

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

X-----X

In the Matter of the Interest Arbitration

-between-

SUFFOLK COUNTY DEPUTY SHERIFFS POLICE
BENEVOLENT ASSOCIATION, INC.,
PARK POLICE UNIT

“Petitioner or PPU”

PERB Case No. IA2010-004;
M2009-082

-and-

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

MAY 13 2013

CONCILIATION

COUNTY OF SUFFOLK

“Respondent or County.”

X-----X

BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
PATRICK BOYLES, CHAIR, PARK POLICE UNIT, PETITIONER MEMBER
PAUL MARGIOTTA, ESQ., ACTING DIRECTOR, SUFFOLK COUNTY LABOR
RELATIONS, RESPONDENT MEMBER

APPEARANCES:

FOR THE PETITIONER:

GREENBERG BURZICHELLI GREENBERG, PC by HARRY GREENBERG, SETH
H. GREENBERG & GENEVIEVE E. PEEPLES, ESQS.

FOR THE RESPONDENT:

LAMB & BARNOSKY, LLP. by RICHARD K. ZUCKERMAN & ALYSON
MATHEWS, ESQS.

BACKGROUND

The parties are signatories to the collective bargaining agreement between the Deputy Sheriffs Police Benevolent Association Park Police Unit (“Petitioner” or “PPU”) and County of Suffolk (Respondent or County). The parties are signatories to a Stipulation of Settlement that covered the period January 1, 2004- December 31, 2008 (Joint Exhibit [JX] 2).

The parties engaged in good faith bargaining in an effort to establish a successor agreement. The negotiations proved to be unsuccessful.

As a consequence, Karen Kenney, a PERB appointed mediator, attempted to mediate the dispute. Despite the mediator's best efforts, the mediation failed to resolve the matter.

Accordingly, PPU filed a Petition for Compulsory Interest Arbitration with New York State Public Employment Relations Board (PERB) on May 5, 2010 (JX3). The County filed its Response to the Petition for Compulsory Interest Arbitration on May 14, 2010 (JX4).

PPU filed an Improper Practice Charge with PERB in which it alleged that five of the County's proposals were non-mandatory and/or prohibited and/or non-arbitrable. This *charge* was dated June 9, 2010 (JX5). The County submitted an Answer to the Improper Practice Charge on July 8, 2010 (JX6).

The parties submitted a Stipulation of Facts and Record on November 17, 2010 (JX7). In a decision dated April 6, 2011, Administrative Law Judge Philip Maier ordered the withdrawal of four of the County's proposals and determined that one of the proposals cited in the Improper Practice Charge was properly submitted to the interest arbitration process (JX8).

On June 18, 2010, PERB designated me to serve as the neutral Chair of the Panel. The PPU selected Patrick Boyles to serve as the Petitioner's Panelist and the County chose Jeffrey L. Tempera to serve as the Respondent's Panelist (JX9). Mr. Tempera was later replaced by Erick Askerberg. Mr. Askerberg was subsequently replaced by Paul Margiotta, Esq. (JX10). The arbitration panel was established to hear and finally decide all relevant issues.

A pre-hearing conference was held on November 17, 2010. Hearings were held on May 2, 26, 2011 and January 29, 2012. The parties were represented by counsel and had a full and fair opportunity to present testimonial and documentary evidence in support of their respective positions. A stenographic record was taken at each hearing.

The parties submitted eleven (11) joint exhibits and the parties moved in excess of one hundred and fifty (150) exhibits (with multiple parts to many of them) into evidence.

The specific provision of the Taylor Law governing interest arbitrations concerning Suffolk County park police officers is Civil Service Law §209.4(i). It is a separate provision and is unlike the one setting forth the interest arbitration proceedings of police units.

Unlike that of police units, the scope of proceedings pursuant to Civil Service Law §209.4(i) does not apply to disciplinary procedures and investigations or eligibility and assignment to details and positions

The parties were directed to submit post-hearing briefs on or before August 17, 2012. I received the briefs in a timely manner. The Panel officially met in executive session on February 26, 2013.

THE UNRESOLVED PROPOSALS

The following is a listing of each party's unresolved proposals:

DSPBA Park Police Unit

1. **Term -Two Years (January 1, 2009 – December 31, 2010)**
2. **Wages (Section 5) -**
 - a. **Effective January 1, 2009:**
 - i. **One time salary adjustment of \$ 5,000**
 - ii. **5% increase on top of salary adjustment**
 - b. **Effective January 1, 2010: 5% increase**
3. **Promotion / Upgrade Salary Adjustment (Section 5(E)) – Section 5 (E), para 7 shall be amended to read: “When a full time employee receives a promotion or upgrade, he/she shall go to the top step of the new position.”**
4. **Salary Differential for Sergeants (Park Police Officer II) – Sergeants shall receive pay equivalent to the top step of Park Police Officer I + 19%.**
5. **Salary Differential for Lieutenants (Park Police Officer III) – Lieutenants shall receive pay equivalent to the top step of Park Police Officer II (Sergeant) + 12%.**

6. Longevity (Section 5.1) – Effective January 1, 2009, longevity pay entitlement shall commence after five years of completed service and shall be paid as follows: \$300 per year of service (e.g. 5 years of completed service = \$1,500; 8 years of completed service = \$2,400; 10 years of completed service = \$3,000 and so on).

7. Overtime Compensation (Section 6.1) – This section shall be replaced with the following:

Overtime compensation shall be paid at the rate of time and one-half the hourly rate for all work performed in excess of the employee's basic workweek or work day. The workday shall include a one-half hour paid meal period. Any time off for vacation, sick leave, personal leave, holidays, or other leave with pay shall be considered as days or time worked under this paragraph.

It shall be management policy to make payment for overtime worked no later than the second payday after the date of submission of the record of the overtime. Records of overtime work must be submitted to the Department payroll office. The Office of Labor Relations undertakes to alert all administrators and fiscal functionaries to this requirement and to follow up promptly lapses in this policy.

8. Night Differential (Section 6.8) - Effective January 1, 2009, night differential shall be 12%.

9. Rotating Shifts (Section 6.9) –

- a. Effective January 1, 2009, additional pay for two-tour rotating shift shall be 7.5%.
- b. Effective January 1, 2009, additional pay for three-tour rotating shift shall be 12%.

10. Lieutenant Stipend in Lieu of Overtime (Section 6.11) – This section shall be amended to reflect the following:

Effective January 1, 2009, and for each subsequent year thereafter, each lieutenant shall receive an annual stipend equal to 225 hours of straight time (at the then current rate) in lieu of overtime for the first 150 hours of overtime.

11. Work Week; Work Day (Section 8.1) –

- a. The normal workweek shall include a half-hour paid lunch (or eating) period each day.
- b. A new work schedule shall be established which requires employees to be scheduled for work 232 days per year.

- c. Employees working the midnight shift shall work a separate work chart consisting of a work week of four days on followed by three days off while working a ten hour day.

12. Vacation Accruals (Section 8.4) – This section shall be amended as follows:

- a. 90 days shall be permitted to be carried over to the succeeding year.
- b. Each employee shall be permitted to use up to (and including) 10 vacation days during the major operating season (May 1st to September 30th).

13. Disputes: Grievance and Arbitration Procedure (Section 14) –

- a. Eliminate Steps 1 and 2; Step 3 shall become the new Step 1
- b. Sub-para B shall be amended to include a list of 7 people mutually agreed upon between the County and the PPU to serve as a panel of arbitrators.

14. 24 Hour Allowance (Section 18(U)) – Increase to \$500 entitlement on an annual basis.

15. Homeland Security Stipend – Effective January 1, 2009, each employee shall receive a Homeland Security stipend each January 1st in an amount equal to 0.25% of the employee's step as of the previous December 31st, to be incorporated into and paid as part of the employee's bi-weekly base wages.

SUFFOLK COUNTY PROPOSALS

1. Section 5 – Compensation: Regular Wages:

Delete requirement for increments to be granted after the expiration of the agreement if a successor agreement is not in effect.

2. Section 6.1 – Overtime:

FLSA: Delete “who are hired prior to May 24, 2007” and “who are hired on or after May 24, 2007”.

3. Section 6.3 – Employee Option:

Amend first paragraph to read, “It will be at management’s sole discretion to determine whether employees will receive compensatory time in lieu of paid overtime”.

4. Section 6.6 – Compensatory Time – Use Of:

Amend first paragraph to read, “It will be at management’s sole discretion to determine whether employees will receive compensatory time in lieu of paid overtime”.

5. Section 6.7 – “Called-In”/Recall Work and Planned Overtime:

Amend to provide that an employee who is recalled will receive overtime only for the actual hours worked.

Delete requirement for payment of travel time for recalls.

6. **Section 6.8 – Night Differential, Section 6.9 – Rotating Shifts:**

Differentials will be paid only for covered hours actually worked.

7. **Section 7.2 – Workers’ Compensation:**

Amend paragraph (A) to change 39 to 26 weeks of full salary.

8. **Section 7.6 – Long Term Disability:**

Amend to provide that disability will only apply to injuries occurring while employee is on full pay status.

9. **Section 8.1 – Work Week; Work Day:**

Amend to provide that the normal work week shall be 40 hours for all employees.

Amend to provide that any new employees will be scheduled by the Department to work an additional 17 extra full shifts per year.

10. **Section 8.4 – Vacation Accruals:**

Amend to provide a maximum of 60 days' accruals in any calendar year for a maximum 30 days allowed to be carried over to the succeeding year.

Amend to provide that, upon separation, pay will be granted for up to a maximum of 60 unused vacation days, except in event of separation for cause, in which event no payment shall be made.

Delete requirement for carryover of any excess vacation accruals in event of a workers' compensation absence.

Delete second paragraph and replace with, "There shall be no accrual of vacation, sick or personal time where an employee has been absent from work in excess of 60 consecutive calendar days or during disciplinary reassignments or suspensions of any length".

11. **Vacation Selection:**

Amend to reflect that January 15 is changed to November 1 of the previous year and February 15 be changed to December 1 of the previous year.

12. **Section 8.5 – Holidays:**

Delete Lincoln's Birthday and Washington's Birthday as Holidays and replace with Presidents' Day.

13. **Section 8.6(A) Leave with Pay:**
Amend - Add paragraph, "Personal leave shall be prorated during the first and last years of employment".
14. **Section 8.6(E) (Administrative Leave):**
Add: The Association shall reimburse the County for all taxpayer-funded Association activities, including released time.
15. **Section 8.8(A) - Sick Time:**
Amend to provide that extended sick leave may be utilized only once per calendar year per employee.

16. **Section 8.8 (F) – Unused Accumulated Sick Time:**
Delete.
17. **Section 9 – Job Description:**
Delete.
18. **Section 10 – Uniforms:**
Amend third paragraph to incorporate current dollar amount.
19. **Section 14 – Disputes: Grievance and Arbitration Procedures:**
Amend (A) – Add in first paragraph, "A grievance shall be defined as an alleged violation of a specific provision of this Agreement".

Delete (B) (2), third sentence.
20. **Section 16 – Protection of Employees:**
Delete paragraph (C), Abolition of Positions.
21. **Section 17 – Personnel Files:**
Amend first paragraph to provide answer must be filed within 10 calendar days of when material is placed in the personnel file.
22. **Section 18 – Miscellaneous:**
Amend paragraph (R) – Dress Code, to allow County alone to establish standards of dress/personal appearance for employees.

Delete paragraph (S), Tie Line in Park Police Unit Headquarters.

Delete paragraph (U), 24 Hour Allowance.

New proposal – GML – 207-C - Clarify that, if an employee is injured or has an illness incurred in the performance of duties pursuant to 207-C of the General Municipal Law, the

employee will only receive the benefits required by law and no other contractual benefits such as, but not limited to, night shift differential, rotating shift differential, cleaning allowance, clothing allowance, vacation, sick and personal leave accruals, etc.

STATUTORY CRITERIA

Pursuant to Section 209.4 of the Act, the Panel is required to make a “just and reasonable determination of the matters in dispute.” In arriving at such a determination, the

Panel must take into consideration, in addition to other relevant factors, the following:

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

POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

The PPU argued as follows:

The interest arbitration award in the instant proceeding will set forth the first ever full term contract in the short history of the Suffolk County DSPBA Park Police Unit (“PPU”). Like other interest arbitration panels, the task before this Panel is to fashion a fair and equitable award which accounts for both the statutory criteria set forth in the Taylor Law and the parties’ proposals.

However, this Panel, unlike other panels, is being charged with a monumental assignment which is arguably the first of its kind in New York State impasse resolution – to determine the placement of a newly created police bargaining unit on the fragile pattern continuum which influences collective bargaining agreements for County unions. Upon this backdrop, the PPU submits this post-hearing brief in support of its position that the Panel must issue an award adopting the PPU’s proposals in their entirety and rejecting the asymmetrical demands of the County of Suffolk.

Several foundational observations provide the necessary context through which the parties’ proposals should be viewed and analyzed when establishing the terms of the impending award. First, the PPU was created in 2006 after its members decertified from the white collar unit of the County’s civilian union. Without a contract as it came into an independent existence, the PPU negotiated a Stipulation of Agreement setting forth certain baseline terms and conditions of employment for its members. That Stipulation was effective April 17, 2006, and covered the period retroactive to January 1, 2004, up through December 31, 2008. The PPU’s initial contract began mid-term. Its passage was beholden to and at the mercy of its predecessor, the County’s Association of Municipal Employees (“AME”), the civilian union whose acquiescence (or waiver of its right to ratify) was a legal precondition to the PPU’s initial employment arrangement. Without AME’s imprimatur, the entire contract would have been null and void. Thus, bargaining for a successor contract to begin January 1, 2009 – whose impasse is now before this Panel – represents the first bargaining by the PPU independent of AME. Given the absence of any real bargaining history, the Panel must delve deeper into the very nature of a Park Police Officer’s qualifications, training, and job assignments to best determine its contractual terms.

Second, the PPU is an employee organization entirely comprised of law enforcement officers. In his decision decertifying Park Police Officers from AME, Arbitrator Howard Edelman concluded

that “there is no doubt that PPO’s are Police Officers.” When conducting a review of Park Police Officers (“PPOs”), Edelman considered a PPOs legal status, qualifications, training, equipment, job assignment, and other relevant factors, all of which are supported and augmented by the evidence produced and testimony presented in the instant matter.

Further, on July 7, 2008, just two years after the PPU was born, the Governor of the State of New York signed into law an amendment to the Taylor Law which granted Suffolk County Park Police Officers the right to resolve contract disputes through binding interest arbitration. The State Senate voted 62 to 0 in favor of the amendment and the State Assembly similarly passed the measure by a vote of 133 to 0. The Suffolk County Legislature also passed a Home Rule Message in support. To date, the only employee bargaining units with the legal right to resolve contract impasses through binding interest arbitration are law enforcement units and the PPU is considered to be such a law enforcement unit.

Finally, unique to the PPU and acute to the Panel’s analyses of the parties’ proposals are the recruitment and retention problems that exist within the Park Police Department. The exception in most other law enforcement jobs is increasingly becoming the norm for Suffolk’s Park Police – the inability to attract applicants and the failure to put a stop to the hemorrhaging of quality officers to other, higher paying and often other local police jobs. Many PPOs are commonly known to engage in off-duty employment to supplement their County pay in order to make ends meet. These problems are at a crisis level, according to the PPU, and are the result of below adequate wages, benefits, and other terms and conditions of employment. The only way to stop the exodus and reverse course is to re-set salaries, wages, and other employment benefits to a level commensurate with the job.

By adopting the PPU’s proposals, the Panel will recognize and reward Suffolk County Park Police for the essential and successful roles they play in keeping the County’s residents and guests

safe. A fair and reasonable contract is one which will acknowledge the ever-increasing demands and stress that are placed on the men and women in blue by the constant threats of violence, exposure to viruses and diseases, and likelihood of serious injury. Awarding the PPU's proposals is just.

No serious discussion about the parties' proposals can occur without considering *comparability*. As noted above, this proceeding will set, for the very first time, placement of the Park Police Unit on the so-called "pattern continuum" of County bargaining units. The record is replete with a technical description of the work performed by PPU members. The undisputed evidence demonstrates that regardless of the lens by which Park Police Unit members are viewed, they are best compared to their counterparts in the Suffolk County Police Department and the police departments of East End towns and villages.

Testimonial evidence with regard to the duties and responsibilities of PPU members, their qualifications, their training, the organizational structure of the Park Police Department, and other relevant facts were presented by Sergeant Brockman and Police Officers Fulton and Sandbichler. No one challenged the veracity of their sworn statements.

In fact, the only arguments posited by the County for why the PPU should not be in the police pattern were the desire not to pay, given the fiscal condition of the County as it sees it, and the historical bargaining position that AME took with regard to park police officers prior to their decertification and prior to the Taylor Law being amended to grant PPU the right to interest arbitration.

After reviewing all of the evidence, the only conclusion that must be drawn is that Park Police perform the same functions, require the same skill set, and work under similar or identical conditions as other police officers throughout the County. Thus, PPOs must be treated similarly.

The Suffolk County Park Police provide around the clock, 24 hours a day, seven days

per week police service for the largest local government park system in the country.

Among its many duties, PPOs are responsible for patrolling more than 46,000 acres of parkland.

Park Police are responsible for enforcing State and local laws. They answer 9-1-1 calls, they assist disabled motorists, they handle aided cases, they issue summonses, and, when necessary, they make arrests. They are assigned to details in Suffolk County Police Department precincts, where they are integrated with other police officers and police, arm in arm, with members of the Suffolk County Police Benevolent Association, Detectives Association, and Superior Officers Association.

In granting decertification from AME, Arbitrator Howard Edelman concluded that PPOs are Police Officers. The facts underlying Arbitrator Edelman's conclusions are no different today.

Every police department exhibits characteristics that fit under three primary headings: (1) organizational; (2) occupational; and (3) strategic. Observing Park Police through this framework must result in the recognition of PPOs as police officers in every sense.

It has often been said that "form follows function" and that the way an organization is structured informs one about exactly what function and what role it (and its officers) play in the community. In mission, hiring practices, training, quasi-military structure, policies and procedures, and the way the law treats PPOs, the Park Police Unit operates identically to other local police departments and neighboring law enforcement agencies. Therefore, it is clear that the PPU are only properly placed in the police pattern.

The stated missions of the Park Police and the Suffolk County Police Department are very similar. The common themes in these mission statements, as with those from the roughly 17,000 other police departments throughout the nation, are: reduce crime and fear, preserve the peace, and work to improve community safety. Though expressed using different configurations of words, the phrases used by each police agency are interchangeable.

Park Police are hired from the same labor pool as Suffolk County Police Department officers, they live and work in the same area with the same cost of living, and operate within the same demographic segments. They are also called upon to provide police services in the same or substantially similar geographic areas.

Civil service job descriptions and civil service examinations prepared and issued by the Suffolk County Civil Service Department for “police officer” and “park police officer” titles have similarities.

Notably, like with other police jobs, there are certain minimum qualifications and certain special requirements including medical, psychological, physical agility, and polygraph evaluations. All Park Police Officers are required to successfully complete a Police Officer Training Course recognized by the New York State Municipal Training Council.

There are various training courses and programs required of a Park Police Officer. Upon being hired and sworn in, PPOs are assigned to the Suffolk County Police Academy wherein they train side by side with recruits employed by the Suffolk County Police Department, East End town and village police departments, Suffolk County Sheriff’s Office, and, at times, the Nassau County Police Department. Upon graduation from the Academy, a PPO is required to partake in 12 weeks of field training. Beyond that, there is individualized instructional training in an in-service training program in the Suffolk County Police Department.

The structure of the Park Police Department is similar to those of other police agencies. The rank structure is identical to the rank structure of other police agencies – Police Officer (PPO I), Sergeant (PPO II), Lieutenant (PPO III), and Captain (PPO IV). There is also the Office of the Chief and the Office of the Commissioner. Like every other police agency, there is a chain of command that must be followed.

Additionally, the Park Police Department has written policies and procedures for handling many different circumstances faced by its officers and for controlling discretion and police behavior. This is one of the hallmark traits of a police department.

Although the Park Police Unit is too small (ranging in staffing size from thirties to mid-forties) to have its own internal affairs bureau, the Park Police utilizes the services of the Suffolk County Police Department to perform internal, administrative investigations. The fact that the Park Police Department does not utilize a civilian investigatory process lends further support for the way the County views PPOs. Finally, it is further worth noting that the Suffolk County Police Department's Rules & Procedures (Chapter 16, Section 1(H)) acknowledges the similar roles played by Park Police by inclusion of procedures to be utilized by PPOs when processing an arrest.

The law treats Park Police as police officers. First, paragraph 34 of Section 1.20 of the New York State Criminal Procedure Law defines "police officer" to include "[a]ny employee of the Suffolk county department of parks who is appointed as a Suffolk county park police officer." Second, the County of Suffolk treats PPOs as police officers, through its Department of Civil Service and through the implementation and effectuation of its rules including disciplinary procedures. Further, PPOs are entitled to coverage by Section 207-c of the New York State General Municipal Law which guarantees certain benefits to police officers injured in the performance of their duties.

Police agencies generally perform tasks that fit within one of several, often overlapping categories. In pertinent part, these categories include law enforcement, order maintenance, and service assignments or job functions.

Law enforcement traditionally includes the activities of police to enforce the law that usually results in arrests and summonses mischief, violation of orders of protection, criminal trespass, burglaries, robberies, and assaults.

Notably, like other police officers throughout the region, PPOs operate radio motor patrol vehicles equipped with a license plate reader, a computerized camera system that reads license plates as they go by and indicates whether there is a problem with the vehicle (e.g., if it is wanted, suspended or revoked registration, etc.).

According to Park Police Department records, Park Police Officers averaged nearly 530 arrests and issued more than 1,700 tickets each year for the years 2008, 2009, and 2010. Additionally, Park Police were responsible for writing up more 1,100 tickets for local law violations (e.g. alcohol, trespassing, etc.) during the same time period. With only 38 PPOs, that means the average Park Police Officer makes approximately 14 arrests and issues nearly 75 summonses per year.

Central Complaint numbers (“CC numbers”) in connection with police functions performed by the Park Police are generated by the Suffolk County Police Department. Any call for service requires a CC number, after which a field or incident report is also generated.

Park Police utilize the Suffolk County Police Department’s records management system, noting Park Police as Police Department command 809 or Precinct 21. Notably, when arrests are made, Park Police utilize the closest Suffolk County Police Department precincts.

Park Police are dispatched to respond to 9-1-1 calls by the Suffolk County Police Department’s communications section. Finally, as described more fully in the much publicized Decision of Administrative Law Judge Philip Maier in connection with the New York State Public Employment Relations Board Case Nos. U-28610 and U-28611 (involving improper practice charges filed by the Suffolk County PBA and SOA challenging the September 2008 transfer of primary highway patrol duties to Suffolk County deputy sheriffs), Judge Maier concluded that, though to a more limited extent, “park police officers also performed [the same duties as the Suffolk County police while travelling the highways within the police district].”

Like its name suggests, order maintenance is the maintenance of order or the absence of disorder. Generally, these include peace keeping activities, crowd control issues, and other types of activities. Similar to other police agencies, Park Police participate in special events such as parades and fun runs. Park Police also frequently participate in DWI checkpoints, participating in roughly a dozen or so such details per year, in coordination with the Suffolk County Police Department's Highway Patrol Bureau and other precincts.

Along with the Suffolk County Police Department, PPOs participate in various anti-crime initiatives and task forces. Further, Park Police are also often called to assist Suffolk County Police on certain high priority calls, when shots are fired, to help set up a perimeter, search wooded areas, among other calls for service.

"Service" provided by Park Police encompasses a myriad of functions performed by police. Park Police participate in community outreach programs (e.g. child passenger safety program, talks at local civic groups, libraries, Kiwanis clubs, etc.).

There are many other actions performed by Park Police that are not captured in activity reports and records maintained by the Park Police. These include general deterrent policing, community service functions, and other matters. Finally, Park Police Officers play a significant role in homeland security functions.

Strategic characteristics of any police agency involve the integration of operational and organizational traits. Park Police are a community policing, problem solving, pro-active and fully responsive police agency. This is precisely what every other good police organization does.

One criterion that must be considered is the history of collective bargaining between the parties. As the discussion below demonstrates, there is very little history of bargaining between the

County and the PPU. Thus, this Panel is uniquely positioned to make the first determination as to where this young unit falls on the bargaining spectrum.

The PPU was born a mere six years ago. It has been without a contract for more than half its life. This proceeding follows the first bargaining between the County and the PPU without any strings attached to park police officers' prior affiliation with the County's civilian union, AME

During the decertification hearings, the County argued vehemently that the DSPBA failed to prove a separate unit for Park Police Officers was warranted or required by law. Hearing Officer Howard Edelman disagreed.

In granting the petition for fragmentation and in concluding that Park Police Officers were entitled to a separate collective bargaining unit, Edelman relied heavily on the fact that PPOs are police officers and should **not** be part of or treated the same as AME which represents exclusively civilian personnel.

In opposing the fragmentation of Park Police Officers from AME, the County argued, as it does again in this proceeding, that there are substantial differences between PPOs and County Police Officers. The County's arguments in that proceeding were unpersuasive to Hearing Officer Edelman and we submit they are equally unavailing in the instant matter. Specifically, the County cited to what it believed to be three primary differences: (1) alleged failure by PPOs to perform several incidental job functions that are performed by County Police Officers; (2) geographic jurisdiction of each officer's job; and (3) the fact that the County Police were permitted to proceed to interest arbitration.

First, the County argued that Police Department officers (and not PPOs) execute search warrants, use electronic eavesdropping devices, and testify in court as part of their jobs. However, the executions of search warrants are functions that are and have been performed by Park Police

Officers. Additionally, the execution of warrants is not a function limited to County Police but is also performed by other law enforcement officers, including deputy sheriffs.

Second, while it is true that the jurisdiction of PPOs and County Police Officers are different, this is only because Park Police Officers have a jurisdiction that is wider in geography and greater in scope than Suffolk County Police Officers. Specifically, PPOs have jurisdiction over the entirety of the County of Suffolk, while the police officers employed in the Suffolk County Police Department are limited (with few exceptions primarily related to detective and/or investigatory functions) to the five western towns of Suffolk County, commonly referred to as the Suffolk County Police District. Park Police have jurisdiction over the five western and the five eastern towns that make up the County.

Finally, the PPU does have the right to proceed to interest arbitration in the event of impasse.

On April 21, 2006, based upon the findings of Hearing Officer Edelman, Suffolk County PERB decertified Park Police Officers from the AME. Soon thereafter the DSPBA was certified as the exclusive bargaining representative for the newly formed PPU.

Once the Park Police Officers were fragmented from the AME, they formed the PPU and joined the DSPBA. Thereafter, the PPU met with the County for purposes of creating a contract for the new unit. On April 5, 2007, the parties entered into a Stipulation of Agreement (“Agreement”). This Agreement set forth terms and conditions of employment for PPU members covering the period January 1, 2004 through December 31, 2008. However, half of the term of this Agreement - January 1, 2004, through April 16, 2006 – falls during the period of time before PPOs’ petition to decertify was granted. Thus, though covering the five year period 2004 through 2008, the Agreement was only effective for PPU members beginning April 17, 2006. This created a legal labyrinth whereby PPU

members were unable to obtain a contract unless there was some approval by AME, who held the bargaining certificate for those years.

Bargaining for a successor contract, one that is to begin retroactively January 1, 2009, represented the first time that the PPU could bargain without AME's direct involvement, approval, or waiver as a requirement or condition subsequent. That bargaining reached impasse and ultimately led us to this proceeding.

Therefore, the history of bargaining between the County and the PPU is essentially non-existent. Any argument that the history of bargaining by AME for Park Police Officers should somehow forever bind PPOs must be dismissed in light of the Edelman decision, Suffolk PERB's decertification order, the State legislature's determination to give PPU the right to interest arbitration, and, especially, in light of what PPOs actually do every day.

During the decertification hearings and bargaining that led to the April 2007 Agreement, the County insisted that the lack of a right to interest arbitration was among the most compelling reasons why the County should not have to treat PPOs as police officers from a bargaining standpoint. This argument has now been effectively reversed.

As currently constituted, the Taylor Law provides, at Section 209.4(i), that, "[w]ith regard to Suffolk county park police officers the provisions of this section shall not apply to issues relating to disciplinary procedures and investigations or eligibility and assignment to details and positions, which shall be governed by other provisions prescribed by law." Although slightly more limited in scope than an interest arbitration covering Suffolk County Police Department police officers, this provision is virtually identical to the provisions covering New York State Police (State Troopers) and more expansive or broader than the similar provisions covering deputy sheriffs as well as such provisions covering security services or security supervisors, who are police officers, who are forest

ranger captains or who are employed by the state department of correctional services and are designated as peace officers.

On or about June 30, 2012, Factfinder / Arbitrator Al Viani issued a decision in connection with the impasse between the City of New York and the Law Enforcement Employees Benevolent Association ("LEEBA") representing Environmental Police Officers ("EPOs"). The facts and circumstances in that case are eerily similar to the ones in this matter.

EPOs' main responsibilities are to protect the City's water supply, waterworks, and aqueducts, and to enforce the City's Watershed Rules and Regulations and other laws. EPOs are employed by the City of New York's Department of Environmental Protection. Viani explained the training, equipment, vehicles, and certain job assignments required of EPOs, all of which mirror almost identically that of PPOs and other police officers.

Viani concluded that EPOs' (and LEEBA's) wages for all levels and steps "shall conform to a uniformed services pattern." In so doing, he acknowledged that a dramatic change in the bargaining framework is only justified in "unique, extraordinary, compelling, and critical circumstances," but nevertheless found that LEEBA should be placed in uniformed services pattern.

Three primary reasons were cited by Viani for changing EPOs' bargaining framework. They are largely the same reasons, with substantially similar facts and circumstances, that Park Police also deserve to be placed in the police pattern. The reasons are summarized below.

First, LEEBA, like the Park Police, "is a relatively new player in the longer history between the City and this group of employees," having been certified by the EPOs as its own union only in October 2005. Like Park Police, EPOs had been part of a civilian bargaining unit covered by the Career and Salary Plan in New York City but the Board of Collective Bargaining recognized the interest of these employees required fragmentation. Like the County in the instant matter, the City of

New York unsuccessfully argued that the status quo must be upheld based solely on prior bargaining history. This, according to Viani and equally applicable for PPOs, “would have the unintended consequence that any newly created bargaining unit would be estopped from presenting arguments that differ from a predecessor representative. This result would render the creation of a new bargaining unit a nullity, locked in, so to speak, to a pattern of settlement that may no longer be appropriate under the existing [statutory] criteria.” The Panel rejects the notion that labor contracts “are ever carved in stone.”

Second, like the Park Police, the LEEBA case represented the first Impasse Panel between the union and the City “and the first time that the question of which pattern of bargaining applies to the EPOs has been properly raised as a matter to be decided by a Panel in a forum that is empowered to adjudicate and decide that precise matter.”

Finally, like PPOs, the evidence in the record demonstrates that the EPOs’ actual daily work, assignments and scheduling, training requirements and other job qualifications, organizational structure, and more are demonstrative of law enforcement pattern traits. Like with Environmental Police, Park Police operate under a para- or quasi-military code and within a para- or quasi-military organizational structure. Viani also acknowledged that a “change in legal authority itself is a sufficient factor to be considered in determining whether the EPO’s status is correctly defined.” In the instant case, Park Police now have interest arbitration, a right that PPOs under AME did not have.

Viani, and the Impasse Panel which he chaired, also acknowledged the City’s concern regarding the ramifications that his conclusion will have in terms of the City’s collective bargaining settlements with much larger groups. The panel there found that its findings were limited to the unique circumstances of the EPOs and, accordingly, “should preclude any undue spillover effect, thereby protecting the interests of both the EPOs and the City.”

For much of the same reasons Viani concludes EPOs should be placed in the City's uniformed services pattern, the PPOs should be placed in the County's police pattern.

The Taylor Law requires that the Panel consider "other relevant factors" as part of making a "just and reasonable determination of the matters in dispute." Perhaps the single most important "other relevant factor" in this proceeding is that the paltry salaries and other wages and benefits of Park Police have made the job undesirable, creating recruitment and retention problems. The Panel must consider this issue in fashioning an award setting forth terms and conditions of employment for current and future PPOs.

There was undisputed testimony that staffing levels fluctuate quite a bit in the Park Police Department, from as low as 25 officers to roughly 38 officers, which ironically was the highest they have had in more than ten years and which is exactly where the staffing levels were at when the current PPU contract expired. Notably, recruitment and retention was a problem five years ago. In the parties' April 2007 Stipulation, the County promised "to address current recruitment and retention issues through the use of in-step hiring procedures."

Shortly after, in December 2007, about 14 PPOs were hired as part of this new in-step hiring, most of them at Step 5. Since January 1, 2008, up to and including the first day of hearings in this matter, May 2, 2011, five of those 15, or more than a third, have since resigned from the job. Of the 24 PPOs who have resigned since 2002, all but two took jobs in law enforcement.

Part of the recruitment and retention problem that faces the Park Police Department is the fact that there are 12 steps to top pay for a PPO, by far the most of any current police officer throughout the County.

Further, once a PPO completes 12 steps and reaches top pay, such pay is an astonishingly low \$65,589. By way of comparison, as of 2008, a top step Suffolk County Police Officer makes a base pay of more than \$101,000, or about \$36,000 more than a top step PPO.

Adoption of the PPU proposals, while not a complete solution, is a solid step in resolving recruitment and retention problems, as awarding the PPU's proposals makes the job more appealing for new hires and current officers.

Pursuant to Section 209.4(2) of the Taylor Law, the Panel must consider, among other relevant factors, "the interest and welfare of the public and the financial ability of the public employer to pay." In assessing the County's ability to pay for the PPU's wage and benefit proposals, the Panel should consider the time period from January 1, 2009 through December 31, 2010. An award by the Panel will cover that two year time period and, therefore, the County's fiscal health at other junctures is largely irrelevant and need not be considered by the Panel.

It would be unreasonable to ignore the economic difficulties that have faced the nation over the last few years. However, it would be equally unjust to simply judge the County's ability to pay without considering its specific revenue and expenditure ledgers. When an analysis of the County's finances is undertaken, what becomes clear is that the County has simply expressed, at the bargaining table, a desire not to pay rather than an inability to meet the more than reasonable proposals put forth by the PPU.

At the start of the hearing the parties agreed to submit the record developed during the interest arbitration for the DSPBA. The parties nevertheless retained the right to supplement and/or amend the DSPBA interest arbitration record. The PPU's position as to the County's ability to pay is supported in part by a report prepared by Decker Economics for the DSPBA proceeding. The PPU will make reference to the Decker Economics report as well as other documents demonstrating that

the County has the ability to pay for the PPU's reasonable wage and benefit proposals. Decker concluded his report finding:

Based on my analysis of the County's ability-to-pay as described herein, it is my Opinion that Suffolk County has the ability to pay the wage proposals set forth by the Suffolk County Deputy Sheriffs PBA.

While Suffolk County was not immune to the negative effects of the national recession, such budget pressures caused by this temporary economic downturn do not fully reflect the County's fiscal health. The County currently has sufficient reserves, high wealth levels and other untapped sources of local revenue sufficient to meet the PPU's reasonable wage and benefit proposals. The credible financial data shows that Suffolk County unequivocally has the ability to pay the PPU's contract proposals.

Notably, there have been no tax increases on the County's General Fund for the last eight years. Park Police salaries and their other wages come from the General Fund. Cost of reasonable increases to salaries and other wages for forty plus officers represents a tiny portion of the General Fund and a fraction of the overall County Budget. The County entered 2010 with combined fund balances of more than \$630 million, of which about half or \$314 million was available for spending at the government's discretion.

The County's economic stability and financial growth during the economic downturn show that it has the ability to pay the benefits sought. This conclusion regarding the County's ability to pay is reached by considering key indicators of the County's financial health: sources of revenue, economic and demographic trends.

The majority of the General Fund is funded by the County's Sales and Use Tax and the Real Property Tax. Each of these sources of revenue is considered separately. Furthermore, despite the

political decision not to raise taxes, the County continues to have the ability to pay for the reasonable and fair proposals sought by the PPU.

The County's sales tax generates the largest portion of revenue used to compensate the PPU. The County's sales tax is the source of 51% of the revenue which comprises the General Fund. The General Fund is funded with 86.9% of sales tax revenues collected Countywide. Further, in 2009 and 2010 the County allocated an even greater share of the sales tax towards the General Fund.

Sales tax collections in Suffolk County are consistently strong. These receipts are consistent with the revenue the County generated in 2007 and 2008 from sales tax. Further, the County saw an increase to \$1,180,808,321 in 2011. Suffolk County has achieved significant growth in the amount of sales which form the basis of their sales tax revenue and resulting increase to the General Fund.

The County's large and attractive retail base shifts a portion of the responsibility to fund the PPU's proposals onto non-residents. This statistic indicates that a "relatively greater portion of the County's sales tax revenues are generated from non-residents, thus resulting in a relatively larger portion of the County's operations (park police officers and other spending functions) being financed by non-residents."

The County's real property tax is the second largest revenue source for the combined General Fund and Police District Fund. Suffolk County's real property tax levy has remained stable in the face of inflation and economic pressures. Over the seven year period from 2003 to 2010, the combined property tax levies have risen an average of 2.54% per year. This 2.54% figure is tempered by the knowledge that annual inflation is approximately 3%.

Another mediating consideration is that during this time property values have been steadily climbing. The market value of properties in Suffolk County achieved significant growth over the last decade.

In addition to high property values, Suffolk County enjoys low property taxes when compared to similar large budget New York counties. Overall, Suffolk County has the second lowest average real property tax rate in 2009, behind only Rockland County.

The County has also designed a cushion to keep property taxes low during difficult financial situations in the form of the tax stabilization reserve fund. Most similarly situated counties in New York do not segregate such non-negotiable government funds and therefore this fund should be considered in this ability to pay analysis. In Suffolk County the tax stabilization reserve fund, as of year-end 2008, contained approximately \$126.6 million dollars.

Suffolk County also enjoys extraordinary per-capita property wealth. Suffolk County's average taxable real property wealth of \$204,190 per resident is the highest of the ten large budget New York counties.

Finally, Suffolk County is modest in their collections of tax revenues. Mr. Decker testified that as of 2010 Suffolk County is only using 13.3% of its constitutional tax levy, the third lowest of the ten large budget counties in the state. Also while Nassau County is considered as taxing at a lower percentage of its constitutional tax levy, these figures are not as truly comparable as Nassau's Legislature increased the limit to 2%. Ultimately Suffolk County could realize an additional \$3.78 billion in real property taxes for 2010.

Overall Suffolk County clearly has the ability to pay the PPU's reasonable demands.

As part of his analysis, Economist Decker looked to the key economic indicators of fiscal health for Suffolk County, including measurable growth and credit rating of the County's bonds. His promising findings indicate the following:

Suffolk County's population is continually growing. Such expansive population growth is a good sign for continued fiscal health and increasing County revenues.

The job opportunities in Suffolk County also continue to rise. For the period from 2003 to 2008 jobs in Suffolk County grew by 6.2%, the greatest increase among ten similarly situated New York counties. Also residents of Suffolk County enjoy an unemployment rate that is consistently below national and statewide levels.

Suffolk County's bonds in October 2009 were rated as AA, the 3rd best of 22 ratings from Standard & Poor's. Later in December 2009, Standard and Poor's assigned an SP-1+ rating to the County's Tax Anticipation Notes, their highest short-term rating. Additionally, the December 2009 offering also received the highest short-term rating assigned by Fitch Ratings and Moody's. All these ratings prove that Suffolk County enjoys "above average levels of property wealth, above average levels of income, a strong employment base and...strong financial management."

There were approximately 45 members of the PPU as of December 31, 2008, at that time there were approximately 13,000 County employees. Considering these figures, the PPU bargaining unit accounts for between 3/10% of Suffolk County employees. The 1% number for the Park Police Unit is a mere \$23,922. The PPU's reasonable proposals are well within the County's ability to pay.

In conclusion, Suffolk County is in solid financial shape and is in no way confronted with the extraordinary conditions that would preclude the Panel from awarding the contract terms and conditions sought by the PPU. Accordingly, for the reasons outlined above as well as those presented

during the hearings, Suffolk County has the ability to pay and the public interest will be safeguarded by awarding the Park Police Unit's reasonable proposals.

The interests and welfare of the public are not limited, as the County would have you believe, solely to the employer's financial interest in the bottom line. Rather, by necessity, it also must involve the community's interest in having a police force continue to serve its essential needs and provide essential services. The Panel in this matter must issue an award that creates an environment where Park Police Officers can continue to be highly trained, efficient, and prepared to respond to the ever-changing needs of their constituents, while simultaneously making the PPU attractive to both recruits and current officers who will continue to meet the Park Police Department's high standards. Fiscal or economic strains facing the County provide no basis to diminish the type of police services nor should artificial or short term financial problems be the basis for denying Park Police Officer proper compensation and other benefits.

Police work is inherently dangerous. There is an expectation on the part of the public that its police force maintain a high level of alertness at all times, respond to emergencies in an expeditious manner, and perform their work with a high degree of competence. There is never a calm moment for police officers. Each minute they may encounter innumerable dangerous situations. And this is so for Park Police as well. They face increased risk of physical injury, illness, death, and emotional disorder due to the high stress and inherent adversarial nature of police work. The job may risk exposure to, for example, extreme weather conditions, noise levels, wildlife/animals, fumes, noxious odors, heights, and disease. These dangers are encountered through pursuits, investigations, and the apprehension of criminals, traffic stops, prevention of and response to violent situations, among other assignments.

On average one law enforcement officer is killed in the line of duty somewhere in the United States every 53 hours. On average, more than two park police officers die in the line of duty throughout the nation each year.

Park Police Officers deserve to be compensated and receive benefits commensurate with the work they perform. The County of Suffolk, including the specific roads, lands, structures, and other geographic zones that fall within the jurisdiction of Park Police, is one of the safest regions in the country due to the area police. The results produced by the Park Police prescribe that the PPU's proposals be adopted in their entirety.

Unfortunately, Park Police Officers have a recruitment and retention problem. Awarding the proposals requested by the PPU would benefit the public in innumerable ways. The fair and reasonable award sought by the PPU would raise the morale of the officers and create a better environment for PPOs to continue to demonstrate the high level of aggressiveness and hard work they exhibit each and every day.

The interests and welfare of the public are also best served by a Park Police Department that is comprised of officers who are well-trained, given the appropriate resources and support, and whose morale is high. It is paramount that, especially given the ever-increasing demands placed on them, Park Police Officers be compensated properly. In arriving at a just and reasonable determination in this proceeding, the Taylor Law requires that the Panel consider the peculiarities of the policing profession, including specifically the hazards of employment, physical and mental qualifications, and job training and skills. As presented throughout this proceeding and described in some detail above, the Panel is all too familiar with the unique role that Park Police Officers play and the exceptional work they perform. These considerations must be at the forefront of every decision made in connection with the proposals presented by the parties.

The Panel should grant all of the PPU's proposals and deny each and every one of the County's proposals.

CONTENTIONS OF THE COUNTY

The County argued as follows:

Interest arbitration is not what it used to be. Until fairly recently, unions viewed interest arbitration as their "golden ticket," an opportunity to convince a neutral chairperson that their members were entitled to a wage and benefit package that their employers were unwilling to offer. As the public's awareness of the interest arbitration process has increased, so too have public employers' efforts at holding the line on high cost, low concession awards. Indeed, the past several years have seen record low cost interest arbitration awards.

The PPU is the last of the County's seven bargaining units which are entitled to interest arbitration to complete that process during this round of bargaining. Although new to the process, the PPU's proposed wage and benefit package demonstrates that its perspective is dated; i.e., it views interest arbitration as an opportunity to cash-in. In fact, it argued that its recent acquisition of the right to interest arbitration justified and/or required the Panel to award its otherwise exorbitant demanded wage and benefit package and to change its placement in the County's bargaining patterns. That position has fortunately been rejected by at least three arbitrators who have served as the chair of County interest arbitration panels with Unions which had just obtained interest arbitration rights. It is up to this Panel to show the PPU how interest arbitration works in the County, particularly the fact that it comes with a price and that this price must be paid as part of this Award.

The County, State, nation and many parts of the world are facing unprecedented economic conditions. The housing markets have crashed with little sign of recovery at any point in the near

future. Interest rates on investments have declined. Retail sales are down, which is especially damaging to municipalities like Suffolk County where one of the main sources of revenue is sales tax. Mandated expenses continue to rise without regard to the cost of living or, seemingly, rationality. Indeed the County anticipates a \$530 million deficit through 2013.

While the PPU claims that conditions are beginning to show signs of improvement, the threat of a “double-dip recession” is becoming a reality. Consequently, instead of trying to merely ride out the recession, governments are continuing to tighten their belts or even considering shutting down.

Given these conditions, the County must do everything in its power to contain costs. It has already laid off employees, securitized a portion of tobacco revenues, offered an early retirement incentive program, maintained strict control over filling vacancies and reduced appropriations to County departments. Unfortunately, this has not been enough. More must be done. The County and its taxpayers cannot afford to continue the status quo.

Interest arbitration panels, including those that issued awards to the County bargaining units during this round of bargaining, have confirmed that the status quo is unsustainable. The 2008-2010 Suffolk County police pattern interest arbitration panels awarded the then-lowest average wage increases to Long Island police units in interest arbitration (3.5%) and then funded those increases through substantial concessions. For example, the award for the Suffolk Police Benevolent Association (“the PBA”) had a net average annual cost of 2.67%. The other police pattern units received similar wage and benefit packages.

This pattern was continued, albeit in a less costly manner, in the recent Deputy Sheriffs Police Benevolent Association (“the DSPBA”) (parent organization to the PPU) interest

arbitration award. That award rejected the DSPBA's renewed efforts to place its members in the police pattern. It then included wage increases, which were smaller than those for the police pattern units, of 3.375%, 3.2% and 3.2% for the years 2008, 2009 and 2010, respectively. Those increases were funded through concessions, including a deferral for 12 pay periods of the 2008 wage increase, a reduction of the starting salary, a reconfiguration of the salary schedule, an increase in the work year by one additional day and an expansion of the Sheriff's right to transfer employees. These concessions resulted in a net cost of 2% per year.

With regard to the AME pattern, which includes the PPU, the raises for 2009-2012 were, respectively, 0%, 0%, 2% and 2%. For the years 2009 and 2010, the PPU should expect to receive, and the Panel should award, the same increases.

The importance of this PPU Award, then, cannot be underestimated. It could, and should, continue and expand upon the groundwork set by the other five interest arbitration awards, and reestablish the PPU's placement in the Association of Municipal Employees ("the AME") pattern and do so in a cost-effective, efficient manner. Anything less will send the absolutely wrong message to the PPU, its members and the other County unions.

Civil Service Law § 201 recognizes the fundamental differences between public sector and private sector employees. The United States Supreme Court has also recognized that private employers and public employers are uniquely different.

As this Panel is well-aware, public employers have limited resources with which to provide services. It is equally self-evident that these services do not come for free.

By statute (Civil Service Law § 209(4)(c)(ii)), the Public Member of this Arbitration Panel represents the members of the general public; i.e., the taxpayers who bear both the burden of

potential increased costs needed to maintain their park police force and who likewise receive the benefits of the provided services. As a result, this is an extraordinary responsibility, and one that, more than ever before, must be carefully exercised.

It is within this context that the Civil Service Law requires that this Panel's decision be based upon the following criteria, "in addition to any other relevant factors:"

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

N.Y. CIV. SERV. LAW § 209(4) (c) (v).

The two most significant issues in this case concern the County's ability to pay for the PPU's demands and comparability. It is the County's position that the increases sought by the PPU are excessive relative to unit members' current wage and benefit package and also completely out of touch with the County's ability to pay for them.

In the last round of bargaining concerning the period 2004-2007, interest arbitration panels for the police pattern units finally recognized the County's lack of ability to pay for excessive

demands. Those panels awarded wage increases of 3.75% per year, together with one half of a percent per year concessions for a net salary cost of 3.25% per year. Those figures then represented the lowest average percentage increases for police units in Suffolk County in more than 20 years. For their part, the Sheriff's pattern units negotiated a wage and benefit package of 3.25% plus 0.25% in the form of a stipend (also with approximately 0.5% in concessions) for a net average cost of 3% per year. For the same period of time, the PPU negotiated a first time contract with a 3% wage increase for only employees on top step. The AME negotiated almost identical wage increases of 3% for employees on every, except the entry level, step.

These awards and settlements represented a good start at holding the line on overly generous interest wage and benefit packages. It is the County's position, though, that the salary increases then negotiated with the PPU were too high and should not be awarded here. Indeed, given the County's projected \$530 million deficit, the increases awarded to other County units during this round are also too high and should not be awarded here.

Since that last bargaining round, the County's economic position, as well as that of Long Island and the entire nation, significantly deteriorated. Recognizing this fact, the 2007-2012 Nassau PBA interest arbitration panel issued an award that moved the line even closer to a new reality than did the 2004-2007 Suffolk police pattern awards. The net cost of the Nassau award (an average of 2.75% per year) and the savings it generated substantially eclipsed that of the 2004-2007 Suffolk police pattern awards.

Considering the time period in which that award was issued; i.e., before the collapse of global, national and local economies, the award broke new ground in terms of reducing overall

costs and maximizing savings. In light of the current dismal state of the economy, however, the cost of that award was still too high and the savings too little.

This was recognized by the 2008-2010 Suffolk PBA Panel, which issued an award with a net cost of 2.67% per year (8% over three years) and what was then the lowest average wage increases in the history of Long Island police interest arbitration. Considering the fact that, pursuant to a separate memorandum of agreement, \$12 million of the benefits awarded by that panel were deferred until each PBA unit member's separation from service, the overall cash cost to the County was significantly lower, approximately 1% over three years. This pattern was continued by the Suffolk County Superior Officers Association (SOA), Suffolk Detectives Association (SDA) and Detective Investigators Police Benevolent Association (DIPBA) Awards. The 2008-2010 Suffolk DSPBA Panel, too, recognized the County's dire economic situation when it subsequently issued an even lower award with a net cost of 2% per year before non-Award related concessions were considered.

While these interest arbitration panels have made great strides in issuing more reasonable awards, we are in unprecedented times with an unprecedented \$530 million budget gap, and much more must be done. The days of rich interest arbitration awards are over. The focus must continue to be on short and long term savings. This Panel must focus on the taxpayers who are still losing their jobs and their homes in record numbers. This time around it is up to the PPU, not the taxpayer, to fund its Award. The County units which have completed the interest arbitration process essentially paid for their wage and benefit packages. This Panel should require the same from the PPU.

The Current Budget Cannot Accommodate an Increase in General Fund Expenditures.

County park police officer salaries are funded through the General Fund. The General Fund is funded by real property and sales tax revenues, state and federal aid and various other revenue sources, including interest earned. Sales tax revenues are split between the General and Police District Funds. The General Fund makes the Police District Fund whole; i.e., sales tax is transferred from the General Fund. Even though PPU members' wages and benefits are not funded by the Police District Fund, any shortage in the Police District Fund's sales tax revenues has a direct impact on the General Fund.

As was confirmed by Union economist Kevin Decker, the County's ability to pay depends primarily upon "the health of the sales and use tax and the health of the real property tax for them to be healthy, the economy needs to be healthy. Unfortunately, sales and property tax revenues are on life support.

The County has been losing sales tax revenue since 2006. When adjusted for inflation, the County's sales tax growth has actually been negative since 2006. This is the first non-inflation adjusted sales tax decline since 1965, when the County first started receiving sales tax revenues.

For 2009, the County projected 6% less in sales tax receipts than it received in 2008. As a result of poor sales tax revenues, legislation was adopted to provide the County with much needed flexibility in its use of the Tax Stabilization Fund. This allowed the County to transfer \$30 million to the General Fund to offset the declining sales tax revenues, which, as of August 5, 2009, were down 14.6% from the previous year.

The County's 2010 budget was based upon the assumption that the 2009 sales tax revenues would be 6% less than those in 2008 and grow by 4% in 2010. As of December 15, 2009, 2009 year sales tax revenues were down 9% or \$90.9 million. Since the 2009 year-end

totals are down 8.47%, the County lost \$23 million over its already low projections. This loss automatically led to a \$24 million loss in 2010 because the baseline for sales tax revenue was less than had been projected.

As a result, the County needed a 13.5% increase in sales tax revenues in November and December 2009 just to meet its projection. This, of course, did not occur.

When a shortfall exists, the County has the option of transferring money between funds. Over the past seven years, sales tax transfers from the General Fund to the Police District Fund have increased. In 2008, it transferred approximately \$87 million, almost 17 times the 2002 amount.

In 2006, the General Fund balance was \$159 million. That has rapidly decreased to a mere \$46.4 million in 2010.

Continuing at this high rate is not feasible. As a result of the projected 2009 budget shortfalls, the County decreased the amount of sales tax transferred to the Police District Fund. Had it not done so, the County would have faced a massive General Fund property tax warrant increase. Since the health of the General Fund depends in part upon the health of the Police District Fund, negative economic impacts in either fund could result in a tax increase.

County residents cannot afford a tax increase in either Fund. Since 2000, there has been a 600% increase in property tax grievances. There was a 64% increase between 2007 and 2008 alone. When a resident is successful at reducing his/her property taxes, other taxpayers make up the difference. Those residents who are barely making ends meet find themselves pushed over the edge. From 2007 to November 2008, tax delinquencies increased by over 16% (equivalent to \$11.6 million), the highest rate in three years.

This at least partially explains the 30% increase in foreclosures and the 36% increase in lis pendens actions over the 2007 figures. From January 2007 to June 2009, lis pendens increased by 41%. The average monthly number of new foreclosures increased by 32% from 2007 to 2008. From January to June 2009, there were 1,400 foreclosures, 50% more than January to June 2008. As foreclosures increase, the County's property tax revenues and housing prices decrease.

There has also been a 16% increase in Medicaid applications over the last two years and a 20% increase in temporary assistance applications since 2004. There was a 13% increase from January to December 2009 alone. New home building decreased 60% since 2005. Mortgage tax receipts are 1/3 of what they were in 2007, with an average monthly decline in 2009 of 30% over the 2008 figures.

County taxpayers are unable to absorb the cost of a PPU award that causes an increase in the General Fund and resulting increases in property taxes. Despite all of its best efforts, Suffolk County still ranks 11th highest out of 788 counties nationwide in percentage of household income paid towards property tax.

To make matters worse, the County's unemployment rate was at a 10-year high of 7.3% as of December 2009. This was up from 6.1% in December 2008.

Even if the County took unprecedented steps, such as closing the John J. Foley Nursing Home and freezing all employee step movement and salary increases for the 2008 and 2009 fiscal years, it would still face a projected budget shortfall in numerous expenditure/revenue areas of \$106 to \$136.7 million in 2010.

The County already took drastic measures in 2009 just to stay afloat. Among others measures taken, the County also reduced police appropriations, canceled a police class, imposed a

lag payroll on all Board of Election and management employees, negotiated a voluntary lag payroll for elected officials and presented a layoff resolution in the event that County bargaining units failed to provide adequate concessions. Had the County not taken these steps, it would have run out of cash for discretionary expenses, such as payroll, before the end of 2009.

Even with these steps, the County ended 2009 in dismal condition. On top of these budgetary shortfalls, there are financial factors which are outside of the County's control, such as falling interest rates.

For the 2010 budget, the County is already projecting a \$128 million shortfall. That budget is \$41 million less than 2009's budget and \$136 million less than 2008.

For 2010 through 2011, the County is also facing serious budgetary challenges: Awarding the PPU's demands would only increase the shortfalls and further squeeze tapped-out taxpayers. As it stands today, the County is already facing a \$530 million deficit through 2013.

The benefits awarded in past interest arbitrations are unsustainable and wholly unrealistic in this economy. The evidence proves that the County does not have the ability to pay increases to its already highly compensated deputy sheriffs, most of whom make considerably more money than the people who pay their salaries. The Panel should reach a similar conclusion.

1. There Are Restrictions on the County's Ability to Increase Its Budget.

There are unique legal budgetary constraints in the County. The Suffolk County Tax Act requires the County's General Fund to cover all delinquent property taxes from County towns, school districts and fire districts. The County's reserve balances are also restricted. The Suffolk County Charter requires that at least 75% of the discretionary General Fund balance, 100% of the mandated General Fund balance and 100% of the Police District Fund balance be returned to

taxpayers as a credit against the following year's tax levy. Thus, any positive fund balance cannot be considered to be a part of the County's reserves.

There are also three statutory restrictions on the County Executive's Recommended Budget. They are Local Law 29-96, The Expenditure Cap (Local Law 21-83) and The Tax Levy Cap (Local Law 38-89).

In addition to these longstanding restrictions, the County faces a new restriction; i.e., the 2% tax cap. For the County, the cap took effect on January 1, 2012. Due to these restrictions, the County refers to its budget preparation as a "zero sum game" in that "uncontrolled cost increases in one area [are] offset by reductions elsewhere in the budget". Every transfer results in a loss to one or more areas of the budget, usually the General Fund.

The restrictions on the County's ability to increase its budget are most readily apparent through the County Executive's resolution to lay off employees (County Ex. 7). In an effort to avoid doing so, the County asked each bargaining unit to provide a pro-rata share of the County's \$30 million budget hole. The County reached agreements with nine of those units. Nonetheless, the County is once again facing the threat of layoffs.

Given these budgetary restraints, it is doubtful that the County's budget will be able to accommodate the PPU's demands. While the PPU may argue that an interest arbitration award can supersede these laws, this issue has yet to be litigated. The PPU's argument is, therefore, too self-serving to be credited. Moreover, these cap laws were enacted following public referenda. The Panel, which by law is obligated to consider the public's interests must avoid issuing an award that conflicts with those interests or results in unnecessary litigation.

Over the term of this Award, and in all likelihood the years that follow, the County will face severe budgetary shortfalls. The County is also experiencing significant cash flow issues. While its surplus cash usually averages around \$22 to \$70 million, the County projected that it would end the 2008 fiscal year with only \$8 million in surplus cash, a total described as “a frightening scenario”.

In total, the County projected that revenues would decrease by at least \$54 million in 2009: Given these shortfalls, outside economists projected that the County would be “in an “L-shaped” business cycle, where a downturn in the economy is followed by little or no growth for an extended period”. If there were any hiccups in the national recovery, they predict that Long Island’s recovery would be delayed until 2011 or 2012 (County Ex. 5a at 8).

This Award, along with the Police and Sheriff’s pattern awards, will impact the contracts of other County bargaining units. It will, therefore, have a profound impact on the County’s ability to endure this recession. It will also be a determining factor in the time it takes for the County to recover from it.

Mr. Decker presented data showing that the County is operating within its tax and debt limits. The PPU argues that the County could, therefore, raise taxes and/or increase its debt to fund this Award. This argument, however, was rejected by the Appellate Division.

The County already uses sales tax revenues to offset increases in property taxes so as to avoid a significantly higher property tax warrants. With sales tax growth already falling short of budgeted amounts, it is unlikely that offsets will be an option.

When faced with the same data, the 2008-2010 PBA Panel determined that the County did not have the ability to pay for the PBA’s demands. This (PPU) Panel Chairperson credited the

County's arguments about its poor economic condition and the state of its fiscal health and found no support in the record for Mr. Decker's optimistic 2010 projections. He also noted that the impact of the current recession could not just be limited to decreases in the County's revenues, but also had to take into account the increases in services the County has to provide to those who had been negatively affected by the economy. When all of these factors were considered, the Chairperson determined that the County had the ability to pay for smaller increases in salary and benefits; i.e., increases which were, on average, the lowest ever awarded to a Long Island police unit in interest arbitration and which were in large part funded through other concessions. The same conclusions were reached by the SOA, SDA, Detective Investigators Police Benevolent Association (DIPBA) and DSPBA panels.

Based upon these facts, this Panel should issue an Award that does whatever is necessary to protect the County's tax base and avoid the need for the County to expend unavailable funds.

The PPU's financial presentation included data about the County's financial state prior to 2009. Economic conditions prior to 2009 have no bearing on this Award. Ability to pay is based upon the economic conditions during the period of the Award.

It is understandable why the PPU would like to ignore the County's current fiscal crisis, but such an unrealistic view is patently unfair to the County and its taxpayers. The Panel should, therefore, disregard this pre-2009 data and take judicial notice of the County's current economic situation and its projected \$530 million deficit.

In its analysis of the County's current economic situation, the PPU also showed that the County received a bond rating boost over the course of 2009. In fact, Moody's, Standard & Poor's and Fitch Ratings have lowered the bond ratings.

While the PPU tried to paint a rosier picture of the County's financial status, reality bites. Neither the County nor its taxpayers are in a position to fork over more money to support already well compensated PPU unit members. If anything, the taxpayers deserve to see their tax bills decrease.

The Suffolk PBA has historically demanded, at a minimum, the same benefits received by the Nassau PBA. The other units in the police pattern (SOA, SDA and DIPBA) follow suit and receive comparable benefits and make comparable concessions. The PPU here seeks an award that is comparable to the police pattern awards. The PPU has participated in one round of bargaining since its certification. Through those negotiations, the PPU voluntarily agreed to a contract that reaffirmed its place in the AME pattern, not the police or Sheriff's pattern.

Despite this reaffirmation, the awards issued during this round of bargaining continue to be relevant. The police pattern awards provide the ceiling in terms of the wages and benefits which can be awarded. The Sheriff's pattern awards set the middle ground, which is still historically higher than the wages and benefits negotiated by the AME pattern units, including the PPU. As a result, and assuming that the long-standing County bargaining patterns are reaffirmed in this proceeding, the PPU should expect to: (1) receive a wage and benefit package that is less than that awarded to the Police and Sheriff's pattern units; and (2) make concessions which are comparable to the PBA.

Based upon these factors, the Suffolk PBA panel determined that the County had the ability to pay for "smaller increases in salaries and benefits". With concessions, the net cost of that award was 2.67% (8% over three years), which was even less than the projected cost of the Nassau PBA award. The panels for the other Police pattern units; i.e., the SOA, SDA and

DIPBA, focused not on the overall cost of the awards, but upon following the existing pattern in terms of the benefits and concessions.

The 2008-2010 DSPBA panel followed the longstanding County bargaining patterns and awarded even small increases. With concessions, the net cost was 6% over three years or 2% per year.

For the years 2008-2010, AME negotiated a wage freeze in 2009 and 2010 and a 2% wage increase in 2011 and 2012. This contract was negotiated in 2011 after the County's economic conditions had deteriorated. In contrast, the Probation Officers Association (POA), which is also a part of the AME pattern, negotiated 3% raises in 2009 and 2010 as part of a settlement entered into on March 20, 2007, well before the economic meltdown. These raises were negotiated in 2007, long before the County could have fathomed the fiscal crisis which lay ahead.

In fashioning this award, the Panel should take into account the time period in which raises were negotiated/awarded. When it does, it will notice the downward trend in the wages and benefits awarded to and negotiated by County bargaining units. Given the present economic climate, this trend must continue.

Historically, the Suffolk PBA award sets the upper limits of what can be awarded during a particular round of bargaining. The Sheriff's pattern panels then award a lesser wage and benefit package and comparable concessions. The AME patterns set the lower end of what can be awarded or negotiated.

When this Panel considers the terms of the 2008-2010 PBA award, it must take notice of the \$4,805,500 in concessions contained in that award. Those concessions came in the form of reducing the starting salary (equivalent to a 0.5% wage increase), prospective savings from

reducing the starting salary (equivalent to a 0.5% wage increase), longevity deferrals (equivalent to a 0.83% wage increase), modification of benefits available to Police Officers on General Municipal Law Section 207-c status (equivalent to a 0.5% wage increase) and the implementation of a sick leave management program (equivalent to a 0.5% wage increase). As a result of these concessions, the blended annual cost of the PBA award expressed in terms of a wage increase was reduced to 2.67%.

For its part, the PPU failed to present any evidence demonstrating that it should not be required to make similar concessions. Since prior interest arbitration panels have imposed this requirement, it should be done so here.

During each round of interest arbitration, the PBA sets the pattern. Subsequent County units, including the PPU, are then expected to produce savings which are proportionate to those generated by the PBA. The 2008-2010 PBA panel awarded \$4,805,500 in concessions. Since the PPU is 0.025% the size of the PBA, the PPU will have to generate 13.8% of the PBA's savings, or at least \$118,281, which is equivalent to a 4.94% wage increase.

Civil Service Law § 209(4) (c) (v) (a) states, in relevant part, that the Panel's decision shall be based upon:

a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar work conditions and with other employees generally in public and private employment in comparable communities.

In this proceeding, there are two patterns which the Panel must consider: the internal County pattern and the external pattern.

With respect to the County's 11 bargaining units, there are four tiers of patterns: (1) the police pattern, consisting of the PBA, the SOA, SDA and DIPBA; (2) the Sheriff's pattern, consisting of the DSPBA and the COA; (3) the AME pattern, consisting of the Association of Municipal Employees White (#2) and Blue (#6) units ("the AME Units"), the PPU and the POA; and (4) the College pattern, consisting of the Faculty Association of Suffolk County Community College ("the Faculty") and the Guild of Administrative Officers of Suffolk County Community College ("the Guild"). The police pattern units have historically received the highest salary increases, followed by the units in the Sheriff's pattern and then by the AME pattern units. The College pattern exists in its own tier, essentially separate from the other three patterns.

Arbitrators have long held that a comparison must be made to these internal County patterns. For example, in the 1993 PBA award, Arbitrator Martin Scheinman noted, "There must be both internal and external comparisons made in order to determine the appropriate modifications, if any, of the expired Agreement. With regard to internal comparisons, I find the other Police units within the County to be the most relevant". He made a similar finding in the 1993 SOA and SDA interest arbitration proceedings, in which he held that, "Of special significance are the wages, hours and conditions of employment of the Suffolk Police Officers and Suffolk Superior Officers. These are the most probative bases for comparison of employees performing similar services or requiring similar skills under similar working conditions".

Arbitrator Howard Edelman reached the same conclusion in his 1993 DIPBA award, in which he held that:

With respect to the comparisons referred to in (a), the most relevant bargaining units exist in the County of Suffolk. Obviously, the identical jurisdiction is the most comparable community upon which to base comparisons. Equally relevant are the comparisons between the bargaining

unit and the other law enforcement ones in Suffolk County. These units perform similar functions. They all uphold the laws of the State of New York and Suffolk County. There are four sworn service bargaining units which have a close community of interest in this County. They are the Police Benevolent Association (PBA); the Superior Officers Association (SOA); the Suffolk Detectives Association (SDA) and the instant unit.

This “de facto pattern” has been found to exist in subsequent rounds of interest arbitration.

The pattern was most recently confirmed by the Panel Chair in the 2008-2010 DSPBA award

(County Ex. 17, Tab 21). There, he found as follows:

There are four internal bargaining unit patterns in Suffolk County. They are the *police pattern*, the *Sheriff's pattern*, the *Association of Municipal Employees* (AME) pattern and the *College* pattern.

The police pattern is comprised of the PBA (Police Benevolent Association), the SOA (Superior Officers Association), the SDA (Suffolk Detectives Association) and the DIPBA (Detective Investigators PBA).

The Sheriff's pattern is made up of the Deputy Sheriff's Police Benevolent Association (DSPBA) and the Correction Officers Association (COA).

The AME pattern is composed of the AME units (Blue Collar and White Collar), the DSPBA Park Police Unit and the Probation Officers Association (POA).

Finally, the College pattern consists of the Faculty Association of Suffolk County Community College and the Guild of Administrative Officers of Suffolk County Community College.

The PPU has presented insufficient justification for destroying these long-standing and recently reaffirmed bargaining patterns. The comparables posited by the County are supported by the evidence and, when considered, will permit the Panel to fashion a more realistic and just award than that demanded by the PPU.

Pattern bargaining is not a new concept in Suffolk County. Nor are the patterns, which have been established through decades of rounds of negotiations. There have been and continue

to be four patterns: the police pattern (PBA, SOA, SDA and DIPBA), the Sheriff's pattern (DSPBA and COA), the AME pattern (AME, POA and PPU) and the College pattern (Faculty and Guild).

These four internal County patterns are re-established each time a new round of collective bargaining begins. Each unit within a pattern looks to the unit that settled first to define the terms and conditions of its settlement. A pattern, of course, may not be established out of thin air, as it, too, must have a basis for comparison. With respect to those unions that enjoy interest arbitration rights, only with the first unit have arbitrators looked beyond the confines of the internal County pattern for guidance. That first unit sets the basic economic pattern. Following that award or settlement, there is little, if any, need to look at external units for comparison. This is true regardless of whether a union or the County disagrees with the pattern. Looking outside the pattern may produce the inequitable result of rewarding the unit that waits longest to settle.

Arbitrator after arbitrator has rejected arguments seeking to ignore or avoid an established internal pattern during proceedings involving the police pattern. Rather, these arbitrators have looked to the award issued to or settlement reached by the PBA, the unit that has historically settled first, as a starting point. The County, through its negotiations, has followed this precedent.

Adherence by all parties (arbitrators, the County and unions) to established internal patterns has produced a clear "pecking order" within the County. The police pattern units set the high end of the basic economic package. The AME pattern units set the low end of the basic economic package. The Sheriff's pattern units have historically received a basic economic package somewhere in between.

While there are theoretically times where it might be appropriate to deviate from a pattern, this proceeding is not one of them. An analysis of the bargaining history between the County and the AME pattern units reflects that each settlement is identical or, at a minimum, pattern-conforming. Nothing presented in this round is any different.

In addition to this bargaining history, arbitrators have noted that employees in the police pattern units “perform similar services...under similar working conditions”. While several County units (AME, POA, Faculty and Guild) do not enjoy the right to interest arbitration, arbitrators have noted the importance of these contracts in setting the various bargaining patterns. Just as arbitrators have found that a pattern exists among the police units based upon their bargaining history, a review of past contracts readily reveals the other patterns. This two decade long history also shows where these patterns fall in relation to one another, which is can be shown on the following charts.

Union	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
PBA	$\frac{1}{1}$ 5%	$\frac{1}{1}$ 5.75%	$\frac{1}{1}$ 5.75%	0%	$\frac{4}{1}$ 4.75%	$\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5%	$\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3%	$\frac{2}{1}$ 5.5%	$\frac{1}{1}$ 4%	$\frac{1}{1}$ 4%	$\frac{4}{1}$ 4%
SOA	$\frac{1}{1}$ 5%	$\frac{1}{1}$ 5.75%	$\frac{1}{1}$ 5.75%	0%	$\frac{4}{1}$ 4.75%	$\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5%	$\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3%	$\frac{2}{1}$ 5.5%	$\frac{1}{1}$ 4%	$\frac{1}{1}$ 4%	$\frac{4}{1}$ 4%
SDA				0%	$\frac{4}{1}$ 4.75%	$\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5%	$\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3%	$\frac{2}{1}$ 5.5%	$\frac{1}{1}$ 4%	$\frac{1}{1}$ 4%	$\frac{4}{1}$ 4%
DIPBA	$\frac{1}{1}$ 5%	$\frac{1}{1}$ 5.75%	$\frac{1}{1}$ 5.75%	0%	$\frac{4}{1}$ 4.75%	$\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5%	$\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3%	$\frac{2}{1}$ 5.5%	$\frac{1}{1}$ 4%	$\frac{1}{1}$ 4%	$\frac{4}{1}$ 4%

PPU	<u>1/1</u> 4.75%	<u>1/1</u> 5.5%	<u>1/1</u> 5.5%	0%	0%	<u>1/1</u> 5%	<u>1/1</u> 2.5% <u>7/1</u> 2.25%	<u>1/1</u> 2.5% <u>7/1</u> 2.25%	<u>3/1</u> 4%	<u>3/1</u> 3%	<u>3/1</u> 3%
COA	<u>1/1</u> 4.75%	<u>1/1</u> 5.5%	<u>1/1</u> 5.5%	0%	0%	<u>1/1</u> 5%	<u>1/1</u> 2.5% <u>7/1</u> 2.25%	<u>1/1</u> 2.5% <u>7/1</u> 2.25%	<u>1/1</u> 4%	<u>1/1</u> 3%	<u>1/1</u> 3%
AME	<u>1/1</u> 4.75%	<u>1/1</u> 5%	<u>1/1</u> 5.25%	0%	0%	<u>1/1</u> 4%	<u>4/1</u> 2.5% <u>10/1</u> 2.5%	<u>1/1</u> 2%	<u>1/1</u> 2.75	<u>1/1</u> 2%	<u>1/1</u> 2%

Union	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
PBA	<u>1/1</u> 4.6%	<u>1/1</u> 4.75%	<u>1/1</u> 4.5%	<u>1/1</u> 4.5%	<u>1/1</u> 3.75%	<u>1/1</u> 3.75%	3.75%	3.75%	3.5%	3.5%	3.5%
SOA	<u>4/1</u> 4.6%	<u>1/1</u> 4.75%	<u>4/1</u> 4.5%	<u>1/1</u> 4.5%	<u>4/5</u> 3.75%	<u>1/1</u> 3.75%	3.75%	3.75%	<u>3/10</u> 3.5%	3.5%	3.5%
SDA	<u>1/1</u> 4.6%	<u>1/1</u> 4.75%	<u>1/1</u> 4.5%	<u>1/1</u> 4.5%	<u>5/3</u> 3.75%	<u>1/1</u> 3.75%	3.75%	3.75%	<u>3/31</u> 3.5%	3.5%	3.5%
DIPB A	<u>1/1</u> 3.95 %	<u>1/1</u> 3.95%	<u>1/1</u> 3.95%	<u>1/1</u> 3.95%	<u>5/3</u> 3.75%	<u>1/1</u> 3.75%	3.75%	3.75%			
PPU	<u>1/1</u> 3%	<u>1/1</u> 5%	<u>1/1</u> 3.5%	<u>1/1</u> 3.25%	\$1,925	<u>1/1</u> \$2665. 80 plus 3%	3.25% +.25% Stipen d	3.25% +.25% Stipen d			
COA	<u>1/1</u> 3.75 %	<u>1/1</u> 3.75%	<u>1/1</u> 3.5%	<u>1/1</u> 3.25%	\$1,925	<u>1/1</u> \$2665. 80 plus 3% <u>12/31</u> \$425	3.25% + .25% Stipen d	3.25% + .25% Stipen d			
AME	<u>4/1</u> 3%	<u>1/1</u> 3%	<u>1/1</u> 3.25%	<u>1/1</u> 3.25%	\$1,925	<u>1/1</u> 3%	3%	3%	3.25%		
POA					\$1,925	<u>1/1</u> 3%	3%	3%	3.25%	3%	

PPU					\$1,925	1/1 3% Step 12	3% Step 12	3% Step 12	3.25%		
-----	--	--	--	--	---------	-------------------------	------------------	------------------	-------	--	--

Based on the 20+ year history illustrated above, it is easy to see how arbitrators have found that there are four distinct patterns. It is also easy to see why arbitrators have declined to permit a union to “break in” to a longstanding pattern.

For example, Arbitrator Townley in the 2005 DSPBA award rejected the DSPBA’s argument that it should be placed in the police pattern. She instead determined that it was appropriately placed in the Sheriff’s pattern.

Likewise, in its 2004-2005 interest arbitration, the COA claimed that it should be included in the police pattern. Arbitrator Stein also found that the COA was entitled to an award that was comparable to the one the DSPBA received, thereby reaffirming the Sheriff’s pattern.

Most recently, this Panel Chair rejected the DSPBA’s renewed effort to join the police pattern. Even when presented with evidence of the alleged increase in deputy sheriffs’ performance of police-like duties and the structural similarities between the Suffolk County Police Department (“the SCPD”) and the Suffolk County Sheriff’s Office (“the SCSO”), he determined that there was insufficient evidence to uproot the longstanding County patterns.

The PPU’s argument is no different from those which have been rejected by arbitrator after arbitrator. This Panel should, accordingly, confirm that the PPU belongs in the AME pattern.

The AME pattern is of critical and most relevant importance. It has been established and reaffirmed through amendments to the Taylor Law and over 30 years of bargaining.

In granting the PPU the right to interest arbitration, the State Legislature did so in a manner that unequivocally articulated the legislators' intent to distinguish park police officers from those police units which have traditionally enjoyed the right to binding arbitration. For example, rather than simply adding park police officers to the statutory litany of those police units already entitled to binding arbitration, the Legislature fashioned a limited form of arbitration in a new Section 209.4(i).

Other than the reference to park police officers, this statute is identical to the one providing interest arbitration to the COA. Thus, even though, pursuant to the Criminal Procedure Law, park police officers are "police officer, the Legislature made a conscious decision to link the interest arbitration procedure to the one applicable to COA unit members, who, pursuant to the Criminal Procedure Law are "peace officers". In fact, the COA is the only County bargaining unit which has the right to interest arbitration and whose members are also "peace officers."

In contrast to police units, which are allowed to bring to interest arbitration all terms and conditions of employment, County park police officers (and the County) are limited. This distinction leads to the inexorable conclusion that the Legislature intended to place park police officers on a different, lesser level than police units with respect to bargaining matters.

In addition to the legislative history, the parties have developed their own bargaining patterns. Park police officers are not treated as part of the police pattern.

The many compulsory interest arbitration awards involving the PBA, SOA, SDA and DIPBA have repeatedly referenced and reaffirmed the so-called police pattern and have reinforced the fact that those units, and those alone, are considered to be internal comparables. This includes the most recent police pattern interest arbitration awards which were issued after the

PPU had been granted the right to interest arbitration. As a result, the right to interest arbitration alone does not justify altering the longstanding pattern. In fact, this argument has been rejected three times in County interest arbitration proceedings.

Furthermore, the PPU's stand-alone bargaining consists of only one contract in which the PPU voluntarily placed itself in the AME by negotiating a contract that was consistent with the AME pattern. The PPU has not proven its entitlement to move into the police pattern, especially given the fact that, during this round, panels have reiterated the PPU's proper placement in the AME pattern.

It is clear, then, that the PPU's attempts to separate itself from the AME pattern are completely self-centered and transparent. The Panel should reject the PPU's arguments and find that the PPU is and always has been a part of the AME pattern.

Indeed, arbitrators have cautioned against disrupting these longstanding patterns. The benefits of maintaining the patterns far exceed any incidental benefit in altering them.

Here, the PPU is part of the AME pattern. The PPU presented evidence purportedly showing that its members perform police-like duties. This evidence was devoid of any representation that any of those duties were any different from those performed for decades by PPU members. Moreover, the duties performed by park police officers show that they significantly differ from those performed by the employees in the police pattern units.

For example, Ron Brockman testified that park police officers patrol the "parks, campgrounds, playground facilities, picnic facilities and in between parklands [they] do travel State, County, primary, secondary and tertiary roadways to get from one location to another".

While park police officers do issue summonses and make arrests, felonies are turned over to the SCPD. Gregory Sandbichler testified that 70-75% of the arrests are made within the parks.

In comparison to these job duties, you can and should take judicial notice of the Suffolk County Civil Service Job Specification for Police Officer which provides as follows: “The work involves enforcing municipal and state laws governing a political unit *to protect the lives, property and legal rights of the public*. The Police Officer patrols a designated area to assist in emergencies and to apprehend or issue summonses to lawbreakers” (emphasis added). When compared to the Park Police Officer I job specification and the testimony of the PPU witnesses, it is clear that there is a distinction in the type of work being performed by a park police officer and a police officer, one that warrants their placement in different bargaining tiers.

The fact that park police officers may at times work with PBA and SOA unit members does not change the analysis. There was no testimony indicating that the work performed on the joint DWI checkpoints, task forces or through Operation Impact is new. With respect to Operation Impact, the role of park police officers, while important, has been de minimis.

The PPU also made reference to the record from County of Suffolk PBA, et. al. v. County of Suffolk & Suffolk County DSPBA and PPU, PERB Case Nos. U-28611, U-28610 (2010) (“Highway Patrol Decision”) in which Judge Maier determined that PBA unit members did not exclusively perform highway patrol-related duties. Unlike DSPBA unit members, who performed one of the largest proportions of highway patrol work for the County, Judge Maier found that park police officers perform those duties “to a more limited extent”.

Notwithstanding this, the evidence before PERB showed that park police officers had been performing highway patrol work long before the date on which the PPU decertified from AME.

This was one of the reasons why, when presented with the same argument, the 2008-2010 DSPBA panel found that the performance of additional highway patrol duties did not warrant the DSPBA's placement in the police pattern.

In addition, the mere fact that Arbitrator Edelman ordered that the PPU be separated from AME does not, in and of itself, mean that the PPU must be removed from the AME bargaining pattern. Mr. Edelman determined that the PPU should be fragmented from the AME because employees who perform police functions should not, as a matter of law, be included in a unit whose members do not perform those functions. Mr. Edelman also noted that there are several police functions which park police officers do not perform including, but not limited to, executing search warrants, using electronic eavesdropping devices and testifying in court. Thus, even this decision upon which the PPU so heavily relies stands for the proposition that there are differences between police officers and park police officers.

The PPU has also conveniently overlooked the fact that the standard for decertification has no relationship to the standard for bargaining pattern placement. Substantial reasons must be established to break a pattern. In contrast to a decertification proceeding where the mere performance of police duties suffices, a similar conclusion may not be reached here.

The Panel should also not be persuaded by the PPU's description of this round of bargaining as the PPU's first without AME's involvement. It is true that the period of time covered by the PPU's first contract included a portion during which AME still represented park police officers. AME was not, however, involved in the negotiation of the first contract. Its involvement was limited to advising the PPU and County that it waived its right to ratify the tentative agreement reached between the PPU and the County. The Panel should reject the PPU's

argument that, based upon Arbitrator Edelman's findings, its decertification from AME and the duties performed by park police officers, the prior bargaining history should be "largely ignored" in this proceeding.

The PPU disregards the fact that a park police officer's duties have not changed. The only fact that has changed is that the PPU can now resolve its collective negotiations impasse through the interest arbitration process. If this were enough to justify breaking the longstanding patterns, then the DSPBA and/or the COA would have been successful in their attempts to accomplish that feat. Since they were not, this Panel must follow the existing precedent and reach the same conclusion with regard to the PPU.

Accordingly, the Panel should dismiss the PPU's efforts to distance itself from the AME bargaining pattern and align itself instead as part of the County's police pattern. The Panel should, rather, focus its attention on ascertaining the substance of the existing patterns, and determining where, had the parties successfully concluded their negotiations without the need to involve third parties, they would have wound up.

The County recognizes the stellar services which park police officers provide. That being said, awarding the PPU's demand of a one-time salary adjustment of \$5,000 effective January 1, 2009, in addition to 5% wage increases in each year of the award, is unjustifiable.

The PPU argues that, even if the Panel awards its wage increase, the PPU will still be behind the other purported comparable police agencies in terms of base salaries. This argument should be rejected.

Moreover, if the Panel does award the PPU's salary demand, new park police officers would be the fourth highest paid officers on the Academy step out of the Park Police Unit's 11 so-

called “comparable” police agencies in 2009 and the third highest in 2010 . New park police officers would be earning more than a new Suffolk County police officer. There are additional reasons why this demand must be rejected.

The Panel should also reject the PPU’s arguments regarding attrition. There is no evidence supporting the PPU’s arguments that these officers left simply because the other jobs paid a higher salary, as opposed to prestige. This argument must, therefore, be rejected.

The PPU failed to present any statistics demonstrating an increase in its unit members’ workload that might justify its wage demand. Instead, it essentially seeks more pay for performing the same work and the misconceived notion that its unit members are entitled to “PBA-like” wages. This is the wrong time, and the wrong place, to make that demand, and this Panel should reject it.

The PPU failed to introduce any evidence demonstrating a need or justification for its remaining demands. Therefore, all of them should be rejected.

The County has found itself in unprecedented economic conditions. These dire conditions demand aggressive solutions.

The County presents the Panel with a wage and compensation package that acknowledges the impact of this round of interest arbitration. If the Panel grants all of the County’s proposals, the County’s taxpayers could realize tremendous savings which would go a long way towards helping the County survive this extreme economic downturn.

OPINION

§209 of the New York State Civil Service Law (*Taylor Law*) sets forth the parameters which an Interest Arbitrator must utilize in deciding terms and conditions of employment. These criteria are as follows:

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

With these criteria in mind, I turn to the specific issues before me. The first such matter is the initial criterion.

With respect to this criterion there are internal and external patterns that may be considered. The internal patterns concern combinations of bargaining units within Suffolk County while the external patterns comprise jurisdictions outside of Suffolk County.

For many years, there have been four internal bargaining unit patterns in Suffolk County. They are the *police pattern*, the *Sheriff's pattern*, the *Association of Municipal Employees (AME)* pattern and the *College* pattern.

The police pattern continues to be comprised of the Police Benevolent Association (PBA), the Superior Officers Association (SOA), the Suffolk Detectives Association (SDA) and Detective Investigators Police Benevolent Association (DIPBA).

The Sheriff's pattern is still made up of the Deputy Sheriff's Police Benevolent Association (DSPBA) and the Correction Officers Association (COA).

The AME pattern has historically been composed of the AME units (Blue Collar and White Collar), the DSPBA Park Police Unit and the Probation Officers Association (POA).

Finally, the College pattern consists of the Faculty Association of Suffolk County Community College and the Guild of Administrative Officers of Suffolk County Community College.

While there is no dispute about the presence of four bargaining patterns within Suffolk County, PPU argued that it is misplaced by being considered part of the AME pattern. It argued that it should be considered part of the police pattern.

It should be pointed out that, until six years ago, PPU was represented by AME. Park Police Officer was one of a number of titles represented by AME.

In June 2004, DSPBA filed a de-certification petition with Suffolk County PERB. It sought the removal of the Park Police Officers from the AME pattern. The County initially opposed the petition.

De-certification proceedings were scheduled. Arbitrator Edelman was appointed the Hearing Officer for that proceeding. He issued his findings in April 2006. Based upon Arbitrator Edelman's Recommendations, Suffolk County PERB de-certified the Park Police Officers from AME.

One year later, the Park Police Officers formed PPU and joined DSPBA. At the same time, the parties entered a Stipulation of Agreement (Stipulation) covering the period January 1, 2004-December 31, 2008. It is obvious that half of the term of the Stipulation covered the time prior to the de-certification. While AME had the right to ratify the terms of the Stipulation concerning the period prior to de-certification, it waived its right to do so.

To complete the historical analysis, the parties commenced bargaining for an Agreement to succeed the Stipulation. The bargaining led to impasse, necessitating the instant proceeding.

The PPU relied heavily on Arbitrator Edelman's Findings and Recommendations in asserting that it should be considered part of the police pattern rather than that of AME. It also pointed to other factors, such as the organizational structure of the department, the occupational characteristics of Park Police Officers and the department's strategic characteristics.

The County had a very different view. It argued that there was no basis for the removal of the PPU from the AME pattern and the placement of it in the police pattern. It referred to statutory differences relative to interest arbitration between police units and park police units. It also stressed the 30 year history of pattern bargaining in Suffolk County.

I have considered the matter of moving the PPU from the AME pattern to the police pattern. I have concluded that such a change is unwarranted.

The matter of changing the bargaining pattern is not a new one. Arbitrator Edelman opined that there is no reason to conclude that patterns, once established, can never be broken. He observed, however, that *substantial reasons* are needed to justify such a change. While the PPU made serious arguments in support of its position, the standard established by Arbitrator Edelman was not satisfied in this case.

I hasten to add that numerous arbitrators have written interest arbitration awards involving a variety of bargaining within the past two decades. Without exception, these arbitrators relied upon pattern bargaining. Moreover, in the instances in which bargaining units argued that they should be moved to a different pattern, their arguments were rejected.

It is insufficient to simply reject the arguments made in support of moving the PPU from the AME pattern to the police pattern. My finding is based on a number of factors.

Reliance on Arbitrator Edelman's Findings and Recommendations relative to the de-certification petition is misplaced. His recommendation in that case was based on his conclusion that PPU should have its own bargaining unit. He distinguished the PPU from civilian units.

While he held that the PPU should be fragmented from the AME pattern, he did so as a means of distinguishing it from civilian units. The de-certification resulted in PPU being enabled to bargain separately from AME. Nothing in Arbitrator Edelman's findings indicates that the broadly accepted pattern bargaining as it applied to the Park Police Officers should be changed.

I am taken with the fact that Arbitrator Edelman established the standard for altering bargaining pattern and also authored the findings concerning the de-certification petition. I have thoroughly read Arbitrator Edelman's decision and nowhere in that document is there any reference to the subject of bargaining and pattern bargaining.

It is noteworthy that, while Arbitrator Edelman focused on distinguishing between civilian and police units, he touched on the duties of Park Police Officers. He pointed out that Park Police Officers perform police functions as well as non/quasi police functions. Thus, despite his conclusions with respect to de-certification, he made it clear that in his reference to

Park Police Officers as police officers, his reference in that regard was not to equate the two groups.

With that in mind, I find no evidence to suggest that the duties of the Park Police Officers changed at or after the time of the de-certification petition. The relevance of this finding is that the job duties are the same now as they were when the Park Police were represented by AME.

In that context, one must return to the question of whether there were *substantial reasons* to break the bargaining pattern. The duties did not change. What happened was the Park Police Officers were given the right to bargain under the DSPBA umbrella. This does not constitute *substantial reasons* for breaking the pattern.

Finally, the PPU argued that the legislature put it in the same position as the police units in the County. In fact, the legislature did not equate the PPU with the police units. The legislation authorizing interest arbitration for Park Police Officers differs from that of police units. It has limitations in it that are not found in the legislation affecting police units.

I am persuaded that the PPU did not satisfy the need to provide *substantial reasons* to break the existing pattern. This finding, when combined with conclusions I and many other arbitrators have drawn in other interest arbitration awards in which I and my colleagues have recognized the history of pattern bargaining in Suffolk County, leads me to find that the PPU shall remain part of the AME pattern.

Criterion (a) of the Taylor Law requires a determination of which bargaining units are most comparable to petitioner/employee organization. I find that there are internal comparables to be considered. I find that the primary areas of comparability were and continue to be established bargaining unit patterns in Suffolk County. As indicated above, the PPU is properly

within the AME pattern. However, the wage, fringe benefit and concession (to be referred to as *compensation*) awards of the Sheriff's pattern cannot be ignored when determining improvements in salary and benefits for the park police.

Criterion (b) concerns the interests and welfare of the public and the financial ability of the public employer to pay for the costs associated with increases in wages and improvements in benefits. I will first address the interests and welfare of the public.

It is unquestioned that the needs of the public are met by a well paid and well maintained corps of park police members that operates safely and efficiently. It is also clear that good morale within these units is essential. Positive morale results in higher productivity and a flow of high quality candidates for the positions available.

The issue of the County's ability to pay requires a different kind of analysis. I must first acknowledge the quality of the presentations made by the representatives of the PPU and the County.

Kevin Decker, the PBA's expert on municipal cost analysis, concluded that the County had the ability to pay for the PPU proposals that he was able to cost out. He based his conclusions on *the availability of local tax and revenue sources, historical results and emerging trends regarding expenditures and tax/revenue rates and bases; and the underlying economics and demographics of the community from which revenues are generated*. He stressed that a claim by a municipality of an inability to pay for contract demands often reflects either an unwillingness to pay, an unwillingness to tap available revenue sources or a deliberate decision to focus spending in other areas.

The PPU adopted Decker's rationale and argued that the County was able to pay for the its proposals but refused to do so. It insisted that the County failed to demonstrate the validity of its refusal to fund the PPU proposals.

Decker's presentation and report showed the sources of funds that are tapped to pay for the budget that pays for the costs associated with the park police. The funding of the salaries of the park police comes from the County's General Fund and that the County has not raised taxes for the General Fund for several years.

The data relied upon suggests that the General Fund is largely derived from sales tax. The PPU noted that the average annual increase since 1999 has been 5.63%. It pointed out that this increase is at least the national rate. It opined that this statistic suggests that the County's economy has undergone real growth.

It noted that the County has a large retail base. It added that the sales tax accrued from such a source has shifted the cost of funding the PPU proposals to non-residents of the County.

As to real property tax revenue, Decker asserted that this is the second largest source of funds for the combined General and Police Funds. He posited that, at a time when the rate of inflation is less than 3% per year, property tax revenues have risen an average of 2.54% per year between 2003 and the present.

In addition, Decker observed that the market value of properties has risen over the past decade. He acknowledged that the tax base has decreased since 2008 but asserted that this was a statewide, not a local, phenomenon.

Kevin Decker posited that there have been modest increases in property taxes. He indicated that, if property had been assessed at full market value, the real property tax since 2003 would have actually decreased.

Decker added that the County has other sources of money to enhance its ability to pay for the PPU proposals. He claimed that the Tax Stabilization Reserve Fund is one such source. He stated that this fund contains about \$126 million that should be considered as part of the *ability to pay* analysis.

The State Constitutional Tax Limit, in the PPU's view, is another indication of the County's fiscal health. It stressed that the County is using only 13.3% of the established constitutional limit. It maintains that the County could have raised an additional \$3.78 billion in property taxes in 2010.

Decker noted that the sales and property tax revenues are healthy sources of income that will remain so despite the current economic downturn. He concluded that the County had the ability to pay for the PPU bargaining proposals.

The DSPBA concluded that the County's rate of population growth, rapid rate of job creation and relatively low rate of unemployment suggest that the County's economy is healthy. Finally, Decker asserted that the bond ratings suggest fiscal health.

The PPU relied on these data and arguments to support its claim that the County has the ability to pay for the cost of its proposals. It asserted that its proposed increases will have a negligible impact on the County's budget.

The County painted a very different picture of its fiscal health. It emphasized that PPU salaries are funded through the General Fund. It added that the General Fund is funded largely

from real property taxes and from sales tax revenue, state and federal aid and other sources, including interest earnings. The County insisted that revenue from both property and sales tax is unhealthy.

It maintained that it has been losing sales tax revenue since 2006. It urged that its consulting firm projected negative growth in 2008 and a 1.3% decline in 2009. It claimed that, when adjusted for inflation, sales tax growth has been negative since 2006. It noted that this is the first non-inflation adjusted sales tax decline since 1965.

The County agreed that it can transfer sales tax revenue from the General Fund to the Police Fund. Even though the PPU salaries and benefits are funded through the General Fund, shortages in the Police Fund impact the General Fund.

It asserted that it transferred \$5.2 million to the Police Fund in 2002 and an additional \$87 million in 2008. It added that the General Fund balance in 2006 was \$159 million and was reduced to \$46.4 million in 2010.

It observed that the health of the General Fund depends on the health of the Police Fund. It stressed that negative economic impacts on either fund could result in a tax increase that County residents cannot afford.

It cited a significant increase in tax grievances. It pointed to a 600% increase in such grievances since 2000 and a 64% increase in 2007 and 2008 alone. It noted a 16% increase in tax delinquencies in 2007 and 2008. It maintains that this had been the highest rate of increase in three years.

It referred to a 30% increase in foreclosures and a 36% increase in *lis pendens* actions over the 2007 statistics within the County. It observed that there were 1400 foreclosures

between January and June of 2009 and that this represented a 50% increase over the same time frame in 2008.

It pointed to declines in housing values. It cited data that indicated a 16.6% decrease in housing prices in the third quarter of 2008. This, stated the County, has resulted in homeowners owing more for their houses than the worth of the houses. In current terminology these houses are *under water*.

It quoted statistics related to increases in Medicaid and temporary assistance applications in recent years. It claimed that there has been a 16% increase in Medicaid applications in the past two years and a 20% increase in applications for temporary assistance since 2004.

It indicated a 60% decrease in new home building since 2005. It emphasized that Mortgage Taxes are one-third of what they were in 2007.

The County averred that people cannot absorb higher sales and property taxes to pay for a PPU contract. It stated that the County ranks eleventh highest in the country in terms of the percentage of household income paid towards property taxes.

It indicated that unemployment in Suffolk is at a ten year high. It observed that it was 7.3% in December 2009. It stressed that it was 6.1% in December 2008. It argued that there are fewer people to absorb the cost of higher wages and benefits.

The County cited the Consumer Confidence Index. It asserted that a reading of 90 or higher suggests a healthy economy. It urged that the index in February 2010 was 46, a decline of 11 points in one month. It quotes economists as predicting that this index will remain depressed for another year or two.

The County claimed that it projected a shortfall of \$106-137 million in 2010. It added that the County took dramatic steps in 2009 in order to remain afloat. It stressed that its departments were subjected to various cuts. It emphasized that it authorized the transfer of \$30 million to the General Fund in order to offset sales tax losses. It insisted that it reduced police appropriations, canceled a police class, imposed a lag payroll on management employees, negotiated a lag payroll with elected officials and presented a layoff proposal in the event that bargaining units did not make adequate concessions.

Interest earnings are a part of County revenues. The County pointed out that falling interest rates reduced its interest income by 46% for the period October 2007 to October 2008 and by 69% for the period January-June 2009. It calculated its loss of interest income in 2007-2009 at about \$37 million.

The County noted that legal budgetary constraints restrict its ability to increase its budget. It pointed to The Suffolk County Tax Act, the County's Charter and Local Laws 29-96, 21-83 and 38-89 in this regard.

It argued that there are projected budget shortfalls that are unparalleled during the life of this award and in the years to come. It suggested that it is experiencing significant cash flow issues. It added that it has lost millions of dollars in sales and property taxes. It posited that it is doubtful that the budget can accommodate the PPU's demands.

It quoted independent economists who have projected an "L" shaped cycle. It posits that such a cycle is characterized by little growth for an extended period of time after a downturn and that any downturns in the economy will further delay the economic recovery on Long Island.

The County rejected the premise that since it is below the constitutional taxing limit, it has the ability to pay for the PPU demands. It relies on a 1994 4th Department decision in this regard. It observed that raising taxes at this time is not a viable option.

The County recalled that the panel that issued the 2008-10 PBA award reviewed much of the same data that was presented here and credited the County's arguments. The Chair of that panel awarded smaller increases and benefits and awarded increases that were the lowest ever awarded to a police unit on Long Island. It added that the award was funded in large measure through concessions. Based on those facts, the County opines that this panel needs to protect its tax base and avoid a tax increase.

The County argued that the PPU presentation on the County's financial condition did not provide a full picture of its dire economic outlook. It maintained the relevant period to be considered begins with 2008. It suggests that conditions prior to 2009 have no bearing on this award. It stresses that *ability to pay* is based on conditions during the period of the award.

It challenged the underpinnings of the PPU argument that bond rating agencies upgraded the County's bond ratings in 2009. It points out that the rating agency noted that the County's two year use of reserves to balance the budget is to be avoided. It stresses that a second rating agency placed the County on a *negative credit watch*.

The County maintained that the most recent Suffolk County awards should be emphasized in this proceeding. It urged that, assuming that the current bargaining patterns are reaffirmed, the PBA award should set the ceiling, with the Sheriff's pattern having smaller improvements and that the PPU award should have a smaller wage and benefits package than did the units in the police and sheriff's pattern.

It insisted that the AME negotiated a wage freeze for 2009 and 2010 and 2% increases in 2011-12. It added that the POA, also part of the AME pattern, negotiated 3% increases for 2009 and 2010. It pointed out that the AME agreement was arrived at after the onset of the recession in 2008 while that of POA pre-dated the beginning of the crisis.

It added that the PPU should be required to make concessions comparable to those required of the PBA. It recalled that the value of the PBA concessions was \$4,805,500. It observed that the PPU is 0.025% of the size of the PBA and therefore its concessions should at least \$118,281.

It is a matter of record that I chaired the panel that issued the Suffolk County PBA interest arbitration award covering the period 2008-10. The award was issued in March 2010.

Three major points need to be made with respect to that award. First, the PBA award set the parameters for the awards for other units in the police pattern. Second, historically the units in the Sheriff's pattern received wage and benefit improvements that were less than those received by the units in the police panel and that the bargaining units in the AME pattern wage and benefit improvements were less than those received by the units in the Sheriff's pattern.

The relevancy of the reference to the PBA and DSPBA's award is clear. To the extent that, in terms of *ability to pay*, many of the factors considered by the PBA and DSPBA panels must be applied here. This award is being written within 16 months of the issuance of the DSPBA award and the general economic climate has not substantially improved and, in some respects, has gotten worse. Given the lengthy history of pattern bargaining in Suffolk County and the stubborn persistence of economic downturn, the economic terms of the DSPBA award are significant here.

Having thoroughly reviewed the arguments and data concerning the County's ability to pay for the PPU proposals, I conclude that, just as the County did not have the wherewithal to satisfy the DSPBA demands as presented, it is equally unable to meet the PPU demands. I credit the County's arguments about the economic conditions in Suffolk County and the state of the fiscal health of the County government. I am persuaded that the County is facing a serious fiscal crisis at this time. I am further convinced that there have been no limited economic improvements since the DSPBA award and there are no firm indicators at this time that suggest that the myriad of financial problems and unemployment rates will be resolved anytime soon.

A review of the data indicates that increased unemployment has an impact on sales tax receipts, Mortgage Tax receipts, property tax receipts and foreclosures. These factors directly affect the County's ability to meet budget projections and to provide a whole host of services to residents of the County.

Suffolk County had an unemployment rate of 7.3% in December 2009. It was 6.1% a year earlier. It should be recalled that scope of the economic decline first became apparent in the fall of 2008.

I take arbitral notice of United States Department of Labor statistics indicating that there has been a small decline in unemployment nationally in 2010. First, even those statistics still indicate a national rate of unemployment of about 8%. It is also too soon to posit that there is a long term trend in the direction of the re-employment of people who have become part of the pool of individuals who have been out of work on a long term basis and/or who have been underemployed during this recession. As of the date of the writing of this award, the national and local unemployment statistics remain at unacceptably high levels.

To be sure, significant unemployment impacts the general economy. People who are unemployed or are concerned about the loss of employment tend to reduce their spending to the greatest degree possible.

The decline in sales tax receipts in Suffolk County bears out the premise set forth above. The context in which this decline has to be viewed is a comparison in receipts between 2008 and 2009.

It is not surprising that the County anticipated reduced sales tax receipts in 2009. The County's proposed 2010 budget assumed a 6% decrease (\$69.9 million) in sales tax receipts in 2009 as compared to 2008. County data indicates a 9% (\$90.9 million) decline through December 2009. In any event, the decline in sales tax receipts in 2009 was in excess of 8%, a further reduction of \$23 million in sales tax income (over the projected 6% decline). This led to a \$24 million sales tax loss since the baseline used to project sales tax revenue was lower than anticipated.

Kevin Decker, on behalf of the DSPBA, developed a chart reflecting sales tax revenue since 2007. His chart showed a 5.1% decline in the fourth quarter of 2008 and a decline of 9.8% in the first three quarters of 2009.

Mr. Decker opined that the recession had *bottomed out* at the end of 2009 and that the economy had begun to recover. While Mr. Decker is a respected economist, there is no data to support his projections for 2010. The combination of continued declines in sales tax revenue and the still high level of unemployment suggest that the County will continue to experience fiscal problems in 2010.

A second contributing factor to a depressed economic outlook is the rate of foreclosures on homes. The number of foreclosures per month has increased by one-third since 2007 and by 50% in the first six months of 2009.

Foreclosures result in property tax delinquencies. There has been a 64% increase in this respect between 2007 and 2009 and about a 25% increase in property tax receivables between 2008 and 2009.

The depressed economic climate has resulted in fewer homes being built, bought and sold. This factor is reflected in diminished proceeds from the Mortgage Tax. In 2009, Mortgage Tax receipts reflected a monthly decline of 30% over the comparable period in 2008.

Other factors such as a 60% reduction in new housing permits in the past five years and the almost 17% decline in housing prices in the third quarter of 2008 are relevant. These two matters negatively impact on the County's property tax receipts.

Kevin Decker's analysis focuses on his conclusion that there are no long term weaknesses in either the County's Sales Tax or Real Property Tax. He acknowledged that there have been certain short term revenue impacts, but pointed out that the County has projected 2010 as a year of growth in sales tax revenues.

Mr. Decker's long term projections of the strength of the County's revenue stream of sales and property taxes may be accurate. However, there is no evidence to suggest that there was a substantial increase in these receipts in 2010. Thus, I am constrained from adopting a more optimistic projection at this time.

The foregoing analysis dealt largely with the *income* side of the situation. In troubling economic times, the County encounters additional expenses. Two such areas are increases in

Medicaid and Temporary Assistance case loads. The provision of services associated with both of these items has increased significantly during the current recession.

Thus, at a time when tax receipts have declined and receivables have increased, the County must meet the challenge of providing greater services to people who may have been negatively affected by the economic downturn. In sum, the County's *ability to pay* must be viewed in the context of these facts.

However, the ability to pay is not measured in absolute terms. In short, it is not necessarily true that the inability to pay for the PPU proposals connotes that the County is unable to fund more modest improvements in wages and benefits.

The PPU opined that the County has the ability but not the will to pay for the increases proposed by the union. The financial data indicates that this is not a matter of a lack of will on the County's part to provide the requested increases.

The PPU also pointed to issues concerning recruitment and retention and that such problems will not and cannot be resolved in the absence of substantial increases. It is well known the park police officers have always earned less than deputy sheriffs and that deputy sheriffs are not paid as much as people represented by bargaining units in the police pattern.

For a very long time, there has been a career ladder that can be employed by Park Police Officers. The maintenance of bargaining patterns provides opportunities for employees working in positions that are paid lesser amounts to move to better paid jobs. Thus, it is in the nature of employment opportunities for individuals such as park police officers to move to higher paid jobs. By its very nature, some park police officers will leave in order to get other jobs. Thus, the

retention *problem* is not unexpected. As to the matter of recruitment, there is little evidence that suggests that the County is unable to fill vacant budgeted positions.

However, despite the severity of the economic recession, I am persuaded that the County does have the ability to pay for smaller increases in salaries and benefits. Some of the factors that enter the calculus of the degree to which the County has the ability to pay are the current fiscal data and a comparison of the economic condition of the County at this time as compared to the period at the expiration of the predecessor agreement.

A review of the current financial health of the County entails a consideration of the data analyzed by the parties. This is essentially an analysis of the County's fiscal development, positive or negative, since December 31, 2007, the date on which the predecessor agreement expired.

I recognize the seriousness and the scope of the economic downturn that has transpired since the fall of 2008. That being said, I conclude that the County has the ability to pay for small improvements in the wages and benefits of PPU members.

Criterion (c) is based upon a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. It is clear that park police are faced with serious and unique hazards. Law enforcement personnel, in general, and, in this case, park police officers, face dangers that are inherent to their positions. Thus, this criterion is satisfied when the PPU is compared with other units that perform some of the same functions.

It should not be surprising that the comparability with respect to salary and benefit considerations fundamentally reflects a comparison with other units within the AME pattern and with other units having some of the same responsibilities and not with other trades or professions.

The final statutory criterion, statutory criterion (d), requires a consideration of past collective bargaining agreements between the parties with respect to compensation and other financial benefits. This criterion mandates that the instant proceeding not be viewed in a vacuum, but rather in the context of prior negotiations, memoranda of agreement and awards between the PPU and Suffolk County. The record contains a prior history relating to these parties and negotiated agreements between them. It also contains a comparative 20 year history of wage increases received by each of the bargaining units in Suffolk County. These data were given appropriate consideration.

Having discussed the relevant statutory criteria, I now turn to the parties' specific proposals.

ANALYSIS OF PROPOSALS (where both parties had proposals relative to the same subject, both proposals are described in the same discussion)

PPU PROPOSALS

1. TERM OF THE AWARD- PPU PROPOSAL 1

The length of the contract is the first issue to consider. Unless agreed to by the parties, the statutory term of an interest arbitration award is limited to two years. The parties to this matter have reached no agreement to go beyond a two year award. The predecessor agreement

expired on December 31, 2007. This two year award will cover the period January 1, 2008-December 31, 2009.

2. WAGES- PPU PROPOSAL 2, COUNTY PROPOSAL 1

The parties had significant differences over the matter of salary increases. The PPU proposed wage increases of 5% in each year of the award. It also sought a one time salary adjustment of \$5,000. It noted that this adjustment should be granted as of January 1, 2009.

It observed that such an increase is fair and reasonable. It restated its premise that the PPU should be included in the police pattern and that adopting its wage proposal would, at a minimum, narrow the gap between employees included in the police pattern and the members of the PPU.

It pointed out that, in comparison with comparable police units in Suffolk County villages and towns, the PPU top salary was far below those enjoyed by its comparators. It added that the PPU would remain far below the average top salary of the comparable villages and towns. It noted that the gap would only be reduced.

It stressed that the average percentage increases in comparable jurisdictions in 2009 and 2010 were 3.4% and 3.5% respectively. It stressed that the top salary for PPU members would remain far below comparable PBA units even if the PPU were awarded 20% increases in those years.

The PPU opined that the County wage proposal of a two year wage freeze is unreasonable. It concluded that it must be rejected.

The County, for its part, urged the denial of the PPU's wage proposal. It argued that the PPU assertion that its members are police officers must be viewed in the context that the Park

Police members have a different Civil Service classification than members of various PBA's and take a different civil service test. It added that the PPU wage proposal is well above the proverbial *going rate*.

The County proposed a wage freeze. It also urged the deletion of the requirement to pay step increases until a new contract is executed.

It calculated the cost of the PPU wage proposal to be about \$482,240, the equivalent of a 20% wage increase. It pointed out that bargaining units in the police pattern received the smallest wage increases ever awarded to police units on Long Island. It stated that considering the longstanding County bargaining patterns, the PPU should expect smaller increases.

The analysis of the wage increase must be divided into a number of components. The first is the actual increase in wages.

As noted above, I have concluded that the extant bargaining patterns are appropriate. Therefore, the PPU will remain within the AME pattern. With that in mind, there is a history to the comparison between the wage increases granted to the units in the police pattern, the Sheriff's pattern and the AME pattern.

Historically the police pattern received the greatest increases, the Sheriff's pattern received less than the police pattern and the AME pattern received the smallest. The wage increases of the AME pattern have almost always been less than those in the police pattern and the Sheriff's pattern. In the interest of maintaining labor stability these distinctions should remain.

In the period 1991-2000, the average difference in wage increases between the Sheriff's and AME patterns ranged from .25% to in excess of 1% (CX22). Between 2001 and 2008, the

difference in increases was .25% (CX23). It should be noted that, in some years, there was a cash stipend for the Sheriff's pattern that was not awarded to the AME pattern. (with the police pattern receiving the biggest increases).

A review of the period 2008-10 is necessary in order to reach a practical determination of the wage increase to be awarded the PPU. The Sheriff's pattern received 3.375% in 2008 and 3.2% increases in each of the remaining years while the AME pattern, received a 3.25% increase in 2008 and wage freezes in 2009 and 2010. The POA, a part of the AME pattern, got 3.0% increases in 2009 and 2010 and 3.25% in 2008.

This entire discussion must be put in the context of a very difficult economic climate. I have already stated that the County does not have the ability to pay for the wage increases proposed by the PPU but that it can pay for wage increases that are greater than the wage freeze proposed by the County.

As stated above, the history of pattern bargaining in Suffolk County suggests that the PPU should get a smaller increase than that of the Sheriff's pattern. It is apparent that the gap between the Sheriff's and AME patterns is narrow. I am cognizant of the fact that there is a difference between the increases awarded to AME and the POA. I am persuaded that, since both the POA and the PPU are uniformed personnel, for purposes of this award only, the increases awarded the POA are more relevant. I conclude therefore that the PPU is to be awarded a 3.0% increase for 2009 and 2010 (See Schedule A for the salary schedules reflecting these increases).

The 3.0% increases awarded to the PPU are consistent with the pattern of AME pattern increases that are less than what the Sheriff's pattern received.

Finally, the un compounded aggregate of the two years of wage increases for the PPU is 6.0%. This represents wage increases which are .2% less than the Sheriff's pattern. This amount is largely consistent with the differences in wage increases achieved by the PPU and the Sheriff's pattern bargaining units in recent years.

The *1% number* (1% of base salary) is \$23,922. Thus, the cost of the wage increase is \$143,532.

The Taylor Law sets forth criteria to be used in this proceeding. The first one concerns *comparability* with other bargaining units. I have addressed this matter extensively and have determined that the bargaining unit most *comparable* to the PPU is also found in the AME pattern. The *comparability* analysis included a consideration of the position of the AME pattern relative to the Sheriff's pattern as well as to the component parts of the AME pattern.

The second element of the Taylor Law criteria involves a review of the County's ability to pay for wage improvements. I have considered the positions of the parties and have concluded that the County does not have the ability to pay for the PPU wage proposals but can provide for more modest increases.

I hasten to add that the wage improvements will be offset to some degree by concessions required of the PPU. The value of the concessions is based on the value of the concessions required of the PBA. The savings accrued from concessions are relevant in terms of the County's ability to pay for improvements in the wages and other financial factors considered herein.

Historically, other units in the police pattern and those in the Sheriff's and AME patterns have been expected to make concessions proportionate to those made by the PBA. As of

December 31, 2008, there were 43 members of the PPU and 1747 members of the PBA (CX24). Therefore the PPU has 2.5% of the membership of the PBA. In short, the concessions to be made by the PPU will be 2.5% of that of the PBA.

The concessions made by the PBA in its 2008-10 Award were valued at \$4,805,000. 2.5% of \$4,805,000 is \$120,125. I must add that the concessions made by the PBA covered a three year period and this is a two year Award. With that in mind, the concessions to be made by the PPU will be limited to 67% of what they would have been had this been a three year Award. In sum, the concessions made by the PPU will be 67% of \$120,125 or \$80,843.

I find no basis for discontinuing the practice of establishing proportionate concessions based on those made by the PBA in this round of bargaining. The manner in which these concessions will be made will be set forth in detail later in this award.

The third criterion deals with the unique elements of the work of park police as compared to other trades and professions. I have previously stated that the work of Park Police Officers is not directly comparable with that of other trades and professions. Therefore, no such comparison was made nor would one be appropriate.

The last of the Taylor Law criteria, criterion (d), requires a consideration of the bargaining history between the parties. The expired CBA of these parties, the prior interest arbitration awards within the relevant patterns and the previous negotiated increases were thoroughly considered before arriving at the wage increase set forth above.

The cost of a two year award with 3.0% in each of 2009 and 2010 year is approximately \$143,532. This comes to \$71,760 in each of the years if this Award.

The basis for these calculations is a commonly referred to statistic known as the *1% number*. This datum reflects 1% of base salary as of December 31, 2008. The *1% number* in this instance \$23,922 (CX17 Tab 28)

I pointed out earlier that, consistent with the PBA and DSPBA Award, the value of the concessions required of the PPU will be 2.5% of that of the PBA or \$80,843 (67% of the proportional value of the PBA concessions since this Award is for two years while the PBA Award covered three years). This sum will be taken from retroactive salary increases and other areas.

In earlier interest arbitration the starting salaries of newly hired Deputy Sheriffs was reduced to \$30,000 and the salary schedule was restructured such that the steps on the schedule from bottom to top were equidistant. This approach was consistent with what was done with the PBA.

It is therefore appropriate to reduce the starting salaries of Park Police Officers to \$30,000. As was set forth in the PBA and DSPBA Awards, the PPU salary schedule will also be restructured such that the salary steps from top to bottom will be equally spaced.

As was true of the other units, the PPU will be credited with a .5% concession (\$11,961). This is in consideration for the prospective savings resulting from the reduction of the starting salary for *new hires* and the restructuring of their salary schedule. Finally, in line with my comments in the PBA and DSPBA Awards, it is my intent that, unless the parties bargain otherwise, the structure of equalized steps should be maintained (See Schedule B).

The PPU will also be credited with a .5% concession for future savings based upon the reduced starting salary and the reconfigured salary schedule. It will receive credit for a .5% concession for changes in GML 207-c procedures.

In order to satisfy the remainder of the required concessions there will be a deferral of some of the retroactive wage increases. The values of the wage deferral and the other concessions are detailed on page 109 of this Award.

Since this award covers a term ending on December 31, 2010, I have concluded that the deferred retroactive wages will be from the period beginning on January 1, 2009. In order to understand the methodology used I determined that there are three titles in the Park Police series. The total number of employees as of December 31, 2008 was 43. The basis for my calculations was the average of the top salaries as of December 31, 2008. While, for various reasons such as actual numbers of Park Police on the County payroll at this time, my calculation cannot be exact, I determined that the average top salary for all of the titles is about \$72,854.

That actual 2009 wage increase was equally spread over 26.1 pay periods. I concluded that the deferral of \$44,960 (a total of \$80,843 in concessions less \$35,883 in assorted concessions) would be satisfied by withholding the retroactive wage increases from January 1, 2009 until the 21st pay period of 2009.

The PPU argued that the County has experienced difficulties in the areas of recruitment and retention of Park Police Officers. It may be true the some members of the PPU have left and taken other jobs. However, I am not persuaded that a degree of turnover is not to be expected in most jobs and that the degree of turnover within the PPU is cause for great concern. Furthermore, I find limited evidence to suggest that such turnover would not occur even if wages were higher.

With that in mind, I am mindful of the County's financial condition and conclude that there is no ability by the County to pay for the increases that the PPU believes will obviate or at least substantially reduce the turnover within the PPU.

I find that the County has a well-trained, well paid and a professional corps of Park Police Officers. The improvements in the salary schedule will permit it to continue doing so.

The County argued for the deletion of the requirement that increments be granted after the expiration of a CBA in the absence of a successor agreement. The procedure in place is consistent with the *Triborough Doctrine* set forth in the Taylor Law.

Without commenting on the merits of the County proposal, this is a matter for the legislature to consider. As a consequence, the County's proposal must be denied.

3. PROMOTION/UPGRADE SALARY ADJUSTMENT- PPU PROPOSAL 3

The PPU proposed that Section 5(E) of the CBA be amended such that, upon the promotion of full time employees, the promoted individual be placed at the top salary step of the new position. Currently such people are given an increase of a minimum of 3%.

The PPU noted that Sgt. Brockman testified that most of the officers he supervises make more money than he does. It stressed that no other police agency employs such a flawed salary schedule. It added that, even if this proposal were granted, a Park Police Lieutenant would make \$27,000 less than his counterpart in the Suffolk County PD.

The County indicated that the practice in place is consistent with that of other units in the AME pattern. It observed that the cost of this proposal would be a total of a 5.1% to 8.8% wage increase and that such an increased expenditure cannot be justified.

I have reviewed how this matter is dealt with throughout the County. Per County Exhibit 17 Tab 78, the POA and AME handle promotions in the same way as is done with PPU. This proposal would be inapplicable to the PBA and SDA and the SOA does not enjoy such a benefit. Finally, the DSPBA and the COA have only one salary step for *promotion positions*. Thus, it is true that promoted members of the DSPBA and COA go to the top salary step of the new position. It is also true that the top step is the only step.

Based on established patterns, this proposal must be denied. Additionally, even units above the AME pattern, do not receive such a benefit. I agree that the salary schedule for promotees in COA and DSPBA go into positions in which there is only one salary step. A structure similar to the one in place for COA and DSPBA was not proposed by PPU. Under the circumstances, it would be improper for me to create a parallel procedure in the PPU. If the PPU wants such a system, it should be a subject of bargaining.

In sum, PPU Proposal 3 is denied.

4. SALARY DIFFERENTIAL FOR SERGEANTS AND LIEUTENANTS- PPU PROPOSALS 4 & 5

The PPU proposed salary differentials for sergeants and lieutenants such that sergeants would be paid a salary of top step PPO + 19% and lieutenants would be paid 12% on top of top salary for sergeants. It noted that the proposals would be retroactive to January 1, 2009.

It pointed out that these proposals would not be costly in light of the limited number of sergeants and lieutenants. It added that this benefit is enjoyed by SOA.

The County argued that the cost of funding these proposals cannot be justified. It calculated the cost of these proposals as being at least a 7.35% wage increase.

A review of the data found in County Exhibit 17 Tabs 81 & 84 sheds light on the benefit enjoyed by the SOA. It appears that, in the SOA, only Detective Sergeants and Lieutenant get a 5% differential. Thus, it does not apply to all SOA members and is far less than the percentages proposed here.

Furthermore, the vast majority of Suffolk County bargaining units, irrespective of bargaining patterns, do not receive this benefit. Finally, having determined that the PPU is properly in the AME pattern, the other units in the AME pattern do not enjoy this benefit.

Therefore, the cost in combination with a review of the other bargaining units in Suffolk County must lead to a denial of this proposal.

5. LONGEVITY- PPU PROPOSAL 6

The thrust of the PPU proposal is to award parity with the bargaining units in the police pattern with respect to longevity. It asserted that its longevity payments are substantially less than those received by units in the police pattern.

The County rejected this proposal as being too expensive. It calculated the cost of the PPU proposal to be \$172,300. It added that this proposal would quintuple the cost of longevity payments and would place the PPU far ahead of its counterparts in the AME pattern.

It observed that the police pattern units received increases in longevity payments but that these payments were deferred until the last day of the award. It averred that this proposal exceeds the enhancement awarded to the PBA.

There are a number of elements to be considered. First, I have done a detailed analysis of the PPU argument that it should be made part of the police pattern. After giving this matter due consideration, I concluded that such a change is unjustified.

The PPU longevity proposal presupposes inclusion in the police pattern. It is unnecessary to repeat the analysis that led to my finding concerning this issue. With this in mind, I find no basis to award the current longevity payments of the units in the police pattern to the PPU, part of the AME pattern.

The cost of the PPU proposal is prohibitive. The cost of this proposal is greater than the wage increases. This cost is far greater than what is appropriate at this time.

On the other hand, some enhancement of the longevity payments is appropriate. In that regard, longevity payments will continue to be flat dollar amounts. These payments will increase by a total of \$75.

As of December 31, 2008 there were 43 members of the PPU. The total cost of a \$75 increase in longevity payments for the life of this award will be approximately \$3,225.

However, by virtue of retirements and resignations, there may also be a decrease in the number of those receiving these payments. Thus, for purposes of this award, my calculation of the cost of these payments may not be exact, but it is certainly an estimate that is sufficiently accurate so that the total cost of this award can be determined.

I am persuaded that a \$75 increase for the life of this award is appropriate. The total of \$75 is in lieu of three \$25 increases. It recognizes the value of the service rendered by the Park Police and does so in a financially prudent manner. The increased longevity payments will become effective on December 31, 2010.

6. OVERTIME COMPENSATION- PPU PROPOSAL 7, COUNTY PROPOSAL 2

The PPU proposed the replacement of Section 6.1 of the CBA with the language quoted in the proposal. In effect, the PPU asserted that overtime based on FLSA be replaced with

language that calls for payment at time and one-half for all hours worked beyond the work day or work week. It also included a 30 minute paid lunch break in the work day. Time off for vacations, personal leave, holidays or other leaves with pay would be considered time worked.

The PPU observed that employees hired on or after May 24, 2007 get overtime pay based on the FLSA formula. Those employees hired before May 24, 2007 are paid for overtime based on the language proposed for all employees.

It claimed that the disparity in language creates two classes of employees. One group gets penalized with the FLSA language while the other does not. The only other bargaining unit that is subject to this division is the DSPBA.

According to the PPU, the savings currently accrued by the County is minimal. This provision, along with lower salaries and longevity pay, impacts on the morale of the PPU.

It notes that the County wants to extend the FLSA approach to all members of the PPU. The granting of this proposal will further demoralize the members of the PPU.

The County opposes this proposal because it was bargained for and was a major concession utilized to fund the first negotiated agreement between the parties. It pointed out that the cost of this proposal can be anywhere from a .74% to a 1.14% wage increase (CX17 Tab 91). It argued that it is unwilling to trade these proposals for concessions because of the negative impact on existing patterns and labor relations policies.

This issue recently came before the DSPBA Interest Arbitration Panel. The arguments made by the PPU were similar to those made by the DSPBA. I chaired that panel and the panel denied the proposal.

The FLSA language was originally bargained for and was a concession by the PPU in order to pay for other benefits. To the extent that there was direct bargaining that resulted in the acceptance of the FLSA language, the deletion of this language should also come from direct bargaining.

It must be said that the PPU agreed to the FLSA language in exchange for other benefits. If the PPU wishes to change the overtime provisions affecting some of its members, it needs to engage in the same process, bargaining with the County. In short, PPU Proposal 7 is denied

The County proposed applying the FLSA language to all employees. This proposal was made in connection with the DSPBA Interest Arbitration. The Panel denied it at that time.

I was persuaded at that time that it was appropriate to deny the proposal. Given the similarity of the arguments, I find a limited justification for granting it at this juncture. Thus, County Proposal 2 is also denied.

7. NIGHT SHIFT DIFFERENTIAL & ROTATING SHIFTS- PPU PROPOSAL 8 & 9, COUNTY PROPOSAL 6

The PPU proposed 12% night shift differential as of January 1, 2009. It also proposed a 7.5% differential for two tour rotating shifts and a 12% differential for three tour rotating shifts.

The PPU pointed out that the current night differential is 10% and that the only change proposed in this language is to increase the differential by 2%. As to the rotating tour differentials, the PPU observes that granting this proposal would equate the 7.5% differential with all other police units. It adds that there is currently no PPU member assigned to a three tour rotating shift.

It rejects the premise underlying County Proposal 6. It opines that the County's proposal to reduce the existing differentials would reduce the compensation earned by PPOs for schedules that impact on their sleep, family life and health.

The County asserted that the PPU proposal is excessive. It noted that the PBA Panel denied similar proposals in an Award covering 2008-10. It concluded that these proposals should be rejected here as well.

It stressed that the cost of these proposals could be equal of wage increases of anywhere from 1.3% to 12.7%. It added that all bargaining units except for DIPBA have a 10% night differential and all units in the AME pattern have a 6% two tour differential and a 10% three tour differential. It pointed out that these differentials are based on base pay and increase as base pay increases.

All bargaining units in the County get a night differential. All (except for the DIPBA) get a 10% differential CX17 Tab 94). The *all* includes the rest of the police pattern, the entire Sheriff's pattern and the entire AME pattern.

In addition to the additional cost, there is no justification to grant a larger night differential to PPU than is received by seven other bargaining units. This is especially true in light of the fact that PPU is in the AME pattern and the other units are in patterns that have historically been remunerated more generously.

With respect to the two tour rotating shift, the PPU gets the same 6% differential as do the other units in the AME pattern. It is true that the police pattern and the Sheriff's pattern receive a 7.5% differential. However, there is no rationale for disturbing the pattern bargaining that has characterized labor relations in Suffolk County for many years.

Finally, there are only three units that get a differential for the three tour rotating shift. Each of those units is part of the AME pattern. Put another way, the police pattern and the Sheriff's pattern do not enjoy this benefit.

With that in mind, I find no basis for awarding the PPU a greater benefit than is received by AME and POA. Having given careful consideration to PPU Proposals 8 & 9, I find that they must be denied.

The County proposed that the differentials alluded to above should be paid only for hours actually worked. There is little in the way of evidence to support this proposal.

Thus, PPU Proposals 8 & 9 and County Proposal 6 are denied.

8. LIEUTENANT STIPEND IN LIEU OF OVERTIME- PPU PROPOSAL 10

The PPU proposed an increase in the stipend received by lieutenant in lieu of overtime. The current stipend is worth \$6,213. The proposal calls a payment for 225 hours at straight for the first 150 hours of overtime. The additional cost of this stipend would be \$3,105 (CX17 Tab 100).

The County urged the denial of this proposal. It pointed out that, depending on which wage proposal is granted, the per lieutenant cost of this proposal would be a minimum of .26% of a wage increase or a maximum of .37% of a wage increase.

In the absence of any evidence that shows the actual number of overtime hours worked by the current lieutenant, I find no justification to grant this proposal. Therefore, PPU Proposal 10 is denied.

9. WORK WEEK; WORK DAY- PPU PROPOSAL 11, COUNTY PROPOSAL 9

The PPU proposal had three parts to it, i.e. a 30 minute paid meal break, a work schedule of 232 days and for employees working a midnight shift, a 10 hour day of four days one week and three days the next week.

It noted that currently employees work a 40 hour week including an unpaid daily meal break of 30 minutes. The PPU proposal calls for compensation of the Park Police for the meal break.

If granted, the PPU's second and third sub-proposals would create work schedules similar to most other police units in the region. It posited that the current schedule is not commensurate with the salary schedule of the PPU.

It observed that its proposal is reasonable and that the County proposal is unreasonable. It urged granting PPU Proposal 11 in its entirety.

The County stressed that the PPU did not recognize that members of the SDA, the DIPBA, the DSPBA and the COA all work more than 232 days per year. It added that only two units in the police pattern work a 232 day schedule (CX17 Tab 43)

With respect to a permanent midnight tour, the County stresses that the Parks Department has no interest in expanding the current *winter work chart* to the entire midnight tour. It argued that the PPU repeatedly asserted that the staffing of the PPU is at an all-time low and yet proposed schedules that would result in fewer Park Police Officers being on duty at any time. It added that, in addition to substantive objections to these proposals and bargaining history within the County, these proposals would be prohibitively expensive and would reflect a cost of \$797,408-\$925,341 (CX17 Tab 104).

As to the proposed paid meal break, the County recalls that the DSPBA made the same proposal and the Panel rejected it. It states that the cost of this proposal would be the equivalent of a 13.3%-15.6% wage increase (CX17 Tab 103).

Thus, the County stated that PPU Proposal 11 in its entirety be denied. For its part, the County proposed the increase in the work week from 37.5 hours to 40 hours and the assignment of 17 additional tours for new employees.

It asserted that currently the PPU and AME work equivalent schedules and that a change in this respect would be helpful. It noted that granting these proposals would go a long way toward paying for this Award.

I have reviewed the parties' proposals and conclude that the work schedule should neither be lengthened nor shortened. Numerous County bargaining units work in excess of 232 days per year. Moreover, the other units in the AME pattern work 261 days, the same number as does the PPU. By the same token, there are no units in the County in which new employees work 278 days. Therefore, both the proposals to reduce the PPU schedule to 232 days and to increase it to 278 days (for new employees) are denied.

The PPU proposal relative to the midnight shift consisting of 10 hour tours in work weeks of four days followed by work weeks of three days is unsupported by evidence that a year round *winter chart* would be an improvement over the current arrangement. Therefore, this proposal is denied.

The proposal for compensating the Park Police for meal breaks is precisely the same proposal made to the DSPBA Panel. The Panel denied it then and there is no greater rationale for it at this time. In short, the proposal is denied.

Finally, the County proposed increasing the work week from 37.5 hours to 40 hours. It is true there are bargaining units that work 40 hour weeks. However, there have been no increases in the length of the work week in this round of bargaining. In the light of the bargaining for all units in all patterns, I conclude that this proposal must be denied.

In sum, PPU Proposal 11(a-c) and County Proposal 9 are denied.

10. VACATION ACCRUALS- PPU PROPOSAL 12, COUNTY PROPOSAL 10 (in part)

The PPU proposed permitting members to carry over 90 days of vacation time to the succeeding year. It also proposed permitting members to use up to 10 vacation days in the period May 1-September 30.

It notes that, under current rules, Park Police Officers can aggregate a maximum of 90 vacation days per year and can carry over 60 of those days to the following year. It seeks to have all 90 days be available for carry-over to the succeeding year. It suggests that units in the police pattern are permitted to carry-over 90 days.

It argues that the families of PPU members are available to go on vacation in May-September. It posits that PPOs should be permitted to use up to 10 vacation days during that period.

The County stressed that the PPU is in the AME pattern and that all of the units in the AME pattern have identical vacation benefits (CX17 Tab 106). It opined that there is no compelling evidence that suggests that PPU belongs in a different pattern.

County Proposal 10 indicated that the number of carry-over days be reduced to 30. I point out that there are three other aspects of the County proposal. These items are unrelated to the PPU proposal and will be discussed later.

With respect to the matter of permitting PPU members to use 10 vacation days in May-September, the County points out that PPOs can use six vacation days during this time frame. It adds that May-September is the busiest time of year for the Parks Department and, despite the PPU argument about staff shortages, it proposes having fewer PPOs available at the busiest time of year.

The County also points out that the cost of this proposal could be as little as about \$110,000 (4.6% of a wage increase) or as much as about \$129,000 (5.4% of a wage increase). It urged the denial of this proposal.

As previously stated, PPU is in the AME pattern and the proposal to include it in the police pattern was denied. I have reviewed the vacation benefits of all County bargaining units (CX17 Tab 106) and find that the vacation benefits within bargaining patterns are identical.

There is a long history of pattern bargaining. This principle has been honored for many years. I find no basis for disturbing that history in this case. I find that the AME pattern should be respected. Thus, the number of vacation carry-over days should remain unchanged.

Moreover, there is little in the record to suggest that the use of six vacation days in May-September is inadequate and that ten such days are needed, rather than preferred. In addition, the granting of this element of the proposal would reduce the number of PPOs available during the period when parks are used to the greatest extent.

Finally, in the context of a continuing economic crisis, the cost of this proposal is high. For all the reason set forth above, I find that PPU Proposal 12 and the first element of County Proposal 10 must be denied.

11. DISPUTES: GRIEVANCE AND ARBITRATION PROCEDURE-PPU PROPOSAL 13, COUNTY PROPOSAL 19

The PPU proposed the elimination of Steps 1 and 2 of the grievance procedure and that Step 3 become the new Step 1. It also proposed the establishment of a mutually agreed upon seven person panel of arbitrators.

PPU proposed that Step 1 be a grievance filed with the County's Director of Labor Relations and that Step 2 be a demand for arbitration. It opined that the granting of this proposal would expedite the grievance process.

The second aspect of this proposal would provide for the creation of a mutually selected panel of arbitrators. It observed that this would also expedite the grievance process.

The PPU posits that the County's proposal to limit grievances to violations of specific provisions of the CBA is unnecessary. It asserted that that this proposal would preclude grievances related to other policies or practices.

The County responds to these proposals by indicating that no bargaining unit submits it grievances directly to the Director of Labor Relations. Relative to the establishment of a panel of arbitrators, it adds that there already is a 10 person panel of arbitrators serving AME. It states that this panel could be modified. It states that it would reconsider its position if PPU would indicate the names of the arbitrators it wishes to delete from the AME panel.

The first aspect of the PPU proposal calls for the elimination of the first two steps of the current grievance process and their replacement with the current Steps 3 and 4. A grievance process is designed to encourage the resolution of disputes at the lowest possible level. The

elimination of the current Steps 1 and 2 are inimical to the resolution of disputes at the most local level.

In addition, no County bargaining unit is permitted to file grievances at Step 1 with the Director of Labor Relations. Thus, this element of the PPU proposal is denied. It is inconsistent with the proper functioning of the grievance process and is also at variance with the grievance procedures in effect with all of the other County bargaining units.

As to the arbitration panel, given that PPU is part of the AME pattern, there is logic to the County's position relative to the modification of the AME panel. However, the PPU proposal is not unreasonable. I conclude that this aspect of the PPU proposal should be granted.

For its part, the County proposed a modification of the definition of a grievance such that it would be defined as *an alleged violation of a specific provision of this Agreement*. The PPU objected to this proposal as being unnecessary and would ignore grievances that relate to other policies or practices (written or otherwise).

It is well settled that management retains the right to manage all of the affairs of the establishment other than those specifically enumerated matters in the CBA. To have a grievance defined as that which would be articulated by an employee *who feels aggrieved* subjects the process to complaints that are not alleged violations of the contract is ineffective and inefficient. This is an approach that requires the utilization of time on complaints by employees that do not allege contract violations. This is an inefficient use of the time of the parties. Thus, this proposal is granted.

The second proposal made by the County calls for the deletion of language in the grievance process that requires the selected arbitrators to hear grievances within 30 days from the

date of selection and, if they are unable to do so, the case should be given to the next arbitrator on the list. The PPU objected to this proposal on the grounds that the current language encourages prompt resolution of grievances.

There is no evidence that suggests that there have been problems related to the existing language. Therefore, there is little reason to modify the existing contract language. Thus, this element of the County proposal is denied.

12. 24 HOUR ALLOWANCE- PPU PROPOSAL 14, COUNTY PROPOSAL 22

CBA Section 18(U) provides for an annual \$75 stipend for employees employed in 24 hour positions who are required to work holidays. PPU indicates that the stipend should be increased to \$500. The County notes that only that AME pattern receives this benefit and that AME receives the \$75 allowance.

For its part, the County states that no other unit other than AME gets this allowance. It stressed that the POA, part of the AME pattern, does not get this benefit.

The issue here comes back to pattern bargaining. Only AME pattern receives this \$75 allowance (CX17 Tab 69). I recognize that PPU, POA and AME are part of the AME pattern. However, there are greater similarities between PPU and POA than there are between PPU and AME. Thus, given that POA is part of the County-wide pattern relative to this allowance, I conclude that the PPU proposal must be denied and, effective December 31, 2010, the County proposal be granted.

13. HOMELAND SECURITY STIPEND- PPU PROPOSAL 15

PPU proposed a Homeland Security Stipend valued at .25% of the employee's step as of the previous December 31. It noted that the stipend would be incorporated into the employee's bi-weekly base wages.

It posits that the Park Police have become increasingly involved with homeland security. It concludes that this stipend should be granted in recognition of these additional duties.

The County objects to this proposal as not being supported by evidence of the homeland security duties assumed by Park Police Officers. It points to the record as suggesting that there is a Parks Department representative on the County Law Enforcement Response Group and that on one occasion the PPU provided *dignitary protection* for Hillary Clinton.

This proposal calls for a stipend for all members when only one member attends meetings of a counter-terrorism group and, on one occasion, the PPU gave *dignitary protection* to Hillary Clinton.

PPU failed to provide justification for the need for this proposal.

COUNTY PROPOSALS

1. COMPENSATION: REGULAR WAGES- See WAGES- PPU PROPOSAL 1, COUNTY PROPOSAL 1

2. OVERTIME- See OVERTIME COMPENSATION- PPU PROPOSAL 7, COUNTY PROPOSAL 2

3. EMPLOYEE OPTION- COUNTY PROPOSAL 3- This proposal was *scoped out* by PERB ALJ Maier in Case No. U-30077 and has been withdrawn.

4. USE OF COMPENSATORY TIME- COUNTY PROPOSAL 4- - This proposal was *scoped out* by PERB ALJ Maier in Case No. U-30077 and has been withdrawn.

5. "CALLED IN"/RECALL WORK & PLANNED OVERTIME- COUNTY PROPOSAL 5

The County proposed that Section 6.7 of the CBA be amended to limit recall pay to actual hours worked. It also sought the deletion of the requirement for travel pay for recalls.

The County observed that employees should not be given premium pay for hours not worked. It argued that the same logic applies to travel time.

The PPU argued that it is within the County's control to limit the number of recalled PPOs. It added that the County should adjust staffing levels in order to avoid recalls.

There is little evidence to indicate that the current approach is excessively costly. Nor is there anything in the record to indicate that the PPU is treated in a manner unlike that of comparable bargaining units. Thus, County Proposal 5 is denied.

6. NIGHT DIFFERENTIAL/ROTATING SHIFTS- See PPU PROPOSAL 8, 9, COUNTY PROPOSAL 6

7. WORKERS' COMPENSATION- COUNTY PROPOSAL 7

The County proposed reducing the number of weeks that an employee could receive Workers' Compensation from 39 to 26. It asserted that the awarding of this proposal would save the County between \$27,710 and \$32,503.

The PPU claimed that such a reduction is drastic and unreasonable. It urged the denial of this proposal.

In the absence of evidence that the current approach is inconsistent with that which is employed with comparable bargaining units, this proposal must be denied.

8. LONG TERM DISABILITY- COUNTY PROPOSAL 8

The County proposed that Section 7.6 of the CBA be amended such these payments apply only to injuries sustained while employees are on full pay status. It posited that taxpayers should not be required to pay for disabilities sustained while employees are not working.

The PPU indicated that employees afflicted with long term illnesses benefit from these payments. It added that it is rare when situations arise when employees receive the disability payments that the County seeks to eliminate.

There is no evidence in the record to indicate that the current situation has become costly or problematical. Should there be a change in that respect, the County is free to reintroduce this proposal. However, at this time, this proposal is denied.

9. WORK WEEK; WORK DAY- See PPU PROPOSAL 11, COUNTY PROPOSAL 9

10. VACATION ACCRUALS- See PPU PROPOSAL 12, COUNTY PROPOSAL 10

11. VACATION SELECTION- COUNTY PROPOSAL 11

The County proposed the amending the CBA such that employees be required to request vacations on November 1 (rather than January 15 of the subsequent year) and that the County respond to the requests by December 1 (rather than February 15 of the subsequent year). It noted that the proposed change is logical and provides everyone with a vacation schedule for the full year before the year begins.

There is nothing in the record to indicate that the current system used for vacation selections is ineffective. Therefore, this proposal is denied.

12. HOLIDAYS- COUNTY PROPOSAL 12

The County proposed the reduction of paid holidays by combining Washington's Birthday and Lincoln's Birthday into one holiday, Presidents' Day. It urged that there would be a cost savings of \$27,496-\$32,253 if the proposal were granted.

The PPU argued that there is no need for this change. It added that no other bargaining unit in Suffolk County has had a reduction of holidays.

The record suggests that the PPU has received 12 paid holidays. It appears that this is consistent with the other bargaining units in the County. In that the other bargaining units neither negotiated nor received a reduced number of paid holidays through an interest arbitration award in the current round of bargaining, it is appropriate that the established pattern both in the AME pattern and in the other patterns be applied to the PPU. Thus, County Proposal 12 is denied.

13. LEAVE WITH PAY- COUNTY PROPOSAL 13

The County proposed amending Section 8.6(A) of the CBA such that personal leave days be prorated during the first and last years of employment of PPU members. It argued that, in contrast to people who work the full year, it is inequitable to grant employees a full year's benefit when they worked for part of the year.

The PPU asserted that the current system does not require a change. It posits the Park Police Officers accrue four personal days on their anniversary date and that complicating this process is not necessary.

There is nothing in the record to suggest that an approach to the granting of personal days in other units in the County (the AME, Sherriff's and police patterns) involves the pro-ration of

personal days in the first and last years of service. Thus, in consideration of the principle of pattern bargaining, this proposal is denied.

14. ADMINISTRATIVE LEAVE- COUNTY PROPOSAL 14

The County proposed amending Section 8.6(E) of the CBA such that the PPU would be required to reimburse the County for all taxpayer funded activities, including released time. It observed that there is no reason to have taxpayers pay for the cost of union activities. It adds that there would be savings of \$23,000-27,000 per year if this proposal were granted.

The PPU indicated that this proposal would hamper the ability of its members to attend negotiating sessions and to attend to union business. It adds that this proposal is inconsistent with how this matter is dealt with relative to other County bargaining units.

I am persuaded that the approach proposed here is unlike the manner in which this issue is dealt with in other County bargaining units. For that reason, given the history of pattern bargaining in Suffolk County, this proposal must be denied.

15. SICK TIME- COUNTY PROPOSAL 15

The County proposed that Section 8.8(A) of the CBA be amended such that extended sick leave may be utilized by each employee only once per year. The County observed that PPOs hired after May 24, 2007 have unlimited sick leave and would be unaffected by this change. As to those PPU members who would be affected by it, the County stated that it is unlikely that they would need to use extended sick leave more than once a year. It noted that granting this proposal would result in a cost savings of \$5,686- 6,426.

The PPU noted that this proposal is unjustified. It added that there is no evidence to support the contention that there would be a savings if the proposal were granted.

There is nothing in the record to indicate that this benefit has been abused. If there were, greater consideration would be given to it. However, at this time, the proposal must be denied.

16. UNUSED ACCUMULATED SICK TIME- COUNTY PROPOSAL 16

The County proposed the elimination of the provision calling for the payment for unused sick time at retirement. It noted that employees hired after May 24, 2007 receive unlimited sick leave and do not get paid for unused sick time at retirement. The County proposed extending this approach to employees hired before May 24, 2007. It asserted that this proposal is a cost containment and common sense measure.

The PPU urged the denial of this proposal. It argued that no other bargaining unit has an unlimited sick leave approach applied retroactively to its members.

There has been a pattern established within the County in which employees hired after a certain date receive unlimited sick leave but cannot accumulate unused sick leave to be *cashed out* upon retirement. In addition to the PPU, this approach has been used in connection with the DSPBA, the COA and the POA.

However, in no instance has the unlimited sick leave approach been used with employees hired before the effective date of the initiation of this procedure. To the extent that there has been no change in this process relative to the other units. I find that there should be no change at this time with respect to the PPU. Therefore, this proposal is denied.

17. JOB DESCRIPTION- COUNTY PROPOSAL 17

The County proposed the deletion of a contractual requirement related to job descriptions. It cited PERB case law that held that that the creation and adjustment of job descriptions is a right of management and is a non-mandatory subject of bargaining.

The PPU contended that this provision is fundamental to PPOs understanding the nature of their duties and to allow the PPU to challenge the misplacement of a new title.

I credit the argument that a PERB decision has determined that the creation and adjustment of job descriptions is part of management's rights. Thus, this proposal is granted.

18. UNIFORMS

The County proposed the amending of Section 10 of the CBA to the extent that the third paragraph of the provision incorporates the current dollar amount. It points out that the current contract language links the uniform allowance of PPU members to that of the DSPBA. It notes that the PPU is the only bargaining unit that has its uniform allowance tied to that of another bargaining unit. It states that the PPU should be treated as a distinct bargaining unit.

The PPU indicated that the County offered no reason for this proposal. It stressed that the current language is devoid of confusion.

The County articulated a sound basis for this proposal. While pattern bargaining is historical in Suffolk County, each bargaining unit should establish its own priorities and bargain accordingly. The current situation results in the PPU not having to bargain for uniform allowances. This is inappropriate. If the uniform allowance is important to the PPU, it should negotiate with the County. If it concludes that the uniform allowance is not a priority matter, then the matter need not be brought up.

The County's proposal does nothing to diminish what PPU members get in a uniform allowance. What it does is it establishes a dollar amount of the allowance such that any proposed increase would be a matter of negotiations pursuant to PERB rules and the Taylor Law. In short, this proposal is granted.

19. DISPUTES: GRIEVANCE & ARBITRATION PROCEDURES- See PPU PROPOSAL 13, COUNTY PROPOSAL 19

20. PROTECTION OF EMPLOYEES- COUNTY PROPOSAL 20 - This proposal was *scoped out* by PERB ALJ Maier in Case No. U-30077 and has been withdrawn.

21. PERSONNEL FILES- COUNTY PROPOSAL 21- This proposal was *scoped out* by PERB ALJ Maier in Case No. U-30077 and has been withdrawn.

22. MISCELLANEOUS- COUNTY PROPOSAL 22

The County proposed amending Section 18 of the CBA such that it would have the right to establish a dress code for PPOs. It states that it negotiated a dress code with the POA and that this proposal makes sense.

The PPU argued that the County offered no justification for any of the elements of this proposal. It concluded that this proposal should be denied in its entirety.

The first aspect of this proposal addresses the matter of the dress code for PPOs. The record (CX17 Tab69) indicates that the County does not have the unilateral right to establish a dress code in any of the bargaining units. In the absence of evidence of a problem related to this issue, there does not appear to be a need for this sub-proposal. Thus, it is denied.

The second part of this proposal concerns a tie-line requirement. The County reasoned that the PPU shares office space with the DSPBA and it is duplicative to require separate tie-lines for both units.

This may be true but there is no guarantee that the two units will continue to share office space. Granting this sub-proposal would create a contractual conundrum if the PPU decided to establish its own office. Under the circumstances, it is more prudent to continue the current arrangement and to re-visit it in the future if circumstances warrant it.

Finally, as to the matter of the *24 Hour Allowance*, see the discussion related to PPU Proposal 14.

NEW PROPOSAL- GML §207-c

The County sought to limit contractual benefits related to GML §207-c benefits to those that are found in the General Municipal Law statute. It proposed precluding 207-c benefits that included night shift differential, rotating shift differential, cleaning and clothing allowances, vacation, sick and personal leave accruals. It observes that the statute provides only for benefits related to base pay and longevity. It maintains that all of the County bargaining units that are eligible for 207-c benefits have limitations on the benefits under the statute.

The PPU rejected the premise that this proposal represents a clarification of the language concerning benefits under GML §207-c. It insisted that it is an attempt to limit the benefits. It indicated that there is no justification for the proposal and noted that there has been no confusion about this matter in the past.

The evidence shows that every other bargaining unit that is eligible for 207-c benefits has limitations in terms of vacation accruals, night differentials, personal leave and sick time and cleaning and clothing allowances (CX17 Tab72). There is no reason why the PPU should not be subject to the same limitations. Therefore, the 207-c limitations placed on DSPBA, COA, PBA, SOA, SDA and DIPBA shall be imposed on the PPU. In sum, this proposal is granted.

THE COST TO THE COUNTY OF THE TERMS OF THIS AWARD

These are extremely challenging financial times. It is therefore incumbent on the panel to set forth the net costs of this Award. For purposes of this analysis, the 1% budgetary value is \$23,922 (CX17 Tab 28). Listed below are the costs and the value of the concessions.

COST

Wage increases- 2009@ 3.0% increase-	\$71,776
2010 @ 3.0% increase-	\$71,776
Cost of longevity award and increase in wages of Park Police Officers during the life of this Award	\$3,225

TOTAL (TWO YEAR COST) **\$146,757**

1% value- \$23,922

TWO YEAR COST EXPRESSED AS A PERCENTAGE INCREASE- **6.0%**

CONCESSIONS

Credit for the reduction of the starting salary to \$30,000 and the reconfiguration of the salary schedule \$11,961

Credited prospective savings from reduction in starting salary to \$30,000 \$11,961

Credit for the granting of County Proposal re: GML 207-c \$11,961

Deferral of 2009 salary increase until the 21st pay period of 2009 \$44,960

TOTAL **\$80,843**

1% value- \$175,169

TWO YEAR CONCESSIONS EXPRESSED AS A BUDGETARY PERCENTAGE - **3.4%**

COST OF TWO YEAR AWARD (COSTS - CONCESSIONS) - **\$65,914**

ANNUAL COST OF AWARD- **\$32,957**

COST FOR TWO YEARS EXPRESSED AS A BUDGETARY PERCENTAGE - **2.8%**

BLENDED ANNUAL COST OF AWARD AS A BUDGETARY PERCENTAGE- **1.4%**

In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent prior interest arbitration awards in arriving at my findings. I believe that this Award properly balances the rights of the members of the DSPBA-PPU to improved wages and benefits with the County's obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests. Thus, based on the above, I make the following:

AWARD

1. **TERM-** This Award shall cover the period January 1, 2009 through December 31, 2010.
2. **WAGES-** Amend the base salary for Park Police Officers referred to in ¶5 of the CBA such that the salary schedules in effect on December 31, 2008 will be increased by the following percentages:
 - As of the 21st pay period in 2009- 3.0%
 - As of January 1, 2010- 3.0%
 - As of December 31, 2010, there will be reduction of starting salary to \$30,000 and reconfiguration of salary schedule such that all salary steps will be equidistant.
3. **LONGEVITY PAYMENTS-** Amend the longevity payments now set forth in ¶5.10 (A) of the CBA such that they will be increased by \$75. The increases in longevity payments become effective on December 31, 2010.
4. **GRIEVANCE & ARBITRATION PROCEDURES-** Amend in ¶14 of the CBA such that:
 - A. Sub-section (A) will define a *grievance* as a *alleged violation of a specific provision of this Agreement*.
 - B. Sub-section (B) will provide for a list of seven mutually agreed upon people to serve as a panel of arbitrators.

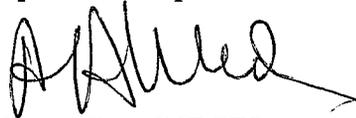
This provision will be effective as of December 31, 2010.
5. **GENERAL MUNICIPAL LAW §207-C-** Effective December 31, 2010:
 - A. **VACATION TIME-** Vacation leave will cease to accrue following the 12th consecutive month of absence from the date of placement on 207-c. Upon return to active duty, the employee will accrue vacation leave days in accordance with section 8.3.
 - B. **NIGHT DIFFERENTIAL-** Night differential payments cease following the 12th consecutive month of absence following the effective date of placement on 207-c. Upon return to active duty, the night differential shall only be paid in accordance with the employee's currently assigned work schedule pursuant to Section 6.8.
 - C. **PERSONAL LEAVE-** Personal leave entitlements shall cease to accrue following the 12th consecutive month of absence following the effective date of placement on 207-c. Upon return to active duty, the employee shall accrue personal leave days in accordance with Section 8.6(A).
 - D. **SICK LEAVE-** Sick leave entitlement shall cease to accrue following the 12th consecutive month of absence following the effective date of placement on 207-c. Upon return to active duty, the employee shall accrue sick leave days in accordance with Section 8.8.

E. UNIFORM ALLOWANCE- Uniform allowance payments shall cease following the 12th consecutive month of absence following the effective date of placement on 207-c. Upon return to active duty, the uniform allowance shall only be paid in accordance with Section 10.

6. "24 HOUR" PROVISION- *Effective* December 31, 2010, delete ¶18 (U) of the CBA.

7. OTHER PROPOSALS- All other proposals of the parties, irrespective of whether they were discussed, are denied.

Dated: April 10, 2013
Hewlett Harbor, NY



ARTHUR A. RIEGEL
CHAIR, INTEREST ARBITRATION
PANEL

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I, Arthur A. Riegel, Esq., affirm that I am the individual describe in and who executed the foregoing instrument which is my Opinion and Interest Arbitration Award.

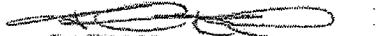


ARTHUR A. RIEGEL, ESQ.

EMPLOYEE PANELIST

I, Patrick Boyles, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|-------------------|---------------|----------------|
| 1. Award Item #1 | <u>Concur</u> | Dissent |
| 2. Award Item #2 | <u>Concur</u> | Dissent |
| 3. Award Item #3 | <u>Concur</u> | Dissent |
| 4. Award Item #4A | Concur | <u>Dissent</u> |
| Award Item #4B | <u>Concur</u> | Dissent |
| 5. Award Item #5 | Concur | <u>Dissent</u> |
| 6. Award Item #6 | Concur | <u>Dissent</u> |
| 7. Award Item #7 | <u>Concur</u> | <u>Dissent</u> |
- *REGARDING AWARD ITEM #7, I CONCUR AS TO THE DENIAL OF THE REMAINING COUNTY PROPOSALS HOWEVER I DISSENT REGARDING THE DENIAL OF THE REMAINING PARK POLICE UNIT PROPOSALS* **SEE NOTE BELOW*


PATRICK BOYLES
EMPLOYEE PANELIST

EMPLOYER PANELIST

I, Paul Margiotta, Employer member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- 1. Award Item #1
- 2. Award Item #2
- 3. Award Item #3
- 4. Award Item #4
- 5. Award Item #5
- 6. Award Item #6
- 7. Award Item #7

Concur	Dissent

PAUL MARGIOTTA
EMPLOYER PANELIST

I concur in denial of the PPA's remaining demands, but dissent as to the denial of the County's remaining proposals.

SCHEDULE A

BIWEEKLY SALARY RATES EFFECTIVE 1-01-08

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1645	1695	1746	1802	1857	1915	1972	2035	2098	2163	2229	2513
21	1803	1859	1915	1975	2036	2099	2164	2230	2300	2371	2445	2755
24	2031	2093	2159	2226	2296	2366	2439	2512	2594	2672	2754	3106

ANNUAL SALARY RATES EFFECTIVE 1-01-08

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	42935	44240	45571	47032	48468	49982	51469	53114	54758	56454	58177	65589
21	47058	48520	49982	51548	53140	54784	56480	58203	60030	61883	63815	71906
24	53009	54627	56350	58099	59926	61753	63658	65563	67703	69739	71879	81067

BIWEEKLY 6% 2-TOUR ROTATING SHIFT RATES 1-1-08

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1744	1797	1851	1910	1968	2030	2090	2157	2224	2293	2363	2664
21	1911	1971	2030	2094	2158	2225	2294	2364	2438	2513	2592	2920
24	2153	2219	2289	2360	2434	2508	2585	2663	2750	2832	2919	3292

BIWEEKLY 10% 3-TOUR ROTATING/STEADY NIGHTS DIFFERENTIAL RATES 1-1-08

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1810	1865	1921	1982	2043	2107	2169	2239	2308	2379	2452	2764
21	1983	2045	2107	2173	2240	2309	2380	2453	2530	2608	2690	3031
24	2234	2302	2375	2449	2526	2603	2683	2763	2853	2939	3029	3417

37.5 HOUR SALARY RATES 1-1-08

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	21.93	22.6	23.28	24.03	24.76	25.53	26.29	27.13	27.97	28.84	29.72	35.9
21	24.04	24.79	25.53	26.33	27.15	27.99	28.85	29.73	30.67	31.61	32.6	39.36
24	27.08	27.91	28.79	29.68	30.61	31.55	32.52	33.49	34.59	35.63	36.72	44.37

40 HOUR SALARY RATES 1-1-08

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	20.56	21.19	21.83	22.53	23.21	23.94	24.65	25.44	26.23	27.04	27.86	31.41
21	22.54	23.24	23.94	24.69	25.45	26.24	27.05	27.88	28.75	29.64	30.56	34.44

24 25.39 26.16 26.99 27.83 28.7 29.58 30.49 31.4 32.43 33.4 34.43 38.83

BIWEEKLY SALARY RATES EFFECTIVE 10-01-09

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,694	1,746	1,798	1,856	1,913	1,972	2,031	2,096	2,161	2,228	2,296	2,588
21	1,857	1,915	1,972	2,034	2,097	2,162	2,229	2,297	2,369	2,442	2,518	2,838
24	2,092	2,156	2,224	2,293	2,365	2,437	2,512	2,587	2,672	2,752	2,837	3,199

ANNUAL SALARY RATES EFFECTIVE 10-01-09

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	44,223	45,567	46,938	48,443	49,922	51,481	53,013	54,707	56,401	58,148	59,922	67,557
21	48,470	49,975	51,481	53,094	54,734	56,427	58,175	59,949	61,831	63,740	65,729	74,063
24	54,599	56,266	58,040	59,842	61,723	63,605	65,568	67,530	69,735	71,831	74,036	83,499

BIWEEKLY 6% 2-TOUR ROTATING SHIFT RATES 10-01-09

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,796	1,851	1,906	1,967	2,027	2,091	2,153	2,222	2,291	2,362	2,434	2,744
21	1,969	2,030	2,091	2,156	2,223	2,292	2,363	2,435	2,511	2,589	2,669	3,008
24	2,217	2,285	2,357	2,430	2,507	2,583	2,663	2,743	2,832	2,917	3,007	3,391

BIWEEKLY 10% 3-TOUR ROTATING/STEADY NIGHTS DIFFERENTIAL RATES 10-01-09

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,864	1,920	1,978	2,042	2,104	2,170	2,234	2,306	2,377	2,451	2,525	2,847
21	2,043	2,106	2,170	2,238	2,307	2,378	2,452	2,527	2,606	2,686	2,770	3,121
24	2,301	2,371	2,446	2,522	2,601	2,681	2,763	2,846	2,939	3,027	3,120	3,519

37.5 HOUR SALARY RATES 10-01-09

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	22.59	23.28	23.98	24.75	25.50	26.30	27.08	27.95	28.81	29.71	30.61	34.51
21	24.76	25.53	26.30	27.12	27.96	28.83	29.72	30.63	31.59	32.56	33.58	37.84
24	27.89	28.74	29.65	30.57	31.53	32.49	33.50	34.50	35.62	36.70	37.82	42.66

40 HOUR SALARY RATES 10-01-09

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	21.18	21.82	22.48	23.20	23.91	24.66	25.39	26.20	27.01	27.85	28.70	32.35
21	23.21	23.93	24.66	25.43	26.21	27.02	27.86	28.71	29.61	30.53	31.48	35.47
24	26.15	26.95	27.80	28.66	29.56	30.46	31.40	32.34	33.40	34.40	35.46	39.99

BIWEEKLY SALARY RATES EFFECTIVE 01-01-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,745	1,798	1,852	1,912	1,970	2,032	2,092	2,159	2,226	2,295	2,365	2,666
21	1,913	1,972	2,032	2,095	2,160	2,227	2,296	2,366	2,440	2,515	2,594	2,923
24	2,155	2,220	2,290	2,362	2,436	2,510	2,588	2,665	2,752	2,835	2,922	3,295

ANNUAL SALARY RATES EFFECTIVE 01-01-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	45,549	46,934	48,346	49,896	51,419	53,025	54,604	56,348	58,093	59,892	61,720	69,584
21	49,924	51,475	53,025	54,687	56,376	58,120	59,920	61,748	63,686	65,652	67,701	76,285
24	56,237	57,954	59,782	61,637	63,575	65,513	67,535	69,556	71,827	73,986	76,257	86,004

BIWEEKLY 6% 2-TOUR ROTATING SHIFT RATES 01-01-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,850	1,906	1,963	2,026	2,088	2,154	2,218	2,288	2,359	2,432	2,507	2,826
21	2,028	2,091	2,154	2,221	2,290	2,360	2,434	2,508	2,586	2,666	2,750	3,098
24	2,284	2,354	2,428	2,503	2,582	2,661	2,743	2,825	2,917	3,005	3,097	3,493

BIWEEKLY 10% 3-TOUR ROTATING/STEADY NIGHTS DIFFERENTIAL RATES 01-01-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,920	1,978	2,038	2,103	2,167	2,235	2,301	2,375	2,448	2,524	2,601	2,933
21	2,104	2,169	2,235	2,305	2,376	2,450	2,525	2,602	2,684	2,767	2,853	3,215
24	2,370	2,443	2,520	2,598	2,679	2,761	2,846	2,931	3,027	3,118	3,214	3,625

37.5 HOUR SALARY RATES 01-01-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	23.27	23.98	24.70	25.49	26.27	27.09	27.89	28.79	29.68	30.60	31.53	35.55
21	25.50	26.30	27.09	27.94	28.80	29.69	30.61	31.54	32.53	33.54	34.59	38.97
24	28.73	29.61	30.54	31.49	32.48	33.47	34.50	35.53	36.69	37.80	38.96	43.94

40 HOUR SALARY RATES 01-01-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	21.81	22.48	23.15	23.90	24.63	25.40	26.15	26.99	27.82	28.68	29.56	33.33
21	23.91	24.65	25.40	26.19	27.00	27.84	28.70	29.57	30.50	31.44	32.42	36.53
24	26.93	27.76	28.63	29.52	30.45	31.38	32.34	33.31	34.40	35.43	36.52	41.19

SCHEDULE B

SALARY SCHEDULE FOR PARK POLICE HIRED AFTER 12-31-2010

BIWEEKLY SALARY RATES EFFECTIVE 12-31-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,149	1,287	1,425	1,563	1,701	1,839	1,977	2,115	2,252	2,390	2,528	2,666

ANNUAL SALARY RATES EFFECTIVE 12-31-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	30000	33599	37197	40796	44394	47993	51591	55190	58788	62387	65985	69584

BIWEEKLY 6% 2-TOUR ROTATING SHIFT RATES 12-31-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,218	1,365	1,511	1,657	1,803	1,949	2,095	2,241	2,388	2,534	2,680	2,826

BIWEEKLY 10% 3-TOUR ROTATING/STEADY NIGHTS DIFFERENTIAL RATES 12-31-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	1,264	1,416	1,568	1,719	1,871	2,023	2,174	2,326	2,478	2,629	2,781	2,933

37.5 HOUR SALARY RATES 12-31-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	15.33	17.16	19.00	20.84	22.68	24.52	26.36	28.19	30.03	31.87	33.71	35.55

40 HOUR SALARY RATES 12-31-10

Grade	1	2	3	4	5	6	7	8	9	10	11	12
19	14.37	16.09	17.81	19.54	21.26	22.99	24.71	26.43	28.16	29.88	31.60	33.33