

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
Case No. IA 2003-024

-----X
IN THE MATTER OF THE COMPULSORY INTEREST ARBITRATION

-between-

COUNTY OF SUFFOLK,

Public Employer,

- and -

SUFFOLK DETECTIVES ASSOCIATION,

Employee Representative.

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BEFORE:

Rosemary A. Townley, Esq., Public Member and Panel Chair
Jeffrey L. Tempera, County Appointed Member
Raymond Griffin, SDA Appointed Member

APPEARANCES:

For the County

Lamb & Barnosky, L.L.P.

Richard K. Zuckerman, Esq., Of Counsel

Sharon N. Berlin, Esq., Of Counsel

For the SDA

Rosenthal Curry & Kranz, L.L.P.

Allen M. Kranz, Esq., Of Counsel

**COMPULSORY INTEREST ARBITRATION
OPINION AND AWARD**

BACKGROUND

The parties are signatories to the collective bargaining agreement (“Agreement”) between Suffolk County (“County”) and the Suffolk Detectives Association (“SDA” or “Association”) that expired December 31, 2003. The Association represents approximately 380 Detectives within the Suffolk County Police Department. The negotiations for a successor agreement for the period commencing January 1, 2004 resulted in an impasse.

The SDA filed a Petition for Compulsory Interest Arbitration, pursuant to the requirements set forth in the Civil Service Law, on November 17, 2003 with the New York State Public Employment Relations Board (“PERB”) (Jt. Exh. 1). The County’s Response was dated December 9, 2003 (Jt. Exh. 2). The County appointed Jeffrey L. Tempera and the SDA appointed Raymond Griffin as their respective panel members. Rosemary A. Townley, Esq. was appointed as the Public Panel Member.

The parties agreed that the term of the award will cover four years, commencing on January 1, 2004 and ending on December 31, 2007, rather than the two-year limit provided for by statute. This agreement was the result of the County Legislature’s adoption on August 23, 2003 of Resolution No. 717-2003, and approved by the then-County Executive on September 3, 2003. (Un. Exh. B). This action met with the approval of the then-County Executive, and was fully authorized by the County’s Director of Labor Relations and SDA President. Although all three panel members participated fully in the hearings and determination of this interest arbitration matter, I, alone, the Public Member and Panel Chair, drafted this Opinion and Award.

Pursuant to the statutory authority, the Panel conducted Executive Sessions between and including March 15, 2004 and March 29, 2005, as well as hearings in West Sayville, New York on June 8 and September 20, 2004. Both parties appeared by counsel and were afforded full opportunity to adduce evidence, cross-examine witnesses, and present arguments in support of their respective positions. No objection was made to the conduct of the proceedings. The parties submitted written, post-hearing briefs in lieu of oral summations. At the direction of the Panel, the deadline for submitting briefs was set for November 1, 2004 and was subsequently extended to November 4, 2004.

The Panel has reviewed this record carefully and considered the proofs of the parties in light of the mandates set forth in § 209(4)(c)(v) of the Civil Service Law (“Taylor Law”), which governs the Panel’s determination. The Taylor Law requires as follows, in relevant part:

(T)he 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 wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. the interests and welfare of the public and the financial ability of the public employer to pay;
- c. comparison of peculiarities in regard to other trades or professions, including specifically (1) hazards of employment; (2) physical qualifications; (3) educational

qualifications; (4) mental qualifications; (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

PROPOSALS OF THE PARTIES

The following constitute the amended proposals of each party as of December 1, 2003.

Association Proposals **Amended as of 12/1/03**

1. **LENGTH OF AGREEMENT:** Four (4) years.
2. **WAGES:** 4.5% increase in each year of the Agreement. (Jt. Exh.3b)
3. **NIGHT DIFFERENTIAL:** Two tour night differential shall be increased to ten (10%) percent. Section 27
4. **SICK TIME:** Employees shall be entitled to be paid for up to 400 days of unused sick leave. Section 38h
5. **STAND-BY PAY:** Stand-by pay to be increased to 4 hrs. Section 30b
6. **WAGES:** Increase assignment pay to 10% of top detective's pay. Section 24k
7. **WAGES:** Add arson, identification and any undercover commands to be eligible for assignment pay. Section 24j
8. **WAGES:** Include any "local agency" to list of task forces to be eligible for special assignment pay. Section 24k
9. **CLOTHING & CLEANING:** Employees clothing and cleaning allowance shall be increased seventy five (\$75) in each year of the agreement. Section 34a&b
10. **EQUIPMENT:** Employees shall be reimbursed for cell phone usage

relating to ordered police business.

11. **NEGOTIATIONS:** Members of the Board of Governors on full release time shall receive an annual stipend, at the following rates: President and two - \$15,000 to be paid in equal bi-weekly amounts.

County's Proposals
Amended as of 12/1/03

1. **WAGES:** 2% for each year of the Award.
2. **INSTITUTE A SICK TIME POLICY:** In accordance with Co. Exh. 33.
3. **AMEND SECTION 28: OVERTIME**
 - **(f)(1):** eliminate "Tours of duty shall not be changed to avoid the payment of overtime."
 - **(f)(1):** The Department may change a Detective's tour of duty, other than for court, up to 10 times per year without penalty.
 - **(f)(3):** The Department may change a tour of duty without penalty, for court.
 - Delete paragraph **(f)(8)**.
4. **CHANGE SECTION 30: RECALL, TRAVEL TIME AND STANDBY**

Delete requirement for six (6) hours' straight time pay. Detectives will be paid at the time and one-half rate for actual hours worked, unless the overtime is scheduled overtime, which shall be paid at the straight time rate, subject to the provisions of the applicable laws.

 - Eliminate the one hour travel time provision.
 - Detectives on recall may be used in any capacity deemed appropriate by the Department.
 - A Detective will receive a 499 day when scheduled for court on an RDO without any further financial compensation.
 - The Department must provide 48 hours' notice for canceling court recalls without penalty.
5. **CHANGE SECTION 13: DETECTIVE STATUS**
 - **13(a):** Delete "unable to perform" burden and replace with "has not performed his or her duties properly."

- **Amend 13(b) and add Section 13(c):** Add language to Section (b) that exempts assignments to undercover positions as designated by the Police Commissioner from receiving Detective designation in 6 months and replace with a new Section (c) that provides for designation to Detective in 18 months for these undercover positions.
6. **AMEND SECTION 29: MILEAGE ALLOWANCE, TRAVEL PAY AND OUT-OF-STATE DUTY**
- (b)(1):** To provide for travel pay for court, governmental agency or regular duty of 2 hours for assignments in New York City and 1 hour for assignments in Nassau County.
7. **CHANGE SECTION 35: PERSONAL LEAVE DAYS:** Personal Leave Days to be granted based upon the needs of the Department.
8. **AMEND SECTION 21: DRUG TESTING AND APPENDIX B SUBSTANCE ABUSE TESTING**
to provide for substance abuse testing to allow for:
- Drug tests of member on 401 status.
 - Hair sample analysis as drug test option in test for cause cases.
 - Test for steroids as part of random test analysis.
9. **SECTION 10: BILL OF RIGHTS**
- Amend last sentence of (7) to read "The Employee or his/her counsel shall be entitled to a copy of the recording at the conclusion of the investigation; i.e., after all of the interviews are concluded.
 - Delete paragraph (8).
10. **SECTION 37: VACATIONS**
Delete paragraph (j). If a Holiday falls during a Detective's vacation on a day which the Detective would ordinarily be scheduled to work, the Detective shall receive no additional compensation.
11. **SECTION 32: WORKING SCHEDULES AND CONDITIONS**
Delete second sentence in paragraph (f) "If a Detective is compelled to miss the meal period or any portion thereof, due to his official duties, he shall be entitled to straight time cash for any portion so missed."

POSITION OF THE SDA

The Association points to the Taylor Law and sets forth the statutory criteria that an interest arbitration panel must adhere to when making its determination. The first of those criteria, known as “comparability,” is 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 in similar services or requiring similar skills under similar working conditions, and with other employees generally, in public and private employment in comparable communities. The Association argues that this criterion is generally considered to be of major significance in any analysis of the statutory factors. It points that although the neutral arbitrator that authored the first two interest arbitration awards between the SDA and the County found comparability to be critical, the last two awards between the SDA and the County relied to a much larger degree on other factors.

The Association also argues that a reading of the early interest arbitration awards between the SDA and the County shows that those panels found the most relevant, and if not only truly relevant bargaining unit for outside comparison, was the Nassau County detectives bargaining unit. It claims that the first interest arbitration award between the instant parties, with Arbitrator Martin Scheinman as the Panel Neutral, which covered the January 1, 1992-December 31, 1995 time frame, held that it was inappropriate to view local town and village departments as absolutely comparable. (Un. Exh. D) (“Scheinman I”). It points out in the second interest arbitration award between the parties, covering January 1, 1996-December 31, 1999, again where Arbitrator Scheinman served as the

Panel Neutral, similarly found absolute comparability to be inappropriate between the SDA and the detectives in New York City, the State Police, and Westchester County. (Un. Exh. E) (“Scheinman II”). This award, the Association maintains, clearly shows that Nassau’s comparability to Suffolk’s Detectives would not require that wages and benefits be tied together, since the other statutory criteria had to be taken into consideration, but rather recognized the importance of a Suffolk County police pattern, and the necessity of its continuance for basic economic benefits. (Un. Exh. E)¹

Nor should comparability be based solely upon external comparisons, according to the Association. Past interest arbitration awards have found a comparison between the SDA to the other Suffolk County Police Department bargaining units, such as the PBA and SOA, to be appropriate and relevant. It maintains that although the Suffolk County Detective Investigators Unit might be of minimal relevance, it has not played much of a role historically given it is a small unit of approximately 40-45 members, which is not a part of the Suffolk County Police Department, but an arm of the District Attorney’s Office. The Association reasons that, as a result, that unit is under different supervision and direction and performs work very different from that of the members of the police

¹The Association points out that at the time this case was presented at hearing, the Nassau Detectives Association and Nassau County had not completed their interest arbitration proceedings. Subsequent to the completion of the hearings in this case, the panel therein issued an expedited award without opinion, with an agreement that a re-issued award and opinion would follow at some point. In addition, that award indicates that various issues remain open, without defining them, so that there is no way to determine whether they have any economic impact. Since to date no opinion has been forthcoming, it is virtually impossible to analyze the award in any meaningful sense. Accordingly, the SDA submits that it has no relevancy to these proceedings, and as a result, it will not be referred to by the Association.

department, and of course, the SDA.

The Association points out that the second criterion concerns the interest and welfare of the public and the financial ability of the public employer to pay. It maintains that any analysis of this factor requires a look at the economic climate as it applies to the municipal employer regarding its ability to provide additional funds to support wage and benefit increases through its property or sales taxing power. It maintains that such an analysis is simplified here, as the first year covered by this award expired before the County could implement the award. Given that the County would have provided moneys for the 2004 pay increases for the much larger Police Benevolent Association (“PBA”) bargaining unit following the December 9, 2004 interest arbitration award (Un. Exh. I) for the same period as will be covered in this Panel’s award, the assumption should be made, based upon history, that the County would be prepared to pay similar increases to the much smaller SDA unit.

The Association points out that with respect to the ability of the County to pay, the parties agreed that the testimony and exhibits from the financial presentations in the interest arbitration between the County and the Suffolk County Police Superior Officers Association (“SOA”) would be used, rather than live testimony and the submission of exhibits. It states that of significance is that presentation included the fact that the County is operating “well within its tax and debt limits” (Jt. Exh.4, p.207) and that an increase in wages and the cost of benefits for sworn police personnel might translate into some tax increase for those homeowners who reside within the police district, i.e. they receive police services from the Suffolk County Police Department. (Jt. Exh.4) It

maintains that there is no evidence in lengthy presentations made by the County in the SOA case or the award rendered by the arbitration panel in the PBA interest arbitration matter covering January 1, 2004 through December 31, 2007 (Un. Exh I) that can be interpreted as an inability on the part of the County to pay, be it the 4.5% annually demanded by the SDA, the 2% annually offered by the County, or the 3.75% annually that the current contractual index would provide. The Association concludes that, as a result, any final determination as to wages and other monetary items by the Panel must turn on other factors, such as comparability or the so-called Suffolk County police pattern.

The Association maintains that the second criterion under the applicable Taylor Law also requires a consideration of the interest and welfare of the public. It argues that the Panel must determine whether increases in wages and benefits will result in significant reductions in other needed services. Given that this Panel's award will be partially retroactive, then to some degree it will nullify the significance of this aspect of the second criterion. It maintains that to a larger degree, the relatively small size of the SDA bargaining unit essentially dictates that increases would not have such impact as to result in a significant reduction in other needed services. It avers that a stable police unit with high morale has been recognized as important to the public's interest and welfare. This principle, it maintains, of necessity relates to comparability, which results in the often needed creation of a municipal pattern. If there any significant deviation in benefits among comparable units or units performing similar services within the same municipality, it contends, then divisiveness and low morale would ensue, which is

contrary to the public's interest.

The Association points out the next criterion is a comparison of peculiarities in regard to other trades and professions, including (1) hazards of employment, (2) physical qualifications, (3) educational qualifications, (4) mental qualifications, and (5) job training and skill. It maintains that it is nearly universally accepted that the law enforcement profession is unique, in that police professionals continuously have the potential to be confronted by extensive, and often life-threatening, hazards. It asserts that it is a well-known fact that Detectives in Suffolk County, and in general throughout the state, face on balance, a relatively high risk of injury or even death in the course of their employment, as compared to non-police public employees. In addition, it contends, detectives require unique qualifications and must engage in extensive investigative training, beyond that required of a police officer. The Association says that this professional uniqueness requires that a comparison be made among other police bargaining units, either within or outside the County, and not with any other types of public employee groups.

The Association notes that the final statutory criterion requires a consideration of the terms of agreements negotiated by the parties in the past, providing for compensation, fringe benefits, including but not limited to, provisions for salaries and retirement benefits, medical and hospitalization benefits, paid time off and job security. It maintains that such bargaining history criterion is extremely important to the extent that it requires that an interest arbitration panel review prior negotiations and awards between the SDA and the County, as well as those awards recently issued between the County and its other

police bargaining units. It maintains that the Panel will find an internal County police pattern has served as driving force behind the last two awards between the SDA and the County.

Noting that historically it was certified as the bargaining agent for the Suffolk Detectives in April 1992, it points to the first interest arbitration award covering 1992-1995 between the parties, or Scheinman I, and notes that it continued the salary index found in its first collective bargaining agreement with the County. It emphasizes that the formula indexes the detectives's salaries to the top base pay of the police officers by computing the former's salaries with a 2% to 12% index above the top PBA rate, with a 6 step salary schedule for Detectives (Step 1 for Detectives would be 2% above the top pay for a PBA member, step 2 would be 4% above, and continuing in 2% increments until step 6 at 12% above a top step PBA member).

In the next award between the parties, covering the full years from 1996-1999, or Scheinman II, the index was continued, and in fact, was referred to in the award as a permanent index. (Un. Exh. E) In the following award for the full years 2000-2001, Arbitrator Arthur Riegel and the Panel maintained the index, but eliminated the second step raise for new Detectives. (Un. Exh. G) The Association points out that Arbitrator Riegel authored a Supplemental Award as to whether the index was a mandatory subject of bargaining and held that although it was not a mandatory subject, neither was it prohibited. In the arbitration award for the 2002-2003 years, Arbitrator David Stein maintained the wage index, but reduced the number of steps so that the range of the steps was between 3% to 12% above the top step of PBA members. (Un. Exh. H) However,

the Association notes, the nature of the index is not addressed by the proposals of either party and thus is not at issue here.

It observes that the PBA bargaining unit, as the largest, has proceeded first in the negotiation process, and then if necessary, on to interest arbitration, and thus have established the standards for the pattern that has been followed by the other units. This fact is reinforced by a review of the past awards between the County and the SDA, all issued after the PBA awards, which all provided the same basic economics of each PBA award.

It observes that Arbitrator Scheinman found that there is a pattern regarding the basic economic package for police bargaining units, as evidenced by his 1996-1999 awards. (Un. Exh. E) He held that the maintenance of such a pattern results in a stable situation for both parties and allowing the County to engage in predictable budgeting. Scheinman also found that pattern bargaining serves to avoid the leap-frogging among police units attempting to better their economic package. This history was supported in the awards of Arbitrators Riegel and Stein. (Un. Exhs. G, H) A reading of these past awards also shows that the County itself essentially advocated the maintenance of the pattern, and did not provide any acceptable reason for deviating from it. It emphasizes that the County clearly has the ability to pay for the economic benefits sought by the SDA, which has fewer than 400 members and thus would result in a County expenditure which would be a fraction of the amount being spent on the PBA.

The SDA also indicates that it also has a number of outstanding negotiating proposals which it addresses on an individual basis.

SDA Proposal #1: Length of Agreement: Four Years. The Association notes that it originally sought a four-year agreement and when negotiations met with impasse, the parties agreed to grant the Panel the authority to issue a four-year interest arbitration award which, it contends, is in the best interests of the parties. It points out that the PBA award, which historically has been followed by interest arbitration panels, is of four years' duration.

SDA Proposal # 2: Wages: 4.5% increase in each year of the award. The Association points out that the parties are presently contractually tied to a wage index that provides for salaries for SDA members as a function of the salary of a PBA member. Although the index was found to be a non-mandatory subject of bargaining, it argues, it has been continued in each arbitration award since its inception and has been considered a positive force in the process. It notes that the index was termed to be a permanent index in the Scheinman II Award, while the Stein Award held that the index was “an important mechanism in the application of the pattern” (Un. Exh. H)

The Association further maintains that a Suffolk County police pattern has been developed and embraced by the parties and the past neutral interest arbitrators and therefore it should be difficult to establish a justification for either party to deviate from that pattern. It claims that by declining to adopt or modify either the 4.5% proposal by the Association, or the 2% offer by the County, thereby maintaining the index, the correct labor relations balance will be achieved and perpetuated.²

² The Association argues that, by declining to adopt either of the parties' wage proposals, the index will continue under the Taylor Law, either through Civil Service Law §209a (1)(e), or as a required maintenance of the status quo. See Matter of PBA of

The Association notes that the County claim that the monetary concession contained in the PBA award will result in a real cash savings to the County of approximately ½ percent per year over the life of the four-year award, as wages increase for PBA members hired on or after January 1, 2004 and who have not reached the top pay step; such replaces the old method of calculating the raise based upon the raise given to a top step PBA member. The Association maintains that the County has offered no rationale for this calculation and this must be based upon some good faith estimate with regard to the number of police hires that would take place during the relevant period of time. The concept of patterned monetary concessions is not a new one to these parties, the Association maintains, and refers to the Scheinman II Award in which the County received \$275,000.00 in cost savings from the SDA, given that it had received proportionate cost savings from the PBA (reduction in extra days off for SDA members working certain duty charts). It also refers to the Riegel Award in which the County received \$484,000.00 in cost savings from the SDA (raise deferrals), calculated as a percentage of the savings the County received from the PBA in its award. The Stein Award provided the County with additional savings, again by the deferring of raises.

The Association contends that it has always paid for its share of patterned concessions with real cash dollars, such as in the Scheinman II Award where there was a reduction of extra days off for members on certain schedules, unlike that found in the PBA award where the savings to the County is solely a function of the hiring of new

Southampton Town, 34 PERB ¶3007; 307 A.D.2d 428, (3rd Dept. 2003), affirmed 2 N.Y.3rd 513 (2004).

police officers. It notes that the value of the extra day off reduction was calculated as \$273,600 based upon 1998 salaries, which today has an annual value of more than \$320,000 per year. Although the County projected the hiring of 100 police officers in each of the years 2005, 2006, and 2007, none had been hired in 2004 and if none or less than 300 are hired in the subsequent years of the award, the projected cost savings becomes nothing more than a miscalculation. This analysis concerning the reduction in the extra days off, coupled with the illusory value of the PBA monetary concession, demonstrates that the SDA should not have to provide any additional concessions to the County.

SDA Proposal #3: Night Differential. The SDA proposes amending Section 27 of the Agreement in order to increase the two-tour night differential to ten (10%) percent from the current 7 ½% of top base Detective pay, with half of the tours at night, and 12% of top Detective base pay for a ten-hour tour extraordinary night duty chart. This current level was a result of the Arbitrator Riegel Award. The last full written agreement between the parties that the two-tour night differential had been 5% over the top Detective base pay. In the Riegel Award, the amount of two-tour night differential was increased to its current level. It also maintains that since January of 1993 to present, the level of night differential for night work in what the Association regards as the comparable jurisdiction of Nassau County has been calculated based upon 10% of a Detective's hourly rate. (Un.Exh. J). The SDA believes that its members should receive a 10% rate.³

³ The SDA notes that, as a point of information, the 10% figure was increased to 12% in the recent Nassau award. It emphasizes that the SDA is not alleging that any weight should be afforded that factor for the reasons set forth in the previous footnote.

SDA Proposal #6: Sick Time. The Association proposes amending Section 38h so that its members are entitled to be paid for up to 400 days of unused sick leave. It points out that pursuant to the terms of the collective bargaining agreement, SDA members can accumulate up to 600 days of sick time, and receive payment at the rate of one day for every two accumulated days. The SDA argues that the accumulation should be increased to 800, so that a member can be paid for up to 400 days. It notes that employees are remaining on the job for more than 20 years, particularly within the Detective Division of the Suffolk County Police Department, and that it is not uncommon for Detectives to retire with 29 to 35 years of service. It contends that many of those Detectives will reach maximum accumulation in the first few years after their 25th year of service. The SDA maintains that it is well known that it is in the public employer's interest to permit the accumulation of sick leave in order to curtail its usage and, probably to a lesser degree, reward dedication. It submits that basic logic dictates that the accumulation be increased as the work force becomes more mature.

The Association notes that while investigating this proposal, it learned that 97 of the then current 378 SDA members had more than 25 years on the job, pointing out that President Smith, with 39 years of service, has 945 accumulated sick days. Yet, at retirement he can only be paid for 300 days. The SDA argues that the Detectives in neighboring Nassau County receive five days' termination pay for each year of service, in addition to being able to accumulate 550 days, and get paid for 275. Accordingly, a twenty-five year Detective, who had accumulated the maximum number of sick days, i.e. 550, would get the 275 days, plus an additional 125 days for a total of 400. (Un. Exh. J,

at page 37, as modified at page 77 of the 1996-2000 Nassau Detectives' interest arbitration award; annexed to last Nassau Detectives' CBA, and part of Exhibit J)

SDA Proposal #7: Stand-By Pay. The Association argues that Section 30b of the Agreement should be amended so that stand-by pay be increased to four hours from the current two hours of pay received if members stand by for duty between 1:00 a.m. and 9:00 a.m. following a regular tour of duty. It notes that if the member is called in, regular call out pay is received. It argues that the stand-by requirement is disruptive to the day-to-day life of a Detective. It also points out that the amount of the stand-by stipend has not been increased since the creation of the SDA.

SDA Proposal #8: Wages: Assignment Pay. The SDA proposes that Section 24k be amended so that assignment pay be increased to 10% of top Detectives' pay from the current 7%. It notes that assignment pay is given to Detectives who are assigned to outside agencies and certain Federal and State task forces, yet they are still employees of the Suffolk County Police Department. At present, Detectives with this type of assignment receive 7% of a top step Detective's pay as a stipend.

It argues that this increase is warranted because the negotiated work charts for Detectives do not apply to the Detectives with these assignments, as these Detectives' work charts are established by the agencies to which they are assigned. The SDA points out that although the remaining Detective work force is bound by the collective bargaining agreement's core chart of 5-2, 5-3, 5-3, pursuant to the Arbitrator David Stein award (Un.Exh. H), and certain other limited work schedules (Un. Exh. C), those restrictions do not apply to the Detectives assigned to the outside agencies.

SDA Proposal # 9: Wages: The SDA proposes amending Section 24j of the Agreement, as amended by the Riegel Award, to add Arson, Identification, and any Undercover commands to assignment pay eligibility. A stipend of 4.5% of top base Detective pay is given to those Detectives assigned to the Environmental Crimes Unit. It contends that members of various other specialized commands, such as the Arson and Identification Units, must work under the same conditions that formed the basis for the stipend being paid to the members of the Environmental Crimes Unit. In particular, the panel is directed to Association Exhibits K and L, along with the testimony and accompanying exhibits, particularly the testimony of the Association's former second vice president, Thomas Heinszen, a 14-year member of the Arson Squad detail, who made numerous references to an array of documents (Un. Exh. L), in order to explain the rationale for the stipend for the Environmental Crimes Unit, and how that rationale applies with equal force to the units at which this proposal is directed. It maintains that both the potential and actual risk of harm from exposure to various noxious chemicals justifies the granting of this proposal.

SDA Proposal #10: Task Forces: The SDA proposes that Section 24k be amended in order to add local agencies to the list of task forces eligible for special assignment pay. It notes that this proposal is related to proposal number 8, which seeks to add local task forces to the Federal and State task forces which qualify a unit member for special assignment pay eligibility. It maintains that Detectives from the Narcotics Squad, such as those assigned to the East End Task Force, which is comprised of personnel from a number of police agencies, are generally traveling greater distances to get to their work

assignments than other SDA members and are under the supervision of non-Suffolk County Police Department personnel. (June 8, 2004 transcript, pages 53-54)

SDA Proposal #12. Clothing and Cleaning: The SDA proposes amending Section 34a and 34 of the Agreement in order to increase the clothing and cleaning allowance \$75 per year for each year of the award. It notes that at present the cleaning allowance for SDA members is \$900 per year, and the clothing allowance is \$600 per year. (Exhibit C, section 34a and 34b, as modified by the Riegel Award, Exhibit G, page 50, and further modified by the Stein Award, Un. Exh. H, page 46) It points to the Nassau County Detectives Association agreement which provides Detectives with a clothing allowance of \$1300 per year, in addition to an equipment allowance of \$950, for a total of \$2250.⁴ It notes that this allowance would encompass the equipment and clothing allowances as related items, given that SDA members do not receive an equipment allowance, yet still require the same equipment. (Un. Exh. J, pages 15-16, as modified by interest arbitration award, page 75)

SDA Proposal #13: Equipment: The SDA argues that its members should be reimbursed for cell phone usage related to ordered police business. It explains that undercover officers often must use their own cell phones due to the work-related limitations on the use of departmental phones. It maintains that undercover officers often

⁴While the Association has already explained its position on the recent incomplete interest arbitration award between the Nassau Detectives and the County of Nassau (see note 2), in the interest of fairness, the SDA advises the panel that the Nassau Detectives equipment allowance has apparently been reduced to \$550, for a total of \$1850 between clothing and equipment, an amount still in excess of the SDA's related benefits by \$350 annually.

need to place calls or receive calls from various police or other types of law enforcement agencies, like the District Attorney's Office which, whether incoming or outgoing, cannot appear on those cell phones provided by the department for use in undercover work, since a list of those calls in the wrong hands could compromise the safety of an officer. It argues that an appropriate reimbursement be made to the Detectives for that expense for ordered police business.

SDA Proposal #16: Negotiations: Board of Governors' Stipends: The SDA argues that members of its Board of Governors, who are on full time release, should receive a stipend in the amount of \$15,000.00 annually. It notes that this proposal mirrors the proposal of the PBA that proceeded to interest arbitration and was granted on a limited basis in the last award. (Un. Exh. I) Those stipends provided the President with 3.25 hours per week at the straight time rate added to the bi-weekly salary, and also provided 1.5 hours per week to the other four full time release Board members. It notes that the rationale for that aspect of the award is that Board members on full time release are unable to earn overtime as a part of their regular work duties. The SDA contends that overtime comprises a significant part of the annual earnings for police officers, and even more so for Detectives, whose ranks have been to some degree depleted over the years. It points out that the average squad Detective earns between 250 and 300 hours of overtime a year, which equates to about \$14,000 a year based upon a \$51.00 per hour rate of pay, and maintains that the rationale for the PBA award of a stipend should apply with equal force to the SDA.

The Association further avers that the concept of a stipend for full time release

police personnel who administer a labor contract is not foreign to law enforcement in this region. It points to the substantial stipends to a variety of Nassau Detectives Association Board members pursuant to a special interest arbitration award in 2001 (Un. Exh. N) which followed the already contractually required stipends received by members of the Nassau County PBA.

It asserts that the police pattern as developed in Suffolk County would mandate the granting of this benefit for all those reasons that the pattern has been utilized as the main thrust for the granting of various benefits in all the prior interest arbitration awards between these parties. The Association also submits that if this proposal is granted, it should be based to a large degree upon the police pattern, with special consideration given to the difference in levels of pay between the PBA members and the SDA members, and the resulting loss in overtime in terms of real dollars.

The SDA asserts that the balance of the County's demands are unjustified as follows:

County Proposal #2: Institute a Sick Time Policy. The SDA argues that this proposal mirrors a rejected proposal made in the negotiations between the County and the PBA and notes that the SDA would agree with the words of PBA President Frayler when he explained that "there is no history of sick time abuse in Suffolk County." (Un. Exh. I, page 44) It asserts that the County has not offered any evidence of sick time abuse, either in the PBA matter or with respect to the SDA, and maintains that granting of this proposal would be contrary to the evidence and to the police pattern.

County Proposal #3: Amend Section 28 -- Overtime. The SDA maintains that this

proposal refers to a rejected contract modification request by the County that was raised during the PBA case. (Un.Exh. I, page 43) It argues that the proposal to eliminate the language of 28(f)(1), “tours of duty shall not be changed to avoid the payment of overtime,” has been the subject of past PBA arbitrations, as noted by the County’s witness, Chief McElhone. The Association contends that the results of those arbitrations have clarified the intent, purpose and requirements of the language and thus there is no justification for its elimination. Nor should the Panel apply the results of these arbitrations to the SDA, which it was not a party to those matters. It concludes that the County has offered no justification for eliminating meal money when a Detective is called in or held over for duty.

County Proposal # 4: Change Section 30 Recall, Travel Time and Standby. The Association argues that this proposal seeks to eliminate long-term benefits covering multiple years which have become a part of the collective bargaining agreements between the County and the PBA and the County and the SOA. It maintains that the recall provisions of the SDA agreement mirrors provisions found in police contracts throughout Long Island. According to the Association, the County has failed to provide any justification for these requested changes, other than as a cost-cutting device, which is an insufficient basis to grant a contract change that would negatively impact only one group of police employees.

County Proposal # 5: Change Section 13- Detective Status. With respect to Section 13(a), the Association maintains that the County has offered nothing more concrete than “we think the language would be clearer if it was substituted with ‘has not

performed his or her duty properly'"(September 20, 2004 transcript, page 108) The SDA claims that such a rationale is insufficient to alter contract language. With respect to the County's request to amend Section 13(b) and add a Section 13(c), the Association argues that the County has failed to offer any justification, other than claiming that the existing 6-month period doesn't work well in all cases, while admitting that the current language "works well in most cases." (September 20, 2004 transcript, page 109) The SDA contends that such a claim is sufficient to negate a contractual benefit.

County Proposal # 6: Amend Section 29-Mileage Allowance, Travel Pay and Out-of-State Duty. The Association points out that the current contract provides for 4 hours travel time to New York City and 2 hours travel time to Nassau County, which the County proposes be cut by half. It argues that there is a need to continue this pay, given that it applies only to those times that a Detective is outside a tour of duty and the member is traveling on his or her own time. The Association maintains that the size of Suffolk County, especially east to west, as well as the substantial periods of time that such travel requires show that there is no justification for making any change.

County Proposal # 7: Change Section 3- Personal Leave Days. The Association contends that it assumes the same position, and for the same reason, as that argued by the PBA as set forth in the PBA award (Un. Exh. I, at page 43-44) wherein the PBA explained the basis for its opposition to this request. It notes that the County's proposal was rejected in the PBA award and that no additional rationale has been offered here to require a change in the SDA contract.

County Proposal # 8: Amend Section 21-Drug Testing and Appendix B-Substance

Abuse Testing. The Association notes that this County proposal was made to the PBA during its last round of negotiations. The first part of the proposal would allow testing of SDA members who are out of work from job related injuries. The second part of the proposal would permit using hair analysis drug testing in certain cases, and the third part of the proposal would allow for steroid testing as a part of random testing.

The first two parts of the proposal, concerning the testing of members out of work on job related injuries and the use of hair analysis in drug testing were rejected in the PBA award, according to the Association, which submits that the maintenance of the police pattern, as well as the failure to provide any justification for the granting of these aspects of the proposal, should prevent its granting by the Panel. It notes that the third aspect of the proposal, concerning steroid testing, was granted in the PBA award (Un. Exh. I, page 93, 97), and is contained in the negotiated agreement by the SOA. Thus, the Association reasons, it would have difficulty arguing that the third proposal be excluded from the instant arbitration award, and it has consequently agreed to it.

County Proposal # 9: Section 10-Bill of Rights. The Association argues that the County is attempting to delay the required submission of tape recordings made during an Internal Affairs interrogation of an SDA member to that member. It maintains that although the County's justification for such a delay is unclear from the testimony. (September 8, 2004 transcript, pages 115-116), it contends that it should be clear that in order for a member to be properly represented in an Internal Affairs matter, it is essential that any required tape of the proceedings be provided as quickly as possible.

County Proposal # 10: Section 37-Vacations. The Association maintains that the

County's attempt to eliminate the ability of a member to be compensated when a holiday falls during a scheduled vacation is not justified in the record, as this is a longstanding contractual benefit that was established to ensure that vacations represent actual additional time off.

County Proposal # 11: Section 32 -Working Schedules and Conditions. The SDA points out that its members are currently entitled to 60-minute meal period and if they cannot take that time or any portion thereof due to the performance of their official duties, they are entitled to cash reimbursement. The County proposal to have SDA members work through their meal period essentially extends their work days without reimbursement, according to the SDA, which provision if accepted would lend itself to abuse by management.

Position of the County

It is the County's position that the increases sought by the SDA are excessive in relation to the salaries paid for comparable positions in other communities and that the Panel must consider the County's changed economic circumstances, directly affecting its limited ability to pay, since the most recent PBA award was issued.

It points out that the PBA panel awarded the lowest average percentage wage increases for a police unit in Suffolk County in more than 20 years, which is recognition of the County's lack of ability to pay excessive demands. In addition, the County points out that the total savings are estimated to be \$2,493,500 over the life of the PBA award. (Co. Exh. F).

Its economic circumstances have significantly deteriorated, the County argues, since the PBA award was issued. The County points out that its budget does not include the funds to pay for that award and that it is currently operating under a savings plan in an attempt to address this shortfall, which probably will not meet with success. Although the PBA award represented a good start at holding the line, the County avers, the 3.75% salary increases nonetheless were too high and should not be awarded to the SDA, even if the SDA makes concessions concomitant with those extracted from the PBA, given that the size of the SDA bargaining unit compared to that of the PBA is 20.3%.

The County contends that it has shown that SDA unit members are among the highest compensated employees when their wages and other benefits are compared to their colleagues in comparable police departments, as well as among other Suffolk County police departments. (C. Exh. 32). In addition, while the SDA has argued that the only other relevant comparable is the Nassau County Detectives unit, the County maintains that this comparison is favorable to the County. The Nassau Detectives unit is in binding arbitration for its new contract, which is likely to mirror the one awarded in 2003 to its PBA unit. If the same increases are awarded to the Nassau Detectives as to the Nassau PBA,⁵ the 2003 salary comparison between Nassau and Suffolk will be as follows:

DETECTIVE	SUFFOLK SDA	NASSAU SDA
Step 1	\$87,081	\$82,431
Step 2	\$89,618	\$84,430

⁵ The Nassau PBA award included the following increases: 2001 – 0%; 1/01/02 – 3.9%; 1/01/03 – 3.9%; 1/01/04 – 3.9%; 7/01/05 – 3.9%; 7/01/06 – 3.9%. (U. Exh. M).

	\$88,350 ⁶	
Step 3	\$92,154	\$86,430
	\$90,464	
Step 4	\$94,690	\$88,429
	\$92,578	
Step 5	\$94,690	\$90,427

The County further points out that the Nassau PBA award required numerous concessions from the PBA in order to fund its increases in wages and benefits. The award required police officers, among other things, to: (1) work an additional four tours or 48 hours at straight time pay; (2) start the night differential shift at 3:00 p.m. instead of 11:00 a.m.; (3) surrender Flag Day as a holiday; and (4) accede to the civilianization of 100 positions held by bargaining unit members. The award also reduced the cost of overtime, holiday pay, unused vacation leave, unused sick leave to officers and the number of holidays given to new hires during their first two years of employment. (Un. Exh. M). It avers that if the Nassau Detectives award contains similar concessions, the value of that award will be driven well below that sought here by the SDA.

⁶ See C. Exh. 22.

The County argues that its ability to pay is constricted by budgetary restrictions. It notes that its 2004 Operating Budget, which was adopted prior to the issuance of the 2003 PBA award, includes no funding for PBA, SOA, SDA or other interest arbitration award increases (Jt. Exh. 4 at 20). Although the Legislature has implemented a savings plan to offset the projected shortfall created by the PBA award, there are legal restrictions on its ability to increase its budget, and it is probable that significant property tax increases will have to occur to fund that award. Any award by this Panel will likely result in a property tax increase and a reduction in services provided to the public. (Jt. Exh. 4, Co. Exh. 21).

It further notes that police salaries are funded through the General Fund and the Police District Fund, which are the two largest taxing funds. The County Executive's Budget Office and the Legislature's Budget Review office have predicted a significant budgetary shortfall for fiscal years 2004 and 2005 in these two funds. The County points out that the General Fund is the larger of the two, with a budget of \$1.82 billion in 2004 and receives locally generated revenues from all Suffolk taxpayers, including revenues from property and sales taxes, state and federal aid and other revenues. General Fund moneys are used to provide services to all Suffolk residents. (Jt. Exh. 4 at T. 112, 5/18/04). On the other hand, the Police District is funded primarily by revenues from real property taxes from the residents of the Police District, which covers Suffolk's five western towns (excluding several villages which have their own police departments). These Funds can only be used to provide services in those areas that support the District with property tax revenues. (Jt. Exh. 4 and Co. Exh. 1-6).

Although the Police District has received between 1/8 and 1/4 of a cent of sales tax revenue from the County in the past, the County notes, the State Comptroller's Office has questioned the appropriateness of transferring sales tax revenues generated on a County-wide basis (10 towns) into the Police District to offset property taxes in the five Western towns for Police District operations. (Jt. Exh. 4 at Co. Exh.15). It further notes that it is considering removing this sales tax money from the revenues given to the Police District Fund in 2005.

Both the County Executive's Budget Office and the Legislature's Budget Review Office have projected a significant budgetary shortfall for fiscal years 2004 and 2005 in the General Fund and the Police District Funds. (Jt. Exh. 4, Co. Exh. 21). Despite the Legislature's adoption of a savings plan to address the projected shortfall, the County Executive's Budget Office is continuing to forecast a significant property tax increase in the General Fund and the Police District tax warrants, which does not include any projections for the cost of a SOA or SDA award. (Jt. Exh. 4, Co. Exh. 21).

One option being considered by the County to offset this projected shortfall in 2005 is not providing sales tax to the Police District, which means that every dollar of increased expenditures related to increased salary costs in the Police District will result in an equivalent increase in property taxes (Jt. Exh. 4 at Co. Exh. 16). It notes that the single largest component of the County's budget is the cost for police personnel and that, as a result of numerous interest arbitration awards, the members of the Suffolk County Police Department have received salary increases (average 4.91% over past four years) far exceeding increases in the cost of living index (average 2.3% per year). (Jt. Exh. 4,

Co. Exh. 1-20). Further, it maintains, the increased costs associated with police retirement benefits and health care costs have had a significant negative impact on the County's budget. (Jt. Exh. 4).

The County reasons that any SDA award will surely increase property tax levies in the General Fund and the Police District, as well as increase the amount that the 2005 budget will need to be reduced in order to come into compliance with the Tax Levy and Expenditure Caps. As a result, it says, reductions in expenditures in the Department to offset the cost of an arbitration award may well result in a reduction in the number of filled sworn personnel and, consequently, services to the public. (Jt. Exh. 4 and Co. Exh. 23).

The County also observes that there are several legal restrictions on the County's ability to increase its budget, as follows: (1) the mandatory Expenditure Cap (Local Law 21 of 1983) limits increases in discretionary expenses in the County's recommended and adopted budgets to not more than 4% in the aggregate or the growth in the Gross Domestic Product (GDP) Chain Price Index,⁷ whichever is greater. The 4% allowable growth has always exceeded the Index and only a super-majority of the County Legislature has the power to change the limit (Jt. Exh. 4 and Co. Exh. 9); (2) the Tax Levy Cap (Local Law 21 of 1983) which requires that the discretionary tax levy for the recommended and adopted budgets' combined General Fund and Police District Fund not increase by more than 4% or the GDP Chain Price Index, whichever is greater, again only exceeded with a super-majority vote of the Legislature at the time the budget is adopted

⁷ The GDP Index measures the value of the national output of goods and services during a

(Jt. Exh. 4, Co. Exh. 10); and, (3) the budget must comply with the County's dual budget presentation requirement, pursuant to Local Law 29 of 1995, which requires adoption of the County's operating budget in a mandated and a discretionary budget, the latter of which is subject to the Expenditure and Tax Levy Caps; nor may surplus appropriations be transferred from the mandated to the discretionary budget even if a deficit is anticipated in the discretionary portion of the budget. (Jt. Exh. 4, Co. Exh. 11). The County points out those personnel costs are considered discretionary, with the exception of debt services. (Jt. Exh. 4, Co. Exh. 11).

Nor did the SDA present evidence that the County's financial condition justified its demands, as it provided no evidence that the County has the ability to pay for the same, according to the County. It submits that the SDA's financial expert, Edward Fennell, did not testify about the cost of the SDA demands or the amount of funds available to the County to pay for them. While Mr. Fennell testified that the County should raise taxes in order to pay for the SDA's demands, the County has established that it is restricted from doing so (absent the enactment of enabling legislation) by the Tax Levy and Expenditure Caps.

The SDA further argues the SDA's argument that this Panel can issue any award that does not require the County to breach the State Constitutional taxing limit. The County which maintains that the fact that it has not reached its constitutional taxing limit does not demonstrate its ability to pay for the demands. It cites to Prue v. City of Syracuse, 27 PERB ¶ 7502 (4th Dep't 1994) ("We reject the [union's] assertion that a

specified period.

municipality necessarily has the ability to pay the increased wages sought unless it has exhausted its constitutional taxing limit") (Co. Exh. 65). It notes that the Constitutional tax limit does not take into account the many taxes imposed by other taxing authorities upon the Suffolk County residents.

The County further asserts that the Panel must consider the impact of the 2004 awards issued by other Panels regarding the Suffolk County Police when deciding the County's ability to pay. It stresses that the Legislature removed funding for the PBA, SOA, SDA and other interest arbitration awards and/or settlements from the 2004 adopted operating budget which resulted in no funding to pay for any interest arbitration awards. (Jt. Exh. 4). The County maintains that this problem is exacerbated by the significant impact that past binding arbitration awards have had on the County's budget, which awarded wage increases to the police in excess of the applicable increases in the cost of living. (Jt. Exh. 4).

When the Panel considers the 2003 PBA award, it must take heed of the \$2,493,500 in concessions mandated by that award. As noted in the Scheinman II Award regarding the SDA:

...[T]he record demonstrates that the duty chart proposal I recently awarded to the County in its interest arbitration involving the PBA resulted in a savings calculated by the Department of four hundred thousand dollars (\$400,000) over the life of the County-PBA agreement. This saving was provided to the County in the context of the overall award. There is no reason why the Detectives should not be required to produce commensurate productivity savings. After all, they are being awarded wage and benefit increases similar to those awarded to the County's police officers. The police pattern in the County which supports awarding these wage and benefit improvements to the

Detectives, also supports awarding a savings to the County commensurate to the savings it was awarded in the County-PBA interest arbitration. The record demonstrates that the Detective bargaining unit is twenty five percent (25%) the size of the PBA bargaining unit. Thus, the County must be awarded one hundred thousand dollars (\$100,000) in savings (\$400,000 x 25%) as a result of the duty chart proposal awarded to the County in its interest arbitration with the PBA.

(Un. Exh. E).

Further, Arbitrator Riegel observed in his 2000-2001 SDA award:

...[T]he county will be awarded savings proportionate to those gained from PBA, SOA, and DIPBA. Inasmuch as the membership is currently 22% of that of the PBA, the County will be awarded \$484,000 in savings (22% of \$2.2 million). These savings will be calculated in the section of the Award that deals with the economic package. As a result of these savings, this Award, like the others and the DIPBA settlement, will be brought within the County's ability to finance the wage and benefit improvements.

(Un. Exh. G).

Arbitrator Stein followed Arbitrator Riegel's findings in his 2002-2003 SDA award:

...I find that the third and fourth years of the PBA Award should be applied to this Award, and I expressly adopt the findings of both the Riegel and Benewitz panels, and find that they continue to apply for the January 1, 2002 through December 31, 2003 period. This includes the 2002-2003 wage and allowance increases, changes in night differentials ordered in Sands, other economic provisions of Sands, and the offset for concessions, under the same formula developed by Arbitrator Riegel when he applied the first two years of the Sands Award to the County's detectives. This would allow the expiration of the detectives' terms and conditions of employment as governed by this Award to be coterminous with the end of the period covered by the Sands Award. It

would also avoid a premature commencement of negotiations for a new contract so shortly following the issuance of this Award (a one year award would expire on December 31, 2002, only weeks after the issuance of this Award). (The maximum period my award may govern, by statute, is two years unless otherwise agreed, and there has been no agreement.)

Here, the application of the Riegel precedent requires me to take the projected value of the Sands Award's \$10,000 starting salary step concession during 2002 and 2003 (valued by the parties at \$2,134,500); calculate the number of SDA unit members as of an agreed upon date (here, 408 members as of April 2002); determine that number as a percentage of the size of the PBA unit at the same time (1,845 PBA members as of April 2002; the SDA is, therefore, 22% of the PBA's size); and analyze the 22% as a function of the \$2,134,500 (which equals \$469,590). According to the evidence submitted to me, this means that the SDA's wage increases must be deferred from the January 1, 2002 effective date it seeks to April 15, 2002, so as to grant the County the appropriate amount of cash concessions as that required by the Sands (and Benewitz and Riegel) awards.

(Un. Exh. H).

The County submits that, as a result of the application of the so-called Suffolk County police pattern, this SDA award will have to generate savings of at least \$506,181, as the unit is 20.3% the size of the PBA, whose award generated savings of \$2,493,500. (Co. Exh. 63). It notes that the SDA's proposed 4.5% annual wage increase will cost the County an additional \$8.6 million over 4 years (Co. Exh. 24), with no evidence in the record of funds to pay for these demands, which must be considered by the Panel in rendering its award.

The County refers to Civil Service Law § 209(4)(c)(v)(a) which states, in relevant part, that the Panel's decision shall be based upon:

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 County points out that the SDA urges the Panel to maintain the internal comparability between the Suffolk PBA, SOA, DIPBA and the SDA, and secondarily to look at Nassau County. It agrees with the SDA that Nassau cannot be ignored as a comparable, given the terms of prior interest arbitration awards on the subject, but argues that there is a substantial difference between Nassau serving as one of many comparables and Nassau serving as the primary comparable outside the County pattern. It notes that Scheinman II observed the same in his award:

...while the Nassau County detective wage increases and benefit improvement, covering the period of time at issue herein, are appropriately used as a basis for comparison and are probative, they are not dispositive. Due to the overwhelming evidence presented by the County regarding its financial status, I cannot “lock step” Suffolk County Detectives with Nassau County....

(Un. Exh. E, p. 51). Moreover, it notes that Arbitrator Scheinman concluded that the County’s proposed comparables, including local Suffolk County municipalities, as well as New York City, New York State and Westchester County, were relevant and appropriate. (Un. Exh. E, p. 52).

It notes that the SDA excludes from its consideration all other Suffolk County police departments, including those of the towns on the East End of Long Island, because the SDA members are the highest paid among them. It points out that different

arbitration panels have reached distinguishable conclusions on this issue and thus there is no consensus that East End municipalities should not be considered comparable to the Suffolk County Police Department.

The County maintains that the facts support the use of East End towns as a meaningful source of comparison for a number of reasons as follows: (1) the five towns in eastern Suffolk County have the largest departments in terms of population and areas of coverage; (2) the detectives in these towns have similar responsibilities and work within the same geographic area and environment as Suffolk County detectives; (3) the detectives train together at the same academy, take the same civil service tests, are subject to the same mental and physical entrance standards, and regularly assist one another in carrying out their duties; and (4) the representatives on both levels of government are also elected by the same taxpayers.

It notes that the Scheinman II 1996 Award made similar references to the County's position:

I also find that it is correct to rely upon comparisons with detectives employed by local communities in Suffolk County. Local municipalities in Suffolk County are similar to one another and the County as a whole. Suffolk County is composed of its constituent communities. It does not somehow exist apart from the municipalities within its borders. Although not identical, the evidence establishes that there is a certain degree of overlap between the training received and the work performed . . . I therefore find that Suffolk County communities are also comparable to the County for purposes of drawing the comparisons required by the statute.

(Un. Exh. G)

The County urges the Panel to include the other East End departments in its

comparability analyses, rather than focusing on Nassau County alone, and to focus primarily upon the largest municipalities in Suffolk County in terms of population and area of coverage. It maintains that other geographically contiguous municipalities to the County within New York State, with similar sized police departments providing similar services, are relevant and should be considered in the comparability equation. These areas include the Westchester County Department of Public Safety, the New York City Police Department, and the New York State Troopers.

The County maintains that, although it recognizes the important work performed by its detectives, it argues that recognition should be given to the fact that they are already the most highly compensated employees in comparison to their peers. It points out that even barring a raise, unit members' salaries far exceed the salaries of their colleagues in comparable jurisdictions. (Co. Exhs. 31, 32). It notes that they are paid thousands of dollars more than their colleagues in Southampton, Riverhead, Southold, Shelter Island and East Hampton (Co. Exh. 32) and are expected to continue its course of significantly exceeding those of Nassau County. Nor has the SDA shown that any comparable jurisdiction has received the 4.5% wage increase it demands which, if granted, will serve to widen the already wide disparity in base salaries that currently exists between Suffolk County detectives and all of these comparables.

The County asserts that its ranking among comparables is due, in large part, to the existence of the current contractual salary index, whereby unit members' salaries are pegged at a percentage above that of top step PBA unit members, providing for an automatic salary increase for unit member based upon the results of the PBA unit's

contract negotiations.⁸ The County insists this index cannot be continued for several reasons including the following: (1) the SDA should be required to negotiate for itself; (2) the County's financial circumstances have deteriorated so significantly since the PBA award was issued that the County cannot afford to pay the rates required by application of the index; and, (3) use of the index has resulted in salaries far exceeding those in comparable jurisdictions. It contends that the SDA recognizes the outrageousness of the results produced by the index and, concerned that this instant award could result in its elimination, the Association seeks, as an alternative, a 4.5% wage increase in each year of the Award.⁹ Awarding this demand would cost \$1,409,253 above and beyond that required by the current index, and \$4,944,902 above and beyond the County proposed 2% wage increase. Nor can the requested wage increases be defended on any objective level, according to the County, as the wage increases already received by the unit far exceed corresponding increases in the Consumer Price Index. (Co. Exh. 29). For example, it notes, in 2003, when the Consumer Price Index increased 3.2%, the SDA received a wage increase of 4.5% (Id.). Between 1982 and 2003, unit member SDA wage increases have exceeded the corresponding increases in the Consumer Price Index by 41.14%. Moreover, the total income increase differential of an SDA unit member over the related increase in the CPI was \$259,165. (Id.)

⁸ The County notes that Arbitrator Arthur Riegel decided that this wage index is a nonmandatory subject of bargaining precisely because it requires the PBA to negotiate for itself as well as the SDA. While he refused to order its removal from the contract, he did decide that the index did not entitle SDA unit members' salaries to be automatically adjusted as soon as PBA unit members' salaries changed, but rather only upon resolution of SDA contract negotiations. (Exhibit A)

⁹ The SDA demands do not propose a continuation of the index, because it believes that it continues as a matter of law.

Thus, the County says that it has shown that unit members are already compensated at a much greater rate than their counterparts in comparable jurisdictions (Co. Exhs. 17, 18) and argues that its wage demand be denied because it would only serve to continue to increase the existing salary disparity between Suffolk County at the top end, and Nassau County, Westchester County, New York City, Albany County and the East End towns at the low end of the salary schedule scale.

The County asserts that the balance of the SDA's demands are excessive and unjustified and argues as follows:

SDA Proposal #3: Night Differential: The County argues that this demand is a wage demand and must be rejected on that basis alone. It points out that the cumulative cost of this demand, when calculated using SDA's proposed 4.5% increase, is an additional \$3,968,732 and that this amount would automatically increase as the top detective step increases, as the differential is pegged to that salary amount. (Co. Exh. 50). Nor has it been shown that there is any need for this increase, according to the County.

SDA Proposal #6: Increase in Unused Sick Leave Pay Buy Out: The County notes that the estimated cost of this demand to increase the payout from 300 to 400 days is in the millions of dollars. (Co. Exhs. 48, 50). It says that no other County police officer unit provides this benefit, and these police employees all receive the same benefit as do the members of the SDA, and no other unit has proposed such an increase. The County requests that this demand be rejected.

SDA Proposal #7: Increase in Stand-By Pay: The County argues that if stand-by pay is increased pursuant to this proposal, which seeks to double the current payments from two to four hours, then the added cost of the demand, over the SDA's 4.5% proposed increase, is estimated to be \$1,476,849. (Co. Exh. 54). It notes that during 2003, SDA members served 3,237 stand-bys for a total of 6,406 hours, and this proposal should be rejected.

SDA Proposals # 8 and 10: Wages-Special Assignment Pay: The County points out that 14 detectives assigned to state or federal task forces or agencies receive 10% above their regular base pay, while members of state and federal task forces receive 7%. If granted, the SDA proposal would result in an increased cost to the County of \$177,796

over the life of the award. (Co. Exhs. 48, 56). The SDA also demands that “local agency” be added to the list of task forces eligible for special assignment pay, which include entities such as the East End Drug Task Force, and could be construed to include all cases where local police work with the County. Not only is it impossible to calculate the cost of such an expansion, the County maintains, there is no evidence that the current benefit is inadequate and thus both should both be rejected.

SDA Proposal # 9: Wages-Assignment Pay to include Arson Squad, Identification Section and any Undercover Commands. The County notes that this proposal to change the title of “Environmental Crimes Unit Assignment Pay” to “Assignment Pay” so as to expand eligibility to other unit members, such as the narcotics and D.A. Squad, would increase the number of eligible detectives from 14 to 114 and increase pay costs of almost \$3.4 million over the four-year award. (Co. Exh. 57) It contends that, at present, this assignment pay is only paid to members of the environmental crimes unit, due to the unusually hazardous nature of their duties. The County points out that none of its other police units receive assignment pay based on the eligibility criteria proposed by the SDA and that this demand was rejected by the last interest arbitration panel and, for the foregoing reasons, it should be denied.

SDA Proposal #12: Clothing and Cleaning Allowances: The County notes that this demand, which would increase the current clothing allowance of \$700 per year and \$800 per year cleaning allowance be increased by \$75 during each of the four years of the award would cost \$588,000. (Co. Exhs. 48, 59). It maintains that no justifiable reason has been provided to award this demand, nor did the PBA or SOA seek such an increase

to these allowances. (Tr. 130) The demand should be denied.

SDA Proposal #13: Equipment: Cell Phone Usage Reimbursement: The County argues that this demand is not justified, as the testimony of the Department's Chief of Patrol, John McElhone, demonstrates that no detective has ever been ordered to use his/her personal cell phone for police ordered business, nor did any other unit seek this benefit. (T. 130-131). It avers that this demand must be denied.

SDA Proposal # 16: Negotiations: Annual Stipend of \$15,000 to Members of the Board of Governors on Full-Time Release. The County points out that this demand that Section 8 of the collective bargaining agreement be amended so that its President, 1st Vice President and 2nd Vice President each receive a \$15,000 stipend per year from the County would total \$180,000 over the term of the award (Co. Exh. 61). It maintains that there is no justification to award such a costly Proposal, as three officers of the Association currently receive full release from work to perform Association business and receive full salary plus supplementary wages and differential pay for their efforts. The County contends that if the SDA leadership has concerns about the potential loss of overtime, which is the stated rationale for this demand, then they should not volunteer for Association duties that interfere with the opportunity to earn it. The County says that although it recognizes the importance of the SDA work, the individuals are nonetheless County employees and the taxpayers should not have to subsidize their non-work related activities. It urges that for these reasons, as well as the County's projected financial problems, the demand should be rejected.

The County maintains that its proposals should be granted, as they are

reasonable and justified and will improve the Department's productivity as follows:

County Proposal # 1: 2% Wage Increase In Each Year of the Agreement: The County argues that its proposed wage increase is reasonable and justified by the previously discussed comparison of wages in similar communities, current increases in the cost of living, the lack of a demonstrated need to maintain the present contractual index, and the County's inability to pay for more. It contends that the SDA has failed to rebut any of these arguments.

County Proposal #2: Institution of a Sick Time Abuse Policy. The County argues that its proposal to institute a sick time abuse/sick leave management policy is similar to that in place in Nassau County, and was a proposal made to and granted by the SOA panel. (Co. Exh. 33). It contends that the purpose of the policy would prevent employees who have abused the system from obtaining any contractual benefits earned by employees who abide by the rules and regulations of the Police Department. It notes that the identified abusers would be prevented from the following: working overtime; switching tours; applying for preferred assignments; receiving night differential pay while on sick leave; and, be in jeopardy of losing vacation leave. (Co. Exh. 33). The policy would also restrict anyone who is on such leave from leaving the employee's residence, so as to help ensure a prompt return to health and work. It notes that there should be no objection to granting this proposal by the SDA, given that it has requested benefits granted to Nassau County officers.

The County further cites to the affidavit of Deputy Police Commissioner Roger Shannon in support of its arguments that the policy is necessary, reasonable

and appropriate. (Co. Exh. 69)

County Proposal #3 : Amend Section 28 (f)(1): Eliminate the Prohibition on Changing Tours of Duty, Up to 10 Times a Year, To Avoid The Payment of Overtime; Amend Section 28 (f)(3) to allow for a Change in Tour Without Penalty for Court Appearances; Deletion of Section (f)(8) which allows a Meal Allowance for Detectives Working Overtime Following a Regular Tour on a Non-Scheduled Day.

The County argues that the current collective bargaining agreement prohibits the Department from changing tours of duty to avoid paying overtime. Presently, the Department may change tours for training and court attendance in court but maintains that it should also have the discretion to change tours on a daily basis up to 10 times a year. The County projects that this amendment not only would increase the County's flexibility to continue investigations, it would generate a savings of \$3,576,922 over the four year award, thereby allowing it to control overtime costs. (Co. Exh. 35). Chief McElhone testified that this language has been the subject of several disputes between the parties resulting in arbitration hearings. It contends that awarding this proposal will allow for the change of tours, without undue imposition on SDA unit members.

The County also contends that Section 28 (f)(3) also should be amended so that it may change a tour of duty without the time-and-a-half pay penalty for court appearances, over which the Department has no control, so that a Detective could report to court during the day tour. It notes that a detective working an eight hour tour receives an extra four hours of pay when his tour is changed for a court appearance and no corresponding hardship will be imposed on the detective whose tour is changed.

The County also proposed the elimination of Section 28(f)(8), which provides a meal allowance to a detective working overtime following his/her regular tour or on a nonscheduled day in order to effect a cost savings to the County. It maintains that Detectives working overtime are well-compensated without an added meal allowance.

County Proposal #4: Change Section 30 regarding Recall, Travel and Stand-By Pay.

The County proposes deleting the requirement in Section 30(a) that any employee called in for any period of time at hours other than his/her regularly scheduled tour of duty, or who is recalled after having completed his/her tour of duty, shall receive overtime pay of not less than six hours' straight time. It argues that Detectives be paid time and one-half for actual overtime hours worked, unless the overtime is scheduled overtime, which shall be paid at straight time rate and that no six hour minimum be applied. (Co. Exh. 21)

The County also proposes eliminating the requirement that a detective be paid one hour of travel time at the overtime rate, regardless of the time required for travel, whenever the detective is recalled to work. It maintains that this proposal will generate over \$1 Million in savings over the four year award (Co. Exh. 38) and that there is no justification to continue this payment.

The County also avers that it should be allowed to assign recalled detectives in any capacity deemed appropriate by the Department during the period of their recall. It argues that this proposal is designed to clarify an arbitration decision which suggested that, if a detective is recalled for a specific investigation or incident, the detective is deemed to be off-duty once the investigation or incident is completed, even though the

detective would still receive a full six hours of recall pay (Co. Exh. 37). Until that time, the Department had exercised its discretion to assign a recalled detective to any unit-appropriate work during the four hour recall period.

The County also proposes that a Detective receive another day off from work, or a 499 administrative leave day, after reporting to court on a regular day off, rather than payment at the current recall rate of time and a half for a minimum of four hours, plus travel time. It contends that this proposal will result in a significant savings to the County (Co. Exh. 48) while imposing minimal inconvenience to the detective.

The County notes that its proposal to change the notification time relating to the cancellation of court recall without penalty to 48 hours has been accepted by the SDA.

County Proposal #5: Amend Section 13(a)-Detective Status; Amend Section 13(b) and Add Section 13(c). The County notes that Section 13(a) of the collective bargaining agreement currently states that, when it wants to remove a supervisor's detective designation, the burden of proof is on the Department to prove that he/she is not competent or no longer has the ability to perform the duties. It seeks to change the burden of proof to focus on whether the detective/supervisor has not performed duties properly, in order to allow the Department to remove detectives from positions when they fail to perform properly and improve the efficiency of the Department.

The County proposes amending Section 13(b) of the Agreement to allow the Department to assign police officers to undercover positions for 18 months without having to designate them as detective which, at present, is limited to a 6-month period. (Co. Exh. 28). It argues that this change is justified because some undercover and task

force operations take longer than six months, although it is not its intent that every police officer assigned to work in these assignments, such as in drugs or prostitution, should become a detective. It maintains that an 18-month period of time is reasonable because the Department would have to designate an officer as a detective after the 18-month period or return him/her to patrol before that time.

County Proposal #6: Amend Section 29 Mileage Allowance, Travel Pay and Out-of-State Duty. The County proposes that Section 29(b)(1) be amended to provide for two hours' travel pay at straight time for assignments in New York City (rather than the current four hours of straight time pay) and one hour travel pay at straight time for assignments in Nassau County (rather than the current two hours of straight time pay) (Co. Exh. 21, 40). It maintains that travel times to New York City and Nassau County will vary, sometimes more, but much more often less, than the current times set forth in the Agreement, and that its proposal would more fairly compensate detectives who are required to travel to these locations. It notes that the current cost of the travel time provision is prohibitive and has caused the Department to not take advantage of training opportunities in New York City.

County Proposal # 7: Change Section 35-Personal Leave Days. The County argues that personal leave day requests should be at the discretion of the Department when the requested time is inconsistent with its needs. It notes that the County may deny an employee's use of personal leave days only when it cannot find a replacement through overtime and cannot secure a volunteer to work the overtime after using "every reasonable effort to find volunteers" which often results in the detective's replacement

receiving overtime. It contends that this is very problematic on holidays and this change would ensure that the Police Department is not left paying outrageous sums in overtime to replace detectives using personal leave time.

County Proposal # 8: Amend Section 21 Drug Testing and Appendix B Substance Abuse Testing. The County argues that the current drug testing policy be expanded to include members on 401 (i.e., General Municipal Law § 207-c) status, as well as the use of hair sample analysis as a drug testing option, and testing for steroids. It maintains that the SDA has not offered a legitimate reason to exempt employees on 401 status from this testing requirement, which essentially affords them better treatment than their working colleagues. It argues that hair sample analysis is a far more accurate test than that presently used for detection and thus it would expect the SDA to support its use. The County points out that the last PBA award included steroid testing usage and the SOA has already agreed to it. For all of these reasons, this proposal should be granted in its entirety.

County Proposal #9: Amend Section 10-Bill of Rights. The County notes that Section 10(7) of the collective bargaining agreement allows an employee or his/her attorney to obtain a copy of a recording made during an investigation by the Internal Affairs Bureau within a reasonable period of time after the interview. The County argues that its proposal that interview tapes to be given to the employee or counsel only after all of the interviews have occurred would better protect the integrity of the investigation by not permitting subsequent interviewees to have the opportunity to tailor their testimony based on their colleagues' prior statements.

County Proposal #10: Amend Section 37: Vacations. The County proposes to delete Section 37(j) of the collective bargaining agreement which provides that if a regularly scheduled vacation includes a holiday, the Detective is allowed to “take” that holiday in cash or receive another compensatory day off. It notes that holidays are also paid separately by two checks during the year pursuant to another section of the contract, and if the detective actually works on the holiday, the detective gets time and a half while working on the holiday. It maintains that eliminating this “double dip” will yield projected savings of \$1,635,165 over the four-year term of the award based on the Association’s 4.5% wage increase proposal (Co. Exh. 46) and in the absence of any countervailing justifications, this proposal should be awarded.

County Proposal # 32: Working Schedules and Conditions. The County seeks to eliminate the requirement that it pay cash to a detective who does not receive a 60-minute meal period. It maintains that its analysis shows that no detective has ever missed a meal and thus the language should be amended to reflect this reality.

OPINION

As noted in the Background section above, the Taylor Law § 209 sets forth the criteria that governs the decision of a Panel when determining the terms and conditions of employment of a collective bargaining agreement which, in sum and substance, provide for the following: (a) a comparison of wages, hours and conditions of employment of this unit to other bargaining unit performing similar services in the County and comparable communities; (b) the interests and welfare of the public and the financial ability of the

County to pay; (c) a comparison of the particulars of the bargaining unit work to other trades and professions including, for example, the hazards of the job and physical qualifications; and (d) a review of the past collective bargaining agreements between the parties.

It is also noted that the parties have agreed that the term of the award will cover four years, commencing January 1, 2004, and ending on December 31, 2007, rather than the two year limit provided for by the statute, as approved by the County Legislature.

With respect to the issue concerning wages, it is clear from the history of past interest arbitration awards that pattern bargaining has been a significant factor to interest arbitrators when determining the parameters of an award. Moreover, past interest awards have found a comparison between the SDA to other Suffolk County Police Departments bargaining units, such as the PBA and SOA, to be most relevant and appropriate when deciding the basic economic package. As noted by Arbitrator Scheinman in his 1996-1999 awards, the adoption and maintenance of a pattern ensures stability to both the County and the unions in terms of working conditions and provides the County with an opportunity to address its budgeting concerns in a predictable manner. He also held that pattern bargaining serves to prevent the “leap-frogging” among the police units within the County to achieve a more desirable contract.

Arbitrator Scheinman’s analysis concerning pattern bargaining was adopted by other interest arbitrators over a number of years when deciding County police bargaining unit contract terms and conditions of employment. For example, Arbitrators Riegel and Stein relied heavily upon the theory of pattern bargaining among County police units in

their respective awards. The reason for adopting the theory was succinctly noted by Arbitrator Stanley Aiges in his recent interest arbitration award involving the SOA (“Aiges Award”):

The reason is straightforward: once a “pattern” is established within a county, that pattern necessarily becomes the single most relevant factor to which wages, conditions and benefits should be compared. Simply stated, an “internal” county pattern-once in effect-casts a heavy shadow over all other potential settlements and/or awards. (p. 24)

Moreover, it is clear that past SDA interest arbitration awards have relied in large part upon the terms and conditions set forth in the SOA awards, as the units are comprised of officers who perform the same or similar services, who must have similar skills, and work under similar conditions, as found in the first statutory criterion.

Similarly, Arbitrator Elliot Shriftman addressed this matter in his 1997 interest arbitration award for the County and the Detective Investigators Police Benevolent Association (“DIPBA”) when he granted the “police pattern” great weight. In accord was Arbitrator Maurice Benewitz in his SOA award, in which he found that “(o)nce a pattern has been established in a county, the most relevant wage, condition, and benefit comparisons are comparisons to the internal county pattern and not to the wages and conditions in the neighboring county.”

Accordingly, the “police pattern” has spanned many years and thus has been recognized by interest arbitrators as an appropriate one. Moreover, a review of the 2003 PBA Award (“Dennis Award”) and the 2005 SOA Aiges Award, indicate that the pattern has continued within the County’s police units. Therefore, the Panel finds the most

relevant comparison under the first statutory criterion to be the PBA, SOA, DIPBA police units. Accordingly, in order to maintain the longstanding pattern among police units in the County, the SDA is entitled to a wage increase which corresponds to the pattern set forth in the PBA and SOA contracts, as the DIPBA has not settled its impasse with the County.

The second statutory criterion concerning the interests and welfare of the public and the financial ability of the public employer to pay for any increases in wages or benefits attendant to an interest arbitration award. It is common knowledge that a well-paid and well-maintained Detective Division best meets the public need, as such provides high morale to the force, which leads to higher productivity and attracts quality candidates. Any major deviation from the pattern must be avoided.

The second aspect of the statutory criterion concerns the County's ability to pay. The Panel notes that the parties relied upon the testimony and documents provided by the County at the SOA interest arbitration hearing.

A review of the evidence supports the Panel's conclusion that the County has the ability to pay and thus could financially support the outcome of this instant arbitration award for a number of reasons: (1) the County is successfully operating fully within its tax and debt limitations; (2) the County has the second highest tax base of the six largest counties; (3) the County's expenditures are commensurate with its budget; (4) the County's General Fund has consistently generated surpluses; and (5) the County's rating was recently increased to A-2 by Moody's Investor Service, which reflects sound management practices and a secure financial stance. In light of the foregoing, the Panel

concludes that this interest arbitration award is within the County's ability to pay and would not work any hardship on it once implemented.

The third statutory criterion involves a comparison of the peculiarities of the bargaining unit work to other trades and professions including, for example, the hazards of the job and required physical qualifications. It cannot be disputed that the work of a detective is a most hazardous one, given the exposure to high risk, the potential for injury or even death. Their unique work serves to ensure the safety of the public. The physical, educational, and mental requirements, along with their job training and skills, can be comparable only to that of other police units, such as the PBA and SOA. There is no private sector employment which would be comparable to that of the bargaining unit members.

The last statutory criterion requires the Panel's consideration of past collective bargaining agreements between the parties with respect to wages and all other terms and conditions of employment, which the Panel undertook. As part of this review, the Panel analyzed past settlements and interest arbitration awards between the County and its police bargaining units which revealed that the pattern had been adhered to with the other units. These past settlements and awards demonstrate a pattern of financial offsets calculated against the increases gained by the bargaining unit, as evidenced in the Scheinman I Award to the most recent SOA award. In addition, the size of the bargaining unit in relation to other units is taken into consideration by the parties when calculating the amount to be offset or given back to the County within the total economic package.

For example, the Aiges Award found that the SOA unit size was approximately 27% of the PBA's, and thus determined that the savings generated by the SOA award would be \$673,000, which amount was used to reduce the total costs of the contract.

Thus, the pattern of offsets with respect to the calculation of the total wage and benefit package to be awarded is to be followed. Here, the SDA membership is 20.3% of the PBA's. Therefore, the total SDA package shall be reduced by that amount to reflect the pattern among the units, which generates a savings of \$506,181.

The Panel finds that the salary schedule is predicated upon an index, the concept of which is fully discussed in the Riegel Award. Therefore, the salary index shall remain in full force for the period covered by this Award which is January 1, 2004-December 31, 2007. In order to partially fund the concessions ordered by this Award, the index shall be implemented and applied to the top PBA base pay effective May 3, 2004. This will yield an 8.6 payroll period financial savings to the County during 2004, equivalent to approximately \$453,369.

There are additional components to the economic package which are to be awarded to the SDA. The SDA's argument concerning assignment pay eligibility was found to be persuasive with respect to the members of the Identification Command, given that these members must work under the same conditions that served as a predicate for the stipend being paid to members of the Environmental Crimes Unit pursuant to the Riegel Award. Therefore, the scope of assignment pay coverage pursuant to Section 24(j) of the Agreement is to be expanded to include detectives in the Identification Command, effective August 1, 2007. This effective date is chosen both in light of the

Aiges Award's implementation of an expanded assignment pay stipend effective January 1, 2007, as well as the need to ensure that the overall cost of this Award, minus its concessions, is proportionate (as discussed earlier) to that awarded to the PBA and the SOA .

The Panel also found persuasive the SDA's arguments concerning the amending of Section 13 (b) of the Agreement so as to award stipends to certain officers of the Union, which would be consistent with that granted to the SOA members in the Aiges Award. The affected officers lose significant overtime opportunities, which impacts not only upon their salary but also their pension which is based upon their final salary. There is no question that the work of the officers in implementing and coordinating with the County the terms and conditions of the Agreement serves the public interest and welfare because it contributes to a positive labor relations environment. Therefore, the language of Section 8(b) shall be amended effective January 1, 2004, so as to grant the President 3.25 straight time hours per week, and 1.5 straight time hours a week to two other full-time bargaining unit members on release. This amount reflects the lost overtime opportunities of these officers and thus has a rationale, as found by Arbitrators Dennis and Aiges.

The Panel also accepts the SDA's reasoning that it should be allowed to reopen negotiations if any economic improvements are granted to the DIPBA that exceed those guaranteed in this interest arbitration award, as such is consistent with the governing concept of the police pattern long recognized by the parties and historically awarded by other Arbitrators analyzing the police pattern.

The remaining SDA proposals are denied, as the Panel did not find sufficient justification for the granting of the remaining requested economic or non-economic increases or changes.

The Panel notes that the County's Sick Leave Management Policy proposal was awarded nearly in toto by Arbitrator Aiges in his recent SOA award. Having carefully considered the parties' arguments about the relevance and applicability of that portion of his award to this impasse, the Panel finds that a revised version of the Sick Leave Management Policy, which is appended to this Award, shall amend Section 38 of the Agreement, effective January 1, 2007. This policy is designed to identify potential sick leave or chronic sick leave abusers and whose absences could result in a major impact upon the workload of the reporting bargaining unit members, as well increase the costs of overtime to the County for coverage of those who were scheduled to work and fail to either appear or notify the County in a timely manner. This Policy is not designed to impact upon those bargaining unit members whose absences are due to on-the-job injuries. The use of sick leave will be monitored and abusers would lose certain privileges, such as preferred assignments and switching tours of duty. The Policy would not become effective until January 1, 2007, which shall provide ample time for all unit members to be on notice concerning the changes in the procedure. In addition, such would serve as a deterrent to those who habitually abuse the sick leave time provided to them.

While the Panel agrees that it is important that all of the County's police units be subject to the same sick leave management policy, several changes have nevertheless

been made to the County's proposal. These include some awarded by Arbitrator Aiges (e.g., excluding employees on 401 status from the coverage of the Policy). Others are required due to persuasive arguments advanced by both the Association and the County regarding the potential and practical effects of implementing the Policy as initially proposed. One such example is the exclusion of FMLA leave time from the definition of an "occurrence," as a contrary result would, in the Panel's opinion, be of questionable legality. A related example is the more carefully delineated definition of what constitutes an "occurrence" under the Policy. The Panel believes, though, that the result of awarding these changes is a better balanced, and easier to implement, Policy that will permit the County to more readily identify potential leave abusers while at the same time better protecting the procedural rights of those so identified.

The Panel also finds persuasive the County's arguments concerning the amending of Section 13(b) of the Agreement concerning Detective status. The County's demand requests that the Department be allowed to assign police officers to Detective positions for 18 months without having to designate them as Detective which, at present, is limited to a 6 month period. The Panel believes that the County's request to increase the six month time frame is a sound one. The record does not, however, support the County's demand to increase the time frame to 18 months. The Panel instead finds that it is appropriate to increase the time frame to nine months, effective July, 1, 2007. The Panel notes that the cost savings projected to be generated by this change offset the cost of awarding the expanded assignment pay set forth above. The Panel also awards changes in the existing contract language (as set forth below) that are required in order to

implement this portion of the Award.

The parties agreed during their negotiations to amend Section 30(c) of the Agreement, dealing with court recall, so as to change the notification time relating to the cancellation of court recall without penalty to the County from 48 to 72 hours. This change is hereby awarded, effective upon the issuance of the Award.

The parties also agreed during their negotiations to the County's proposal that the current drug testing policy, found in Section 21: Appendix B of the Agreement, be expanded to include steroid testing. Both the PBA and SOA have such language in their testing policies and thus an inclusion in this interest arbitration Award is consistent with the pattern. Moreover, it goes without saying that the general public has become fully aware of the dangers of the use of steroids and the impact upon the health of the user. The County has the right to ensure that its Detectives are not engaging in such dangerous usage. This change is hereby awarded, effective upon the issuance of this Award.

The Panel has considered the remaining proposals submitted by the County and has decided to deny them in their entirety.

Thus, based upon the foregoing findings, the Panel makes the following award:

AWARD

1. Duration (§ 2).

The contract shall cover a four year period, commencing 01/01/04 through 12/31/07.

2. Salary (§24(e))

- The salary index shall remain in full force for the period covered by this Award (1/1/4 - 12/31/7).
- The index will be implemented effective 5/3/4 so that the index is applied to the 2004 top PBA base pay on that date.

3. Assignment Pay (§ 24(j))

- The language shall be expanded to include employees assigned to identification command effective 8/1/7.

4. Sick Leaves (§ 38)

- The Sick Leave Management Policy as set forth in the Appendix to this Award shall be implemented effective 1/1/7.

5. Detective Status (§ 13(b))

- Increase six months to nine months, effective 7/1/7. In addition, insert "(nine months effective 7/1/07)" after "one (1) year" each time it appears.

6. Executive Board (§ 8(b))

- Effective 1/1/04, the President and two other full-time members on release as designated per the CBA shall receive an annual stipend paid bi-weekly in lieu of lost overtime opportunities as follows: President, 3.25 straight time hours per week; two other full-time members on release 1.5 straight time hours per week.

7. Steroid Testing (§ 21; Appendix B)

- Effective upon the issuance of the Award, the current drug testing policy will be expanded to include steroid testing.

8. Court Recall (§ 30(c))

- Effective upon the issuance of the Award, change 72 to 48 hours.

9. Reopener

- The SDA may reopen negotiations if any economic improvements are granted to the DIPBA that exceed those guaranteed herein.

10. Other Proposals

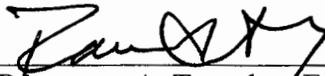
All other SDA and County proposals are denied.

AFFIRMATION OF PUBLIC MEMBER AND PANEL CHAIR

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

I, Rosemary A. Townley, Esq., affirm that I am the individual described in and who executed this foregoing instrument which is my OPINION AND AWARD.

3/29/05
(Date)



Rosemary A. Townley, Esq.

POSITION OF COUNTY APPOINTED PANEL MEMBER

I, Jeffrey L. Tempera, County Appointed Member of the Interest Arbitration Panel, (CONCUR WITH) ~~(DISSENT FROM)~~ the above Interest Arbitration Award.

3/29/05
(Date)


Jeffrey L. Tempera

POSITION OF SDA APPOINTED PANEL MEMBER

I, Raymond Griffin, SDA Appointed Member of the Interest Arbitration Panel, CONCUR WITH (~~DISSENT FROM~~) the above Interest Arbitration Award.

3-29-05
(Date)

Raymond Griffin
Raymond Griffin