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In the Matter of Interest Arbitration

between

County of Monroe and
Monroe County Sheriff

and

Monroe County Sheriff's Police
Benevolent Association, Inc.

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Findings and Award of

Public Arbitration Panel

(PERB Case No. IA2014-012)

Having determined that a dispute continues to exist in the negotiations between the joint employers, County of Monroe and Monroe County Sheriff (hereafter County or Employer), and the Monroe County Sheriff's Police Benevolent Association (hereafter Union), the Public Employment Relations Board (PERB), pursuant to its authority under the Taylor Law, designated a tripartite Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute. The designated Panel comprises Peter J. Spinelli, Esq., as the Public Employer Panel Member; Lawrence J. Andolina, Esq., as the Employee Organization Panel Member; and Howard G. Foster as the Public Panel Member and Chairperson.

Following organizational conference calls among the Panel members, a hearing in the matter was held on August 5, 2015, at the Watts Building, and on August 17, 2015, at the Monroe County Office Building, both in Rochester, New York. Prior to the hearing, the parties submitted thorough statements of their positions, with supporting evidence. Testimony was taken from three Employer witnesses and three Union witnesses, and documentary evidence was received from both sides. Upon submission of post-hearing briefs by the parties on August 31, 2015, the record was closed. The Panel met in executive session on September 21, 2015, and subsequently conferred further by telephone and email.

Although the Panel's charge under the law is to make determinations on the submitted issues for the calendar years 2013 and 2014, the parties have formally authorized the Panel to issue an award covering the period January 1, 2013, to December 31, 2016. This Award constitutes the Panel majority's determination of the issues in dispute. Employee Organization Panel Member Andolina dissents.

APPEARANCES

For the Employer:

Karlee S. Bolaños, Attorney
William Q. Lowe, Attorney
Brayton McK. Connard, Human Resources Director
Robert Franklin, Chief Financial Officer
Anthone Feroce, Controller
Lindsey A. Zullo, Attorney
Christyn Musso, Sheriff's Counsel
Drew Forsythe, Undersheriff
Michele Romance Crain, Sheriff's Counsel
David Phelps, Chief Deputy
Thomas Vasey, Manager of Labor Relations

For the Union:

Daniel P. DeBolt, Attorney,
John Auberger, President
Joseph Firpo, Second Vice President
John Watson, Treasurer
Kevin R. Decker, Economist

BACKGROUND

The County of Monroe is a county in Western New York with an urban core (Rochester) surrounded by suburban, exurban and rural communities. It is home to about 750,000 people, about three-tenths of whom live in the City of Rochester. The Sheriff's

Office is one of 10 local police agencies in the County. The Sheriff's Office is the primary provider of police services in those municipalities that do not have their own police forces, and it cooperates with those that do. The bargaining unit consists of approximately 250 law-enforcement personnel employed in the Police Bureau, including Deputy Sheriffs Patrol, Deputy Sheriff Investigators, Deputy Sheriff Sergeants Patrol, and a Deputy Sheriff Investigator Sergeant.

The most recent (and currently effective) collective bargaining agreement (CBA) between the parties covered the years 2009-2012. Previously, the parties operated under an interest-arbitration award covering the years 2004-2008. They initiated negotiations for a successor to the 2009-2012 agreement in July 2012, and they met several times before impasse was declared by the Union in January 2014. PERB-conducted mediation was unsuccessful in resolving the impasse, and on October 1, 2014, the Union petitioned for compulsory interest arbitration. Following some litigation before PERB, the panel was designated on November 14, 2014.

Under Civil Service Law §209.4(g), the Panel is limited to issues "directly relating to compensation." The Taylor Law sets forth four criteria that the Panel is required to consider in making its determination of a "just and reasonable" resolution:

> 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 interests 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: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills.

4. The terms of collective agreements negotiated between the parties in the past providing 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.

The remainder of this Award is organized as follows. We begin with a summary and discussion of the parties' general positions regarding the statutory criteria for a "just and reasonable determination" of the dispute, most particularly comparisons with employees in "comparable communities" and the "financial ability of the public employer to pay." We then address each of the issues in contention, setting forth the current contractual provision, if any; the changes or additions sought by the proposing party or parties; and the parties' positions on the proposed changes or additions. The final sections include the analysis and findings of the Panel and the Panel's award.

POSITION OF THE UNION ON THE STATUTORY CRITERIA

The Union contends that the communities with which Monroe County is properly comparable include the Counties of Erie and Onondaga, the City of Rochester, and the Towns of Greece and Irondequoit. The two counties are comparable because they are the only other upstate New York counties with large populations and an urban core. The municipalities are comparable because they have the largest police forces in Monroe County; their officers perform duties that are similar to those of the deputies; they perform those duties in the same labor market as the deputies; and the deputies are in fact required to live in Monroe County (and thus have similar costs of living). The crime data in these municipalities are also comparable to those of the Sheriff's Office.

As for the ability of the Employer to pay, the Union acknowledges that the County consistently runs a relatively low fund balance, but that condition is caused by a belief of County management that the larger fund balances recommended by the New York State Comptroller are unnecessary for a county the size of Monroe, as well as its absolute refusal to raise taxes for more than a decade. Moreover, when the Administration (even while touting economic improvements) refers to the financial stresses that it faces, it emphasizes state and federal mandates as the primary cause. Wage and benefit costs of County employees are rarely mentioned in this regard, and indeed the State Comptroller assigns a financial-stress score of zero to employee compensation. In fact, the total payroll is lower in 2015 than it was in 2009. According to the County's own public statements, its current financial situation is solid.

For these reasons, and as shown by the analysis of the Union's financial expert, the Union contends that the County can well afford the compensation enhancements sought by the PBA in this arbitration.

POSITION OF THE EMPLOYER ON THE STATUTORY CRITERIA

The County contends that because of the vastly different budgets and financial responsibilities of counties and other municipalities in New York State, the appropriate "comparable communities" for this arbitration are other counties. The counties in upstate New York that the County considers comparable to Monroe include Broome, Cortland, Livingston, Onondaga, Ontario, Orleans, Schuyler, Seneca, and Wayne. The basis for using these counties is that they are generally proximate to Monroe and operate in the same labor market, with deputies often moving back and forth among them.

With respect to ability to pay, the County argues that it is currently in the midst of a financial crisis, with unprecedented uncertainty. It has balanced its recent budgets with "one-shot" funding sources that are no longer available, and it is approaching the point where it will no longer be able to meet its existing wage obligations, much less incur new ones, without significant relief from its health-insurance costs.

The County notes that it is demonstrably one of most fiscally stressed local governments in New York State. Its general-fund balance is less than 2 percent of revenues, a precarious position that has been cited as a matter of concern by both the State Comptroller and the bond-rating agencies. The County's condition is largely attributable to the costs of mandated programs and services, which are only fractionally covered by state and federal aid. These costs leave the County with virtually zero budgetary flexibility for compensation increases. And even as the budget of any county in New York is wholly different from that of a city, town or village, Monroe County is set apart even from other counties by a statutory requirement that it share its sales tax receipts with other municipalities. Thus when mandated costs are not fully funded by the state and federal governments, the resulting stress lies squarely on the tax levy, and property taxes in Monroe County are already very high.

Accordingly, asserts the County, it does not have the ability to pay the wage and benefit increases demanded by the Union.

SUMMARY OF THE ISSUES

1. Wages

An Appendix to the CBA provides six-step salary schedules for the four classifications in the bargaining unit. Increments are received after 7 months, 14 months, 24 months, 36 months, and 48 months of service. In addition to a baseline schedule, there are schedules incorporating extra pay for various longevity levels and for an educational incentive. The annual pay for 2012 ranges from $42,740 for an entry-level Road Patrol Deputy to $80,841 for a Deputy Sheriff Sergeant with 20 years of service and Educational-Incentive pay. The Union proposes to increase all salaries by 2.0 percent as of January 1, 2013 (not retroactive), another 2.0 percent as of January 1, 2014, and another 2.5 percent as of January 1, 2015. (It has no specific proposal for 2016.) The County proposes no increase for 2013, 1.5 percent on January 1, 2014 (not retroactive), 2.0 percent on July 1, 2015 (not retroactive), 1.5 percent on July 1, 2016, and 2.0 percent on July 1, 2017.

The County proposes two other changes to the wage schedule: (1) adding a new longevity step at 8.5 percent above Step E beginning with the 25th year of service in law enforcement, with at least 20 years with Monroe County; and (2) making all increments payable after 12 months of service for prospective employees, so that top pay would be reached after 60 months instead of 48 months.

The **Union** contends that the wages of this bargaining unit lag those of the comparable communities. The top pay of patrol deputies is somewhat lower than that of their counterparts in Erie and Onondaga Counties, and dramatically lower than that of police officers in Rochester, Greece, and Irondequoit, and these gaps do not take account of the increases that the comparables will see in 2016. The Union's proposed increases do nothing more than keep its members in their current position at bottom of the ladder.

The **County** contends that its road-patrol deputies are already paid more than those in most neighboring counties. In addition, Monroe County deputies work significantly fewer hours than those in the majority of neighboring counties. Thus despite the shorter hours of members of this bargaining unit, they earn wages that are higher than most of their nearby counterparts. The County further argues that police officers in local police departments are not appropriate comparables, given the budgetary and scheduling differences between the County and the municipalities. Indeed, very few Monroe County deputies leave to take jobs with other law-enforcement agencies. Thus salary parity is not necessary for the County to retain its personnel.

2. Health Insurance/Active Employees

Section 22.1 of the CBA provides for health insurance for active employees, although since the contract was negotiated the County has become self-insured. Employees now receive benefits equivalent to the Excellus Blue Point 2 Value Plan. Those hired before January 1, 2006, contribute $50 per pay period toward their coverage, while those hired on or after January 1, 2006, contribute $65 per pay period. There is no distinction in the contribution between single and family coverage. There is also provision for a buyout of health insurance, in the amount of $2,000, for employees who have alternative coverage.

The County proposes moving all employees to the Excellus Simply Blue HD (High Deductible) Plan with the Blue4U rider; increasing the employee contribution by $20 per pay period per year; increasing the employee contribution further for employees or spouses who decline to participate in the Blue4U program; providing a County match for an employee's contribution to his or her Health Savings Account to a maximum of $1,300 single or $2,600 family, with a cap on aggregate contributions; and increasing the buyout to $2,500, with a County option to increase it further. The Union proposes making no change in the base plan; providing a $500 incentive for employees to participate in the Blue4U program; eliminating the distinction in contribution based on date of hire and setting the employee contribution at $60 per pay period for single coverage and $75 for family coverage.

The **County** observes that the rationale for its proposals on health insurance (for both active members and retirees) is primarily cost containment. It contends that although the 2006 interest-arbitration award and the 2009-2012 agreement made significant changes in the health-insurance benefit, those changes were still not nearly enough to create a fiscally sustainable health-benefit program, whose costs continue to escalate. Although the lower-cost HD plan with HSA has been available since 2009, very few deputies have chosen to enroll in it. Because of their rising costs, health insurance has been a central issue for the County in these negotiations, and remains so in this arbitration. Indeed, the cost of health insurance is a major factor in the County's negative economic forecast. Even with the changes proposed by the County, the employees in this bargaining unit will enjoy a very generous health-insurance benefit, one that is far richer than those of County taxpayers in the private sector and comparable to those in other county police departments.

The **Union** notes that County officials have stated publicly that the move to self-insurance has saved the County millions of dollars. Between 2011 and 2014, the cost of health insurance for the bargaining unit rose by only 4.8 percent, even declining in 2014, the first year of self-insurance. Furthermore, the County's share of health-insurance costs has actually decreased, owing to concessions previously made by the Union. With turnover, the County realizes a saving as departing members paid less for their coverage than do their replacements. In this context, the Union argues that its proposal for modest increases in employee contributions, including the division of the bargaining unit by family status rather than date of hire, is reasonable. Basing the contribution on family status makes more sense and is inherently fair. In addition, members of the bargaining unit already pay a higher percentage of insurance costs than do employees in the comparable communities. If the Union's proposal were adopted, many employees would still be paying at the upper end of the range. By contrast, the payments associated with the County's proposal are wildly out of line with the comparable units, especially for single coverage.

The Union further contends that there should be no change in the current health-care plan, Blue Point 2 Value, with an option for a high-deductible plan. If the County wishes employees to switch to the high-deductible plan, it should provide adequate incentives to do so.

The Union is in agreement with the County's proposal to increase the health-insurance buyout to $2,500, with a County option to increase that amount to $3,000 in the future. It would also be agreeable to language providing that the employee's alternate source of health-care coverage not trigger a penalty under the Affordable Care Act if appropriate safeguards were put in place.

3. Health Insurance/Retirees

Section 22.2 of the CBA provides for fully paid health insurance for retirees hired before January 1, 2006, with benefits equivalent to the Blue Point 2 Value Plan. Employees hired after January 1, 2006, receive the same benefits, but are responsible for the same employee contribution applicable to active employees hired after January 1, 2006. The Union proposes that retirees who have reached Medicare eligibility receive a creditable Medicare supplement or advantage plan to cover the difference in benefits between Medicare and their prior coverage. It also proposes that the retiree have the option to "buy up" to a higher supplement plan, with the County assuming 75 percent of the cost. In addition, the Union proposes that post-2006 retirees receive fully-paid health insurance if they have had 25 years of service with the Monroe County Sheriff's Office.

For its part, the County proposes establishing a "Rule of 85," under which pre-Medicare retirees whose age and years of service at retirement total 85 or greater continue to receive 100 percent of the coverage to which they were entitled as active employees; requiring those who retire before reaching 55 years of age to pay additional contributions; terminating contributions to the HSA upon retirement; extending the buyout to pre-Medicare retirees; providing retirees who reach 65 years of age with a CMS creditable Medicare supplement or Medicare -Advantage plan selected by the County; and covering a spouse or family of a pre-Medicare retiree for 24 months after the retiree becomes Medicare-eligible or after the death of the retiree.

The **Union** contends that the County's proposal on retiree health care is draconian and should be rejected. It would strip pre-2006 hires of the fully paid insurance in retirement that they have been promised. Many are on the eve of retirement and should not be suddenly stripped of a benefit for which they have worked their entire careers. Further, even those who retain fully-paid insurance would receive only the high-deductible plan, which especially for a retiree presents a risk of very significant health-care costs. In addition, the County's proposal treats post-2006 retirees even more harshly, requiring them to meet the "Rule of 85" standard merely to be entitled to the significantly reduced benefits. The County's proposal would in effect eliminate the 20-year retirement plan, since employees would have to work significantly longer to qualify for the benefits currently available to a 20-year retiree. It would also be devastating to transfers, and it would cut off coverage for a retiree's younger spouse and the surviving spouse and children of a deceased retiree. There is no evidence that these coverages have imposed a significant financial burden on the County. In sum, there is no need for the oppressive cuts to retiree health care included in the County's proposal.

The **County** argues that the burden of providing health insurance to both active employees and retirees is becoming unsustainable, and the fact that there has been no agreement since the expiration of the previous agreement has resulted in a lost opportunity to achieve needed savings. In 2013 and 2014, 14 members of this bargaining unit retired with fully-paid health insurance. So far in 2015, an additional 7 PBA members retired. The annualized savings for these retirees had the County's proposal been adopted amounts to more than $172,000. What is particularly onerous about retiree insurance in this unit is the young age at which members retire. Since 2006, PBA retirees have averaged 24 years of service and 48 years of age. These retirees will thus continue to receive an unusually generous health-insurance benefit for an average of 17 years before they go on Medicare. Indeed, the cost of health insurance for retired state and local government employees is a well-documented national crisis.

4. Affordable Care Act Re-opener

The County proposes new contract language that, in the event that legislation or regulations (primarily those associated with the Affordable Care Act) affect the plans, costs, or benefits provided in the CBA, either party may reopen negotiations, during which the County may implement any changes that are necessary to bring the plans into compliance with the relevant law or regulation or to avoid penalties.

The **County** contends that this new language is necessary given the uncertainties associated with the ongoing implementation of the Affordable Care Act.

The **Union** agrees that having language to address the potential effects of changes in law or regulation on health-care benefits and costs is not unreasonable, but the County's proposal is excessive. While the Union would agree to reopen negotiations under these circumstances, the County should not be allowed to make any changes unilaterally while negotiations proceed. Negotiations under these conditions would be illusory. Instead, the Union suggests that the parties meet in good faith and negotiate the necessary changes on an expedited basis. If agreement cannot be reached, there can be a fast-track impasse-resolution mechanism to ensure that the negotiations do not cause an untoward delay in resolving the matter.

5. Work Week and Work Shift
Court Appearance
Overtime
Vacation Accrual
Light Duty

The County advanced proposals on the above subjects during negotiations. At arbitration, the Union contended that these subjects are not eligible for interest arbitration. As the County has not advanced a contrary argument in this arbitration, the Panel declines to pass judgment on these proposals.

DISCUSSION AND FINDINGS OF PANEL

Statutory Criteria

The Panel has considered the parties' arguments in respect to the statutory criteria. Regarding terms and conditions of employment in "comparable communities," we are generally persuaded by the County's argument that the most comparable communities are other counties. Although the Union makes cogent arguments regarding the relevance of large municipalities within Monroe County owing to their common labor market, their overlapping costs of living, and the similar responsibilities of their police officers, the County makes telling points in respect to the differences in responsibilities and finances of counties generally and municipalities generally. Less persuasive, however, is the County's specific list of counties to which it seeks to be compared. Many of these counties are largely rural in nature, much lower in population, somewhat distant from Monroe, and with very different economic bases. In this regard, we believe that comparisons with the Counties of Erie and Onondaga are clearly and by far the most directly applicable to an assessment of the terms and conditions of employment in Monroe County. Thus although reference to conditions in Rochester, Greece and Irondequoit may bear some relevance to the task at hand, the primary weight will be given to comparisons with Erie and Onondaga Counties.

With respect to "the interests and welfare of the public and the financial ability of the public employer to pay," we are cognizant that the public interest is served by providing deputies with wages and working conditions befitting the important work they do and sufficient to attract and retain qualified personnel, while at the same time not requiring the citizenry to shoulder an unreasonable burden or to make unreasonable tradeoffs. As for the ability of the public employer to pay, the evidence persuades us that the County's fiscal challenges are real. The Union's argument that the unusually low fund balances are based much more on choice than necessity is not entirely convincing, and the fact that these conditions have been explicitly cited as a matter of concern by outside financial reviewers cannot be ignored by this Panel. The County's point about sales-tax sharing and the constraints it places on revenue generation is likewise salient, and the fact that the County has not increased its tax rates for some time does not mean that higher taxes are an obvious revenue source if taxes are already very high, a fact asserted by the County and not rebutted by the Union.

The conclusion to which the Panel is drawn by the foregoing considerations is that a "just and reasonable resolution" of this dispute should contemplate a modest increase in employee compensation along with some relief to the County from the pressures of its health-insurance costs (and particularly the increases in those costs). Although, as the Union points out, the current wages of deputies in this unit are modestly lower than those in the two major comparables, Erie and Onondaga Counties, the differences cited in the Union's argument do not fully take account of the fact that the other wages already reflect increases for 2013 and 2014. Nor does the argument address other elements of compensation, most notably health insurance. With modest increases here, Monroe County's wages will be at or very near those in Erie and Onondaga. The intent of this award, in sum, is to recognize the County's fiscal pressures while still providing sufficient improvements in compensation to keep the deputies in this unit reasonably in line with their peers in truly comparable communities.

Set forth below are the Panel's findings on the issues for which an affirmative award is made. These findings constitute the Panel's disposition of proposals that involve changes in the current terms of the Collective Bargaining Agreement. Other proposals presented to the Panel have been carefully considered, and its finding is that, with respect to those proposals, no affirmative award should be made.

Wages

As noted above, we find that a modest increase in wages is supported by the record. We are also cognizant of the fact that other County employees have generally not received increases in their base wages in recent years, including years in which this bargaining unit, pursuant to an earlier Agreement, did get significant increases. We will accordingly award increases to the wage schedule for each of the four years covered by this award, but for cost-control purposes the increases for the first three of those years will not be retroactive. In lieu of retroactivity, however, there will be lump-sum payments for those years. In addition, we find that the proposals to add a new longevity step and to make all increments earned after 12 months of service are reasonable, and we will therefore adopt them in our award.

Award. (1) Revise Article 8 as follows:

8.1.8: For 2013, the 2012 salary schedule shall be increased by 1.5 percent
8.1.9: For 2014, the 2013 salary schedule shall be increased by 1.5 percent
8.1.10: For 2015, the 2014 salary schedule shall be increased by 1.5 percent
8.1.11: For 2016, the 2015 salary schedule shall be increased by 1.5 percent

(2) Revise Article 8 by renumbering 8.1.12 to 8.1.13 and adding new 8.1.12 as follows:

All four of the above increases will be implemented together on January 1, 2016, for a total of 6 percent plus compounding. There shall be no retroactivity for these increases.

(3) Add new 8.1.14 as follows:

All employees currently on the payroll will receive lump-sum payments reflecting \$750 for 2013, \$1,000 for 2014, and \$1,250 for 2015. These payments will be prorated for employees hired between January 1, 2013 and December 15, 2015. The \$3,000 in total payments will be made in two installments of \$1,500 on the pay day following December 15, 2015, and July 1, 2016.

(4) Renumber Paragraph 8.3.5 to 8.3.6 and add new Paragraph 8.3.5 as follows:

Effective January 1, 2016, all employees covered by this agreement who have given twenty-five (25) years of continuous service to law enforcement, with at least twenty (20) of those years in the Monroe County Sheriff's Office, based upon anniversary date of employment shall have their hourly rate increased by eight and one-half percent (8.5%) above Step E.

(5) Add new section in Article 8 as follows:

Employees hired on or after January 1, 2016 shall receive wage increments on the following schedule:

8.x.1 All employees coming on the payroll of the County shall be hired at Step "X" of the salary schedule. An employee commencing at step "X" of the salary schedule shall, upon satisfactory completion of a 12-month period, be upgraded to Step "A" of the salary schedule.

8.x.2 Effective with the first payroll period following the completion of two (2) years of satisfactory service, such employee shall be upgraded to Step "B" of the salary schedule.

8.x.3 Effective with the first payroll period following the completion of three (3) years of satisfactory service, such employee shall be upgraded to Step "C" of the salary schedule.

8.x.4 Effective with the first payroll period following the completion of four (4) years of satisfactory service, such employee shall be upgraded to Step "D" of the salary schedule.

8.x.5 Effective with the first payroll period following the completion of five (5) years of satisfactory service, such employee shall be upgraded to Step "E" of the salary schedule.

Health Insurance/Active Employees

As noted above, the Panel finds that the current health-insurance benefit has become too costly for the County to sustain in its present form. Some of the specific avenues of relief sought by the County, however, are a step too far, particularly the proposed mandatory switch to the high-deductible plan and the proposed mandatory enrollment in the Blue4U rider, although a well-designed high-deductible plan as an option for employees makes good sense to us. We have also tried to be cognizant of the effects on deputies of the higher contributions that we see as unavoidable, and thus to ensure that the costs to them remain reasonable and in line with those paid by other public employees. Finally, we are generally receptive to the Union's argument that it is more just and reasonable to base the employee's contribution to health insurance on the level of the benefit he or she receives than simply on the date of hire, regardless of the level of benefit, as is the case now. These considerations, we conclude, argue for requiring employees on average to shoulder a somewhat higher portion of the cost of health insurance than they do now, and to base those contributions on the type of coverage each employee enjoys. This outcome is best accomplished by assessing each employee a straightforward percentage of the cost of the plan to which he or she subscribes.

Award. Revise Section 22.1 of the CBA as follows:

(1) Add new Paragraph 22.1.1(C) as follows:

Effective January 1, 2016, all employees shall pay fifteen (15) percent of the premium-equivalent of the Excellus Blue Point 2 Value Plan as applicable to their family status.

(2) Add new final paragraph to 22.1.3 as follows:

Notwithstanding the above language, the County reserves the right to develop and implement a high-deductible alternative to the Blue Point 2 Value Plan as a voluntary option available to employees.

(3) Revise 22.1.2 as follows:

Replace "2,000" with "2,500." Also, add the following new language: "At its option, the County may increase the buy-out amount to $3,000."

Health Insurance/Retirees

As with health insurance for active employees, the Panel finds that the County has made a strong case for cost relief. These costs are clearly magnified by the relatively early age at which many deputies retire, leaving the County with the obligation to continue their full (pre-Medicare) health insurance for many years. At the same time, we see merit in the Union's argument that there should be some pathway to fully-paid health insurance for retirees, at least for those deputies who may be retiring in the near and intermediate-term future. To the extent that this pathway takes the form of long service to the Sheriff's Office, it will also serve the County's interest in reducing the length of time that a pre-Medicare retiree receives County-paid health insurance. To this end, we have incorporated the County's proposal to base health-insurance coverage for retirees on a combination of their age and years of service. And in order to ameliorate the effects of the awarded changes on deputies who planned to retire in the very near future, we will provide a short window during which any eligible deputy may retire with fully-paid insurance in retirement.

Award. Revise Article Subsection 22.2.3 of the CBA as follows:

(1) Employees who give notice of retirement on or before February 1, 2016, and retire on or before August 1, 2016, before attaining Medicare eligibility shall be entitled to retiree health-insurance coverage as provided in the parties' 2009-2012 Collective Bargaining Agreement. An employee may

revoke such notice of retirement but will then be subject to the terms of this 2013-2016 Award.

(2) Employees who retire on or after August 1, 2016, before attaining Medicare eligibility shall be entitled to retiree health-insurance coverage equivalent to the Blue Point 2 Value Plan. The County's contribution to this coverage shall be as follows:

(a) for retirees whose age and years of service total 85 or more, coverage shall be fully paid by the County.

(b) for retirees whose age and years of service total 80 to 84, the County shall pay eight-five (85) percent of the cost of coverage.

(c) for retirees whose age and years of service total 75 to 79, the County shall pay eighty (80) percent of the cost of coverage.

(d) for retirees whose age and years of service total 70 to 74, the County shall pay seventy (70) percent of the cost of coverage.

(e) for retirees whose age and years of service total 65 to 69, the County shall pay sixty (60) percent of the cost of coverage.

(f) for retirees whose age and years of service total 60 to 64, the County shall pay fifty (50) percent of the cost of coverage.

(3) A deputy who transfers to the County from another police agency without a break in service will receive up to five (5) years credit for his or her immediate prior service for purposes of retiree health eligibility and benefits.

(4) A deputy who qualifies for and receives a disability retirement under the New York State Retirement System, and has at least ten (10) years of credited service with the County but less than twenty (20) years, will be treated as if he or she has twenty (20) years of service for purposes of retiree health eligibility and benefits.

(5) The spouse of a retiree at the time of retirement will continue to receive health-insurance coverage for 24 months after the death of the retiree.

(6) The "buy out" option provided to active employees shall be extended to pre-Medicare retirees.

(7) When a retiree attains Medicare eligibility, he or she by application may enroll in a CMS-creditable Medicare supplement or advantage plan available through the County.

Award on Remaining Proposals

Any demands and/or terms other than those specifically modified or set forth in this Award are hereby denied.

Award on Remaining Proposals

Any demands and/or terms other than those specifically modified or set forth in this Award are hereby denied.

Duration

This Award, except as otherwise stated, will be effective 12:01 a.m. on January 1, 2013, and remain effective until 12:00 midnight on December 31, 2016.

Implementation

The Panel shall retain jurisdiction of this matter for six months following the latest signature below for the sole purpose of resolving any disputes over the implementation of this Award.

COMMENTS ON DISSENTING OPINION

As noted earlier, Employee Organization Panel Member, Lawrence Andolina, has dissented from this Award, and his dissenting opinion is attached hereto. The Panel majority believes that the picture of the Award, and the process leading up to it, offered in the dissent are in significant respects inaccurate or incomplete. Hence the following additional comments on both process and content.

The Panel's Discussions

Although normal practice is not to air the internal deliberations of arbitration panels, since the dissent has done so at least in part, referring to "inexplicable" developments in the Panel's deliberations, we feel obliged to complete the picture.

After receiving the parties' briefs and before the first scheduled executive session, the Chairperson sent the other panel members an email outlining his general reactions to the parties' arguments and "thoughts" on the form an award might take. The dissent states that the Chairperson's email was sent "to that end" of inducing the parties to agree to authorize an award extending beyond the two-year statutory limit, and that the Union in fact agreed to a four-year award on the basis of the outcomes contained in the email. In fact, however, the only purpose of this internal communication was to set forth a starting point for discussion of the terms of an award. There was no expectation that it would be sent to the parties (although there was no agreement to that effect within the Panel). Whatever may have been the Union's assumptions upon reviewing this internal communication, it cannot be said that its content was either a floor or a ceiling for further discussions among Panel members. More important, it would be wrong to suggest that it was intended as any inducement to secure consent from either party for a four-year award. The Panel members for both parties saw that a two-year award that expired on December 31, 2014, would leave the parties almost two years behind in their efforts to establish current terms and conditions for unit members. Ultimately, both the Union and the County gave the Panel written authorization to issue a four-year award, without any preconditions.

The Panel met in executive session on September 21, 2015. When the session ended, there had been convergence on outcomes with respect to wages and health insurance for active employees; a formula on health insurance for retirees that Mr. Andolina said he would take under consideration; and no substantive discussion yet of several proposals advanced by the County. Two days later, the Chairperson sent an email to the Panel summarizing these results of the meeting, to which Mr. Andolina offered no objection or contradiction. The next day Mr. Andolina and Mr. Spinelli agreed to meet the following week on "what appears to be the one remaining issue" (retiree health insurance), and they asked the Chairperson to be available by telephone when they met.

During this meeting, held on September 29, Messrs. Andolina and Spinelli resolved the retiree health care issue and informed the Panel Chair by telephone. Following the meeting, Mr. Spinelli sent the Chairperson an email, with copy to Mr. Andolina, stating, "Attached are terms Larry and I agreed upon this morning," and noting that both of them would later confirm whether they were authorized to sign on, "which Larry and I are both committed to doing." Subsequently, Mr. Andolina sent an email requesting clarification of the terms on retiree health insurance, and stating that "I can't commit until Monday. We should expect I will sign but need clarification." Several days later, he informed the other Panel members that he could not join in the Award as it stood and would send ideas on how the terms could be made acceptable.

On October 6, the Panel had a telephone conference. In that conversation, in an attempt to address Mr. Andolina's concerns, both Mr. Spinelli and the Chairperson suggested several changes in the terms on retiree health insurance, although not in the principle that the cost to the employee should bear relation to the total cost of the benefit over time. Mr. Spinelli and Mr. Andolina agreed to the new terms and both again expressed their personal willingness to sign as part of a unanimous award and to use their best efforts to obtain consent from their respective parties on the revised formula. On the next day, Mr. Spinelli reported that he would agree to sign the revised award if it were unanimous, but Mr. Andolina wrote to say that he would be filing a dissent "once the award is determined." Thus although the dissent now refers to the award – which actually improved after the first day of the Panel's deliberations – as "incredibly unfair," "unprecedented," and "absurd," among other descriptors, the Panel majority had reason to believe until the very end that the award was likely to be unanimous. It is also relevant to note that none of the "inexplicable" divergences from the Chairperson's initial thoughts came about without Mr. Andolina's knowledge or indeed over his explicit objections.

The Statutory Requirements

Mr. Andolina asserts that the Award is defective because it does not provide a retiree health-care benefit equal or substantially similar to that received in either Erie or Onondaga County. We note, however, that the Panel is required to "consider" the "wages, hours and terms and conditions of employment" of not only "employees performing similar service or requiring similar skills under similar working conditions . . . in comparable communities," but also "other employees generally in public and private employment in comparable communities," which are decidedly less generous on retiree health insurance. Further, the statute directs consideration of "the terms of collective bargaining negotiated between the parties in the past," including the 2009-2012 Agreement. Most important, however, is the requirement that the Panel consider the "ability of the public employer to pay." The dissent appears to disregard the extensive evidence in the record on the County's severe fiscal constraints, evidenced by a tax burden that is one of the highest in the nation and by a very small fund balance that has been judged problematic by more than one outside authority. Over the years the County has balanced its budget using one-time revenue sources (tobacco settlement funds, sale of properties, etc.), a practice that is clearly not sustainable. In short, the Panel majority was persuaded that the long-term burden on County finances placed by its retiree health obligations required relief. While it is entirely reasonable for Mr. Andolina to hold the Panel to the statutory criteria, it is not appropriate to stress one criterion to the exclusion of all others.

Modifications to Retiree Health Benefits

There is no question that the retiree health benefit contained in the Award is less generous than the one in the expired Agreement, but as noted the Panel majority was persuaded that the current benefit is not sustainable. The Award adopts the principle, apparently rejected by the dissent, that employees who choose to retire earlier will receive a smaller contribution from the County, but will also receive the benefit for a longer period of time (up to 25 years prior to Medicare eligibility), and that this is a reasonable tradeoff. Under the Award, a deputy still receives this fully-paid coverage if he or she satisfies the "Rule of 85" combining age plus years of service, plus the post-death coverage for the spouse for 24 months. If the deputy decides to retire earlier, the benefit is reduced – but is in effect for a longer period of time. As a result, the deputy who retires early still receives more in dollars paid by the County for health insurance.

The dissent objects to the impact on deputies who retire after 20 years on half-pay and an obligation to pay a high percentage of the health insurance cost. It is not clear, however, that such deputies in fact "retire" as we typically use the term. We believe that most deputies do not retire from employment at age 45 but rather take other jobs while receiving their pension for police work. It is therefore unclear that these deputies will not have the resources to pay for a portion of their retiree health insurance. Moreover, if the other job includes employer-paid health insurance, then under a new term of this Award the deputy would not only avoid a cost for County-provided insurance but would be entitled to a "buy-out" payment from the County. Deputies in Onondaga County, regardless of age and years of service, pay 17.5% percent for retiree health, and deputies in Erie County pay 15 percent. Neither have the opportunity for fully paid retiree health insurance, as will all

Monroe deputies who meet the Rule of 85. Further, Monroe County deputies who meet a Rule of 80 will be entitled to 85% of their retiree health premiums paid, comparable to Erie and better than Onondaga. Finally, Mr. Andolina's suggestion that a deputy could work for 20 years and retire with no retiree health-care benefit is incorrect. One cannot become a Sheriff's deputy until age 20, so that after 20 years (age 40) he or she would have enough age and years of service (60) to receive a 50 percent retiree health insurance benefit for 25 years, estimated to be worth more than $250,000.

Mr. Andolina also suggests that deputies will be unable to take advantage of their 20-year retirement plan because they will not receive fully-paid health insurance for life. We do not see the logic of this argument. If the deputy wishes to retire from police work, he can do so and receive a substantial benefit. If he wants to work longer, he can get an even larger benefit. That a deputy will often choose to work past 20 years is not speculative. Deputies in Monroe County work an average of 25 years, even though they can retire after 20. But ultimately the issue here is not only what the deputy needs to retire early, but also the extent to which the County's taxpayers should be required to underwrite that decision. Asking the deputy who wants to retire after 20 years in his or her early 40s to pay a greater portion of the cost of a costly 20-25 year benefit does not seem to us to warrant the outrage expressed in the dissent.

Mr. Andolina also objects that allowing only 5 years of retiree health-insurance credit to those deputies transferring from another police department is unfair, suggesting that a transferee is "making a life altering decision operating under an existing framework." Yet Mr. Andolina agreed during Panel discussions that a 5-year credit was sufficient. Moreover, it is not clear why the County should provide a costly benefit to a retiree largely on the basis of work for another employer. Mr. Andolina further makes various allegations of unfairness based on the retiree health-insurance treatment of those who retire with a disability pension. Once again, most significantly, the 10-year requirement was something he agreed to, without objection or a request for a longer period. Moreover, any benefit, especially one as expensive as retiree health insurance, should bear a reasonable relationship to the service one gives to his employer.

More broadly, Mr. Andolina's objections regarding retiree health insurance seem to be based on the notion that a deputy, once hired, should expect that the benefit existing at that time will remain in effect forever. We do not believe that this is how collective bargaining or interest arbitration works. Bargaining does not operate like a ratchet; there is movement over time in both directions. In this regard, it may also be pointed out that the Award actually provides an *improvement* in retiree health benefits for some deputies hired on and after January 1, 2006. Under the expired contract, these deputies would pay the same contribution in retirement as that required of active deputies (now 15 percent). Under the Award, these deputies will be eligible for fully-paid retiree health insurance if they meet the Rule of 85.

Health Insurance Contributions for Active Employees

Curiously, the dissent acknowledges that the Award on this issue "is not inherently unreasonable" and "may be an appropriate award." It then goes on to list three reasons why the Award is not reasonable. It notes that members with family coverage will pay significantly more for their insurance, neglecting to mention *that this results from a change the Union sought*. It asserts that the County's health costs "have declined in recent years," which is not what we believe the record shows, and is certainly not a reasonable compromise its positions. The County sought even more cost savings: a change to a high-deductible health insurance plan for all deputies; a mandatory program for healthy choices, with penalties if not taken; more modest wage increases on a prospective basis only and no bonus payments; and more aggressive modifications to retiree health payments. The Panel rejected some of these proposal, and the County ultimately compromised on others of them, expressing its hope for a unanimous award. Mr. Andolina from the outset showed a willingness to compromise from the Union's original arbitration demands and twice even appeared to agree to terms for a unanimous Award, but he was ultimately moved to dissent. However one might view the final result of the Award, the Panel majority believes that it cannot fairly be characterized as a draconian reduction for unit members. To the contrary, a $3000 bonus; 6 percent (plus steps) in salary increases (8 percent for those with 25 years of service); a 15 percent health-insurance contribution for active employees (up modestly from an average of 11 percent under the expired contract); and a still generous retiree health benefit which will pay from 50 percent to 100 percent of premiums for life (including 100 percent for some who would never obtain fully-paid insurance under the expired contract), does not seem to us an unfair outcome, particularly given the recession since the last contract was settled (in which the deputies received 10 percent pay increases) and the difficult fiscal challenges facing the County.

Date: 11/4/15 Howard G Foster

Howard G. Foster
Public Panel Member and Chair

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, Howard G. Foster, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

November 4, 2015 Howard G Foster

Howard G. Foster
Public Panel Member and Chair

Laurie Foster
LAURIE FOSTER
NOTARY PUBLIC, State of New York
Qualified in Erie County
My Commission Expires Dec. 31, 2018

X I concur with the above Award.

___ I do not concur with the above Award.

Date: 11/6/2015 Peter J Spinelli

Peter J. Spinelli, Esq.
Public Employer Panel Member

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

I, Peter J. Spinelli, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

11/6/2015 Peter J Spinelli

Peter J. Spinelli, Esq.
Public Employer Panel Member

Karen M Trost

KAREN M. TROST
Notary Public, State of New York
Qualified in Monroe County
No. 01TR4676206
My Commission Expires August 31, 2018

___ I concur with the above Award.

✓ I do not concur with the above Award.

Date: 11/10/15

Lawrence J. Andolina, Esq.
Public Employee Organization Panel Member

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

I, Lawrence J. Andolina, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is an Interest Arbitration Award.

11/10/15

Lawrence J. Andolina, Esq.
Employee Organization Panel Member

Karen M. Trost

KAREN M. TROST
Notary Public, State of New York
Qualified in Monroe County
No. 01TR4676206
My Commission Expires August 31, 2018

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between

COUNTY OF MONROE and
MONROE COUNTY SHERIFF

and

MONROE COUNTY SHERIFF'S POLICE
BENEVOLENT ASSOCIATION, INC.

PERB Case No. IA2014-012

Dissenting Opinion

Lawrence J. Andolina

I dissent from the panel's award because I feel it is incredibly unfair to the men and women of the Monroe County Sheriff's Police Benevolent Association, Inc. ("MCSPBA"), represents a previously unheard of stripping of benefits and fails to abide by the statutory criteria mandating consideration of the terms and conditions of employment for employees performing similar work in comparable communities.

Retiree Healthcare

By far the most significant aspect of the panel's award is the portion which dramatically cuts the retiree healthcare benefit for members of the MCSPBA. Although I believe the panel's award also unfairly and unreasonably resolves virtually every issue in favor of the employer, it is on the issue of retiree healthcare where the panel most drastically departs from the realm of reasonableness and any pretense of considering the benefits provided in comparable communities.

The Taylor Law explicitly requires then panel to consider:

> 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 service or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.

Civ. Serv. Law § 209.4(g).

The panel finds that the Counties of Erie and Onondaga represent the most applicable comparables and rejects consideration of small, rural Counties. This is undoubtedly correct. The panel then notes both compelling arguments to also utilize the City of Rochester and Towns of Greece and Irondequoit, and at the same time reasons weighing against such a direct comparison – primarily the different responsibilities and finances of towns as compared to counties. The panel resolves these competing rationale by holding that the City of Rochester, Greece and Irondequoit may "bear some relevance", primary weight will be given to Erie and Onondaga Counties.

On the whole, I do not significantly disagree with this analysis or conclusion. While I would give somewhat more weight to the City, Greece and Irondequoit, I do not necessarily disagree that primary consideration should be given to Erie and Onondaga Counties. My problem with the panel's award is that, after a reasonable analysis and consideration of which communities should serve as statutory comparables, it then appears to discard them from any further consideration, particularly with respect to retiree healthcare.

Under the expired CBA, and since 2006, the retiree healthcare benefit promised to members of the MCSPBA depended on date of hire. For employees hired prior to 2006, they have, for their entire careers, been promised fully paid healthcare in retirement. For those employees hired after 2006, they would receive coverage in retirement for the same contribution paid by active employees. The panel's award dictates that current employees will contribute 15 percent of the premium equivalent.

The panel's unprecedented award destroys this system and puts in its place a radical system which, to my knowledge – and no contrary information was put forth at the hearing - has never previously been employed in any public employment setting in New York, and certainly not for law enforcement employees. This new system imposes massive and draconian cuts to employees' retiree healthcare benefits. It also unjustifiably changes the rules of the game for members who years ago made the decision to transfer into the Monroe County Sheriff's Office from another law enforcement agency and will impose significant hardship on a member who suffers a career-ending injury in the line of duty.

Under the panel's award, a member who has worked for the MCSO for 19 years, the entire time having been promised fully paid healthcare in retirement, could now see that benefit slashed to 50 percent, or potentially even eliminated entirely if he or she was initially hired before turning 20 years old. Such an employee, both statutorily and contractually permitted to retire after 20 years of service, would have made life and financial planning decisions over the past decade based on the promise of fully paid retiree healthcare. Now, if they can qualify for any benefit, they will be required to pay, at current rates, more than $7,500 a year until reaching Medicare eligibility, and at a time when they will be receiving a pension of roughly half their salary while employed. At a 15 percent contribution rate this employee would have paid roughly $2,250 per year while employed. At a salary of $70,000 this would equate to 3.2 percent of gross salary going to healthcare. While a pension of 50 percent, and a requirement to now pay 50 percent of healthcare costs, as a retiree this member would be paying 25 percent of gross income to healthcare. This is simply unworkable and the practical result is to eliminate the potential for a 20 year retirement.

The panel's award, through the mechanism of unreasonable healthcare contributions, has stripped members of the 20 year retirement to which they are entitled by statute and under the CBA. This is not only unfair and unreasonable, but in my view violates the public policy behind the 20 year retirement for law enforcement officers. That statue recognizes the physical and mental rigors unique to law enforcement, as well as the physical danger officers face on a daily basis and the psychological toll that can come with routinely being exposed to gruesome crime/accident scenes and in general confronting the worst society has to offer. The statute recognizes that it is unreasonable and unfair to expect law enforcement personnel to work for 25 or 30 years, which might be reasonable for someone working in an office or in a factory. The panel's award, which requires members to work 25 to 30 years to obtain a meaningful retiree healthcare benefit, disregards and contradicts this understanding and in practice negates the statutory benefit. As evidenced by information submitted by the MCSPBA regarding the age and years of service of current members, there is, out of a bargaining unit of approximately 250 members, it appears there is only a single member who could meet the combined age and years of service of 80 requirement by the panel to obtain full healthcare in retirement.

Those members who transferred to the MCSO from another law enforcement agency, who previously had been promised retiree healthcare as long as they worked 10 years with the County, now will be so short on years of service that most will be stripped of any retiree healthcare benefit. These members made a life altering decision operating under an established framework for retiree healthcare. Now, after that irrevocable decision has been made, the panel changes the rules of the game on them and takes away retiree healthcare.

It also works a ridiculous unfairness on members disabled as the result of an injury sustained in the line of duty. Presumably in an effort to address this harm, the panel's award provides that such an employee, if they have 10 years of service with the County, will be treated as if they have 20 years of service. The problem with this is, first, that anyone disabled prior to reaching 10 years of service with the County is left with no healthcare benefit at all. Second, because the schedule set by the panel is so absurd, even if credited with 20 years of service, any Deputy who becomes disabled prior to age 40 will still receive no healthcare in retirement. And even for those Deputies who become disabled after age 40, the requirement that they contribute 40-50 percent of the healthcare premium, given that they will be on only a disability pension, will in most cases be impossible for the disabled Deputy to meet. So a 15 year veteran of the department who becomes disabled at age 39 as the result of injuries sustained in the line of duty will be left without healthcare. Such a result is in my mind unconscionable.

It also unfairly diminishes the risk that Deputies take on a daily basis and says to them that the County values their sacrifice so little that it will not even provide healthcare for a member and his/her family when the member becomes permanently disabled as a result of the dangers inherent in law enforcement work. When considering this particular aspect of the panel's award it is difficult to comprehend the reasoning behind its decision and to adequately describe the anger and dismay that every member of the MCSPBA will justifiably feel upon learning that their service and willingness to place themselves in harm's way is meaningless in the eyes of the County and the majority of this panel.

It is also baffling how the panel identifies appropriate comparables and then entirely ignores those comparables in creating an unprecedented retiree healthcare benefit. In both Erie and Onondaga, which the panel identified as the primarily comparables, retirees contribute 15 percent toward the cost of healthcare. In the Town of Irondequoit members receive fully paid retiree healthcare, as do current employees in the Town of Greece, where only new hires will contribute to their retiree healthcare. In the City of Rochester, retirees with 20 years of service must pay 8 percent, with 25 years of service 3 percent and with 30 years of service it becomes fully paid by the City. Thus, the most that retirees in any comparable contribute is 15 percent. Yet the panel inexplicably finds it appropriate that members of the MCSPBA should pay up to 50 percent of their retiree healthcare, and in some of the instances discussed above lose retiree healthcare entirely.

No justification has been given for treating members of the MCSPBA so much more harshly than any comparable group of law enforcement officers.

Healthcare – Active Employees

Under the panel's award all members will contribute 15 percent of the cost of healthcare. Fifteen percent is in line with the contributions paid by employees in the majority of comparables, is not inherently unreasonable and in isolation I do not significantly disagree that it may be an appropriate award. I mention it briefly for three reasons. First, for the approximately 50 percent of the bargaining unit which receives family coverage, this represents an increase of 40-90 percent depending on an employee's date of hire. Second, with the County's recent move to self-funded for health insurance, healthcare costs for this bargaining unit have stabilized and even declined in recent years. There is, therefore, no clear justification for requiring additional contributions from unit members when the County's costs are not increasing. Third, even though most members will see a significant increase in their required contribution, this could have been a component of an overall award which was fair and balanced, siding with the County on some issues and the Union on others. In this case, however, virtually every significant issue was resolved in the County's favor. In that context, it appears significantly less fair.

Wages

The panel awarded wage increases of 1.5 percent per year for 2013, 2014, 2015 and 2016. I relation to the primary comparables of Erie and Onondaga Counties, these raises bring Monroe County Deputies at top pay close to the salary levels of these comparables, and thus at first glance may appear reasonable. Such a view, however, fails to take into account several important factors which should have resulted in more significant increases.

Although it roughly equates deputies in the three counties, it leaves Sergeants and Investigators significantly behind. It also seemingly ignores the issue of Monroe County Deputies not only starting at a significantly lowers salary level, but also taking significantly longer to reach the top pay rate. In fact, this deficiency has been exacerbated by the panel's decision to stretch the step scheduled even further, delaying top pay by an additional year. So although top pay for Deputies may be fairly similar, Monroe County Deputies will have earned tens of thousands of dollars less than their upstate counterparts by the time they get to top pay.

The panel's award on salary, in terms of comparison to Erie and Onondaga Counties, also ignores the fact that it crushed this bargaining unit on retiree healthcare, making the total level of compensation far less. Once it decided to strip members of the retiree healthcare benefit which they had been promised, any sense of fairness would have required, at a minimum, softening the blow with some additional compensation. Instead, the panel award increases of 1.5 percent each year, which based on a review of interest arbitration awards published on PERB's website, is at the absolute lowest end of the increases recently awarded to other law enforcement bargaining units.

The panel's award also entirely ignores the comparables within Monroe County. While the panel noted that the City and Towns were not equally comparable, due to the differences in finances between Counties and other municipalities, that does not mean that these other law enforcement agencies within Monroe County can or should be ignored. The panel correctly noted that these officers perform the same work as unit members and, as unit members must reside within Monroe County, they also share similar costs of living and constitute a common labor pool. It is one thing to suggest that financial constraints prevent Deputies from being paid equivalent to Town and City police officers, but it is another thing entirely to completely ignore those comparables and leave Deputies performing the same work in the same area more than ten thousand dollars behind in terms of pay.

Finally, the panel's decision not to make the salary increase retroactive is essentially unprecedented. I have been representing unions of law enforcement officers and firefighters, both of whom have interest arbitration available, for 40 years. I have been personally involved in many interest arbitration proceedings and have reviewed awards issued in many, many more. The only interest arbitration award of which I am aware which did not provide for retroactivity of wage increases was the 2006 arbitration award involving these parties. That award, however, was a unanimous award, which indicates, as confirmed by discussions with the parties at the end of the hearing in this matter, that it was a negotiated agreement agreed to by both sides.

The failure to make a salary increase retroactive is particularly unreasonable for a unit of Deputy Sheriffs, who by statute are not able to petition for interest arbitration until the prior CBA has been expired for one year. This means that, in practice, it will be 2-3 years from expiration of the old CBA before an interest arbitration award will be issued. If retroactivity is not provided, the employer has a tremendous incentive not to reach a voluntary agreement, as it will save 2-3 years' worth of salary increases every time around. Recognizing this, every other interest award with which I am familiar has provided for salary increases to be retroactive.

It does appear that the panel recognized this unfairness and attempted to mitigate its effect by providing for a lump sum payment designed to approximate the retroactive payments which would normally apply. In terms of the dollar amount of the payments, they approximate the amount which would be owed to a deputy, but not for a Sergeant or Investigator. Because the lump sum amounts were calculated by looking at base pay, they ignore overtime worked, and thus are less than would be owed based upon a straight retroactive award. Payment of the lump sum awards is also spread out under the panel's award, as yet another favor done for the County.

In a typical award it would likely be possible to overlook the above defects. The lump sum award is at least in the ballpark of what members would be owed for retroactive increases and are presumably easier for the employer to administer. Spreading the payments out over six months could also be seen as a reasonable accommodation to assist the County. That, however, would require an award which was somewhat balanced and favored the union on some issues.

The biggest problem with the lump sum award issued by the panel is tied to the draconian changes to retiree healthcare. The panel's award will undoubtedly trigger a mass exodus from the Sheriff's Office. There are a significant number of unit members who have obtained 20 years of service, as credited by the retirement system, and are thus eligible to retire prior to the August 1, 2016 deadline to retain retiree healthcare benefits. Undoubtedly, the overwhelming majority of these members will retire in order to save the retiree healthcare benefit they had been promised and had worked their entire career to obtain. In calculating their final average salary for pension purposes, the retirement system will utilize wages from the past three years. The failure to make the salary increases retroactive means that they will not be factored in to these calculations, which will produce a lower pension. The panel finds that wages of 1.5 percent higher in each of the last three years would have been "fair", but for these employees, and any employee who retirees in the next three years, when portions of these years would be included in the final average salary calculations, those increased levels will never be realized. So not only does the panel's award force these members to retiree earlier than they may have wanted to, in order to keep their healthcare benefit, it deals them another blow by forcing a lower final average salary and a lower pension payment every month for the rest of the member's life.

<u>4-year Award</u>

I must also comment on the circumstances which led to the parties providing authority for the panel to issue an award covering four years. At the conclusion of the hearing the panel and counsel for the parties discussed the possibility of giving the panel such authority, given that award limited to the statutory two year period would not even bring the parties up to the present day. Both sides were open to the possibility, but indicated that it would be dependent on the terms of the award. Obviously, it would not make sense for either party to allow an extended award which carried significantly unfavorable terms.

To that end, the Chairman forwarded by email his "thoughts" on the various issues. The two most important issues were obviously wages and retiree healthcare. On wages, the Chairman suggested the following increases for a potential 4 year award:

2013 1.0%

2014 2.0%

2015	2.0%
2016	2.5%

This totaled a 7.5 percent increase over 4 years. The Chairman also indicated that, if authorization was not given for a 4 year award, his inclination was to make the 2015 increase effective December 31, 2014, essentially making a 3 year award, at least in terms of salary increases.

For retiree healthcare, he suggested the following scale based upon combined age and years of service, with the percentage being the percent of the premium equivalent to be paid by the County:

80	100%
75	90%
70	80%
65	70%
60	60%

Based upon this information, the union provided authorization for the 4 year award. While the cuts to retiree healthcare being proposed were certainly severe, and not viewed favorably by the union, those changes could be imposed regardless of the length of the contract. Thus, the real difference was the addition of a 2.5 percent raise in 2016.

Admittedly, these figures were understood not to be set in stone and it was certainly understood that they might be modified through a give and take in an effort to reach a unanimous award, which the Chairman indicated was his primary objective. That understanding, however, necessarily contemplated that such modifications would be in the nature of a give-and-take, not entirely one sided.

As soon as authorization was given for a 4 year award, the award on these two critical issues shifted significantly and entirely in favor of the County. First, 1.5 percent disappeared from the wage increases. In discussions prior to finalization of this award the Chairman indicated that his initial proposed figures had also contemplated retroactive application of healthcare contribution increases and that the reduction in the raises was to offset the fact that healthcare changes were ultimately not made retroactive. While at first glance there would be some logic to tying the retroactivity of the healthcare changes and salary increases, the problem with the panel's explanation and ultimate award is that the math shows it not to be a net wash, which is clearly the implication of the explanation, but rather another significant change in favor of the County.

First, 10 percent of the bargaining unit does not receive health insurance through the County. Not only would this portion of the bargaining unit not have seen any increased contribution from retroactive increases, but if the entire healthcare portion had been made retroactive they amount they received for the buyout would actually have increased. Second, approximately 25 percent of the unit receives single coverage, as opposed to family. Under the healthcare changes implemented these employees would actually pay less for healthcare. As most of these employees are in the post-2006 hire group, their contribution actually goes down by approximately $800 per year. So not only does the panel's award not retroactively give this $2,400 repayment to a quarter of the bargaining unit, it then somehow uses the fact that it did not give that additional money to the employees as justification for taking away an additional 1.5 percent cumulative salary increase.

The panel's award, for all employees, also results in a salary which, going forward, is roughly $1,100 per year less than it would have been. This decrease will continue for the remainder of the member's career, and will even be compounded by the fact that all future increases will be based on a lesser salary. Thus, even for those employees with family coverage, where the increased healthcare contributions would reduce the amount they would have been owed for retroactive salary increases, they would have been better off over the long run having the higher salary.

The significant, and one sided, changes to retiree healthcare once the union gave authority for a 4 year award are also striking. Initially the Chairman had been proposing a system where a combined age and years of service would get an employee fully paid healthcare in retirement. Not only did that number increase to 85, but the potential for fully paid healthcare for post-2006 hires was eliminated entirely. In the final award a total of 80 for combined age and years of service will only get a retiree 85 percent of their healthcare paid by the County. And at each successive step down the scale established by the panel, the resulting contribution from the County is 10-15 percent lower than in the initial figures put forth by the Chairman.

Equally important is the window which was to be allowed for members nearing the end of their career to be able to retiree under the previously promised fully paid healthcare benefit. As the Chairman stated in his initial thoughts: "At the same time, I wouldn't want to make any changes affecting people on the verge of retirement, so whatever we do I would exempt any retiring before, say 2019." In the award actually issued, this window is inexplicably shortened to August 1, 2016. Thus, the award does exactly what the Chairman previously indicated he would not want to do, make changes for members on the verge of retirement. Under the panel's award, Deputies with 19 years of service, who become eligible to retire in the latter portion of 2016 will, less than a year before retirement, have their promised retiree healthcare benefits drastically slashed. If these members were hired in their early twenties, as many are, they will see their retiree healthcare benefits cut in half. This drastic shift on such a critical issue has never been explained or justified. The Chairman initially seemed to recognize a valid concern expressed by the union, agreed that it would be unfair to cut the benefit for a member on the verge or retirement, stating that he would not want to do so, and then inexplicably the window to be grandfathered under the previously promised benefit went from 4 years down to 8 months.

My complaint is not simply that the details of the final award differ from what was initially put forth by the Chairman as the basis upon which the parties were to make their decision on whether or not to authorize a 4 year award. The Chairman indicated that these items were not set in stone and the nature of this process is that, in an effort to get both the employer and the union representatives to the panel to sign on to an award there is expected to be some give and take. My issue, and the reason which the union quite understandably feels it was misled into providing authorization for a 4 year award, is that every important issue which changed, changed in favor of the County, and in some cases significantly and without explanation. The wages decreased, they became non-retroactive, that decrease was then also used to justify not making healthcare changes retroactive which would have benefited a sizeable portion of the bargaining unit, the retiree healthcare cuts went from bad to worse and the window for members to retiree under the old agreement was inexplicably cut.

For all of the above reasons, I dissent from the panel's award in this matter.

Dated: October 21, 2015

Lawrence J. Andolina
Public Employee Organization Panel Member