

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration

-between-

SUFFOLK COUNTY DETECTIVE  
INVESTIGATORS POLICE BENEVOLENT  
ASSOCIATION, INC.,

Voluntary Interest Arbitration

PERB Case No. IA2008-018;  
M2008-038

-----  
"Petitioner or PBA"

-and-

COUNTY OF SUFFOLK,

"Respondent or County."

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BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL  
LLOYD M. BERKO, PETITIONER MEMBER  
JEFFREY L. TEMPERA, RESPONDENT MEMBER

APPEARANCES:

FOR THE PETITIONER:

DAVIS & HERSH, LLP by DAVID A. DAVIS, ESQ.

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 Detective Investigators Police Benevolent Association (Petitioner) and County of Suffolk (Respondent) that expired on December 31, 2007 (Joint Exhibit [JX] 2). Negotiations for a successor agreement commenced upon the written request of the DIPBA on May 29, 2007 (JX3). The parties exchanged proposals on October 22, 2007 (JX 6).

The parties held four negotiating sessions in 2007. The dates of these meetings were September 27, October 22, November 14 and December 13, 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 May 8, 2008 (JX6).

~~The dispute was submitted to mediation. The parties selected Jay M. Siegel, Esq., as the mediator. A mediation session was held on July 2, 2008. Despite the mediator's best efforts, the mediation failed to resolve the matter.~~

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 January 5, 2009 the DIPBA filed a Petition for Compulsory Interest Arbitration with PERB (JX8). The County filed a timely response on January 16, 2009 (JX14).

On February 6, 2009, PERB designated me to serve as the neutral Chair of the Panel. The DIPBA selected Lloyd M. Berko, Esq., to serve as the Petitioner's Panelist and the County chose Jeffrey L. Tempera to serve as the Respondent's Panelist (JX10). The arbitration panel was established to hear and finally decide all relevant issues.

Hearings on this matter were held on October 6 and November 14, 2009. 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 twelve (12) joint exhibits and the parties moved in excess of two hundred (200) exhibits into evidence.

The record was left open on November 14, 2009 for the parties to submit into evidence the Suffolk County-Suffolk County Police Interest Arbitration Award covering the period January 1,2008-December 31, 2010 (Detective Investigators PBA Exhibit [PX] 9). That Award was issued on March 11, 2010. In the period between November 14, 2009 and March 11, 2010, the DIPBA and the County entered into a Memorandum of Agreement to extend the Panel's jurisdiction to three (3) years, January 1, 2008 through and including December 31, 2010. (JX 21). In exchange for a third year, the DIPBA agreed to defer four (4) days' pay per member at the 2009 rate of pay. The MOA stated that the deferred pay would be paid to the members of the DIPBA upon their separation from employment with the County.

A resolution (Resolution 410-2010) was introduced to the Suffolk County Legislature to implement the agreement (JX. 22). The Suffolk County Legislature passed the resolution on May 11, 2010 and County Executive Levy signed it on May 26, 2010. Therefore, the parties entered into a Voluntary Interest Arbitration agreement pursuant to Section 209.2 of the Civil Service Law setting forth the parameters for this panel to render a three (3) award (JX 23).

In order to expedite the process, and in anticipation that the resolution would be enacted, the Panel determined that an additional hearing would be held to present updated financial information and any further evidence regarding a potential third year.

A third hearing was held on May 4, 2010, during which the DIPBA and the County provided additional evidence and made additional arguments. The record was left open for the submission of further evidence and would be deemed closed as of the date the parties' post hearing memoranda are submitted to the Panel. The parties agreed to submit post-hearing briefs

on May 14, 2010. I received the briefs in a timely manner. The Panel met in executive session on October 4 and 25, 2010.

### **THE UNRESOLVED PROPOSALS**

Prior to the arbitration hearings, the DIPBA and the County each agreed to reduce the number of their proposals to sixteen. However, subsequent to the execution of the MOA and the extension of the Panel's jurisdiction to a third year, the DIPBA, pursuant to the 209.2 Agreement (JX23), the DIPBA added two proposals. These proposals were not previously before the Panel but were the subjects of bargaining. The following is a listing of each party's unresolved proposals:

#### **DIPBA**

1. **Wages:** Wages shall be increased by six percent (6%) in each year of the agreement.
2. **Longevity:** Members shall receive a longevity payment of one percent (1%) of base pay after completion of one (1) 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 (7) years of service).
3. **Assignment Pay:** (a) Increase assignment pay to seven percent (7%).  
(b) When a bargaining unit member is assigned to any Federal or State agency for the purpose of performing any police function or duty, e.g. those Detective Investigators assigned to the Federal DEA Task Force, he/she shall receive Special Assignment pay of seven percent (7%).
4. **Family Sick:** A member may use up to ten (10) family sick days per year.
5. **Work Schedule:** (a) Employees working the rotating 5/2 duty schedule shall have 26 XDO's per year (prorated for portions of a year worked) which shall be scheduled by the Office. This will result in a 234 day annual work day schedule. Employees working the 5/2 straight work day schedule shall have 24 XDO's per year (prorated for portions of a year worked) which shall be scheduled by the Office. This will result in a 236 day annual work

schedule. All work schedules will be labeled as to appropriate night differentials based on current contract agreements.

(b) All employees, depending on their work schedule, shall be guaranteed a work schedule of 232 to 236 days per year. Any employee who works in excess of either amount shall be compensated for the difference by the equivalent number of leave days scheduled by the Office.

(c) All duty and work schedules for employees shall be given to the Association on January 1<sup>st</sup> of each year or when issued, if an amendment thereto is made during the year.

(d) There shall be no automatic restrictions on when an employee may take leave days.

6. **Separation from Service:** Members who separate from service with 10 or more years of service shall receive all benefits of retirees.

7. **Meal Money:** Delete Section 26, and insert the following:

(a) If an Employee, not on a regularly scheduled tour of duty, leaves the County on County business for four hours or more, actual time, he/she will receive a meal allowance of \$7.50 if the four hours are completed prior to 1700 hours and \$12.00 if the four hours are completed after 1700 hours. If an Employee, on a regularly scheduled tour of duty, leaves the County for three hours or more with one hour or more falling within the hours of 1200 to 1400 hours, he/she will receive a meal allowance of \$7.50. If an Employee, on a regularly scheduled tour of duty, leaves the County for three hours or more with one hour or more falling within the hours of 1900 and 2100 hours, he/she will receive a meal allowance of \$12.00. If he/she is out of the County overnight, he/she will receive an additional meal allowance of \$3.00. However, no meal allowance money shall be paid if the Employee is actually given a meal period before leaving the County.

In lieu of the above meal allowances, Employees performing an extradition shall receive a \$50.00 meal allowance in advance for each overnight stay. Such allowance will be the total meal allowance payable during the extradition proceeding for each Employee.

(b) An Employee, who performs overtime, (either upon completion of his regular tour or a nonscheduled day), shall be entitled to a meal allowance of \$12.00 upon the completion of the first four hours of

overtime work, \$7.50 upon the completion of the second four hours of overtime work, and \$7.50 upon the completion of each four hours of overtime work thereafter.”

8. **Past Benefits:** Create a new section of the CBA to read as follows:

“The County shall not eliminate any term and condition of employment continuously enjoyed by all Employees for a substantial period of time. Any such elimination of shall be subject to the grievance procedure of this Agreement.”

9. **Association Business:**

Modify weekly stipends as follows:

President	11 hours
1 <sup>st</sup> Vice President	1.5 hours
2 <sup>nd</sup> Vice President	1.5 hours
Treasurer	1.5 hours
Financial Secretary	1.5 hours
Recording Secretary	1.5 hours

10. **Reopener:** The DIPBA shall have the right to reopen negotiations with the County if the Suffolk County Police Benevolent Association, Suffolk County Superior Officers Association or Suffolk Detectives Association or Suffolk Detectives Association obtains 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:** All steps of the salary schedule shall be frozen during the term of the Agreement.
2. **Section 6.1, Overtime:**
  - (a) Delete provision allowing time for vacation, sick leave, personal leave, holidays, etc., being considered as time worked in determining eligibility for overtime.
  - (b) FLSA: Modify and or delete each relevant contract provision, policy and practice so that overtime and compensatory time entitlements are provided solely in accordance with FLSA mandates.
3. **Section 6.5, Night Differential:**
  - (a) Amend to provide for night differential of 10%.

(b) Amend to provide that employees assigned to a ten (10) hour extraordinary night shift shall receive 12% night differential.

4. **Section 7.2, Injury Determination:**

(a) Amend paragraph C(1) to provide that effective January 1, 2008 vacation time entitlement shall cease to accrue following the 12<sup>th</sup> consecutive month of absence from the effective date of placement on code 401.

5. **Section 8.5, Holidays:**

(a) Delete Floating Holiday.

6. **Section 8.7, Leaves of Absence Without Pay, (B) and Appendix B, Pregnancy/Maternity, Disability and/or Child Care Leave:**

(a) Amend to conform with legal requirements.

7. **Section 8.8 Sick Time:**

(a) Amend to provide that sick time is accrued each pay period.

(b) Amend 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 upon the NYC Police Department procedures. Delete the requirement for payment of unused sick time upon retirement.

8. **Section 9, Association Business:**

(a) Delete paragraph A requiring the payment to the President and five members of the Executive Board of 12% night differential.

(b) Delete Paragraph B requiring Board Pay of 3.25 hours to the President of the Association at the straight time rate.

(c) Add: The Association shall reimburse the County for all taxpayer-funded Association activities, including release time.

**POSITIONS OF THE PARTIES**

**CONTENTIONS OF PETITIONER**

The DIPBA argued as follows:

Its proposals are just and reasonable and should be granted in their entirety. 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. A review of these standards will lead

the Panel to conclude that the DIPBA's proposals should be granted in their entirety. The County's proposals are unreasonable and should therefore be denied.

Relevant case law supports its position. 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.

~~The Buffalo Court concluded that the fiscal condition of the City of Buffalo must be weighted against the services performed by a police officer and that the police officers should not bear the full burden of the City's fiscal problems. The opinion of the Court in terms of the County's denial of all of the DIPBA proposals is significant in this case.~~

These directives from the Court are significant in the instant matter where it appears that the County's argument for denying all DIPBA proposals, as well as support for its own proposals, is predicated predominantly upon cost and the current fiscal climate. However, the County is in good fiscal health, even considering the state of the national and state economies, and does not face the high property abandonment, unemployment, fleeing population and declining tax base that Buffalo was experiencing in the 1970's. This Panel has the jurisdiction and authority to award the reasonable increases sought by the DIPBA.

Section 209(4)(C)(v) of the Civil Service Law, subdivision (a), directs the panel to compare wages, hours and conditions of employment of the members of the DIPBA to two groups of employees: 1) employees who perform similar work; and 2) employees generally in public and private employment in comparable communities. (Jt. Ex. 1).

There are no public or private sector employees, outside of law enforcement, whose work compares to the work performed by DIPBA bargaining unit members. However, the wages,

hours and conditions of employment of the law enforcement units that comprise the Suffolk County "police pattern" are comparable. The police pattern indisputably consists of the members of the DIPBA, Suffolk Detective Association, Inc. ("SDA"), the Superior Officers Association Inc. ("SOA") and the Suffolk County Police Benevolent Association Inc. ("PBA"). This conclusion is supported by numerous arbitration awards involving the County and the police pattern units, excerpts of which are included in the record. (PX 9 = 18; CX 2 = 18). In 1994, in a proceeding between the instant parties, Arbitrator Howard Edelman found:

With respect to the comparisons referred to in (a), the most relevant bargaining units exist in the County of Suffolk. Equally relevant are the comparisons between this bargaining unit and the other law enforcement ones in Suffolk County. These units perform similar functions. They all uphold the laws of the State of New York and Suffolk County. There are four sworn service bargaining units which have a close community of interest in this County. They are the Police Benevolent Association unit (PBA); the Superior Officers Association (SOA); the Suffolk Detectives Association (SDA) and the instant unit (PX10).

The pattern was also acknowledged by Arbitrator David Stein in the last arbitration between the parties:

[T]he undisputed evidence is that for many years, the DIPBA settlements/awards have been patterned on other Suffolk County sworn law enforcement personnel employed by the Department such as the PBA, SOA and SDA Awards/settlements. (DX 18).

During the current round of bargaining, the Chairperson of this Panel, serving as Chairperson of the PBA Panel, opined in the PBA Award covering January 1, 2008 through December 31, 2010:

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 of the four [County] patterns... . (DX 9 at 84).

There is no reason to discontinue this practice, which inures to the benefit of both parties.

The County, however, insists that the DIPBA should also be compared to its counterparts in Nassau County, New York City and Westchester County. With respect to Nassau County, the Suffolk County PBA award is based in large part on a comparison with the Nassau County PBA Award. ~~Since the Suffolk PBA award is the cornerstone for this panel, Nassau County is an~~ influence, by proxy. However, the Nassau County Detective Investigators, who work for the Nassau County District Attorney's Office, cannot be a basis for comparison. They were formed out of a CSEA unit in 2004, and have yet to reach their first independent collective bargaining agreement with Nassau County. (DX 5(a)).

Finally, there have been numerous panels which have rejected using New York City and Westchester County as comparables. Most recently, the Chairperson of this panel found in the recently issued PBA Award:

[a]s to New York City and Westchester County, the arbitral history is devoid of references to them as being comparable to Suffolk County. ... 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 (PX9).

The history of bargaining between the parties has relied on the use of the Suffolk County police pattern. Therefore, the Panel should continue to do so as it prepares this Award.

The interest and welfare of the public is greatly impacted by this proceeding in two distinct ways. First, a fair wage and benefit package fosters high morale of DIPBA members, which in turn maintains the extraordinarily high quality of service residents of Suffolk County have come to expect. Second, it permits the County to continue to recruit the cream of the crop

in law enforcement. A vast number of DIPBA members, attracted by the wages and benefits of the DIPBA, come from other police agencies. This provides the County with a distinct opportunity to select the best, most experienced and highly skilled detective investigators.

Therefore, the interests and welfare of the public are best served by a just and reasonable increase in wages and benefits.

The Panel must first determine whether the County has the ability to pay for the DIPBA's proposed just and reasonable increases in wages and benefits. The parties have agreed to rely on the PBA interest arbitration record, which consists of testimony and the financial presentations of Kevin Decker, the PBA's expert in municipal budget analysis, and Frederick Pollert and Connie Corso of the County Executive's Budget Office. Since this Award is for 2008, 2009 and 2010, it is important to examine the County's fiscal condition as it existed in 2008 and in 2009, as well as its present condition. Therefore, the parties have seen fit to include as part of the record for this proceeding the financial data and analysis for those years considered by the PBA Panel, which includes Mr. Decker's October 21, 2008 testimony and exhibits (JX. 13, 15) and his December 15, 2009 update (PX 78, CX1 [Vol. II]); as well as the County's October 30, 2008 presentation and exhibits (JX 14 and 16); its August 2009 update (JX 17); and its December 15, 2009 update (CX2 [Vol. II]). Since the PBA Award was recently issued, and this Award will conform to the pattern set by the PBA Award, the finding of the PBA panel's chairperson is dispositive on the issue of ability to pay:

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 (PX9)

The finding of the PBA panel chairperson is consistent with Mr. Decker's finding on October 21, 2008. Mr. Decker found, and after a careful review of the County's finances, "... that the County has the ability to pay" for the PBA's proposals (JX13).

Like the PBA, the DIPBA agreed to defer monies due them until separation of employment. On May 22, 2009, the DIPBA entered into a memorandum of agreement with the County to defer \$222,233, an amount equal to eleven (11) days' pay at the average daily rate for 2007 (JX 19,PX 71). This equals approximately \$4,630 per member. In addition, the DIPBA agreed, in exchange for a three (3) year award, to defer four (4) additional days' pay at the average 2009 daily rate. This equates to approximately \$80,812 for the bargaining unit or \$1,686 per member at the average 2007 daily rate of pay. Assuming the Panel awards the DIPBA wage increases for 2008 and/or 2009, the savings will increase. These sacrifices should be taken into consideration when the Panel issues its Award. Not only has the DIPBA saved the County money in the short term in order to help it deal with the current economic slowdown, it has also conceded additional monies in consideration for increases in wages and benefits for a three (3) year award, providing the County with further monetary relief.

The County's presentation on October 30, 2008, did not refute Mr. Decker's conclusion. Instead, it focused on its expectations, speculations, forecasts and projections of how the economic downturn would affect the County's future sources of revenue and spending priorities. Its unwillingness to pay for the PBA's proposals was clear.

Mr. Decker presented an illustrative packet of charts and data together with a narrative which supported his conclusion. (JX 15). PBA members are paid out of the County's general fund and its police district fund. The sales tax and the real property tax are the two largest

sources of revenue for those two funds. 83% of the police district fund's revenues are derived from real property tax and 14% from sales tax revenue. Mr. Decker pointed out that the two funds could not be looked at in isolation. (JX13). This is because the County has the ability to move sales tax revenue between these two funds to meet budgetary needs and expectations.

One of the sources of revenue to fund the DIPBA Award comes from sales taxes. Mr. Decker initially examined sales tax revenues through the third quarter of 2008. (JX13). The average annual rate of increase in sales tax base over the previous ten (10) years more than doubled the rate of inflation during that time period. Mr. Decker also noted that sales tax revenue is not only derived from Suffolk County residents, but also in large part from non-resident visitors and tourists. In essence it is an "imported" tax for which the burden does not fall completely on the shoulders of the residents.

The other source of revenue to fund this Award comes from real property taxes. Mr. Decker pointed out that in 2008, in the midst of the an economic downturn, the County Executive was so confident in the fiscal health of the County, he recommended tax freezes for both the general and police district warrants. (JX 13). Mr. Decker testified, "that is not an action you would take if you were facing at [sic] some type of financial problem."

In his December, 2009 update concerning the Sales Tax and Real Property Tax, Mr. Decker concluded:

The economic events of the last year have done little to change the conclusion that was reached in the analysis presented in October 2008 (PX78).

The County's use of the State Constitutional Tax Limit is another indication of the County's fiscal health. Since 2003, the County's use of the tax limit has steadily declined (JX

15). In 2007-09, the County was using 13.2% of its tax limit, which was the third lowest usage among the ten (10) largest counties in New York State (PX 78).

Mr. Decker found that the County also maintained other monies in a Tax Stabilization Reserve Fund, which are in addition to the positive fund balances recorded in the General and Police District funds. (JX15). The combined fund balance of the General and Police District funds together with the Tax Stabilization Fund at the end of 2008 was \$151.6 million, representing 6% of total expenditures.

Moreover, the 2010 general fund budget and the 2010 police district fund budget include contingent accounts of \$11.5 million and \$59.5 million, respectively. (PX 78). These accounts are often used by municipalities to fund the cost of labor settlements. Lastly, in October 2009, Fitch reaffirmed the County's bond rating as AA-, and Standard & Poor's reaffirmed its rating of AA. The County has acknowledged the AA rating is its first ever and it was the only county in the state to receive a credit rating increase since the beginning of 2008.

The sound fiscal health of the County in recent years positions it to weather fiscal downturns better than other counties in the state. Factors such as the County's comparatively high growth in population, high per capita personal income, fast rate of job creation and comparatively low unemployment rates contribute to its resilience.

Fred Pollert, Mr. Levy's Deputy County Executive for Finance & Management, does not agree with Mr. Decker's conclusion. Instead, he paints a picture of gloom and doom with regard to the County's fiscal position for the future. While Mr. Decker's presentation relied on actual numbers to bolster his conclusion that the County has the ability to pay for the PBA's proposals, Mr. Pollert's presentation was replete with "smoke and mirror" estimates and projections of the

possible effects the current economic downturn will have on the County in the future. While he acknowledges the difficulty in predicting future economic trends, at the same time, his presentation was replete with predictions (JX14 &16).

During the hearing held on October 30, 2008, Connie Corso, the County's Budget Director, pointed to a laundry list of items which would significantly close the projected revenue gap. Specifically, she referred to the securitization of tobacco revenue, which she predicts "will hopefully bridge the county through the economic downturn." This alone amounts to \$60 million in revenue during the term of the award. Cost savings measures such as an early retirement incentive program, controlled filling of vacancies, reduction of appropriations, reductions in contract agency contracts, increasing fees, eliminating "pay-as-you-go" projects and debt refunding were implemented to help close the projected revenue gap. These savings amount to approximately \$23 million, which is in addition to the \$60 million in revenue to be generated from the tobacco securitization. Ms. Corso also testified the County will see additional revenue in the form of \$5.7 million from filing fees and \$3.5 million per year from the sale of the Suffolk HMO. (JX14 &16). Furthermore, Mr. Pollert confirmed the County and unions have saved about \$120 million since 2004 and have agreed to save an additional \$15 million savings in health related costs in 2009. (JX14).

The County's August, 2009 update also cites to savings, which helped reduce a projected budget gap as of that date. For instance, a resolution was passed increasing flexibility in the use of the Tax Stabilization Reserve Fund; the County transferred \$30 million from the fund to the general fund; it reduced police appropriations by \$3.2 million; and it instituted a lag payroll for board of education employees, management employees and elected officials. (JX17). The

projected budget gap was closed by other cost-savings measures including a lag payroll for all twelve (12) bargaining units, which saved \$22 million. In December, 2009, the County acknowledged that “the decline in sales tax receivables on a check to check basis as compared to the previous year have improved ... .” Lastly, the County concludes that it has “weathered the financial storm of 2009 ...” and has done so remarkably without raising taxes in the general fund and without depleting the tax stabilization fund. The County cites to what it calls “unique legal restraints” that should be considered by the Panel when assessing its ability to pay. These “restraints” are a series of locally enacted laws concerning budgeting and tax levies. (JX16). This Panel is not beholden to these local laws. It cites City of Amsterdam v. Helsby 37 N.Y.2d 19, 371 N.Y.S.2d 404 (1975) and City of Buffalo v. Rinaldo, 41 N.Y.2d, 764, 396 N.Y.S.2d 152 (1977).

The testimony of Mr. Pollert and Ms. Corso demonstrates that the County has significant tools and resources to deal with this fiscal slowdown. Regardless of how the County chooses to meet its budgetary goals and obligations, the fact is, it has more than adequate resources to meet them.

Section 209(4)(C)(v) of the Civil Service Law, subdivision (c), directs the panel to compare the peculiarities of law enforcement with other trades or professions, including the (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills. (Jt. Ex. 1).

There are no public or private employees, outside of law enforcement, who perform similar work to the members of the DIPBA. Therefore, it is not feasible to compare the peculiarities of other employment with their work. Law enforcement has its own unique hazards,

physical, mental and educational requirements and job training and skills. In addition, DIPBA members face health risks, including the potential of exposure to hepatitis, TB and other diseases when coming in close contact with suspects and prisoners.

DIPBA members work directly for the District Attorney. The majority of the arrests made at the behest of the District Attorney are based on intelligence gathered by DIPBA members. Therefore, DIPBA members are instrumental in the successful prosecution of these cases. In 2008, DIPBA members assisted the District Attorney in successfully disposing of a total of 7,618 adult felony arrests leading to a 100% conviction rate. They are also instrumental in keeping the rate of violent felony and drug felony convictions high (PX26).

The DIPBA unit contains seven (7) civil service titles: Detective Investigator; District Attorney Investigator; Detective Investigator (Technical Services); Special Investigator; Senior Detective Investigator; Principal Investigator and Assistant Special Investigator. The qualifications of these positions are established by the Suffolk County Civil Service Commission and are outlined on their respective job descriptions. (PX 1). All positions require applicants to have a minimum of eight (8) years of investigative or detective experience working for a municipal police department in New York State or a Federal law enforcement agency (except for a District Attorney Investigator who needs a minimum of three (3) years of experience).

In order to become police officers, DIPBA members were required to be free of mental illness, serious emotional disturbances or nervous disorders, alcoholism, drug dependence or abuse that would interfere with the performance of duties. All candidates were evaluated through a psychological screening process and may have been screened for the presence of drug

abuse and a polygraph test was administered. The minimum educational requirement to become a Suffolk County Detective Investigator is the completion of sixty (60) college credits.

Finally, the job training and skills of DIPBA members are immense. The New York State Division of Criminal Justice Services establishes a basic course for police officers consisting of a minimum of 635 hours of basic training (PX 29). Since all members of the DIPBA were law enforcement officers at the local, state or federal level, the Suffolk County police academy basic training requirements can serve as a guideline

There are simply no other jobs or professions with comparable hazards; physical, educational and mental qualifications; and job training and skills. The County appears to be in agreement with this conclusion having offered no contradictory argument or evidence nor any attempt to use other trades or professions as part of a comparability analysis. The Panel should find that no other trade or profession is comparable to law enforcement.

Section 209(4) (C) (v) of the Civil Service Law, subdivision (d), directs the panel to consider the terms of collective agreements negotiated between the parties in the past.

The DIPBA submitted all collective bargaining agreements between the parties from January 1, 1987 through December 31, 2007. (PX 5, JX 2). The DIPBA decertified from the Association of Municipal Employees in 1986 to become an independent bargaining unit. Since then, all of the DIPBA contracts, awards and the 2000-2003 MOA, have conformed to the police pattern, except for the work schedule. (PX 9-18, 68). An examination of the history of negotiations demonstrates that DIPBA members, as part of the police pattern, have always enjoyed the same, consistent, increases in wages and benefits set by the PBA, and are well compensated for the outstanding work that they perform. This Panel should not deviate from the

negotiation history and it should continue to award DIPBA members its proportionate share of the wages and benefits awarded to the PBA for the period of January 1, 2008 through December 31, 2010.

Based on the evidence and testimony, the DIPBA's just and reasonable proposals should be granted in their entirety for the reasons set forth below.

**1. Wages:                    ~~Wages shall be increased by six percent (6%) in each year of the agreement.~~**

The DIPBA's first and most important economic proposal is for a fair wage increase. The proposal is to increase base wages by six percent (6%) in each year of the Award.

The first consideration regarding wages is the County's resources to pay for these increases. As previously noted, there is no dispute that the County has the ability to pay for the proposed raises. Even in the wake of an economic downturn, the County's history of sound budgeting practices; the availability to access more of the local tax base and revenue sources; its ability to float debt as demonstrated by the County's high bond ratings; the flexibility it has to move revenues to and from the general and police district funds; the savings the County has already undertaken as outlined by Budget Director Connie Corso; the substantially funded tax stabilization fund; the monies set aside in the reserve fund; the persistently low, frozen and/or decreasing, tax rate; and the underlying economics and demographics of the County are all indications that the County has the ability to pay for the DIPBA's wage proposal.

The panel's second consideration with regard to the DIPBA's wage proposal is the wages and wage increases received by the other bargaining units in the police pattern. As set forth above, the PBA sets the wage pattern. This is exemplified by PX72:

	PBA	SOA	SDA	DIPBA
1989	5%	5%		5%
1990	5.75%	5.75%		5.75%
1991	5.75%	5.75%		5.75%
1992	no increase	no increase	no increase	no increase
1993	4.75% (4/1)	4.75% (4/1)	4.75% (4/1)	4.75% (4/1)
1994	3% (1/31) - 3% (7/31)	3% (1/31) - 3% (7/31)	3% (1/31) - 3% (7/31)	3% (1/31) - 3% (7/31)
1995	3.5% (2/28) - 3% (7/31)	3.5% (2/28) - 3% (7/31)	3.5% (2/28) - 3% (7/31)	3.5% (2/28) - 3% (7/31)
1996	5.5% (2/1)	5.5% (2/1)	5.5% (2/1)	5.5% (2/1)
1997	4%	4%	4%	4%
1998	4%	4%	4%	4%
1999	4% (4/1)	4% (4/1)	4% (4/1)	4% (4/1)
2000	4.60%	4.60%	4.60%	3.95%*
2001	4.75%	4.75%	4.75%	3.95%*
2002	4.50%	4.50%	4.50%	3.95%*
2003	4.50%	4.50%	4.50%	3.95%*
2004	3.75% (1/1)	3.75% (4/5)	3.75% (5/3)	3.75% (5/3)
2005	3.75%	3.75%	3.75%	3.75%
2006	3.75%	3.75%	3.75%	3.75%
2007	3.75%	3.75%	3.75%	3.75%
2008	3.50%	TBD	TBD	TBD
2009	3.50%	TBD	TBD	TBD
2010	3.50%	TBD	TBD	TBD

\* The DIPBA agreed to these wage increases, which were less than the increases awarded to the PBA, in order to obtain its pro rata share of the overall benefits awarded to the PBA. There is no dispute the DIPBA agreement conformed to the pattern.

In order to achieve comparable benefits awarded to the PBA, the County has calculated it must receive concessions equal to \$127,826, which is 2.66% of the concessions made by the PBA (the DIPBA is 2.66% the size of the PBA) (PX 70). According to the County, the net cost of the DIPBA award should be \$364,945. (CX15 Vol. II). However, it should not be required to meet the full amount of the PBA's concessions made in the areas of GML 207-c and the implementation of the sick leave management program. Both of these concessions were assigned

a net savings of \$850,000 by the PBA Panel over the course of the three (3) year PBA Award. (PX 70). However, those items did not go into effect until the award was issued on March 11, 2010. Therefore, the concessions will be in effect for nine (9) months, and based on the value assigned by the PBA Panel, the DIPBA should only be required to achieve a pro rata share of nine (9) months worth of the concession, which is 2.66% of \$415,000, or \$93,911. (PX 70). This, in turn, raises the net cost of this Award to \$398,860, a difference of \$33,915, requiring the DIPBA to achieve that much less in concessions and to derive that much more in benefits.

Another consideration the Panel should make is that the DIPBA has already conceded \$6,316 per bargaining unit member to assist the County, a comparable amount to the monies deferred by PBA members. Just as the PBA Panel gave great weight to the PBA's deferred monies, this Panel should also factor in the DIPBA's concession when rendering its award for a wage increase.

Another factor the Panel should consider when rendering its Award is that the County is not required to contribute to the pension system for twenty-nine (29) DIPBA members. (DIPBA Ex. 2). This is a major difference between the DIPBA and the other units in the police pattern.

Finally, as set forth in detail below, the DIPBA's work schedule proposal will help achieve the appropriate concessions from the DIPBA. These unique savings opportunities should be credited to the DIPBA not only in furtherance of meeting its pro rata share of the concessions, but also in achieving its pro rata share of the benefits awarded to the PBA.

2. **Longevity:**       **Members shall receive a longevity payment of one percent (1%) of base pay after completion of one (1) 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 (7) years of service).**

This proposal would change the current system of calculating longevity from a flat dollar amount for each year of service, currently three hundred dollars (\$300), beginning in the sixth year of employment, to a percentage based system (JX 2).

DIPBA members have not received an increase in longevity since 2001 (PX73). The DIPBA is long overdue for an increase in longevity, and should the Panel decide not to award the DIPBA's proposal for a new system of calculating longevity, it should still award a just and reasonable increase in longevity pay.

An examination of the negotiation history reveals that the four (4) units in the police pattern have been in lock step since 1992 regarding longevity increases. (Id.). The PBA was awarded increases of twenty-five dollars (\$25) per year from the recent PBA Panel. This Panel should not deviate from the pattern set by the PBA, and should increase longevity pay for DIPBA members as part of the benefits granted in this Award.

**3. Assignment Pay:**

- (a) **Increase assignment pay to seven percent (7%).**
- (b) **When a bargaining unit member is assigned to any Federal or State agency for the purpose of performing any police function or duty, e.g. those Detective Investigators assigned to the Federal DEA Task Force, he/she shall receive Special Assignment pay of seven percent (7%).**

Pursuant to the direction of the Panel, the DIPBA refers the Panel to the extensive evidence and arguments presented in support this proposal (PX52, 53, 74). This proposal is just and reasonable and should be granted in its entirety.

**4. Family Sick: A member may use up to ten (10) family sick days per year.**

The DIPBA proposes to increase the number of family sick days from five (5) to ten (10) days. The CBA provides that:

Employees shall be allowed to use up to five (5) of their earned sick days per calendar year for an illness in the employee's immediate family or for a relative living within employee's household (JX2).

Family sick days are not in addition to individual sick days and have no financial impact on the County. They are a designated number of individual sick days that can be taken to care for a family member.

~~PX75 compares the family sick leave available to other bargaining units in the police pattern. The PBA was recently awarded an increase from five (5) to seven (7) days, effective June 1, 2010. In conformance with the pattern, this proposal should be granted in its entirety.~~

**5. Work Schedule:** (a) **Employees working the rotating 5/2 duty schedule shall have 26 XDO's per year (prorated for portions of a year worked) which shall be scheduled by the Office. This will result in a 234 day annual work day schedule. Employees working the 5/2 straight work day schedule shall have 24 XDO's per year (prorated for portions of a year worked) which shall be scheduled by the Office. This will result in a 236 day annual work schedule. All work schedules will be labeled as to appropriate night differentials based on current contract agreements.**

(b) **All employees, depending on their work schedule, shall be guaranteed a work schedule of 232 to 236 days per year. Any employee who works in excess of either amount shall be compensated for the difference by the equivalent number of leave days scheduled by the Office.**

Next to its wage proposal, this is the DIPBA's most important proposal. It represents the final link to complete the conformance of the DIPBA contract to the police pattern and away from the civilian pattern. Currently, DIPBA members are assigned to a work schedule consisting of five (5) consecutive workdays, seven (7) hours per day, for a total of thirty-five (35) hours per week. Members are entitled to a one (1) hour meal period during each tour of duty, however, for years members have been receiving a one (1) hour unpaid meal period during the tour.<sup>1</sup> If this

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<sup>1</sup> This is currently the subject of a contract grievance that has been placed on hold pending the outcome of this

proposal is granted, the DIPBA's work schedule would be the same as the work schedule currently worked by the SDA bargaining unit members with whom DIPBA members work side-by-side every day. (DIPBA Ex. 57).

The proposal is for a work schedule of five (5) days on and two (2) days off, (the County has mischaracterized the proposal to be for a schedule of five (5) days on and three (3) days off, and then five (5) days on and two (2) days off). PX58 provides the Panel with an overview of how the current DIPBA work schedule compares to those of the other police pattern bargaining units.

If the Panel does award this proposal, it will not affect productivity or require the County to replace bargaining unit members on overtime, or as the County suggests, require the need for an additional six (6) bargaining unit members. There is no minimum staffing required by the CBA, so the Office would not be required to incur overtime as a result of having to transfer a member or switch a member's tour to meet staffing requirements. A detective investigator is responsible for completing his or her work regardless of the number of days off, and members are more than capable of doing so with fewer appearances.

Moreover, the pattern conforming work schedule proposed by the DIPBA would actually save the County money. Since DIPBA members would be responsible for a schedule consisting of 1,856 hours, annually, their hourly rate would be diminished. Accordingly, the overtime rate and daily rate of pay, which is used to calculate holiday pay and vacation pay, would also be diminished. With every member working twenty-nine (29) additional hours above their current work obligation per year, the County will realize a savings equal to 1,392 hours, or \$128,910 per

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proceeding. (See DIPBA Ex. 59).

year at the average 2007 rate of pay. This represents 76% of the average annual cost of one DIPBA member.

The County's argument that it will be required to hire six (6) additional detective investigators to cover a reduced schedule is ludicrous. (CX13 Vol. II). Since each employee will be responsible to work an additional twenty-nine (29) hours per year, productivity will increase. ~~As set forth above, the resulting savings from the reduced hourly rate of pay and the additional~~ hours of productivity over a three (3) year Award is equal to \$410,821 or a 7.82% wage concession. Therefore, awarding this proposal will be beneficial to both parties. It will finally provide the DIPBA with a pattern conforming work schedule and, at the same time, it will increase productivity and reduce costs for the Office and the County. It will also create a substantial savings that will satisfy the DIPBA's pro rata share of the concessions benefits awarded to the County by the recent PBA Panel.

Parts (a) and (b) of this proposal are just and reasonable and should be granted in its entirety.

- (c) **All duty and work schedules for employees shall be given to the Association on January 1<sup>st</sup> of each year, or when issued, if an amendment thereto is made during the year.**
- (d) **There shall be no automatic restrictions on when an employee may take leave days.**

Pursuant to the direction of the Panel, the DIPBA refers the Panel to the extensive testimony and evidence in support of part (c) of this proposal. (PX 60). Lastly, if part (d) of the proposal is granted it will serve to further conform the DIPBA contract to the other police pattern contracts. Those contracts contain a provision whereby the County is prohibited from issuing a work rule automatically restricting when a member may take a contractual leave day. This is meant to ward off a work rule such as "no personal days will be granted on Fridays." The SDA,

SOA and PBA bargaining units have this benefit, and therefore, there is no reason why this Panel should not award it to the DIPBA.

**6. Separation from Service: Members who separate from service with 10 or more years of service shall receive all benefits of retirees.**

This proposal is to seek benefits for those members who separate from employment, which are currently available only for members who are eligible to retire from Suffolk County.

This is not a proposal, as the County has characterized, to change accumulated leave time provisions in the CBA. More than half of the membership has retired from other jurisdictions, and are therefore not eligible to retire from their position with the County and receive certain contractual benefits upon their separation from employment. It is conceivable that two members, both with twenty (20) years of service, could receive very different benefits upon leaving the employ of the County. Specifically, a retiring member is entitled to health benefits into retirement pursuant to the CBA. (PX 62, Section 7.1[D]). Also, retired members are entitled to retain their County issued weapons, I.D. card and shield, whereas employees who separate are not entitled to retain those benefits. Lastly, separated members are not provided a County issued pistol permit, while retired employees do have that benefit.

Similarly situated members should not be treated disparately. The Panel should rectify this inequity by granting this proposal.

**7. Meal Money: Delete Section 26, and insert the following:**

**“(a) If an Employee, not on a regularly scheduled tour of duty, leaves the County on County business for four hours or more, actual time, he/she will receive a meal allowance of \$7.50 if the four hours are completed prior to 1700 hours and \$12.00 if the four hours are completed after 1700 hours. If an Employee, on a regularly scheduled tour of duty, leaves the County for three hours or more with one hour**

or more falling within the hours of 1200 to 1400 hours, he/she will receive a meal allowance of \$7.50. If an Employee, on a regularly scheduled tour of duty, leaves the County for three hours or more with one hour or more falling within the hours of 1900 and 2100 hours, he/she will receive a meal allowance of \$12.00. If he/she is out of the County overnight, he/she will receive an additional meal allowance of \$3.00. However, no meal allowance money shall be paid if the Employee is actually given a meal period before leaving the County.

In lieu of the above meal allowances, Employees performing an extradition shall receive a \$50.00 meal allowance in advance for each overnight stay. Such allowance will be the total meal allowance payable during the extradition proceeding for each Employee.

(b) An Employee, who performs overtime, (either upon completion of his regular tour or a nonscheduled day), shall be entitled to a meal allowance of \$12.00 upon the completion of the first four hours of overtime work, \$7.50 upon the completion of the second four hours of overtime work, and \$7.50 upon the completion of each four hours of overtime work thereafter.”

Pursuant to the Panel’s direction, the DIPBA refers the panel to the extensive evidence and testimony presented in support of this proposal. (PX 64). This proposal should be granted in its entirety.

8. **Past Benefits:** Create a new section of the CBA to read as follows:

“The County shall not eliminate any term and condition of employment continuously enjoyed by all Employees for a substantial period of time. Any such elimination shall be subject to the grievance procedure of this Agreement.”

Pursuant to the Panel’s direction, the DIPBA refers the panel to the extensive evidence and testimony presented in support of this proposal. (PX 66 &67). This proposal is just and reasonable and should be granted in its entirety.

**9. Association Business:**

**Modify weekly stipends as follows:**

<b>President</b>	<b>11 hours</b>
<b>1<sup>st</sup> Vice President</b>	<b>1.5 hours</b>
<b>2<sup>nd</sup> Vice President</b>	<b>1.5 hours</b>
<b>Treasurer</b>	<b>1.5 hours</b>
<b>Financial Secretary</b>	<b>1.5 hours</b>
<b>Recording Secretary</b>	<b>1.5 hours</b>

This proposal is to increase the weekly stipend provided to the president of the DIPBA to compensate him for lost overtime as a result of his full release status. Currently, the president receives 3.25 hours of overtime at the straight time rate. (JX 2). The proposal is also to provide other members of the DIPBA executive board with a stipend for missed overtime opportunities because of the time they put in with the DIPBA. Stipends for these members are not currently provided by the CBA.

This proposal should be granted for two reasons. First, the president of the association puts in many hours above and beyond an eight (8) hour day engaging in activities that not only benefit the DIPBA, but also inure to the benefit of the County. President Weishahn uses a large percentage of this time to attend labor relations meetings to attempt to resolve issues between the parties, which in turn save money for the County because it avoids grievances and litigation. Second, this proposal should be awarded by the Panel because the PBA Panel sought fit to increase this benefit in its recent award. The PBA president now receives 6.5 hours of overtime at the straight time rate and the other members of the executive board receive 3 hours. (PX 76). This Panel should not ignore the undisputed police pattern by denying this proposal.

**10. Reopener:           The DIPBA shall have the right to reopen negotiations with the County if the Suffolk County Police Benevolent Association, Suffolk County Superior Officers Association or Suffolk Detectives Association or Suffolk Detectives Association obtains any economic improvements through negotiations or compulsory interest arbitration for the term of this Agreement that are not contained in this Agreement.**

This proposal is to grant the DIPBA the right to reopen negotiations if any of the other bargaining units attain any economic improvements through negotiations or compulsory interest arbitration not attained by the DIPBA. As the PBA and the County have clearly established in this proceeding, the PBA, SDA, SOA and DIPBA have historically engaged in pattern bargaining. (PX 10-18, CX 3 -18). The PBA has generally volunteered to negotiate first and set the pattern. Neither the County nor the PBA desires the SDA, SOA or DIPBA to engage in leapfrogging by obtaining greater benefits than those received by the PBA. This will result in a lack of closure and cause a chain reaction among the bargaining units in the pattern.

The recent PBA Panel granted the PBA's proposal for a reopener. (PX 9). Since the SDA and SOA awards have yet to be issued, this Panel should award this proposal with respect to the SDA and SOA. During the last round of bargaining, the SDA and SOA panels awarded reopeners should either one of them, or the DIPBA, obtain economic improvements not achieved by the others. (PX77). Should this Panel issue its Award prior to the issuance of the SDA or SOA awards, the DIPBA needs the right to reopen negotiations in order to maintain the integrity of the pattern. This not only protects the DIPBA, but it assists the County in resisting any potential demands by the other bargaining units to the extent they seek to exceed the economic improvements contained in the PBA's Award, and in turn, this Panel's Award. In the past, the DIPBA was not awarded a reopener because it was the last bargaining unit in the pattern to receive an award. However, in this round of negotiations, it is not certain that the DIPBA award

will be issued last, and therefore, this proposal should be granted to avoid the potential of leapfrogging.

After considering all of the evidence and testimony submitted by both parties, and for all of the following reasons, the County's proposals are neither just nor reasonable and must be denied in their entirety.

**1. Section 5, Wages:**

**(a) Freeze all steps of the salary schedule for the duration of the Award.**

The County's wage proposal is to provide a zero percent (0%) wage increase in each year of the Award. This proposal should be denied for several reasons.

First, a three (3) year wage freeze is unprecedented. A three (3) year freeze has never been negotiated or awarded by an interest arbitration panel in the parties' bargaining history. (DIPBA JX2, PX6 [a-i]). Second, no bargaining unit in the police pattern has received a three (3) year wage freeze in their bargaining histories. (PX6 [a-1], 9, 7[a-i], 8[a-g]). Third, as established by the PBA panel, the County has the ability to pay, and should pay, for a reasonable wage increase. Fourth, the DIPBA is entitled to its share of the pattern package established by the PBA panel.

**2. Section 6.1, Overtime:**

- (a) Delete provision allowing time for vacation, sick leave, personal leave, holidays, etc., being considered as time worked in determining eligibility for overtime. Amend to calculate holiday pay and overtime based upon a 261 day duty chart.**
- (b) FLSA: Modify and or delete each relevant contract provision, policy and practice so that overtime and compensatory time entitlements are provided solely in accordance with FLSA mandates.**

Pursuant to the Panel's direction, the DIPBA refers the Panel to the evidence and testimony presented against part (a) of this proposal. (PX[Rebuttal]4). This proposal is neither just nor reasonable and should be denied in its entirety.

Part (b) of this proposal should also be denied in its entirety. Currently, the CBA provides that members receive overtime for all work in excess of seven (7) hours in one day or thirty-five (35) hours per week. (JX 2). The County is seeking a wholesale revision of the contract by proposing that overtime be paid in accordance with FLSA mandates. (CX 47). The County is asking this Panel to completely ignore the parties' bargaining history and to disregard the police pattern. There is not one police bargaining unit that is paid overtime based on FLSA mandates. (CX48). The County had the same proposal before the recent PBA Panel, and it was rejected.

The County used the Deputy Sheriffs, Park Police, Corrections and the Association of Municipal Employees to demonstrate there are Suffolk County bargaining units that have some form of FLSA overtime in their contracts. (CX 48). As stated by the County itself during its presentation, and as stipulated by the PBA, those bargaining units are not part of the Suffolk police pattern and never have been. These units should not be used as a basis by the County to support this proposal.

**3. Section 6.5, Night Differential:**

- (a) Amend to provide for night differential of 10%.**
- (b) Amend to provide that employees assigned to a ten (10) hour extraordinary night shift shall receive 12% night differential.**

The County's proposal 3(a) to decrease the night differential rate from 12% to 10% should be denied. Section 6.5 of the CBA provides that bargaining unit members who work between the hours of 4 p.m. and 8 a.m. receive a night differential of 12%. (PX[Rebuttal] 8). The County's evidence in support of this proposal is misleading. It posits that the DIPBA is the only bargaining

unit that receives a 12% differential, when, in reality, all of the police pattern bargaining units have a night differential of 12% as the highest night differential rate. (PX[Rebuttal]. 9). The DIPBA also has a differential of 7.5% for those members who are assigned to a two-tour rotating schedule. This is the same percentage received by members of the PBA, SDA and SOA who work a rotating two-tour schedule. This proposal should be denied because the 12% night differential rate falls squarely within the pattern and the DIPBA has historically received increases in accordance with the other bargaining units. (PX [Rebuttal] 9).

Part (b) of the County's proposal should also be denied. It is to amend the contract to provide that employees assigned to the extraordinary night tour shall receive 12% night differential. This proposal does not make sense. First, there is no extraordinary night tour in the CBA. Second, there is no proposal before the Panel to add an extraordinary night tour as a term and condition of employment. Therefore, the Panel should not award this proposal since there is no logical justification for it.

**4. Section 7.2, Injury Determination:**

- (a) Amend paragraph C(1) to provide that effective January 1, 2008 vacation time entitlement shall cease to accrue following the 12<sup>th</sup> consecutive month of absence from the effective date of placement on code 401.**

By this proposal the County seeks to take away members' entitlement to accrue vacation after the twelfth month of absence because of an on-duty injury. This proposal should be denied since none of the comparable bargaining units have this. In fact, the recent PBA Panel rejected the same proposal advanced by the County. (PX 9). Also, there is no practical reason to award this proposal since over the past six (6) years no DIPBA member has been out for more than one year. In fact, only two members have suffered on-duty injuries and they were absent for twelve

(12) and sixty-four (64) days, respectively. (CX58). The DIPBA, and the other bargaining units in the pattern, already have a cap on vacation accrual when they reach maximum accumulation while absent because of an injury classified as “code 401.”

**5. Section 8.5, Holidays:**

**(a) Delete Floating Holiday.**

The County withdrew this proposal during the arbitration hearing.

**6. Section 8.7 Leaves of Absence Without Pay, (B) and Appendix B, Pregnancy/Maternity, Disability and/or Child Care Leave:**

**(a) Amend to conform with legal requirements.**

Section 8.7(B) and Appendix B of the CBA provides pregnant women with a maximum of eighteen (18) months leave from the date of pregnancy, but no more than nine (9) months after the birth of the child. Members are permitted to use accrued sick, vacation and personal days prior to being taken off the payroll. (JX 2). Presumably, the proposal is to provide maternity benefits that are on par with the level of benefits available to men who suffer from non-occupational illness or injury. This, however, would greatly reduce the current benefits provided to pregnant members both prior to and after giving birth. After giving birth, the County proposes that the member take Child Care Leave in accordance with Appendix B of the CBA. (JX 2). Appendix B is a nine (9) month unpaid leave during which the member is not permitted to use accruals. Assuming the current provisions are “illegal,” there are ways to make them “legal” that do not reduce the benefits of the women to conform with the benefits supplied to men, but instead raise the benefits supplied to men to conform with those already supplied to women. If the Panel finds the benefits illegal, but is inclined to make the maternity benefits “legal”, it should do so in a way that does not spite women for the sake of gender equality. In the alternative, if the Panel

deems it necessary to change the benefit, it should do so in accordance with the language awarded by the recent PBA Panel. (PX9).

For the foregoing reasons, this proposal is neither just nor reasonable and should be denied in its entirety.

**7. Section 8.8, Sick Time:**

- ~~(a) Amend to provide that sick time is accrued each pay period.~~
- (b) Amend 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 upon the NYC Police Department procedures. Delete the requirement for payment of unused sick time upon retirement.**

Pursuant to the Panel's direction, the DIPBA refers the panel to the evidence and testimony presented in opposition to proposal 8(a). (PX [Rebuttal] 20). This proposal is neither just nor reasonable and should be denied in its entirety.

County proposal 8(b) should also be denied. This proposal has three parts. The first part is to completely revamp the method by which sick time is accrued, by instituting unlimited sick time, which is completely foreign to the police pattern. The County presented this exact proposal to the PBA Panel, and that panel denied it in its entirety. Regardless, the County did not articulate a persuasive reason for the panel to deviate from the pattern by awarding this proposal. (PX [Rebuttal] 22). The second part of the proposal is to institute the leave monitoring and usage procedures employed by the New York City Police Department. Again, no police bargaining unit in the pattern has this provision, and the County failed to extract it from the recent PBA Panel. The third part is to abolish sick leave payouts upon retirement. This goes hand in hand with unlimited sick time, and is not part of the police pattern in Suffolk County.

**8. Section 9, Association Business:**

- (a) **Delete paragraph A requiring the payment to the President and five members of the Executive Board of 12% night differential.**
- (b) **Delete Paragraph B requiring Board Pay of 3.25 hours to the President of the Association at the straight time rate.**
- (c) **Add: The Association shall reimburse the County for all taxpayer-funded Association activities, including release time.**

This proposal has three parts, all of which should be denied.

- a. **Delete 12% night differential pay to the President and five members of the Executive Board of Governors.**

This is a benefit received by President and the Executive Board to compensate them for the extraordinary amount of work that they put in on their own time to adjust grievances and enforce the contract. This time inures to the benefit of the PBA and to the County in order to address issues before they become grievances, PERB charges or litigation, all of which cost the PBA and the County time and money. All of the other County police units receive this benefit, and the DIPBA has been in lock step with those units each time the benefit was increased. (PX [ Rebuttal] 27, 28). The DIPBA has had this benefit since it was awarded by the Edelman panel in 1993. (PX[Rebuttal] 26).

- b. **Delete paragraph B requiring Board Pay of 3.25 hours to the President of the Association.**

This benefit was awarded by the 2004-2007 arbitration panel to supplement the President's pay for lost overtime opportunities. (PX[Rebuttal] 30). That panel provided ample justification to award this benefit. It would now be unjust for this Panel to undo it. Moreover, all of the County police bargaining units receive this benefit and the recent PBA Panel just increased it to 6.5 hours for the President and 3 hours for other members of the executive board. (DIPBA Ex. 9).

**c. The Association shall reimburse the County for all taxpayer-funded**

**Association activities, including released time.**

If awarded, this proposal would not only be a new contract section, it would be the only such contract section in any Suffolk County contract. (PX [Rebuttal] 34). Moreover, the County has failed to explain what it means by taxpayer-funded Association activities. It is also unclear how the DIPBA would reimburse the County if there is no understanding of the definition of a taxpayer-funded activity. The Panel should not award a vague and ambiguous proposal. Also, the recent PBA Panel rejected the same proposal advanced by the County. (PX9).

**CONCLUSION**

**WHEREFORE**, based upon the forgoing, it is respectfully requested that the compulsory interest arbitration panel issue an Award for a three (3) year term finding all of the DIPBA's proposals just and reasonable and granting them in their entirety, and finding all of the County's proposals neither just nor reasonable and denying them in their entirety.

**CONTENTIONS OF THE COUNTY**

The County argued as follows:

The County is facing unprecedented economic conditions. Its ability to pay is being driven by forces outside of its control; e.g., frozen credit markets, low interest rates on investments, a shattered housing market, flat retail sales (JX16). To counter these forces, the County has taken drastic steps, such as securitizing a portion of the tobacco revenues, offering an early retirement incentive program, maintaining strict control over the filling of vacant positions, reducing appropriations to County departments; etc., just to keep its taxpayers' heads above water

and avoid being drowned (JX16 ). Rather than recognize these dire circumstances, the DIPBA has presented the Panel with a tsunami, a wage and benefit package that will annihilate the County's financial well-being and empty the already tight wallets of its taxpayers.

Although these external factors influence the County's economic well-being, they exist on a national level and will require more than just the County's efforts to improve. Nonetheless, the County must do, and has done, its part. It must, and has tried to, reduce expenses, particularly large expenses like wages and benefits.

The County's efforts to reduce its labor costs have been constrained by interest arbitration awards. Until recently, interest arbitration has been a union's golden ticket. Unions left the process with huge benefits, and the County walked away with little in return.

To be fair, the parties have faced nothing that can remotely compare to the current economic crisis. In the past, except 1992-1993, interest arbitration panels have determined that the County had, for the most part, the ability to pay for reasonable increases in wages and benefits. Even the recession of 1991-1992, which resulted in a wage freeze being imposed on DIPBA members for all of 1992 and the first quarter of 1993 (CX21, Volume I), did not present as dire a set of circumstances.

Now, and much like the rest of the nation, however, the County's expenses have escalated at a record-breaking pace due to unprecedented increases in health care, debt service and special education program costs (JX16). Continuing this pace in this economic climate will almost certainly yield catastrophic results.

This is why interest arbitration panels have begun to recognize that the status quo is unsustainable and that life, as all have known it, must change. It is in this climate, then, that a

new contract must be delivered. The importance of this Award cannot be underestimated. It will continue the groundwork set by the Suffolk County Police Benevolent Association ("the PBA") interest arbitration award for the remaining units in the County's police pattern, as well as those in the County's other bargaining tiers. It will also be analyzed by other jurisdictions when they sit down at the bargaining table with their police-related units.

The County's financial health over the next few years depends upon this Award, as it will, in part, determine whether the County will be able to survive this historic recession. Even if we were enjoying excellent economic conditions, the County would have difficulty funding the DIPBA's demands. In this economic climate, it is all but impossible to expect the County to do so.

Even before the recession hit, the interest arbitration world had begun to change. The days of benefit-rich awards are gone. Interest arbitration panels have begun to place the brakes on unions' attempts to obtain more and better benefits. The 2004-2007 Suffolk PBA award was the lowest overall cost police award or settlement in the region, at least until the 2007-2012 Nassau PBA award was issued. The trend in leap-frogging has now reversed, with each panel awarding more savings and less onerous wage and benefit improvements than the one before. This fact was recognized by the 2008-2010 Suffolk PBA panel, which recently awarded the lowest average wage increases to a Long Island police unit in interest arbitration (3.5%) and then funded those increases through substantial concessions (DIPBA Ex. 9). It is critical to the County's financial well-being that this trend continues.

Civil Service Law § 201 recognizes the fundamental differences between public sector and private sector employees. The Supreme Court of the United States has also recognized that private employers and public employers are uniquely different.

As this Panel is well aware, public employers have limited resources with which to provide services. It is self-evident that the residents of Suffolk County, much like residents throughout the country, require the services of their Detective Investigators. It is equally self-evident that these services do not come for free.

It is within this context that the Civil Service Law requires that this Panel's decision be based upon the statute's well established criteria, "in addition to any other relevant factors."

The two most significant issues in this case concern the County's ability to pay for the DIPBA's demands and comparability. It is the County's position that the increases sought by the DIPBA are not only excessive relative to unit members' already generous wage and benefit package, but are completely out of touch with the County's ability to pay.

The County should not be required to pay for the increases sought by the DIPBA. The panel for the parties' last interest arbitration finally recognized the County's lack of ability to pay for excessive demands. For the four years covered by that award (2004-2007), the panel awarded the same wage increases as were awarded to the PBA. These represented the lowest average percentage increases for a police unit in Suffolk County in more than 20 years. That award represented the continuation of a good start at holding the line on overly generous interest arbitration awards. It is the County's position, though, that the 3.75% salary increases then awarded to the DIPBA (together with one-half of a percent per annum wage concessions, for a net

salary cost of 3.25% per year, with a 2.5% cost in 2004) were too high and should not be awarded here (PX5(a)).

Since the 2004-2007 DIPBA award was issued, the County's economic position, as well as those in neighboring jurisdictions and the entire nation during the relevant time period, significantly deteriorated. In recognition of this fact, the 2007-2012 Nassau PBA interest arbitration panel issued an award that held the line even more so than did the 2004-2007 Suffolk DIPBA award. The net cost of the Nassau award (an average of 2.75% per year) and the savings it generated substantially eclipsed that of the 2004-2007 Suffolk police pattern awards (PX9). Considering the time period in which that award was issued; *i.e.*, before the collapse of global, national and local economies, the award broke new ground in terms of reducing overall costs and maximizing savings. In light of the current dismal state of the economy, however, the cost of that award is too high and the savings too little.

This was recognized by the 2008-2010 Suffolk PBA Panel, which issued an award with a net cost of 2.67% per year (8% over three years) and the lowest average wage increases in the history of Long Island police interest arbitration (PX9). Considering the fact that, pursuant to a separate memorandum of agreement, \$12 million of the benefits awarded by that panel will be deferred until each PBA unit member's separation from service, the overall cash cost to the County is significantly lower, approximately 1% over three years.

The days of rich interest arbitration awards are over. The focus must be on savings. The Panel should focus on the taxpayers who are losing their jobs and their homes in record numbers. This time around it is up to the DIPBA, not the taxpayer, to fund this Award. The Nassau and

Suffolk PBA's paid for their wage and benefit packages. This Panel should require the same from the DIPBA.

The Panel's Award must consider the County's limited ability to pay for the DIPBA's demands. The current budget cannot accommodate an increase in General Fund expenditures, the source of DIPBA salaries.

County Detective Investigator salaries are funded through the General Fund (JX13). The General Fund is funded by real property and sales tax revenues, state and federal aid and various other revenue sources, including interest earnings (JX16).

As was confirmed by Union economist Kevin Decker, the County's ability to pay depends primarily upon "the health of the sales and use tax and the health of the real property tax. For them to be healthy, the economy needs to be healthy" (JX13). Unfortunately, sales and property tax revenues are notably unhealthy. They are on life support.

The County has been losing sales tax revenue since 2006 (JX14). It was projected that sales tax would grow by only 1% in 2008, much less than the historical 3% average, with no growth in 2009 (JX 14 & 16 ). These figures were optimistic when compared to those of the County's economic consulting firm, Thomas Conoscenti & Associates, Inc., which projected negative growth in 2008 and a 1.3% decline in 2009 (JX14 & 16). When adjusted for inflation, the County's sales tax growth has actually been negative since 2006 (JX 14).

For 2009, the County projected 6% less in sales tax receipts than it received in 2008 for a loss of \$107.3 million in 2009 (JX 17). As a result of poor sales tax revenues, legislation provided the County with much needed flexibility in its use of the Tax Stabilization Fund, which

allowed the County to transfer \$30 million to the General Fund to offset the sales tax decline. As of August 5, 2009, sales tax revenues were down 14.6% from the previous year (JX 17).

The County's 2010 budget is based upon the assumption that the 2009 sales tax revenues will be 6% less than those in 2008 and grow by 4% in 2010 (CX 2, Volume II ). As of December 15, 2009, 2009 year sales tax revenues were down 9% or \$90.9 million. If the 2009 year-end totals are down 8%, then the County will have lost \$23 million over its already low projections. This will automatically lead to a \$24 million loss in 2010 based upon the fact that the baseline for sales tax revenue will be less than projected. The County would need a 13.5% increase in sales tax revenues in November and December 2009 just to meet its projections. Considering that 47% of County residents have reported that they expected to spend less on holiday shopping, it is unlikely that the County will be able to meet its already low projections. Based upon these figures, it is clear that since 2008 people are not spending money and, if they are, they are not doing it here (JX14 ).

Sales tax revenues are split between the General and Police District Funds. The General Fund makes the Police District Fund whole; i.e., sales tax is transferred from the General Fund (JX14). Even though DIPBA unit members' wages and benefits are not funded by the Police District Fund, any shortage in the Police District Fund's sales tax revenues has a direct impact on the General Fund. Over the past seven years, sales tax transfers have increased (JX16). In 2002, the County transferred \$5.2 million to the Police District Fund. This past year it transferred approximately \$87 million, almost 17 times the 2002 amount.

Continuing at this high rate of transfers is not feasible. As a result of the projected 2009 budget shortfalls, the County has already decreased the amount of sales tax transferred to the

Police District Fund . Had it not done so, the County would have faced a massive General Fund property tax warrant increase. The health of the General Fund depends in part upon the health of the Police District Fund. Negative economic impacts in either fund could, therefore, result in a tax increase.

County residents cannot afford a tax increase in either Fund. Since 2000, there has been a 600% increase in property tax grievances (JX14). There was a 64% increase between 2007 and 2008 alone (JX16). Indeed from 2007 to November 2008, tax delinquencies increased by over 16% (equivalent to \$11.6 million) (Jt. Ex. 16, 11/26/08 update at p. 6). Tax delinquencies are at the highest rate in three years (CX 2, Volume II).

This at least partially explains the 30% increase in foreclosures and the 36% increase in lis pendis actions over the 2007 figures (JX 14 & 16). From January 2007 to June 2009, lis pendis increased 41% (JX17). The average monthly number of new foreclosures increased 32% from 2007 to 2008 (JX16, 16). From January to June 2009, there were 1,400 foreclosures, 50% more than January to June 2008. As foreclosures increase, the County's property tax revenues decrease (JX16).

Even more disconcerting is the fact that a November 25, 2008 release of the Standard & Poor's/Case-Shiller U.S. National Home Price Index showed a record decline of 16.6% in housing prices during the third quarter of 2008 (JX16). Home prices have fallen to levels not seen since early 2004. As a result, many taxpayers find themselves owing more than their homes are worth. Indeed, there has been a 12.7% decrease in median real property values (CX2, Volume II).

There has also been a 16% increase in Medicaid applications over the last two years and a 20% increase in temporary assistance applications since 2004 (JX16). There has been a 13% increase from January to December 2009 alone (CX2, Volume II). New home building has decreased 60% since 2005 (JX16). Mortgage tax receipts are 1/3 of what they were in 2007 with an average monthly decline in 2009 of 30% over the 2008 figures (JX17).

County taxpayers are unable to absorb the cost of a DIPBA award that causes an increase in the General Fund and resulting increases in property taxes. Suffolk County already ranks eleventh highest out of 788 counties nationwide in percentage of household income paid towards property tax.

To make matters worse, the County's unemployment rate is at a 10-year high of 5.3% (JX15). Fewer people are working here. This means fewer people to bear the burden of further wage and benefit increases. In a survey by *Long Island Business News*, 37% of Long Islanders reported that either they or a family member had lost their job in the last year (CX2, Volume II). 45% of the unemployed earned \$60,000 or more. 72% had a college or a post-graduate degree. 80% are 30 or more years old. These statistics show that the backbone of the Long Island workforce is unemployed. Unemployment remains at the highest level by at least 2% since January 2000.

As part of the adopted 2009 budget, the County Legislature restored \$4.5 million in funding for the Nursing Home, \$2 million less than will be required (JX16). Due to this change in the budget, the County projected a \$15 million loss from the operating costs of the Nursing Home.

The County already took drastic measures in 2009 just to stay afloat. These included a January 15, 2009 Executive Order requiring that 10% of available appropriations for non-mandated expenses be embargoed. This Order precluded County departments from spending/obligating \$48 million (\$26.7 million from the General Fund and \$19.2 million from the Police District Fund) of their 2009 funds for operational expenses (JX17). Other legislation was passed that gave the County more flexibility in its use of the Tax Stabilization Fund, which allowed it to transfer \$30 million from that Fund to the General Fund to offset sales tax losses. The County also reduced police appropriations, canceled a police class, imposed a lag payroll on all Board of Election and management employees, negotiated a voluntary lag payroll for elected officials and presented a layoff resolution in the event that County bargaining units failed to provide concessions (JX 17&18). Had the County not taken these steps, it would have run out of cash for discretionary expenses, such as payroll, before the end of 2009 (JX17).

On top of these budgetary shortfalls, there are financial factors that are outside of the County's control, such as falling interest rates. Since October 2007, interest earnings have declined 45-70% per annum (CX2, Volume II).

For the 2010 budget, the County is already projecting a \$128 million shortfall (JX 15). The 2010 budget is \$41 million less than 2009's budget and \$136 million less than 2008 (CX2, Volume II). Awarding the DIPBA's demands would only increase these shortfalls and further squeeze tapped-out taxpayers.

The benefits awarded in past interest arbitrations are unsustainable, not to mention unrealistic in this economy. As stated by County Executive Steve Levy, "In these very difficult economic times, it is more important than ever to protect our residents from property tax

increases” (JX15). The County urges the Panel to heed the County Executive’s advice. The evidence shows that the County does not have the ability to pay increases to its already highly compensated Detective Investigators, most of whom make considerably more money than the people who pay their salaries. The Panel should reach a similar conclusion.

There are unique legal budgetary constraints in the County. The Suffolk County Tax Act requires the County’s General Fund to cover all delinquent property taxes from County towns, school districts, fire districts (JX16). This often means that the County must advance funds to these jurisdictions at a cost of approximately \$19.3 million and hope, often to no avail, that it will be repaid.

The County’s reserve balances are also restricted. The Suffolk County Charter requires that at least 75% of the discretionary General Fund balance, 100% of the mandated General Fund balance and 100% of the Police District Fund balance be returned to taxpayers as a credit against the following year’s tax levy. Thus, any positive fund balance cannot be considered to be a part of the County’s reserves.

There are also three statutory restrictions on the County Executive’s Recommended Budget. Local Laws 29-96, 21-83 and 38-89 must be complied with.

Due to these restrictions, the County refers to its budget preparation as a “zero sum game” in that “uncontrolled cost increases in one area [are] offset by reductions elsewhere in the budget” (JX16). Every transfer results in a loss to one or more areas of the budget, usually the General Fund.

The restrictions on the County’s ability to increase its budget are most readily apparent through the County Executive’s resolution to lay off employees (JX 18). In an effort to avoid

laying off employees, the County asked each bargaining unit to provide a pro rata share of the County's \$30 million budget hole. The County reached agreements with nine of those units (CX 118-125).

Given these budgetary restraints, it is doubtful that the County's budget will be able to accommodate the DIPBA's demands. While the DIPBA may argue that an interest arbitration award can supersede these laws, this issue has yet to be litigated. The DIPBA's argument is, therefore, too self-serving to be credited. Moreover, these cap laws were enacted following public referenda. The Panel, which by law is obligated to consider the public's interests (N.Y. CIV. SERV. LAW § 209(4) (c) (v) (JX 1)), should avoid issuing an award that conflicts with those interests or results in unnecessary litigation.

Over the term of this Award, and in all likelihood the years that follow, the County will face severe budgetary shortfalls. Recommended funding levels for almost every County department in 2009 are less than 2008 levels (JX16). Given the fact that the 2009 budget was presented prior to the October 2008 stock market crash, these cuts may need to be revisited and perhaps increased.

The County is also experiencing significant cash flow issues. While its surplus cash usually averages around \$22 to \$70 million, the County projects that it will end the 2008 fiscal year with only \$8 million in surplus cash, a total described as "a frightening scenario".

Given these shortfalls, outside economists have projected that the County will be "in an "L-shaped" business cycle, where a downturn in the economy is followed by little or no growth for an extended period". Thomas Conoscenti & Associates, Inc. has warned the County that Long Island tends to lag behind the nation in terms of economic recovery. If there are any hiccups in

the national recovery, they predict that Long Island's recovery will be delayed until 2011 or 2012 (JX17).

This Award, along with the PBA award, sets the pattern for all other County units' contracts. It will, therefore, have a profound impact on the County's ability to endure this recession. It will also be a determining factor in the time it takes for the County to recover from it.

Financial expert Kevin Decker presented data showing that the County is operating within its tax and debt limits (JX15). These exhibits suggest that the County could raise taxes and/or increase its debt to fund this Award. This argument, however, was rejected by the Appellate Division in Prue v. City of Syracuse, 27 PERB ¶ 7502 (4th Dep't 1994). There, the Appellate Division reversed the lower court's vacatur of an interest arbitration award and rejected a claim that "a municipality necessarily has the ability to pay the increased wages sought unless it has exhausted its constitutional taxing limit".

Increasing the taxes of those who earn less than a Detective Investigator just so that the Detective Investigator can earn more is simply not a viable or realistic option. It would, therefore, be inequitable and irresponsible for the Panel to issue an Award that forces the County to raise taxes simply because the County has the statutory ability to do so.

Moreover, the County already uses sales tax revenues to offset increases in property taxes so as to avoid a significantly higher property tax warrant (JX16). With sales tax growth already falling short of budgeted amounts, it is unlikely that offsets will be an option.

Based upon these facts, the Panel should issue an Award that protects the County's tax base and avoids a tax increase.

As is customary, the DIPBA's financial presentation primarily relied upon testimony and exhibits submitted by the PBA during its interest arbitration proceedings. That presentation, however, focused on data from the County's financial state in 2006 and 2007. This was a period when the County's economy was still growing (JX16). Growth over the two years preceding this Award does not demonstrate that growth will continue. Likewise, the County's relative economic health in 2006 and 2007 does not demonstrate an ability to pay in 2008 and 2009.

Economic conditions prior to 2008 had no bearing on the PBA award and have no bearing on this Award. Ability to pay is based upon the economic conditions during the period of the Award. Looking outside that period would encourage unions to delay the process until the financial outlook improved. This would, in turn, place the employer at a disadvantage, thereby subverting the Taylor Law's purpose, among other things, of promoting harmonious and cooperative labor relations and protecting the public.

In its analysis of the County's current economic situation, the DIPBA also showed that the County received a bond rating boost over the course of 2008 (JX15). The DIPBA glossed over the fact that many of the County's outstanding tax anticipation notes are funded by banks which either no longer exist or are the recipients of large amounts of federal bailout monies. The simple fact remains that fewer entities are lending money. A high bond rating is of little use when the well is dry. Moreover, Moody's placed the County on a "negative credit watch" in the spring of 2009 based upon its poor sales tax revenues and use of "one-shot" rather than recurring/actual savings (CX2, Volume II).

In addition to this skewed depiction of the County's economic status, the DIPBA presented no calculations of the cost of its demands. Based upon this lack of data, it is difficult to credit the DIPBA's self-serving assertions that the County has the ability to pay for its demands.

At the May 4, 2010 hearing, the DIPBA presented updated financial information that included data on 2008 and 2009 and predictions for 2010. None of this data changed the fact that the County does not have the ability to pay for the DIPBA's demands. Indeed, Mr. Decker acknowledged the County's poor sales tax revenues (CX1, Volume II). While he tried to paint a rosier picture by pointing to the County's availability of local tax and revenue sources, neither the County nor its taxpayers are in a position to fork over more money to support already highly compensated DIPBA unit members. If anything, the taxpayers deserve to see their tax bills decrease.

The Suffolk PBA has historically demanded, at a minimum, the same benefits received by the Nassau PBA. The DIPBA then seeks benefits at least equivalent to those awarded to the Suffolk PBA.

In 2007, the Nassau PBA received an interest arbitration award that granted benefits to its members which are considerably less than those demanded by the DIPBA. Indeed, that panel awarded blended wage increases of 2.96% over the six year award (PX9). The net average cost of the Nassau award (benefits and concessions) was 2.75% per year, or \$127 million over the life of the award. The net average annual cash cost was also 2.75%. Indeed, for 2007 and 2008, the first two years of the award, the net cash cost was 0.16% and 1.34%, respectively. The Nassau PBA was required to produce approximately \$92.5 million in concessions over the life of the award.

Yet even that award, one of the least expensive police awards ever for the New York City metropolitan area, proved to be too costly. Just over a year after its issuance, the parties returned to the bargaining table and negotiated a three year extension contract that included further concessions.

The 2008-2010 Suffolk PBA panel recognized that the Nassau PBA award was issued during a very different time and that the “economic climate on Long Island has changed dramatically since then” (PX9). The Panel credited the County’s argument that it “is facing a serious fiscal crisis...[and] 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”. Of particular importance to that panel was the fact that the County saw drastic decreases in its revenues, even below the ultra-conservative decreases for which it had budgeted. The panel also took note of the fact that the County’s costs had increased, as it has had to provide “greater services to people who have been negatively affected by the economic downturn”.

Based upon these factors, the Suffolk PBA panel determined that the County had the ability to pay for “smaller increases in salaries and benefits”. Those increases resulted in a three year cost of 10.9%. With concessions, the net cost was 2.67% (8% over three years), which was even less than the projected cost of the Nassau PBA award.

The Nassau and Suffolk PBA awards demonstrate a downward trend in the wages and benefits awarded to police units in interest arbitration. Given the present economic climate, this trend must continue.

Historically, the Suffolk PBA award serves as a guidepost for the DIPBA award; i.e., DIPBA panels have awarded comparable benefits and concessions fitting into the pattern set by

the PBA (PX 5(a), (d) and (f)). When this Panel considers the terms of the 2008-2010 PBA award, it must take notice of the \$4,805,500 in concessions contained in that award (PX9).

Some of the concessions contained in the PBA award, such as those concerning Section 207-c benefits and the sick leave management program, were awarded as part of the last DIPBA award (PX 5(a)). Based upon the data contained in the exhibits presented to that panel and based upon the dicta contained throughout the award, the DIPBA panel ascribed a particular value to those concessions of approximately one payroll period (two weeks' pay) each.

The 2008-2010 PBA Panel calculated the credit for each of these concessions as equivalent to a 0.5% wage increase (PX9). The values ascribed to these concessions were based upon data that was unique to the PBA unit.

While the DIPBA may claim that the amount it was credited in savings for these two concessions was proportionately less than that credited to the PBA and so the DIPBA should receive an additional credit during this round, that argument should be rejected. During every interest arbitration, the parties are called upon to submit estimates of the cost or savings expected from various proposals. Those calculations are based upon conditions as they exist at the time the calculation is made. Sometimes the conditions change, making the calculations less accurate with hindsight. Nonetheless, interest arbitration panels do not revisit those calculations in subsequent rounds, let alone provide the union with a credit based upon the changed conditions (PX 5(a), (d) and (f)). Nothing has changed requiring this round be any different.

Thus, even if the credit received by the PBA for the Section 207-c and the sick leave management program concessions may have been greater than that awarded to the DIPBA, this would not necessarily entitle the DIPBA to a credit since the facts before each panel are different

and the DIPBA is a different (and smaller) unit that may not have as many members receiving Section 207-c benefits or abusing sick leave. As a result, any DIPBA demand for an additional credit should be denied.

To the extent that the DIPBA may argue that it already made the concessions that the PBA provided as part of its 2008-2010 Award and so should be re-credited for those concessions in this round, that argument too should be rejected. During each round of interest arbitration, the DIPBA has been required to make concessions which represent its pro rata share of the savings generated by the PBA award. Sometimes those concessions concern the same subject matter and sometimes they do not. The mere fact that prior DIPBA panels awarded the Section 207-c and sick leave management program that have now been awarded to the PBA does not excuse the DIPBA from producing its pro rata share of concessions during this round. It must still provide new or expanded concessions in this round of interest arbitration in order to be eligible to even begin to assert a claim to PBA-type wage and fringe benefit improvements.

Lastly, the DIPBA has argued that the concessions outlined in the PBA award should be recalculated for purposes of applying them to the DIPBA (PX. 70). It bases this argument on the fact that the PBA panel awarded a modification of benefits available pursuant to General Municipal Law § 207-c and a sick leave management program which were each valued at \$850,000 for three years, yet were made effective March 11, 2010. This type of argument has been raised and rejected in almost every round of interest arbitration, with each unit claiming that the pro rata concessions from the PBA award should, for one reason or another, not apply to it. Nonetheless, each interest arbitration panel has rejected that argument out of hand (PX. 5(a), 7(b), 7(c), 7(d), 8(b), 8(c), 8(d), 8(f)). Here, only the PBA panel members know their rationale for their

decision, which could have been as simple as a belief that the delayed implementation of the concessions would result in a large up-front savings once finally implemented. For its part, the DIPBA failed to present any evidence demonstrating anything to the contrary, let alone that there is something unique about its interest arbitration that should lead this Panel to a different conclusion (than the one reached by its predecessor panels).

During each round of interest arbitration, the PBA sets the pattern. Subsequent County units, including the DIPBA, are then expected to produce savings which are proportionate to those generated by the PBA

The 2008-2010 PBA panel awarded \$4,805,500 in concessions or approximately \$1,601,833 per year (PX9). Since the DIPBA is 2.66% the size of the PBA, the DIPBA will have to generate 2.66% of the PBA's savings, or at least \$127,826 (CX15, Volume II).

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

a comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar work conditions and with other employees generally in public and private employment in comparable communities (JX1).

In this proceeding, there are two patterns which the Panel must consider: the internal County pattern and the external pattern.

With respect to the County's 11 bargaining units, there are four tiers of patterns: (1) the police pattern, consisting of the DIPBA, the PBA, the Superior Officers Association ("the SOA") and the Suffolk Detectives Association ("the SDA"); (2) the Sheriff's pattern, consisting of the

Deputy Sheriff's Benevolent Association ("the DSBA") and the Correction Officers Association ("the COA"); (3) the AME pattern, consisting of the Association of Municipal Employees White (#2) and Blue (#6) ("the AME Units"), the DSBA Park Police unit ("the Park Police") and the Probation Officers Association ("the POA"); and (4) the College pattern, consisting of the Faculty Association of Suffolk County Community College ("the Faculty") and the Guild of Administrative Officers of Suffolk County Community College ("the Guild"). The police pattern units have historically received the highest salary increases, followed by the units in the Sheriff's pattern and then by the AME pattern units (CX 21-22). The College pattern exists in its own tier, essentially separate from the other three patterns.

Arbitrators have long held that a comparison must be made to these internal County patterns. For example, in the 1993 PBA award, Arbitrator Martin Scheinman noted, "There must be both internal and external comparisons made in order to determine the appropriate modifications, if any, of the expired Agreement. With regard to internal comparisons, I find the other Police units within the County to be the most relevant" (County Ex. 3, Volume I). Arbitrator Howard Edelman reached the same conclusion in his 1993 DIPBA award (CX2, Volume 1).

The Panel should, to a lesser extent, be guided by external comparable jurisdictions. Past interest arbitration panels have historically determined that Nassau County is the most comparable external jurisdiction. The County submits that the most comparable Nassau County unit is the Investigators Police Benevolent Association ("the IPBA"). IPBA unit members are Detective Investigators who perform the same or similar duties for the Nassau County District

Attorney's Office as do DIPBA unit members. Due to its impact upon the Suffolk PBA Award, the County further submits that, to a lesser extent, the Nassau PBA is a comparable unit.

When the comparison to Nassau County is made during this round of interest arbitration, however, the Panel will find that it cannot award the DIPBA demands in light of the recent Nassau County PBA award. The Nassau PBA award directed average blended wage increases of 2.96% (1% for steps 3-8 and 4% for top step) which were funded through multi-million dollar concessions (PX9).

The fact that the Nassau PBA received these wage increases and other benefit improvements do not mean that the Panel must award them here. As best articulated by Arbitrator Scheinman, "While the Nassau Police Officer wage increases and benefit improvements, covering the period of time at issue here, are appropriately used as a basis for comparison and are probative, they are not dispositive" (CX3, Volume I).

The Panel should further be guided by the terms and conditions of the police units in New York City and Westchester County (PX 8(f)). The Panel's Award must be based upon comparable communities which perform similar skills under similar conditions. These police forces are among the largest neighboring departments in the State.

The comparables posited by the County are, as has been demonstrated above, supported by the evidence and, when considered, will permit the Panel to fashion a more realistic and just award than that demanded by the DIPBA.

While the County recognizes the excellent services which Detective Investigators provide, it must also be recognized that they are already among the highest compensated employees in comparison to their peers. Awarding the DIPBA's demand of 6% wage increases in each year of

the award will only exacerbate this already wide discrepancy in base salaries. Moreover, this increase is not even in the realm of the asserted "going rate", especially given the fact that the PBA was recently awarded increases approximately half those demanded by the DIPBA (PX 9).

The total increased cost of the DIPBA's wage demand is \$1,053,351, the equivalent of a 20% wage increase. This cannot be justified even under positive economic conditions (CX10, Volume II). While the need to attract Detective Investigators may have justified salary increases in the past, the need no longer exists. The DIPBA failed to present any statistics showing an increase in its unit members' workload that would justify its wage demand. Instead, it essentially seeks more pay for performing the same work. This is the wrong time, and the wrong place, to make such a demand, and this Panel should reject it.

The DIPBA failed to introduce any evidence demonstrating a need or justification for its remaining demands. Instead, it merely described them for the Panel and occasionally pointed to the fact that its current benefits are less than those received by other units. Nonetheless, the DIPBA continues to insist that its members "need" these wage and benefit improvements. As will be shown, these demands have not been justified by the DIPBA and are completely indefensible.

The DIPBA demands that its current longevity compensation of \$300 for each year of service beginning with the sixth year be converted to a percentage of base pay; i.e., 1% of base pay after one year of service and 0.5% for each additional year. The current longevity structure conforms to the applicable internal patterns (CX. 86-87, Volume I) and external comparable jurisdictions (CX 88, Volume I). Indeed, DIPBA unit members already earn more in longevity than their Nassau County counterparts.

Even though the Suffolk PBA was awarded longevity increases of \$25 in each year of its award, those increases were deferred until the last day of the award and so, in essence, paid for themselves (PX9). The same is not necessarily true with regard to the longevity increases sought by the DIPBA, not to mention the fact that the DIPBA demands increases that exceed those awarded to the PBA.

If this demand is awarded, the DIPBA's longevity rates would more than double, placing its members leaps and bounds ahead of comparable bargaining units (CX86-88, Volume I). In addition, the County cannot afford to pay an additional \$300,128 towards longevity, the equivalent of a 5.7% wage increase (CX11, Volume II) in the absence of off-setting, objectively demonstrable concessions.

The DIPBA seeks to double the amount of family sick leave to 10 days per year. This is higher than the two day increase to seven days awarded by the PBA panel (PX. 9). DIPBA unit members already receive an adequate number of family sick days, consistent with the internal patterns and external comparable police unit contracts (CX. 95-96, Volume I).

Given the DIPBA's inability to offer even a scintilla of evidence in support of this demand, it should be rejected. The projected increased cost of this demand is \$356,359, the equivalent of a 6.8% wage increase (CX12, Volume II). This price is much too high, given the DIPBA's inability to articulate a justifiable basis for awarding it.

The DIPBA has demanded that its work chart be reduced from a 5/2 schedule of 261 days per year, to a 5/2, 5/3 schedule with 24-26 X-days for a total of 234-236 scheduled appearances per year. In support of this demand, the DIPBA argued that it is the only police pattern unit whose members work a 261 chart (PX57). It also purports that it is "unfair" for a Detective

Investigator to work an additional 24-26 days when a Detective who is also assigned to the SCDA's Office does not have to work those days. Mr. Weishahn did, however, acknowledge that, unlike the other police pattern units, DIPBA unit members do not work holidays and work the fewest number of hours per year (PX 58). Thus, it would seem that the purported "unfairness" of the work year issue is balanced by scheduling perks which the PBA, SOA and SDA do not enjoy. In addition, the DIPBA's current work schedule is identical to that worked by its Nassau County counterparts (CX98A, Volume I).

The DIPBA also argued that having employees work fewer days per year will somehow save the County money (DIPBA Ex. 79). In support of this, it pointed to the fact that its hourly rate would drop, thereby resulting in smaller payments for overtime and accruals (T. 76-77). The DIPBA also admitted, though, that overtime is rarely incurred by the SCDA's Office.

Moreover, Deputy Chief Inspector Frank Guidice testified that the current schedule works well. As he stated, Detective Investigators' schedules mirror those of the Assistant District Attorneys with whom they primarily work. While there are Detectives who also work in the SCDA's Office and who work fewer days per year than to DIPBA unit members, Mr. Guidice testified that there have been discussions within the SCDA's Office about the ineffectiveness of the Detectives' schedules. He also expressed his opinion that extending the work day and giving Detective Investigators additional days off would result in *decreased* productivity. Since the DIPBA admitted that its units are "stretched very thin" (T. 37), it is counterproductive to award a work schedule demand that would detrimentally impact the SCDA's Office's efficiency and productivity. Moreover, this demand would, in the County's view, cost the County approximately \$3,035,053, the equivalent of a 57.8% wage increase (CX13, Volume II)!

The DIPBA has demanded that its contract be amended to include a provision that the SCDA's Office may not automatically restrict leave days. This demand would prohibit the SCDA's Office from identifying blackout periods or days during which DIPBA unit members may not request the use of leave days. The only support the DIPBA provided for this demand was to point out that its contract is the only one among the police pattern units that does not contain this provision (PX 60). While this is true, it hardly provides any rationale for the Panel to grant this demand, especially when considering the fact that the DIPBA is the only police pattern unit whose members do not work for the Suffolk County Police Department. Moreover, the DIPBA failed to present any evidence that its unit members had experienced any issues with regard to leave time requests.

The DIPBA seeks to amend its contract to guarantee that unit members with 10 or more years of service receive retiree benefits. Those benefits include the right to retain his/her County-issued weapon and shield at no additional cost and receiving health insurance in retirement. Mr. Weishahn testified that there are DIPBA unit members who, prior to commencing employment with the County, retired from another employer. While those unit members are permitted to enroll in the County health insurance plan during employment, they must revert to their previous employer's plan during retirement. Mr. Weishahn testified that it is inequitable for DIPBA unit members to revert to a previous plan, especially when some have been enrolled in the County plan for 20 or more years.

While retiree health insurance may be an issue that the DIPBA wishes to resolve, it may not do so in this proceeding. Pursuant to a memorandum of agreement between the County and

its 11 bargaining units including the DIPBA, health insurance is negotiated separate and apart from contract negotiations (JX2).

The DIPBA failed to present any evidence of a justification for its unit members to retain their County-issued weapons and shields at no cost. Moreover, no other County bargaining unit or comparable external unit's contract contains this guarantee (County Exs. 106-107, Volume I).

The DIPBA demands that a past practice clause be added to its contract that would lower the threshold for establishing a long-standing past practice. While the DIPBA pointed to the fact that the other police pattern units have this language in their contracts (PX55), it failed to present any evidence that would support the need to change the DIPBA's contract. This is also a provision that is absent from the Nassau IPBA and PBA contracts as well as the New York City and Westchester PBA contracts (CX115, Volume I). Even more importantly, the DIPBA can enforce its "past practice"-type rights at PERB through an improper practice charge. Based upon the lack of justification for this demand, the Panel should deny it.

The DIPBA seeks an increase in Union Officer stipends as follows: President stipend of 11 hours per week (currently 3.25 hours) and Vice Presidents, Treasurer, Financial Secretary and Recording Secretary stipends of 1.5 hours per week (currently 0 hours) (PX76). In support of the first part of this demand, the DIPBA asserted that the PBA was just awarded 6.5 hours for its President and three hours for four other Board members, while the SOA and SDA Presidents presently receive 3.25 hours and two other Board members receive 1.5 hours. Even though the DIPBA has the fewest number of Union officers receiving a stipend, it is also the smallest of the police pattern units and has only one officer on full-time release (CX35, Volume I; JX2). In addition, the purpose of this stipend is purportedly to compensate full-time released Officers for

lost overtime opportunities (PX 5(a)), which do not exist for this unit. As a result, there is no justification for extending it to Officers who do not hold full-time released positions.

In addition, DIPBA Officers volunteered for these positions and knowingly took on the privilege of the related responsibilities. They already receive enormous perks from the County, including night differential of 12% for a night tour they do not work, all while doing zero work for the County and its residents (JX2). Taxpayers should not be expected to pay an additional \$40,439, which is the equivalent of a 0.76% wage increase, for non-County work (CX14, Volume II). In fact, consistent with the County's proposal, the DIPBA should reimburse taxpayers for the cost of these stipends.

While it is true that these stipends were increased as part of the PBA award, the stipends awarded were far less than those demanded by the DIPBA (PX 9). Moreover, the County vehemently objected to those enhanced stipends (id.). As stated by panel member Jeffrey L. Tempera, it is simply wrong to require taxpayers to pay stipends in lieu of overtime for overtime that has not been worked. The fact that the PBA award increased those stipends does not mean they must automatically be increased here. Indeed, as occurred during the last round of interest arbitration, the Panel could award a comparable monetary benefit that is more objectively palatable to the parties (PX5[a]).

The DIPBA demands a reopener on the issue of economic improvements not yet awarded to the PBA, SOA or SDA. This demand is inconsistent with the status of the DIPBA as an independent bargaining entity. The County is entitled to finality in its negotiations. If the Panel grants the DIPBA's demand, then after all of the police pattern units' awards have been issued, the DIPBA could then invoke its reopener (PX9). This action would result in a reopening by the

other police pattern units, thereby creating a never-ending cycle. The merits of the issues before this Panel should stand on their own and not be subject to reopening based on another unit's actions

In this economic climate, the County presents the Panel with a wage and compensation package that acknowledges the impact of this round of interest arbitration. Should the Panel grant all of the County's proposals, the County's taxpayers could realize tremendous savings, which would go a long way towards helping the County survive this extreme economic downturn

The County's proposal for a wage freeze recognizes the fact that DIPBA unit members are already more than adequately compensated and that wage increases are not feasible in this economic climate. In each year to be covered by this Award, the County's financial outlook has deteriorated, even more so than the dismal predictions the County made as part of its budgetary process. In light of these conditions, a wage freeze is the only sensible solution.

The County seeks to modify the contractual overtime provisions so that overtime entitlements are in compliance with, but not in excess of, those required by the federal Fair Labor Standards Act (FLSA). Presently, employees receive overtime payments (time and one half) for all hours worked in excess of their work day. Any time off for vacation, sick leave, personal leave, holidays or other leave with pay also counts as days worked pursuant to the contractual overtime procedures. This is far more generous than what the law requires.

Unlike the current DIPBA contract, federal law requires that overtime be paid in a more equitable manner that would not bleed dry the County and its taxpayers. It mandates that an employee be paid overtime for time actually worked in excess of that specified by law for the

relevant work cycle. Thus, County taxpayers are, at times, paying a premium for days not worked. This is unnecessarily costly, as well as inequitable.

The FLSA provides the appropriate relief. Implementing these work cycles would obviously go a long way towards lowering the overtime costs in the SCDA's Office, as employees would earn straight time, instead of time and one-half, until they reach the applicable threshold.

These kinds of overtime restrictions are appearing more frequently in the County's collective bargaining agreements. The Park Police, POA and AME units agreed to the County's FLSA proposal as part of their most recent contract settlements (CX48, Volume I). It was also awarded by the 2005 DSBA and 2006 COA interest arbitration panels. The County's FLSA proposal has also been implemented, in part, in non-County police contracts.

The DIPBA currently enjoys a benefit unique among police pattern units, namely a 12% night differential for unit members who are assigned for a majority of their time to any tour starting at 4 p.m. or later or ending at 8 a.m. or earlier. Other police pattern unit contracts provide for a 12% night differential for employees who work a 10 hour steady night tour (CX51, Volume I; PX [Rebuttal]8). There is no 10 hour tour in the SCDA's Office. Thus, the DIPBA's night differential exceeds that comparable amount for other police pattern units (CX51, Volume I). Reducing the night differential to 10% would resolve this issue and save the County approximately \$72,663, the equivalent of a 1.4% wage increase (CX7, Volume II).

The County proposes amending the current contract language to provide that only those employees assigned to the 10 hour extraordinary night shift receive the 12% night differential (or 10% if the County's proposal is awarded). The DIPBA is the only police pattern unit whose

extraordinary night differential is based upon the hours worked rather than the tour to which the employee is assigned (PX6 (a), 7(a), 8(a)). Since the DIPBA has consistently argued that its contract should be amended to more closely resemble a police contract, the Panel should award this proposal.

The County seeks to eliminate the current contractual provision that grants a Detective Investigator injured in the line of duty greater benefits than those required by General Municipal Law § 207-c, namely that vacation time cease to accrue following an employee's twelfth consecutive month of absence. Well-established case law makes it clear that an employer need only pay salary, health insurance and certain fringe benefits to law enforcement personnel who are injured on the job (N.Y. GEN. MUN. LAW § 207-c; Benson v. County of Nassau, 137 A.D.2d 642, 524 N.Y.S.2d 733 (2d Dep't 1988)). Yet, a Suffolk County DIPBA unit member continues to accrue vacation time and other benefits even though he/she is not working. In many instances, this means that a Detective Investigator on § 207-c status is making more money, after the withholding of taxes (which employees on § 207-c status do not pay), than those employees who are actually working. This results in an obvious disincentive for employees to return to work. It also can have an adverse effect on the morale of those who are actually working.

Recognizing the unfairness of the situation, prior DIPBA, SOA, SDA, DSBA and COA interest arbitration panels have significantly cut back on an injured employee's right to continue to accrue benefits while absent from work (CX59, Volume I). These panels have restricted employees who have been absent for 12 consecutive months as a result of a line-of-duty injury from continuing to be paid night differential and/or rotating shift payments and cleaning, clothing and maintenances allowances and to cease accruing personal and sick leave (PX 5(a), 7(b), 8(b)).

There is no reason why this Panel should not continue in their footsteps and award more reductions. Moreover, the insurance benefits of Nassau IPBA unit members on injury-related leave are only maintained for one year (CX60, Volume I).

The County proposes amending Appendix B of the parties' contract to conform to the legal requirements regarding maternity leave and leaves of absence. The contract currently contains provisions that discriminate against Investigators on the basis of gender in that child care leave is only available for women (JX 2). To remedy this, the County proposes appropriate language changes to the Articles 8.7, 8.8 and Appendix B of the CBA.

The DIPBA has resisted this proposal based upon a purported discrepancy between maternity leave and leaves of absence. Yet, every other County unit, except for the DIPBA, has voluntarily agreed to incorporate these changes into its collective bargaining agreement (CX66, Volume I) or had the changes involuntarily made pursuant to an interest arbitration award (PX9).

The County proposes to delete the requirement that employees hired on or after January 1, 2008 be paid for their unused, accumulated sick leave upon retirement, in exchange for giving these employees unlimited sick leave. This is intended as both a cost containment and common sense measure. The County has paid a tremendous amount of money to employees in the form of unused accrued sick days, amounts which tend to be annually plastered across the front page of *Newsday*. Moreover, employees blessed with good health should not realize a financial windfall because they did not need to utilize extensive amounts of sick leave.

The County proposes deleting the requirement that members of the DIPBA Executive Board receive the 12% night differential, which is the contractual amount paid to employees who actually work the extraordinary night chart. No member of the Board works this tour (CX74,

Volume I). It is unjust and inappropriate to pay anyone, let alone Union officers, for hours they do not work, especially when there is no evidence that they would be working the extraordinary night chart if they were not on full-time release. Indeed, New York City and Westchester PBA and Nassau IPBA unit members do not enjoy this benefit (CX76, Volume I).

Eliminating this inequitable benefit would save the County between \$246,333 (the equivalent of a 4.69% wage increase) and \$277,094 (the equivalent of a 5.28% wage increase), depending upon the size of the wage increase, if any, to be awarded here (CX7, Volume II). Given the current economic situation, the time has come for the Panel to do away with this excessive perk enjoyed by Union officers.

The County seeks to delete the stipend of 3.25 hours per week being paid to the DIPBA president. This stipend was awarded during the last round of interest arbitration to compensate the president for alleged lost overtime opportunities as a result of his/her position with the DIPBA, even though the Union freely admits that there is little, if any, overtime earned by DIPBA unit members.

As part of its efforts to alleviate the burden on its taxpayers, the County is proposing that the DIPBA reimburse it for all taxpayer-funded Union activities, including released time. While some might argue that Union business is important to an employer, it cannot be forgotten that these individuals are County employees. They were hired to perform a service for the residents of Suffolk County. There is no reason why taxpayers should fund activities which do not enhance public safety, especially when those activities often result in costing the taxpayers more than they would otherwise be responsible for funding.

If the Panel grants this proposal, the County would save between \$679,581 and \$764,442 (the equivalent of a 12.9% to 14.6% wage increase) over the life of the Award.

Although an identical proposal was admittedly rejected by the 2008-2010 PBA panel, that should not prevent this Panel from awarding it here. As occurred with the 2004-2007 DIPBA award, new types of concessions, such as the sick leave management program and Section 207-c concessions, were awarded against the DIPBA even though they had not been awarded against the PBA in that round of interest arbitration (PX5(a)). There is no reason why the same cannot be done here with regard to this proposal, and it should, therefore, be granted.

### **CONCLUSION**

For all of the reasons set forth by the County, it respectfully, and earnestly, requests that the Panel award the County's proposals and reject those of the DIPBA.

### **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.

With respect to this criterion there are internal and external patterns that may be considered. The internal patterns concern combinations of bargaining units within Suffolk County while the external patterns comprise jurisdictions outside of Suffolk County.

There are four internal bargaining unit patterns in Suffolk County. They are the *police pattern*, the *Sheriff's pattern*, the *Association of Municipal Employees (AME)* pattern and the *College* pattern.

The police pattern is comprised of the Police Benevolent Association (PBA), the Superior Officers Association (SOA), the Suffolk Detectives Association (SDA) and Detective Investigators Police Benevolent Association (DIPBA).

The Sheriff's pattern is made up of the Deputy Sheriff's Benevolent Association (DSBA) and the Correction Officers Association (COA).

The AME pattern is composed of the AME units (Blue Collar and White Collar), the DSBA Park Police Unit and the Probation Officers Association (POA).

Finally, the College pattern consists of the Faculty Association of Suffolk County Community College and the Guild of Administrative Officers of Suffolk County Community College.

There are external patterns as well. These include Nassau County, New York City and Westchester County. These jurisdictions are geographically in close proximity to Suffolk County.

There are a significant number of interest arbitration decisions which bear on this standard. These decisions cover the period 1993-2007. (PX1[a,c,e]).

In his 1993 PBA Award Arbitrator Scheinman discussed the internal and external patterns and opined that the police pattern is the most relevant of the internal patterns (CX3, Volume 1).

Arbitrator Edelman reached the same conclusion in his 1993 DIPBA award (CX2, Volume 1). Arbitrator Stein chaired the panel in the most recent interest arbitration proceeding between these parties. He reached the same conclusion as did Arbitrator Edelman (PX18).

Following the 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 2003 SDA award, and the 2005 SOA and DIPBA awards all stand for this proposition (CXS6,7, 8, 9, 12, 14, 15, 18, 19, Volume 1).

I recently issued the PBA Award covering 2008-10 (PX9). I concurred with my colleagues who found the police pattern to be highly relevant when considering the bargaining issues of the units within the police pattern.

As to the external patterns, these decisions reflect a well-established premise that the jurisdiction which is most comparable to Suffolk County is Nassau County. However, I hasten to add that this principle has greater relevancy with respect to the PBA, the SOA and the SDA.

The equivalent to the DIPBA in Nassau County is the Investigators Police Benevolent Association (IPBA). A comparison between the DIPBA and the IPBA is problematical. The

IPBA is a relatively recently established bargaining unit that has not yet negotiated its own CBA or has been the recipient of an interest arbitration award. Under other circumstances, the IPBA CBA or Award would have significant relevancy in terms of comparability to the DIPBA.

However, to the extent that the Nassau PBA Award influenced the recent Suffolk PBA Award and the Suffolk PBA Award affected the SOA and SDA Awards, the Nassau PBA Award has relevancy, though not to the same degree that it was relative to the Suffolk PBA.

The County argued that, in addition to Nassau County, New York City, Westchester County should be part of this analysis. However, there is limited arbitral support for considering New York City and Westchester comparable to Suffolk for interest arbitration purposes.

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 DIPBA at this time. The community of interests among the units in the police pattern leads me to this conclusion.

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.

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.

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.

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 law enforcement personnel that operates safely and efficiently. It is also clear that good morale within these units 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 DIPBA and the County.

Kevin Decker, the DIPBA's expert on municipal cost analysis, concluded that the County had the ability to pay for the DIPBA 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 DIPBA adopted Decker's rationale and argued that the County was able to pay for the DIPBA proposals but refused to do so. It insisted that the County failed to demonstrate the validity of its refusal to fund the DIPBA proposals.

Decker's presentation included certain charts (JX15). 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 over the past ten years sales tax revenues have increased by more than double the rate of inflation (JX13). He added that sales tax revenue represents an *imported* tax in that it is paid by people who are not Suffolk County residents as well people who reside in Suffolk County.

As to real property tax revenue, Decker asserted that the County Executive's budget reflects confidence in the County's fiscal health. He 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 (JX13).

The State Constitutional Tax Limit, in the DIPBA's view, is another indication of the County's fiscal health. He stressed that the use of the tax limit has declined since 2003.

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 DIPBA 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 S&P bond rating of AA.

The DIPBA 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 DIPBA relied on these data and arguments to support its claim that the County has the ability to pay for the cost of the DIPBA proposals.

The County painted a very different picture of its fiscal health. It emphasized that DIPBA salaries are funded through the General Fund. It added that the General Fund is funded largely from real property taxes and, from sales tax revenue, state and federal aid and other sources, including interest earnings. The County insisted that revenue from both property and sales tax are unhealthy (JX13).

It maintained that it has been losing sales tax revenue since 2006 (JX14). 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(JX 14). It noted that this is the first non-inflation adjusted sales tax decline since 1965 (JX17).

The County indicated that the Legislature provided the County with the ability to transfer funds from the Tax Stabilization Fund in order to offset reduced sales tax revenue. In this regard, it stated that there was a transfer of \$30 million to the General Fund.

It posited that the 2009 County budget was premised on a 6% decline in sales tax revenue as compared to 2008 and a 4% increase in 2010. It observed that, as of December 2009, sales tax

revenue for the year was down 9% and that this will impact on 2010 since the baseline for sales tax revenue will be less than projected.

The County agreed that it can transfer sales tax revenue from the General Fund to the Police Fund. Even though the DIPBA salaries are funded through the General Fund, shortages in the Police Fund impact the General Fund. The County pointed out that, in the past year, it has already transferred \$87million to the Police Fund and that this amount is seventeen times the amount transferred in 2002.

It observed that the health of the General Fund depends on the health of the Police Fund. It stressed that negative economic impacts on either fund could result in a tax increase that County residents cannot afford.

It cited a significant increase in tax grievances. It pointed to a 30% increase in foreclosures within the County.

It pointed to declines in housing values. This, stated the County, has resulted in homeowners owing more for their houses than the worth of the houses.

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 DIPBA 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 (JX15). It argued that there are fewer people to absorb the cost of higher wages and benefits.

Interest earnings are a part of County revenues. The County pointed out that falling interest rates reduced its interest income by 46% for the period October 2007 to October 2008 and by 69% for the period January-June 2009.

The County claimed that it projected a \$128 million shortfall in 2010. It added that the 2010 budget was \$1million less than that of 2009 and \$136 million less than 2008. In its view, awarding the DIPBA demands would add to the shortfall.

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. It posits that such a cycle 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 does not demonstrate an ability to pay for the DIPBA demands. It observed that raising taxes at this time is not a viable option. It insisted that the DIPBA's presentation was based on inaccurate and outdated data. It contended that the DIPBA 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.

It is a matter of record that I chaired the panel that issued the Suffolk County PBA interest arbitration award covering the period 2008-10 (PX9). The award was issued in March 2010.

Three major points need to be made with respect to that award. First, the PBA award sets the parameters for the awards for other units in the police pattern. Second, the PBA panel considered Nassau as the jurisdiction most comparable to Suffolk and the 2007-12 Nassau PBA was given great consideration while assessing the demands of Suffolk County and the Suffolk County PBA. Finally, the Suffolk PBA agreed to defer \$12 million in monies due to its members as a result of the interest arbitration award. The \$12 million deferral was memorialized in a lengthy document that spelled out the terms of the MOA. In brief, the term of the interest arbitration award was extended from two years to three. Beyond the lengthened term of the award, there were additional significant elements to the MOA.

The relevancy of the reference to the PBA award is clear. To the extent that, in terms of *ability to pay*, many of the factors considered by the PBA panel must be applied here. This award is being written within a few months of the issuance of the PBA award and the general economic climate has not substantially improved and, in some respects, had gotten worse.

The Suffolk PBA award contained an analysis of the Nassau PBA award and reflected some of the determinations made by the Nassau PBA award. That being said, it follows that since the Suffolk PBA award is a major consideration for other units in the police pattern and

was developed after a study of the Nassau PBA award, the Nassau PBA award is significant in this matter. Thus, the matter of comparability with Nassau County is apparent and its impact on Suffolk County's *ability to pay* for improvements in the CBA's of all of the units in the police pattern is also clear.

This is not to suggest that this award must repeat the analysis of the Nassau PBA award. That study is reflected in the Suffolk PBA award. In short, because of the reliance on the Suffolk PBA award in this case, there need not be an explicit reference to Nassau County.

Finally, just as the Suffolk PBA agreed to defer monies due to its members as a result of the interest arbitration award until separation from employment, the DIPBA did so as well. The DIPBA agreement to do this was memorialized in two MOA's.

I note that the fact that there were two DIPBA MOA's and only one PBA MOA is not of great moment. In great measure, the financial terms and conditions of the single PBA MOA is found in the combination of two DIPBA MOA's.

The first MOA was agreed to in May 2009. The DIPBA agreed to defer 11 days' pay at the 2007 pay rate until its members separate from County service. The DIPBA payroll in 2007 was \$5,252,700. Based on a 260 day work year, the average daily pay rate was \$202.03. Thus, the total amount of money deferred for 10 days was \$209,626. The County has already taken this money out of the pay checks of members of the DIPBA.

The second MOA was memorialized on April 15, 2010 and was agreed to by the DIPBA in exchange for a three year award rather than one covering only two years. The second MOA detailed a deferral of four days' pay until separation from service (PX71).

For purposes of estimating the value of the deferral, the 2007 pay rate was used. The parties previously agreed that the value of the deferral will be re-calculated and will be based upon the 2009 pay rate. As will be seen below, the value of the four day deferral is \$87,703. This money will be taken from retroactive pay raises due to members of the DIPBA.

Having thoroughly reviewed the arguments and data concerning the County's ability to pay for the DIPBA proposals, I conclude that, just as the County did not have the wherewithal to satisfy the PBA demands as presented, it is equally unable to meet the DIPBA demands. 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 have been no significant economic improvements since the PBA award and 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 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/or 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% (\$90.9 million) 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 DIPBA, 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 suggest 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 or 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 DIPBA 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 DIPBA award (PX5a) 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 the Suffolk police pattern is the source of the greatest comparability and that Nassau County was considered to be Suffolk's most comparable jurisdiction for purposes of the 2008-10 Suffolk PBA interest arbitration award, it is

essential to consider the status of the economy at this time as compared to when the 2007-12 Nassau PBA and 2008-10 Suffolk PBA interest arbitration awards were issued. It goes without saying that the economic climate during the period of the 2004-07 Suffolk DIPBA 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 DIPBA 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. Law enforcement personnel, in general, and, in this case, detective investigators, risk death and serious injuries regularly. There is a strong similarity between police officers and other law enforcement units, such as the detective investigators, relative to the specific considerations in this criterion. Thus, this criterion is satisfied when the DIPBA is compared with other law enforcement units. It should not be surprising that the comparability with respect to salary and benefit considerations fundamentally reflects a comparison 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 DIPBA 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 DIPBA proposed wage increases of 6% in each year of the award. It observed that such an increase is fair and reasonable. It stressed that, albeit the difficult economic climate, the County has the ability to fund 6% increases in each year of this award.

It noted that the most comparable units are found within the Suffolk County police pattern. In that connection, it points out that DIPBA wage increases have mirrored those of the Suffolk PBA since 1989 (PX72). The DIPBA stated that the County asserted that since it is 2.66% of the size of the PBA the DIPBA concessions as part of this award should be 2.66% of those of the PBA. It noted that the County calculated that the DIPBA concessions should be \$127,826 and that the net cost of this award should be \$364,945 (CX 15, Volume II).

It argued that the PBA concessions in the areas of GML 207c and *sick leave management* were valued at \$850,000 and did not go into effect until March 2010. It averred that these concessions will only be in effect for nine months and that the DIPBA concessions should be limited to the value of nine months of the concessions.

It opined that, when this factor is considered, the net cost of the award should be \$398,860 or \$33,915 more than the net cost calculated by the County. In its view, this would result in the DIPBA being required to have less in concessions and that much more in benefits.

The DIPBA recalled that the PBA panel gave great weight to the monies deferred by the PBA. It asked this panel to do the same.

It pointed out that the County is not required to make pension payments for 29 members of the DIPBA. It indicated that the panel should credit the DIPBA with this amount. Presumably, in the opinion of the DIPBA, the value of its concessions should be reduced by this amount.

Finally, it emphasized that its proposal to revise the DIPBA work schedule will help achieve appropriate concessions. It maintained that these savings should be credited toward the DIPBA's pro-rata share of the concessions and to achieving the pro-rata share of the benefits.

Relative to the DIPBA assertions that it should be given credit for issues such as the date of effect of the PBA concessions in the areas of the GML 207c and *sick leave management*, the County's argument differed dramatically from that of the DIPBA. It insisted that the DIPBA arguments should be rejected.

The County noted that in every interest arbitration parties are asked to estimate the value of proposals and are based on conditions as they exist at the time. It observed that conditions

may change, resulting in reduced accuracy of the calculations. It maintained that subsequent panels do not and have not revisited the calculations in subsequent rounds.

It concluded that the DIPBA should not be credited with the changed values of the PBA concessions. It pointed out that the current DIPBA argument has been raised and rejected in previous rounds of interest arbitration and should be rejected here as well.

I have reviewed a number of prior interest arbitration awards (PX5a, 7b-d, 8c-f) and have concluded that the credit sought by the DIPBA at this time has never been given in prior rounds of interest arbitrations. In fact, the fourth of the Taylor Law criteria requires the panel to consider the prior bargaining between the parties. There is nothing in the record to suggest that the DIPBA has previously been given and should be given credit for the issues it raised relative to GML 207c, *sick leave management*, and the reduced need to fund pensions for members who are already retired and are receiving pensions based on prior careers. Thus, its arguments concerning these matters must be rejected.

The County proposed a wage freeze in each of the years of this award. It noted that the members of the DIPBA are already adequately compensated and that raises are not feasible at this time.

It calculated the wage increase demanded by the DIPBA to be \$1,053,351. It stated that such an increase would represent a 20% increase. It suggested that such an increase could not be justified in good times, let alone these times. It insisted that the wage increase requested by the DIPBA should be rejected.

The analysis of the wage proposals 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 DIPBA 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, if the police pattern is most comparable, the PBA (which also proposed 6% increases) was awarded 3.5%. I hasten to add that, when the PBA panel considered other comparable jurisdictions, there was no evidence to suggest that any of those jurisdictions 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 DIPBA.

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 the Suffolk police pattern in general and, in this case, the PBA is most comparable to the DIPBA. Therefore, the 2008-10 Suffolk PBA award is relevant here.

I have previously noted that the 2007-12 Nassau PBA award was given significant consideration in the development of the Suffolk PBA award. This calls for an in depth analysis of the 2008-10 Suffolk PBA award and, by inference, the 2007-12 Nassau PBA award.

The terms of the 2007-12 Nassau PBA award and the 2008-10 Suffolk PBA award are in the public record. However, it must be pointed out that the Nassau award was issued in June 2007. It goes without saying that the economic climate on Long Island changed dramatically between the date of the Nassau award and the issuance of the Suffolk PBA award. Moreover, there has been little change in the financial condition of Suffolk County between March 2010, when the Suffolk PBA award was issued, and the present.

While I need not discuss the specific details of the Nassau award, I must add that the total cost of it 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 were there concessions by the Suffolk PBA. I have previously held that the police pattern is the source of comparability in this interest arbitration. Therefore, just as the Suffolk PBA was required to provide concessions, so too will the DIPBA. These concessions will be spelled out in subsequent parts of this Award.

The Suffolk PBA award provided for annual increase to salary schedule of 3.5%. Given the similarity of the economic conditions, the history of the bargaining within the police pattern and the narrow time frame between the issuance of the Suffolk PBA award and this one, I conclude that the salary increases in each year of this award should be 3.5%.

The cost of a three year award with a 3.5% wage increase each year is approximately \$572,146 (\$184,194 for 2008, \$190,640 for 2009 and \$197,312 for 2010).

In order to calculate the total cost of this award, it will be necessary to determine the cost per pay period of the 2008 increase of 3.5%. There are 26.1 pay periods per year. Therefore, the cost of the increase per pay period is \$7,057 (\$184,194 divided by 26.1).

It should be recalled that the DIPBA agreed to defer the value of a total of 15 days pay. I have previously accounted for the value of deferrals under the two MOA's. However, I hasten to add that these deferrals reflect monies that the Detective Investigators will receive upon their separation from employment with the County. Thus, the value of the deferrals will not be listed in the concessions made by the DIPBA as part of this award

I pointed out earlier that, consistent with the PBA award, the value of the concessions required of the DIPBA will be 2.66% of that of the PBA or \$127,826. This sum will be taken from retroactive salary increases. I will indicate below the sources of the concessions such that the cost of this award will closely approximate that of the Suffolk PBA.

In short, while greater precision is impossible, I am convinced that there is comparability between the PBA and the DIPBA with respect to the deferrals. The two units negotiated the deferrals independently but the amount of money in deferrals is being applied in the same manner. Furthermore, in addition to maintaining comparability with the Suffolk PBA, the 3.5% increases recognize the realities of these times (See Schedule A).

The County has a well trained, well paid and a highly professional corps of detective investigators. The improvements in the salary schedule will permit it to continue doing so. Its ability to recruit and retain high quality detective investigators will continue unabated.

## LONGEVITY PAYMENTS

The thrust of the DIPBA proposal was to alter the system used to calculate longevity payments. It proposed replacing the flat dollar amount, \$300 for each year of service beginning in the sixth year, 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 DIPBA's proposed new approach is inconsistent with the manner in which longevity payments are made in applicable internal patterns and comparable external jurisdictions. It noted that the DIPBA longevity payments are already greater than those of their counterparts in Nassau County.

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 DIPBA indicated that its longevity payments have not been increased since 2001. It recalled that the Suffolk PBA received an increase of \$25 per year. It argued that the panel should not deviate from that which was awarded to the Suffolk PBA.

I am persuaded that a \$25 increase for each year of this award is appropriate. It is comparable to the annual increase of the Suffolk PBA.

The annual \$25 increases to the longevity payments will cost \$ 53,850 over the life of the Award. I recognize that there is an increase each year in the number of detective investigators eligible for longevity payments. However, by virtue of retirements and resignations, there is also a decrease in the number of those 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.

In order to address the County's current financial condition, the increased longevity payments will become effective on December 31, 2010.

#### **ASSIGNMENT PAY**

The DIPBA proposed an increase in assignment pay to 7%. It also requested Special Assignment pay of 7% for bargaining unit members who are assigned to any State or Federal agency for the purpose of performing any police function or duty.

The first part of this proposal concerns the increase of assignment pay for 4.5% to 7%. A review of the record suggests that, with the exception of 1995 and 1996, the four units in the police pattern all received the same assignment pay (PX52). As of 2007, each of the units received 4.5% in assignment pay.

A review of the most recent Suffolk PBA award reveals that there was no increase in assignment pay for police officers. Given that the PBA award is the first one in this round of bargaining and that there was no increase in assignment pay, from the perspective of comparability, the assignment pay for the DIPBA will also remain 4.5%.

Turning now to the matter of Special Assignment pay, I note that the PBA did not receive Special Assignment pay until the 2008-10 award and continues not to receive it. I hasten to add

that the SDA and the SOA have received a 7% Special Assignment pay and did so until the current round of bargaining (PX53).

From the perspective of comparability, the argument in favor of the DIPBA getting the Special Assignment pay was during the 2004-07 round of bargaining. It is apparent that the DIPBA and PBA panels did not award Special Assignment pay to either of these units.

In the current round of bargaining the PBA did not receive an increase in Special Assignment pay. To the extent that I am persuaded that the 2008-10 Suffolk PBA provides greater comparability than does the 2004-07 CBA /awards of the SOA and SDA, the DIPBA proposal for Special Assignment pay is denied.

In sum, both elements of the DIPBA proposal concerning Assignment Pay are denied.

#### **FAMILY SICK**

The current CBA provides for the use of five of a detective investigator's individual sick days for the care of spouses or members of the immediate family living in the household of the officer. The DIPBA 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. It opined that the DIPBA presented no evidence in support of this proposal. It added that the Nassau PBA and IPBA receive no Family Sick days.

The record indicates that there is an absence of abuse of this benefit. 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.

I addressed this proposal in the Suffolk PBA award and was persuaded that the number of Family Sick days should be increased from five to seven. I concluded that, to the extent that there may be unusual circumstances when officers may need more than five Family Sick days, the number of such days was increased from five to seven. I find no reason to conclude otherwise with respect to the DIPBA.

Therefore, the DIPBA 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 DIPBA.

Given the timing of this Award, this provision will take effect on the date of the issuance of this award.

### **WORK SCHEDULE**

The DIPBA proposal has four parts to it. The first part, Part (a), concerns detective investigators who work either a rotating or a straight 5/2 schedule. It proposed 26 or 24 XDOs thus resulting in either a 234 or a 236 day annual schedule.

The second element of this proposal, Part (b), provides for a work schedule of 232-236 days. It requires compensation for work days in excess of 232-236 by way of an equivalent number of leave days scheduled by the office.

The DIPBA claimed that its members work a 35 hour week (5 days per week X 7 hours per day). It observed that its members get a one hour unpaid meal break. It stated that the issue of the unpaid meal break is the subject of a grievance which is being held in abeyance pending the outcome of this proceeding.

It argued that the granting of this proposal would result in detective investigators working the same work schedule as the other units in the police pattern (PX59). It posits that there is no reason for its members to work a longer schedule than its police pattern counterparts.

It stresses that the granting of this proposal will not result in diminished productivity. It denies the County argument that six additional detective investigators would have to be hired if the proposal were granted.

It asserted that there is no minimum staffing and therefore there would be no overtime incurred when members' tours would be changed to meet staffing needs. It indicated that detective investigators are required to complete their work regardless of the number of days off.

It quoted Frank Giudice, Deputy Chief Investigator, who indicated that the schedule worked by SDA members (who work side by side with DIPBA members) allows them to carry out the duties and responsibilities needed to assist the office of the SCDA.

It maintained that the granting of this proposal would actually save money. It urged that since its members would be responsible for a schedule of 1,856 hours, the hourly rate of pay would actually be reduced. It added that this would also affect overtime and holiday pay.

It calculated that its members would actually work an additional 29 hours per year. As such, in its view, the County would save the value of 1,392 hours (29 hours X 48 members) or \$128,910 (based on the 2007 salary schedule). It concluded that over the three year life of this award the savings to the County would come to \$386,730 or a 7.36% decrease in payroll. It argued that the combination of the reduced hourly rate and the additional hours of productivity would yield a savings to the County of \$410,821 over the life of this award. It posited that this is the equivalent of a 7.82% wage concession (PX79).

The County's view of this proposal was very different. It rejected the argument that it is unfair for DIPBA members to work 24-26 days more per year than do detectives assigned to the office of the SCDA. It pointed out that DIPBA members work fewer hours per year than do members of the other units in the police pattern and, unlike the other units, do not work on holidays (PX58). It concluded that the scheduling advantages enjoyed by the DIPBA balance the difference in the length of the work year.

It added that there is comparability between the DIPBA and the Nassau County IPBA. It pointed out that the current schedule of the two units is identical (CX98A, volume I).

It challenges the assertion that the granting of this proposal will be a money-saver for the County. It recalled that the DIPBA claimed that there would be a reduction in the hourly rate earned by detective investigators and that this would reduce the cost of overtime and accruals.

The County observed that the record shows that overtime is rare. It concluded that it is unlikely that the granting of this proposal would have any effect on the overtime costs of the office of the SCDA.

The County also cited the testimony of Frank Giudice. It noted that he indicated that DIPBA members have a schedule that mirrors that of assistant district attorneys, with whom DIPBA members primarily work.

The County observed that Giudice commented that giving DIPBA members additional days off would decrease productivity. It recalled that the DIPBA admitted that its units are stretched thin. It concluded that the granting of this proposal would detrimentally affect the efficiency and productivity of the office of the SCDA and would be counterproductive.

I find that I must first address the issue of comparability with appropriate bargaining units. I have concluded that, in terms of comparability, I need to consider other units in the police pattern. However, I also stated that the Nassau County IPBA is a unit that is comparable to the DIPBA.

The relevance of this statement concerns the work schedule of the units in the police pattern and that of the IPBA. As noted above the units in the police pattern work 232-236 days per year while the IPBA has a 261 day schedule.

In this context, I am persuaded that, with respect to this issue, there is greater comparability between the DIPBA and the IPBA than there is between the DIPBA and the other units in the police pattern. The nature of the work done is at the heart of this finding.

The *raison d'être* of the DIPBA and the IPBA is the same. They are members of the staff of the District Attorney and their work is the work of the District Attorney.

It may be true that there are members of the SDA who are assigned to the SCDA's office. However, when one speaks of comparability to police pattern units, it is inappropriate to apply the duties of a relatively small number of detectives to the entire police pattern when there is a virtually identical unit in Nassau County performing the same duties.

Yes- the police pattern is a source of comparability but it is not the only source. I indicated that 2007-12 Nassau PBA award was relevant in the writing of the 2008-10 Suffolk PBA award and that the Suffolk PBA award is the basis for police pattern comparability in this round of bargaining. Therefore Nassau County remains a basis of comparability here. Thus, from the perspective of comparability, I will place greater emphasis on the similarity of work

schedules of the DIPBA and the IPBA than on that of the DIPBA and the other units in the police pattern.

I turn now to the argument that granting the DIPBA proposal will result in the detective investigators actually working 29 hours more than they did under the 261 day schedule. This claim is premised on an eight hour day rather than the current seven hour day.

The DIPBA schedule calls for 261 days of seven hours each. The members get a one hour unpaid meal break. The unpaid nature of the meal break was the subject of a grievance that is being held in abeyance pending the outcome of this proceeding.

The fact is that the DIPBA members currently get paid for 261 days of seven hours each, for a total of 1,827 hours. The DIPBA claim that its proposal would result in its members working 29 hours more than they currently do.

The proposal calls for a yearly schedule of 1,856 hours. That does represent 29 hours more than 1,827 hours. However, the 1,856 hours is the product of 232 days of eight hours each. The proposal is silent with respect to the dispute over the unpaid meal period. In the absence of a specific reference to an eight hour work day plus a one hour unpaid meal period, I must conclude that the detective investigators would continue to work seven hours a day and would be paid for an eighth hour, which would be a paid meal period.

This calculation leads me to conclude that granting this proposal would result in diminished productivity. Unless the volume of work was reduced, the County would indeed be required to hire additional detective investigators.

The DIPBA argued that its proposal would result in a *reduced* hourly rate and that such a reduction would impact of overtime costs. I find that, if granted, the proposal would have a

negligible impact on the cost of overtime because the record is clear that the amount of overtime worked by the DIPBA is minimal.

I conclude that this proposal must be denied. It will reduce productivity and could carry with it the likelihood of additional costs to the County by virtue of the need to hire additional detective investigators to do the same amount of work. Moreover, with respect to this proposal, I find the Nassau IPBA to be the most comparable unit to the DIPBA.

The third part of this proposal, Part (c), would require the County to give the DIPBA the duty and work schedules of its members on January 1 of each year or, if the duties and schedules are amended, at the time of the changes. The DIPBA indicated that the other units in the police pattern already have this benefit.

This proposal pre-supposes that the SCDA /County has the right to change the duties and responsibilities of members of the DIPBA. Granting this proposal would require timely notice to the DIPBA of the duties and responsibilities of the detective investigators.

In the light of the comparability of the each of the units in the police pattern, this proposal is granted.

The final part of this proposal, Part (d), would bar automatic restrictions on when DIPBA members could take leave days. This provision is applicable to the other units in the police pattern.

The key word in this proposal is *automatic*. As an example, the DIPBA indicated that the County would be precluded from blacking out personal days on every Friday. However, this language would not obviate the County's or the DA's right to make a case by case determination as to applications for leave days.

With this in mind, there is no reason why DIPBA members should be treated in a manner unlike members of other units in the police pattern. Thus, Part (d) is granted.

In sum, with respect to the DIPBA Work Schedule proposal, parts (a) and (b) are denied and Parts (c) and (d) are granted. Parts (c) and (d) of this proposal are granted effective December 31, 2010.

### SEPARATION FROM SERVICE

The DIPBA proposed that members who separate from service with at least 10 years of service receive all benefits received by retirees. The DIPBA noted that more than 50% of its members retired from other jurisdictions and are ineligible to retire from their position with Suffolk County and receive certain contractual benefits upon separation from employment. It reasoned that two members with 20 years of service could receive very different benefits at the time when they leave the employ of the County.

The DIPBA suggested that this issue has implications relative to health insurance and the retention of pistol permits. It pointed out that retirees keep their health insurance and their pistol permits into retirement while members who simply separate from County employment do not.

The County urged that this proposal be denied. It noted that retiree health insurance is not a subject within the jurisdiction of the panel since this is a matter that is negotiated with all of the County bargaining units separate and apart from contract negotiations (JX2). It added that there is no evidence to justify the retention by separated employees of their pistol permits and shields.

The DIPBA presented two specific issues for the consideration of the panel, health insurance and pistol permits. I am persuaded that the panel does not have the authority to consider issues related to health insurance.

Pursuant to Article 7 of the CBA, all County employees are covered by the *Employee Medical Health Plan* (EMHP). That plan defines which employees are entitled to retiree health insurance. Thus, the entitlement of such benefits to DIPBA retirees is not an issue that is before this panel.

As to pistol permits, none of the comparable units receive such a benefit (CX106-7, Volume I). As such, there is no basis to grant such a benefit here.

Therefore, this proposal is denied.

#### **MEAL MONEY**

The DIPBA proposed the modification of Article 26 of the CBA. The proposed modification of Article 26 is consistent the language of Articles 7 and 8 of the 2004-07 SDA contract (PX64). Based on comparability with other units in the police pattern, this proposal is granted as of December 31, 2010. However, it is impossible to estimate the cost of this improvement at this time.

#### **PAST BENEFITS**

The DIPBA proposed a new contract section that deals with the retention of terms and conditions of employment that have been enjoyed for a substantial period of time. The proposal included language that made the elimination of any such benefits subject to the grievance procedure. It pointed to similar language in the CBAs of the PBA, SOA and SDA (PX66 & 67).

The County objected to this proposal on the grounds that there is no need for such a contract provision. It added that the DIPBA can adjudicate such matters before PERB as *improper practices*.

To the extent that the other units in the police pattern have such a provision in their CBAs, this proposal is reasonable. However, the language found in the CBAs of the PBA, SDA and SOA differs to some degree from the DIPBA proposal. The specific language (as modified to make it appropriate for the DIPBA) found in those contracts (*The County shall not eliminate any generalized benefit that has been continuously enjoyed by all Detective Investigators for a substantial period without good cause*) is granted. Effective the date of the issuance of this award, this provision will replace Article 33 Paragraph 2 of the expired CBA.

#### **ASSOCIATION BUSINESS**

The DIPBA proposed a modification of the weekly stipend of its president from 3.25 hours per week to 11 hours per week. It also proposed the creation of a 1.5 hour per week stipend for the 1<sup>st</sup> Vice President, the 2<sup>nd</sup> Vice President, the Treasurer, the Financial Secretary and the Recording Secretary. It posited that the stipends are designed to compensate the officers for lost overtime opportunities.

It should be stated that the only DIPBA officer on full time release is the president. The other officers function as detective investigators.

The DIPBA observed that the president puts in many hours beyond his eight hour day while tending to DIPBA and County business. It emphasized that these efforts inure to the benefit of the County and save the County money as a result of the avoidance of grievances and litigation.

It added that the PBA panel awarded this proposal to the extent that the stipend of the PBA president was increased to 6.5 hours and the stipends of the other officers were increased to three hours.

The County urged the denial of this proposal. It acknowledged that the DIPBA has the smallest number of officers on full time release. It added, however, that the DIPBA is the smallest unit in the police pattern.

It indicated that the stipend is designed to compensate the DIPBA officers for lost overtime opportunities. It insists that there are no lost overtime opportunities because such opportunities do not exist for this unit.

It maintained that the DIPBA officers are well compensated. It posited that the County should not be required to pay an additional \$40,439 (the equivalent of a .76% wage increase) for non-County work.

The DIPBA is a small organization. It has fewer than 50 members. Its membership is 2.6% of that of the PBA. That being said, the president of the DIPBA has many of the same responsibilities as does the presidents of larger organizations. Thus, there is a justification to treating the DIPBA president in a manner similar to the PBA president. Therefore, I conclude that, just as the stipend for the PBA president was increased from 3.25 hours to 6.5 hours per week at straight time, so too should there be a similar increase for the president of the DIPBA.

However, the huge difference in size between the two organizations requires a different analysis concerning the two vice-presidents, the two secretaries and the treasurer. Historically there has been no stipend for these officers and there is nothing in the record to suggest that there has changes in conditions that would justify the granting of such a stipend.

The DIPBA argued that such a stipend would compensate these officers for missed overtime opportunities. However, as noted in the section of this decision dealing with Work Schedules, there is virtually no overtime available for DIPBA members.

I find that this proposal should be granted such that the wage stipend of the president of the DIPBA should be increased from 3.25 hours per week to 6.5 hours per week at a straight time rate. However, given the date of the issuance of this award, this increase will be effective on January 1, 2008.

The cost of this item is based on an average hourly rate of \$75. The approximate total cost of this improvement is \$35,000. This sum includes the value of the across the board wage increases.

#### **REOPENER CLAUSE**

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

I agreed 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 have placed the PBA potentially in the position of setting the base from which the other units bargain.

At the time of the submission of proposals by the DIPBA which culminated in this proceeding and as this award was being written, the DIPBA may have had concerns that the improvements granted to the SOA and the SDA by their interest arbitration panels would exceed

those awarded to the DIPBA. However, as of the completion of this award, the SDA and SOA awards have been issued. This DIPBA award is the final one for police pattern units.

A review of those awards reveals that the need for the proposed Reopener Clause has been obviated. Therefore, the DIPBA proposal relative to this matter is denied.

### **INJURY DETERMINATION**

The County proposed that ¶7.2 of the CBA be amended such that employees who are on GML §207c status for 12 consecutive months cease accruing vacation time entitlement. It sought the implementation of this proposal as of January 1, 2008.

The DIPBA urged the denial of this proposal. It pointed out that, practically speaking, for the past six years, no detective investigator was on GML § 207c leave for 12 consecutive months.

In reviewing the recent SOA and SDA awards, I find that the panels issuing both awards awarded this proposal. Therefore, this proposal is awarded effective the date of the issuance of this award.

It is undisputed that no one will presently be affected by this proposal since there is no one on §207c status for 12 months. That being said, there is no way of quantifying the value of this change in the terms of that ¶7.2 of the CBA. The County cannot consider this matter as an offset against the overall cost of this award and the DIPBA it as a concession that has a specific financial value.

### **MATERNITY LEAVE AND LEAVES OF ABSENCE WITHOUT PAY 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 the CBA makes maternity leaves available only to women. This premise was undisputed.

In order to remedy this inconsistency, the County proposed new language for ¶ 8.7 and Appendix B of the CBA. The DIPBA 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. It is evident that this proposal was granted in the 2008-10 PBA award and, except for the DIPBA, all of the other bargaining units in Suffolk County have agreed to adopt the modification being proposed here.

It is appropriate to award the County's proposal. The terms of ¶8.7 and Appendix B will meet current legal standards. They will also be aligned with CBA's of virtually all of the other County bargaining units, as per Schedule B attached to this Award.

**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 \$52,627. Listed below are the costs and the value of the concessions.

**COST**

Wage increases- 3 years @ 3.5% increases-	\$572,146
Increases in stipends for DIPBA president-	\$35,000
<b>TOTAL (THREE YEAR COST)</b>	<b>\$607,146</b>

1% value- \$52,627

**THREE YEAR COST EXPRESSED AS A PERCENTAGE INCREASE- 11.5%**

**CONCESSIONS**

Deferral of 2008 salary increase until pay period beginning May 27, 2008

(10.5 pay periods @ \$7,057 per pay period) \$74,099

Deferral of Longevity increase to December 31, 2010- 3 years @ \$25 per year - \$53,850

**TOTAL \$127,949**

1% value-\$52,627

**THREE YEAR CONCESSIONS EXPRESSED AS A BUDGETARY PERCENTAGE -**

**2.4%**

**COST OF THREE YEAR AWARD (COSTS - CONCESSIONS) - \$479,197**

**ANNUAL COST OF AWARD- \$159,732**

**COST FOR THREE YEARS EXPRESSED AS A BUDGETARY PERCENTAGE-**

**9.1%**

**BLENDED ANNUAL COST OF AWARD AS A BUDGETARY PERCENTAGE-**

**3.0%**

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 DIPBA 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 detective investigators contained in ¶5 of the CBA such that the 2007 salary schedules will be increased by the following percentages:
  - As of May 27, 2008- 3.5%
  - As of January 1, 2009- 3.5%
  - As of January 1, 2010- 3.5%

See Schedule A (attached).

3. **LONGEVITY PAYMENTS-** Amend the longevity payments now set forth in ¶5.1 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.

4. **FAMILY SICK DAYS-** Amend ¶8.8 of the CBA as follows:

The number of Family Sick days will be increased from five (5) to seven (7). This will be effective as of the issuance of this award.

5. **WORK SCHEDULES-** Amend ¶8.1 of the CBA as follows:

All duty and work schedules of employees shall be given to the Association on January 1<sup>st</sup> of each year, or when issued if an amendment is made thereto is made during the year.

Amend ¶8.6 of the CBA as follows:

There shall be no automatic restrictions on when an employee may take leave days.

The effective date of these changes shall be December 31, 2010.

6. **MEAL MONEY-** Delete the existing language of ¶26 of the CBA and substitute the following:

- (a) If an Employee, not on a regularly scheduled tour of duty, leaves the County on County business for four hours or more, actual time, he/she will receive a meal allowance of \$7.50 if the four hours are completed prior to 1700 hours and \$12.00 if the four hours are completed after 1700 hours. If an Employee, on a regularly scheduled tour of duty, leaves the County for three hours or more with one hour or more falling within the hours of 1200 to 1400 hours, he/she will receive a meal allowance of \$7.50. If an Employee, on a regularly scheduled tour of duty, leaves the County for three hours or more with one

hour or more falling within the hours of 1900 and 2100 hours, he/she will receive a meal allowance of \$12.00. If he/she is out of the County overnight, he/she will receive an additional meal allowance of \$3.00. However, no meal allowance money shall be paid if the Employee is actually given a meal period before leaving the County.

In lieu of the above meal allowances, Employees performing an extradition shall receive a \$50.00 meal allowance in advance for each overnight stay. The allowance will be the total meal allowance payable during the extradition proceeding for each Employee.

(b) An Employee, who performs overtime, (either upon completion of his regular tour or a nonscheduled day), shall be entitled to a meal allowance of \$12.00 upon the completion of the first four hours of overtime work, \$7.50 upon the completion of the second four hours of overtime work, and \$7.50 upon the completion of each four hours of overtime work thereafter.

This language will take effect as of December 31, 2010.

**7. PAST BENEFITS-** Effective as of the date of the issuance of this award, delete the existing language of ¶33 Paragraph 2 of the CBA and substitute the following:

“The County shall not eliminate any generalized benefit that has been continuously enjoyed by all Detective Investigators for a substantial period without good cause.”

**8. ASSOCIATION BUSINESS-** Amend ¶9 (B) of the CBA to read as follows as follows:

Effective January 1, 2008, the President of the Association shall receive 6.5 hours of overtime per week at the straight time rate, to be paid bi-weekly.

**9. INJURY DETERMINATION-** Add the following to ¶7.2 (C) of the CBA:

Employees who have been of GML §207c status for 12 consecutive months shall not continue to accrue vacation leave after the 12<sup>th</sup> consecutive month of absence. This language shall be effective as of the date of the issuance of this decision.

**10. MATERNITY LEAVES AND LEAVES OF ABSENCE WITHOUT PAY-** Amend ¶8.7(B) and Appendix B 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 ¶ 8.7 and Appendix B shall be revised per the County’s proposal such that their language conforms to legal requirements, as set forth in Schedule B, attached hereto.

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

Dated: October 25, 2010  
Hewlett Harbor, NY

  
ARTHUR A. RIEGEL  
CHAIR, INTEREST ARBITRATION  
PANEL

110

  
DANIEL SCHORR  
QUALIFIED IN NASSAU COUNTY  
DZSC 6220542  
COMM. ~~EXPIRES~~ 4/12/2014

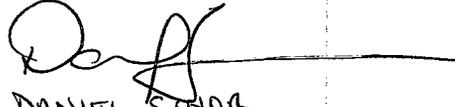
AFFIRMATION

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.



DANIEL SCHNOR  
QUALIFIED IN NASSAU COUNTY  
02SC6220547  
COMM. EXPIRES 4/12/2014

EMPLOYEE PANELIST

I, Lloyd M. Berko, Esq., Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

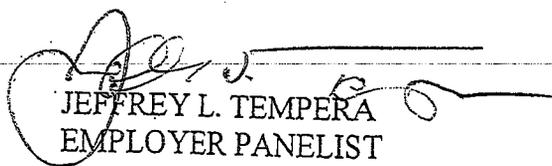
- |  |        |         |
|--|--------|---------|
| 1. Term  | Concur | Dissent |
| 2. Wage Increase                                       | Concur | Dissent |
| 3. Longevity Payments Increase                         | Concur | Dissent |
| 4. Family Sick   | Concur | Dissent |
| 5. Work Schedules- DIPBA Proposals 5 (c) and 5 (d)     | Concur | Dissent |
| 6. Meal Money  | Concur | Dissent |
| 7. Past Benefits                                       | Concur | Dissent |
| 8. Association Business                                | Concur | Dissent |
| 9. Injury determination                                | Concur | Dissent |
| 10. Maternity Leaves and Leaves of Absence Without Pay | Concur | Dissent |
| 11. Rejected Suffolk County proposals                  | Concur | Dissent |
| 12. Rejected Suffolk County DIPBA proposals            | Concur | Dissent |

*Lloyd M. Berko* 11/16/10  
LLOYD M. BERKO, ESQ.  
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  | Concur | Dissent |
| 2. Wage Increase                                       | Concur | Dissent |
| 3. Longevity Payments Increase                         | Concur | Dissent |
| 4. Family Sick   | Concur | Dissent |
| 5. Work Schedules- DIPBA Proposals 5 (c) and 5 (d)     | Concur | Dissent |
| 6. Meal Money  | Concur | Dissent |
| 7. Past Benefits                                       | Concur | Dissent |
| 8. Association Business                                | Concur | Dissent |
| 9. Injury determination                                | Concur | Dissent |
| 10. Maternity Leaves and Leaves of Absence Without Pay | Concur | Dissent |
| 11. Rejected Suffolk County proposals                  | Concur | Dissent |
| 12. Rejected Suffolk County DIPBA proposals            | Concur | Dissent |

  
JEFFREY L. TEMPERA  
EMPLOYER PANELIST

Compulsory Interest Arbitration Award  
Suffolk County  
And  
Suffolk County Detectives Investigators PBA

Dissenting Opinion of County Appointed Arbitrator  
Jeffrey L. Tempera

I am compelled to comment on this award with regards to the increased wages and various benefits when the County is struggling to emerge from one of the worst economic periods. To award a 3.5% wage increase on top of salaries that are already listed as some of the highest in the County, just seems to go against logic. While I applaud the savings generated through the delay in the 2008 wage increase, the increases in salaries for Detectives Investigators is not justified in this economy.

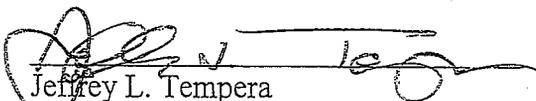
For the same reasons I have dissented on the increase in the longevity benefit.

I have also dissented on the amendment to the work schedules, sections 8.1 and 8.6 as well as the meal money section 26. To amend these sections at a time of economic distress makes no sense. The change to the work schedule sections adds an additional administrative burden and restriction on the District Attorney's Office at a time of a tight budget and staff shortages. The granting of the meal money amendments during these tough fiscal times just sends the wrong message.

When the arbitration panel issued the award to the DIPBA for the period 2004 through 2007 and it contained for the first time a new benefit granting pay to the DIPBA President for lost overtime opportunities, I dissented. Why should the County have to subsidize these union activities? If a member of the DIPBA 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 the DIPBA President receives 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, Work Schedules amendments, Meal Money amendment, Association Business increase and all the rejected County proposals.

  
Jeffrey L. Tempera  
County Appointed Arbitrator

SCHEDULE A

SALARY CHARTS

2008 SALARIES

<u>TITLE</u>	<u>BI-WEEKLY</u>				
	2	3	4	5	6
Detective Investigator (5731)	3,752	3,922	4,089	4,284	4,465
Senior Detective Investigator (5732)	4,269	4,459	4,656	4,868	5,073
Principal Detective Investigator (5733)	4,857	5,073	5,293	5,536	5,779
Assistant Special Investigator (5740)	2,266	2,594	2,924	3,253	3,587
Special Investigator (5741)	3,752	3,922	4,089	4,284	4,465
District Attorney Investigator (5728)	2,266	2,594	2,924	3,253	3,587

<u>TITLE</u>	<u>ANNUAL</u>				
	2	3	4	5	6
Detective Investigator (5731)	97,927	102,364	106,723	111,812	116,537
Senior Detective Investigator (5732)	111,421	116,380	121,522	127,055	132,405
Principal Detective Investigator (5733)	126,768	132,405	138,147	144,490	150,832
Assistant Special Investigator (5740)	59,143	67,703	76,316	84,903	93,621
Special Investigator (5741)	97,927	102,364	106,723	111,812	116,537
District Attorney Investigator (5728)	59,143	67,703	76,316	84,903	93,621

2009 SALARIES

<u>TITLE</u>	<u>BI-WEEKLY</u>				
	2	3	4	5	6
Detective Investigator (5731)	3,883	4,059	4,232	4,434	4,621
Senior Detective Investigator (5732)	4,418	4,615	4,819	5,038	5,251
Principal Detective Investigator (5733)	5,027	5,251	5,478	5,730	5,981
Assistant Special Investigator (5740)	2,345	2,685	3,026	3,367	3,713
Special Investigator (5741)	3,883	4,059	4,232	4,434	4,621
District Attorney Investigator (5728)	2,345	2,685	3,026	3,367	3,713

<u>TITLE</u>	<u>ANNUAL</u>				
	2	3	4	5	6
Detective Investigator (5731)	101,346	105,940	110,455	115,727	120,608
Senior Detective Investigator (5732)	115,310	120,452	125,776	131,492	137,051
Principal Detective Investigator (5733)	131,205	137,051	142,976	149,553	156,104
Assistant Special Investigator (5740)	61,205	70,079	78,979	87,879	96,909
Special Investigator (5741)	101,346	105,940	110,455	115,727	120,608
District Attorney Investigator (5728)	61,205	70,079	78,979	87,879	96,909

**2010 SALARIES**

<b><u>TITLE</u></b>	<b><u>BI-WEEKLY</u></b>				
	2	3	4	5	6
Detective Investigator (5731)	4,019	4,201	4,380	4,589	4,783
Senior Detective Investigator (5732)	4,573	4,777	4,988	5,214	5,435
Principal Detective Investigator (5733)	5,203	5,435	5,670	5,931	6,190
Assistant Special Investigator (5740)	2,427	2,779	3,132	3,485	3,843
Special Investigator (5741)	4,019	4,201	4,380	4,589	4,783
District Attorney Investigator (5728)	2,427	2,779	3,132	3,485	3,843

<b><u>TITLE</u></b>	<b><u>ANNUAL</u></b>				
	2	3	4	5	6
Detective Investigator (5731)	104,896	109,646	114,318	119,773	124,836
Senior Detective Investigator (5732)	119,355	124,680	130,187	136,085	141,854
Principal Detective Investigator (5733)	135,798	141,854	147,987	154,799	161,559
Assistant Special Investigator (5740)	63,345	72,532	81,745	90,959	100,302
Special Investigator (5741)	104,896	109,646	114,318	119,773	124,836
District Attorney Investigator (5728)	63,345	72,532	81,745	90,959	100,302

## SCHEDULE B

### LEAVES OF ABSENCE

¶ 8.7(B) and Appendix B shall be revised to read as follows:

#### ¶8.7. LEAVES OF ABSENCE WITHOUT PAY

[paragraph (b) shall be deleted and the following paragraphs relettered.]

#### APPENDIX B

##### Disability and/or Child Care Leave

###### A. Disability and/or Child Care Leaves, Generally:

1. Leaves shall be granted by the Department for disability leave and/or child care in accordance with the following rules and regulations.

2. The employee concerned should give reasonable notification of intent to take the leave so that arrangements may be made by the Department for a necessary replacement of the employee during the period of the leave.

###### B. Disability Leave:

1. Disability for the purpose of this policy shall include any disability related to the pregnancy prior to the birth of the child, disability related to child birth, or any disability to the mother originating from childbirth after the birth of the child.

2. Absences for the reason of disability, at the option of the employee, may be charged to the employee's accrued time reserve (vacation, sick, personal and/or compensatory time) during the period of disability

An employee seeking disability leave first may utilize all accumulated sick leave. At the exhaustion of ordinary sick leave accumulation, the employee has the option of using any and all accumulated time reserve. This time may not extend beyond the time of the employee's disability. The Medical Evaluation Unit may, at its discretion, require the employee to submit to a physical/medical examination. Where the MEU and the employee's physician disagree, the Office of Personnel and Labor Relations shall make a final and binding decision based on the third party medical opinion described in Section 7.2 of this Agreement. The employee may request that the Office of Personnel and Labor Relations state, in writing, the basis of its decision.

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 12 months.

a. However, in no case will an employee be permitted a combination of disability and child care leave which extends beyond one year period inclusive of any disability leave (e.g., an employee who starts a disability leave four weeks before the date of the delivery and uses accumulated time for the first eight weeks after the birth may only take a child care leave of up to nine months). Where an employee has taken disability leave during the first six months of pregnancy and where the employee has returned to work for a minimum of three months prior to the birth of the child, the prior time taken for disability shall not be included in the calculation of the 12 month leave.

b. Any employee who does not commence child care leave immediately upon termination of a disability leave and/or any 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	10 months
3 months	9 months
4 months	8 months
5 months	7 months
6 months	6 months
7 months	5 months
8 months	4 months
9 months	4 months
10 months	4 months
11 months	4 months

c. 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 year, the adoptive parent may make application to the Office of Personnel and Labor Relations for a child care leave of a four week 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.

d. No employee shall be permitted to use any type of leave accruals during a child care leave, except where the employee has a pre-approved vacation period (an employee may use vacation, compensatory or personal time) falling within the time period for which they have been granted a child care leave. This vacation period is to commence immediately following the period of disability leave. The employee is not permitted to use other types of leave accruals immediately preceding or after the leave, except a disabled employee who may utilize all applicable disability leave accruals (regardless of type) immediately before or after child care leave.

e. An employee may substitute accrued vacation, personal or compensatory time for the unpaid child care leave set forth in 4(b), provided that this does not lengthen the maximum permissible time.