium for hours not worked while an employee is on leave. It claims restoring the threshold of one hundred seventy one (171) hours of actual work will restore the levels of overtime contemplated by the FLSA, while saving the County the equivalent of an eleven and one half percent (11.5%) wage increase over the term of this Award.

The County proposes to eliminate compensatory time as an optional form of overtime compensation under the Agreement. It asserts compensatory time has proven to be a large burden and costs the County twice as much money when an employee opts to receive compensatory time rather than cash payment for overtime. The County claims there is no dispute when a Deputy Sheriff stays out on compensatory time, he or she is still paid and it must also then pay an employee called in on overtime to fill in for the absent Deputy Sheriff. The County argues granting this proposal will generate significant savings for the County but will not lessen the employee's take home pay.

#### **Paging Devices/Cell Phones**

The County proposes to modify existing provisions (Article 14, subparagraph 9-a) by which employees may be required to wear pagers, so as to require they carry cell phones. It contends this

change is warranted because pagers are no longer in use. In the County's view, this is a housekeeping change only.

The County proposes to eliminate contractual restrictions upon its authority to discipline an employee who fails to carry or respond to a call on a County-issued cell phone or who declines an assignment when called in. It insists these changes are needed to enable it to enforce the requirement employees assigned a cell phone carry them and respond when called.

The County proposes to revise the current contract language regarding payment of call-in pay when a Deputy Sheriff, assigned a cell phone, is called into work. Presently, it contends, call-in pay commences when the employee responds to a call and accepts the assignment. The County demands the language be changed to commence call-in pay when the call is received, and not when the employee accepts the assignment. It explains when pagers were used, an employee who was paged had to return the County's call. However, when a cell phone is used, it is readily ascertainable when the cell phone conversation has occurred and the assignment has been accepted.

The County also demands when an employee is called in via a County-issued cell phone, he or she may be required to be on duty within a reasonable time, without having the choice of whether to accept the assignment. It insists this demand should be granted to meet the needs of the County Sheriff's Office.

## Longevity

The County proposes longevity payments begin upon completion of the anniversary year in question rather than at the beginning of the anniversary year. It claims an Award issued by Arbitrator Jacquelin Drucker resolved an earlier dispute whether longevity gets paid at the beginning or end of the anniversary year. The County asserts the Drucker Award required payments of longevity be made at the beginning of the anniversary year.

Nevertheless, the County insists it never intended to pay longevity at the beginning of an anniversary year and did not budget for doing so. It claims as a result of the Drucker Award, its longevity payments to Association members are inconsistent with those made to members of its other bargaining units, all of whom receive longevity payments upon completion of the anniversary year.

The County argues granting its proposal will foster administrative convenience, restore internal unit comparability and save taxpayers the equivalent of a three and thirteen one hundredths percent (3.13%) wage increase.

The County also makes a housekeeping proposal to delete Longevity provisions, set forth at Article 19(a) of the expired Agreement, which were only effective until January 2, 2004.

### **Step Placement**

The County proposes to change the prior contract language so as to permit it to place new hires with prior experience or training on a step higher than step one (1) of the salary schedule, without being required to up-step others hired during the year to the higher step granted to a new hire or transfer. It contends doing so will facilitate the County being able to attract of more qualified candidates including those with police certification. The County maintains granting this proposal will save training and other costs and will not reduce any benefit presently enjoyed by other members of the Association's bargaining unit. Its demand proposes to eliminate the first three (3) sentences of Article Twenty Three of the expired Agreement and to thereby end the upward adjustment for current employees in the same title but lower step of the new hire being assigned above step 1.

### **Health Insurance**

The County demands the Association's members increase their health insurance contributions to two thousand five hundred forty (\$2,540.00) dollars for individual coverage and two thousand nine hundred sixty five (\$2,965.00) dollars for family coverage, effective January 1, 2007, and each year thereafter by the same percentage increase in Empire Plan premiums. It insists these proposed increases are reasonable and in line with those paid by other bargaining units within the County government.

The County asserts during negotiations for the expired Agreement, the parties agreed to improve the Association members' retirement plan in exchange for the members paying an additional one thousand seven hundred ninety (\$1,790.00) dollars health insurance contribution beyond that required by the existing pattern which, it contends, was then five hundred (\$500.00) dollars for individual and seven hundred fifty (\$750.00) dollars for family coverage.

The County argues health insurance costs have skyrocketed in recent years. It contends from 2006 to 2009, Empire Plan premiums increased by more than eight hundred (\$800.00) dollars for individual coverage and more than one thousand eight hundred (\$1,800.00) dollars for family coverage. However, during this same period, the County asserts, the Association members' premium contributions have not increased, requiring the County to absorb these increased costs during the period since the last Agreement expired.

In the County's view, a contribution increase is needed to keep the internal bargaining pattern intact. It contends CSEA, Faculty and Staff & Chair units have all increased their health insurance contributions to nine (9%) percent with caps of seven hundred fifty (\$750.00) dollars for individual and one thousand four hundred fifty (\$1,450.00) dollars for family coverage in 2009; ten (10%) percent with caps of eight hundred seventy five (\$875.00)

dollars for individual and one thousand six hundred fifty (\$1,650.00) dollars for family coverage in 2010; eleven (11%) percent with caps of one thousand (\$1,000.00) dollars for individual and one thousand eight hundred twenty five (\$1,825.00) dollars for family coverage in 2011 for CSEA and ten (10%) percent with caps of nine hundred twenty five (\$925.00) dollars for individual and one thousand seven hundred twenty five (\$1,725.00) dollars for family coverage in 2011 for Faculty and Staff & Chair; and eleven (11%) percent with caps of one thousand (\$1,000.00) dollars for individual and one thousand eight hundred twenty five (\$1,825.00) dollars for family coverage in 2012 for Faculty and Staff & Chair. The County contends proposals for increased health contributions by employees are pending before the SOA and COBA fact finder.<sup>5</sup>

In light of these asserted facts, the County urges its proposal for increased employee health insurance contributions is warranted and should be granted. It claims to have lost the equivalent of more than a two percent (2%) wage increase by having to cover the increased costs of health insurance premiums for Association members during the two (2) years they have not paid for them.

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<sup>5</sup> The Panel has been advised that COBA has since agreed upon a successor contract.

The County proposes where an employee elects the medical insurance buy out, such election be deemed to continue in effect until such time as he or she re-enrolls in the health insurance plan during an annual open enrollment period, or upon a qualifying event. It contends presently, an employee who opts out but does not inform the County he or she wishes to continue opting out, is automatically re-enrolled in the County's health insurance plan.

The County claims most employees who opt out continue to do so in the following year. It argues its proposal to have the opt out continue unless re-enrollment is requested, will save administrative time and money and avoid having to track down employees who fail to respond to inquiries about re-enrollment. The County also contends its proposal will avoid the cost of having to pay for the health insurance of an employee who has, under the existing provision, been automatically re-enrolled after failing to respond. It asserts the CSEA, Faculty and Staff & Chair units have each agreed to this proposal. For all these reasons, the County urges this proposal should be granted.

As well, the County proposes upon granting of the foregoing proposal, contract language should be revised to provide when an employee re-enrolls in the medical health insurance plan upon a qualifying event, his or her buyout shall be prorated. It argues this revision is required as a necessary housekeeping matter.

The County proposes dual health insurance coverage for employees married to other County employees, be eliminated and replaced with an option of one (1) family plan or two (2) individual plans. It argues this proposal is a necessary cost containment measure already agreed to by the other County bargaining units. The County asserts no present Association members are married to other County employees and therefore, current unit members will not be directly affected by the granting of this proposal. It insists doing so will eliminate unnecessary benefits without decreasing coverage for employees.

The County proposes unit members be required to contribute one thousand seven hundred ninety (\$1,790.00) dollars per year even if they opt out of County-provided health insurance coverage. It asserts in the expired Agreement, the Association agreed an extra contribution toward health insurance would be made by unit members in this amount as payment toward an improved retirement benefit package. The County claims it is unjust and inequitable to allow unit members to opt out of the County-provided health plan and receive the opt out payment while not making the extra contribution. In effect, it argues the unit members are receiving the improved retirement package without upholding their promise to pay the extra contributions which were agreed upon as the means for funding same.

The County claims to have lost more than fifty one thousand (\$51,000.00) dollars in contributions toward the improved retirement benefit from unit members who have declined health insurance coverage. It asserts this loss will continue to grow until the enhanced contributions sunset in 2013, unless this proposal is granted.

**Elimination of Textbook Reimbursement**

The County proposes to eliminate reimbursement for textbooks purchased by Association members. It claims no members have yet utilized this benefit. However, the County asserts employees from other bargaining units have abused the reimbursement by receiving same and then selling the books on E-Bay. It contends CSEA has agreed to eliminate textbook reimbursement and a proposal to do so is pending with the SOA. The County asks its proposal be granted to maintain conformity with these other units.

**Elimination of Meal Allowance**

The County proposes to eliminate the eight (\$8.00) dollar meal allowance paid to employees who work four (4) or more consecutive hours of overtime. It asks this proposal be granted as a cost saving measure and claims doing so will save the County more than fourteen thousand (\$14,000.00) dollars over the two (2) year term of this Award.

## Housekeeping Proposals

The County asks its several Housekeeping Proposals be granted. It proposes to delete language from Article 24, Section 1(c) of the expired Agreement which related to health insurance funding and was only in effect until January 2, 2004, and thereafter was replaced by other language. ~~The County also demands language in Article 14(1) (a) relating to overtime, be deleted because such language expired on January 2, 2004 and was replaced by another provision.~~

The County proposes language in Article 19(a) concerning longevity be deleted because such language expired on January 2, 2004 and was replaced by another provision. It requests language in Article 27(1) (a) and (3) relating to salaries during the term of the prior contract, now expired, be deleted. The County proposes to delete from the first sentence of Article 27(4) the phrase "and grade allocation", so as to clarify the listing on Schedule C of job classifications included within the bargaining unit lists only classifications and not grade allocations.

The County proposes to revise Article 30(2) to reflect a current practice by which boots are issued to Deputy Sheriffs and not shoes, and to delete expired contract language.

The County proposes a language change to a sentence in Article 24 which states "The employee understands that participation in a medical health plan is mandatory", by deleting the first four (4) words of the sentence. It asserts this change should be made to

reflect the reality no party can state what an employee understands.

The County argues these housekeeping proposals will have no impact upon unit members and should be granted.

### **Drug and Alcohol Testing Procedures**

The County proposes to modify current provisions for Drug and Alcohol Testing codified in Article 38 of the expired Agreement. It asserts under those provisions, an employee who tests positive for drug or alcohol use may be suspended for up to sixty (60) days and must be evaluated for treatment by a substance abuse professional. If the professional concludes treatment is necessary, the employee must undergo and successfully complete a drug/alcohol rehabilitation program. Refusal to participate in or successfully complete the program is deemed just cause for discharge. An employee who enters a program must be tested prior to reinstatement and if he or she tests positive, the positive test is deemed just cause for discharge without further right to rehabilitation. The current provisions permit the employee who has tested positive to grieve, through the Agreement's grievance and arbitration procedure, the positive finding, basis for reasonable cause, or randomness of selection for testing. They provide the arbitrator has no power to modify or mitigate the agreed upon consequences of a positive drug or alcohol test.

The County demands these current provisions be modified as set forth in its separate written proposal. It proposes an employee who tests positive for drug use and whose positive report is verified by the Medical Review Officer and who does not request a re-test, or who tests positive upon the re-test, shall be immediately ~~terminated from employment without a hearing under the disciplinary~~ provisions of the Agreement and without recourse in any other forum.

The County proposes a non-permanent employee who tests positive for alcohol use with an alcohol concentration greater than .04 shall be immediately terminated without a hearing under the disciplinary provisions of the Agreement and without recourse in any other forum. It further proposes a permanent employee who tests positive with an alcohol concentration of .04 or greater shall be suspended without pay and may be permitted to undergo rehabilitation in an approved program, with the right to return to work upon the program attesting he or she has successfully completed the program and is cleared to return to duty and perform all essential job duties. Such return would also be conditioned upon passing a return to work drug and or alcohol test and the approval of the County's Personnel Commissioner and the Sheriff or their designees. The County proposes failure to participate in and satisfactorily meet the requirements of the program will result in immediate termination without a hearing or recourse. Additional

positive tests for alcohol use by an employee with permanent status would result in immediate termination under the County's proposal.

As well, the County proposes any employee who tests positive for alcohol must submit to and pass a return to work alcohol test before returning to duty and regular pay status. A positive test result on a return to work alcohol test will result in immediate termination under this proposal, without a hearing or recourse. Additional provisions for random alcohol testing are proposed for up to one (1) year after an employee has been reinstated after participating in an approved program.

The County argues its Drug and Alcohol Testing proposal is warranted and should be granted. It claims drug use has been a problem in the Association's bargaining unit, with employees testing positive for illegal drug use. The County claims difficulties exist terminating employees who test positive, using the current arbitration process. It insists changes are needed to enable it to maintain and enforce a zero tolerance policy.

The County argues immediate loss of employment is needed to protect the public against the dangers inherent in having a law enforcement officer who uses illegal drugs serving in a law enforcement position. The County asserts unit members testing positive for drugs have no business working for the County in a law enforcement position.

The County acknowledges the expired Agreement's Drug and Alcohol protocols did not require immediate discharge for a positive drug test, but, instead, provided for evaluation by a substance abuse professional and completion of any necessary drug rehabilitation program. It insists such alternatives are at odds with the zero tolerance approach embodied in its proposal.

The County asserts Association members are charged with enforcing the drug laws and with protecting the public and the public's property. It claims drug use by Deputy Sheriffs could lead to devastating consequences as employees' judgment and perceptions become clouded. Simply put, the County contends Deputy Sheriffs who have tested positive for illegal drug use cannot be allowed to continue working in law enforcement positions. It therefore urges we grant its proposal, so as to enable the County to readily terminate those unit members found to be using illegal drugs or who have tested positive for alcohol.

#### **Indemnification**

The County proposes Article 4(4) of the expired Agreement be modified to provide the Association will indemnify the County not only for claims made by reason of acts undertaken to comply with agency fee deduction laws (except for negligence or intentionally wrongful conduct by the County) but also for acts undertaken to implement all other deductions recited in Article 4 (membership dues, life insurance premiums, contributions to Association

sponsored health and welfare plans, deferred compensation contributions). It claims the expired Agreement provides indemnification only for agency fee deductions. The County contends indemnification with respect to these additional deductions is appropriate because the County processes the ~~deductions as a convenience to unit members and should not bear the~~ risk of having to litigate or suffer adverse claims on account of providing a deduction process which solely benefits employees and for which it receives no benefit. It asserts recent negotiations with its CSEA, Staff and Chair and Faculty bargaining units have resulted in expansion of the indemnification provisions for deductions made for those units. The County maintains similar proposals are pending with the COBA and SOA units. It urges this proposal be granted.

**Disciplinary Procedure (Fact-Finding)**

The County proposes to increase the number of accrued days for which a unit member can be docked for disciplinary purposes, from five (5) to ten (10). It contends under the expired Agreement, disciplinary options are limited to a written reprimand, suspension without pay, a fine, up to five (5) days loss of accruals, reduction in grade or dismissal. The County asserts sometimes the Sheriff would prefer to dock accrued leave time but instead imposes a suspension because the five (5) day limit on docking accrued time is too limiting. The County claims increasing the number of

accrued days that may be docked will reduce overtime costs by avoiding the need to fill a suspended employee's shift.

The County notes the Association's opposition to its proposed revisions to the existing Disciplinary Procedure Article includes an argument against a proposal to increase the number of days a unit member may be suspended without pay under the alternative disciplinary arbitration process. The County claims this portion of its proposals was withdrawn during the July 13, 2009, hearing.

The County proposes replacing the American Arbitration Association (AAA) Arbitrator Selection Procedure with a Bench Panel of Arbitrators and an Expedited Arbitration Process. It maintains the AAA process is lengthy and expensive and has resulted in inordinate delays. The County urges a more timely process for arbitrator selection is needed.

**Change of Hours Notification (Fact Finding)**

Pending in Fact Finding is the County's proposal to modify Article 5, paragraph 9, to reduce the advance notice the Sheriff must give before changing the start or end time of a shift by up to two (2) hours. For such a change, it proposes the amount of advance notice that must be given be established at twelve (12) hours prior to the start of the new assignment, instead of the forty eight (48) hours provided by the expired Agreement. Also pending in Fact Finding is the County's proposal to reduce from twenty one (21) to seven (7), the number of days advance notice the

Sheriff must provide before changing a unit member's shift assignment.

The County maintains these proposals are reasonable and needed to assure adequate flexibility in the Sheriff to meet manpower needs as they arise and to limit unnecessary overtime expenses. It contends no internal County units or any other Mid-Hudson Valley Deputy Sheriff units have any contractual restriction on the Employer's ability to change start or end times of shifts. The County asserts notice provisions prior to a change in shift assignment exist in only Sullivan and Orange Counties and in none of the other Mid-Hudson Valley County Deputy Sheriffs contracts. It claims a proposal is pending to reduce the notification provided to SOA unit members prior to a change in shift assignment.

**Sick Leave (Fact Finding)**

The County proposes Sick Leave shall run concurrently with Family and Medical Act (FMLA) Leave, provided the leave is used for an FMLA qualifying event. It contends other County bargaining units except for COBA run Sick Leave concurrently with FMLA leave and a proposal to do so is pending with the COBA Fact Finder. The County asserts this proposal is a needed measure of cost containment and will reduce the amount of time employees are on paid leave while still receiving County-provided health insurance.

The County proposes existing provisions permitting the Sheriff to require a physician's certification for sick leave in

excess of four (4) consecutive work days, or in cases of apparent abnormal or abusive use of sick leave, be modified by allowing a physician's certification to be required for any sick leave without condition. It insists this change is needed to provide the Sheriff sufficient flexibility to assure Sick Leave is used only for its intended purpose of providing leave when an employee is unable to report to work because of illness. The County contends no other Mid-Hudson Valley counties have a comparable restriction on an Employer's ability to police sick leave usage. It claims Sullivan and Dutchess Counties may require a Deputy Sheriff to produce a doctor's note after an absence longer than two (2) days, but Rockland and Ulster Counties have no restriction on when they can require a doctor's note be produced.

**Shortening the AWOL Period (Fact Finding)**

The County proposes shortening the notice provided to an employee absent without authorization and before which he or she will be deemed to have resigned if he or she does not contact the Sheriff. It claims at present, unit members are notified after seven (7) calendar days' absence without authorization that he or she will be deemed to have resigned unless he or she contacts the Sheriff within fourteen (14) calendar days from initial absence. The County proposes to shorten these time frames to a notification after five (5) calendar days of unauthorized absences and ten (10) calendar days to contact the Sheriff or be deemed to have resigned.

The County proposes these shortened time frames still provide adequate opportunity for a unit member to respond, but will permit the Sheriff to more quickly terminate an employee who has abandoned his or her job. It asserts its proposal would bring the Association's Agreement into conformity with other County bargaining units except COBA, before whose Fact Finder a similar proposal is pending. The County insists its proposal is reasonable and justified.

**Written Notice to County and Sheriff of Wish to Negotiate**

The County proposes the Association provide written notice to both the County and the Sheriff of its wish to commence negotiations for a successor Agreement. It maintains the County and Sheriff are joint employers of the Association's members and both should, therefore, receive notice in a clear, written manner to avoid past issues regarding receipt of notice to commence negotiations.

**Tenure (Fact Finding)**

The County proposes the provisions of Article 21 of the expired Agreement be deleted in their entirety. Those provisions grant employees in the non-competitive and labor classes the same rights conferred upon employees in the competitive class under Civil Service Law Section 75 and local Civil Service Rules concerning removal or suspension after completion of probation. The County asserts none of the positions in the Association's

bargaining unit are within the non-competitive or labor classes and its proposal, therefore, is in the nature of a housekeeping matter that will not impact unit members.

**Deletion of Sunsetting Hours of Work Provisions (Fact Finding)**

The County proposes Article 5, Sections 1 - 4 of the expired Agreement, be deleted. It claims these provisions sunsetted on December 31, 2003 and were replaced by Sections 5 - 12 of the expired Agreement.

**Deletion of Procedure for Appeals from Classification Decisions (Fact Finding)**

The County proposes deleting the contractual procedure contained in Article 28 for appealing from decisions about position classifications. It asserts the existing procedure consists of old CSEA language having no application to the Association's bargaining unit and views its deletion as a housekeeping matter.

**Deletion of Defensive Driving Provision**

The County proposes to delete Article 31, Section 12 of the expired Agreement. It contends this provision deals with Defensive Driver Training and asserts such training is now covered by Article 25 of the expired Agreement.<sup>6</sup> The County asserts the proposed deletion is a housekeeping matter.

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<sup>6</sup> In its proposal No. 27, the County has demanded Article 25, Section 2 of the expired Agreement be revised to give the Sheriff discretion to include in the areas of instruction or

## Tentative Agreements

The County asserts prior to Fact Finding, the parties agreed to County proposals 14 (Holidays), 15 (Performance Adjustment), 16 (Grade Allocation), 19 (Seniority), 33 (Grievance Procedure), 34 (Promotions) and 37 (Sheriff Unit Positions). It asks these proposals be incorporated into our Award.

In all, the County asserts its proposals are justified under the relevant statutory criteria. It asks they be awarded.

## Opinion

This Opinion and Award is the culmination of the Panel's deliberations and examination of the record evidence when considered in light of the statutory criteria which is set forth in Section 209.4 of the Taylor Law. That section provides the following criteria:

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

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training employees may be required to undergo, "training in Defensive Driving given one time every three years".

hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

**1. Term of Award**

The period of time encompassed by this Opinion and Award was stipulated by the parties to be the calendar years 2007 and 2008. Accordingly, the term of this Award shall be January 1, 2007, through December 31, 2008.

**2. Wages**

The Association has proposed a five percent (5%) wage increase on January 1 of each year. The County has proposed a two and one half percent (2.50%) increase on January 1 of each year. We find both proposals unacceptable.

Given the recent severe recession which continues to adversely impact the County's budget, there can be no justification for a salary increase of five percent (5%) on January 1 of each year. Under no circumstances can this level of increase be justified in light of the relevant statutory criteria.

On the other hand, the County's proposal also is not justified. It would result in Deputies unnecessarily falling behind their counterparts in comparable jurisdictions. As explained below,

the financial circumstances of the County can be taken into account without requiring wages fall further behind the wages paid to law enforcement officers in comparable jurisdictions. Thus, the County's wage proposal also cannot be awarded.

We are persuaded wage increases between the Association's proposal and the County's proposal are appropriate here. In order to determine with specificity the appropriate wage increase, it is necessary to analyze the evidence presented by the parties concerning the statutory criteria.

The first statutory criterion requires a comparison of wages, hours and conditions of employment of the Sheriff's Deputies 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.

The County introduced evidence bearing upon its assertion the relevant comparison of "wages, hours and conditions of employment of the employees involved in the arbitration proceeding" should be drawn with those wages, hours and conditions of employment enjoyed by the existing bargaining units within the County's government. The County asserted an internal pattern was developed over the course of negotiations with its other bargaining units, by which increases were granted in the range of three percent (3%). In particular, it contended the COBA unit received a three percent

(3%) increase in 2005 and 2006 and the CSEA unit received a three percent (3%) raise retroactive to January 1, 2007 and a three and one half percent (3.5%) increase in 2008 after agreeing to certain concessions making such raise more affordable. The County maintained its proposed increase of two and one half percent (2.5%) per year for the term of this Award is in line with the foregoing pattern but also takes into account recent, adverse economic conditions impacting its ability to pay.

In contrast, the Association introduced evidence tending to demonstrate the job functions of certain members of the Association were similar to those job functions performed by Police Officers in twenty seven (27) full time Police Departments of other jurisdictions within the County. It urged the Panel adopt those police departments as the appropriate comparison group for the purpose of applying the criteria in Section 209.4 of the Taylor Law.

The Association presented evidence demonstrating of the twenty eight (28) jurisdictions, including the County, employing full time Police Officers, its members ranked eleven (11) out of twenty eight (28) for base wages plus longevity in 2004 and 2005 and thirteen (13) out of twenty eight (28) for 2006. It also brought forth evidence showing base wage percentage increases received by full time Police Officers in those twenty seven (27) other jurisdictions within the County in 2006 ranged from a low of two percent (2%) in

one instance (Town of Warwick) to a high of eleven and thirty five one hundredths percent (11.35%) (Town of Tuxedo Park), with several jurisdictions receiving percentage increases in the four percent (4%) to five percent (5%) range and one (1) (Village of Tuxedo Park) an increase of seven percent (7%). The Association urged its ~~proposal for five percent (5%) increases in each year of our Award~~ was in line with increases granted these other jurisdictions.

We determine it would be inappropriate to ignore the historical relationship developed between members of the Association and other employees of the County concerning wages, hours and terms and conditions of employment. Such relationship, while not dispositive, is deserving of consideration in our determination of the terms and conditions of employment to be awarded.

On the other hand, it would also be improper to ignore the wages, hours and terms and conditions of employment enjoyed by Police Officers in the towns and villages of Orange County when determining the appropriate salary and benefit levels for members of the Association. After all, the record demonstrates Deputy Sheriffs employed by the County perform functions which, in many cases, are similar to those performed by Police Officers in those jurisdictions. Therefore, in reaching our determination, the Panel has also considered the salaries and other terms and conditions of

employment of Police Officers in these villages and towns as a component in the overall determination of comparability.

As to the interest and welfare of the public, we agree with the County its citizens are not benefited by a salary increase which the County cannot afford and which results in reductions in other needed services. Therefore, logically, the County's proposal, which is lower than the Association's, is preferred when evaluating the economic interest and welfare of the public.

However, the public's interest and welfare is also served by a stable law enforcement workforce whose morale is high. Thus, we are persuaded a wage package which deviates dramatically from the type of salary increases provided to other Police Officers in comparable jurisdictions, or which leaves the Sheriff's Deputies earning significantly less than Police Officers in comparable jurisdictions, does not serve the interest and welfare of the citizens of the County. After all, the interest and welfare of the public is not limited solely to the public's financial interest and welfare. By necessity, it also must involve the community's interest and welfare in having its law enforcement personnel continue to serve its essential needs for protection and security.

Under any reasonable view, the wage proposal set forth by the County will adversely affect employee morale. This does not serve the interests and welfare of the public. Moreover, it is not

necessitated by the evidence submitted by the County concerning its financial ability to pay.

The County has presented persuasive evidence with respect to the effects of the recent economic recession. Thus, given this issue, the statutory criterion requires we not award the five percent (5%) wage increases being sought by the Association.

However, the County has not shown it is unable to pay wage increases in excess of its proposal for a two and one half percent (2.5%) annual increase. We are convinced the economic evidence demonstrates the County can pay the increases awarded below without unduly burdening County residents and taxpayers.

By adding a new step 6 to the existing Salary Schedule, we are providing Association members an opportunity to receive increased wages at step 6 and beyond, more than they would otherwise receive were no new step created. For example, under the existing Salary Schedule, an employee who reaches step 5 would then remain at step 5 wage levels until reaching year 10 where a longevity increase is codified. With the new step 6 we are awarding herein, an employee would receive the step 6 increase at step 6 and each year, thereafter, providing him or her additional income as he or she continues to be employed.

At the same time, establishing a new step 6 defers until an employee's reaching such step, the County's expenditure of the increased wages provided for step 6 and beyond, allowing those

extra monies to be used for other needs and priorities as the County continues to deal with a challenging economic environment. In this way, we have enabled the Association's members to receive additional wages while also easing the burden the County might otherwise have were such increment to be built into the Salary Schedule earlier in an employee's career.

The next statutory criterion requires a comparison of the peculiarities of being a Sheriff's Deputy with 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. The unique and extensive hazards confronted by Sheriff's Deputies are undisputed. Their work requires unique physical, educational and mental qualifications as well as extensive training.

These unique aspects of being a Sheriff's Deputy do not dictate the awarding of either the Association's or the County's wage proposal. However, they convince us a relevant comparison to be drawn pursuant to the statutory criteria, is with Police Officers in comparable jurisdictions.

The next statutory criterion requires a consideration of the terms of the 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.

This criterion recognizes each negotiation (including interest arbitration) cannot be viewed in a vacuum. Cognizance must be taken of the parties' bargaining history. In this regard, it is important to consider the relationship between the terms and conditions of employment of the Sheriff's Deputies and the County's other unionized employees. As discussed above, such relationship, while not dispositive, cannot be ignored when determining the wages, hours and terms and conditions of employment of the Sheriff's Deputies. In reaching our determination, we have fully considered the internal relationship existing between the Association's members and other County employees concerning terms and conditions of employment, together with all other relevant factors.

Comparisons between the wages paid to the Sheriff's Deputies and to Police Officers in comparable jurisdictions, as well as considerations of the internal pattern, financial prudence and the relevant statutory criteria, support the awarding of a wage increase in between the increases proposed by the Association and the County.

Accordingly, we shall award a revised wage schedule for the Deputy Sheriffs' Salary Schedule, as follows:

- 1) Effective December 31, 2008, at 11:59 p.m., an Academy step shall be established in the amount of thirty one

thousand two hundred (\$31,200.00) dollars, which shall not affect any employees already hired before the issuance of this Award. This Academy rate shall only apply for the first twenty six (26) weeks of employment.

- 2a) Effective January 1, 2007, steps 1 through 5 of the expired 2006 Salary Schedule shall be increased to the following base pay amounts:

Step 1: forty thousand (\$40,000.00) dollars;  
~~Step 2: forty three thousand seven hundred and four~~  
(\$43,704.00) dollars;  
Step 3: forty five thousand four hundred sixty six  
(\$45,466.00) dollars;  
Step 4: forty seven thousand nine hundred sixty one  
(\$47,961.00) dollars;  
Step 5: fifty four thousand seven hundred thirty  
seven (\$54,737.00) dollars;

- 2b) Effective January 1, 2007, a new step 6 shall be added to the Deputy Sheriffs Salary Schedule in the amount of fifty five thousand two hundred sixty four (\$55,264.00) dollars for base pay.

- 3a) Effective January 1, 2008, steps 1 through 5 of the Deputy Sheriffs Salary Schedule shall be increased to the following amounts:

Step 1: forty one thousand two hundred (\$41,200)  
dollars;  
Step 2: forty five thousand one hundred three  
(\$45,103.00) dollars;  
Step 3: forty six thousand nine hundred sixty six  
(\$46,966.00) dollars;  
Step 4: forty nine thousand five hundred ninety two  
(\$49,592.00) dollars;  
Step 5: fifty six thousand six hundred fifty two  
(\$56,652.00) dollars;

- 3b) Effective January 1, 2008, step 6 of the Deputy Sheriffs Salary Schedule shall be increased to fifty six thousand eight hundred ninety four (\$56,894.00) dollars. Effective July 1, 2008, step 6 of the Deputy Sheriffs Salary Schedule shall be increased to fifty seven thousand six hundred ninety one (\$57,691.00) dollars.

4. Effective January 1, 2007, the base pay amount at year ten (10) of the Deputy Sheriffs Salary Schedule, now also referred to as Step 7, shall be increased by an amount equal to twelve percent (12%) of the step 6 base wage amount and shall be increased by the same percentage when step 6 base wage amounts increase on January 1, 2008, and July 1, 2008.
5. Effective January 1, 2007, the base pay amount at year fifteen (15) of the Deputy Sheriffs Salary Schedule, now ~~also referred to as Step 8,~~ shall be increased by an amount equal to eighteen percent (18%) of the step 6 base wage amount and shall be increased by the same percentage when step 6 base wage amounts increase on January 1, 2008, and July 1, 2008.
6. Effective January 1, 2007, the base pay amount at year twenty (20) of the Deputy Sheriffs Salary Schedule, now also referred to as Step 9, shall be increased by an amount equal to twenty five percent (25%) of the step 6 base wage amount and shall be increased by the same percentage when step 6 base wage amounts increase on January 1, 2008, and July 1, 2008.

We note these percentage increases in longevity payments are intended basically to codify the longevity amounts previously negotiated into the expired Agreement.

We shall award a salary schedule for Deputy Sheriff and Sergeants as follows:

1. Effective January 1, 2007 and for the term of this Award, the base pay upon Appointment (also referred to as Step 1) shall be twenty two and seven tenths percent (22.7%) above the Step 6 base pay for Deputy Sheriffs;
2. Effective January 1, 2007 and for the term of this Award, the base pay at year 5 (also referred to as Step 2) shall be two and sixty seven one hundredths percent (2.67%) above the Step 1 base pay for Deputy Sheriff and Sergeant;
3. Effective January 1, 2007 and for the term of this Award, the base pay at year 10 (also referred to as Step 3) shall be three and one hundred seventy five thousandths percent (3.175%) above the Step 2 base pay for Deputy Sheriff and Sergeant. We note that these percentage differentials are

intended basically to codify the amounts previously negotiated into the expired Agreement;

4. Effective December 31, 2007, in no event shall a Deputy Sheriff promoted to Deputy Sheriff and Sergeant receive less than one thousand five hundred (\$1,500.00) dollars more than his or her previous base salary inclusive of longevity.<sup>7</sup>

~~These wage increases comport with the record evidence~~  
concerning the statutory criteria. In particular, the wages established for 2007 represent increases in line with the pattern of percentage increases shown by the County for other units within its workforce. As well, the wages established at steps 1 through 5 for 2008, reflect annual increases ranging from three percent (3%) to three and one half percent (3.5%) over 2007. Step 6 has a blended rate in 2008 of three percent (3%). These increases for the time period covered are reasonable and appropriate under all of the proven circumstances and with due regard for the statutory criteria. We have taken into account the financial circumstances of the County and its residents and taxpayers while also addressing the Association's priority its membership receive appropriate wage increases.

We recognize Step 6 is established as of 2007 at a modest increase of approximately five hundred (\$500.00) dollars over Step 5, but are convinced doing so will enable unit members to realize,

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<sup>7</sup> By this determination, a pending grievance concerning newly promoted Deputy Sheriff and Sergeant pay shall be withdrawn and deemed to have been settled.

thereafter, additional income as the Step 6 base is continued and increased in 2008. These wage improvements help establish a wage and benefit package competitive with those enjoyed by other law enforcement personnel working in comparable jurisdictions. It is appropriate they be granted.

### **3. Clothing Allowance**

We find a reasonable increase in the Clothing Allowance is appropriate to enable unit members to keep pace with clothing costs related to their duties. Accordingly, effective January 1, 2007, the allowance provided by the expired Agreement shall be increased by seventy five (\$75.00) dollars to the sum of six hundred seventy five (\$675.00) dollars for steps 1 through 5 on the Deputy Sheriffs' Salary Schedule and all steps on the Deputy Sheriff and Sergeant Salary Schedule. Effective January 1, 2007, the clothing allowance of six hundred seventy five (\$675.00) dollars shall also be added to the new step 6 of the Deputy Sheriffs' Salary Schedule.

Effective January 1, 2008, the clothing allowance shall be increased an additional seventy five (\$75.00) dollars to the sum of seven hundred fifty (\$750.00) dollars for steps 1 through 5 of the Deputy Sheriffs' Salary Schedule. Effective January 1, 2008, the clothing allowance for step 6 of the Deputy Sheriffs' Salary Schedule and for all steps on the Deputy Sheriff and Sergeant Salary Schedule, shall be increased to the sum of eight hundred (\$800.00) dollars.

Upon implementation of the Academy Step, the clothing allowance for the Academy Step shall be seven hundred fifty (\$750.00) dollars.

**4. In-Service Training**

We conclude an increase in the stipend provided by the expired Agreement for in-service training days attended by officers in off-duty status, is warranted. Accordingly, effective January 1, 2008, the existing stipend of four hundred (\$400.00) dollars per training day shall be increased to four hundred seventy five (\$475.00) dollars per training day.

**5. Tour of Duty Differential**

The expired Agreement provides a differential of one thousand five hundred sixty (\$1,560.00) dollars per year, in addition to a unit member's regular straight time rate of pay, for all hours worked on a shift whose hours commence after 2:00 p.m. We find the amount of this differential should be increased by seventy five (\$75.00) dollars, to the sum of one thousand six hundred thirty five (\$1,635.00) dollars per year, effective January 1, 2008. Such increase is appropriate and provides a reasonable differential to those unit members working shifts extending into evening or overnight hours.

**6. Physical Fitness Incentive Payments**

The expired Agreement provided incentive payments according to an agreed upon formula, for employees choosing to participate in a physical fitness test. The payments were to be made from a pool of money totaling six hundred (\$600.00) dollars times the number of ~~employees in the bargaining unit at the time of testing.~~ We conclude the per employee amount of six hundred (\$600.00) should remain in effect as of January 1, 2007 and should be increased as of January 1, 2008 by seventy five (\$75.00) dollars to six hundred seventy five (\$675.00) dollars. Such increase is appropriate and will maintain the physical fitness incentive at reasonable levels.

**7. Personal Leave**

The expired Agreement provides, in Article Nine, "personal leave accruals shall not be compensated in the event of an employee's separation from County service. However, when an employee is transferred within County service his/her unused personal leave shall be transferred with him".

We find it appropriate the contract language be changed, effective December 31, 2008, to allow conversion of unused personal leave to sick leave in an employee's last year of employment for those who do not complete a full year. As well, we conclude personal leave shall be prorated during a unit member's last year of employment.

These measures are reasonable improvements and are warranted to enhance a unit member's sick leave allotment, which may be used for certain purposes beneficial to the member upon retirement from County service pursuant to Article Seven of the expired Agreement.

**8. Sick Leave and FMLA Leave**

~~We find it appropriate to require Sick leave shall run~~  
concurrently with FMLA leave, provided the leave usage is for a FMLA qualifying event. Granting this requirement is consistent with most other County bargaining units, who run Sick Leave concurrently with FMLA leave. It also provides a reasonable measure of cost containment needed by the County.

Consistent with the parties' accord reached during the proceeding concerning our consideration of this item, we shall condition this provision upon the parties executing a separate letter, incorporated herein and annexed hereto as Appendix B, agreeing this subject is arbitrable in this proceeding and in future interest arbitration proceedings.

**9. Step Placement for New Hires and Transfers**

In light of the timing of this Opinion and Award, we decline to grant this proposal and leave the matter to the parties for their consideration.

**10. Health Insurance Opt-Out**

We shall grant a provision, effective December 31, 2008 and thereafter, by which an employee's election of the optional buy-out

of the medical portion of health insurance coverage shall continue in effect unless and until the employee reenrolls in the health insurance plan during open enrollment or upon a qualifying event. In this event, the payment to the employee shall be prorated.

This provision will relieve the County of the unnecessary ~~administrative burden of having to annually contact unit members~~ who have opted out to determine whether they wish to continue opting out and also avoid an employee from realizing a windfall when reenrolling in the health insurance plan. It is reasonable, once an employee has opted out of County-provided medical insurance, to place the burden on him or her to reenroll should he or she wish to restore coverage.

#### **11. Health Insurance Dual Coverage**

We conclude, effective December 31, 2008 at 11:59 p.m., if an employee is covered under the County's medical insurance program as a dependent of his or her spouse (who is also a County employee), dual family coverage shall be eliminated. Instead, the employee and his or her spouse will be permitted to have one (1) family coverage and one (1) individual coverage. Such an arrangement makes sense. It is reasonable and is awarded. We also shall direct any such unit members who received dual family coverage after December 31, 2008, at 11:59 p.m. and up to the date when this provision is implemented by the County following issuance of this Award, shall not be subjected to any claims or proceedings by the County to

recover payment for the dual family coverage being eliminated by this Award.

**12. Drug and Alcohol Testing**

We shall grant those Drug and Alcohol Testing Procedures as are now in force for the County's COBA bargaining unit. A copy of ~~those Procedures is appended to this Award as Appendix A and~~ incorporated herein. We recognize the County urged adoption of revised procedures demanded prior to appointment of this Panel and Fact Finder. However, we conclude adoption of the same procedures as now exist for the COBA bargaining unit is appropriate for the Deputy Sheriffs bargaining unit and grant them, accordingly. It goes without saying, the County has a legitimate right to ensure Deputy Sheriffs are free of illegal drugs.

Consistent with the parties' accord reached during the proceeding concerning our consideration of this item, we shall condition this provision upon the parties executing a separate letter, incorporated herein and annexed hereto as Appendix B, agreeing this subject is arbitrable in this proceeding and in future interest arbitration proceedings.

**13. Notice of Bargaining**

We direct notice of a party's desire to negotiate on terms and conditions of employment shall be given in writing to the other party. Such notice by the Union shall be given to both the Sheriff and to the County Executive. We find these provisions are

reasonable and appropriate to assure the requisite notice is given to these County officials, both of whom have an interest in being duly notified of a party's wish to negotiate.

**14. Housekeeping Items**

We make no Award upon demands the parties have identified as "Housekeeping" items. We leave those demands to the parties.

**15. Retroactivity**

We find it appropriate to limit retroactivity of the wage increases and adjustments being awarded herein, to unit members still employed or those who have died, retired or become disabled due to a work-related injury. Accordingly, only those unit employees who were employed by the County on the date of this Award shall be eligible for wage increases and or retroactive wage adjustments, except that employees who have died, retired or become disabled from work-related injury shall be eligible for retroactive wage adjustments for any applicable period(s) of active service on this payroll during the contract period. All retroactive wage increases and adjustments shall be paid to said eligible employees, forthwith, but no later than April 1, 2011.

**16. Tentative Agreements**

During the hearing, the parties informed the Panel tentative agreements had been reached concerning County proposals 14 (Holidays), 15 (Performance Adjustment), 16 (Grade Allocation), 19 (Seniority), 33 (Grievance Procedure), 34 (Promotions) and 37

(Sheriff Unit Positions).<sup>8</sup> We have been asked to deem those tentative agreements incorporated into our Award. The Panel finds it appropriate to do so. The parties' tentative agreements reached concerning the aforementioned County proposals shall be deemed incorporated into our Award.

**17. Proposals Not Awarded**

The Panel will not repeat the various issues which were discussed and rejected. Suffice to say, any proposal or demand not specifically granted by this Award has been rejected.

**18. Fact Finding**

In light of certain issues being presented to the Panel, which otherwise would have been subjects for Fact Finding, all other issues in Fact Finding are rejected.

**19. Retention of Jurisdiction**

The Panel shall retain jurisdiction over disputes concerning the initial application and interpretation of the provisions of this Opinion and Award.

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<sup>8</sup> Transcript at 12 - 16.

AWARD

1. Term of Award

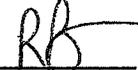
The term of this Award shall be January 1, 2007, through December 31, 2008.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur

\_\_\_\_\_  
Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur

\_\_\_\_\_  
Dissent

2. Wages

The Deputy Sheriffs' Salary Schedule is revised, as follows:

- 1) Effective December 31, 2008, at 11:59 p.m., an Academy step shall be established in the amount of thirty one thousand two hundred (\$31,200.00) dollars, which shall not affect any employees already hired before the issuance of this Award. This Academy rate shall only apply for the first twenty six (26) weeks of employment.
- 2a) Effective January 1, 2007, steps 1 through 5 of the expired 2006 Salary Schedule shall be increased to the following base pay amounts:
  - Step 1: forty thousand (\$40,000.00) dollars;
  - Step 2: forty three thousand seven hundred and four (\$43,704.00) dollars;
  - Step 3: forty five thousand four hundred sixty six (\$45,466.00) dollars;
  - Step 4: forty seven thousand nine hundred sixty one (\$47,961.00) dollars;
  - Step 5: fifty four thousand seven hundred thirty seven (\$54,737.00) dollars;
- 2b) Effective January 1, 2007, a new step 6 shall be added to the Deputy Sheriffs Salary Schedule in the amount of

fifty five thousand two hundred sixty four (\$55,264.00) dollars for base pay.

- 3a) Effective January 1, 2008, steps 1 through 5 of the Deputy Sheriffs Salary Schedule shall be increased to the following base pay amounts:

Step 1: forty one thousand two hundred (\$41,200) dollars;

Step 2: forty five thousand one hundred three (\$45,103.00) dollars;

Step 3: forty six thousand nine hundred sixty six (\$46,966.00) dollars;

Step 4: forty nine thousand five hundred ninety two (\$49,592.00) dollars;

Step 5: fifty six thousand six hundred fifty two (\$56,652.00) dollars;

- 3b) Effective January 1, 2008, step 6 of the Deputy Sheriffs Salary Schedule shall be increased to fifty six thousand eight hundred ninety four (\$56,894.00) dollars.

Effective July 1, 2008, step 6 of the Deputy Sheriffs Salary Schedule shall be increased to fifty seven thousand six hundred ninety one (\$57,691.00) dollars.

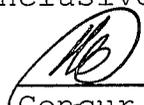
4. Effective January 1, 2007, the base pay amount at year ten (10) of the Deputy Sheriffs Salary Schedule, now also referred to as Step 7, shall be increased by an amount equal to twelve percent (12%) of the step 6 base wage amount and shall be increased by the same percentage when step 6 base wage amounts increase on January 1, 2008, and July 1, 2008.
5. Effective January 1, 2007, the base pay amount at year fifteen (15) of the Deputy Sheriffs Salary Schedule, now also referred to as Step 8, shall be increased by an amount equal to eighteen percent (18%) of the step 6 base wage amount and shall be increased by the same percentage when step 6 base wage amounts increase on January 1, 2008, and July 1, 2008.
6. Effective January 1, 2007, the base pay amount at year twenty (20) of the Deputy Sheriffs Salary Schedule, now also referred to as Step 9, shall be increased by an amount equal to twenty five percent (25%) of the step 6 base wage amount and shall be increased by the same

percentage when step 6 base wage amounts increase on January 1, 2008, and July 1, 2008.

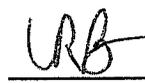
The Deputy Sheriff Sergeants salary schedule shall be revised, as follows:

1. Effective January 1, 2007 and for the term of this Award, the base pay upon Appointment (also referred to as Step 1) shall be twenty two and seven tenths percent (22.7%) above the Step 6 base pay for Deputy Sheriffs;
2. Effective January 1, 2007 and for the term of this Award, the base pay at year 5 (also referred to as Step 2) shall be two and sixty seven one hundredths percent (2.67%) above the Step 1 base pay for Deputy Sheriff and Sergeant;
3. Effective January 1, 2007 and for the term of this Award, the base pay at year 10 (also referred to as Step 3) shall be three and one hundred seventy five thousandths percent (3.175%) above the Step 2 base pay for Deputy Sheriff and Sergeant;
4. Effective December 31, 2007, in no event shall a Deputy Sheriff promoted to Sergeant receive less than one thousand five hundred (\$1,500.00) dollars more than his or her previous base salary inclusive of longevity.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur      Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur      Dissent

### 3. Clothing Allowance

Effective January 1, 2007, the allowance provided by the expired Agreement shall be increased by seventy five (\$75.00) dollars to the sum of six hundred seventy five (\$675.00) dollars for steps 1 through 5 on the Deputy Sheriffs' Salary Schedule and all steps on the Deputy Sheriff and Sergeant Salary Schedule.

Effective January 1, 2007, the clothing allowance of six hundred seventy five (\$675.00) dollars shall also be added to the new step 6 of the Deputy Sheriffs' Salary Schedule.

Effective January 1, 2008, the clothing allowance shall be increased an additional seventy five (\$75.00) dollars to the sum of ~~seven hundred fifty (\$750.00) dollars for steps 1 through 5 of the~~ Deputy Sheriffs' Salary Schedule. Effective January 1, 2008, the clothing allowance for step 6 of the Deputy Sheriffs' Salary Schedule and for all steps on the Deputy Sheriff and Sergeant Salary Schedule, shall be increased to the sum of eight hundred (\$800.00) dollars.

Upon implementation of the Academy Step, the clothing allowance for the Academy Step shall be seven hundred fifty (\$750.00) dollars.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur \_\_\_\_\_  
Dissent \_\_\_\_\_

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur \_\_\_\_\_  
Dissent \_\_\_\_\_

#### 4. In-Service Training

Effective January 1, 2008, the existing stipend of four hundred (\$400.00) dollars per training day shall be increased to four hundred seventy five (\$475.00) dollars per training day.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur \_\_\_\_\_  
Dissent \_\_\_\_\_

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

RB  
Concur

\_\_\_\_\_           
Dissent

**5. Tour of Duty Differential**

The Tour of Duty Differential, for all hours worked on a shift whose hours commence after 2:00 p.m., is increased by seventy five (\$75.00), to the sum of one thousand six hundred thirty five (\$1,635.00) dollars per year, effective January 1, 2008.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

RKZ  
Concur

\_\_\_\_\_           
Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

RB  
Concur

\_\_\_\_\_           
Dissent

**6. Physical Fitness Incentive Payments**

Effective January 1, 2007, the Physical Fitness Incentive payment shall remain at the existing contractual rate. Effective January 1, 2008, the Physical Fitness Incentive payment shall be increased by seventy five (\$75.00) dollars to six hundred seventy five (\$675.00) dollars pursuant to the existing contractual formula.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

RKZ  
Concur

\_\_\_\_\_           
Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

RB  
Concur

\_\_\_\_\_           
Dissent

**7. Personal Leave**

The language of the Agreement shall be changed, effective December 31, 2008, to allow conversion of unused personal leave to sick leave in an employee's last year of employment for those who do not complete a full year. The language shall also be revised to provide personal leave shall be prorated during a unit member's last year of employment.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur                                            
Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur                                            
Dissent

**8. Sick Leave and FMLA Leave**

Sick leave shall run concurrently with FMLA leave, provided the leave usage is for a FMLA qualifying event. Consistent with the parties' accord reached during this proceeding, this provision is conditioned upon the parties executing a separate letter, incorporated herein and annexed hereto as Appendix B, agreeing this subject is arbitrable in this proceeding and in future interest arbitration proceedings.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur                                            
Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur                                            
Dissent

9. Step Placement for New Hires and Transfers

We decline to grant this proposal and leave the matter to the parties for their consideration.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur

                      
Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur

                      
Dissent

10. Health Insurance Opt-Out

Effective December 31, 2008 and thereafter, an employee's election of the optional buy-out of the medical portion of health insurance coverage shall continue in effect unless and until the employee reenrolls in the health insurance plan during open enrollment or upon a qualifying event. In this event, the payment to the employee shall be prorated.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur

                      
Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur

                      
Dissent

11. Health Insurance Dual Coverage

Effective December 31, 2008 at 11:59 p.m., if an employee is covered under the County's medical insurance program as a dependent of his or her spouse (who is also a County employee), dual family

coverage shall be eliminated. Instead, the employee and his or her spouse will be permitted to have one (1) family coverage and one (1) individual coverage.

Any such unit members who received dual family coverage after December 31, 2008, at 11:59 p.m. and up to the date when this provision is implemented by the County following issuance of this Award, shall not be subjected to any claims or proceedings by the County to recover payment for the dual family coverage being eliminated by this Award.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur          Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur          Dissent

**12. Drug and Alcohol Testing**

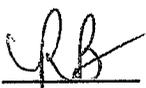
The Drug and Alcohol Testing Procedures now applicable for the County's COBA bargaining unit, are hereby awarded and shall be applicable to members of the Association's bargaining unit, as per the procedure attached to this Award as Appendix A.

Consistent with the parties' accord reached during this proceeding, this provision is conditioned upon the parties executing a separate letter, incorporated herein and annexed hereto as Appendix B, agreeing this subject is arbitrable in this proceeding and in future interest arbitration proceedings.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur            Dissent           

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur            Dissent           

**13. Notice of Bargaining**

A party's desire to negotiate terms and conditions of employment shall be given in writing to the other party. Such notice, if by the Union, shall be given to both the Sheriff and to the County Executive.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur            Dissent           

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur            Dissent           

**14. Housekeeping Items**

We make no Award upon demands the parties have identified as "Housekeeping" items. We leave those demands to the parties.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur            Dissent           

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur            Dissent           

**15. Retroactivity**

Only those unit employees who were employed by the County on the date of this Award shall be eligible for wage increases and or retroactive wage adjustments, except employees who have died, retired or become disabled from work-related injury also shall be eligible for retroactive wage adjustments for any applicable period(s) of active service on payroll during the term covered by this Award. All retroactive wage increases and adjustments shall be paid to said eligible employees, forthwith, but no later than March 31, 2011.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur                  Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur                  Dissent

**16. Tentative Agreements**

The parties' tentative agreements concerning County proposals 14 (Holidays), 15 (Performance Adjustment), 16 (Grade Allocation), 19 (Seniority), 33 (Grievance Procedure), 34 (Promotions) and 37 (Sheriff Unit Positions) are deemed incorporated into our Award.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur                  Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur                  Dissent

17. Proposals Not Awarded

Any proposal or demand not specifically granted by this Award has been rejected.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur      Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur      Dissent

18. Fact Finding

In light of certain issues being presented to the Panel, which otherwise would have been subjects for Fact Finding, all other issues in Fact Finding are rejected.

Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur      Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur      Dissent

19. Retention of Jurisdiction

The Panel shall retain jurisdiction over disputes concerning the initial application and interpretation of the provisions of this Opinion and Award.

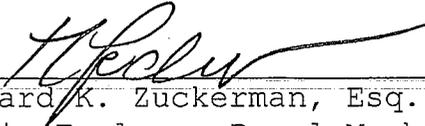
Richard K. Zuckerman, Esq.  
Public Employer Panel Member

  
Concur      Dissent

Richard P. Bunyan, Esq.  
Employee Organization Panel Member

  
Concur      Dissent

December 23, 2010.



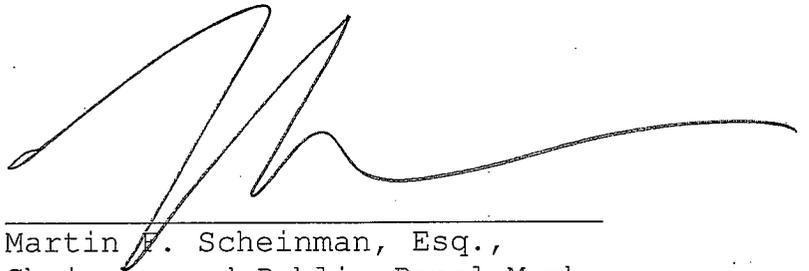
Richard K. Zuckerman, Esq.  
Public Employer Panel Member

December 29, 2010.



Richard P. Bunyan, Esq.  
Employee Organization  
Panel Member

January 5, 2011  
~~December~~, 2010.



Martin F. Scheinman, Esq.,  
Chairman and Public Panel Member

On this 23<sup>rd</sup> day of December 2010, before me personally came and appeared RICHARD K. ZUCKERMAN, ESQ., PUBLIC EMPLOYER PANEL MEMBER, to me known and known by me to be the individual described herein, and who executed the foregoing instrument and who acknowledged to me that he executed the same.

Sworn to and subscribed before me this 23<sup>rd</sup> day of December 2010.

*Helen Anselmo*

Notary Public

**HELEN ANSELMO**  
Notary Public, State of New York  
No. 01AN4990344  
Qualified in Nassau County  
Commission Expires December 30, 2013

On this 29 th day of December 2010, before me personally came and appeared RICHARD P. BUNYAN, ESQ., EMPLOYEE ORGANIZATION PANEL MEMBER, to me known and known by me to be the individual described herein, and who executed the foregoing instrument and who acknowledged to me that he executed the same.

Sworn to and subscribed before me this 29 day of December 2010.

*Jenine Heckmann*

Notary Public

**Jenine Heckmann**  
Notary Public, State of New York  
No. 01HE6209463  
Qualified in Rockland County  
Commission Expires July 27, 2013

On this 5 th day of ~~December 2010~~ <sup>January 2011</sup>, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., CHAIRMAN AND PUBLIC PANEL MEMBER to me known and known by me to be the individual described herein, and who executed the foregoing instrument and who acknowledged to me that he executed the same.

Sworn to and subscribed before me this \_\_\_ day of ~~December 2010~~

January 2011

*Kate Tierney*

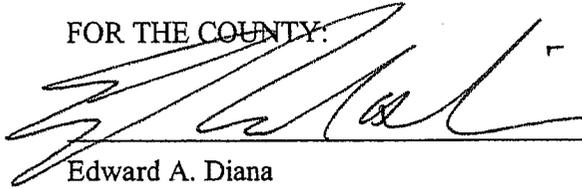
Notary Public

**KATE TIERNEY**  
Notary Public, State of New York  
No. 01TI6136538  
Qualified in Queens County  
Commission Expires November 7, 2013

**APPENDIX B**

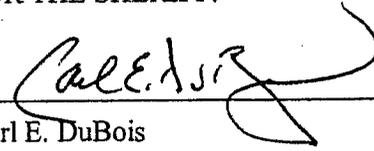
The provisions of Civil Service Law section 209(4)(g) shall not apply the terms of Award item ## 8 (FMLA) and 12 (Drug Testing). Proposals with regard to these two provisions may be submitted to future interest arbitration panels, provided that they would otherwise be mandatory subjects of bargaining pursuant to Civil Service Law section 209.4(c). In the event that PERB will not render a determination regarding objections to the negotiability of the proposal(s), the parties will vest the arbitration panel with jurisdiction to make that determination.

FOR THE COUNTY:



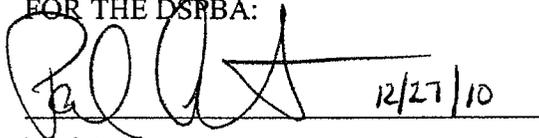
Edward A. Diana  
County Executive

FOR THE SHERIFF:



Carl E. DuBois  
Sheriff

FOR THE DSPBA:



Paul Arteta  
President

**APPENDIX A**

**3/24/10**

**DRUG AND ALCOHOL TESTING**

**Sec. 1 Drug Testing**

a. All Correction Officers and Correction Sergeants will be subject to annual random drug testing and will be included in the Office of the Sheriff's random drug testing pool. Employees will be tested for the drugs and/or controlled substances included in the New York Public Health Law Section 3306, Schedules I through V, as may be amended from time to time, as well as for any masking agents, as defined by a certified drug testing laboratory. The Employer will determine the number of random tests to be performed on an annual basis. Random testing will be unannounced. The method by which an employee holding one of the affected titles is selected for random testing shall be completely neutral so that all affected employees will have an equal chance of being tested. Employees who are selected for random testing must report to the neutral testing site immediately or as soon as practicable, as directed by the Employer or his/her designated official. Refusal to submit to a random drug test is a basis for discharge.

b. Upon reasonable cause to believe an employee covered by this Agreement is using or under the influence of drugs, the

Employer may require the employee to be tested at a neutral site. The employee will be tested for any drug or controlled substance listed in the Public Health Law 3306 (Schedules I through V) including, but not limited to, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, ~~morphine or its derivatives, mescaline, peyote, phencyclidine~~ (angel dust), opium, opiates, methadone, cocaine, quaaludes, amphetamines, seconal, codeine, phenobarbital and valium, for which an employee does not have proper medical authorization. In addition, the employee will be tested for masking agents, as defined by a certified drug testing laboratory. Refusal to submit to a reasonable cause drug test is a basis for discharge.

c. An employee who is assigned to a specialized unit by the Sheriff must submit to a pre-assignment drug test before commencing the assignment. The employee will be tested at a neutral site for the drugs outlined in Section 1.a. Refusal to submit to a pre-assignment drug test is a basis for discharge.

d. Because of the consequences of a positive test result, the Employer will employ a very accurate split-sample, three-stage testing program. At the time of collection, a urine sample and two hair samples shall be obtained. Urine samples will be

analyzed by a highly-qualified independent laboratory which is certified by the Substance Abuse and Mental Health Services Administration using a chain of custody procedure established by the laboratory. The first sample will be subject to an initial test using an immunoassay to determine levels of drugs or drug metabolites. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques. If the specimen is identified as positive on the confirmatory test, the employee's hair sample shall be tested using radioimmunoassay techniques.

**Sec. 2**      **Positive Drug Test Results**

If the first urine sample is identified as positive on the initial test, the Employer and employee shall receive simultaneous notice of the result and the employee shall be suspended with pay. If the initial test is positive for a masking agent, the employee's hair sample shall be tested using radioimmunoassay techniques and a confirmatory urine test shall not be performed. If the radioimmunoassay test is negative, the employee shall return to work. If the radioimmunoassay test is positive, the Employer and employee shall receive simultaneous notice of the result and the employee shall be terminated effective upon the date of the Employer's notification of the

positive test. At the time of separation from service, the cost of the positive radioimmunoassay test shall be deducted from any monies owed to the employee by the Employer. If the initial test is positive for any drug(s) or controlled substance(s), then a confirmatory urine test shall be conducted. If the confirmatory urine test is negative, the employee shall immediately return to work. If the confirmatory urine test is positive for the presence of a drug or controlled substance, the Employer and employee shall receive simultaneous notice of the result, the employee's suspension shall be converted to a suspension without pay and the employee's hair sample shall then be tested using radioimmunoassay techniques. If the radioimmunoassay test is negative, the employee shall return to work. If the radioimmunoassay test is positive, the Employer and employee shall receive simultaneous notice of the result and the employee shall be terminated effective upon the date of the Employer's notification of the positive test. At the time of separation from service, the cost of the positive radioimmunoassay test shall be deducted from any monies owed to the employee by the Employer. In the event of a positive radioimmunoassay test, the employee may grieve through the grievance and arbitration procedure: (i) the positive finding; and/or (ii) the randomness of the method of selection for

testing; except, however, that the employee will be placed in no pay status immediately upon the Employer's receipt of the positive radioimmunoassay test result notwithstanding any provision to the contrary in this Agreement, Civil Service Law §§ 75-77 and/or any other provision of law, rule, policy, practice or regulation and, further, that in the event the grievance is denied, the arbitrator will be without authority to in any way modify or mitigate the stated consequences of a positive drug test result; i.e., termination of employment. All costs for review of the laboratory testing procedures or results will be paid for by the Union and/or the affected employee, unless it is determined that the grievance is sustained.

**Sec. 3**      **Alcohol Testing**

Upon reasonable cause to believe an employee is under the influence of alcohol, the Employer may require the employee to submit to an alcohol breathalyzer test. A positive test for alcohol is any result of .05 or more. Refusal to submit to an ordered breathalyzer test is a basis for discharge.

**Sec. 4**      **Positive Alcohol Test Results**

Any employee who tests positive for alcohol use may be suspended for up to sixty (60) days and will be required to submit to an evaluation by a substance abuse

professional (SAP). If the SAP determines that treatment is necessary, the employee will be required to participate in, and successfully complete an alcohol rehabilitation program. A refusal to participate in or successfully complete rehabilitation, as described herein, shall constitute just cause for discharge. Successful completion includes participation in follow-up care as is recommended by the rehabilitation provider. The employee must agree to give the County access to the records of the rehabilitation program as will establish that the employee is cooperating in the recommended rehabilitation treatment. In the event that an employee returns to work while still participating in the rehabilitation program, the results of any testing for alcohol use done by the rehabilitation provider shall be made available to the Employer.

Those employees who have or are participating in an alcohol rehabilitation program must, prior to reinstatement, be tested for alcohol use. A positive test result for alcohol use will be a basis for discharge. Any employee, who has participated in an alcohol rehabilitation program and after being reinstated, may be randomly tested on a periodic basis for one (1) year not to exceed 24 tests in the year. If upon re-testing for alcohol use an employee tests positive, the positive testing shall

constitute a basis for discharge without further right to rehabilitation.

An employee found to have tested positive for alcohol use may grieve through the grievance and arbitration procedure: (i) the positive finding; (ii) the Employer's basis for reasonable cause; or (iii) the randomness of the method of selection for testing; except, however, in the event the grievance is denied, the arbitrator is without authority to modify or mitigate the stated consequences of a positive alcohol test result.