

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration

between

County of Chenango and Chenango County Sheriff

and

Chenango County Law Enforcement Association

PERB Case No: IA2014-013

*
*
*
* DISCUSSION
*
* AND
*
* AWARD
*
*
*

BEFORE:

Ronald E. Kowalski, Ph.D.
Arbitrator

John F. Corcoran, Esq.
Public Employer Panel Member

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

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

RECEIVED

MAR 18 2016

CONCILIATION

APPEARANCES

For the Public Employer

Robert J. Thorpe, Esq.

For the Public Employee Organization

John K. Grant, Esq.

INTRODUCTION

On December 8, 2014 the New York State Public Employment Relations Board (hereinafter “PERB”) having determined that a dispute continued to exist in negotiations between Chenango County and Chenango County Sheriff Law Enforcement Association (hereinafter “Union”), and acting under the authority vested in it under Section 209.4 of the Civil Service Law, designated the above-listed Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute.

On April 16, 2015 a hearing was held in Norwich, New York. Representatives appeared before the Panel, which received exhibits, contracts, demonstrative evidence and testimony. After submission of all supporting evidence, the parties agreed the hearing was closed and briefs were submitted to the Panel in July 2015. The Panel met in Executive Session on September 2, 2015 and held subsequent discussions on the outstanding issues resulting in this Award.

THE STATUTORY STRUCTURE

Subdivision 4 of Section 209 of the Civil Service Law was enacted to provide a means for resolving negotiation impasses between public employers in New York State and police and firefighters, as defined in the statute.

Subdivision 4 provides that, when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party

may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of Section 209 requires that a person requesting referral to an interest arbitration Panel file a petition for compulsory interest arbitration which must contain:

- (3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon;
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon.

The response to the petition must also contain respondent's position specifying the terms and conditions of employment that were resolved by agreement and, as to those that were not agreed upon, respondent shall set forth its position.

The Public Arbitration Panel shall then hold hearing on all matters related to the dispute and all matters presented to the Panel shall be decided by a majority vote of the members of the Panel.

The Panel is directed to make a just and reasonable determination of the matters in dispute. The statute spells out the following criteria, which must be taken into consideration, when relevant:

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.

The Panel's determination is final and binding upon the parties for the period prescribed by the Panel.

BACKGROUND FACTS

A Collective Bargaining Agreement (“CBA”) existed between the parties from January 1, 2005 through December 31, 2009. The parties are also subject to a prior interest arbitration award covering the period of January 1, 2010 through December 31, 2011. Representatives of the parties met in an attempt to reach a negotiated agreement with respect to the terms and conditions of employment commencing in September of 2013. The parties did not reach an agreement and the Union filed a Declaration of Impasse. The New York State Public Employment Relations Board appointed a mediator and a mediation session was conducted on August 20, 2014. The parties were unable to reach an agreement and, subsequently, the Union filed for compulsory interest arbitration on or about October 29, 2014. The Union and the County both subsequently filed Improper Practice Charges. The Union and the County settled the Union’s charge. The County’s charge was decided by a PERB decision issued on July 7, 2015 part of which may be under appeal. The bargaining unit is comprised of twenty-two members holding the title of Deputy Sheriff (18), Sergeant (3), and Lieutenant (1).

Pursuant to the provisions of Civil Service Law Section 209., the New York State Public Employment Relations Board (“PERB”) designated the undersigned on December 8, 2014 as the Public Arbitration Panel for purposes

of making a just and reasonable determination on the matters in dispute between the parties.

ISSUES

In accordance with the provisions of Section 209.4 of the New York Civil Service Law the parties hereto submitted the following issues to the undersigned arbitration panel:

- Wages
- Longevity
- Health Insurance
- Shift Differential
- Reimbursement for loss of personal property
- Overtime Compensation
- Dues Deduction
- Detective or Call Pay

The Panel has carefully weighed the evidence and testimony submitted to it during the hearing and in post-hearing submissions in its determinations. The Panel has attempted to take a balanced approach to the demands, one that recognizes the fiscal considerations of the County and the legitimate concerns of the members of the Union. The Panel has applied the criteria set forth in the law in assessing the merits of the parties' demands.

TERM OF AWARD

The maximum term of the Award cannot exceed the statutory two (2) year award restriction. The Panel Award shall be for the two-year period from January 1, 2012 through December 21, 2013.

I concur (~~do not concur~~) with the above Award.

Date: 2/26/16

John F. Corcoran
John F. Corcoran, Esq.
Public Employer Panel Member

I concur (do not concur) with the above Award.

Date: 3/1/2016

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

DISCUSSION AND DETERMINATION OF THE ISSUES

Wages/Longevity Pay

The Union has proposed wage increases of 3.5% for each year of the award. The Union argues that salary increases of this size are reasonable given comparisons with similar employees in comparable counties and municipalities in the region and New York State. A comparison with fifteen comparable counties and municipalities in the region including adjoining counties, the cities of Norwich, Cortland, Oneida and villages in these counties clearly demonstrates that on average officers in the bargaining unit are paid lower salaries than those in these comparable communities and the proposed increase of 3.5% would provide necessary adjustments to improve their competitive position. The County's proposed increase of one percent for each year would create an even greater disparity with the comparable units in the region as

members of this unit lag significantly behind the comparable counties and municipalities above as noted in the Union's exhibits.

The testimony of Kevin Decker, an expert in municipal finances as well as his analysis of the County's financial statements demonstrates the County clearly has the ability to pay the increases sought by the Union. The County's budget and tax base clearly can support the increase sought by the Union and the County has no debt and significant reserves. The Union also seeks an increase in the current longevity payments. The Union proposes to increase longevity to \$650 at 5 years and an additional \$250 at each of the current steps at 10 years, 15 years and 20 years as well as adding a new step at 26 years and to make the longevity payments cumulative. The Union contends such increases are necessary to bring longevity payments into a competitive position with respect to comparable units in the region. Current payments are lower and there are fewer steps than those in neighboring agencies.

The County argues that there was a significant enhancement of longevity in prior negotiations in the period from 2007 and 2009 and after. The current rates are competitive in relation to other comparable jurisdictions. The County has also rewarded long service with a negotiated special twenty year retirement plan at significant cost by way of payments to the New York State Retirement System.

The County further contends that its proposed wage increase of 1% is reasonable given that current salaries paid are competitive with surrounding county departments as noted in its exhibits. The starting salary exceeds a number of these comparative agencies. In addition, the approximate cost of annual step movement for Union members as of July of 2012 was roughly .7% on top of base salaries. The County also believes any wage increases granted by the Panel and any retroactivity should be limited to employees who still are active on the County payroll or have retired as of the date of the Award.

Discussion

The Panel has carefully reviewed the extensive data submitted on both salary and longevity and has discussed the matters at some length as well as the issue of comparability. With respect to the latter clearly the first basis of comparison must be similar deputy units in the same geographic area as they are the most comparable. It also must include within the County any major municipal units, in this case that being the City of Norwich which would draw from a similar pool of job applicants. The surrounding counties are Cortland, Delaware, Madison, Otsego and Broome, Broome having a much larger population, but they all perform similar work. A secondary consideration to be given less weight is a comparison with other municipalities in the region. While among the contiguous comparable counties Chenango does reasonably well at

starting or minimum rates including the City of Norwich, it does start to lag a number of these after five years. Given this fact a greater than average increase in wages as well as some additional monies for longevity are justified to begin to adjust for this disparity. The County clearly has the ability to make such adjustments as it has good financial reserves. The Panel has taken into consideration the fact that the County is “fiscally eligible” based on its property tax rate and as such has utilized the weighting criteria set out in Civil Service Law 209.6 in its deliberations on compensation. The process of salary adjustments should be in steps over time as not to place any burden on its taxpayers.

Increases in the County as well as among other comparable sheriff’s units have been in the 2% range in the period in question. A salary increase of 2.5% in the form of a 1.25% January 1, 2012 and 1.25% July 1, 2012 as well as 1.25% January 1, 2013 and 1.25% July 1, 2013 is therefore appropriate to begin an adjustment. A \$50 increase in longevity at all steps of the schedule in both 2012 and 2013 would also be warranted.

Award

Base Salaries – Appendix “A”

The base hourly wage rates shall be increased by 1.25% effective January 1, 2012. The resulting base hourly wage rates shall be increased by an additional 1.25% effective July 1, 2012. The resulting base hourly wage rates shall be increased by an additional 1.25% effective January 1, 2013. The resulting base hourly wage rates shall be increased by an additional 1.25% effective July 1, 2013.

Longevity – The current Article 30 longevity schedule shall be adjusted as follows effective January 1, 2012:

<u>Years of Continuous Service</u>	<u>Current Amount Paid</u>	<u>Increase To</u>	
5 th through 9 th Anniversary	\$600.00	\$650.00	(+\$50)
10 th through 14 th Anniversary	\$800.00	\$850.00	(+\$50)
15 th through 19 th Anniversary	\$1,000.00	\$1,050.00	(+\$50)
20 th Anniversary and above	\$1,250.00	\$1,300.00	(+\$50)

The longevity schedule shall be further adjusted as follows effective January 1, 2013:

<u>Years of Continuous Service</u>	<u>Increase To</u>	
5 th through 9 th Anniversary	\$700.00	(+\$50)
10 th through 14 th Anniversary	\$900.00	(+\$50)
15 th through 19 th Anniversary	\$1,100.00	(+\$50)
20 th Anniversary and above	\$1,350.00	(+\$50)

Retroactivity – Each member of the bargaining unit who is still on the active payroll of the County as of the date of the full execution of the interest arbitration award, and any retiree who worked during the period covered by the award, shall receive a retroactive payment computed upon the difference between the new Appendix “A” base wage rates and the Appendix “A” base wages rates existing prior to the issuance of the interest arbitration award for each hour actually paid, including paid time off and overtime, between January 1, 2012 and the time of the implementation of the interest arbitration award. Retroactivity shall also apply to shift differential and longevity. The terms of the Award shall be implemented as soon as practical. The Panel retains jurisdiction until payment of retroactivity and implementation of this Award is completed as set forth herein. Any disputes concerning same shall be returned to the Panel for its determination.

I concur (~~do not concur~~) with the above Award.

Date: 2/26/16

John F. Corcoran
 John F. Corcoran, Esq.
 Public Employer Panel Member

I (concur) do not concur with the above Award.

Date: 3/1/2016

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

Shift Differential

Discussion

The parties have exchanged positions on the matter of increases in the current shift differential in Article 24 of the Collective Bargaining Agreement. The Union seeks a 50 cent per hour increase in each year 2012 and 2013. The County argues the current shift differential is competitive with comparable bargaining units and exceeds that of a majority in the region. After a careful review of the data submitted by the parties on this issue there appears to be justification for a small adjustment to continue to maintain the current competitive positions of the bargaining unit with respect to this issue. An increase from \$1.05/hour to \$1.10/hour effective January 1, 2012 and a subsequent increase from \$1.10/hour to \$1.15/hour effective January 1, 2013 is warranted.

Award

Shift Differential – The current Article 24 shift differential amount of \$1.05/hour shall be increased to \$1.10/hour effective January 1, 2012. Said amount shall be further increased to \$1.15/hour effective January 1, 2013.

I concur (~~do not concur~~) with the above Award.

Date: 2/26/16

John F. Corcoran
John F. Corcoran, Esq.
Public Employer Panel Member

I (concur) do not concur with the above Award.

Date: 3/1/2016

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

State of New York)
)
County of Onondaga)

SS:

I, John F. Corcoran, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

2/26/16

John F. Corcoran

Date

John F. Corcoran, Esq.
Public Employer Panel Member

State of New York)
)
County of Orange)

SS:

I, John M. Crotty, Esq., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this Instrument which is an Interest Arbitration Award.

3/1/2016

John M. Crotty

Date

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

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

In the Matter of the Compulsory Interest Arbitration between

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

Public Employee Organization/Petitioner,

-and-

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

Public Employer/Respondent.

PERB Case Nos.: IA2014-013; M2014-080

**CONCURRING
OPINION**

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

MAR 18 2016

CONCILIATION

History repeats itself all too often. As was the case in the prior interest arbitration between these parties, I am compelled to write separately as the Employer Panel Member to respond to the Employee Organization Panel Member's harsh and unfounded dissent to Panel Chair Kowalski's Opinion and Award.

First, I believe that the personal criticism of the Panel Chair's approach to his crafting of the Opinion and Award is unwarranted and unseemly. All too often in recent years, the neutral Public Member of an interest arbitration panel has been made the subject of strident criticism when the award does not meet with the favor of the dissenting party, herein the petitioning Union. It is a wonder that the neutrals continue to serve under such circumstances. Surely, becoming the object of public ridicule is not a deserved reward for agreeing to serve the parties to achieve a fair and reasonable resolution of their bargaining impasse.

In short, the Opinion and Award has ample evidentiary support grounded in the voluminous hearing record, is not arbitrary or capricious, and is the end product of fair and reasonable Panel deliberations taking into account all of the statutory factors set forth in Section 209(4)(c)(v) and Section 209(6) of the Public Employees' Fair Employment Act ("Act"), more commonly known as the "Taylor Law" provisions of the State Civil Service Law. Moreover, the Opinion and Award does specify in sufficient detail the basis for its findings and reflects a proper consideration of the relevant factors. As I previously observed in the earlier interest arbitration, the statute does not require that the Opinion and Award specifically address each of the enumerated factors as to each of the individual disputed items nor does it dictate that the factors actually addressed by the Award be discussed in any particular length or depth of analysis.

Turning to the main bugaboo raised by the Union's Panel Member, the Panel Chair and the other Panel Members did take into account the fact that the County is one of the municipalities identified by the State Comptroller as being "fiscally eligible", for purposes of affording the "ability to pay" factor 70% weight in the application of the various factors set forth in Section 209(4)(c)(v) of the Act in formulating the Award. The other Panel Member and I both supplied input to the Panel Chair during this process as to how that weighing exercise should have affected the Award. Indeed, as I noted to the other Panel Members in October 2014, the County is on the Comptroller's list of "fiscally eligible" municipalities because its average full value real property tax rate is higher than the average rate of 75% of the other municipalities in the state. That the County has a property tax rate in the top 25% in the state is surely an indication that the County's taxpayers are carrying a heavy burden. Indeed, the record reflects that the County's taxpayers are already saddled with one of the highest real property tax burdens *in the United States* as a percentage of home value. In particular, the County's tax burden is in

the top 50 counties of 3,000 nationwide. These undisputed facts militated in favor of the Panel Chair's measured approach to the Award.

Although one can easily criticize the State Legislature for coming up with the political compromise of the "70%/30% balancing test" when the statute was amended in 2013, a test having surface appeal but lacking clarity in application, there can be little doubt that the State Legislature intended interest arbitration panels to moderate their economic awards when a municipality is found to be fiscally strained by either an exceedingly high real property tax rate *or* a low fund balance, or both for that matter.

The Union Panel Member argues that the County's financial condition is excellent which should therefore have compelled the Panel Chair to award most if not all of the Union's numerous and excessive economic demands. This view is incorrect on both counts.

First, the Union Panel Member's focus on the County's unreserved fund balance is misplaced. Fund balance is akin to one's personal savings account. The County's unreserved fund balance exists as a hedge against rainy day expenditures, provides only for "one-shot" withdrawals, and should not be viewed as a continuing funding source for salary and benefit increases which are recurring, and indeed compounding, expenses of the County. As expressly stated in the County's Fund Balance Policy, the Board of Supervisors has determined that the County's unassigned fund balance should be used only for one-time expenditures like capital purchases, dealing with emergencies such as the severe flooding which occurred in the County in recent years, and moderating the impact of year-over-year tax levy increases, and not for ongoing expenditures, unless a viable plan designed to sustain the expenditure is also adopted. Such a "viable plan" in this context could only translate to further real property or sales tax increases, or a reduction or elimination of other non-mandatory but important services delivered by County

government – policy decisions that properly rest with the County’s legislative body and not an interest arbitration panel not accountable to the County’s electorate. In short, the County’s fund balance, regardless of its obviously disputed magnitude, is simply not available to cover ongoing salary and benefit costs of the Union’s members.

Second, large enhancements to the salary and benefits that are currently provided to LEA members would only place additional strain on the County’s financial resources and on the individual taxpayers of this County. The Panel’s award in this proceeding comes at a time when the County faces rapidly escalating increases in the cost of both employee pensions and health benefits. County Treasurer William Craine testified to the challenges the County must take into consideration in its financial decision making, pointing to stagnated sales tax revenues and declining growth in the total taxable assessed property value. Mr. Craine also stated that the County’s tax levy steadily increased through the 2012 budget year, that is, the first year covered by this Panel’s award, despite the application of substantial amounts of fund balance to attempt to reduce or minimize the tax levy increase. Of particular note, the County’s legislative body applied a very high amount of fund balance to both its 2012 and 2013 budgets to reduce or moderate the impact of the overall tax levy. Furthermore, the County is heavily dependent on sales tax revenues, which are difficult to predict and more volatile than other revenue sources.

The State Comptroller recognized in his 2012 and 2013 Annual Reports on Local Governments, the years covered by the Panel’s award, that local governments like Chenango County continue to struggle and have not yet reached a full economic recovery to 2008 pre-recession levels. Put another way, and in my view, the County simply could not afford to pay the extravagant salary and benefit increases sought by the Union without further raiding its general fund balance, an act that would constitute fiscal imprudence in light of the declining

revenue sources available to it or by raising real property taxes or cutting services, something which is clearly not in the best interests of the public.

Third, and as Arbitrator Rinaldo stated so eloquently in the 2006 Fulton County PBA interest arbitration, “the County’s ‘ability to tax’ cannot be equated with the County’s ‘ability to pay.’” Furthermore, and as Panel Chair Lewandowski noted in the prior award involving these same parties, “the ability to pay does not mean that the employer is obligated to pay the increases sought.” These truisms illuminate the fallacies of the Union Panel Member’s arguments on the ability to pay factor.

Moreover, much of the substance of the Union’s dissenting opinion, including the ruminations about the intent of the State Legislature and the state of mind and motivations of the Panel Chair and Employer, is self-serving, speculative, and flat out wrong, and could easily be made the subject of a lengthy rebuttal in this concurring opinion. My decision to refrain from such an exercise should not be viewed as any sort of acquiescence to the points made by the Employee Organization Panel Member in his dissenting opinion but rather is grounded in sensitivity to the County’s pocketbook. In short, however, the Opinion and Award grants the bargaining unit members generous base salary, longevity pay, and shift differential increases at a time when the economy continues to try to regain its feet from the aftermath of the 2008 implosion of the financial system in this country and the resulting lengthy Great Recession (if not a depression). I also respectfully submit that the Opinion and Award is in line with, or exceeds, recent interest arbitration awards involving other county deputy sheriff units and underscores the reasonableness of the County’s position in this interest arbitration. As I stated in my prior concurring opinion, the Panel Chair should not be blamed for fashioning his Opinion

and Award in a manner more closely aligned with the Employer's position than the Union's multitude of unreasonable demands.

The Employee Organization Panel Member acknowledges his personal frustration with the compulsory interest arbitration process in general and tosses brickbats at panel chairs as a group. Quite simply, his jaundiced view of interest arbitration should not be taken as proof that the Panel Chair's approach to the instant Award was flawed in this case.

I also submit that the next round of negotiations need not result in an impasse and another interest arbitration proceeding if the Union would simply assume a more reasonable position on the economic items during the negotiations process and come to the table with a willingness to negotiate in good faith. It seems that the Union's approach to bargaining over the course of the last two rounds has been to initially interject a set of excessive demands, to then engage in a very limited number of bargaining sessions devoid of movement or compromise, and to then launch the interest arbitration process which only serves to put a target on the back of the neutral Panel Chair and saddles the Chair with the ultimate and entire responsibility for the bargaining outcome. That approach was and is not only unfair to the Panel Chair and the County but also makes a mockery of the bargaining process. It does not have to be that way and it cannot be squared with the fact that interest arbitration should be a course of last resort and not a way for a party to shed itself of its obligation to negotiate in good faith. This Panel Member cannot take originating credit for that observance but rather acknowledges the wit and wisdom of the now deceased Harold R. Newman, a well-respected, regal and long-standing Chairman of PERB, who in many ways imbued the Taylor Law with fairness and rationality in its interpretation and application.

I also feel compelled to comment on the other Panel Member's conclusory contention that the Panel Chair misinterpreted and misapplied the "comparability" factor by the Chair's finding that other county deputy sheriff units are entitled to primary consideration while other municipal police agencies should be given only secondary consideration in the comparability analysis. Long a proponent of the notion that *only* other county deputy sheriff units belong in the comparability mix, I initially maintained to the other Panel Members that Arbitrator Lewandowski determined correctly in the prior interest arbitration between these same parties that the members of the LEA unit should be compared only to the other sheriff law enforcement units in the counties contiguous to Chenango County. Those counties are Broome, Cortland, Delaware, Madison and Otsego. The LEA did not present any evidence in this proceeding to allow a conclusion that any of the comparability findings should be changed from those made only three or four years ago in the prior award.

However, this Panel Member did not approach this issue with a closed mind and expended great effort, including a substantial commitment of time, to examine other interest arbitration awards involving deputy sheriffs to see how the comparability issue had been handled by other panels over the years. In particular, I examined the 32 interest arbitration awards reported on PERB's website which had been issued since 2005 for deputy sheriff units.

Based on a closer examination of 23 of the awards, it appeared that "counties only" were determined to be the proper comparables in five of the awards: Delaware (Campagna, 2005); Onondaga (Prosper, 2006), Chenango (Lewandowski, 2012), Seneca (Foster, 2012) and Cayuga (Lewandowski, 2013).

I also found that in at least eight of the 23 awards, counties were deemed appropriate comparables with some consideration also being given to one or more municipalities with local

police departments (PDs), *but only those PDs located within the particular county giving rise to the interest arbitration proceeding*: Fulton (Rinaldo, 2006), Ontario (Kaufman, 2006), Erie (Rinaldo, 2007), Fulton (Rinaldo), Greene (Siegel, 2011), Dutchess (Siegel, 2012), Sullivan (Siegel, 2012) and Tompkins (Foster, 2012).

In four of the 23 awards, the panel made no specific ruling with regard to which particular jurisdictions constituted the comparable communities: Onondaga (2010, Kowalski), Jefferson (Lewandowski, 2011), Madison (Lewandowski, 2012) and Warren (Lobel, 2013). Having served on the Onondaga, Jefferson and Madison panels, I can safely say that the issue was handled delicately in those three instances so as to leave the parties the ability to argue or fight over the issue “some other day”. With regard to the 2010 Onondaga award, it should be noted that an earlier award between the same parties resulted in a ruling that the comparables were limited to County road patrol units. (Prosper, 2006).

Also, I submitted to the other Panel Members herein that the exceedingly lengthy 2011 Suffolk County award was an “outlier” given that panel chair’s extended treatment of the various “patterns” employed within that county (e.g., police, sheriff, etc.).

In sum, however, it became crystal clear to this Panel Member that the majority approach of interest arbitration panels is to look either exclusively or primarily to sheriff’s units in the contiguous counties, or some subset of sheriff’s units in the contiguous counties, to determine the proper comparable communities. The trend is also to give consideration of lesser weight to selected towns, villages or cities with municipal police departments but only those within the particular county to be covered by the interest arbitration award.

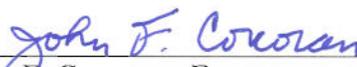
I saw little, if any, support for the notion that a hand-picked set of communities (with municipal police departments) located outside the particular “host county” should be included in

the comparable communities universe. As such, the LEA's approach to the comparability universe in this case was not consistent with the approaches taken by the vast majority of the other interest arbitration panels.

Therefore, and in the interest of taking a reasonable approach to the task at hand, I urged that the deputy sheriff units in the contiguous counties of Cortland, Delaware, Madison and Otsego should be considered the "primary comparables", and that the Broome County deputy sheriffs unit and the City of Norwich police department unit should also be included as the "secondary comparables." I also noted that the data for the primary comparables should be afforded more weight by the Panel than the data for the secondary comparables. The Panel Chair's albeit short discussion of comparability is fully consistent with the approach I suggested and is grounded in the majority view of interest arbitration panels for deputy sheriffs units. In my opinion, the Union Panel Member's criticism of the Panel Chair's treatment of the comparability issue is just plain unfair.

To conclude, I must also comment that the Employee Organization Panel Member's assertion that the County's deputy sheriffs are "under paid and under benefitted" is once again belied by the facts of record, is unfairly intended to cast the County as a villain in this drama, and ignores the fact that this Panel Chair, like the one before him, got it right.

Dated: March 14, 2016



John F. Corcoran, Esq.
Employer Panel Member

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

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

Between

**PERB Case Nos.
IA2014-013; M2014-080**

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

Union/Petitioner,

-and-

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

Employer/Respondent.
-----X

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED
MAR 18 2016
CONCILIATION

DISSENTING OPINION

EMPLOYEE ORGANIZATION PANEL MEMBER

JOHN M. CROTTY

I dissent because the Chairman completely failed to do what is required of him by law.

This Employer is “fiscally eligible” under the definitions of that term in the 2013 amendments to the Taylor Law’s compulsory interest arbitration provisions. The Employer qualifies as fiscally eligible because of its property tax rate, not because of its fund balance that is massive. Being “fiscally eligible”, the Employer’s ability to pay becomes by law the predominant, controlling criterion (70%) trumping all other statutory criteria singly or collectively (30% collective total weight).

Because ability to pay is the dispositive factor in this arbitration proceeding, I will not comment at any length about the Chairman’s discussion of comparability which misinterprets and misapplies that criterion. The Chairman does not explain at all why he believes county deputy sheriff units are “most comparable” while other municipal police agencies are given “secondary consideration”.

For all of the reasons stated in my dissent to another Chairman’s award for these parties covering 2010-2011 (IA 2010-039 July 2012) this Chairman’s understanding of comparability is entirely incorrect for several reasons. Readers who have an interest in learning the reasons why this Chairman got comparability wrong can refer to my 2012 dissent. These reasons were submitted to the Chairman in the Association’s post-hearing brief, but he does not address in his award any of those arguments or explain why they are incorrect or unpersuasive.

The Chairman does not discuss any of the other statutory criteria. He was obligated to do so, but he did not.

As bad as are these errors and failures, they pale in comparison to the Chairman’s failure to apply the law as it pertains to “fiscally eligible” municipalities. There is nothing stated in this award about the law other than a passing reference to its existence.

The 2013 Taylor Law amendments, although unnecessary and ill-conceived in my opinion, are nonetheless the law that must be applied. This Chairman does not discuss the 2013 law, he does not analyze it, nor does he apply it. He could not do so and still issue the award he did because if he applied the law as it is written and intended he would have had to award every one of the Association's economic demands as proposed because this Employer has the proven ability to pay every one of them from existing revenues.

The 2013 amendments to the Taylor Law's interest arbitration provisions are usually used by "fiscally eligible" employers against unions and employees. They try to get panels to award little or nothing for employees while trying to extract concessions from them. But the new law is a double edged sword. It cuts both ways and sometimes it favors unions and employees, as it does in this proceeding.

Other than mentioning that the County has "good financial reserves", the Chairman says nothing else about the County's financial condition. He had to avoid discussion about the County's excellent economic condition because if that condition were revealed in the award, and given its required weight, the Chairman could not have issued the award he wanted. And so, he all but ignores the statute that governs this proceeding and the ability to pay criterion that is dispositive.

The true facts as to the Employer's financial condition are these in very brief summary. This County is debt free. That, itself, is extraordinary. It has massive fund balances. It has nominal real property taxes, all below the State's tax cap for six consecutive years. It has an increasing tax base. Sales tax receipts alone have increased every year since 2009. It had millions of dollars in reserve funds, contingency accounts and cash balance at the end of 2013.

The County has the second lowest score among all counties in the State under the State Comptroller's multi-faceted fiscal stress monitoring system.

The Chairman's first draft of the award did not even mention the 2013 amendments to the Taylor Law even though I had raised with him the need to discuss and apply that law in the award. This award, that merely mentions the new law, is the Chairman's response to my insistence. It is woefully inadequate.

There is no mystery about the 2013 Taylor Law amendment. It is plainly written. It must be applied. The Chairman did not apply it.

In discussing and applying the 2013 statutory amendments to the Taylor Law in an award issued in 2015 for the Town of Lancaster and its police officer union (IA2014-010), Arbitrator Siegel wrote this:

The consequences of being designated a fiscally eligible municipality alter the Panel's role from making a decision requiring it to give equal weight to all of the statutory criteria to requiring it to give a much greater weight to the Town's ability to pay. More specifically, in rendering this Award, the Panel is now required to assign a weight of 70% on the Town's ability to pay with all of the other statutory criteria cumulatively being accorded a weight of 30%. In plain English, this obligates the Panel to place the great majority of its analysis and assessment on the Town's ability to pay in rendering this Award. This is precisely what the statute requires and this is precisely what the Panel has done in rendering this Award. (Siegel Award p. 21)

Arbitrator Siegel went on to state correctly that it remains the duty of an interest arbitration panel to make an ability to pay determination which is to be done on the objective data of record. Arbitrator Siegel found the Town that, like this Employer, was "fiscally eligible" because of its property tax rate nonetheless had strong economic conditions. This Employer's economic conditions are much better than are Lancaster's.

If this Chairman had done what he is required by law to do, the award on the Association's demands would have been much different and much more favorable to these Deputy Sheriffs who are police officers under law and in fact.

Instead of making ability to pay dispositive as is required, this Chairman bases his award on what he believes are the "average" wage settlements within the area for the years covered by this award.

In the first place, the Chairman does not explain how he came to a conclusion about what is the "average". Second, even if his conclusion is correct, it is not entitled to controlling weight. Indeed, it is not even relevant because what poorer municipalities do for their much better paid and better benefitted deputy sheriffs and police officers has nothing to do with what this rich Employer should be required to do for its deputies who are at or near the bottom of the market in terms of wages and benefits. Ability to pay controls and this Employer has it without question. This Chairman cannot consistently with applicable law make what other employers and unions have done controlling, yet that is exactly what he has done. What others have done relates, at best, to comparability and that criterion is subordinated in the extreme to ability to pay in this proceeding.

The Chairman makes an award upon three issues only. He dismisses all other of the Association's demands that were before him without any discussion or analysis whatsoever. That has been improper since 1977 when the Taylor Law was changed to require specification and discussion of all statutory criteria upon all matters in dispute. The purpose of that statutory change almost forty years ago was to enable the parties and a court upon review of an award to determine how and why a panel came to the conclusions it did. No one reading this award has any idea why the Chairman denied several of the Association's demands. Indeed, a reader

cannot even know what the Association was demanding or why. That, too, is a complete failure by this Chairman to obey the law that governs this proceeding.

The Chairman denies any wages or benefits to former employees who left employment after expiration of the last contract except those who retired. That is wholly unfair. The retroactive wage, longevity and shift differential increases set the rate for the work performed going back to January 1, 2012. The former employees did the work. They deserve to be paid the rate for the work they did and to receive the increases awarded to others who remain employed. Chairman Dennis Campagna, for example, awarded full retroactivity for three years to all who worked during the award period in a Village of Canton award issued in August 2014 (IA2013-011). He did so recognizing the unfairness of denying former employees retroactivity and being persuaded by the Appellate Division's same rationale in Baker v. Hoosick Falls Central School District, 3 AD3d 678 (3d Dep't 2004) aff'g 194 Misc. 2d 116 (Sup. Ct. Rensselaer County 2002). This Chairman should have done the same. Nonpayment just further enriches this Employer at the expense of employees who are effectively being punished for the time it takes to get through the Taylor Law impasse procedures. Former employees are being sacrificed to subsidize the few increases that are awarded.

I have become frustrated over the years with an interest arbitration process that I have been studying and working with in one capacity or another from the inception of interest arbitration in New York's public sector in 1974. As applied by many panel chairs, the law does not work as it should. It is still a better impasse process than any other, just not what it is supposed to be. For far too many panel chairs facts and law matter little, if at all, except when the facts and law benefit employers. My personal frustration with the process, however, is of no concern. I am, however, greatly disappointed to say the least by the unwillingness of this

Chairman to do what is right and fair and required under law and facts for the Deputy Sheriffs who are represented by this Association. This Chairman recognizes that these Deputy Sheriffs are under paid and under benefitted compared to most if not all other Deputy Sheriffs and police officers within whatever comparable market is picked, whether that be deputy sheriffs or other municipal police officers. His award does nothing to change that situation. By awarding what he believes to be a bit better than “average” settlements, the Chairman necessarily maintains the existing wage and benefit disparity. No gap is narrowed or closed.

It is disgraceful for this Employer that has the resources to do far better for these Deputy Sheriffs than it has done to push for maintenance of that status quo. It offered during negotiations two one-percent base wage increases despite knowing that such offer could not possibly be accepted. More of a disgrace is this Chairman’s willingness to let this Employer escape the consequences of a law that compels a much more favorable award for these Deputy Sheriffs.

If this Employer were struggling financially, it would have been the first to emphasize and insist upon application of the 2013 Taylor Law amendments. Instead, it tried to hide from those amendments in the hope the Chairman would ignore the law because the Employer knows full well that the objective data of record proves beyond any question that it has the ability to pay the Association’s demands as presented without any difficulty. It just does not want to pay what it can and should and this Chairman honors that want.

The Chairman mentions that his obligation is to issue a “just and reasonable determination of the matters in dispute.” I agree, but by definition an award that does not comply with the very law that establishes interest arbitration panels and governs the awards they issue cannot be a just and reasonable award. At bare minimum, an award must comply with law

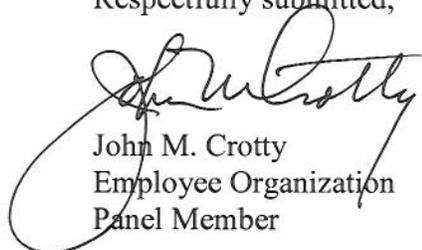
for it to be just and reasonable. This award does not comply with law, making it unjust and unreasonable as a matter of law.

As I stated in my dissent to the last interest arbitration award for these parties, one of the goals of a good award is to position the parties to reach agreements in the future. The last chairman's award did not do that. Neither does this one. I predicted the prior award would result in future impasse and another interest arbitration proceeding because it encouraged this Employer to refuse to bargain with the Association in good faith. The prior award did exactly that. The prior award and this one empower this Employer because it is not exposed to any meaningful consequence for its intransigence. Quite the contrary, it is rewarded by an award that does not comply with law or the facts. This award likely condemns these parties to a repeat of their history and that benefits no one.

For these reasons, I dissent.

Dated: March 3, 2016
Newburgh, New York

Respectfully submitted,



John M. Crotty
Employee Organization
Panel Member