

INTEREST ARBITRATION PANEL

IN THE MATTER OF THE INTEREST ARBITRATION

Between

COUNTY OF WARREN

And

**WARREN COUNTY POLICE BENEVOLENT
ASSOCIATION**

**NYS PERB CASE #: IA2013-016
M2012-358**

OPINION

AND

AWARD

The Arbitration Panel members are:

Ira B. Lobel, Esq.
Public Panel Member and Chairperson

J. Lawrence Paltowitz, Esq., Bartlett, Pontiff, Stewart & Rhodes, PC
Employer Panel Member

Edward W. Guzdek, Sr.
Union Panel Member

Appearances:

For the County of Warren:
Martin D. Auffredou, Esq., Warren County Attorney

For the Warren County Police Benevolent Association
James B. Tuttle, Esq., The Tuttle Law Firm

INTRODUCTION

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the New York State Public Employment Relations Board, by letter dated July 12, 2013, designated the Chairperson, the Public Employer, and Employee Organization Panel Members to make a just and reasonable determination of the outstanding issues in the collective bargaining dispute

between the County of Warren (hereinafter referred to as the "County") and the Warran County Police Benevolent Association (hereinafter referred to as the "PBA").

The collective bargaining agreement ("CBA") expired on December 31, 2011. After the parties failed to reach agreement in direct negotiations, impasse was declared. A mediator was appointed but no agreement was reached. The Union filed a Petition for Compulsory Interest Arbitration on or about June 3, 2013. The County filed a response on or about June 17, 2013.

Ira B. Lobel was appointed Chairperson of the Arbitration Panel ("Panel"); J. Lawrence Paltrowitz and Edward W. Guzdek were designated as panel representative for the County and the Union, respectively. The interest arbitration hearing was held on September 24, 2013, in the County offices in Lake George, New York. Both parties were represented by counsel and introduced oral and written evidence, examined and cross-examined witnesses, and otherwise supported their respective positions on the outstanding issues. The parties timely filed post hearing briefs on or about November 15, 2013.

The Panel met in executive session on December 5, 2013, and deliberated on each of the outstanding issues. The Panel has carefully and fully considered all the data, exhibits, briefs, and testimony of the sworn witnesses. The Panel considered each item individually and the impact of each item upon the entire agreement and working relationship. This Award is the result of these deliberations. In arriving at the determination and Award contained herein, the Panel has considered the following statutory guidelines contained in Section 209.4 of the Statute:

- (v) The public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:
 - a. 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:

- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;
- d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

BACKGROUND REGARDING THE COUNTY OF WARREN

The County of Warren has a population of approximately 65,000 inhabitants. The bargaining unit is composed of 62 full time employees including 45 patrol officers, 9 sergeants, and 8 investigators. This interest arbitration proceeding is applicable to these police officer titles.

The contract period for this arbitration award goes from January 1, 2012 until December 31, 2013. The statute limits awards to a two year period unless the parties agree to accept a longer contract. In this instance the parties did not agree to a longer period.

The County employs approximately 900 employees and has four other bargaining units in addition to the PBA. There is a contract with the Civil Service Employees Association expiring December 31, 2016, covering eligible employees in the County not covered by other contracts. Another contract is with the Warren County Sheriffs' Employees' Alliance, also expiring December 31, 2016, and covering eligible employees in the Sheriffs' Department not included in this PBA unit, the police supervisors unit, or the correctional supervisors unit. The Warren

County Police Supervisors Benevolent Association covers the police lieutenants (patrol and investigative) and has a contract that expires on December 31, 2015. There was no information submitted by either side as to the current status of the labor agreement involving the Warren County Correctional Supervisors Association.

PARTIES' POSITIONS AND DISCUSSION REGARDING STATUTORY CRITERIA

Under the Taylor Law, the Panel is charged with analyzing four different factors. This analysis is set forth below.

1. COMPARABILITY

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

The PBA argues that the appropriate comparisons are similar police departments in Columbia County, Saratoga County, Rensselaer County, the City of Glens Falls, and the City of Saratoga Springs. The County contends that the appropriate comparisons include similar police departments in the counties of Essex, Clinton, Washington, Fulton, and Montgomery as well as the police departments in the Village of Hudson Falls and the City of Glens Falls.

Discussion. The Panel has carefully considered the parties' positions regarding comparability. The reality is that the determination of the appropriate comparable jurisdictions, as required by law, is not an exact science. The law does not require this panel to specifically state that the police officers in this particular case must be compared to a specific jurisdiction or group of

jurisdictions. The law requires that this panel compares wages, hours, and conditions of employment of the employees in the County of Warren with other employees similarly situated. Any conclusions developed involve a multifaceted analysis in which a variety of factors are considered.

In making comparisons, it is impossible to conclude that any jurisdiction, or group of jurisdictions, is so similar that a direct comparison should be made. Each jurisdiction cited by the parties has a basis for a valid comparison; none of these jurisdictions can be used for a direct and exact correlation. In addition to different demographic factors, some contracts might emphasize paying more money for junior employees; others may put emphasis on senior employees; still others may choose to emphasize benefits in lieu of wages. Each decision will have an impact in any comparative analysis.

Employees in larger and/or wealthier towns normally have higher salaries than employees in smaller and/or less affluent communities. However, some of the jurisdictions recruit and retain in different labor markets. Any employer must be cognizant of the salary and fringe benefits in surrounding jurisdictions in order to properly recruit and retain quality employees. Accordingly, all of these variables are relevant; none can be conclusive.

Any analysis must also include acknowledgement of the current contracts with the other bargaining units. While the settlements in these other contracts cannot be conclusive, treatment of other employees within Warren County must be factored into any decision made by the Panel.

2. INTERESTS AND WELFARE OF THE PUBLIC AND THE ABILITY TO PAY

Another factor to be considered is the "interests and welfare of the public and the financial ability of the public employer to pay." In the current economic climate, this factor has become particularly difficult to evaluate. In many locations, revenue from the general tax levy

(property tax) and sales tax is flat or declining.

The County describes in detail many of the challenges it is currently facing. It noted that in 2009, 2010, and 2011, its financial condition was uncertain at best and even bleak. The New York State Comptroller's report (Fennel Exh. 5) noted the County's cash flow problems in meeting its expenses and criticized the County's practice of consistent appropriation of fund balance as a budgetary funding source. It notes various policies established to prevent these problems from re-occurring.

The PBA, through its economic expert, argues that the financial condition of the county is much improved, with a total fund balance of \$20.7 million and an unallocated fund balance of \$14 million. It maintains that it was well below the fiscal stress indicators as established by the State Comptroller. It further maintains that the County is within the tax cap limit of 2%.

Discussion. It is undisputed that the County faced significant financial challenges during the 2009 through 2011 period. It is further undisputed that the County has addressed and corrected many of these financial concerns. This means that the County should continue to be prudent in trying to maintain a sound fiscal approach that both avoids any of the concerns raised by the Comptroller and still provides its employees with a realistic and competitive total compensation package.

3. PECULARITIES OF THE PROFESSION

There is no doubt that police officers are engaged in a dangerous profession. In terms of the hazards of employment, the physical qualifications, educational demands, and mental qualifications, police can face a myriad of daily problems. As society becomes more complex, these demands can increase, especially in a rural county like Warren. Police officers in the Warren County Sheriff's Department face similar challenges to police officers elsewhere.

4. PAST NEGOTIATIONS AND BARGAINING HISTORY

The Panel recognizes that the current wages and working conditions of the police officers are the cumulative result of previously agreed upon collective bargaining agreements. For good or bad, the comparative position of the police officers in other cities and towns is the result of these collectively bargained agreements. The Panel must acknowledge and recognize that prior agreements were arrived at for good and valid reasons, taking into account economic conditions and other settlements in the County and elsewhere.

DISCUSSION OF SPECIFIC PROPOSALS

In this matter, there are relatively few issues requiring a decision by the Panel. A number of issues were settled during negotiations. There are also two issues that involve future hires – one involving payment of unused sick leave upon retirement and the other concerning the health insurance contribution, as well as the issue of improved vacations. The panel believes that issues such as these are usually best determined not by an arbitration panel, but through direct negotiations between the parties, as part of an overall package. This is particularly true in this situation; the parties will have to begin negotiations for a successor contract almost immediately.

Regarding the other outstanding issues (wages, investigator stipend, health insurance, and sick leave incentive), the Panel carefully considered each of these issues, individually and as part of the overall agreement. The parties unanimously came to a consensus on the overall package. Since this is a unanimous award, the Panel believes it is unnecessary and inappropriate to restate the positions of the parties.

In reaching this unanimous Award, the Panel bases its conclusions on developing a wage and benefit package that is consistent with both comparable communities and within other units in the County. Regarding specific items, the current health insurance contribution is difficult to

understand and/or compute. A percentage is much more common throughout other municipalities and in Warren County. Making both the change to a percentage and increasing the percentage on July 1, 2013, is appropriate since it corresponds to a mid-year wage increase. The other changes in the health insurance language are required to make the contract language consistent with current practices. During negotiations, the parties agreed to eliminate the sick leave incentive if there was agreement on an overall package. The panel believes it makes sense to continue this tentative agreement. However, because the parties have been operating under its provisions during 2013, the provision will be eliminated effective December 31, 2013, effectively eliminating it from future contracts.

The specific provisions in the Award are as follows:

1. Wages (applicable to all current employees and retirees) :

- a. Effective January 1, 2012 – 1.75%
- b. Effective January 1, 2013 – 1.25%
- c. Effective July 1, 2013 – 1%
- d. Effective December 31, 2013 – increase the investigator stipend by \$300.00 to \$4,890

2. Health Insurance:

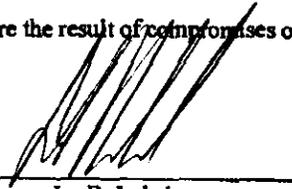
- a. Effective July 1, 2013, employees will contribute 11% of the health insurance premium.
- b. The County will offer only the Blue Shield EPO, or a substantially similar plan, with office co-pays of \$25/\$40 and prescription drug co-pays of \$10/\$30/\$50.
- c. The County may change insurance or self-insure with regard to any health insurance policy (including Medicare Advantage Plans) as long as the benefits, co-pays and deductibles remain substantially similar or equivalent to those provided in 2013 under the Blue Shield EPO Plan or Medicare Advantage, as the case may be, so long as the cost of the policy to the

employee is equal to or less than the cost would have been if the County had stayed with the Blue Shield EPO or Medicare Advantage Plans, as the case may be, and renewed, or whatever plan in existence at the time the County determines to change carriers. (This is to be separate and distinct from the increase in contribution rates provided for herein.) The County will provide 30 days written notice to the President of the PBA, or if there should not be a President, the next highest officer of the PBA.

- d. Effective December 1, 2013, eliminate the County's reimbursement to employees of \$5 prescription drug name brand and \$10 prescription drug non-formulary.
3. Sick Leave: Effective December 31, 2013, the sick leave incentive in Article 8, Section 2A(j) and Section 2B(j) will be deleted.
4. Duration of Contract: There shall be a two year contract effective from January 1, 2012 to December 31, 2013.

CONCLUSION

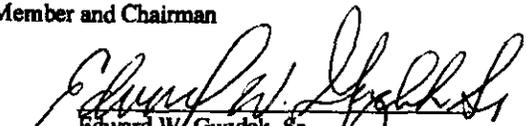
This OPINION AND AWARD has been the result of lengthy discussions among the panel members. Each has brought significant experience and knowledge to these deliberations and the conclusions set forth above are the result of compromises on the part of all parties to reach a fair and just conclusion.



Ira B. Lobel
Public Panel Member and Chairman



J. Lawrence Paltrowitz
Public Employer Panel Member

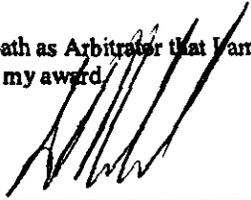


Edward W. Guzdek, Sr.
Employee Organization Panel Member

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF ALBANY)

I, Ira B. Lobel, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.
Date: December , 2013



Ira B. Lobel
Public Panel Member and Chairperson

STATE OF NEW YORK)
COUNTY OF WARREN)

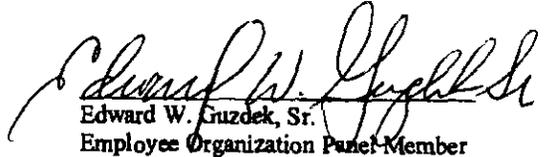
I, J. Lawrence Paltrowitz, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.
Date: December 23, 2013



J. Lawrence Paltrowitz
Public Employer Panel Member

STATE OF NEW YORK)
COUNTY OF ERIE)

I, Edward W. Guzdek, Sr., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.
Date: December 19, 2013



Edward W. Guzdek, Sr.
Employee Organization Panel Member