

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between  
The COUNTY OF CHENANGO & THE CHENANGO COUNTY Sheriff,  
Joint Employer,  
-and-  
THE CHENANGO COUNTY LAW ENFORCEMENT ASSOCIATION,  
Union.

OPINION  
AND  
AWARD  
PERB CASE NO.  
IA2010-039  
M2010-130

Before the following Public Arbitration Panel:

Michael S. Lewandowski  
Chairman

John M. Crotty, Esq,  
Public Employee Organization Panel Member

John F. Corcoran, Esq.  
Public Employer Panel Member

Appearances: Melinda B. Bowe, Esq.  
Hancock Estabrook, LLP  
For the County

John K. Grant, Esq.  
For the Association

On or about January 12, 2011, the Chenango County Law Enforcement Association ("Union" or "LEA") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). The County of Chenango, New York and the Chenango County Sheriff, a joint employer

(hereafter and collectively the "County") responded to the petition in or about January, 2011. Said response to the petition was subsequently amended on or about November 17, 2011. The LEA also subsequently filed an Improper Practice Charge. The foregoing filing was answered by the County. The LEA's Improper Practice Charge was ultimately settled. The County also filed an improper practice charge, which was litigated before PERB resulting in a Board decision dated January 24, 2012 and an administrative law judge decision dated September 22, 2011. Prior to the above filings, the County and the Union had reached impasse in their negotiations for a successor Agreement to the Collective Bargaining Agreement ("Agreement") between the parties that expired on December 31, 2009. The unit is composed of 22 members holding the title of Deputy Sheriff (18), Road Patrol Sergeant (3) and Road Patrol Lieutenant (1).

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated January 4, 2012<sup>1</sup> from the New York State Public Employment Relations Board ("PERB"). The panel met and conducted a hearing in the City of Norwich, New York on January 31, 2012. The panel held an Executive Session on June 8, 2012 in Syracuse, New York.

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<sup>1</sup>Note: Originally, Mr. Anthony Solfaro was designated to serve on the Panel as the Public

At the hearing, the parties were afforded a full opportunity to present relevant evidence in support of their positions. Each presented data collected concerning police agencies that they considered to be comparable to the County as well as data pertaining to the County's fiscal condition and past wage and benefits awards or agreements made by the County and the LEA.

The content of this opinion and award reflects the results of consideration of the evidence presented against the criteria specified in the Civil Service Law.

Specifically considered were the interests and welfare of the public and the financial ability of the County to pay any salary increase or benefit increases awarded; comparable wages of comparable police units in other public sector employers, hours and conditions of employment provided employees involved in similar work or requiring similar skills (police/deputy sheriff); comparison of peculiarities in regard to other professions such as hazards, physical qualifications, educational qualifications, mental qualifications and job training and skills. The panel also considered the terms of the collective bargaining agreement negotiated between the parties in the past. The final disposition of the issues is the result of the deliberations of the panel. The

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Employee Panel Member but later the designation was given to Mr. Crotty.

panel members were split on what should be the outcome with respect to the individual issues reviewed by the panel. The award contains the outcome as voted on by the Panel members. All issues were decided by a majority vote. Issues not addressed here were deemed properly left to future negotiations. In any event, the fate of these issues in the future lies with the parties and not this panel.

To reiterate, the evidence presented by the parties was considered against the criteria set forth in the Law including but not limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

## DISCUSSION AND ANALYSIS

After extensive review of the significant amount of evidence presented at the arbitration, the majority of the panel reached agreement on the Award that follows. The Award is a product of the consideration of all the factors specified in the Civil Service Law. This award modifies terms and conditions of employment in a manner which benefits both the LEA and the County.

**TERM.** The term of this award shall not exceed the two-year period expressed in Law as the maximum period for an interest arbitration award issued by such panel. The term of this award shall therefore be for a two-year period commencing on January 1, 2010 and expiring on December 31, 2011.

**BASE WAGES:** The Union proposed wage increases of four and one-half percent (4.5%) in each year of a two-year award. For various reasons, the County urged a 2% increase in base wages per year during the two-year term of the Award, notwithstanding that it had proposed a three percent (3%) increase in base wages in January, 2011 during the course of the parties' unsuccessful negotiations for a successor collective bargaining agreement. Analysis of the demands follows.

Any review of proposed salary increases should begin with a review of the employer's ability to pay. The panel received into evidence a significant amount of data addressing this issue. The data presented by the Union and the data presented by the County showed that the County has the ability to pay an increase in compensation; however the parties differed greatly on the amount of increase to be awarded. The data presented shows not only that the County has a significant fund balance (one of the highest percentage of budget fund balance ever seen; so claimed the Association's panel member) but also that the County's finances were such that it could continue to pay the increases awarded here as they become a permanent part of the LEA members' compensation.

The data showed that after two years of small deficits, the County had an unreserved fund balance of \$24,511,027 for the 2009 fiscal year against Revenues of \$76,876,709. The budget surplus for 2009 was \$2,454,946. Similarly, in the 2010 fiscal year, the County had an unreserved fund balance of \$23,449,856 (31.6% of expenditures). It had a budget surplus for that period of \$2,852,346. The foregoing shows that not only does the County have significant cash reserves but it is also generating income in excess of expenditures that is large enough to absorb the cost of the increases found appropriate

here where each one percent (1%) increase in base wages for this unit costs the County \$9,834.

The panel is also mindful of the fact that the County's expenses are increasing including significant increases in the cost of providing health care benefits to its employees and the rising cost of retirement benefits.

The panel must also take note that the data presented shows that this County is populated with people who had a per capita income in 1999 of only \$22,496.

The fact is however that the data shows the County has the ability to pay the increases advanced here.

The panel is also mindful of the fact that the ability to pay does not mean that the employer is obligated to pay the increases sought. Under the Law, a public employer is only obligated to provide compensation and benefits appropriate to the criteria provided in the Law, which requires a comparison to that which is provided to other employees providing similar services.

The panel considered the data presented by both parties with respect to compensation and benefits when compared to similar work performed for comparable employers.

The County asserted that the panel should deem comparable only those law enforcement units operated by similarly sized Counties (Sheriff's Departments) in close proximity to Chenango County while the LEA asserted that the proper group for consideration would be police agencies at the County and municipal level geographically near the County.

The County proposed the following as comparable units; Broome County<sup>2</sup>, Cortland County; Delaware County; Madison County and Otsego County. Each of these counties borders on Chenango County.

The LEA proposed that the panel should find all of the following police agencies as comparable: Broome County, Village of Canastota, Village of Cazenovia, Village of Chittenango, City of Cortland, Cortland County, Village of Endicott, Village of Hamilton, Village of Johnson City, Madison County, City of Norwich, City of Oneida, City of Oneonta, Otsego County and

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<sup>2</sup> Because Broome County is nearly twice the size of Chenango County in terms of population, the County offered Broome County with the proviso that it would be appropriate only if it was somehow weighted.

the Town of Vestal.

There was much disagreement over which set of comparable police agencies to use as the panel here considers the proper award. The majority of the panel, however, concluded that the members of this unit are properly compared to other County Sheriff law enforcement units. As both Arbitrator Thomas Rinaldo and Arbitrator Peter Prosper concluded, "the logical choice of comparables must be other County road patrol units. It is common knowledge that, particularly under contemporary conditions, counties in New York State face unique fiscal challenges that are not necessarily of the kind and degree faced by other municipalities in the State. Common sense supports the conclusion that the best source of comparison is the same type of municipality."

Given the determination to compare this unit to other County Sheriff operations in counties contiguous to Chenango County, the data presented shows that the members of this unit are currently receiving wages and benefits on par with the employees occupying their titles in the comparable agencies.

The following chart shows that the base compensation paid to officers in this unit is very comparable to that received by

the two other units for which data was available at the time of the hearing. Based on the data presented, the majority of the panel concluded that a three percent (3%) raise in the base hourly wage rates in Appendix "A" of the expired Agreement was appropriate for each of the two years covered by this award.

#### 2010 Comparable Units Deputy Sheriff

County	Minimum	Maximum
Chenango with 3%	\$39,488	\$45,332
Cortland	\$38,871	\$53,609
Delaware	\$37,119	\$40,523
Average (w/out Chenango)	\$37,995	\$47,066

#### 2011 Comparable Units Deputy Sheriff

County	Minimum	Maximum
Chenango with 2 <sup>nd</sup> 3%	\$40,673	\$46,692
Cortland	\$40,464	\$55,807
Delaware	\$38,325	\$41,840
Average (w/out Chenango)	\$39,395	\$48,823

The data thus shows that this unit, when base wages are increased by three percent (3%) in each year of the two-year period covered by this award, pays salaries comparable to those that are received by members of other comparable employers.

The panel also considered that the immediately prior agreement between these parties contained substantial base wage increases of 4.5% in each year of a five-year settlement (i.e., 2005-2009) that additionally provided for a \$1000 add on in the first two years of that agreement.

#### **HEALTH INSURANCE:**

The LEA proposed increasing the amount of payout an employee may get for unused sick leave from \$20 per day to the actual daily rate of pay at time of retirement. The maximum number of days eligible to be paid would also increase from 60 days to 240 days.

The majority of the panel rejected this proposal. First, the record shows that the parties just increased and actually doubled the benefit now enjoyed from \$10 per day to \$20 per day in the last contract. Second, the LEA benefit already exceeds that paid to comparable employees. Neither Delaware County nor

Otsego County have a buy out provision. Madison County has a payout of a maximum of 75 days. Most significant in the determination to reject this proposal is the fact that the LEA asks the County to here increase a benefit that now costs a maximum of \$1,200 per retiree to a benefit that would cost a maximum of about \$28,000. Given that the County is already facing significant increases in health insurance and retirement costs, such a dramatic increase must be deemed excessive.

The LEA also advances other increases in health insurance benefits including reduced employee contributions and increased retiree benefits. The majority of the panel notes that the cost of providing health insurance benefits is skyrocketing. The County's health insurance costs increased by 24% in 2011 and another 5.2% in 2012. In addition, the County was forced to fund a year-end deficit in its self-administered insurance plan at the close of 2010 of \$750,000.

The data presented shows that the County, as compared to the other County Sheriff departments found comparable here, provides health insurance with similar employee contributions as the comparable departments and also Chenango County provides a dental plan benefit.

Given the above data concerning comparable benefits and the significant cost increases already facing the County without even factoring in the huge leap in costs associated with the LEA proposals, the majority of the panel votes to reject the LEA proposal regarding health insurance.

**LONGEVITY:**

The LEA proposal for longevity payments increases the amount of payments and adds two additional steps to the longevity payment schedule. Currently, full-time LEA members hired on or after July 1, 1989 receive the following longevity payments under Article 30.02 of the collective bargaining agreement.

5<sup>th</sup> through 9<sup>th</sup> anniversary = \$550  
 10<sup>th</sup> through 14<sup>th</sup> anniversary = 750  
 15<sup>th</sup> anniversary and above = \$950

A different schedule applied to those LEA members hired prior to July 1, 1989 under Article 30.01.

The proposed LEA schedule is as follows.

5 <sup>th</sup> through 9 <sup>th</sup> anniversary	1/1/10 = \$550	1/1/11 = \$575
10 <sup>th</sup> through 14 <sup>th</sup> anniversary	1/1/10 = \$750	1/1/11 = \$775
15 <sup>th</sup> through 19 <sup>th</sup> anniversary	1/1/10 = \$950	1/1/11 = \$975
20 <sup>th</sup> through 25 <sup>th</sup> anniversary	1/1/10 = \$1150	1/1/11 = \$1175
26 <sup>th</sup> anniversary and above	1/1/10 = \$1350	1/1/11 = \$1375

The record before the panel shows that the parties had significantly increased the longevity payments in the last

contract period. They reinstated the 5-year payment and increased longevity payments for each of the last three years of their agreement. Additionally, the current longevity schedule provides payments that are comparable to peer police agencies. Broome County's schedule provides a maximum payment after 20 years of service of \$1,150. Delaware County Sheriffs get a maximum of \$1,500 after twenty years and their two-step schedule provides no payments until an employee reaches 12 years of service. Madison County has a two-tier schedule based on hire date and the maximum amount paid the longest serving employees is \$2,200 after 15 years of service. Finally, Otsego County's schedule provides a maximum payment of \$1,150 after 24 years of service. The facts show that the members of this unit already receive longevity payments that are comparable to their peers.

The record also shows that the proposed increase in the longevity schedule would not come without significant cost increases. As proposed, the total longevities paid to LEA members would increase from \$8,400 in 2009 to \$15,560 in 2010 and \$18,725 in 2011. The resulting percentage increase in longevities for the 2010 year would represent an 86% increase, an amount equivalent to .75% of base salaries. Roll-up costs for FICA, worker's compensation and employer contributions to

the Retirement System would further compound that figure.

After considering the above, the majority of the panel deemed it appropriate to increase the longevity payments but only as follows.

Effective January 1, 2010, the current Article 30 longevity schedules shall be adjusted as follows.

5 <sup>th</sup> through 9 <sup>th</sup> anniversary =	\$ 600.00
10 <sup>th</sup> through 14 <sup>th</sup> anniversary =	\$ 800.00
15 <sup>th</sup> through 19 <sup>th</sup> anniversary =	\$1,000.00
20 <sup>th</sup> anniversary and above =	\$1,250.00

Furthermore, the term "years of continuous service" shall be interpreted to mean length of continuous employment with the Chenango County Sheriff's Office and without regard to bargaining unit status.

**SHIFT DIFFERENTIAL:**

Chenango County currently provides a shift differential payable to those employees who work between the hours of 4:00 p.m. to 8:00 a.m. Eligible employees receive a shift differential of \$.85 per hour. LEA here proposes to increase the differential to \$1.60 per hour on 1/1/10 and then to \$2.35 per hour on 1/1/11. LEA also proposes changing the terms of the benefit to provide payment to those employees who are on

paid leave such as vacation, GML 207-c, personal leave, etc. from a position where they were regularly scheduled to work the covered hours of the day.

When reviewing the comparable shift differential amounts, the following is seen.

Cortland County	pays no shift differential
Broome County	pays \$1.05 for the afternoon shift and \$1.25 per hour for the midnight shift
Delaware County	pays \$.50 per hour for afternoons and \$1.00 for midnights
Madison County	pays \$.35 per hour for afternoons and \$.70 per hour for midnights
Otsego County	pays an annual payment of \$360 for afternoon shift employees and \$400 annually for midnight shift employees

As is seen above, Chenango County already exceeds the majority of what is paid in contiguous counties. The one exception being Broome County, which pays a higher shift differential. Further, the proposed increase almost doubles the benefit in the first year and almost triples the benefit in the second year of the award. Nevertheless, the panel recognizes the fact that working the afternoon and midnight shifts presents a hardship to the employee and puts the employee on duty during times when police work can be the most active. In recognition of these facts, the panel awards an increase in the shift differential that increases the benefit

to \$.95 per hour worked during the covered hours effective January 1, 2010 and again increases the benefit to \$1.05 per hour worked during the covered hours effective January 1, 2011.

**OTHER:**

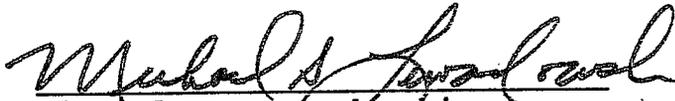
The majority of the panel deemed it appropriate to reject all other proposals and to remand those proposals back to the parties for future consideration.

Finally, the majority of the panel deemed it appropriate to award the increases in base pay and other compensation contained herein payable as soon as is administratively feasible after the execution of this award. Each member of the unit that is still on the active payroll of the County as of the date of the full execution of this award and any retiree who worked during the period covered by the award, shall receive a retroactive payment computed upon the difference between the new Appendix "A" base wage rates and the Appendix "A" base wage rates existing prior to the issuance of this interest arbitration award for each hour actually paid, including paid time off and overtime, between January 1, 2010 and the time of the implementation of this award. As stated above, retroactivity shall also apply to the awarded shift differential and longevity payments subject to the same

ALL OTHER PROPOSALS advanced by the parties are not a part of this award and are referred to the parties for future bargaining should the parties choose to continue to pursue them further.

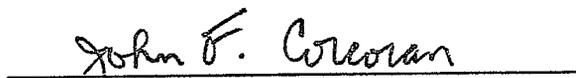
RETROACTIVITY AND IMPLEMENTATION OF THIS AWARD: Each member of the bargaining unit who is still on the active payroll of the County as of the date of the full execution of this Award, and any retiree who worked during the period covered by this Award, shall receive a retroactive payment computed upon the difference between the new Appendix "A" base wage rates and the Appendix "A" base wage rates existing prior to the issuance of this interest arbitration Award for each hour actually paid, including paid time off and overtime, between January 1, 2010 and the implementation of this interest arbitration Award. Retroactivity shall also apply to shift differential and longevity. The terms of this Award shall be implemented as soon as practicable.

I CONCUR WITH THE ABOVE AWARD.

  
 Michael S. Lewandowski

7/24/12  
 DATE

I CONCUR WITH THE ABOVE AWARD.

  
 John F. Corcoran, Esq.

7/25/12  
 DATE

I DISSENT. *See attached*

  
 John M. Crotty, Esq.

7/30/12  
 DATE

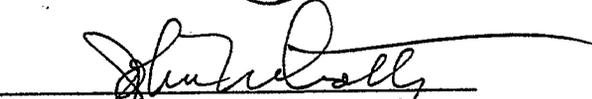
**AFFIRMATION**

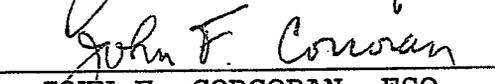
COUNTY OF ERIE )

STATE OF NEW YORK )

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

Date: 7/24/12   
MICHAEL S. LEWANDOWSKI

Date: 7/30/12   
JOHN M. CROTTY, ESQ.

Date: 7/25/12   
JOHN F. CORCORAN, ESQ.

**STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD**

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**In the Matter of the Compulsory Interest Arbitration between  
CHENANGO COUNTY LAW ENFORCEMENT ASSOCIATION, INC.,**

**Public Employee Organization/Petitioner,**

**CONCURRING  
OPINION**

**-and-**

**COUNTY OF CHENANGO and CHENANGO COUNTY SHERIFF,**

**Public Employer/Respondent.**

**PERB Case Nos.: IA2010-039; M2010-130**

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I write separately as the Employer Panel Member to respond briefly to the Employee Organization Panel Member's strident dissent to the Opinion and Award.

First, I believe that the criticism of the Panel Chair's approach to his crafting of the Opinion and Award is unwarranted. The Opinion and Award does have evidentiary support, is not arbitrary or capricious, and is the end product of fair and reasonable Panel deliberations. Moreover, the Opinion and Award does specify in sufficient detail the basis for its findings and evinces a proper consideration of the factors set forth in Section 209(4)(c)(v) of the Civil Service Law. The statute does not require that the opinion and award specifically address each of the enumerated factors as to each of the individual disputed items.

Second, the fact that the Opinion and Award does not meet with the favor of the Employee Organization Member seems grounded in the notion that an interest arbitration award should result in an award of pay and benefit improvements somewhere between the employer's

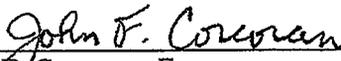
last proposal in negotiations and the union's demands at the bargaining table. It is refreshing to see a panel chair reject that "split the baby" approach to the fashioning of a final award. Indeed, such an expectation only serves to discourage the reaching of voluntary settlements at the bargaining table by compelling both sides to take extreme positions in negotiations in the belief that interest arbitration is inevitable and the final award will come to rest in the middle ground.

Finally, the substance of the dissenting opinion, including the ruminations about the intent of the State Legislature and the state of mind of the Employer, could easily be made the subject of a lengthy rebuttal in this concurring opinion. However, and in the interest of economy and sensitivity to the Employer's pocketbook, I simply state that my decision to refrain from such an exercise should not be viewed as any sort of acquiescence to the points made by the Employee Organization Panel Member in his dissenting opinion. In the final analysis, the Opinion and Award affords the bargaining unit members generous base salary, longevity pay, and shift differential increases during this period of great economic strain and at a time when many, if not most, of the County's taxpayers are not seeing any sort of pay and benefit increases. I also respectfully submit that the fact that the Opinion and Award is in line with the County's last package offer during the bargaining process underscores the reasonableness of the County's position in the negotiations and in this interest arbitration. The Panel Chair should not be blamed for crafting his Opinion and Award in a manner more closely aligned with the Employer's proposals than the Union's unreasonable demands.

I also posit that whether the next round of negotiations results in an impasse and another interest arbitration proceeding will be largely dependent on whether the Union assumes a realistic position during the negotiations. The Employee Organization Panel Member's claim that the County's deputy sheriffs are working for "substandard wages and benefits" is belied by

the facts of record, is needlessly inflammatory, and appears to be an attempt to divert attention from the fact that the Panel Chair got it right.

Dated: August 2, 2012

  
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John F. Corcoran, Esq.  
Employer Panel Member

**STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD**

-----X  
**In the Matter of Compulsory Interest Arbitration**

**between**

**CHENANGO COUNTY LAW ENFORCEMENT  
ASSOCIATION, INC.,**

**PERB Case Nos.**

**IA2010-039; M2010-130**

**Union/Petitioner,**

**- and -**

**COUNTY OF CHENANGO and CHENANGO  
COUNTY SHERIFF,**

**Employer/Respondent.**

-----X

**DISSENTING OPINION**

**EMPLOYEE ORGANIZATION PANEL MEMBER**

**JOHN M. CROTTY**

I dissent because this award conflicts fundamentally with the statutory provisions that govern its terms. As a result, the wages and benefits awarded are fewer in number and at lower levels than they should have been if the Taylor Law's interest arbitration provisions had been correctly applied to the relevant facts of record.

I begin with the Chairman's most flagrant mistake. This Chairman's decision to compare these deputies' wages and benefits with only those of other county deputy sheriffs is incorrect as a matter of law and contrary to the decisions that have been rendered by the chairs of all other New York interest arbitration panels, including ones chaired by this Chairman's self-described "good friend", Arbitrator Rinaldo. Indeed, the Chairman's comparability determination in this case is contrary to ones he has made in other awards he has rendered. When I attempted to explain to the Chairman why the "county only" comparability was manifestly wrong, the Chairman told me I could explain in my dissent why his decision to use "county only" comparables is incorrect. What follows is my acceptance of the Chairman's invitation and my adherence to his directive that any comments regarding his draft award, other than those I would make in a dissent, were to be limited to a correction of "grammatical errors".

The "county only" comparables used by the Chairman conflicts directly with a few of the statutory criteria that govern interest arbitration awards.

Taylor Law §209.4(c)(v)(a) requires a comparison of the wages, hours, and other conditions of employment of the at-issue employees with those 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."

This first Taylor Law criterion causes a search for a market for the services of the type being rendered by the at issue employees so that a panel can determine what similarly situated employees are receiving within that market. The Legislature by this criterion is telling a panel that in deciding what wages and benefits it should award it must look to what others who are

doing similar work are receiving from their employers. By accepting the county only comparables, the Chairman fundamentally misapplies this first criterion. By looking only to what other county governments pay their deputy sheriffs, the Chairman fails to make the required comparisons between the Chenango County deputies and other employees who are similarly situated, i.e. other police officers employed by municipalities within Chenango County and within a reasonable geographic proximity to the County. The comparability analysis required by the first statutory criterion must be conducted within a sphere that includes employees, whether in public or private sector employment, who are "similarly" situated to those at issue in the arbitration. Therefore, even though county deputy sheriff departments are among the relevant comparables, an interest arbitration panel must also compare deputy sheriffs with other municipal police officers because those other police officers are very similarly, if not identically, situated to the criminal law enforcement deputy sheriffs. The Chairman erroneously limits the wage and benefit comparison to those who are identically situated as to class of employee (deputy sheriff) and identity of employer (county government). But the statute by its express terms requires a broader comparison such that the wages and benefits of other employees who are similarly situated to the employees at issue in the given arbitration proceeding are considered.

Taylor Law §209.4(c)(v)(a), moreover, is not the only comparability criterion. There is another in Taylor Law §209.4(c)(v)(c) that requires a panel to compare the at-issue employees with other employees as to their occupational hazards, qualifications, job training and skills. By this criterion the Legislature is instructing a panel to fashion a wage and benefit package in light of the attributes of the employees' job and the qualifications for it as compared to those for other jobs. Being police officers in every relevant sense of that term, these road patrol deputies' wages and benefits should have reflected a comparison of their job hazards, qualifications, training and skills with those of other police officers. Those employment attributes are substantially similar, if not identical, for police officers and road patrol deputies such that these deputies' wages and benefits should compare favorably with those of other police officers in the market. By looking to only the wages and benefits of other county deputy sheriffs, this Chairman completely disregards the third Taylor Law criterion while simultaneously failing to properly apply the first criterion.

In addition to the several criteria that are specifically listed in the Taylor Law's interest arbitration provisions, panels are required to consider "any other relevant factors." Put simply, it cannot be argued with any degree of reason or persuasion that the wages, benefits, and working conditions of other municipal police officers within a reasonable geographic proximity to this Employer are utterly irrelevant to what these deputy sheriffs should receive, yet that is exactly what this Chairman has concluded by his "county deputy sheriff only" comparability analysis that is adopted at the behest of this Employer.

The arguments advanced for this "county only" comparability not only defy the text of the statute, they are fundamentally flawed.

It is an alleged "uniqueness" of county government that the Chairman uses to justify his limiting the comparability analysis to other county deputy sheriff departments. But all forms of municipal government, not just counties, are unique in different ways. A city's powers, duties and governance structure differ from those of a town and a town's differ from those of a village. If the "county only" comparability argument were correct, it would follow logically that the only comparables in an interest arbitration involving city police officers would be other cities; in a town proceeding, only other towns; and in a proceeding involving a village, only other villages. But interest arbitration panels have crossed these governmental lines when doing a comparability analysis since interest arbitration was first enacted in 1974. Nothing in the nature or structure of county government compels or justifies a result that necessarily and absolutely confines the comparability analysis to only other counties' deputy sheriffs. A panel must compare the wages and benefits of the at-issue employees to other employees who are in employments similar to the employees at issue, not only employees who are identically situated as to job title or classification and identity of employer as the Chairman has made it.

What allegedly makes county government "unique" and, therefore, to the Chairman's mind, makes county governments the only relevant comparables, is that county governments shoulder some state and federal service mandates that other types of governments do not bear with respect to certain social and education programs e.g., Medicaid. But it is not the bearing of that burden that is relevant, it is the cost of those mandated programs and that cost factor is

relevant, at best, only to ability to pay. That is a separate interest arbitration criterion captured in Taylor Law §209.4(c)(v)(b). Uniqueness grounded upon what are ultimately financial obligations simply is not material to the statutory criterion of comparability. As and to the extent there is any "uniqueness" to county government, it is relevant to only ability to pay, not comparability whether under the first or third statutory criterion.

In addition to disregarding the statutory criteria, the Chairman's decision to limit the wage and benefit comparability analysis to the wages and benefits extended to only other deputy sheriffs also disregards the history of deputy sheriff impasse procedures and the reasons for their eventual acquisition of a limited interest arbitration procedure.

Other municipal police officers have had interest arbitration available to them since 1974. Deputy sheriffs did not acquire that right until thirty years later and even then on a basis more limited than that which is available to other municipal police officers. Deputies can arbitrate as of right only terms directly relating to compensation while other police officers can arbitrate any mandatorily negotiable subject except certain pension benefits that the State Legislature has blocked by law from compulsory interest arbitration (i.e. one year final average salary; 1/60<sup>th</sup> bonus for service after 20 years).

Historically, therefore, deputy sheriffs had to settle a collective bargaining agreement on the employer's terms, go without a contract, or face a unilateral imposition of employment terms by the employer's legislative body. As a result, the wages and benefits of deputy sheriffs lag substantially those of municipal police officers across the state. This Employer knows that to be true and that is why it insisted to the Chairman that he rely solely upon the wages and benefits extended to other deputy sheriffs. The Employer wanted this Chairman to accept a distorted picture of the terms and conditions of employment that prevail in the market for police officers and that is exactly what this Chairman has allowed. While a comparison with other deputy sheriffs may be warranted, it cannot be to the exclusion of a consideration of the wages and benefits paid to other police officers in the market as this Chairman has done.

A comparison limited to only other county deputy sheriffs is also inappropriate when the reasons for road patrol deputies being granted interest arbitration is considered.

After thirty years of going without this impasse resolution procedure, the State Legislature in 2004 extended road patrol deputies a piece of what municipal police officers have had since 1974. The Legislature did not intend to have arbitration panels hearing a deputy sheriff impasse ignore the municipal police officers' three prior decades of arbitration developments. As deputies had no interest arbitration experience, the Legislature quite obviously intended those deputies to be compared with municipal police officers when the terms and conditions of their employment that directly relate to compensation are submitted to an arbitration panel for determination. Comparing the wages and benefits of deputies who have had no interest arbitration process with only other deputies who have been denied that process results in a comparison of the "have-nots" and that is exactly what this Chairman has done at the request of this Employer. The Legislature, however, could not have intended that idiotic result because that does not offer a true picture of the market for police officer services. The Legislature limited the scope of the deputy sheriffs' interest arbitration to matters directly affecting compensation, but the statutory criteria are exactly the same for deputy sheriffs as they are for municipal police officers. Those criteria compel a comparison of these deputy sheriffs' wages and benefits with those of other police officers in municipalities that are geographically proximate to Chenango County.

The Legislature was eventually persuaded of the need to extend road patrol deputy sheriffs interest arbitration because they are police officers in all relevant respects. As the public safety groups eligible for interest arbitration expanded in the years after 1974, the Legislature could no longer justify the continuing exclusion of criminal law enforcement deputies. The Legislature was aware that the wages and benefits of those deputies were not and are not at a level similar to those of municipal police officers because that unquestionable fact was made known to it by organized labor. The Legislature was persuaded that this one last group of police officers could not with any logic or fairness continue to be denied the interest arbitration all other municipal police officers have had for a very long time. That disparity in the wages and benefits between deputy sheriffs and other groups of police officers who are identically situated other

than the identity of their employer was what the Legislature expected to be corrected as warranted. That correction simply cannot be accomplished if the only comparison made of wages and benefits is between the at-issue deputies and only other deputy sheriffs as this Chairman has done. These deputies will never reach any wage and benefit parity with municipal police officers on this Chairman's logic.

Furthermore, only those sheriff department employees who are certified as police officers within the definition provided by state law are eligible for statutory interest arbitration. The Legislature took this additional step to ensure that access to compulsory interest arbitration was available to those performing a full range of traditional police officer services not, for example, civil deputies. By its explicit terms, therefore, the very foundation for deputy sheriff interest arbitration compels a comparison of wages and benefits between police officers and road patrol deputies, not just deputies to deputies as this Chairman has done.

In justifying this "county deputy sheriff only" comparability, this Chairman refers to only two interest arbitration awards. In doing so, the Chairman not only misconstrues or misrepresents those two awards, he also ignores completely all others that have rejected the "county only" comparability model, including those rendered earlier by this very Chairman.

The language quoted in the majority's award is from Arbitrator Rinaldo's award in a Fulton County proceeding (IA2004-019). This was one of the first interest arbitration awards that issued after road patrol deputy sheriffs were granted interest arbitration. Although the quote is accurate, it is incomplete. Arbitrator Rinaldo in that proceeding specifically took into account as comparables city police agencies so as to permit the deputies "to achieve some degree of parity with their counterparts in the comparable municipalities and to achieve a measure of fairness when one takes into account the City Police Departments within the County of Fulton."<sup>1</sup> Thus, Arbitrator Rinaldo specifically and expressly twice recognized in the Fulton County awards that a purpose for the interest arbitration legislation for road patrol deputies was to enable those deputies to reach some reasonable parity with other police

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<sup>1</sup> Arbitrator Rinaldo did the same thing in a second award involving Fulton County (IA2006-037). In neither did Arbitrator Rinaldo adopt a "county only" comparability analysis.

officers and to be treated fairly in comparison with other municipal police officers as to their wages, benefits and other terms and conditions of employment. Either this Chairman never actually read Arbitrator Rinaldo's award, and he just relied on the partial quote that was given to him in the Employer's brief, or he intentionally omitted the parts of the Rinaldo award that did not support his conclusion. Neither is consistent with the rights and expectations of the parties to an interest arbitration proceeding or a panel chairman's role under law or his professional obligations as an impartial arbitrator.

The same is true of the reference by the Chairman to Arbitrator Prosper who, in awards involving Onondaga County (IA2005-003) and St. Lawrence County (IA2009-008), parroted Arbitrator Rinaldo's language from the first Fulton County award. However, just as did Arbitrator Rinaldo, Arbitrator Prosper went on to state in those awards that comparisons with town and village police officers also had to be made and could not be ignored.

Thus, neither award cited by this Chairman stands for the proposition that only county sheriff departments are properly considered as comparables in a deputy sheriff impasse.

As I tried to explain to this Chairman, no other panel chairs have adopted this "county only" set of comparables. They have rejected it as incorrect, unpersuasive and/or unfair to differing degrees and upon somewhat differing rationales. I will not quote all of these many opinions, all of which are readily available, but I feel constrained to point out several of them so that future panel chairs do not make the same egregious mistake this Panel Chairman has made in this proceeding by looking only to county sheriff departments to make a wage and benefit comparison.

Arbitrator Douglas in an award involving Putnam County deputies (IA2004-026) expressly rejected the "county only" comparability that this Chairman adopts. Arbitrator Douglas wrote that "comparisons must include all relevant full-time salaried full-service police departments...Comparability analysis must be based on cross governmental lines and agencies. To restrict the analysis to only road deputies would be to ignore the larger overall functions of a police agency." (emphasis added).

Arbitrator Campagna in a Tompkins County award (IA2005-011) also expressly rejected the “county only” comparability and used as comparables both deputy sheriff departments and municipal police agencies that were within Tompkins County and a reasonable geographic proximity thereto.

Arbitrator Scheinman in an Orange County award (IA2008-013) also rejected the “county only” comparability this Chairman adopts. Arbitrator Scheinman stated that it would be “improper to ignore the wages, hours and terms and conditions of employment enjoyed by Police Officers in the towns and villages of Orange County when determining the appropriate salary and benefit levels for [Orange County deputies]”. Therefore, Arbitrator Scheinman specifically included those many municipal police departments as part of the statutorily required comparability analysis.

Arbitrator Scheinman had done the same thing in an earlier award involving Rockland County (IA2005-006) in which he compared the deputies’ terms and conditions of employment with those received by the police officers employed by the several towns and many villages within Rockland County.

In an award involving Monroe County (IA2004-018), Arbitrator Selchick used county sheriff departments and municipal police departments as “legitimate” sources of comparability and as parts of a “larger mosaic” in terms of appropriate comparables. Arbitrator Selchick specifically rejected the employer’s argument that “county only” comparables should be used because of an alleged “uniqueness” of county government.

After Arbitrator Selchick’s award in Monroe County, Arbitrator Rinaldo in an award involving Erie County (IA2006-020) adopted and quoted with approval Arbitrator Selchick’s comparability analysis in Monroe County. Therefore, Arbitrator Rinaldo has always looked to both county sheriff departments and municipal police agencies for the comparables in a deputy sheriff impasse.

Arbitrator Selchick, in another Erie County award (IA2009-007), that issued after the Rinaldo award in Erie County, again rejected the "county only" comparability model, he looked to comparisons of wages and benefits paid to police officers within geographically proximate police agencies, weighing each comparable, issue-by-issue, as the panel deemed to be appropriate on the facts.

The Selchick awards were cited and discussed in the LEA's brief to the Panel, yet this Chairman makes no mention of those awards or any others that have rejected the county only comparability. Even if the Chairman was going to adopt a "county only" comparability, he had an obligation to explain to the parties and to the public why the LEA's arguments were incorrect or unpersuasive and why all these other panel chairs were wrong in rejecting a "county only" comparability. He did not do that because he could not do that. Instead, he wanted to do what this Employer insisted he do and that is why he just ignored not only the actual holdings in the two awards he cited, but all the other many contrary opinions that have been issued by other panel chairs that have looked to the wages and benefits paid to municipal police officers in deciding what wages and benefits county deputy sheriffs should receive.

There are several other interest arbitration awards to the same effect as those discussed above, but continuing the discussion about how very wrong this Chairman is as to the comparability criterion after a point becomes the proverbial beating of a dead horse. In short, this "county only" comparability does not find support anywhere, not now, not ever.

Bad enough that this Chairman misconstrued or misrepresented the two awards he cited, and worse that he ignored all of the other awards that expressly reject the "county only" comparability he adopts, but this Chairman himself has previously used municipal police agencies as part of the comparability analysis in deputy sheriff impasses and he makes no mention of that fact in his opinion. That is outrageous.

In Albany County (IA2004-032), this Chairman used city police agencies as part of the comparability analysis.

Very recently in an award involving Madison County (IA2009-036) that issued in January 2012, this same Chairman used county sheriff departments and municipal police departments as the comparables in a deputy sheriff interest arbitration proceeding.

This Chairman's departure in this proceeding from precedent, including his own, is unexplained and wholly arbitrary. The result appears to me to be clearly a product of the Chairman's frustration with a statutory impasse system in which he no longer wishes to participate and his displeasure with a union which the Chairman believes should have accepted the County's last offer. Neither of those motives has any place in a compulsory interest arbitration proceeding. If a panel chair cannot or will not do the hard work that is required of a panel chair for whatever the reason, he should not take cases. The party who is "at fault" in an impasse, or the one who is more "unreasonable", whether union or employer-assuming that can even be determined objectively-is an irrelevancy. Once the dispute is litigated, the interest arbitration award must issue upon the statutory criteria, correctly applied, upon the facts of record, nothing else. Consideration of anything else turns an award into a work of subjective opinion that has no place in the statutory scheme.

The "big two" of the statutory interest arbitration criteria are comparability and ability to pay. This Chairman got the first entirely incorrect for the reasons discussed earlier and he paid only lip service to the second. Both failures were to the detriment of the LEA and to the unfair advantage of this Employer.

The Chairman concludes, correctly, that the County has the ability to pay the demands made by the LEA. What he omits, intentionally, are the details that reveal the County's excellent financial condition. He does that, while simultaneously and repeatedly emphasizing "costs" to the County that are allegedly attributable to the LEA's demands according to the County's "costings" so that his wage and benefit award appears to be "reasonable" and so that anything more than what was awarded would appear to be "unreasonable."

As to employer costs, that is not dispositive of ability to pay nor is it of any relevance to any other statutory criterion. What is relevant in an interest arbitration proceeding is a

given employer's ability to pay the costs associated with a given union's demands. There are, for example, some employers who do not have the ability to pay even low cost union demands. Conversely, there are other employers who have the ability to pay any demand regardless of its cost. Indeed, it is not uncommon, even these days, for some employers to stipulate to their ability to pay all of the union's demands. The point is, however, that the relevant inquiry is always "ability to pay", not cost of a given demand.

As to the County's financial condition, the real picture of this County's ability to pay in a nutshell is this: this County is completely debt free; it has massive fund balances that equal 37% of its budget; it imposes and has imposed for many years only nominal real property taxes that have been historically well below the 2% "tax cap"; it has a deputy sheriff police force that is a miniscule part of its overall budget; and it has large contingency accounts. In short, it has available for purposes of a collective bargaining agreement or an award for these deputies a great deal of money despite its complaints about the rising cost of health insurance and pensions. Those costs are borne by other municipalities as well, even ones which are not as well off as the County is financially, but they pay and benefit their police officers better than does this Employer.

Putting all of this in context for wage purposes, a hypothetical 3.5% base wage increase, assuming it were to be financed entirely out of the real property tax-that is completely unnecessary-was shown on the record to cost the average County tax payer no more than \$2.00 per year or about one-half cent a day! A more reasonable wage increase than the awarded 3% wage increases would not even have been felt by taxpayers.

The base wage increase awarded by this Chairman is not market consistent even accepting the "county only" comparability erroneously adopted by this Chairman. For 2010, that increase has top grade deputies paid at least \$1,700 less than the average top pay for deputy sheriffs within the Chairman's chosen market. That disparity grows in 2011 to over \$2,100 proving that the 3% increases awarded do not keep pace even with the "deputy sheriff only" comparison used by this Chairman. If one were to look to the overall market for police officers, as should have been done, the wage disparity between them and these deputies

would have been much greater. The increases awarded by this Chairman cause these deputies to lag the market in base wages however that market is defined. With the County having so ready an ability to pay, the wage increases awarded these deputies should have been higher.

The 3% wage increase awarded was the same wage increase as was offered by the Employer prior to the interest arbitration proceeding, yet shortly before in Madison County, this Chairman awarded deputy sheriffs split 4% base wage increases. As Chenango County's finances equal or exceed Madison County's, there is no reason these deputies should not have been awarded a higher wage increase.

The Chairman's denial of all of the health insurance demands made by the LEA is equally indefensible. Contrary to the Panel Chairman's naked conclusion, the existing health insurance benefits for active deputies and retirees are not what prevail even within the limited deputy sheriff universe the Chairman uses for comparison purposes. The health insurance benefits are better and at lower employee cost for deputies in Broome, Cortland and Otsego counties. Much of the evidence bearing upon the health insurance issues is not discussed by the Chairman in his award. He could not discuss the evidence in any detail because the facts are not consistent with the conclusion he wanted to reach so he just omitted the facts. He did, however, again rely on County "costings" to justify the health insurance award notwithstanding that those costings are inflated, rest on a number of assumptions which may not prove true, and which are ultimately irrelevant to the County's ability to pay for the reasons previously discussed. Even if the Chairman believed the union's proposals regarding health insurance could not be awarded exactly as demanded, a lesser variation on the demands could have and should have been awarded. Instead, the Chairman used an all or nothing approach.

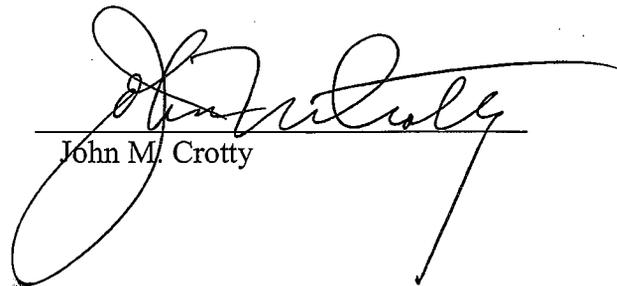
With the barest of rationales, this Chairman awards the Employer's last offer to the union without the addition of holidays the Employer had offered or the value of those holidays. That is just inexcusable. This Chairman has effectively turned this arbitration into a package last best offer proceeding, but that is not New York's interest arbitration system and it never has been. I believe this award is the product of a Chairman who just gave up

because he is quitting the interest arbitration business, as he announced as he left our executive session. Unfortunately, these deputies have been victimized as this Chairman goes out the door on this low note. These deputies were entitled to a fair and reasonable award in light of record facts and statutory criteria correctly interpreted and applied. They did not get that. They remain under-paid and under-benefited relative to the market for police officers and even as to other deputy sheriffs.

One of the by-products of a well done interest arbitration proceeding is to position the parties to reach future agreements. This award does exactly the opposite. This Chairman is much to blame, but he is not solely at fault. By encouraging and accepting this unfair award, this Employer forces these employees to again seek market rate wages and benefits in the next round of bargaining. It is unrealistic for this Employer to expect that these police officers will continue to work for substandard wages and benefits without trying to change that unfair status quo. Should this Employer then perceive in light of this award those union demands to be ones asking for "too much" -as may be likely-then this award will just have set the stage for future impasses. That does not advantage anyone, not even the Employer. The likelihood of future impasses that is fostered by this award could have been avoided had this Chairman taken the time to render the award the statute requires. That he did not or could not or would not is as good a reason as any for him to quit this business. It is just unfortunate for these police officers that he did not leave service earlier.

For these reasons, I dissent.

Dated: July 30, 2012



John M. Crotty

Sworn to before this  
30<sup>th</sup> day of July, 2012



Notary Public

**DEBRA A. HARRIS**  
Notary Public, State of New York  
No. 4972228  
Resident of Orange County  
Commission Expires 9/24/2014