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NEW YORK STATE PUBLIC EMPLOYMENT  
RELATIONS BOARD

DEC 15 2003

COMPLAINT

In the Matter of the Compulsory  
Interest Arbitration

Case No. IA2003-016;M2003-120

between

THE COUNTY OF SUFFOLK, PUBLIC EMPLOYER

OPINION  
and  
AWARD

and

THE SUFFOLK COUNTY  
POLICE BENEVOLENT ASSOCIATION,  
EMPLOYEE ORGANIZATION

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Before the Public Arbitration Panel:

RODNEY E. DENNIS, Public Member and Chairperson  
RONALD J. DAVIS, Esq., Employee Organization Member  
JEFFREY L. TEMPERA, Public Employer Member

APPEARANCES

The County of Suffolk - RICHARD K. ZUCKERMAN, Esq. &  
MICHELE A. BAPTISTE, Esq. - Rains &  
Pogrebin, P.C.

The Suffolk County PBA - DAVID A. DAVIS, Esq. - Davis, &  
Herish, LLP

BACKGROUND OF THE CASE

On September 23, 2003, Richard Curreri, Director of Conciliation of the New York State Public Employment Relations Board, designated the above-listed panel members as the Public Arbitration Panel to hear the instant matter and make a just and reasonable determination pursuant to Civil Service Law, Section 209.4.

On August 6, 2003, Counsel for the Employee Organization (PBA) notified Mr. Curreri, by letter that the PBA and the County of Suffolk had reached an impasse in the bargaining for a successor to the January 1, 2000, to December 31, 2003, Agreement then in force.

The letter fully explained what had taken place up to the impasse and how the parties planned to proceed in the mediation effort that would follow the impasse.

The parties entered into mediation of the dispute in August 2003. The mediation effort was unsuccessful and in September the PBA filed a petition for compulsory interest arbitration with the Public Employment Relations Board (PERB). The PBA named Ronald J. Davis, Esq., as its member of the Arbitration Panel and David A. Davis, Esq., as its advocate for the proceedings. The County, by its attorneys, Rains & Pogrebin, P.C., responded to the Petition for Interest Arbitration. Jeffrey L. Tempera was designated

as the County's representative on the Arbitration Panel. Richard K. Zuckerman, Esq., was named as the County's advocate. Both parties listed the unresolved issues that each considered to be open at the time the Petition for Arbitration and Response to the Petition were submitted to PERB in September 2003.

The following items represent the open issues submitted to arbitration by the PBA:

The presently unresolved proposals on behalf of the PBA are as follows:

1. Wages, Section 4:

Wages shall be increased by four and one half (4.5%) percent in each year of a four (4) year agreement.

2. Benefit Fund, Section 7:

Contributions to the Benefit Fund shall be maintained at a level of two (2%) percent of base pay per employee per year.

3. Night Differential, Section 11:

Two tour night differential shall be increased to nine (9%) percent.  
Ten hour extraordinary night shift differential shall be increased to fifteen (15%) percent.

4. Longevity, Section 6:

In each year of the agreement, longevity payments shall be increased fifty (\$50.00) dollars for each full year of completed police service.

5. Pension, Section 10:

The County shall adopt Section 443(f) of the Retirement and Social Security Law on behalf of all bargaining unit members.

6. Sick Time, Section 22:

Bargaining unit employees shall be automatically entitled to donate days from their sick time bank to other bargaining unit members whose total accrued time is becoming exhausted as a result of a serious injury, illness or condition.

7. Sick Time, Section 22:

Employees injured, taken ill or suffering from a disabling condition shall be provided, if capable, with a modified assignment.

8. Negotiations, Section:

Precinct trustees shall be excused from their regular duties without loss of pay or benefits, including cleaning allowance and clothing allowance, to administer this agreement and to execute the duties of their offices.

9. Work Schedules, Section 19(C):

Upon graduation from the Police Academy, each officer shall be guaranteed a work schedule of two hundred forty two (242) to two hundred forty four (244) days per year until his/her second (2<sup>nd</sup>) employment anniversary.

10. Vacation, Section 23:

Vacation days made available pursuant to Suffolk County Police Department guidelines as of January 1<sup>st</sup> of each year, and not utilized in one week vacation blocks as per normal vacation selections, shall remain available for use, and shall not be denied for, individual vacation days or weekly blocks throughout the calendar year.

11. Personal Leave, Section 25:

Officers assigned to the steady ten (10) hour night schedule shall be entitled to five (5) tours of duty for personal leave.

12. Overtime, Section 20:

Members of the Board of Governors of the Association shall be compensated weekly for four (4) hours pay, at the prevailing overtime rate, to be paid, at the employee's sole discretion, in either time or pay.

13. Working Conditions, Section 31:

For each precinct, and highway patrol, the Department shall staff at least the following number of positions for each entire shift.

1 <sup>st</sup> Precinct	22	Sector Car Operators	3	Desk Officers
2 <sup>nd</sup> Precinct	21	Sector Car Operators	3	Desk Officers
3 <sup>rd</sup> Precinct	23	Sector Car Operators	3	Desk Officers-
4 <sup>th</sup> Precinct	17	Sector Car Operators	3	Desk Officers
5 <sup>th</sup> Precinct	24	Sector Car Operators	3	Desk Officers
6 <sup>th</sup> Precinct	23	Sector Car Operators	3	Desk Officers
Highway	12	Sector Car Operators	(6 on LIE & 6 on Sunrise Hwy)	

14. Re-opener:

The PBA may re-open negotiations/mediation/arbitration if the Suffolk County Superior Officers Association, Suffolk County Detectives Association or Suffolk County Detective Investigators Police Benevolent Association bargaining units attain any economic improvements not attained by the PBA.

The presently unresolved proposals on behalf of the County are as follows:

1. Wages: Increase wages each year of the Agreement by 2% of the base salary at each step of the salary schedule.
2. Implementation of the provisions of Section 22 f of the current PBA Contract to conform with Section 38(f) of the Detectives Association contract; i.e. loss of excess accruals after one year in 401-207(c) status. (See Attached)

3. Change Section 19 A 2 a (work schedules and conditions) to: The ten hour night shift may be scheduled to end within two hours of the time the day shift is scheduled to commence. Therefore, any court overtime will not be calculated as recall.
4. Amend Section 19 restricting commands to one duty chart per command and remove restriction of prescribed tours for seven-day schedules.
5. Amend Section 19 C 2a to provide that upon graduation from the Academy, each officer will work a two hundred sixty-one (261) day work chart for their first three years of service with the department. Delete remainder of the paragraph.
6. Allow for tour changes for staffing and special events (10 unpaid, others at time and one-half).
7. Personal Leave Days to be granted upon mutual consent, particularly on holidays.
8. Institute a sick time abuse policy similar to Nassau County Police Department, including policy that 301 & 401 personnel are to remain in residence during scheduled tour of duty.
9. Amend Section 28 - Bill of Rights as Follows:
  - (A) Interrogations to be held on two days during the week designated by IAB.
  - (B) Paragraph 4 - delete the phrase "including the name of the complainants".
10. Amend Appendix B - substance abuse testing to allow for:
  - Drug tests of members on 401 status.
  - Hair sample analysis as drug test option in test for cause cases.
  - Test for steroids as part of random test analysis.
11. Amend Section 30 and Appendix A, as amended, to provide for an agreed upon panel of arbitrators.

As stated above, the Arbitration Panel appointed to resolve this impasse is authorized and regulated by Section 209.4.C(v), a.b.c.d., of the New York State Civil Service Law. The terms of that law pertinent to the Panel's deliberation are stated below:

Section 209.4

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

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with 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 qualification; (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.

It should also be pointed out that on June 10, 2003, the Suffolk County Legislature adopted Resolution 446-2003 authorizing this Panel to render an Award for a four-year contract covering the period from January 1, 2004, until December 31, 2007. On September 18, 2003, Jeff E. Frayler, President of the PBA, and Jeffrey L. Tempera, Director of the County Office of Labor Relations, signed an agreement implementing the terms of Resolution 446-2003 for the instant arbitration.

Hearings were held in this matter at the PBA headquarters in Bohemia, New York, on October 20, 21, and 22, 2003. An executive session by phone was held on September 24, 2003. At the conclusion of the formal hearings on October 20, 21, and 22, additional executive sessions were also held. Both parties were represented by experienced counsel and had a full opportunity to present evidence, to examine and crossexamine witnesses, and to present arguments in support of their respective positions.

A week prior to the scheduled hearings, the Chairman requested that both parties submit a lengthy document on the ability to pay issue. This issue would be central to the proceedings. These documents gave the Chairman an opportunity to study the financial data that was to be presented during the hearings and be more aware of the financial situation in the County than would otherwise have been the case.

The hearing produced a record of over 280 transcript pages, twelve joint exhibits, more than forty PBA exhibits, and more than sixty-five County exhibits. The parties gave the panel all collective bargaining agreements that were available between employers and PBA organizations in Nassau and Suffolk Counties. The parties also presented every interest arbitration award from Nassau and Suffolk Counties involving PBA units that were available to them. The Panel was fully informed in regard to historical data surrounding collective bargaining and interest arbitration involving Long Island cities, towns, and their counties. The material presented to the panel in this proceeding ran to thousands of pages.

Throughout the three days of hearings in this dispute, advocates for both the PBA and the County kept reminding the Panel that it must carefully consider the conditions spelled out in Section 209.4 of the law authorizing interest arbitration in its deliberations. Given all of the attention paid to these conditions, no Arbitration Panel appointed in Suffolk County could make a decision without a complete consideration of controlling legal restrictions. During its deliberations, the Panel has had the law fully in view.

At the conclusion of the hearings, the parties went into a brief executive session to lay out a plan for the Panel to follow in finalizing the proceedings and issuing an Opinion and Award in

this case. It was agreed that the parties' advocates would have their briefs in the hands of the Panel members on November 10, 2003. This was later changed to November 11, 2003.

It was also concluded that the Chairman would produce a draft Opinion and Award and deliver it to the partisan members for review. The final Award in this case represents a document that was produced with input from the Partisian Members of the Panel. The Public Member and Chairman of the Panel, Rodney E. Dennis, wrote the final Opinion and Award.

#### POSITION OF THE PARTIES

##### The PBA

The PBA began its presentation by reciting the legal basis for the Panel's authority to render a decision in this matter. It pointed out that the Panel has authority to evaluate the fiscal priorities of the County and to determine whether the Employer has the ability to pay the costs associated with an Award. The PBA noted that the Panel's authority in this area was especially significant, since the County's position in opposition to the PBA's proposals, as well as its support of its own, is based solely on cost. The PBA argued that all statutory criteria should be considered by the Panel. The PBA went on to point out

how the Panel should apply the elements of the law. First, it discussed the impact of paragraphs (a) and (b) of Section 209.4:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

The PBA asserted that before any comparison could be performed, it was necessary to answer two questions. Who performs comparable work? Which communities are comparable? The PBA contended that the answer to the first question was nobody performs comparable work. The answer to the second question was that comparable communities for the PBA include the villages in western Suffolk County (i.e., within the police district), the villages in Nassau County, and Nassau County, itself. The line of demarcation between eastern and western Suffolk County is longstanding in compulsory interest arbitration awards. The PBA cited numerous interest arbitration awards to support this notion: Town of Southampton and Southampton Town PBA, PERB Case No. IA96-001 (Sands 1996) PBA 13; Riverhead PBA and Town of Riverhead, PERB Case No. IA94-025 (Hammer 1996) PBA 14; and

Riverhead PBA and Town of Riverhead, PERB Case No. IA92-029  
(Doner 1992).

The PBA pointed out that the County attempts to compare Suffolk County with jurisdictions never before recognized as comparable. They include the City of New York, City of Albany, New York State Troopers, Westchester County, Rockland County, and the various eastern Suffolk County Police Departments. It stated that these jurisdictions are not comparable communities. Suffolk County's Police District is a highly populated suburban environment. The jurisdictions relied upon by the County are either rural (eastern Suffolk County, Westchester County, Rockland County, and New York State Troopers) or urban in nature (City of New York, City of Albany). Further, the County has not submitted any evidence or compulsory interest arbitration awards that recognize Suffolk County as comparable to any of these jurisdictions.

As one would expect, the PBA placed considerable emphasis on the County's ability to pay for the benefits it seeks and the positive impact on the interest and welfare of the public of a long-term Collective Bargaining Agreement.

It cited PBA President Frayler's testimony describing how the interest and welfare of the public is greatly affected by this proceeding in three distinct ways. First, having a collective bargaining agreement in place fosters high morale among PBA

members, who in turn maintain the extraordinarily high quality of service residents of Suffolk County have come to expect. Second, final resolution to this matter allows County government to calculate its long-term expenses in order to prepare budgets, and the like. Third, a final agreement enables the Suffolk County Police Department to continue to select the "cream of the crop" of applicants, as evidenced by the hiring of five hundred recruits from a field of 29,000 candidates.

On the issue of the County's ability to pay, the PBA stated that "There is no doubt that the County of Suffolk has the ability to pay the demands requested." It cited the strong and confident statement made by Edward Fennell, the PBA's expert witness in municipal budget analysis, to support its position. That statement, it asserts, was never refuted by the County. Fennell examined numerous documents, including the Suffolk County budget, recommended budget, and bond ratings. He concluded that between the County's expected \$65.6 million surplus, re-prioritization of the budget, ability to take on additional debt, and \$1.3 billion in available property tax revenue, the County could handily pay for the PBA's proposals.

On a more individualized basis, he calculated the difference in cost between the PBA's demand of 4.5 percent and the County's offer of 2 percent. He determined that if the County is granted its proposal that raises not be given to all officers based upon

the top step, even if fully funded through taxes, it would only amount to a property tax increase in 2004 of \$15.86 for the average homeowner.

The PBA also questioned the picture drawn by Robert C. Bortzfield, the Budget Director for the County's economic future when compared with that of County Executive Gaffney. The County submitted an affidavit from Mr Bortzfield, that describes a vivid picture of "doom and gloom" with regard to the County's fiscal position in the future. It is inexplicably at odds with the economic forecast submitted in the recommended 2004 budget by the County Executive who, according to the Suffolk County Charter, is the County's Chief Budget Officer. For example, Mr. Bortzfield had concerns regarding the slowing national and regional economies. County Executive Gaffney's assessment was that the economy in Suffolk County continues to be strong. Mr. Bortzfield bemoaned a deceleration of the sales tax. County Executive Gaffney stated that his recommended budget would show a "dramatic increase" in sales tax revenue for both 2003 and 2004. Mr. Bortzfield lamented increases in General Fund expenditures. County Executive Gaffney highlighted an actual surplus of \$60.5 million for year-end 2002 and an estimated surplus of \$65.6 million for year-end 2003.

Mr. Bortzfield never disputed the undeniable fact that the County has, and is expected to continue, to run at an enormous

surplus; can float additional debt; and can raise an additional \$1.3 billion through property tax increases. Nor does he dispute Mr. Fennell's calculation regarding the cost to the average homeowner. He merely stated his belief that increases in the Police District budget would place a considerable burden on taxpayers.

Comparison of Peculiarities in Regard to Other Trades or Professions

Section 209(4)(C)(v) of the Civil Service Law, subdivision (c), directs the Panel to consider the following:

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.

In an effort to persuade the Panel that a Suffolk County Police Officer's job is unique, dangerous, requires extraordinary mental and physical ability, and demands devotion and commitment on the part of the Officers, the PBA relied on the testimony of its president, Jeff Frayler. President Frayler testified that the hazards of employment of police work are well documented. He noted that PBA members are the first responders to every call for a crime, including violent crimes. This is why the profession of police officer is the only one in which you put on a bullet proof vest in order to report for work. There are numerous hazards in police work, including car accidents while on patrol, traffic

stops on the roadways, volatile domestic disturbances, robberies, rapes, and homicides. In addition, there are health risks of AIDS, TB, and other diseases while administering first aid or being bitten by a prisoner. There are now also the added dangers of biological and nuclear weapons. President Frayler testified that a large number of PBA members responded to Ground Zero after the September 11, 2001, terrorist attacks. He further stated that, on average, there are between eight hundred and nine hundred officers injured every year while performing their duties.

Crime statistics corroborate President Frayler's testimony. The last fully published Crime and Justice Annual Report, prepared by the New York State Division of Criminal Justice Services, covers calendar year 1999. In that year, there were 34,007 property crimes in Suffolk County, the highest in the state outside of New York City. The following crimes were also reported in 1999:

Murder	24
Negligent Manslaughter	1
Rape	135
Robbery	848
Aggravated Assault	1,353
Burglary	5,101
Larceny	26,109
Motor Vehicle Theft	2,797
Arson	366
Kidnapping	10
Controlled Substances	4,617
Dangerous Weapons	274
Bribery	3

Sex Offenses	522
Extortion	2
Forgery	1,112
Prostitution	542
Stolen Property	622
Coercion	4
Criminal Mischief	17,920
Fraud	1,224
Gambling	10
Offenses of Public Order	26
Embezzlement	25
Simple Assault	5,768
Offenses Against Family	328
DWI	5,608
Unauthorized Use Vehicle	657
Possession Burglary Tools	46
Liquor Violations	183
Disorderly Conduct	12,965
Public Narcotic Intoxication	1
Loitering	366
Other Offenses	24,236

A review of the limited data available for subsequent years is consistent with the 1999 reported statistics, as seen below:

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Murder	28	34	17
Rape	118	160	143
Robbery	982	1,019	907
Aggravated Assault	1,921	2,072	1,429
Property Crimes	33,362	33,934	27,630
Burglary	4,905	5,206	4,159
Larceny	25,500	25,524	20,587
Motor Vehicle Theft	2,957	3,204	2,884

The County has not offered any evidence or argument to refute the assertion that Suffolk County is a dangerous place to work as a police officer.

The PBA points out that Counties establish the qualifications for becoming a police officer. Those standards are high. The Suffolk County Civil Service job posting for the position of police officer documents both the medical and physical fitness requirements for the job. Applicants must meet acceptable standards regarding acuity vision, color vision, hearing, smell, speech, heart, respiratory, gastrointestinal, endocrine and metabolic, neurological, musculoskeletal, and dermatological health. In addition, applicants must also meet predetermined standards for sit-ups, flexibility, push-ups, and a 1.5 mile run, all of which vary depending upon the applicant's age and gender.

The educational qualifications to become a Suffolk County police officer are also established by the County. The Suffolk County Civil Service job posting for the position of police officer lists the minimum educational requirement as "Graduation from a standard senior high school or possession of a high school equivalency diploma recognized by the New York State Department of Education, by the date of appointment. No substitution of experience for education will be permitted." President Frayler testified that on multiple occasions, the PBA and he personally have gone before the Suffolk County Legislature to request that the educational standard be raised. Unfortunately, those requests have gone unanswered.

The mental qualifications to become a Suffolk County police officer are also established by the County. The Suffolk County Civil Service job posting for the position of police officer lists the mental qualifications as being free of mental illness, serious emotional disturbances or nervous disorders, alcoholism, drug dependence, or abuse that would interfere with the performance of duties. All candidates are evaluated through a psychological screening process and may also be screened for the presence of drug abuse.

The job training and skills of PBA members are immense. The New York State Division of Criminal Justice Services establishes a basic course for police officers consisting of a minimum of 510 hours of basic training. The Suffolk County police academy provides training that far exceeds that standard by providing 884.5 hours of training on all subjects covered by the state and more. In addition, the Suffolk County police academy requires, prior to graduation, that all officers receive 140 - 420 hours of field training, depending on the amount of prior police experience they possess. Officers in the Suffolk County police academy are also held to an extremely high degree of accountability, as documented in the Recruit Rules and Standards booklet.

Job training and honing of job-related skills continues after graduation from the academy and throughout a police officer's career. Police officers must continually qualify with

their weapons at the range, maintain their EMT certifications, and pass tests as part of the Decentralized Individualized In-Service Training. The tests include subjects such as deadly physical force, search and seizure, domestic violence, NYSPIN, and use of computers.

President Frayler testified that after comparing the peculiarities of the job of a Suffolk County police officer with other trades and professions, he is unaware of any other job with comparable hazards; physical, educational, and mental qualifications; and job training and skills.

The County appears to be in agreement with this conclusion, having offered no contradictory argument or evidence, nor any attempt to use other trades or professions as part of a comparability analysis. Similarly, the Panel should find that no other trade or profession is appropriate for comparative purposes.

Terms of Collective Agreements Negotiated Between the Parties in the Past.

Section 209(4)(C)(v) of the Civil Service Law, subdivision (d), directs the Panel to consider the following:

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 PBA pointed out that it had submitted all collective bargaining agreements between the parties from January 1, 1979, through December 31, 2003. In 1979 and 1981, the parties negotiated two-year agreements. In 1983, 1986, and 1989, they negotiated or received a compulsory interest arbitration award for three-year terms. In 1992, 1996, and 2000, the parties were unable to negotiate agreements and received compulsory interest arbitration awards for four-year terms.

The Suffolk County PBA desires to enter into a negotiated agreement with the County, but only if such an agreement is reasonable. An examination of the history of negotiations demonstrates that PBA members have always been well compensated for the outstanding work that they perform. It also reveals that the PBA has always been on the cutting edge of developments in labor. For instance, the PBA was one of the first police organizations in the Country to accept and embrace drug testing of PBA members. The same is now true of alcohol testing.

In recent years, the PBA has been compelled to resort to the compulsory interest arbitration process due to the unwillingness of the County to be reasonable. Unfortunately, for the January 1, 2004, through December 31, 2007, negotiation process, the PBA feels that this is again the situation and once more relies upon the just and reasonable determination of the Panel pursuant to §209 of the Civil Service Law. The PBA then presented its

demands to the Panel with detailed and lengthy rationale to support its position on each open issue.

### PBA Proposals

The PBA commenced negotiations with fourteen proposals, thirteen of which were written and one that was verbal. During the negotiation and mediation process, the PBA has since reduced its proposals to nine. They are now before the Panel for consideration. The PBA asserts that the remaining proposals are just and reasonable and should be granted in their entirety.

#### A. PBA Proposal 1 - Wages

The PBA's first and most significant proposal is its demand for a 4.5 percent wage increase in each year of the four-year Award. This proposal inherently incorporates the longstanding past practice of the parties to calculate raises for all PBA members based upon a top step police officer salary. Thus, the history of the parties is that after applying the raise to the top step rate, that dollar amount increase is then applied to all other steps to avoid creating even greater disparity in pay between the salary steps.

The first consideration regarding wages is the County's resources to pay for these increases. County Executive Gaffney and PBA expert witness Fennell are in complete agreement that the County is in excellent financial condition and can easily afford

to pay for these increases. Even County witness Erick Askerberg, the Assistant Director of Labor Relations, only testified regarding his analysis of the costs associated with the various proposals. He did not dispute the County's ability to pay.

Only Mr. Bortzfield, the County Budget Director, who is statutorily the County Executive's subordinate on budget issues, takes a different view. Even Mr. Bortzfield, however, failed to allege that the County does not have the resources to pay for the PBA's proposals through budget surplus, budget restructuring, floating debt, increasing taxes, or a combination thereof.

Instead, the County relies upon two court cases. The first is from the Supreme Court of the State of Connecticut. While interesting, the commentary in that case is completely irrelevant, since it interprets a different statute and is from a different state, in a different court system. The second case is from New York's Fourth Department--even though Suffolk County is in the Second Department. This decision rejects the "assertion that a municipality necessarily has the ability to pay the increased wages sought unless it has exhausted its constitutional taxing limit." Id. While this is not necessarily the law in the Second Department, and appears contrary to the dictates of the Helsby and Rinaldo decisions, this contention is also irrelevant. (See City of Amsterdam v. Helsby, 371 N.Y.S.2d 404 (Ct. App. 1975); City of Buffalo v. Rinaldo, 396 N.Y.S.2d 152 (Ct.App.

1977).) The PBA, as discussed above, need not rely solely on a tax increase to pay for its proposals. In addition to, or in lieu of, a tax levy, the County may use money from its expected \$65.6 million surplus, re-prioritize the budget, and/or float debt to pay for the PBA's proposals.

The PBA takes the position that the Panel's second consideration with regard to the PBA's wage proposal is the wages and wage increases for police unions in comparable jurisdictions. As discussed above, the relevant jurisdictions to be considered in a comparability analysis include the villages within the Suffolk County Police District, villages in Nassau County, and the Nassau County Police Department.

PBA Exhibit 21 reflects the wage rates and percentage increases for all police departments in Suffolk County for whom data were available. Of those, only Amityville, Lloyd Harbor, Northport, and Huntington Bay are in western Suffolk County and within the confines of the police district. The salaries and raises with respect to those jurisdictions as compared with the PBA are as follows:

	<u>PBA</u>	<u>Amityville</u>	<u>Lloyd Harbor</u>	<u>Northport</u>	<u>Huntington Bay</u>
2001	77,420 4.75%	77,370 4.85%	76,286 4.25%	76,841 4.25%	76,914 4.25%
2002	80,904 4.5%	80,854 4.5%	79,719 4.5%	80,299 4.5%	80,182 4.25%
2003	84,545 4.5%	84,495 4.5%	83,306 4.5%	83,912 4.5%	

Clearly, there is a close proximity in wages and wage increases between these jurisdictions. Unfortunately, Huntington Bay's collective bargaining agreement expired in 2002 and the others all expire either with, or shortly after, the PBA's current agreement.

Nassau County and its villages are far more instructive. Another PBA exhibit reflects the wage rates and percentage increases for all police departments in Nassau County for whom data were available. Without reproducing the information for all seventeen police departments in Nassau County. The PBA notes that only ten have agreements covering 2004, six covering 2005, five covering 2006, and one covering 2007. Comparing the average wages and wage increases of all Nassau County police departments to the PBA reveals the following:

	<u>PBA</u>	<u>Nassau County Average</u>
2001	77, 420 4.75%	78,463 4.09%
2002	80,854 4.50%	81,687 4.09%
2003	84,545 4.50%	85,120 4.18%
2004		88,888 4.45%
2005		91,543 4.32%
2006		96,031 4.28%
2007		103,596 4.00%

The PBA contends that its salary obviously lags behind the average throughout Nassau County. The PBA's wage demand of 4.5 percent is commensurate with those jurisdictions in Nassau that have already established future wages.

The PBA continues to advocate that the most comparable of all jurisdictions is the Nassau County PBA. The PBA does not, however, accept the County's proposition that the Nassau County Award translates to a 3.25 percent wage increase. Nassau received an Award with wage increases of 0 percent in 2001 and 3.9 percent in years 2002 through 2006. While the raises in 2005 and 2006 are not effective until July 1 in those years, that does not affect the bottom line, the base pay. It is merely a cost savings device in that year. Further, what the County characterized as a Union concession, working an additional forty-eight hours per year, was actually a trade to increase base pay in 2004 by an additional 2.6 percent. Thus, in 2004, Nassau actually received a cumulative wage increase of 6.5 percent.

For the years this Panel is authorized to render an Award, Nassau received an average wage increase of 4.76 percent per year (2004 - 6.5 percent, 2005 - 3.9 percent, 2006 - 3.9 percent). This makes the PBA's proposal appear more than reasonable. Even using the County's calculations, Nassau received 3.9 percent wage increases in 2004, 2005, and 2006, a far cry from the County's offer of 2 percent.

The PBA believes that the County is misguided in its heavy reliance upon the police departments in eastern Suffolk County. Only four departments have resolved their contracts for 2004 (East Hampton Village, Town of Riverhead, Village of Sag Harbor, and Southampton Village) and none for any years thereafter. For 2004, those four jurisdictions have an average base pay of \$82,287 and an average increase of 4.15 percent. As aforementioned, the contracts in eastern Suffolk County support the PBA's 4.5 percent proposal far more than the County's 2 percent counteroffer. The PBA is simply being consistent with its position for many years that departments in eastern Suffolk County are not comparable jurisdictions.

The County also offered into evidence documentation from several other urban and rural municipal police departments. As addressed above, the Suffolk County Police District is a suburb an environment that has never previously been compared to the City of New York, Rockland County, and the like. The PBA believes that there is no basis in the record for the Panel to now recognize those jurisdictions as comparable.

Suffolk County does not suffer from the same fiscal problems as Nassau, is operating at an annual surplus in excess of \$60 million, has an excellent bond rating, can float additional debt, and can raise property taxes. The PBA's comparable jurisdictions provide for wage increases between 4.28 percent and 4.45 percent

in addition to any other traditional economic benefits. The PBA has withdrawn proposals for increases in night differential, longevity, and pension. Consequently, the PBA's wage proposal of 4.5 percent increases in each year of the Award is just and reasonable and should be granted in its entirety.

**B. PBA Proposal 2 - Benefit Fund**

The Benefit Fund was established in 1972 to provide PBA members and their families with enhanced medical, legal, and financial benefits. It is run by a Board of Trustees consisting of four members appointed by the PBA and four members appointed by the County. Phil Carter, the Fund's Administrator, testified that the Fund was insolvent in the early 1990's and had to cut benefits. After a decade of cautious administration and prudent investing, the Fund now has net assets of approximately \$6.7 million.

The dental and optical benefits for both active and retired members provided by the Fund are substantially inferior to those provided by funds for other County employees. The Association of Municipal Employees ("AME"), Superior Officers Association ("SOA"), and Faculty Association of Suffolk Community College ("FASCC") each have their own benefit fund. Each of those funds provide active members with dental benefits at a greater reimbursement rate than the PBA Benefit Fund, as well as an implant benefit the PBA Benefit Fund does not offer. Likewise, those

funds provide active members optical benefits yearly, while the PBA Benefit Fund only provides active members age 45 to 49 with optical benefits every eighteen months and those under age 45 every twenty four months. Further, the AME provides retirees with optical benefits every twelve months, while the PBA Benefit Fund only offers such benefits every twenty four months.

Mr. Carter testified that in response to inquiries by the Board of Trustees, he requested the Fund's actuary to prepare a cost analysis to enhance both active and retiree dental and optical benefits. The actuary calculated the additional costs per year as follows:

Dental Benefits

Match AME benefit level for active members	423,000
Match SOA benefit level for active members	200,527
Match FASCC benefit level for active members	538,642
Add implant benefit offered by AME, SOA & FASCC	75,000
Offer Plan III benefits at no cost to retirees	245,000

Optical Benefits

Annual optical benefits for active members	261,400
Annual optical benefits for retirees	110,000

Unfortunately, despite the \$6.7 million dollars in net assets, the Fund cannot afford these benefit enhancements, because those assets must remain in reserve. Mr. Carter testified that given the requirements of the State Insurance Department and following the recommendations of the American Institute

of Certified Public Accountants, the Fund must maintain reserves equal to one-year's annual expenses plus its benefit obligations, which are \$2.664 million and \$3.659 million, respectively.

Based upon the foregoing, the PBA seeks an increase in the amount of contributions to the Benefit Fund to raise benefits to a level comparable to other County employees. In addition, the PBA seeks to index the increase to two 2 percent of base pay of a top-step police officer in order to keep pace with increases in the costs of the benefits offered. Currently, contributions to the Fund are calculated in a flat dollar amount of \$1,705 per member per year. Given the 2003 top-step police officer salary of \$84,545, the 2003 contribution of \$1,705 per member is exactly 2 percent. Thus, to the extent that the PBA's wages move forward in the future, contributions to the Benefit Fund would move forward in tandem. The PBA's request to increase and index Benefit Fund contributions is just and reasonable and should be granted in its entirety.

C. PBA Proposal 6 - Sick Time Donation Banks

PBA Second Vice President Thomas Muratore provided very persuasive testimony regarding the PBA's proposal to remove the County's discretion with regard to sick time donation banks. Vice President Muratore explained that a sick time donation bank allows members to donate accrued time to another member who is in

danger of exhausting all accruals and being removed from the payroll due to a catastrophic illness or injury. He further documented twenty-four occasions when the PBA, on behalf of a member, requested that a sick time donation bank be established.

The basis for the PBA's proposal is the County's abuse of discretion in approving these requests. For example, when Police Officer Laura LoBianco was stricken with colon cancer and was unable to work due to surgery and treatment, the former Director of Labor Relations denied her a sick time vacation bank because he did not consider it a catastrophic illness. Fortunately, the PBA was ultimately successful in reversing that decision. Similarly, when Police Officer Larry Hurley needed sick time donation banks established on two different occasions due to illnesses, he wound up going off the payroll both times due to unnecessary delays in approving his requests. Finally, Police Officer Kathleen Focus, who had already received a sick time donation bank for maternity leave, was denied her request when she sought another sick time donation bank for a second maternity leave. Ms. Focus's second request for a sick time donation bank was never approved and she ultimately went off payroll for seventy-eight days.

The PBA's proposal is designed to eliminate precisely these arbitrary and unreasonable decisions by the County under the cover of discretion. The essential element of the proposal is to

have the sick time donation banks be automatic in order to avoid these abuses of discretion. Based upon the County's demonstrated inability to properly exercise its discretion, the PBA's request is just and reasonable and should be granted in its entirety.

D. PBA Proposal 8 - Negotiations: Full-Time Release of Trustees

The PBA seeks to have its eight Trustees, all of whom serve on the Board of Governors, released full-time to perform PBA business. Currently, all Trustees work a full-time job as a police officer and must perform all of their PBA duties from a limited pool of release time or on their own time. The reality is that the majority of the work is done on their own time, as exemplified by time reports submitted by Trustees Molinari and Sales. President Frayler, a Trustee himself for ten years, testified that the job of Trustee is the most difficult job within the Union, since you work directly for Supervisors you must sometimes oppose and alongside the constituents you represent.

Trustees deal with a myriad of issues that inure to the benefit of the County. They work hand in hand with the Department to develop new policies and bring them forth in a positive light, help interpret the Collective Bargaining Agreement, assist internal affairs in arranging interviews of PBA members, and

expedite Homicide's ability to speak to police officers involved in shooting incidents.

The PBA's number of full-time release personnel pales in comparison to the other three police agencies employed by the County. The PBA only has one full-time representative per 367 members. Meanwhile, the Suffolk Detectives Association has three full-time representative members, the Superior Officers Association also has three full-time representative members, and the Detective Investigators Police Benevolent Association has one full-time representative per fifty-five members. Comparison to other jurisdictions is difficult due to the small size of other police departments. On a per capita basis, however, those jurisdictions also provide a greater amount of release time or simply provide release time, as needed.

The PBA lags behind police agencies employed by Suffolk County and other comparable jurisdictions when it comes to release time. To equalize this disparity and to recognize the exhaustive efforts performed by Trustees on their own time for the County's benefit, this proposal should be deemed just and reasonable and be granted in its entirety.

E. PBA Proposal 9 - Work Schedules for Recruits

The PBA proposes to amend the work schedule for new hires for their first two years of employment. Currently, members work 261 days during their first year of employment, 249 days

during their second year of employment, and between 232 and 234 days thereafter. President Frayler testified that the purpose behind the proposal to have members work between 242 and 244 days per year for their first two years of employment is to make the schedule easier to administer. Under the current system, "it becomes very, very difficult to get these people assigned."

Most PBA members are assigned to a chart that has 242 to 244 days of work per year, depending on whether you start the year with a day off or are working. In order to satisfy the Collective Bargaining Agreement's requirement to only work members with more than two years experience 232 to 234 days per year, each officer has ten chart days scheduled during which they are not required to work. Hence, the PBA's proposal is to have members, in their first two years of employment, work the same 242 to 244 charge without receiving chart days.

The County has submitted a diametrically opposed proposal seeking to increase the number of work days for new members to 261 days for the first three years of employment. The County's only support for its proposal is its everlasting desire to have "more officers working more days."

Even if the PBA's desire to ease the workload is counterbalanced by the County's desire to increase the workload, the tie is broken lopsidedly in the PBA's favor when examining the status of comparable jurisdictions. PBA members currently work more days

during their first two years of employment than in any other comparable jurisdiction. The vast majority of jurisdictions do not even differentiate between work schedules for new and senior members. Of the four out of twenty-one jurisdictions that do differentiate, the new hires in those jurisdictions work fewer additional days than currently required of PBA members.

Accordingly, when confronted with competing desires, the Panel should look to comparable jurisdictions to determine what is just and reasonable. The County's proposal to have PBA members, who already work more days during their first two years of employment than any other comparable jurisdiction, work even more days is neither just nor reasonable. On the other hand, the PBA's proposal to improve this condition and move the PBA from last place on this issue to seventeenth place out of twenty-one jurisdictions is just and reasonable. The PBA's proposal should therefore be granted in its entirety.

F. PBA Proposal 10 - Vacation

PBA Proposal 10 regarding vacation selection is also directed at administrative convenience and is designed to avoid abuse of discretion. The proposal does not seek any additional vacation time, simply more flexibility to use the vacation allotment already provided. President Frayler testified that pre-pick vacation selections are done in the fall of each year for the forthcoming year. The Department advises the officers of the

number of tours available for vacation depending on the number of officers assigned to the squad and then the officers make their selections. The problem arises when officers attempt to schedule remaining vacation time after the pre-pick selection is complete. President Frayler said of such requests, "they're granted at the sole discretion of [the] commanding officer which very rarely, if ever, is granted."

The PBA's solution to this problem is very straightforward: require the Department to keep available throughout the year those tours the Department designated as open for selection during the pre-pick selection process. Chief McElhone's protestations that he thinks the commanding officer needs "to maintain the right to approve or disapprove any staffing levels" is inconsistent. It is the commanding officer who initially establishes the number of officers permitted to be on vacation as a part of the pre-pick vacation process. The PBA simply asks that once those levels are established by the commanding officer, they be maintained throughout the year. The PBA's proposal to maintain available vacation slots beyond the close of pre-pick vacation selections is just and reasonable and should be granted in its entirety.

G. PBA Proposal 11 - Personal Leave

The PBA has approximately 405 members who work steady ten-hour shifts from 10:00 p.m. to 8:00 a.m. The ten-hour shift was

implemented in the early 1990's upon the request of the Department. The current Collective Bargaining Agreement provides that "Leave accruals, deductions, and forfeitures shall be computed on an hour for hour basis..." for the midnight shift. Unlike their counterparts on day tours, whose forty hours of personal time excuses them from work on five days per year; midnight employees' forty hours of personal time only excuses them from work on four days per year.

President Frayler testified that personal leave time "is granted to attend personal business such as a christening, wedding, house closing [and] wasn't meant to be doled out in hours. I believe it was meant to be doled out in days." Examination of other comparable jurisdictions with elongated tours shows that President Frayler is not alone in his belief. The Village of Long Beach provides the same number of personal days to police officers who work ten-hour shifts as those who work eight-hour shifts. The same is true regarding the Village of Malverne and its police officers who work twelve-hour shifts. The PBA's proposal to have ten-hour midnight police officers receive five full shifts of personal leave is therefore just and reasonable and should be granted in its entirety.

#### H. PBA Proposal 12 - Overtime

PBA Proposal 8, requesting full-time release of PBA Trustees, is closely interconnected with this Proposal 12, which

requests that members of the PBA Board of Governors receive four hours of overtime pay weekly. Both seek to remove disadvantages incurred by police officers who commit themselves to supporting their Union.

The Board of Governors is comprised of sixteen members. Five of those members constitute the Executive Board (President, First Vice President, Second Vice President, Treasurer, and Financial Secretary). The five Executive Board members are released from their assignments in the Department to perform PBA duties on a full-time basis. As a result, those five Executive Board members have no overtime opportunities and suffer from the concomitant loss of opportunity to supplement their salaries. For example, President Frayler testified that during his last year as a regularly assigned full-time police officer, he worked over 500 hours of overtime. Since then, as Treasurer and President of the PBA, he has received no overtime.

The remaining eleven positions on the Board of Governors consists of eight Trustees, two Sergeants at Arms, and a Recording Secretary who all work full-time assignments as police officers. While these individuals are all permitted to work overtime, the innumerable hours of their own time they expend to the dual benefit of the PBA and the County substantially reduces their ability to volunteer for available overtime assignments. As a result, these eleven members of the Board of Governors are

also penalized for their PBA activities. In order to rectify these lost overtime opportunities, the Panel should find it just and reasonable to pay members of the Board of Governors four hours of overtime per week at the prevailing overtime rate, in time or pay, at the member's discretion.

I. PBA Proposal 14 - Re-Opener

The PBA, Suffolk County Detectives Association, Suffolk County Superior Officers Association, and Suffolk County Detective Investigators Police Benevolent Association have historically engaged in pattern bargaining. The PBA has generally volunteered to negotiate first and set the pattern. Of course, neither the County nor the PBA desires the other bargaining units to engage in leapfrogging by asking for the benefits received by the PBA, and then a little more. To allow such leapfrogging to occur would unfairly disadvantage the PBA for volunteering to set the trend.

PBA Proposal 14 asks the Panel to grant the PBA the right to re-open the Collective Bargaining Agreement for further negotiations, mediation, and, if necessary, compulsory interest arbitration if any of the other three bargaining units attain any economic improvements not attained by the PBA herein. This not only protects the PBA, but it assists the County in resisting any potential demands by the other bargaining units to the extent they seek to exceed the economic improvements contained in the

Panel's Award. It is therefore in the best interest of both the County and the PBA that this proposal be found just and reasonable and be granted in its entirety.

#### The PBA's Position on the County Proposals

At the conclusion of the PBA's presentation in support of its proposals, it presented its arguments and supporting comments in opposition to the County's proposals. The PBA contends that the County's proposals are neither just nor reasonable and should be denied by this Panel in their entirety. The presentation made by the PBA on the County's proposals began with a discussion of wages.

##### A. County Proposal 1 - Wages

The County's first proposal is actually a counteroffer on wages whereby the County offers to increase wages each year by 2 percent of the base salary at each step. Both aspects of this proposal/counteroffer, the 2 percent figure and not calculating all raises based upon a top-step police officer, are unjust and unreasonable for the numerous reasons discussed above. Accordingly, the proposal should be denied in its entirety in favor of the PBA's proposal for a 4.5 percent increase per year based upon a top-step police officer.

B. County Proposal 2 - Loss of Accruals After One Year on 401 - 207(c) Status

President Frayler concisely articulated the PBA's objection to this, and many other, County proposals: "The main reason we opposed it is because it is an abusive proposal." This proposal in particular is abusive because police officers who are injured in the line of duty should be honored and protected, not penalized.

The County's proposal seeks to cap the accrual of benefits to police officers on 401 - 207(c) status. This is true despite the fact that in recent years, due to a decision from the New York State Court of Appeals, the standards to qualify for 401 - 207(c) status have become considerably more difficult. The County alleges that an employee injured in the performance of duty receives a better benefit than an employee who works throughout the year. The County, however, offered no documentary or testimonial evidence to support that allegation or even explain what constitutes the "better benefit."

C. County Proposal 3 - Flexibility for Ten Hour Work Schedule

In keeping with the maxim that if you give an inch, they will want a yard, the County seeks Proposal 3 to change the 10 p.m. x 8 a.m. tour to a 12 a.m. x 10 a.m. tour at the commanding officer's whim without penalty. The PBA opposes this proposal, since its adoption would allow the Department to change member's

work schedules with impunity and would disrupt the lives of the 400 plus members assigned to the ten-hour midnight shift.

D. County Proposal 4 - Remove Restriction of One duty Chart Per Command

In actuality, there are two duty charts in every command, an administrative chart and a patrol chart. There are also already two ways under the Collective Bargaining Agreement the Department can create additional duty charts. The Department can either establish a special duty chart if there is a particular need for a limited duration or can request the PBA's permission. The special duty chart provision has been used sparingly, but requests to the PBA have been numerous. Notably, the PBA has never denied the Department such a request. While the PBA reserves the right to deny future requests if they are considered unreasonable, it appears there is no problem with the current system.

E. County Proposal 5 - New Hires Work 261 Days For There First 3 years

The County's proposal to have new hires work 261 days for their first three years of employment with the Department has been fully discussed above and should be found unjust, unreasonable, and be denied in its entirety for the reasons stated therein.

F. County Proposal 6 - Ten Unpaid Tour Changes

County Proposal 6 requests the right to dramatically and negatively disrupt the lives of PBA members ten times per year without having to pay compensation for such disruptions. The focal point here is compensation, since the Department already has the right to change an officer's tour, subject to a change of tour penalty of one-and-one-half hours pay for each hour worked. President Frayler testified that Department proposals such as this are exactly why we need Unions to protect the rights and working conditions of employees. The PBA opposed this proposal.

G. County Proposal 7 - Personal Leave Days Granted Upon Mutual Consent

Understanding the genesis of this proposal once again requires a review of the Department's history of abuse. In 1988, the PBA went to arbitration because, in the words of President Frayler, "When I was a young police officer, if you needed a personal day, you could not get one." Arbitrator MacGregor sustained a grievance holding that the contractual language did not require "that approval must be received from some higher authority or that the leave must be by mutual agreement."

Shortly thereafter, the PBA, in response to the Commissioner's concerns that personal days could be used to effectuate a job action, agreed that a personal day could be denied if the officer could not be replaced through voluntary overtime. PBA

members have enjoyed the luxury of personal days on demand ever since and the County has unsuccessfully sought to regain the right to deny personal days in every contract negotiation for the last fifteen years. The PBA contends there is no reasonable basis for the County's personal leave proposal.

H. County Proposal 8 - Sick Time Abuse Policy

"There [is] no history of sick time abuse in Suffolk County." These are powerful words from President Frayler. Like many other County proposals, this demand seeks to impose draconian restrictions upon all officers because of the Department's uncorroborated belief that sick time abuse exists. There is no evidence of any sick time abuse in the record of these proceedings. The impact of this proposal, were it ever granted, would therefore be to punish officers out of work with legitimate injuries, illnesses, and conditions.

The PBA has repeatedly invited the Department to weed out any alleged sick time abuse through internal investigations and disciplinary action. Such action would only punish those guilty of misconduct. There is no evidence in the record of any such investigation, charges, or findings of misconduct. Therefore, absent evidence of widespread sick abuse, imposition of the restrictions alluded to in the Nassau County policy are not just or reasonable and the proposal should be denied in its entirety.

J. County Proposal 11 - Panel of Arbitrators

The parties presently resolve their contractual disputes through the American Arbitration Association (hereinafter referred to as AAA). The present system works well and the PBA sees no reason to fix that which is not broken. The County raised concerns regarding the AAA's expense, prior administrative problems, and delays. The PBA believes that the AAA system works well and the price paid, equally by the parties, is worthwhile for the services rendered.

The Chair Person has explored this matter extensively in Executive Session with the parties, including reviewing opinions of numerous arbitrators, as well as discussing procedures for administering a panel. Nevertheless, the PBA hereby renews its strong opposition to the implementation of a panel of arbitrators. The County has not met its burden to demonstrate that its proposal to establish such a panel is just or reasonable and the PBA therefore respectfully requests that the proposal be denied in its entirety.

THE COUNTY

The County began its presentation to the Panel by instructing it regarding its responsibilities and limits in applying the criteria specified in Civil Service Law §209(4)(c)(v). It continued with a detailed presentation laying out the County's

ability to pay the costs connected with the PBA's proposals. The County then addressed the comparability issue and the specific demands made by the PBA.

It completed its presentation by explaining to the Panel in detail the substance and merit of its proposals. It summarized its position by stating that the Panel should adopt its position on the issues and essentially reject the PBA's requests. The County's positions on the issues are stated below.

In what appears to be a change in a long-standing position that the Suffolk County PBA should not be compared to the Nassau County PBA, the County has all but proposed that if the Suffolk County PBA wants the same level of wage increase as the Nassau County Police, the Panel should award it. The County presented a comparison of the wage package awarded by the Nassau County Arbitration Panel with the demands requested by the Suffolk County PBA for the Panel's edification.

The County believes that this compulsory interest arbitration proceeding can be the moment when the PBA finally reaps the bitter seed that it has sown throughout those prior compulsory interest arbitration proceedings. For if the PBA truly wants Nassau County's terms and conditions of employment, and in particular its base salary increases, here they are--pursuant to the terms of the very recently issued Nassau County compulsory interest arbitration award covering the years 2001-2006 (that is,

covering all but one of the same years to be addressed by this Award). The County summarizes them as follows:

<u>(Year)</u>	<u>Nassau PBA Award</u>	<u>Suffolk PBA Demand</u>
2001	0%	(4.75% per 2000 award)
2002	3.9%	(4.5% per 2000 award)
2003	3.9%	(4.5% per 2000 award)
2004	3.9%	4.5%
2005	3.9% eff. 7/1/05 (1.95%)	4.5%
2006	3.9% eff. 7/1/06 (1.95%)	4.5%
2007	<>	4.5%
AVERAGE 2001-2006	2.6%	4.5%

The County takes the position that, moreover, if the PBA truly wants those increases, here is a sampling of what the Nassau PBA "gave up" in order to "win" those increases:

- Must work an additional 4 tours, or 48 hours, of work at straight time pay;
- Lost four hours of night differential pay coverage (used to commence at 11:00 a.m.; now commences at 3:30 p.m.);
- Loss of Flag Day as a paid holiday;
- Civillianization of 100 police positions;
- Reduction in the rate of pay used for wage and fringe benefit-based hourly calculations such as overtime and holiday pay (denominator increased from 1856 to 1985 hours);

- The same reduction for use in retirement payment-based hourly calculations for benefits such as unused sick and vacation leave;
- New hires to receive several fewer holidays during their first two years, and a reduced pay rate for the first 10 years.

In other words, Nassau's PBA compulsory interest arbitration panel extracted all of these concessions, and more, from the PBA in order to fund base salary wage increases averaging almost one-half of those demanded by our PBA, and only slightly more than the 2 percent wage increases offered by Suffolk County.

In spite of the County's position on the importance of the Nassau County PBA's arbitration award to this Panel, the County made the following point in its presentation:

This is not to say that the County is abandoning its historic contention that Suffolk County's East End town police departments are those most comparable to Suffolk's, or that there are other non-Island-based police forces whose terms and conditions should also be deemed to be comparable to Suffolk's. ...Instead, Suffolk is, for once, finding itself persuaded by the PBA that Nassau County's contract should be one of the primary guiding lights when crafting this Award. For that award explicitly considered, and gave heed to, Nassau's dire fiscal condition; the same fiscal condition all but explicitly ignored by the 2000 Suffolk PBA (Sands) Panel Award.

The County spent considerable time and effort prior to and during the hearings in this matter and in its post-hearing brief preparing documentation to support its position that it will not

be able to fund the PBA proposals from the projected County budget. It presented among many other arguments the following three for the Panel's consideration:

The County Has Budgetary Restrictions on its Ability to Pay for the PBA's Demands

The County Executive's Recommended Budget is restricted by the Expenditure Cap, Tax Levy Cap, and Dual Budget Presentation. First, the budget Expenditure Cap requires that the recommended and adopted budget's discretionary expenses for all funds not increase by more than 4 percent in the aggregate or the growth in the GDP Chain Price Index, whichever is greater. The County is required to comply with the budget cap. After a 1987 State Supreme Court ruling that the County exceeded its Expenditure Cap, the County made great efforts to reduce its budget to become compliant.

Second, similar to the Expenditure Cap, the Tax Levy Cap requires that the recommended and adopted budget's discretionary tax levy for the combined General Fund and Police District be limited to a 4 percent increase.

The third budget restriction on the Police District is based on Local Law 25-95, which requires adoption of both a mandated and a discretionary budget. Both the Expenditure and Tax Levy Cap apply to the Police District, since its expenditures are considered "discretionary."

Accordingly, it is doubtful that the demands sought by the PBA can be afforded by the County given its growing expenditures and the restrictions on the budget.

The County made a special effort to point out to the Panel that the decision in the City of Buffalo v. Rinaldo, 41 N.Y.2d 764, 396 N.Y.S.2D152 (1977) that stands for the proposition that an arbitration award can be imposed under certain conditions when the employer lacks the ability to pay is not applicable in the case before this Panel. The conditions that existed in Buffalo in 1975 and 1976 to support the Rinaldo Award and the subsequent Supreme Court decision do not exist in Suffolk County at this time. In fact, the County argues just the opposite exists now.

In Buffalo, the Union provided undisputed evidence that its members' wages, hours, and working conditions were far less than those in comparable areas. Additionally, the Union provided evidence that the size of its police force had decreased, while the crime rate and the cost of living had increased.

There is no evidence in this case, fortunately, that similar circumstances exist in Suffolk County. The Union's own exhibits show that the crime rate in Suffolk County has decreased over the past few years, its wages increases have outpaced the cost of living, and the wages and benefit packages now in existence places a PBA member on par with or better than most other police officers in the Long Island jurisdiction.

The County also argued in great detail that this Panel, when making its Award on the PBA wage request, should fashion the Award along the lines of the County's proposal with strong emphasis on the recent Nassau County arbitration Award. It should not rely on the PBA's financial presentation to support a 4.5 percent wage increase.

In its presentation to the Panel on comparability, the County submitted a comprehensive list of conditions for the Panel to follow and facts for it to consider. It states that the Panel's decision shall be based on:

a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar work conditions and with other employees generally in public and private employment in comparable communities.

The PBA has historically compared itself to police officers in Nassau County. when this comparison is made today, however, the Panel will find that it cannot award the PBA's demands in light of the recent Nassau County Award. That Award, as noted earlier, did not order the 4.5 percent average wage increase sought by the Suffolk PBA. Rather, it directed average 2.6 percent increases that were funded through numerous concessions.

For its part, the County urges the Panel to consider, in addition to Nassau County, the five East End towns in Suffolk

County: Southampton, Riverhead, Southold, Shelter Island, and East Hampton. These towns are physically located within Suffolk County, are the largest sized police departments within the County other than the SCPD, share the same training facilities with the SCPD, and are funded by taxpayers who also pay county-wide taxes. Additionally, police officers throughout Suffolk County take the same civil service examination and are subject to the same medical and physical requirements.

In contrast, the PBA has failed to provide any evidence showing that the towns and villages in Nassau County and the other specific villages in Suffolk County that the PBA cites to are comparable in terms of anything, let alone the size of their police departments, or the size of the population they serve.

The County also urges the Panel to compare Suffolk County's police officers' terms and conditions of employment with those of police officers employed by New York State, Rockland County, Westchester County, Albany County, and New York City. The Panel's Award must be based upon comparable communities that perform similar skills under similar conditions. These police forces are among the largest neighboring departments in the state. Moreover, the law enforcement officers in these municipalities often work alongside PBA members.

The comparables posited by the County are, as has been demonstrated above, supported by the evidence and, when consid-

ered, will permit the Panel to fashion a more realistic and just Award than that demanded by the PBA.

The County completed its presentation on why the Panel should deny the PBA's wage demand by pointing out that Suffolk County Police Officers at various levels of their salary schedule receive more pay than police officers in all police departments throughout Long Island, as well as New York City, Westchester County, the State of New York, and cities and towns throughout the state. In the final analysis, the County is saying that this Panel should grant the PBA a wage increase of about 2 percent on each step of the salary schedule, not the 4.5 percent requested by the PBA that would be calculated on the top step of the salary schedule that would be assigned to each step of the schedule.

Once the County completed its presentation in regard to the Panel's obligation to follow the statutory criteria of the law, the County's inability to finance the current PBA monetary demands, the comparability elements the Panel must follow, and the reasons why Suffolk County police officers should only received a 2 percent wage increase, it addressed the PBA's eight remaining open issues, as well as the ten issues it put forward. The County stated at the hearings and in its post-hearing brief that the PBA's list of open issues was excessive and unjustified and should be rejected. It presented the following comments on each issue:

The County's Position on the PBA's Proposals

A. The PBA's Demand to Increase Benefit Fund Contributions to 2 percent of the Base Pay Per Year is Unjustified

The PBA's demand to change the County's payments to the Benefit Fund to a percentage of top-step base salary, rather than the current flat rate is unreasonable. First, the top salary step of PBA members far exceeds that in comparable communities. Additionally, the cost of such an increase to the taxpayers would be incredible--a total of \$1.3 million over the term of the new contract.

In addition, the PBA's demand increase is particularly unjustified given that comparable jurisdictions such as Southampton, Riverhead, Shelter Island, New York State, Rockland County, and Albany County do not provide "welfare fund" benefits to their police officers. Additionally, of the comparable jurisdictions that provide welfare funds, Suffolk County already has by far the highest contribution per employee to the Welfare Fund.

The testimony of the PBA's witness, Phil Carter, indicates that the Benefit Fund is not currently operating in a deficit as it was in 1990 and 1991. If it were, that could conceivably justify an increase in contributions. Instead, the Benefit Fund currently has \$6.7 million in net assets.

Moreover, simply because PBA member wages increase does not automatically mean that Welfare Fund costs do too. One has

nothing to do with the other. Since the Fund has ample on-hand assets, no increase is needed in the present contribution. There is likewise no reason to convert the funding formula, as demanded by the PBA.

B. The PBA's Demand For a Sick Time Donation Bank Is Unnecessary

To quote the PBA during this arbitration hearing, "if it's not broken, don't try to fix it." The PBA's demand for a sick time donation bank should be denied because the current policy is effective and fair. The parties' contract is silent regarding an employee's ability to donate his/her accrued sick leave time to another employee "in need" of additional time in order to stay on the payroll during a long-term leave. Yet, the uncontroverted evidence submitted by the PBA confirms that the County has nevertheless always exercised its discretion in good faith by permitting employees to voluntarily donate their days to others in appropriate situations.

Indeed, the PBA established that in only one of twenty-five cases in which a request was made to donate sick time was the request denied. In that case, involving John and Kathleen Focus, a request was initially made in 1998 to transfer sixty days for maternity leave. That request was granted. It was only when a second request made for maternity leave by the same two people two years later was denied that this additional demand arose.

Since this one denial was obviously the exception rather than the rule, there is no evidence that the County was unreasonable in denying the request. Since the PBA has submitted no independent evidence establishing that there is a compelling need to create a contractually mandated benefit, this demand should be denied.

C. There is No Reason To Grant the PBA's Demand To Grant Fully Paid Released Time to Precinct Trustees

The PBA demands fully paid release time for its precinct Trustees. There are seven Trustees who would be affected by this demand. The cost of awarding full release time to the seven precinct Trustees over four years is \$2.9 million. This is equivalent to the cost of a 2 percent wage increase to all unit members during 2004.

The County will have to bear an exorbitant amount of money to compensate PBA members for non-work related activities, if this demand is granted. There is simply no reason why it should be.

D. The PBA's Demand For a Reduced Work Schedule for New Hires is Unjustified and Unreasonable

The contract provides that new hires work 261 days during their first year and 249 during their second year. The PBA proposes to reduce the work schedule to 242-244 days in both years.

The PBA has failed to provide any evidence justifying this demand that would cost the County \$4.1 million over the life of the contract, equivalent to a 1 percent wage increase in 2006. This demand also seeks to decrease productivity at a time when the County is already short-staffed.

The PBA's own evidence corroborates why this demand should be rejected. This is an era of increasing efficiencies and cost-savings measures. The recent Nassau award, for example, reduced the number of paid holidays for new hires, established a below schedule entry salary rate, expanded the number of years before the new hire achieves top-step pay, and also reduced the number of holidays paid to those same employees.

Likewise, no jurisdiction cited by the PBA has recently reduced the work schedule for new hires. To the contrary, for example, the comparable police departments in Riverhead and Southold both require their new hires to work a 260-day chart for the first two full years of their employment.

For all of these reasons, this demand should be rejected.

E. The PBA's Demand that Unpicked Vacation Slots Remain Available for Future Use Would Unreasonably Restrict Needed Scheduling Flexibility

The PBA demands that unselected vacation days remain available for its members. The contract currently provides for the selection of time vacation time according to seniority. This

demand, if granted, will have a tremendous negative impact on the Police Department's ability to adequately and efficiently provide services to the community because it would increase scheduling problems and decrease productivity. In contrast, the PBA's only justification is for this demand is that it wants the option of having the vacation days remain available.

While the PBA may argue that vacation requests are granted based on the discretion of the supervisor, there is no evidence that there has been an abuse of such discretion. The Union did not cite to one case where a PBA member was denied a vacation day request. Absent any shred of evidence, this demand should be denied as unjustified.

F. The PBA's Demand for Five Personal Leave Days for Officers Assigned to the Ten Hour Night Shift Is Absurd

The PBA's demand that the Panel increase the number of personal leave days for employees assigned to the steady ten-hour shift from four to five days is unwarranted. This demand would have a direct impact on the efficiency of the Police Department's day-to-day operation by decreasing the number of scheduled appearances. More time off also generally means increased overtime costs. In addition, the cost of this demand to the County, assuming that the Panel awards PBA wage increases of 4.5 percent over four years, would equal \$1,113,402, or itself a 1 percent wage increase during the first year of the new contract.

Moreover, employees assigned to the ten-hour shift already have fewer appearances per year than those assigned to regular eight-hour shifts. That is why the parties' Agreement provides for four rather than personal days for the former.

Since awarding this demand would provide an unjustifiable windfall to a discrete class of employee, it should be rejected.

G. The PBA's Demand for Four Hours of Overtime Compensation for Members of the PBA's Board of Governors Is Indefensible

The PBA proposes to compensate members of the Board of Governors for four hours of missed overtime opportunities per week. The current Suffolk County PBA Agreement provides in relevant part that members of the Board of Governors "...shall be excused from duty on the day meetings are to be held, so that they are able to attend meetings of the Board of Governors and Membership Meetings, and shall not be required to perform any additional service to make up for the time spent in attendance at such meetings." Additionally it provides that for an annual bank of days of administrative leave.

The PBA has not presented any evidence that the bank of days that is currently provided for in the contract is inadequate or insufficient to permit the Board of Governors to attend to their PBA duties. Additionally, there is no rational basis for compensating employees for overtime that is not actually worked. If Board Members are concerned about the loss of potential overtime,

they should not volunteer for Union duties that interfere with the opportunity to earn the same.

The cost of this demand would equal \$1,016,570 over the four-year term of the contract. This would be equivalent to a 1 percent wage increase if it were granted to all unit members. Given the financial problems that are projected for the County and the other issues already stated, such a demand is indefensible.

The PBA's Demand for Reopeners on the Issues Before the Panel Should be Denied

The PBA demands a reopener on the issue of wage increases. This demand is inconsistent with the status of the PBA as an independent bargaining entity. The County is entitled to finality in its negotiations. Yet, if the Panel grants the PBA's demand, the County may have to wait indefinitely for the conclusion of the SOA, SDA, and a DAI contract negotiations before it can know for sure what the final terms and conditions of PBA unit member will be.

The merits of the issues before this Panel should stand on their own and not be subject to reopening based on another unit's actions. For all of these reasons, this PBA demand should also be denied.

### County Proposals

The County believes that its proposals should be awarded because they are reasonable, have been justified, and will improve the police departments productivity.

#### A. The Application of Wage Increases to each Salary Step

The County proposes that wage increases should be applied to each step on the salary schedule. While this may seem to be a self-evident proposition, historically wage increases for PBA unit members have been ascertained by applying the across-the-board cost-of-living wage increase to the top step police officer base salary and then applying a flat dollar amount to that increase to all of the remaining steps. This has artificially increased lower step salaries and therefore personnel costs. It has also resulted in an artificial and unnecessary compression of the salary schedule.

The County proposes instead that any increases awarded pursuant to this Award be applied uniformly to each step on the salary schedule, as is done in other Nassau and Suffolk Awards before the Panel.

#### B. Proposal to Limit the Accrual of Personal and Sick Leave Entitlements, Night Differential Payments, and Cleaning and Clothing Allowances for Officers on a 401 Leave Absence

The County proposes to limit the accrual of personal leave, sick leave, night differential payments, cleaning allowances, and

clothing allowances to officers on "401" on-duty injury leave (a/k/a General Municipal Law §207(c)). The contract now provides that those employees shall not lose any vacation, sick leave, or other benefits while on 401 leave status.

This proposal should be granted because it makes sense. First, when employees are on 401 leave status, they should be required, as are active employees, to use or lose any vacation time that they acquire over 90 days. (Employees can accrue up to 120 days but can only carry over 90 days from one year to another year). Second, employees on 401 status should not receive compensation for night differential work that they do not perform. Third, an employee on 401 leave status should not receive a clothing or cleaning allowance because, by virtue of being on leave, they are not working. Phrased another way, the County's proposal, if awarded, will result in employees on 401 leave status being treated the same as active employees.

Limiting the accrual of personal, sick leave, night differential, clothing, and cleaning allowance would occur after the employee has been on 401 leave status for more than twelve consecutive months. The new sick leave policy would not change the manner in which employees accrue vacation leave. Additionally, the policy would provide that upon the employees return to work, they will be credited prorated sick leave or personal leave days "up to the contractual maximum, to be determined by dividing

the number of complete months remaining in the calendar year by 1.4 or 2.1." Moreover, when an employee returns to work, night differential, clothing, and cleaning allowances will be paid in accordance with the contractual provision.

In 2003, the County was awarded this proposal by the Suffolk Detectives Association Compulsory Interest Arbitration Panel. As the Panel is aware, there had been long-standing pattern bargaining and interest arbitration awards among County's policy unions. Application to this pattern mandates that the Panel award this proposal.

It should also be noted that the relief sought by the County would not be unique to it. Similar restrictions on benefits for employees on 401 leave status are also contained, for example, in the collective bargaining agreements in the Town of Southold and the Village of Freeport.

C. Proposal to Schedule the Ten-Hour Night Shift to End Within Two Hours of the Start of the Day Shift

The County proposes amending the contract so that it can flex the ten-hour shift to end within two hours of the beginning of the day shift in order to accommodate scheduled court appearances. Assistant Chief McElhone testified that officers who work during the 10 p.m. to 8 a.m. shift must now be recalled whenever they have a court appearance scheduled. As a result, the County

is required to pay seven hours of recall time regardless of the time that was actually spent in court.

The County's proposal reflects a potential cost savings measure by which the Department would compensate the officers for one hour based on their regular pay and then provide time and a half for any time there thereafter. An estimated savings of \$617,000 would be realized from this proposal. The benefit far outweighs the PBA's sole complaint that the ten-hour tour was added by Management, which should not now be able to change it.

It is undisputed that the County spends an incredible amount of money to pay police officers for court appearances. In 2002, for example, the County spent \$696,841 in court appearances. In light of the fact that the Department has no control over the scheduling of such appearances, this proposal will enhance appropriate staffing levels and provide a huge financial savings to the Department.

For all of the reasons mentioned above, this proposal should be granted.

D. Proposal to Amend Section 19, which Restricts Commands to One Duty Chart per Command and Remove Restrictions of Prescribed Tours for Seven-Day Schedules

The County's proposal to amend Section 19 and remove restrictions of prescribed tours for seven-day schedules should be granted because it aims at allowing flexibility within the Police

Department to change the hours of its employees based on staffing needs. The current provision of the contract makes it difficult for the Police Department to adapt to its ever-changing needs. Assistant Chief McElhone testified that this change is needed because the current contract language limits the Department's use of duty charts for tours of duty to only one duty chart per command. Consequently, if the Department wanted to supplement the twenty-four-hour chart for a special event, it would have to "reconstruct or create a whole new command." When a new command is created, there are different reporting procedures and different overtime restrictions. Therefore, this proposal should be granted to remove the obstacles that exist when the Police Department needs additional personnel.

E. Schedule Officers to Work a 261-Day Work Chart for Their First Three Years of Service after Graduation from the Academy

The County proposes to increase the work chart for new hires to 261 days during the first three years of service. The current contract provision only provides for a 261-day work chart for new hires during the first year of service and a 249-day chart during the second year. This proposal will obviously increase productivity by increasing the number of employee appearances.

In addition, the current work year for new hires is less than that of their colleagues in other comparable jurisdictions, such as Riverhead and Southold.

The PBA submitted a contrary proposal that would reduce the appearances of these officers. It should be rejected for all of the reasons why the County's should be awarded.

F. Allow Tour Changes for Staffing and Special Events

Assistant Chief McElhone testified that the changing of tours has been the subject of several arbitrations between the parties. Under the current policy, the Police Department is drastically limited in the situation in which it can change an officer's tour, of duty in a cost effective manner. As a result, the County proposes additional flexibility for tour changes, based on Departmental needs.

This proposal would allow the Department to change an officer's tour without paying recall pay if there is a scheduled special event or inadequate personnel coverage. Currently, the Department must pay recall pay even though the employee is not being recalled from a day off.

Since this proposal is justified in that it will promote cost-effective operation of the Police Department, it should be granted.

G. Grant Personal Leave Days upon Mutual Consent, Especially on Holidays

The County proposes that personal leave days be granted only upon mutual consent. In particular, the County would like this proposal to apply during holidays, given the frequency of per-

sonal leave days taken during this time. Presently, due to the infamous MacGregor award, "these days may be taken virtually at-will."

No one disputes that police officers may need to use personal days for home closings or special events. The evidence demonstrates, though, that a significant number of personal leave days are used during the holidays.

According to Assistant Chief McElhone, on Thanksgiving Day in 2002, a total of fifty-three officers in three precincts used a personal leave day. This required the Department to staff the positions at overtime rates.

Awarding the County's proposal would ensure that the Police Department is not left with a huge personnel shortage on holidays, requiring the rehiring of staff on overtime. Accordingly, it should be awarded.

#### H. Proposal to Institute a Sick Time Abuse Policy

The County proposes instituting a sick time abuse policy that is similar to the policy used in Nassau County. The purpose of the policy is to identify sick leave abusers. Anyone who is identified as a sick leave abuser will not be allowed to work overtime, switch their tours, or apply for preferred assignments.

The policy would also prevent abusers from receiving night differential while on sick leave. Further, chronic sick leave abusers will be in jeopardy of losing vacation leave. The policy

would also restrict anyone who is on sick leave from leaving their residence.

This proposal is reasonable since it prevents employees who have abused the system from obtaining any contractual benefits shared by employees who abide by the Rules and Regulations of the Police Department. It has worked in Nassau County and can work here.

I. Substance Abuse Testing of Police Officers On 401 Status, Hair Sample Analysis as A Drug Test Option, and Testing for Steroids as Part of Random Test Analysis

Due to concerns raised by the Department's Internal Affairs Bureau, the County proposes a policy to allow drug testing of members on 401 status, use of hair sample analysis as a drug testing option, and testing for steroids. The need for this proposal was recognized by the Department when one of its employees on 401 status was involved in a drug transaction. Since this employee was not tested randomly for drugs, there was no way to identify the employee's involvement in drug activity.

Hair sample analysis is a far more accurate test than that presently used. We would expect the PBA to support its use. Finally, due to the increased use of steroids in the Department, testing for steroids has become a necessity. It cannot seriously be questioned that steroid use impairs judgment and other criti-

cal skills absolutely essential to police work. For all of these reasons, this proposal should be granted.

J. Proposal to Establish an Agreed-Upon Panel of Arbitrators

The County has also proposed to create a panel of arbitrators rather than using the case administration services of the American Arbitration Association ("AAA"). The services now provided by the AAA are expensive and the actual scheduling of the cases was problematic in the past. Requiring that the designated Panel members be agreed upon also enhances both perceived and actual fairness in the arbitration. Moreover, this proposal is not unique to Suffolk County. It is common in collective bargaining agreements throughout both the public and private sectors. The creation of a panel of arbitrators should be approved.

The County concluded its presentation to the Panel with a plea that this Panel should deny the PBA's proposals in whole and award the County's proposals.

OPINION AND AWARD OF THE PANEL

At the outset of this portion of the Opinion and Award, the Chairman has concluded that despite the extensive labor relations experience of the parties to this dispute and the extraordinary

competence of the advocates for each side, a statement setting out just how Interest Arbitration relates to collective bargaining and how this Panel should view its role in this dispute is advisable.

It is well accepted by members of the labor-management community that the best labor agreements are those that are negotiated through collective bargaining without help from outsiders (e.g., arbitrators, arbitration boards, government agencies, and the like). Despite the most diligent efforts of bargainers, there are occasions when outside assistance may be required. This occurs when seasoned personnel recognize that additional efforts to reach an agreement will be fruitless. It is at this point that it is in everyone's best interest to bring a third party or parties into the dispute to complete the process. It is the role of the Chairman of the Panel to issue an award that the parties would have developed had it been possible for them to bargain to a conclusion. That is what I will attempt to do in this case.

Before I embark on the mission to consider the parties' open issues, I must first address the issues of welfare of the public, the County's ability to fund a reasonable PBA contract, and the question of comparability. With whom should the Suffolk County PBA be compared when an analysis of wages and benefits is made to determine what this Panel should award in these proceedings?

I have reviewed and studied in detail the financial positions of both parties. I conclude that the information contained

in this record supports the notion that the County has the ability to fund a reasonable wage and benefit package for the PBA. There were considerable financial data presented by both parties. Some of them were conflicting. Based upon a review of the data, however, there seems to be a general consensus that Suffolk County is a prosperous, growing county with competent financial Management. Despite past interest arbitration awards and collective bargaining settlements that have followed the pattern of settlements in the County, the County has managed to maintain a sound budgetary position and has ended up some years with a surplus. At no point in the instant proceeding has the County categorically stated that what the PBA is requesting cannot be funded under any circumstance.

Based upon what I deem appropriate to award, I conclude, as Chairman, that the County has the financial ability to fund a reasonable agreement.

In regard to the issue of the welfare of the public, I find that a long-term agreement between the PBA and the County is most definitely in the public's interest. This will be the basis for a competent, efficient, loyal police force working for the good of the County. A competent, devoted, and contented police force is a public benefit.

The Panel is also obligated by law to make proper comparisons between the Suffolk County PBA's wages, hours, and condi-

tions of employment with similarly situated police units in surrounding areas. The record of this case contains many collective bargaining agreements from all jurisdictions on Long Island in both Nassau and Suffolk counties. It also contains numerous arbitration awards involving Suffolk County police units, as well as numerous arbitration awards involving Nassau County PBA and other Nassau County jurisdictions.

The overwhelming conclusion of many highly respected arbitrators, when confronted with the comparability issue in Suffolk County and in Nassau County, is that the most significant comparison for the Suffolk County PBA would be with the Nassau County PBA. The reverse was decided when the question arose as to with whom the Nassau County PBA should be compared. I can find no basis on which to undermine the decisions of the panels that went before this Panel. As those panels determined, while various communities on Long Island and even some off of it, are certainly "comparable" to Suffolk County, the most comparable, outside of those within the County's traditional "police pattern," continues to be Nassau County. Accordingly, I conclude (as the County suggests), that a financial award in this case should be fashioned significantly in line with the recent Nassau County Award that has been quoted in some detail earlier in this document.

I will address the issues presented by the parties in the order they were received into the record. The PBA's open issues were discussed first and the County's issues were then presented.

1. Wages

The PBA proposed a salary increase for all current employees of 4.5 percent to be applied to the current salary schedule on the basis of 4.5 percent calculated on the top step of the salary schedule.

The County proposed a 2 percent across-the-board salary increase applied to each step of the salary schedule. The arguments presented by both parties to support their respective positions have been reviewed and considered by the Chairman. As a result of that review, I have concluded that a reasonable solution to the wage increase issue would be a wage increase somewhere between the County's 2 percent offer and the PBA's 4.5 percent demand.

I reach this conclusion based on the following. First, I have considered both the base salary increases awarded to the Nassau County PBA, as well as the concessions that were ordered in order to fund them. I credit the PBA's analysis of the value of those increases (including the various base salary enhancements that were awarded separate and apart from those mentioned in the wages portion of that award) as exceeding 4.3 percent per year over the life of the award. I also, though, credit the

County's argument that the "value" of the ordered concessions in that award averages more than 1 percent per year.

While the PBA has presented me with its analysis of other Long Island police department base wage increases, I note that some of those increases occur mid-year, representing a cost savings to the affected municipalities.

I have also considered the fact that the PBA's demand for a 4.5 percent increase for each of four years would result in raises far exceeding the current increases in the cost of living for the New York area. I also find, though, that the County's offer of 2.0 percent for each of those years is inadequate because it would cause PBA unit members' wage increases to be outpaced by those same cost of living increases.

Also significant is the balance I must reach between PBA unit members' historic comparability with Nassau County in terms of top step salary with Suffolk County's ability to pay for that salary. While Suffolk does not seriously argue that it cannot afford to pay for the PBA's demands during the year 2004, in which it is projected to enjoy a large operating surplus, the PBA has not rebutted the County's legitimate concerns about its fiscal projections for 2005 and beyond.

It is these considerations, plus other related arguments presented at the hearing and through the parties' post-hearing briefs, that lead me to conclude that base salary increases

should be at the rate of 3.75 percent per year for each year of this Award. Having done so, I recognize that I must still address the County's demand for relief from the traditional manner in which those increases are to be applied to the salary schedule, as well as its argument that the true "cost" of the Nassau award is closer to 3.25 percent per year.

Despite the past practice pursuant to which base salary increases have been calculated (i.e., by figuring percentage wage increases on the top step of the salary plan and then applying that dollar amount to each lower level step of the schedule), I am persuaded by the County that there is no rational reason to continue this practice at least for new hires. Unlike current unit members, whose salary increases have historically been calculated based upon this practice, new hires have no such expectation. Moreover, I am unaware of any other comparable police bargaining unit, including Nassau County, that calculates its salary increases in this manner. Further, I am convinced that the potential savings to the County of a prospective implementation of this change in the manner in which raises are calculated will yield a real cash savings to the County over the life of the Award of approximately  $\frac{1}{2}$  percent per year. This change will also help the County's finances in the long term by stopping the long-standing compression of the salary schedule

that occurs from applying the value of the top step wage increase to each of the subordinate steps.

For these reasons, I hereby award that the current practice of calculating percentage wage increases on the top step of the salary schedule and then applying that dollar amount to each lower step of the salary schedule shall remain in place for all unit members on the payroll at the end of the current Agreement (i.e., December 31, 2003). For all employees hired on or after the effective date of this Award (i.e., January 1, 2004), wage increases shall be calculated based on the base salary at each step of the salary schedule.

## 2. Benefit Fund

The PBA proposed that the County contribution to the Benefit Fund be maintained at a level of 2 percent of base pay per employee per year. The County objects to this proposal on the basis that indexing the Benefit Fund contribution to the top salary of a police officer would cost an exorbitant amount of money over the life of a four-year contract. It also pointed out that the Benefit Fund has a sizable surplus at this time and additional contributions are not necessary.

I have studied the arguments on this issue and am persuaded that the County has a number of valid points in its presentation. I reject the notion that the County contribution to the Fund should be indexed to the salary plan. I also reject the County's

position that no Benefit Fund contributions are necessary for the life of the Agreement. The PBA has presented some arguments that indicate that some County employees receive higher benefits from their plans than do police officers. While both parties have some valid points to support their positions, compromise must be the end result.

I therefore direct that the County contribution to the PBA Benefit Fund remain as a fixed amount per employee per year. I also direct that the amount of \$50 per year per employee be contributed to the Benefit Fund by the County. I have concluded that the Award on this issue is fair and just and will not allow the Benefit Fund to grow more than required to maintain or slightly improve benefits enjoyed by police officers.

3. Sick Time

The PBA proposed the following contract change:

Bargaining unit employees shall be automatically entitled to donate days from their sick time bank to other bargaining unit members whose total accrued time is becoming exhausted as a result of a serious injury, illness or condition.

It did so in order to allow employees to donate sick days automatically from their sick time bank to other employees who have exhausted their sick time. It wants to eliminate the County's authority to deny such requests if they deem the requests to be inappropriate. The County objects to this demand on

the basis that only once in twenty-five cases in which requests were made to donate sick time was the request denied. The County's advocate has adopted as his rationale for objecting to this demand a quote made by the PBA President during the hearing in this matter, "If it's not broken, don't try to fix it." I agree with those words, whoever uses them.

The PBA demand on this issue is denied.

#### 4. Negotiations

The PBA proposed:

Precinct trustees shall be excused from their regular duties without loss of pay or benefits, including cleaning allowance and clothing allowance, to administer this agreement and to execute the duties of their offices.

The PBA proposed this contract change in order to give the eight Trustees (the County suggests there are seven), all of whom serve on the Board of Governors, sufficient time to perform PBA business. It in effect argues that even though there is a limited release time available to them, most of the PBA work they do is on their own time. The PBA would like to remedy this situation.

The County objects to this demand based on the cost over four years of this contract, as well as the need to pay PBA members for non-work-related activities.

I am mindful of the difficulty Union officials have fulfilling their responsibilities while at the same time working a full-

time job. This is not a problem unique to the Suffolk County PBA. The subject comes up in labor relations in many discussions in the public sector, as well as in private sector jurisdictions across the country. Based on the record, however, I cannot justify supporting this demand.

The PBA demand on this issue is thus denied.

5. Work Schedules

Upon graduation from the Police Academy, each officer shall be guaranteed a work schedule of two hundred forty two (242) to two hundred forty four (244) days per year until his/her second (2<sup>nd</sup>) employment anniversary.

The PBA proposed a change in the work schedule for new hires during their first two years of their employment. Schedules should decrease from 261 days during their first year and 249 days during their second year to between 242 and 244 during the first two years of employment.

The County objected to this proposal on a cost, productivity, and comparability basis. In fact, among its proposals in this proceeding, the County has a demand to have new hires work 261 days for the first three years of employment.

After a review of the arguments from both parties on this issue, I am forced to conclude that a demand such as this is better agreed upon by the parties than decided in arbitration by a third party. Around-the-clock scheduling of police officers is a complicated procedure that depends on many factors. I am

persuaded that the information presented by both sides on this issue constitutes an insufficient basis on which to base a decision that alters the status quo.

The PBA demand on this issue is denied.

6. Vacation

Vacation days made available pursuant to Suffolk County Police Department guidelines as of January 1<sup>st</sup> of each year, and not utilized in one week vacation blocks as per normal vacation selections, shall remain available for use, and shall not be denied for, individual vacation days or weekly blocks throughout the calendar year.

The PBA proposed this contract change to improve the administrative procedures for officers in scheduling their remaining vacation time after the pre-pick selection is completed. At this point, such requests are approved or disapproved by the commanding officer. The County has objected to this demand on the basis that it would increase scheduling problems and decrease productivity. The County also pointed out that the PBA failed to identify one instance of what might be called abuse of discretion of a Supervisor in denying a vacation day request.

I have considered the position of both parties and have decided that the PBA has not been persuasive in supporting a change in the current vacation policy.

The PBA's demand on this issue is denied.

7. Personal Leave

Officers assigned to the steady ten (10) hour night schedule shall be entitled to five (5) tours of duty for personal leave.

The PBA proposed this contract change in order to equalize the actual days of personal leave granted to midnight-shift employees and day-shift employees. Day-shift employees receive forty hours a year of personal leave time. That equates to five actual days off for them. Midnight shift employees who work ten-hour shifts, forty hours in four days, receive forty hours per year personal leave. That equates to four days off for a midnight-shift employee.

The County objects to this proposal on the basis that its unwarranted cost would have an impact directly on the efficiency of day-to-day operations by decreasing scheduled appearances by night shift personnel.

I have reviewed both positions on this issue. It is my conclusion that midnight shift personnel have sufficient time off during a business week to attend to personal matters. I cannot be persuaded, based on the evidence presented to me, that an extra day per year of personal leave awarded to midnight shift employees, increasing their leave time to fifty hours per year, ten hours more than anyone on a regular forty hour week, is justified.

The PBA demand on this issue is denied.

8. Overtime

Members of the Board of Governors of the Association shall be compensated weekly for four (4) hours pay, at the prevailing overtime rate, to be paid, at the employee's sole discretion, in either time or pay.

The PBA proposed this contract change in an effort to obtain for the Executive Board of the PBA (President, First Vice President, Second Vice President, Treasurer, and Financial Secretary) as well as the eleven remaining members of the Board of Governors an additional stipend to help compensate them for the extraordinary amount of time they spend on PBA problems that also have a benefit to the County.

The County objects to this PBA proposal on the basis that it is unnecessary. PBA members of the Board of Governors are given ample release time to perform their Union duties. It also takes the position that the demand, if granted, would be exceedingly expensive. In the current financial climate, it is indefensible.

I have reviewed the arguments presented on this issue. I have concluded that both parties have some merit to their positions. The County makes a strong point as to the cost of this demand over the four-year period of the contract and the fact that the eleven Board Members who can earn overtime need not let their Union duties interfere with overtime opportunities.

On the other hand, the PBA has a point that the five members of the Executive Committee are not in a position to work overtime

in the department, since they are full-time released employees and overtime pay is a major portion of a police officer's wages.

I therefore have concluded that a minimal stipend to compensate the five members of the Executive Board is warranted. This is because the PBA has submitted ample evidence that members of the Board of Governors would in fact be eligible for significant amounts of overtime opportunities but for their release status. As for the County's rejoinder that Board of Governors members have chosen to forgo these opportunities in exchange for release from work, the PBA correctly asserts that the County has historically negotiated contract provisions that ensure that Board members are not financially penalized for assuming those important duties.

Based upon the evidence presented to me by the PBA, I have concluded that were they not on release status, Board members would have the opportunity to earn significant amounts of overtime per week. Indeed, were Executive Committee members not on full-time release, I have determined that they would earn approximately 3.25 hours of overtime per week over the course of a year.

I am not, though, unmindful of the County's arguments about the voluntary nature of the duties assumed by these PBA officers. Nor am I disputing the legitimacy of the County's concerns about the cost of implementing this benefit at this time.

Accordingly, I hereby award that this benefit shall be ordered for Executive Committee members only. I further order that, based upon the above considerations, there be a differentiation between the additional pay awarded to the PBA President and that provided to other Executive Board members as follows:

I direct that the Executive Board Members receive additional pay:

1. President - 3.25 hours to be added each week
2. First Vice President - 1.5 hours
3. Second Vice President - 1.5 hours
4. Treasurer - 1.5 hours
5. Financial Secretary - 1.5 hours

It is the decision that these hours are calculated and paid on a straight-time basis.

9. Re-opener

The PBA may re-open negotiations/mediation/arbitration if the Suffolk County Superior Officers Association, Suffolk County Detectives Association or Suffolk County Detective Investigators Police Benevolent Association bargaining units attain any economic improvements not attained by the PBA.

The PBA has presented this demand on the basis that the PBA has been the trend setter in collective bargaining in Suffolk County by agreeing to go first and obtain an agreement. It sets the pattern for the other three PBA bargaining units, Suffolk County Detective Association, Suffolk County Superior Officers Association, and the Suffolk County Detective Investigators

Police Benevolent Association. The PBA asks for this re-opener clause to protect itself from being taken advantage of because of its willingness to go first in the bargaining. It also suggest that a re-opener clause would be advantageous to the County.

The County objects to this proposal on the basis that once an agreement is made or, in this instance, when an arbitration award is rendered, the case should be closed. The County should not have to, under any circumstances, reopen the bargaining and give the PBA a chance to obtain more.

In reviewing this issue, I can find no fault with the PBA's request for a re-opener. The current contract contains such a clause, just as do numerous other County contracts. I see some advantage to the PBA's attempt to maintain the pattern bargaining that is traditional in Suffolk County.

I endorse the PBA's proposal.

The Chairman now turns to the open proposals placed before him by the County.

1. Wages

Increase wages each year of the Agreement by 2% of the base salary at each step of the salary schedule.

The County's wage increase proposal was addressed in the Discussion and Award concerning the wage issue put forth by the PBA. I have awarded an increase of 3.75 percent in each of four years beginning on January 1, 2004. The wage proposal of the

County had considerable bearing on the decision to award the 3.75 percent for current employees and the procedures to be adopted for granting the wage increase for employees hired after December 31, 2003.

2. Limit accruals of personal and sick leave entitlements, night differential payments, and cleaning and clothing allowances for officers on a 401 Leave of Absence

The County puts forth this proposal on the basis that it is a fair and just proposal and it makes sense. Employees on 401 leave status should not be treated better than active employees. It also argues that the Suffolk Detective Association Arbitration Panel awarded this identical demand to the County.

The PBA opposes this on the basis that it is a harsh proposal that seeks to take contract benefits away from police officers who are injured in the line of duty. The PBA argues that these employees should be honored and protected, not penalized. It further contends that the County's argument that the Panel should grant this benefit because the Detective Unit's arbitration award did is not valid.

The PBA finally argues that the County has not demonstrated the need to change the clause in dispute here dramatically. It has not demonstrated one instance of abusive use of this clause by a member.

I have reviewed this proposal and the County's twin justifications of cost savings and application of the so-called "police pattern." While I am particularly sympathetic to the latter argument, I find that it is misplaced. This is because the Section 207-c/401 concessions extracted from the SDA during its last interest arbitration award were themselves awarded as cost saving concessions required to offset the value of the concessions awarded by the Sands PBA panel during the last two years of that award. As a result, requiring the PBA to follow the so-called pattern here would, in effect, result in an undeserved windfall to the County, as I have already identified the cost savings that are necessary in order to fund this Award.

This proposal is denied.

3. Change Section 19(A)(2)(a) (work schedules and conditions) to:

The ten hour night shift may be scheduled to end within two hours of the time the day shift is scheduled to commence. Therefore, any court overtime will not be calculated as recall.

The County seeks a change in the contract to allow it the flexibility to change the 10:00 PM to 8:00 AM shift to a 12:00 midnight to 10:00 AM shift when the midnight shift police officer is scheduled to appear in court. The County contends that the right to make these changes when necessary to ensure that a police officer who has to report to court is available without a

penalty payment for being called back after he is off duty would constitute a great savings in overtime to the Department.

The PBA opposes this proposal on the basis that the Department requested that the 10:00 PM to 8:00 AM shift be established. It then prevailed on the PBA to make a change so that a midnight to 10:00 AM shift would be established so that police officers who were needed in court would be paid a five-hour penalty rather than a 7.5-hour penalty. It now wants to keep the 12:00 midnight to 10:00 AM shift and eliminate the penalty altogether. The PBA argues that allowing the Department to change a midnight shift employee's work schedule without a penalty would cause havoc in the lives of the more than four hundred members working the midnight shift.

I am persuaded that through this proposal, the Department is attempting to change a contract clause to which it agreed and has changed at least once before to accommodate its desire to have flexibility to change the midnight schedule so that officers could be available for court appearance with a minimum amount of monetary penalty. I am not persuaded that this proposal is reasonable or justified, given the facts as presented in support of the County's position. I understand the PBA's position on this proposal and am aware of the mischief it could cause if it is recommended.

I reject the County's proposal on this issue.

4. Amend Section 19 restricting commands to one duty chart per command and remove restriction of prescribed tours for seven-day schedules

The County's proposal is to amend Section 19 and remove restrictions on the County to allow flexibility within the Department to change hours of its employees based on staffing needs. It makes this proposal since the current Agreement restricts the Department's need to establish duty charges as it sees fit. It requests this change.

The PBA opposes the change on the basis that there are actually two duty charts in every command--an administrative chart and a patrol chart. There are two ways under the Collective Bargaining Agreement that the Department can establish a special duty chart. It can do so if there is a limited duration-need or by the permission of the PBA. The PBA argues that requests for the Department to establish special duty charts have never been denied by the PBA.

I have evaluated the evidence presented on this issue. It has concluded that the County has not made a persuasive case for changing the terms of Section 19.

This proposal is denied.

5. Amend Section 19 C 2a to provide that upon graduation from the Academy, each officer will work a two hundred sixty-one (261) day work chart for their first three years of service with the department. Delete remainder of the paragraph

The County proposed that new hires work a 261-day chart during the first three years of their service. This proposal,

the County claims, will increase productivity. It also argues that other police jurisdictions allow for such a work schedule for new hires.

The PBA objects to this proposal on the basis that the new hires should work a chart considerably less than the one they do now.

After an analysis of the positions of both sides of this issue, I see no basis to increase the work schedule of new hires.

6. Allow for tour changes for staffing and special events (10 unpaid, others at time and one-half)

The County's proposal is designed to enable it to change tour changes when it deems it necessary. The County seeks the authority to make tour changes without paying recall pay if there is a special need.

The PBA opposes this proposal on the basis that it would allow the County to change a police officer's tour without a penalty. That would cause a serious hardship to those employees. The only way to restrict the County's action in this regard is to maintain the penalty payment when such a change is made.

I have addressed this issue of penalty payments during these proceedings on a number of occasions. I see no legitimate basis to modify the status quo in these situations. This clause was agreed upon by the parties. If one or the other party finds that living with this is onerous, it should obtain a change through bargaining, not through interest arbitration.

This proposal is denied.

7. Personal leave days to be granted upon mutual consent, particularly on holidays

The County proposes that personal leave days be granted only upon mutual consent. Due to a grievance arbitration award, personal days can be taken at will. The Department, however, is proposing this change to eliminate the need to hire on overtime during holiday periods.

The PBA opposes this proposal on the basis that Arbitrator MacGregor sustained a grievance holding that the contractual language did not require "that approval must be from some higher authority or that leave must be by mutual agreement."

It appears from the record that the County has attempted to overturn the MacGregor award at the bargaining table and through interest arbitration proceedings for the past fifteen years. It has not been successful. Once again, it comes to arbitration with the same request. The County has not presented any compelling arguments to support a change in the existing contract language or its interpretation.

This proposal is denied.

8. Institute a sick time abuse policy similar to Nassau County Police Department, including policy that 301 & 401 personnel are to remain in residence during scheduled tour of duty

The County proposed the adoption of a sick time abuse policy to control cost and restrict the movement of Department employees on 301 and 401 leave. The proposal it put forward was three and

one half pages in length, with over sixty separate conditions. It was extensive and comprehensive.

The PBA opposes this proposal on the basis that the County has not demonstrated any sick time abuse in Suffolk County. The PBA is on record as inviting the County to weed out, through investigation and disciplinary action, any sick time abuser it can identify. The PBA argues that no such investigation has been conducted nor have any sick time abusers been identified.

I have concluded that this proposal is one more of a number that request changes in contract language to make the administration of the department easier and less costly. The County, however, in this proposal, as well as in others involving personnel administration, has not presented persuasive arguments to support changing agree-upon contract language by an arbitration panel.

This proposal is denied.

9. Amend Appendix B. Substance abuse testing to allow for:

- Drug tests of members on 401 status
- Hair sample analysis as drug test option in test for cause cases
- Test for steroids as part of random test analysis

Based on concerns raised by Internal Affairs, the County has proposed the drug policy changes listed above. The PBA objects to the changes sought by the County.

I have reviewed at length the proposed modifications to the substance abuse policy. Based on the record, I do not find justification for the testing of members on 401 status or for hair sample analysis as a drug test option.

I, however, agree with the County that testing for illegal steroid use should be a part of the random test analysis. This is a natural progression following Arbitrator Sands' award of random drug and alcohol testing as part of the last interest arbitration proceeding between the parties. The PBA has presented me with no reason why I should find to the contrary, especially in light of the County's unrebutted evidence that steroid abuse has been an issue within the Department.

I am aware, though, that it will take some time for the parties to develop the appropriate procedures required for implementing steroid testing. As a result, if the parties cannot agree, as Chairman of this Panel, I shall retain jurisdiction to help resolve this matter.

10. Amend Section 30 and Appendix D, as amended to provide for an agreed-upon Panel of Arbitrators

The County proposes to create a Panel of Arbitrators that will hear all disputes arising under this contract. At the present time, arbitration case administration is handled through the American Arbitration Association. The County contends that this service is expensive. Scheduling of hearings is problematic

and arbitrators appearing on lists supplied by the Association are sometimes unknown to the parties. A designated permanent Panel agreed on by the parties will enhance both perceived and actual fairness in arbitration.

The PBA opposes this proposal on the basis that the existing system using the American Arbitration Association as the administrator of grievance arbitration under the existing contract works well and should not be changed.

I became involved in this issue during executive sessions wherein numerous arbitrators were discussed. While I had little or no input in the selection of individual arbitrators, I did contribute to the discussion on whether a permanent arbitration panel should be established in this instance. While the PBA objected in principle to a permanent list of arbitrators, it did agree that if it was concluded that the County's proposal should be adopted, the specific list of arbitrators agreed upon during the executive session should be named in the Agreement.

Based upon these discussions in executive session, presentations at the hearing, and the posthearing briefs, it is my decision that a Panel of Arbitrators for all grievances and disciplinary arbitrations arising under the contract shall be established. This shall be effective for all demands for arbitration filed on or after January 1, 2004. I direct that the rules of the American Arbitration Association for administering

arbitrations be adopted as the rules to govern the internal administration of arbitration under the new system. The administration of an internal arbitration system is not simple. The parties must quickly meet and establish rules and procedures to govern the appointment of arbitrators, fees to be charged by the arbitrator, the time frame within which an arbitrator must hold a hearing after being appointed, the removal of an arbitrator from the Panel, add new arbitrators, and establish which party will have the administrative responsibility for running the system.

I direct that the arbitrators on the list will be selected and appointed to cases in alphabetical order. From that point forward, the procedures developed by the parties will prevail. It is directed that the parties meet as soon as possible to establish the rules and regulations to administer this procedure. In the unlikely event that the parties have failed to complete this process by the end of this calendar year, the Chairman of this Panel will maintain jurisdiction in the matter to assist with a resolution. The list of arbitrators to hear grievances and disciplinary arbitration under this contract are:

1. Dan Brent
2. Jacquelin Drucker
3. Robert Light
4. Roger Maher
5. Martin Scheinman
6. Jack Tillem

These arbitrators are all members of the National Academy of Arbitrators and have had extensive experience in arbitrating cases of all types, in both public and private sector jurisdictions. Most, if not all, have national reputations.

AWARD OF THE PANEL

1. The duration of this Agreement shall be from January 1, 2004, to December 31, 2007.
2. Wages: Wages shall be increased as follows:

Effective 1/1/2004	3.75%
Effective 1/1/2005	3.75%
Effective 1/1/2006	3.75%
Effective 1/1/2007	3.75%

In accordance with past practice, wage increases for each step shall be calculated for all employees on the payroll as of 12/31/2003, based on the top step police officer dollar increase. Wage increases for all employees hired after December 31, 2003, will be based upon their base salary at each step of the salary plan.

3. Benefit Fund:

The County contribution to the PBA Benefit Fund shall be increased as follows:

1/1/2004	-	\$50 per member
1/1/2005	-	\$50 per member
1/1/2006	-	\$50 per member
1/1/2007	-	\$50 per member

4. Board of Governors Pay:

Effective 1/1/2004, the President, First Vice President, Second Vice President, Treasurer, and Financial Secretary of the PBA shall receive a stipend as follows:

President 3.25 hours per week at the straight-time rate added to the bi-weekly salary.

First Vice President, Second Vice President, Treasurer, and Financial Secretary:

1.5 hours per week at the straight-time rate added to the bi-weekly salary.

5. Panel of Arbitrators:

A panel of arbitrators to be established for all grievance and disciplinary arbitrations to replace the American Arbitration Association procedures. This shall be effective for all demands for arbitration filed on or after January 1, 2004.

The arbitrators on this Panel shall be:

Dan Brent  
Jacquelin Drucker  
Robert Light  
Roger Maher  
Martin Scheinman  
Jack Tillem

The Chairman of this panel shall maintain jurisdiction to resolve any disputes that arise in setting up this procedure.

6. Substance abuse testing:

The County shall have the authority to test for steroids as part of the random drug test.

The Chairman shall maintain jurisdiction to resolve any dispute that arise in implementing the terms and procedures of this Award.

7. Re-opener:

The PBA shall have the right to reopen negotiations with the County if the SC Superior Officers, SC Detectives Association, or the SC Detective Investigators PBA obtain any economic improvements through negotiations or compulsory interest arbitration for the period of this Award that are not contained in this Award.

The above-listed seven items constitute the total Award of the Chairman of this Panel. Both parties came to these proceedings with numerous other proposals. The County's proposals, as a rule, dealt with contract language changes that would give it more flexibility and authority to manage the workforce. The PBA's proposals generally dealt with requests to increase its members' ability to benefit from existing rules and regulations. I reviewed each of the parties' proposals in detail. I rejected all proposals placed before me except the seven items listed in the summary Award. My decision on every item is contained in the body of this Award.

Respectfully Submitted,

*Rodney E. Dennis*

Rodney E. Dennis,  
Public Member and Chairman

SIGNATURE GUARANTEED  
STAMP MEDALLION GUARANTEED  
BANK OF AMERICA, N.A.

(FLTS)  
AUTHORIZED SIGNATURE  
X9004957  
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM

*Jeffrey Tempora*

Jeffrey Tempora,  
County Appointed Arbitrator

I concur with dissent from the above Award. as attached.

*Ronald Davis*

Ronald Davis, Esq.,  
PBA Appointed Arbitrator

I concur with dissent from the above Award.

December 9, 2003

**Compulsory Interest Arbitration Award**  
**Suffolk County**  
**And**  
**Suffolk County Police Benevolent Association**

**Opinion of County Appointed Arbitrator**  
**Jeffrey L. Tempera**

I am compelled to comment on this award as I am torn between the issues, which I believe are justified, and those that I believe are onerous to the County. The wage award, while higher than that which the County sought, is offset by the relief granted with new Officer rates.

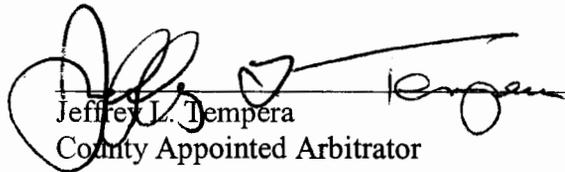
However, I am compelled to dissent on the issue of Board of Governors Pay and the Re-Opener.

The County is required as a result of this award to subsidize the Union activities of the Suffolk County PBA. Yes, I believe Officers of the PBA have lost overtime as a result of their Union activities. This is the path that they have taken, and the County should not be penalized for their decision to take part in running the PBA.

With regard to the Re-Opener, I believe the County is entitled to complete negotiations with the PBA upon the issuance of the Award. To allow the PBA to re-open negotiations because another bargaining unit received a different economic award is unfair to the County.

Finally, the County put forth many meritorious arguments with regard to increased management prerogatives that were not granted in this award. I understand the Arbitrator performed a balancing act between granting increased wages against granting "givebacks" in the area of management issues. While a difficult task, I believe the arguments presented by the County should have resulted in additional management prerogatives.

For the reasons stated above, I concur with the above Award on all items except for item number 4, Board of Governors Pay and item number 7, Re-Opener on which I dissent.

  
Jeffrey L. Tempera  
County Appointed Arbitrator