

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration between

COUNTY OF ERIE, NEW YORK and the
SHERIFF OF ERIE COUNTY

Public Employer

-and-

ERIE COUNTY SHERIFF'S POLICE
BENEVOLENT ASSOCIATION,

Employee Organization.

PERB Case No. IA-2009-007; M2008-275

BEFORE:

Jeffrey M. Selchick, Esq.
Public Panel Member and Chairman

Paul D. Weiss, Esq.
Employee Organization Panel Member

Christopher M. Putrino, Esq.
Public Employer Panel Member

APPEARANCES:

For the County of Erie and Sheriff's of Erie County
Goldberg Segalla, LLP
Sean P. Beiter, Esq. of Counsel

For Erie County Sheriff's Police Benevolent Association
Bartlo, Hettler & Weiss
Sarah E. Hansen, Esq., of Counsel

OPINION

AND

AWARD

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned was designated by the Chairman of the New York State Public Employment Relations Board ("PERB"), to make a just and reasonable determination of a dispute between the County of Erie, New York and the Sheriff of Erie County ("County") and the Erie County Sheriff's Police Benevolent Association, Inc., ("PBA").

It is noted that the County has a geographical area of approximately 1,044 square miles with a population of 909,845 at the 2008 census, a decrease of 4.3% in population size since the 2008 population estimates from the Census Bureau. The Panel Chairman further notes that the State, on July 12, 2005, enacted the Erie County Fiscal Stability Authority Act in view of a "severe fiscal crisis" that was being experienced by the County. This legislation created the Erie County Fiscal Stability Authority ("Control Board"), which is to continue until December 31, 2039. Section 3957 of the New York Public Authorities Law mandates the County Executive to submit a 4-year financial plan to the Control Board, which must lay out, among other items, revenue and expenditure projections. When a gap is identified between projected revenues and expenditures, the County is required to identify "Gap Closing Actions" that are to be implemented. Further, Section 3959 of the Public Authorities Law allows the Control Board to impose a "control period". During a "control period", the legislation allows the Control Board to impose a wage and/or hiring freeze. No

such wage freeze is currently in effect. On June 2, 2009, the "control period" was revoked by the Control Board.

The PBA unit, as of the date of the hearings in this proceeding, consisted of approximately 147 employees in the Erie County Sheriff's Criminal Division.

The composition of the unit, as of the date of the hearings, was as follows:

Title	Number
Captain	3
Captain-Aviation	1
Lieutenant	4
Sergeant	10
Technical Sergeant	1
Senior Detective	2
Detective	14
Deputy Sheriff-Criminal	110
Senior Flight Tactical Officer	1
Undercover Narcotics	1

(Union Exhibit 1).

According to the record, the Criminal Division's primary responsibility is to ensure public safety throughout the County of Erie. In approximately 16 towns and villages in the County, the Sheriff's Road Patrol is the primary provider of law enforcement services, responding to emergency 911 calls and routine calls. In these jurisdictions, the Sheriff's Office has the sole responsibility for investigating crime. In other municipalities in the County with their own police departments, unit members, on request, provide assistance, especially in the form of unique services or equipment unit members can make available. In this regard, it is

noted that the Sheriff's Criminal Division includes a special services unit, consisting of the following:

- Aviation Unit
- Bomb Squad
- SWAT Team
- Sheriff's K-9 Unit
- Marine and Snowmobile Division

Further, it is noted that, within the Sheriff's Office, there is a Civil Division, a Criminal/Housing Court Warrants Squad, a Family Court Warrants Squad, a Narcotics Investigation Squad, an Arson Unit, an Underwater Recovery Team, A Technology Unit, a Weapons and Ordinance Unit, a Traffic Enforcement Unit, a Commercial Vehicle Enforcement Unit, and a Motorcycle Squad. Unit members also participate in various task forces and response teams and thus find themselves working with other local, state, and federal law enforcement agencies. The Criminal Division, it can also be noted, is responsible for providing transportation services for inmates that are housed at the Erie County Holding Center and is involved in transporting inmates between the Holding Center and various courts in the County as well as the Erie County Medical Center. Unit members also patrol County buildings.

The parties most recent Collective Bargaining Agreement covered the period January 1, 2000 through December 31, 2002. (Joint Exhibit 1). In addition, the parties executed a Memorandum of Agreement that was effective from January 1, 2003 through December 31, 2004. (Joint Exhibit 2). The parties were not able to reach a successor Agreement and proceeded to Interest

Arbitration before a Panel Chaired by Thomas N. Rinaldo, Esq., ("Rinaldo Panel"). The Rinaldo Panel, on November 28, 2007, issued its Award for the period January 1, 2005 to December 31, 2006. (Joint Exhibit 3).

The parties commenced negotiations for a successor Agreement in October 2008. Impasse was declared by the PBA in January, 2009 and mediation was then conducted by PERB. Subsequently, the PBA filed its Petition for Compulsory Interest Arbitration on June 19, 2009. (Joint Exhibit 4). The County filed its response to the Petition on July 2, 2009. (Joint Exhibit 5). The parties then both filed Improper Practice Charges, which saw them agreeing to withdraw various proposals. (Joint Exhibit 9). Eventually, the PBA submitted 18 proposals and the County submitted 3 proposals in this proceeding. Hearings were held March 23 and 24, 2010, and, at the hearings, both parties were represented by counsel and other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented extensive arguments on their respective positions. Post-hearing briefs have also been received by the Panel.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by both parties. After significant discussions and deliberations at a number of Executive Sessions, this Panel, consisting of the Panel Chairman and the Employer Panel Member, reached agreement on the terms of this Interest Arbitration Award. The Employee Organization Panel Member is dissenting from this Opinion and Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and in the post-hearing briefs, all of which are incorporated by reference into this Award. The parties' positions, as relevant, will merely be summarized for the purposes of this Opinion and Award.

This Award therefore provides an Agreement for the period commencing January 1, 2007 through December 31, 2008. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the terms and conditions of employment at issue for the period January 1, 2007 through December 31, 2008.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service Law:

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

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities."

In this proceeding, the PBA proffered a list of 13 comparable communities. These comparables consisted of the Monroe, Niagara, and Onondaga County Sheriff's Departments; Police Departments in municipalities in Erie County including the Town of Amherst, City of Buffalo, Town of Cheektowaga, Town of Evans, Town and Village of East Aurora, Town of Hamburg, Town of Lancaster, Town of Orchard Park, Town of Lancaster, Town of Tonawanda, and Town of West Seneca; and the New York State Police.

Regarding the County Sheriff's Department, the PBA asserts that the counties it selected are all "large, upscale counties containing a major city." Significant weight, according to the PBA, should be given to Monroe County since the population of Monroe County is closer to Erie County than any other

upstate County and both counties contain a major city. Further, the PBA notes the crime index rate in Monroe is closest to that of Erie County. It observes that Monroe County was considered a comparable by the Rinaldo Panel and that the Chairman of this Panel found Monroe and Erie Counties to be comparables in an Award of December 12, 2005, for the interest arbitration proceeding concerning the Monroe County and Monroe County Sheriff's PBA. Significant weight should also be given to Niagara County, the PBA argues, since it also contains a large city and is contiguous to Erie County. Onondaga County, the PBA puts forth, "should be given less weight than Monroe and Niagara counties," given the fact that it does not have the same geographical proximity as Monroe and Niagara counties.

As to the Towns and Villages in Erie County offered as comparables, the PBA maintains that the Departments for these municipalities have the same essential mission as PBA members who patrol in municipalities in the County without police departments. There is a "parity between the work performed by PBA members and officers working for [these] local police departments", the PBA contends, and the parity is underscored by the fact that a number of PBA members over the years have transferred the work in these local agencies. The Rinaldo Panel considered local police departments within Erie County, the PBA observes, as part of what the Panel identified as a "trend" to consider both County and local police departments. This "trend", the PBA notes, was endorsed

by the Chairman of this Panel in the Monroe County Award as well as by Arbitrator Kowalski in an Award involving Onondaga County Sheriffs.

The PBA also maintains that the State Police should be considered a comparable since "New York State Troopers provide many of the same services as PBA members." In addition, the PBA maintains that its members "work closely with the New York State Police performing the same functions in those municipalities in Erie County that do not have police departments of their own." The PBA argues that any claim by the County that the New York State budget would allow for the payment of greater wages should be rejected because "Erie County is currently in a better fiscal position than New York State, which has not yet been able to adopt a budget and close significant spending gaps."

Regarding comparables offered by the County, the PBA requests that the Panel reject proffered comparables in the form of counties that do not resemble Erie County either in size or demographics. Fulton County is identified by the PBA as one such County. Moreover, the PBA urges the Panel to reject any comparables offered by the County in terms of Erie County employees "holding non-public safety jobs who are not exposed to the same kinds of hazards which PBA members face on a daily basis as part of their employment."

The County urges the Panel not to accept the State Troopers as a comparable, noting that the Rinaldo Panel rejected this comparable as did the Panel in the Fulton County Interest Arbitration. Rejection of local municipalities, the County notes, would be justified as well, based on the rationales offered by

Arbitrator Rinaldo in the Fulton County proceeding and Arbitrators Prosper and Kowalski (Onondaga County).

The County does note the Panel Chairman's findings in the Interest Arbitration in Monroe County Road Patrol Deputies that no department or agency can be considered a universal comparable "for all purposes." It observes that the Rinaldo Panel found Road Patrol Units in Monroe and Onondaga Counties and municipalities in Erie County as forming the comparable universe, though the local municipalities would not be given as much weight.

Panel Determination of Comparability

The Rinaldo Panel, taking note of an Award that Arbitrator Rinaldo issued in the Fulton County Road Patrol Deputy Interest Arbitration proceeding, quoted approvingly from that Award that "the State-wide employment of the Troopers and their status as State employees placed the Troopers in a unique employment status that would make it unreasonable to compare the Troopers to members of the bargaining unit herein notwithstanding the considerable similarities in their working conditions, including the dangers and risks thereof." Accordingly, the Rinaldo Panel found that "the PBA's attempt to include State Troopers as part of the universe of comparables cannot be accepted." This Panel finds no reason to reach a different conclusion. The Rinaldo Panel also took note of the instant Panel Chairman's observations in the Road Patrol Deputy Interest Arbitration proceeding in Monroe County wherein this Panel Chairman

offered the conclusion "that both local law enforcement agencies and other County Sheriff's departments may be viewed as legitimate sources of comparability." The Rinaldo Panel also quoted with approval the following observations of this Panel Chairman in the Monroe County proceeding:

In the instant case, and upon the record developed and presented herein, the Panel has viewed all such other agencies, both in and outside of Monroe County, as part of a larger mosaic in terms of appropriate comparables. The Panel has in effect accepted the premise that in the instant proceeding and upon the record herein, there is no single agency or department that can be considered universally comparable for all purposes. Therefore, the Panel has utilized all such information to reach the conclusions contained herein regarding the wages and benefits to be provided to Monroe County Road Patrol Deputies.

Accordingly, this Panel finds that the record evidence containing comparables advanced by both parties, save for the State Troopers, will be taken into account by the Panel and, on a particular issue, be given greater weight, lesser weight, or no weight at all.

ABILITY TO PAY

The PBA puts forth that the relevant time frame in which to consider the County's ability to pay is "the present." In this regard, the PBA urges the Panel to reject any argument by the County that the Panel should consider the County's ability to pay during the period covered by the Award and the fact that, during that time, the County was under a "control period". It is the PBA's position that "financial ability to pay is appropriately examined in light of the employer's

present financial condition". (Emphasis in original). The findings of this Panel Chairman in an Interest Arbitration Award involving the State of New York and NYSCOPBA are cited by the PBA in support of this proposition.

The PBA accuses the County of acting in a manner that contradicts its approach in the Award between the parties herein covering the period 2005 and 2006. Thus, the PBA observes that only two months of that period fell during the "control period" and yet the County argued that, since a "control period" was in place when the interest arbitration proceeding was held, the Rinaldo Panel should take that fact into account. According to the PBA, the Sheriff should not be allowed to argue in 2007 that the Rinaldo Panel consider the County's "current fiscal crisis" and to argue now in this proceeding "that the relevant inquiry is not the current state of the County's finances, but what they were back in 2007 and 2008."

Viewing the County's current finances, the PBA observes that its Financial Consultant, and County Budget Director Gach, "agreed that the County has been relatively resistant to the effects of the nation-wide recession" and that the County enjoys a "current positive financial state" evidenced by "the fact that the ECFSA [Control Board] has seen fit to revert to an advisory status and has adopted the County's 2010 budget, together with its Four Year Plan." Though the County did not budget for the cost of wage increase for County employees who have been working without a contract, the Control Board, the PBA puts forth, "has sequestered monies to be utilized to pay retroactive wage increases."

The County's bond ratings, the PBA states, reflect the improvement in the County's finances. The "current bond ratings", according to the PBA, "paint a positive picture of the County's current financial state, illustrating that the County has the ability to pay wage and benefit increases to PBA members." Further, the PBA identifies the County's "low level of debt per capita" and the "fact that the County has experienced significant surpluses over the past few years." Thus, the PBA notes that the County ended 2009 with approximately \$44 million in surplus, which the County was able to accomplish without any federal stimulus relief monies. The PBA notes that the County, according to the record evidence, has used surpluses that have been reached in the past several years to "rebuild its undesignated fund balance, or reserve fund." According to the PBA, the County has sought to confuse the "current positive financial condition by dwelling upon speculation as to what events may occur in 2011 and the future that could impact future County budgets."

The PBA argues that the Panel should not accept the County's speculative concerns and "[t]o the extent there are concerns about a projected budget gap beyond 2011 or contingencies associated with the end of the national recession, the County has already provided for means to address those contingencies." The PBA also identifies what it considers to be the County's ability to generate revenue in the forms of property taxes, sales tax, and state and federal aid. Thus, the PBA asserts that "the County is capable of balancing its budget while still providing necessary services."

It also cannot be doubted, the PBA argues, that the "impact of the cost of police services on the County as a whole is minimal, and, correspondingly, the cost of wage and benefit increases for PBA members is also minimal and would not affect the budget or tax levy in any significant manner." At the end of the day, the PBA asserts, the record clearly supports a conclusion that the County can pay significant increases in wages and benefits. Supporting this conclusion, the PBA maintains, is the fact that the County has responsibility to its taxpayers "to provide a strong county-wide police force, particularly in those municipalities where there is no local police department and particularly during periods of economic downturn, when crime is expected to rise." Thus, the PBA maintains, the County's ability to pay justifies significant wage and benefit increases, which in turn are "necessary to the welfare of the public."

The County notes that it finished fiscal year 2007, which is the first year to be covered by this Award, with a "positive operating result of \$9.3 million" and that it finished fiscal year 2008, the second year covered by the Award, with a "positive operating result of \$10.7 million." These results, the County sets forth, were achieved by "fiscal discipline caused by the existence of the control period" and increases in sales tax. It is the County's position that the operating surplus of \$44 million generated in fiscal year 2009 was "largely due to Federal stimulus funds" and "that money has already been designated for other uses."

The County claims it is now faced with "projected budget gaps in 2011, 2012 and 2013 that total approximately \$100,000,000." Additionally, the County observes that no funds have been reserved to pay for wage increases for employees during the years 2007, 2008, or 2009. Accordingly, the County notes, "any monies awarded by this Panel must be funded out of the 2010 Budget."

The County contends that its revenues primarily depend on sales tax and real estate tax, both of which were increased for fiscal year 2006. Its expenses, the County notes, are "driven by the capped growth (three percent [3%] of Medicaid and other mandated services." It is clear, the County maintains, that the record evidence shows "the growth in expenditures is outpacing the modest growth in revenue services." In the 2007 budget, the County observes, 88.06% of its revenue was utilized to fund mandated expenses and, of non-mandated expenses, one of the largest components is the Sheriff's Division. The expenses for the Sheriff's Division, the County claims, "makes up just over ten percent (10%) of the County's non-mandated expenditures" which is "a significant portion of the County's non-mandated services budget."

Panel Determination on Ability to Pay

The Panel is well aware of the County's uncertain and difficult fiscal condition that existed in 2005 and resulted in the enactment of the Control Board legislation. It is very clear to the Panel, however, that the County responded well to the Control Board structure and limitations, and has successfully managed to

put its fiscal house back in order. To that end, the Panel takes special note of the fact that the "control period" has ended and that the County's bond ratings have significantly increased. While the Panel is mindful of the severe fiscal challenges the County and many other municipalities faced in 2007, 2008 and to date, it does find that the County can pay the wage increases set forth in this Award. The County's ability to pay, the Panel also notes, is enhanced by the savings the County will realize by the health insurance portion of this Award.

WAGES AND ENHANCED DUTY PAY

The PBA has sought an 8% annual increase for all unit members for each year of the term of the Award. In support of its wage increase proposal, the PBA claims that the record clearly permits the conclusion that the effect of a wage increase on the County's tax levy would not be substantial. It asserts that the proposed 8% wage increases are necessary in order to bring the PBA into parity with the wages provided to employees in the offered comparable communities, "particularly those police officers employed in municipal police departments within Erie County and deputies employed in the Monroe and Niagara County sheriff's departments." Focusing on officers working for municipal police departments in Erie County, the PBA maintains that the record evidence shows that "a comparison of base salary alone shows that the PBA lagged 23% behind the average of all comparable police units in 2007, with three police agencies, Buffalo, East Aurora, and Orchard Park, having a 27% higher average base

salary in that year." The PBA further asserts that in 2008 it "lagged 26% behind the average of all comparable police units" and in 2009 "a comparison of base pay places the PBA 29% behind the average of other comparable police units, which grew to 31% in 2010, 2011, and 2012." The PBA also identifies "total compensation" and, staying within the universe of local police departments, observes that it "lagged 18% behind the average of comparable police units in 2007 and 21% behind the average in 2008." The unfavorable comparisons for unit members, according to the PBA, is evidenced by the fact that its members "at the first opportunity" transfer from the Sheriff's division to local municipalities.

Based on its perception of comparable counties, the PBA asserts that a "significant wage increase is needed to bring the wages of PBA members in line with or to maintain parity with the wages offered to these counties' deputies." According to the PBA, for 2007, a "6% increase in base salary would be needed in order to bring the PBA into line with the average base pay offered to deputies in Monroe, Niagara and Onondaga counties for that year" and in 2008 "the PBA fell to 15% behind Monroe County, 9% behind Niagara County, and 3% behind Onondaga County in terms of base salary, with a 9% increase in salary needed to bring the PBA into line with the average base pay offered to deputies in those counties for that year." The PBA argues that for "total compensation", the comparisons reveal that the unit it lags "13% behind Monroe County and 4% behind the average in 2008" and "would need a significant wage increase to achieve parity with those wages offered to deputies in comparable counties,

particularly Monroe and Niagara counties.” The PBA maintains that, even with an 8% wage increase in 2007 and 2008, the PBA would still not be in parity with local police departments or the State Troopers and such increases “would only just bring the PBA’s wages in line with Monroe County.”

The County puts forth that it has not budgeted or reserved funds to pay for wage increases and for those wage increases paid to other labor organizations, the County notes, the unions involved made major health care concessions, especially in the area of retiree health insurance. Without such concessions from the PBA, the County contends, wage increases are not justified. Thus, the County points to a 0% increase for both years of the Award as its proposal. The County rejects the testimony of Union witness Hynes in support of the Union’s wage proposal as “tainted” and “manipulated” and presenting an analysis that “does not reflect the health insurance plan or pension plan of employees in other units, which are significant cost factors” and “his analysis”, the County further observes, “does not include overtime, which accounts for twenty percent (20%) of the compensation paid to PBA members.”

The PBA’s wage proposal, the County puts forth, would cost the County over a three year period approximately \$26,266 “on average per member.” There is “no justification” for such an increase, according to the County, and the County maintains that the PBA has the burden “to demonstrate why the County tax payers should incur almost \$4 million in additional costs for services already rendered to them.” The County claims that it will be confronted with “significant

budget gaps” and further states that it “was in a control period during the term of this Award.” Additionally, the County puts forth that there has been no change in the cost of living that would justify the proposal, nor were agreements reached or awards issued concerning the County or its other employees that “even approach the amount of the PBA’s proposal.”

Turning to comparables, the County finds that the comparables must remain at the county level and any effort to compare the County to Erie County localities should not be accepted by the Panel. The fact that neither Monroe nor Onondaga Counties “set a pattern of wage increases in their awards in the range of eight percent (8%) each year”, the County argues, constitutes further reason for rejecting the PBA’s proposal. Added to this fact, the County contends, is the contention that “there is no doubt that Erie County is in a much more difficult financial position than either Onondaga or Monroe Counties.”

Panel Determination on Wages and Enhanced Duty

As noted above, the Panel finds that the County has the ability to pay a modest increase in wages. Additionally, and particularly in light of benefit concessions provided herein, the County is also able to pay a salary upgrade. These increases, it can be further noted, would be justified by viewing PBA wages for the relevant two year period within the context of the comparables, with particular emphasis on the County level of comparables. It is the Panel’s determination that a \$2,400 across the board salary upgrade effective December

31, 2008, in recognition of enhanced duties and in order to bring unit members closer to proper comparables, is warranted. This \$2,4000 added to base wages, coupled with a 2% wage increase for both 2007 and 2008, will be successful in placing unit members in the appropriate position when viewed against comparables and is an appropriate response to the PBA's request for salary parity.

In reaching this conclusion, the majority of the Panel finds no justification could be found for either a 0% increase, as sought by the County, or an 8% increase, as sought by the PBA. The PBA's 8% increase, the Panel observes, relies too heavily on local comparables and also attempts to find its justification by a comparison with the Troopers, which comparison the Panel has rejected. The County's proposal of a 0% increase, the Panel also observes, finds no justification in the record evidence. While the County may have been experiencing significant financial difficulties in 2007 and 2008, the ability to pay criterion is based on present circumstances, and, as noted, the present fiscal situation of the County will permit the increases awarded.

Accordingly, in view of all statutory criteria, and based on the Panel's findings, the Panel will Award an increase in salary as follows:

AWARD ON SALARY

1. Effective January 1, 2007 and retroactive to that date, the base salary schedule shall be increased by two percent (2%).
2. Effective January 1, 2008 and retroactive to that date, the base salary schedule shall be increased by two percent (2%).

AWARD ON PAY UPGRADE

Effective December 31, 2008, a \$2400 across the board increase, to be added to base wages, and is in the nature of enhanced duty pay.

HEALTH INSURANCE

The Rinaldo Panel, after observing that “the trend in New York law enforcement contracts is for some form of contribution to be made toward health insurance premiums” and in light of the “particular onerous burden placed on County governments”, found that “the County has a legitimate need to reduce its health insurance costs at least going forward.” Accordingly, the Rinaldo Panel for “any employee hired on or after January 1, 2008” directed a contribution for such employees at 15% of the premium for Core coverage, and for employees hired on or after January 1, 2008, a 15% contribution for retiree health insurance plus pay for the cost of Medicare Part “B”. In this proceeding, the County’s proposal would require current employees to pay 15% of the current premium and 30% of all increases. Current employees would be contributing 50% for retiree health insurance under the County’s proposal and employees hired after the Award would not receive any contributions from the County for retiree health insurance. The PBA proposes, in effect to delete all employee contributions to active and retiree health insurance.

By way of further background, the Panel would note that, in 2004, by agreement, the parties moved to a single health insurance provider. (Joint Exhibit 2). This agreement required the County to pay 100% of health insurance premiums, including for all eligible retirees retiring on or after January 1, 2003. As noted, the Rinaldo Panel’s Award changed the terms of the agreement by requiring certain contributions as noted above.

In support of its proposal, the County notes that Onondaga County employees make health insurance contributions similar to the County's proposal. (See County Exhibit 5 [tab 1]). The County claims that "the rate at which health insurance premiums are increasing" mandate that the "PBA members share in the cost of this benefit as it increases." The County further maintains that the "greatest potential long-term savings from the County's proposal is that new hires will not be entitled to County paid health insurance at retirement," which it labels as "consistent with the county's NYSNA and AFSCME settlements." Further, the County observes that "existing employees shall only be entitled to fifty percent (50%) of the premiums from the County" for retiree health insurance, "as opposed to the fully paid benefits that many members of the unit are entitled to now." The County asserts that "[b]ased upon the current health insurance census, the County would save almost \$1,036,314 from this proposal if implemented on January 1, 2007" and "would accrue significantly less liability for future retiree health insurance under this policy."

The County relies on the testimony of Budget Director Gach that under Government Accounting Standards Board Statement 45, employers are required to calculate the current liability of the costs of providing future benefits and that the County's liability is "just south of \$1 billion." According to the County, it has not reserved funds to pay for this accrued liability and "it sits as an unfunded liability that will need to be borne by the future taxpayers in Erie County." In the County's estimation, in light of "demographic trends and the already high tax

burden placed upon the County taxpayers, it is clearly justified to grant the County some relief on this subject" of health insurance or "as these liabilities will become due, it will swallow the County's revenues entirely."

The PBA resists the County's proposal and advances its own proposal. It asserts that the 2003-2004 Memorandum of Agreement concerning health insurance, which also saw unit members receive a 0% wage increase because they would not have to contribute to health insurance premiums, made it clearly "improper for the Rinaldo Panel to impose a health insurance contribution on PBA members." The PBA claims that the County is continuing "to enjoy savings achieved as a result of this Agreement" and "there should be no reason why PBA members should now be forced to contribute to the cost of health insurance." The PBA argues that the "the Panel should issue an award returning to PBA members the benefit of having to make no contribution for health insurance," which is its proposal before the Panel. As an alternative, the PBA urges the Panel to deny the County's attempt to increase the contributions beyond those set forth in the Rinaldo Panel Award.

The PBA states that its members "currently pay a higher percentage of the costs of premiums for health insurance than many of these other police units" in the comparable communities. No justification for the County's proposal, according to the PBA, can be seen when comparable jurisdictions are taken into account, and requiring the contributions sought by the County would "greatly exacerbate the Sheriff and County's current difficulties recruiting and retaining

qualified employees, as potential recruits or newly hired deputies will continue to be inclined to decline employment or leave employment with the Sheriff's Office to work for a local police unit where health insurance is either fully paid or where contributions extinguish after four or five years of employment." Further, the PBA claims that, were the County's proposal to be awarded, its members "would have retiree health insurance benefits that are less favorable than those of other County employees working in non-public safety jobs."

The retiree proposal by the County, according to the PBA, "is also entirely out-of-line with the retiree health insurance benefit offered in comparable communities." The PBA observes that only Onondaga County requires a contribution as high as 50% for retirees and then only in certain instances. Insofar as the County claims the 50% contribution would be consistent with benefits before the LMHF plans of 2004, the PBA reminds the Panel that it "negotiated in good faith to eliminate the 50% contribution for retirees, for which the PBA exchanged the ability to elect from among four health insurance providers as well as agreeing to a 0% wage increase for 2004."

The PBA also urges the Panel to consider its proposal to increase the amount of payments to PBA members who waive health insurance and asserts that "the monetary benefit of waiving health insurance coverage is much higher" in comparable communities. Moreover, the PBA claims that the Panel should eliminate that provision that excludes employees who have spouses working for

the County from receiving the waiver benefit. Such members, according to the PBA, should not be "penalized by virtue of who their spouse's employer is."

Panel Determination on Health Insurance

The record indicates that the 2006 PBA health insurance annual cost to the County was approximately \$1.1 million; in 2007 the net annual cost was approximately \$1.3 million; in 2008 the net cost was approximately \$1.4 million; in 2009 the net cost was approximately \$1.6 million; and in 2010 the net annual cost to the County will be approximately \$1.7 million. (County Exhibit 3 [tabs 2-6]). The percentage increase in total costs between 2006 and 2010 was 31.2%. (Id., tab 7). By way of a more specific view of the increases in the premiums, it can be seen that family coverage between 2006 and 2010 under the Value Plan increased 41.85%; family coverage under the Core Plan for the same years increased 36.47%, and under the Enhanced Plan for these years it increased 36.71%. (Id., tab 9). Single coverage between the years 2006 and 2010 under the Value Plan increased 37.83%; for the same years under the Core Plan, it increased 36.37%; and under the Enhanced Plan it increased 33.91%. (Id.).

In addressing this topic, the Panel would first offer its observation that the rising costs of health insurance cannot be doubted and, in fact, are amply demonstrated in the record of this proceeding. As seen above, the percentage increases in premiums between 2006 and 2010 exceed 30% in all instances, and there is no reason at all for the Panel to believe that this trend will change in any

way in the future. The Panel cannot blink away the fact that the County's responsibilities to the population that it serves requires it to maintain fiscal stability. The Rinaldo Panel, this Panel finds, had no choice realistically but to impose a contribution burden on members of the PBA, and this Panel finds that it is constrained to follow the lead of the Rinaldo Panel and require greater contributions from the PBA in this very difficult area. It is entirely consistent with the statutory criteria for this Panel to conclude that the County needs further relief to deal with the challenge of rising health insurance costs. By increasing the amount of contributions for both active and retired members, the Panel will be granting the County much needed relief, both for the present, and more importantly, for the future. It is in this manner that the County can continue to maintain fiscal stability while providing an acceptable level of health insurance benefits to its public employees.

For retirees, the Panel is sensitive to its need not to prejudice retirees who, upon their retirement, had reason to believe that the Rinaldo Panel's Award on health insurance would remain in place. To this end, the Panel will keep in place the Rinaldo Panel's Award on retiree health insurance for employees who retire prior to December 31, 2010. This will allow PBA members who may be planning on retirement to time their retirement to optimize their retiree health insurance.

Accordingly, in view of all statutory criteria, and based on the Panel's findings, the Panel's Award on health insurance is as follows:

AWARD

Effective 12/31/08, a fifteen percent (15%) contribution for health insurance, for any Plan enrolled in, for active employees and for those employees who retire after 12/31/10.

To be as clear as possible, this means that the Panel has created a two (2) year hold harmless period, so that any unit member who has retired during the period 12/31/08 to 12/31/10, shall receive health insurance in retirement without any employee contribution. Any unit employee who retires effective 1/1/11 and thereafter, shall be subject to the 15% health insurance contribution for retiree health insurance coverage.

REMAINING ISSUES

The Panel has reviewed in great detail all of 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 closely studied and considered in the overall 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 are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on a number of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Except for those proposals and/or items previously agreed upon by the parties herein, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

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

DURATION OF AWARD

This Award provides terms and conditions of employment for members of this bargaining unit for the period commencing January 1, 2007 and ending December 31, 2008.

	<u>s/Jeffrey M. Selchick</u> JEFFREY M. SELCHICK, ESQ. Public Panel Member and Chairman	<u>11/5/10</u> Date of Award
Dissent	<u>s/Paul D. Weiss</u> PAUL D. WEISS, ESQ. Employee Organization Panel Member	<u>11/1/10</u> Dated
Concur	<u>s/Christopher M. Putrino</u> CHRISTOPHER M. PUTRINO, ESQ. Public Employer Panel Member	<u>10/27/10</u> Dated

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this day of , 2010 before me personally came and appeared Jeffrey M. Selchick, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF) ss.:

On this day of , 2010 before me personally came and appeared Paul D. Weiss, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF) ss.:

On this day of , 2010 before me personally came and appeared Christopher M. Putrino, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

State of New York
Public Employment Relations Board
Interest Arbitration Panel

In the Matter of the Interest Arbitration Between

**COUNTY OF ERIE, NEW YORK and the
SHERIFF OF ERIE COUNTY**

Employer,

PERB CASE NO.

-and the-

IA 2009-007

M 2008-275

**ERIE COUNTY SHERIFF'S POLICE
BENEVOLENT ASSOCIATION, INC.**

Union.

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

RECEIVED

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CONCILIATION

BEFORE:

**Jeffrey M. Selchick, Esq.,
Public Panel Member and Chairman**

**Christopher M. Putrino, Esq.
Public Employer Panel Member**

**Paul D. Weiss, Esq.
Employee Organization Panel Member**

DISSENT

It is the opinion of this Panel member that the Majority erred when it issued an award that failed to recognize and address the significant disparity between the wages and benefits of members of the Erie County Sheriff's PBA ("the PBA") and law

enforcement personnel working in comparable communities. Further, the Panel Majority's Opinion and Award exacerbates that disparity by imposing an unprecedented retroactive, across the board health insurance contribution on all PBA members.

Section 209(4) of the New York State Civil Service Law ("the Act") requires every interest arbitration panel to examine certain factors and considerations in rendering a just and reasonable award, including the employer's ability to pay a reasonable wage increase and the wages and benefits offered to law enforcement officers in comparable communities. The Taylor Law's mandate of a "just and reasonable" award requires, on the record evidence presented in this case, considerably larger pay increases which are long overdue, coupled with maintaining the current health insurance cost containment scheme provided to the County. The Majority's award not only fails to bring the PBA into line with the wages and benefits paid to law enforcement officers within comparable jurisdictions, but actually further widens the disparity between the benefits received by PBA members and those received by officers in comparable communities.

The wage increase awarded by the Majority does not begin to close the wage gap between members of the PBA and law enforcement officers working in comparable jurisdictions, particularly in the towns and villages located within Erie County or the New York State police. Evidence presented at the hearing demonstrated that the base wages payable to PBA members lagged an average of 23% behind law enforcement officers employed in the towns and villages within Erie County in 2007 and 26% behind those officers in 2008. The PBA also lagged 12% in 2007 and 15% in 2008 behind neighboring Monroe County in terms of base salary and was an average of 9% behind Niagara County for 2008. Comparing PBA members to local officers of the New York

State Police, the evidence demonstrated that the New York State Police work directly with PBA members responding to emergency calls in Erie County, but that PBA members are paid nearly half of the wages paid to State police officers for that work.

The Panel's award of 2% retroactive to 2007 and 2% retroactive to 2008 has the effect of continuing, and actually contributing to, the artificially depressed salary rates of PBA members. Evidence presented at the hearing on this matter illustrates that the gap between the base wages of PBA members and those of local law enforcement officers is projected to widen to about 31% between the PBA and police officers in Erie County and 16% between the PBA and deputy sheriffs in Monroe, Niagara, and Onondaga counties by 2011-a gap that will continue to widen when those officers receive pay increases. The undeniable evidence that PBA members receive wages far below those paid in comparable communities mandates awarding a significant increase in base salary by this Panel. In granting only a very modest 2% increase in 2007 and 2% increase in 2008, the Panel Majority not only failed to take any steps to bring the PBA into parity with the wages paid to law enforcement officers in comparable communities, but actually widened the gap between the PBA's salary rates and those of local law enforcement officers while simultaneously deflating the amount of retroactive wages to be paid to PBA members. Moreover, any benefit that the PBA members could have derived by virtue of the \$2,400 raise in pay for members effective December 31, 2008 has effectively been negated by the Panel's unprecedented award of retroactive health insurance contributions for all members of the PBA.

While the Panel Majority may believe that a more significant wage increase cannot be awarded at this time, the evidence presented at the hearing on this matter does

not support their contention. Both the PBA's expert and the County's Budget Director agreed that Erie County has been relatively resistant to the effects of the nation-wide recession. This is in part because the PBA has come to the table in the past to negotiate with the County and Sheriff in good faith to reduce costs, particularly the cost of health insurance. Moreover, the County is no longer operating under the auspices of a hard "control board," but, instead, the Erie County Fiscal Stability Authority has reverted to "advisory" status only, which is indicative of the fact that the County is currently fiscally stable. Three national bond rating agencies currently rank the County's bonds as rating as "positive."

The evidence presented at the hearing demonstrated that the County is capable of paying a more significant wage and benefit increase than that awarded by the Panel. The County has achieved year end surpluses of \$9.3 million in 2007, \$10.7 million in 2008, and a record \$44 million dollar surplus in 2009. These surpluses have been utilized to raise the County's undesignated fund reserve to \$74 million, or approximately 7% of the total budget. The County's undesignated fund reserve is now well in excess of that which is considered to demonstrate a strong financial position. The County Executive has publicly stated that he anticipates closing the 2010 fiscal year with another surplus. In addition to the significant reserve fund that the County has generated, the evidence presented at the hearing demonstrated that the County currently has a low property tax rate, one of the lowest in the State.

There can be no question that the County has the financial ability to pay a wage increase necessary to bring the PBA into line with the wages and benefits paid to law enforcement officers in comparable jurisdictions. In fact, during the hearing the County's

Budget Director conceded that the impact of a wage and benefit increase on the County's budget would not be significant. The County Executive has simply chosen not to utilize the undesignated fund reserve or the surplus monies to provide for those basic services that the County's residents depend on, such as the Sheriff's Road Patrol. Section 209(4) of the Act requires the Panel to examine not only the financial ability of the County to pay a wage or benefit increase, but whether payment of a wage or benefit increase is in the best interests of the county's taxpayers. The residents of sixteen towns and villages within the County rely exclusively on the Sheriff's services to respond to both routine and emergency calls. In light of the current state of the County's finances, the time was ripe for the Panel to begin to make progress toward congruence between the PBA and comparable law enforcement personnel. The majority has failed to take the necessary steps to bring the salary of PBA members in line with those of other police officers and has actually set back the statutory imperative of Section 209(4) relative to comparability.

I must also issue this dissent because the Majority members of the Panel have erred in implementing an unheard of 15% across the board employee contribution for health insurance premiums, retroactive to December 31, 2008. Any benefit that the PBA could have derived from an increase in its base salary has been lost in light of the additional, uncapped health insurance contributions imposed upon all PBA members by the Panel Majority. In imposing such a significant contribution on current PBA members, the majority has penalized the PBA for coming to the table in negotiating with the County in the past and for making concessions, specifically the move to a single health insurance provider, which contributed to over \$12 million in savings for the County.

In 2003, the PBA voluntarily agreed to the move to a single health insurance provider, administered by the Labor Management Healthcare Fund. The record evidence revealed that at the time the 2003 Agreement was reached, the PBA was advised that the cost savings generated from the move to a single health insurer would be utilized to eliminate any contribution that PBA members would have to pay towards health insurance, either during employment or in retirement, and to fund future wage increases.

The PBA also agreed to a 0% wage increase in 2004 in exchange for the benefit of having health insurance fully paid for by the County. The County has undeniably enjoyed the benefits of the move to a single health insurance provider and continues to enjoy the benefits derived therefrom. The PBA's participation in the Labor Management Healthcare Fund has allowed the County to contain healthcare costs, whereas other governmental entities have experienced drastic increases in the cost of health insurance.

The Panel Majority's award of a 15% across the board contribution for health insurance penalizes the PBA for entering into good faith negotiations with the County, which resulted in the 2003, and 2004 agreement regarding the move to a single health insurer. The Panel Majority's award places the PBA back in the position that it was in prior to the 2003 agreement regarding the move to a single health insurer, effectively undoing the agreement reached between the parties while allowing the County to retain the benefits derived from that agreement, including the savings associated with the move to a single provider under the Labor Management Healthcare Fund and the lack of a wage increase in 2004. Moreover, this Panel member is unaware of any other interest arbitration panel imposing such a severe giveback as an across the board health insurance contribution, affecting both new and existing members, especially in circumstances such

as this where existing members were promised fully funded health insurance and had made significant concessions to gain those benefits. The County continues to realize health insurance cost containment from those concessions. Now however, the Panel Majority is complicit in a classic "bait and switch." The County obtained a cost-effective health insurance and is now expropriating what it gave up to get it. In short, the Panel Majority's award is a windfall for the County providing an unearned benefit to the County on the backs of the hard working members of the PBA.

In addition to the fact that the Panel Majority has penalized the PBA for entering into prior negotiations with the County regarding health insurance, the Panel Majority's imposition of a 15% across the board contribution for health insurance costs fails to comport with the statutory criteria set forth in section 209(4) of the Act. The evidence presented at the hearing demonstrated that as a result of the 2005-2006 interest arbitration award issued by the Rinaldo Panel, PBA members were already contributing for health insurance at a higher percentage than the majority of law enforcement officers in comparable communities—many of whom do not contribute for health insurance during their employment whatsoever or who contribute only for the first four or five years of their employment. The majority's award serves to further widen the gap between the benefits offered to PBA members and those of local law enforcement officers and is likely to result in continued difficulties to recruit and retain skilled individuals for employment in the Sheriff's Criminal Division, a fact cavalierly dismissed by the Majority.

The majority's award of a 15% across the board contribution for health insurance is also inappropriate in light of the fact that other County employees holding positions

which do not involve public safety are not required to contribute for the cost of health insurance in active employment or retirement. Members of the CSEA and the Teamsters unions continue to enjoy the benefit of having health insurance fully paid for by the County and active employees in the NYSNA union are given a stipend to reduce the cost of a 15% contribution applicable to cost increase.¹ It is antithetical for the Panel Majority to require higher health insurance contributions from PBA members, who place their safety at risk for the benefit of the County's residents on a daily basis, while other County employees are not required to contribute or are required to contribute less. Retiree health insurance is an integral part of the benefits package for law enforcement personnel due to the continued exposure to the risks of physical injury on duty and the likelihood that line-of-duty injuries will continue to manifest symptoms well after retirement. It is improper for the majority to strip the PBA of the benefit of fully funded health insurance, while it is still enjoyed by County employees who do not work in the public safety sphere and are not exposed to the risks and hazards associated with working in law enforcement.

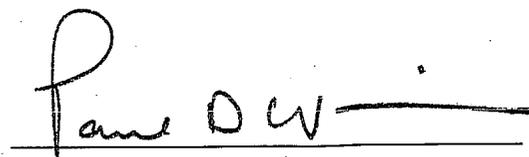
It was also inappropriate for the Panel Majority to require retroactive payment of health insurance contributions by PBA members. By requiring these retroactive payments, the majority has effectively negated any benefit which would have been derived from retroactive wage increases. Moreover, it is prejudicial to the PBA to require its members to pay retroactive health insurance costs, particularly given that some deputies may have chosen to forego health insurance through the County by waiving

¹ Interestingly, when confronted with glaring disparity in the County's pattern of bargaining where NYSNA members contribute 15% toward increases in health insurance premiums versus requiring all PBA members to contribute 15% of the overall cost of the health insurance premium, the County was silent, a response that was willingly accepted as a sufficient explanation by the Chairman.

same and electing coverage under a spouse's policy if they had known that they would have been required to contribute down the line. Any imposition of health insurance contributions by the Panel Majority should have affected new hires only and should not have been made retroactive.

The majority's determination and award in this matter has effectively placed the PBA in a position where they are actually further, rather than closer, to the statutory principles of Section 209 (4) in regard to comparability in terms of wages and benefits with law enforcement officers employed within the County and in other comparable communities. The negligible wage increases ordered by the Majority are too modest to be able to make any progress towards closing the gap between the salaries and benefits of PBA members and those of other law enforcement officers within the County and in other comparable communities. Any benefit that could have been derived from the wage increase ordered by the majority has effectively been negated by the unparalleled givebacks in health insurance imposed by the Majority. As such, it is the opinion of this Panel member that the Panel Majority gave a wink and nod to each other and then ignored the dictates of Section 209(4) of the Act in rendering its award and, for this and the foregoing reasons, this Panel member must dissent from the decision of the Panel Majority.

Dated: November 1, 2010

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

Paul D. Weiss, Esq.
Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

On this 1st day of Nov, 2010 before me personally came and appeared Paul D. Weiss, Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

BEVERLY A.R. NATALE
No. 01NA6104361
Notary Public, State of New York
Qualified in Erie County
My Commission Expires January 20, 2012


Notary Public