STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration between

OPINION & AWARD

COUNTY OF ERIE, NEW YORK and the SHERIFF OF ERIE COUNTY

-and-

ERIE COUNTY SHERIFF'S POLICE BENEVOLENT ASSOCIATION

PERB Case No. IA2006-020;M2006-109

Before Interest Arbitration Panel:

Thomas N. Rinaldo, Esq., Chairman

George M. Loncar, Esq., Public Employer Member

Edward W. Guzdek, Employee Organization Member

The New York State Public Employment Relations Board, pursuant to the New York Civil Service Law, Section 209.4, designated the Chairperson and the other above Panel Members by Notice dated January 30, 2007.

Hearings were held on September 26, and 27, 2007, in Buffalo, New York. Appearing on behalf of the Erie County Sheriff's Police Benevolent Association ("PBA") was the Tuttle Law Firm, by James B. Tuttle, Esq., and on behalf of the County of Erie and the Erie County Sheriff ("County") was the law firm of Jaeckle, Fleischmann & Mugel, LLP, by Sean P. Beiter, Esq., of Counsel. At the hearing, the Parties were given a full opportunity to produce witnesses and present documentary, video, and other evidence in support of their respective positions.

This Opinion and Award constitutes the results of the Panel's consideration of the evidence presented within the context of the criteria set forth in Section 209.4 of the Civil Service Law, including, but not limited to, a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interest and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazards, educational qualifications, training and skills; and the terms of collective agreements negotiated between the Parties in the past providing for compensation and fringe benefits. The Panel specifically takes note of Section 209.4(g) of the Civil Service Law, which reads:

> With regard to members of any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than 50 percentum of their service as certified by the County Sheriff and are police officers pursuant to subdivision 34 of §1.20 of the Criminal Procedure Law as certified by the Municipal Training Council, the provisions of this section shall only apply to terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefit; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling or issues relating to eligibility for overtime compensation which shall be governed by other provisions by law.

Before issuing this Opinion and the Award, the Panel met in executive session and engaged in substantial deliberations.

PROPOSALS OF THE PARTIES

PBA's Proposals

PBA DEMAND NO. 1

ARTICLE XVII, §2, PAGE 23 WAGES

Wages for the period of this contract are as follows:

- 2005 8%
- 2006 8%
- 2007 8%

PBA DEMAND NO. 2

ARTICLE XXIV, §3, PAGE 38 MAINTENANCE

Part 1: Modify §3(b)(2)(E)(iii) to increase the $750 uniform maintenance allowance to $1,000 payable by separate check.

Part 2: Modify §3(c) to increase the $250 annual voucher to $300

PBA DEMAND NO. 5

ARTICLE XVII, §5, PAGE 23 SHIFT DIFFERENTIAL

Part 1. Add a new subsection 3(b) to provide for a shift differential of $1.00 per hour for afternoon detectives and members working second shift on a twelve-hour schedule, and

Part 2. Renumber old subsection (b) to be new subsection (c) and modify to provide that during overtime situations, the payment of shift differential shall be paid at the rates stipulated in (a) and (b) above.

PBA DEMAND NO. 6

ARTICLE XVII, §9, PAGE 25 BOMB SQUAD

Increase Bomb Squad bonus from $1,000 to $5,000 annually.

PBA DEMAND NO. 12

ARTICLE XI, §1, PAGE 9 SUPERVISOR'S PAY UPGRADE

Add the following language at the end of subpart (b):

"Effective January 1, 2005, all Civil Service Supervisors (which shall not include detectives) will be upgraded one pay grade."

PBA DEMAND NO. 14

ARTICLE XII, §4, PAGE 12 HOLIDAY PAY

Eliminate the existing provisions of Section 4 and replace with the following language:

"In lieu of all other compensation for having to work on a holiday, all members will receive the following holiday pay compensation:

Part 1. All 8-hour shift employees will receive 8 hours of pay for each of the twelve holidays, payable in two separate checks in the pay periods immediately following July 4th and December 25th of each year.

Part 2. All 12-hour shift employees will receive 12 hours of pay for each of the twelve holidays, payable in two separate checks in the pay periods immediately following July 4th and December 25th of each year.[1]

COUNTY PROPOSALS

County Proposal No. 2 (AMENDED)
Dated 4/27/06

Salary Increase

Across-the-board salary increase effective January 1, 2005 - 0%
Across-the-board salary increase effective January 1, 2006 - 0%

Salary offer from ratification going forward to be determined.

County Proposal No. 3 (AMENDED) - Health Insurance
Dated 4/27/06

Amend Article XIX, as follows:

All Health Insurance provisions as contained in the 2003-2004 Memorandum of Agreement shall remain in full force and effect.

Section 4 to add:

All employees hired after the effective date of this Agreement shall pay fifteen percent (15%) of the amount the Employer is required to pay toward the cost of the annual health insurance premium. Said fifteen percent (15%) shall be deducted from the bi-weekly paycheck.

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It is noted that the PBA submitted other proposals with its Petition for Compulsory Interest Arbitration but, pursuant to a stipulation of settlement executed by the Parties in January, 2007, the PBA withdrew all but the above listed proposals. It is noted that the Stipulation followed the County's filing of an Improper Practice Charge before PERB (Case No. U-27130).

Section 4 (d) is amended to add:

The cash payment for waiving medical/dental insurance shall not be paid to any employee where the waiver results from multiple family County employments.

Section 6 is amended to add:

(e) The provisions of Section 6 (a), (b), & (c) shall not apply to any employee hired after the effective date of this Agreement. Any employee hired after the effective date of this Agreement who subsequently retires shall contribute fifteen percent (15%) towards retiree health insurance PLUS pay for the cost of Medicare Part "B".

To be eligible for Retiree Health benefits, the retiree must have fifteen (15) continuous years of County service and retire under one of the NYS Retirement plans then available.

Section 9 is amended as follow:

Delete "Section 3 (a)" and substitute "Section 4(d)."

County Proposal No. 4 (AMENDED) - Holidays
Dated 4/27/06

Amend Article XII - Holidays as follows:

1. Sections 1 through 5 of Article XII are deleted in their entirety effective January 1, 2007 and replaced as follows:

2. Article XII - Holiday Pay

In lieu of holidays, all employees covered by this Agreement shall receive the equivalent of six (6) hours of pay at their base rate for each of the following holidays:

New Year' Day	Labor Day
Martin Luther King Day	Columbus Day

Patriot's Day	Memorial Day
Independence Day	Veteran's Day
Thanksgiving Day	Christmas Day

To be eligible for the payment, the employee must be on the active payroll for each holiday. Payment will be included in the second paycheck in December of each year.

County Proposal No. 6 - Retirement
Dated 10/8/04

Amend Article XIX, Section 6 to add a new section as follows:

Employees who retire under this Agreement shall have whatever health insurance plan or plans are selected by the Labor-Management Healthcare Fund.

In the event a retired employee expires, such employee's spouse, may if he or she so desires, continue the health insurance coverage. However, the entire premium shall be paid by the surviving spouse at the group rate.

County Proposal No. 7 - Extended Sick Leave
Dated 10/8/04

Delete Article XV, Section 4 "Extended Sick Leave" in its entirety.

County Proposal No. 8 (NEW)
Dated 4/27/06

ARTICLE XIV - PAID LEAVES

Amend Article XIV, Section 4, "Civil Service Examinations" by deleting the words "with pay."

BACKGROUND FACTS

The most recent version of an expired Collective Bargaining Agreement between the Parties covered the period January 1, 2001 through December 31, 2002. A Memorandum of Agreement also exists for the period January 1, 2003 through December 31, 2004.

The Road Patrol Unit, the bargaining unit herein, consists of 133 employees as of the hearing date. In 2005, there were 146 employees in the bargaining unit, and 144 employees were in the bargaining unit in 2006. The following titles are in the bargaining unit:

Captain	3 members
Captain-Aviation	1 member
Lieutenant	3 members
Sergeant	9 members
Technical Sergeant	1 member
Senior Detective	2 members
Detective	7 members
Deputy Sheriff	105 members
Senior Flight Tactical Officer	1 member
Undercover Narcotics	1 member

The Panel takes note that the State Legislature, on July 12, 2005, having declared that the County was facing a "severe fiscal crisis", enacted the Erie County Fiscal Stability Authority Act, which created the Erie County Fiscal Stability Authority ("Control Board"). The instant proceeding addresses the two year period between January 1, 2005 and December 31, 2006. Under the applicable legislation, the Control Board was empowered to impose a "control period", and such a "control period" was imposed by the Control Board on December 31, 2006, for a period of one year. As the PBA points out, all but two months of the period covered by this Award are without the "control period." The law creating the Control Board addresses the Board's role in interest arbitration, as follows:

> (f) shall act jointly with the County in selecting members of any interest arbitration panel. Notwithstanding any other evidence presented by the County, the covered organization or any recognized employee organization, the arbitration panel must, prior to issuing an final decision, provide the Authority with the opportunity to present evidence regarding the fiscal condition of the County.

While the County introduced considerable evidence concerning its fiscal condition, the Panel notes that the Control Board was afforded the opportunity to present evidence regarding the County's fiscal condition but declined to do so. Having identified the limited period of the "control period" within the context of the two year period covered by this Award and the fact that the Control Board saw fit not to present its evidence concerning the County's fiscal condition to the Panel, the Panel must nevertheless observe that the County's fiscal condition is measured in part by the constraints of the Erie County Fiscal Stability Authority Act. Thus, the County Executive is required under the Act to submit a four year financial plan to the Control Board and is mandated to use conservative projections of revenue and expenditures. When there is a gap between projected revenue and expenditures, the Act compels the County to set forth proposed Gap Closing Actions that can be implemented. It is noted that, for the three year period of 2008 to 2010, there is a projected gap for each year as follows:

2008 - $10,843,877

2009 - $12,722,012

2010 - $12,790,795

The existing financial plan does not set aside any funds for increases that could be awarded to the PBA for 2005 and 2006. The Panel also observes that, at the close of hearing, the County's proposal to sell its tax liens from 2006 and 2007 was awaiting Control Board approval. Should the Control Board approve the County's proposal, the County would end the year 2007 with a positive operating result. If the sale is not approved, the County is projected to finish 2007 with about a $9 million operating deficit.

In fiscal year 2004, the County, the record shows, had an operating deficit of $103,722,050. The County completed fiscal year 2005 with a positive operating result of $9,352,599. This positive operating result reflected substantial reduction in expenditures and the County's refinancing of its 2000 Tobacco Settlement. The County had a positive operating result of $23,246,124 for fiscal year 2006, which accompanied an increase in the sales tax rate and an increase in the real estate tax rate. It would appear at present that the County projects a positive operating surplus of $4,586,625 for fiscal year 2007 provided the above proposed sale of tax liens is accepted by the Board. It is fair to conclude, based on the record evidence that, any monies awarded by the Panel will be funded out of either the 2007 or 2008 budget.

The Panel observes that the County's four year plan required by the act contains the observation that:

> ... the County can no longer afford to provide Sheriff's road patrol to some municipalities and not to other municipalities. Those municipalities who choose to use the sheriff will enter into a contract with the County to reimburse costs for road patrol services.

There is, however, no contract yet in existence between the County and any municipality concerning reimbursement for the cost of road patrol.

The above background information provides a framework for the Panel to set out the main contours of the Parties' positions on questions before the Panel. After the Parties' positions are identified in this fashion, the Panel will address the specifics of the Award and the analysis used to reach various significant conclusions.

POSITION OF THE PBA

The PBA urges the Panel to fulfill its statutory duties under the Civil Service Law without paying any particular regard to the possible power of the Control Board to undo or modify any part of the Panel's Award. The PBA reminds the Panel of the limited amount of time the "Control Board" applies to the two year period of the Award herein. Additionally, the PBA notes that the Panel has complied fully with its obligation to allow the Control Board to present evidence concerning the County's fiscal condition.

The PBA claims that the record establishes that the County has made an "escalating health insurance demand." Thus, it points to County Amended Proposal No. 3 which calls for employees hired after the effective date of the Agreement to pay 15% of health insurance premiums and for retirees to also pay 15% of health insurance premiums together with the cost of Medicare Part B. The PBA identifies comments made by the County's representative on the Panel that, if salary increases were to be awarded for either of the two years at issue, there would need to be a 30% contribution toward health insurance by all new hires. According to the PBA, the fact that the County's 15% demand was also coupled with an offer of zero percent increase in wages for the two years of the Award period does not provide the County with a right to claim, for wage increases granted, more than a 15% contribution for health insurance would have to be awarded. The PBA posits that, if the County could escalate its demand, then the PBA would respond that an insurance contribution in excess of 15% would raise its wage increase demands from 8% to 12%. The PBA, therefore, requests that the County "be restricted to its original 15% health insurance contribution demand."

Viewing the statutory criteria, the PBA finds that attention must be devoted to the selection of appropriate comparable communities. It claims that the appropriate comparable communities that should be considered include the 20 Town and Village Police Departments in the County of Erie plus the New York State Troopers. The PBA observes that the County contends that the comparable communities are Monroe County Sheriff's Road Patrol, Onondaga County Sheriff's Road Patrol, Fulton County Deputy Sheriff's Road Patrol, and Delaware County Sheriff's Road Patrol. The PBA opines that there is "a difference between these two sets of comparables."

The vast discrepancy identified by the PBA between the comparables is reflected in the PBA's contention that, if the County's comparables are selected, members of the PBA would be considered only slightly underpaid whereas if the PBA comparables are selected it can be seen that PBA members are "grossly underpaid."

In seeking to justify its selection of comparables, the PBA notes that there were 1,753 police officers employed in the County of Erie in 2006, with only 8% being members of the PBA. Moreover, 100 Troopers are assigned to road patrol duties, the PBA notes, which thus reduces the percentage of members of the PBA to 7% of the individuals performing police work in the County. The PBA identifies the Division of Criminal Justice Services Crime Index Report for the years 2002 to 2006 and notes that, for that period, the State Police operating in the County reported a decreasing number of index crimes while the Sheriff's Department reported an increasing number of index crimes. The Index Crime Report data, according to the PBA, nevertheless reflects that both the State Police and the Sheriff's Department have "significant roles in the overall picture of Erie County Law Enforcement."

The PBA also contends that members of the Erie County Road Patrol perform the same job in Erie County communities that do not have Police Departments as Officers who are employed in those communities in the County who do have their own Police

Departments. Its members, the PBA claims, therefore have the "same training, patrol ... , work the same hours and schedules and run the same risks." Notwithstanding the similarities it contends it has identified between the bargaining unit members and Erie County local law enforcement and the State Troopers in Erie County, the PBA finds it significant that its calculations show PBA members lagging behind their fellow law enforcement officers in Erie County by approximately 30% in total compensation. It is also worthy of mention, the PBA asserts, that, when Road Patrol Deputies in Erie County leave their jobs because of low pay, which happens more than infrequently, these Officers do not go to those Counties identified by the County as comparables but instead go to local departments in the County of Erie where they can receive better pay.

In laying out its position regarding comparables, the PBA also observes that the Erie County Road Patrol has experienced "massive reductions in personnel since the notorious County-wide budget crisis in 2005 and is presently doing a greater volume of work with significantly less personnel." The PBA thus claims the County by "means of staff reductions" has experienced a huge savings. The "benefit" of these savings, according to the PBA, has imposed a "burden" on the present members of the PBA, which should be reflected in the Award.

The PBA looks at bargaining history between the Parties and points out that there were no wage increases in 2001, 2002, and 2004. Further, the PBA claims that the "sole provider" health insurance plan achieved in 2004 generated huge savings for the County that it has not shared with the PBA. The County, according to the PBA, "now wants to take back the 0% contribution to health insurance benefits that it just gave them [members of the PBA] in 2004 and that they paid for with a 0% by means of a demand for a 15% contributions towards health insurance, which it now wants to increase to 30%." In the PBA's estimation, it is beyond dispute that the bargaining history has favored the County.

Regarding the County's ability to pay, the record evidence shows, the PBA contends, that the County has an accumulated fund balance as of March 13, 2007, of $37.8 million and, since the end of 2005, the undesignated fund balance has increased by more than $23.2 million. It is the PBA's position that the County can advance "no logical argument" to support any conclusion that it does not have the ability to pay. In addressing the criterion of the ability to pay, the PBA acknowledges that the County has been through a fiscal crisis, but claims that the crisis was not brought about by any factors "remotely attributable" to the PBA but instead "from gross fiscal mismanagement by the County Administration." The PBA maintains that it has already "done its part" to assist the County in resolving its fiscal problems. Members of the PBA, the PBA notes, are members of the County community and, as such, have paid the increased real property taxes and did not receive, any wage increase in 2001, 2002, and 2004. The PBA also alleges that its membership gave up multiple health insurance providers to allow the County in 2004 to go to a sole provider.

The PBA insists that the record evidence shows that "the County has turned around its financial affairs and is making excellent progress towards it goal of a $50 million undesignated fund balance."

The PBA seeks an Award of two retroactive 8% wage increases, and claims that these could be funded by the County by "diverting the stream of $53,089 in daily excess income now being used to augment its undesignated fund balance for a total of 72.7 days." The PBA notes that this approach would "delay the County's attempt to achieve a goal of $50 million undesignated fund balance but would not prevent the County from ultimately achieving that goal. There is an "adequate revenue stream" currently available to the County, the PBA maintains, to fund the 8% retroactive wage increases sought for each of the two year periods.

Turning to its uniform allowance proposal, the PBA claims that the record evidence establishes that the current uniform allowance of $750 per year is only "just above" the average uniform allowance of PBA comparables and that the requested increase would still place the PBA "significantly below a number of departments." The "annual cost" of its proposal, the PBA notes would be $33,750, and the total retroactive cost to the County would be $101,250. As the PBA views it, the amounts required to fund this proposal would only "divert" the stream of excess income the County is using to address its undesignated fund balance for a period of less than two days.

The PBA notes it seeks a shift differential increase, which would amount to a total cost for 2005, 2006, and 2007 of approximately $45,000. Less than one day of diversion of the "stream of excess revenue," the PBA claims, would be required. As to the bomb squad stipend increase sought from $1000 to $5000 per year, the PBA observes that the increase would affect four employees now on the bomb squad. The total cost over three years would be $48,000 the PBA notes, and again less than a day's worth of diversion from the stream of excess revenue addressing the undesignated fund balance would be required.

The PBA asserts that the supervisor's pay upgrade should be viewed by the fact that it is currently below shift differentials for Albany, Monroe, Niagara, and Onondaga County Sheriff's Departments and also below the average of State Police and Erie County law enforcement agencies. Less than six days worth of diversion, the PBA claims, would be required from the stream of excess income.

As to holiday pay, the PBA observes that its proposal would continue to recognize the 12 holidays set forth in the Contract but would provide that, in place of all other compensation due PBA members for being required to work on a holiday, all PBA members would receive a regular day's pay for each of the 12 holidays that would be paid in two separate checks over a course of a year. The PBA notes that the cost of its proposal would be $150,000 a year and the retroactive costs would be $450,000. Approximately 9 days of diversion from the stream of excess income, the PBA notes, would be required to fund its proposal.

POSITION OF THE COUNTY

The County, in setting forth its position, offers its general understanding that the PBA seeks an Award from the Panel which would significantly increase compensation of PBA members despite the fact that no funds have been set aside or reserved to pay for such increases. The County claims that the record establishes that the PBA's demands would cost the County over $6 million for a unit consisting of approximately 133 employees. According to the County, the "panel must balance the needs of the members of this unit for a wage increase against the impact of that increase on the County and its residents." The County asks the Panel to consider whether the PBA's wage demands would justify the County using any portion of its deficient reserves, or raising the sale tax rate again, or raising the property tax rate again, or in laying off more employees or cutting more programs.

The County alleges that the PBA bears the burden to justify its wage increase demands. As the County understands the record evidence, the 8% per year wage increases sought by the PBA far exceed wage increases given by Interest Arbitration Panels "in jurisdictions that are not facing the same fiscal pressures that face the County of Erie." The County also contends that the Panel must consider, when making a determination regarding wages, the unit members' work schedule, holiday pay, leave time, line-up pay, shift premium, and overtime pay.

The County views the financial ability criterion under Section 209(4) of the Civil

Service Law to be one that must be considered in light of the County's current fiscal crisis. It notes that the Control Board legislation required the County to submit a four year plan and that "restoration of the County's reserve fund balance is an important strategic goal of the four year plan." The County observes that the objective of the plan is to reach $75 million in fund balance reserves, and, at present, the County has approximately $38 million in reserves. The County argues that it would not be prudent to have an Award that would require the County to invade reserves to fund it. It notes that revenue in the County basically rely on proceeds from sales tax and real estate tax, both of which were increased in fiscal year 2006. It also identifies the record evidence establishing that County expenses are "driven by the capped growth of medicaid and other mandated services." The County notes that "the growth in expenditures is outpacing the modest growth in revenue services."

Focusing on the bargaining unit and the current Agreement between the Parties, the County observes that PBA members, in its estimation, receive generous benefits. It notes that they receive fully paid health insurance, 12 paid holidays, vacation time ranging from 10 to 30 days a year, bereavement leave, four personal leave days per year, an ability to earn up to 15 sick days a year, shift differential, longevity pay, line-up pay, and miscellaneous bonuses. Further, the County states that, in 2005, members of the bargaining unit received $192,116.08 in line-up pay and in 2006 bargaining unit members received $176,926.99 in line-up pay.

The County argues that the Union's demand for an 8% wage increase in 2007 must be rejected on the ground that it is beyond the two year period covered by the Award and on the further ground that the County will not consent to a three year Award. The County claims that the record reflects that the PBA's own expert acknowledged at the hearing that he could not identify any money that has been reserved to fund a wage increase in the County's 2007 budget. The County opines that an Award of a salary increase of any amount will reduce the projected surplus for 2007 if the tax sale lien is approved or increase the projected deficit for 2007 if the tax lien sale is not approved, lead to greater taxes, increase the budget gap projected for 2008, and reduce the amount of the County's currently insufficient fiscal reserves.

The County notes the PBA's demand of retroactive 8% wage increase to January, 2005 would cost the County approximately $2.4 million in retroactive payments and an 8% retroactive increase to January 1, 2006 would cost the County additional retroactive payments of $1.76 million. The County additionally asserts that such increases would require it to address about $2.5 million in additional future expenditures.

The County acknowledges that members of the bargaining unit received no wage increase in 2004, but also points out that PBA members received improved health care benefits, which eliminated premium contributions for various members. The County acknowledges the record evidence that the PBA is slightly behind the Deputy Sheriffs' represented by the Teamsters, but claims that "that lag is attributed to the fact that this unit has a twenty year and out retirement benefit and the Teamster unit does not."

The County insists that no justification can be found for the 8% increase demanded annually by the PBA. An 8% increase according to the County substantially exceeds the CPI and the negotiated raises that were received by members of the negotiating unit at the County that is represented by the CSEA. Further, the 8% increase, the County claims, exceeds the increase awarded by the Prosper Panel to the Onondaga County Deputy Sheriff's for 2005 as well as the increase negotiated between Monroe County and the Monroe County Sheriff PBA for the same period.

According to the County, the Panel Chair essentially rejected the attempt by the PBA to include the State Police in its comparables. It points to the Award of the Panel in Fulton County, which included the Panel Chairperson, and the finding therein that the "logical choice of comparables must be other County road patrol units." The County also accuses the PBA of failing to include line-up pay in total compensation for unit employees, which in turn "artificially deflates the compensation of this unit as compared to other employees."

The County's final word on a wage increase is that the public interest and welfare must be seen to outweigh any justification the PBA has offered for its significant increases in wages. Given the impact on any Award of an increase on the County budget and the four year financial plan, the County claims that "any wage increase awarded, if at all, must be modest and accompanied by the changes in health care contributions for new hires and retirees sought by the County."

Turning to its health insurance proposals, the County notes that the current cost of family coverage under the County's core plan is $902.47 per month, with single coverage at $319.98 per month. The County contends that, if its proposal is awarded, new hires would be contributing $135.37 per month for family coverage and $48.00 per month for single coverage. The County notes that, although the proposal would not have immediate significant financial impact, "it would position the County and new employees more fairly going forward with regard to health care costs sharing." The County also observes that the proposal would not have any adverse effect on current members of the unit who would continue to receive premium health care benefits without contributions. Further, the County argues that, if any increase in wages are awarded, "the premium contribution for new hires should be increased even further." The County also contends that its proposal adds clarity to the benefit plan for retirees and also addresses the issue of surviving spouse coverage.

As to the Parties' proposals on holidays, the County notes its proposal seeks to eliminate premium pay for working on a holiday and in its place grant employees a lump sum payment of six hours for ten holidays. According to the County, its proposal would generate a savings of approximately $300,000 per year going forward.

The County justifies its extended sick leave proposal, which seeks to delete the benefit in its entirety, by claiming it will help the County contain expenses. As to its proposal to delete the Agreement's provision that employees are paid for taking civil service exams, the County contends it simply has insufficient reserves to continue to fund this benefit.

As to the PBA's demand for an increase in uniform allowance, the County points out that the cost of implementing the PBA's proposal going forward would be approximately $42,600 per year. The County asserts that this demand "is really just an effort to increase an employee's total compensation." The County rejects the PBA's shift differential demand by noting that the cost of implementing it going forward would be $50,302 per year. The County identifies the demand as another attempt to increase total compensation.

The County rejects the PBA's proposal to increase the bomb squad bonus from $1,000 to $5,000 annually by claiming that there is no "clear and convincing rationale" that has been offered for this proposal, which would cost $16,000 per year going forward. Finally, the County claims that the Supervisor's pay upgrade sought by the PBA would affect 18 unit employees. The cost of this proposal, the County observes, would be $98,681 per year going forward. The County points to what it claims is the clear record evidence of its "limited financial resources," and no justification, the County argues, has been advanced by the PBA to justify this proposal.

DISCUSSION

Except for the Parties' proposals on wages and the County's health insurance proposal, the Panel finds that the status quo should remain in effect regarding the subject matter of all other proposals. This finding reflects the Panel's consideration of an application of all statutory criteria to the record evidence. Further, the Panel issues this Award, in conformity with the statute, for the two year period running from January 1, 2005 through December 31, 2006.

Consideration of General Statutory Criteria

The Panel has taken into account all of the statutory criteria in rendering its Award. Two of the criteria, however, are deserving specific comment. Hence, the Panel will discuss the issue of comparables and the County's ability to pay.

On the question of comparables, it is useful to consider the findings of other Panels in Road Patrol Deputy Interest Arbitration proceedings. In the Monroe County proceeding, the Selchick Panel noted that Monroe County urged a comparison with deputies in Erie and Onondaga Counties while the PBA sought a comparison primarily based on towns and villages in Monroe County and the City of Rochester. The Selchick Panel concluded "that both local law enforcement agencies and other County Sheriff's departments may be viewed as legitimate sources of comparability." It went on to observe:

> In the instant case, and upon the record developed and presented herein, the Panel has viewed all such other agencies, both in and outside of Monroe County, as parts of a larger mosaic in terms of appropriate comparables. The Panel has in effect accepted the premise that in the instant proceeding and upon the record herein, there is no single agency or department that can be considered universally comparable for all purposes. Therefore, the Panel has utilized all such information to reach the conclusions contained herein regarding the wages and benefits to be provided to Monroe County Road Patrol Deputies.

In Fulton County, the Chairperson of this Panel, on behalf of the Fulton County Panel, noted the Union's position that New York State Troopers should be considered within the universe of comparables but rejected the Union's assertion in this regard, finding that: "the State-wide employment of the Troopers and their status as State employees place the Troopers in a unique employment status that would make it unreasonable to compare the Troopers to members of the bargaining unit herein notwithstanding the considerable similarities in their working conditions, including the dangers and risks thereof." The Fulton County Panel went on to state that "[c]ommon sense ... supports the conclusion that the best source of comparison is the same type of municipality." Nevertheless, the Fulton County Panel observed that it was "not prevented from considering and giving some weight to police departments of cities within the County." The Panel also selected three counties (Columbia, Warren, and Washington) as the best focus of comparables "based on proximity, population, and rural/suburban mix of population."

In Onondaga County, the Prosper Panel cited approvingly to the Fulton County Panel's language "that the logical choice of comparables must be other County road patrol units." In the interest arbitration involving the Delaware County Road Patrol Deputies, the Campagna Panel found that, by accepting the Fact-Finder's recommended increases in wages, there was "no need to determine a listing of comparables."

In keeping with the foregoing, this Panel finds that the PBA's attempt to include State Troopers as part of the universe of comparables cannot be accepted. Consistent with the approaches of the Selchick Panel and the Fulton County Panel, this Panel will give credence to the County's comparables of various County Road Patrol Units, particularly those

Counties resembling Erie County (Monroe and Onondaga) and will consider, but with not as much weight, the comparables within Erie County offered by the PBA. With the exception of the State Police, the Panel, therefore, to one degree or another, will view agencies offered by both Parties, to use the language of Arbitrator Selchick in Monroe County, "as parts of a larger mosaic in terms of appropriate comparables."

Regarding the County's ability to pay, the Panel is obviously struck, and should be, by the County's somewhat dire fiscal situation. The Monroe County Panel, viewing a County in healthier financial condition than Erie County, found that the "County's ability to pay is somewhat constrained ... especially in light of the vexing fiscal problems experienced by county governments throughout the State due to mandated social services spending." This general observation regarding the fiscal problems faced by counties in this State is, in Erie County, only part of the picture. The Panel cannot simply blink away the County's fiscal difficulties that led to the Control Board legislation. The County's four year plan, mandated by this legislation, does not control the Panel's findings but clearly must be given a position of some influence.

Nevertheless, the record evidence demonstrates that the County is not lacking in funds to address a wage increase. The testimony of the PBA's financial expert, Edward Fennell, and supporting documents, support this conclusion. Mr. Fennell testified, by resort to documents generated by the County, that the County had a "structurally unbalanced budget" at the beginning of that period of time that led to the Control Board legislation. According to Mr. Fennell, the County was using "[t]he fund balance ... excessively and there was no control of expenditures." He noted that the anticipated "budgetary gap" for the year ending December 31, 2006, was in excess of $130 million. He further noted that, in 2006, according to a statement made by the County Executive of March 13, 2007, the County had a surplus of $23.6 million and an accumulated fund balance of $37.8 million. Mr. Fennell also testified that the County Executive stated that $10.6 million dollars was designated "to pay encumbered bills from 2005 and 2006" and that there was an "undesignated fund balance of $27.2 million." Mr. Fennell also noted the County Executive's identification of the County Legislature's approval for the "bulk sale" of tax liens, which would give the County "nearly $24 million of anticipated revenue in 2007 and extra revenue for gap-closing in future years." According to Mr. Fennell, "the financial condition is that the County has reached a point whereas of right now and for the period ending December 31, 2006, there was approximately twenty-four million dollars of unencumbered fund balance and unreserved." Mr. Fennell then offered the following conclusion:

> Given the size of the fund balance, they have no proximity to the tax limit. They do have a sizable fund balance. They have the ability to support a reasonable raise issued by this panel.

The Panel finds that the record evidence supports Mr. Fennell's conclusion. Specifically, the Panel finds that the County's fiscal situation has evolved positively enough to permit the conclusion that it has the ability to pay a fair and equitable wage increase.

Wages

As seen above in the Parties' proposals, the PBA in its demand No. 1 seeks an 8% wage increase for 2005, 2006, and 2007. The County, on the other hand, in its Proposal No. 2 ask the Panel to award a 0% increase in 2005 and 2006. The Panel notes that, absent the County's consent to an Award for more than two years, the Panel is statutorily confined to issuing an Award for a two year period. Thus, the PBA's Demand No. 1 to the extent it seeks a wage increase for the year 2007 cannot be considered by the Panel.

The Panel has already stated its finding that the County has the ability to fund a fair and equitable increase in wages. Moreover, the Panel states its finding that the remainder of the statutory criteria when considered individually or collectively do not preclude the Panel's Award of a fair and equitable increase in wages. Of remaining statutory criteria, the Panel, consistent with its general observations about the statutory criteria, will make some specific references to comparability.

The record evidence would indicate that a comparison of the PBA with Erie County Police Departments discloses the PBA lagging behind in comparables. By way of example, looking at 2006 base salaries, in year 1, Officers in the Town of Amherst receive a salary of $48,476; in year 2 Cheektowaga Officers receive a salary of $53,888; in year 3 Village of East Aurora Officers receive a salary of $58,671; in year 4 Town of Hamburg Officers receive a salary of $54,700; in year 5, Town of Lancaster Officers receive a salary of

$58,072. Under the current wage schedule, PBA members receive a salary of $40,085 in year one; $41,983 in the second year; $43,883 in the third year; $45,773 in the fourth year; and $47,665 in the fifth year. Looking at year ten, one finds Amherst Officers compensated at $54,941; Town of Cheektowaga Officers compensated at $59,048; East Aurora Officers compensated at $61,756; and Town of Hamburg Officers compensated at $60,778. In the tenth year, PBA members receive a salary of $47,665. At year 15, Amherst Officers receive a salary of $54,941; Cheektowaga Officers a salary of $59,048; East Aurora Officers a salary of $61,756; and Town of Hamburg Officers $60,778. In the 15th year, members of the bargaining unit receive a salary of $47,665. In the 20th year, Amherst Officers receive a salary of $54,941; Cheektowaga Town Officers a salary of $57,356; East Aurora Officers a salary of $61,756; and Hamburg Town Officers receive a salary of $60,778. At the 20th year, PBA members remain at a salary of $47,665. Finally, by way of some local comparables, Amherst Town Officers in year 25 receive $54,941; Cheektowaga Officers, $59,048; East Aurora Officers $61,756; and Town of Hamburg Officers $60,778. PBA members again remain at $47,665. While it might be that some of the PBA total compensation figures offered to the Panel are somewhat deflated, as the County argues, because of failure to include line-up pay in the total compensation, the fact remains that, as the PBA argues, and as the above comparisons suggest, the PBA lags somewhat substantially behind the top compensated Village and Town Departments in Erie County in base compensation. The Panel, of course, has noted that the weight to be given to local comparisons is not as great as those given to comparisons with other counties. When the Panel takes into account other County Road Patrols as a basis of comparison, the numbers still suggest the need for a wage increase.

In 2006, for base salary compensation at year 1, Albany County Deputies receive a base salary of $38,626; Monroe County Deputies receive a base salary of $46,229; Onondaga County Deputies receive a base salary of $40.897. At year five, Albany County Deputies receive $49,714; Monroe County Deputies $54,779; and Onondaga County Deputies $43,620. At year 10, Albany County Deputies are compensated at $49,714; Monroe County Deputies are compensated at $54,779; and Onondaga County Deputies at $47,052. The base salary for these three aforementioned municipalities remains the same at year 15 and 20. As can be seen, under this base salary comparison, members of the PBA are essentially behind at years 1, 5, 10, 15, 20 and 25 in terms of base salary. It can also be noted, however, that the Erie County Deputies are not lagging as much in these years in base salary comparison as they are when the local Erie County salaries are taken into account.

The Panel is also mindful of the fact that the Award herein, as will be seen, will include a contribution for health insurance premiums from new hires and retirees and that there has been no wage increase for members of the PBA in 2001, 2002, and 2004. While these zero percent increases were part of quid pro quo bargaining, they nevertheless indicate that the wages of the PBA members have remained static at a time, needless to say, when cost of living expenses for members of the PBA have increased. Finally, the Panel states its finding that the wage increases for 2005 and 2006, for each year, should be retroactive to January 1 of that year. In this regard, the Panel states its finding that, absent extraordinary circumstances not present in the record herein, Awards in Interest Arbitration proceedings should favor retroactivity. A contrary approach, the Panel observes, would typically prejudice the labor organization.

The Panel therefore Awards:

RETROACTIVE TO JANUARY 1, 2005- 3% WAGE INCREASE

RETROACTIVE TO JANUARY 1, 2006- 3% WAGE INCREASE

Health Insurance

This topic relates to County Proposal No. 3 Amended. As stated above, the County seeks to modify the Parties' Agreement by requiring a 15% contribution from employees hired after the effective date of this Award towards the cost of the annual health insurance premium. The County also seeks a like 15% contribution toward retiree health insurance plus the cost of Medicare Part "B" from employees hired after the effective date of this Agreement who thereafter retire. Moreover, the County's proposal seeks to amend the Parties' current health insurance agreement by stating that the cash payment for waiving medical/dental insurance is not to be paid to any employee where a waiver results from multiple family County employments. Regarding health insurance from retirees, the County also seeks in its proposal to impose a requirement that a retiree have 15 years of continuous service and retire under one of the New York State Retirement Plans available.

Looking at comparables, the Panel notes that the following counties and local Erie County municipalities have health insurance contribution as indicated:

Albany County - some form of contribution required for employees hired after January 1, 1989.

Town of Amherst - contribution required as of March 31, 2003 for individuals wishing to remain in Traditional Blue Cross and Blue Shield; contribution required of new hires of 15% in first year reduced down to 5% in fourth year of employment, with no contribution thereafter.

Town of Cheektowaga - officers hired after June 1, 2005, pay 5% of cost during first two years, 10% for the next three years, nothing thereafter.

Village of East Aurora - effective in 2006, new hires pay 15% of premium and retirees hired after May 31, 2000 contribute $15 per month for insurance (retiree health insurance ceases at 65).

Town of Evans - new hires, effective 1998, during first year of employment must pay 15% of premium and retirees pay 10% of premium.

Town of Hamburg - members hired after March 13, 1995 must contribute to 15% of premium.

Town of Lancaster - no contribution.

Monroe County - employees hired before January 1, 2006 pay $5.00 in 2007 and pay $15.00 monthly in 2008 for contributions; those hired after January 1, 2006 pay $10.00 in 2006 monthly, $20.00 monthly in 2007, and $30.00 monthly in 2008.

Onondaga County - Officers pay 10% of the cost of the premium; retirees pay 15% of premium for single coverage and 65% of premium rate for family coverage after 20 years of service with a reduction on a sliding scale of 40% of the premium after 25 years or more of service.

Orchard Park - Officers selecting Blue Cross Blue Shield pay the difference in cost between the highest cost HMO and the Traditional Plan; after age 65, retirees, using unused sick leave days valued at 100%, contribute to monthly premium rates until the accumulated leave is exhausted.

Town of Tonawanda - employees hired after June 1, 2006, in selecting Blue Cross Blue Shield pay 100% of the difference between the cost of Blue Cross and the most expensive HMO offered; retirees make some contribution.

West Seneca - Officers hired after January 2001, he receive the cheapest HMO with the employee paying 10% of cost during the first two years, 5% in the third year and zero thereafter, employees selecting Traditional Blue Cross and Blue Shied pay the full difference between the cost of that plan and the lowest HMO; Employees selecting any other HMO other than the lowest pay 10% of the cost.

The above comparisons reflect the obvious. That is to say, the trend in New York law enforcement contracts is for some form of contribution to be made toward health insurance premiums. Given the particular onerous burdens placed on County governments, as earlier noted by the Panel in its reference to other interest arbitration proceedings, the County has a legitimate need to reduce its health insurance costs at least going forward. The County's proposal to impose a contribution requirement on new hires, in the Panel's estimation, offers existing members of the bargaining unit some recognition for working without pay increases and thus being below parity these past several years. The wage increases provided in this Award coupled with no burden being imposed on current hires for health insurance is a particularly significant and persuasive factor to the Panel in allowing it to conclude that an application of the statutory criteria justifies the imposition of a health insurance contribution from new hires when they enter the bargaining unit, and at the time of their retirement. The

Panel observes that these new hires will also receive the benefit of the pay increase Awarded herein. The Panel is therefore adopting the County's proposal for a 15 % health insurance contribution but limiting it to new hires hired after January 1,2008.

The Panel is also persuaded that fairness dictates that there should be no cash payment for waiving medical and dental insurance if the waiver results from multiple family County employments. Finally, as a "housekeeping" item, the Panel finds that in Article XIX, Section 9, Section 3(a) should be deleted and in its place there should be substituted Section 4(d).

Accordingly, the Panel's Award on health insurance is as follows:

Amend Article XIX, as follows:

Effective as of December 31, 2006, any employee hired on or after January 1, 2008, shall contribute to the cost of health insurance as follows:

a. In the event the employee selects CORE coverage, the employee shall pay 15 % of the amount the Employer is required to pay toward the cost of the annual health insurance premium. Said contribution of 15% shall be deducted from the bi-weekly paycheck. In the event that the employee selects ENHANCED coverage, the employee must pay the full difference in cost from the County's share of the cost for the CORE plan.

b. The provisions of paragraph 8 of the 2003-04 MOU concerning health insurance at retirement shall not apply. Upon retirement, an employee hired on or after January 1, 2008 shall contribute 15 % toward retiree health insurance PLUS pay for the cost of Medicare Part "B".

Effective as of December 31, 2006 amend Article XIX, section 4(d) and paragraph 7 of the 2003-04 MOU by adding the following

sentence:

> **The cash payment for waiving medical/dental insurance shall not be paid to any employee where the waiver results from multiple family County employments.**

Effective as of December 31, 2006, amend the first sentence of Article XIX, section 6 to read as follows:

> **Effective January 1, 2008 employees who retire into one of the New York State Retirement plans then available, with fifteen (15) or more years of County service, shall be eligible for the following:**

Article XIX, section 9:

Delete "Section 3(a)" and substitute "Section 4(d)."

AWARD ON REMAINING ISSUES

As noted, all items other than those specifically addressed by this Award remain "status quo" as they existed in the Parties' 2001-2002 Agreement and the Memorandum of Understanding for the period January 1, 2003 through December 31, 2004.

DATED: 11/28/07

THOMAS N. RINALDO, CHAIRPERSON

George M. Loncar 11/28/07

GEORGE M. LONCAR, ESQ., PUBLIC EMPLOYER MEMBER

11/28/07

EDWARD W. GUZDEK EMPLOYEE ORGANIZATION MEMBER