

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

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**In the Matter of the Compulsory Interest  
Arbitration between**

**THE FULTON COUNTY DEPUTY SHERIFF'S  
POLICE BENEVOLENT ASSOCIATION**

**OPINION**

**AND**

**AWARD**

and

**THE COUNTY OF FULTON AND THE  
FULTON COUNTY SHERIFF**

PERB Case No. IA2004-019; M2004-131

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**Before Interest Arbitration Panel:**

**Thomas N. Rinaldo, Esq., Chairperson**

**William M. Wallens, Esq., Public Employer Member**

**Edward W. Gudzek, Employee Organization Member**

The New York State Public Employment Relations Board, pursuant to the New York Civil Service Law, Section 209.4, designated the Chairperson and other above Panel Members by Notice dated March 18, 2005.

A hearing was held on August 17, 2005, in Johnstown, New York. Appearing on behalf of the Fulton County Deputy Sheriff's Police Benevolent Association ("Union") was the Tuttle Law Firm, by James B. Tuttle, Esq., and on behalf of the County of Fulton and the Fulton County Sheriff ("County") was the law firm of Roemer Wallens & Mineaus, LLP, Elayne G. Gold, Esq., of counsel. At the hearing, the Parties were given a full opportunity to produce

witnesses and present documentary, video, and other evidence in support of their respective positions, as well as the opportunity to cross-examine witnesses appearing on behalf of both Parties. Both Parties submitted post-hearing brief.

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

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

Before issuing this Opinion and the Award, the Panel met in executive session on November 29, 2005, and engaged in substantial deliberations.

## PROPOSALS OF THE PARTIES

### PBA's Proposals

#### **Proposal Number 1**

Page 2 Article III    Section 1    Subsection A  
Compensation

Effective January 1<sup>st</sup>, 2004, the members of this bargaining unit request a six (6%) percent annual wage increase, per year throughout the term of this contract, being three (3) years.

#### **Proposal Number 2**

Page 3 Article III    Section C  
Longevity Pay

Effective January 1<sup>st</sup>, 2004, the longevity schedule will be modified as follows:

Full-time employees with one (1) or more years of service will receive longevity compensation of \$100.00 per year of service calculated from the first anniversary date of employment.

Commencing on an employee's sixth (6<sup>th</sup>) year of service, the longevity shall be increased to \$150.00 per year.

Commencing on an employee's eleventh (11<sup>th</sup>) year of service, the longevity shall be \$200.00 per year.

Commencing on an employee's sixteenth (16<sup>th</sup>) year of service, the longevity shall be \$250.00 per year.

#### **Proposal Number 3**

Page 4 Article III    Section 3    Subsection C  
Compensation (under Miscellaneous Compensation)  
Increase in Shift Differential (Premium Pay)

Effective January 1<sup>st</sup>, 2004, employees will receive: Premium pay for employees working the second and third shifts shall be \$1.25 per hour.

### **Proposal Number 4**

Page 8 and 9 Article VI Section 1 Subsection E.  
Vacation, Sick Leave and Other Leave Regulations  
Vacation Buy Back

Effective January 1<sup>st</sup>, 2004, the members of this collective bargaining unit wish to: Add to - "Employees may sell back to the county up to one hundred and twenty (120) hours of earned vacation time in each year of the contract with the approval of the Department Head, which approval shall not be unreasonably denied. The Department Head must respond within ten (10) working days. If approved, such payment shall be made by the first payroll in July and December. If, during the course of the year, an employee has reached his / her maximum vacation time, the employee can request time sell back at that time. If approved by the Department Head, payment shall be made within three (3) payroll periods. Employees may not sell back more than one hundred and twenty (120) hours of vacation time in any calendar year."

### **Proposal Number 5**

Page 7 Article IV Section 2 Subsection D  
Workday, Workweek and Overtime  
An Increase from 4-hours to 8-Hour Compensatory Time for Criminal Investigators for On-Call Status

Effective January 1<sup>st</sup>, 2004, the members of this collective bargaining unit wish that: Investigators shall be granted eight (8) hours of Compensatory Time for each week the investigator has "on-call" responsibility.

### **Proposal Number 6**

Page 2 Article III Section 1 Subsection B 1  
Compensation  
Delete and replace with compensation Step Program.

Effective January 1<sup>st</sup>, 2004, members of this collective bargaining unit wish that: A step program be add to the contract to include a 5 year program, With increments of \$1000 per year. Upon completion of the 4<sup>th</sup> year the rate will be as specified in appendix A.

See attached for example.

## Proposal Number 6 supplement

With this compensation Step Program the county will save \$5000 per new employee hired, With a total of \$15,000 over the 5 year period per employee.

**There is no cost to the county to implement this program.**

This will apply to new employees only.

This step program is a 5 year program, With increments of \$1000 per year.

As an example

Less then 1 Year \$5000 less then appendix A

Less then 2 Years \$4000 less then appendix A

Less then 3 Years \$3000 less then appendix A

Less then 4 Years \$2000 less then appendix A

Less then 5 Years \$1000 less then appendix A

More then 5 Years rate as specified in appendix A.

### County Proposals

#### County Proposal No. 1

##### *Article VII, Section 6.B, Personal Leave (p. 13)*

Except in an emergency, personal leave must be requested from the Sheriff or designee at least two (2) days prior to taking such leave.

#### County Proposal No. 2

##### *Article VIII, Section 8, Tardiness (p. 13)*

The Employer may establish and publish rules establishing penalties for tardiness. An employee who is unable to report to work at his/her normal starting time is required to notify the Sheriff or his/her designee. In the event of severe storms or floods or of similar uncontrollable conditions effecting a group of employees, tardiness will be excused and not charged against accumulated vacation providing, however, that the employee reports within two (2) hours of his/her starting time.

The Chairman of the Fulton County Board of Supervisors shall be vested with the sole discretion to invoke the above provisions. Said decisions shall be based upon information obtained from the Fulton County Sheriffs Department, the Fulton County Highway Department, and from the cities and towns within Fulton County. Upon mutual agreement of the employee and the Sheriff,

employees may have the option of flexing their time for inclement weather conditions when the provisions of this section are invoked.

Employees shall be considered tardy if they do not report to work at the start of their shift or workday, and shall only be paid for time worked.

### County Proposal No. 3

#### ***E-Mail/Internet Policy.***

New provision to provide as follows:

#### Acceptable Uses of the Internet and County E-mail

The County encourages the use of the Internet and e-mail because they make communication more efficient and effective. However, Internet service and e-mail are County property, and they are to be used only to facilitate County business. Every employee has a responsibility to maintain and enhance the County's public image and to use County e-mail and Internet access in a productive manner. The County has established the following guidelines for using e-mail and the Internet. Any unauthorized or improper use of e-mail or the Internet is not acceptable and will not be permitted.

The Union shall have the right to use to the Email system to notify members of Union business (excluding partisan political activity or electioneering). ,

#### Unacceptable Uses of the Internet and County E-mail

The County e-mail and Internet access may not be used for transmitting, retrieving or storing any communications of a discriminatory or harassing nature or materials that are obscene or X-rated. Harassment of any kind is prohibited. No messages with derogatory or inflammatory remarks about an individual's race, age, disability, religion, national origin, physical attributes or sexual orientation may be transmitted or forwarded using the County system. No abusive, profane or offensive language may be transmitted through the County's e-mail or Internet system. The County's harassment policy applies in full to e-mail and Internet use. Employees do not have a personal privacy right regarding any matter created, received, stored or sent from or on the company's e-mail or Internet system or computers.

The County e-mail and Internet system also may not be used for any other purpose that is illegal, against County policy or contrary to the County's best

interest. Solicitation of non-County business or any use of the County e-mail or Internet system for personal gain is prohibited.

#### Rules for Electronic Communications

Each employee is responsible for the content of all text, audio, or images that he or she places on or sends over the County's e-mail or Internet system. Employees may not hide their identifies or represent that any e-mail or other electronic communications were sent from someone else or someone from another company. Employees must include their name in all messages communicated on the County's e-mail or Internet system.

Any messages or information sent by an employee to another individual outside the County via County e-mail or Internet system (including bulletin boards, online services or Internet sites) are statements that reflect on the County. Despite personal "disclaimers" in electronic messages, any statements may be tied to the County.

All communications sent by employees via the County's e-mail or Internet system must comply with all County policies and may not disclose any confidential or proprietary County information.

If employees receive unsolicited e-mail from outside the County that appears to violate this policy, the employee should notify his or her supervisor immediately. Similarly, if any employee accidentally accesses an inappropriate web site in the normal course of business, the employee should notify his or her supervisor immediately.

#### Downloading Software

To prevent the downloading of computer viruses that could contaminate the e-mail or Internet system, no employee may download software from the Internet without prior authorization. Any and all software that is downloaded from the Internet must be registered to the County. For authorization, please contact the system administrator.

#### Copyright and Trademark Issues

Copyrighted and trademarked material that does not belong to the County may not be transmitted by employees on the County's email or Internet system without permission from the holder of the copyright or trademark. Every employee who obtains access to the other companies' or individuals' materials must respect all

copyrights and trademarks and may not copy, retrieve, modify or forward copyrighted materials, except with permission or as a single copy for reference only.

### System Security

The County reserves the right to routinely monitor how employees use e-mail and the Internet. The County may monitor to measure cost analysis/allocation and the management of the County's gateway to the Internet. All messages created, sent or received over the County's e-mail or Internet system are the County's property and should not be considered private information. The County reserves the right to access and monitor every message and file on the County's e-mail or Internet system. Despite the existence of any passwords, employees should not assume that any electronic communication is private. Highly confidential information or data should be transmitted in other ways.

### Violations

Any employee who violates these rules or otherwise abuses the privilege of the County's e-mail or Internet system will be subject to corrective action up to and including termination. If necessary, the County also reserves the right to advise appropriate officials of any illegal activities.

### County Proposal No. 4

#### ***Drug Testing Procedure***

### County Proposal No. 5

Remove Lieutenant from bargaining unit.

### County Proposal No. 6

Convert leave time to hours based upon an 8-hour day.

## BACKGROUND FACTS

The most recent version of an expired Collective Bargaining Agreement between the Parties covered the period January 1, 1998, through December 31, 2002. A Memorandum of Agreement also exists for the period January 1, 2003, through December 31, 2003. The Panel will address various topics set forth in the Parties' proposals in issuing its Award. A threshold issue, however, will be addressed initially regarding proposals submitted by the County.

According to the record evidence, the 2000 census found the County with a population of 55,073. The Road Patrol Unit, the bargaining unit herein, consists of 29 Uniformed Deputies who patrol 533 square miles. Specifically, there are 14 Deputy Sheriffs, 3 Corporal Deputies, 6 Sergeants, 4 Investigators, and 2 Lieutenants. These individuals work in a Sheriff's Department that operates continuously on a 24/7 basis. A number of individuals in the bargaining unit work 12 hour shifts. There are three other bargaining units in the County: CSEA-General, CSEA-Nurses, and the Alliance (Office Employees in the Sheriff's Department).

The County budget, the record shows, consists of a General Fund, a Residential Health Care Fund, a Solid Waste Enterprise Fund, and a Highway/Road Machinery Fund. The largest fund is the General Fund, and it is this fund which is utilized for the operations of the Sheriff's Department. The major revenue sources for the General Fund are real property taxes and sales taxes.

It is noted that the County does receive State aid, which would largely appear to be designated for mandated programs. The County does not presently receive "revenue sharing" monies from the State. It would appear that the County did receive \$11,706 of "revenue sharing"

from the State for the years 2001, 2002, and 2003, and it further appears that this amount of money did not fully address the County's participation in the mandated program known as Family Health Plus. Further, it is noted that Family Health Plus is not the only mandated program the County must operate, since Human Services and Social Services programs are also operated by the County, including Medicaid. According to evidence in the record, the County's Medicaid costs are 50% or more of the 2004 tax margin.

The evidence also indicates that the County is at 2% of its constitutional tax limit. A June 23, 2004, letter from the State's Deputy Comptroller warned the County that, consistent with the record evidence, it was advancing toward its constitutional tax limit and was in a "danger zone."

The record also indicates that the distribution of sales tax is governed by State law. The County sales tax is 7%, 4% of which is earmarked to the State. The 3% balance is levied to municipalities in the County, with the County keeping 50% of the 3% balance. It is noted that there are two cities within the County: Johnstown and Gloversville. These two cities keep 50% of the sales tax generated within them. The record also indicates that, effective December 1, 2005, the sales tax in the County increased an additional 1%.

The record further shows that, in 2004, the County's fund balance was 17.8 million dollars. In 2004, the County appropriated 1.5 million dollars of the 2004 fund balance in order to balance the 2005 budget. The County's Contingent Fund has been budgeted at \$500,000 since 2001. It would appear that monies in the Contingent Fund are traditionally spent in the second half of the fiscal year.

Other general financial information found in the record is the New York State Retirement

cost to the County for the Union, which in 2004 was 12.93% of the payroll. Health insurance monthly premium rates (Empire Plan and Community Blue) have increased. It is noted that 24 of 29 members of the Union have health insurance coverage, with various levels of contribution made toward premium payments by members of the bargaining unit. In 2003, the County, the record shows, paid 86.6% of the health insurance bill.

### **THRESHOLD ISSUE**

The Union focuses on the language of Section 209 (4)(g) of the Civil Service Law, which constitutes the State Legislature's Amendment of Section 209 to provide for "economic only" interest arbitration for deputy sheriffs. In the Union's estimation, the County's proposals are all non-economic in nature. Thus, the Union argues that the Panel has no authority to consider any of the County's proposals. The Union does note that the inclusion of the County's proposals in the County's response to the Union's petition for compulsory interest arbitration was in accordance with the PERB Rules of Procedure. These Rules of Procedure, the Union maintains, cannot, however, override the clear legislative direction in Section 209 (4)(g) "expressly prohibiting the consideration of non-compensatory issues in arbitration involving Deputy Sheriffs."

While there is room for the observation to be made that the legislation granting compulsory interest arbitration to Road Deputies might be somewhat narrow in its approach to economic issues, given what some might see as the economic aspect of nearly every term and

condition of employment. The difficulty with the legislation as written is that it precludes the Panel from considering the non-economic concerns of Management that might serve as a balance for the economic concessions granted to the Union. The Panel is nevertheless charged with applying the language of Section 209 (4)(g) and the statutory language is very clear and explicit and requires the Panel to confine its decision-making to “terms ... directly relating to compensation” and to refrain from addressing “non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling or issues relating to eligibility for overtime compensation ...” Accordingly, the Panel finds itself in agreement with the Union that none of the County’s proposals is properly before the Panel. Hence, the Panel will confine its analysis and Award to the Union’s proposals.

### **POSITION OF THE COUNTY**

The County claims that its financial situation can be fairly described as “somewhat bleak.” Thus, the County notes that it is at 97.56% of its taxing limit and has no further ability to raise taxes. It does observe that the sales tax rate has increased, but maintains that the additional monies raised will simply make it easier to balance the 2006 budget and possibly offset the cost of Medicaid. The County’s sales tax rate, it also notes, is 4% as of December 1, 2005, which makes it one of eight counties with a sales tax rate at that level. The County contends that it lacks the ability to pay the 6% wage adjustment sought each year by the Union.

In assessing comparable communities, the County identifies the Counties of Allegany,

Chenango, Delaware, Genesee, Montgomery, Tioga, Warren, and Washington. The County rejects the Union's claim that the cities of Johnstown, Gloversville, and Amsterdam should be included within the universe of comparables. It notes that said cities do not have State mandates that "eat up more than 50-70% of their budgets." It also notes that cities, unlike counties, do not have to hold school districts harmless for taxes that are levied. Cities, the County further observes, continue to receive "revenue sharing" monies from the State, and, in the final analysis, the County argues, cities simply cannot be considered comparable communities to County governments.

The County also rejects the Union's claim that Saratoga County should be considered a comparable community. It notes that, at the end of 2004, Saratoga County had used only 18.52% of its constitutional taxing limit, had a population of over 200,000, and poverty level of 5.7% as compared to Fulton County's 12.5%.

Regarding the Union's proposal on wages, the County maintains that it cannot sustain a 6% wage adjustment for each year of a Contract and it argues that the statutory criterion of "ability to pay" does not equate to the "ability to tax" nor the ability of the taxpayer to pay."

As to the Union's proposal regarding longevity, the County relies on its Comparable Study for longevity rate comparisons.

Regarding the Union's proposal for a raise in shift differential, the County argues that within the context of its comparables the current shift differential need not be adjusted upward.

As to the Union's proposal on the sell-back of vacation time and the Union's attempt to eliminate the cap and increase the County's liability, the County responds that the only

comparable community with a vacation sell-back provision is Allegany County. No evidence was offered by the Union, the County contends, to support this proposal.

Concerning Union proposal number 5, which seeks an increase on on-call pay for Investigators, the County notes that the additional four hours sought becomes, in fact, six hours of new time off. In the County's estimation, the Union did not offer any support for this increase.

The County also claims that there is no support that can be found in the record to support the Union's proposal for an increase in rank differential.

#### **POSITION OF THE UNION**

The Union maintains that its proposed comparables, in fact, are "comparables" whereas the "comparables" offered by the County do not truly qualify as such. In rejecting the County's comparables, the Union notes that they consist only of counties despite the statutory language of "comparable communities." Thus, the Union maintains that there is no need for comparables to necessarily be "of the same type." Moreover, the Union asserts that the mere fact that the County has offered other counties as comparables does not make them comparables. In this regard, the Union claims that the County's comparables suffer from lack of proximity insofar as the County offers Allegany, Delaware, Genesee, and Tioga Counties. In addition, the Union observes, Chenango, Washington, Allegany, Tioga, and Delaware Counties do not contain cities within their borders. In the Union's estimation, Warren County and Montgomery County could

serve as comparables but, the Union maintains, the County has not provided the Panel with enough information concerning employment in either of these counties from which meaningful comparisons or conclusions can be drawn.

The Union focuses on its comparables and claims that they all can serve as “comparable communities” within the meaning of the statute. It notes that all of its comparables are within a 50 miles radius of the County and that the cities of Johnstown and Gloversville are in fact within the County, while the City of Amsterdam is in adjacent Montgomery County, only 6.7 miles from the City of Johnstown. Saratoga County, the Union notes, adjoins the County and, like the County, contains a major metropolitan area surrounded by rural and suburban communities. The County of Warren, according to the Union, can also be considered comparable because it is almost adjacent to the County and is adjacent to Saratoga County. Moreover, Warren County, the Union puts forth, resembles Saratoga County and Fulton County because it has a major metropolitan area with surrounding rural and suburban communities. The Union notes that Columbia County, though not adjacent to Fulton County, is in the “same relative position to the south of the greater Capital region ... as Fulton County is to the north of the Capital Region.” Additionally, the Union claims, Columbia County has a major metropolitan area surrounded by suburban and rural communities. State Troopers also qualify as a comparable community, the Union argues, given the fact that “a substantial number of New York State Troopers [are] assigned in Fulton County and that their day-to-day responsibilities and duties are extremely similar to those of the Fulton County Deputy Sheriffs.”

The Union contends that the overall compensation its members receive must be

considered “extremely low in comparison to other employees performing similar services under similar working conditions in comparable communities.” According to the Union, its members, in the universe of comparables, stand “way behind in terms of base pay, overall compensation, longevity, shift differential, and rank differential.” It notes that the financial adjustments set forth in the petition for interest arbitration reflect proposals prior to the enactment of the legislation providing for the instant interest arbitration. Such demands, according to the Union, reflected the reality that it would receive no more, in the final analysis, than what the County was willing to pay. The demand did not seek to bring the Union into parity, the Union contends, but it is the Union’s position that this Panel is not limited to an Award within the confines of the demands contained in the petition for interest arbitration. Hence, the Union seeks an Award from this Panel that would bring the total compensation paid to members of the Union in the parity with the Officers working in the comparable communities as identified by the Union.

On the issue of compensation, the Union notes that the comparisons prove that, in essence, it would take a huge salary increase for the Union’s compensation to be in parity with the average of compensation of the comparables. The Union maintains, therefore, that the 6% increase in base pay it seeks would constitute but a small step in narrowing the gap.

As to longevity, the Union maintains that its requested increase, if granted, would find it still below the average of the comparables at every interval level. Its request for longevity increases, the Union concludes, must be considered entirely reasonable.

Regarding shift premiums, the Union contends that the average shift differential earnings for a 10 year veteran in the Union falls below 50% of the average of the comparables. The

requested increase would achieve some parity, the Union maintains, with the average annual shift differential earnings found in the comparable units.

On the issue of rank differential increases for the positions of Corporal, Sergeant, and Lieutenant, the Union argues that its sought-after increase of \$.50 per hour "represents minimal compensation for the duties and responsibilities of supervision, and it is entirely consistent with common practice, although not specifically referenced in the compensation analysis."

The Union maintains that the increases that it seeks would bring members of the bargaining unit more into line with non-Trooper comparables. As to the Troopers, the Union acknowledges that it does not expect to achieve parity but notes that its members "respectfully urge this Panel to take into consideration the fact that these officers work side-by-side with the New York State Troopers performing all of the same functions and more, yet they are paid less than half of the total compensation enjoyed by the Trooper."

In setting forth its position, the Union claims that the record clearly establishes the County's ability to pay. It notes that in fiscal year 2004, the County's total budget included a total unreserved fund balance-unappropriated of \$16,331,803. Further, the Union notes that a 1% increase in base salary of all its members would cost the County about \$12,000 or .007% of the County's unreserved fund balance-unappropriated. The Union claims that even if the total cost of economic could be considered at 28% of the County's present payroll, the package would amount to no more than approximately \$336,000 cost to the County.

Further, the Union claims that the record establishes that if the County were to move from 1.5% to 2% in regard to its constitutional tax limit it would generate an additional \$2.6 million

in annual income to the County that would not have to be shared with any other municipality. It is the Union's position that the County "could raise millions of extra dollars anytime it needed to by voluntarily increasing its constitutional tax limit." As to sale tax revenue, the Union notes that the County's sales tax increase of 1% effective December 1, 2005, will generate about an additional 2.6 million dollars in total revenue, 50% of which the County will be able to retain.

The Union contends that the County's evidence regarding unpaid taxes, on consideration, would seem to be a fairly small percentage of the tax levy. Overall, the Union contends, the County's evidence of uncollected taxes does not support its claim that its uncollected taxes are in a category of "problematically high." The Union also alleges that the County has not elected to address its share of the Tobacco Settlement Funds and notes its evidence that the County's 2005 share of the Settlement will be approximately \$973,377.55. Thus, the Union concludes that the County "already has on hand more than enough money to easily pay a fully retroactive award granting every single increase that the PBA has asked for."

### **DISCUSSION**

The Panel notes its earlier decision that none of the County's proposals is properly before the Panel in view of the language of Section 209(4)(g) of the Civil Service Law. Hence, the Panel will address the Union's proposals within the context of the statutory criteria. Initially, the Panel will consider the question of what can properly be considered "comparable communities" for purposes of the Award to be rendered herein.

On the question of comparables, the Panel notes the Union's position that New York State Troopers should be considered within the universe of comparables. At a certain level of comprehension, the Union's position is logical given the fact that, like State Troopers, members of the Union on a daily basis face the challenges and considerable risks associated with road patrol work. Nevertheless, the Panel must ultimately reject the Union's attempt to include Troopers within the universe of comparables due to the fact that the State-wide employment of the Troopers and their status as State employees places the Troopers in a unique employment status that would make it unreasonable to compare the Troopers to members of the bargaining unit herein notwithstanding the considerable similarities in their working conditions, including the dangers and risks thereof.

The Panel also observes that the logical choice of comparables must be other County road patrol units. It is common knowledge that, particularly under contemporary conditions, counties in New York State face unique fiscal challenges that are not necessarily of the kind and degree faced by other municipalities in the State. Common sense also supports the conclusion that the best source of comparison is the same type of municipality. Having made these observations, the Panel also notes that it is not prevented from considering and giving some weight to police departments of cities within the County. Thus, while the police departments of the Cities of Johnstown and Gloversville have not been considered as "true comparables" by the Panel they have been taken into account in the Panel's deliberations.

As to counties, the Panel finds that the Counties of Columbia, Warren, and Washington are the three counties that should be considered as comparables to Fulton County. The Panel

arrives at this conclusion based on proximity, population, and rural/suburban mix of population. In the Panel's estimation, the other counties advanced by the Parties as comparables suffer due to lack of proximity, and/or population, and/or suburban/rural mix of population, and/or poverty level.

In addressing the Union's proposals, the Panel finds itself confronting two somewhat opposing forces that emerge from the statutory criteria. On the one hand, there is the County's genuine set of fiscal concerns, evidenced in this record by a variety of factors earlier identified. The Panel notes, as the County has argued, that the County's "ability to tax" cannot be equated with the County's "ability to pay." As to the latter, there are legitimate constraints that the County faces.

The second opposing force that the Panel can identify is the need for the Unit members to achieve some degree of parity with their counterparts in the comparable municipalities and to achieve a measure of fairness when one takes into account the City Police Departments within the County of Fulton. As it now stands, the members of this unit are below other comparable communities in a somewhat pronounced degree in the area of wages, longevity benefits, and rank differential. The Panel, in view of the statutory criteria, therefore finds it necessary to begin the process of achieving parity in these three areas by the Award herein.

Regarding the Union's proposal on wages, the Panel finds that the economic constraints faced by the County mandate that the Union cannot receive a 6% annual wage increase as it has sought. Nevertheless, in an effort to begin the process of achieving parity, the Panel Awards: **a 3 1/4% annual wage increase for each year of the period covered by this Award.**

As to the Union's proposal on longevity, the Panel finds that the Union is entitled to increases in an effort to advance the members on the road to parity. The County's genuine fiscal concerns, however, mandate that the Union's proposals be modified. Thus, the Panel's Award for each year of the period of this Award:

**Full time employees with one or more years of service will receive longevity compensation of \$50 per year of service calculated from the first anniversary date of employment.**

**Commencing on an employee's sixth year of service, the longevity shall be increased to \$100 per year.**

**Commencing on an employee's eleventh year of service, the longevity shall be increased to \$150 per year.**

**Commencing on an employee's sixteenth year of service, the longevity shall be \$200 per year.**

**However, no longevity payment to any employee shall exceed \$3500 per year.**

Finally, the Panel finds it necessary, in its effort to see members of the Union achieve parity, to grant the Union some increase in rank differential. In addressing the Union's proposal, the Panel would note that it finds the proposal properly before it. The Union has sought rank differential for the positions of Corporal, Sergeant, Lieutenant of \$.50 per hour for each year of the period covered by this Award. In light of the County's fiscal difficulties, the Panel finds it appropriate to Award: **the positions of Corporal, Sergeant, and Lieutenant shall receive a rank differential increase of \$.25 per hour for each of the years covered by the period of this Award.**

**AWARD ON REMAINING ISSUES**

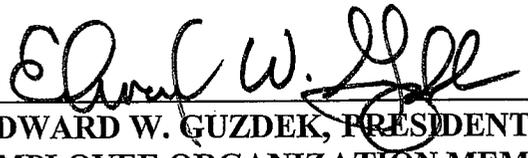
Any items other than those specifically addressed by this Award remain "status quo" as they existed in the Parties' 1998-2002 Agreement and the Memorandum of Agreement for the period January 1, 2003 through December 31, 2003.

DATED: 1/21/06

  
\_\_\_\_\_  
THOMAS N. RINALDO, CHAIRPERSON

 1.18.06  
\_\_\_\_\_  
WILLIAM M. WALLENS, ESQ.  
PUBLIC EMPLOYER MEMBER

CONCUR/~~DISSENT~~

 1/18/06  
\_\_\_\_\_  
EDWARD W. GUZDEK, PRESIDENT  
EMPLOYEE ORGANIZATION MEMBER

CONCUR/~~DISSENT~~



the County's proposals were properly before the Panel for consideration.

Dated: January 18, 2006



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William M. Wallens, Esq.  
Panel Member