

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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JAN 02 2013

In the Matter of Interest Arbitration

between

CONCILIATION
Opinion and Award

Tompkins County/Tompkins County Sheriff

and

For the Period of
March 1, 2008 to
February 28, 2010

Tompkins County Deputy
Sheriffs' Association, Inc.

(PERB Case No. IA2011-023)

* * * * *

APPEARANCES

For the Employer:

Dionne A. Wheatley, Esq. – Roemer Wallens Gold & Mineaux, LLP
Joseph Mareane, County Administrator
David Squires, Finance Director
Ken Lansing, Sheriff
Derek Osborne, Undersheriff

*For the Tompkins County Deputy Sheriffs' Association, Inc.,
Affiliated with the New York State Union of Police Associations, Inc.:*

John K. Grant, Esq. – Law Offices of John K. Grant, P.C.
Dawn Caulkins, Association President
Peter Walker, Association Vice President
Michael St. Angelo, Executive Board Member
Shawn Lansing, Executive Board Member
Kevin Decker, Economic Consultant

Having determined that a dispute continues to exist in the negotiations between Tompkins County/Tompkins County Sheriff (Employer) and the Tompkins County Deputy Sheriffs' Association, Inc. (Union), the New York State Public Employment Relations Board (PERB), pursuant to its authority under the Taylor Law, designated a tripartite

Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute. The designated Panel comprises James W. Roemer, Jr., Esq., as the Public Employer Panel Member; Anthony V. Solfaro, President of the New York State Union of Police Associations, Inc., as the Employee Organization Panel Member; and Howard G. Foster as the Public Panel Member and Chairperson. This Award constitutes the Panel's determination of the issues in dispute.

BACKGROUND

The Union represents for collective bargaining purposes a bargaining unit consisting of 38 law-enforcement personnel and 3 clerical personnel. This interest arbitration involves only issues directly related to compensation of the law-enforcement personnel. Non-compensation issues for the law-enforcement personnel and all unresolved terms and conditions of employment for the clerical personnel are addressed in a concurrent fact-finding. The last negotiated collective bargaining agreement (CBA) between the parties that set compensation for law-enforcement personnel expired on February 28, 2004. Since then, the parties have concluded two interest-arbitration proceedings, covering the periods March 1, 2004 to February 28, 2006, (PERB Case No.: IA2005-011; M2004-335) and March 1, 2006, to February 29, 2008 (PERB Case No: IA2008-006; M2007-121). On November 4, 2011, the Union petitioned for the present interest arbitration to cover the period March 1, 2008, to February 28, 2010. The Employer submitted its response to the Union petition to PERB on November 17, 2011. The Union requested that PERB designate a fact-finder for the law-enforcement personnel on issues that are not directly related to compensation. The Employer

recommended that Howard G. Foster be appointed as fact-finder, and he was. The Panel was appointed by PERB on January 10, 2012.

An arbitration hearing in this matter was held on May 31, 2012, in the Old Jail Conference Room in Ithaca, New York. Representing the Employer was Dionne Wheatley, Esq. Representing the Union was John K. Grant, Esq. Testifying for the Employer were Joseph Mareane, County Administrator, and Derek Osborne, Undersheriff. Testifying for the Union were Michael St. Angelo, Executive Board Member and former President, and Kevin Decker, Economic Consultant. Post-hearing briefs were submitted by both sides on August 24, 2012. The Panel met in executive session on October 9, 2012, in Cicero, New York, to discuss its findings and make its determinations.

DISCUSSION OF ISSUES

Under Civil Service Law §209.4(g), the Panel is limited to issues "directly relating to compensation." There are ten unresolved subjects before us:

- | | |
|---------------|-------------------------------------|
| 1. Article 3 | Overtime computation |
| 2. Article 3 | Shift premium |
| 3. Article 3 | Application of shift premium |
| 4. Article 3 | Travel time |
| 5. Article 3 | Mandatory on-call pay |
| 6. Article 7 | Health insurance – active employees |
| 7. Article 7 | Health insurance – retirees |
| 8. Article 13 | Longevity |
| 9. Article 21 | Clothing allowance |
| 10. Exhibit E | Wage schedules |

The discussion below summarizes each topic as follows: (1) the current provision in the CBA, if any; (2) the demand(s) submitted; and (3) the positions of the parties on the proposed demand(s).

Overtime Computation [Article 3, Section 4(a)]

The current contract provides for overtime pay for time worked in a day beyond 8 hours. The Union proposes an addition to this language as follows:

In lieu of payment of overtime, an employee may elect compensatory time, computed as set forth herein, up to a maximum of eighty (80) hours each year. All requests shall be submitted to the Sheriff or designee a minimum of seventy-two (72) hours in advance of the requested starting time to use compensatory time, which shall not be unreasonably denied. All unused compensatory time shall be paid to the employee in the last pay period of December each year.

The Union seeks to provide deputies the option of obtaining more time off the job in preference to additional pay. This is especially important under the current duty schedule which often requires deputies to work 6 consecutive days.

The Employer argues that the new language providing deputies with more time off would adversely affect the Sheriff's ability to staff the shifts, which would in turn create more overtime. The requirement to pay unused compensatory time at the end of the year would also require the Employer to budget for an uncertain outcome. Accordingly, the Employer urges that the proposal be rejected.

Shift Premium [Article 3, Section 4(b)]

The current contract provides for premium pay for hours worked on the afternoon and night shifts, in the amount of \$1.35 per hour. It further provides that "shift premium shall be paid only for hours actually worked by the employee." The Union proposes to increase the shift premium to \$1.85 per hour effective March 1, 2008, and further to \$2.35 per hour effective March 1, 2009. It also proposes that the shift

premium be paid to any employee who is out on any paid leave, such as, but not limited to, disability, personal, vacation, holiday, GML §207-c, etc.

The Union argues that comparable jurisdictions pay their police officers a higher shift premium than does Tompkins County, and that the value of this benefit relative to existing hourly pay should be maintained.

The Employer argues that the Union has not provided a compelling justification for this proposal, and that the current shift premium compares favorably with comparables in the region. Further, the shift premium should not be paid for time not worked, as the purpose of the shift premium is to compensate an employee for working designated evening and overnight hours.

Travel Time Pay [Article 3, Section 5]

The current contract states: "Employees attending basic training in the title of Deputy Sheriff will not be paid for time traveling to and from the training location." The Union would amend this provision as follows:

All Deputy Sheriffs shall be paid for all travel time to and from the basic academy, including study and notebook preparation, at time and one-half (1.5x) his/her hourly rate of pay.

The Union argues that travel time is work, and should be compensated like all other work performed while on duty and in an official capacity.

The Employer argues that the current travel time provision is consistent with that of other municipalities and thus should not be changed.

On-Call Pay [Article 3, Section 15]

The current contract provides that "when the Sheriff requires that an Investigator must be available for work," the Investigator will be compensated at the rate of \$1.80 per hour. The Union proposes increasing this rate to \$2.30 per hour effective March 1, 2008, and further to \$2.80 per hour effective March 1, 2009.

The Union notes that some municipalities do not have on-call provisions because they staff their investigative units 24/7, but the ones that do have on-call provisions use a variety of methods to compensate their detectives. The Union further argues that the current compensation is wholly inadequate for the inconvenience of putting one's life on hold and bears no relationship to the sacrifice required.

The Employer contends that there is no justification for increasing this benefit, since an investigator receives the pay whether or not he ever responds to a call. Moreover, this demand would further stress the Employer's finances. Thus the demand should be rejected.

Health Insurance for Active Employees [Article 7, Section 2]

The current requirement provides for a health-insurance contribution that was reduced in a previous arbitration award. It now provides that the Employer pay 85 percent of the equivalent premium and the employee 15 percent. The Union proposes to increase the Employer's contribution to 90 percent. The current contract also provides for the Employer to contribute to a Voluntary Employee Benefits Account (VEBA) in the amount of \$400 per year for each employee. The Union proposes to increase this amount to \$500 per year for each employee.

The Union notes that the Employer has saved substantial money since it moved to a self-insured consortium model for health insurance, but these savings have not been shared with employees. The current level of coverage pales in comparison with that of the Employer's nearest comparables, the City of Ithaca and the Village of Cayuga Heights.

The Employer points out that all other employees of the County pay 20 percent of their health-insurance-equivalent premiums, as opposed to the 15 percent paid by members of this bargaining unit. There is thus no reason, it argues, to further reduce the contribution for deputies, especially in light of the steady increase to the equivalent premiums that the Employer has primarily borne. Moreover, neighboring counties have employee contributions that are comparable to that of these deputies. As for the VEBA, the Employer notes that these reimbursement accounts are rarely provided by municipalities at all, and there has been no showing that the \$400 per year provided to each employee has been inadequate.

Health Insurance for Retirees [Article 7, Section 4]

The current contract provides for health insurance for retirees and dependents. Pursuant to a previous arbitration award, the Employer contributes 50 percent of the health-insurance-equivalent premium for the individual, and an additional 50 percent of the difference between the individual and dependent (family) cost, "without the return of any paid leave time." In addition, the Employer fully funds the premium for individual or dependent (family) coverage in the event a Deputy Sheriff has sustained an injury or illness in the line of duty, where the illness or injury results in a disability retirement by

the New York State Retirement System. The Union proposes to increase the Employer's contribution to 75 percent of the equivalent premium for either single or dependent (family) coverage for regular retirement.

The Union argues that the communities most comparable to Tompkins County, namely, the City of Ithaca and the Village of Cayuga Heights, provide better health coverage for their retirees, as do the majority of other municipalities used as comparables.

The Employer contends that its contribution to bargaining-unit members toward the equivalent premium for retirees is already more generous than those received by other retirees of the Employer. Moreover, these other retirees tend to work much longer before retirement and thus receive the benefit for less time. As for the comparables, other jurisdictions also require that their retirees contribute to health insurance, and the change demanded by the Union is excessive and unreasonable.

Longevity Pay [Article 13]

The current longevity payments start in the employee's 9th year. The payments range from \$475 in year 9 to \$1,000 in year 18 and above. In a recent grievance arbitration award, longevity pay was determined to begin at the *end* of the year in which the employee qualifies, and not the start. The Union proposes to both modify and accelerate the payments, as well as to redefine eligibility to the *beginning* of the year in which the employee qualifies. Under the demand, the longevity schedule would be changed as shown below as compared with the existing amounts to be paid each year, starting at the beginning of the indicated year in which the employee qualifies.

EXISTING		PROPOSED		
Years of Service	Effective 3/1/07	Years of Service	Effective 3/1/08	Effective 3/1/09
Start 9 th year through 11 th year	\$475	Start of 6 th year through 9 th year*	\$500	\$525
Start 12 th year through 14 th year	\$675	Start of 10 th year through 13 th year*	\$700	\$725
Start 15 th year through 17 th year	\$800	Start of 14 th year through 17 th year*	\$825	\$850
Start 18 th year & above	\$1,000	Start of 18 th year and above	\$1,025	\$1,050
*Denotes Compression				

In addition, the Union seeks longevity to be calculated and paid for all prior service with the Employer, or as a full-time police officer or Deputy Sheriff hired with prior credited service in the State of New York, and be included in the overtime calculation rate.

The Union notes that the current Base-Wage structure incorporates only a hire and a working rate. There is no step progression as in all of its comparables. The current system thus affords little additional compensation for experienced members, and hence the longevity-schedule demand. It also provides inadequate recognition of the value of experience. The current longevity schedule needs to be improved to bring it to the level found in the surrounding comparables.

The Employer argues that the current longevity schedule and amounts exceed those of other counties. Most of the comparable counties do not provide separate

longevity pay. As the Union has offered no compelling justification for this demand, it should be rejected.

Clothing Allowance [Article 21]

The existing clothing allowance is \$375 per year for each employee, and an additional one-time \$275 upon promotion to Investigator. The Union proposes to increase the annual amount to \$400 effective March 1, 2008, and to \$425 effective March 1, 2009.

The Union argues that even the proposed increases will leave its members far behind their counterparts. Virtually every other agency provides a clothing allowance greater than in Tompkins County. The current amount is facially inadequate to compensate for the cost of clothing and uniform maintenance. Some jurisdictions employ a quartermaster system with the employer taking responsibility for cleaning and maintaining uniforms. No other agency imposes a comparable burden on its deputies as does the Employer.

The Employer argues that the Union has provided no justification for this proposal.

Wages [Exhibit E]

The current wage schedule provides a "hire rate" and a "work rate" for each title in the bargaining unit. As the preponderance of unit members are in the title of Deputy Sheriff, and as neither party has proposed a change in the wage structure of the unit, the discussion here will focus on the Deputy Sheriff's Base Wage. The current hire rate for Deputy Sheriff is \$49,263, and the current work rate is \$53,524. The Union

proposes to increase the Base-Wage schedule for each title by 4 percent effective March 1, 2008 and a further 4 percent effective March 1, 2009. The Employer has not explicitly proposed a wage freeze, but neither has it proposed any specific change in wages for 2008 and 2009.

Union Argument. The Union notes that one of the criteria that the Panel must consider is a comparison of the deputies' wages with those of "other employees performing similar services or requiring similar skills under similar working conditions." In this case, the comparisons must be made with deputy sheriffs and municipal police officers in "comparable communities." These communities include the neighboring counties of Broome, Chemung, and Cortland, as well as the municipalities of the City of Ithaca and the Village of Cayuga Heights in Tompkins County, the City of Elmira and the Village of Horseheads in Chemung County, and the Town of Vestal in Broome County. It would be inappropriate to limit the comparison to sheriffs' offices, as the road-patrol deputies in these agencies were granted interest arbitration only recently, while other police officers have had access to it for more than three decades. Indeed, the Employer agrees with most of the comparables cited by the Union, adding Cayuga County, and excluding Broome County, the City of Elmira, and the Town of Vestal.

The Union argues that, compared with New York State or its Central Region, Tompkins County has a strong financial condition and is at the top of every financial indicator. It is first in the region in population growth and resident income. Its employment rate is stable, buttressed by its universities, and it has an excellent long-term forecast. Its sales-tax revenues have increased markedly since 2002. Its full-value tax rate is relatively stable and the lowest in the region. It has used only a fraction of its

constitutional tax limit, best in the region. According to the Union's municipal-finance expert witness, the Employer has a healthy fund balance and is in sound financial shape. The cost of funding the Union's proposed wage increases would amount to a very small fraction of the Employer's reserve funds, or of its sales tax revenue, or of its property tax receipts. These findings have not been rebutted by the Employer, and they show that the Employer has the ability to provide a fair and equitable wage-and-benefit increase for employees in this bargaining unit. Providing such an increase also serves the interests and welfare of the public by enticing persons to become and remain members of the Sheriff's Office.

The Union further contends that its proposal is supported by comparisons with its comparables. The current Base Wage pales in comparison with the most direct comparables, the City of Ithaca and the Village of Cayuga Heights, whose police officers work directly alongside the sheriffs' deputies. The proposed adjustment is not even a substantial step toward parity with these jurisdictions, and it will not impose an undue burden on local taxpayers.

Finally, the Union has a demand that retroactivity be paid to any employee who worked during the period of March 1, 2008, through February 28, 2010; that employees be paid for all time worked; including any fringe benefits; and that the payment include a work sheet setting forth how the calculations were made and what they represent.

Employer Argument. The Employer contends that the proper comparables for this bargaining unit are the Counties of Cayuga, Chemung, and Cortland, along with the City of Ithaca and the Villages of Cayuga Heights and Horseheads. These are in fact the comparables that were used in the two previous interest arbitrations.

The Employer notes that one of the statutory criteria that the Panel must consider is "the financial ability of the public employer to pay." In this case the Employer asserts that the record shows that it faces substantial limitations on its ability to fund an award. Since the core business of the Employer is to provide state-mandated human services, its budget is tightly linked to the state of the economy, and the economic downturn in the 2008-2010 period created a major increase in the demand for mandated services. These services include food stamps, Medicaid, temporary assistance, and child placement. In addition, the recession engendered significant increases in the Employer's pension costs, to the point that for deputies they are now 29 percent of their salary, and the costs are projected to rise until 2013. This cost growth has been added to the ongoing rise in health-insurance costs. The recession also led to a decline in the Employer's sales-tax revenues, in that the 2008 level of revenues was not regained until 2011, and in the capacity of taxpayers to pay higher property taxes. The increase in the unemployment rate in Tompkins County has not been reversed, and its largest employer, Cornell University, has lost endowment and cut staff. In addition, a major corporate taxpayer has gone into bankruptcy. In general, property values have stagnated, and the tax on an average home is burdensome. The state property-tax cap will also make it difficult for the Employer to increase the tax levy.

To meet these challenges, asserts the Employer, it has taken some difficult steps, recognizing that much of the budget is off-limits because of fixed costs and obligations. While some services may be cut, they cannot be eliminated. Discretionary costs represent only 26 percent of the Employer's budget, most notably the Sheriff's road patrol. For three years locally controlled services have been cut and the workforce has

declined. The Employer eliminated a home-health agency that served hundreds of elderly people. If it had the ability to pay more, it would not have closed this agency. Services were also reduced for rural youth, preventive services for child welfare, and road repair. With its fund balance and some one-time positive events, the Employer was able to weather the storm and avoid the catastrophic outcomes faced in some other counties.

The Employer argues, in addition, that it has been able to negotiate settlements with other bargaining units that have restrained wages and avoided wholesale reductions in work time. The white-collar unit received a 3 percent increase in 2008, which was before the financial crisis, but no base-wage increases in 2010, 2011, or 2012. The blue-collar unit received much the same. The Sheriff's Office Corrections Unit received 4 percent in 2008 as the result of an earlier long-term agreement and a 2.25 percent increase in 2009, but no increases for 2010 or 2011 and about a 2 percent increase for 2012. Other units also agreed to higher drug co-pays.

As for comparables, the Employer notes that members of this bargaining unit are generally paid more than other county employees. Its wages are highly competitive and in some instances higher than those of the other counties in the area. The Employer's hire rate for a Deputy Sheriff in 2007 exceeds those of all the comparable jurisdictions cited by the Union. Moreover, the Union has offered no testimony showing that higher salaries are needed to address recruitment issues or to meet increased work demands. The demand for higher salaries must be viewed in light of the Employer's budget constraints and the shared sacrifices of the citizens and employees of Tompkins County.

Finally, the Employer argues in its brief that a just and reasonable determination of this dispute would limit any retroactive wage payments to employees on the payroll at

the time of the award, and exclude employees who left Employer employment while this interest arbitration was pending.

FINDINGS AND AWARD

In arriving at a just and reasonable determination of the matters in the dispute, the Panel has carefully considered the statutory criteria set forth in §209.4 of the Taylor Law, the testimony of sworn witnesses, and the exhibits and post-hearing briefs submitted by both sides. The comparability criteria include a comparison of the compensation of Tompkins County deputies with that of employees performing similar services and requiring similar skills under similar working conditions "in comparable communities." In the two prior interest arbitrations between these parties, both panels found the comparables to comprise deputy sheriffs in Cayuga, Chemung, and Cortland Counties, along with municipal police officers in the City of Ithaca and the Villages of Cayuga Heights and Horseheads. We find this list to be reasonable and have used it in our analysis for this two-year award.

Set forth below are the Panel's findings on the compensation issues for which an award is made. These findings constitute the Panel's disposition of issues that involve changes in the current compensation of members of the bargaining unit. The other issues presented to the Panel have been carefully considered, and its finding is that, with respect to those issues, no change in the current compensation package should be made for the years covered by this award. These demands are therefore rejected, and no award is made.

Wages [Exhibit E]

The Panel finds that increases in the Base Wage for this bargaining unit are warranted, but not in the amount demanded by the Union. An important consideration in this regard is the comparison of wages in Tompkins County with those in the comparable communities indicated above. There are various ways to make this comparison, largely because of differences in the pay structures across the communities. In Tompkins County, there are only two wages, a hire rate and a work rate one year later. Based on the foregoing, the other comparables all start at a much lower wage than does Tompkins, but over time the differences are narrowed. Sometimes the wages in the comparable communities surpass those in Tompkins County, in some cases by substantial margins. Therefore the best way to compare wages generally across communities is to look at the cumulative wages that an individual would receive over a period of time, say, 15 or 20 years.

What a comparison of this kind shows is that wages in Tompkins County are considerably higher than those in the three comparable counties of Cayuga, Chemung and Cortland, as well as the Village of Horseheads, but considerably lower than those in the neighboring City of Ithaca and Village of Cayuga Heights. It might also be noted that including in the comparison the other comparables proposed by the Union does not change the picture much, as wages in those specific municipalities are roughly comparable with those in Tompkins County, without a comparison to the work schedule, retiree health insurance and like benefits. While it is certainly relevant that police officers in the City of Ithaca and the Village of Cayuga Heights receive higher wages than the deputies of Tompkins County, it is also relevant that the sheriff's deputies in most

neighboring counties receive lower wages, again without the schedule and benefit comparisons mentioned above. Thus the wage comparisons tug in two opposing directions, and accordingly they do not provide a compelling rationale for either an unusually large pay adjustment or an unusually low one.

The Union's evidence on the Employer's ability to pay the increases sought is generally sound, and we are persuaded that within the range of consideration here there is not an ability-to-pay constraint. This is not to deny the challenges that the Employer has faced and continues to face, and which the Employer articulates forcefully in its arguments, but rather to note that despite these challenges the Employer has had both the resources and the budgetary skills to manage them. It should also be noted that during the years in question, other employees of Tompkins County received wage increases within the range of discussion here, and we are not persuaded that the deputies should be disadvantaged because their wages for 2008-2010 are under consideration much later than they were for other employees.

The foregoing considerations lead the Panel to the conclusion that the Base Wages of members of this bargaining unit shall be increased by 2.9 percent for each title, effective March 1, 2008, and by another 2.9 percent for each title, effective March 1, 2009. These increases shall apply to all active employees, including employees on leave, and to all employees who retired or resigned on or after March 1, 2008, but not to employees who were terminated before the date of this Award.

Accordingly, the Panel awards the following Base-Wage schedule:

	Effective 3/1/08 (+2.9%)		Effective 3/1/09 (+2.9%)	
	Hire	Work	Hire	Work
Deputy Sheriff/Trainee	\$45,707	\$50,093	\$47,033	\$51,546
Deputy Sheriff	\$50,692	\$55,076	\$52,162	\$56,673
Deputy Sheriff Criminal Investigator	\$61,336	\$66,641	\$63,115	\$68,574
Deputy Sheriff Juvenile Investigator	\$61,336	\$66,641	\$63,115	\$68,574
Deputy Sheriff Sergeant	\$61,336	\$66,641	\$63,115	\$68,574
Senior Criminal Investigator	\$67,468	\$73,305	\$69,425	\$75,431
Lieutenant	\$67,468	\$73,305	\$69,425	\$75,431

Longevity Pay [Article 13]

Longevity pay is part of the compensation package, more a component of the pay rate than a benefit. As such, it is appropriate to increase longevity pay when the Base Wage is being increased. The Union's demand in this regard is generally modest and supported by a review of longevity pay in the comparable communities. Accordingly, the Panel is for the most part receptive to the proposal, although in recognition of its financial impact we believe that some of the changes in the demand should not be implemented until the last day of this arbitration award, and paid pursuant to the schedule from that day forward. Accordingly, the Panel awards the following longevity schedule:

Years of Service	Effective 3/1/08	Effective 3/1/09	Years of Service	Effective 2/28/10
Start 9 th year through 11 th year	\$500	\$525	Start of the 8 th year through 9 th year	\$525
Start 12 th year through 14 th year	\$700	\$725	Start of the 10 th year through 13 th year	\$725
Start 15 th year through 18 th year	\$825	\$850	Start of the 14 th year through 17 th year	\$850
Start 18 th year and above	\$1,025	\$1,050	Start of the 18 th year and above	\$1,050
Effective February 28, 2010, all employees shall qualify for and be paid longevity pay at the start of the anniversary year indicated in the above schedule.				

Shift Premium [Article 3, Section 4(b)]

The presence of this provision in the pay package reflects the general understanding that there should be a premium paid to employees who work what are widely regarded as undesirable times. As with longevity pay, we believe that the current shift premium, as a component of wages, should be adjusted to reflect increases in base pay. Accordingly, the Panel awards that the shift premium shall be increased to \$1.50 per hour as indicated below, effective March 1, 2008. The Panel further awards that employees who are on paid leave, and who had been receiving a shift premium when they went on leave, shall continue to receive the shift premium during the leave.

3/1/08 – increase by \$.15	3/1/09 – no change
\$1.50	\$1.50

Mandatory On-Call Pay – Investigators [Article 3, Section 15]

This provision reflects a mutual understanding that investigators who are required to be available for work during their off-duty hours deserve compensation for the disruption in their lives that this status entails. As with the other variants of wages, the current level of such pay should be adjusted as the Base Wage goes up. Accordingly, the Panel awards that the mandatory on-call pay status for investigators shall be increased as follows:

3/1/08	3/1/09
Increase \$.20/hr	no change
\$2.00 per hour	\$2.00 per hour

Clothing Allowance [Article 21]

The record shows that, in some other comparables, the purchase and maintenance of work clothing are provided directly by the employer rather than through an allowance to employees. However, in those comparable jurisdictions where an allowance is provided, the allowance tends to be more generous than in Tompkins County. We are therefore persuaded that the Union's proposal is reasonable and should be awarded in some form. Accordingly, the Panel awards the following:

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

On this 13th day of December, 2012, before me personally came and appeared HOWARD G. FOSTER, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Laurie Foster

Laurie Foster
NOTARY PUBLIC, State of New York
Qualified in Erie County
My Commission Expires Dec. 31, 2014

STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On this 18th day of December, 2012, before me personally came and appeared JAMES W. ROEMER, JR., to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Beverly Adelman

BEVERLY ADELMAN
Notary Public, State of New York
No. 01AD6155385
Qualified in Saratoga County
Commission Expires November 13, 2014

STATE OF NEW YORK)
COUNTY OF ORANGE) SS:

On this 19th day of December, 2012, before me personally came and appeared ANTHONY V. SOLFARO, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Lorraine J. McGuinness

LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 2015

CONCURRING OPINION

While I generally support the economic provisions of this Award based upon the record before the Panel, I want to emphasize the primary reason I am supporting the Award. The County, like all other municipalities in New York State, is facing unprecedented fiscal challenges both in terms of general economic conditions, as well as the recently imposed 2% tax levy cap. As the Opinion notes, we are dealing here with a two year period commencing March 1, 2008 and ending February 28, 2010. During that period of time, all other bargaining units within the County received bargained pay adjustments in the range of this Award. While it is true that the 2% tax levy cap was not then in effect and is in effect now, I do not believe that the County's current fiscal circumstances warrant consideration of the tax levy cap for the period of time in question. If this Award covering a period of time including 2011 and 2012, I would definitely not support the monetary adjustments that are being made.

Additionally, the Opinion notes that the deputies' salaries are considerably lower than those in the neighboring City of Ithaca and the Village of Cayuga Heights. I do not concur that either the City of Ithaca or the Village of Cayuga Heights are "comparable communities" for Taylor Law purposes. There is a general recognition in the law enforcement hierarchy that a sheriff's department road patrol (which is not a mandatory service) is different from a City or Village police department, both of which have had binding arbitration as a dispute resolution mechanism for four decades. In my view, Counties are comparable to other Counties. I have been involved in numerous Interest Arbitration Panels and have never confronted an argument from a police bargaining unit that they are comparable to their County's road patrol bargaining unit, nor have I ever seen an Opinion which so holds. Generally speaking, the law enforcement activities of a police officer in a community with a concentrated urban population such as typically found in a City or Village are substantially different than the law enforcement activities typically found in a road patrol bargaining unit.

Finally, I want to emphasize that the "ability to pay component" in the deliberations of an Interest Arbitration Panel has, in my view, changed dramatically in the last several years. It goes without saying that New York taxpayers are among the highest taxed citizens in the United States, a dilemma that is attributable to every level of government, including school districts. The imposition of a tax levy cap and the concomitant publicity surrounding the implementing legislation has put taxpayers on notice that their respective governments should strive to stay within the limitations imposed by the cap. The ability to override the cap is there when absolutely necessary, but should not, in my opinion, be used as a tool for governments to conduct "business as usual." In this new world economic climate, a municipality's ability to pay must be examined carefully, not simply for the fiscal years in question, but in 5 year and 10 year periods. Municipalities with hefty fund balances today who strive to stay within the tax levy cap limitations could quickly see those fund balances dissipate in a relatively short period of time. To my way of thinking, in these atypical economic times, a municipal

entity's "ability to pay" is best measured on how they deal with the compensation and other general economic issues of their non-public safety employees.

Dated: December 18, 2012

By: James W. Roemer, Jr.
James W. Roemer, Jr., Esq.

Sworn to before me this 18th
day of December, 2012.

Beverly Adelman
Notary Public - State of New York

BEVERLYADELMAN
Notary Public, State of New York
No. 01AD6155385
Qualified in Saratoga County
Commission Expires November 13, 20 14