

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Interest Arbitration Between:

THE COUNTY OF WESTCHESTER,
Public Employer

-And-

WESTCHESTER COUNTY DEPARTMENT OF PUBLIC
SAFETY POLICE BENEVOLENT ASSOCIATION, INC.
(SUPERIOR OFFICERS UNIT),
Employee Organization

PERB Case No. IA2008-030; M2008-189

**FINAL OPINION AND AWARD
OF TRIPARTITE ARBITRATION PANEL**

PUBLIC PANEL MEMBER AND CHAIRPERSON:

Dennis J Campagna, Esq.
9120 Michael Douglas Drive
Clarence Center, N.Y. 14032

PUBLIC EMPLOYEE PANEL MEMBER

Anthony V. Solfaro, President
New York State Union of Police Associations, Inc.
One Spring Square Business Park
Newburgh, N.Y. 12550

PUBLIC EMPLOYER PANEL MEMBER:

Michael W. Wittenberg, Labor Relations Consultant
35 Sunnyside Avenue
Pleasantville, N.Y. 10570

APPEARANCES:

For the Westchester S.O.U.

John K. Grant, Esq.
One Spring Business Park
Newburgh, N.Y. 12550

For the County of Westchester

Lori A. Alesio, Esq.
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148 Martine Avenue, 6th Floor
White Plains, N.Y. 10601

BACKGROUND

Pursuant to Civil Service Law, Section 209.4, on April 27, 2009, Richard A. Curreri, Esq., Director of Conciliation of the New York State Public Employment Relations Board (“PERB”) designated the undersigned as the Public Panel Member and Chairperson as well as the Public Employee Panel Member and Public Employment Panel Member for the purpose of rendering a just and reasonable determination on matters in dispute between the County of Westchester (“County”) and the Westchester County Department of Public Safety Police Benevolent Association (Superior Officers Unit) (“S.O.U.”). The SOU covers Police Officers with the rank of Lieutenant and Captain. The parties to this dispute operated under the terms of a Collective Bargaining Agreement with effective dates January 1, 2001 through December 31, 2002. (“CBA”) The CBA was thereafter modified by an Interest Arbitration Award issued by Panel Chairperson Howard C. Edelman for the two year term January 1, 2003 through December 31, 2004, and Chairperson Jeffrey M. Selchick, Esq. for the two year term January 1, 2005 through December 31, 2006.

THE PARTIES TO THIS PROCEEDING

The County of Westchester is a municipal corporation located north of New York City. It has a population of approximately 950,000 residents and encompasses 450 square miles. Housed within the boundaries of Westchester County are 48 municipalities that vary greatly in size with approximately 42% of the County’s total population being located in its four largest cities of Yonkers, New Rochelle, Mount Vernon and White Plains. The County has a large and varied economic base consisting of corporate

headquarters, research facilities and service industries with luxury residences throughout the County.

The is the certified bargaining agent for all Lieutenants, Captains, Inspectors and Chief Inspectors employed by the Westchester County Department of Public Safety Division of Police, excluding all other County employees.

THE INSTANT PROCEEDING

The County and the S.O.U. commenced negotiations for a successor to the Selchick Panel Award in or about September, 2006 with an exchange of bargaining proposals and thereafter met on several occasions but were unable to reach agreement. The S.O.U. filed its impasse declaration with PERB and mediation efforts proved to be unsuccessful. Subsequently, the S.O.U. filed its Petition for Compulsory Interest Arbitration on March 3, 2009. The County's response reiterated a listing of its contractual demands.

A formal hearing was held in White Plains, New York on September 17, 2009. The County and the S.O.U. were represented by skilled and experienced attorneys. At all times during such hearings, the parties were accorded and took full advantage of the opportunity to introduce relevant evidence, present testimony, summon witnesses, cross-examine witnesses and otherwise support their respective positions on the outstanding issues before the Panel. A stenographic record was made at the hearings which is the official record of the proceedings. At the conclusion of the hearings, the County elected to summarize its position with the filing of a written closing statement postmarked December 18, 2009.

All issues which have attendant support submitted by each party were carefully considered, as well as any responses offered by the opposing party. The Public Arbitration Panel ("Panel") met in executive session on January 28, 2010 at which time the Panel deliberated on each of the outstanding issues, carefully and fully considered all the data, exhibits, closing statement and testimony of the sworn witnesses who appeared

at the hearing on behalf of both parties. The results of those deliberations are contained in this Opinion and Award, which constitutes the Panel's best judgment as to a just and reasonable solution of the impasse consistent with our obligation under Section 209.4 of the Act. Those issues presented by the parties which are not contained in this Opinion and Award were also carefully considered by the Panel, but are remanded back to the parties for further negotiation, at their option, and accordingly, no award is made on those issues.

N.Y.S. CIVIL SERVICE LAW, § 209.4

On April 27, 2009, Richard A. Curreri, PERB's Director of Conciliation, designated the foregoing Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute existing between the Town and the Association.

In arriving at a just and reasonable determination of the matters in dispute, the Panel considered the following statutory guidelines with which it was charged by Section 209.4:

- a. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. The interests and welfare of the public and the financial ability of the public employer to pay;
- c. Comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The following demands were submitted and acted upon by the Public Panel pursuant to the statutory criteria set forth above:

THE S.O.U.'S DEMANDS

1. **DURATION:** January 1, 2007 through December 31, 2008
2. **HOURS OF WORK:** Delete reference to Training Day in its entirety.
3. **COMPENSATION:**

TITLE	2007	2008
LIEUTENANT	17% above the Sergeant's Base Wage	17% above the Sergeants Base Wage
CAPTAIN	17% above the Lieutenant's Base Wage	17% above the Lieutenant's Base Wage
INSPECTOR	+6%	+6%
CHIEF INSPECTOR	+6%	+6%

4. **LONGEVITY SCHEDULE)**

STEP	YRS OF SERVICE	2007	2008
6	Aft 5 Years	4% of Base Wage	4% of Base Wage
7	Aft 9 Years	5% of Base Wage	5% of Base Wage
8	Aft 13 Years	6% of Base Wage	6% of Base Wage
9	Aft 17 Years	7% of Base Wage	7% of Base Wage

5. **HOLIDAYS (Article 5.3):** Work on any Holiday to be paid at the rate of 1.5X except for Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, each of which shall be paid at the rate of 2X. In addition, any Veteran who works on Veteran's Day and/or Memorial Day shall be paid an additional Holiday over and above the fourteen (14) listed in Section (a).

6. ARTICLE 6 (DIFFERENTIALS)

- a. Shift Differential – Employees having a regular starting time of 1:00 p.m. or later or a regular ending time of 12:00 noon or earlier shall receive the following Shift Differential:

2007: 7.5% of Base Wage & Longevity

2008: 10.0% of Base Wage & Longevity

- b. Clothing Allowance:

2007: Add \$250.00 (raising the total to \$1,500.00)

2008: Add \$50.00 (raising the total to \$1,550.00)

- c. Meal Allowance – 2007 Increases ranging from a low of \$4.00 (Break, Without Receipt) to a high of \$12.00 (O/O/County With Receipt). No additional increases proposed for 2008.

- d. Stand-By Allowance:

- i. Employees assigned to County Executive Security Detail:

2007: Add \$500.00 (raising the total to \$1,500.00)

2008: Add \$250.00 (raising the total to \$1,750.00)

- ii. Employees permanently assigned to Bomb Squad:

2007: Add \$500.00 (raising the total to \$4,500.00)

2008: Add \$500.00 (raising the total to \$5,000.00)

- e. Special Assignment Remuneration:

Additional increases/rates proposed for Aviation, Special Response Team (new), Accident Investigator/Reconstruction, Breath Analysis Operator (new), Instructors (new).

7. ARTICLE 7 (LEAVES)

- a. Sick Leave Buy-Out – Payment for all unused accumulated sick leave at the time of retirement at 100% of his/her daily rate of pay at that time.
- b. Sick Leave Incentive (new) – An employee who was on the payroll for the entire preceding calendar year, shall be paid a sick leave incentive no later than the first pay period of February of each year, based on an established schedule for use from the previous calendar year.

8. ARTICLE 8 (EMPLOYEE BENEFITS)

- a. Section 8.2: Welfare Fund

2007: Add \$305.00 (raising the total to \$2,160.00/year)

2008: Add \$240.00 (raising the total to \$2,400.00/year)

- b. Section 8.3 (BOOK REIMBURSEMENT & POLICE EDUCATION PGM.)

2007: Add \$25K (raising the total to \$50K)

2008: No Change from 2007

9. RETIREMENT

Upon retirement, the County shall pay one-hundred percent (100%) of the health insurance premium for the individual or family plan.

THE COUNTY'S DEMANDS

- 1. Art. 6.5 M e a l M o n e y ,
Eliminate payment when working overtime.
- 2. Art. 6.6 D o g H a n d l e r s
Employee shall be paid a \$3,600 differential for all time spent caring for their dogs.
- 3. S. 1a H e a l t h I n s u r a n c e
Employees will pay 10% of the cost of their option (single or family).

4. Art. 8.4 Drug Testing (new)

If an employee tests positive, a Hearing will be held, by an agreed-upon Arbitrator, if the PEA files a grievance within five (5) days of the employee's notification of the positive test.

The Arbitrator's sole authority at this Hearing shall be to either certify or invalidate the test results. At the Hearing, the SOU shall have the responsibility of proving to the Arbitrator that the test was flawed.

At the time the employee is notified of the positive test, the employee shall be suspended without pay. The employee shall remain suspended until either terminated or reinstated by the Arbitrator.

If the Arbitrator certifies the positive test or the SOU does not file a grievance, in the time stated above, the employee shall be terminated with no further action required by the County.

If the Arbitrator invalidates the test, the employee shall be reinstated in a manner determined by the Arbitrator.

5. State of Emergency: Eliminate extra pay.

POSITION OF THE PARTIES ON THE STATUTORY CRITERIA

1. THE ISSUE OF COMPARABLE JURISDICTIONS

CSL § 209.4 requires the Panel to engage in a comparative analysis of terms and conditions with “other employees performing similar services or requiring similar skills under similar working conditions with other employees generally in public and private employment in comparable communities.” Fortunately, we need not reinvent the wheel relative to the issue of comparability since prior panels have gone through the painstaking task of establishing the comparables for purposes of CSL § 209.4. In this regard, the Selchick panel (2005-2006) determined for these purposes:

The Panel has taken the opportunity to again review the issue of comparability for Westchester Police. While the Panel does note that salaries paid to police in other

county departments in the downstate area are of interest generally and provides the Panel with a broad framework and range of police salaries, such county police departments are not found to be appropriate comparables to Westchester County police. This Panel Chairman has previously held in 1993 and again in 1996 that the most appropriate wage comparison is with other police units within Westchester County and this has been followed in the 1993-94, 1997-98 and 1999-2000 Interest Arbitration Awards by Arbitrator Haber as well.

This Panel finds no basis to change the foregoing Panel determinations since the setting, economic environment, people served and overall responsibilities for Westchester Police Officers are substantially greater in similarity to those local police departments housed in Westchester County than those of other County police departments. Accordingly, this Panel concludes that the appropriate comparables to the SOU are other police units in Westchester County.

2. THE ABILITY TO PAY

A. The S.O.U.'s Position

It is the SOU's position that while the County has experienced a shortfall in its sales tax revenues for 2007, as the wealthiest County in New York State, it has the ability to pay for the SOU's demands. Accordingly, the SOU asserts that it is not a question of an ability to pay, but more of an assertion by the County of an unwillingness to pay. In this regard, the SOU suggests that one need look no further than the County Executive's State of the County Address dated April 23, 2009. In relevant part, the County Executive noted

Let's cut to the chase. Despite the recession, despite the loss of revenue from Albany, and despite the increase in mandated costs, the State of Westchester County Government remains strong. Moreover, I submit to you, that no county is in a better position to meet the challenges ahead than Westchester.

The County's ability to pay is also reflected in its per capita property wealth the SOU notes. In this regard, this is an indicator that is generally studied by analysts to measure how capable a local municipality is of raising revenues locally. It is significant, the SOU asserts, that Westchester County has the highest taxable real property wealth per residents in the Hudson Valley, at nearly \$200K per resident.

Finally, the SOU notes that while sales tax revenues dropped in 2009, there is every indication that this is not a trend that will continue into future years. Indeed, the SOU adds, there is every indication that sales tax revenues will increase in the upcoming years.

B. The County's Position

It is the County's position that the fiscal crisis crippling the United States has had a detrimental effect on Westchester County. Simply put, the County maintains that now, in 2010, it simply does not have the resources to pay for the extravagant demands lodged by the SOU. In this regard, the County notes that the record in this proceeding demonstrates that for the year 2009, the County budget had a sales tax short fall of approximately \$51 million, an amount more than twice the size of the Department of Public Safety payroll.¹ Yet, the County adds, in the face of this current fiscal crisis, the SOU has requested that this Panel grant increases in pay and benefits for 2007 alone that exceed 10%. Indeed, the County notes, if this Panel were to award no raises for the two-year period at issue in this proceeding, bargaining unit employees would continue to receive total compensation consistent with employees in comparable police departments located within the confines of Westchester County.

Given the foregoing, the County urges this Panel to reject any and all of the SOU's monetary demands.

¹ Base salaries for members of the Westchester County Department of Public Safety SOU and Superior Officers Bargaining Unit total approximately \$22.1 million using the 2006 salary rates and the bargaining unit roster that existed at the time of the hearing in this matter.

3. PECULIARITIES OF THE POLICE PROFESSION

While the parties may be at odds on a number of issues, they both agree and accordingly there is no dispute that the police profession is a unique one, and consequently, there are no real comparisons that can be made with other trades or professions. No other is truly comparable. Appropriate weight must therefore be given to the particularly hazardous nature of a police officer's work as well as to their special qualifications, training and skills required for the position of police officer.

4. THE TERMS OF PAST COLLECTIVE AGREEMENTS NEGOTIATED BETWEEN THE PARTIES

A. The S.O.U.'s Position

The S.O.U. asserts that the County's demand for concessions, particularly those having a financial impact, represent issues that have been negotiated over time and contained in numerous contracts between the parties. Given the lack of any compelling reason in the record for any change in these jointly negotiated provisions, the S.O.U. asserts that the County's demands should not be ordered by this Panel. By way of example, the SOU notes that the major and virtually sole economic demand by the County deals with Health Insurance where the County is seeking a major contribution by SOU members towards the premium amount associated with Insurance coverage. Yet, the SOU notes, no bargaining unit was asked to contribute or did contribute toward their Health Insurance coverage during the relevant 2007 and 2008 time period.

B. The County's Position

The County maintains that SOU unit members fare well when compared to other County police groups, placing them in the upper one-third in terms of salaries and benefits. In this regard, the County asserts that if this Panel awards the County's proposal of no increase in wages for the relevant time period, SOU unit employees will continue to

receive a total compensation package consistent with employees in other police departments located within Westchester.

**POSITION OF THE PARTIES ON THE OUTSTANDING ISSUES
AND
THE PANEL'S FINDINGS AND CONCLUSIONS ON THESE ISSUES**

The parties presented testimony, argument and documentary evidence with respect to wages and health insurance, and the County further developed its respective positions on these issues in their post-hearing submission. No specific arguments were made on the other financial issues proposed by either party. Therefore, the discussion below is reflective on the manner and method the parties chose to support their positions. It should also be noted that in addition to such arguments, documents and evidence, the Panel, in reaching its determination on the issues discussed below, has carefully considered the statutory guidelines set forth in Section 209.4 as well as the positions of the parties on these guidelines as set forth above.

Given the foregoing, the Panel hereby makes the following Awards with which the Public Panel Member and Chairperson concurs in its entirety.

1. DURATION OF AWARD

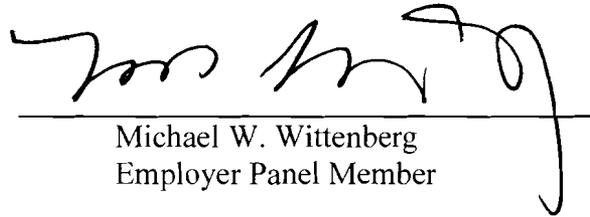
The parties agree to a two-year Award which shall be effective January 1, 2007 through December 31, 2008. Based on such agreement, the Panel hereby makes the following

AWARD

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

I CONCUR with the above Award.

Date: 02-27-2010



Michael W. Wittenberg
Employer Panel Member

I CONCUR with the above Award.

Date: 02-27-2010



Anthony V. Solfaro
Employee Organization Panel Member

2. WAGES & WAGE RATES

The S.O.U. has proposed increases ranging from a 17% differential above the Sergeant's base wage rate for Lieutenants, a 17% differential above the Lieutenant's base wage rate for Captains. and a 6% increases for the Inspector and Chief Inspector for each of the two years of this Award.

The County proposes no change in wages from the 2006 levels for 2007 and 2008.

The parties presented documentary evidence and argument in support of their respective positions on the issue of Wages, bringing into evidence a comparison of the wage rates and other benefits in other comparable communities, including those with similar skills, the employer's ability to pay, an analysis of wages and other benefits negotiated by the parties in the past. Particular emphasis was placed on a comparison of wages of the Westchester County SOU as compared to Police in other jurisdictions within Westchester County, as well as a thorough discussion on the County's ability to pay. Those arguments are found in the discussion of the Statutory Criteria above.

Having carefully considered the foregoing arguments, the Panel first takes note of two competing interests. The first interest, advanced by the SOU, asserts that the Panel may only consider the financial status of the County during the relevant time period of 2007 and 2008, and any other data outside of this period is simply not relevant to the task of this Panel. The second interest, advanced by the County, asserts that should the Panel grant any increases, such increases will likely be paid from 2009/2010 funds. Accordingly, the County maintains that this Panel must take into consideration the County's fiscal status for 2009. The Panel finds each of these interests compelling and concludes that any decision by the Panel MUST take into consideration each such concern.

Turning now to the proposals:

As noted earlier, the top base pay rate for a Westchester Police Officers as of December 31, 2006 is \$80,368. This wage rate places the Unit at 18th of 39 departments, near the middle of all comparables in the County. A further comparison demonstrating the mid-stream position of SOU represented police is seen when comparing the five year cumulative total base salaries of departments in Westchester County. Westchester Police who have a five-year cumulative total of \$310,878 rank 18th out of 40 departments surveyed. approximately \$32,400 below the highest department (City of Rye at \$343,279. and \$69,760 more than the lowest paid department (City of Mt. Vernon at \$241,118). However, when factoring in the longevity received by SOU unit members, the base pay

rate provided to Westchester County Police is very competitive in order to attract and retain quality and qualified Police personnel.

With respect to relevant settlements occurring within the 2007 and 2008 time frame, the Panel takes note of County and PBA/SOU exhibits demonstrating that the median wage increase (aside from any longevity increases awarded and/or agreed upon during this same time period) equated to approximately 4.0%.

Based on a careful analysis of all testimony, exhibits, particularly those dealing with the County's fiscal picture, as well as other documentary evidence, and after due consideration of the statutory criteria, the Panel hereby determines that a salary increase of 4% effective January 1, 2007, followed by an additional salary increase of 3.5% effective January 1, 2008, represents a fair and equitable increase at this time. These increases will insure that Westchester County Police Officers in the S.O.U. Bargaining Unit remain competitively compensated for attraction/retention purposes and should also assure Bargaining Unit members that they will not lose any ground in the salary rankings for base pay. It is also significant that this awarding of salaries takes into consideration the two competing interests noted and discussed above.

This Panel's decision to award Westchester County Police, S.O.U. Unit, with 4.0% in 2007 conforms with what the Panel has determined to be a just and fair increase for the PBA unit, and will also assure that they maintain their County-wide status. More importantly, this analysis makes it clear to this Panel that even assuming reasonable increases for other departments in the County that may not have resolved their contracts for 2007 and 2008, the top police pay rate for Westchester, when viewed in the context of all other compensation and benefits provided, represents a fair and equitable wage at this time.

As noted earlier, the Panel acknowledges the important and dangerous work performed by this Police group. The Panel also recognizes the unique and specialized skills of members of the department, and that given the current climate there have been increased

demands placed on members of the department who are willing to risk all to keep us safe. This is a significant factor as to why this Panel feels that SOU Unit members deserve fair and equitable salary increases such that the department can continue to attract and retain skilled, dedicated and highly capable individuals. Our determination in this regard fits well with the County Executives pledge to spend County resources in a prudent fashion. We might add that prudent spending does not necessarily imply no spending, particularly where, as here, circumstances require the award of a fair and equitable wage increase.

Finally, in addressing the County's ability to pay, as well as the impact of this Award on the public, it is clear to the Panel that the evidence presented supports the conclusion that this Award is well within the financial means of the County. In this regard, we note that for 2007, the last year for which a comprehensive annual financial report exists, the year end fund balance total exceeded \$188 million, and the unreserved portion was \$167.2 million. Expressed as a percentage of the budget, these figures accounted for 11.7 and 10.4% respectively. Bond rating agencies in New York State as well as the State's Comptroller urge that municipalities maintain at least a 5% cushion, with 10% considered desirable. Westchester's numbers exceed each of these percentages.

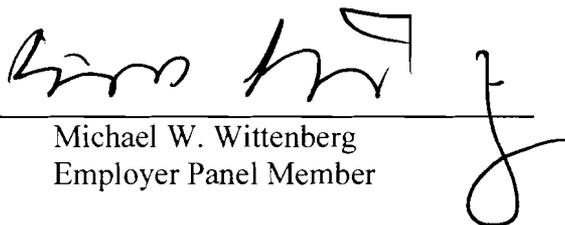
Accordingly, after consideration of the exhibits, documentation and testimony presented, and following due consideration of the criteria set forth in Section 209.4 of the Civil Service Law, the Panel makes the following:

AWARD

RANK	Effective 1/1/07	Effective 1/1/08
Lieutenant	\$114,417	\$118,876
Captain	\$133,868 (17% differential above Lieutenant)	\$139,085 (17% differential above Lieutenant)
Inspector	\$141,368 (\$7500 differential above Captain)	\$146,585 (\$7500 differential above Captain)
Chief Inspector	\$148,868 (\$7500 differential above Inspector)	\$154,085 (\$7500 differential above Inspector)

I CONCUR with the above Award.

Date: 02-27-2010



Michael W. Wittenberg
Employer Panel Member

Statement by Mr. Wittenberg:

While I have consented to the award, any decision to do so must be looked at through the prism of time. The statutory criteria requires me to evaluate the financial conditions in effect during the term of the award which is 2007 to 2008, as well as the conditions that currently apply to Westchester County.

If the term of the award was more current, I surely would have declined to support an award with wages and other increases of this magnitude. However, in the interest of fairness and taking into consideration the financial and economic conditions in 2007 and 2008, I shall consent.

I DO NOT CONCUR with the above Award.

Date: 02-27-2010



Anthony V. Solfaro
Employee Organization Panel Member

3. LONGEVITY

Currently, SOU Unit Members receive longevity commencing after 5 years of service as follows:

YEARS OF SERVICE	AMOUNT (2006 RATES)
After 5 Years	\$2700.00
After 10 Years	\$2900.00
After 15 Years	\$3100.00
After 20 Years	\$3300.00

The SOU seeks to change the manner and method of longevity payment by adding four (4) additional steps to the Salary Schedule as follow:

STEP	YEARS OF SERVICE	AMOUNT
6	After 5 Years	4% of Base Wage
7	After 9 Years	5% of Base Wage
8	After 13 Years	6% of Base Wage
9	After 17 Years	7% of Base Wage

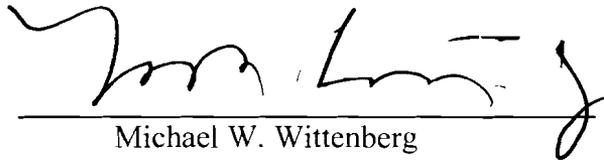
Upon review, the Panel finds that while longevity payments are an integral part of the Police Officer's compensation package, and while there is support for a modest increase, respectfully, there is no support for the type of major change proposed by the SOU. While SOU Unit Members fare well relative to longevity payments made, the amount of any increase must be balanced against the fact that the wage rate increase awarded falls below the County average. Accordingly, the Pane finds that following to be just and reasonable:

AWARD ON LONGEVITY

YEARS OF SERVICE	AMOUNT (Effective 1/1/07))	AMOUNT (Effective 1/1/08))
After 5 Years	\$2775.00	\$2975.00
After 10 Years	\$2975.00	\$3175.00
After 15 Years	\$3175.00	\$3375.00
After 20 Years	\$3375.00	\$3575.00

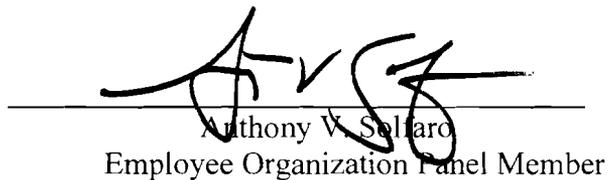
I **CONCUR** with the above Award.

Date: 02-27-2010


Michael W. Wittenberg
Employer Panel Member

I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010


Anthony V. Salfaro
Employee Organization Panel Member

4. SHIFT DIFFERENTIAL

At the current time, SOU Unit Members who have a starting time of 1:00 p.m. or later or a quit time of 12:00 noon or earlier receive a shift differential payment of \$23.00 per shift.

The SOU maintains that the shift differentials as they currently exist are insufficient to properly compensate for the burden of working inconvenient shifts which disrupt normal family life. They propose to change the formula for the calculation of the shift differential, thereby increasing the differential at the same time as follows:

- Effective 1/1/07 7.5% of Base Wage & Longevity
- Effective 1/1/08 10.0% of Base Wage & Longevity

The County seeks to keep the differential status quo for each of the two years of this Award.

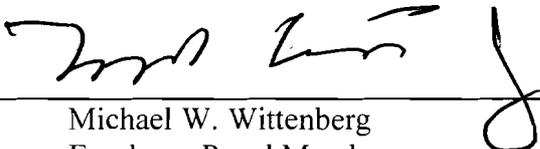
Upon review of the comparables, the Panel finds that while the SOU's proposal represents a novel approach, respectfully, there is no support for the drastic change proposed. Moreover, we find that the shift differential currently paid is competitive. Accordingly, while the increase proposed by the SOU is not warranted, we find that while no increase will be granted for 2007, a modest increase at or around the cost of living for 2008 is just and proper.

AWARD ON SHIFT DIFFERENTIAL

Effective 1/1/07 \$23.00 (no change for 2007)
Effective 1/1/08 \$24.50

I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010



Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010



Anthony V. Solfaro
Employee Organization Panel Member

5. CLOTHING ALLOWANCE

Currently, SOU Unit Members receive a clothing allowance of twelve hundred fifty dollars (\$1250.00) per year, payable in two lump sum payments as set forth in Section 6.3 of the Collective Bargaining Agreement. This stipend was agreed upon in 2002 and since that time, there has been no increase.

The SOU seeks to increase the stipend by \$250.00 effective 1/1/07, thereby raising the stipend to \$1,500.00, and further increase the stipend by \$50.00 effective 1/1/08, raising the stipend to \$1,550.00.

The County asserts that the current stipend provided to SOU Unit Members compares favorably with all jurisdictions within the County and accordingly, no further increase is warranted.

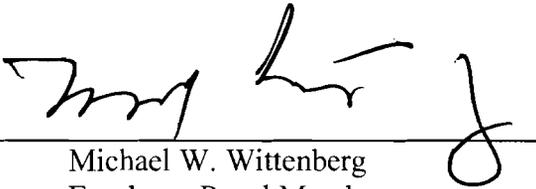
Upon review, the Panel agrees with the County that the clothing allowance paid to SOU Unit Members is competitive. Accordingly, while the increase proposed by the SOU is not warranted, a modest increase effective with the second year of this Award (2008) is just and proper.

AWARD ON CLOTHING ALLOWANCE

Effective 1/1/07 \$1250.00/year (no change for 2007)
Effective 1/1/08 \$1,300.00/year

I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010



Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010



Anthony V. Solfaro
Employee Organization Panel Member

6. STAND BY ALLOWANCES

A. COUNTY EXECUTIVE'S SECURITY DETAIL

Currently, SOU Unit Members assigned to the County Executive's security detail receive a yearly stipend of one-thousand dollars (\$1000.00) per year as set forth in Section 6.6 of the Collective Bargaining Agreement. This stipend was agreed upon in 2002 and since that time, there has been no increase.

The SOU seeks to increase the stipend by \$500.00 effective 1/1/07, thereby raising the stipend to \$1,500.00, and further increase the stipend by \$250.00 effective 1/1/08, raising the stipend to \$1,750.00.

The County asserts that the current stipend provided to SOU Unit Members compares favorably with all jurisdictions within the County and accordingly, no further increase is warranted.

Upon review, the Panel agrees with the County that the stipend paid to SOU Unit Members is competitive. Accordingly, while the increase proposed by the SOU is not warranted, a modest increase effective with the second year of this Award (2008) is just and proper.

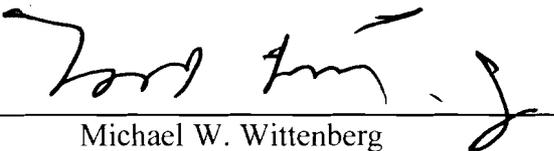
AWARD ON COUNTY EXECUTIVE'S SECURITY DETAIL

Effective 1/1/07 \$1000.00/year (no change for 2007)

Effective 1/1/08 \$1,100.00/year

I **DO NOT CONCUR** with the above Award.

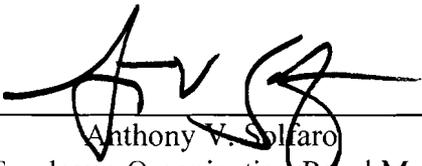
Date: 02-27-2010



Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010



Anthony V. Solfaro
Employee Organization Panel Member

B. BOMB SQUAD

Currently, SOU Unit Members assigned to the Bomb Squad receive a yearly stipend of one-thousand dollars (\$4000.00) per year as set forth in Section 6.6 of the Collective Bargaining Agreement. This stipend was agreed upon in 2002 and since that time, there has been no increase.

The SOU seeks to increase the stipend by \$500.00 effective 1/1/07, thereby raising the stipend to \$4,500.00, and further increase the stipend by \$500.00 effective 1/1/08, raising the stipend to \$5,000.00.

The County asserts that the current stipend provided to SOU Unit Members compares favorably with all jurisdictions within the County and accordingly, no further increase is warranted.

Upon review, the Panel agrees with the County that the stipend paid to SOU Unit Members is competitive. Accordingly, while the increase proposed by the SOU is not warranted, a modest increase effective with the second year of this Award (2008) is just and proper.

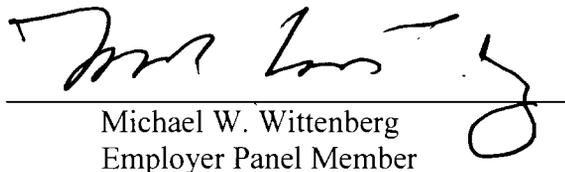
AWARD ON BOMB SQUAD DETAIL

Effective 1/1/07 \$4000.00/year (no change for 2007)

Effective 1/1/08 \$4,100.00/year

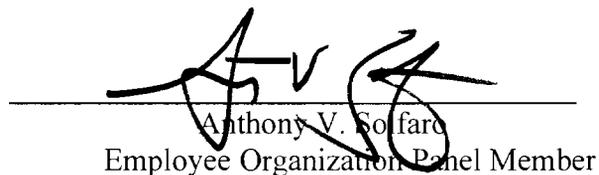
I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010


Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010


Anthony V. Solfaro
Employee Organization Panel Member

7. HEALTH INSURANCE

The County proposes that effective January 1, 2010, all Unit Members contribute 10% of the cost of their health insurance plan. The SOU proposes no change in the current rate of contribution.

In support of their position, the County maintains that a majority of police bargaining units in the geographical area have agreed to a contribution in some form to be made by employees toward their health insurance coverage. The County also notes that a majority of these municipalities provide benefits under the Empire Plan, a less costly plan with a less favorable benefit schedule. Within the County, the County notes that the CSEA, the largest County bargaining unit, agreed to substantial changes in their health benefit plan. Accordingly, a 10% contribution from SOU Unit Members is justified and appropriate the County adds.

The SOU opposes any contribution at this time for two reasons. First, the SOU asserts that there has been little substantive discussion on the subject, and any change in a major benefit such as health insurance should be preceded by productive talks. Second, aside from the CSEA, whose changes are to take effect late in December 2008, no other County group has agreed to any significant changes relative to the current health insurance benefit, particularly the type of change sought here by the County.

As we begin this discussion, it is apparent that any direction by this Panel on the health insurance issue before it must be made in light of the fact that this Award covers the period January 1, 2007 through December 31, 2008. Accordingly, for all intents and purposes, this Award will have “expired” even before it has been issued. Therefore, there remains a serious question as to the practicalities of an Award that changes a health insurance plan retroactively. Moreover, since the parties have continued their current Westchester County Health Benefits Plan into calendar year 2010, and given the fact that the parties will enter negotiations for a successor to the current collective bargaining agreement, the parties need to further discuss such major changes in health insurance

rather than have it imposed by an arbitration panel. This conclusion makes sense, particularly in light of the fact that any substantive changes agreed upon by the CSEA in their last round of bargaining did not take effect until the end of December 2008, a time period coincidental with the termination of this Award. It is also significant that the changes agreed upon by the CSEA were not retroactive as the County would desire in the case before this Panel.

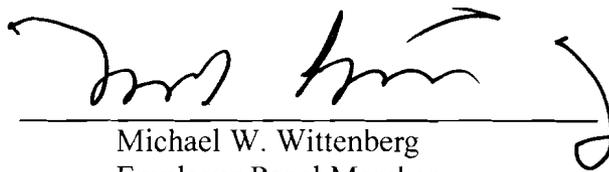
Given the foregoing, following a careful and thorough analysis of all testimony, exhibits, and other documentary evidence, the Panel makes the following

AWARD ON HEALTH INSURANCE

The change sought by the County is respectfully DENIED.

I **DO NOT CONCUR** with the above Award.

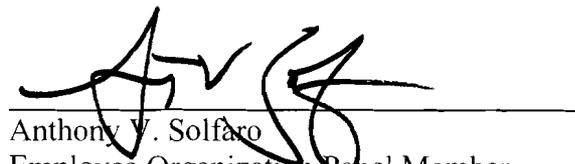
Date: 02-27-2010



Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010



Anthony V. Solfaro
Employee Organization Panel Member

8. WELFARE FUND

To supplement the benefits of the basic health insurance plan, a Welfare Trust Fund has been established. This fund is used to purchase other benefits for SOU Unit Members such as dental, optical etc. Currently, a \$1855.00 per year contribution per employee is made to the Fund by the County.

The SOU seeks to increase the Fund contribution by \$305.00 effective 1/1/07, thereby raising the yearly Fund Contribution to \$2,160.00, and further increase the Fund contribution by \$240.00 effective 1/1/08, raising the County's contribution to \$2,400.00. The County asserts that the current stipend provided to SOU Unit Members compares favorably with all jurisdictions within the County and accordingly, no further increase is warranted. Moreover, the County notes that the Fund retains a healthy balance, further demonstrating that no additional contribution is warranted.

Upon review, the Panel agrees with the County that the current amount paid to the Welfare Fund is both generous and competitive. However, the Panel recognizes that in lieu of welfare benefit payments, there are numerous departments within Westchester County that continue to pay for the cost of dental and vision insurance of its Police personnel. Based upon the Panel's experience in labor relations and familiarity with the cost of dental and vision plans, the Panel is of the reasonable belief that those jurisdictions continuing to pay for dental and vision pay a comparable amount as Westchester County pays toward the Welfare Fund. Accordingly, while the increase proposed by the SOU is not warranted, a modest increase effective with the second year of this Award (2008) is just and proper in order to keep pace with the rising expenses and inflationary costs associated with the benefits the Fund provides.

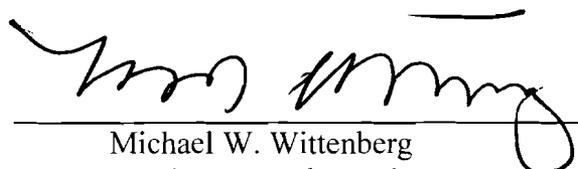
AWARD ON WELFARE FUND

Effective 1/1/07 \$1,855.00/year (no change for 2007)

Effective 1/1/08 \$1,900.00/year

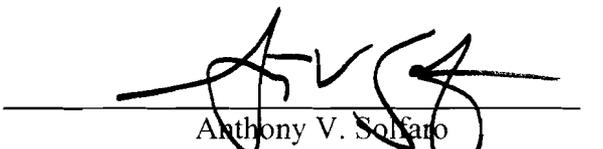
I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010


Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010


Anthony V. Solfero
Employee Organization Panel Member

RETROACTIVITY

It is the SOU's position that full retroactivity to any Unit Member who worked during any period incorporated by this Award is due and owing. The County, on the other hand, believes that only those who remained on the rolls during and subsequent to the period covered by the Award or those who may have retired during the term of this Award are due any retroactive benefits.

The Panel is of the belief that full retroactivity to any Bargaining Unit member who worked during any period covered by the term of this Award is due and owing. The Panel finds support for its conclusion in the Appellate Division, Third Department's

decision in *Baker vs. Hoosick Falls Central School District*, 3 AD 3d 678 (3d Dep't 2004), aff'g 194 Misc. 2d 116 (Sup. Ct. Rensselaer County, 2002). In Hoosick Falls, the teachers each retired during the pendency of contract negotiations on a contract that was to be retroactive to years in which the teachers worked. The successor contract included retroactive pay raises, which were paid to current but not retired teachers. The Teacher's Union had refused to negotiate the issue with regard to retired teachers. Defendant School District's motion to dismiss asserted the complaint was time barred, that the teachers lacked standing, and that the complaint failed to state a cause of action. The court affirmed, holding that (1) the teachers commenced their action within the time requirement in N.Y. C.P.L.R. § 217(2) and the only evidence to the contrary was mere speculation; (2) as the teachers had alleged an injury-in-fact caused by the exclusion from the retroactive pay raises, they had standing to bring their action; (3) under the facts of the case, the association owed a continuing duty to the teachers to negotiate on their behalf over terms and conditions that would be retroactively applied; and (4) the association's total lack of representation of the teachers was sufficient to state a cause of action for breach of the association's fair representation duty. In relevant part, the Court noted:

[P]ERB has nonetheless recognized that an employee organization may have a continuing duty to represent former employees "in circumstances in which the severance from employment is being contested or there is some other basis upon which to conclude that there is a continuing nexus to employment" (*Matter of Bartolini [Westchester County Correction Officers' Benevolent Assn.]*, *supra* at 3184; see *Matter of Heady [County of Dutchess--Dutchess County Deputy Sheriffs' SOU]*, 31 PERB 3068, at 3151 [1998]). In our view, there is a continuing nexus between a retiree's former employment and negotiations over terms and conditions that will be retroactively applied to those periods of active employment. We conclude, therefore, that the Association had a continuing duty to represent plaintiffs in negotiations for the new retroactive CBA.

(Id. at 681)

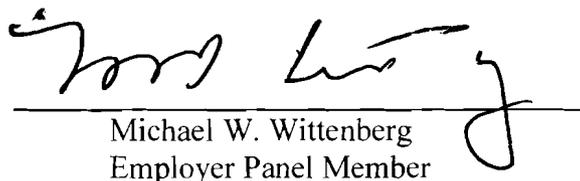
Given the foregoing, the Panel makes the following Award:

RETROACTIVITY

The Panel Awards full retroactivity to any Unit Member who worked during any period incorporated by the term of this Award.

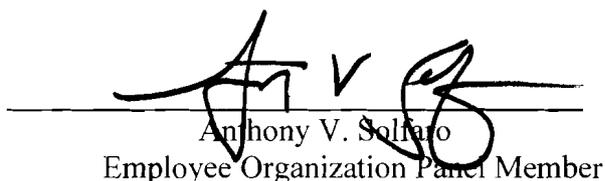
I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010


Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010


Anthony V. Solfaro
Employee Organization Panel Member

REMAINING ISSUES

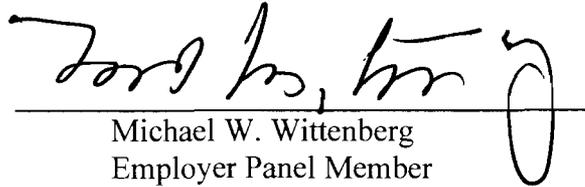
The Panel has reviewed the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not studied and seriously considered in the context of contract terms and benefits by the Panel Members. In Interest Arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions lead to agreement. The Panel, in reaching what it has determined to be fair results, has not addressed or made an Award on many of the proposals submitted. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Accordingly, we make the following Award:

AWARD ON REMAINING ISSUES - COUNTY

Any proposals and/or terms other than those specifically modified by this Award are hereby rejected.

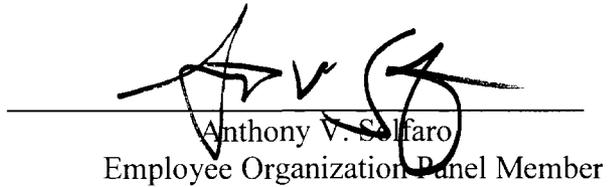
I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010


Michael W. Wittenberg
Employer Panel Member

I **CONCUR** with the above Award.

Date: 02-27-2010

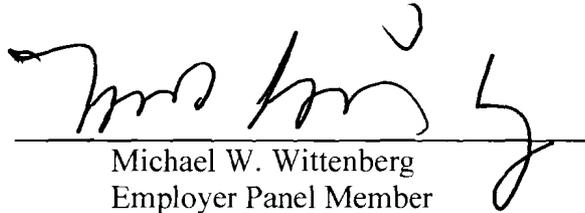

Anthony V. Salfaro
Employee Organization Panel Member

AWARD ON REMAINING ISSUES - SOU

Any proposals and/or terms other than those specifically modified by this Award are hereby rejected.

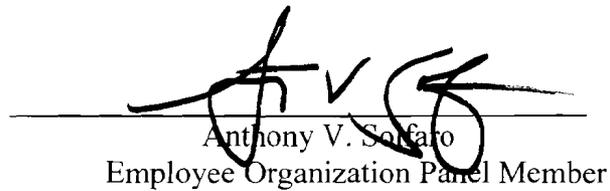
I **CONCUR** with the above Award.

Date: 02-27-2010


Michael W. Wittenberg
Employer Panel Member

I **DO NOT CONCUR** with the above Award.

Date: 02-27-2010


Anthony V. Salfaro
Employee Organization Panel Member

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction over any and all disputes arising out of the interpretation of this Opinion and Award.

