

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
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In the Matter of the Interest Arbitration

-between-

SUFFOLK COUNTY POLICE BENEVOLENT
ASSOCIATION, INC.,

“Petitioner or PBA”

Voluntary Interest Arbitration

PERB Case No. IA2007-021;
M2007-203

-and-

COUNTY OF SUFFOLK,

“Respondent or County.”

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BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
JOHN E. FRAYLER, PETITIONER MEMBER
JEFFREY L. TEMPERA, RESPONDENT MEMBER

APPEARANCES:

FOR THE PETITIONER:

DAVIS & HERSH, LLP by DAVID A. DAVIS & LLOYD M. BERKO, ESQS.

FOR THE RESPONDENT:

LAMB & BARNOSKY, LLP. by RICHARD K. ZUCKERMAN & ALYSON MATHEWS,
ESQS.

BACKGROUND

The parties are signatories to the collective bargaining agreement between the Suffolk County Police Benevolent Association (Petitioner) and County of Suffolk (Respondent) that expired on December 31, 2007 (Join Exhibit [JX] 2). Negotiations for a successor agreement commenced on April 19, 2007. The parties exchanged proposals on May 11, 2007 (JXS4,7). The parties modified their proposals on July 3, 2007 (JXS 5,8). The final negotiating session was held on September 26, 2007.

The negotiations proved to be unsuccessful. Accordingly, a Joint Declaration of Impasse was filed with New York State Public Employment Relations Board (PERB) on October 31, 2007 (JX9).

The dispute was submitted to mediation. The parties selected Elliott D. Shriftman, Esq., as the mediator. A mediation session was held on December 7, 2007. Despite the mediator's best efforts, the mediation failed to resolve the matter (JX12).

Consequently, and pursuant to §209.4 of the New York State Civil Service Law (*The Taylor Law*), Interest Arbitration procedures were invoked. In that connection, on December 14, 2007 the PBA filed a Petition for Compulsory Interest Arbitration with PERB (JX13). The County filed a timely response on January 2, 2008 (JX14).

On May 20, 2008, PERB designated me to serve as the neutral Chair of the Panel. The PBA selected John E. Frayler to serve as the Petitioner's Panelist and the County chose Jeffrey L. Tempera to serve as the Respondent's Panelist (JX15). The arbitration panel was established to hear and finally decide all relevant issues

Hearings on this matter were held on September 29, October 21, October 30 and November 20, 2008. The parties were represented by counsel and had a full and fair opportunity to present testimonial and documentary evidence in support of their respective positions.

A stenographic record was taken at each hearing. The parties submitted fifteen (15) joint exhibits and the parties moved in excess of five hundred (500) exhibits into evidence.

The record was left open on November 20, 2008 for the County to submit rebuttal evidence and an affidavit from Chief Edward Webber. The affidavit was to support the County's proposals. Counsel to the County, Richard K. Zuckerman, Esq., submitted said affidavit along

with an affirmation in support of County proposals and in opposition to PBA proposals. The record was closed upon receipt of these documents.

The parties agreed to submit post-hearing briefs on March 6, 2009. I received the briefs in a timely manner.

During the spring of 2009, various County labor organizations, including the AME, SCPOA, SOA, SDA, DIPBA, DSPBA, and DSPBA Park Police Unit, engaged in negotiations with the County relative to concessions by the unions in order to prevent layoffs, furloughs, demotions, abolition of positions, wage reductions or further lag payrolls. These discussions led to the execution of Memoranda of Agreement (CXS 444-450).

In like manner, the PBA negotiated with the County over the same issues. A tentative agreement was arrived at on October 28, 2009 (JX16).

The MOA was multi-faceted. I need not outline all of the terms. However, it included an agreement by the PBA to defer \$12 million due to members as a result of this Award. This money was to come from retroactive wage increases, longevity increases or any other retroactive monies due to employees. The County, for its part, agreed to refrain from unilateral layoffs, furloughs, wage reductions, abolition of positions or lag payrolls during 2009 and 2010.

The MOA directly affected this Interest Arbitration Panel. The Panel's jurisdiction had been previously limited to an Award covering the period January 1, 2008-December 31, 2009. The MOA extended the Panel's jurisdiction until December 31, 2010. In short, the MOA authorized the Panel to issue a three year Award.

The PBA Board of Governors agreed to the MOA and, on December 1, 2009, the County Legislature, in Resolution No. 1056-2009, resolved to extend the jurisdiction of the instant

Panel such that it was authorized to issue an Award covering the period January 1, 2008-December 31, 2010 (JX17).

Following the action of the County Legislature, the parties executed an MOA that specifically authorized this Panel to issue an Award covering the three year period of January 1, 2008-December 31, 2010. The MOA was dated December 15, 2009 (JX18).

Given the passage of time since the record had been previously established and consistent with the MOA extending the Panel's jurisdiction to include a third year, I conducted an additional hearing on December 15, 2009. The parties had the opportunity to add to the record previously developed.

The Panel met in executive session on March 5, 2010.

THE UNRESOLVED PROPOSALS

Prior to the arbitration hearings, the PBA and the County each agreed to reduce the number of their proposals to sixteen. The following is a listing of each party's unresolved proposals:

PBA

1. **Wages:** Wages shall be increased by six percent (6%) in each year of the agreement.
2. **Night Differential:** (a) Members assigned to the two (2) tour schedule shall receive a night differential of nine percent (9%) of a top step police officer.
(b) Members assigned to the ten hour extraordinary night chart schedule shall receive a night differential of fifteen percent (15%) of a top step police officer.
(c) Members assigned to the steady night tour shall receive a night differential of eleven percent (11%) of a top step police officer.
3. **Longevity:** Members shall receive a longevity payment of one percent (1%) of base pay after completion of one year of service; and an additional one half percent (0.5%) of base pay, cumulative, for each additional completed year of service. (Example: 4% of base pay after completion of seven years of service).

4. Personal Leave: (a) Members working the steady ten hour night schedule shall receive five personal leave days per year.

(b) Members with twenty years of service in the "10" command shall receive two additional personal leave days per year.

5. Canine: (a) Canine officers shall be compensated for work done off duty for the care and maintenance of the dog at an amount equal to seven hours of overtime per week at the then current rate of pay.

(b) Canine officers shall receive \$1500 for the building of a kennel.

6. Family Sick: A member may use up to ten family sick days per year.

7. Termination pay: (a) Upon separation from service a member or his/her legal representative shall be entitled to cash payment for accumulated terminal leave computed on an entitlement basis of 40 hours pay for each year of completed service. Entitlement to termination pay shall be pro-rated on a portion of a completed year worked. Years of completed service shall only include time served as a member of the Suffolk County Police Department and while on military leave of absence pursuant to §24 of the New York State Military Law.

(b) At the option of the member, s/he may be allowed a five year to ten year payout for all monies due him/her upon retirement. A Labor Management Committee shall investigate and finalize the placing of said monies in an interest-bearing account and institute such an account, if permissible by law.

8. Assignment Pay: (a) Increase assignment pay to 7%.

(b) Assignment pay shall also be paid to all members assigned as Breath Test Technical Supervisors or to the Motor Carrier Safety Section.

9. Civilianization: Absent agreement with the PBA, the County shall not civilianize any work currently performed by PBA members.

10. Vacation: (a) Vacation days made available pursuant to SCPD guidelines as of January 1st of each year, and not utilized in one week vacation blocks, as per normal vacation selections, shall remain available for use, and shall not be denied for individual vacation days or weekly blocks throughout the calendar year.

(b) Delete §23:c of the CBA regarding joining squads with fewer than three members for purposes of vacation selection.

11. Negotiations: (a) Trustees shall be excused from their duties without loss of pay or benefits, including cleaning allowance and clothing allowance, to administer this agreement and to execute the duties of their offices.

(b) Modify weekly stipends as follows:

President	11 hours
1 st Vice President	7 hours
2 nd Vice President	7 hours
Treasurer	7 hours

Financial Secretary 7 hours
Sgt. At Arms 1.5 hours
Trustees 1.5 hours

(c) Members of the PBA Board of governors who attend scheduled Board meetings on their regular days off shall receive eight hours of compensatory time.

(d) Clarify that when members are excused for PBA business they are excused from all duties and responsibilities to the County.

(e) The PBA administrative leave bank shall be increased to 1000 days.

(f) To enhance the ability of the PBA to communicate with members, the PBA shall be provided with an operating electronic bulletin board for its exclusive use in each precinct and command.

12. Death Leave: Members shall be granted three working days or four calendar days leave of absence with full pay, whichever is greater, in the case of death of his/her son-in-law, daughter-in-law, half-brother and half-sister.

13. Education Stipend: The County shall pay the following education stipends:

\$2500 Members holding an Associates Degree
\$5000 Members holding a Bachelors Degree
\$7500 Members holding a Masters, Doctorate or Law Degree

14. Schedule: Upon graduation from the Police Academy, each graduate shall be guaranteed a work schedule of 242-244 days per year until his/her second anniversary.

15. Motorcycles: Members assigned to take home motorcycles shall be compensated for work done off-duty for the care and maintenance of the motorcycle at an amount equal to three hours of overtime per week at the then current rate of pay.

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

COUNTY

1. **Section 4-Wages:** Amend to create a new salary chart for all officers hired on or after January 1, 2008 with a starting salary of \$35,000

2. **Section 5- Hourly and Daily Rate of Pay:** Amend to calculate holiday pay and overtime based on a 261 day duty chart.

3. **Section 11- Night Differential:** Night differential will be calculated on the employee's base salary.

4. **Section 19- Work Schedules and Conditions:** A 10 hour tour may be initiated by the Department within any command and does not have to be used in conjunction with a rotating two tour schedule.

5. **Section 19- Work Schedules and Conditions:** Eliminate the requirement for the rotating two tour and steady 10 hour night tour as the core schedule and replace with three steady 8 hour tours.

6. **Section 19- Work Schedules and Conditions:** (a) Amend to provide for a work schedule of 261 days for all employees hired on or after January 1, 2008.

(b) Amend to provide for a work schedule of 238 days for all employees hired prior to January 1, 2008.

7. **Section 19- Work Schedules and Conditions:** Delete restrictions on taking Leave days.

8. **Section 20-Overtime, Section 21- Recall, Travel time and Standby, etc.:** Modify and/or delete each and every relevant contract provision, policy and practice so that overtime and compensatory time entitlements are provided solely in accordance with FLSA mandates.

9. **Section 20(f)(1)- Overtime:** Amend to allow for tour changes without penalty for staffing needs including special events.

10. **Section 22- Sick Leave:** (a) Amend paragraph (a) to provide for 12 sick days per year and this time shall accrue at the rate of one day per completed month.

(b) Amend paragraph (a) to provide for unlimited sick time for any employee hired on or after January 1, 2008 with the leave usage and monitoring procedures to be based on NYC Police Department procedures. Delete the requirement for payment of unused sick time upon retirement for those employees.

(c) Delete paragraph (d) and provide that all employees will remain at their residence or place of confinement when they use sick accruals.

(d) Delete paragraph (f) and amend as follows:

I. An employee shall only accrue vacation time in accordance with Section 23(h), regardless of his or her sick, injury or on-duty injury status; excess vacation time shall be lost.

ii. Night differential payment shall cease after the third consecutive month of absence due to an on-duty injury leave regardless of his/her sick, injury or on-duty injury status. An employee, upon return to work, shall only be paid night differential in accordance with the employee's currently assigned work schedule and Section 11.

iii. Personal leave days, sick leave and vacation leave entitlements shall cease to accrue after 12 consecutive months of on-duty injury leave of absence, regardless of his/her sick, injury or on-duty injury status. Upon return to work after an injury leave of

absence of one year or more, an employee shall be credited with one personal leave day and 2½ sick days for every two months actually worked in the current calendar year up to the maximum.

iv. Clothing, cleaning and maintenance allowance shall cease after 12 consecutive months of on-duty injury leave of absence, regardless of his/her sick, injury or on-duty injury status. Upon return to work after an injury leave of absence of one year or more, an employee shall be paid the foregoing allowance in accordance with Section 12.

(e) Delete paragraph (h) and the requirement to pay for unused sick leave on retirement.

(f) Implement the attached sick leave management program.

11. Section 23-Vacations: (a) Amend paragraph (h) to provide for a maximum accrual of 30 days and a maximum payout on termination of 60 days.

(b) Delete paragraph (l).

(c) Employees absent due to on-duty injury regardless of his/her sick, injury or on-duty injury status, must schedule and take their vacation time regardless of their leave status.

12. Section 25- Personal Leave Days: (a) Amend paragraph (a) to provide for three personal leave days.

(b) Amend paragraph (b) to provide that personal leave days will be pro-rated for employees in the last year of employment, as well as for any time in excess of a pay period that an employee is off the payroll.

(c) Delete paragraph (e).

(d) Amend paragraph (f) to provide that personal leave days will only be granted upon mutual consent.

13. Section 26-Maternity Leave and Leave of Absence: Amend to conform with legal requirements.

14. Section 29- Disciplinary Procedures: (a) Amend paragraph (f)(4) to provide for a separate procedure for disciplinary arbitrations to ensure that matters are addressed and resolved in a timely fashion.

(b) Delete the second sentence from paragraph (f)(1).

15. Section 31- Working Conditions: (a) Delete that part of paragraph . . . requiring destruction of Department records (illegal).

(b) Delete that part of paragraph (e) requiring destruction of Department records (illegal).

16. Section 34-Negotiations: (a) Delete requirement for night differential pay for Board of Governors.

(b) Delete requirement for pay of the highest supplementary wage to members of the Executive Board.

Delete payment of a stipend to the President, 1st Vice President, 2nd Vice President, Treasurer and Financial Secretary.

(d) Amend paragraph c. to provide for a bank of 400 days of administrative leave.

(e) Add: The Association shall reimburse the County for all taxpayer funded Association activities, including released time.

POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

The PBA indicates that its proposals are just and reasonable. It asserts that they should be granted in their entirety. It adds that the County's proposals are neither just nor reasonable and should be denied in their entirety.

New York State Civil Service Law §209(4)(C)(v) establishes the criteria to be considered in compulsory interest arbitration proceedings. It posits that a review of these standards will lead the panel to conclude that the PBA's proposals should be granted in their entirety. It adds that the County's proposals are unreasonable and should therefore be denied.

The PBA cites relevant case law in support of its position. It emphasizes that the Court of Appeals, in *City of Buffalo v. Rinaldo*, 41 N.Y.2d 764, 396 N.Y.S.2d 152 (1977), stated that all of the statutory criteria must be considered and that *the ability to pay* is only one of the criteria and is not dispositive. It suggests that the opinions of the Court in terms of the County's denial of all of the PBA proposals are significant in this case

It observes that the first criterion to be considered is a comparison of the PBA's wages, hours and conditions of employment with those of other employees doing the same work as well as employees generally in public and private employment in comparable communities.

It insists that there are no employees outside of law enforcement whose work compares with that of a police officer. However, in its view, the wages, hours and conditions of

employment of police officers employed in towns and villages in Nassau and Suffolk County are comparable. It adds that Nassau County *per se* is also comparable.

It maintains that the wages, hours and conditions of employment of Nassau County police officers are the most comparable. In this connection, it cites interest arbitration awards written by Arbitrators Scheinman, Sands and Dennis.

It argues that there are comparisons to be found in the town and villages of Nassau and Suffolk County. It states that, within this group, the greatest weight should be given to the police officers employed in the western villages of Suffolk County. However, it urges the panel to use the wages, hours and conditions of employment of the police employed by Nassau County as the primary comparable community.

It notes that the County relies on the wages, hours and conditions of employment of East End towns and villages, as well as the police employed by New York City and Westchester County for purposes of comparability in this matter. It observes that East End towns have been held to be comparable with each other and not with Suffolk County. It stresses that interest arbitration panels have never recognized New York City and Westchester County as being comparable to Suffolk County for the instant purpose.

The PBA states that the interests and welfare of the public and the financial ability to pay is a second criterion to be considered. It opines that the interest and welfare of the public are impacted by this proceeding in two distinct ways.

It stresses that a fair wage and benefit package fosters high morale of PBA members. It indicates that this results in the maintenance of high quality service to the residents of Suffolk County.

It emphasizes that such a package also permits the County to continue to attract the cream of the crop in law enforcement. It indicates that it is not surprising that the Suffolk County Police Department (SCPD) website uses the wage and benefit package as a tool to recruit new police officers.

As to the wage and benefits package, the PBA argues that the panel must first determine if the County has the ability to pay for the PBA's proposed just and reasonable wage and benefits increases. It recalls that Kevin Decker, the PBA's financial expert, reviewed the County's finances and concluded that the County has the ability to pay for the PBA's proposed increases.

It adds that Mr. Decker updated his findings in December 2009. It states that he continued to assert that the County has the ability to pay for all of the PBA proposals. It urges that his opinion was buttressed by the PBA's agreement to defer \$12 million due to its members as a result of the Interest Arbitration proceeding.

It points out that Mr. Decker indicated that the cost impact of certain PBA proposals cannot be determined with any degree of certainty because the cost of these proposals is dependent on actions by the County. It suggests that it is conceivable that there could be little or no cost to these proposals.

It concludes, therefore, that the County's assertions of its *inability to pay* reflects either an unwillingness to pay, an unwillingness to tap available revenue sources or a decision to focus on other areas.

It argues that the County did not refute Mr. Decker's conclusions, but rather focused on how the current economic downturn would affect future sources of income and spending

priorities. It maintains that the County did not claim or demonstrate an inability to pay for the PBA's proposals.

The PBA notes that the County's sound fiscal health in recent years positions it to weather economic downturns better than other counties in the state. It argues that County Executive Levy's 2009 budget and his 2010 proposed budget indicate that, despite the economic downturn, the County is poised for economic expansion and corporate investment.

It suggests that Fred Pollert, the Deputy County Executive for Finance & Management, does not share Mr. Levy's confidence. It urges that he painted a picture of doom and gloom. It insists that, while Mr. Decker based his arguments on actual numbers, Mr. Pollert relied on estimates and projections of the possible effects that the current economic downturn will have on the County.

The PBA points out that the County's budget director, Connie Corso, testified that the County has a variety of items that would significantly close the projected revenue gap. It asserts that Ms. Corso claimed that the securitization of tobacco revenue, certain cost saving measures and additional revenue from particular sources will bridge the County through the current economic downturn.

It adds that Mr. Pollert agreed that the County and the unions have saved about \$120 million since 2004. It notes that they have planned to save an additional \$15 million in health related costs in 2009.

The PBA rejects the County's argument that the panel should consider locally enacted laws when assessing the County's *ability to pay*. It insists that the state legislature and the Court of Appeals have delegated authority to the panel to determine the County's *ability to pay* and to assign weight to each statutory criterion.

It avers that the testimony of Mr. Pollert and Ms. Corso indicates that the County has the resources to meet the economic downturn. It concludes that the panel should find that the County has the *ability to pay* for all of the PBA proposals.

The PBA states that the third criterion to be considered is a comparison of the peculiarities of law enforcement with other trades and professions. It suggests that these comparisons concern hazards of employment, educational qualifications, mental qualifications and job training and skills.

It maintains that police work is unique. It posits that it is not feasible to compare the peculiarities of other employment with police work. It points out that the combination of factors to be considered with respect to this criterion suggests that no other type of employment is comparable to law enforcement.

The PBA observes that the final criterion to be considered relates to the terms of prior collective bargaining agreements negotiated by the parties. It indicates that the PBA has put into evidence all of the prior collective bargaining agreements of the parties.

It asserts that it was prepared to enter into a reasonable agreement with the County. It recalls that its members have always been well compensated for the outstanding service they render. It adds that the PBA has always been on the cutting edge of developments in labor. It points to its being the first police organization in the country to accept the testing of its members for drugs, alcohol and steroids.

It argues that, in recent years, the County's responses have compelled the PBA to resort to interest arbitration. It claims that the PBA has had to rely on the panel for a just and reasonable determination of the PBA's terms and conditions of employment for the period January 1, 2008-December 31, 2010.

The PBA argues that its proposals are just and reasonable and should be granted in their entirety. It asserts its position as follows:

1. Wages

It contends that wages should be increased by 6% in each of the three years of the agreement. It opines that this is a fair wage increase.

It suggests that the record established the County's *ability to pay* such a wage increase. It points to the testimony of Kevin Decker in this connection.

It adds that Fred Pollert did not dispute the County's *ability to pay*. It recalls that he spoke of the County's unwillingness to pay for wage increases and of decreases in tax revenues. It notes that the County Executive has chosen not to raise taxes.

It stresses that the County's bonds are rated AA and it does not want the County to raise taxes. However, in its view, the County's sound fiscal planning suggests that the County has the ability and the resources to pay for the wage increase without raising taxes.

The PBA stresses that a review of wage increases in comparable jurisdictions support the reasonableness of its proposal. It points out that the average wage increase in towns and villages in western Suffolk County have been 3.83%- 3.99% in 2007, 2008, 2009 and 2010. It notes that the PBA received an increase of 3.75% in 2007, the last year of the expired contract.

It indicates that a similar analysis shows that Nassau County towns and villages received increases of 4.15%-4.23% over the same period. It adds, as noted, that the Suffolk County PBA got a 3.75% increase in 2007.

The PBA states that a comparison of average top step wages of police officers in towns and villages in western Suffolk and Nassau reveals that the top salary for Suffolk County police

ranks in the middle of western Suffolk jurisdictions and toward the bottom of Nassau County towns and villages.

It recalls the several arbitrators have held that Nassau County is the most comparable jurisdiction to Suffolk County. It maintains that the Nassau County interest arbitration award covers the years 2007-12 and that the top step police officers in Nassau were awarded 4% increases. It observes that the Nassau panel was authorized to craft a six year award (that was recently extended by three additional years). It recalls that the panel was able to defer much of the cost of the award to later years. It indicates that the PBA made concessions to the County and received numerous enhancements in exchange.

It states that the weighted percentage increase for 2008 was 3.14% and was 2.96% for 2009. It points out that lagged wage increases, deferred wage payments and averaged wage increases for officers at top steps and those within the steps factored into the percent increases.

It emphasizes that, since Nassau County is the most comparable jurisdiction, it is important to note the historical comparison with the top salary in these counties. It suggests that, since 1992, the top salary in Suffolk has been higher than that of Nassau. It acknowledges that the difference has been as little as \$18 (in 1995) and as much as \$4,869 (in 2003). It stresses that, in 2007, the Suffolk salary was \$1,829 higher.

It asserts that the top salary in Nassau will be \$108,132 on 2010. It stresses that this historical comparison is a factor that must be considered by the panel.

The PBA indicates that it is necessary to consider the 2001-06 Nassau County interest arbitration award at this time. It stresses that the panel awarded Nassau police officers a 3.9% increase in 2004. It adds that the officers were required to work an extra 48 hours per year (four twelve hour days). It indicates that these days were called *quarter days* because the officers were

required to work one additional day per quarter at straight time. It calculates that the value of the 48 hours of work actually increased that value of the increase in base pay from 3.9% to 6.5%.

It points out that the 48 hours were reduced to 36 hours in 2007, to 24 hours in 2008 and to 12 hours in 2009. It insists that the officers did not have to take a corresponding reduction in pay of 2.58% in exchange for working fewer hours. It concludes that, in essence, the Nassau PBA received a 2.58% increase during the course of the 2007-12 award. It stresses that average wage increases awarded in Nassau County in 2008-09 were 4.34%.

With respect to pay comparisons, it opines the County's reliance on police departments in eastern Suffolk, New York City and Westchester is misplaced. It suggests that the average wage increases in eastern Suffolk in 2008 was 4.12% and 4.23% in 2009.

The Suffolk PBA would gladly accept those increases but requests that the panel not consider eastern Suffolk jurisdictions and that it rely on Nassau County as the most comparable jurisdiction. It also urges that New York City and Westchester have never been considered comparable to Suffolk and that the panel should continue to view them that way.

In view of all of the evidence, it agrees that the PBA wage proposal is just and reasonable. It stresses that it should be granted in its entirety.

2. Night differential

The PBA defines the night differential as a percentage of base wages for a top step police officer. It indicates that members currently working a two tour schedule (one week of 7:00 AM-3:00 PM tours and one week of 3:00 PM-11:00 PM tours) receive a night differential of 7%. It notes that officers assigned at this time to the ten hour extraordinary night chart (four consecutive 9:00 PM-7:00 AM tours) receive a 12% night differential and that officers now

assigned to a steady night tour (either 6:00 PM-2:00 AM or 8:00 PM- 4:00 AM) earn a 10% night differential.

It argues that an increase in night differential rates is to compensate members who work rotating and night tours. It advises that working nights has a negative impact on health and family life.

The PBA proposes an increase in the night differential for officers working a two tour schedule from 7.5% to 9%. It stresses that Suffolk County officers on a two tour schedule earn a night differential that is less than their counterparts in Amityville and Nassau County jurisdictions.

As for the officers working the ten hour extraordinary night tour, they are most comparable to officers in other jurisdictions who work a three tour schedule or a twelve hour night schedule. It recognizes that its members who work this schedule are equally compensated as compared to Nassau and other Suffolk jurisdictions. It also urges an increase to 15% in order for it to maintain its current position relative to the other jurisdictions.

The PBA states that it is unaware of other jurisdictions in which police officers work a steady eight hour night tour. It points out that the work hours of this tour are so abnormal that an increase in the night differential is appropriate. It observes that, just as all of the proposed night differential increases are just and reasonable, so too is an increase of 11% in the night differential for those working a steady night tour.

3. Longevity:

The PBA states that currently the longevity payments are based on a flat dollar amount, \$300, for each year of service. It indicates that these payments begin in the sixth year of service.

It proposes a change in the structure of the system used to calculate longevity payments. It urges that members receive longevity payments of with a percentage formula based on 1% of base pay after one year of service and 0.5% for each year thereafter.

It points out that the PBA members have not received an increase in longevity payments since 2001. It notes that it has reduced its standing in comparison with other bargaining units that have made significant strides in this area.

It maintains that, as compared to other Suffolk County jurisdictions, its members are among the most poorly compensated in terms of longevity payments after six and ten years and are in the middle of that grouping after fifteen and twenty years.

It indicates that officers in Suffolk receive a longevity payment of \$1,800 in the sixth year. It suggests that, in 2007, it was ranked second from the bottom among Suffolk County police departments. It urges that the average longevity payment in 2007 after six years of service was \$1,952.

It observes that averages in 2008, 2009 and 2010 were or are \$2,045, \$1,935 and \$2,290 respectively. It emphasizes that the data after 10 and 15 years of service for the same years shows a pattern of Suffolk County longevity payments being depressed as compared to other jurisdictions in the County.

It adds that Nassau County officers' longevity payments in 2007 exceeded those in Suffolk by at least \$250 in the tenth year. It avers that, until 2004, the longevity increases per year of service in Suffolk have regularly been greater than that of Nassau. It suggests that, for the first time, as of 2007, the longevity payments per year in Nassau County were higher than that in Suffolk.

The PBA argues that it is overdue for an increase in longevity. It emphasizes that, even if the panel does not award the proposed new system, it should award a just and reasonable increase in this area.

4. Personal Leave:

The PBA seeks parity relative to Personal Leave between officers working steady eight hour day tours and those working steady ten hour night tours. It notes that officers working the steady day tour get five personal leave days, while those working the ten hour night tour get only four such days. It contends that the current contract provision is inequitable for two reasons.

It points out that both of the tours span five days per week. Thus, in its view, the police officer working a steady ten hour night tour should not be treated in a manner unlike a counterpart working steady day tours.

The PBA posits that the Personal Leave benefit should be granted based on occurrences rather than on the current hourly basis. It insists the officers on the ten hour night tour should have the same opportunities as those working steady days to attend family functions and to take care of personal business.

It proposes that members with a minimum of 20 years in the *10* command receive two additional Personal Leave days per year. It suggests that this proposal is designed to reward officers with at least 20 years of service. It points out that these officers assume additional responsibilities and should be compensated for it through the receipt of two additional Personal Leave days. It adds that the cost of this proposal is minimal because only 97 PBA members are affected.

5. Canine:

The PBA posits that canine officers are compensated for off duty and care and maintenance of their police dog and that the compensation should increase to seven hours per week at the overtime rate. It adds that it should be increased by the percentage of general wage increases thereafter. It states that these officers are currently compensated at a rate of \$6,743 per annum, a rate that is not tied wage increases. It observes that this rate has not increased in six years.

It stresses that canine officers invest a significant amount of time and resources in the care and maintenance of the dogs. In fact, states the PBA, these officers spend an average of 14 hours per week in the off-duty care of the dogs. It notes that this care is needed for the dogs to remain healthy and able to perform their duties.

It observes that Nassau County PBA members currently receive \$5,521 more than do Suffolk County officers for the off-duty care and maintenance of the dogs. It points out that, since 1996, the officers in Nassau have received about \$3,000 more than their Suffolk counterparts for this function. It argues that this disparity will increase without a substantial increase in this area.

It adds that Suffolk County SOA members assigned a police dog are paid \$1,200 more than the PBA members for the performance of these duties. It concludes that, in addition to Nassau County, this disparity exists within the Suffolk County police pattern.

It stresses that Nassau, the Village of Southampton and Southold index canine pay to wages. It contends that its proposal would bring about this result in Suffolk County.

In the event the panel does not grant the canine officers seven hours of overtime at the current overtime rate, the PBA requests the panel to increase the compensation such that it is comparable to that of the Nassau PBA and to index future increases to wages.

The PBA indicates that canine officers must build and maintain a kennel with defined specifications for their police dogs. It urges that the officers are currently given a stipend of \$250 and it has not been increased in 30 years.

It posits that the cost of building a kennel now exceeds \$2,000 and insists that its proposal of a \$1,500 stipend is reasonable. It notes that this is a one-time cost incurred only when a member is first assigned to the canine unit.

6. Family Sick:

The PBA indicates that officers can currently use five sick leave days per year for the care of spouses or immediate family members in the household who cannot care for themselves. It proposes that the number of Family Sick days be increased to ten.

It stresses that these days are not in addition to individual sick days accrued by members. It adds that officers with ill family members who cannot take time off may be distracted while working.

It emphasizes that this is not a benefit that is abused. It recalls that, if the entire membership is considered, in 2006 and 2007 the average number of Family Sick days taken was 1.48 and 1.69 respectively. It notes, however, that the average number of Family Sick days actually taken by officers needing them was a bit more than three, with some of them taking five such days and needing more.

In terms of comparability, the PBA cites two Suffolk County villages and one Nassau County village that provide more Family Sick days than does Suffolk County. It concludes that this proposal should be granted.

7. Termination Pay:

The PBA states that its members do not receive the termination pay described in part (a) of this proposal. It maintains that termination pay is commonplace among Nassau County bargaining units.

It indicates that calculation of termination pay in Nassau County bargaining units is calculated based on five days per year of service. It suggests that its proposal is consistent with the majority of Nassau County bargaining units.

It observes that part (b) of this proposal is a no cost item for the County. It points out that the Suffolk SOA and the Northport PBA receive this benefit. It adds that it is commonplace in Nassau County.

8. Assignment Pay:

The PBA asserts that assignment pay is given to members assigned to the Emergency Service Unit, Aviation Unit, Marine Bureau Dive Team, Firearms Training Unit and Crime Scene Unit. It suggests that these Units currently receive 4.5% in assignment pay. It proposes that this amount be increased to 7%.

It indicates that the SDA, SOA and DIPBA also get 4.5% in assignment pay. It stresses that the SDA and SOA have *special assignment pay* for people in certain specialized units. It notes that these employees get 7% in assignment pay. Finally, it recalls that Nassau County pays members of certain specialized units 5% of base pay.

It argues that members of the units receiving assignment pay undergo specialized training, acquire special skills and face hazards not faced by other officers. It asserts, therefore, that these officers receive additional compensation. It insists that these officers deserve an increase because of their training and skills and due to the increased risks they face daily.

The PBA avers that the units receiving assignment pay should be increased to include the Breath Test Technical Supervisors and to the Motor Carrier Safety Section. It posits that the members of these units reflect the kind of training and skills held by the members of units who receive assignment pay and also face greater risks than do other police officers. It proposes that these members should receive assignment pay.

9. Civilianization:

The PBA proposes a new contract provision that precludes the County from civilianizing unit positions without the consent of the PBA. It observes that this proposal has broader implications than merely preserving unit positions. It notes that there were safety issues when police officers working at the precinct desk were replaced by civilians.

It states that the Nassau County PBA has this protection in its contract and, as of 2007, Nassau County has the right to civilianize 30.6 positions. It argues that, if granted, this proposal will save the parties time and money by avoiding further litigation.

10. Vacation:

According to the PBA, vacation selections are made at the end of the year for the following year. It indicates that, after vacation selections are made in accord with Department policy, there remain open vacation slots left in blocks authorized by the Department.

It states that this proposal is designed to keep the open slots available throughout the year to be utilized by officers who may need additional vacation time or to cancel pre-picked vacation days and reschedule them.

It indicates that the PBA proposal has implications for single vacation days. It maintains that single vacation days are subject to the approval of Commanding Officers.

The PBA proposal, if granted, would allow single days to be granted without prior approval since it might have been available as a pre-picked vacation slot.

It rejects the Department's premise that awarding this proposal will hinder the ability of Commanding Officers to plan staffing levels in advance. It asserts that the Commanding Officer would still know in advance which days are blocked for vacations and how many slots are open daily.

The PBA contends that §23(c) of the CBA is obsolete. It insists that, after the tour system was changed, there were no squads with fewer than three members. Therefore, claims the PBA, this provision is no longer relevant and should be deleted from the contract.

11. Negotiations:

The PBA notes that its Board of Governors consists of 17 members, five of whom (currently the President, 1st Vice President, 2nd Vice President, Treasurer, Financial Secretary) are fully released from police duties. It observes that there are nine trustees on this Board. It indicates that there is one trustee per precinct and two assigned to Headquarters to represent members serving in certain units.

It proposes to have each of these trustees released full-time to work on PBA business. It stresses that the trustees currently work full-time as police officers and do their PBA work either on their own time or from a limited pool of released time.

It emphasizes that its number of full-time release personnel per bargaining unit member pales in comparison to the other County police agencies. It suggests that part (a) of this proposal will reduce the disparity among the PBA and the SDA, SOA and the DIPBA.

It states the part (b) of this proposal concerns the weekly wage supplement currently received by the President, the 1st and 2nd Vice Presidents, the Treasurer and the Financial Secretary. It maintains that the increase in the wage supplement proposed will compensate the recipients for the work done beyond the regular eight hour day. It points out that the proposal, as it relates to the above referenced officials, is consistent with what is received by the same officials in the Nassau County PBA.

It states that, should the panel not grant part (a) of this proposal, the awarding of the supplement to the trustees, the Sgts. At Arms and the Recording Secretary will compensate them for their off-duty work.

As to part (c) of Proposal 11, the PBA stresses that trustees who attend Board of Governors meetings on regular days off are not compensated. It proposes that they receive eight hours of compensatory time on those occasions. It asserts that this would be a new benefit for the PBA, but is one that is already in the CBAs of the SDA and SOA.

It proposes a clarification of the contract such that, when members are excused for PBA business, they are excused from all responsibilities to the County. It states that the genesis of this proposal stems from an incident where an officer of the PBA testified before the Legislature

and was ordered to appear before *internal affairs* concerning said testimony. It recalls that it filed a grievance about this matter and the County granted the grievance.

It stresses that part (d) of this proposal will avoid the need to file grievances in order to enforce this section of the contract. In its view, it will avoid further abuses.

The PBA observes that part (e) of this proposal will expand the administrative leave bank from 800 days to 1000 days. It insists that this increase is necessary because the need to process grievances and PERB charges has increased.

It adds that on a proportionate basis, the PBA lags behind the other County police units. It seeks to remedy this disparity.

It maintains that the County cites the 1992-95 Scheinman award as capping the PBA's leave time at 800 days. It recalls that the panel in that award found that the PBA was using more than 1100 administrative leave days. It urges that the instant proposal is for significantly fewer administrative leaves days than granted in the Scheinman award.

It insists that it has not used all of the current 800 days. Thus, in its view, it has not abused this provision. However, states the PBA, the additional days will be needed if the County continues to be unreasonable.

The final aspect of this proposal, part (f), is new to the PBA, despite the fact that the concept is not new. It points out that the Nassau PBA has had this benefit for years. It indicates that an electronic bulletin board would be an important communications device to be used among members. It opines that this is a no cost item that is beneficial to all PBA members.

12. Death Leave:

The PBA states that the current Death Leave contract provision defines *immediate family* as wife/husband, child, father, mother, brother, sister, parent-in-law, step-parent, grandparent, grandparent-in-law and grandchild. It adds that members are currently entitled to a one day leave of absence in the event of the death of a son-in-law, daughter-in-law, brother-in-law, sister-in-law, foster parent, foster child, nieces, nephews, uncles, aunts, half-brother and half-sister. It proposes that the term *immediate family* be expanded to include son-on-law, daughter-on-law, half-brother and half-sister.

It opines that one day is an insufficient leave when there is a death of a son or daughter-in-law or half-brother or sister. It stresses that with the increased numbers of divorces and remarriages half-brothers and sisters need to be considered *immediate family*.

It observes that the SOA and DIPBA enjoy this benefit either in whole or in part. It adds that six Nassau County towns or villages have a similar benefit with respect to leave in the event of a death of a son or daughter-in-law.

13. Education Stipend:

This proposal, if granted, would provide PBA members with a new benefit. It maintains that better educated officers make for better officers. It concludes, therefore, that this stipend would provide an incentive for current members to achieve a higher level of education as well as future officers who apply for the job.

The PBA would like to see the minimum education requirements for the position raised. It notes, however, that this is not a proposal at this time.

14. Schedule:

The PBA notes that academy graduates currently work 261 days in their first year (which includes six months in the academy), 249 days in their second year and 232-234 days thereafter. It urges that this proposal has no effect on the training period in the academy.

It indicates that most members work 242-244 days, with ten chart days when they are not required to work. It stresses that this approach satisfies the CBA requirement of officers working 232-234 day after two years of experience.

It maintains that this proposal would result in new officers working 242-244 days in the 18 months after graduation from the academy. It adds that these officers would not receive chart days.

It points out that Suffolk PBA members work the greatest number of days in their first year of employment and are among those working the highest number of days in their second year. It posits that the vast majority of jurisdictions do not distinguish between new hires and officers with more than two years of service. It maintains that four jurisdictions do make such a distinction. It stresses that the new hires in those jurisdictions work fewer days than do their Suffolk County counterparts.

15. Motorcycles:

The PBA states that nine members have the duty of caring for a motorcycle and receive no compensation for off-duty time spent doing so. It claims that these officers spend 3-4½ hours per week taking care of their motorcycles. It concludes that its proposed compensation of three hours of overtime is justified.

16. Reopener:

It asserts that the County agrees that its four police units engage in pattern bargaining. It observes that the PBA negotiations generally come first. It argues that neither the County nor the PBA want the other units to *leapfrog* over the PBA by proposing greater benefits after the PBA negotiations. It concludes that allowing this would be disadvantageous to the PBA for volunteering to go first.

It insists that this proposal protects the PBA. Further, it emphasizes that it assists the County in resisting the demands of other units that would exceed the improvements gained by the PBA.

The PBA argues that the County's proposals are neither just nor reasonable and should be denied. It rejects the County's premise that Suffolk County should be compared with jurisdictions other than Nassau County and the villages of Nassau County and western Suffolk County.

It adds that the County's reliance on the patterns found in the other Suffolk County police units is misplaced. It posits that the PBA sets the pattern in Suffolk County and that it would be inappropriate for the panel to grant any County proposals that rely primarily on a comparison with other County police units.

The PBA analyzes the County's proposal as follows;

1. Section 4-Wages:

It contends that the County's proposal to provide no increases during the two years of the award, to reduce the starting salary by \$22,811 and to create a nine step salary schedule should be denied. The PBA states that there are several reasons for this assertion.

It points out that the County failed to make a detailed wage proposal until the final arbitration hearing. It observes that this prevented the parties from engaging in meaningful discussions that might have led to counter-proposals.

It insists that a two year wage freeze is unprecedented. Such a freeze has never been awarded as part of an interest arbitration award.

It observes that no comparable community has received a two year wage freeze during the applicable period of this award. It argues that the County has the ability to pay for a reasonable wage increase.

It indicates that reducing the starting salary as proposed by the County would result in Suffolk County having the lowest starting salary in Suffolk and among the lowest in Nassau. It adds that Nassau County increased the starting salary during the term of its 2007-12 award.

It maintains that increasing the number of salary steps from five to nine is inconsistent with the parties' bargaining history. It urges that there have been five to seven salary steps since 1979.

The PBA emphasizes that the Nassau County PBA made wage concessions such as wage increase deferrals, lagged increases, additional steps, a frozen step and smaller increases below the top step. It adds, however, that the County provided increased benefits and continued benefits not enjoyed by the Suffolk County PBA.

As to the concessions made by the Nassau County PBA, the Suffolk PBA notes that it cannot make similar concessions for two reasons. It indicates that the instant award will be limited to two years while the concessions made in Nassau were part of a six year award. It

adds that Suffolk is fiscally healthier than Nassau was. It insists that the Nassau wage deferrals were in years when Nassau County was experiencing budget deficits.

It argues that any concessions awarded by the panel should be comparable but less than those of Nassau County and the wage increase should be greater.

2. Section 5-Hourly and Daily Rate of Pay:

It states that in the current CBA the daily and hourly rate is based on a 232 day duty chart. It recalls that the County proposed a 261 day work chart. It observes that granting a 261 day chart would raise the denominator by 29 days not worked for the calculation of these rates.

It maintains that almost all other Suffolk and Nassau County jurisdictions calculate overtime and holiday pay based on the number of days in the work chart. It agrees that Nassau County includes an additional 16 days (a total of 1985 hours) and explains that Nassau County factors longevity pay into the calculation.

3. Night Differential:

The PBA states that night differential is currently based on a percentage of top step salary. It observes that the County proposal would have the night differential calculation based on the officer's base salary.

It opines that the County proposal is inconsistent with the police pattern. It rejects the County's claims about night differentials paid in East End towns. It repeats that these towns are not comparable.

It notes that night differentials in Nassau County are based on actual base salaries. It stresses, however, that longevity pay is considered part of base pay in Nassau County and, as a consequence, their base pay is higher than that of other jurisdictions.

The PBA recalls that it made concessions in order to achieve the current manner of calculating night differential. It points out that it has had this benefit for more than 25 years.

It recognizes that the DIPBA and the SOA do not have this benefit. It stresses that the PBA should not lose this benefit because the other units did not make the concessions in order to get it.

4. Section 19- Work Schedules and Conditions:

The PBA observes that the current core chart consists of rotating two tour schedules and a steady ten hour night tour. It adds that the ten hour night tour has no set time when it must end, except that it must end when the day tour begins.

It maintains that the County's proposal would allow for the insertion of a ten hour tour at any time and in any command irrespective of the start or end of the day or evening tour. This proposal, states the PBA, would be disruptive to the lives of the members.

It adds that the current approach was proposed by the County during the negotiations leading to the 1992-95 CBA. It opines that the County should have to work within the chart it initially proposed. It argues that the current approach was the result of direct negotiations and should not be changed through interest arbitration.

5. Section 19- Work Schedules and Conditions:

It indicates that the County proposed the elimination of the rotating two tour and steady ten hour night tour as the core schedule and its replacement with three steady eight hour tours. It claims that this proposal was offered in the event that Proposal # 4 was denied.

It insists that there are no bargaining units that have steady eight hour tours. It urges that it has provided data that shows that steady midnight tours have detrimental physiological and psychological effects.

The PBA states that Chief Webber's affidavit misstates the County's proposal and should not be considered. It emphasizes that Proposals 4 and 5 should be denied.

6. Section 19 (C)(1)- Work Schedules and Conditions:

It posits that the County proposed a 261 day work schedule for employees hired after January 1, 2008. It insists that this proposal should be denied.

It indicates that no bargaining units in Nassau or Suffolk work a 261 day chart. It notes that this proposal is also inconsistent with the work charts of the SOA and SDA.

It recalls that the County proposed a 238 day work schedule for employees hired before January 1, 2008. It suggests that this would require the members to work an additional six days per year.

It argues that the County is proposing what the Nassau County PBA was awarded in the 2001-06 interest arbitration award. It stresses that it has addressed this issue in its discussion of the PBA proposals and need not be repeated. Suffice it to say, in its view, it would accept the additional days and the 2.58% raise with a subsequent reduction in the number of work days without a concomitant pay reduction. It points out, however, that the County is not making such a proposal.

7. Section 19 (C)(10)- Work Schedules and Conditions:

The PBA notes that the County proposed the deletion of restrictions in taking leave days. It agrees to this proposal.

It points out, however, that the County explained that this proposal does not mean what it states. The PBA quotes the County as proposing that it have complete discretion over when officers take leave by having the ability to blackout week-ends, holidays and other times when personal leave days are likely to be taken for family functions or doctors' appointments.

It indicates that the County has shown its willingness to ignore current CBA provisions concerning leave time and stresses that it has filed a grievance to this effect. It argues that it is difficult to know how the County would abuse the right to restrict leave days if it had free reign over the matter.

8. Section 20- Overtime, Section 21- Recall, Travel Time and Standby, etc.:

The PBA observes that the County is proposing that all overtime be paid in accordance with FLSA mandates. It insists that the County is asking the panel to ignore bargaining history and to disregard the police pattern. It stresses that none of the police units in either Nassau County or Suffolk County are paid overtime that is based on the FLSA.

It notes that units other than the County's police units may have some form of FLSA overtime in their contract. It maintains that these units are not and have never been part of the Suffolk police pattern.

It posits that the PBA does not rank among the top Suffolk units with respect to overtime. It opines that the County does not need this proposal for the PBA.

9. Section 20 (f)(1)- Overtime:

The PBA stresses that currently there is a change of tour penalty of 1½ hours of pay for each hour worked during a changed tour. It recalls that there are certain exceptions to this penalty listed in the CBA.

It argues that the County's proposal would eliminate the penalty. It asserts that the existing provision is needed to prevent the County from interrupting the officers' personal lives.

It states that it would not be necessary to change the tours of police officers if the Department were adequately staffed. It avers that the issue of tour changes has been the subject of past grievance arbitrations in which the PBA prevailed

It points out that no comparable jurisdiction has the right to change the tours of officers for staffing without penalty. It stresses that the removal of the penalty would have disastrous consequences for the PBA and its members.

10. Section 22- Sick Leave:

The PBA indicates that the County proposal would reduce the number of sick leave days from 26 to 12 and have the days accrue at a rate of one day per completed month rather than *in toto* on January 1 of the calendar year. It urges the denial of this proposal since there are no bargaining units in Nassau or Suffolk with as little as 12 sick leave days per year. It adds that there are four jurisdictions in which the officers have unlimited sick leave. It notes that all of the County's police units have 26 sick leave days per year.

It notes that the County proposed unlimited sick leave for employees hired after January 1, 2008. It stresses that this is foreign to the police pattern in that there are only four jurisdictions that have such a sick leave policy. It argues that none of the other Suffolk police units have unlimited sick leave and that the County did not offer a persuasive reason for deviating from the existing pattern.

It asserts that the County proposed amending the CBA such that employees out on sick leave would be required to remain at home or place of confinement at these times. It points out

that the Commissioner, if he can demonstrate good cause, has the authority to order an officer on sick leave to remain at his/her residence. It observes that the proposal is illegal to the extent that it does not address situations when officers could leave their residences.

It states that none of the western Suffolk towns have such a requirement. It notes that half of the Nassau units have such a provision but, in those instances, the provision identifies instances when officers can leave their residences. It maintains that none of the other Suffolk police units have such a requirement.

The PBA indicates that the County proposed the deletion of §22(f) of the CBA. It observes that current provision provides for no loss of vacation time, sick leave entitlement, personal days, equipment and cleaning allowance, night differential, clothing allowance or any other benefit to which the officer might be entitled while said officer is out on GML §207-c leave.

It argues that the Appellate Division has held that the continuation of contractual benefits while officers are on GML §207c leave is dependent on the presence of a provision in the CBA that provides for their continuation.

It argues that this proposal is abusive and penalizes officers who were injured in the line of duty. It acknowledges that the other County police units have a provision similar to the one proposed in their contracts but that the County is asking the panel to have the *tail wag the dog*.

It emphasizes that the provision affecting the other police units differ from the one proposed here in a significant way. It recalls that the language in §22(f) of the other units calls for the continuation of all contractual benefits except for those that cease after one year of §207-c leave. It insists that the proposal as written would deprive officers of health insurance during

the leave and concludes that the provision would leave the PBA as the only County police unit without contract language to continue contractual benefits during a §207-c leave.

The PBA argues that limiting §207-c leaves to one year would disproportionately impact its members. It urges that police officers have a greater exposure to hazards of employment than do members of the SOA, SDA and DIPBA.

It posits that, if the panel is inclined to award the proposal, the panel must consider the disproportionate level of savings accrued to the County as compared to the other police units. It recalls that the PBA was the first bargaining unit to receive an arbitration award covering 2004-07. It stresses that the panel in that case did not award this proposal despite the fact that another panel had previously awarded it in an SDA arbitration. It maintains that the SDA panel awarded it to offset concessions made to the PBA by Arbitrator Sands in the arbitration award preceding the one of 2004-07. It urges that the 2004-07 PBA panel rejected the proposal because it would have resulted in an undeserved windfall to the County.

The PBA insists that this logic still applies. It avers that awarding this proposal will give the County an undeserved windfall at this time. It opines that this proposal must be assessed in conjunction with the County's proposed Sick Leave Management Program. It points out that this proposal, as well as the §207-c restriction proposal, were awarded by SOA and DIPBA panels during the 2004-07 arbitrations. It adds that the SDA panel awarded this program and the §207-c restriction proposal in the 2002-03 award.

It cites Arbitrator Aiges' statement in the SOA award in which he calculated the savings that had to be reached in order for the SOA award to comport with the pattern set by the PBA. It recalls that part of the calculation was the value of the §207-c proposal and that of the

Sick Leave Management Program. It observes that the SDA panel needed to do what the SOA panel did in terms of finding savings such that the SDA award would be consistent with the PBA pattern.

The PBA asserts that this panel has similar proposals before it; i.e., Assignment Pay and Negotiations. It stresses that, if the panel is inclined to award County Proposals 10(d) and 10(f), the panel must provide the PBA with the appropriate credit for the savings to the County.

It states that, using the SOA award as a baseline, the two County proposals should be valued at the equivalent of a 4% wage increase. It indicates that, per the SDA award, the Sick Leave Management Program should be valued at the equivalent of a 2.8% wage increase and that the §207-c proposal should be assigned a value greater than that of the three proposals awarded to the SDA in exchange for the §207-c proposal.

It concludes, therefore, that PBA Proposals 8(a)(b) and 11(a-f) should be awarded by the panel to account for the greater impact of County Proposals 10(d)(f) on the PBA and the enhanced savings to the County. It adds that, if the panel is inclined to award County Proposal 10 (d)(ii-iv), it should consider increasing the length of time that a member could be absent before his/her benefits cease.

As to the current provision in which the County pays one day for every two days of unused sick leave to a maximum of 300 days for 600 unused sick days, the PBA notes that the County proposed deleting this language from the contract. It insists that there are only three bargaining units that do not have a sick leave payout at retirement and the officers in those units have unlimited sick leave. It concludes that the comparables weigh in favor of the PBA.

The PBA urges the denial of the County proposal calling for the Sick Leave Management Program. It contends that this proposal seeks to impose draconian restrictions based upon unconfirmed notions of sick leave abuse. It stresses that PBA members have not abused sick leave as evidenced by the fact that they average only seven sick days per year. It quotes the chair of the 2004-07 PBA panel as observing that the County did not present persuasive arguments that would support the existing contract language.

It urges that, in comparison with members of the SOA, SDA and DIPBA, this proposal will disproportionately affect PBA members. It adds that the terms of this proposal are harsher than that awarded to the SDA panel and later modified by the SOA panel.

It reiterates that this proposal, if granted, will result in savings to the County. It argues that these savings should be credited to the PBA.

11. Vacations:

The PBA indicates that the County proposed limiting the accrual of vacation days to 30 days and limiting payout at termination to 60 days. It avers that this proposal has the effect of rescinding a benefit awarded by Arbitrator Scheinman in 1996.

It contends that it is unreasonable for the panel to reverse a prior panel in the absence of highly persuasive evidence. It recalls that no such evidence was provided and therefore the proposal should be denied.

It observes that the County proposed that members use vacation days when a holiday falls during a vacation. It insists that this issue was the subject of a recent grievance arbitration in which the PBA prevailed. It maintains that the panel should not overturn that decision. It adds that the current benefit is enjoyed by the SDA, SOA and Nassau County PBA.

The PBA states that the final component of this proposal would require officers on §207-c leave irrespective of his/her sick, injury or §207-c status, to schedule and take their vacation time. It posits that this proposal is contrary to current policy.

It opines that this proposal has the effect of eliminating the payout at retirement for unused vacation time. It stresses that this proposal, if awarded, would punish injured officers.

12. Personal Leave Days:

The PBA states that the County has proposed the reduction of Personal Leave Days from five per year to three. It insists that this proposal must be denied in that it would leave its members with the smallest number of Personal Leave Days enjoyed by any bargaining unit in Nassau and Suffolk County.

It stresses that the County proposal calls for the proration of Personal Leave Days during employees' last year of employment. It indicates that members are entitled to use Personal Leave Days during the calendar year.

It claims that the County gave no justification for the proposal. It suggests that the savings to the County would be so minuscule as to indicate the abusiveness of the proposal.

The PBA posits that §25(e) of the CBA precludes the County from canceling pre-approved Personal Leave Days except in cases of public emergency and when the Department is fully mobilized. It adds that this provision allows for recall pay if a Personal Leave Day is canceled for any other reason. It states that the County proposed the deletion of §25(e) from the CBA.

The PBA stresses that the deletion of this language would effectively delete Personal Leave Days from the contract. It observes that, in an understaffed state, the Department would

surely cancel Personal Leave Days in order to avoid paying overtime. It adds that all of the other Suffolk police units have this benefit.

It argues that the County proposed that Personal Days be granted upon mutual consent. It points out that the current CBA provides the Department with the right to deny Personal Leave requests under specific conditions.

It insists that *mutual consent* in this proposal is a misnomer. It posits that what the Department really wants is the right of unilateral approval.

It states that the current language represents an agreement of the parties after a 1988 decision of Arbitrator MacGregor. It recalls that, under the facts of the case, Arbitrator MacGregor held that, as a result of the County's frequent denial of these days, officers should have the right to Personal Leave Days on demand. It claims that the PBA did not exercise this right and agreed to the current language. It concludes that the County has been trying to return to its pre-1988 abuse for more than 20 years.

It notes that Nassau County has similar restrictions in its PBA contract. It concludes that the current language should be preserved.

13. Section 26- Maternity Leave and Leave of Absence:

The PBA believes that this proposal is designed to provide maternity benefits to women that are on par with those provided to men who suffer from non-occupational injuries or illnesses. It asserts, however, that this would greatly reduce the benefits afforded women before and after giving birth.

It notes the County has argued that the current provisions are illegal. It observes that, if the County is correct, there are ways of conforming the provisions to current law without

reducing the benefits of women by conforming them to current law. It could do so by conforming the benefits received by men to those received by women.

14. Section 29- Disciplinary Procedures:

The PBA notes that the County has proposed the carving out of a separate approach to disciplinary procedures. It recalls that the current contract provides for arbitration proceedings to be expedited through the selection of arbitrators who will hear cases within 30 days.

It states that the County's proposal is deficient in two ways. It maintains that the proposal does not specify how §29 is to be amended. It adds that the County proposed and was awarded a panel of six arbitrators by the 2004-07 panel. It urges that the six arbitrators are highly qualified and are very busy. It argues that, if the current language is lacking, it is so because the County was awarded panel arbitrators in lieu of AAA lists of arbitrators.

It stresses that a member has the right to choose binding arbitration in discipline cases in which the County seeks a fine or a suspension of more than five days. It observes that, where the proposed discipline is for five or fewer days, the member can select a CSL §75 hearing but cannot opt for binding arbitration.

It asserts that the County proposal would allow it to say it was seeking a penalty of five days and thereby limit the member to a §75 hearing, a proceeding in which the member can be given a penalty in excess of five days.

This, in its view, would penalize members for challenging a discipline that the Department believed should result in a penalty of five days or less. The PBA insists that this is patently unfair.

15. Section 31-Working Conditions:

The PBA observes that the County seeks to delete the contract section that calls for the destruction of anonymous correspondence and memoranda unless it is part of an investigation resulting in a complaint issued by the Department against an employee. It opines that this language protects officers from having unfounded anonymous complaints used against them in the future.

It stresses that the County has not produced statutory evidence that the destruction of the above described records is illegal. It adds that, should such a citation be produced, the documents in question should be stamped *unfounded*. It posits that such an approach would preserve the intended effect of the current provision.

It states that the County also proposed the deletion of language that refers to the destruction or return to the member of *charges and specifications* and references thereto when the member is found not guilty of same. It asserts that this proposal is unreasonable and should be denied. According to the PBA, in the event the panel is persuaded that the destruction of the documents is illegal, these documents should be stamped *unfounded*.

16. Section 34-Negotiations:

The PBA states that the County proposed the deletion of the 12% night differential for members of the Board of Governors. It argues that this benefit compensates these members for the amount of work they do to adjust grievances and enforce the contract. It insists that other County police units and the Nassau County PBA have this benefit.

It indicates that the County also proposed the deletion of the provision requiring the County to pay the highest supplementary wage to the President, 1st and 2nd Vice Presidents, the

Treasurer and the Financial Secretary. It insists that this provision compensates these officers for the work they do on behalf of the PBA.

It posits that the above mentioned officers receive a stipend to compensate them for lost overtime. It recalls that this benefit was awarded by the 2004-07 arbitration panel.

It argues that the 2004-07 panel provided ample justification for this benefit and it would be unjust to undo it. It stresses that all of the County police units and the Nassau PBA receive this benefit.

The PBA asserts that the current bank of administrative leave is 800 days. It contends that it seeks it be increased to 1000 days while the County wants it reduced to 400 days.

It indicates that the County agreed that the PBA has used close to 800 days for the past four years. It suggests that this statement shows that this proposal is punitive. It insists that the number of leave days per member is less than half of that of other County police units and the Nassau PBA.

It states that the County's final proposal would require the PBA to reimburse the County for all tax-payer funded PBA activities, including released time. It observes that this proposal would be a new provision and the only one of its kind in any Nassau or Suffolk contract.

It maintains that the County did not define *tax-payer funded PBA activities*. It reasons that it is also unclear how the PBA would reimburse the County for undefined activities. It concludes that the panel cannot award such an unclear proposal.

CONTENTIONS OF THE COUNTY

The County asserts that it is facing unprecedented economic times. It posits that its ability to pay is driven by forces beyond its control. It stresses that it has taken drastic steps in

order to avoid serious consequences to its taxpayers. It argues that the PBA demands will destroy the County's financial well-being and harm the taxpayers.

It notes that the factors affecting the County's finances are national in scope and it must do its part in dealing with the problems. It argues that it must reduce large expenses, such as police wages and benefits.

It asserts that the parties have never faced anything remotely like the current problem. It observes that even the recession of 1991-92 that resulted in a wage freeze for 1992 and part of 1993 is unlike the current situation.

With the exception of 1992-93, recalls the County, interest arbitration panels have found that the County has the ability to pay for reasonable increases in wages and benefits. It maintains that the County's expenses have escalated at an unprecedented rate. It concludes that a continuation of this pace will lead to catastrophic results.

It urges that interest arbitration panels have begun to recognize that the *status quo* is unsustainable and that conditions must change. It stresses that this Award will lay the groundwork for the other units in the County police pattern and in other tiers.

It notes that, even prior to the recession, interest arbitration awards began to change. It posits that, from the 2004-07 Suffolk PBA Award to the 2007-12 Nassau PBA Award, the 2004-07 Suffolk Award was the lowest overall cost police award or settlement. It adds that the trend in leapfrogging has stopped and it is critical that this not change.

The County contends that the application of relevant statutory criteria will mandate the awarding of its proposals and the rejecting of the PBA proposals. It stresses that statutory provisions and case law recognize the difference between public and private employment.

It indicates that public employers have limited resources for the provision of services. It recognizes police services are required and that these services are not free.

It states that the decisions made during interest arbitrations directly impact the SCPD's and the County officials' ability to set priorities for the 2008-2009 fiscal years. It emphasizes that the law requires the panel to follow well settled criteria when engaged in interest arbitration. It opines that the two most important criteria are the County's *ability to pay* and *comparability*. It posits that the PBA's demands are excessive and out of touch with the County's ability to pay.

It insists that the last interest arbitration award (covering 2004-07) contained the lowest average percent increase for a county police unit in 20 years. It recalls that the prior award called for increases of 3.75% and a net salary cost of 3.25% per year. It argues that such an award at this time is too high and should not be awarded here.

It observes that, since the 2004-07 award was issued, the County's economic position, as well as that of neighboring jurisdictions, has deteriorated. It adds that the 2007 Nassau PBA award contained an average net cost of 2.75% per year and that the savings generated were substantially greater than those in the 2004-07 Suffolk PBA award.

It asserts that the 2007 Nassau award came before the global economic collapse and that award broke new ground in terms of cost savings. It opines that, in light of current conditions, the cost of the Nassau award is too high and the savings are too little.

It points out that the Nassau PBA paid for its own wage and benefit package. It avers that this panel should require the same from the Suffolk PBA.

The County stresses that the panel must consider the County's limited ability to pay for the PBA demands. It suggests that the current budget cannot accommodate an increase in Police

District Fund expenditures. It stresses that police salaries are primarily funded through the Police District Fund and that the funds are financed through property taxes (82.3%) and sales tax revenues (16.3%). It concludes that 98.3% of the Police District Fund comes from local revenue.

It recalls that the PBA economist, Kevin Decker, agreed that the County's ability to pay depends on the health of sales and use taxes and property taxes. It urges that none of these taxes are healthy at this time.

It indicates that the sales tax revenue has been declining since 2006. It notes that it was projected to increase by 1% in 2008 with no growth in 2009. It adds that the County's economic consulting firm projected negative growth in 2008 and a 1.9% decline in 2009.

It contends that, when adjusted for inflation, the County's sales tax growth since 2006 has been negative. It concludes that people are not spending money and, if they are doing so, they are not spending it in Suffolk County.

The County stresses that sales tax constitutes 43% of its total revenue. It notes that it anticipated a 6% decline (\$69.9 million) in sales tax revenue in 2009 as compared to 2008. It states that, in January-October 2009, the sales tax receipts have been 9% (\$90 million) lower than they were in 2008. It posits that there will be an 8% shortfall in sales tax revenue for the full 2009 year.

It stresses that this will impact the 2010 budget. It maintains that the reduced sales tax income in 2009 will result in an additional loss of \$47 million in 2010.

The County agrees that it has the ability to transfer sales tax revenue from the General Fund to the Police District Fund. It adds that it is unclear whether this continues to be a viable option.

It cites the increase in such transfers since 2002 and maintains that this rate of transfer is not sustainable. It indicates that it has already reduced the transfer of sales tax revenues to the Police District Fund in 2009. It suggest that, had it not done so, the County would have faced a great increase in the area of General Fund property tax.

It stresses that County residents cannot afford a tax increase. It points to the great increase in the number of property tax grievances since 2000 and particularly since 2007. It adds that there has been a 30% increase in foreclosures and a 36% increase in *lis pendis* since 2007. It maintains that the number of foreclosures in 2009 have ranged from a minimum of 150 foreclosures per month to 300 a month.

It reasons that, as foreclosures increase, property tax revenues decrease. It states that there has been a 43% increase in delinquent tax receivables between 2007 and 2009.

It points out that the County received \$11.5 million in Mortgage Tax receipts in January 2007. It observes that this income has decreased on a monthly basis since then. It indicates that the monthly Mortgage Tax receipts in 2009 ranged from a low of about \$2.75 million in March 2009 to a high of \$5.5 million in September 2009. It suggests that in November 2009 the Mortgage Tax receipts were \$3.8 million.

It adds that other indicators, such as the increase in unemployment, Medicaid and temporary assistance applications and the decrease in new home building, are further indicators of the state of the economy in Suffolk County. It maintains that these factors must be considered.

It emphasizes that the unemployment rate in September 2009 was 7.5%. It recalls that it was less than 3.5% in January 2007.

As to Medicaid case loads, the County states that there has been an increase of 25% in this area since January 2007. It asserts that the Medicaid caseload has increased from 85,000 to almost 97,000 between January and December 2009.

It argues that, in 2009, there was an increase of 13% in the County's Temporary Assistance caseload. It indicates that there were 5,791 cases in January 2009 and 6,549 in October.

It states that there has been a decline in new housing permits in 2009. It claims that the number of such permits through September 2009 are 40% below the number in 2008.

The County contends that the New York State budget has an impact on the County's budget. It maintains that the General Fund receivables from Federal and State Aid has grown 29% between 2008 and 2009. It notes that the receivables in 2008 amounted to \$227 million and that this amount grew to more than \$292 million in 2009. It adds that current indicators suggest that this problem will continue in the coming months and will intensify pressure on the County's cash flow.

It insists that the taxpayers cannot absorb the cost of a PBA contract that results in higher property and sales taxes. It emphasizes that, nationally, Suffolk County ranks eleventh highest in percentage of household income paid towards property tax.

It argues that the County would face budget shortfalls in many areas even if it took unprecedented steps to reduce expenses. It avers that awarding the PBA demands would increase the shortfalls and further negatively affect taxpayers who cannot handle additional tax burdens.

It opines that benefits awarded in prior arbitration awards are unsustainable. In this connection it quotes County Executive Levy and urges the panel to reach the same conclusion.

It observes that there are restrictions on the County's ability to increase its budget. It cites the Suffolk County Tax Act with respect to the requirement that the County cover delinquent property taxes from jurisdictions within the County. It points out that the funds extended are, at times, not repaid.

It maintains that the County's reserve balances are restricted. It asserts that any positive fund balances cannot be considered to be part of the County's reserves.

It insists that Local Law 29-96, Local Law 21-83 and Local Law 38-39 contain restrictions on the County Executive's Recommended Budget. As a consequence, it refers to its budget preparation as a *zero sum game* in that increases in one area must be offset by decreases in others.

The County contends that the restraints present make it doubtful, if not impossible, that it can accommodate the PBA's demands. It acknowledges the PBA's argument that an interest arbitration award can supersede the above-referenced laws. It adds, however, that this issue has not been litigated and it urges the panel to avoid issuing an award that could result in litigation.

The County indicates that it will face severe budget shortfalls during the period of this award. It adds it is likely that this condition will continue in the years that follow. It stresses that the recommended funding levels for every department were cut in 2009. It stresses that the 2009 budget was prepared prior to the October 2008 stock market crash and that the previously imposed cuts may need to be increased.

It posits that the 2010 budget is \$41 million less than the 2009 Adopted Budget and \$136 million less than that of 2008. It avers that these reductions have resulted in decreased allocations to County departments.

It asserts that the instant award will set the pattern for all other County bargaining units. In its opinion, this award will profoundly affect the County's ability to endure the recession and will determine the time it will take to recover from it.

The County argues that the fact that it has not reached its constitutional taxing limit does not show that it has the ability to pay for the PBA demands. It cites a decision of the Appellate Division in support of this position.

It observes that the PBA data indicates the per capita personal income in the County was \$46,830. It notes that, in 2006, a first year police officer's base salary exceeded that amount by \$10,000 and that this difference was irrespective of additional income such as overtime pay and night differentials. The County stresses that the average earnings of police officers in 2007 was \$120,000.

It avers that it would be inequitable and irresponsible for the County to raise taxes just because it has the statutory authority to do so. It posits that, in order to avoid higher property tax warrant, it already uses sales tax revenue to avoid property tax increases. It posits that, with shortfalls in sales tax growth, it is unlikely that offsets will be an option.

The County maintains that the PBA's presentation of the County's financial condition is based on inaccurate and outdated data. It recalls that the PBA relied on data depicting the County's finances in 2006 and 2007, a period when its economy was still growing. It notes that the PBA did not comment on 2009 data because it may not have been available. It urges that this

data does not demonstrate an ability to pay in 2008, 2009 and 2010. It insists that the panel should disregard data prior to 2008.

It recalls that the PBA stated that the County's bonds were given a higher rating in May 2008. It indicates that many of the County's bonds are funded by banks that no longer exist or were recipients of federal bailout money. It argues that a high bond rating is of little use when fewer entities are lending money.

It points out that the PBA presented inaccurate calculations of the cost of its demands. It insists that these calculations did not consider the increased cost of overtime, holiday pay, recall pay, sick leave, personal leave and vacation leave due to wage increases.

The County requests that the panel understand and emphasize the Nassau PBA award when determining the unreasonable nature of the demands of the Suffolk PBA. It states that the Suffolk PBA has historically demanded at least the same benefits received by the Nassau PBA. It notes that, in its 2007 award, the Nassau PBA was granted benefits that were far less than those demanded by the Suffolk PBA.

It maintains that the average net cost of the Nassau award was 2.75% over the life of the award. It adds that the net average annual cash cost was also 2.75% and, in the first two years of the award, the net cash cost was 0.16% and -1.34%. It urges that the Nassau PBA had to produce about \$92.5 million in concessions over the life of the award. It points to a chart that shows concessions made in many areas in which benefits were enhanced as well as concessions made by the Nassau PBA in areas where there were no improved benefits.

It avers that the Nassau award turned out to be too costly and the parties negotiated a three year extension. It states that the extension contained further Nassau PBA concessions.

The County posits that some of the concessions made in Nassau cannot be made in Suffolk. It urges the panel to look at the overall cost of the Nassau award as a guide for what is to be awarded in Suffolk. It argues that Nassau and Suffolk have historically received similar awards. It insists that the PBA wants what was awarded to Nassau and that, if this is to be considered, then Suffolk is entitled, at a minimum, to the corresponding savings awarded to Nassau.

As to the matter of comparability, the County indicates that the panel needs to consider the applicability of internal and external patterns. It points out that there are 11 bargaining units in Suffolk County. They are divided into four tiers, with the police pattern comprised of the PBA, the SOA, the SDA and the DIPBA. It observes that the police pattern units have historically gotten the highest salary increases.

It urges that arbitrators have long held that a comparison must be made to the four County patterns. It quotes Arbitrator Scheinman, in his 1993 award, as finding the police units within the County to be the most relevant comparison. It adds that he made the same finding in his 1993 SDA award. The County notes that Arbitrator Edelman reached the same conclusion in his 1993 DIPBA award. It stresses that this *de facto pattern* continued in subsequent interest arbitration awards.

It agrees that the PBA has historically set the pattern that other County units follow. It adds however, that the existing internal pattern cannot be ignored. It stresses that the internal pattern concerning the County's sick leave management program and the removal of illegal contract language concerning maternity leaves is relevant here.

With respect to external comparable units, the County observes that past panels have concluded that the Nassau PBA is the most comparable unit. It states that the instant parties are in agreement about this subject. In this connection, when the panel compares the Suffolk PBA demands to the recent Nassau PBA award, it cannot award the Suffolk demands.

It indicates that the Nassau PBA received an average 2.96% per year in improved wages and benefits. It insists that the panel need not award the same level of improvements here simply because the Nassau PBA received them. It emphasizes that Arbitrator Scheinman has held that improvements in salaries and benefits in Nassau are an appropriate basis for comparison and are probative. It adds, however, that they are not dispositive.

The County asserts that the terms and conditions of employment in the East End towns serve as guidelines for the panel to follow. It suggests that the PBA agrees with the County on this point, as indicated by the PBA exhibits showing that these towns are *comparables* to be considered.

It stresses that New York City and Westchester County are comparables to be used and urges that those police departments reflect communities which perform similar skills under similar conditions. The County adds that these police departments are also among the largest neighboring departments in New York State.

The County disagrees that Nassau district and village police departments and Suffolk town and village police departments are comparable to Suffolk County. It maintains that the panel chaired by Arbitrator Sands is the only one that found these small police units to be comparable to the Suffolk County PBA.

It urges that the PBA has provided no evidence showing that the small units in Nassau and Suffolk are comparable to the Suffolk PBA. It opines that the comparables identified by the County are supported by evidence and when considered will help the panel to award a more reasonable and realistic award than that demanded by the PBA.

The County contends that the PBA's wage demand should be denied. It observes that its members are already adequately compensated.

It recognizes the quality of the work done by police officers but stresses that they are among the highest paid officers when compared to their peers in Nassau, New York City, Westchester and several East End towns. It insists that this is true of Suffolk police officers at top salary as well as those in their first three years of employment.

It indicates that the PBA's salaries would continue to be greater than those in Nassau when its demand for a 6% increase is considered. It adds that this would remain unchanged even if a wage freeze were imposed in Suffolk.

It states that awarding a 6% increase would exacerbate the already great discrepancy in base salaries. It adds that such an increase is not within the realm of the *going rate*.

It posits that the PBA cannot argue that a 6% increase is justified based upon increases in the cost of living. It stresses that the 2007 increase in the cost of living was 2.8% and it was less than that in 2008.

It notes that the need to improve salaries in order to attract new recruits may have been a consideration in the past, however it no longer is now.

The County maintains that the other PBA demands are excessive and unjustified. It urges that granting the PBA demands would raise the average cost of an officer from about \$178,000 to approximately \$208,000. It posits that the PBA would realize a 38.86% increase.

It asserts that the PBA has not justified its demand for night differential increases. It recalls that the PBA argued that the health of officers is affected by rotating and night tours. It acknowledges that some of the tours do not conform to the work schedule of average people. However, it notes that the SCPD is a 24/7 operation and the officers were aware of this fact when they took the job. It asserts that the police officers already receive additional compensation for night tours and the PBA submitted no evidence showing that they should be compensated to a greater degree.

The County points out that PBA members working 7:00 AM-3:00 PM and 3:00 PM-11:00 PM tours are significantly better compensated than their counterparts in other jurisdictions working rotating 12 hour tours. It contends that rotating 12 hour tours are more disruptive than rotating eight hour tours.

As to officers working the extraordinary night tour, the County stresses that the PBA members are better compensated than their counterparts in other jurisdictions who work a three tour rotating schedule. It adds that the Suffolk police officers working the extraordinary night tour do better than officers in other jurisdictions who work longer tours around the clock.

It agrees that PBA members lag behind officers in Long Beach by \$119. It adds, however, that Long Beach has a three tour rotating schedule and has never been held to be comparable to Suffolk County.

The County emphasizes that the current PBA night differential rates are consistent with the County's police pattern. It adds that these rates are two or three times higher than those in the East End towns.

It calculates the PBA demand concerning night differentials to cost \$5.2 million based on the PBA wage demand or the equivalent of a 3.07% salary increase. Based on the PBA wage proposal, the County estimates the PBA night differential to cost a bit more than \$3 million or the equivalent of a 1.81% salary increase. The County urges the panel to deny this proposal.

The County avers that the PBA's longevity demand is unreasonable. It points out that the PBA's charts showing the ranking of Suffolk PBA longevity rates after six, 10, 15 and 20 years of service are based on comparisons with police units that are not historic comparables to Suffolk County.

It points out that when base salary and longevity are considered, the PBA ranks third among all police units in Suffolk. It urges that the Nassau PBA received longevity increases in its last award and, even so, a top step Suffolk officer will earn more in overall compensation than his/her Nassau counterpart until s/he reaches 15 years of service. It observes that, at that point, the Nassau officer will earn \$46 more in salary and longevity.

It indicates that current PBA longevity payments are consistent with the applicable internal patterns. It recalls that a longevity structure based on a percentage of base pay, as demanded here, was recently rejected in the New York City interest arbitration.

The County insists that the PBA longevity rates would almost double if the PBA demand is awarded. It asserts that the County cannot afford such an increase. It calculates the cost of

this proposal to be about \$6.5 million or the equivalent of a 3.85% wage increase. It concludes that this demand should be rejected.

It indicates that the PBA witness claimed officers working a 10 hour tour were unable to attend family functions. The County asserts that there is no evidence in support of this assertion. It concludes that the two PBA demands to increase personal leave time should be denied.

It maintains that all employees in the internal pattern receive the same amount of personal leave time as do PBA members. Thus, it asserts that all County police employees are treated alike in this respect.

It adds that in Nassau County, employees working 12 hour tours are charged 1½ personal days per day off. It notes that eight hour employees are charged one day.

As to the demand that officers with 20 or more years of service should be rewarded for their years of service and for the additional duties they undertake by two additional personal days per year, the County disagrees. It insists that no external comparable jurisdiction grants this kind of benefit.

It observes that unused personal days are converted to sick days which can be accrued and that officers can be paid for these days at retirement. It construes this demand as an attempt to increase termination pay. It recalls that Arbitrator Dennis rejected this demand in the last interest arbitration.

It states that the combined cost of these proposals is \$1.6 million or the equivalent of a 1.25% wage increase. It suggests that the cost of the demands and the fact that no comparable jurisdiction provides such a benefit requires its denial.

The County claims that the PBA demand for increased canine pay is not justifiable. It notes that the PBA actually made two demands in this connection, an increase in canine pay and increased compensation for the building of the kennel.

It states that Suffolk canine officers receive greater compensation than almost all of their colleagues in other jurisdictions. It argues that the PBA demand to convert canine pay to the current overtime rate would result in these officers getting \$28,818 per year for the care of a dog. It suggests that this would quadruple the current canine pay and would be double what Nassau canine officers receive. It adds that the canine pay would increase if the PBA gets a wage increase.

The County points out that PBA officers receive the highest supplementary wages available. The highest supplementary wages are canine pay. It reasons that the PBA officers would realize a windfall of \$144,090 over the course of the award.

It emphasizes that the granting of this demand would cause an overall increase in canine pay from about \$168,000 to approximately \$720,000 or \$809,000 depending upon which party's wage proposal is used. It posits that this would represent a 327% to 380% increase and would represent a wage increase of .42% to .48%. It maintains that this proposal is unaffordable.

As to the compensation for building a kennel, the County opines that there is no need to increase this compensation. It concedes that the PBA produced evidence that shows the cost of building kennels exceeds \$250. However, it recalls showing that canine officers in other jurisdictions receive nothing.

The County asks the panel to closely examine the invoices provided by the PBA in the event it is inclined to grant this demand. It indicates that the invoices showed that the most expensive kennel cost \$1010.21, almost \$500 less than the PBA demand.

The County asks the panel to deny the PBA demand to increase Family Sick Leave. It maintains that the PBA failed to provide any evidence to support its claim that there needs to be a doubling of the number of Family Sick Leave days. It notes that the records show officers use on average less than two such days per year.

It rejects the argument that granting this proposal would benefit the public because officers who have sick family members on their minds would not be required to work. It suggests that average people do not have benefits beyond FMLA and that these people would prefer to have officers working rather than getting paid time off.

It points out that the current benefit is consistent with internal patterns and external comparables. It estimates the cost of this demand to be between \$2.5 and 2.8 million and would reflect a wage increase of 1.51% to 1.65%. It concludes that this demand should be denied.

The County opines that there is no basis to award the PBA demand for termination pay. It claims that a payment of five days pay for each year of service at retirement is virtually non-existent in Suffolk County. It recalls that this demand was last made in 1976 and not again until now.

It points out that the 2007 Nassau PBA panel reduced termination pay and capped it at twice the officer's final year salary, and, in addition, increased the divisor from 1985 to 2088. It notes that, unlike the Suffolk PBA, Nassau County went in the opposite direction by reducing this benefit.

The County also opposes the demand to allow employees the option of a five or 10 year payout of all monies at retirement. It asserts that this proposal would increase the County's FICA costs and contends that the current payout procedures are in line with established patterns and should not be changed.

The County argues that the Assignment Pay demands (an increase from 4.5% to 7% and the inclusion of Breath Test Technical Supervisors and the Motor Carrier safety Section) are excessive. It maintains that the current compensation conforms to existing patterns and is the same percentage as other County police units receive.

As to the inclusion of the two groups of employees, it states that, despite the fact that Nassau has Assignment Pay for Breath Test Technicians, no County police units have Assignment Pay for both groups of employees.

It indicates that the two demands would cost between approximately \$611,000 to \$667,000 and would be the equivalent of wage increases of .36% to .39%. It posits that these demands should be rejected.

The County opines that the PBA demand to restrict its statutory right to civilianize work should be rejected. It urges that the County currently has the unfettered right to civilianize any position and that the County has prevailed anytime the PBA has challenged the exercise of this right.

It rejects the argument that civilians have been unable to keep up with the workload previously completed by officers and has led to officers being pulled off patrol to help. It notes that the PBA has not offered any evidence of safety hazards resulting from civilians doing this work.

The County observes only Nassau has a *civilianization* provision in its contract and that the absence of such language is consistent with applicable internal and external patterns. It points out that, despite the language in the Nassau PBA contract, recent interest arbitration panels have awarded relief so that Nassau County can civilianize unit positions. It concludes that the PBA demand in this regard is moving in an opposite direction from what is happening in Nassau.

It indicates that civilianization saves the County about \$44,000 per position. It states that this sum increases as overtime is reduced and police return to traditional police duties.

The County requests that the panel reject the method through which vacation leave is made available as demanded by the PBA. It suggests that this demand states that any day not already chosen as part of a vacation should remain open for use by other officers. It insists that, subject to the approval of the Commanding Officer, single vacation days have always been available for use.

It stresses that the PBA showed three examples of denied requests. It opines that this does not show a need to change the current system or that Commanding Officers have abused their discretion in this regard. It adds that Arbitrator Dennis rejected this demand in the last interest arbitration award.

It states that the PBA seeks the deletion of the provision that merges squads of fewer than three people for the purpose of selecting vacations. It notes that this provision is not currently used, but could be in the future.

It claims that the deletion of this provision could result in one officer per small squad being on vacation simultaneously. It observes that this could result in squads being understaffed

and necessitating the need to bring officers in on overtime. It concludes that the County is in the best position to determine the need for the continued presence of this contract provision.

The County avers that the PBA has not justified the changes it seeks in the Negotiations Section of the CBA. It indicates that there is no need to grant full time release status to PBA trustees. It recalls that the PBA cited the number of hours that a trustee spends on PBA business on top of his regular police duties. It contends that this argument is not credible in that a trustee indicated that he attended a meeting that had not taken place.

It emphasizes that the PBA's claim that its ratio of released officer per bargaining unit members is one of the lowest. It posits that the Nassau PBA has four full time released members, not seven, and has opted to use a portion of its administrative leave bank to place three additional officers on full-time release. It concludes that, according to its contract, the Nassau PBA has a lower ratio than the Suffolk PBA.

The County urges that granting this proposal would result in the PBA having the highest ratio of all County units. It asserts that the PBA would have double the number of full-time released employees as compared to AME, while AME has three and one-half the number of members. It contends that this demand, if granted, would give the PBA more full-time released employees than any comparable jurisdiction except for New York City, which has a much larger unit. It adds that most comparable units have no full-time released people.

It recalls that Arbitrator Dennis rejected this demand in the last award. It claims that the cost of releasing 12 more officers would be between \$4.3 million (a 2.53% wage increase) and \$4.8 million (a 2.84% wage increase). It argues that this demand cannot be justified.

The County maintains that the PBA seeks an increase in the stipends received by PBA officials. It cites the testimony setting forth the need for this increase. It quotes the same testimony in relation to the fact that the Financial Secretary, the Recording Secretary, the Sergeant-at-Arms and the trustees receive no extra compensation from the County.

It insists that these officials already get a 12% night differential, clothing and cleaning allowances and canine pay. It asserts that the taxpayers should not be required to pay an additional \$100,000 for activities that do not constitute County work.

It observes that the PBA also compensates its officials and some of its trustees. It opines that these officials are already adequately compensated for their PBA duties.

The County states that it is unreasonable to demand the granting of compensatory time to members of the Board of Governors who attend regular Board meeting on regular days off (RDOs). It notes that the PBA is demanding eight hours of compensatory time under these circumstances.

It maintains that few comparable units have this benefit. It adds that these meetings are scheduled in advance and that the PBA should plan around work schedules.

As to the PBA demand that full-time released officers be excused from all County responsibilities, the County claims the PBA has not justified the demand. It insists that the PBA cited a single instance in which a problem arose. It argues the presence of a single instance does not suggest an ongoing problem or a need for a remedy.

It maintains that the granting of this demand would free these officers from firearm training and mandatory drug, alcohol and steroid testing. It insists that being required to

participate in these activities is small enough price to pay for those receiving the salaries and perks that these officers get.

The County indicates that there is no reason to increase the number of days in the PBA's Administrative Leave bank. It observes that, in the last six years, the PBA has not come close to using up its 800 day Administrative Leave bank.

It posits that the PBA seeks to increase this bank to 1000 days. It indicates that the PBA's rationale for this demand concerns the number of days in this bank per member. It urges that such a ratio does not show the need to increase the size of the bank.

It recalls that Arbitrator Scheinman, in his 1992-93 award, opined that 1000 days in this bank is excessive. It argues that the PBA has no evidence to refute that finding.

It estimates the cost of granting this demand to be about \$250,000 or the equivalent of a .16% salary increase. It insists that this demand is not justified.

The County urges the demand for electronic bulletin boards in each precinct be rejected. It suggests that, while the PBA says that it is seeking these bulletin boards in order to better communicate with its members, there has been no indication provided that the PBA is having difficulty in communicating with its members. It adds that the County opposes this demand due to litigation concerns over the material that could be posted.

It avers that such bulletin boards were established in Nassau County and were disconnected because of material that was posted about the County Executive and the Police Commissioner. It observes that this matter was litigated through the arbitration process.

The County asserts that no reason has been given for the granting of this demand. It adds that the demand is deficient in that the PBA has not offered to indemnify the County

against claims based on the content of the posting and has not offered to grant the County broad latitude in restricting offensive or controversial postings.

The County avers that the PBA demand to increase the Death Leave benefit from one day to three working days or four calendar days in the event of the death of a half-brother, half-sister, son-in-law and daughter-in-law is unnecessary. It states that, within the police pattern, the SOA has had this benefit relative to the death of half-brothers or half-sisters since the 1970s. It adds that the SOA and DIPBA have this benefit relative to the deaths of sons-in-law and daughters-in-law.

It observes that Nassau County provides an additional day in the event of the death of a son-in-law or daughter-in-law. It states that other counties provide fewer days. It notes the East End towns may give three or four days following the death of a son-in-law or daughter-in-law, but most give no time for the death of a half-brother or half-sister.

The County posits that the PBA is in a middle position when set against external *comparables*. It states that in the absence of adequate evidence calling for enhanced benefits, there is no need to grant a demand that carries a cost of \$21,876- \$23,884.

The County indicates that the PBA demand for an education stipend is unnecessary and excessive. It observes that no other County unit receives an education incentive. It adds that there is no evidence tying a degree unrelated to an employee's duties and the professional performance of those duties.

It asserts that the cost of this benefit is \$9,755,000 or the equivalent of a 5.75% wage increase. It posits that it cannot afford this benefit in the absence of a requirement or a need for it.

The County avers that the PBA demand to shorten the work year must be rejected. It maintains that the PBA seeks to reduce the work schedule of new hires in their first year of service from 261 days to 242 - 244 days. It stresses the officers in their first year are in training for up to nine months, six months of which are in the Academy. It insists that the 261 day chart is essential if new officers are to receive adequate training.

It adds that reducing the work chart may cause staffing shortages. It urges that this would result in increased overtime. It recalls that Arbitrator Dennis found this proposal to be unreasonable in the last interest arbitration award.

It claims that this demand would cost between \$2.4 and \$2.6 million or the equivalent of a 1.42-1.55 % wage increase. It posits that the cost renders this demand counterproductive.

The County posits that there is no basis for awarding the PBA demand of compensating officers who take county-owned motorcycles home. It emphasizes that the PBA produced no evidence of this benefit being provided in any other comparable jurisdiction.

It indicates that the cost of this benefit is between \$223,000 and \$242,000. It asserts that this demand should be denied.

The County insists that the panel should reject the PBA demand for a *reopener*. It argues that this demand is inconsistent with the PBA's status as an independent bargaining entity. It stresses that the County is entitled to finality in its negotiations. It stresses that the granting of this demand will result in a wait for the conclusion of the SOA, SDA and DIPBA contract negotiations before the County can definitely know the terms and conditions of employment for police officers and the cost of same.

The County contends that its proposals are reasonable and will increase productivity and efficiency. It asserts that they should be awarded.

The County argues that, in this economic climate, its wage and compensation package acknowledges the impact of this interest arbitration. It stresses that the County would realize \$52.5 million in potential savings if the panel awards all of its proposals. It notes that these savings would help the County survive this downturn.

The County proposes a wage freeze and a new salary schedule. It suggests that the new salary schedule include a starting salary of \$35,000, equidistant steps and two additional steps. It observes that these proposed changes will result in a schedule that resembles that of Nassau County to a greater degree than does the current one. It points out that both counties will have similar starting salaries, with Suffolk's being a bit higher. It states that both counties would have nine step salary schedules and both would have top step salaries that are almost identical, with that of Suffolk being slightly higher.

It indicates that, with a wage freeze in each of the next nine years, the cost of the current salary schedule would be in excess of \$79 million. It posits that awarding the County's wage proposal would result in almost \$20 million in savings over the next nine years. It maintains that, even if there were a wage freeze, the cost of step movement over the life of the award would be \$3.6 million or the equivalent of a 2.13% wage increase. It observes that this is slightly less than the blended wage increase awarded to the Nassau PBA for 2007-2012.

The County proposes increasing the divisor for overtime and holiday pay from 232 to 261. It states that, when compared to external jurisdictions, the County is on the low end, with

most divisors being 243. It adds that most jurisdictions have a higher divisor for new hires, who must appear more frequently than do their senior counterparts.

It stresses that the PBA CBA makes no distinction in divisors based on the officer's work schedule. In its view, the County concludes that officers have received enhanced overtime and holiday pay based on a schedule they do not work.

If this proposal is awarded, it calculates the County's savings to be about \$2.6 million. It says that this equates to a 1.57% wage increase.

The County states that it has proposed calculating night differentials based on the officer's base salary. It insists that determining night differentials based upon top salary is unheard of in every comparable police CBA including Nassau and the Suffolk County SOA. It claims that only the SDA enjoys the current benefit.

If this proposal is awarded, depending on which wage proposal is considered, it estimates saving between about \$409,000 and \$1.3 million. It claims that this would equate to a wage increase of .24% to .77%.

The County suggests that its proposed changes in the work schedules will improve efficiency. It indicates that there are currently two standard work charts, rotating tours of 7:00 AM-3:00 PM and 3:00 PM-11:00 PM and steady tours of 9:00 PM-7:00 AM. It points out that there is a two hour overlap between the 3:00 PM-11:00 PM and the 9:00 PM-7:00 AM tours. It says that the County recognizes that the overlap has not had the desired effect and is inefficient.

It avers that the SCPD has had to double up patrol cars for these two hours. It contends that this is inefficient in that two officers are assigned to one car for a two hour period. Moreover, it states that patrol time is lost when the officer going off duty at 11:00 PM must be

returned to his/.her relief point, thereby interrupting the patrol of the officer who will remain on duty until 7:00 AM.

It posits that there is another problem with the 10 hour tour. It points out that the contract provision requires that the 10 hour tour end when the eight hour day shift begins.

The County states that the SCPD gets an increasing numbers of calls for service at about 6:00 AM and that the number of calls peak at about 5:00 PM. It opines that the current charts do not permit the SCPD to deploy officers in precincts so that the public's needs are best met.

It posits that its proposal would give the SCPD the flexibility to schedule 10 hour tours at any time. It notes that it would be more effective if the SCPD were permitted to create three eight hour tours. It argues that the 10 hour tour could then be used as an overlay covering the busier times. It avers that this approach would permit the SCPD to have the equivalent of an additional 80 officers on duty.

The County posits that it has justified its proposal to increase the work year. It notes that it seeks to increase the number of work days for officers hired after January 1, 2008 to 261 days and to 238 days for all police officers hired before that date.

It stresses that PBA members work fewer days than most other County units and fewer days than officers employed in Westchester and New York City. It states that the granting of this proposal would result in savings to the County of \$13.7 million to \$14.9 million. It adds that such savings translate to wage increases of 8.08% to 8.83%.

The County proposes that the SCPD have the authority to deny leave time requests. It points out that, currently, the Department has little or no discretion to restrict officers from vacation or personal leave at certain times.

It indicates that the Department needs the flexibility to restrict officers from taking leaves on days of special events and on days when the Department historically needs additional officers on duty. It suggests that this will result in reducing the need to call officers in on overtime.

It posits that leave time is provided by the employer. It concludes that the employer should have the authority to determine when this benefit is to be used.

The County proposes the awarding of the proposal that seeks to implement the FLSA rules for overtime. It suggests that, currently, overtime is accrued for all hours worked in excess of the work day. It stresses that this approach is more generous than what the law provides and that the granting of this proposal would reduce the costs of overtime.

It maintains that the use of FLSA provisions in calculating overtime payments is becoming more common in County contracts. It adds that it has been implemented in part in the Nassau PBA interest arbitration award.

The County states that its tour change proposal is justified. It urges that the SCPD is currently restricted in its ability to cover personnel shortages, special events and court appearances without calling officers in on overtime.

The County opines that shifts are interchangeable. It concludes that, with adequate notice, it should make little difference to officers as to which tour they work.

It points out that the SCPD has the authority to change tours without penalty for schools, seminars and in-service training. It insists that there is no reason that the same approach should not be used with respect to the above-mentioned circumstances.

It avers that, in New York City and some East End towns, the police departments possess the flexibility sought in this proposal. It stresses that the granting of this proposal will improve the cost-effectiveness of the SCPD.

The County seeks the awarding of its sick leave proposals. It maintains that the reduction of sick leave days to 12 such days is justified. It notes that officers currently get 13 sick days in their first year, 19 in their second year and 26 sick days thereafter.

It points out that the County has negotiated reductions in sick days from 13 to 10 in a recent County contract. It adds that this proposal would result in sick leave accruals similar to those in East End towns.

It contends that the granting of this proposal would result in savings of \$21.1 to \$23.3 million. It suggests that these savings would be the equivalent of a 12.6%-13.7% wage increase.

The County asserts that its proposal for unlimited sick leave should be granted. It asserts that this proposal should apply to officers hired after January 1, 2008. It indicates that this proposal is modeled after what is done in New York City and in the Suffolk County Sheriff's Office.

It emphasizes that abuse of this system can be avoided by making sick leave usage subject to the provisions of CSL §§ 71-73. In its view, this would permit the separation of an employee from employment after a year's leave of absence.

The County argues that eliminating the payout for unused accumulated sick leave upon retirement is fiscally responsible. It indicates that the requirement that such payouts be made upon retirement should be deleted from the CBA or, in the alternative, this should affect employees hired after January 1, 2008.

It observes that it has paid retiring officers \$13.4 million in unused accumulated sick leave over the past four years. It says that, on average, each retiring officer received \$81,087. It observes that the 2007 Nassau interest arbitration award reduced terminal leave payout (including unused accumulated sick leave) to no more than twice the officer's final salary and increased the divisor for calculating the value of a single day from 1985 to 2088. It adds that other comparable jurisdictions; i.e., Westchester and Southampton, have effected similar restrictions. It concludes that the PBA should not be treated in a manner unlike other County bargaining units.

It suggests that restricting employees on sick leave to their homes or place of confinement conforms to existing patterns. It maintains that, currently, officers can be restricted to home only when the Commissioner so directs.

It indicates that Nassau restricts officers on sick leave to their homes from 9:00 AM to 5:00 PM on his/her regular scheduled work days. It argues that officers who are ill should be resting at home unless they require the assistance of a physician.

The County insists that the panel should award the proposal to restrict the leave time of officers on GML §207-c leave. It asserts that the statute requires the County to pay salary, health insurance and certain fringe benefits while the current CBA allows officers to accrue vacation, sick and personal days as well as equipment, clothing and cleaning allowances and night differentials. It urges that, in many cases, officers on GML §207-c leave have higher net earnings than officers who are actually working.

It recalls that the SOA, SDA, DIPBA and DSBA have accepted reductions in injured employees' right to accrue benefits while absent from work. It posits that the PBA has provided no rationale for its being treated unlike the other bargaining units.

It avers that officers on *401* leave should be required to use or lose vacation time in excess of 90 days and should not receive a night differential for when they are not working nights. It adds that they should not receive clothing and cleaning allowances for this period.

The County states that, on average, there are 20 officers out on §207-c leave for at least a full year. It claims that the average leave time is two to three years.

It observes that this proposal is mandated by the County's police pattern. It recognizes that the PBA has argued that the terms of this proposal go beyond those affecting other units in the police pattern. The County insists that this difference is justified since the PBA is the only County unit that had a four year period with no restrictions. It adds that there is no reason to believe that the County will not seek the same restrictions with the other units in the police pattern.

The County dismisses the argument that officers will be without health insurance if this proposal is granted. It cites case law that requires continued coverage for medical costs related to §207-c injuries even if there is no contractual obligation to do so.

It claims that comparable jurisdictions already have similar restrictions in their contracts. It cites Westchester in this regard. It points out that East End towns have the authority to determine whether to continue benefits in excess of the time period required by statute and applicable case law.

The County calculates the savings to be accrued if this proposal is granted as being \$480,000 to \$530,000. It says that this equates to a wage increase of .28%-.31%.

The County stresses that its proposal to implement a sick leave management program must be awarded. It contends that this proposal is designed to deal with sick leave abuse. It claims that it is in place in other County units (in and out of the police pattern), Nassau County and New York City. It emphasizes that the proposal is reasonable in that it prevents sick leave abusers from receiving the benefits of the contract enjoyed by officers who abide by the rules.

It states that this program has worked in Nassau County. It insists that it can work in Suffolk.

The County indicates that it has justified its vacation leave proposals. It posits that, should the panel grant the proposal, it will limit vacation accruals and separation pay for unused accrued vacation days.

The County seeks to limit the accrual of vacation days to 30 days per year. It notes that officers can currently accrue up to 120 days per year and carry over 90 days into the next year. It observes that this results in unnecessary personnel costs; i.e., additional overtime costs when additional days are taken off.

The County also proposes to limit separation days for unused accrued vacation days to a maximum of 60 unused days. It suggests that the current 120 day payout is higher than that of comparable jurisdictions.

It states that it spent \$1.3 million through November 20, 2008 on vacation day payouts. It observes that it would save \$543,947 if this proposal were awarded.

It argues that the current provision in the CBA granting an additional vacation day if a vacation day falls on a holiday be deleted. It adds that the officer actually gets paid at a time and a half rate if the officer works on the holiday.

It maintains that awarding this proposal would result in a savings of \$2.3 million dollars. It stresses that this sum is the equivalent of a 1.37% wage increase.

It opines that officers are aware of holidays when they schedule vacations. It suggests that it is illogical, under these conditions, that the officers get an extra day off or compensatory time.

The County maintains that it justified its proposal to require employees on GML §207-c leave to use their vacation leave. It claims that officers currently retain their vacation even though they are home and not working.

It recognizes that employees on active duty may forego a vacation or may be too busy to take a vacation. It accepts that these officers can carry over, to a maximum of 90 days, unused vacation days. It insists that officers on §207-c leave have no such constraints but are entitled to carry over their days beyond the cap.

It avers that the current situation is inequitable. It adds that it would save \$397,000-\$433,000 if this proposal were awarded.

The County indicates that its personal leave proposals should be awarded. It posits that the proposal to reduce the number of personal days should be awarded. It seeks to decrease the number of personal days from five to three. It points out that the recent New York City interest arbitration panel eliminated personal days altogether.

It urges that the awarding of this proposal will result in a savings of \$3-\$3.3 million. It suggests that this equates to a 1.8%-1.96% wage increase.

It asserts that its proposal to prorate personal leave time is reasonable. It points out that this proposal is limited to an officer's last year of service as well as for any time s/he is off the payroll. It opines that there is no reason for an officer to get a full complement of personal days when s/he does not work a full year. It observes that this proposal, if granted, would save the County between \$25,000 and \$26,454.

It maintains that the SCPD should have the authority to cancel personal leaves. It points out that the Department currently has the right to cancel personal leaves due to public emergencies and the full mobilization of the Department. It adds that the cancellation of personal days for any other reason results in the officer involved being entitled to recall pay. It posits that the current restriction is non-existent outside of the County and is present in only two other County unit contracts.

The County urges that the granting of personal leave days should be based on mutual consent. It argues that the current CBA allows the employee to dictate when s/he will use a personal leave day.

It states that a disproportionate number of personal leave days are taken on holidays. It insists that this results in other officers being called in on overtime.

The County asserts that it has the authority in almost all other County contracts to restrict personal days and adds that, in the contracts of external comparables, management has the right to restrict the use of personal day to some degree.

The County stresses that the granting of this proposal will reduce the cost of overtime. It notes that it would save \$604,000-\$659,000 if this proposal were awarded. It calculates the savings to be .36%-.39%.

The County proposes to conform the maternity leave section of the CBA to statutory requirements concerning maternity leaves and leaves of absence. It asserts that current contract language is discriminatory in that "maternity" leaves are only available to women. It cites case law that holds that this constitutes gender discrimination. It observes that its proposed changes to Section 26 and Appendix C of the CBA will remedy the problem.

It recalls that, with the exception of the DIPBA, all other County units have agreed to these changes. It dismisses the PBA arguments about a purported discrepancy between maternity leaves and leaves of absence.

The County opines that there is no reason for the PBA to be treated in a manner unlike virtually all other County bargaining units. It adds that there is also no reason for an illegal provision to remain in the CBA.

The County argues that it has justified its disciplinary proposals. It indicates that the current requirement that disciplinary matters be heard and decided within 30 days is unrealistic. It suggests that, in the current environment and with the caliber of the arbitrators used by the parties, this time frame cannot remain. It states that almost all such arbitrations take months or years to complete.

The County proposes the deletion of this contract language. It posits that similar language is virtually non-existent in the contracts of external comparable units, as well as the CBA's of the SDA, DIPBA and the DSBA.

It contends that it is reasonable to delete the restrictions on penalties available to employees who opt for a CSL §75 hearing. It indicates that disciplinary charges are often resolved with penalties of suspensions of five days or fewer.

It points out that, when the SCPD seeks such a penalty, the officer can accept it or proceed with a §75 hearing. The County asserts that, in its view, when this happens, the penalty remains that of a suspension of up to five days even if the hearing officer believes a more severe penalty is justified. It maintains that the discretion of the hearing officer should not be restricted.

It urges that the *destruction of records* provision of the CBA should be deleted. It stresses that, while it does not oppose removing the documents in question from the employee's file, destroying them violates State law. It states that the Nassau CBA permits the destruction of documents when permissible by law.

The County urges the awarding of its proposal to modify the *Negotiations* section of the CBA. It rejects the premise that members of the Board of Governors should be paid the 12% night differential. It notes that this differential is paid to officers who work the extraordinary night chart and that no one on the Board of Governors works this tour. It claims that the CBA's of units in Westchester, New York City and the East End towns have no such provision.

The County contends that it is fiscally irresponsible to compensate Board of Governors members with the highest supplementary wages. It maintains that members of this Board receive canine pay, \$6,743 pr annum, for caring for a non-existent dog.

It urges that this perk is non-existent in Nassau, Westchester, New York City or the East End towns. It adds that the cost of this item is \$33,715 and should be removed from the contract.

It observes that the stipends available to PBA officers must be deleted. It recalls that these stipends were awarded to compensate the PBA officials for lost overtime opportunities. It insists that this benefit is enjoyed by more PBA members than in any other County unit. It notes this will cost the County \$50,776-\$55,445 over the life of the contract and urges the panel to grant this proposal.

The County argues that the PBA's administrative leave bank should be reduced from 800 days to 400 days. It suggests that the PBA's current bank is the highest of any unit in the County, including AME, which is at least three times greater than the PBA.

It calculates the savings, if this proposal is granted, to be \$307,000-\$337,000. It estimates that these sums are the equivalent of a .18%-.20% wage increase.

The County stresses that the PBA should reimburse it for all taxpayer funded PBA activities, including released time. It posits that taxpayers should not fund activities that do not improve public safety.

It states that PBA activities cost the County in excess of \$1 million per year. It insists that granting this proposal would result in savings of \$2.3-3 million, an equivalent of a 1.4-1.8% wage increase.

OPINION

§209 of the New York State Civil Service Law (*Taylor Law*) sets forth the parameters which an Interest Arbitrator must utilize in deciding terms and conditions of employment. These criteria are as follows:

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

With these criteria in mind, I turn to the specific issues before me. The first such matter is the initial criterion.

There are a significant number of interest arbitration decisions which bear on this standard. These decisions cover the period 1996-2007. (PX1[a,c,e]).

These decisions reflect a well-established premise that the jurisdiction which is most comparable to Suffolk County is Nassau County.

The PBA asserted that the districts and villages in Nassau County and the villages in western Suffolk are comparable to Suffolk County and the collective bargaining agreements with their police departments should be considered by the panel for the purpose of determining the wages, hours and conditions of employment of the members of the Suffolk County PBA. For its part, the County argued that, in addition to Nassau County, New York City, Westchester County and the towns of the East End of Suffolk County should be part of this analysis.

While both parties forcefully stated their positions relative to this matter, there is limited arbitral support for either position. It is true that the interest arbitration award covering 2000-2003 refers to the larger police departments in Nassau County and the western towns in Suffolk. However, that panel relied primarily on Nassau County as being the most comparable to Suffolk. Additionally, there is little arbitral support for considering New York City, Westchester and the East End towns comparable to Suffolk for interest arbitration purposes.

It must be stated that the County averred that the issue of comparability needs to be viewed through the prism of other bargaining units within the Suffolk County jurisdiction as well as external ones. While the arbitral history indicates that Nassau County is the external jurisdiction that is most comparable to Suffolk County, I must now consider the argument that there are internal *comparables* in Suffolk County.

The record suggests that there are four tiers of patterns within Suffolk County. As a matter of fact, there are eleven bargaining units within the County. Each one falls within a pattern.

The first pattern is the *police pattern*. The four units within this pattern are the PBA (Police Benevolent Association), the SOA (Superior Officers Association), the SDA (Suffolk Detectives Association) and the DIPBA (Detective Investigators PBA).

The next one is the *Sheriff's pattern*. The DSBA (Deputy Sheriffs Benevolent Association) and the COA (Corrections Officers Association) comprise this pattern.

The third pattern is referred to as the *AME* (Association of Municipal Employees) *pattern*. The units within this pattern are AME (White Collar and Blue Collar units), the DSBA Park Police (Park Police) and the Probation Officers Association (POA).

The final pattern is the *College Pattern*. Suffolk Community College (SCC) personnel come under the County's purview at least for bargaining and labor relations purposes. There are two SCC bargaining units that make up the *College Pattern*. They are the Faculty Association of SCC (the Faculty) and the Guild of Administrative Officers of SCC (the Guild).

Not all of these patterns are equally relevant here. There is significant arbitral support for viewing the police pattern as being the one that is most comparable to the PBA. In the 1993 PBA Award (CX3), Arbitrator Scheinman concluded that there are both external and internal comparisons to the PBA that must be considered. While he and other arbitrators found that Nassau County is the most comparable external jurisdiction, Arbitrator Scheinman addressed the internal patterns for purposes of comparability. He concluded that the police units are the most relevant in this regard. Arbitrator Scheinman was also the neutral chair of the 1993 SDA interest arbitration panel. He made the same finding in that award (CX4).

Arbitrator Edelman was the chair of the panel that issued the 1993 DIPBA award (CX6). He noted that the units in the police pattern were comparable to each other because of their *close community of interest*.

Following these 1993 awards, there was a string of interest arbitration awards that continued to support the premise that the units in the police pattern were comparable to each other for purposes of considering their wages, hours and conditions of employment. The 1996 PBA and SOA awards, the 1997 DIPBA award, the 2000 SDA award, the 2002 SDA and SOA awards, the 2005 SDA and SOA awards and the 2006 DIPBA awards all stand for this proposition (CXs7, 8, 9, 10, 11, 12, 13, 14, 15, 17).

The record persuades me that the police pattern is the most relevant internal grouping of bargaining units to be considered when determining the wages, hours and conditions of employment to be awarded to the PBA at this time. However, this is not to say that the other patterns have no relevancy. To the extent that broad County policy is reflected in the collective bargaining agreements of units in other patterns, appropriate weight must be given to these agreements.

In sum, the most comparable external jurisdiction to be considered by this panel is Nassau County. Its size, location, population, economic conditions and social conditions contribute to this conclusion.

While the districts and villages in Nassau and Suffolk are geographically proximate to the SCPD, there are significant differences in size between them and the SCPD. There are also great differences within the grouping of these districts and villages in Nassau and Suffolk in terms of their populations and economic and social conditions. Thus, they cannot be given the same weight that is given Nassau County for purposes of this award.

As to New York City and Westchester County, the arbitral history is devoid of references to them as being comparable to Suffolk County. While the County's argument was clearly articulated and has a logical basis, I find little support at this time for considering these two jurisdictions to be considered comparable to Suffolk County under the terms of the Taylor Law.

As far as the internal bargaining patterns within Suffolk County is concerned, the community of interests among the units in the police pattern leads me to conclude that the police pattern is the most relevant one of the four patterns described above. Though under certain

circumstances the other *patterns* are relevant, less weight is given to them than to the police patterns.

Criterion (b) concerns the interests and welfare of the public and the financial ability of the public employer to pay for the costs associated with increases in wages and improvements in benefits. I will first address the interests and welfare of the public.

It is unquestioned that the needs of the public are met by a well paid and well maintained corps of police officers that operates safely and efficiently. It is also clear that a police force with good morale is essential. Positive morale results in higher productivity and a flow of high quality candidates for the positions available.

The issue of the County's ability to pay requires a different kind of analysis. I must first acknowledge the quality of the presentations made by the representatives of the PBA and the County.

Kevin Decker, the PBA's expert on municipal cost analysis, concluded that the County had the ability to pay for the PBA proposals that he was able to cost out. He based his conclusions on *the availability of local tax and revenue sources, historical results and emerging trends regarding expenditures and tax/revenue rates and bases; and the underlying economics and demographics of the community from which revenues are generated*. He stressed that a claim by a municipality of an inability to pay for contract demands often reflects either an unwillingness to pay, an unwillingness to tap available revenue sources or a deliberate decision to focus spending in other areas.

The PBA adopted Decker's rationale and argued that the County was able to pay for the PBA proposals but refused to do so. It insisted that the County failed to demonstrate the validity of its refusal to fund the PBA proposals.

Decker's presentation included certain charts (PX81). The documents showed the sources of funds that are tapped to pay for the police budget. This funding comes from the County's General Fund and its Police District Fund. The data relied upon suggest that both Funds are largely derived from real property taxes and, to a much smaller degree, from sales tax. Decker observed that the County has the ability to move money from one Fund to another as needed.

Decker asserted that sales tax revenues have increased from about \$668 million in 1998 to \$1.8 billion in 2007. He added that sales tax receipts through the third quarter of 2008 increased by 1.7% over 2007.

As to real property tax revenue, Decker stressed that the combined increase in tax levy for both Funds since 2003 was less than the rate of inflation. He added that the taxable full value of real property in the County increased at an annual rate of 13% since 2003 and has increased by almost 18% within the Police District during that period. He observed that the County's full value tax rate was second lowest among the State's large counties.

The PBA asserted that the County Executive's budget reflects confidence in the County's fiscal health. It noted that the County Executive recommended freezes in both the General and Police District warrants. Decker opined that this is not the action to be taken when facing financial problems.

The State Constitutional Tax Limit, in the PBA's view, is another indication of the County's fiscal health. It stressed that the use of the tax limit has decreased over the past six years.

Decker posited that the sales and property tax revenues are healthy sources of income that will remain so despite the current economic downturn. He also indicated that the County's outstanding debt is the second lowest per capita when compared to other large counties.

He added that the County has other sources of money to enhance its ability to pay for the PBA proposals. He claimed that the Tax Stabilization Reserve Fund is one such source.

Finally, Decker asserted that the bond ratings suggest fiscal health. He cited the Fitch rating of AA- and the upgrade by S&P to AA.

The PBA concluded that the County's rate of population growth, high per capita income, rapid rate of job creation and relatively low rate of unemployment position it to weather economic downturns better than most counties. The PBA relied on these data and arguments to support its claim that the County has the ability to pay for the cost of the PBA proposals.

The County painted a very different picture of its fiscal health. While it agreed that the police budget is supported by the General Fund and the Police District Fund, it emphasized that police salaries are largely funded through the latter. It added that the Police District Fund comes largely from real property taxes and, to a lesser degree, from sales tax revenue. The County insisted that both of these sources of revenue are unhealthy.

It maintained that it has been losing sales tax revenue since 2006. It urged that its consulting firm projected negative growth in 2008 and a 1.3% decline in 2009. It claimed that, when adjusted for inflation, sales tax growth has been negative since 2006.

The County acknowledged its ability to transfer sales tax revenue from the General Fund to the Police District Fund. It argued that it is not clear that it will be able to continue doing so.

It posited that County taxpayers cannot afford a tax increase. It cited a significant increase in tax grievances. It pointed to a 30% increase in foreclosures within the County.

It quoted statistics related to increases in Medicaid and temporary assistance applications in recent years. It indicated a large decrease in new home building since 2005.

The County averred that people cannot absorb higher sales and property taxes to pay for a PBA contract. It stated that the County ranks eleventh highest in the country in terms of the percentage of household income paid towards property taxes.

It indicated that unemployment in Suffolk is at a ten year high. It argued that there are fewer people to absorb the cost of higher police wages and benefits.

The County noted that legal budgetary constraints restrict its ability to increase its budget. It pointed to The Suffolk County Tax Act, the County's Charter and Local Laws 29-96, 21-83 and 38-89 in this regard.

It argued that there are projected budget shortfalls that are unparalleled during the life of this award and in the years to come. It suggested that it is experiencing significant cash flow issues. It added that it has lost millions of dollars in sales and property taxes.

It quoted independent economists who have projected an "L" shaped cycle that is characterized by little growth for an extended period of time after a downturn.

The County rejected the premise that it is below the constitutional taxing limit and can raise taxes to pay for the PBA's proposals. It observed that raising taxes at this time is not a viable option.

It insisted that the PBA's presentation was based on inaccurate and outdated data. It contended that the PBA arguments were based on data on 2006 and 2007 statistics, a period when the County was still growing. It maintained that 2006 and 2007 data do not demonstrate an ability to pay in 2008, 2009 and 2010.

It is a matter of record that the parties entered into an MOA in October 2009 and that it was approved by the County Legislature in November 2009. It was effectuated on December 1, 2009.

I have previously set forth the most significant elements of the MOA. Clearly the MOA provision that is of greatest importance to the panel is the extension of the panel's jurisdiction from writing an award covering two years (January 1, 2008-December 31, 2009) to one covering three years (January 1, 2008-December 31, 2010).

A second element of the MOA was the provision that called for the deferral of \$12 million in payments of retroactive monies provided for in this Award. The deferred retroactive payments will be paid to the officers within thirty days of separation from employment with the County. In return for the deferral by the PBA of the \$12 million, the County agreed to a number of conditions, items 3a-c and 4-10.

As a consequence, I provided the parties with the opportunity to update the financial data they had provided as part of their cases in chief and in their post-hearing briefs and to offer additional arguments. It should be recalled that the parties submitted their briefs in early March 2009 and that they were focused on 2008 and 2009. In this economic environment, the nine months between March and December 2009 were significant and the updated data was essential

in order for the findings concerning 2009 to be re-examined and for the development of conclusions concerning 2010.

The parties provided updated data and argument on December 15, 2009. I have considered the recently submitted information. The parties' submissions are reflected in this Opinion.

Having thoroughly reviewed the arguments and data concerning the County's ability to pay for the PBA proposals, I conclude that the County does not have the wherewithal to satisfy those demands as presented. I credit the County's arguments about the economic conditions in Suffolk County and the state of the fiscal health of the County government. I am persuaded that the County is facing a serious fiscal crisis at this time. I am further convinced that there are no firm indicators at this time that suggest that the myriad of financial problems and unemployment rates will be resolved anytime soon.

A review of the data indicates that increased unemployment has an impact on sales tax receipts, Mortgage Tax receipts, property tax receipts, foreclosures. These factors directly affect the County's ability to meet budget projections and to provide a whole host of services to residents of the County.

Suffolk County had an unemployment rate of 7.5% at the beginning of the fourth quarter of 2009. With some fluctuation, it was at that level since the fourth quarter of 2008. It should be recalled that scope of the economic decline became apparent in the fall of 2008.

It should be pointed out that the unemployment rate in Suffolk County in January 2007 was about 3.5%. Thus, the rate of unemployment doubled between January 2007 and

September 2008 and, with some seasonal changes, has remained relatively constant since September 2008.

There was a small decline in unemployment nationally at the end of January 2010. It is unclear whether this decline was reflected on Long Island. It is also too soon to posit that there is a long term trend in the direction of the re-employment of people who have become part of the pool of individuals who have been out of work on a long term basis and who have been underemployed during this recession.

To be sure, significant unemployment impacts on the general economy. According to the Sienna Research Institute, consumer confidence continued to erode through the end of 2009. The Sienna findings of December 2009 were consistent with those of a News 12 Public Opinion poll. A lack of consumer confidence results in reduced spending. People concerned about the loss of employment tend to reduce their spending to the greatest degree possible.

The decline in sales tax receipts in Suffolk County bears out the survey results discussed above. The context in which this decline has to be viewed is a comparison in receipts between 2008 and 2009.

It is not surprising that the County anticipated reduced sales tax receipts in 2009. The County's proposed 2010 budget projected a 6% decrease (\$69.9 million) in sales tax receipts in 2009 as compared to 2008. County data indicates a 9% (\$90.9million) decline through October 2009. It may be that Christmas shopping may have reduced the decline. However, there is no data to indicate that the reduced decline in November and December was more than marginal. In any event, the decline in sales tax receipts in 2009 is in excess of 6% and the County opines that

it is on the order of 8% or a further reduction of \$23 million in sales tax income (over the projected 6% decline).

Kevin Decker, on behalf of the PBA, developed a chart reflecting sales tax revenue since 2007. His chart showed a 5.1% decline in the fourth quarter of 2008 and a decline of over 9% in the first three quarters of 2009.

Mr. Decker opined that the recession had *bottomed out* at the end of 2009 and that the economy had begun to recover. While Mr. Decker is a respected economist, there is no data to support his projections for 2010. The combination of continued declines in sales tax revenue and the still high level of unemployment suggests that the County will continue to experience fiscal problems in 2010.

A second contributing factor to a depressed economic outlook is the rate of foreclosures on homes. The number of foreclosures per month has almost tripled since January 2007 and almost doubled since January 2008. Foreclosures result in property tax delinquencies. There has been a 43% increase in this respect between 2007 and 2009 and about a 25% increase in property tax receivables between 2008 and 2009.

The depressed economic climate has resulted in fewer homes being bought and sold. This factor is reflected in diminished proceeds from the Mortgage Tax. In January 2007 the proceeds from the Mortgage Tax was \$11.5 million. It was \$3.6 million in November 2009. This represents a 67% decline.

A comparison between January 2008 and November 2009 is equally revealing. The Mortgage Tax revenue in November 2009 was 40% lower than it was in January 2008.

Other factors such as a 40% reduction in new housing permits in the first three quarters of 2009 and the almost 13% decline in median property values since June 2008 are relevant. These two matters negatively impact on the County's property tax receipts.

Kevin Decker's analysis focuses on his conclusion that there are no long term weaknesses in either the County's Sales Tax and Real Property Tax. He acknowledged that there have been certain short term revenue impacts, but pointed out that the County has projected 2010 as a year of growth in sales tax revenues.

Mr. Decker's long term projections of the strength of the County's revenue stream of sales and property taxes may be accurate. However, there is no evidence to suggest that there will be a substantial increase in these receipts in 2010. Thus, I am constrained from adopting a more optimistic projection for the third year of this Award.

The foregoing analysis dealt with tax receipts from sources within the County. The County is dependent to some degree on aid coming from the State and the Federal government. To the extent that the County's financial problems are not unique, both the State and the Federal government are going through similar difficulties.

The manifestation of the crises at other levels is the growth in General Fund receivables. The 2009 receivables amount to about \$292 million. The receivables in 2008 came to \$227 million. This represents a 29% increase. Receivables of this magnitude seriously affect cash flow.

Needless to say, the County is paying for the adjustments in 2008 and 2009 at this time. It is well documented that much of 2008 and all of 2009 were years in which the County

experienced serious declines in tax revenue receipts. The County's fiscal travails continue to be problematical.

The foregoing analysis dealt largely with the *income* side of the situation. In troubling economic times, the County encounters additional expenses. Two such areas are increases in Medicaid and Temporary Assistance case loads. The provision of services associated with both of these items has increased significantly during the current recession.

Thus, at a time when tax receipts have declined and receivables have increased, the County must meet the challenge of providing greater services to people who may have been negatively affected by the economic downturn. In sum, the County's *ability to pay* must be viewed in the context of these facts.

However, the ability to pay is not measured in absolute terms. In short, it is not necessarily true that the inability to pay for the PBA proposals connotes that the County is unable to fund more modest improvements in wages and benefits.

Despite the severity of the economic recession, I am persuaded that the County does have the ability to pay for smaller increases in salaries and benefits. Some of the factors that enter the calculus of the degree to which the County has the ability to pay are the current fiscal data, a comparison of the economic condition of the County at this time as compared to the period of the prior interest arbitration award, the terms and conditions of employment of the Nassau police force, the most comparable jurisdiction, as well as the time frame when the most recent Nassau County PBA award was issued.

A review of the current financial health of the County entails a consideration of the data analyzed by the parties. The comparison with the period of the last Suffolk PBA award is

essentially an analysis of the County's fiscal development, positive or negative, since the award that covered 2004-07. Finally, given the finding that Nassau County is Suffolk's most comparable jurisdiction, it is essential to consider the status of the economy at this time as compared to when the 2007-12 Nassau interest arbitration award was issued. It goes without saying that the economic climate during the period of the 2004-07 Suffolk PBA Award and at the time of the negotiations leading to the Nassau 2007-12 Award was drastically different from and substantially better than these times.

I recognize the seriousness and the scope of the economic downturn that has transpired since the fall of 2008. That being said, I conclude that the County has the ability to pay for reasonable improvements in the wages and benefits of PBA members.

Criterion c) is based upon a comparison of the peculiarities of the job of members of the unit involved in the interest arbitration with other trades or professions, including specifically hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. It is clear that police personnel are faced with serious and unique hazards. Police personnel, in general, and, in this case, police officers, risk death and serious injuries regularly. There is a strong similarity between police officers and other law enforcement units relative to the specific considerations in this criterion. Thus, this criterion is satisfied when the PBA is compared with other police departments. It should not be surprising that the comparability with respect to salary and benefit considerations fundamentally reflects a comparison with Nassau County and with other units within the Suffolk County police pattern, not with other trades or professions. Law enforcement is unique and those employed in this field can only be compared with others in that field.

The final statutory criterion, statutory criterion (d), requires a consideration of past collective bargaining agreements between the parties with respect to compensation and fringe benefits. This criterion mandates that the instant proceeding not be viewed in a vacuum, but rather in the context of prior negotiations and awards between the Suffolk PBA and Suffolk County. The record is replete with prior interest arbitration awards. These awards were given appropriate consideration.

Having discussed the relevant statutory criteria, I now turn to the parties' specific proposals.

TERM OF THE AWARD

The length of the contract is the first issue to consider. The MOA to which the parties are signatories indicates that a three year successor agreement is appropriate. The predecessor agreement expired on December 31, 2007. A three year award will cover the period January 1, 2008-December 31, 2010.

WAGES

The parties had significant differences over the matter of salary increases. The PBA proposed wage increases of 6% in each year of the award. It noted that police officers in villages in western Suffolk received an average wage increase of 4.04% in 2008, 4.05% in 2009 and 3.99% in 2010. It added that officers in districts and villages in Nassau County got average increases of about 4.15% in 2008, 4.16% in 2009 and 4.21% in 2010. It stressed that the Nassau PBA award provided for 4% raises in each of the three years.

It must be added that there are increasingly fewer jurisdictions reporting wage increases in 2009 and 2010 as compared to 2008. This is true in both Nassau and Suffolk County.

Thus, while the data is unchallenged, I must reserve judgment on the weight to give these statistics because they do not provide a complete picture. The jurisdictions that are not reflected in the statistics are facing similar problems to those in Suffolk County and, in all likelihood, will be under similar pressure to bargain for less costly collective bargaining agreements.

The County proposed a wage freeze in each of the years of this award. It also proposed a new salary schedule. It posited a new starting salary of \$35,000, equidistant steps and two new salary steps. It suggested that the awarding of this proposal would result in a salary schedule that would more closely resemble the one in place in Nassau County.

This analysis must begin with the current economic climate. As set forth in detail above, the diminished tax revenue, unemployment and uncertainty about what the future holds makes the PBA proposal of 6% increases unacceptably high. Pursuant to criterion (b), the County simply does not have the ability to pay for such an increase.

Moreover, there is no evidence to suggest that any jurisdiction that the PBA considered comparable to it provided for 6% increases in 2008, 2009 and 2010. Therefore, the factoring in of criterion (a) further strengthens my finding that 6% increases are unreasonable.

On the other hand, a three year wage freeze is also inappropriate. I have stated my conclusion that the County does have the ability to improve the salary schedule, albeit to a lesser degree than proposed by the PBA.

One of the Taylor Law criteria, criterion (d), requires a consideration of the bargaining history between the parties. The expired CBA of these parties included salary increases of 3.75%. That was the percentage increase in 2007.

There can be no doubt that the County's fiscal health has significantly declined since that point in time. Thus, these facts provide guidance with respect to the wage increases in the successor agreement. The County is unable to unconditionally fund a 3.75% wage increase at this time.

As previously indicated, agreements reached in comparable jurisdictions need to be studied when assessing the matter at hand. I have concluded that Nassau County is the jurisdiction that is most comparable to Suffolk County. Therefore, the 2007-12 Nassau PBA award is relevant here. This calls for an in depth analysis of the Nassau award.

It should first be pointed out that the Nassau award was issued in June 2007. It goes without saying that the economic climate on Long Island has changed dramatically since then. The Nassau award was written at a time when the financial health of Nassau County had improved since the issuance of the prior award (covering 2001-06).

The Nassau award provided for increases of 1%-4%. Officers below top salary were awarded 1% increases, while police officers at top step were given 4% increases. These increases were effective April 1 of the year. This constitutes an 18 month wage delay over the life of the contract. This provision resulted in blended wage costs of 2.96% over the six year award.

I must add that the total cost of the Nassau award was 2.75% per year. There were further cost savings awarded in the award that impacted on the cost of the award. This factor will come into play here as well.

Just as the Nassau PBA was required to make concessions when reaching an Agreement with a net cost of 2.75%, so too will there be concessions by the Suffolk PBA. These

concessions will be spelled out in subsequent parts of this Award. I am conscious of the need to avoid redundancy, but I must again emphasize the differences in economic conditions now as compared to 2007. In addition to the wage increase described above, the Nassau panel awarded a reduction in the starting salary to \$34,000. It also created a new Step 2 of \$45,000. The new Step 2 was to remain in place until December 31, 2012, at which time it would become Step 1 and would replace the \$34,000 starting salary. The panel awarded this change as a cost saving means since there was a projection of 100 police officers being hired each year during the life of the award.

Given the differences in the length of the award here as compared to Nassau County, I conclude that it is more practical to have the same percentage salary increase for all officers in service as of January 1, 2008. Moreover, I conclude that the salary increases in each year of this award should be 3.5%.

However, there needs to be a comparison drawn between Nassau and Suffolk salary schedules under the conditions described above. Appendix A of the 2007-12 Nassau award indicates that top salary for Nassau PBA members on January 1, 2007 was \$96,129 (with the raise deferred until April 1, 2007). As of January 1, 2008, the first year of this award, the Nassau top salary went to \$99,974 (with the raise deferred until April 1, 2008). The top salary in Nassau on January 1, 2009 was \$103,973 (with the same three month deferral as in the prior two years). Finally, the top salary in Nassau on January 1, 2010 was \$108,132.

The top salary in Suffolk on January 1, 2007 was \$97,958. With annual increases of 3.5%, the top salary in Suffolk on January 1 of 2008, 2009 and 2010 will be \$101,387, \$104,935 and \$108,608 respectively. It is clear that, historically, the police officers in Suffolk have had

higher salaries than their counterparts in Nassau and, as of January 1, 2010, that historical relationship will remain unchanged.

It is true that the gap between the top salaries in the two counties will narrow during these three years. The difference in 2007 was \$1,829. It becomes \$1,413 in 2008, \$962 in 2009 and \$476 in 2010. However, I must add that the gap between the salaries in Nassau and Suffolk at the salary steps below top salary must grow since the salary increases at these steps in Nassau is 1% while the increase in Suffolk is 3.5%.

The point is that, in terms of comparability with Nassau, I am persuaded that even in these difficult times there is minimal change to the balance between the counties through December 31, 2010. There is a small narrowing of the difference in the top salary in Nassau and Suffolk which is balanced by a greater increase in the difference in the salary steps below the top step. Moreover, the Nassau schedule is in place through December 31, 2015 and the parties to the Suffolk County CBA will be negotiating further improvements shortly after the issuance of this Award.

The cost of a three year award with a 3.5% wage increase each year is approximately \$18.7 million (\$5,940,733 per year or \$495,061 per month). It should be recalled that the PBA agreed to defer \$12 million worth of retroactive payments due. It should be noted that the Nassau PBA deferred a total of \$12.6 million in the first three years of the 2007-12.

Given the date of this Award, the \$12 million will come out of retroactive wage increase payments due for the first two years and one month of this Award. It is clear that the entire \$12 million deferral will come from the retroactive payments due in 2008 and 2009 as well as a portion of 2010. There will be retroactive monies due for about two months in 2010 with the

balance of the increases in salary in 2010 reflected in regular paychecks through December 31, 2010.

In short, while greater precision is impossible, I am convinced that there is comparability between the deferrals in the two counties that are mutually most comparable. Furthermore, in addition to maintaining comparability with Nassau County, the 3.5% increases recognize the realities of these times (See Schedule A).

That being said, I am persuaded that there needs to be further savings for the County. The recent Nassau award provided such savings, in part, through the reduction in the starting salary of Nassau police officers to \$34,000 and the creation of a new second step. The Nassau award stated that the new second step would become the starting salary on December 31, 2012.

I have considered the reduction of starting salaries and have determined that such a step is appropriate. In this regard, the County proposed a reduction in the starting salary to \$35,000. The PBA's proposals included no reduction in starting salaries.

There is no one in the Police Academy at this time. However, it is expected that there will be a class of cadets in the near future. A reduction in starting salaries will result in immediate savings to the County and over time there will be greater savings.

Therefore, as of the date of this Award, the starting salary for new hires will be \$42,000. Prior to this award and the 2007-12 Nassau award, the starting salary in Suffolk County was higher than that of Nassau County. The reduction of the starting salary to \$42,000 will ultimately reduce costs and will maintain the current difference in starting salaries in Nassau and Suffolk Counties.

The difference in the terms of the two awards makes the approach of creating a new second step impractical in Suffolk County. The Nassau award extends out to 2012, at which time the newly created second step will be further dealt with. By contrast, this award covers a period ending on December 31, 2010.

A second element of the reduction of the starting salary involves the creation of a new salary schedule. In this regard, there will be an equalization of salary steps from starting salary to top salary. This will accrue long terms savings to the County.

There are currently six salary steps in the schedule. The salary schedule will continue to be comprised of six steps. However, all of the officers hired after the date of this Award will be paid in six equalized steps as set forth in Schedule B.

For the sake of clarity, Step 0 of the salary schedule represents that salary as of the date on which the recruit is hired. Step 1 indicates his/her salary six months after the date of hire. Steps 2-6 indicate the salaries to be paid on the anniversary date of being hired with Step 6 being the top salary.

What must be clear is that the current top salary of the new schedule will be \$108,608. This will be the top salary as of January 1, 2010. Since no one is in the Academy at this time, no recruit will reach top salary by 2010. Therefore, the top salary in this Award for officers already in service will be the top salary for all recruits hired after the issuance of this Award. Using the current system of scheduling salaries, the recruit hired at \$42,000 will go to a salary of \$53,101 six months later. There will be increases of \$11,101 until the newly hired officer reaches a top salary of \$108,608 (See Schedule B).

There are two basic concepts being put in place. The starting salary is being reduced and there will be equalization of salary increases. It is my intent that, unless the parties bargain otherwise, the structure of equalized steps should be maintained.

These are cost savings that the County gains both short term and long term. That being said, the salary schedules set forth in Schedule B are fair and reasonable. This is particularly true given the current economic climate.

Moreover, the future savings to the County will be significant. Based on a starting salary of \$42,000 and a top salary of \$108,923, if the County were to start a class of 100 recruits, as compared to the current schedule, there would be an immediate annual savings of about \$1.5 million during the recruits' first year of employment. Given the date of the Award, the maximum savings in 2010 would be \$1,125,000. If there were a class of 70 recruits, the immediate savings would be about \$800,000.

In addition, there will be long term savings. The savings for a class of 70 recruits from the date of hire until the attainment of top salary would be about \$4.5 million. Finally, the savings for a class of 100 recruits during that same period would be \$6.5 million.

The demographics of the current police force suggests that the County cannot go on indefinitely without hiring new recruits. This approach will increase the financial feasibility to do so.

The County has a well trained, well paid and a highly professional police force. The improvements and changes in the salary schedule will permit it to continue doing so. Its ability to recruit and retain high quality police officers will continue unabated.

LONGEVITY PAYMENTS

The thrust of the PBA proposal was to alter the system used to calculate longevity payments. It proposed replacing the flat dollar amount with a percentage formula based on 1% of base pay after one year of service and 0.5% for each year thereafter. It added that, should the panel reject this approach, it proposed a reasonable increase to the flat dollar amount.

The County rejected this proposal as being too expensive. It also pointed out that the PBA's proposed new approach is inconsistent with the manner in which longevity payments are made in other County bargaining units.

I am persuaded that the change in approach proposed is unwarranted at this time. Such a restructuring would add greatly to the *longevity payments* costs. However, I agree that an increase in longevity payments is appropriate at this time.

Longevity payments will continue to be flat dollar amounts. These payments will increase by \$25 in each year of this Award.

The PBA asserted that the PBA's in Nassau and Suffolk both had longevity payments of \$300 as of 2006. It argued that, while Nassau's payments increased by \$25 per year, Suffolk had no increase in 2007, as that year was covered by the prior PBA award, which did not increase longevity payments, and has had no increases since then. As a result, by 2009, Nassau's longevity payments were to be \$375 per year, while Suffolk's were still at \$300 per year. This Award will mostly restore the balance between the Nassau and Suffolk PBA's with respect to longevity payments.

I must point out that the Nassau Award references the improved financial climate at the time of the issuance of that Award. The instant increase must be viewed in the context of very difficult economic climate.

I am persuaded that a \$25 increase for each year of this Award is appropriate. It is comparable to the annual increase in Nassau.

The annual \$25 increases to the longevity payments will be \$468,500 per year or \$1,405,500 over the life of the Award. I recognize that there is an increase each year in the number of officers eligible for longevity payments. However, by virtue of retirements and resignations, there is also a decrease in the number of police officers receiving these payments. Thus, for purposes of this Award, my calculation of the cost of these payments may not be exact, but it is certainly an estimate that is sufficiently accurate so that the total cost of this Award can be determined.

SICK LEAVE MANAGEMENT

The County proposed a Sick Leave Management Program. This program is designed to identify sick leave abusers. It sets forth restrictions applied to officers identified as sick leave abusers. The PBA objected to the awarding of this proposal.

The Sick Leave Management Program has been in place in Nassau County for several years. In addition, all of the units in the Suffolk police pattern have agreed to this provision. There may be minor differences between the Sick Leave Management Program in Nassau County and the program implemented with the SOA, DIPBA and the SDA, but the programs are much more similar than dissimilar.

The PBA made a strenuous argument that the amount of sick leave abuse in Suffolk County is minimal. That may be. However, the County has a valid basis for proposing the program. It is appropriate for the County to reduce the amount of sick leave abuse to the lowest possible level or, ideally, to eliminate it entirely.

The thrust of this proposal is to deny certain benefits to those identified as sick leave abusers. Sick leave abusers would not be permitted to work scheduled overtime, switch tours, apply for a new tour schedule, receive night differential while on sick leave and, for chronic sick leave abusers, receive night differential while on vacation leave. Finally, this program would restrict anyone on sick leave to his/her residence.

Since this program has yet to be initiated with the PBA, it is impossible to determine the precise cost savings to the County. However, in the light of the prospective reduction of sick leave use and the replacement costs at the overtime rate, I estimate the savings to the County to be on the order of \$850,000 (approximately \$283,300 per year) over the life of this Award.

As noted, the Sick Leave Management Program is in place in the contracts of the SOA and the SDA. The County proposal as implemented with the SOA, DIPBA and SDA is awarded, as per Schedule D, which is attached to this Award.

GENERAL MUNICIPAL LAW §207-c LEAVE

The County proposed the elimination of the current contract provision concerning officers on GML §207-c leave. The current contract language places no limit on the length of time that officers on §207-c leave continue to accrue vacation days, sick leave, personal leave, night differential and clothing and cleaning allowances. This provision provides benefits that exceed those provided by the statute.

The County's proposal mandates that officers on §207-c leave must use or lose vacation days acquired that exceed 90 days. It denies night differentials and cleaning and clothing allowances to those receiving 207-c benefits after three months of such benefits.

All of the units in the Suffolk police pattern already have more restrictive provisions in their CBA's than that of the PBA. With respect to all of the benefits other than vacation days, the other units' provisions have a 12 month limitation, not the three months proposed in this instance. They all limit the accrual of vacation days to the maximum number permitted in the CBA, irrespective of leave status. I am persuaded that the principle of comparability suggests the time frames set forth in §207-c language in the contracts of the other units in the Suffolk police pattern should apply to the PBA.

This proposal is awarded in part. The time frames relative to vacation accruals, payments for night differential and cleaning and clothing allowances will mirror the provisions of the CBA's of the SOA, SDA and DIPBA, pursuant to the language set forth in the attached Schedule E.

The PBA argued that the County proposed the deletion of ¶22(f) of the CBA and its replacement with new GML§207-c language (Proposal 10d). It observed that, if granted, the deletion would include *any other benefit to which he/she would be entitled because of an on-duty injury*. It noted that the deleted language included the injured officer's health insurance and that, under the proposed language, officers could lose their health insurance.

The proposed §207-c language has been in the contracts of the SOA, DIPBA and the SDA for some time. There is no evidence that its application has resulted in the loss of health

insurance by anyone covered by those agreements. This speaks to the County's intent relative to this proposal.

While understandable, the PBA's concerns relative to this issue appear to be unwarranted. Officers who fall under the County's §207-c language have not lost their health insurance and there is nothing in the record to suggest that the implementation of this proposal with respect to the PBA will differ from the manner in which it has been employed with the SOA, DIPBA and the SDA.

In sum, the County's 207-c proposal (10d) is granted. However, it will be modified to conform to the language present in the contracts of the SOA, SDA and DIPBA, as is set forth in Schedule E.

The granting of this proposal as described above will result in savings to the County. I estimate the savings will be in the range of \$850,000 over the three years covered by this Award.

FAMILY SICK

The current CBA provides for the use of five of an officer's individual sick days for the care of spouses or members of the immediate family living in the household of the officer. The PBA proposed the doubling of the number of Family Sick days from five to ten days. The County indicated that there was no need for this increase.

The record indicates that there is an absence of abuse of this benefit. PBA members have been judicious in taking Family Sick days. Further, Family Sick days are not above and beyond the contractual number of sick leave days. Thus, it is difficult to quantify a greater cost to the County if there were an increase in Family Sick days.

To the extent that there may be unusual circumstances when officers may need more than five Family Sick days, the number of such days is to be increased from five to seven. Therefore, the PBA proposal is granted to the extent that there will be an increase in Family Sick days. However, the number of Family Sick days will be increased by two days per year and not five as proposed by the PBA.

Given the timing of this Award, this provision will take effect on July 1, 2010.

REOPENER CLAUSE

It is undisputed that the PBA is the first unit in the police pattern to bargain for a contract to replace the one that has expired. It is also true that there is a history of pattern bargaining with the police pattern.

I agree with the PBA that *leapfrogging* by other units in the police pattern; i.e., SOA, SDA and DIPBA, is inconsistent with sound labor relations. The rejection of this proposal could place the PBA potentially in the position of setting the base from which the other units bargain.

The 2007-12 Nassau award provided for a Reopener Clause for the Nassau PBA. However, the panel issuing that award limited the Reopener to situations in which one or more of the other units in the Nassau police pattern bargained for or were awarded changes in the overall terms and conditions of employment for the term of the 2007-12 PBA award. That panel specifically rejected the premise that the Nassau PBA was entitled to reopen negotiations simply because another unit in the police pattern bargained for or was awarded a single benefit that is inconsistent with that which is awarded herein.

There is a good deal of logic in the thinking of the Nassau panel. There may be specific circumstances that have disproportionate effects on one unit. The fact that a single benefit

achieved by another unit is greater than what is awarded to the PBA is insufficient to permit the PBA to invoke the Reopener Clause. As in the 2007-12 Nassau award, a change in the overall terms and conditions of other units in the Suffolk police pattern during the life of this Award will entitle the PBA to reopen negotiations relative to this Award, including the right to return to this panel in an Interest Arbitration proceeding. The instant panel will retain jurisdiction of this matter in the event the PBA seeks to invoke the *Reopener Clause* based on subsequent bargaining by other units in the Suffolk police panel. In short, the PBA is awarded a Reopener Clause as described above.

CANINE

The PBA proposal contained two elements. The first concerned the compensation received by the canine officers for the off-duty care and maintenance of the dogs. The second related to the one time cost of building the kennel to house the dogs when the officers are off-duty.

The proposal concerning the cost of building the kennel has merit. The record indicates that the current reimbursement received by the officers does not cover the cost of building the kennel.

There is no reason for the officers to be involved in selecting a contractor to build a kennel that meets the specifications of the SCPD. There is also no justification for officers paying for the construction of the kennel and then receiving a reimbursement that does not cover the cost of the kennel.

Therefore, when a new officer is added to the canine unit, it will be the responsibility of the SCPD to arrange for the construction of the kennel.

There needs to be some analysis done relative to the part of this proposal dealing with the compensation received for off-duty care and maintenance of dogs. There are currently 20 officers assigned to the Canine Unit. At this time, per ¶12(h) of the CBA; they are paid \$6,743 per year for off-duty work in this area.

There are two comparables to be considered with respect to this matter. In 2007, the members of the Nassau County Canine Unit received \$12,255 in compensation for their off-duty care and maintenance of dogs. This sum is indexed to wages.

There is also a Canine Unit in the Suffolk County SOA. These officers are paid \$7,955 for their off-duty assignments to care for their dogs.

Under current circumstances, I conclude that it is appropriate to base an increase in the compensation of the PBA Canine Unit on that received by the Suffolk County SOA. In this connection, the members of the Canine Unit will receive increases of \$404 in each year of this Award. As a consequence, as of January 1, 2008, the members of the PBA Canine Unit will be paid \$7,147 for their off-duty care and maintenance of their dogs. The compensation as of January 1, 2009 will be \$7,551 and, as of January 1, 2010, it will be \$7,955. I note that these increases will erase the gap between the PBA and the SOA and will narrow it between the Nassau and Suffolk PBA's.

The three year increase in the cost of this item will be \$24,420 or \$8,140 per year. As to the cost of the construction of the kennels, the PBA estimates indicate that the cost of each such kennel will be about \$1,000. This aspect of the PBA proposal is awarded prospectively. On the assumption that the County orders the construction of ten kennels in 2010, the cost will be

\$10,000. Thus, the total cost of awarding, in part, PBA Proposal 5 will be a maximum of \$34,420.

MATERNITY LEAVE AND LEAVE OF ABSENCE PROPOSALS

The County asserted that the current language in the CBA is inconsistent with legal requirements in that it is discriminatory relative to male police officers. It noted that ¶26(a) makes maternity leaves available only to women. This premise was undisputed.

In order to remedy this inconsistency, the County proposed new language for ¶ 26(a) and Appendix C of the CBA. The PBA argued that the problem could be resolved by improving the equivalent benefits of the males.

It is fundamental that contract language must conform to existing legal standards. Therefore, there must be a modification of the contract language to effect such an outcome.

The matter of the language to be substituted for the existing language in the PBA contract was discussed at length at the March 5, 2010 executive session. It was agreed that there would be a review of the relevant terms of the SOA and SDA settlements to determine appropriate language for this Award.

When the parties reviewed the terms of the SOA settlement, they concluded that the relevant provision was not gender neutral and was therefore unacceptable. However, the SDA settlement contained language that was appropriate. I adopt the terms concerning Leaves of Absence and Child Care Leaves as set forth in the 2001 SDA scope of bargaining improper practice charge filed by the County.

It is appropriate to award the County's proposal. As per Schedule F attached to this Award, the terms of ¶26(a) and Appendix C will meet current legal standards. .

NEGOTIATIONS

Under a proposal entitled *Negotiations* (PBA Proposal 11), the PBA proposed six items. These items affected officers who are fully released from police duties, other officers who are not fully released, trustees and members of the Board of Governors. They also dealt with the administrative leave bank, an electronic bulletin board in each precinct and command and the applicable rules when PBA members are excused from their duties and responsibilities to the County while tending to PBA business. The County objected to the entire proposal as being costly and unnecessary.

Proposal 11(a) concerned Released Time for nine Trustees. 11(c) bought eight hours of compensatory time for Board of Governor members who attend Board meetings on RDO's. 11(d) was designed to clarify the duties and responsibilities to the County of officers excused for PBA business. 11(e) proposes the increasing of the administrative leave bank to 1000 days. Finally, 11(f) calls for the installation and use by the PBA of an electronic bulletin board in each precinct and command.

Items (a), (c), (d), (e) and (f) are not awarded. The effect of granting 11(a) would be to more than triple the number of officers who are fully released from their duties. The resulting number of officers on full-time release would be substantially higher than any other Suffolk County unit. Moreover, the cost of granting this proposal would be excessively high. Thus, it must be denied.

11(c) if granted, would be inconsistent with what is done in many external jurisdiction. It may be that two units in the police pattern enjoy this benefit. It would be impossible to even guess the cost of granting this proposal. As such, it necessitates the denial of this proposal.

11(d) stems from an incident which was resolved through a grievance. While I have no doubt that the PBA was concerned about the underlying incident, the record does not suggest a broad scale problem that can only be resolved through a modification of the language of the CBA. Moreover, the instant matter demonstrates that the grievance process works effectively. 11(d) is denied.

The number of days in the Administrative Leave bank is currently 800 days. 11(e) proposes that this bank be increased by 300 days. It is uncontested that the PBA has not used 800 days in each of the last several years. There appears to be no need to increase the size of the Administrative Leave bank. Thus, 11(e) is denied.

The PBA asserted that the granting of 11(f) would facilitate communications between the PBA and its members. There is nothing in the record to indicate that there is a problem in search of a solution. In short, 11(f) is denied.

However, 11(b) is awarded in modified form. Item (b) relates to the weekly stipends received by certain PBA officers.

There are currently five officers of the PBA who are fully on release time to perform their PBA duties, i.e. President, the 1st and 2nd Vice Presidents, the Treasurer and the Financial Secretary. With the exception of the President, these officers' current stipend is a wage supplement of 1.5 hours per week. The President's current wage supplement is 3.25 hours.

The PBA proposal is to increase the President's stipend to 11 hours per week and that of the four other officers to seven hours per week. The PBA also proposed a seven hour wage supplement for the Recording Secretary and the Sergeant at Arms.

To begin with, this proposal is granted relative to the five PBA officers who are currently fully released from police duties; i.e., President, 1st and 2nd Vice Presidents, Treasurer and Financial Secretary. The PBA is a large organization with significant administrative functions. The history of the bargaining between these parties indicates that a wage supplement for these five PBA officials has been the subject of negotiations. Either through bargaining or awards, the result has been the current language in the CBA.

Furthermore, as noted previously, Nassau County is the most comparable jurisdiction to Suffolk County. In this connection, the comparable Nassau PBA officers already receive the wage supplements proposed for the five PBA officers referenced above.

In Nassau County, the Recording Secretary and the Sergeant at Arms also receive a wage supplement. However, unlike Suffolk County, it appears that these two PBA are on full-time release. I am persuaded that this distinction is significant and therefore limit the awarding of this proposal, (b), to the five PBA officers who are fully released from police duties.

Therefore, as of January 1, 2008, the wage supplement for the PBA President will be 6.5 hours per week. The wage supplement of the two Vice Presidents, the Treasurer and the Financial Secretary will be 3 hours per week.

I recognize that the degree to which 11(b) is granted is less than what has been granted in Nassau. However, almost quadrupling the benefit for the president and more than quadrupling it for the other three officers would be excessive. This proposal is granted to the extent that the weekly stipends for the five PBA officers on full-time release will be doubled.

The cost of granting 11(b) is \$37,060 over the three year life of this Award. The cost in 2008 is \$11,933, in 2009, \$12,344 and \$12,783 in 2010.

THE DESTRUCTION OF RECORDS PROVISIONS

The County proposed the deletion of ¶¶31(c) and (e) from the CBA. These provisions require the destruction of certain records from an officer's personnel file if they resulted from an investigation in which s/he was found not guilty.

The PBA opposed this proposal. It stressed that members should not be exposed to unfounded anonymous charges at a later date.

I can understand the PBA's concern in this matter. However, the State regulations concerning the retention and disposition of personnel records are clear (CX237). Investigative records and those of disciplinary proceedings are to be retained for three years after a decision has been rendered.

It should be added that these items may be destroyed earlier than in three years pursuant to a collective bargaining agreement. Such a situation exists here, in that ¶¶31(c) and (e) call for the destruction of the records in question.

Weighing the options, I conclude that there are valid reasons for the records to be retained as set forth in the regulations. On the other hand, these records should not be in an officer's personnel file. Too many people may have access to the file and the presence of such records for clerical staff members to view can be damaging to the reputation of a police officer who may have been found not guilty of charges or anonymous written or verbal allegations.

I conclude that the records described above in cases in which an officer has been found not guilty should be removed from his/her personnel file and should be kept in a separate confidential file created for the purpose of storing such records for the requisite period.

Moreover, the decision and/or report setting forth that the officer was found not guilty of charges and/or allegations is to be attached to the documents removed from the personnel file.

Finally, all other proposals of the parties, whether or not addressed herein, are denied.

THE COST TO THE COUNTY OF THE TERMS OF THIS AWARD

These are extremely challenging financial times. It is therefore incumbent on the panel to set forth the net costs of this Award. For purposes of this analysis, the 1% budgetary value is \$1,700,000. Listed below are the costs and the value of the concessions.

COST

Wage increases- 3 years @ 3.5% increases-	\$18,453, 252
Construction of kennels-	\$10,000
Off-duty care and maintenance of canines-20 officers @ \$1212	\$24,420
Increases in stipends for five PBA officers-	\$37,060
TOTAL (THREE YEAR COST)	\$18,525,232

1% value-\$1,700,000

THREE YEAR COST EXPRESSED AS A PERCENTAGE INCREASE- 10.9%

CONCESSIONS

Reduction of starting salaries to \$42,000-	\$850,000
Credited prospective savings from reduction of starting salary-	\$850,000
Deferral of Longevity increase to December 31, 2010- 3 years @ \$25 per year -	\$1,405,500
Modification of benefits under GML §207-c-	\$850,000
Implementation of Sick Leave Management Program-	\$850,000

TOTAL	\$4,805,500
	1% value-\$1,700,000
THREE YEAR CONCESSIONS EXPRESSED AS A BUDGETARY PERCENTAGE -	2.8%
COST OF THREE YEAR AWARD (COSTS - CONCESSIONS) -	\$13,719,052
ANNUAL COST OF AWARD-	\$4,573,017
COST FOR THREE YEARS EXPRESSED AS A BUDGETARY PERCENTAGE-	8%
BLENDED ANNUAL COST OF AWARD AS A BUDGETARY PERCENTAGE-	2.67%

In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent prior interest arbitration awards in arriving at my findings. I believe that this Award properly balances the rights of the members of the PBA to improved wages and benefits with the County's obligation to carefully spend the tax dollars raised and to otherwise protect the public welfare and interests. Thus, based on the above, I make the following

AWARD

1. **TERM-** This Award shall cover the period January 1, 2008 through December 31, 2010.

2. **WAGES-** Amend the base salary for currently employed police officers contained in ¶4 of the CBA such that the 2007 salary schedules will be increased by the following percentages:

As of January 1, 2008- 3.5%

As of January 1, 2009- 3.5%

As of January 1, 2010- 3.5%

See Schedule A (attached).

3. WAGES FOR POLICE OFFICERS HIRED ON OR AFTER JANUARY 1, 2008

Amend the base salary for police officers hired on or after January 1, 2008 contained in ¶4 and 4(e) of the CBA as follows:

The starting salary will be \$42,000

The top salary will be equal to that of police officers hired before January 1, 2008.

Salary increases from starting salary to top salary will be equalized.

See Schedule B (attached).

4. **LONGEVITY PAYMENTS-** Amend the longevity payments now set forth in ¶6 of the CBA such that they will be increased as follows:

As of January 1, 2008- Increase the scheduled longevity payments by \$25 over the prior calendar year.

As of January 1, 2009- Increase the scheduled longevity payments by \$25 over the prior calendar year.

As of January 1, 2010- Increase the scheduled longevity payments by \$25 over the prior calendar year.

The increases in longevity payments become effective on December 31, 2010.

See Schedule C (attached).

5. SICK LEAVE MANAGEMENT PROGRAM-

Amend ¶22 of the CBA as follows:

The Sick Leave Management Program proposed by the County is to be added effective upon the date of this Award.

The terms of the Sick Leave Management Program in ¶22 shall be as per Schedule D, attached hereto.

6. GENERAL MUNICIPAL LAW §207-c

LEAVE-Amend ¶ 22(f) of the CBA as follows:

Effective upon the date of this Award, the County's 207-c proposal (10d) is granted for all current and future absences. However, it will be modified to conform to the language set forth in Schedule E.

7. FAMILY SICK DAYS- Amend ¶22 of the CBA as follows:

As of July 1, 2010, the number of Family Sick days will be increased from five (5) to seven (7).

8. REOPENER

A new item is to be added to the CBA as follows:

The PBA proposal relative to its right to reopen negotiations in the event that other units in the Suffolk County police pattern obtain economic benefits either through bargaining or award that are greater than those awarded herein, as follows:

The PBA shall be entitled to re-open negotiations over terms and conditions of employment, including the right to return to this Panel in an Interest Arbitration proceeding, in the event that any current or future law enforcement bargaining unit agrees or is awarded a change in overall terms and conditions of employment for the period 2008-2010 inconsistent with the pattern set forth in this Award. For purposes of this provision, current law enforcement units are the SOA, SDA and DIPBA.

This provision will sunset with the conclusion of the current round of bargaining involving the other units in the police pattern.

The instant panel shall retain jurisdiction of this matter in the event the PBA moves to re-open negotiations.

9. CANINE- Amend the provisions contained in ¶12 of the CBA as follows:

Modify ¶12(h) such that the compensation paid to members of the Canine Unit for the off-duty care and maintenance of canines will be increased as follows:

Effective January 1, 2008- Increase of \$404

Effective January 1, 2009- Increase of \$404

Effective January 1, 2010- Increase of \$404

10. CANINE- Delete ¶12(I) and replace with language that states that, effective upon the date of this Award, the County will be responsible for the cost and construction of kennels used to house canines while they are off-duty for any officer assigned to the Canine Unit after the date of this Award.

11. MATERNITY LEAVES AND LEAVES OF ABSENCE- Amend ¶26 and Appendix C of the CBA as follows:

Effective for all employees seeking the benefits of this provision on or after the date of this Award, absences covered by this provision occurring on or after the date of this Award. ¶ 26(a) and Appendix C shall be revised per the County's proposal such that their language conforms to legal requirements, as set forth in Schedule F, attached hereto.

12. NEGOTIATIONS- Amend ¶34 of the CBA as follows:

The wage supplements received by the following officers of the PBA, President, 1st Vice President, 2nd Vice President, Treasurer and Financial Secretary are to be increased as follows:

The President will receive a wage supplement of six and one hours (6.5) hours per week.

The 1st Vice President, 2nd Vice President, Treasurer and Financial Secretary will receive wage supplements of three (3) hours per week.

13. **DESTRUCTION OF RECORDS-** Effective upon the date of this Award, amend ¶¶31(c) and (e) such that, in cases in which the officer has been found not guilty, the documents related to charges of misconduct and anonymous written and oral complaints will be removed from the officer's personnel file and will be maintained in a separate file for the requisite period. The reports reflecting the finding that the officer was not guilty is to be attached to the document removed from the personnel file.

14. **OTHER PROPOSALS-** All other proposals of the parties, irrespective of whether they were discussed, are denied.

Dated: March 11, 2010
Hewlett Harbor, NY


ARTHUR A. RIEGEL
CHAIR, INTEREST ARBITRATION
PANEL

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I, Arthur A. Riegel, Esq., affirm that I am the individual describe in and who executed the foregoing instrument which is my Opinion and Interest Arbitration Award.


ARTHUR A. RIEGEL, ESQ.

EMPLOYEE PANELIST

I, John E. Frayler, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|------------------------------------------------------------------|--------|---------|
| 1. Term- | Concur | Dissent |
| 2. Wage Increase- | Concur | Dissent |
| 3. Decrease in starting salaries and equalization of salary step | Concur | Dissent |
| 4. Longevity Payments Increase- | Concur | Dissent |
| 5. Sick Leave Management Program- | Concur | Dissent |
| 6. General Municipal Law §207-c | Concur | Dissent |
| 7. Family Sick. | Concur | Dissent |
| 8. Reopener Clause | Concur | Dissent |
| 9. Canine- Construction of kennels | Concur | Dissent |
| 10. Canine- Compensation for members of Canine Unit | Concur | Dissent |
| 11. Maternity Leaves | Concur | Dissent |
| 12. Negotiations- PBA Proposal 11(b) | Concur | Dissent |
| 13. Destruction of Records | Concur | Dissent |
| 14. Rejected Suffolk County proposals- | Concur | Dissent |
| 15. Rejected Suffolk County PBA proposals | Concur | Dissent |

JOHN E. FRAYLER
EMPLOYEE PANELIST



EMPLOYER PANELIST

I, Jeffrey L. Tempera, Employer member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|------------------------------------------------------------------|---------------|----------------|
| 1. Term- | <u>Concur</u> | Dissent |
| 2. Wage Increase- | Concur | <u>Dissent</u> |
| 3. Decrease in starting salaries and equalization of salary step | <u>Concur</u> | Dissent |
| 4. Longevity Payments Increase- | Concur | <u>Dissent</u> |
| 5. Sick Leave Management Program- | <u>Concur</u> | Dissent |
| 6. General Municipal Law §207-c | <u>Concur</u> | Dissent |
| 7. Family Sick. | <u>Concur</u> | Dissent |
| 8. Reopener Clause | Concur | <u>Dissent</u> |
| 9. Canine- Construction of kennels | <u>Concur</u> | Dissent |
| 10. Canine- Compensation for members of Canine Unit | <u>Concur</u> | Dissent |
| 11. Maternity Leaves | <u>Concur</u> | Dissent |
| 12. Negotiations- PBA Proposal 11(b) | Concur | <u>Dissent</u> |
| 13. Destruction of Records | <u>Concur</u> | Dissent |
| 14. Rejected Suffolk County proposals- | Concur | <u>Dissent</u> |
| 15. Rejected Suffolk County PBA proposals | <u>Concur</u> | Dissent |



JEFFREY L. TEMPERA
EMPLOYER PANELIST

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

Dissenting Opinion of County Appointed Arbitrator
Jeffrey L. Tempera

I am compelled to comment on this award with regards to the awarding of increased wages and various benefits when the Country, no less Suffolk County is in the midst of one of the worst economic times. To award a 3.5% wage increase on top of salaries that are already listed as some of the highest in the Country, just seems to go against logic. I applaud the arbitrator for awarding a lower starting salary as well as a restructuring of the salary schedule for newly hired police officers. However, while this grants relief to the County for new hires, the increases for current police officers is not justified in this economy.

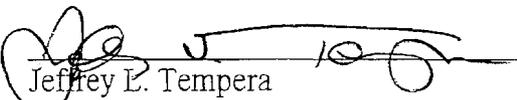
For the same reasons I have dissented on the increase in the longevity benefit.

With regards to the re-opener, I believe the County is entitled to complete negotiations with the PBA upon the issuance of this Award. To allow the PBA to re-open negotiations because another bargaining unit in the police pattern receives a change in their overall terms and conditions of employment is unfair to the County.

When the arbitration panel issued the award to the PBA for the period 2004 through 2007 and it contained for the first time a new benefit granting pay to PBA officers for lost overtime opportunities, I dissented. What I stated at that time and the arguments then remain the same today. Why should the County have to subsidize these union activities? If a police officer decides he or she wants to serve as a union official that is fine. To require the County and the taxpayers to pay them for overtime that they have not worked because of their decision to become a union official is wrong. To double the pay that these PBA officials receive for not working overtime is unconscionable.

Finally, the County presented many proposals with back up documentation and testimony with regards to increased management prerogatives or to eliminate union perks that were not awarded. I understand the arbitrator must balance the needs of the membership based upon the legal criteria versus the County taxpayers needs in this unprecedented economy. This is a difficult task to say the least, but I believe many of the County proposals if granted would have resulted in much needed relief to the taxpayers and residents of Suffolk County.

For the reasons stated above, I dissent from the wage increase, Longevity Payments increase, Re-Opener Clause, Negotiations- PBA Proposal 11 (b) and all the rejected County proposals.


Jeffrey L. Tempera
County Appointed Arbitrator

SCHEDULE A

SALARY CHARTS

1/1/08 ANNUAL SALARIES

<u>Steps</u>	<u>Officers on payroll prior to 1/1/04</u>	<u>Officers on payroll after 12/31/03</u>
0	\$66,463	\$59,904
1	\$68,463	\$61,904
2	\$82,709	\$78,988
3	\$84,709	\$81,385
4	\$95,352	\$94,150
5	\$97,799	\$97,084
6	\$101,387	\$101,387

1/1/09 ANNUAL SALARIES

<u>Steps</u>	<u>Officers on payroll prior to 1/1/04</u>	<u>Officers on payroll after 12/31/03</u>
0	\$70,011	\$62,071
1	\$72,011	\$64,071
2	\$86,257	\$81,753
3	\$88,257	\$84,234
4	\$98,900	\$97,445
5	\$101,347	\$100,482
6	\$104,935	\$104,935

1/1/10 ANNUAL SALARIES

<u>Steps</u>	<u>Officers on payroll prior to 1/1/04</u>	<u>Officers on payroll after 12/31/03</u>
0	\$73,684	\$64,314
1	\$75,684	\$66,314
2	\$89,930	\$84,614
3	\$91,930	\$87,182
4	\$102,573	\$100,856
5	\$105,020	\$103,999
6	\$108,608	\$108,608

SCHEDULE B

SALARY CHART FOR RECRUITS HIRED AFTER 1/1/08

<u>Step</u>	<u>Annual Salary</u>
0	\$42,000
1	\$53,101
2	\$64,202
3	\$75,303
4	\$86,404
5	\$97,505
6	\$108,608

SCHEDULE C

LONGEVITY

Effective December 31, 2010, longevity payments in each of the listed years of service shall be as follows:

<u>Year</u>	<u>Payment</u>
6	2,250
7	2,625
8	3,000
9	3,375
10	3,750
11	4,125
12	4,500
13	4,875
14	5,250
15	5,625
16	6,000
17	6,375
18	6,750
19	7,125
20	7,500
21	7,875
22	8,250
23	8,625
24	9,000
25	9,375
26	9,750
27	10,125
28	10,500
29	10,875
30	11,250
31	11,625
32	12,000
33	12,375
34	12,750
35	13,125

SCHEDULE D

SICK LEAVE MANAGEMENT PROGRAM

Effective upon the date of the 2008-2010 Award, the following Sick Leave Management Program (Program) is established for all employees. Unless otherwise stated, any existing Rules and Procedures relating to sick leave shall remain in full force and effect.

A. Effective Dates

1. The program shall be effective upon the date of this Award. Only sick time used after that date will be used to implement this Program. Nothing herein limits the Department from taking disciplinary action against any employee as it deems to be appropriate.

An employee will be designated a sick leave abuser or a chronic sick leave abuser as determined by the Department in accordance with Section B.

B. Definitions

1. Occurrence: Includes any partial sick day or more than one consecutive sick day. Occurrence excludes workers' compensation and/or General Municipal Law 207-c illnesses and injuries.
2. Sick Day: Includes full tours of duty on sick leave. Sick day excludes workers' compensation and/or General Municipal Law § 207-c illnesses or injuries.
3. Sick Leave Abuser: An employee who has five or more occurrences of sick leave, or eight or more non-consecutive sick days, or a combination of occurrences and non-consecutive sick days that equal eight, during any rolling 12 month period.
4. Chronic Sick Leave Abuser: An employee who has either:
 - a. been a Sick Leave Abuser for 18 consecutive months from the date of the

first use of sick time during any rolling 12 month period; or

b. 10 or more occurrences of sick leave, or 16 or more non-consecutive sick days, or a combination of occurrences and non-consecutive sick days that equal 16, during any rolling 12 month period.

5. Family Sick Leave: Use of Family Sick Leave in accordance with Section 22 of the Agreement shall not be considered in determining abuse pursuant to the Program.

6. Approved FMLA time taken in accordance with the County procedures will not be considered in determining abuse pursuant to the Program.

7. Use of sick leave where permitted by the Agreement during any other unpaid leave of absence will also not be considered in determining abuse pursuant to the Program.

8. Report to Police Surgeon: Unless otherwise stated, means notify and, if required to do so by the Department report, immediately, when a Police Surgeon is available. When a Police Surgeon is not available, the employee must notify and, if required to do so by the Department report, at the beginning of next operating hours of the Police Surgeon's Office. Employees will not be entitled to any overtime for any time expended in reporting to the Police Surgeon.

C. Rules: Sick and Chronic Sick Leave Abuse

1. An employee designated as a Sick Leave Abuser or Chronic Sick Leave Abuser will report to the Police Surgeon each time the employee calls in on sick leave.

2. An employee who is designated as a Sick Leave Abuser or Chronic Sick Leave Abuser will not be eligible to:

- a. work scheduled overtime, unless approved by the Commissioner or his/her designee based on operational needs; and
- b. switch tours of duty in accordance with § 20 of the Agreement (Mutual Tour Change); and
- c. apply for preferred assignments, or designations where applicable; and
- d. apply for a new tour of duty if an opening occurs; and
- e. receive night differential while on sick leave; and
- f. Chronic Sick Leave Abusers only: receive night differential while on vacation.

D. Duties

- 1. The Commanding Officer of the Medical Evaluation Section will monitor the sick leave system and identify employees who should be designated or relieved as Sick Leave Abusers and Chronic Sick Leave Abusers, and will:
 - a. notify an employee and his/her Commanding Officer when an employee is identified as a Sick Leave Abuser or a Chronic Sick Leave Abuser; and
 - b. notify an employee and his/her Commanding Officer when an employee is designated or relieved as a Sick Leave Abuser or a Chronic Sick Leave Abuser; and
 - c. inform an employee in writing of his/her rights and restrictions pursuant to this Policy; and

- d. notify an employee in writing of final determinations on appeals; and
 - e. monitor those who are designated as abusers for purposes of:
 - (1) removing designations as a Sick Leave Abuser when an employee uses no sick leave during six consecutive months of active duty (i.e., not on vacation or other types of paid or unpaid leave) following the designation as a Sick Leave Abuser;
 - (2) removing designation as a Chronic Sick Leave Abuser when an employee uses no sick leave during six consecutive months of active duty (i.e., not on vacation or other types of paid or unpaid leave) following the designation as a Chronic Sick Leave Abuser. The employee will then be designated as a Sick Leave Abuser.
2. The Police Surgeon will receive and review appeals from employees requesting that tours of duty of sick leave not be considered when determining designation or removal as a Sick Leave Abuser or Chronic Sick Leave Abuser.
3. Commanding Officers will ensure that the commands have in place a system to implement and monitor the Sick Leave Management Program, and
- a. ensure that the Commanding Officer's designee and the PBA are notified when an employee is designated or relieved as a Sick Leave Abuser or a Chronic Sick Leave Abuser; and

- b. prepare written internal correspondence to the Division Chief when ineligible employees receive scheduled overtime; and
 - c. deny applications for preferred assignments, and designations where applicable, from ineligible employees; and
 - d. deny requests for switching tours of duty or picking new tour of duty schedules from ineligible employees.
4. Commanding Officers will monitor the Sick Leave List for ineligible employees prior to scheduling overtime, and notify the Division Chief or designee when an ineligible employee is ordered to work scheduled overtime.
5. The Commanding Officer's designee will maintain and monitor a list of employees who:
- a. are designated as Sick Leave Abusers or Chronic Sick Leave Abusers; and
 - b. deduct night differential pay when an employee is not entitled to receive same; and
 - c. notify the Commanding Officer when an ineligible employee receives scheduled overtime.

E. Restriction to Residence

1. During a date on which the regularly scheduled tour of duty falls, any employee designated as a Sick Leave Abuser or Chronic Sick Leave Abuser shall be confined to the employee's residence during the hours of his/her regularly scheduled tour of duty, except where excused from same by the Commanding Officer or Police Surgeon due to, for example, attendance at medical appointments, attendance at religious obligations, and/or other

attendance at other matters that are approved by the Department and/or Police Surgeon pursuant to its guidelines regarding same and which cannot be attended to at another time.

SCHEDULE E

GENERAL MUNICIPAL LAW § 207-C/CODE 401

Section 22(f) shall be revised by adding the following to the end of the paragraph:

Effective upon the date of the 2008-2010 Award, this paragraph shall be amended as follows:

Vacation Leave - An employee on Code 401 status shall only accrue and/or carry-over vacation time in accordance with section 23 of the Agreement.

(A) Night Differential - Night differential payment shall cease after the 12th consecutive month of absence due to Code 401 injury leave. The employee, upon return to work, shall only be paid night differential in accordance with the employee's currently assigned work schedule as listed in Section 19 of the Agreement. Notwithstanding this provision, if the employee applies for a disability retirement pension from the State during the 12-month period, the employee may elect to receive the night differential payments beyond the 12-month cap. However, if the application is finally denied, the employee must repay the County for all night differential payments made beyond the 12-month period, even if the employee has separated from employment with the County. Repayment shall be made to the County upon prior written notice to the employee. Where possible, the preferred method of recoupment shall be deduction of the monies owed from the employee's "accrued termination pay." If the employee is about to separate from County service and the disability retirement has not yet been decided, then the County shall be authorized to withhold from the employee's "accrued termination pay" an amount equal to the night differential payments which may have to be repaid. Where the employee's "accrued termination pay" is insufficient to meet the employee's actual or potential repayment obligations, the employee shall be deemed to have consented to recoupment based on terms and conditions to be set by the County at the time of recoupment.

(B) Personal Leave - Personal leave entitlement shall cease to accrue following the 12th consecutive month of absence from the effective date of placement on code 401. Upon return to active duty, the employee shall be credited with prorated personal leave days, up to the contractual maximum, to be determined by dividing the number of complete months remaining in the calendar year by 2.4, rounded to the nearest whole number.

(C) Sick Leave - Sick leave entitlement shall cease to accrue following the 12th consecutive month of absence from

the effective date of placement on code 401. Upon return to active duty, the employee shall be credited with prorated sick leave days, up to the contractual maximum, to be determined by multiplying the number of complete months remaining in the calendar year by 2.16, rounded to the nearest whole number.

(E) Clothing and cleaning allowances - Clothing and cleaning allowances shall cease after 12 consecutive months on-duty injury Code 401 leave of absence. Upon return to work from an injury leave of absence of one year or more, the employee shall be paid the foregoing allowances in accordance with Section 12 of the Agreement.

SCHEDULE F

LEAVES

Section 26(a) and Appendix C shall be revised to read as follows:

SECTION 26. LEAVES OF ABSENCE

(a) A leave of absence may be granted for child care leave in accordance with Appendix C without loss of seniority and longevity.

APPENDIX C

CHILD CARE LEAVE

1. A child care leave shall be granted upon application in accordance with these guidelines to a natural or adoptive parent of either sex. A child care leave will be granted in the case of any individual and/or multiple births in accordance with the following:
2. Only one parent may be on a child care leave at any given time.
3. A child care leave may commence no earlier than the date of the birth of the child.
 - a. The commencement of a child care leave in connection with an adopted child shall be directly related to the date the child is placed in the home.
4. Child care leaves may be granted for a maximum of nine (9) months.
 - a. An employee who does not commence child care leave upon the birth of the child and/or any adoptive parent employee, shall have the length of child care leave computed as follows:

<u>Age of Child Upon Start of Leave</u>	<u>Maximum Permissible Child Care Leave</u>
Birth to two months	9 months
3 months	8 months
4 months	7 months
5 months	6 months
6 months	5 months
7 months	4 months
8 months	4 months
9 months	4 months
10 months	4 months
11 months	4 months

(b) No child care leave shall be permitted for a child one year or older, except:

(1) Where there are mitigating circumstances (such as an infant who has required extensive hospitalization) and where the employee has returned to work and did not avail herself/himself of a child care leave, the employee may make application to the Office of Personnel and Labor Relations for special consideration for a child care leave extending beyond the child's first birthday.

(2) Where an adoptive parent can show that an adoption agency necessitates the adoptive parent to be at home with an adoptive child over the age of one(1) year, the adoptive parent may make application to the Office of Personnel and Labor Relations for a child care leave of a four (4) week period. A minimum of four (4) weeks will be granted in the adoption of a child over one (1) year of age. Where an adoptive agency necessitates more than a four (4) week leave period, the employee shall be responsible for documenting same at the Office of Personnel and Labor Relations in order to have the four week leave period extended.

(c) No employee shall be permitted to use any type of leave accruals during a child care leave falling within the time period for which they have been granted a child care leave.