LOUIS J. PATACK, ESQ.
ARBITRATOR AND MEDIATOR

November 9. 2016

NYS PUBLIC EMPLOYMENT RELATIONS BOARD
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CONCILIATION

Kevin B. Flanigan
Director
NYS Public Employment Relations Board
P.O. Box 2074, Empire State Plaza
Agency Building 2, 18th Floor
Albany, NY 12220-0074

Re: Tioga County Law Enforcement Association, Inc. and
County of Tioga and Tioga County Sheriff
PERB Case Nos.: IA2015-006; M2014-258

Dear Kevin:

Enclosed is the opinion and award in this interest arbitration, together with concurring and dissenting opinions.

Sincerely,

Louis

Louis J. Patack

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration between

TIOGA COUNTY LAW ENFORCEMENT
ASSOCIATION, INC.,

Employee Organization/Petitioner,

-and-

COUNTY OF TIOGA AND TIOGA COUNTY SHERIFF,

Public Employer/Respondent.

PERB Case No.: IA2015-006; M2014-258

OPINION AND AWARD
OF PUBLIC ARBITRATION
PANEL

BEFORE: Louis J. Patack, Esq.
Public Panel Member and Chairperson

Anthony V. Solfaro
Employee Organization Member

James W. Roemer, Esq.
Public Employer Member

APPEARANCES:

For the Tioga County Law Enforcement Association, Inc.:
John M. Crotty, Esq.
Of Counsel to the New York State Union of Police Associations, Inc.

For the County of Tioga and Tioga County Sheriff:
Roemer Wallens Gold & Mineaux LLP
Matthew P. Ryan, Esq and
Elena P. Pablo, Esq., of counsel

INTRODUCTION

The Tioga County Law Enforcement Association, Inc. ("Association") and the County of Tioga and Tioga County Sheriff ("County") are parties to a collective bargaining agreement ("Agreement") covering the period January 1, 2009, through December 31, 2012.

When the parties were unable to negotiate a successor agreement, and mediation efforts were also not successful, the Association filed a petition for interest arbitration with the New York State Public Employment Relations Board ("PERB") pursuant to Civil Service Law § 209.4. The County filed a response, and PERB referred the dispute to a public arbitration panel. The panel consists of the undersigned, as chairperson, Anthony V. Solfaro, as the Association member, and James W. Roemer, Esq. as the County member.

The panel conducted a hearing on December 9, 2015, in Owego, in Tioga County. At the hearing the parties, through their attorneys, offered evidence through witness testimony and documents. A stenographic record of the hearing was made.

Following the hearing the parties submitted briefs, and the panel members then met in executive session on May 17 and June 14, 2016.

RELEVANT STATUTORY PROVISIONS

As in all interest arbitrations CSL § 209.4(c)(v) requires the arbitration panel to "make a just and reasonable determination of the matters in dispute," taking into consideration all relevant factors, and specifically the following:

> a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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 addresses these standards below.

Unique to interest arbitrations such as this one, involving deputy sheriffs, CSL § 209.4(g) provides that the statute "shall only apply to the terms of collective bargaining agreements directly relating to compensation . . . ."

Both parties filed improper practice charges with PERB claiming that the other had submitted to binding arbitration proposals that are outside the scope of § 209.4(g). The charges were consolidated for hearing, and an Administrative Law Judge decision was issued on May 12, 2016.

The Administrative Law Judge found some proposals to be arbitrable, and they are before the panel because neither party appealed. (PERB Rules of Procedure §205.6(d)).

Turning to another issue, both parties agree that under CSL § 209.6, the County is a "fiscally eligible municipality." The parties also understand that what this determination means is that the panel, in considering the factors it is required to take into account under § 209.4(c)(v), shall assign a weight of seventy percent to the County's ability to pay. The other three factors, taken together, are assigned a weight of thirty percent (§ 209.6(e)).

There will be more discussion about this weighing issue below in the discussion of the County's ability to pay.

Section 209.6(e) also provides that the panel must take into account the "constraints, obligations and requirements imposed by the real property tax cap" pursuant to General Municipal Law § 3-c.

Finally, unless the parties have agreed otherwise, and they have not, CSL § 209(4)(c)(iv) provides that the maximum period of an interest arbitration award is two years from the expiration of an expired collective bargaining agreement. Here, the award covers the period from January 1, 2013 through December 31, 2014.

The panel chair now turns to comparability, ability to pay, and the other factors the panel is required to consider in rendering a just and reasonable determination.

COMPARABILITY

The parties have suggested what they consider comparable jurisdictions for the panel to use as appropriate benchmarks in arriving at awards on their proposals.

According to the Association these should be Broome, Chemung, Cortland and Tompkins Counties, the cities of Ithaca, Cortland and Elmira, the villages of Endicott and Johnson City, and the Town of Vestal. The County believes that comparable communities are the following counties: Chemung, Cortland, Delaware, Schuyler, Seneca and Schoharie.

Position of the Association

The Association makes several arguments as to why the panel should consider not just counties, but other governmental units, as comparables, and why they should be located in close proximity to Tioga County.

According to the Association, the statute's[1] directive to compare wages and benefits of the County's employees to those received by similar types of employees in comparable jurisdictions shows that the intent of the state legislature was to create a market rate for all such employees. The market is for those competing for the same jobs, and must, therefore, include only those communities relatively close to Tioga in terms of geography. The market is also not limited to deputy sheriffs in other counties, as the County argues, but to police officers in area cities, towns and villages. They all compete for the same jobs. For this reason, the panel should exclude from its consideration the counties suggested by the County that are some distance away, meaning all but Chemung and Cortland. And it should consider the wages of the officers in the other jurisdictions suggested by the Association, since they and deputy sheriffs all perform identical work.

The Association makes the point that the statute's requirement that the panel consider peculiarities of other professions, such as job hazards, qualifications, job training and skills, also means that it must consider not just other deputy sheriffs, but all police officers, since those employment aspects are substantially similar, or even identical, for all these law enforcement personnel.

Addressing the County's argument that only counties are appropriate comparables because they alone are mandated to provide costly social service programs, such as Medicaid, the Association makes two points. The first is that cost factors are a consideration in ability to pay, not in determining what should be comparable communities. The second point is that following the County's logic, all jurisdictions, because they have different powers and forms of

[1] For this comparability discussion reference to the statute is to CSL § 209.4(c)(v).

government, and provide different services, could only be compared to their counterparts. Cities, for example, could only be compared to cities.

The Association says that it is for the reasons just discussed that interest arbitration panels have historically considered various types of governments in their comparability analyses.

Another Association argument is that because deputy sheriffs obtained interest arbitration 30 years after other municipal police officers, the former's wages and benefits lag seriously behind officers in localities throughout the state. The argument continues that in providing interest arbitration to the deputy sheriffs the state legislature's intent was to narrow, and eventually close, the gap between what they and other local police officers earn in terms of wages and benefits.

Following this reasoning, the panel cannot just compare deputy sheriffs to their counterparts in other counties, because that would make it impossible to ever fulfill the legislative intent to bring their wages and benefits up to the level of police officers in cities, towns and villages.

The Association faults the County not only for offering only counties as comparables, but also for then excluding Broome and Tompkins, which both border Tioga. The Association argues that the County selected some of its comparables for only one reason, that being that those counties have paid their deputy sheriffs less than Tioga, making the County look fair by comparison.

Position of the County

The County maintains, based upon a comparability study submitted to the panel, that the jurisdictions it has selected are based on proximity, population, crime rate, mixture of rural, suburban and urban areas, and other relevant socioeconomic factors.

It is not necessary to include the specific reasons the County gives for including Chemung and Cortland Counties, since both parties select them.

The County argues that the makeup of a county in terms of urban, suburban and rural character is directly related to the types of services its law enforcement officers provide. For this reason it maintains that because Tioga does not have a large urban center, unlike its contiguous neighboring counties, it includes non-bordering counties with similar demographic and socioeconomic characteristics. It explains why each of these (Schuyler, Seneca, Delaware, and Schoharie) is similar to Tioga in terms of one or more of these, such as crime rate, population density, and number of similarly tasked deputy sheriffs.

The County does argue, as the Association anticipated, that counties, unlike the governmental entities within them, have unique financial responsibilities. It points out, for example, that mandated services account for almost 30 per cent of its general fund expenditures. Because cities, towns and villages are not required to provide these services, it is not proper to compare them here to counties.

The County, like the Association, points to the fact that deputy sheriffs did not obtain interest arbitration until 30 years after it was afforded to other local law enforcement personnel. The argument here, however, is that because of the effect that interest arbitration, as opposed to traditional collective bargaining, has on terms and conditions of employment, it is difficult and not proper to compare deputy sheriff units to other local law enforcement bargaining groups.

Finally, the County argues that Broome and Tompkins are not comparable to Tioga. It points out that both are considerably larger than Tioga, and include major city centers and one or more large colleges or universities.

The County points out that the services provided in these two counties and Tioga cannot be fairly compared. The County notes that Broome County has almost twice as many full-time deputy sheriffs as Tioga, and a much higher crime rate.

Discussion

Chemung and Cortland counties are obviously included as comparables, having been selected by both parties.

As the Association points out, since the inception of interest arbitration for deputy sheriffs, arbitrators serving as panel chairs have considered not only counties as comparables, but the municipal governments included within them. One reason is the statutory directive that a panel consider other occupations with similar employment hazards, qualifications, training and skills. Uniformed law enforcement personnel, whether they be road patrol deputy sheriffs or city police officers, would all seem to have these in common to a greater or lesser degree.

The Association claims that the legislature's intent in providing interest arbitration to deputy sheriffs was to eventually give them parity with police, who had this procedure for 30 years before it was provided to the former. No legislative history was offered, however, to support this argument. To the extent that the Association is defining parity as equality, there is no reason to believe that the legislature intended that at any particular time in the future deputy sheriffs and local police officers should receive the same wages and benefits. That being said, however, it is fair to assume that the legislature would not have provided interest arbitration to deputy sheriffs unless it intended the process to provide them with greater compensation benefits than those they had been able to achieve through traditional collective bargaining.

That being the case, it would seem to be useful to take into consideration the salaries and other benefits directly related to compensation received by other police officers, and not just deputy sheriffs.

As to the County's argument that the panel should consider only counties, because of their unique financial responsibilities, although the chair agrees that counties should be compared to themselves, there is merit to the Association's position that the impact of expenditures devoted to mandated services is properly considered in examining the County's ability to pay. Some counties might be in a better, or not so favorable, financial position than others to provide required services.

The chair does not agree with the Association that non-contiguous counties should be excluded because they are too distant from Tioga. In this rural part of the state the distances between Tioga and the counties the Association would reject are inconsequential.

The chair agrees with the Association, however, that both Broome and Tompkins counties should be included in the mix. Both border Tioga, and the County does not persuasively argue why they should be excluded because they have relatively large cities and universities, and, at least with Broome, a much higher crime rate.

The County fails to show what impact these facts have on the jobs performed by the deputy sheriffs in Broome and Tompkins. The cities in each have their own police departments, and no evidence was offered to establish that the deputy sheriffs in either county have different duties and responsibilities, or face greater risks, than their Tioga counterparts. While the crime rate for the Broome County Sheriff is higher than that for the Tioga County Sheriff, the former has almost twice as many deputies.

In other interest arbitrations the chair has written that it is better to have more information than less to work with in evaluating the proposals in a particular matter. The same is true here, and for this reason, and the reasons just explained, the chair sees no reason to reject any of the suggested comparables.

ABILITY TO PAY

Position of the Association

The Association argues that based upon the testimony of its witness, Kevin Decker, an economist, the County is in good financial condition, and able to fund the Association's proposals.

The Association offers what it considers indicators of the County's strong financial health.

According to Mr. Decker, the primary sources of County revenue are property and sales taxes. Starting with the former, the Association notes that it has remained well under the 2% statutory property tax cap, and that as a result taxpayers receive a refund from the State for the county taxes they pay. The County is also well under the constitutional tax limit, although Mr. Decker made it clear that it would not be prudent for it to use its authority to impose increased taxes simply because it has the ability to do so.

As to sales taxes, Mr. Decker noted that they have grown in recent years, and, contrary to the County's projections, estimated that they would be higher in 2015 and 2016.

Turning to the County's balance sheet, the Association points to the fact that for the five-year period 2010 through 2014, with the exception of 2011, the County has enjoyed an operating surplus in its general fund. Mr. Decker explained that there are different organizations that measure the adequacy of a municipality's fund balance, but that regardless of what standard is

used the County has more than an adequate unrestricted fund balance. This balance, which has shown consistent increases, and can be used for any purpose, was over $13 million at the end of 2014.

The Association points to the fact that the State Comptroller, with its fiscal stress monitoring system, has assigned the County a zero, or perfect score. Mr. Decker explained that the system measures various indicators of a municipality's balance sheet in order to inform local governments of present or potential financial difficulties. He said that very few counties have received this score.

Anticipating the County's argument that being a fiscally eligible municipality negatively affects its ability to pay, the Association argues that, as explained by Mr. Decker, the designation has nothing to do with this factor.

Finally, again based upon Mr. Decker's testimony, the Association argues that the County is able to fund all its proposals with very little impact on taxpayers. Mr. Decker noted, for example, that the County's general fund balance for the tentative 2016 budget included a contingent account of $550,000, and explained that this type of account is often used to fund retroactive labor settlements.

Position of the County

The County first argues that its being a fiscally eligible municipality does negatively impact its ability to pay. Because the designation means that the County is in the top twenty-five percent of New York municipalities in terms of full value tax rate, its taxpayers bear a larger real property tax burden than property owners in the other seventy-five percent. The County also claims that the legislature has determined that fiscally eligible municipalities have fiscal stress at such a level as to affect ability to pay.

The County argues that it has taken several cost saving measures in recent years to insure its future financial stability. According to the County's Budget Officer and Chief Accountant, Rita Hollenbeck, these include selling its solid waste transfer station, implementing an energy savings project, contracting public health nursing programs, making changes to its health insurance plans, reducing staff, and eliminating its public transportation system.

According to Ms. Hollenbeck these efficiencies have saved the County almost $2.2 million, and resulted in the budget surpluses seen in recent years. In addition she also explained that County departments have been asked to implement zero-based budgeting for the purpose of achieving further savings.

The County points out that it faces steadily increasing costs with its community college and pre-kindergarten programs, as well as with employee compensation and health insurance premiums. It also issued bonds in 2010 and 2013 totaling $16.6 million for infrastructure repair, and notes that if it had not borrowed the money it would have had a negative fund balance in 2014.

According to Ms. Hollenbeck, the County will face serious financial problems in the next few years, and she projected that the general fund balance, which had increased due to one-time cash infusions, will dramatically decrease by 2018.

The County maintains that according to the Association the general fund is the primary source for funding an interest arbitration award. That being the case it should be understood that a fund balance is a figure that exists for a single year. While it might fund a salary increase for the year in question, the increase continues into the future, while there is no assurance that the fund balance will continue to grow.

The County emphasizes that with employee costs increasing, especially in the area of benefits, revenues will not keep pace, even without taking into account an award providing compensation increases. As a result, before long the County will have to resort to using unreserved fund balances to maintain balanced budgets.

The County makes the point that with future growth in question, the strong possibility exists that the real property tax cap will become an impediment to its ability to raise the revenue necessary to fund an award here into the future.

Finally, the County argues that although its fund balance indicates that it is presently in good financial health, it must be emphasized that it has exhausted its ability to achieve further savings through cost cutting measures, and, therefore, that the future impact of compensation increases provided here cannot be ignored.

Discussion

Beginning with the disagreement over whether, without more, the County being a fiscally eligible municipality negatively affects its ability to pay, the chair agrees with the Association that it does not.

The state legislature has determined that in municipalities in which taxpayers have a higher property tax burden than those in most other communities there is good reason to require an interest arbitration panel, in considering the statutory factors it employs in making an award, to give seventy percent weight to ability to pay. The legislature did not say, however, nor does the wording of CSL § 209.6 suggest, that the tax burden itself has any impact on ability to pay. It simply tells a panel that it must pay special attention – seventy percent – to a municipality's ability to pay. That is what the panel has done in this proceeding.

The County does not dispute that its finances are currently in good order. Its point is that it undertook several cost-cutting measures to put itself in this position, and that since there are no further savings it can reasonably expect to realize, within the next few years it will begin to experience significant budgetary deficits.

Although the County, seemingly through prudent management, was able to realize $2.2 million in savings over the past few years, it seems that even without those it would have a positive balance sheet. By the end of 2014 its unassigned fund balance had grown to $13.2 million.

The County argues that appropriating money from its general fund balance is a one-time proposition, and cannot be depended upon to fund increasing employment costs in outgoing years. The County, however, has realized budget surpluses in the last several years, with the exception of 2011, and these have continued to add to its unrestricted fund balance.

If there were any current or possible problems with the County's financial picture, it could be expected that these would have been noted by the State Comptroller in its fiscal stress report. The report examines nine different indicators, including fund balances, operating deficits, debt issuance and debt service as a percentage of revenues, and personnel costs and benefits as a percentage of revenues. As we know, the County was given a perfect score, something, according to Mr. Decker's undisputed testimony, seen in only a few other counties in the state.

It might be, but it is not certain, that there will have to be a minor property tax increase needed to fund this award. It does not appear, however, that any such increase would bring the County near its 2% tax cap.

Taking into consideration, therefore, all the testimony and arguments made here, the chair, and panel,[2] are persuaded that the County does have the ability to pay the compensation increases provided in the award.

REMAINING STATUTORY FACTORS TO BE CONSIDERED BY THE PANEL

In addition to requiring the panel to consider the County's ability to pay, CSL § 209.4(c)(v)(b) also directs it to consider the interests and welfare of the public.

These factors certainly include the financial impact of the award on the County's property owners, who pay the taxes that primarily fund the award. The panel has already considered economics, however, in addressing the County's ability to pay.

It remains to be said that the interests and welfare of the public, including all County residents, is best served by having its deputy sheriffs, who make up what is in effect the County's police force, and perform what by its nature is dangerous work, fairly and competitively paid.

Under CSL § 209.4(c)(v)(c) the panel is required to compare the peculiarities of the job of deputy sheriff with other types of employment, specifically taking into account job hazards, various qualifications, and necessary training and skills.

Neither party has given the panel any justification for comparing the deputy sheriffs to anyone other than those engaged in law enforcement.

Finally, pursuant to CSL § 209.4(c)(v)(d) the panel is directed to consider the parties' past contracts. The panel has obviously considered the expired 2009-2012 Agreement, since it contains the compensation provisions the parties address, and seek to change, retain or modify.

The panel now turns to the various proposals on which it makes awards.

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[2] References to the panel are always to a majority of its three members.

The awards themselves do not immediately follow the treatment of the individual proposals, but are included in an Appendix. The reasons are twofold. One, the Association and County panel members have agreed to include revisions to contract language that would be required by the awards. Two, there are language changes they have agreed to make, although not necessarily required by the awards. Simply stated, the awards read more coherently included in one place.

SALARIES AND WAGES

Position of the Association

The Association's salary proposal is to increase the January 2, 2012, deputy schedule contained in Article 7.2.A of the Agreement by 3.5% starting January 1, 2013, and by 3.5% starting January 1, 2014. There are separate sergeant/investigator and lieutenant/senior investigator schedules (7.2.B and C respectively). Under these the sergeant/investigator receives a differential of $5,000, representing 9.46%, more than the step 4 deputy sheriff, and the lieutenant/senior investigator receives a differential of $5,000, representing 8.65%, more than the sergeant/investigator.

The Association seeks to increase the percentages to 10% and 8.75%. It would also eliminate the references to dollar amounts, and replace these with the percentage figures.

In addition to proposing higher salaries, the Association also seeks to remove from the salary and wages article language that freezes step increment movement for deputy sheriffs on December 31, 2012, and makes them subject to negotiations for a successor agreement.

The Association points to the fact that its unit members are either the lowest or close to the lowest among all its comparables in both starting salaries and those paid over a 20-year

career. It argues that this situation barely changes, if at all, even if the panel awards not only the increases sought here, but also its longevity proposal.

The Association claims as further justification for its proposal that, according to its analysis, its members also receive employee benefits far below the level of those provided in its comparables' agreements.

The Association maintains that even if the County were to finance its wage proposal through increased property taxes, the average increase for a homeowner would be just $3.30 annually.

Position of the County

The County points out that among its comparables, Association unit members rank near the top, taking into account both starting and top salaries.

Further, according to the County, if the Association's wage and longevity proposals are fully awarded the deputies would be the highest paid among its comparables for both 2013 and 2014, and its supervisors would rank among the highest.

In summary, the County argues that since its deputies and the supervisors covered by the Agreement already receive highly competitive wages for the two years of the award, and in some cases the highest among its comparables, there is no justification for awarding the increases sought by the Association.

Discussion

Both parties accurately refer to where the deputies and superior officers rank in terms of wages among their select group of comparables. They compare unfavorably when Broome and Tompkins Counties, and the municipalities other than counties are taken into account, and a few

of the counties proposed by Tioga are not considered. They are in line, however, with what their counterparts receive in most of the counties suggested by Tioga as comparables.

The chair finds it difficult not to consider Broome and Tompkins for the reasons spelled out above, and especially since they are contiguous to Tioga. It is also fair to consider what cities, towns and villages pay their police officers, since they and the deputy sheriffs all perform essentially the same work.

While it might not hold true for Broome and Tompkins, it is fair to assume that sheriff's deputies have fallen behind other police officers simply because they have not, until recently, been able to avail themselves of interest arbitration. The converse of this argument, of course, is that other police officers have had their wages disproportionately increased only because they have had interest arbitration for so long.

The chair believes, however, that, on balance, the County's deputies and unit supervisory personnel are at the low end of the wage scales of all the comparables, and that it is fair to provide increases which improve their position relative to what their colleagues in these other sheriffs and police departments earn.

Awards on individual proposals are not made in a vacuum, of course, and often take into account enhancements or diminishments made in other areas. As discussed below, Association members currently pay a comparatively low percentage of health insurance premiums, and what they pay is capped at a particular amount. A significant factor in making the wage award here is that unit employees are being required to make higher contributions, and without any cap.

Taking into account all the factors discussed here, the panel believes that an appropriate award is one that increases base wages by 2% on January 1 of both 2013 and 2014, and 1% on July 1 of both years. The differentiations, however, for sergeant/investigator and

lieutenant/senior investigator shall remain at $5,000 as set forth in Articles 7.2.B and 7.2.C of the Agreement.

As to the provision freezing step movement on December 31, 2012, it could be argued that since the language in question does not refer to the expiration of the Agreement, but to the specific date of December 31, 2012, the provision no longer has any meaning.

Assuming it does, however, this provision, or one similar, is not found in the contracts of any of the parties' comparables. It waives the unit employees' rights under PERB's Triborough Doctrine to having terms and conditions of employment continue upon a contract's expiration until a new agreement is negotiated. The rationale for this rule is that, under the Taylor Law, and unlike in the private sector, public employees do not have the right to strike. What they receive in return is the right, specific to this matter, to continue to receive step movement.

Because none of the comparables suggested by either party contains this type of provision it is appropriate to eliminate it here.

Award

As noted above, awards are included in the Appendix.

LONGEVITY

Position of the Association

The Association proposes to add a new longevity section, reading as follows:

Years of Service	1/1/13	(+$50.00) 1/1/14
Start of the 10th through 13th Year	+$250.00	+$300.00
Start of the 14th through 17th Year	+$250.00	+$300.00
Start of the 18th through 20th Year	+$250.00	+$300.00
Start of the 21st through 23rd Year	+$250.00	+$300.00
Start of the 24th Year and above	+$250.00	+$300.00

> The above amounts are cumulative, and shall be paid in the pay period of the employee's anniversary date, and included in the calculation of the employee's overtime rate of pay.

The Association argues that all its comparables provide for longevity, whether it be incorporated into the salary schedule, or, as it would be here, in a separate provision.

The Association points out that although the Agreement has a three-step schedule, bringing deputies to their highest pay after three years, it is not a typical longevity clause, rewarding continuing and long service with the employer.

The Association also makes the point that it has proposed only modest amounts in the schedule because it would be included in the overall salary package for the first time.

Position of the County

The County argues that deputies now reach top step in three years, faster than those in any of its comparables, and, therefore, earn the same or more than deputies in those counties. According to the County its deputies, over a 25-year career, even without a longevity schedule, earn wages competitive with those found in the agreements of comparables which provide longevity.

Discussion

It appears from the figures provided by the County that all of its comparables provide longevity increases, even if they are built into the salary schedule rather than appearing in a separate provision.

The Association is correct that bringing deputies to the highest amount they will earn in three years, absent overall negotiated raises, cannot in any real way be said to be a longevity system. All the comparables here provide for longevity, and it is rare not to have one in a contract for law enforcement officers.

Even with the wage increases awarded here, and the longevity schedule as proposed by the Association, deputies, while certainly making progress, still do not begin to reach parity with many of their counterparts in comparable communities. For this reason, and again taking into account the increases in health insurance premium contributions unit employees will be paying, the panel awards the longevity schedule as proposed by the Association.

Award

Refer to the Appendix.

HEALTH INSURANCE – ACTIVE EMPLOYEES

Position of the County

Although there are various elements in the County's health insurance proposal, clearly the one it has given the highest priority is increasing employees' premium contributions. Currently Association bargaining unit members pay 5%, but with a cap of $20 a pay period for the individual, and $40 for the family, plan. The County would increase the contributions to 10% of the premium starting in 2013, and 12% in 2014, and eliminate the cap.

The County first notes that all its non-union employees now pay 15% of premium contributions. Its CSEA unit began contributing 7% starting in 2012, and currently pays 13%, moving to 13.5% in 2017. The corrections unit began paying 7% in 2014, and now pays 10%.

With its comparables, and with few exceptions, contributions have ranged between 10% and 20% since 2012.

The County argues that that there is no more important factor in its efforts to contain costs than realizing higher premium contributions. It also makes the point that with all other employers, both public and private, the trend is toward having employees bear a greater share of

health insurance costs. With Tioga, however, and with the cap in place, the higher premiums go, the lower the percent being paid by Association members.

Position of the Association

The Association argues that with ever higher premiums the effect of both increasing the percentage contribution and eliminating the cap is to effectively lower wages. It maintains that even if it received its proposed 3.5% wage increases in 2013 and 2014, it would be all but totally lost if the panel adopted the County's proposed premium increases.

Discussion

It is clear that Association members pay very low insurance contributions, even measured against its own comparables. Its argument for maintaining the 5% rate and the dollar cap is that even with its suggested raises, employees will not realize their benefit if the panel approves the percentage contributions, and ending of the cap, suggested by the County.

As the chair inferred above, with the increased wages provided here must come premium increases in line with what employees in comparable jurisdictions and other Tioga employees are paying.

One step toward that objective is eliminating the dollar cap in order that percentage contributions not decrease as premiums increase. The other is to increase the percentage.

The County achieves its most important goal here with removing the cap. The percentage increases it seeks are too high, however, much in the same way as the wage increases the Association proposes.

A majority of the panel believes a fair premium contribution is the 7% the corrections unit employees first began making in 2014. Here the deputy sheriffs and other unit employees

will be required to contribute that same 7%, without any dollar cap, but starting effective 11:59 p.m. December 31, 2014.

Award

Refer to the Appendix.

HEALTH INSURANCE – RETIREES

Position of the Association

The Association proposes to incorporate into the Agreement effective January 1, 2013, the health insurance benefits currently being provided retirees by the County, but only through legislative resolutions and policies.

The Association strenuously argues for the need to codify the benefits, first pointing out that under the 1998 New York Court of Appeals decision in *Aeneas McDonald v. City of Geneva*, 92 N.Y.2d 326, legislative resolutions and policies, such as those creating the retiree benefits here, are not binding and enforceable, and may be changed without the need for collective bargaining. The benefits can be dramatically reduced, or eliminated entirely, at the whim of the County legislature.

The Association makes it clear that it is not looking for any new benefit, but only to protect those benefits retirees currently have through the legislative resolutions and policies.

It points out that over the years the County has increased contribution rates, imposed a new cost for Medicare eligible retirees and spouses, and increased prescription drug payments and deductibles.

The Association refers the panel to awards made in other interest arbitration cases which have codified retiree insurance benefits. It mentions two that did not award the benefit, but only because of the chair's opinion that the municipality involved in both was in a precarious

financial situation. The Association claims that these cases are not relevant here, since Tioga is in good financial condition.

Another argument the Association makes is that unless health insurance benefits are contained in the parties' collective bargaining agreement, the Association has no basis on which to conduct meaningful negotiations over them since the benefits can be unilaterally changed by the County at any time.

Yet another point the Association makes is that because deputies may retire after 25 years regardless of age, it is more critical for them to be assured of their retiree health insurance benefits than it is for civilians, most of whom retire only shortly before reaching Medicare eligibility.

Addressing Ms. Hollenbeck's testimony that if retiree health insurance were included in the Agreement the County might be required to set aside money to pay for this future benefit, the Association argues that local governments do not fund post-employment benefits such as this in their budgets.

Finally, the Association maintains that if the County again increases health insurance costs for retirees, or eliminates the benefit altogether, it will then be too late to fix the problem.

Position of the County

The County objects to including retiree health insurance in the collective bargaining agreement, first arguing that under the Court of Appeals decision in *Kolbe v. Tibbets*, 22 N.Y.3d 344 (2013), contractual health insurance benefits can be considered vested and not subject to any change by the employer. In order to control spending the County insists that it must have the flexibility to make changes to retirees' benefits as insurance premiums continue to rise, and to address changes in the Medicare program.

The County notes that its other bargaining units also do not have retiree health insurance benefits in their contracts.

The County rejects the Association's claim that it has eroded these benefits over the years, observing that since 1994 it has implemented only minor contribution increases, and that these have been more than reasonable given the dramatic escalation in premium costs.

In contrast to the Association's argument that deputies need the guarantee of contractual retiree health insurance because they are able to retire so young, the County makes the point that this is a reason not to include the benefit, because it is much more costly than providing it for other bargaining unit employees, who, on average, retire closer to their Medicare eligibility.

Discussion

Health insurance in retirement is an important benefit, and it is obvious that it would be better for Association members if it were contained in the collective bargaining agreement. In this respect, however, they are in no different position than employees in the other County units.

While it is true that most deputies retire younger than their civilian counterparts, and will need insurance longer before becoming eligible for Medicare, it is also true, as the County points out, that this same fact makes the benefit for the Association more costly. The chair does not find retirement age to be a reason for codifying the benefit.

The chair is also not persuaded to include the insurance because, as the Association argues, it would form the basis or foundation for the Association to conduct future negotiations to improve or at least maintain the level of the benefit contained in the Agreement. The problem with this argument is that it assumes the County providing the contractual benefit in the first instance. Whether or not it is successful, there is nothing preventing the Association from negotiating health insurance benefits.

The chair believes that an interest arbitration award, as a practical matter, is an attempt to balance the various needs and interests of the parties, as expressed in their proposals and responses to those of the other party. The panel does this, as it has here, by taking into consideration the various statutory factors, and, in the end, producing what it can only hope is a just and reasonable award.

Here the chair has concentrated on what he believes is the most important issue for the Association, that being higher pay, and for the County, increased employee health insurance premium contributions.

As the chair said at the outset of this discussion, retiree health insurance is an important benefit, but because it is already being provided it is not crucial for it to receive further consideration here.

The Association is correct that the County can reduce retiree health insurance coverage at any time without negotiating. In over 20 years, however, during which time premium costs have reached what most consider disturbingly high levels, the County has required what can only be seen as relatively minor increases in the contributions required of retirees.

Accordingly, the panel will not incorporate the retiree health insurance benefits into the Agreement.

Award

Refer to the Appendix.

CALL-IN PAY

Position of the Association

Unit employees currently receive a minimum of three hours, at straight time, if called in to work other than on a normal work day or shift. Under Article 7, Section 5.B call-in is defined as:

> an employee being appearanced or assigned to trials, to testify at motor vehicle hearings or an emergency as deemed by the department head or his designee, at times other than their regular and duty schedule.
>
> The Association proposes to amend the section as follows:
>
> An employee who is "called in" to work at a time when not regularly scheduled for his/her eight (8) hour tour of duty (shift), such as but not limited to, testifying at a trial, Grand Jury, Motor Vehicle hearing and/or training, shall be paid a minimum of three (3) hours overtime as set forth in this Article, or the actual hours or part thereof worked beyond the minimum "call in" set forth herein. In the event the employee completes the assignment or task in less than the minimum "call in" set forth herein, he/she shall be entitled to leave and be paid the minimum "call in" hours.

The Association argues that since police officers being called into work when not on their regular shift are having their home lives disrupted they should, in addition to being paid for a minimum of three hours, receive premium pay for those hours.

The other change sought here is that deputies be allowed to leave from a call-in when they have completed the work for which they have been brought in. The argument here is that the pay for a minimum of three hours no longer has meaning if the deputy can be made to stay the entire time and given assignments other than the one for which he or she was called in.

Position of the County

As to the second part of the proposal, the County makes the point that employees paid for three hours should have to work that entire period of time. The County also argues that the

Association has provided no justification for the increase from straight time to the contractual overtime rate.

Assuming that the panel does approve the overtime rate, the County argues that if an employee is called in contiguous to or within a few hours of the start of the employee's shift, the premium pay should be limited to the time actually worked. The reasoning here is that coming in before a shift is not as inconvenient or disruptive as being called in after since the employee is starting his or her regular shift relatively soon after arriving for the call-in, and not leaving until the end of the shift.

Discussion

The Agreement provides that employees called into work other than when on their regular shift are paid for a minimum of three hours. Pay for a minimum number of hours is common among both parties' comparables, and is justified by the fact that employees called in are having their off-duty hours interrupted, and their personal lives inconvenienced. The contracts of most of the parties' comparables also pay an overtime rate for call-in time, and not the straight time paid under the expired Agreement.

The panel has determined that overtime should be paid for call-in, but that when the call-in is contiguous to the beginning of a shift, defined as being within three hours of the start of the shift, the overtime should be only for the time actually worked.

With regard to employees being required to leave work upon completion of the call-in assignment, in particular on a day off, the existing practice shall remain in place, and left to future negotiations.

Award

Refer to the Appendix.

SHIFT DIFFERENTIAL

Position of the Association

Article 7.6 of the Agreement provides a shift differential of $.85 per hour for the A line and $.75 for the C line. The Association proposes to increase the rate by $.25 on January 1, 2013, and another $.25 on January 1, 2014.

The Association notes that the last increase, which was $.10 per hour, occurred in 2005, and argues that this figure is below most of its comparables, and has been eroded simply because of how long it has remained unchanged.

Position of the County

The County argues that the current shift differential is very competitive among its comparables, and that the Association has offered no evidence that it has been ineffective in keeping veteran deputies on the less desirable shifts.

Discussion

Little discussion is required here. The chair believes that some increase is in order here as part of an overall compensation package intended to bring the unit employees' wages and benefits more in line with those received by their counterparts in the comparable municipalities. A reasonable figure would be an additional $.10 starting on January 1 of both years covered by the award.

Award

Refer to the Appendix.

CLOTHING ALLOWANCE

Position of the Association

Plain clothes investigators currently receive a $500 clothing allowance, subject to the submission of receipts. The Association seeks a $75 increase in each of the two years of the award.

The argument here is the same as with the shift differential. The allowance has not been increased for several years, and is lower than most of the Association's comparables.

Position of the County

The County argues that its clothing allowance is fourth highest among its comparables, and, therefore, very competitive.

Discussion

The allowance now provided is in the range of all the comparables, but since there has been no increase since 2006 a modest one is appropriate here. A reasonable amount is $25 starting in the second year of the award

Award

Refer to the Appendix.

CRIMINAL INVESTIGATION DIVISION ON-CALL PAY

Position of the Association

Article 7.9A of the Agreement provides for C.I.D. members involved in on-call duties to be paid $35 per day. The Association proposes to increase this in the first year of the award to $50 for week days and $75 for weekends, and in the second year to $100 and $125. It also

proposes to add contract language creating a procedure for distributing and regulating on-call assignments.

The Association notes that since the amount has remained the same since 2006 it has lost value over time, and argues that the proposed increases would bring this benefit in line with what its comparables provide.

A justification is also offered for the need to include appropriate procedures and safeguards in the Agreement.

Position of the County

The County argues that the increase the Association seeks would make the benefit much higher than provided among its comparables. As to the proposal to add procedural language, the County notes that in the PERB improper practice charge proceeding, the ALJ found this part of the proposal not to be arbitrable. As such, it is not before the panel.

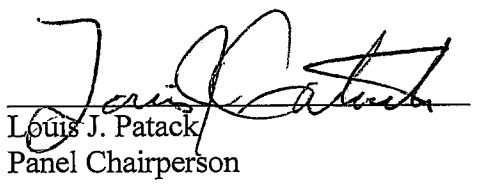
Discussion

The panel agrees that a modest increase of $10 starting in the second year of the award is appropriate.

Award

Refer to the Appendix.

Dated: November 8, 2016
Bonita Springs, Florida



Louis J. Patack
Panel Chairperson

APPENDIX

Tioga County Law Enforcement Association, Inc. and
County of Tioga and Tioga County Sheriff
PERB Case No. IA2015-006; M2014-258

- **Article 7 – SALARY AND WAGES (pp. 2-6)**

Section 2A. Deputy Salary Schedule – Amend to reflect the following:

All employees shall receive an annual salary based on the following schedule:

(N/C)	(2.0%)	(1.0%)	(2.0%)	(1.0%)
Effective	1/1/13	7/1/13	1/1/14	7/1/14
Hire	$44,346	$44,789	$45,685	$46,142
1 Year	$47,434	$47,908	$48,866	$49,355
2 Years	$50,522	$51,027	$52,048	$52,568
3 Years	$53,890	$54,429	$55,518	$56,073

X
Concur

Dissent

James W. Roemer, Jr. 10/31/16
James W. Roemer, Jr. Date
Employer Panel Member

X
Concur

Dissent

11/2/16
Anthony V. Solfaro Date
Employee Panel Member

B. Sergeant Investigator Salary Schedule:

1/1/13	7/1/13	1/1/14	7/1/14
$58,890	$59,429	$60,518	$61,073

The Sergeant/Investigator Salary Schedule represents $5,000.00 above the 3 year Deputy Sheriff Salary Schedule. **(NOTE: This represents no change).**

X
Concur

Dissent

James W. Roemer, Jr. 10/31/16
James W. Roemer, Jr. Date
Employer Panel Member

Concur

X
Dissent

11/2/16
Anthony V. Solfaro Date
Employee Panel Member

C. Lieutenant/Senior Investigator Salary Schedule:

1/1/13	7/1/13	1/1/14	7/1/14
$63,890	$64,429	$65,518	$66,073

The Lieutenant/Senior Investigator Salary Schedule represents $5,000.00 above the Sergeant/Investigator Salary Schedule. **(NOTE: This represents no change).**

X		James W. Roemer, Jr. 10/31/16	
Concur	Dissent	James W. Roemer, Jr.	Date
		Employer Panel Member	
	X	Anthony V. Solfaro 11/2/16	
Concur	Dissent	Anthony V. Solfaro	Date
		Employee Panel Member	

Delete Addendum A-2 and re-letter any Addendums accordingly. **(NOTE: Refers to salary schedules, and is no longer needed with 2A, 2B and 2C above).**

X		James W. Roemer, Jr. 10/31/16	
Concur	Dissent	James W. Roemer, Jr.	Date
		Employer Panel Member	
X		Anthony V. Solfaro 11/2/16	
Concur	Dissent	Anthony V. Solfaro	Date
		Employee Panel Member	

D. Effective January 1, 2013 this section is deleted **(NOTE: Refers to salary schedule movement being "frozen" upon expiration of Agreement).**

NEW D. Longevity Schedule – Each employee shall be paid pursuant to the following schedule:

Years of Service	1/1/13	**(+$50.00)** 1/1/14
Start of 10th through 13th Year	+$ 250.00	+$ 300.00
Start of 14th though 17th Year	+$ 250.00	+$ 300.00
Start of 18th through 20th Year	+$ 250.00	+$ 300.00
Start of 21st through 23rd Year	+$ 250.00	+$ 300.00
Start of 24th Year and Above	+$ 250.00	+$ 300.00

TOTAL	+$1,250.00	+$1,500.00

The above amounts are cumulative, and shall be paid in equal amounts starting in the pay period of the employee's anniversary date, and included in the calculation of the employee's overtime rate of pay going forward (e.g., longevity is $300.00. Divide by 26 pay periods, paid $11.54 each pay period. The $300.00 annually will be divided in the same manner as the employees Base Wage to determine the straight time hourly rate to be applied to the Base Wage hourly rate for the purpose of calculating the overtime rate).

X			10/31/16
Concur	Dissent	James W. Roemer, Jr., Employer Panel Member	Date
X			11/2/16
Concur	Dissent	Anthony V. Solfaro Employee Panel Member	Date

Section 4A, 4B and 4C. – Delete in their entirety, and re-number and re-letter Sections accordingly. **(NOTE: Refers to overtime calculation formula applying the Fair Labor Standards Act, and is no longer applicable)**.

X			10/31/16
Concur	Dissent	James W. Roemer, Jr. Employer Panel Member	Date
X			11/2/16
Concur	Dissent	Anthony V. Solfaro Employee Panel Member	Date

Section 4D. – Re-letter to 4A and amend to read as follows:

An employee who works over forty (40) hours in any workweek, and/or over eight (8) hours in his/her regularly scheduled tour of duty (shift), shall be entitled to overtime, and paid at the rate of one and one half times (1.5X) his/her applicable hourly rate of pay, including longevity if applicable. In a workweek that an employee is scheduled to work over thirty-two (32) hours, based on the four (4) and two (2) rotating work schedule, and/or over eight (8) hours in his/her regularly scheduled tour of duty (shift) that workweek, he/she shall be entitled to overtime and paid at the rate of one and one-half times (1.5X) his/her applicable hourly rate of pay, including longevity if applicable. At the employees option, he/she may elect compensatory time in lieu of overtime pay, which shall be calculated as set forth herein (e.g., - works 8 hours =

12 hours of compensatory time). All paid leave time off shall be counted as time worked for the purposes of calculating overtime payment.

X		10/31/16
Concur	Dissent	James W. Roemer, Jr. Date Employer Panel Member
X		11/2/16
Concur	Dissent	Anthony V. Solfaro Date Employee Panel Member

Section 5 A. Delete in its entirety and amend to read as follows:

Effective 11:59 p.m. December 31, 2014 and thereafter, and in the event an employee is called into work anytime, other than his/her regularly scheduled tour of duty/shift (Example: day off, prior to regularly scheduled starting time of the tour of duty/shift as defined herein), he/she shall be paid a minimum of three (3) hours of overtime at one and one-half times (1.5X) his/her straight time rate of pay, including longevity, if applicable. Notwithstanding the foregoing, and in the event an employee is called into work contiguous to his/her regularly scheduled tour of duty/shift, he/she shall be paid for the actual amount of time at one and one-half times (1.5X) his/her overtime pay, including longevity, if applicable (e.g., called in one hour prior to the starting time, paid one hour of overtime). Contiguous shall be defined as being called in within three (3) hours of the starting time of the employees regularly scheduled tour of duty/shift.

X		10/31/16
Concur	Dissent	James W. Roemer, Jr. Date Employer Panel Member
X	X	11/2/16
Concur	Dissent	Anthony V. Solfaro Date Employee Panel Member
with all but the contiguous time for overtime payment	As to contiguous time for overtime payment	

Section 6. Amend the shift differential/hourly rate as follows:

	(+$.10/hr) 1/1/13	(+$.10/hr) 1/1/14
"A" Line	$.95/hr	$1.05/hr
"C" Line	$.85/hr	$ .95/hr

X		10/31/16
Concur	Dissent	James W. Roemer, Jr. Date Employer Panel Member
X		11/2/16

Concur	Dissent	Anthony V. Solfaro Employee Panel Member	Date

Section 7. Amend to read as follows:

An employee who is authorized and uses his/her personal vehicle for official business, shall be reimbursed at the rate per mile established each year by the County.

X			10/31/16
Concur	Dissent	James W. Roemer, Jr. Employer Panel Member	Date
	X		11/2/16
Concur	Dissent	Anthony V. Solfaro Employee Panel Member	Date

Section 8 B. Amend to read as follows:

In addition, the County agrees to pay plain clothes Investigators a clothing allowance, payable in January each year, with purchase receipts to be submitted to the Sheriff, or designee, by June 1st of each year. Failure to submit receipts totaling at least the amount herein shall result in the amount lacking to be deducted from the employee's first (1st) paycheck in June of that year. The clothing allowance amount to be paid is as follows:

	(N/C)	**(+$25.00)**	
	1/1/13	1/1/14	
	$500.00	$525.00	
X			10/31/16
Concur	Dissent	James W. Roemer, Jr. Employer Panel Member	Date
X			11/2/16
Concur	Dissent	Anthony V. Solfaro Employee Panel Member	Date

Section 9 A. Amend to read as follows:

The County agrees to pay employees of the C.I.D involved in "on-call" duties, the following amount each day:

(N/C) **(+$10.00/day)**

1/1/13	1/1/14
$35.00/day	$45.00/day

X
Concur

Dissent

James W. Roemer, Jr. 10/31/16
James W. Roemer, Jr., Date
Employer Panel Member

X
Concur

Dissent

Anthony V. Solfaro 11/2/16
Anthony V. Solfaro Date
Employee Panel Member

- **Article 9 – RETIREMENT** (p. 6)

  A. Delete in its entirety and re-letter accordingly. **(NOTE: Refers to retirement plan coverage to those employees prior to July 1, 1976 and is no longer applicable).**

X
Concur

Dissent

James W. Roemer, Jr. 10/31/16
James W. Roemer, Jr. Date
Employer Panel Member

X
Concur

Dissent

Anthony V. Solfaro 11/2/16
Anthony V. Solfaro Date
Employee Panel Member

- **Article 10 – HEALTH AND DENTAL INSURANCE (pp. 6-8) – Amend Article heading to HEALTH INSURANCE**

Delete A, B(1-7), C(1-5), D, E, and F in its entirety, and insert the following to read as follows:

A. All employees shall be entitled to enroll in the Excellus Blue Cross/Blue Shield PPO Option H – Split health insurance plan with a fifteen dollar ($15.00) co-pay for most services, unless announced otherwise with plan description. Employee contributions each pay period shall be as follows:

Individual	Family
5% up to $20.00	5% up to $40.00

Effective 11:59 p.m. December 31, 2014, each employee enrolled in the Excellus Blue Cross/Blue Shield PPO Option H- Split health insurance plan, shall contribute seven percent

(7.0%) of the premium in the category enrolled (e.g., individual or family). The contribution shall be deducted each pay period in equal amounts as set forth in C below.

The County agrees to maintain the Excellus Blue Cross/Blue Shield PPO Option H-Split health insurance plan until such time that an alternate health insurance plan or provider is mutually agreed upon by the County and the TCLEU.

B. Each employee shall pay a drug prescription (Rx) co-pay as follows:

- Tier 1 Rx - $5.00
- Tier 2 Rx - $15.00
- Tier 3 Rx - $30.00 as outlined and defined by the "3-Tier Medication Guide of Commonly Prescribed Drugs" available on the website of Excellus Blue Cross/Blue Shield.

C. All employee health insurance contributions shall be processed through an Internal Revenue Service (IRS) 125K plan, on a mandatory basis. An employee shall have the option of withdrawing from participation in the IRS 125K plan, provided the withdrawal is made in writing.

D. All employees shall have the option of participating in an expanded IRS 125K plan for qualifying out of pocket and dependent care expenses permitted by the plan. The premium cost of this plan shall be paid by the County.

X		James W. Roemer, Jr. 10/31/16	
Concur	Dissent	James W. Roemer, Jr.	Date
		Employer Panel Member	
X	X	Anthony V. Solfaro 11/2/16	
Concur	Dissent	Anthony V. Solfaro	Date
		Employee Panel Member	

with all but the health insurance increase and no cap

DISSENT TO health INSURANCE INCREASE AND NO CAP

Retiree Health Insurance – The Panel denies incorporating and codifying the retiree health insurance benefit set forth in the resolutions introduced as Exhibit 30 into the record by the Tioga County Law Enforcement Union, Inc.

X Concur	_____ Dissent	10/31/16 James W. Roemer, Jr. Date Employer Panel Member
_____ Concur	X Dissent	11/2/16 Anthony V. Solfaro Date Employee Panel Member

APPENDIX "A"

TIOGA COUNTY – SECTION 207-C PROCEDURE (pp. 1-13)

Section 2: DEFINITIONS – Amend f) to add the following:

f) Section 207-c Benefits – insert "including longevity" after where "wages" appears in the 1st line.

X		10/31/16
Concur	Dissent	James W. Roemer, Jr. Date Employer Panel Member
X		11/2/16
Concur	Dissent	Anthony V. Solfaro Date Employee Panel Member

DURATION – The duration of this Award shall be January 1, 2013 through December 31, 2014. The terms of this Award shall be implemented as soon as possible, but no later than the first (1st) pay period of November. The County shall provide a worksheet for all unit members detailing by pay period, the basis of the calculation of his/her compensation, including any retroactive amounts that may be due pursuant to the terms of this Award, and will make every effort to do so not later than thirty (30) calendar days following the date of the Panel Chairman's signature to this Award.

X		10/31/16
Concur	Dissent	James W. Roemer, Jr. Date Employer Panel Member
X		11/2/16
Concur	Dissent	Anthony V. Solfaro Date Employee Panel Member

Any demand and/or terms other than those specifically modified by this Award submitted by the County, are denied.

X		10/31/16
Concur	Dissent	James W. Roemer, Jr. Date Employer Panel Member
X		11/2/16
Concur	Dissent	Anthony V. Solfaro Date Employee Panel Member

Any demand and/or term other than those specifically modified by this Award submitted by the Association, are denied.

X Concur	Dissent	James W. Roemer, Jr. 10/31/16 James W. Roemer, Jr. Date Employer Panel Member
Concur	X Dissent	Anthony V. Solfaro 11/2/16 Anthony V. Solfaro Date Employee Panel Member

RETROACTIVITY – The Panel awards full retroactivity to any unit member who worked during any period incorporated by the term of this Award. The Panel hereby retains jurisdiction of any or all disputes arising out of the implementation and payment of retroactivity of this Award for adjudication, which shall only be for one hundred and twenty (120) calendar days after the payment of retroactivity is paid.

X Concur	Dissent	James W. Roemer, Jr. 10/31/16 James W. Roemer, Jr. Date Employer Panel Member
X Concur	Dissent	Anthony V. Solfaro 11/2/16 Anthony V. Solfaro Date Employee Panel Member

STATE OF ~~NEW YORK~~ Florida
COUNTY OF ~~ALBANY)~~ Lee ss:

On this 8th day of November, 2016 before me personally came and appeared, Louis J. Patack to me known and known to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Diane Willis
Notary Public

DIANE WILLIS
Notary Public - State of Florida
My Comm. Expires Oct 17, 2018
Commission # FF 135684

STATE OF NEW YORK
COUNTY OF ALBANY) ss:

On this 31st day of October, 2016 before me personally came and appeared, James W. Roemer, Jr., to me known and known to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Emily J. Bond
Notary Public

EMILY J. BOND
Notary Public, State of New York
No. 01BO6313190
Qualified in Albany County
Commission Expires 10-14-2018

STATE OF NEW YORK
COUNTY OF ORANGE) ss:

On this 2nd day of November, 2016 before me personally came and appeared, Anthony V. Solfaro, to me known and known to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Kimberly O'Brien
Notary Public

KIMBERLY OBRIEN
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Orange County
Reg. No. 01OB6317781
Commission Expires January 12, 2019

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration between

TIOGA COUNTY LAW ENFORCEMENT ASSOCIATION, INC.,

Employee Organization/Petitioner,

-and-

COUNTY OF TIOGA AND TIOGA COUNTY SHERIFF,

Public Employer/Respondent.

PERB Case Nos. IA2015-006; M2014-258

FOR THE PERIOD OF JANUARY 1, 2013 THROUGH DECEMBER 31, 2014

DISSENTING OPINION OF ANTHONY V. SOLFARO

EMPLOYEE ORGANIZATION PANEL MEMBER

DISSENTING OPINION

I dissent from this award as set forth herein for several reasons, but I would like to start on a somewhat more positive note.

The Chairman awards these 32 deputy sheriff police officers some needed and deserved wage and benefit improvements, although not in the number or to the level warranted by the law and the facts. He correctly rejects the Employer's "county only" comparability argument. The award also acknowledges that employees' economic fringe benefits should not go unchanged for long periods of time as has happened with these deputies. The Chairman's recognition that these deputies have been and still will despite this award be paid and benefitted below market rates for area police officers may improve the chances for the parties to reach a collective bargaining agreement in the next round of negotiations if the Employer accepts the finding that it does not pay its deputies market compliant wages and benefits. That is important because this award covers only January 1, 2013 through December 31, 2014. Upon release, the parties will be back in negotiations. Only a multi-year agreement will avoid the merry-go-round of litigation that neither party can or should want.

With the good news of this award – such as it is – out of the way, now the bad offered in no particular order of importance to the interest arbitration process generally or to LEA and its membership specifically.

The Chairman's comparability analysis is wrong in part and his inconsistent application of comparability is greatly troubling.

The Chairman wrongly includes among the comparables four counties offered by the Employer that are not contiguous to Tioga County (Delaware; Schuyler; Schohaire; Seneca). In

three of these four, those sheriff's offices are much smaller than Tioga County's. The Chairman does this in the expressed belief that having more jurisdictions in the comparability sample is a good thing or is at least harmless. There are several problems with this rationale. What the Chairman did was neither good nor harmless.

In rejecting the LEA's opposition to the four non-contiguous counties being included among the comparables, the Chairman writes that the distance these counties are from Tioga County is "inconsequential" in this "rural part of the state". Putting aside that distance from Tioga County was not the only reason for the LEA's opposition, if distance does not matter, then all other non-contiguous county sheriff's offices and the police agencies within those other counties which are as close or closer to Tioga County as are the four the Chairman accepted must also be part of the comparable market. The Employer did not offer any of these nor did the Chairman require the Employer to produce information about the wages and benefits extended to police officers in these other non-contiguous counties that were excluded from the comparables the Employer offered.

It is obvious why the Employer offered these four non-contiguous counties as comparables. It hoped to persuade this Chairman that the low wages and benefits paid to the deputy sheriffs working for these four remote counties in smaller agencies evidences that the Tioga County deputies are paid and benefitted at market rates or better. The Employer wanted this Chairman to compare Tioga County deputies with have-nots from a gerrymandered market to suppress the terms of this award. The Chairman should not have allowed the Employer's attempt to rig the market for comparability analysis.

The ten comparables offered by the Association, that include the sheriff's offices in all four of the counties that abut Tioga County and the police agencies within those counties, except for one very large city police department (Binghamton) and two very small village police departments (Waverly and Owego), give the Panel the most accurate, fairest description of the wages and benefits paid to police officers in the surrounding area. Those ten comparables are more than sufficient in number and type to enable a reasonable and meaningful comparability analysis. The Chairman should not have enlarged the market to accommodate the Employer's position and lend credence to its argument that is pays its deputies a competitive market rate for police officer services.

This Chairman, like others, has previously written that having more municipalities in a comparability sample just to have more jurisdictions is not necessary or appropriate. This Employer added these four remote jurisdictions while simultaneously excluding others as remote and trying, unsuccessfully, to exclude the contiguous counties of Broome and Tompkins in a transparent attempt to convince this Chairman that Tioga County deputies are fairly paid and benefitted because the deputies in these four remote counties are also low paid and have poor benefits. Unfortunately, the Chairman appears to have been influenced somewhat by the Employer's obvious cherry-pick of these four remote counties as comparables. But even if he was not so influenced, the Chairman should not have allowed even paper consideration of these four remote counties as comparables because that only encourages this Employer and other employers to try the same ploy in future interest arbitration proceedings. That will surely complicate and lengthen the interest arbitration process.

Not only is the Chairman's comparability analysis incorrect for the reasons stated, he applied it arbitrarily and inconsistently. I will discuss the Chairman's application of comparability in the part of my dissent about the Chairman's awards upon health insurance issues because this is where the shifting comparability analysis appears.

The Chairman spends some time in the award recounting Employer witness Rita Hollenbeck's testimony as to why she believes the County's economic future does not look bright. If what will be or may be in the future is relevant, then the Chairman should have discussed the current and future impact of the County's gaming operations. Tioga County will soon be home to a full casino. The anticipated revenues from that casino by the County's own estimates are enormous. That information was submitted to the Panel, but the Chairman refused to even mention that revenue in the award.

It appears from what the Chairman wrote that he was somewhat persuaded by Ms. Hollenbeck's testimony to temper the terms of this award. He should have at least reported the future good economic news along with Ms. Hollenbeck's gloom-and-doom predictions. I believe he did not do that because that would have made the County's already very good financial condition look even better and that would have made it more difficult for the Chairman to justify the denial of several LEA demands and more difficult for him to award the County's "highest priority" demands for increased, uncapped health insurance premium payments by these employees and to leave the retirement health care benefits in an unenforceable form.

If, contrary to my belief, the Chairman discounted Ms. Hollenbeck's pessimism about the future, it was with good reason. As between Mr. Decker and Ms. Hollenbeck, it is Mr. Decker

who is, as stipulated by the Employer, the financial expert. The differing expertise is well shown just by their differing opinions about sales tax revenue.

The County budgeted 13.8 million in net sales tax revenue for 2015. Mr. Decker believed that gross sales tax revenue in 2015 would be about 19.5 million, with a net of 14.5 million to the County. Ms. Hollenbeck disagreed stating that sales tax revenue for 2015 would come in "at or just over what had been budgeted" (Tr. p. 155). The County collected 19.55 million in gross sales tax for 2015, almost exactly what Decker said it would be. That resulted in about 14.59 million net sales tax to the County, about $700,000 more than what the County had budgeted for 2015.

The Chairman's discussion about the impact of the state legislation making ability to pay the predominant factor in proceedings involving a "fiscally eligible" municipality such as Tioga County is superficial. It is given little more than lip service by the Chairman. As President of the New York State Union of Police Associations, Inc. (NYSUPA), I specifically warned the Governor and some members of the State legislature in person and by letters that this legislation would hurt those municipalities which meet the "fiscally eligible" definition, but which nonetheless had money. That is Tioga County, among others.

This is yet another award in which a Panel Chair has not applied the "fiscally eligible" statute as required with the misapplication benefitting the Employer. Tioga County has more than enough money to pay for every one of the LEA's demands exactly as presented. The $700,000 additional sales tax revenue the County did not expect to receive is enough by itself to have paid for all of the LEA's demands, now and into the future. Despite this, several of the

LEA's demands are denied, often without any explanation, or are awarded at a level lower than demanded and warranted.

This award is representative of what I consider to be a major problem, perhaps the biggest one, with interest arbitration in the post-recession era. When unions and employees have the law and the facts in their favor, Panel Chairs with increasing frequency ignore or minimize the law and facts so as to not award employees what the law and facts entitle them to receive. That is an abandonment of a Panel Chair's duties and it is fundamentally unfair to employees.

Upon the issues that are addressed in the award, it is the Chairman's award upon health insurance issues that I find most objectionable.

The Chairman increases the deputies' payments toward health insurance premium costs during employment to 7% of premium from 5%, and he eliminates the dollar cap on those payments. The Chairman also refuses to award the LEA's demand to codify retiree health care benefits, choosing instead to leave the retirees from this unit exposed to the County's unilateral action.

The Chairman's rationale for his award upon the Employer's demand that imposes higher, uncapped health insurance payments upon these underpaid deputies is that other Tioga County employees and other police officers in the comparable market pay more for health insurance than what these deputies were paying. There are two very basic and major problems with this rationale.

By making comparability dispositive as to the Employer's health insurance demand, the Chairman plainly violates the "fiscally eligible" statute that makes ability to pay dispositive of this demand and others. The Chairman cannot take comparability that is allowed no more than

30% weight even when combined with other statutory criteria and make it controlling. Moreover, the Chairman's award upon the Employer's health insurance demand ignores completely the fact that the other deputy sheriffs and police officers in the comparable market, except in the few remote counties the Employer threw into the mix, are paid and benefitted so much better than are these deputies. As to what other Tioga County employees are paying for health care, the Chairman earlier stated correctly in the award that the relevant comparability is police officer to police officer, not police officer to civilians or peace officers.

The Chairman states specifically and correctly in the award that neither party "has given the panel any justification for comparing the deputy sheriffs to anyone other than those engaged in law enforcement." Throughout the award and until his discussion of the parties' health insurance demands, the Chairman compares these deputies' wages and benefits to those of other deputy sheriffs and police officers. As to both the Employer's demand to have employees pay an uncapped, higher premium percentage, and the LEA's demand to codify existing health insurance benefits, the Chairman's comparison is with the County's civilian employees and its correction officers. No explanation is given by the Chairman for how something immaterial for most purposes suddenly becomes material and significant regarding the Employer's health insurance demand.

There cannot be one comparability analysis for one purpose and an entirely different comparability analysis for another purpose, but that is what the Chairman has done.

Not only is this shifting comparability hypocritical, it violates the "fiscally eligible" law. The Chairman knows that ability to pay is weighted most heavily, at 70% in this proceeding, with all other criteria combined carrying a total weight of only 30% because he states this early

in the award. Despite this, the Chairman makes a shifting comparability dispositive as to his awards upon health insurance demands applicable during employment and in retirement. What he did in regard to health insurance is not what he said earlier in the award had to be done under the "fiscally eligible" statute.

In justifying his award of the Employer's health insurance demand, the Chairman first notes that some other County employees pay more for their health care than do these deputies. What other County employees, who are not police officers, pay for their health insurance is immaterial.

The County employees who are not police officers are not eligible for interest arbitration. All of these employees have no alternative but to accept whatever the County wants to give them or face the imposition of those same terms by the Employer's legislative body pursuant to a legislative imposition. As such, other County employees' terms and conditions of employment are not relevant to what police officers' terms and conditions of employment are and should be.

In granting the Employer's demand for higher and uncapped health insurance premium payments by these deputy sheriffs during their employment, the Chairman also invokes the payments made by market police officers. But those police officers, except for the deputies working in the non-contiguous counties who the Chairman erroneously includes in the comparability analysis, are all paid and benefitted much better than are these deputies. Therefore, it perhaps understandable that these other police officers would pay more for health care during employment than these deputies because they can better afford to do it. There is no analysis or evidence submitted on what the health insurance plans are in the comparables or the annual premiums, which can be a factor on what may be the basis of the level of contribution in a

particular jurisdiction, including receiving health insurance upon retirement. But until these deputies are paid and benefitted the same as these other police officers in the market, what these other police officers pay for their health care should be applied, and it is not supportive of the award this Chairman makes, especially when every comparable includes retiree health insurance.

The Chairman next states his personal belief that with increased wages "must come premium increases in line with what employees in comparable jurisdictions and other Tioga employees, are paying." There is no explanation given by the Chairman for what he believes is some universal truism. It simply is not true that wage and benefit improvements must be offset by some concessions. I have been on many arbitration panels which did not award employer demands for employee concessions and which awarded wage and benefit improvements for employees. The terms of an award should be governed by the law and the facts. There are no universal givens. A Panel Chair cannot extract with any logic or fairness market level health insurance premium contributions or payments in line with market rates from employees unless those employees are at or near market rate wages and benefits. These deputies are not anywhere near market levels for wages and benefits even under this award.

The award of an increased percentage of premium contribution without a cap will impact the wage and benefit increases awarded.

In a County that has plenty of money, with more coming with the casino, and one that has been found not to be paying or benefitting its deputy sheriffs at market rates and levels, an award of an increased, uncapped percentage of health insurance premium is indefensible.

The shifting comparability that is made dispositive as to the Employer's health insurance demand is this Chairman's attempt to fashion some kind of a rationale so he could award

something upon what he believes is the Employer's "highest priority" demand. The award in this respect violates law and disregards important facts for the reasons already given.

This same flawed comparability analysis is repeated with the Chairman's denial of the LEA's demand to just codify the employees' existing retirement health insurance benefits in the award. The Chairman denies this demand because other Tioga County employees also do not have legal protection for their health insurance benefits.

The Chairman states that the deputies are in "no different position than employees in the other County units". That is wholly unpersuasive. Just because County employees do not have protection for their health care in retirement does not mean these deputies do not deserve that protection on the facts, the law, and what every other comparable submitted provides, a health insurance benefit on retirement. The record does not disclose why these other County employees do not have enforceable rights with respect to retiree health insurance. Maybe they never tried to get them. Moreover, those County employees do not have the duties, responsibilities and rights under law that these deputy sheriff police officers have. Thus, what other County employees who are not police officers do not have should not determine what police officers should have pursuant to a law that contains specific criteria governing the award.

If non-police comparability is at all relevant, despite what the Chairman wrote earlier in his award, it is not significant or controlling. Ability to pay controls in this proceeding, this Employer has it, and a codification of existing retiree health care benefits costs the Employer nothing more than what it is paying now. A codification makes the health insurance benefits enforceable, and prevents the Employer from unilaterally reducing or eliminating the benefits, and provides a balance on the terms and conditions of employment. This Chairman failed in his

responsibility on the law and evidence submitted in the proceeding to see that the improvements in this Award, or bargained in the future, are built on a false premise when the retiree health insurance benefit is an illusion. As codification of existing benefits does not cost the Employer anything more than what it is already paying, the ability to pay criterion that is controlling in this fiscally eligible proceeding should have resulted by law in an award of the LEA's demand to codify the existing retiree health insurance benefit. Ability to pay this demand is, yet again, not even mentioned by the Chairman in his rationale.

The Chairman next states that a codification of retiree health care is "not crucial" because retiree health insurance is already being provided and he states his belief that wages are "the most important issue for the Association".

In the first place, a Panel Chair is not free to decide what is and is not important to a union or an employer. The parties decide what is important to them. A codification of retiree health care is an extraordinarily important demand. It occupied much of these parties' attention during negotiations and at arbitration. That issue often drives impasses in public sector negotiations and interest arbitration filings.

The Chairman's professed belief that retiree health care protection is not "crucial" because the employees are now being provided with health care benefits in retirement is just ridiculous. Not even the Chairman can truly believe that statement. Employees do not have a benefit in any real sense if the benefit can be changed or eliminated at any time by employer unilateral action.

These deputies have in retirement only the health care benefits the County chooses to give them at any given point in time. That which they have can be changed or eliminated

because the benefits are not enforceable under current law because they exist under legislative resolutions.

In a prior award involving the Village of Baldwinsville, this Chairman created a retirement health care benefit where there was none, thereby simultaneously protecting the retirement health care benefit against that employer's unilateral change. He did this over that employer's objection in recognition that retiree health insurance is a "critical benefit".

What the Chairman previously described as a "critical" benefit in Baldwinsville has now become to this same Chairman in this proceeding just "important". The Chairman does not in his discussion refer to what he awarded in Baldwinsville. Apparently, he believes this proceeding is different from Baldwinsville because these deputies "have" retiree health insurance by legislative resolution. Only in the strictest dictionary sense of the word do these deputies "have" retiree health insurance. Something possessed at a moment in time by retired employees that can be changed or eliminated at any time by an employer and its elected or appointed officials is not anything the retirees "have" in any real sense. What these deputies "have" in retirement exists by County sufferance under unenforceable legislative resolutions. These deputies deserved, upon every criterion governing this proceeding, to have the existing retiree health insurance benefit put into an award to guard against any more unilateral reductions in benefits by the Employer or any more cost shifting to retirees.

This Chairman denies these deputy sheriffs that protection in the expressed hope that this is a just and reasonable disposition of the LEA's demand in light of the other terms in this award. It is not. Under the criteria that govern this proceeding, these deputies more than deserved the modest wages and benefits they are awarded. By those same criteria, the Employer did not

deserve to have these still low paid and under benefitted deputies pay even more for their health care benefits during employment. The Employer did not deserve to be left free to change the health care benefits of deputies in their retirement. But that is exactly what this Chairman gives the Employer.

Every deputy sheriff and police officer in the LEA's ten comparable jurisdictions have that post-retirement protection of their health care benefits, as do all of the deputy sheriffs working in the remote comparables the Employer offered. The higher health insurance premium contributions during employment the Chairman found were being made by deputy sheriffs and police officers in the comparable market he used was a major part of the Chairman's justification for his decision to have these deputies pay more for their health care during employment. The same deputy sheriff and police officer comparability the Chairman finds to be significant to his award of the Employer's demand regarding health care during employment should have been given the same significance in the disposition of the LEA's retirement health care benefit demand resulting in a codification of the benefit. That deputy sheriff and police officer comparability, instead, is completely ignored by the Chairman as to the LEA's demand to codify the existing retiree health insurance benefits. Only other County employees, who are not police officers, are mentioned by the Chairman.

If comparability is relevant to an award upon health insurance, as the Chairman believes, then the Chairman cannot with any fairness or logic ignore the fact, brought clearly to his attention in the LEA's post-hearing brief and my discussions with him, that every other of the LEA's proffered comparables, including the Employer's comparables, have retiree health insurance addressed in their collective bargaining agreements, thus making the benefit

enforceable, and bargainable, as it should be to achieve a comprehensive contract, or Award. The Chairman does not even mention this fact in his award. The Chairman cannot consistently with law and facts make significant or dispositive what non-police employees do not have and reduce to total insignificance what deputy sheriffs and police officers do have. Yet that is precisely what the Chairman does with his decision to leave retirement health care benefits unprotected.

The Chairman next justifies his award denying a codification of retirement health care benefits by stating that the several unilateral changes the County has made to date in retiree health care are "relatively minor". Those changes may be minor to this Chairman, but they are not minor to these employees and retirees.

The County over the years has made it more difficult for employees to qualify for health care benefits in retirement by changing age and years of service requirements, it has increased what retirees must pay for coverage, decreased the benefits, increased service and prescription drug co-pays, and added and increased deductibles. It has been a steady decline of benefits coupled with a cost shift to retirees all done unilaterally.

Not only does the Chairman's comment about the "minor" nature of these unilateral changes minimize what the County has actually done, it misses the controlling point. Without the protection that comes from codification of the existing benefit what was "relatively minor" in the past may become major or ruinous to retirees in the future. This award leaves these deputies in their retirement completely exposed to the County's unilateral action. That is fundamentally unfair and a result that defies every criterion that is applicable in this proceeding and certainly the ability to pay criterion that is controlling.

The Chairman also rejects the LEA's argument that a codification of retiree health care is necessary to give the parties a fair and reasonable basis to negotiate in the future. The Chairman states that the refusal to codify the existing retiree health insurance benefits will not prevent the Association from negotiating those benefits. That is accurate in a strict sense, but that was not the LEA's argument. The LEA argued that without a codification of retiree health insurance benefits it would "be forced to inflate its wage and benefit demands as a hedge against the likelihood of changes in this benefit". It also argued that it would not be able to negotiate long-term contracts for fear the Employer would change retiree health care benefits unilaterally during a multi-year agreement. The LEA argued the effect of an award that refused to codify the existing retirement health insurance benefits would be repeated with frequent impasses and interest arbitration proceedings, results that are in conflict with the Taylor Law's policies. The LEA never claimed that non-codification would prevent it from negotiating retirement health insurance benefits. Of course it can bargain this issue without a codification of the benefit, just not in an intelligent, meaningful way.

The Chairman's finding that the relatively young age at which deputies may retire is not a reason to codify the retiree health care benefits. Instead, he uses that fact to deny the demand. The earlier age at which deputies may retire just means to the Chairman that it will cost the Employer more to cover the deputies in retirement than it will other employees who are not police officers and who retire at an older age. The Chairman's rationale is truly mystifying. Knowing that more change to this "critical benefit" is likely, if not a certainty, makes the Chairman's award on this issue all the more objectionable and irrational.

By granting the Employer's demand to have employees pay more for health insurance during employment and simultaneously denying them protection of that benefit in retirement, this Chairman has done what other chairs have not. In the City of Albany, for example, the employer sought health insurance concessions from employees. The police supervisors union that NYSUPA represents demanded the non-contractual retiree health care benefits be codified. Chairman Selchick denied both the employer's and the union's demands (IA2010-020 issued February 2013). In doing this, he expressly recognized that there is a relationship between retiree health insurance benefits and health insurance benefits during employment. Chairman Selchick did not consider it appropriate under the law governing interest arbitration to award employer concessions as to health insurance during employment if health insurance is not guaranteed to employees in retirement.

This Employer wanted more health insurance payments from employees during employment and it wanted to leave them without any protection of that benefit in retirement. Those were its two priority demands. This Chairman awarded the Employer both of its demands. That is an unconscionable result and one that is unprecedented in my interest arbitration experience of more than 30 years.

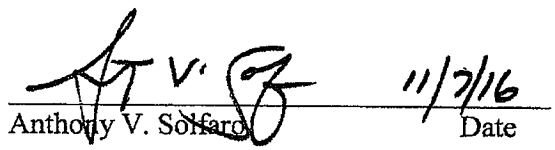
This Chairman believes it is better to leave this Employer with the power to shift health care costs onto retired deputy sheriffs than it is to protect a level of retiree health care benefits already unilaterally reduced several times by this Employer. That is never the correct choice in my opinion and it cannot be the correct choice in this proceeding because ability to pay controls in this proceeding and this demand costs nothing more than what the Employer is currently paying.

In the end, this Chairman has decided it is more reasonable to allow this Employer that is well off financially to save money by hurting retirees than it is to protect those retirees who have earned their health care in retirement by many years of employment in an extraordinarily dangerous and demanding occupation. The choice the Chairman made cannot be justified by the facts or the law, both of which this Chairman has disregarded.

By refusing to protect these deputies' existing health insurance benefits in retirement against this Employer's unilateral change, this Chairman perpetuates the very unilateralism the Taylor Law condemns as against the public policies of this State. His award in this respect is not just and reasonable under any criterion applicable in this proceeding.

It is apparent to me that this Chairman does not fully comprehend the interest arbitration process, or the law that governs it, as demonstrated in this Award on two major elements.

For these reasons, I dissent from this award.



Anthony V. Solfaro 11/7/16
Date

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest Arbitration Between TIOGA COUNTY LAW ENFORCEMENT ASSOCIATION, INC. -and- COUNTY OF TIOGA AND TIOGA COUNTY SHERIFF.	**CONCURRING OPINION OF PUBLIC EMPLOYER PANEL MEMBER JAMES W. ROEMER, JR., ESQ.** **PERB Case No.: IA 2015-006 M 2014-258**

Although I concurred in every aspect of the Award in this matter, I feel compelled to write a Concurring Opinion so that disinterested parties reading the Opinion and Award will have a better understanding of my reasoning for concurring with the Award drafted by the Chairperson.

Primary Matters that Led to the Interest Arbitration Proceeding

In my view, there were two primary matters which led the Tioga County Law Enforcement Association (TCLEA) to file for Interest Arbitration. The first was TCLEA's demand that retiree health insurance, as currently offered by the County by legislative resolution, be made part of the Collective Bargaining Agreement so as to preclude subsequent changes by the County Legislature without TCLEA concurrence through the collective bargaining process. There are currently two other collective bargaining units in Tioga County and neither of the collective bargaining agreements covering those units has a provision for retiree health insurance. Under the current state of the law the County was unwilling to place such a guarantee in the TCLEA collective bargaining agreement given the precarious nature of County finances. The Award in this matter does not contain a provision which inserts the providing of retiree health insurance in the collective bargaining agreement.

Second, an essential proposal by the County in the collective bargaining process was that the members of the TCLEA bargaining unit must pay a greater share of their health insurance premiums. The expired collective bargaining agreement (which expired on December 31, 2012) provides that employees enrolled in an individual health insurance plan contribute 5% of the health insurance premium up to a maximum of $20 per pay period (there are 26 pay periods in a year). The agreement also provides that employees enrolled in family health insurance contribute 5% of premium per pay period up to a maximum of $40 per pay period. In bargaining, the County had proposed to increase the health insurance premium contribution to levels ranging from 10%-15% depending upon the duration of the agreement (if indeed one was reached). During the period of time covered by this Award, employees in the other two bargaining units of the County were contributing at least 10% of the health insurance premium WITHOUT that amount being capped. At no time during the bargaining sessions was the TCLEA willing to agree to any health insurance premium increase that did not contain a cap. As is apparent from this Award, the health insurance premium has been increased to 7% of actual premium WITHOUT a cap. In 2014 (the last year covered by this Award), the family health insurance premium for members in this bargaining unit enrolled in the least expensive plan (a majority of the bargaining unit members were enrolled in this plan) was $21,000 annually, or approximately $804 bi-weekly. Utilizing the formula in the expired collective bargaining agreement, the 5% of premium with a $40 cap had already been reached, meaning that on a going forward basis (assuming health insurance premium increases), the 5% contribution would be meaningless as the cap would always be in play. In 2016, the health insurance premium for the same plan used in this illustration increased to an amount in excess of $26,000 per year. While the 7% uncapped health insurance premium

contribution contained in this Award is significantly less than the County is receiving from all of its other employees, whether in a bargaining unit or not, it is a step in the right direction and, more significantly, it removes the cap that had been in place.

Comparable Jurisdictions

Tioga County is best described as a rural county in the southern tier. Its "urban centers" consist of the Village of Owego with a population of less than 4,000 and the Village of Waverly with a population of slightly more than 4,000. The County urged the Panel to look at similarly situated rural counties without a major urban center as being comparable, and included Chemung County and Cortland County which are contiguous counties to Tioga, as well as Schuyler County, Seneca County, Delaware County and Schoharie County, none of which are contiguous to Tioga County, but all of which possess the same rural characteristics. At page 9 of the Chairperson's Opinion, he states

> "The Chair does not agree with the Association that non-contiguous counties should be excluded because they are too distant from Tioga. **In this rural part of the state, the distances between Tioga and the counties the Association would reject are inconsequential"** (emphasis supplied).

Yet, in the very next paragraph, the neutral Chairperson states

> "The Chair agrees with the Association, however, that both Broome and Tompkins Counties should be included in the mix. Both border Tioga, and the County does not persuasively argue why they should be excluded because they have relatively large

> cities and universities, and, at least with Broome, a much higher crime rate."

It is with this latest quote that I respectfully disagree. By including both Broome and Tompkins County in the list of "comparable jurisdictions," the Chair was able to fashion economic awards which are higher than would have been warranted without the inclusion of Broome and Tompkins County since their road patrol deputies are at the highest economic end of the comparable counties that were used. I am not certain how it would be possible for an employer to "persuasively argue" that two counties with large cities as urban centers (Binghamton in Broome and Ithaca in Tompkins), both with significantly larger populations than Tioga and both containing large university centers should be discounted as being comparable to Tioga. It would appear from the logic used by the Chair by including these counties as comparable that they were included because they are contiguous but, more than likely, would have been excluded were they not contiguous. Stated another way, the Chair has agreed that rural counties that are not contiguous to Tioga should be included because "distances....are inconsequential," but on the other hand, includes what can best be described as more urban counties because they are contiguous. Schoharie County has three incorporated municipalities within its borders, the Village of Schoharie with a population of less than a thousand, the Village of Sharon Springs with a population of less than six hundred and the Village of Cobleskill with a population of less than five thousand. Greene County has as its largest incorporated municipality the Village of Catskill with a population of approximately four thousand. Both Schoharie County and Greene County are contiguous to Albany County yet I doubt that any fair minded individual would equate either Schoharie County or Greene County as being "comparable" in any sense of the word to Albany County.

Once the Chair had ruled that Broome and Tompkins counties were in the mix of comparable counties, it left me no choice but to agree that the favorable financial aspects of the Award for the members of the TCLEA were warranted on the basis of comparability.

Ability to Pay

More recent amendments to the Taylor Law specifically targeting Interest Arbitration and the Interest Arbitration Panel are contained in Section 209.6(e) of the Civil Service Law. Specifically, the charge to the Interest Arbitration Panel is that for those municipalities that are deemed "fiscally eligible" because of either their high tax rate or their low fund balance, the Panel is directed to weight the factor known as "ability to pay" with an overall weight of 70% and according to the statute such consideration shall be "first and foremost." In this particular proceeding, during the Executive Sessions conducted by the Panel, little or no consideration was given to this important aspect of the Panel's charge by the Chair. My recollection is that less than 15 minutes of discussion took place regarding the 70% weight factor and more specifically as it relates to Tioga County's ability to pay. At page 13 of his Opinion, the Chair states

> "Beginning with the disagreement over whether, without more, the County being a fiscally eligible municipality negatively effects its ability to pay, the Chair agrees with the Association that it does not."

The Opinion then goes on to say

> "The state legislature has determined that in municipalities in which taxpayers have a higher property tax burden than those in most other communities there is good reason to require an interest

> arbitration panel, in considering the statutory factors it employs in making an award, to give seventy percent weight to ability to pay. The legislature did not say, however, nor does the wording of CSL § 209.6 suggest, that the tax burden itself has any impact on ability to pay. It simply tells a panel that it must pay special attention – seventy percent – to a municipality's ability to pay. That is what the panel has done in this proceeding."

With all due respect to the Panel Chair, I completely disagree that this Panel paid "special attention – 70% – to Tioga County's ability to pay and it certainly did not consider ability to pay "first and foremost." The extensive testimony of Rita Hollenbeck, the County's Chief Accountant and Budget Officer, all of which is contained in a transcript of the hearing in this matter, extensively details the fiscally prudent steps which the County Legislature has taken over the past several years in order to attempt to balance the books. These steps include the elimination of several previously offered County services, as well as consolidation of services and other fiscally prudent measures designed to keep property tax rates in check. In addition, as Hollenbeck's uncontradicted testimony demonstrates that without more revenue and assuming the continued maintenance of existing curtailed services, the County will be forced to deplete its fund balance in order to stay within the "tax cap," a matter which is of significant import to the Tioga County Legislature since its designation as a "fiscally eligible" municipality is based upon the fact that it has a higher tax rate than at least 75% of the other municipalities in New York State. The notion that the State Legislature placed a significant emphasis (first and foremost) on a fiscally eligible municipality's ability to pay (a 70% weight factor) certainly does not equate to the conclusion

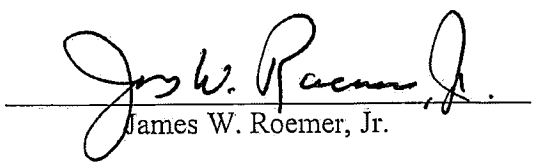
reached by the Chair that "the tax burden itself has any impact on ability to pay." If this were true, then there would have been no need to amend the Taylor Law as the State Legislature has done with directives to the Panel to first and foremost give considerable weight to the financial condition of a municipality which has been deemed fiscally eligible. Here, in Tioga County, had I been the neutral, I would have given considerable weight to the fact that the County has taken enormous steps to rein in County expenses and has consistently adopted budgets in the last few years that stay within the state mandated "tax cap."

As an aside, but in my view an important one, imploring the Panel to use a 70% weight factor in a fiscally eligible municipality concerning its ability to pay is so subjective that it is impossible to administer (as evidenced in this matter). If the Legislature is serious about directing Interest Arbitration Panels to give overwhelming weight to a fiscally eligible municipality's ability to pay, rather than a subjective "70% weight factor," perhaps something more definitive such as directing the Panel that it may not award a fiscal package that is greater than a certain percent or one that is greater than the net fiscal package the municipality has negotiated with its non-public safety bargaining units would be a more meaningful and workable mandate.

Conclusion

Given the logic employed by the Chair in his Opinion and the parameters that flowed from that logic, taken together with what was not awarded to the TCLEA as noted above, I felt constrained to agree with the totality of the ultimate Award.

Dated: November 7, 2016
Albany, New York



James W. Roemer, Jr.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On this 7th day of November, 2016, before me personally came and appeared James W. Roemer, Jr., Esq., to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Emily J. Bond

Notary Public

EMILY J. BOND
Notary Public, State of New York
No. 01BO6313190
Qualified in Albany County
Commission Expires 10-14-2018