

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD  
INTEREST ARBITRATION PANEL

In the Matter of

ONEIDA COUNTY SHERIFF'S DEPUTIES'  
POLICE BENEVOLENT ASSOCIATION,

Employee Organization,

-against-

COUNTY OF ONEIDA and DANIEL G. MIDDAGH |  
as the ONEIDA COUNTY SHERIFF,

Joint Employer.

PERB Case No. IA2007-026

OPINION AND AWARD

BEFORE: Peter A. Prosper  
Public Panel Member and Chairman

Ronald G. Dunn, Esq.  
Employee Organization Panel Member

Gregory J. Amoroso, Esq.  
Employer Panel Member

APPEARANCES:

For the Joint Employer:

John F. Corcoran, Esq.  
Hancock & Estabrook, LLP

For Oneida County Sheriff's Deputies PBA:

Michael P. Ravalli, Esq.  
Gleason, Dunn, Walsh & O'Shea

**BACKGROUND**

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board ("PERB"), to make a just and reasonable determination to resolve an "Impasse and Dispute" between the County of Oneida ("County") and Daniel G. Middaugh as the Oneida County Sheriff ("Sheriff") collectively referred to as the "Joint Employer" and the Oneida County Deputy Sheriff's Police Benevolent Association ("PBA").

The County is a municipal corporation located in the "Mohawk Valley" region in Central New York. The most recent 2006 census data indicates that the County's population is approximately 233,954 people. The County is contiguous to the Counties of Herkimer, Otsego, Madison, Oswego and Lewis.

The County has three Cities (Rome, Sherrill and Utica), twenty-six Towns and nineteen Villages within its boundaries. Some, but not all of these municipalities have police agencies that to some degree work in conjunction with the Oneida County Sheriff's Department. In addition the New York State Police provide some Police services within the County, again to some degree in conjunction with the Oneida County Sheriff's Department.

The County Sheriff's Office has approximately 420 full and part time employees assigned to the Civil, Correction and Law Enforcement Divisions. The Oneida County Deputy Sheriffs Departmental Employees, Local 1249 of AFSCME, Council 82 represents a bargaining unit for employees in the Civil and Corrections Division.

PBA filed a Petition for Interest Arbitration (Joint Exhibit 2) pursuant to Section 209.4 of the Civil Service Law.

The Joint Employer filed a Response to said Petition on March 14, 2008 (Joint Exhibit 3), and thereafter, on August 6, 2008, the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the NYS Civil Service Law, for the purpose of making a just and reasonable determination of this dispute (Joint Exhibit 4).

Hearings were conducted before the undersigned Panel on October 24, 2008 and November 4, 2008. At all hearings, both parties were represented by Counsel and other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented extensive arguments on their respective positions with testimony, oral argument and extensive written submissions in the post hearing briefs.

Prior to arbitration the Joint Employer filed a scope petition with PERB challenging certain proposals submitted by the PBA. (See Joint Exhibit 12). The PBA responded. (See Joint Exhibit 13). Ultimately the parties entered into a stipulation limiting the scope petition. See Joint Exhibit 14) PERB has not yet issued a decision on that charge with the consequence that the Panel does not currently have jurisdiction to issue an award on the PBA's proposals concerning:

Article VII, Section 7.5(d)- Mileage

Article VII, Section 7.15- FTO, ERT & ET Stipends

Article XI, Section 11.2- Retirement

Article XI, Section 11.3- Retirement

Article XIV, Section 14.1(a)(iii)- Uniform Allowance, and

Article XVII- Educational Reimbursement (See Joint Exhibit 14)

As we discuss below, the legal consequence of the pending scope petition at PERB is that absent a voluntary agreement this Panel may be forced to reconvene once PERB resolves the scope petition if one or more of the PBA proposals is found to be a subject that this Panel has jurisdiction over.

**SUMMARY OF PROPOSALS SUBMITTED**

The PBA submitted the following proposals:

1. A two (2) year contract with 6% across-the-board base salary increases for 2007 and 2008;
2. Replace the existing Longevity benefit with the following:
  - 5-10 years \$100/year
  - 11-15 years \$125/year
  - 16 + \$150/year capped at 25 years
3. Modify the step movement provision to reflect step movement each January 1 rather than the current July 1;
4. Convert the shift differential from a flat rate to a percentage rate of 5% and 10%;
5. Introduce an On Call benefit of one hour of compensatory time for each six hours of on call time;
6. Add a new retirement plan with a 20 year half pay benefit plus 1/60<sup>th</sup> for each additional year of service;
7. Increase the clothing allowance;
8. Increase the meal allowance;
9. Provide 100% of the cost of health insurance and protect against co-pay increases;

10. Increase the compensation for advanced degrees;
11. Increase the level of education cost reimbursement;

The Joint Employer submitted the following proposals for the Panel's consideration:

1. Across the Board salary increase of 2.5% (County Exhibit 1);
2. Impose new co-pays for prescription drugs and reaffirm the right to offer one base line POS Health Insurance plan (County Exhibit 2);
3. Limit the overtime meal allowance (County Exhibit 3);
4. Amend Article 8.3, "Overtime" by eliminating the Joint Employers obligation to pay overtime on a daily basis and eliminate the current requirement to include paid time off as time worked in calculating overtime (County Exhibit 4);
5. Require employees who transfer to other departments to reimburse the training costs incurred. (County Exhibit 5)

At the commencement of the arbitration hearing, the PBA modified both its salary proposal and its longevity proposal. (See PBA Exhibits 4, 5 & 6) The other proposals submitted for the Panel's consideration by either the PBA, in its Petition for Interest Arbitration, or the Joint Employer in its Response, proceeded to arbitration without modification.

The Panel has fully reviewed all data, evidence, arguments and issues submitted by both parties. After significant discussions and deliberations at the Executive Session, this Panel, consisting of the Panel Chairman, the Employee Organization Panel Member and the Employer Panel Member, reached agreement on the terms of this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and arguments, and the post hearing briefs

submitted by both parties, which are all incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award.

Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the terms and conditions of employment at issue.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service Law:

- a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interests and welfare of the public and the financial ability of the public employer to pay;
- 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. (See NYS Civil Service Law 209(4)(c)(v) as modified by 209(4)(g).

### TERM

The Panel is confronted with an unintended consequence of the statutory design. The parties are now almost two years without an agreement. Absent an agreement that allows an award that exceeds two years, the parties would be back at the negotiating table immediately

after an award. Even assuming rapid negotiations any agreement for a period beyond a two year award would have a significant retroactive component.

The parties have also engaged in extensive proceedings at PERB to determine whether six of the PBA's demands are properly before the Panel. A decision on those issues has not yet been issued with the result that by operation of statute the Panel cannot render an award on those issues until PERB has completed its review. Absent agreement of the parties resolving that proceeding, this Panel could be reconvened to determine any proposals that remain after that related PERB proceeding is finally resolved. That could further delay the parties efforts to bargain the next agreement while we continue to deliberate long after the two year agreement has expired.

Clearly the Panel has more flexibility in fashioning a just and reasonable award that meets both parties' legitimate needs in a financially responsible way if the award covers a period that exceeds two years and the proposals affected by the PERB proceeding are resolved finally without the need for further proceedings. As a practical matter some proposals, such as changes in Health Insurance co-pays cannot be imposed retroactively. Yet proposals to make modifications in Health Insurance plans are central proposals for both parties. Revisions to base salaries are more easily addressed if the Panel can phase in increases over a longer term. Similarly, the salary compression issue can be addressed over a longer term consistent with responsible financial considerations. The practical realities provide a strong incentive for both parties to agree to allow the Panel to issue an award covering a period beyond two years.

In recognition of these practical realities all parties have specifically authorized the Panel to issue an award that covers four years, i.e., January 1, 2007 through December 31, 2010. All

parties have also agreed that the PBA will withdraw those proposals now before PERB thereby removing from the Panel any need to reconvene if one or more of the proposals at issue in that related proceeding remains before the Panel at the conclusion of the PERB proceeding.

### COMPARABILITY

The Taylor Law requires an Interest Arbitration Panel to compare, the wages, hours and conditions of employment of 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" New York Civil Service law.

To aid the Panel in this pursuit, the PBA and the Joint Employer have each selected communities for the purposes of comparison. Both parties agree that the proper job titles are other law enforcement titles. However, the parties are in sharp disagreement as to the appropriate standards for comparability beyond the acknowledgment that we should focus our attention on comparisons to other law enforcement titles. These positions are well described in the Parties' briefs. But, in summary, the PBA asserts that the appropriate comparables include the large municipal police officer bargaining units within Oneida County including the County's two largest cities, the City of Utica, and the City of Rome, together with the Police Department in the largest Town in the County, the Town of New Hartford Police Department. The PBA argues that these units consist of Police Officers hired from the same local labor pool, live and work in the same area with the same cost of living and demographic comparison and which are called upon to provide police services in the same geographic area. The PBA also argues that the Police Officers in local Police agencies (excluding the Troopers) receive the same training at precisely

the same training academy from precisely the same training officers. Finally the PBA asserts that a large number of Deputy Sheriffs have left the Oneida County Sheriff Department to accept positions in these departments as lateral transfers with no need for further training or certification.

The PBA also points to the immediately contiguous County Sheriff Departments for the following Counties: Lewis, Madison, Oswego and Otsego. The PBA also points to the County Sheriff Departments for Albany, Broome, Niagara, Onondaga, and Schenectady. The PBA argues that these non-contiguous departments service counties with approximately the same size, geographic spread, demographic variety and approximately similar size and economic conditions.

Finally, the PBA includes the New York State Troopers and Supervisor Bargaining Units arguing that these groups work "hand in glove" with the Oneida County Sheriffs Department in providing police services throughout Oneida County. The PBA argues that by definition, since the New York State Police service the same population in precisely the same location, they too are a comparable police agency applying the statutory standard.

For its part, the County argues that the only appropriate comparison is other County Sheriff Departments because of the unique financial structure that a County faces, including but not limited to the growing Medicaid burden and the significant number of State mandates. The County apparently agrees with the PBA comparison to the immediately contiguous Counties plus Albany, Broome and Niagara. The County has not included Onondaga and Schenectady in its comparability analysis, arguing that the demographics of these counties are dissimilar to Oneida County and further arguing that the activities of their respective sheriffs offices are also dissimilar to Oneida County.

The County argues that the Panel should not include any city, town or village police departments as comparables, as counties face unique fiscal challenges that are not of the kind and degree faced by other municipalities in New York State. Further the County asserts that there is no real competition between it and the cities, towns and villages in regards to recruiting and retaining sworn personnel. The County argues that the New York State Police do not belong in the comparability pool, due to the vastly different nature and resources of the State of New York versus the County of Oneida.

A majority of the Panel rules that the New York State Police will not be included in the group of police agencies used for comparing wages and other terms and conditions of employment with Oneida County. The reasons are that State Police are funded by the State of New York which has substantial resources and the ability to direct monies to that group with relative ease. In addition, State Police costs are a relatively small part of the State's budget, while Police Officers costs in Oneida County's budget are substantially a greater proportion of total budget.

The Panel finds that a logical choice of comparables is other County road patrol units. It is recognized that counties, such as Oneida County face unique fiscal challenges that are not faced by villages, towns and cities in the counties, and thus pose different financial restraints. However, police departments in villages, towns and cities within Oneida County, along with the County's police officers, comprise a local labor market. Within that market there is always movement of police personnel between and among police agencies, competition which must be acknowledged. There exists the possibility of police personnel leaving one agency for another for higher wages and/or benefits if salaries and benefits of one agency get substantially out of line

with other agencies. For this reason, the Panel cannot completely ignore levels of and changes in salaries and benefits of other police agencies within the County. It is not necessary to parse out precisely which community is the most comparable for our analysis since the composite picture is sufficient for our purposes.

The record reflects that the base salary for the Oneida County Deputy Sheriff's unit should be adjusted over a period of four years in order to bring it closer into line with the base salaries of law enforcement personnel in other units. Because the Panel has been permitted by the parties to render a four year award we have greater flexibility to accomplish this goal in a way that is both financially prudent and serves the public by delivering law enforcement in a most efficient manner.

#### **ABILITY TO PAY**

The Statute also compels that we review the financial ability of the joint employer to pay a just and reasonable award.

We are fortunate in that the County has by all accounts been a responsible steward of its finances. While we do not suggest that the County has the ability to pay any award, its present finances do allow for the increases we award within the confines of its present revenues and expenses.

We note that there is substantial agreement between the financial analysis of the PBA's expert, Edward Fennell and the County Commissioner of Finance, Anthony Carvelli that the County's financial condition is sound due to the prudent financial stewardship over the last few years. Both experts are also in agreement that this is the result of a sustained period of

responsible operations by the County. The County has correctly noted that we are entering a period of uncertainty on State and National matters of finances. What we do know is that the County's finances for 2007 and 2008 are sound as is the County's current position.

### **OTHER STATUTORY FACTORS**

The statute requires that the Panel also consider the interests of the public generally. We specifically find that it is in the interests of the public that its law enforcement professionals be fairly compensated for the important work they do.

Based on the statutory criteria and balancing these factors the Panel has focused its deliberations on three issues raised by the parties: 1) a fair increase to base salary; 2) the parties' compression issue and longevity proposal; and 3) health insurance issues.

These three issues have overriding importance to the entire bargaining unit. Because the Panel believes that the limited finances should be directed at these issues rather than the other proposals, for this reason we declined to award relief on the parties' other proposals.

We address these three areas in order.

TERM

Based on the record and the Agreement of the Parties, the Panel makes the following:

AWARD

The Term of this Award shall be from January 1, 2007 through December 31, 2010

I concur (do not concur) with the above Award

Date: 1/12/09

Gregory J Amoroso  
Gregory J Amoroso, Esq.  
Employer Panel Member

I concur (do not concur) with the above Award

Date: 1/9/09

Ronald G. Dunn  
Ronald G. Dunn, Esq.  
Employee Organization Panel Member

BASE SALARY

The PBA proposed across the Board increases of six per cent (6.0%) each year using the existing salary schedule. The Joint Employer proposes across the board increases of two and one half per cent (2.5%) each year using the existing salary schedule. Both parties agree that any increase should be fully retroactive.

The comparisons of the current salary structure of the County to the salary structure of other comparable counties is set forth above. The parties' arguments on the ability to pay and other relevant factors are set forth above.

Taking into account a fair adjustment of salaries in a long term way while balancing the need to be financially prudent we award the following:

AWARD

The existing salary schedule will be increased by four (4.0%) percent on January 1, 2007, four (4.0%) percent on January 1, 2008, four (4.0%) percent on January 1, 2009 and four (4.0 %) percent on January 1, 2010. The salary schedule administration shall continue as set forth in the prior agreement. The salary increases shall be fully retroactive.

I ~~(concur)~~ (do not concur) with the above Award

Date: 1/12/09

Gregory J Amoroso  
Gregory J Amoroso, Esq.  
Employer Panel Member

I (concur) (do not concur) with the above Award

Date: 1/9/09

Ronald G. Dunn  
Ronald G. Dunn, Esq.  
Employee Organization Panel Member

16  
LONGEVITY

The PBA also proposes to replace the current longevity service bonus with a new plan based on years of service. As follows:

5-10 years \$100/year  
11-15 years \$125/year  
16 + \$150/year capped at 25 years (See PBA Exhibits 4&6)

The PBA's longevity proposal is designed to address the compression issue created by the current salary and longevity schedule. The evidence established that the parties' prior efforts to raise the starting salary have had the unintended consequence of compressing the salary of all employees hired over the last eight years. Under the current salary schedule, the lowest step level was eliminated each year. While this practice has successfully increased the entry level salary in the department, it also ensures that each new years hires will begin at the same step that prior year's hirees currently hold. (See Joint Exhibit 1 and Simmons testimony.) As a result, a deputy sheriff hired in 2001 holds the same step and is being paid the same salary as a deputy sheriff who was newly hired in 2005. (See, Testimony of Larivey, Simmons and Kane)

Testimony and exhibits established additional oddities resulting from the Department's compressed salary structure. For example, PBA President Simmons testified that in certain circumstances, individuals who are not yet even certified as police officers are being paid at the same rate as a veteran officer with four (4) years of on-the-job experience. He also testified that the compressed salary structure has even resulted in at least one situation where a Field Training Officer was earning a lower salary than the new recruit he was training. (See Simmons Testimony)

The County does not contest the compression reality, but rather points out correctly that the compression is the result of a collective bargaining history that all parties voluntarily negotiated and agreed upon. As the County points out, any effort to ameliorate the compression must be done in a fiscally prudent way consistent with the overall needs of the parties. The County correctly points out that as presently structured the PBA proposal adds the functional equivalent of one (1.0%) percent to the bargaining unit's total compensation.

The record reflects that one unintended consequence of the prior effort to increase the starting salary for new hires is to cause a compression in salaries particularly for employees with less than ten years of service. One consequence of the compression has been to minimize the relative value of continuance service. Everyone agrees that more experienced Deputy Sheriffs should be appropriately compensated for their years of experience. The PBA proposal to introduce a longevity system more closely aligned to years of service is an attempt to address that issue. However, the proposal as drafted would create an improperly high financial burden both because the PBA proposes full retroactivity and because the annual sums increase over time. The Panel finds that by modifying the proposal to flatten the per-year calculation and making the new system effective January 1, 2009 the proposal imposes a significantly lesser financial burden while still allowing for progress in creating adequate compensation for years of service. To that end the Panel awards the following.

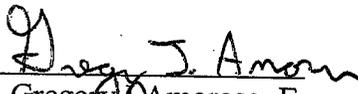
AWARD

Effective January 1, 2009 Article 7.4 shall be replaced with the following:

“Each employee in the defined negotiating unit shall receive \$100 per year for each year of service starting in year five. (IE at 4 years of service there is no longevity, at 5 years of service there is \$500 longevity.) This will be capped at 25 years of service. (IE 26 years of service and greater longevity will equal \$2,500.) The longevity will be added to base pay for all purposes and paid as part of the biweekly paycheck. In calculating years of service, the member will earn the longevity increment upon reaching their anniversary date. For example, if a member is hired January 1, 2005, the member will receive their longevity increment starting on January 1, 2010.”

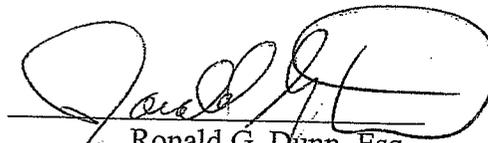
I ~~(concur)~~ (do not concur) with the above Award

Date: 1/12/09

  
Gregory J. Amoroso, Esq.  
Employer Panel Member

I (concur) ~~(do not concur)~~ with the above Award

Date: 1/9/09

  
Ronald G. Dunn, Esq.  
Employee Organization Panel Member

### HEALTH INSURANCE

Both parties introduced proposals concerning modifications in the health insurance. For its part, the PBA sought to equalize the contribution across the unit with the employer picking up 100% of the cost, sought to hold the members harmless against any increase in co-pays and deductibles and sought to enhance the opt-out payment for employees who obtain health insurance through a spouse.

For its part, the County seeks to memorialize the present practice of providing at least one Point of Service provider. Currently, that is the practice despite the absence of language to that effect. The County also seeks a new prescription drug co-pay structure for the baseline Point of Service Plan and RMSCO plan as follows: \$5 for generic drugs, \$20 for preferred brand name drugs, and \$35 for non-preferred brand name drugs.

The record is clear that the County's health insurance proposal will effect savings and create cost saving incentives.

The PBA proposals by contrast will cause an increase in cost. While we are sympathetic to the PBA's desire to insulate its members from rising health insurance costs, we find on this record that the cost savings the modest changes the County proposes serves the public interest while still affording the PBA with options for quality health insurance coverage at an affordable price.

Based on that, we make the following award on Health Insurance.

AWARD

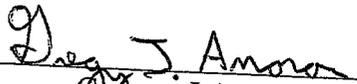
Article 15.1 shall be amended to reflect that the existing paragraph will be re-lettered 15.1(a) and a new 15.1(b) will be added as follows:

“Effective January 1, 2009 the County shall provide the following plans or their substantial equivalent:

- i) a self-insured traditional style plan administered by a third party administrator with benefits that are the substantial equivalent or better than the plan in effect on December 31, 2008 with annual cash deductibles of \$100 per person subject to a \$300 maximum per covered family; and individual maximum major medical benefit level of \$100,000 annually and \$1,000,000 lifetime; and
- ii) an HMO Point of Service Plan with benefits, deductibles and co-pays substantially equivalent to the MVP POS Plan in effect December 31, 2008; and
- iii) the prescription drug rider for both health insurance plans shall be \$5 generic, \$20 preferred brand name drugs and \$35 for non-preferred brand name drugs.

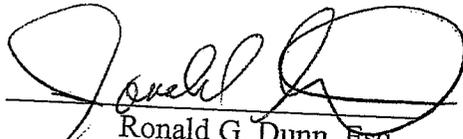
I  concur (do not ~~concur~~) with the above Award

Date: 1/12/09

  
Gregory J. Amoroso, Esq.  
Employer Panel Member

I  concur (do not ~~concur~~) with the above Award

Date: 1/9/09

  
Ronald G. Dunn, Esq.  
Employee Organization Panel Member

AWARD ON ALL OTHER PROPOSALS

The Panel has considered all other proposals made by the parties not specifically addressed above and declines to issue an award on these proposals.

I concur (do ~~not~~ concur) with the above Award

Date: 1/12/09

Gregory J Amoroso  
Gregory J Amoroso, Esq.  
Employer Panel Member

I concur (do ~~not~~ concur) with the above Award

Date: 1/9/09

Ronald G. Dunn, Esq  
Ronald G. Dunn, Esq  
Employee Organization Panel Member

Respectfully submitted,

Date: 1/13/09

Peter A. Prosper  
Peter A. Prosper  
Public Panel Member and Chair