

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration

-between-

DEPUTY SHERIFFS POLICE BENEVOLENT
ASSOCIATION, INC.,

"Petitioner or PBA"

-and-

COUNTY OF SUFFOLK & SUFFOLK COUNTY
SHERIFF'S OFFICE

"Respondent or County."

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BEFORE:

ARTHUR A. RIEGEL, ESQ., CHAIRMAN OF THE PANEL
MATTHEW MULLINS, PETITIONER MEMBER
JEFFREY L. TEMPERA, RESPONDENT MEMBER

APPEARANCES:

FOR THE PETITIONER:

GREENBERG BURZICHELLI & GREENBERG, PC by HARRY GREENBERG & SETH
GREENBERG, ESQS.

FOR THE RESPONDENT:

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

BACKGROUND

The parties are signatories to the collective bargaining agreement between the Deputy Sheriffs Police Benevolent Association (Petitioner) and County of Suffolk and the Suffolk County Sheriffs Office (Respondent). The collective bargaining agreement expired on December 31, 2007 (Joint Exhibit [JX] 1).

Compulsory Interest Arbitration

PERB Case No. IA2009-001;
M2008-253

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

The parties engaged in good faith bargaining in an effort to establish a successor agreement. The negotiations proved to be unsuccessful. Accordingly, a Joint Declaration of Impasse was filed with New York State Public Employment Relations Board (PERB) on April 14, 2009 (JX2).

The dispute was submitted to mediation. Administrative Law Judge Philip Maier served as the mediator. A mediation session was held on January 27, 2009. 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 April 14, 2009 the DSBA filed a Petition for Compulsory Interest Arbitration with PERB (JX2). The County filed a timely response on May 1, 2009 (JX2).

On May 18, 2009, PERB designated me to serve as the neutral Chair of the Panel. The DSBA selected Matthew Mullins 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 (JX2).

Hearings on this matter were held on November 17, December 15, 2009, January 5 and 19, February 8 and 22, March 3 and 15, and April 2, 2010. 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 six (6) joint exhibits and the parties moved in excess of two hundred (200) exhibits (with multiple parts to many of them) into evidence.

On December 1, 2009 the DSBA and the County entered into a Memorandum of Agreement to extend the Panel's jurisdiction to issue an award covering three (3) years, January 1, 2008 through and including December 31, 2010 (JX 4). In exchange for a third year, the DSBA 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 DSBA upon their separation from employment with the County and at the rate of pay in effect at the time of separation of employment with the County.

Resolution No. 1196-2009 was introduced to the Suffolk County Legislature to implement the agreement. The Suffolk County Legislature passed the resolution on December 23, 2009 and County Executive Levy signed it. Therefore, on or about March 1, 2009 the parties entered into an implementing memorandum of agreement pursuant to Section 209.2 of the Civil Service Law (JX 4).

The specific provision of the Taylor Law governing interest arbitrations concerning deputy sheriffs is Civil Service Law §209.4(g). It is a separate provision and is unlike the one setting forth the interest arbitration proceedings of police units.

Unlike that of police units, the scope of proceedings pursuant to Civil Service Law §209.4(g) is limited to matters *directly relating to compensation*. Each of the parties challenged certain of the other party's proposals relative to the question of whether the proposals in question were both mandatory and arbitrable.

The parties declined to have PERB rule on this matter and agreed to have the panel determine whether those proposals were mandatory and arbitrable. The parties entered this agreement for this proceeding only and without waiving legal rights going forward.

The parties were directed to submit post-hearing briefs on or before November 15, 2010. I received the briefs in a timely manner. The Panel officially met in executive session on April 14, 2010 and April 29, May 26 and June 16, 2011.

THE UNRESOLVED PROPOSALS

The following is a listing of each party's unresolved proposals:

DSPBA

1. Wages: Effective January 1, 2008:
 - a) A one-time salary adjustment of \$5,000
 - b) A 5% increase on all steps on top of salary adjustmentEffective January 1, 2009: 5% increase on all steps
Effective January 1, 2010: 5% increase on all steps

2. Overtime Compensation: Section 9.1 Overtime shall be replaced with the following language:

Overtime compensation shall be paid at the rate of time and one half the hourly rate for all work performed in excess of the employee's basic workweek or workday. The workday shall be eight hours, which shall include a one-half hour paid meal period. Any time off for vacation, sick leave, personal leave, holidays, or other leave with pay shall be considered as days or time worked under this paragraph.

The practices with regard to travel to and from home in County vehicles shall be those that prevailed prior to January 1, 1983.

It shall be management policy to make payment for overtime worked no later than the second payday after date of submission of record of said overtime. The Office of Labor Relations undertakes to alert all administrators and fiscal functionaries to this requirement and to follow up promptly on lapses in this policy.

3. Longevity Pay: Increase to \$300 for each year of service beginning at 5 years
Examples: 5 years of service X \$300= \$1,500
6 years of service X \$300=\$1800, etc.

4. Workday:
The workday shall include a one-half hour paid meal period.

5. Vacation Leave: Vacation leave accruals shall be amended as follows:

| | |
|---|------------------|
| From Beginning until 5 th Anniversary: | 21 days per year |
| From 5 th Anniversary until 10 th Anniversary: | 27 days per year |
| From 10 th Anniversary until 15 th Anniversary: | 28 days per year |
| From 15 th Anniversary on: | 30 days per year |

6. Deputy Sheriff Investigators shall receive a 12% salary premium above Employees in the title of Deputy Sheriff I.

7. Effective January 1, 2008, add new step effective on the 5th anniversary in the title of Deputy Sheriff II at \$5,000 above the current step.

8. All members of the DSPBA Executive Board shall be entitled to the highest supplementary wage available under the Agreement

COUNTY

1. Wages: Wage freeze for 2008, 2009 & 2010.

2. Section 5, Work Week; Work Day:
 - (a) All new employees will work an additional five (5) days per year.
 - (b) Training – All Deputy Sheriffs will work one extra day per year of straight time for the purpose of training in addition to the stated work year.

3. Section 9.1, Overtime and all other relevant contract provisions:
 - (a) Bypassed Overtime – A deputy Sheriff who is wrongly bypassed for overtime shall be placed at the top of the overtime list for the next overtime assignment.
 - (b) Overtime Procedure – Change 9.3 (A) to update list from weekly to monthly.
 - (c) Amend to provide that all overtime lists shall be designated at the discretion of the Sheriff and overtime assignments shall remain within the designated section. If the section has no volunteers, the most junior officer in that section shall be forced to work the overtime assignment.
 - (d) Delete “who are hired on or after December 31, 2005” from the 4th and 5th paragraphs of section 9.1.

4. Section 9.5, Recall, "Called-in" Work, Planned Overtime and Stand-by Pay:
 - (a) Amend to provide that an employee who is recalled will receive overtime pay only for the hours actually worked.
 - (b) Delete requirement for payment of travel time for recall.

5. Section 12, Tuition Reimbursement:

Amend to provide for an annual allotment of \$15,000. Funds not expended by the end of the year will not carry over to the succeeding year.

6. Section 13.5, Workers' Compensation:
 - (a) Amend to provide for 26 weeks instead of 39 weeks.
 - (b) Provide that time spent performing light duty will not be considered as part of an employee's probationary period.
 - (c) When a member is absent due to any type of job related illness or injury, he/she shall not engage in any activity that might further impair his/her ability to return to full duty. Outside employment, whether part time or full time is prohibited.

7. Section 16.2, Vacation Accruals:
 - (a) Amend to provide a maximum of Sixty (60) days' accruals in any calendar year for a maximum Thirty (30) days allowed to be accrued over to the succeeding year.
 - (b) Amend to provide that, upon separation, pay will be granted for up to a maximum of Sixty (60) unused vacation days.
 - (c) Delete requirement for hold harmless on carryover due to workers' compensation injury.

8. Section 16.4, Sick Time:

Delete paragraph A and paragraph E. Remove "hired on or after December 31, 2005" from paragraph B and add "There shall be no payment for unused accumulated sick time."

9. Section 20 (E) Personnel Files:

Must provide answer within ten days of when material is placed in the personnel file.

10. Section 22, Probation:

Amend to provide for an eighteen month probationary period.

11. Section 26, Transfers:

- (a) Provide that all transfers and assignments, including Internal Affairs Investigators and Superior Officers, will be made at the sole discretion of the Sheriff based on qualifications for the job.
- (b) Provide that posting will not be required for transfers and seniority shall not be a factor.
- (c) Temporary Transfers: The Sheriff may temporarily transfer Deputy Sheriffs for a period of up to 45 days without notice or posting.

STATUTORY CRITERIA

Pursuant to Section 209.4 of the Act, the Panel is required to make a “just and reasonable determination of the matters in dispute.” In arriving at such a determination, the Panel must take into consideration, in addition to other relevant factors, the following:

- 1) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- 2) The interest and welfare of the public and the financial ability of the public employer to pay;
- 3) Comparison of peculiarities in regard to other trades or professions, including specifically, (i) hazards of employment; (ii) physical qualifications; (iii) educational qualifications; (iv) mental qualifications; and (v) job training and skills; and
- 4) The terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

POSITIONS OF THE PARTIES

CONTENTIONS OF PETITIONER

The DSPBA argues as follows:

The interest arbitration panel must issue an award that adopts the DSPBA's proposals in their entirety and rejects the demands of the County of Suffolk ("County") and the Suffolk County Sheriff's Office ("Sheriff's Office" or "SCSO"). The Panel's adoption of all of the DSPBA's proposals is the only way to ensure the proper placement of deputy sheriffs within the police pattern.

This Panel, unlike other panels however, must also shape its award keeping in mind that the deputies have only gone through interest arbitration on one other occasion, wherein that panel ignored or failed to delve into relevant facts and other evidence. Furthermore, that panel was not presented with a complete and thorough picture regarding the functions and roles that deputies play. Finally, since the last interest arbitration was held more than five years ago much has changed in the life of a deputy sheriff. The role of deputies has expanded in almost every unit including a dedicated highway patrol unit.

Deputies perform the same functions in the five eastern towns of Suffolk County that officers of the Suffolk County Police Department ("SCPD") perform in the five western towns of Suffolk County (e.g. pistol licensing and election details). For these reasons Deputies must be placed in the police pattern along with their counterparts at the SCPD and other police agencies throughout the County. Other panels have recognized the expanding role of the deputy sheriffs in other counties throughout the state and have awarded them a law enforcement differential to compensate them for the additional duties they perform.

Finally, it warrants noting that while historical comparisons and so-called “patterns” are important, they are merely instructive and are not binding. They are among many factors to be considered. Where placement of a bargaining unit in a pattern has become stale and when historical comparisons are no longer accurate – that is, they no longer reflect comparable services, skills, and working conditions – it is time to change those comparisons and change pattern placement. As such, the County’s assertion that the deputy’s absence from the police pattern is dispositive fails. There ought to be differences in contractual terms and benefits between and among comparators. Comparison with respect to other jurisdictions will be discussed throughout this brief, wherever and whenever appropriate, but must be put in perspective as only one of many factors.

At its last (and first) interest arbitration, Arbitrator Townley indicated that on the “pattern continuum”, deputies should be placed above Correction Officers and working their way towards police. Even assuming that placement was correct, deputies are now below Correction Officers in base wages and overall compensation, far short of even Arbitrator Townley’s vision. This is so despite increasing and evolving responsibilities and demands. At the very least, therefore, this Panel must correct the deputies’ position to reflect the realities of where they have fallen since the Townley Award.

Further, while the County has expressed an unwillingness to pay for the deputies’ proposals, it has failed to show that it does not have the actual ability to pay for them. When a neutral analysis in the County’s finances is employed, it becomes clear that the County has simply expressed a desire not to pay rather than an inability to meet the reasonable proposals put forth by the DSPBA.

In the instant proceeding, the DSPBA seeks a fair and reasonable contract. By adopting the PBA's proposals the Panel will acknowledge the ever-increasing demands and stress that have been placed on the deputies. In recognition of all this, awarding the DSPBA's proposals is fair and just.

Suffolk County Deputy Sheriffs are police officers and must be placed in the County's *police pattern*. At the heart of this interest arbitration is the functions deputy sheriffs perform and whether what deputies do is comparable to other police officers. As described herein and demonstrated throughout the hearings, deputy sheriffs are police officers in every way and perform the same functions as their counterparts throughout the County of Suffolk. What sets Suffolk County deputies apart from their counterparts in the Suffolk County Police Department and those employed on the East End is that the jurisdiction of deputy sheriffs is the entire County while the others have a limited geographic focus.

Every police department or law enforcement agency, including and especially the Police Division and other relevant bureaus within the Suffolk County Sheriff's Office, exhibits characteristics that fit under the following three primary headings: (1) organizational; (2) occupational; and (3) strategic. It is within this framework that it should be recognized that deputy sheriffs are police officers in every sense.

The organizational structure of Deputy Sheriffs is the same as police agencies everywhere. The stated mission of the Suffolk County Sheriff's Office is, in relevant part, that deputy sheriffs "are dedicated to providing the highest quality services in order to improve community safety, protect life and property, reduce crime, reduce the fear of crime in Suffolk County..." This mission statement is similar to other neighboring police departments, including the New York City Police Department and the Suffolk County Police Department.

The civil service examinations and civil service job descriptions, and process, are identical. Deputy Sheriffs and Police Officers employed by the County of Suffolk attend the same Police Academy and are trained using the same curriculum.

When a deputy sheriff is promoted to sergeant, he/she goes for additional training. The newly promoted sergeants generally go to the Suffolk County Police Academy, although they have also gone to Nassau and New York City as well.

The Sheriff's Office maintains an Academy Bureau, which is comprised of recruit training, in-service training, canine training, and firearms training. Thus, just like other police agencies, the Sheriff's Office maintains training programs even after deputies are sworn in and those programs are consistent with police training throughout the region, State, and nation.

The Structure of any police organization falls along three lines: (1) operational units, (2) support units, and (3) administrative units. Every police organization, no matter the size, has units that fit within this scheme. The Police Division of the Suffolk County Sheriff's Office, along with its associated bureaus staffed by deputies, is no different.

The rank structure, other than in title name, for deputy sheriffs is similar if not identical to the rank structure of the Suffolk County Police Department and other police agencies. There is Deputy Sheriff I which is comparable to title of Police Officer. Deputy Sheriff II, also known as a Deputy Sheriff Sergeant, is the first line supervisor. The Deputy Sheriff III title is also called Deputy Sheriff Lieutenant, and Deputy Sheriff IV is the Captain title. There is also a Chief Deputy Sheriff. The chain of command for deputy sheriffs is similarly identical compared with other police departments.

Within each of the ranks, with the exception of the chief, there's the investigator title. Like the title of detective, "investigator" is a designation.

Police Division is comprised of nearly all deputies of the various titles. It is, for all intents and purposes, the Police Department of the Suffolk County Sheriff's Office. Deputies make up seven of the eight primary sections within the Police Division.

By far the "largest section of uniformed officers", the deputies assigned to the Headquarters Bureau work in Special Operations Section (which includes Police Canine Unit), Vehicle and Traffic Enforcement Section, the Sheriff's Labor Assistance Program, Marine Patrol Section, and the Impound Section. There are approximately 84 deputies assigned to the Headquarters Bureau, which represents nearly one-third of deputy sheriffs of all ranks.

Approximately three dozen deputies have the training necessary to use the license plate reader. Similarly about two dozen deputies have the training necessary to use LIDAR and RADAR equipment.

Deputy sheriffs assigned to the Headquarters Bureau perform a wide array of functions including emergency room runs, prisoner transport, traffic enforcement, and patrol at Gabreski Airport. Deputies also help with other calls for service and assistance from other police agencies.

Beginning in September 2008 Deputies took on additional patrol functions on both the Long Island Expressway and the Sunrise Highway. The patrol functions performed by Deputies on the highways expanded upon patrol work previously performed by Deputies on the highways and on other roadways.

The Highway Enforcement Section falls under the Enforcement Bureau but it was universally testified that deputies are often pulled from the Headquarters Bureau and are assigned patrol work on the highways or elsewhere throughout the County.

The Enforcement Bureau is the bureau to which the second highest number of deputies is assigned. There are approximately 63 deputies of all ranks permanently assigned to this bureau. The Enforcement Bureau includes the Highway Enforcement Section, the Civil Enforcement Section, and Police Records Section.

As of December 2009, approximately 24 deputies were assigned on a permanent basis to cover highway patrol functions. Additionally, there is one other deputy on light duty that is performing administrative support functions and two sergeants are assigned permanently to midnights. However, these permanently assigned Deputies are simply not sufficient to staff the highway patrol division on a 24 / 7, around-the-clock basis. As part of his scheduling functions, Lieutenant Migliore must staff 21 shifts per day along with six to eight additional HOV shifts filled twice each day during morning and afternoon rush hours and two additional units on Sunrise Highway staffed in the evening.

Deputies assigned to Highway Patrol handle accidents, assist disabled motorists, enforce the Penal Law and Vehicle and Traffic Law including DWI enforcement, conduct commercial vehicle enforcement inspections, perform escorts for funerals and in the event of an organ transplant. Deputies are trained to use LIDAR and RADAR equipment and regularly perform those functions during patrol.

As part of their highway enforcement functions, deputies also set up DWI checkpoints on the highway exit ramps. To staff these checkpoints at least six additional deputies are needed. The Police Division in the Sheriff's Office and other police agencies, including the Suffolk County Police Department, receives grant money to participate in the click-it-or-ticket campaign.

In total, 60 different deputies are used to staff the highway patrol division in a given week. This amounts to one-third of all Deputy Sheriff I titles.

Deputies assigned to the Domestic Violence Bureau "[s]erve, and enforce orders of protection issued from any of the courts in the county and enforce family offense and criminal contempt warrants of arrests." According to the Sheriff's Office 2008 Annual Report, the functions of deputy sheriffs assigned to the Domestic Violence Bureau are threefold. First, "[t]hey serve and enforce the Orders of Protection [; second,] they arrest individuals charged with violating Orders of Protection and those with family offense related warrants [; and t]he third function is to provide victims with a safe refuge by removing batterers from the home, seizing weapons and executing all arrest warrants against the perpetrators of domestic violence."

The DVU receives a faxed list from the court each day with the names of individuals wanted for domestic violence violations each day. The Suffolk County Police Department also receives the same fax and both agencies work off the same list; on occasion, deputies and SCPD

officers have arrived at the same location to arrest a wanted individual. Both officers perform the same functions in executing warrants for arrest.

Deputies assigned to the First District Court are involved in the transportation and processing for pre-arraignment and processing of arrests. They also perform these functions post-arraignment if prisoners are coming from jail for purposes of court hearings.

Dr. McCabe, a veteran of the New York City Police Department and expert on the inner workings of other police agencies throughout the nation, also compared the role of deputies assigned to the First District Court with other police officers. He explained:

Interestingly, the first district court is the entity in the sheriff's organizational structure that processes the prisoners or I should say is intermediary between the field unit and the court. So an arrest is made anywhere in Suffolk County, the prisoner is delivered to the first district court or the sheriff takes custody of the prisoner until the prisoner is arraigned. And if the prisoner is set free, they go free, and if they're remanded, then the department of corrections takes over.

In Nassau County, the police perform those first two functions. In New York City, the police perform those first two functions. So if somebody gets arrested in Brooklyn, they're taken to Brooklyn court where the Brooklyn - - the police from NYPD in Brooklyn take charge of the prisoner, deliver the person to court and the prisoner is either arraigned or set free. The equivalent job that's done by the police in both Nassau and New York City is done by the First District Court.

Notably, deputies assigned to the First District Court perform other law enforcement functions outside of the section itself.

The Investigative Services Command encompasses the Criminal Investigations Bureau ("CIB"), the Warrant Bureau, including the Sex Offender Section, and the Task Force Bureau.

The warrant squad executes all warrants assigned to the Sheriff's Office. Warrant squad officers make hundreds of arrests as part of their regular duties.

There are two deputies assigned to a customs task force wherein they investigate drug-related cases by following money transactions. Two additional deputies are assigned to the Drug Enforcement Administration where they perform long-term narcotics investigations and conduct wiretaps. Two more deputies are also assigned to the East End Drug Task Force where they work undercover on narcotics cases at the street level. One Deputy is assigned to the High Intensive Drug Trafficking Area Task Force which has focused on intelligence gathering since the September 11th attacks. In total there are approximately eight different Deputies assigned to task forces on a regular basis; however, additional Deputies may be assigned to task forces on an as needed basis depending upon the types of cases which come up and the staffing appropriate.

Deputies on each of these task forces face dangerous situations where they encounter drug dealers, weapons, and a host of other unknown risks. One of the deputies assigned to the U.S. Marshal's task force was involved in a shooting, wherein the fugitive made a movement toward the deputy, who shot the suspect in defense. To mitigate these risks Deputies in the task forces take advantage of the K-9 unit. Deputies are also pulled from the headquarters bureau, civil bureau, and other areas as needed to assist K-9 unit.

The chief role of CIB is to investigate any and all felonies and fugitive issues. In 1997 CIB deputies spent approximately 60 to 75% of their time focused on crimes which occurred within correction facilities. As of 2000, however, deputies in CIB spent approximately 50% of their time performing investigations related to crimes in the jails and approximately 50% of their time performing functions on the roads.

Deputies in CIB began handling investigations surrounding struggles that occurred during arrests including struggles which resulted in death. Deputies also handle suicide investigations.

SCPD officers do not, in contrast, possess this training certification to perform death investigations.

The role of deputies in CIB expanded so now they handle all investigations related to any work performed by deputies. CIB Deputies handle burglaries and robberies when in the past these tasks had been turned over to the SCPD; today that is no longer the case.

There have been times when Deputies and SCPD officers disputed who should handle certain police matters. To resolve these disputes the SCPD and the Suffolk County Sheriff's Office entered into a memorandum of agreement. Pursuant to the agreement, deputies handle all matters which are the direct result of action taken by deputies. Therefore, deputy sheriffs of the SCSO were acknowledged as performing police and criminal law enforcement functions.

The Sheriff's Office, in its 2008 Annual Report, described that the Warrant Bureau generally consists of five sections to which deputy sheriff investigators are assigned. They include: Family Offense; Abuse & Neglect; Juvenile Delinquency; PINS; and Service of Summonses in all areas. As part of its assignments, deputy sheriff investigators assigned here also assist the DEA, the U.S. Marshal's, the East End Drug Task Force, and various East End police departments with warrant arrest operations.

Homeland security has become an important element within the Sheriff's Office. This office was set up in the aftermath of 9/11.

Deputies and supervisors assigned to the Emergency Preparedness Section are part of HAZMAT [hazardous materials] strike team for the County of Suffolk. The HAZMAT strike team is a "[m]ulti-agency team that can respond to HAZMAT incidents and decontamination." Deputies are responsible for security in these types of incidents.

Deputies are also part of the County's incident management assistance team and "we have some people assigned to the County for planning for the County for emergency preparedness."

The Operations Division of the Sheriff's Office includes many administrative units. They include the public information office, asset forfeiture bureau, honor guard bureau, grants bureau, property bureau, personnel investigations bureau, accounting bureau, among others. The Operations Division also includes some of the support units such as communications. One of the commands that falls under the Operations Division is the Pistol License section. Some other commands that fall under the Operations Division are the Sheriff's Office community oriented policing efforts (COPE) and the Gang Resistance Education And Training (GREAT) program. GREAT is "a school-based program, community interaction program with the sheriff's office similar to - - the curriculum is different but it is administered similarly to the DARE [drug abuse resistance program] program that used to be prevalent in Suffolk County."

Like with most police agencies, the Suffolk County Sheriff's Office also has an Internal Affairs Bureau. Its functions are similar to those performed by officers in the Suffolk County Police Department.

The recent decision by the State's Public Employment Relations Board ("PERB") with regard to the duties performed on certain parts of those roadways deserves further discussion.

The Suffolk County Police Benevolent Association (SCPBA) and the Superior Officers Association of the Police Department of the County of Suffolk (SCSOA) filed separated improper practice charges with PERB, Case Nos. U-28611 and U-28610 respectively, alleging that the County unilaterally and improperly transferred their unit work to the deputy sheriffs. In what is perhaps the longest decision by an administrative law judge in PERB history (79 pages), both

charges were dismissed in their entirety as it was found that the work previously performed by the SCPBA and the SCSOA as not exclusively performed by either unit.

The work at issue was defined by the ALJ as the “patrolling of highways, which includes the duties of assisting disabled motorists, handling motor vehicle accidents, making arrests for violation of the penal law, making DWI arrests, and enforcing any local New York State or federal law.” With regard to the work at issue, a discernible boundary was drawn around the Long Island Expressway (“LIE”) and Sunrise Highway within the police district. The SCPD abolished its Highway Patrol Bureau and removed all SCPBA and SCSOA members from the L.I.E. and Sunrise Highway.

Judge Maier credited the testimonies of Chief Kneitel and the Executive Officer, Deputy Sheriff Sergeant Todd Cobe, regarding the qualifications of deputies and the duties they performed on the highways within the police district (five western towns) on an increasing basis beginning in October 2005, after the Townley Award (discussed infra) was issued. Specifically, Judge Maier also credited uncontested testimony and stipulations of fact that individuals in deputy sheriff titles performed the same actual duties as police officers. The duties performed were many and include, but are not limited to, enforcing the Vehicle & Traffic Law, Penal Law and other applicable laws, using LIDAR and/or RADAR, issuing summonses; checking motorists’ driving history and/or outstanding warrants; assisting disabled motorists; making arrests, including DWI arrests, and/or responding to or handling motor vehicle accidents. Deputies also acted as first responders to incidents on the highways within the Police District.

When discussing the role of deputy sheriffs, Judge Maier’s decision acknowledged that deputies have police officer status under the State’s Criminal Procedure Law. He also noted that

“[t]hey participate in the same training in the County police academy as most if not all other police agencies in the County. Once they graduate they also receive additional training, some of which is relevant to their duties involving highway patrol enforcement.”

This decision, which was issued on or about August 12, 2010, is notable for several reasons. First, it further demonstrates that the deputy sheriffs are police officers. Second, it shows that while deputies had performed highway patrol functions in the past, their presence there and the duties they were asked to perform increased gradually over the last five years. And finally, as a result of this decision, deputy sheriffs continue (as they have since September 15, 2008) to be the primary law enforcement unit on the L.I.E. and Sunrise Highway throughout the County of Suffolk.

It is also worth noting that this decision is limited to the highways within the five western towns of Suffolk (the Police District). The duties of deputies in the East End and in performing other police functions throughout the County were well documented and have been discussed at great length.

One of the hallmark traits of a police department is that it has written policies and procedures for just about anything. The Directive Manual of the Sheriff’s Office includes a myriad of law enforcement and police directives. These include hundreds of directives regarding arrests and summonses, evidence and property, police operations for various incidents such as motor vehicle stops and accidents, domestic incidents, and orders of protection. There are prescribed police operations regarding searches, Miranda warnings, roadway safety and sobriety checkpoint procedures, stop and frisk procedures, among others. Reporting and recording procedures are included. There are directives on investigative operations. Entire chapters are

devoted to the use of force and emergency operations such as explosions, bomb threats, fire and medical emergencies, and special events.

While it is unnecessary to list every directive issued by the Sheriff's Office to its deputies, what is unmistakable is that policies and procedures exist that are identical to those that govern other police departments throughout the state and nation.

In considering the law of the State of New York, there is significant support for the DSPBA's argument that it should be placed within the police pattern. Specifically, as described below, the state legislature saw fit, in multiple instances, to treat deputy sheriffs as police officers. Therefore, it would seem reasonable that this Panel reach the same conclusions.

Certain occupational characteristics are similarly exhibited in all police agencies. Occupational characteristics – those tasks that are actually performed – fall into five different subheadings in every police department. They are: (1) law enforcement; (2) order maintenance; (3) service; (4) homeland security; and (5) other general administrative capacities.

Law enforcement is traditionally the activities of the police to enforce the law that usually results in arrest and summonses. According to the Sheriff's Office own records, there were approximately 8,974 traffic summonses issued and approximately 2,660 arrests made by deputy sheriffs in 2008 alone. That number rose in 2009, where through September, deputies had issued more than 16,500 summonses and effectuated nearly 3,000 arrests.

If we look at the number of summonses issued, the number of summonses issued per deputy sheriff in 2008 was 33.49. The average New York City police officer issued 34.31 summonses.

Deputies regularly perform arrests for crimes in progress that generate “summary charges.” Summary charges differ from warrant arrests where the crime is not in progress at the time of arrest. Summary charges require additional paper not necessary for warrant arrests.

The hard data submitted into evidence, along with the testimony presented throughout the hearings, demonstrates the law enforcement functions performed by deputies on a daily basis.

Order maintenance, like its name suggests, is the maintenance of order or the absence of disorder. General activities include “peace keeping, preventing disorder, maintaining order, traffic control, crowd control type of activities.” A sampling of requests by various towns and villages throughout the County of Suffolk seeking assistance from deputies with events, fireworks shows, road races, parades, concerts, etc. was introduced during the hearing. These requests came from the Northport Village Police Department, East Hampton Town Police Department, Quogue Village Police Department, Asharoken Village Police Department, Riverhead Town Police Department, Westhampton Beach Police Department, Shelter Island Police Department, and the list goes on.

Traffic control includes elements of order maintenance. Deputy sheriffs have authority to provide such function on all the roadways throughout the County. Specifically, they have, since September 2008, performed, exclusively, the traffic enforcement and order maintenance functions on the Long Island Expressway and Sunrise Highway throughout the County.

Service is that catchall phrase of functions performed by police. A review of blotters details the tens of thousands of calls for service that deputies respond to in a given year. They include accident responses, aided cases, missing children, giving directions, providing transportation, and so on.

The Police Division of the Sheriff's Office has a specific Homeland Security Section which addresses this important function. This new role, one that has emerged in the aftermath of September 11th, is focused primarily on "civil preparedness, securing critical facilities as far as mitigation and response go." Deputy sheriffs in Suffolk County are set up to respond to critical incidents and to mobilize a field force

Under the heading of general administrative functions fall such items as property management, pistol licensing, and Election Day details. Elections in the five western towns of Suffolk County are administered, secured, and safeguarded by the Suffolk County Police Department. Similarly, elections in the five eastern towns of Suffolk County are administered, secured, and safeguarded by the deputy sheriffs of the Suffolk County Sheriff's Office. This same concept applies to pistol licenses.

In the context of police strategy, the deputy sheriffs perform traditional law enforcement functions, they respond to and perform order maintenance requests, and they also have community policing programs. GREAT deals with gangs and is just one example. In sum, the deputy sheriffs of the Suffolk County Sheriff's Office are, like any police organization, engaged with the community and partnering with the community to combat local problems. That is community policing.

The Deputy Sheriffs belong in the police pattern. The history of collective bargaining does not preclude it.

One criterion that must be considered is the history of collective bargaining between the parties. As the will be demonstrated, the evolving and expanding functions performed by Suffolk

County deputy sheriffs, including significant changes to their legal status under the Taylor Law now requires placement of the DSPBA into the police pattern.

For many years, the Deputy Sheriffs were part of the Civil Service Employees Association, which included many other Suffolk County workers, most of whom were civilians. Then, on or about 1982, the Deputy Sheriffs and Correction Officers employed jointly by the County and the Sheriff's Office separated from CSEA and created ADSCO, the Association of Deputy Sheriffs and Correction Officers. However, in 1985, recognizing insurmountable differences related to what they do and where they do it, the Deputy Sheriffs and Corrections Officers created separate bargaining units and negotiated separate collective bargaining agreements. Today, Deputy Sheriffs and the Corrections Officers continue to operate as separate bargaining units. And, it goes without saying, the functions performed by each title are vastly different and varied.

In 2003, after successful lobbying, the DSPBA was able to gain passage of an amendment to the Taylor Law that granted Deputy Sheriffs compulsory interest arbitration. Not too long after it became law, the DSPBA and the County participated in what some had billed, correctly or incorrectly, the first ever deputy sheriff's arbitration in State history. The result was the Townley Award, named of course after interest arbitrator, Rosemary Townley, who authored the decision.

The question before Townley, as it is here, is "which bargaining unit(s) is "comparable" to the Deputy Sheriffs?" Townley concluded:

... if a column exists with respect to salary and related issues, at the top end we would find the Suffolk police units, while the bottom end we would find the AME [Association of Municipal Employees which represents the County's civilian employees]. The proper placement of the Deputy Sheriffs on the continuum would continue to be a number of tiers above the AME, as well as above the COA

[Correction Officers Association] as part of some movement toward the police end of the column.

The DSPBA submits that this decision was improper and that it should be placed in the same pattern as the other police units. However, even if Townley's Award appropriately placed the DSPBA on the so-called "pattern continuum," the reality is that the members of the Correction Officers Association continue to receive compensation well above the members of the DSPBA. The benefits awarded placed the DSPBA well below her assessment and certainly did not mirror the "movement toward the police end of the column" asserted by Townley.

When you read through the Townley Award, three primary reasons were provided by Arbitrator Townley that called for distinguishing between the DSPBA and other police units. First, the compulsory interest arbitration provision in the Taylor Law that covers deputy sheriffs was slightly different than the arbitration provision for other police units. Specifically, the provision that is applicable to deputy sheriffs was limited to compensatory items only. This difference, Townley concluded, even in the absence of proof in the record before her, must have been because the legislature and the governor determined deputy sheriffs were less than full police officers. The second reason Townley distinguished the DSPBA from other police units is her reliance on past contracts that put deputies in a pattern below police. And the third, and final, reason for distinguishing between deputies and other police was based simply on the testimony of the Sheriff's Office employee relations director that there were a small number of deputies performing patrol services.

Townley's conclusions, which formed the basis of her award, were not based upon any evidence submitted in the record, all of which has been provided to the panel during the hearings

in this matter. Townley's conclusions were outright wrong and factually incorrect. This brief will address each of her inaccurate conclusions in turn.

Section 209.4(g) of the Taylor Law provides:

With regard to members of any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service as certified by the county sheriff and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed by law. Provided, further, that with regard to any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this subdivision pertaining to interest arbitration shall only apply in the event that the collective bargaining agreement between the public employer and the public employee organization has been expired for a period of not less than twelve months and the parties have fully utilized all other impasse resolution procedures available under this subdivision.

Section 209.4(g) is distinguishable from certain other police and fire units in several ways. First, certain mandatory subjects of bargaining are non-arbitrable. Put another way, only terms and conditions of employment directly relating to compensation can be subject to compulsory interest arbitration. Second, there is a 12 month waiting period before either the public employer or the deputy sheriffs union can petition for arbitration. That is, a union comprised of eligible deputy sheriffs must wait until its contract is expired for at least one year before it can file for arbitration.

The history of how Section 209.4(g) came about, however, is much different than the Townley Award describes. The current Sheriff, Vincent DeMarco, was President of the DSPBA at the time the law came about. He was a proponent of the law's change. In fact, DeMarco was directly involved with negotiating this change with the Governor's office and the State legislature. Although DeMarco did not testify during the hearings in this matter, the DSPBA was able to secure the DSPBA's lobbyist who has similar knowledge. His testimony, along with the legislative history of the law itself (something that was never introduced at the Townley hearings), clarify that the reason for differences in the law had nothing to do with thinking deputies were any less police officers compared to other police officers.

William Schnell has lobbied on behalf of the DSPBA since 2001, and continues in that capacity today. Further Schnell also served as the Deputies' lobbyist from 1992 through 1995. Schnell assisted former DSPBA President Vincent DeMarco in obtaining compulsory interest arbitration in the event of impasse in 2001. Schnell lobbied, in conjunction with other deputy sheriff organizations throughout the state, to get support from state legislators to sponsor a bill for interest arbitration. The bill, however, was vetoed by Governor Pataki in 2001 because he was seeking to reform the ability to pay portion of the Taylor Law. Thereafter, Schnell lobbied again on behalf of the Deputies for interest arbitration. The new bill unanimously passed in both houses but was again vetoed by Governor Pataki in 2002. In his second veto message Pataki provided the Deputies with a road map to get the bill passed. Pataki viewed the interest arbitration legislation as more generous than that awarded to the state police, and therefore he suggested limiting it to just economic issues so that it would be akin to the state police provision.

Notably, State Police (Troopers) had been granted interest arbitration but the provision of the section applicable to them, Section 209.4(e), explicitly excluded from interest arbitration all issues “relating to disciplinary procedures and investigations or eligibility and assignment to details and positions, which shall be governed by other provisions prescribed by law.” State Police were no less police officers because of this change but it was a politically negotiated deal to address ideological concerns regarding the law’s applicability.

The Deputies then lobbied a third time, taking Pataki’s suggestions into account and limiting the bill to cover economic issues the way the state police’s bill was drafted. Schnell (and DeMarco) met with representatives from the Governor’s office and the parties were able to agree that deputies would be entitled to interest arbitration in a manner akin to the state police’s provision.

Part of the bill that was submitted to the Governor for his signature also required deputies to wait for 12 months before interest arbitration. Again, this addressed ideological concerns and was consistent with the State’s policy to encourage voluntary agreements between the parties.

Schnell explained that at no point did the Governor’s office question the Deputies’ status as police officers, a point that went unrefuted throughout the hearings. Rather, Schnell testified, to the contrary there was a general consensus that deputies were police officers pursuant to the Criminal Procedure Law. The Governor’s office did, however, seek to exclude certain deputies who worked primarily in the jails or those who do predominantly civil functions from entering interest arbitration. The Governor's office did not seek to exclude the Suffolk County Deputies from the ability to enter binding interest arbitration.

Knowledge of the history of Section 209.4(g) eliminates the mistaken distinction that Townley relied upon. In fact, understanding the history of how deputies were granted interest arbitration only further supports their inclusion in the police pattern.

The history of bargaining for the DSPBA was not static; rather, it is one that can only be described as dynamic and fluid. If there is one constant, however, it is the ever increasing climb by the Suffolk County deputy sheriffs up to the top of the pattern continuum, joining their counterparts in the Suffolk County PBA, SDA, SOA, and DIPBA.

As was recognized when hearings in this matter began approximately one year ago, history matters. Patterns do have a place, but they are not fixed. A union, like the DSPBA, is not forever glued to one pattern. If the testimony and evidence presented throughout the hearings demonstrate anything it is that deputy sheriffs are police officers in what they do and how they do it. They have also been treated by the County as police officers, as evidenced by the ever-increasing duties they have been asked to perform. The only place they have been treated as less than police is at the bargaining table.

Townley was not presented with the type of hard data and testimonial evidence before this Panel. And no evidence indicates that Townley was made aware of the evolving and increased functions performed by deputies over the years. Perhaps she would have concluded otherwise if she was presented with such evidence.

What matters most, however, is that even since the Townley Award was issued, there have been significant changes to the role that deputies play in the County of Suffolk. They have been asked to do more of the things they have always done and they are continually being asked to do things that they had never done before.

It is significant that deputy sheriffs, since on or about September 15, 2008, have taken over the primary functions of patrolling Suffolk's highways. And a recent decision by PERB permits this job to continue. Testimony was presented which establishes that 60 different deputies are required to staff the Highway Enforcement Section each week and that deputies throughout the Police Division are pulled from their commands to perform this function.

Even in the absence of the highway patrol functions, however, the record demonstrates that deputies perform police work and law enforcement work in all they do. The instant matter presents unique, extraordinary, compelling, and critical circumstances that cannot be addressed without stretching the parameters of historical patterns. There is ample precedent throughout the State of New York that supports inclusion of the deputies in the police pattern:

In January 2006, Arbitrator Michael Lewandowski concluded that deputies in Albany County are comparable to police officers in other counties and municipalities.

In May 2006, Arbitrator Jeffrey Selchick awarded certain Schenectady County deputies a one time 5% law enforcement salary differential on top of their annual wages "in recognition of the fact that they are police officers . . . [who] face additional risks and hazards and must be compensated in accord with other police officers."

In January 2007, Arbitrator Martin Scheinman considered the history of collective bargaining that placed deputies in a separate and lower pattern than police but also acknowledged that, with respect to Rockland County Deputy Sheriffs, "it would also be improper to ignore the wages, hours, and terms of conditions of employment of police officers in towns and villages of Rockland County when determining the appropriate salary and benefit levels for members of the

Association. This is due to the fact that members of the Association perform functions which, in many cases, are similar to those performed by police officers in those departments.”

One month later, in February 2007, Arbitrator Joel Douglas wrote, with respect to Putnam County’s deputy sheriffs’ union:

The time when the Office of the County Sheriff performed limited police duties and was concerned primarily with Civil Duties and the enforcement of administrative tasks has long passed. The record reflects that the Office of the Putnam County Sheriff is a full time professional full-service 24/7 police agency.

The same can be said of the Suffolk County deputy sheriffs. Arbitrator Douglas then concluded that comparisons for deputies must include all relevant full-time salaried full-service police departments.

Finally, in January 2009, Arbitrator Peter Prosper issued an arbitration award concerning Oneida County Deputy Sheriffs where the same issue came up. The union and its joint employers there agreed that the proper job titles for purposes of comparisons were other law enforcement titles. The union, however, argued that other police agencies throughout the County should be included as comparables while the joint employers argue that the only appropriate comparison is other county Sheriff Departments. Arbitrator Prosper concluded:

The Panel finds that a logical choice of comparables is other County road patrol units . . . However, police departments in villages, towns and cities within Oneida County, along with the County’s police officers, comprise a local labor market. Within that market there is always movement of police personnel between and among police agencies, competition which must be acknowledged. There exists the possibility of police personnel leaving one agency for another for higher wages and/or benefits if salaries and benefits of one agency get substantially out of line with other agencies.

Therefore, there is already authority and precedent that exists to do what the Suffolk County Deputy Sheriffs PBA is requesting this Panel to do. The record overwhelmingly establishes the fact that deputy sheriffs are police officers and should be in the police pattern. Their salaries and other benefits should be elevated to the same levels.

The Townley Award also relied upon testimony presented by the Sheriff's Office Employee Relations Director with regard to the number of deputies that perform "patrol functions." Specifically, the County continues to place deputies in a pattern with correction officers, arguing that what deputies do is more closely comparable and related to the functions performed by correction officers. This, however, cannot be further from the truth.

What was most troubling about Townley's reliance on the testimony presented by the County's Employee Relations Director, Robert Draffin, was that a superficial connection was made between so-called "patrol" functions and police work. Robert Draffin, who continues to work as Employee Relations Director, has never been a police officer and has never received training as a law enforcement officer in any capacity. He testified at the Townley hearings as follows:

A. Yes, I believe you [counsel for the County] pointed out that the main difference is the patrol function. There are some deputies that do the patrol function. The majority does not, and I have, basically, 35 deputies I can identify that do have primary patrol function.

Q. Out of how many units' members?

A. Out of 252 currently that represents about 14 percent.

Q. How did you say that breaks down?

A. In the marine unit, there are eight Deputy Sheriffs essentially assigned for perimeter, I guess, slash booth, as it is called. There are 15 Deputy sheriffs at the airport, there are currently nine. However, the county executive

proposes in his current budget to civilianize those, and there are three K-9 Deputy Sheriffs.

Draffin's testimony presupposes that patrol work is the only type of police work that exists. Furthermore, even assuming his testimony was factually accurate (which we believe it was not), there have been significant changes in the last five years that would make Draffin's testimony then unreliable today.

DSPBA Exhibit No. 4 sets forth the number of deputies assigned to each command within Sheriff's office. Specifically related to the Police Division, the breakdown is as follows:

| | |
|--------------------------|----|
| Headquarters Bureau - | 84 |
| Enforcement Bureau - | 63 |
| First District Court - | 37 |
| Domestic Violence - | 25 |
| Investigative Services - | 27 |
| Homeland Security - | 5 |
| Emergency Preparedness- | 4 |

As described in more detail earlier in this brief, a significantly higher percentage than testified by Draffin perform patrol work. Sixty different deputies alone perform highway patrol and enforcement functions. 100% of all deputies perform police work or law enforcement work similar to the SCPD, the NYPD, and all other neighboring police agencies. The Townley panel seems to suggest that police work can only consist of patrol functions. This is simply wrong.

The record clearly supports the conclusion that deputy sheriffs are police officers and should be treated as such.

A final comment with regard to Correction Officers is noteworthy. Recently, there was a decision by Arbitrator Stein setting forth terms of a successor agreement for the COA. In his award, Stein, for the first time ever, found the existence of a new so-called "Sheriff's Office pattern." He found that the relative bargaining relationship between deputies and correction

officers should operate, generally, in lockstep. However, he awarded correction officers greater base pay and higher credit for concessions than the DSPBA received by Townley. The COA is not a valid comparable to the DSPBA; that much has been proven throughout the hearings in this case. What is most troubling, however, is that Arbitrator Stein went out of his way to draw factual conclusions about deputy sheriffs – what they do, how long they have been doing what they do, their legal status, and their bargaining history – without ever consulting the DSPBA or seeking its input. The DSPBA was, obviously, not a party to the COA’s proceeding and did not have an opportunity to correct the record. Not surprisingly, therefore, the “factual” conclusions reached by Stein are unsupported by the actual facts and reality. Therefore, the DSPBA urges this Panel to ignore Arbitrator Stein’s COA award. That award relied on assumptions that are unsupported by the record and those assumptions have been proven false by the testimony and evidence submitted throughout the hearings in the instant matter.

There are other reasons why the SCPD’s PBA, SDA, SOA, and DIPBA are the best comparators to the DSPBA. They share the same legal status, as police officers and again as detective/investigators. They have the same rank structure and quasi-military chain of command. They are all hired from the same labor pool. They all live and work in the same area with the same cost of living and the same demographic comparisons. They are called upon to provide police services in the same or substantially similar geographic areas. They receive the same training from precisely the same training academy and from the exact same training officers. Finally, they work side-by-side handling incidents and in serving on the same task forces. Notably, some officers in other police agencies do not perform patrol functions and yet they

receive the same pay and benefits because they are responsible for performing other criminal law enforcement activities.

Public interest requires a contract that rewards Deputy Sheriffs for continued excellence in service in light of additional and evolving responsibilities.

The interests and welfare of the public are best served by police agencies that are comprised of officers and deputies who are well-trained, given the appropriate resources and support, and whose morale is high. It is paramount, especially given the increasing demands placed on them, that Suffolk County deputy sheriffs be compensated in a way commensurate with the work they perform and the growing danger of the job.

Suffolk County deputy sheriffs risk their lives each and every day to provide the high quality of life that Suffolk residents and visitors expect. Despite added responsibilities, they continue to demonstrate aggressiveness and hard work each and every day. And the result has been safe communities and a reduction in crime, while, at the same time, effectuating cost savings for the County.

Deputy Sheriffs deserve a contract that will generate a sense of community (rather than disempowerment) with other police officers in the same County. Deputies merit an award which establishes terms and conditions of employment that understands, values, and provides for their needs and services. In short, deputy sheriffs of the County of Suffolk have earned the right to share in the fruits of their labor.

Peculiarities of the police profession mandate compensation and benefits that acknowledge increasing demands that are inherently dangerous. In arriving at a just and reasonable determination, the Taylor Law requires that the Panel consider the peculiarities of the

policing profession, including specifically the hazards of employment, physical and mental qualifications, and job training and skills. This Panel, having lived through interest arbitrations with other police units, is all too familiar with the unique role that deputy sheriffs play and the exceptional work performed by them. No other profession requires its members to put their lives in real jeopardy every day.

Police work is inherently dangerous. There is an expectation on the part of the public that its police force maintain a high level of alert at all times, respond to emergencies in an expeditious manner, and perform their work with a high degree of competence.

Suffolk's deputy sheriffs deserve to be compensated and receive benefits commensurate with the work they perform. The Nassau-Suffolk region is consistently one of the safest regions in the country. The results produced by its police officers and deputy sheriffs prescribe that the DSPBA's proposals be adopted in their entirety.

The County has the ability, just not the desire, to pay for the DSPBA's reasonable wage and benefit proposals.

While Suffolk County was not immune from the negative effects of the national recession, such budget pressures caused by this temporary economic downturn do not fully reflect the County's overall fiscal health. The County currently has sufficient reserves, high wealth levels and other untapped sources of local revenue sufficient to meet the DSPBA's reasonable wage and benefit proposals. More importantly, Suffolk County is successfully financially weathering the economic downturn and stands poised to rebound and achieve significant growth as the economy continues to recover. Thus, the credible financial data shows that Suffolk County unequivocally has the ability to pay the DSPBA's contract proposals.

The DSPBA's proposals are reasonable and are meant to compensate DSPBA members commensurate with the work they perform and the hazardous, life-threatening situations they face on a daily basis. The DSPBA's proposals are reasonable and well within the County's ability to pay. The indicators of Suffolk County's fiscal health are strong and prove that the County has the ability to pay for the benefits sought.

Kevin Decker, a partner at Valuation Resources Group, LLC and president of an economic consulting firm, provided evidence representing Suffolk County's ability to pay for the DSPBA's contract proposals. Mr. Decker's highly organized analysis allows one to not only understand the basic structure of Suffolk County's budget, but to identify trends in the data and make the imminently reasonable conclusion that Suffolk County has the ability to pay for the DSPBA's proposals.

The County's continued economic stability and financial growth during the economic downturn show that it has the ability to pay the benefits sought. This conclusion regarding the County's ability to pay is reached by considering key indicators of the County's financial health: sources of revenue, economic and demographic trends. Of the various County funds from which it budgets its expenses, the members of the Suffolk County DSPBA are exclusively compensated from the "General Fund." The General Fund is the County's primary operating fund and accounts for the majority of its resources.

The majority of the General Fund is funded by the County's Sales and Use Tax and the Real Property Tax. Each of these sources of revenue is considered separately below. It should be noted that deputies' salaries are paid from the General Fund. Furthermore, the County has not raised taxes on the General Fund for approximately the last seven years. Nevertheless, despite the

political decision not to raise taxes, the County continues to have the ability to pay for the reasonable and fair proposals sought by the DSPBA.

The County's sales tax generates the largest portion of revenue used to compensate the DSPBA. The County's sales tax is the source of 51% of the revenue which comprises the General Fund. The General Fund is funded with 86.9% of sales tax revenues collected Countywide. Further, in 2009 and 2010 the County will allocate an even greater share of the sales tax towards the General Fund.

Sales tax collections in Suffolk County are consistently strong. Since 2002, Suffolk County's total sales tax revenues increased at an average rate of 4.53%. Despite a small decline from 2007 to 2008 of 1.1%, sales tax revenues have steadily increased from \$892.5 million in 2002 to \$1.164 billion in 2008.

Despite the recent impact of the economic downturn, the County estimates an increase in sales tax revenues for 2010. The quarterly sales tax collections for Suffolk County roughly track the course of the economic downturn. First, during the second and third quarters of 2008, sales tax collections closely mirrored the amounts of the same quarters in the previous year. Next in the fourth quarter of 2008 the sales tax collected decreased by 5.1% from the same period in 2007. In the first three quarters of 2009, sales tax collections decreased between 9-10%. The most recent data indicates that in the final quarter of 2009, the decrease over the same period in 2008 softened to 5.9%. The County's 2010 Adopted Budget estimates that sales tax revenues will grow approximately 6.5% over the estimated actual collections for 2009. This 6.5% growth of sales tax from 2009 to 2010 is approximately two percentage points higher than the average

annual percentage change for the past six years. This prediction of above average growth reveals that Suffolk County expects sales tax revenue collections to achieve meaningful recovery.

Suffolk County has achieved significant growth in the amount of sales which form the basis of its sales tax revenue. Each year since 1999, the County has seen a rise in taxable sales subject to the applicable sales tax. Over this period the average annual growth of the sales tax base was 5.63%, a figure well above the average annual rate of price inflation of approximately 3%. This excess indicates that Suffolk County's economy is undergoing real growth and with these increased sales will continue to expand as the economy is rehabilitated.

The County's large and attractive retail base shifts a portion of the responsibility to fund the DSPBA's proposals onto non-residents. Suffolk County ranks second, among Long Island and lower Hudson Valley counties, in taxable sales averaged over the population. This statistic indicates that a "relatively greater portion of the County's sales tax revenues are generated from non-residents, thus resulting in a relatively larger portion of the County's operations (deputy sheriffs and other spending functions) being financed by non-residents."

The County's real property tax is the second largest revenue source for the combined General Fund and Police District Fun. The County has flexibility in allocating its largest revenue sources between the General Fund and the Police District Fund. For the 12-month period ending February 28, 2008, real property taxes accounted for 22.4% of the combined makeup of these two funds.

Suffolk County's real property tax levy has remained stable in the face of inflation and economic pressures. Over the seven year period from 2003 to 2010, the combined property tax levies have risen an average of 2.54% per year. This 2.54% figure is tempered by the knowledge

that annual inflation is approximately 3%. Another mediating consideration is that during this time property values have been steadily climbing.

The market value of properties in Suffolk County achieved significant growth over the last decade. Beginning in 2003, Suffolk County's property tax base for the General Fund has increased 8.12% on average every year and 10.11% for the Police District. Even though there was a slight decrease in the tax base from 2008 until 2010, this event affected not only Suffolk County, but also the entire State of New York. Overall comparing Suffolk County with the ten large budget New York counties, Suffolk ranked first in average annual rate of growth in the full value of taxable real property over the last ten years and second over the last five years.

In addition to high property values, Suffolk County enjoys low property taxes when compared to similar large budget New York counties. When faced with economic downturn, the County only imposed a moderate increase in the real property levy. In 2009, the combined levy increased only by 1.4% over the same in 2008. Then in 2010, the combined levy increased by only 2.1% over 2009. Over the same period other municipalities implemented "double digit increases." Overall, Suffolk County has the second lowest average real property tax rate in 2009, behind only Rockland County. Further if property within the County had been assessed at its full value, the real property tax levy over 2003 to 2010 would have actually decreased 8.6% for the General Fund and decreased 6.4% for the Police District Fund.

The County has also designed a cushion to keep property taxes low during difficult financial situations in the form of the tax stabilization reserve fund. Most similarly situated counties in New York do not segregate such non-negotiable government funds and therefore this

fund should be considered in this ability to pay analysis. In Suffolk County the tax stabilization reserve fund, as of year-end 2008, contained approximately \$126.6 million dollars.

Suffolk County also enjoys extraordinary per capita property wealth. Suffolk County's average taxable real property wealth of \$204,190 per resident is the highest of the ten large budget New York counties. This ranking indicates that "despite the recent turmoil in the housing market, Suffolk County continues to have a relatively stable tax base and enjoys high levels of property wealth." This figure also reveals a combination of higher home values and greater commercial and industrial development in Suffolk County.

Finally, Suffolk County is modest in its collections of tax revenues. Mr. Decker testified that as of 2010 Suffolk County is only using 13.3% of its constitutional tax levy, the third lowest of the ten large budget counties in the state. Also while Nassau County is considered as taxing at a lower percentage of its constitutional tax levy, these figures are not as truly comparable as Nassau's Legislature increased the limit to 2%. Ultimately Suffolk County could realize an additional \$3.78 billion in real property taxes for 2010.

Overall Suffolk County clearly has the ability to pay the DSPBA's reasonable demands. Even in the face of trying economic times, Mr. Decker opined that "there is nothing to suggest that the County faces long-term weakness in either of its two major revenue sources, the Sales Tax and Real Property Tax." Mr. Decker highlighted that the "County's own assessment is that 2010 will be a year of growth in its largest revenue source, the Sales Tax." He also noted that "despite other budget pressures associated with the economic downturn, the County's 2010 Adopted Budget calls for only a very modest increase in what are already low real property taxes." Further, analysts consider property wealth per capita to determine a County's ability to

pay and Suffolk County enjoys the largest per capita property wealth of similarly situated New York counties, a clear indicator of the County's good fiscal health. Economic and demographic indicators show the County is in good health.

As part of his analysis, Mr. Decker looked to the key economic indicators of fiscal health for Suffolk County, including measurable growth and credit rating of the County's bonds. His findings indicate the following:

Suffolk County's population is continually growing. Census Bureau statistics show that between the year 1990 and 2000 (the last year that census data is available), Suffolk County experienced a 7.4% growth in population, the third fastest rate of increase of the ten counties with the largest budgets in New York State. The Census Bureau estimates that since 2000, Suffolk County's population has continued to grow at 6.5% increase, now the second fastest rate of growth of the ten referenced counties. Such expansive population growth is a good sign for continued fiscal health and increased County revenues.

The job opportunities in Suffolk County also continue to rise. For the period from 2003 to 2008 jobs in Suffolk County grew by 6.2%, the greatest increase among ten similarly situated New York counties. Private sector jobs increased by the same percentage, 6.2%, which represented the second largest increase among the same ten counties. Also residents of Suffolk County enjoy an unemployment rate that is consistently below national and statewide levels.

Suffolk County's bonds in October 2009 were rated as AA by Standard & Poor's. Later in December 2009, Standard and Poor's assigned an SP-1+ rating to the County's Tax Anticipation Notes, their highest short-term rating.

The DSPBA proposed increase would only infinitesimally impact Suffolk

County's budget.

There were approximately 263 members of the Suffolk County Deputy Sheriffs PBA as of October 1, 2009. At that time there were somewhere between 13,000 to 14,604 County employees. Considering these figures, the DSPBA bargaining unit accounts for between 1.8% and 2.0% of Suffolk County employees. Looking at calendar year 2007, the total payroll for all DSPBA members was \$27.15 million, which accounted for .95% of the County's total spending of \$2.86 billion. A 5% increase in the above DSPBA payroll would yield \$1.36 million in new spending. If, for example, this entire \$1.36 million were to be raised from the County's sales tax, it would only require the equivalent of "just 11.7 hours of one day's collections." Such reasonable proposals are well within the County's ability to pay.

In conclusion, Suffolk County is in solid financial shape and is in no way confronted with the extraordinary conditions that would preclude the Panel from awarding the contract terms and conditions sought by the PBA. Accordingly, for the reasons outlined above as well as those presented during the hearings, Suffolk County has the ability to pay and the public interest will be safeguarded by awarding the DSPBA's reasonable proposals.

Awards for other police units must form the baseline for the DSPBA award. Earlier this year, three interest arbitration awards were issued setting forth successor contracts for the SCPBA (March 11, 2010), the SOA (July 30, 2010), and the SDA (September 22, 2010). Those awards must all serve as the baseline for the DSPBA's award setting forth its successor contract for the same three years (2008, 2009, and 2010).

The SCPBA was awarded wage increases of 3.5% each for three years (again, 2008, 2009, and 2010). This amounted to an approximate \$11,000 increase in the base wages for top pay

police officers. There were also increases in longevity and changes to a few other items deemed significant to either or both the SCPBA and/or County. There was also approximately \$4,805,500 worth of economic concessions. This resulted from (a) reduction in starting salaries for new hires, (b) credited prospective savings from such reduction in starting salary, (c) deferral of longevity increases to the last day of the successor contract, (d) modification of benefits under GML 207-c, and (e) implementation of a Sick Leave Management Program.

The SOA and SDA were awarded the same wage and longevity increases. However, Arbitrators Stanley Aiges and Elliot Shriftman, neutral members of the SOA and SDA interest arbitration panels respectively, explicitly relied upon the SCPBA Award in rendering their decisions. Each also took into account economic concessions given up by the SCPBA. They awarded similar concessions that reflected the pro rata population of each union. This resulted in economic concessions of \$1,319,590 for the SOA and \$1,037,988 for the SDA. It should be noted, however, that the SOA's concessions were met simply by deferring first year wage increases approximately 70 days and by deferring longevity increases until December 31, 2010.

Since the DSPBA was comprised of approximately 249 County employees as of December 31, 2007, then assuming the same arbitral construct, the DSPBA would be entitled to the equivalent economic package provided they were to make equivalent concessions equal to \$662,534. Any savings generated above that should, presumably, be credited back to the DSPBA for additional benefits. However, the DSPBA's total remuneration must first be made competitive with other police units. Therefore, a law enforcement differential must first be awarded and other benefits must be placed in line with comparable police units before applying the police pattern described above. After all, 3.5% of \$97,958 (top step of a 2007 SCPD police

officer) amounts to significantly more than 3.5% of \$63,356 (top step of a 2007 SCSO deputy sheriff).

In the context of the cost / concession discussion, a few additional observations of the Townley Award are both relevant and necessary. Townley specifically utilized the same formula described above in coming up with her so-called “wage and benefit improvements patterned upon the 2004-2005 police pattern and AME settlement precedents.” That is, she obligated the DSPBA to generate savings on a pro rata basis, utilizing the population of the Union as compared to the SCPBA’s membership. Although it required police unit comparable concessions that offset the cost, the Townley Award merely awarded base salary increases “identical to that negotiated with the AME (0% in 2004 plus a \$1,925 bonus; 3% in 2005)”. In other words, the DSPBA was required to give up its pro rata share of concessions comparable to police units (e.g. FLSA provision, Sick Leave Management Program, etc.) but it only received compensation as a civilian. These conclusions amount to a proverbial slap in the face to DSPBA members. This Panel must not make the same mistake as Townley and must consider the substantial givebacks that DSPBA was required to sacrifice under the Townley Award. DSPBA members are now somewhere below correction officers on the pattern continuum and have gradually moved closer to the AME. This trend must be reversed. The evidence and testimony demonstrates conclusively that the DSPBA must be placed squarely within the police pattern.

The DSPBA proposals are just and reasonable. Therefore, they should be awarded in their entirety.

The DSPBA submitted eight proposals to the Panel. All eight proposals are fair and reasonable. Although awarding these proposals in their entirety cannot possibly compensate

deputy sheriffs in a manner that puts them completely on par with the other comparable police units, they represent a significant starting point from which to finally recognize the important role deputies play as police officers. Notably, these proposals, if awarded, are even consistent with Arbitrator Townley's vision that deputies are somewhere above the correction officers on the pattern continuum, moving towards police.

As noted at the outset of the hearings, there are certain proposals submitted by both the DSPBA and the County which may not be arbitrable. The parties have granted this Panel jurisdiction, for this proceeding only and without being precedent setting, to decide this threshold question with respect to those issues that are subject to what is referred to as "scope" improper practice charges.

The threshold issues that must be decided with regard to these proposals is, first, whether such a demand is mandatorily negotiable under the Taylor Law and, second, if that mandatorily negotiable proposal is also arbitrable pursuant to Section 209.4(g) of the Act.

The Arbitrator is charged with determining the scope of bargaining; that is, whether each proposal is a mandatory or nonmandatory subject of bargaining, and in the case of the deputies whether the proposal is arbitrable. It is well-settled that only mandatorily negotiable subjects may be submitted to compulsory interest arbitration. Further, it is well-settled that only subjects which are arbitrable may be considered by the interest arbitration panel.

Pursuant to § 209.4(g) the Panel is permitted to rule on proposals which relate directly to compensation such as "salary, stipends, location pay, insurance, medical and hospitalization benefits". The Panel is not, however, permitted to render an award or issue a decision on those

the statutory criteria. The testimony and evidence presented demonstrate that deputies belong in the “police pattern” along with other like law enforcement personnel. The scope and range of duties performed by deputies and the expansion of such duties requires that DSPBA members be compensated accordingly.

The County’s demand for a wage freeze, or 0% raise in each of three years is totally unreasonable and ignores all relevant facts and circumstances. Such proposal ignores the realities that other bargaining units in the County have received wage increases. The SCPBA for example received a 3.5% wage increase for each year that the County proposes the Deputies should receive a 0% increase. The County’s wage proposal is not one which can be taken seriously and does not account for any of the changes or expansion of duties performed by deputies. County Proposal No. 1, therefore, must be rejected because it is unreasonable.

Further, the prior interest arbitration award issued by Arbitrator Townley relied upon several factors which were inaccurate and/or not fully developed. An examination of the prior record reveals that there are several fatal flaws in her reasoning and the assumptions she made when rendering her award. In that Award, the deputies made giveback upon giveback without receiving the same credit that other police units have received since then.

A top step SCPBA police officer in 2007 received \$97,958 compared to \$63,356 of a top step DSPBA deputy in 2007. This amounts to a difference of \$29,602 in base wages alone. Adopting the DSPBA’s wage proposals in their entirety would result in a top step deputies’ base salary being more competitive but still at the bottom among other police comparators. Even if you would adopt the DSPBA’s wage proposals in their entirety, a top step SCPBA police officer in 2007 would still be making more than \$13,000 more than a top step deputy sheriff in 2010.

This does not even take into account the annual 3.5% increases that SCPBA members received in their latest award.

The evidence demonstrates conclusively that in terms of base salary rank, DSPBA members fall at or near the bottom of the rankings as compared to the SCPD officers and other East End police officers in salaries and hiring rates. For convenience, below are charts which provide the comparisons described above.

Top Step Salaries 2007 - 2010

| | 2007 | 2008 | 2009 | 2010 |
|--------------------------|----------|-----------|-----------|-----------|
| Suffolk County PBA | \$97,958 | \$101,387 | \$104,935 | \$108,608 |
| Southampton Town PBA | \$94,010 | \$97,629 | \$100,558 | \$103,575 |
| Quogue PBA | \$93,258 | \$97,231 | \$101,467 | \$103,285 |
| Southampton Village PBA | \$93,030 | \$96,751 | \$102,261 | \$102,261 |
| Westhampton Beach PBA | \$92,406 | \$96,184 | \$97,809 | - |
| East Hampton Village PBA | \$91,667 | - | - | - |
| Riverhead PBA | \$91,445 | \$95,103 | \$95,103 | \$102,863 |
| Southold PBA | \$90,906 | \$94,540 | \$98,322 | - |
| Sag Harbor PBA | \$88,381 | \$92,358 | \$96,514 | \$100,491 |
| East Hampton Town PBA | \$89,304 | \$91,090 | \$93,823 | \$96,638 |
| Shelter Island PBA | \$85,978 | \$91,104 | - | - |
| | | | | |
| Average | \$91,668 | \$95,338 | \$98,977 | \$102,532 |
| | | | | |
| Suffolk County DSPBA | \$68,356 | - | - | - |

If County's Wage Proposals Were Adopted:

| | | | | |
|----------------------|----------|----------|----------|----------|
| Suffolk County DSPBA | \$68,356 | \$68,356 | \$68,356 | \$68,356 |
|----------------------|----------|----------|----------|----------|

If DSPBA's Wage Proposals Were Adopted:

| | | | | |
|----------------------|----------|----------|----------|----------|
| Suffolk County DSPBA | \$68,356 | \$77,024 | \$80,875 | \$84,919 |
|----------------------|----------|----------|----------|----------|

If the County's proposals were adopted, DSPBA members' wages would continue to decline in comparison to the SCPBA and other Suffolk local police department. The difference

between a top step SCPBA member and a top step DSPBA member would increase from \$29,602 to \$40,252, a disparity that is nearly \$11,000 greater than before.

However, if the DSPBA's reasonable proposals were adopted, while deputies would still be at the bottom of the rankings, their top salary would at least be more competitive. The difference between a top step SCPBA member and a top step DSPBA member would decrease from \$29,602 to \$23,689, still far off from where deputies should be but certainly moving in the correct direction.

Percentage raises for those local police departments listed above are indicated below:

Raises 2007 – 2011

| | 2007 | 2008 | 2009 | 2010 | 2011 |
|--------------------------|------|------|------|------|------|
| Suffolk County PBA | 3.75 | 3.5 | 3.5 | 3.5 | - |
| Southampton Town PBA | 3.9 | 3.9 | 3 | 3 | 3 |
| Quogue PBA | 4.2 | 4.3 | 4.4 | - | - |
| Southampton Village PBA | 4 | 4 | 4 | - | - |
| Westhampton Beach PBA | 4 | 4.15 | - | - | - |
| East Hampton Village PBA | - | - | - | - | - |
| Riverhead SOA | 4 | 4 | 4 | 4 | 4 |
| Southold PBA | 4 | 4 | 4 | - | - |
| Sag Harbor PBA | 4.5 | 4.5 | 4.5 | 4.5 | - |
| East Hampton Town PBA | 2 | 2 | 3 | 3 | 2.95 |
| Shelter Island PBA | 8 | 4 | - | - | - |
| Suffolk County DSPBA | 3.5 | - | - | - | - |
| Average | 4.2 | 3.9 | 3.9 | 3.8 | 4 |

Even if the DSPBA would receive 15% increases each year in 2008, 2009, and 2010, a top step deputy would still be making more than \$4,600 less than a top step SCPBA member.

The Suffolk County SDA and Suffolk County SOA, representing detectives and supervisors respectively in the SCPD, were awarded identical wage increases as the SCPBA. Thus, for DSPBA investigators and supervisors of all ranks excluding chief, the gap between them and their counterparts in other local police agencies also widens.

Other comparisons are worth noting. First, in Nassau County, utilizing 2009 numbers, a top step police officer receives \$103,973 in top pay compared to \$88,292 for a top step deputy sheriff. This difference is \$15,681 or 18%. By comparison, in Suffolk County, utilizing 2007 numbers, the percentage and actual money gap between an SCPD police officer and a SCSO deputy sheriff is \$29,602 or a whopping 43%. In order to establish the same differential in Suffolk as in Nassau between the two titles, a Suffolk County deputy sheriff would have to be making \$14,659 more in 2007 alone.

Finally, much as been said about the SCSO deputies' being compared with correction officers. As the record clearly demonstrates, and even as Townley concluded, deputies should be placed well above correction officers on the pattern continuum. Unfortunately, the reality is that correction officers receive base pay more than \$4,000 above a deputy sheriff. Specifically, the following differences exist:

| | <u>Deputy Sheriffs</u> | <u>Correction Officers</u> |
|----------|------------------------|----------------------------|
| Days | \$68,356 | \$72,450 |
| Rotating | \$73,472 | \$77,749 |
| Nights | \$75,193 | \$79,497 |

So how much more does a correction officer make than a deputy sheriff in Suffolk County? The answer is between \$4,094 and \$4,303 more per year, or approximately 6%.

In order to just make a small dent into the huge gaps between a deputy sheriff and other police officers in Suffolk County, and in order to even place deputies in a position even Townley envisioned, deputies must at least be granted a one time law enforcement differential, separate and distinct from the salary / wage increases sought. Such a differential has been awarded in the past in other jurisdictions and there is statewide precedent for such an award. Based on the evidence and testimony presented, as well as the for all of the aforementioned reasons, the DSPBA urges the Panel adopt the PBA's wage proposals in their entirety and reject the County's.

**B. Overtime (FLSA) - DSPBA Proposal 2
County Proposal 3(d)**

Here, the DSPBA's proposal deals directly with the deputies' compensation for work performed beyond their regular work day. Further, such proposal is not foreclosed by the provision in Section 209.4(g) which excludes proposals related to eligibility for overtime compensation. The Board has held the phrase "issues relating to eligibility for overtime compensation' cannot be read to exclude from the scope of arbitration all proposals for 'overtime compensation'." In effect DSPBA Proposal 2 is a demand for premium pay, which is specifically arbitrable pursuant to § 209.4(g).

The DSPBA's proposal addresses the rate at which certain employees are compensated for the performance of additional work. Namely, some employees receive time and one half after eight hours of work, while other receive time and one half after 86 hours of work in a given 14 day cycle. As such DSPBA Proposal 2 is arbitrable and should be considered by the panel.

At present deputies hired on or after December 31, 2005 receive overtime compensation of time and one-half only if they work more than 86 hours in a 14 day period, while deputies hired prior to December 31, 2005 receive overtime compensation at time and one-half whenever they work (or take vacation, sick leave, personal leave, holidays, or other leave with pay) for more than eight hours in one workday. Such disparity creates two classes of deputies - those who are penalized by the current contractual provision and those who are not penalized by the current contractual provision.

The DSPBA seeks to modify the manner in which deputies, hired on or after December 31, 2005, are compensated for additional work performed. Such modification is arbitrable; however, the County's proposal which seeks to alter which deputies are eligible to receive overtime compensation at time and one half is inarbitrable. The County proposes that deputies hired prior to December 31, 2005 be rendered ineligible for overtime compensation until they have completed more than 86 hours of work. Thus, while the DSPBA's proposal is arbitrable the County's proposal is not.

DSPBA Proposal 2 should be adopted by the panel as it is both reasonable and justified. No other law enforcement unit in the County, other than DSPBA and its affiliates, has such a comparable provision. Further, while the County touts the current provision of the contract, such provision results in very low actual savings for the County.

In contrast, the provision impacts upon deputies hired on or after December 31, 2005 in a major way. Such provision in its current form impacts upon deputies' morale and serves as a constant thorn in their side. For the above stated reasons the DSPBA Proposal 2 is reasonable and necessary, and should be adopted by the panel.

Townley awarded the FLSA provision because she concluded that the "tried and true" methods of controlling overtime did not work and that overtime was out of control. However, this conclusion belies the realities of the last five years.

The savings sought to be generated by the applicability of the FLSA provision was not realized. In fact, the applicability of such a provision had a detrimental effect on the members' morale.

County Proposal 3(d) should not be considered by the Panel at all, but if it is, the Panel should reject it. In Proposal 3(d), the County requests that the Panel apply the FLSA provision, which currently impacts only members hired after December 31, 2005, across the board to all deputies regardless of when hired. The County's proposal is not arbitrable as it addresses certain deputies' eligibility for overtime. Such proposal would make deputies hired prior to December 31, 2005 ineligible for overtime until after they had worked in excess of 86 hours in a two week period. Such proposal would now penalize a new group of deputies hired prior to December 31, 2005. These Deputies have incurred overtime in the same manner for many years, and in some instances decades. To suddenly alter the eligibility for certain overtime at time and one-half for senior deputies will no doubt further hurt morale. For all of these reasons, this unreasonable proposal should be rejected, and only the DSPBA's proposal should be adopted.

C. Longevity - DSPBA Proposal 3

Longevity payments are an essential form of wages that are necessary to prevent deputies from lagging behind their comparators in other law enforcement agencies. Further such longevity payments help the Sheriff's Office to retain experienced deputies who might otherwise seek employment elsewhere. At present deputy sheriffs are ranked last among police agencies in Suffolk County when it comes to longevity. The DSPBA seeks longevity pay of \$300 per year beginning with the fifth year. The DSPBA's modest proposal helps to narrow the gap between deputies and other law enforcement agencies throughout the County. The chart below demonstrates the current differences between longevity for DSPBA members and other comparable units.

| | 5 / 6 Years | 10 Years | 15 Years | 20 Years | 25 Years |
|------------------------------------|--------------------|-----------------|-----------------|-----------------|-----------------|
| DSPBA | \$800 | \$1,300 | \$1,800 | \$2,300 | \$2,800 |
| SCPBA | \$1,800 | \$3,000 | \$4,500 | \$6,000 | \$7,500 |
| SDA | \$1,800 | \$3,000 | \$4,500 | \$6,000 | \$7,500 |
| SOA | \$1,800 | \$3,000 | \$4,500 | \$6,000 | \$7,500 |
| DIPBA | \$1,800 | \$3,000 | \$4,500 | \$6,000 | \$7,500 |
| | | | | | |
| DSPBA (if proposals awarded) | \$1,500 | \$3,000 | \$4,500 | \$6,000 | \$7,500 |

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As is demonstrated above, the DSPBA's proposal seeks to place deputies in line with their police counterparts in the SCPD. Such proposal would help to narrow the gap and further place deputies more competitive with other law enforcement agencies rather than with civilian agencies such as the Suffolk County Association of Municipal Employees.

Accordingly, for the aforementioned reasons, as well as those presented during the hearing, the panel should adopt the DSPBA's longevity proposals.

D. Meal Period with Pay - DSPBA Proposal 4

The Deputies' fourth proposal requests that they be compensated for their meal period. At present, deputies work an eight and one-half hour day with a half-hour unpaid meal period. Deputies request that they receive compensation for the currently unpaid meal period. Such proposal is arbitrable as it relates directly to compensation. Namely, deputies are requesting that they be paid for their meal period. Further, such proposal is reasonable and should be granted.

Several other law enforcement agencies in the County receive additional compensation for meal periods. For example, the SCPBA, the SDA, and the SOA all receive 60 minute paid lunch (75 minute paid lunch for 10 hours shift officers). Moreover, it is important to note that a Deputy's meal period, like that of other police officers, is different than an ordinary civilian employee's meal period. That is, a deputy is always "on-call" during his meal period and may be called to an emergency or situation which requires back up at any moment. Since deputies may need to take action during their meal periods it only makes sense they receive the appropriate compensation.

For the aforementioned reasons the Union requests that the Panel grant this proposal as it is reasonable and justified.

E. Vacation Leave - DSPBA Proposal 5

The length and duration of Deputies' vacation time is again related to their compensation. That is, vacation time which is used amounts to paid time off from performance of law enforcement functions. Further, such vacation time may ultimately lead to compensation upon separation from service. Pursuant to the parties' current contract, deputies receive payment upon separation for up to 90 unused vacation days. For these reasons, this proposal is appropriate for submission to the Panel for consideration and determination. In addition, the deputies' moderate increase to vacation accruals will allow for much needed time off from the stress and hazards of the job they perform. Deputies' request 21 vacation days per year from the beginning through their fifth anniversary. From the fifth anniversary through the tenth anniversary deputies request 27 vacation days per year. From the tenth anniversary through the fifteenth anniversary, deputies seek 28 vacation days. From the fifteenth anniversary onward, deputies request 30 vacation days.

Such increases are critical for deputies who just began their employment and are entitled to very little vacation time. Deputies accrue less vacation time than several other law enforcement agencies in Suffolk County. Altering deputies' vacation accrual schedule in accordance with the above proposal will simply put deputies in line with correction officers and other agencies throughout the County. As such, it will entitle Deputies to more paid days off, and the potential to receive additional pay upon separation.

For the above stated reasons, the Union's request for additional vacation time is reasonable and necessary and should be adopted by the panel.

F. Investigator Pay - DSPBA Proposal 6

The Union requests that Deputies who are designated as Investigators receive a 12% salary premium above what a Deputy Sheriff I receives. Such premium pay is a request for increased compensation to supplement a deputy's base pay for the increased duties he assumes when performing additional investigative work. Such premium pay is warranted since Investigators frequently engage in hazardous work which poses additional risks and which requires extra skills and training. Increasing the premium pay will motivate the most qualified deputies to accept the designation of Investigator. At present, Investigators receive a nominal premium for work which requires a great deal of responsibility, risk, and skill.

An SCPD detective makes 12% more than a SCPD police officer where an SCSO deputy sheriff investigator makes only 7% more than an SCSO deputy sheriff. Adopting the DSPBA's proposal would place the percentage difference between the officer and investigator designation on par with each other. However, even if granted, a Deputy Sheriff-Investigator in 2010 will still be making more than \$14,000 less than its counterpart in the SCPD in 2007.

Below is a chart comparing Detective and/or Investigator salaries at top step for all comparable units effective December 31, 2007.

Detective / Investigator (Top Step) Salaries 2007

| | 2007 |
|--|-------------|
| Suffolk County SDA | \$109,713 |
| Suffolk County DIPBA | \$145,730 |
| Southampton Town PBA | \$100,542 |
| Quogue PBA | \$105,473 |
| Southampton Village PBA | \$100,218 |
| Westhampton Beach PBA | \$99,846 |
| East Hampton Village PBA | \$97,167 |
| Riverhead PBA | \$98,519 |
| Southold PBA | \$94,354 |
| Sag Harbor PBA | \$95,048 |
| East Hampton Town PBA | \$94,355 |
| Shelter Island PBA | \$89,076 |
| | |
| Suffolk County DSPBA (DS-Investigator) | \$73,132 |

For the aforementioned reasons the DSPBA's request to increase the premium pay for Investigators is reasonable and necessary.

G. STEPS- DSPBA PROPOSAL 7

The DSPBA's request to include an additional step in the salary schedule for Deputy Sheriff II's again relates to their compensation. The DSPBA proposes that an additional step be added effective January 1, 2008 on the fifth anniversary of DS II's to the tune of \$5,000 above the current step. Such \$5,000 adjustment to the salary schedule helps to close the gap disparity between deputies and other law enforcement officers.

H. Executive Board - DSPBA Proposal 8

This proposal addresses supplemental wages that deputies who serve on the Executive Board of the Union would be entitled to receive. The Executive Board of the DSPBA tirelessly performs many tasks and should be compensated accordingly. As such, the DSPBA's request that Executive Board members receive the highest supplemental wage under the contract is reasonable and warranted. This proposal is consistent with, and in many cases still far below, the compensation that other police union executive board members receive. The contracts for the SCPBA, SOA, and SDA all provide that executive board members shall receive the highest supplementary wage available under that agreement. For the aforementioned reasons the DSPBA requests that the Panel grants its request for executive board compensation.

I. Remaining County Proposals Unreasonable

The County's remaining proposals are inarbitrable and/or unreasonable and as such should not be granted. Again, it is well-settled that pursuant to § 209.4(g) only proposals which are "directly related to compensation" may be awarded.

Based upon this statutory limitation many of the County's demands are improper for compulsory interest arbitration. However, to the extent the Panel determines that a demand is arbitrable, it should nevertheless reject the County's proposals because they are unreasonable. To the extent the Panel adopts any of the County's proposals, the DSPBA requests that it receive credit for any windfall of cost savings the County receives as a result of any implemented proposal.

1. Additional Days - County Proposal 2(a)

County Proposal 2(a) seeks to require newly hired Deputies to work five additional days per year. Such proposal has been improperly submitted to interest arbitration in that it does not pertain directly to compensation as required by § 209.4(g) of the Act. Further, the Act specifically excludes deployment and scheduling as issues which may be considered in interest arbitration. For that reason, County proposal 2(a) is not arbitrable and may not be awarded by the Panel.

Should the Panel decide to consider this proposal it should nevertheless reject it. The County has failed to demonstrate why this proposal should be granted. Other police agencies throughout the County have fewer appearances than the deputies do at present. Increasing the number of appearance days for new deputies indefinitely will only widen the disparity between deputies and other law enforcement agencies. Further, such alteration to the number of appearances would increase deputies' appearances beyond that of correction officers. The additional appearances are not necessary and do not result in any additional compensation. Deputies currently work 243 days per calendar year. Members of the SCPBA, SDA and SOA work anywhere between 9 and 11 days less per year. Requiring deputies to make five additional appearances when their counterparts in the SCPD already work significantly less is unreasonable.

Accordingly, the Panel should reject this proposal and maintain the number of appearances per year at the now current level.

2. Training - County Proposal 2(b)

The County proposes that all deputies work one additional day for training purposes. Such proposal however is non-compensatory in nature and therefore is non-arbitrable pursuant to § 209.4(g) of the Taylor Law. Training is not one of the examples listed in the statute as compensatory in nature, and further, on its face is in no way compensatory. It is again akin to requiring deputies work one additional day (for free!); therefore, the proposal is non-compensatory. If, however, the Panel nevertheless considers County Proposal 2(b) it should reject it. Requiring deputies to come in for additional unspecified training when they already receive ample training each year and without additional compensation is unreasonable and should not be adopted.

3. Overtime Bypass Remedy - County Proposal 3(a)

County Proposal 3(a) again addresses a matter which is not directly related to compensation as required by Section 209.4(g) of the Act. Specifically, County Proposal 3(a) seeks to simply place a Deputy bypassed for overtime to the top of the list. At present when a deputy is bypassed on the overtime list he is permitted to take advantage of the grievance arbitration process. Pursuant to that process, if successful, he may be entitled to remedies that include, but are not limited to, being afforded overtime in the amount he would have been entitled to work, not being charged such overtime, and/or receiving overtime pay in the amount he would have received had he been properly chosen. Notably, in the past, whenever a deputy was improperly skipped over, he has been granted compensatory time as a remedy and/or has been

permitted to work the overtime he should have gotten without taking another deputy's spot (e.g. he served as an extra deputy during a shift).

Furthermore, such demand deals with deputies' eligibility for overtime which is specifically precluded from this Panel's jurisdiction under § 209.4(g) of the Act. If the Panel views this proposal as one which does not affect eligibility for overtime it should nevertheless reject it as non-arbitrable. As such this proposal is non-arbitrable and should not be addressed by the interest arbitration panel.

Without question, therefore, the Panel is without jurisdiction to award County Proposal 3(a). If, however, the Panel does consider such proposal it should nevertheless reject it because it is unreasonable. That is, the County seeks to minimize the penalty it has to endure for improperly skipping a deputy on the overtime list. In reality, the County already too frequently skips deputies on the overtime list and as such decreasing the deterrent can only have more negative consequences. One can only imagine how carelessly the County will abide by the overtime list when no financial remedy or other consequence results other than to move the deputy to the top of the overtime list. As such, this proposal is not only non-arbitrable, but also, unreasonable. Therefore it should be rejected by the panel.

4. Overtime List Update - County Proposal 3(b)

Similarly, County Proposal 3(b) is also non-arbitrable as it applies to issues which are not related to compensation. That is, pursuant to 3(b) the County would like to update the overtime list on a monthly rather than weekly basis. Such proposal has no possible link to compensation and instead falls within the parameters defined by § 209.4(g) as non-arbitrable. For that reason

the Panel is required not to consider and/or award County Proposal 3(b). However, if the Panel decides to address Proposal 3(b) it should reject it as such proposal will encourage the County not to timely update the list. If the list stagnates for a month rather than a week it becomes inaccurate and fails to serve its purpose of ensuring the equal distribution of overtime. Therefore, if this proposal is considered by the panel it should be rejected.

5. Designation of Overtime Sections - County Proposal 3(c)

In County Proposal 3(c) the County again seeks to introduce a proposal which is not a proper subject for interest arbitration. County Proposal 3(c), which seeks to give the Sheriff discretion to designate overtime assignments, improperly addresses issues which are not compensatory in nature. Here, again the County proposes to alter a deputy's eligibility for overtime compensation. As such, this proposal is not arbitrable. Even if it was arbitrable, however, it should be rejected because it is unreasonable. The proposal permits the Sheriff to designate sections for overtime assignment such that overtime may be assigned outside of the section where it originates. Such designation of overtime outside the section in which it originates is improper and disrupts a well-established past practice to keep overtime opportunities within the command or section from which it originates. Accordingly, this proposal must be rejected.

6. Recall - County Proposal 4(a)

The County proposes in 4(a) to alter deputies' eligibility to earn overtime pay when they are recalled to work. Again this proposal is non-arbitrable in that the County raises a subject

which is not related to deputy compensation. At present the deputies earn a minimum of four hours of overtime if they are recalled. The County proposes to remove this four hour minimum of overtime hours. This proposal which does not pertain to compensation, but rather limits the number of hours a deputy will earn for reporting back to work. Even if the panel views such proposal as arbitrable, it should nevertheless reject the County's proposal. The provision as it exists now ensures that deputies return to work when recalled by guaranteeing them a fixed number of hours of work. If there was no guarantee in place deputies could conceivably be recalled to work for very short periods of time (e.g. a half hour or hour) which would not be worth their while and might even make their travel time to and from work more than the actual recall time itself. We are not aware of any other law enforcement unit that has recall providing lesser protections and compensation than what the deputies currently have; this proposal makes that even worse. The proposal, which would unreasonably strain deputies, should be rejected.

7. Travel Time (Recall) - County Proposal 4(b)

The County also seeks to delete a provision of the contract which affords deputies travel time when they are recalled to work. County Proposal 4(b) is inarbitrable as it does not pertain directly to compensation, and instead concerns eligibility for overtime compensation. The Board upheld an ALJ decision in which recall pay was held inarbitrable. As such this Panel cannot properly award this proposal.

Further, even if the Panel does consider this proposal it should nevertheless be rejected. Deputies along with all other unions in Suffolk County are entitled to payment for travel time when they are recalled. Such payment encourages deputies to return to work from the comfort of

their homes. The County has pointed to no logical reason for deleting such provision which is universally enjoyed throughout the County. As such the panel should reject County Proposal 4(b).

8. Tuition Reimbursement - County Proposal 5

County Proposal 5 seeks to alter the level of reimbursements by the County with respect to the successful completion of approved courses of study meant to further the education and training of deputy sheriffs. Even if the Panel does consider such proposal it should reject it because it limits deputies from obtaining the type of in-service training they need. The County's proposal limits covered reimbursements to \$15,000 per year, and does not allow for carry over from year to year. Other law enforcement comparators in Suffolk County which have a cap on in-service training have a much higher cap than the *de minimus* cap proposed by the County. For example, the SCPBA has a cap of \$283,990, the SOA has a cap of \$81,902, and the SDA has a cap of \$50,000. In the case of the SCPBA and the SOA, both units' contract provides that unused funds will be rolled over from year to year. Further, correction officers have no cap. For these reasons, County Proposal 5 should be rejected.

9. Worker's Compensation - County Proposal 6(a)

Here the County seeks again to raise a subject which does not relate to compensation, but rather goes beyond the scope of subjects which may be submitted to interest arbitration. Proposal 6(a) seeks to reduce the number of weeks deputies are entitled to full salary rather than worker's compensation from 39 to 26. Such reduction is an improper subject for determination by an

interest arbitration panel. Even if it was an appropriate topic for consideration by the Panel it should nevertheless be rejected as unreasonable. Currently when a deputy is found ineligible for 207-c coverage, but eligible for workers compensation, he may receive his normal salary for 39 weeks. Such benefit protects deputies and their families during times when deputies are incapable of performing their functions due to injury. To reduce this benefit by more than three months puts deputies recovering from an injury at a distinct disadvantage. The only evidence introduced by the County in support of its position is that the Rockland County SDA provides for a limitation of 26 weeks. No other comparable internal jurisdictions or so-called comparable external jurisdiction was introduced during the hearings that provides the same benefit as that which is proposed by the County. As such, the DSPBA requests that the Panel reject the County's proposal and maintain this benefit at its current level.

10. Probationary Period - County Proposal 6(b)

The County seeks to alter what type of service in the Sheriff's Office satisfies the probationary period new deputies are subjected to when they are hired. Namely, the County seeks to add a provision which would not count a deputy's light duty service as part of his probationary period. Such proposal is not related to compensation and therefore is not a proper subject for the Panel to award. Whether or not specified service should be counted towards the probationary period is a matter which is non-arbitrable. Nevertheless, it should be rejected on the merits as the County failed to cite even a single comparator which maintains this provision. Further, such provision is unreasonable as it seeks to tack on more time to the already lengthy probationary period faced by new deputies. The Sheriff's Office can assess deputies based upon work they

perform during any relevant light duty assignment, and have done so for years. As such Proposal 6(b) should be rejected.

11. Outside Employment - County Proposal 6(c)

County Proposal 6(c) again addresses a subject matter which is non-arbitrable. Namely, in this proposal the County attempts to impose upon the deputies' ability to procure any employment of any type while they are absent due to illness or injury. Such prohibition on outside employment clearly is not compensatory in nature and therefore falls outside the scope of § 209.4(g) of the Taylor Law. Even if the Panel decides to consider this proposal it should reject it as unreasonable. The proposal would prohibit all outside employment regardless of type or amount. Such blanket proposal unreasonably restricts deputies while they are out due to illness or injury. No other relevant union in Suffolk County has such a pervasive restriction, or any restriction at all for that matter. This includes all other police units, the COA, the Probation Officers Association, and the AME. Therefore, County Proposal 6(c) should be denied as both unreasonable and unnecessary.

12. Vacation Accrual - County Proposals 7(a) and 7(b)

In Proposal 7(a) the County is yet again submitting a subject for interest arbitration which is not directly related to compensation. In 7(a) the County attempts to limit the maximum number of accrued vacation days that a deputy can carry over from one year to the next. Such proposal is unrelated to compensation and as such is inarbitrable pursuant to § 209.4(g) of the Taylor Law.

Even if such proposal was arbitrable the Panel should nevertheless reject it as an unreasonable reduction to vacation carry over. At present deputies can accrue up to 90 vacation days in a given year and carry over a maximum of 90 vacation days to the next year. The County seeks to alter this policy by permitting deputies to accrue a maximum of 60 days in a given year and carry over a maximum of 30 days to the next year. Further County Proposal 7(a) does not allow for the Director of Labor Relations to make an exception to the number of days which may be carried over from year to year. The County offered no other "internal" jurisdiction that has such limitations. Rather, it relies simply on jurisdictions outside of the downstate New York area. For these reasons the County's proposal is unreasonable and must be rejected by the Panel.

Similarly, County Proposal 7(b) also addresses vacation accruals. Specifically the County proposes to only permit deputies to receive vacation pay up to 60 days upon separation. At present deputies are permitted to receive payment for up to 90 unused vacation days upon separation. Thus, the County seeks to limit the number of days a deputy can receive pay upon separation by one third. Such a drastic change without justification is unwarranted. At present, very few deputies receive pay out above the 60 day mark, plus, they are still capped at 90 days, limiting the County's responsibility. Thus, the proposal should be rejected.

13. Sick Leave - County Proposal 8

County Proposal 8 deals with deputies' sick leave usage and accumulation. Such proposal is not related to deputy compensation and as such it is inarbitrable under the Taylor Law. PERB has previously concluded that the accumulation of sick leave is an improper demand pursuant to

209.4(g), and the fact that accumulation may ultimately result in compensation does not satisfy the directly related to compensation requirement.

To the extent the Panel deems this proposal to be arbitrable even though it addresses matters which are not directly related to compensation, the Panel should nevertheless reject this proposal. In one fell swoop the County seeks to turn sick leave on its head. At present deputies hired before December 31, 2005 are entitled to a bank of sick days each year. Unused sick days can be carried over year to year, and at separation deputies are permitted to receive payment for half of their accumulated sick days up to a total of 180 days paid from 360 days accumulated. Further, deputies are entitled to extended sick leave when they exhausted their sick leave in a given year, and are out due to illness of 20 workdays or more. Such extended sick leave entitles deputies to receive half pay for one pay period per year of service worked. Further, deputies were permitted to use up to five days per year for the illness of an immediate family member or relative in the deputy's household.

Deputies hired on or after December 31, 2005 were not entitled to the same benefit, and instead are entitled to sick leave for each day that they are actually unable to work due to illness. Deputies hired after December 31, 2005 are not entitled to pay out of unused sick leave.

The County seeks to change its current sick leave policy with respect to senior deputies hired prior to December 31, 2005. Namely, the County now seeks to have the same sick leave policy apply to all deputies regardless of date of hire. Deputies hired prior to December 31, 2005 would no longer be entitled to a bank of days which they could accrue and receive pay out for upon separation. Further, they would not be entitled to extended leave, and would not be permitted to sick leave for the illness of an immediate family member or relative in their

household. These stark changes would greatly impact deputies hired prior to December 31, 2005. DSPBA members who still accumulate sick leave do so at an annual rate far less than their police counterparts throughout the County. This proposal would cause an even greater gap between the sick leave entitlements of deputies and police officers elsewhere. The County provided no justification for its proposed drastic changes, and as such County Proposal 8 should be rejected by the Panel.

14. Personnel File - County Proposal 9

The County again attempts to submit the subject of a deputy's personnel file to arbitration when it has no bearing on compensation. As such, the County is improperly submitting County Proposal 9 for consideration by the panel. Further, such proposal relates instead to disciplinary procedures which are specifically prohibited from submission to interest arbitration under § 209.4(g). The panel should therefore reject this proposal as inarbitrable. If however the panel opts to consider County Proposal 9, it should reject it because it is unreasonable, and provides deputies with two thirds fewer days to respond to matter placed in their personnel files. Namely the County seeks to cut the deputies' time from 30 to 10 days to respond to answer any material which is placed in the deputies' personnel files. Such change is an unreasonable reduction and severely limits deputies' opportunity to dispute letters of counseling and the like. Therefore, the panel should dismiss County Proposal 9.

15. Probationary Period - County Proposal 10

County Proposal 10 addresses the deputies' probationary period. The County has again submitted a proposal for arbitration which does not relate to compensation. That is, the County seeks to increase the probationary period from 12 months to 18 months. During such probationary period deputies are subject to summary termination and are not entitled to due process protections. This proposal relates to deputies' job security which is inarbitrable pursuant to § 209.4(g). Further, the proposal could even be considered disciplinary in nature, and would thus again be inarbitrable under § 209.4(g).

If however, the Panel considers County Proposal 10, the Union submits that it should reject this proposal as unreasonable and unnecessary. The County already has a lengthy period of time to evaluate newly hired deputies. Elongating this period of time is unnecessary and is of little value. Further, it is clear when looking at other unions throughout the County, most unions have a 12 month probationary period, not an 18 month probationary period. As such, the County's proposal to increase the probationary period without more should be rejected by the panel.

16. Transfers - County Proposals 11(a) and (b)

Pursuant to County Proposals 11(a) and (b) the County seeks to change the current policy regarding transfers such that the Sheriff's Office will wield under the new proposal all power and discretion with respect to transfers. Proposals 11(a) and (b) again address an issue which is not related to compensation. These proposals again are related to a deputy's job security so far as a deputy would no longer be secure in his position in a particular bureau of the Sheriff's Office, but

rather could be moved at anytime. As such, the panel should reject this proposal because it is inarbitrable.

However, if the panel opts to consider County Proposals 11(a) and (b), the DSPBA asserts that it should nevertheless reject the proposals as unreasonable. Such proposal would grant the Sheriff's Office unfettered discretion to transfer deputies anywhere regardless of seniority and/or minimum qualifications. As such, this proposal is totally unreasonable and should not be adopted by the Panel.

17. Temporary Transfer - County Proposal 11(c)

In County Proposal 11(c) the County proposes adding a provision to the contract whereby it would be able to temporarily transfer deputies for up to 45 days without notice or posting. Such proposal is inarbitrable pursuant to § 209.4(g) of the Taylor Law. Namely, the proposal does not address a matter related to compensation, and further impacts upon deputies' job security. Therefore, the Panel should not consider County Proposal 11(c).

If for some reason the panel does consider County Proposal 11(c), it should nevertheless reject it because it is unreasonable and unwarranted. Such provision which would allow temporary transfers in excess of one month without any notice or posting of such position. County Proposal 11(c) would leave deputies ill-equipped to prepare and adjust to new assignments, and would further prevent individuals desirous of transfers from receiving them. For the aforementioned reasons the panel should not adopt County Proposal 11(c).

For the foregoing reasons, as well as those which were presented during the course of the hearings, the Panel should grant all of the DSPBA's proposals and deny each and every one of the County's proposals.

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; etc. 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 and reducing appropriations to County departments, just to keep its taxpayers' heads above water so that they are not drowned. Rather than recognize these dire circumstances, the DSBA has presented the Panel with a tsunami, a wage and benefit package that will annihilate the County's financial well being and empty its taxpayers' already tight wallets.

Little can be done by the County to resurrect the housing market, loosen the restrictions on lending or encourage people to spend money and boost sales. 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 remotely comparable to the current economic crisis. In the past interest arbitration panels 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 DSBA members for all of 1992 and 1993, 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. 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 within this climate then that a new contract must be delivered. As a result, the importance of this Award cannot be underestimated. Within the groundwork set by the Suffolk County Police Benevolent Association ("the PBA"), Suffolk Superior Officers Association ("the SOA"), the Suffolk Detectives Association ("the SDA") and the Suffolk Detective Investigators Police Benevolent Association ("the DIPBA") interest arbitration awards for the units in the County police pattern, it will lay the foundation for what will become the Sheriff's pattern for this round, as the Suffolk County correction officers Association ("the COA") has not yet settled on the terms of its next contract. This award will also be analyzed by other jurisdictions when they sit down at the bargaining table with their deputy sheriff units.

The County's financial health over the next several years will be substantially impacted by this Award. Even if we were enjoying excellent economic conditions, the County would have

difficulty funding the DSBA's demands. In this economic climate, it is all but impossible for the County to do so.

The interest arbitration world had begun to change even before the recession hit. 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 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, netting an average of cost of 2.67% per year. It is critical to the County's financial well being that this trend be reinforced and continued.

This panel's application of the relevant statutory criteria will mandate awarding the County's proposals and rejecting the DSBA's demands. Civil Service Law § 201 recognizes the fundamental differences between public sector and private sector employees. The United States Supreme Court 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 law enforcement services, including those of their deputy sheriffs. It is equally self-evident that these services do not come for free.

By statute (Civil Service Law § 209(4)(c)(ii)), the Public Member of this Arbitration Panel represents the members of the general public; i.e., the taxpayers who both bear the burden of potential increased costs needed to maintain their deputy sheriff force and who likewise receive the benefits of the provided services. The Public Member is the panel member ultimately charged with making choices, usually reserved to the public's elected officials, regarding salaries and fringe benefits which are the largest expenses and expenditures of the Suffolk County Sheriff's Office ("the SCSO"). These decisions, by virtue of the sheer amount of money involved, will directly impact on the SCSO's and County's elected officials' ability to set financial and policy priorities. Given the current economic conditions, this Award will also play a critical role in establishing the financial and policy priorities in the years following its expiration. This is an extraordinary responsibility, and one that, more than ever before, must be carefully exercised.

It is within this context that the Civil Service Law requires that this Panel's decision be based upon the criteria set forth in Civil Service Law § 209 (4)(c)(v).

The two most significant issues in this case concern the County's ability to pay for the DSBA's demands and comparability. It is the County's position that the increases sought by the DSBA are excessive relative to unit members' already generous wage and benefit package and also completely out of touch with the County's ability to pay for them.

In the last round of bargaining concerning the period 2004-2007, interest arbitration panels for the police pattern units finally recognized the County's lack of ability to pay for excessive demands. Those panels awarded wage increases of 3.75% per year, together with one half of a percent per year concessions for a net salary cost of 3.25% per year. Those figures represented the lowest average percentage increases for police units in Suffolk County in more than 20 years.

For its part, the DSBA negotiated a wage and benefit package of 3.25% plus 0.25% in the form of a stipend (also with approximately 0.5% in concessions) for a net average cost of 3% per year. The COA negotiated a similar package.

The police awards and Sheriff's pattern settlements represent the continuation of a good start at holding the line on overly generous interest wage and benefit packages. It is the County's position, though, that the 3.25% salary increases then negotiated with the DSBA was too high and should not be awarded here.

Since that last bargaining round, the County's economic position, as well as that and the entire nation, significantly deteriorated. In recognition of this fact, the 2007-2012 Nassau PBA interest arbitration panel issued an award that moved the line even closer to a new reality than did the 2004-2007 Suffolk police pattern awards. 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. 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. Considering the fact that, pursuant to a separate memorandum of agreement, \$12 million of the benefits awarded by that panel were deferred until each PBA unit member's separation from service, the overall cash cost to the County was significantly lower, approximately 1% over three years.

While these interest arbitration panels have made great strides in issuing more reasonable awards, we are in unprecedented times and more must be done. The days of rich interest arbitration awards are over. The focus must continue to be on short and long-term savings. This Panel must focus on the taxpayers who are still losing their jobs and their homes in record numbers. This time around it is up to the DSBA, not the taxpayer, to fund its Award. The Nassau and Suffolk police pattern units paid for their wage and benefit packages. This Panel should require the same from the DSBA.

The panel's award must consider the County's limited ability to pay for the DSBA's demands. The current budget cannot accommodate an increase in General Fund expenditures.

County deputy sheriff salaries are funded through the General Fund. The General Fund is funded by real property and sales tax revenues, state and federal aid and various other revenue sources, including interest earnings. 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. Even though DSBA 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.

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. You need to have people living and working here and you need to have people spending money here". Unfortunately, sales and property tax revenues are on life support.

The County has been losing sales tax revenue since 2006. 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. 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. When adjusted for inflation, the County's sales tax growth has actually been negative since 2006. Sales tax receipts for 2008 showed a decline of 3.22% over budgeted amounts (equivalent to \$38.7 million), which the County expected to continue through 2009 as a result of falling oil prices. This is the first non-inflation adjusted sales tax decline since 1965, when the County first started receiving sales tax revenues.

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. As a result of poor sales tax revenues, legislation was adopted to provide the County with much needed flexibility in its use of the Tax Stabilization Fund. This allowed the County to transfer \$30 million to the General Fund to offset the declining sales tax revenues, which, as of August 5, 2009, were down 14.6% from the previous year.

The County's 2010 budget was based upon the assumption that the 2009 sales tax revenues would be 6% less than those in 2008 and grow by 4% in 2010. As of December 15, 2009, 2009 year sales tax revenues were down 9% or \$90.9 million. Since the 2009 year-end totals are down 8.47%, the County lost \$23 million over its already low projections. This loss automatically led to a \$24 million loss in 2010 because the baseline for sales tax revenue was less than had been projected.

As a result, the County needed a 13.5% increase in sales tax revenues in November and December 2009 just to meet its projection. This, of course, did not occur, especially since 47% of

County residents reported that they expected to spend less on holiday shopping. Based upon these figures then, it is clear that, since 2008, people are not spending money and, if they are, they are not doing it here.

Mr. Decker pointed out that the County's 2010 Adopted Budget included a 6.5% increase for the estimated sales tax collections for 2009. Deputy County Executive for Financial Affairs Connie Corso, though, noted that the 4% growth that was anticipated for 2010 would probably be in the range of 2.75 to 3%. Actually, she expected that the County might have a shortfall of \$67 million for 2009 and 2010, \$40.6 million of which would be attributable to 2010.

When a shortfall exists, the County has the option of transferring money between funds. Over the past seven years, sales tax transfers from the General Fund to the Police District Fund have increased.

In 2002, the County transferred \$5.2 million to the Police District Fund. In 2008, it transferred approximately \$87 million, almost 17 times the 2002 amount. In 2006, the General Fund balance was \$159 million. That has rapidly decreased to a mere \$46.4 million in 2010.

Continuing at this high rate is not feasible. As a result of the projected 2009 budget shortfalls, the County 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. Since the health of the General Fund depends in part upon the health of the Police District Fund, negative economic impacts in either fund could 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. There was a 64% increase between 2007 and 2008 alone. When a resident is successful at reducing his/her property taxes, other taxpayers make up

the difference. Those residents who are barely making ends meet find themselves pushed over the edge. From 2007 to November 2008, tax delinquencies increased by over 16% (equivalent to \$11.6 million, the highest rate in three years.

This at least partially explains the 30% increase in foreclosures and the 36% increase in lis pendens actions over the 2007 figures. From January 2007 to June 2009, lis pendens increased by 41%. The average monthly number of new foreclosures increased by 32% from 2007 to 2008. 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.

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. 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.

There has also been a 16% increase in Medicaid applications over the last two years and a 20% increase in temporary assistance applications since. There has been a 13% increase from January to December 2009 alone. New home building has decreased 60% since 2005. 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.

County taxpayers are unable to absorb the cost of a DSBA award that causes an increase in the General Fund and resulting increases in property taxes. Despite all of its best efforts, Suffolk County still ranks 11th highest out of 788 counties nationwide in percentage of household income paid towards property tax.

To make matters worse, the County's unemployment rate was at a 10-year high of 7.3% as of December 2009. This was up from 6.1% in December 2008. Fewer people are working here, which means that there are 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 during 2009. 45% of the unemployed had earned at least \$60,000 per year. 72% had a college or post-graduate degree. 80% were 30 or more years old. These statistics show that the backbone of the Long Island workforce is unemployed.

The DSBA argued that County unemployment rates were below those of the State and country. The County's 2009 unemployment rate of 7.4% was the highest it has been in over 10 years. In fact, the unemployment rate had more than doubled since 1999 and remained at the highest level by at least 2% since January 2000. To trivialize these facts, as the DSBA has done, is a slap in the taxpayers' faces. It is these taxpayers who are losing their jobs in record numbers and who the DSBA expects to fund its outrageous demands.

With this backdrop, it should be no surprise that the Consumer Confidence Index figures released in February 2010 were much lower than projected. A reading above 90 points indicates that the economy is on solid ground. In February, the index fell almost 11 points to 46, down from 56.5 in January. This was the lowest level since April 2009, when the reading was 40.8 points. Economists are projecting that the Index will remain below healthy levels for at least another year or two.

Even if the County took unprecedented steps, such as closing the John J. Foley Nursing Home and freezing all employee step movement and salary increases for the 2008 and 2009 fiscal years, it would still face a projected budget shortfall in numerous expenditure/revenue areas of

\$106 to \$136.7 million in 2010. It would be \$54 million short in carry-in revenues, \$20 million short due to higher employee health care costs, \$12 million short due to higher debt service costs, \$5 million short due to higher Medicaid costs, \$5 million short due to the increased cost of handicapped children's programs and \$10 million short due to a reduction in the tobacco securitization debt service relief.

Yet, as part of the adopted 2009 budget, the County Legislature restored \$4.5 million in funding for the Nursing Home, \$2 million less than was required. Due to this change in the budget, the County projected a \$15 million loss from the Nursing Home's operating costs.

The County already took drastic measures in 2009 just to stay afloat. These included an 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. As previously mentioned, new legislation allowed the County 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 adequate concessions. 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.

On top of these budgetary shortfalls, there are financial factors which are outside of the County's control, such as falling interest rates. From October 2007 to October 2008, the

County's interest earnings decreased by 46% or \$10 million. From January to June 2009, there was a 69% decrease in interest earnings.

For the 2010 budget, the County is already projecting a \$128 million shortfall. That budget is \$41 million less than 2009's budget and \$136 million less than 2008.

For 2010 through 2011, the County is also facing the following budgetary challenges: \$40.6 million sales tax shortfall in the General Fund; \$20 million anticipated unpaid property taxes; \$6 - \$10 million decrease in State aid; \$45 million increase in pension costs for 2011; \$36 million loss of federal aid for Medicaid reimbursement (commonly known as FMAP); and \$25 to \$30 million increase in contractual step increases, debt service and Medicaid and employee health care.

Awarding the DSBA's demands would only increase these shortfalls and further squeeze tapped-out taxpayers. The benefits awarded in past interest arbitrations are unsustainable and wholly 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". The County urges the Panel to heed the County Executive's advice. The evidence proves that the County does not have the ability to pay increases to its already highly compensated deputy sheriffs, most of whom make considerably more money than the people who pay their salaries (*id.* at Ex. A-19). 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 and fire districts. 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 Law 29-96 requires the adoption of the County's operating budget in two parts: a mandated budget and a discretionary budget. All Police District expenses, other than debt services, are considered to be discretionary expenses. The law also prohibits the transfer of surplus appropriations from the mandated to the discretionary budget.

The Expenditure Cap (Local Law 21-83) requires that the recommended and adopted budget's discretionary expenses for all funds be capped at no more than a 4% increase in the aggregate or the growth in the GDP Chain Price Index, whichever is greater. Only a supermajority vote of the Legislature (14 of the 18 Legislators) can override this requirement.

The Tax Levy Cap (Local Law 38-89) requires that the recommended and adopted budget's discretionary tax levy for the combined General and Police District Funds also be limited to a 4% increase or the GDP Chain Price Index, whichever is greater. This, too, can only be overridden by a supermajority vote of the Legislature.

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". 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. In an effort to avoid doing so, 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.

Given these budgetary restraints, it is doubtful that the County's budget will be able to accommodate the DSBA's demands. While the DSBA may argue that an interest arbitration award can supersede these laws, this issue has yet to be litigated. The DSBA'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)), must 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 would face severe budgetary shortfalls. Recommended funding levels for almost every County department in 2009 are less than 2008 levels. The 2009 recommended budget includes \$125 million in cuts for all funds, \$77.3 million more than in 2008.

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 projected that it would end the 2008 fiscal year with only \$8 million in surplus cash, a total described as "a frightening scenario".

In total, the County projected that revenues would decrease by at least \$54 million in 2009: \$22.4 million in lost sales tax, \$20 million in lost real property taxes, \$600,000 in lost revenue from the sale of Brownfields, \$10 million in decreased State aid and \$1 million in overstated Real Property Tax Service Agency revenues. Given these shortfalls, outside economists projected that the County would be “in an “L-shaped” business cycle, where a downturn in the economy is followed by little or no growth for an extended period”.

This Award, along with the police pattern awards, sets the Sheriff’s pattern and will impact the contracts of other County bargaining units. 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.

The County’s not reaching its constitutional taxing limit does not suggest an “ability to pay”. Mr. Decker presented data showing that the County is operating within its tax and debt limits. The DSBA argues that the County could, therefore, 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).

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

When faced with the same data, the 2008-2010 PBA Panel determined that the County did not have the ability to pay for the PBA’s demands (County Ex. 6 at p. 90). This (DSBA) Panel Chairperson credited the County’s arguments about its poor economic condition and the state of its fiscal health and found no support in the record for Mr. Decker’s optimistic 2010 projections.

He also noted that the impact of the current recession could not just be limited to decreases in the County's revenues, but also had to take into account the increases in services the County has to provide to those who had been negatively affected by the economy. When all of these factors were considered, the Chairperson determined that the County had the ability to pay for smaller increases in salary and benefits; i.e., increases which were, on average, the lowest ever awarded to a Long Island police unit in interest arbitration and which were in large part funded through other concessions.

Based upon these facts, this Panel should issue an Award that does whatever is necessary to protect the County's tax base and avoid a tax increase.

The DSBA's presentation on the County's financial condition provided only a glimpse of the County's dire economic outlook. The DSBA's financial presentation included data on the County's financial state prior to 2008. Economic conditions prior to 2008 have no bearing on this Award. Ability to pay is based upon the economic conditions during the period of the Award. Looking outside that relevant time 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. It is understandable why the DSBA would like to ignore the County's current fiscal crisis, but such an unrealistic view is patently unfair to the County and its taxpayers. The Panel should, therefore, disregard this pre-2008 data.

In its analysis of the County's current economic situation, the DSBA also showed that the County received a bond-rating boost over the course of 2009. The DSBA glossed over the fact

that the agencies issuing those ratings noted that the County's two-year trend of relying on reserves to balance its budget "is a pressure on the county's rating". Standard and Poor's warned: "At this time, we expect management to prudently manage reserve levels and to avoid becoming any more dependent on nonrecurring revenues in reaction to pressures resulting from the economic recession, specifically maintaining a strong tax stabilization reserve level, which serves as a major credit strength and stabilizer". 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.

While the DSBA tried to paint a rosier picture of the County's financial status, reality bites. Neither the County nor its taxpayers are in a position to fork over more money to support already highly compensated DSBA unit members. If anything, the taxpayers deserve to see their tax bills decrease.

The Panel should understand and emphasize the most recent County awards when determining the unreasonableness of the DSBA's demands. The Suffolk PBA has historically demanded, at a minimum, the same benefits received by the Nassau PBA. The other units in the police pattern (SOA, SDA and DIPBA) follow suit and receive comparable benefits and make comparable concessions. The DSBA then seeks the same, historically to no avail. The Suffolk PBA award, however, continues to be relevant as it provides the ceiling for this round of bargaining. Assuming that the long-standing County bargaining patterns are reaffirmed in this proceeding, the DSBA should expect to make concessions which are comparable to the PBA. It should also expect to receive a wage and benefit package that is less than that awarded to the PBA.

The 2008-2010 Suffolk PBA panel relied upon the Nassau PBA award as a guidepost. It recognized, however, 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”. 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.

These 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 sets the upper limits of what can be awarded during a particular round of bargaining. The DSBA panels then award a lesser wage and benefit package and comparable concessions. 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. As a result of the concessions, the blended annual cost of the PBA award expressed in terms of a wage increase was reduced to 2.67%.

For its part, the DSBA failed to present any evidence demonstrating that it should not be required to make similar concessions. Since prior interest arbitration panels have imposed this requirement, it should be done so here.

A. The Panel Must Award Savings from the DSBA which Are Proportionate to Those Contained in the PBA Award.

During each round of interest arbitration, the PBA sets the pattern. Subsequent County units, including the DSBA, are then expected to produce savings which are proportionate to those generated by the PBA. Since the DSBA is 13.8% the size of the PBA, the DSBA will have to generate 13.8% of the PBA's savings (\$4,805,500), or at least \$663,159.

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.

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 PBA, the SOA, the SDA and the DIPBA; (2) the Sheriff's pattern, consisting of the DSBA and the COA; (3) the AME pattern, consisting of the Association of Municipal Employees White (#2) and Blue (#6) units ("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. 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”. He made a similar finding in the 1993 SOA and SDA interest arbitration proceedings, in which he held that, “Of special significance are the wages, hours and conditions of employment of the Suffolk Police Officers and Suffolk Superior Officers. These are the most probative bases for comparison of employees performing similar services or requiring similar skills under similar working conditions”.

Arbitrator Howard Edelman reached the same conclusion in his 1993 DIPBA award, in which he held that:

With respect to the comparisons referred to in (a), the most relevant bargaining units exist in the County of Suffolk. Obviously, the identical jurisdiction is the most comparable community upon which to base comparisons. Equally relevant are the comparisons between the 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 (PBA); the Superior Officers Association (SOA); the Suffolk Detectives Association (SDA) and the instant unit.

As will be explained in more detail below, this “de facto pattern” has been found to exist in subsequent rounds of interest arbitration.

The pattern was most recently confirmed by the Panel Chair in the 2008-2010 PBA award (County Ex. 6 at pp. 82-83). There, he found as follows:

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

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

The next one is the *Sheriff's pattern*. The DSBA (deputy sheriffs Benevolent Association) and the COA (correction officers Association) comprise this pattern.

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

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

The DSBA has presented insufficient justification for destroying these long-standing bargaining patterns.

The Panel should further be guided by the terms and conditions of the deputy sheriff units in Dutchess, Orange, Putnam, Rockland and Ulster Counties. The Panel's Award must be based upon comparable communities which perform similar skills under similar conditions. These deputy sheriff forces are among the largest neighboring departments in the State.

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

Pattern bargaining is not a new concept in Suffolk County. Nor are the patterns, which have been established through decades of rounds of negotiations. There have been and continue to be four: the police pattern (PBA, SOA, SDA and DIPBA), the Sheriff's pattern (DSBA and COA), the AME pattern (AME, POA and Park Police) and the College pattern (Faculty and Guild).

These four internal County patterns are re-established each time a new round of collective bargaining begins. Each unit within a pattern looks to the unit that settled first to define the terms and conditions of its settlement. A pattern, of course, may not be established out of thin air, as it, too, must have a basis for comparison. With respect to those unions that enjoy interest arbitration rights, only with the first unit have arbitrators looked beyond the confines of the internal County pattern for guidance. That first unit sets the basic economic pattern. Following that award or settlement, there is little, if any, need to look at external units for comparison. This is true regardless of whether a union or the County disagrees with the pattern. Looking outside the pattern may produce the inequitable result of rewarding the unit that waits longest to settle.

Arbitrator after arbitrator has rejected arguments seeking to ignore or avoid an established internal pattern during proceedings involving the police pattern. Rather, these arbitrators have looked to the award issued to or settlement reached by the PBA, the unit that has historically settled first, as a starting point. The County, through its negotiations, has followed this precedent.

Adherence by all parties (arbitrators, the County and unions) to established internal patterns has produced a clear “pecking order” within the County. The police pattern units set the high end of the basic economic package. The AME pattern units set the low end of the basic economic package. The Sheriff’s pattern units have always historically received a basic economic package somewhere in between. It does not matter which unit settles first and establishes the pattern. It only matters that an internal pattern is in place.

While there are theoretically times where it might be appropriate to deviate from a pattern, this proceeding is not one of them. An analysis of the bargaining history between the County and the Sheriff’s pattern units reflects that each settlement is identical or, at a minimum, pattern-conforming. Nothing presented in this round is any different.

The development of and adherence to these internal patterns is most clearly shown by a review of the interest arbitration awards issued to those units in the police pattern. Since at least 1985, the four police pattern units have received identical wage increases. The only exception was in the years 2000-2003 when the DIPBA was able to reach a settlement with the County without proceeding to interest arbitration. While the DIPBA settled for an increase that was less than what the pattern presumably called for, other parts of that settlement made up for the difference in wage increases and all involved agreed that it was a pattern conforming settlement. As a result, arbitrators have properly determined that, despite the differences in the police pattern settlements in the 2000 round, the DIPBA remained a part of that pattern.

This bargaining history has played a key role in the formation of the police pattern, which has been consistently applied by arbitrators. As articulated by Arbitrator Scheinman in the 1996 PBA interest arbitration:

The evidence establishes that for some time there has been a de facto pattern in existence within the County among the police personnel belonging to these four (4) Associations: the Police Benevolent Association, the Superior Officers, the Detectives and the Detective Investigators...This "police pattern" required that the basic economics of the packages awarded to these different police personnel be consistent...The basics of the Agreement should be the same for all of these units yet allowing for the unique aspects of each unit to be addressed within the "police pattern."

This "de facto pattern" has also been found by other arbitrators who have reviewed the bargaining history of the police pattern units. For example, Arbitrator Riegel, based on his review of prior interest arbitration awards and contracts, determined that other Suffolk County police units were the relevant comparables for the SDA. Arbitrator Aiges conducted a similar review and found that, "An historical relationship exists as regards pay raises granted to the Suffolk PBA and the Suffolk SOA. Tracing back to 1986, both bargaining units received identical percentage increases in pay."

In addition to this bargaining history, arbitrators have noted that employees in the police pattern units "perform similar services...under similar working conditions." Arbitrator Edelman, in his 1996 SOA award, determined that police officers, detectives and superior officers "work in the same jurisdiction...face identical working conditions...[and] encounter the same frustrations on the job....".

While several County units (AME, POA, Faculty and Guild) do not enjoy the right to interest arbitration, arbitrators have noted the importance of these contracts in setting the various bargaining patterns. Just as arbitrators have found that a pattern exists among the police units based upon their bargaining history, a review of past contracts readily reveals the other patterns.

This two decade long history also shows where these patterns fall in relation to one another, which is can be shown on the following charts.

| <u>Union</u> | <u>1989</u> | <u>1990</u> | <u>1991</u> | <u>1992</u> | <u>1993</u> | <u>1994</u> | <u>1995</u> | <u>1996</u> | <u>1997</u> | <u>1998</u> | <u>1999</u> |
|--------------|------------------------|------------------------|------------------------|-------------|------------------------|--|---|---|-----------------------|---------------------|---------------------|
| PBA | $\frac{1}{1}$ 5% | $\frac{1}{1}$ 5.75% | $\frac{1}{1}$ 5.75% | 0% | $\frac{4}{1}$ 4.75% | $\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5% | $\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3% | $\frac{2}{1}$ 5.5% | $\frac{1}{1}$ 4% | $\frac{1}{1}$ 4% | $\frac{4}{1}$ 4% |
| SOA | $\frac{1}{1}$ 5% | $\frac{1}{1}$ 5.75% | $\frac{1}{1}$ 5.75% | 0% | $\frac{4}{1}$ 4.75% | $\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5% | $\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3% | $\frac{2}{1}$ 5.5% | $\frac{1}{1}$ 4% | $\frac{1}{1}$ 4% | $\frac{4}{1}$ 4% |
| SDA | | | | 0% | $\frac{4}{1}$ 4.75% | $\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5% | $\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3% | $\frac{2}{1}$ 5.5% | $\frac{1}{1}$ 4% | $\frac{1}{1}$ 4% | $\frac{4}{1}$ 4% |
| DIPBA | $\frac{1}{1}$ 5% | $\frac{1}{1}$ 5.75% | $\frac{1}{1}$ 5.75% | 0% | $\frac{4}{1}$ 4.75% | $\frac{1}{31}$ 3% $\frac{7}{31}$ 3.5% | $\frac{2}{28}$ 3.5% $\frac{7}{31}$ 3% | $\frac{2}{1}$ 5.5% | $\frac{1}{1}$ 4% | $\frac{1}{1}$ 4% | $\frac{4}{1}$ 4% |
| DSBA | $\frac{1}{1}$ 4.75% | $\frac{1}{1}$ 5.5% | $\frac{1}{1}$ 5.5% | 0% | 0% | $\frac{1}{1}$ 5% | $\frac{1}{1}$ 2.5% $\frac{7}{1}$ 2.25% | $\frac{1}{1}$ 2.5% $\frac{7}{1}$ 2.25% | $\frac{3}{1}$ 4% | $\frac{3}{1}$ 3% | $\frac{3}{1}$ 3% |
| COA | $\frac{1}{1}$ 4.75% | $\frac{1}{1}$ 5.5% | $\frac{1}{1}$ 5.5% | 0% | 0% | $\frac{1}{1}$ 5% | $\frac{1}{1}$ 2.5% $\frac{7}{1}$ 2.25% | $\frac{1}{1}$ 2.5% $\frac{7}{1}$ 2.25% | $\frac{1}{1}$ 4% | $\frac{1}{1}$ 3% | $\frac{1}{1}$ 3% |
| AME | $\frac{1}{1}$ 4.75% | $\frac{1}{1}$ 5% | $\frac{1}{1}$ 5.25% | 0% | 0% | $\frac{1}{1}$ 4% | $\frac{4}{1}$ 2.5% $\frac{10}{1}$ 2.5% | $\frac{1}{1}$ 2% | $\frac{1}{1}$ 2.75 | $\frac{1}{1}$ 2% | $\frac{1}{1}$ 2% |

| <u>Union</u> | <u>2000</u> | <u>2001</u> | <u>2002</u> | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> | <u>2010</u> |
|--------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
|--------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|

| | | | | | | | | | | | |
|------------------------|-------------------------|---------------------|---------------------|---------------------|---------------------|---|-------------------------------|-------------------------------|---------------------|------|------|
| PBA | <u>1/1</u> 4.6% | <u>1/1</u> 4.75% | <u>1/1</u> 4.5% | <u>1/1</u> 4.5% | <u>1/1</u> 3.75% | <u>1/1</u> 3.75% | 3.75% | 3.75% | 3.5% | 3.5% | 3.5% |
| SOA | <u>4/1</u> 4.6% | <u>1/1</u> 4.75% | <u>4/1</u> 4.5% | <u>1/1</u> 4.5% | <u>4/5</u> 3.75% | <u>1/1</u> 3.75% | 3.75% | 3.75% | <u>3/10</u> 3.5% | 3.5% | 3.5% |
| SDA | <u>1/1</u> 4.6% | <u>1/1</u> 4.75% | <u>1/1</u> 4.5% | <u>1/1</u> 4.5% | <u>5/3</u> 3.75% | <u>1/1</u> 3.75% | 3.75% | 3.75% | <u>3/31</u> 3.5% | 3.5% | 3.5% |
| DIPB A | <u>1/1</u> 3.95 % | <u>1/1</u> 3.95% | <u>1/1</u> 3.95% | <u>1/1</u> 3.95% | <u>5/3</u> 3.75% | <u>1/1</u> 3.75% | 3.75% | 3.75% | | | |
| DSBA | <u>1/1</u> 3% | <u>1/1</u> 5% | <u>1/1</u> 3.5% | <u>1/1</u> 3.25% | \$1,925 | <u>1/1</u> \$2665. 80 plus 3% | 3.25% +.25% Stipen d | 3.25% +.25% Stipen d | | | |
| COA | <u>1/1</u> 3.75 % | <u>1/1</u> 3.75% | <u>1/1</u> 3.5% | <u>1/1</u> 3.25% | \$1,925 | <u>1/1</u> \$2665. 80 plus 3% <u>12/31</u> \$425 | 3.25% +.25% Stipen d | 3.25% +.25% Stipen d | | | |
| AME | <u>4/1</u> 3% | <u>1/1</u> 3% | <u>1/1</u> 3.25% | <u>1/1</u> 3.25% | \$1,925 | <u>1/1</u> 3% | 3% | 3% | 3.25% | | |
| POA | | | | | \$1,925 | <u>1/1</u> 3% | 3% | 3% | 3.25% | 3% | |
| Park Police | | | | | \$1,925 | <u>1/1</u> 3% Step 12 | 3% Step 12 | 3% Step 12 | 3.25% | | |

Based on this twenty year history as illustrated above, it is easy to see how arbitrators have found that there are four distinct patterns. It is also easy to see how Arbitrator Townley in the 2005 DSBA award determined that, "if a column exists with respect to salary and related issues, at the top end we would fine the Suffolk police units, while the bottom end we would find the AME. The proper placement of the deputy sheriffs on the continuum would continue to be a number of tiers above the AME"

In its 2004-2005 interest arbitration, the COA, like the DSBA, claimed that it should be included in the police pattern. Arbitrator Stein rejected that argument, noting: "Based upon my review of the above facts, I conclude that there is a so-called "Sheriff's pattern" which link the settlements achieved by the DSBA and the [COA] with the County". Arbitrator Stein also found that the COA was entitled to an award that was comparable to the one the DSBA received, thereby reaffirming the Sheriff's pattern.

The DSBA, the only other County unit that, like the COA, is jointly employed by the County and the Sheriff's Office, falls in the same place as the COA, within the Sheriff's pattern.

The Sheriff's pattern is of critical and most relevant importance. It has been established and reaffirmed through amendments to the Taylor Law and over 30 years of bargaining.

In granting the DSBA the right to interest arbitration, the State Legislature did so in a manner that unequivocally articulated the legislators' intent to distinguish deputy sheriffs from those police units which have traditionally enjoyed the right to binding arbitration. For example, rather than simply adding deputy sheriffs to the statutory litany of those police units already entitled to binding arbitration, the Legislature fashioned a limited form of arbitration. The statute limits interest arbitration as follows:

With regard to members of any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service as certified by the county sheriff and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this section shall only apply to the terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other

provisions proscribed by law. Provided, further, that with regard to any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this subdivision pertaining to interest arbitration shall only apply in the event that the collective bargaining agreement between the public employer and the public employee organization has been expired for a period of not less than twelve months and the parties have fully utilized all other impasse resolution procedures available under this subdivision.

In contrast to police units, which are allowed to bring to interest arbitration all terms and conditions of employment, deputy sheriffs (and the County) are limited. This distinction leads to the inexorable conclusion that the Legislature intended to place deputy sheriffs on a different, lower level than police units with respect to bargaining matters.

The DSBA presented documentation and testimony allegedly supporting its argument that the legislative history means something different than what it says. DSBA witness and lobbyist William Schnell testified about the multiple attempts that the deputy sheriff unions made in an effort to gain the right to interest arbitration. After two failed attempts, Governor Pataki suggested that the right be limited to economic issues; i.e., the statute would match the one governing State police interest arbitration. When another bill was introduced with those changes, however, the Governor once again vetoed it, allegedly because he had not achieved ability to pay reforms. This time the Governor suggested that a waiting period be imposed. The bill was later reintroduced and approved.

The DSBA asserted that, when negotiating the bill with the Governor, no one questioned whether deputy sheriffs are police officers (T. 16, 1/19/10). Thus, the DSBA may argue that the differences between the statutes governing interest arbitration for the police pattern units and

deputy sheriffs does not in and of itself mean that the DSBA belongs in the Sheriff's pattern. The DSBA's argument is defeated by the fact that Governor Pataki signed the bill granting the COA the right to interest arbitration just one year after he approved adding Section 209.4(g) to the Taylor Law. At that point, Governor Pataki had still not achieved his ability to pay reform. Nonetheless, he granted the COA broader interest arbitration rights than the DSBA in that the COA is not restricted to economic items and is not bound by a statutory waiting period. Since the same Governor signed the same two bills during the same period time and under the same conditions, i.e., ability to pay reform not yet achieved, the legislative history demonstrates that deputy sheriffs were intended to be kept separate from other police officer unions and perhaps even at a place secondary to Suffolk County correction officers!

In addition to this legislative history, the parties have developed their own bargaining patterns. Deputy sheriffs are not treated as part of the police pattern. As noted by Arbitrator Townley in the 2005 DSBA award, the only award at that time issued to a unit in the Sheriff's pattern:

The Panel cannot ignore the fact that the parties to this interest arbitration have developed their own pattern of bargaining over the past few decades, with only slight variations during a few of those years. The pattern that has emerged from many years of bargaining is that the deputy sheriffs, as well as the correction officers, both of whom are jointly employed by the County Sheriff and Suffolk County (unlike the other units who are employed solely by the County), enjoy similar treatment on wage and benefit matters...The evidence also shows that, except in 2001 when they negotiated different salary percent increases based on the length of their respective work days, these two bargaining units have received the same wage increases, thereby establishing a pattern for nearly two decades.

Neither the DSBA nor the COA has been placed in any pattern other than the Sheriff's pattern. The many compulsory interest arbitration awards involving the PBA, SOA, SDA and

DIPBA have repeatedly referenced and reaffirmed the so-called police pattern and have reinforced the fact that those units, and those alone, are considered to be internal comparables.

The DSBA and COA have never been part of that pattern, despite the fact that both units now have the right to compulsory interest arbitration. Based on its acquisition of this right, the DBSA argued in 2005 that it should be compared to the police pattern units. Arbitrator Townley refused to do so (DSBA Ex. 8). Arbitrator Stein reached the same conclusion. This Panel's conclusion should be no different.

Indeed, the units in the police pattern continue to receive enhanced wage and benefit packages as compared to the Sheriff's pattern units. Notwithstanding their placement below the police pattern units, the DSBA and COA have remained above the AME pattern units since their split from the CSEA (now AME), a unit that has historically received wage and benefit packages far below those of the police pattern units.

In 1982, the DSBA and COA formed the Association of deputy sheriffs and correction officers (ADSCO) as a distinct bargaining unit within the CSEA. Thereafter, in 1984, ADSCO formally separated from the CSEA. One year later, the DSBA and COA split into their own units. Since that time, with two exceptions, the DSBA and COA have received identical percentage wage increases which have been greater than those negotiated by the County with the CSEA/AME, but less than those negotiated or awarded to the police unions.

Only two variations from this pattern occurred, one in 1997 when the DSBA negotiated wage increases effective March 1 and the COA negotiated the same effective January 1, and the other in 2001, when the DSBA agreed to a longer work day in exchange for a 5% salary increase. The COA workday remained unchanged and its members received a 3.75% increase. The COA

stipulation of agreement subsequently guaranteed the COA the “same wage increases as the DSBA” between January 1, 2002 and December 31, 2005. Similarly, the 1997-1999 COA settlement guaranteed the COA the same wage and benefit increases as the DSBA if the DSBA agreed to or was awarded a higher percentage amount.

Other than their similar, if not identical, historical wage increases, the DSBA and COA have also traditionally negotiated the same terms and conditions of employment. The County submitted the DSBA and COA settlements covering the years 1985 through 2003 to the 2004-2005 COA interest arbitration panel.

Based upon that information, Chairman Stein concluded that there is a Sheriff’s pattern that links the settlements of the DSBA and COA. This same information is before this Panel, and it is urged that the Panel reach the same conclusion.

This evidence shows, then, that there is a clear Sheriff’s pattern. The differences in the settlements merely illustrate a history of pattern conformance, just like Arbitrator Stein found in the 2004-2007 DIPBA award when he concluded that the DIPBA remained a part of the police pattern despite the difference in wage increases during the previous round of bargaining. Arbitrator Stein’s 2004-2005 COA award was comparable to Arbitrator Townley’s award. Moreover, both units also negotiated similar, if not identical, settlements for the years 2006-2007. The bargaining history simply does not support the theory that there are tiers within the Sheriff’s pattern or that either unit belongs in the police pattern.

In addition to their similar, if not identical, terms and conditions of employment and a past history of negotiating together, the DSBA and COA perform similar services under similar working conditions. Both DSBA and COA unit members are primarily responsible for the

transportation, supervision, custody and safety of inmates. They also receive similar training and share the same minimum qualification requirements (see also County of Suffolk and Sheriff of Suffolk County, 28 PERB ¶ 4617 (1995), aff'd, 29 PERB ¶ 3002 (1996), aff'd, 31 PERB ¶ 7006 (2d Dep't 1998) (noting that "there is no significant difference in the nature of the work actually performed or the employee training required to perform it").

It is clear, then, that the DSBA's attempts to separate itself from the Sheriff's pattern are completely self-centered and transparent. The Panel should reject the DSBA's arguments and find that the DSBA is and always has been a part of the Sheriff's pattern.

As a practical matter, then, the Panel is presented with essentially the same legal and practical issues that would have been before it had this proceeding taken place two or five or 10 or 20 years ago. There are long-term, existing bargaining relationships utilized by the employer and its unions. The details for the two primarily relevant patterns, those involving the County's police and civilian units, have been established for the two years covered by this Award. The DSBA, as part of the Sheriff's pattern, historically falls in between the police and civilian patterns. No compelling reasons have been presented for disturbing them.

While it is true that an arbitrator may issue an award that effectively destroys the pattern, most arbitrators are unwilling to do so absent compelling evidence. As most clearly articulated by Arbitrator Edelman,

This is not to say that a pattern, once established can never be broken. After all, these are separate bargaining units with distinct needs and responsibilities. As such, slavish adherence to a pattern without examination of distinguishing factors serves neither the interest of the Officers involved nor of the County nor of the general public. *However, there should be substantial reasons why a well established pattern should be broken.*

Arbitrator Sands expressed similar concerns when he noted, “These parties have a well-established history of collectively bargained contracts and interest arbitration awards that establishes certain principles from which *they may not lightly depart*

Here, the DSBA is part of the Sheriff’s pattern. As it did in the previous round of interest arbitration, the DSBA presented evidence showing that its members’ duties have expanded over the years beyond enforcing court orders and transporting prisoners to more police-like duties. Even though Arbitrator Townley credited the DSBA’s arguments based upon this evidence, she refused to change the existing police pattern. The DSBA remains part of the Sheriff’s pattern. Based upon the evidence presented during this round, the Panel should reach the same conclusion.

In this round, the DSBA presented eight witnesses who testified about the job duties which deputy sheriffs perform. Some of the job duties are admittedly similar, if not identical, to those performed by PBA unit members. More importantly, though, most of those duties have been performed by deputy sheriffs for years; i.e., even before Arbitrator Townley reviewed them and determined that the DSBA belongs in the Sheriff’s pattern.

Chief Sharkey testified that the primary difference in unit members’ duties since Arbitrator Townley’s award has not been a change in duties, but the volume of the work . Since Sheriff DeMarco took office in 2006, there have been a handful of new duties, namely those related to the G.R.E.A.T. program, Project Lifesaver, Hazmat Response Team and Motor Carrier Safety. Chief Sharkey also testified that DSBA unit members now conduct random sex offender checks and respond to 911 calls on the Long Island Expressway and Sunrise Highway. Most of these duties are performed on an as-needed basis rather than as a DSBA unit member’s primary

assignment. Performing highway patrol work, however, is “not a new function,” a point that will be further addressed .

With regard to these allegedly “new” duties, several of them are performed by employees in other bargaining units. For example, correction officers and deputy sheriffs perform G.R.E.A.T. program-related duties. The Suffolk County Fire, Rescue and Emergency Services (FRES) coordinates HAZMAT situations, which usually involve several County agencies such as the SCSO, the Police Department and the Department of Public Works.

There are also assignments within the SCSO in which correction officers work side by side with deputy sheriffs, performing the same duties. These include the Community Relations Bureau, Academy Bureau, Quartermaster Bureau, Personnel Investigations, Canine and Honor Guard.

Chief Sharkey also testified that there are some duties currently being performed by deputy sheriffs that could be performed by correction officers if the Sheriff chose to make that decision (which he has not). Those include District Court and Transportation Section-related duties. In other words, putting aside any Taylor Law-related issues, the SCSO could, as a matter of law, assign this work to correction officers.

In addition to this testimony, the County submitted exhibits establishing that the DSBA’s evidence before this Panel is similar, if not identical, to that submitted by it to Arbitrator Townley. Indeed, Chief Sharkey’s testimony and these exhibits show that little, if anything, has changed. While the volume of work may have increased (thanks to Sheriff DeMarco’s initiatives), the duties have not.

The same can be said for highway patrol-related duties. The evidence before PERB in the Highway Patrol IPCs showed that deputy sheriffs have been performing highway patrol work long before Arbitrator Townley issued her award. This was the primary reason why the County prevailed.

In his analysis of the evidence, Judge Maier found that deputy sheriffs have been performing highway patrol work for decades. Chief Kneitel testified that deputies have been performing those duties for at least 23 years. Sergeant Cobe testified that, while deputies had been performing those duties since he was first hired in 1993, he first began assigning them to do so in October 2005.

Likewise, Deputies Patterson, Carlock and Calise have been performing Highway patrol duties since 2002, 1988 and 1998, respectively. Moreover, Sergeants Berezny, Andrejack and Behrle testified that they had been supervising deputies in the performance of those duties since 2008, 2002 and 2005, respectively. The PBA and SOA consented to submit these witnesses' testimony via stipulation, thereby effectively waiving their rights to cross examination. Neither presented witnesses to refute the statements set forth in the stipulations. As a result, Judge Maier accepted the stipulations as factual findings (Highway Patrol Decision at 70).

Based upon the evidence submitted, Judge Maier held that deputy sheriffs have been performing the same highway patrol duties as PBA and SOA unit members. This, along with the fact that Suffolk County Park Police, SOA unit members and law enforcement personnel from other jurisdictions performed the same duties lead Judge Maier to conclude that the PBA and SOA did not exclusively perform the work at issue.

It is true that the frequency with which deputies were assigned to patrol the highways has increased since the Arbitrator Townley issued her award. That alone, however, is an insufficient basis upon which to place the DSBA in the police pattern. N.Y. Civ. Serv. Law § 209(4)(c)(v)(a) requires a comparison of services performed by employees rather than the quantity of services performed. Even if it were, Judge Maier's decision was based on the fact that deputies have been assigned to perform highway patrol duties at all times (i.e., every shift, every day) since *at least* August 2007. Indeed, the testimonies of the County's witnesses prove that deputies have been performing this work for decades, albeit on a less frequent basis.

Similar to other deputy duties, there has been an increase since the Townley Award. There has not been a change in duties. As a result, the Panel is without a sufficient basis to disturb the long-existing bargaining patterns.

In addition to its unsuccessful attempts at establishing that deputy sheriffs' job duties have changed, the DSBA cited to several interest arbitration awards for deputy sheriff units across the State. It is important for the Panel to keep in mind that those units are in upstate New York, where deputy sheriffs serve as the primary law enforcement agency. In Suffolk County, the primary law enforcement agencies are the SCPD, SCSO and police departments in the east end towns.

In addition, notwithstanding those differences, the awards cited by the DSBA do not support its conclusion. For example, during the 2004-2005 interest arbitration award for the County of Albany and the Albany County DSPBA, those parties agreed that the duties and responsibilities of deputy sheriffs were comparable to PBA unit members. That is not the case here. Even with that agreement on comparability, that panel still looked to other sheriff's units

for the purposes of deciding the appropriate award regarding salary, health insurance, shift differential and longevity.

In Onondaga County, the sheriff's office includes a police department, civil department and custody department. Unlike in Suffolk County, their deputy sheriffs perform the criminal law enforcement duties in the police department. It, therefore, comes as no surprise that Arbitrator Prosper found that deputy sheriffs were comparable to police officers employed by the county and its towns and cities .

The same is true for Putnam County, where the sheriff's department operated a police department. Nonetheless, Arbitrator Douglas still looked to other sheriff's departments, in addition to town police departments for comparability purposes.

In Schenectady, deputies were mainly a road patrol unit that performed a full range of police duties. Still, Arbitrator Selchick awarded the deputies the same salaries as the corrections and correction supervisors' units. He also compared the deputies to the corrections unit when determining the appropriate uniform allowance increase.

For the 2009 Oneida County deputies' award, the parties agreed that other law enforcement titles are comparable. This is not the case here.

As a result, these awards do little, if anything, to bolster the DSBA's arguments that it should be compared to the Suffolk County police pattern units. In each of the cited awards, there were very different, compelling reasons for comparing deputy sheriffs to police officers. Those reasons do not exist here.

Accordingly, the Panel should dismiss the DSBA's efforts to distance itself from the Sheriff's bargaining pattern and align itself instead as part of the County's police pattern. The

Panel should, rather, focus its attention on ascertaining the substance of the existing patterns, and determining where, had the parties successfully concluded their negotiations without the need to involve third parties, they would have wound up.

With respect to the scope of this proceeding, the County and the DSBA filed improper practice charges (PERB Case Nos. U-29128 and U-29155, respectively) in which they alleged that, pursuant to Civil Service Law § 209.4(g), the other party had submitted non-arbitrable proposals to interest arbitration. In sum and substance, Section 209.4(g) authorizes arbitration of proposals which are “directly relating to compensation” including, by way of non-exhaustive example, those directly related to “salary, stipends, location pay, insurance, medical and hospitalization benefits.”

The law also provides these non-exhaustive examples of items not directly related to compensation: “job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation.”

The seminal PERB case interpreting this statute is County of Putnam & Putnam County Sheriff, 38 PERB ¶ 3031 (2005). There, the Board adopted its holding in State of New York (Governor’s Office of Employee Relations), 30 PERB ¶ 3013, confirmed sub. nom., New York State Police Investigators Ass’n v. PERB, 30 PERB ¶ 7011 (Sup. Ct. Albany County 1997) (“State Police”), which interpreted identical statutory language then governing the New York State Police. PERB held that:

If the sole, predominant or primary characteristic of the demand is compensation then it is arbitrable because the demand to that extent relates directly to compensation. A demand has compensation as its sole, predominant or primary characteristic only when it seeks to effect some change in amount or level of compensation by either payment from the State to or on behalf of an employee or the modification of an employee’s

financial obligation arising from the employment relationship (e.g., a change in an insurance payment). If the effect is otherwise, then the relationship of the demand to compensation becomes secondary and indirect and the subject is, therefore, excluded from the scope of compulsory interest arbitration....

Based upon this precedent, it is the County's position that several of the DSBA's demands are not arbitrable. The arbitrability of each demand will be addressed separately below.

VI.
THE PANEL SHOULD DENY THE DSBA'S WAGE DEMAND BECAUSE ITS MEMBERS ARE ALREADY ADEQUATELY COMPENSATED

While the County recognizes the excellent services which deputy sheriffs provide, it recognizes that deputy sheriffs are already among the highest compensated employees in comparison to their peers. Awarding the DSBA's demand of a one time salary adjustment of \$5,000 effective January 1, 2008, in addition to 5% wage increases in each year of the award, will only exacerbate this already wide discrepancy in base salaries. Moreover, these increases are not even in the realm of the asserted "going rate," especially given the fact that the PBA was recently awarded increases of approximately half those demanded by the DSBA.

The total increased cost of the DSBA's wage demand is \$4,202,346, the equivalent of a 24% wage increase. This cannot be justified.

From 1993 through 2007 alone, DSBA unit members' wages have already outpaced the CPI by approximately 10.65% (the equivalent of an extra \$16,448 per unit member). Indeed, none of the County bargaining units have received this large of an increase during this round. Instead, the police pattern units received wage increases that were the lowest ever to be awarded to a police unit in Long Island. The DSBA should expect nothing more. Considering the longstanding County patterns, it should expect less.

Moreover, the DSBA 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 and the misconceived notion that its unit members are entitled to "PBA-like" wages. This is the wrong time, and the wrong place, to make such a demand, and this Panel should reject it.

The DSBA may nonetheless point to the fact that the current hourly rate for correction officers exceeds that of deputy sheriffs. Part of the reason for this is that correction officers work a 37.5 hour week, while the deputy sheriffs' workweek is 40 hours. The longer workweek was a conscious decision by the DSBA in 2001 when it received a 5% wage increase in comparison to the COA, which received 3.95%.

The DSBA may also argue that the Townley award dictates that its unit members' wages and hourly rates be above that of the COA. When considering this argument, the Panel should remember that DSBA unit members have an enormous retirement benefit. Every year, this benefit yields costs the County \$400,000, an amount far exceeding the COA's line up pay, which is admittedly part of a correction officer's hourly rate. Thus, even these arguments do not provide justification for the DSBA's excessive wage demand.

The DSBA failed to introduce any evidence demonstrating a need or justification for its remaining demands. Instead, it merely described them for the Panel and occasionally claimed that its current benefits are less than those received by other units, namely the PBA and other police units in Long Island. No arbitrator has ever compared the DSBA to these units.

Nonetheless, the DSBA continues to insist that its members "need" these wage and benefit improvements or should receive them because they are "police officers." At a cost of

\$20,382,273, the equivalent of a 116.3% wage increase, these demands have not been justified by the DSBA and are completely indefensible. The County respectfully submits that, for the reasons which follow, the Panel should reject them in their entirety.

The DSBA demands to have overtime calculated based upon an 8.5 hour workday and that the provisions regarding the Fair Labor Standards Act (FLSA) as awarded by Arbitrator Townely be deleted from the contract. Pursuant to Section 209.4(g), this demand is non-arbitrable.

Section 209.4(g) specifically excludes “issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed by law.” This demand has as its primary characteristic expediting the point at which overtime compensation will attach. PERB ALJ Doerr found a similar demand to be inarbitrable. County of Orange, 43 PERB ¶ 4511 (2010). The demand in that case was a flex time provision that allowed the employer to avoid paying contractual overtime while assigning employees to extra hours of work. Although the demand admittedly had a compensation component, PERB has held that this alone is an insufficient basis upon which to find a demand to be arbitrable. County of Putnam, supra, citing State Police, supra.

Here, the demand is intended to change overtime eligibility for unit members hired on or after December 31, 2005. Accordingly, it is inarbitrable, and the Panel should find that it is not properly submitted to interest arbitration.

Even if the Panel asserts jurisdiction over it, the demand should be rejected. Employees hired before December 31, 2005 presently receive overtime payments (time and one half) for all hours worked in excess of their workday. Any time off for vacation, sick leave, personal leave, holidays or other leave with pay also counts as time worked pursuant to the contractual overtime

procedures. Employees hired after December 31, 2005 receive overtime payments consistent with the provisions of the FLSA. Time off also counts for purposes of calculating overtime.

The cost for eliminating the FLSA provisions from the contract is \$165,055 in overtime payments, and \$54,076 in compensatory time, for a total of \$219,131, the equivalent of a 1.25% wage increase. To be clear, though, the County has no intent in trading these provisions for a reduced wage increase because the negative impact on existing patterns and labor relations policies would far outweigh its cash neutral “benefit” to the DSBA.

These provisions became a part of the DSBA contract as part of the 2004-2005 interest arbitration award. They were a major concession utilized to fund that award. During the next round of bargaining, the DSBA was unable to bargain these FLSA provisions out of the contract. They are now part of the established SCSO practice.

The DSBA is not the only County unit that has FLSA provisions in its contract. The same provisions exist in the COA, AME, POA and Park Police contracts.

The County trend is to add these provisions to the contracts, not remove them. This kind of provision is also not unusual to a deputy sheriff unit, as Orange and Dutchess Counties have similar provisions in their deputy sheriff contracts.

There is ample evidence in the record demonstrating why this demand should be rejected. Nonetheless, the DSBA presented testimony lamenting the hardships of the FLSA and how unit members hired after December 31, 2005 have to work more hours to receive overtime. The DSBA perceived this split benefit system as unfair, even though there are currently differing longevity and vehicle assignment provisions for DSBA unit members. Indeed, it is not

uncommon for a union to negotiate or to be awarded a lesser benefit for new members in exchange for a better benefit for current members.

The County also takes offense to the fact that DSBA unit members believe that they are entitled to a certain amount of overtime. DSBA unit members are hired to work a 40 hour week. While overtime assignments certainly occur, they are not a part of a deputy sheriff's normal workweek. No deputy sheriff should feel entitled to overtime hours and/or pay.

The DSBA may nonetheless argue that it is entitled to a credit because the FLSA provisions were implemented for newly hired COA unit members approximately four years after they were implemented for the DSBA. While this is certainly accurate, the DSBA's argument should be rejected because, as held by Arbitrator Stein, the terms and conditions of employment for DSBA and COA unit members are comparable. Arbitrator Stein reviewed over 20 years of bargaining history showing that the same concession was effective at a different date for the DSBA than the COA. Despite this, he found the settlements to be comparable and reaffirmed the longstanding Sheriff's pattern.

For these reasons, the DSBA's demands and its request for an additional credit should be rejected.

The DSBA demands that the current method of paying longevity; i.e., a flat dollar amount, be converted to a payment of \$300 for each year of service beginning at five years. This is the same longevity provision that is part of the police pattern units' contracts. The DSBA is not a part of that pattern and, therefore, is not entitled to this enhanced benefit. The current longevity structure conforms to the applicable internal patterns.

If this demand is awarded, the DSBA's longevity rates would more than triple, placing its members leaps and bounds ahead of the COA, the most comparable bargaining unit. In addition, the County cannot afford to pay an additional \$683,900 towards longevity, the equivalent of a 3.9% wage increase, even if there were off-setting cash concessions.

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. The same is not true with regard to the longevity increases sought by the DSBA, especially given the fact that the DSBA demands increases that drastically exceed those awarded to the PBA.

The Panel should, therefore, reject this demand.

4. The DSPBA's Demand for a 30 Minute Meal Period to Be Paid at the Overtime Rate Is Out of Touch with Reality and Should Be Rejected.

Pursuant to its scope charge, the County argued that the DSBA demand that a 30 minute lunch break be paid for at the overtime rate was not arbitrable. Based upon the revisions that the DSBA made to this demand during the hearings, the County withdraws its objection to the arbitrability of this demand.

The Panel should, nonetheless, reject it. DSBA unit members currently work an 8.5 hour workday, 30 minutes of which is an unpaid meal period. Paying that meal period at the overtime rate would cost \$4,357,623 over the life of the award, the equivalent of a 24.9% wage increase.

The 30 minute unpaid meal period was negotiated in 2001 in exchange for a 5% wage increase. The DSBA is now seeking to undo that deal and obtain payment for that meal period at each unit member's applicable overtime rate. Only three County units, all in the police pattern, have a paid meal period. None receives overtime during that lunch period regardless of whether

unit members work through it. Thus, the DSBA has demanded a benefit that exceeds that received by the PBA, yet has provided zero support in the record for that demand. This alone is reason to deny it.

5. The DSPBA's Demand to Increase Vacation Leave Should Be Rejected because The DSBA Has Failed to Provide Any Compelling Evidence Why It Should Be Awarded.

The County alleged in its scope charge that the DSBA demand for increased vacation leave was not arbitrable. PERB has held that time-off demands only indirectly relate to compensation. State of New York (Governor's Office of Employee Relations), 30 PERB ¶ 3013 (1997). While the DSBA may argue that this demand directly relates to compensation, as unit members receive a payout upon retirement of their accrued vacation leave, PERB has already rejected this argument. Thus, the Panel should find that it does not have jurisdiction over this demand.

Should the Panel find that it does have jurisdiction, it should nonetheless reject this demand. The only reason for it is that the DSBA wants the same benefit as the PBA, even though it is not in the police pattern and its benefit is the same as is enjoyed by the COA.

In addition, if awarded, this demand would more than double the number of vacation days to which a DSBA unit member is entitled in some years. Since the DSBA's current vacation accrual schedule conforms to the applicable internal pattern, and is comparable to the vacation benefits received by other deputy sheriff units and increasing the vacation leave would result in an increased cost of \$604,031 over the life of the award, the equivalent of a 3.45% wage increase, this demand should and must be rejected.

6. The Panel Should Reject the DSBA's Demand for a 12% Salary Premium for deputy sheriff Investigators.

The DSBA seeks to create a 12% salary premium above Deputy Sheriff I for all Deputy Sheriff Investigators. This level of benefit is almost non-existent in the County and in other deputy sheriff units. The COA, the most comparable unit to the DSBA, does not enjoy it, and it should not be awarded here. The cost to the County would be an additional \$1,316,515 over the life of the award, the equivalent of an 8% wage increase. Awarding this would be absurd given the lack of justification presented by the DSBA.

The DSBA demands that, effective January 1, 2008, a new Deputy Sheriff II step be created at the rate of \$5,000 above the current step. As with the prior demand, there is no basis for employees holding the position of a top step Deputy Sheriff II to receive a one-time wage increase on top of the one, if any, that the Panel deems reasonable. In this economy, it is not prudent to add steps to a salary schedule, especially when the internal and external patterns do not warrant doing so. Due to the absence of any objective need for this change, the \$70,000 price tag of this demand (the equivalent of a 0.4% wage increase over the life of the award) requires that it be rejected.

The DSBA demands an additional PBA-like benefit, namely that all Executive Board members receive the highest supplementary wages available pursuant to the parties' collective bargaining agreement. Only those County units in the police pattern currently enjoy this benefit. It is nonexistent in the Sheriff's pattern and comparable deputy sheriff units.

In addition, DSBA Executive Board members volunteered for these positions and knowingly took on the privilege of the related responsibilities. At a cost of \$19,684, the equivalent of a 0.11% wage increase, there is no reason for taxpayers to fund their choice.

While it is true that PBA Executive Board members received increases as a result of the canine pay and union officer stipend increases, which were part of the 2008-2010 PBA award, these were not new benefits, though, and the PBA presented evidence deemed sufficient by the Panel majority to justify the increases. Moreover, the County vehemently objected to them because, as articulated by Panel Member Jeffrey L. Tempera, it is wrong to require taxpayers to pay stipends in lieu of overtime for overtime not worked and, similarly, special assignment pay for assignments that have not been worked.

For these reasons, the Panel should deny this demand for a new, expensive, self-serving benefit.

The County's proposals should be awarded. They are reasonable, appropriate and will improve productivity and efficiency.

It has found itself in unprecedented economic conditions. These dire conditions demand aggressive solutions. Failure to act could destroy the County's financial well-being. This call to action applies to this proceeding. Under these grim circumstances, wage freezes, decreased benefits and a loosening of the grips on management's ability to run the SCSO in a more cost-efficient manner are necessary to the County's economic survival, as well as that of the taxpayers who will ultimately foot the bill.

The County presents the Panel with a wage and compensation package that acknowledges the impact of this round of interest arbitration. If the Panel grants 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 DSBA unit members are already more than adequately compensated and that wage increases are not feasible in this economic climate. The County's financial outlook has deteriorated in each year to be covered by this Award, even more so than the dismal predictions the County made as part of its annual budgetary process. In light of these conditions, a wage freeze is the only sensible solution. Even without a wage increase, the County will still expend approximately \$406,575 towards step movements, the equivalent of a 2.32% wage increase. It is unfair to taxpayers taking a pay cut to keep their jobs to pay more for already highly compensated employees.

The County proposes that all new employees work an additional five days per year. While the DSBA argues that this demand is not arbitrable, its primary characteristic is to decrease overtime; i.e., effect a change in the level of compensation given to employees. It is, therefore, "directly related to compensation" and arbitrable.

With regard to the proposal's merits, increasing the work year for new hires helps the County avoid excess overtime costs. The County would be able to use new employees at the straight time rate to perform work for which it would otherwise need to assign to employees at the overtime rate. Assuming the County hires 14 deputy sheriffs in each year of the award, the County could save approximately \$169,808, the equivalent of a 0.97% wage increase.

In terms of comparability, DSBA unit members' work year is shorter than some (PBA, SOA and SDA) County units and longer than others (DIPBA, Park Police, POA and AME). When compared to other deputy sheriff units, it is substantially less, as deputy sheriffs in Rockland, Dutchess, Putnam, Ulster and Orange Counties all work a 260-261 day work year. Thus, there is ample support in the record for extending the work year.

The County proposes that all DSBA unit members be required to work one extra day per year for training at no additional cost to the County. The DSBA incorrectly argues that this demand is not arbitrable. As testified to by Employee Relations Director Bob Draffin, this proposal will alleviate the SCSO's overtime burden. Unlike now, the SCSO will not have to pay a premium for those occasions when it sends its deputy sheriffs for training. As a result, this proposal, like the previous one, will decrease the amount of compensation a deputy sheriff receives and is arbitrable.

If awarded, this proposal could save the County \$302,106, the equivalent of a 1.72% wage increase, if paid at the overtime rate, over the life of the award. In an attempt to prove that it should be part of the police pattern, the DSBA took great pains to detail the training its unit members have received. It should, therefore, have no problem requiring an additional day of training, albeit without cost to the County.

There is further support for this proposal within the Sheriff's pattern. Pursuant to the COA contract, correction officers are required to attend firearms training on a non-work day once per year. The Deputy Sheriffs are currently paid overtime for that training. The County is seeking the same contract provision, but without the overtime requirement. For these reasons, this proposal should be awarded.

The County's overtime proposals are reasonable. The County seeks to establish a procedure pursuant to which a DSBA unit member who is wrongfully bypassed for overtime is placed at the top of the overtime list. The DBSA incorrectly asserts that this proposal is outside of the scope of interest arbitration. When a DSBA unit member is wrongfully bypassed for an overtime assignment, he/she loses money to which he/she was entitled. This revised procedure

would automatically place that money back in the unit member's pocket. The predominant characteristic of this proposal, therefore, seeks to increase the compensation a unit member receives and is "directly related to compensation" and arbitrable.

In addition, changing this procedure would improve efficiency. As testified to by Mr. Draffin, the parties often rectify a wrongful bypass in the very same manner as set forth in this proposal. Moreover, the COA, the most comparable unit to the DSBA, has a similar provision in its contract. Pursuant to that provision, a wrongfully bypassed correction officer is credited with 7.5 hours of overtime which he/she usually works in the Operations Division. Orange County deputy sheriffs also have a procedure in their contract that is identical to the one the County seeks. This proposal is an efficient, cost-effective means of ensuring that a DSBA unit member receives the overtime compensation to which he/she is entitled. It should be awarded.

The County seeks that the overtime list be updated only on a monthly basis. Currently, the contract requires that it be updated weekly. Contrary to the DSBA's argument, this proposal directly affects DSBA unit members' compensation. A unit member who would receive an overtime assignment based upon a weekly list may not receive that assignment based upon a monthly list and vice versa. Thus, this proposal is "directly related to compensation."

In addition, this proposal will improve efficiency. The SCSO would only be required to update the overtime chart 12 times per year rather than 52. It would also be easier for the SCSO to correct an error on a monthly list, as there would be more time to amend it.

The County proposes that overtime lists be designated at the Sheriff's discretion and that overtime assignments remain within the designated section. Here too, the DSBA incorrectly

argues that this proposal is not arbitrable. This proposal would, however, affect the overtime compensation that a DSBA unit member receives.

Pursuant to the current contractual procedure, each SCSO section has its own overtime list. When there are no volunteers for an overtime assignment, the SCSO seeks volunteers outside of the section. This proposal would give the Sheriff the discretion to expand overtime lists beyond those designated in the contract and to force the most junior person within the Sheriff's designated section to work that assignment. Since this proposal would control whether a DSBA unit member receives overtime compensation, the predominant characteristic of this proposal is compensation, and it is, therefore, arbitrable.

The changes which the County seeks are not unusual. The PBA, SDA, DIPBA, Park Police and AME contracts require that overtime assignments stay within a particular section or unit. The same is true for deputy sheriffs in Dutchess, Ulster and Orange Counties. Keeping overtime assignments within a particular section also makes sense because this allows employees who are most familiar with the work complete the assignment.

For these reasons, this proposal should be granted.

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 FLSA. The DSBA incorrectly argues that this proposal is not arbitrable. To the contrary, the DSBA's own evidence supports a finding that it is "directly related to compensation."

The DSBA called several witnesses, including Chief Sharkey and Deputy Ronca, to testify about what it perceives to be the cash value of the contractual FLSA provisions. It cannot now

argue that this demand is not “directly related to compensation.” As Deputy Ronca testified, deputies hired on or after December 31, 2005 are paid straight time while deputies hired after that date earn overtime for working those same extra hours. This proposal directly affects unit members’ compensation and is, therefore, arbitrable.

Employees hired before December 31, 2005 presently receive overtime payments (time and one half) for all hours worked in excess of their workday. 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. In recognition of this, the Townley Panel awarded that employees hired after December 31, 2005 receive overtime payments consistent with the provisions of the FLSA. The County seeks to expand this to the entire unit.

Federal law requires an overtime compensation system that will 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. The work cycle in this matter is 14 days. Federal law requires the payment of overtime (i.e., payments at time and one-half the employee’s hourly rate) for a deputy sheriff assigned to a 14 day work cycle only after he/she has *actually* worked 86 hours during that time period. This is unlike the current contract, which allows a pre-December 31, 2005 deputy sheriff to be paid time and one-half for any time worked over his/her scheduled eight or 10 hour work day. The contract even allows that employee’s use of sick, personal and/or vacation time to count towards his/her daily amount. Thus, County taxpayers are, at times, paying a premium for days not worked. This is unnecessarily costly, as well as inequitable.

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

If awarded, this proposal would save the County \$2,534,803, the equivalent of a 14% wage increase, over the life of the award and more than enough to offset the cost of several of the DSBA's demands.

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. It was also awarded by the 2006 COA interest arbitration panel.

There is no reason why the Panel should not continue the groundwork laid by previous panels and expand the FLSA to cover all employees. In fact, this has already been done in Orange County, where all deputy sheriffs receive overtime pursuant to the FLSA.

Relative to Recall Pay, the County seeks to eliminate the contractual requirement that employees receive a minimum number of hours' pay when they are recalled to work. Specifically, the County proposes that employees only receive overtime pay for those hours which they actually work.

Contrary to the DSBA's claim, this proposal is arbitrable. This is because, if awarded, the amount of compensation which a recalled DSBA unit member will receive will decrease. Instead of the minimum four hours' pay, he/she may well receive less. The primary characteristic of this demand, then, is to decrease recall pay. The proposal is, therefore, "directly related to compensation" and arbitrable.

Moreover, it makes sense that the County and its taxpayers only be required to pay employees for the time they actually work. An employee should not receive a premium simply because he/she showed up to a recall assignment.

The County proposes the elimination of the contractual requirement that employees receive a travel time payment when they are recalled to work. Employees currently receive an hour's pay at the overtime rate when recalled. Although the DSBA argues that this proposal was not arbitrable, here too, the primary characteristic of this proposal is to reduce unit members' compensation. It is, therefore, "directly related to compensation" and arbitrable.

While all County units receive travel pay, none of the comparable deputy sheriff units do. Thus, there is a basis upon which the Panel to award this proposal, and it should do so.

The County proposes to cap at \$15,000 the annual allotment it provides for tuition reimbursement, and to prevent any unused funds from carrying over into the succeeding year. Every single County bargaining unit, except for the COA, has a contractual cap on tuition reimbursement. In addition, only the PBA and SOA contracts provide that unused funds will be rolled over from year to year. Neighboring deputy sheriff units have a cap that is far below that sought by the County.

In the past three years, the County has reimbursed only \$1,141, \$4,176 and \$5,243, respectfully, in tuition monies. This is far less than the proposed cap. Awarding this proposal will, therefore, have little, if any, effect upon the DSBA's members, while saving scarce public funds.

The County seeks to reduce from 39 to 26 weeks the number of weeks for which a DSBA unit member can receive workers' compensation payments. In other words, a DSBA unit member

would only be entitled to workers' compensation payments for six months. If awarded, the amount of compensation a deputy sheriff on workers' compensation would receive would be reduced by one-third. That makes this proposal "directly related to compensation" because its primary purpose is to reduce compensation. Thus, it is arbitrable.

In this economic climate, it is unfair to require taxpayers to pay for employees who are not performing any work. Although unique to the County patterns, this type of reduction in workers' compensation is not unusual. For example, it already exists in the Rockland County deputy sheriffs' contract.

The County seeks to exclude time spent performing light duty from the calculation of the employee's probationary period. While the DSBA has argued that this proposal is non-arbitrable, employees in their probationary period may be ineligible to apply for certain postings, including those which carry additional compensation, such as night differential or a stipend. Extending the probationary period by not counting periods of light duty would, therefore, affect unit members' compensation. Thus, this proposal is "directly related to compensation" and is properly before the Panel.

This proposal is also appropriate on its merits. Probationary periods exist so that an employer has the opportunity to observe how an employee actually performs his/her job. A deputy sheriff performing light duty functions is not, by definition, performing all of the functions of a full-time deputy sheriff, and the Sheriff does not, as a result, have an adequate opportunity to make a fair assessment of the officer's ability to adequately perform in that position. Indeed, much of the training an employee receives in any field occurs while on the job. This change would also be consistent with the intent of applicable Civil Service regulations and case law,

which allow the employer to exclude from the probationary period time which the employee is absent (Suffolk County Civil Service Rule 14, ¶ 8).

The applicable Sheriff's pattern also supports this proposal. Currently, both deputy sheriffs and correction officers have a 12 month probationary period. Deputy sheriffs, however, spend half of that in the police academy while correction officers only spend 14 weeks in the academy. Thus, the Sheriff has almost three additional months within which to evaluate correction officers. At a minimum, he should have the same amount of time to evaluate deputy sheriffs.

The County seeks to prevent those DSBA unit members who are absent for a job-related illness or injury from engaging in outside employment and activities that may impair their ability to return to full duty. The DSBA has incorrectly alleged that this proposal is non-arbitrable.

This proposal is primarily aimed at preventing deputy sheriffs from working other jobs while they are on Section 207-c leave. If awarded, it would, accordingly, directly impact a deputy sheriff's ability to earn extra compensation while he/she is on leave. It is, therefore, "directly related to compensation" and is arbitrable.

In addition, this proposal codifies the existing SCSO Operations and Procedures and does not change terms and conditions of employment. Since DSBA unit members are presently obligated to follow these orders, they should have no problem codifying them in their contract. Although this would be a new provision among County units, Orange County deputy sheriffs have a similar provision in their contract. Thus, there is a basis in the record upon which the Panel may award it.

The County seeks to reduce the number of days that a deputy sheriff may accrue (from 90 to 60 days) and carry over (from 90 to 30 days).

Here too, the DSBA has alleged that this proposal is not properly before the Panel. Unlike the DSBA's vacation leave demand, which seeks to increase the number of vacation days, the County's proposal, by reducing the accrual and carry over limits, seeks to decrease the amount of money a deputy sheriff will receive in the form of accrued vacation time upon separation from service. The primary purpose of this demand is to save money, not to increase or decrease paid time off. It is, therefore, "directly related to compensation" and arbitrable.

Given the fact that the DSBA's vacation accrual and carryover benefit drastically exceeds that of other comparable deputy sheriff units, there is ample support in the record for granting this proposal, and the Panel should do so.

The County seeks to reduce the number of vacation days for which a deputy sheriff may be paid upon separation from service. Once again, while the DSBA has argued that this proposal is not arbitrable, its primary characteristic is to reduce the County's financial burden for accrued vacation time. It also would decrease the amount of compensation a deputy sheriff would receive for his/her accrued time. It is, therefore, "directly related to compensation" and arbitrable.

Since the Panel has jurisdiction over this proposal, the Panel should award it. DSBA unit members currently enjoy a vacation payout (90 days maximum) that far exceeds that of other deputy sheriff units. In comparison to these units, the DSBA's benefit is excessive.

It is unfair to continue to require taxpayers to pay for these "golden parachute"-type benefits. Awarding this proposal would save the County approximately \$42,999, the equivalent

of a 0.25% wage increase, over the life of the Award. This is a small price for the DSBA to pay for a financially feasible award.

The County seeks to delete the provision in the Agreement that allows deputy sheriffs who were unable to reschedule scheduled vacation time lost as a result of a workers' compensation absence to maintain their vacation accruals even if they exceed the 90 day cap. While the DSBA has argued that this proposal is not arbitrable, it is "directly related to compensation," as its primary purpose is to reduce the County's financial burden. As with the previous two proposals, this one would decrease the vacation payout for employees who were unable to reschedule their vacation days as a result of a workers' compensation absence. Pursuant to the current language, these employees may receive a payout for those days above and beyond the 90 day cap. Awarding this proposal would impose a limit on the number of days for which a deputy sheriff could be paid.

This proposal also makes sense. DSBA unit members who are allegedly unable to reschedule vacation days due to a workers' compensation absence should not receive more generous vacation benefits/pay outs than unit members who are working. There is also no basis in this record for the Panel to assume that every deputy sheriff on Section 207-c leave in fact cannot take his/her scheduled vacation leave. Moreover, in the absence of the contract clause, those employees would have to take their vacation leave.

The County proposes deleting the requirement that all unit members be paid for their unused, accumulated sick leave upon retirement. The County proposes giving these employees unlimited sick leave. Currently, this is the status quo only for those unit members hired on or after December 31, 2005.

Here too, the DSBA has argued that this proposal is not arbitrable. The primary characteristic of this proposal is to reduce the amount of money that DSBA unit members receive in sick leave payouts. This will directly impact the amount of money these unit members receive upon retirement. Their compensation will, in effect, be eliminated. Thus, this proposal is “directly related to compensation” and it is properly before the Panel.

This proposal 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 that tend to be annually plastered across the front page of *Newsday*. Indeed, the County projects that it would save \$218,930, the equivalent of a 1.25% wage increase, over the life of the Award.

Employees blessed with good health should not realize a financial windfall simply because they did not need to utilize extensive amounts of sick leave. The DSBA and COA contracts also contain this restriction, albeit only for those unit members hired on or after the effective date of the unit’s respective 2004-2005 interest arbitration award. Other County units, such as the Park Police and POA, have negotiated settlements including it. The rationale for these changes is the same as that here: eliminating the squirreling away of sick time for large end career payouts. This is a bill taxpayers can no longer afford to pay, especially when most of them do not enjoy the luxury of stockpiling their sick leave in exchange for a “golden parachute” upon retirement.

The County should not have to answer to taxpayers, who are already struggling to make ends meet, when *Newsday* prints yet another article on a payout that exceeds the County

Executive's annual salary. There is simply nothing that the County can say to satisfy angry taxpayers who foot the bill for a benefit they will never have the opportunity to enjoy.

The County proposes adding a 10 day limitation within which an employee can provide an answer to material placed in his/her personnel file. The DSBA has incorrectly alleged that this proposal is not arbitrable. Unit members' personnel files are used for a variety of purposes, including determining whether a deputy sheriff possesses the minimum qualifications for an open position. If a unit member fails to address negative notations in his/her personnel file, he/she may be passed over for a position. This could potentially affect his/her income, as positions often carry financial benefits. Thus, this proposal is arbitrable because it is "directly related to compensation."

This proposal also makes sense because it will allow the employee a reasonable time upon which to decide whether to address any concerns he/she has with the material, rather than waiting until the eve of a disciplinary hearing to first write a self-serving response at a time when the employee's purported concerns about the material can no longer be effectively addressed. This proposal was awarded by the 2004-2005 COA interest arbitration panel because it was deemed reasonable and consistent with other County collective bargaining. The same rationale applies here.

The County proposes to extend the probationary period from 12 months to 18 months. The DSBA has alleged that this proposal is not arbitrable, but, as previously articulated, employees in their probationary period may be ineligible to apply for certain postings, including those which carry additional compensation. Extending the probationary period would, therefore,

affect unit members' compensation. Thus, this proposal is "directly related to compensation" and is properly before the Panel.

Given this six month stint in the Academy, there is little time for the SCSO to evaluate new deputy sheriffs before the expiration of their 12 month probationary period. A longer probationary period would give the Sheriff a better opportunity to evaluate them.

Moreover, PBA unit members, who attend the same Academy, already have an 18-month probationary period. Since the DSBA is intent on obtaining PBA-like benefits, it should have no issue with this proposal.

The County seeks to give the Sheriff the discretion to make all transfer decisions instead of having to follow the strict seniority, blue collar system that currently exists. As a result of this proposal, the requirement to post available positions and consider unit members' seniority would also be deleted from the contract.

Contrary to the DSBA's claim, this proposal is arbitrable. Various positions in the SCSO carry with them extra compensation, such as night differential, canine pay; etc. Unit members are currently selected for these positions on a strict seniority basis. If this proposal is awarded, unit members who would be transferred to these positions based upon the current system may no longer be selected. As a result, this proposal has direct bearing on unit members' compensation. It is, therefore, arbitrable.

The Sheriff currently has the authority to transfer and assign unit members to certain designated positions, including those in Internal Affairs and superior officer assignments. That authority should be expanded to all positions. There would, therefore, be no need for postings or to consider seniority as the only factor in a transfer decision. Since the SCSO has had to defend

grievances where DSBA unit members have allegedly ripped down postings, this proposal makes sense.

The DSBA and COA are the only County bargaining units where the employer does not have the sole discretion to transfer employees. They are also the only two units whose contracts require postings and seniority to be the only factor for transfers. Since the DSBA wants to become part of the police pattern, it should be willing to incorporate police pattern-type language into its contract. Other county deputy sheriff units do not have these restrictions in their contracts, and they should be eliminated here.

The County proposes that the Sheriff be given the authority to make temporary transfers for a period up to 45 days. This proposal is arbitrable because when a deputy sheriff is transferred to a position, he/she may experience a change in compensation. This is due to the fact that certain positions carry with them shift differential and/or a stipend. A deputy sheriff may, therefore, receive an increase or decrease in compensation when the Sheriff transfers him/her. Thus, this proposal is "directly related to compensation" and is properly before the Panel.

In addition, this proposal promotes efficiency. Temporary transfers allow the SCSO to address short-term staffing needs. For example, Mr. Draffin testified that this type of contract provision would have been beneficial to the SCSO when it took primary control over patrolling the Long Island Expressway and Sunrise Highway.

The provision sought by the County also currently exists in the COA's contract. With respect to that unit, this provision has proven beneficial to the SCSO and COA unit members. When correction officers request to be moved out of a particular assignment due to a personal need, the SCSO has the contractual means to fulfill that request.

For all of the reasons set forth in this Post Hearing Memorandum and at the hearing, the County respectfully, and earnestly, requests that the Panel award the County's proposals and reject those of the DSBA.

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

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 (DSPBA) 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 counties north of New York City. These jurisdictions are geographically in close or relatively 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.

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.

Arbitrator Edelman reached the same conclusion in his 1993 DIPBA award. Arbitrator Stein chaired the panel in a subsequent interest arbitration proceeding between these parties. He reached the same conclusion as did Arbitrator Edelman.

I was the chairman of the most recent interest arbitration proceeding between the DIPBA and Suffolk County. I made the same finding as did Arbitrators Edelman and Stein.

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.

Turning now to the Sheriff's pattern, there are two bargaining units within this grouping, the Deputy Sheriffs Police Benevolent Association (DSPBA) and the Correction Officers Association (COA). It is important to review the history of the DSPBA.

The DSPBA was part of Civil Service Employees Association (CSEA) until 1982. In 1982 the Deputy Sheriffs and the Correction Officers broke away from CSEA and formed the Association of Deputy Sheriffs and Corrections Officers (ADSCO). This unit survived until 1985 when the DSPBA and the COA were formed. After 1985 these two units negotiated their own collective bargaining agreements. These bargaining units continue to remain as separate entities.

While the DSPBA negotiated its own CBA after 1985, it was not eligible for interest arbitration until 2003. The Taylor Law was amended in 2003 and §209.4(g) of the statute was enacted.

This provision provided for interest arbitration for units of deputy sheriffs. I must add that this provision differed from the one affecting police units in significant ways. §209.4(g)

limited interest arbitration proceedings to matters *directly relating to compensation*. The statute specifically excluded *non-compensatory issues* from interest arbitration proceedings. This is not to suggest that only non-mandatory subjects were not arbitrable. Certain mandatory subjects of bargaining were deemed inarbitrable under §209.4(g). In addition, the statute required a 12 month waiting period after the expiration of a predecessor agreement before either party to petition for could file for interest arbitration.

The extant CBA between Suffolk County and the DSPBA expired on December 31, 2003. The DSPBA filed for interest arbitration under the newly enacted amendment to the Taylor Law.

Dr. Rosemary Townley, Esq., was named the public member of the interest arbitration panel. That panel issued its award in January 2006. That award covered 2004-2005.

The parties successfully negotiated an agreement covering the period January 1, 2006-December 31, 2007. The parties reached impasse when attempting to negotiate an agreement covering January 1, 2008-December 31, 2010.

With this in mind, I now turn to the matter of internal comparability. In short, the DSPBA vigorously asserted that it should be included within the police pattern and should be compared with the PBA, SDA, DIPBA and SOA.

For their part, the County and Sheriff's Office argued that the DSPBA should remain within the Sheriff's pattern. They insisted that the unit that is most *comparable* to the DSPBA is the COA.

The DSPBA made extensive arguments in support of its basic premise. It emphasized that police units and deputy sheriffs units are similar organizationally, occupationally and

strategically. It added that police officers and deputy sheriffs receive the same training. It maintained that deputy sheriffs are police officers in every sense.

It stressed that placement in a particular *pattern* must not be static. It insisted that conditions change and that these changes must be considered. It specifically pointed to a recent PERB decision (Case Nos. U-28611 and U-28610). This decision concerned an *improper practice charge (IPC)* brought by the Suffolk County PBA and the Suffolk County SOA against Suffolk County. The nature of the charge was that the patrol of the Long Island Expressway and Sunrise Highway was the exclusive work of the PBA and SOA and that Suffolk County Executive Levy had assigned this work to the DSPBA. I will discuss this decision in detail once the summary of the arguments is completed.

The DSPBA indicated that it is inappropriate to compare it to the COA. It observed that deputy sheriffs are police officers under state law and that correction officers are not. It pointed that deputy sheriffs do police/law enforcement work.

From the perspective of external comparables, the DSPBA noted that several interest arbitration panels have determined that deputy sheriffs should be considered comparable to police units. In this connection the DSPBA cited a number of interest arbitration awards.

It concluded that deputy sheriffs and police officers have the same legal status. It added that the police department and the Sheriff's Office have the same organizational structure. It posited that deputy sheriffs and police officers come from the same labor pool and live and work in the same area. It stated that police officers and deputy sheriffs often work side by side. It contended that the DSPBA must be included in the Suffolk County police pattern.

For its part the County stressed that there is a 30 year history of pattern bargaining in Suffolk County. It noted the presence of internal and external patterns. It asserted an extensive number of interest arbitration awards that relied on internal patterns when resolving bargaining impasses. It pointed out that these awards were first issued in 1993 and continued to the present. It insisted that the DSPBA and the COA were always part of what is known as the Sheriff's pattern.

The County argued that there is insufficient evidence to disturb the existing patterns. It posited that Arbitrators Shriftman and Scheinman spoke of the importance of maintaining patterns and that Arbitrator Edelman indicated that there must be substantial reasons to break a pattern.

The County agreed that some of the duties of deputy sheriffs are similar to those of police officers. It stressed that this has been so for many years. It indicated that the deputy sheriffs have been assigned few new duties. The County pointed out that some of the new duties are also performed by employees who are not deputy sheriffs.

With respect to the matter of the highway patrols, the County posited that deputy sheriffs were performing highway patrols long before the PERB decision relative to the IPC brought by the PBA and SOA. It stressed that Administrative Law Judge (ALJ) Maier dismissed the charge because the highway patrol work was not exclusive work of the PBA and SOA. It emphasized that the ALJ relied on the fact that deputy sheriffs had historically done some of this work. The County added that employees other than deputy sheriffs, park police, for example, also performed highway patrols. The County argued that there has been an increase in the use of

deputy sheriffs for highway patrols but that an increase does not constitute a change in the duties of deputy sheriffs.

The County indicated that there have been interest arbitration awards in which deputy sheriffs have been parties. It stated that these awards have involved bargaining units north of New York City. It opined that those awards supported the County's position or were distinguishable in significant ways.

It stressed that there has been pattern bargaining within the County for 30 years and that there have been four bargaining patterns. It maintained that the first unit in the round of bargaining defines the terms and conditions of employment. It argued that the first unit may look to external comparables and that subsequent units rely on the first unit.

It asserted that the PBA sets the top of the range while AME reflects the bottom of the range. It concluded that the deputy sheriffs fall somewhere between the PBA and AME.

As to the comparability of the DSPBA and COA, the County maintained that these two units have gotten the same raises virtually every year since 1989. It recalled that Arbitrator Townley commented about this fact in her arbitration award.

It observed that the COA sought to be included in the police pattern in the 2004-05 bargaining. It stresses that COA was not made part of the police pattern.

The County argued that the legislature clearly distinguished between deputy sheriffs and police officers with respect to interest arbitration. It added that the legislature granted the right to interest arbitration to correction officers. It noted that this happened one year after the deputy sheriffs were given this right. It stresses that the rights afforded to the correction officers were broader than those granted to deputy sheriffs. In sum, the County concluded that the Sheriff's

pattern should be undisturbed and that the DSPBA claim that it should be made part of the police pattern should be rejected.

Having carefully weighed the arguments, I must conclude that there is insufficient evidence to warrant removing the DSPBA from the Sheriff's pattern and placing it in the police pattern. There are several factors that I weighed in reaching this conclusion.

I must point out that the issue of the movement from the Sheriff's pattern to the police pattern was raised during the prior interest arbitration. Arbitrator Townley concluded that the change in pattern was not justified.

Arbitrator Townley determined that, on a continuum of bargaining unit patterns, the DSPBA is above the AME pattern and below the police pattern.

She did indicate that the DSPBA should be closer to the police pattern than is the COA. However, Arbitrator Townley did not suggest the creation of a fourth pattern.

The Townley panel considered past negotiations between the County and the DSPBA, the COA, the police units and AME and the patterns that emerged. That panel reflected on the differences in legislation under the Taylor Law and indicated that there are significant differences between the interest arbitration provisions for the police units and the deputy sheriffs.

It also noted that the COA received the statutory right to interest arbitration about one year the DSPBA got it. It stressed that, accordingly, that there was no statutory basis to distinguish the DSPBA from the COA.

Much of what the Townley panel considered remains unchanged. CSL §209(4) (g) remains unaltered. The DSPBA continues to be limited to arbitrating matters of compensation while the police units may raise all terms and conditions of employment.

This is highly significant. If the legislature intended for deputy sheriffs to be treated in the same manner as police units, it would not have drawn such a clear distinction. If the DSPBA cannot even bring the same issues to an interest arbitration panel as can police units, how can it be put into the same pattern for purposes of comparability?

Furthermore, there was a period of one year when the deputy sheriffs were eligible for interest arbitration and the correction officers were not. As of the end of 2005, CSL §209.4(h) granted the correction officers the option of going to interest arbitration. In fact, the interest arbitration rights of correction officer bargaining units may be superior to those of deputy sheriffs.

The legislative history reveals that there is no basis to distinguish the DSPBA from the COA. This supports the premise that the existing Sheriff's pattern should remain unchanged. Moreover, with the passage of time, if the legislature concluded that the deputy sheriffs should be distinguished from the correction officers, it would have amended the Taylor Law. The fact is that it did not do so.

The Townley panel reviewed the history of the bargaining within the County's bargaining patterns. Its award was issued in January 2006.

The data from 1989 to 2003 indicates that, with the exception of 2000 and 2001, the DSPBA and the COA have consistently received the same salary increases. Furthermore, their increases were less than those received by the police units and greater than those achieved by AME.

It is important to note that the pattern of deputy sheriffs and correction officers being compared with each other continued unabated after 2003. The interest arbitration panels dealing with the two bargaining units awarded the same wage increase in 2004 and 2005.

There were negotiated settlements in 2006 and 2007. Once again, the salary improvements were identical.

It is also significant that during the period 2004-2007 the increases awarded to the units in the police pattern were greater than those in the Sheriff's pattern. In addition, the raises given to AME pattern (which by 2004 included the POA and the Park Police) were the smallest of the three bargaining patterns.

It is obvious that the history of pattern bargaining is lengthy. A review of this record is a powerful indicator of the stability in the bargaining relationships which has developed.

The question posed here is whether there is a basis to move the DSPBA from one pattern to another. Interest arbitrators have regularly opined that pattern bargaining best serves the interests of the parties. This is not to suggest that there are no circumstances under which patterns should be broken.

Arbitrators Edelman posited that there must be *substantial reasons for a well established pattern to be broken*. Further, Arbitrator Sands expressed similar sentiments.

With this in mind, I find that the reasons for breaking the Sheriff's pattern are not *substantial*. An analysis of the DSPBA arguments reveals that it asserted that deputy sheriffs perform many of the same functions as do police officers. This premise may be valid. However, this has been true for many years when the Sheriff's pattern was unchallenged.

It may be that the Sheriff has added a small number of duties to the ranks of the deputy sheriffs. However, some of these duties are also performed by personnel other than deputy sheriffs. Moreover, the additional duties have not substantially changed the role of the deputy sheriffs.

The DSPBA also argued that the organizational structure of the deputy sheriff's bargaining unit is similar to that of the police department. It added that the training received by deputy sheriffs and their qualifications are the same as those of police officers.

All of this may be true but these statements could have been made prior to the current round of bargaining and prior to previous rounds of bargaining. Given the long history of pattern bargaining, these factors do not reflect changes that would justify changing the composition of patterns.

The DSPBA asserted that the PERB decision concerning highway patrols must be given great weight. The question before ALJ Maier was to determine if the patrols of certain highways was the exclusive work of the PBA and SOA. He concluded that such was not the case.

Judge Maier observed that, in addition to the PBA, the highways were patrolled by the SOA, deputy sheriffs, park police, New York State police, MTA police and DEC police. He rejected the PBA's IPC claim to having exclusively patrolled the Long Island Expressway and Sunrise Highway. The record suggests that the deputy sheriffs patrolled the highways for several years prior to September 2008.

The PERB decision is as important for what it does not say and it is for what it does say. It does say that the work in question is not exclusive to the PBA. It does not say that that the work is exclusive to the DSPBA.

It must be said that the deputy sheriffs performed highway patrols before 2008 and continue to do so at this time. It is apparent that there are more deputy sheriffs involved in patrolling the highways now than there were before 2008. With respect to the highway patrol, the difference between the period before 2008 and after it is quantitative and not qualitative. Patrolling the highways is not a new assignment for deputy sheriffs. However, there are more of them involved in this duty. It would be improper to rearrange bargaining patterns based upon an increased number of deputy sheriffs currently performing a duty that had been assigned as compared to a smaller number of them in the past.

Before concluding this section of the award, it would be appropriate for me to comment on interest arbitration awards commented upon by both parties. These awards concern bargaining units representing deputy sheriffs north of New York City.

First and foremost, based on a long history of reliance on internal comparables in Suffolk County, I place significantly greater weight on the analysis of the Suffolk County patterns than on external comparables. That being said, I recognize the importance of considering the cited awards.

The DSPBA cited a January 2006 award written by Arbitrator Lewandowski in a proceeding involving the Albany County deputy sheriffs, (*In the Matter of the Interest Arbitration between The County of Albany, NY and The Albany County Deputy Sheriffs Police Benevolent Association*, PERB Case No. IA2004-032, M2004-136, Arbitrator Lewandowski, January 2006). It indicated that the arbitrator found those deputy sheriffs to be comparable to police officers in other counties and municipalities.

It noted that in May 2006 Arbitrator Selchick awarded certain Schenectady Counties a one time 5% differential *in recognition of the fact that they are police officers...*(*In the Matter of the Interest Arbitration between The County of Schenectady and Schenectady County Deputy Sheriff Benevolent Association*, PERB Case No. IA2005-022, Arbitrator Selchick, May 2006). It quoted Arbitrator Scheinman who, in a January 2007 award concerning Rockland County deputy sheriffs, observed that *it would be improper to ignore the wages and terms and conditions of employment of police officers in towns and villages of Rockland County when determining the appropriate salary and benefit levels of deputy sheriffs* (*In the Matter of the Interest Arbitration between The County of Rockland and The Rockland County Sheriff's Deputy Association*, PERB Case No. IA2005-006, M2004-250, Arbitrator Scheinman, January 2007).

The DSPBA asserted that Arbitrator Joel Douglas, in February 2007, indicated that the Office of the Putnam County Sheriff is a full time professional service 24/7 police agency (*In the Matter of the Compulsory Interest Arbitration between The County of Putnam and Sheriff of Putnam County and Putnam County Sheriff's Department Police Benevolent Association*, PERB Case No. IA2004-026, M2004-211, Arbitrator Joel Douglas, March 2007). Lastly, it argued that in a January 2009 award concerning Oneida County Deputy Sheriffs, Arbitrator Prosper indicated that *the Panel cannot completely ignore levels of and changes in salaries and benefits of other police agencies within the County* (*In the Matter of Oneida County Sheriff's Deputies' Police Benevolent Association and County of Oneida and Daniel G. Middbaugh as the Oneida County Sheriff*, PERB Case No. IA2007-026, Arbitrator Prosper, January 2009).

The County, for its part, noted that in both the 2004-05 Albany County DSBA award and in the 2009 Oneida County deputy sheriffs award the parties agreed that the duties of deputy

sheriffs were comparable to those of police officers or that law enforcement titles are comparable. It stressed that there was no such agreement here.

It pointed out that Arbitrator Prosper's statement that Onondaga County deputy sheriffs were comparable to police officers was based on the fact the deputy sheriffs perform the law enforcement work within the police department (*In the Matter of the Interest Arbitration between Onondaga County Deputy Sheriff's Police Association and County of Onondaga and Onondaga County Sheriff*, PERB Case No. IA2005-003, M2004-321, Arbitrator Prosper, September 2006). It noted that Arbitrator Douglas in his Putnam County deputy sheriffs award considered other sheriffs departments as well as police departments for purposes of comparability.

With respect to Arbitrator Selchick's Schenectady deputy sheriffs award, the County emphasized that the arbitrator awarded the deputy sheriffs the same salaries as those gotten by correction officers and supervisors.

I have read each of the cited decisions and have concluded that the awards referenced by the DSPBA, while being reflective of serious research on its part, do not stand for the principal that police units are the *comparables* to be considered. The Lewandowski panel issued a unanimous decision. It may be true that the award contains the statement cited by the DSPBA. However, the wage award was the same as that of CSEA. The cost of health care was comparable to that of other sheriff departments. The shift differential determination made no reference to police units and the longevity increase was comparable to that of correction department supervisors.

The Selchick panel in *Schenectady* made it apparent that the deputy sheriffs comprised the County's Road Patrol Unit. The decision suggests that Road Patrol was the only work of the deputy sheriffs.

The deputy sheriffs had been paid at the same rate as the correction officers and supervisors. The union in that case sought comparability with the local police units. At an executive session, it reduced its demand to that of a 6% differential as compared with correction personnel.

The panel awarded the deputy sheriffs a one time 5% differential. It considered the deputy sheriffs to be police officers and did so in recognition of the risks inherent in their jobs.

The deputy sheriffs in *Schenectady* are unlike their counterparts in Suffolk County in that their job is Road Patrol. Nothing in that award suggests that they have duties other than Road Patrol. In Suffolk County, the deputy sheriffs continued to perform all of the other duties they always performed with a larger number than before doing highway patrols.

Furthermore, the Selchick panel did not provide parity with the police units. It awarded a one time 5% differential to the deputy sheriffs. This was after the deputy sheriffs reduced its demand from comparability with the police units to a 6% differential, which the panel reduced to a one time 5% differential. In short, the Selchick panel did not use police units as the comparable bargaining units to that of the deputy sheriffs.

The Scheinman panel award in *Rockland County* is instructive here. In that award, the panel noted that it would be improper to ignore the terms and conditions of police officers when determining the salaries and benefits of deputy sheriffs.

A review of the history of the past two decades in Suffolk County indicates that the wages and benefits of the units in the police pattern have not been ignored. There is a consistent pattern relative to the difference in increases between those received by the units in the police pattern and those in the Sheriff's pattern.

The Scheinman panel's position relative to comparability was reflected in the Rinaldo panel's award in *In the Matter of the Interest Arbitration between Fulton County Deputy Sheriff's Police Benevolent Association and County of Fulton and Fulton County Sheriff*, PERB case No. IA2004-019, M2004-131, Arbitrator Rinaldo, January 2006). The Rinaldo panel indicated that certain police departments were not *true comparables* but were *taken into account* by the panel. Thus, the police units were not *ignored*.

Furthermore, the Rinaldo panel concluded that other Road Patrol units were the *logical choice of comparables* in the *Fulton County* matter. The Prosper panel in *Oneida County* used this precise language when discussing comparability.

The Selchick panel in *In the Matter of the Interest Arbitration between County of Monroe and Monroe County Sheriff and Monroe County Sheriff's Police Benevolent Association*, PERB case No. IA2004-018, Arbitrator Selchick, October 2006) considered other units of deputy sheriffs as well as other law enforcement agencies as comparables. The award does not spell out how the panel this conclusion was actualized. Nonetheless, it is apparent that the Selchick panel did not *ignore* data related to law enforcement units while considering the comparability of other units of deputy sheriffs.

The award of the Douglas panel in *Putnam County* was cited by the DSPBA. It suggested that the panel considered the police units to the comparable units for the deputy sheriffs. A close

reading of that award suggests that the panel considered other units of deputy sheriffs to be comparables. It added that it would not be limited to only units of deputy sheriffs and would also consider awards given to police units.

The panel opined that interest arbitration was available to police units for 30 years while those rights had only recently become available to deputy sheriffs. Under those conditions, the panel indicated that *one cannot ignore the terms and conditions available to comparable police departments.*

The award of the Douglas panel makes no reference of a long history of pattern bargaining as is the case in Suffolk County. Given the newness of the deputy sheriff's right to interest arbitration, that panel was seeking a broader range of comparables in order to produce an award that reflected the Taylor Law criteria.

In the instant matter, there is a history of pattern bargaining with consideration given to intra-pattern comparables. Historically, both before and after the deputy sheriffs became eligible for interest arbitration, intra-pattern factors were reviewed. Evidence of this is found in the almost universal difference between wage improvements obtained by units in the police pattern and those in the Sheriff's pattern.

The Douglas panel used language that is remarkably similar to that of other panels. It opined that one cannot *ignore* the terms and conditions of police departments. Arbitrator Scheinman in the *Rockland County* case used the same word relative to the comparability of police departments. As was discussed above, the history of bargaining in Suffolk County reveals that the relevant terms and conditions of units in the police pattern have not been *ignored*, particularly in connection with the DSPBA.

The *Putnam County* award indicates that the Douglas panel considered police and deputy sheriff units as comparables in the discussion of wage increase. However, in a bitter dissent of the employee panelist, he excoriated the chair for considering other units of deputy sheriffs as being the only comparables to the deputy sheriffs at least with respect to health insurance for retirees. Moreover, it is not clear whether the panel considered anything more than ability to pay when rendering its award relative to longevity payments and other health insurance proposals.

Having thoroughly reviewed the *Putnam County* award, I find it to be distinguishable from the instant matter based on the major differences in the history of the bargaining in the two counties. Moreover, the Douglas panel indicated that the awards given to police units cannot be ignored. In fact, with respect to wages, it considered police and deputy sheriff units to be comparable to the Putnam deputy sheriffs. It also determined that police units were not comparable to the Putnam deputies relative to retiree health insurance.

The last decision cited by the DSPBA was the Prosper panel award in *Oneida County*. The deputy sheriffs in Oneida sought comparability with other county units of deputy sheriffs. They also wanted to be compared to New York State Police.

The panel rejected the argument about comparability with State police officers. It concluded that the logical comparables are other Road Patrol units within and outside of Oneida County.

As to a comparison to police units, the panel decided that, like the Scheinman panel in *Rockland County*, changes in salaries and benefits of other police agencies cannot be *ignored*. The panel's rationale for this premise was the possibility of movement of personnel from one police agency to another.

Thus, the Prosper panel held that the most comparable units were Road Patrol units, not police units. It did opine that police agencies cannot be ignored for the reason stated above. Arbitrator Prosper and his co-panelists in *In the Matter of the Interest Arbitration between Onondaga County Deputy Sheriff's Police Association and County of Onondaga and Onondaga County Sheriff*, (PERB Case No. IA2005-003, M2004-321, Arbitrator Prosper, September 2006) used the same language as was found in *Oneida County*.

I hasten to add that the Rinaldo panel *In the Matter of the Interest Arbitration between County of Erie, New York and Erie County Sheriff and Erie County Sheriff's Police Benevolent Association*, PERB case No. IA2006-020, M2006-109, Arbitrator Rinaldo, November 2007) cited to awards written by Arbitrators Prosper and Selchick as well as to his *Fulton County* award in that these awards found other Road Patrol units to be the *logical* comparables with the understanding that some consideration should be given to terms and conditions of certain police departments.

I must add that the DSPBA vigorously argued in support of its contention that it should be moved into the police pattern. As noted in the section of this award entitled *Positions of the Parties* it produced serious arguments and multiple witnesses in support of its position. Some of the witnesses were identified by name and others were not.

However, I have conducted an in-depth review of the relevant legislation, pertinent case law and the history of bargaining in Suffolk County. As a consequence, I conclude that the DSPBA is properly found within its current bargaining pattern.

Criterion (a) of the Taylor Law requires a determination of which bargaining units are most comparable to petitioner/employee organization. I find that there are internal and external

comparables to be considered. I find that, while external comparables need to be considered, the primary areas of comparability were and continue to be established bargaining unit patterns in Suffolk County. As indicated above, the DSPBA is properly within the Sheriff's pattern. However, as has been the case for at least two decades, the wage, fringe benefit and concession (to be referred to as *compensation*) awards of the police pattern cannot be ignored when determining improvements in salary and benefits for the deputy sheriffs.

The external comparables that I considered were units of deputy sheriffs in areas north of New York City. In many cases there are significant differences between those units and the DSPBA, the main one being the absence of a very long history of pattern bargaining within the jurisdictions in question. None of the cited cases reflect established multiple patterns of bargaining units.

That being said, a review of the cited awards leads me to conclude that they do not support the contention that the DSPBA should be moved from the Sheriff's pattern to the police pattern. A theme that was common to many of the awards identified was that, while police units were not accepted as the comparable units, the results of the bargaining with such units could not be ignored when considering the negotiating demands of deputy sheriffs. I find that the history of bargaining in Suffolk County is consistent with this approach.

Finally, Arbitrator Edelman set forth a standard for the movement of a bargaining unit from one pattern to another. He opined that such a move must be based on *substantial* changes. That standard is applicable here.

The major change concerning the deputy sheriffs is that more of them are involved in highway patrol. Patrolling the highways has been a duty of deputy sheriffs for a long time. This

is not a new duty. With minor differences, the rest of the duties of the deputy sheriffs remain unchanged.

I conclude that, in the context of the Edelman panel award, the changes in the duties do not rise to the level of being *substantial*. In sum, I conclude that the DSPBA is properly in the Sheriff's pattern and is comparable to the COA. However, I hasten to add that, as noted above and has been historically the case, this panel will not ignore the improvements in areas of compensation of bargaining units in the police pattern.

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 DSPBA and the County.

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

Decker's presentation and report showed the sources of funds that are tapped to pay for the budget that pays for the costs associated with the deputy sheriffs. The funding of the salaries of deputy sheriffs comes from the County's General Fund and that the County has not raised taxes for the General Fund for seven years.

The data relied upon suggests that the General Fund is largely derived from sales tax. The DSPBA noted that the average annual increase since 1999 has been 5.63%. It pointed out that this increase is at least the national rate. It opined that this statistic suggests that the County's economy has undergone real growth.

It noted that the County has a large retail base. It added that the sales tax accrued from such a source has shifted the cost of funding the DSPBA proposals to non-residents of the County.

As to real property tax revenue, Decker asserted that this is the second largest source of funds for the combined General and Police Funds. He posited that, at a time when the rate of inflation is less than 3% per year, property tax revenues have risen an average of 2.54% per year between 2003 and the present.

In addition, Decker observed that the market value of properties has risen over the past decade. He acknowledged that the tax base has decreased since 2008 but asserted that this was a statewide, not a local, phenomenon.

Kevin Decker posited that there have been modest increases in property taxes. He indicated that, if property had been assessed at full market value, the real property tax since 2003 would have actually decreased.

Decker added that the County has other sources of money to enhance its ability to pay for the DSPBA proposals. He claimed that the Tax Stabilization Reserve Fund is one such source. He stated that this fund contains about \$126 million that should be considered as part of the *ability to pay* analysis.

The State Constitutional Tax Limit, in the DSPBA's view, is another indication of the County's fiscal health. It stressed that the County is using only 13.3% of the established constitutional limit. It maintains that the County could have raised an additional \$3.78 billion in property taxes in 2010.

Decker noted that the sales and property tax revenues are healthy sources of income that will remain so despite the current economic downturn. He concluded that the County had the ability to pay for the DSPBA bargaining proposals.

The DSPBA concluded that the County's rate of population growth, rapid rate of job creation and relatively low rate of unemployment position suggest that the County's economy is healthy. 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 DSPBA relied on these data and arguments to support its claim that the County has the ability to pay for the cost of its proposals. It asserted that its proposed increases will have a negligible impact on the County's budget.

The County painted a very different picture of its fiscal health. It emphasized that DSPBA 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 is unhealthy.

It maintained that it has been losing sales tax revenue since 2006. It urged that its consulting firm projected negative growth in 2008 and a 1.3% decline in 2009. It claimed that, when adjusted for inflation, sales tax growth has been negative since 2006. It noted that this is the first non-inflation adjusted sales tax decline since 1965.

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 \$30million to the General Fund in 2009.

It posited that the 2010 County budget was premised on a 6% decline in sales tax revenue as compared to 2009 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 led to a \$24 million loss in sales tax revenue in 2010. It stressed that the baseline for sales tax revenue was less than projected.

The County agreed that it can transfer sales tax revenue from the General Fund to the Police Fund. Even though the DSPBA salaries and benefits are funded through the General Fund, shortages in the Police Fund impact the General Fund.

It asserted that it transferred \$5.2 million to the Police Fund in 2002 and an additional \$87 million in 2008. It added that the General Fund balance in 2006 was \$159 million and was reduced to \$46.4 million in 2010.

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 600% increase in such grievances since 2000 and a 64% increase in 2007 and 2008 alone. It noted a 16% increase in tax delinquencies in 2007 and 2008. It maintains that this had been the highest rate of increase in three years.

It referred to a 30% increase in foreclosures and a 36% increase in *lis pendens* actions over the 2007 statistics within the County. It observed that there were 1400 foreclosures between January and June of 2009 and that this represented a 50% increase over the same time frame in 2008.

It pointed to declines in housing values. It cited data that indicated a 16.6% decrease in housing prices in the third quarter of 2008. This, stated the County, has resulted in homeowners owing more for their houses than the worth of the houses. In current terminology these houses are *under water*.

It quoted statistics related to increases in Medicaid and temporary assistance applications in recent years. It claimed that there has been a 16% increase in Medicaid applications in the past two years and a 20% increase in applications for temporary assistance since 2004.

It indicated a 65% decrease in new home building since 2005. It emphasized that Mortgage Taxes are one-third of what they were in 2007.

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

It indicated that unemployment in Suffolk is at a ten year high. It observed that it was 7.3% in December 2009. It stressed that it was 6.1% in December 2008. It argued that there are fewer people to absorb the cost of higher wages and benefits.

The County cited the Consumer Price Index (CPI). It asserted that a CPI of 90 or higher suggests a healthy economy. It urged that the CPI in February 2010 was 46, a decline of 11 points in one month. It quotes economists as predicting that the CPI will remain depressed for another year or two.

The County claimed that it projected a shortfall of \$106-128 million in 2010. It added that the County took dramatic steps in 2009 in order to remain afloat. It stressed that its departments were subjected to various cuts. It emphasized that it authorized the transfer of \$30 million to the General Fund in order to offset sales tax losses. It insisted that it reduced police appropriations, canceled a police class imposed a lag payroll on management employees, negotiated a lag payroll with elected officials and presented a layoff proposal in the event that bargaining units did not make adequate concessions.

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. It calculated its loss of interest income in 2007-2009 at about \$37 million.

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 posited that it is doubtful that the budget can accommodate the DSPBA's demands.

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 and that any downturns in the economy will further delay the economic recovery on Long Island.

The County rejected the premise that since it is below the constitutional taxing limit, it has the ability to pay for the DSPBA demands. It relies on a 1994 4th Department decision in this regard. It observed that raising taxes at this time is not a viable option.

The County recalled that the panel the issued the 2008-10 PBA award reviewed much of the same data that was presented here and credited the County's arguments. The Chair of that panel awarded smaller increases and benefits and awarded increases that were the lowest ever awarded to a police unit on Long Island. It added that the award was funded in large measure through concessions. Based on those facts, the County opines that this panel needs to protect its tax base and avoid a tax increase.

The County argued that the DSPBA presentation on the County's financial condition did not provide a full picture of its dire economic outlook. It maintained the relevant period to be considered begins with 2008. It suggests that conditions prior to 2008 have no bearing on this award. It stresses that *ability to pay* is based on conditions during the period of the award.

It challenged the underpinnings of the DSPBA argument that bond rating agencies upgraded the County's bond ratings in 2009. It points out that the rating agency noted that the County's two year use of reserves to balance the budget is to be avoided. It stresses that a second rating agency placed the County on a *negative credit watch*.

The County maintained that the most recent Suffolk County awards should be emphasized in this proceeding. It urged that, assuming that the current bargaining patterns are reaffirmed, the PBA award should set the ceiling and that the DSPBA award should have a smaller wage and benefits package than did the units in the police pattern.

It added that the DSPBA should be required to make concessions comparable to those required of the PBA. It recalled that the value of the PBA concessions was \$4,805,500. It observed that the DSPBA is 13.8% of the size of the PBA and therefore its concessions should be 13.8% of \$4,805,500 or at least \$663,159.

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. The award was issued in March 2010.

Three major points need to be made with respect to that award. First, the PBA award set the parameters for the awards for other units in the police pattern. Second, historically the units in the Sheriff's panel received wage and benefit improvements that were less than those received by the units in the police panel. Finally, the DSPBA entered into an MOA with the County on

December 1, 2009 in which it agreed to defer the equivalent of four days pay until the affected deputy sheriffs separate from their employment with the County. In brief, consistent with the MOA, the term of the interest arbitration award was extended from two years to three. Thus, the period covered by this award is January 1, 2008-December 31, 2010.

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 year of the issuance of the PBA award and the general economic climate has not substantially improved and, in some respects, has gotten worse.

The Suffolk PBA award has been previously referenced. That being said, it follows that the Suffolk PBA award was a major consideration for other units in the police pattern. Further, given the lengthy history of pattern bargaining in Suffolk County, the economic terms of the PBA award are significant here.

Having thoroughly reviewed the arguments and data concerning the County's ability to pay for the DSPBA 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 DSPBA 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 7.3% in December 2009. It was 6.1% a year earlier. It should be recalled that scope of the economic decline first became apparent in the fall of 2008.

I take arbitral notice of United States Department of Labor statistics indicating that there has been a small decline in unemployment nationally in 2010. First, even those statistics still indicate a national rate of unemployment of more than 9%. 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. As of the date of the writing of this award, the national and local unemployment statistics remain at high levels.

To be sure, significant unemployment impacts on the general economy. People who are unemployed or are 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 premised set forth 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 that assumed a 6% decrease (\$69.9 million) in sales tax receipts in 2009 as compared to 2008. County data indicates a 9% (\$90.9million) decline through December 2009. In any event, the decline in sales tax receipts in 2009 was in excess of 8%, a

further reduction of \$23 million in sales tax income (over the projected 6% decline). This led to a \$24 million sales tax loss since the baseline used to project sales tax revenue was lower than anticipated.

Kevin Decker, on behalf of the DSPBA, 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 9.8% 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 increased by one-third since 2007 and by 50% in the first six months of 2009.

Foreclosures result in property tax delinquencies. There has been a 64% 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 built, bought and sold. This factor is reflected in diminished proceeds from the Mortgage Tax. In 2009, Mortgage Tax receipts reflected a monthly decline of 30% over the comparable period in 2008.

Other factors such as a 60% reduction in new housing permits in the past five years and the almost 17% decline in housing prices in the third quarter of 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 was a substantial increase in these receipts in 2010. Thus, I am constrained from adopting a more optimistic projection at this time.

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 DSPBA 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 and a comparison of the economic condition of the County at this time as compared to the period at the expiration of the predecessor agreement.

A review of the current financial health of the County entails a consideration of the data analyzed by the parties. This is essentially an analysis of the County's fiscal development, positive or negative, since December 31, 2007, the date on which the predecessor agreement expired.

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 DSPBA 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 deputy sheriffs are faced with serious and unique hazards. Law enforcement personnel, in general, and, in this case, deputy sheriffs, face dangers that are inherent to their positions. Thus, this criterion is satisfied when the DSPBA is compared with other similar 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 Sheriff's pattern and to a lesser degree to other units outside of Suffolk County and 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 other financial 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 DSPBA and Suffolk County. The record contains a prior interest arbitration award relating to these parties and negotiated agreements between them. It also contains a comparative 20 year history of wage increases received by each of the bargaining units in Suffolk County. These data were given appropriate consideration.

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

1. 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. This three year award will cover the period January 1, 2008-December 31, 2010.

2. WAGES- DSPBA PROPOSAL 1, COUNTY PROPOSAL 1

The parties had significant differences over the matter of salary increases. The DSPBA proposed wage increases of 5% in each year of the award. It also sought a one time salary adjustment of \$5,000. It noted that this adjustment should be granted as of January 1, 2008.

It observed that such an increase is fair and reasonable. It restated its premise that the DSPBA should be included in the police pattern and that adopting its wage proposal would at a minimum narrow the gap between employees included in the police pattern and the members of the DSPBA.

It pointed out that in 2007 top step members of the PBA earned about \$30,000 per year more than a top step deputy sheriff. It maintained that granting the DSPBA wage proposal would reduce the differential to \$13,000.

It indicated that there have been repeated references to the DSPBA being part of the Sheriff's pattern. It asserted that the COA is the other unit in the Sheriff's pattern. It stressed that, while Arbitrator Townley noted that deputy sheriffs should be placed above the correction officers on the pattern continuum, the correction officers' base pay is more than \$4000 higher than that of the deputy sheriffs.

The DSPBA opined that the County wage proposal of a three year wage freeze is unreasonable. It concluded that it must be rejected.

The County, for its part, urged the denial of the DSPBA's wage proposal. It argued that the deputy sheriffs are among the highest paid employees and that granting their wage proposal would exacerbate the current wide discrepancy in base salaries. It added that the DSPBA wage proposal is well above the proverbial *going rate*.

It calculated the cost of the DSPBA wage proposal to about \$4.2 million, the equivalent of a 24% wage increase. It maintained that the wage increases of deputy sheriffs between 1993 and 2007 exceeded CPI by 10.65%.

It pointed out that bargaining units in the police pattern received received the smallest wage increases ever awarded to police units on Long Island. It stated that considering the longstanding County bargaining patterns, the DSPBA should expect smaller increases.

It anticipated the DSPBA argument relative to the hourly rate of correction officers as compared to deputy sheriffs. It posited that the deputy sheriffs have a workweek that is 2½ hours longer than that of correction officers. It pointed out that in 2001 the DSPBA bargained for a longer workweek than that of the COA and in return received a wage increase that was 1.05% higher than that of the COA. It explained that the higher hourly rate of correction officers is due to their shorter workweek.

It agreed that Arbitrator Townley observed that the DSPBA should be higher than the COA on the continuum of bargaining units. It stressed that the deputy sheriffs have a retirement benefit that costs the County \$400,000 per year and that this amount is much greater than the line-up pay received by correction officers.

The analysis of the wage increase must be divided into a number of components. The first is the actual increase in wages.

As noted above, I have concluded that the extant bargaining patterns are appropriate. Therefore, the DSPBA will remain within the Sheriff's pattern. With that in mind, there is a history to the comparison between the wage increases granted to the units in the police pattern, the Sheriff's pattern and the AME pattern.

Historically the police pattern received the greatest increases and the AME pattern received the smallest. The wage increases of the Sheriff's have almost always been less than

those in the police pattern and greater than those in the AME pattern. In the interest of maintaining labor stability these distinctions should remain.

In the period 1999-2007, the average difference in wage increases between the police and Sheriff's pattern has been slightly under 1% (with the police pattern receiving the bigger increases). On the other hand, the AME pattern received less than .5% less in wage increases than did the Sheriff's pattern.

A review of the period 2008-10 is necessary in order to reach a practical determination of the wage increase to be awarded the DSPBA. The police pattern received 3.5% increases in each of the three years while the AME pattern, received a 3.25% increase in 2008 and the POA, a part of the AME pattern, got 3.0% increases in 2009 and 2010.

This entire discussion must be put in the context of a very difficult economic climate. I have already stated that the County does not have the ability to pay for the wage increases proposed by the DSPBA but that it can pay for wage increases that are greater than those proposed by the County.

As stated above, the history of pattern bargaining in Suffolk County suggests that the DSPBA should get a larger increase than that of the AME pattern but a smaller one that received by the police pattern. It is apparent that the gap between the police and AME patterns is narrow. I conclude that the DSPBA is to be awarded a 3.375% increase for 2008 and increases of 3.2% for 2009 and 2010 (See Schedule A for the salary schedules reflecting these increases).

2008 was the last year in which the entire AME pattern received a wage increase. It was 3.25%. The 3.375% increase awarded to the DSPBA is consistent with the pattern of DSPBA

increases that are greater than that achieved by the AME pattern and less than what the police pattern received.

As to 2009 and 2010, the 3.2% increases awarded to the DSPBA is larger than the 2009 increase gotten by the POA, a part of the AME pattern, and are less than the police pattern increases in wages. The record indicates that the POA received wage increases of 3.0% in 2009 and 2010 (CX5). I cannot comment on the remaining units in the AME pattern since that data is not in this record. The AME MOA was issued after this record was closed and, therefore, was unavailable to me.

Finally, the un compounded aggregate of the three years of wage increases for the DSPBA is 9.775%. This represents an average of 3.26% in wage increases which is .24% less than the police pattern. This amount is consistent with the differences in wage increases achieved by the DSPBA and the police pattern bargaining units in recent years.

The Taylor Law sets forth criteria to be used in this proceeding. The first one concerns *comparability* with other bargaining units. I have addressed this matter extensively and have determined that the bargaining unit most *comparable* to the DSPBA is also found in the Sheriff's pattern. The *comparability* analysis included a consideration of the position of the Sheriff's pattern relative to the AME pattern and the police pattern.

The second element of the Taylor Law criteria involves a review of the County's ability to pay for wage improvements. I have considered the positions of the parties and have concluded that the County does not have the ability to pay for the DSPBA wage proposals but can provide for more modest increases.

I hasten to add that the wage improvements will be offset to some degree by concessions required of the DSPBA. The value of the concessions is based on the value of the concessions required of the units in the police pattern. The membership of the DSPBA is 13.8% of that of the Suffolk County PBA. Historically, other units in the police pattern and those in the Sheriff's and AME patterns are expected to make concessions proportionate to those made by the PBA.

I find no basis for discontinuing this practice. Since the DSPBA is 13.8% of the size of the PBA, its concessions will be 13.8% of those required of the PBA. The value of the DSPBA concessions will be \$663,159. The manner in which these concessions will be made will be set forth in detail later in this award.

The third criterion deals with the unique elements of the work of deputy sheriffs as compared to other trades and professions. I have previously stated that the work of employees in law enforcement is not directly comparable with that of other trades and professions. Therefore, no such comparison was made nor would one be appropriate.

The last of the Taylor Law criteria, criterion (d), requires a consideration of the bargaining history between the parties. The expired CBA of these parties, the prior interest arbitration award and the previous negotiated increases were thoroughly considered before arriving at the wage increase set forth above.

The cost of a three year award with wage increases of 3.375% and 3.2% in each of 2009 and 2010 year is approximately \$1,712,275. This comes to \$591,195 for 2008, \$560,540 for 2009 and \$560,540 for 2010.

The basis for these calculations is a commonly referred to statistic known as the *1% number*. This datum reflects 1% of base salary as of December 31, 2007. The *1% number* in this instance \$175,169 (CX3Tab 9)

It should be recalled that the DSPBA agreed to defer the value of a total of 4 days pay at the 2009 rate of pay, i.e. the daily rate on December 31, 2007 plus the 3.375% increase on January 1, 2008 plus the 3.2% increase on January 1, 2009. However, I note that these deferrals reflect monies that the deputy sheriffs will receive upon their separation from employment with the County. As such, the value of the deferrals will not be listed in the concessions made by the DSPBA as part of this award

I pointed out earlier that, consistent with the PBA award, the value of the concessions required of the DSPBA will be 13.8% of that of the PBA or \$663,159. This sum will be taken from retroactive salary increases and other areas.

In order to satisfy part of the required concessions there will be a deferral of some of the retroactive wage increases. The values of the wage deferral and the other concessions are detailed on pages 203-4 of this award.

Since this award covers a term ending on December 31, 2010, I have concluded that the deferred retroactive wages will be from the period beginning on January 1, 2008. In order to understand the methodology used I determined that there are eight titles in the Deputy Sheriff series. The total number of employees as of December 31, 2007 was 249. The basis for my calculations was the average of the top salaries as of December 31, 2007. While, for various reasons such as actual numbers of deputy sheriffs on the County payroll at this time, my

calculation cannot be exact, I determined that the average top salary for all of the titles is about \$80,000.

That actual 2008 wage increase was equally spread over 26.1 pay periods. I concluded that the deferral of \$312,821 was satisfied by withholding the retroactive wage increase until June 17, 2008 (see pages 203-4). The balance of the \$663,159 in concessions was satisfied through other items.

During the course of the proceeding the parties agreed to reduce the starting salaries of newly hired Deputy Sheriffs to \$30,000 and to restructure the salary schedule such that the steps on the schedule from bottom to top are equidistant. As was true when the PBA agreed to a similar approach, the DSPBA is credited with .5% (\$87,585) for the reduction of the starting salary and the restructuring of the salary schedule and the same amount for the prospective savings as a result of these changes. See pages 203-4 for the accounting for these credits and Schedule B for the salary schedule for new *hires*. Finally, in line with my comments in the PBA award, it is my intent that, unless the parties bargain otherwise, the structure of equalized steps should be maintained.

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

3. OVERTIME COMPENSATION- DSPBA PROPOSAL 2, COUNTY PROPOSAL 3(d)

In her interest arbitration award covering 2004-05, Arbitrator Townley partially granted the County proposal with regard to the FLSA. She did so only for deputy sheriffs hired after December 31, 2005.

The effect of this award was to make overtime pay available to employees after they have worked 86 hours in a 14 day period. This is in contrast to eligibility for overtime pay after working eight hours on any given day.

The DSPBA proposed to modify the CBA such that overtime pay would be earned after a deputy sheriff works his/her full work day or work week. It noted that §209.4(g) limits interest arbitration proposals to matters of compensation. It opined that this proposal addresses the manner in which employees are compensated and not eligibility for overtime. It concluded that this proposal is arbitrable.

As a substantive issue, the DSPBA observed that the current contract language created two categories of employees and as such has a deleterious effect on morale. It added that no other law enforcement unit in the County has a comparable contract provision. It pointed out that the FLSA provision in the CBA has resulted in negligible savings in overtime costs.

It stressed that, in County Proposal 3(d), the County proposed that the FLSA language be applied to all deputy sheriffs, i.e. those hired both before and after December 31, 2007. It posited that thus proposal is not arbitrable in that it addresses eligibility for overtime rather than compensation.

The County urged the rejection of the DSPBA proposal. It averred that, based on the terms of §209.4(g), this proposal is inarbitrable. It maintained that this proposal intended to change overtime eligibility for employees hired after December 31, 2007 and, as a consequence, under the relevant provision of the Taylor Law is inarbitrable.

The County indicated that the cost of eliminating the FLSA provision is \$165,055 in overtime payments and \$54,076 in compensatory time payments. It suggested that it was unwilling to trade this proposal for a reduced wage increase.

It recalled that the provision became part of the contract after the 2004-06 interest arbitration award. It observed that the DSPBA unsuccessfully tried to negotiate the provision out of the CBA in the next round of bargaining.

It emphasized that similar language is found in the contracts of the COA, AME, POA and Park Police. It cited the deputy sheriff bargaining units in Orange and Dutchess Counties as examples of bargaining units that have similar provisions in their contracts.

There is a threshold issue to be decided in connection with this proposal. §209.4(g) is the section of the statute that granted interest arbitration rights to deputy sheriffs. Within the overall context of the Taylor Law, this provision is unique in that proposals must be limited to matters that are *directly related to compensation*.

I must point out that the parties agreed to place a number of matters concerning arbitrability before the panel rather than before PERB. They did so at this time without limiting their options to resolve arbitrability issues in the future. This proposal is the first one that calls for a determination of arbitrability.

The opposing positions relative to this proposal were well stated. The distinction drawn in the briefs concerned whether this proposal dealt with the eligibility for overtime pay or the rate of overtime pay. The latter is related to compensation while the former is not.

The DSPBA argued this proposal concerns the rate at which employees are compensated for additional work. It asserted that some employees are paid the overtime rate after working

eight hours in a given day and others get that rate after working 86 hours in a 14 day cycle. It concluded that this issue is arbitrable under the statute.

The County disagreed. It opined that this proposal concerns eligibility for overtime pay and therefore is inarbitrable.

I conclude that DSPBA Proposal 2 and County Sub-proposal 3(d) are both arbitrable. Both proposals relate directly to the compensation of employees. The deputy sheriff who works in excess of eight hours on a given day would be entitled to overtime pay under the DSPBA proposal as compared to having to work over 86 hours over a 14 day period in order to be eligible for overtime. Such a difference goes directly to that individual's compensation. In sum, the DSPBA proposal would positively affect the compensation of employees while the County's proposal would reduce it. Whether the effect is positive or negative is not relative. The statute requires the proposals to impact on compensation. Both proposals have that effect.

As to the merits of these proposals, both the DSPBA and COA have portions of their memberships subject to the overtime rules under FLSA (County Exhibit 3 Tab3). Furthermore, four of the five relevant external jurisdictions do so as well. Under the circumstances, there is little basis to undo a provision that was awarded in an interest arbitration proceeding.

The County proposal would require all deputy sheriffs to be subject to the provision governing the overtime of their counterparts who were hired after December 31, 2005. While I recognize that this proposal would benefit the County financially, I note that the full cadre of COA employees is not subject to the FLSA requirements. Since, for the purposes of this award, the most important comparators are the DSPBA and COA, I conclude that just as the DSPBA

proposal was rejected, so too should the County's. In sum, DSPBA Proposal 2 and County Proposal 3(d) are rejected.

4. LONGEVITY PAYMENTS- DSPBA PROPOSAL 3

The thrust of the DSPBA proposal is to award parity with the bargaining units in the police pattern with respect to longevity. It asserted that its longevity payments are substantially less than those received by units in the police pattern.

The County rejected this proposal as being too expensive. It calculated the cost of the DSPBA proposal to be \$683,900.

It also pointed out that the DSPBA's proposed new approach called for a change in longevity payments from a flat dollar amount to \$300 per year of service (beyond five years), the approach used in the police pattern. It stressed that the DSPBA is not part of the police pattern. It added that the DSPBA proposal would triple the cost of the longevity payments and would place it significantly above the COA, the other unit in the Sheriff's pattern. The County proposed no change in the longevity payments.

There are a number of elements to be considered. First, I have done a detailed analysis of the DSPBA argument that it should be made part of the police pattern. After giving this matter due consideration, I concluded that such a change is unjustified.

The DSPBA longevity proposal presupposes inclusion in the police pattern. It is unnecessary to repeat the analysis that led to my finding concerning this issue. With this in mind, I find no basis to award the current longevity payments of the units in the police pattern to the DSPBA, part of the Sheriff's pattern.

The cost of the DSPBA proposal is prohibitive. The cost of this proposal is greater than the wage increases. This cost is far greater than what is appropriate at this time.

On the other hand, some enhancement of the longevity payments is appropriate. In that regard, longevity payments will continue to be flat dollar amounts. These payments will increase by a total of \$75.

As of December 31, 2007 there were 249 members of the DSPBA. With the possible exception of 16 people, all of them are entitled to longevity payments. The total cost of a \$75 increase in longevity payments for the life of this award will be approximately \$17, 475.

However, by virtue of retirements and resignations, there may also be 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.

I am persuaded that a \$75 increase for the life of this award is appropriate. The total of \$75 is in lieu of three \$25 increases. It recognizes the value of the service rendered by the deputy sheriffs and does so in a financially prudent manner. In order to address the County's current financial condition, the increased longevity payments will become effective on December 31, 2010.

5. WORKDAY- DSPBA PROPOSAL 4

The DSPBA proposed that its members be paid for its currently unpaid 30 minute lunch period. The County initially argued that the proposal be found to be inarbitrable. The DSPBA revised the proposal and the County subsequently withdrew its objection. Thus, the question of the arbitrability of this proposal is not before the panel.

As to the merits of the proposal, the DSPBA argued that the PBA, SOA and SDA receive 60 minute paid lunch. It added that deputy sheriffs are always *on call* and can be assigned to emergencies during their unpaid lunch. It reasoned that they should be paid for their lunch breaks.

The County stressed that this proposal would cost \$4.3 million since the deputy sheriffs work an 8.5 hour day and payment for a 30 minute lunch would have to be at the overtime rate. It added that the 30 minute unpaid lunch was negotiated in 2001 in exchange for a 5% wage increase. It observed that the DSPBA is seeking to undo the 2001 negotiations. It stressed that the only units getting a paid meal break are those in the police pattern.

This proposal must be rejected for a number of reasons. First, in the light of my finding that the DSPBA is properly within the Sheriff's pattern, the granting of this proposal would be at variance with the relevant conditions for all bargaining units outside of the police pattern.

Second, deputy sheriffs hired prior to December 31, 2005 are paid overtime for hours worked beyond eight hours per day. As a practical matter, the granting of this proposal would result in a paid meal break at the overtime rate for a significant number of deputy sheriffs. That would put those employees in a superior position as compared to their counterparts in the police pattern. Therefore DSPBA Proposal 4 is denied.

6. VACATION LEAVE- DSPBA PROPOSAL 5

The DSPBA proposed an increased number of vacation days for its members. The increase varied based upon the numbers of years of service.

The DSPBA averred that the proposal is arbitrable in that it affects compensation at the time of separation from service. The County argued that the matter is not irritable since time off that indirectly lead to compensation are not arbitrable.

I have considered the matter and conclude that the proposal is arbitrable. The CBA contains a provision that provides for compensation at the time of separation for accrued vacation leave. Thus, an increase in the number of vacation days can lead to increase compensation.

With respect to the merits, the proposal is rejected. The DSPBA is seeking the same vacation schedule that is enjoyed by the police pattern. Furthermore, its current vacation benefit is equal to that of the COA (CX3Tab 88). Since the DSPBA is part of the Sheriff's pattern, it is appropriate that it be compared to the COA and not the police pattern.

Furthermore, the proposed increase in numbers of vacation days is very great. The proposal calls for almost a doubling of the number of vacation days in certain years of the proposal, i.e. currently deputy sheriffs get 10 vacation days after one year of service and the proposal would raise the number of vacation days to 21.

It is true that the multiplier is not the same for every year. Currently deputy sheriffs get 18 vacation days after 15 years and would get 30 vacation days if the proposal were granted. This represents an increase of 67%, not 100% as in the case referred to above (CX3 Tab 87).

Aside from the issue of comparability, the cost of this proposal is too high to be considered at a time of such uncertain financial conditions. This proposal is rejected.

7. 12% SALARY PREMIUM FOR DEPUTY SHERIFF INVESTIGATORS- DSPBA PROPOSAL 6

The DSPBA proposed a 12% premium above the pay rate of Deputy Sheriff I personnel for Deputy Sheriff Investigators. The DSPBA based this proposal on a comparison with members of the SDA and detectives/investigators in various other police benevolent associations in Suffolk County.

The County recommended the rejection of this proposal. It claimed that this proposed provision is not enjoyed by virtually all of the other Suffolk County bargaining units and other deputy sheriff bargaining units outside of Suffolk County.

I have reviewed the data relative to this proposal and conclude that a 12% premium for Deputy Sheriff Investigators is excessive. However, I find that some improvement in their salary schedule is appropriate.

There are 47 Deputy Sheriff Investigators. 33 of them have held the title of *Investigator* for a minimum of three years. There are three steps in the salary schedules of the Deputy Sheriff Investigators. In terms of new hires, they must work as a Deputy Sheriff Investigator for three years in order to be eligible for the \$500 increase.

A fourth step in these schedules will be created. Each step will provide for a \$500 increase over their salary at Step 3. This is not to suggest that this is in place of the increases set forth above. It is in addition to the 3.375%, 3.2% and 3.2% increases awarded to all members of the bargaining unit.

The annual cost of this improvement is \$16,500, substantially less than that which was proposed. However, given the County's financial condition, this increase is prospective. This increase is effective as of December 31, 2010.

8. A NEW SALARY STEP AT \$5,000 ABOVE THE CURRENT TOP STEP FOR THOSE IN THE TITLE OF DEPUTY SHERIFF II AFTER FIVE YEARS- DSPBA PROPOSAL 7

The DSPBA made this proposal in an effort to narrow the gap between the salaries those holding the title of Deputy Sheriff II and SCPD sergeants and law enforcement personnel. The County noted that the internal and external *comparables* indicate that there is no basis for the granting of this proposal.

I have previously held that the DSPBA is not in the police pattern. Therefore, the salary schedule of the SCPD sergeants is not a comparator here. Thus, the proposal is denied.

9. HIGHEST AVAILABLE SUPPLEMENTARY WAGE FOR DSPBA EXECUTIVE BOARD MEMBERS- DSPBA PROPOSAL 8

The DSPBA argued that the executive board members of the units in the police pattern receive this benefit and that its executive board members perform the same functions. It concluded that its proposal is consistent with and, in many cases, is far below the compensation received by executive board members of other police unions.

The County averred that this proposal should be rejected. It stressed that the County should not pay stipends in lieu of overtime for executive board members who voluntarily assumed their roles in the DSPBA. It added that members of the Sheriff's pattern and other units of deputy sheriffs have not received such a benefit.

I have previously stressed that the bargaining unit most comparable to the DSPBA is the COA. The record indicates that the COA does not enjoy such a provision. Therefore, DSPBA Proposal 8 is rejected.

10. WORK WEEK; WORK DAY- COUNTY PROPOSAL 2

This proposal is divided into two parts. The first one, 2(a), proposes the addition of five work days for new employees. The second one, 2(b), would require an additional day each year at straight time. This purpose of this day would be for training. Each of these items will be addressed separately.

Sub-proposal 2(a)

This sub-proposal calls for five additional work days for new employees. The County asserted that this proposal is arbitrable in that it would reduce the amount of overtime. It stressed that this would effect a change in the level of compensation of employees.

With respect to the merits, the County claimed that the awarding of this proposal would result in a savings of about \$169,808. In terms of comparability, it pointed out that the DSPBA work year is shorter than the PBA, SOA and SDA and longer than that of the DIPBA, Park Police, POA and AME. It added that the work year of the DSPBA is shorter than that of the deputy sheriffs of four counties north of New York City. It noted that those units have a work year of 260-261 days.

The DSPBA asserted that this proposal is not arbitrable under §209.4(g) in that scheduling and deployment are excluded from arbitration. As to the merits, it posited that the County did not give a rationale for such an increase in the work year. It added that other police agencies in the County have fewer appearance days than does the DSPBA. It also stated that the granting of this proposal would result in deputy sheriffs having a greater number of appearance days than the correction officers.

I find this proposal to be arbitrable. I am persuaded that this proposal, if awarded, would reduce the overtime payments earned by deputy sheriffs. Thus, it is directly related to the compensation of the affected deputy sheriffs. This is consistent with the terms of the statute.

As to the merits, a review of the data shows that the length of the work year of the deputy sheriffs and the correction officers (243 days) is the same. The deputy sheriffs work more days than do members of the PBA, SOA and SDA and fewer days than the members of the DIPBA, Park Police, POA and AME. The deputy sheriffs' work year is shorter than that of similar units in Orange, Putnam, Dutchess and Rockland Counties (CX3 Tabs 16 & 17).

I have repeatedly indicated that the DSPBA is part of the Sheriff's pattern and should be compared with the COA. The two bargaining units now work the same number of days per year.

However, this is not a rationale for not granting this proposal. The DSPBA is the first unit in the Sheriff's pattern to have its impasse resolved and the results here will probably affect the outcome of the bargaining involving the COA.

I find that, in this round of bargaining, the County's two proposals involve a greater time commitment on the part of deputy sheriffs. As will be discussed below, I conclude that, at this time, the second sub-proposal, 2(b), is more efficacious. Therefore, Sub-proposal 2(a) is rejected.

Sub-proposal 2(b)-

This item would require deputy sheriffs to work an additional day a year at straight time. This day would be devoted to training.

The County asserted that this proposal is arbitrable since it would obviate the need to send employees for training at the overtime rate. It maintained that this item directly relates to compensation since it will reduce the amount of overtime pay earned.

The County argued that members of the COA already attend firearms training on a non-work day once a year. It urged that it seeks the same provision but at straight time, not overtime.

The DSPBA averred that this proposal is not arbitrable. It stressed that this matter is simply not related to compensation. As to the merits, it insisted that the deputy sheriffs already receive an adequate amount of training and that this proposal should be rejected.

I find the proposal to be arbitrable. As was true of 2(a), awarding this proposal will reduce overtime compensation and therefore is *directly related to compensation*.

As to the merits, training is a vital component of staff development programs. The County's basis for the proposal is positive and purposeful.

I recognize that the COA has a contract provision calling for training on a non-work day at the overtime rate. While the objective here is similar to that of the COA provision, the approach is different. This award calls for payment for training on a non-work day at straight time, not overtime. The County is limited to scheduling training on a one day a year basis.

With that in mind, Sub-proposal 2(b) is awarded prospectively and is effective December 31, 2010. However, as noted below, the DSPBA is given credit for the difference between the overtime rate and the straight time rate.

11. OVERTIME- COUNTY PROPOSAL 3

This proposal was sub-divided into four parts. Part (d) was discussed in connection with County Proposal 2 and was rejected. It will not be addressed here again. The first three sub-proposals will be considered herein.

Sub-proposal 3(a)-

The County proposed that deputy sheriffs who are wrongfully bypassed for overtime should go to the top of the list for the next overtime assignment. This proposal raised both procedural and substantive issues.

As a threshold issue, the County asserted that this matter is arbitrable. It claimed that it directly affects the compensation of the deputy sheriff who loses money by being bypassed for overtime.

The County argued that, substantively, the proposal would improve efficiency and is consistent with the manner that bypassed overtime assignments are remedied. It added that the COA and the Orange County deputy sheriffs have similar proposals in their collective bargaining agreements.

The DSPBA asserted that this proposal is not arbitrable. It noted that this matter does not directly deal with overtime.

It stressed that deputy sheriffs are currently able to seek redress to bypassed overtime opportunities through the grievance process. It maintained that the remedies available thereunder are greater.

With respect to the arbitrability of this matter, I find it to be arbitrable. It promptly affords overtime compensation to a deputy sheriff who was improperly bypassed for an overtime assignment.

As to the merits of the proposal, it will promptly resolve the issue of instances in which overtime assignments were not assigned properly. While I understand the DSPBA preference for the utilization of the grievance procedure, this proposal will result in the avoidance of delays in the resolution and the costs to the parties that frequently accompany alleged contract disputes.

As a consequence of the adoption of this proposal, the remedy for the bypassed overtime is prompt with no impact on the subsequent overtime assignments.

This proposal is arbitrable and is awarded. I conclude that the awarding of this proposal is a procedural change. However, it is not a financial concession since the change does not diminish the number of overtime opportunities or their cost.

Sub-proposal 3(b)-

The County proposed that the overtime lists be updated monthly as opposed to weekly. This proposal was also the subject of dispute over arbitrability.

The County contended that the matter is arbitrable in that the compensation of individual deputy sheriffs can be affected by the change in monthly rather than weekly updates of the overtime lists. It indicated that, on a substantive level, this proposal will increase efficiency and will facilitate the correction of errors.

The DSPBA disagreed about the arbitrability of this proposal. It suggested that this proposal does not directly relate to compensation. It posited that, if the matter is held to be arbitrable, it should be rejected on the grounds that the lists will become inaccurate and will fail to ensure the equal distribution of overtime.

For reasons stated above, I find the proposal to be arbitrable in that it can effect the compensation of employees who would be eligible for overtime opportunities on a weekly overtime list but not on one that is monthly.

As to the merits, I find that there is no evidence to suggest that the current system is flawed and that the weekly updating of the overtime lists is sufficiently onerous as to require a change. Thus, sub-proposal 3(b) is rejected.

Sub-proposal 3(c)-

The County proposed that overtime assignments remain within the same section. It stressed that the proposal is arbitrable in that it will affect the amount of overtime compensation that a deputy sheriff will receive.

It added that many of the bargaining units in and outside of the County have similar provisions in their contracts. It noted that the proposal will result in employees within the section who are most familiar with the work getting the overtime to complete the assignment.

The DSPBA stated that this matter is not arbitrable in that it does not directly affect compensation. It contends that the practice has been for overtime to remain within the section or command in which it originates.

For reasons previously stated, I find this proposal to be arbitrable in that it can directly affect the compensation of those who receive overtime opportunities. With respect to the substance of this proposal, the major difference between the current contract provision and the proposed change is that currently when no one in a section who volunteers for overtime, individuals in other sections can volunteer. If no volunteers are found, the Sheriff can assign the overtime to the junior person in the section in which the work emanated on an involuntary basis.

There was no showing that the current approach has been unduly burdensome on the County. Moreover, the COA, the unit most comparable to the DSPBA, does not employ the method overtime selection set forth in this proposal. Therefore, Sub-proposal 3(c) is rejected.

Sub-proposal 3(d)-

As indicated in connection with DSPBA Proposal 2, this proposal is rejected.

12. RECALL- COUNTY PROPOSAL 4

The County proposed two changes to Section 9.5 of the CBA. I will address them individually.

Sub-proposal 4(a)-

This item would amend the Agreement such that those who are *recalled* would be paid only for the hours actually worked.

The County claimed that this matter is arbitrable in that it would directly affect the compensation of employees who are *recalled*. It emphasized that the proposal is logical in that taxpayers should be required to pay *recalled* employees only for the hours they work.

The DSPBA observed that this proposal is not arbitrable in that it affects the number of hours which *recalled* employees can work and does not affect compensation. With respect to the substance of the proposal, it insists that all law enforcement units work under a provision in which there is a minimum number of hours for which recalled employees are paid.

I conclude that this proposal is clearly arbitrable. It would directly affect the compensation of employees who are *recalled*. However, there is no evidence to suggest that law enforcements units inside or outside the County have a provision devoid of a minimum number of hours for which *recalled* employees are paid. In sum, Sub-proposal 4(a) is rejected.

Sub-proposal 4(b)

This proposal calls for the elimination of *travel time* for *recalled* employees. As was true of Sub-proposal 4(a), the parties differed as to the arbitrability of the proposal. I find the matter to be arbitrable in that it relates to the compensation of recalled employees.

With respects to the substance of the proposal, the County argued that comparable deputy sheriff units are not paid for *travel time*. The DSPBA asserted that all Suffolk County bargaining units receive *travel time*.

While I recognize that external jurisdictions do not provide for *travel time* (CX3Tab 37), other County units in the police pattern, Sheriff's pattern and AME pattern do (CX3 Tab 36). I find the data concerning the County bargaining units to be persuasive. Thus, Sub-proposal 4(b) is denied.

13.TUITION REIMBURSEMENT-COUNTY PROPOSAL 5

The County proposed to amend Section 12 of the CBA such that the tuition reimbursement is limited to \$15,000 per year. It also proposed that unused funds one year not be carried over to the succeeding year.

The County pointed out that, other than the COA, every other bargaining unit in the Suffolk County has a cap on tuition reimbursement (CX3 Tab 39). The DSPBA indicated that the County bargaining units with caps have limits that are much higher than \$15,000. It stressed that the PBA and SOA have a provision that permits the roll over of unused from one year to another. It added that the COA has no cap on tuition reimbursement funds and has no roll over provision.

I have repeatedly stated that the COA is the bargaining unit most comparable to the DSPBA. As of this time, neither the DSPBA nor the COA has a cap on tuition reimbursement or a roll over provision.

Further, the record indicates that the actual funds expended for tuition reimbursement in 2007-2009 ranged from \$1,141 to \$5,243 (CX3 Tab 41). With this in mind, the monies actually expended are far less than the proposed cap.

The current system does not impose a greater fiscal hardship on the County at this time than would be if this proposal were awarded. If such a problem were to develop in the future this matter can be revisited in subsequent rounds of bargaining. Therefore, this proposal is rejected.

14. WORKERS' COMPENSATION-COUNTY PROPOSAL 6

There were three sub-proposals subsumed within this proposal. I will address them separately.

Sub-proposal (a)

The County proposed the reduction of full pay Workers' Compensation payments for employees out for non-GML §207-c injuries or illnesses from 39 weeks to 26 weeks. It posited that this proposal is arbitrable in that it would reduce the employees' Workers' Compensation income by one-third and would directly affect their compensation. As to the merits of the proposal, the County noted that it is unfair to expect taxpayers to pay for employees who are not working. It added that the comparable Rockland County bargaining unit has such a provision (CX3 Tab 43).

The DSPBA opined that this matter is not arbitrable in that does not directly relate to compensation. It added that it should be denied even if it arbitrable. It stressed that no internal or external bargaining unit (except for Rockland County) has such a provision in its contract.

This proposal is arbitrable. A reduction in the number of weeks an employee can receive Workers' Compensation benefits has a direct impact on compensation.

I must point out that all Suffolk County bargaining units are bound by the 39 week limit. Moreover, there is no evidence in the record to suggest that the current system is problematic in these troubled fiscal times. There, Sub-proposal 6(a) is rejected.

Sub-proposal 6 (b)-

The County proposed the elimination of time spent on *light duty* from the duration of the employee's probationary period. It emphasized that the proposal is arbitrable in that probationary employees may be barred from applying for certain positions and may make them ineligible for additional compensation. Thus, in its view, limiting the probationary period to periods of full time duty can affect compensation.

As to the merits, the County posited that this proposal affords the County a greater opportunity to evaluate probationary employees. It added that this proposal is consistent with the intent of Civil Service regulation and case law.

The DSPBA maintained that this proposal is inarbitrable. It added that this proposal should be rejected on the merits even if found to be arbitrable.

I conclude that the proposal is arbitrable. Lengthening the probationary period of those employees who are *light duty* for a period of time affects compensation of deputy sheriffs by making it impossible for them to apply and be granted posted positions that carry with them additional compensation.

With respect to the merits of the proposal, there is no evidence of any comparable internal or external bargaining unit having this provision in their CBAs. Therefore, Sub-proposal 6(b) is denied.

Sub-proposal 6(c)

The County proposed that employees absent due to job-related injury or illness be prohibited from engaging in activities that could deter their return to full duty. It further

proposed that such employees be barred from full time or part time employment. This proposal concerns deputy sheriffs absent on a leave pursuant to GML §207-c.

The County stresses that this proposal is arbitrable in that it affects the compensation available to employees absent to a job-related injury or illness. It suggests that this proposal codifies the existing SCSO Operations and Procedures and does not change terms and conditions of employment (CX3 Tab45A). It stresses that deputy sheriffs must follow these orders and therefore should not object to their codification in the CBA.

It acknowledges that this provision would be new in Suffolk County. It notes however that Rockland County deputy sheriffs have such a provision in their contract.

The DSPBA urges that this proposal is not arbitrable since it is not compensatory in nature. It emphasizes that the proposal is unreasonable in that it is a blanket bar to any and all employment while a deputy sheriff is absent on GML §207-c leave. It points out that no other union in Suffolk County has such a pervasive provision in its CBA.

With respect to the procedural matter, I find the provision to be arbitrable. A bar against outside employment has a direct bearing on the compensation of a deputy sheriff.

As to the merits of the proposal, it is clear that the substance of this proposal must be followed by the employees. A review of SCSO §150-46 (G) and §150-47 (C & D) reveals that deputy sheriffs out on leave or on light duty must follow the substance of this proposal (CX3 Tab45A).

The County wants the rule codified in the CBA. The DSPBA objects to the proposal being awarded. In the absence of any comparator having such a contract provision, I conclude that Sub-proposal 6(c) should be rejected.

I note that this panel does not have the authority to rescind SCSO §150-46 (G) and §150-47 (C & D). Any changes in those rules must be addressed in a different forum.

15. VACATION ACCRUALS-COUNTY PROPOSAL 7

This proposal has three sub-proposals in this proposal. They will be addressed in the aggregate.

The County asserted that these proposals are arbitrable in that they affect the compensation at the time of retirement. The DSPBA disagreed and indicated that these proposals are not arbitrable under §209.4(g).

To the extent that these proposals relate the compensation of deputy sheriffs at the time of retirement, proposals concerning vacation accruals are arbitrable.

I have reviewed the record and have found that none of the County's bargaining units have language reflecting these proposals in their contracts. I recognize that there are provisions comparable to these proposals in the contracts of certain external jurisdictions. However, the internal comparators are more persuasive particularly in the presence of such an *across the board* approach to vacation accruals. County Proposal 7 is denied.

16. SICK TIME- COUNTY PROPOSAL 8

The County proposed the deletion of paragraphs A and E (in their entirety) from CBA Section 16.4 as well the phrase *hired on or after December 31, 2005* from paragraph B from CBA Section 16.4. It further proposed the addition to paragraph B of *There shall be no payment for unused sick leave.*

The County indicated that this proposal is arbitrable in that it would have a direct effect on the compensation of deputy sheriffs at the time of retirement. It posited that this proposal

would result in cost containment by the County. It calculated the awarding of this proposal would result in a savings of \$218,930 to the County.

The DSPBA argued that the proposal is not arbitrable in that it is speculative that this proposal will directly affect compensation. As to the merits of the proposal, it contended that the impact on deputy sheriffs hired prior to December 31, 2005 would be draconian.

I find the proposal to be arbitrable. It is intended to reduce the compensation of deputy sheriffs when they separate from service.

With respect to the merits of the proposal, there are no bargaining units in Suffolk County who are subject to this proposal. As such County Proposal 8 is rejected.

17. PERSONNEL FILES- COUNTY PROPOSAL 9

The County proposed that Section 20(E) of the CBA be modified such that deputy sheriffs be given a ten day limit for responses to material placed in their personnel files. The current language provides for a 30 day time frame.

The County argued that this proposal is arbitrable in that a failure to respond to negative notations in the personnel file could result in their being passed over for a position. In its view, this could result in the employee being denied a position that carries with it financial advantages. It reasoned that this would directly affect that individual's compensation.

It suggested that the proposal is sensible. It added that this provision was awarded by the panel in the 2004-05 COA interest arbitration.

The DSPBA indicated that this proposal is inarbitrable in that it does not deal with compensation. It opined that the proposal should be denied even if arbitrable since it would severely reduce the response time of deputy sheriffs to counseling letters and other memos.

I find that the proposal is arbitrable since it may well impact on the compensation of a deputy sheriff who does not promptly respond to a negative comment placed in his file which could result in his/her being denied a position provides for additional compensation for which s/he applied.

As to the merits, I have frequently expressed my recognition of pattern bargaining. In this instance, the COA is the main comparator to the DSPBA. The instant proposal has been in place for the COA for several years.

Further, the proposal will result in the prompt resolution of disputes arising from material placed in personnel files. Therefore, County Proposal 9 is awarded effective July 1, 2011.

18. PROBATION- COUNTY PROPOSAL 10

The County proposed the modification of Section 22 of the CBA such that the probationary period would be extended from 12 months to 18 months. It argued that this proposal is arbitrable in that probationers are not eligible for certain positions that impact on the selectee's compensation. In this context, stated the County, the proposal directly affects compensation.

The County stressed that deputy sheriffs are in the academy for six of the twelve months of probation. It urges that six months is insufficient for the superior officers to evaluate new hires.

The DSPBA maintained that the proposal is not arbitrable in that is not directly related to compensation. It posited that most of the bargaining units in the County have a 12 month probation period and that there is no basis for extending the probationary period of deputy sheriffs.

This proposal is arbitrable. It has the effect in certain circumstances of limiting compensation.

As to the substance of the proposal, it is true that the PBA and SDA have 18 month probationary periods. It is also accurate to note that the SOA and the DIPBA have probationary periods of 12 months or less. The COA has a 12 month probation (CX3 Tab 59).

While there is some merit to lengthening the period of probation, there is no evidence to suggest that the current system is insufficient to determine the worthiness of new hires. Moreover, I note that the COA is within the Sheriff's pattern (as is the DSPBA) and that the COA has a 12 month probation. Therefore, based on the lack of evidence of a need to modify the current probation period, I find that this proposal should be denied.

19. TRANSFERS-COUNTY PROPOSAL 11

This proposal is divided into three sub-proposals. The County argued that they are all arbitrable in that the positions sought via transfer may result in greater compensation. Thus, asserted the County, they are consistent with §209.4(g).

The DSPBA indicated that these sub-proposals are not arbitrable. It averred that these matters are unrelated to compensation.

As to the issue of arbitrability, I find that they are consistent with §209.4(g). Transfers frequently result in greater compensation for the selectee. Thus, they are within the panel's jurisdiction.

The merits of the sub-proposals will be addressed individually.

Sub-proposal 11(a)

This sub-proposal would provide for all transfers to be at the discretion of the Sheriff based on the qualifications for the positions. The County contended that the Sheriff already has the unfettered authority to effect certain transfers and that this proposal would simply bring all transfers under the Sheriff's discretion.

It added that this proposal would eliminate the need for postings and would avoid the need to consider seniority as the only factor in the awarding of transfers. It observed that the DSPBA and the COA are the only bargaining units in which the employer does not have sole discretion in the granting of transfers (CX3 Tab 61).

The DSPBA maintained that the proposal is unreasonable. It opined that it should not be awarded by the panel.

I am persuaded that a change in the manner in which transfers are effected is not justified at this time. Thus, Sub-proposal 11(a) is denied.

Sub-proposal 11(b)

This sub-proposal provides for no posting of transfer opportunities and for the elimination of seniority as a factor in transfers.

The arguments offered relative to this sub-proposal were subsumed within those made in connection with the prior sub-proposal. I have reached the same conclusion here as was the case with 11(a).

Sub-proposal 11(c)

The County proposed that the Sheriff have the discretion to make temporary transfers (of up to 45 days) without notice or posting.

The County maintained that this sub-proposal promotes efficiency and allows for the addressing of short term staffing needs. It added that such a provision is in place with the COA at this time.

The DSPBA averred that this matter is unreasonable. It indicated that deputy sheriffs who are transferred under these circumstances would be ill-prepared and ill-equipped to deal with the changes. It added that it would deprive individuals interested in the temporary transfers of the opportunity to get them.

The data indicates that the DSPBA is the only bargaining unit in Suffolk County that does not operate under the proposed change to Section 26 of the CBA. There is little doubt that it is more efficient to have the Sheriff address temporary staffing issues promptly.

I find the County's position to be justified. Thus, Sub-proposal 11(c) is awarded.

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 \$175,169 (CX3 Tab 9). Listed below are the costs and the value of the concessions.

COST

| | |
|--|------------------------|
| Wage increases- 2008 @ 3.375% increase- | \$591,195 |
| 2009 @ 3.2% increase- | 560,540 |
| 2010 @ 3.2% increase- | 560,540 |
| Cost of longevity award and increase in wages of Deputy Sheriff Investigators during the life of this Award | 0 |
| TOTAL (THREE YEARCOST) | \$1,712,275 |

1% value- \$175,169

THREE YEAR COST EXPRESSED AS A PERCENTAGE INCREASE- 9.78%

CONCESSIONS

Credit for the reduction of the starting salary to \$30,000 and the reconfiguration of the salary schedule \$87,585

Credited prospective savings from reduction in starting salary to \$30,000 87,585

Credit for the granting of County Proposal 2(b) 87,585

Credit for the granting of County Proposal 11(c) 87,585

Deferral of 2008 salary increase up through and including June 16, 2008 (12 pay periods) 312,821

TOTAL \$663,161

1% value- \$175,169

THREE YEAR CONCESSIONS EXPRESSED AS A BUDGETARY PERCENTAGE -

3.78%

COST OF THREE YEAR AWARD (COSTS - CONCESSIONS) - \$1,049,114

ANNUAL COST OF AWARD- \$349,704

COST FOR THREE YEARS EXPRESSED AS A BUDGETARY PERCENTAGE- 5.99%

BLENDED ANNUAL COST OF AWARD AS A BUDGETARY PERCENTAGE- 2%

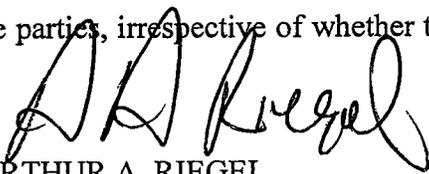
In sum, I have carefully considered the relevant statutory criteria, as well as the pertinent prior interest arbitration awards in arriving at my findings. I believe that this Award properly balances the rights of the members of the DSPBA to improved wages and benefits with the

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 deputy sheriffs referred to in ¶6 and Appendix A of the CBA such that the 2007 salary schedules will be increased by the following percentages:
 - As of June 17, 2008- 3.375%
 - As of January 1, 2009- 3.2%
 - As of January 1, 2010- 3.2%See Schedule A (attached).
Reduction of starting salary to \$30,000 and reconfiguration of salary schedule- See Schedule B (attached)
3. **LONGEVITY PAYMENTS-** Amend the longevity payments now set forth in ¶6.10 (A) of the CBA such that they will be increased by \$75. The increases in longevity payments become effective on December 31, 2010.
4. **WAGES OF DEPUTY SHERIFF INVESTIGATORS-** Amend the salary schedules of Deputy Sheriff Investigators referred to in ¶6 and Appendix A of the CBA such that, effective December 31, 2010, there will be a fourth step in those schedules with a salary \$500 higher than that on the third step. Those eligible for this increase must have completed three years of service as a Deputy Sheriff Investigator.
5. **WORK SCHEDULES-** Amend ¶5 of the CBA as follows:
 - As of December 31, 2010, all employees who receive training as scheduled by the Sheriff on a non-work day will receive pay at straight time for all hours engaged in such training. This provision is limited to one day per year.
6. **OVERTIME-** Amend ¶9.3 (D) of the CBA such that a deputy sheriff wrongly bypassed for overtime shall be placed at the top of the overtime list for the next overtime assignment. This provision is effective as of December 31, 2010.
7. **PERSONEL FILES-** Amend ¶20 (E) of the CBA such that, as of December 31, 2010, responses to material placed in an employee's personnel file must be provided within ten (10) days of the material being placed in the file. This provision is effective as of December 31, 2010.
8. **TRANFERS-** Amend ¶26 (A) of the CBA as follows:
 - Effective December 31, 2010, the Sheriff may temporarily transfer Deputy Sheriffs for a period of up to 45 days without notice or posting.
9. **OTHER PROPOSALS-** All other proposals of the parties, irrespective of whether they were discussed, are denied.

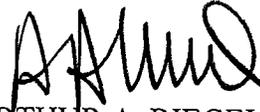
Dated: June 27, 2011
Hewlett Harbor, NY


ARTHUR A. RIEGEL
CHAIR, INTEREST ARBITRATION
PANEL

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

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


ARTHUR A. RIEGEL, ESQ.

EMPLOYEE PANELIST

I, Matthew Mullins, Employee member of the Interest Arbitration Panel (concur with) (dissent from) the numbered elements of the above Interest Arbitration Award as follows:

- | | | |
|------------------|--------|---------|
| 1. Award Item #1 | Concur | Dissent |
| 2. Award Item #2 | Concur | Dissent |
| 3. Award Item #3 | Concur | Dissent |
| 4. Award Item #4 | Concur | Dissent |
| 5. Award Item #5 | Concur | Dissent |
| 6. Award Item #6 | Concur | Dissent |
| 7. Award Item #7 | Concur | Dissent |
| 8. Award Item #8 | Concur | Dissent |
| 9. Award Item #9 | Concur | Dissent |

MATTHEW MULLINS
EMPLOYEE PANELIST

Matthew Mullins

Compulsory Interest Arbitration Award
Suffolk County
And
Suffolk County Deputy Sheriffs P.B.A.
Dissenting Opinion of D.S.P.B.A. Panel Member
Matthew J. Mullins

I have little choice but to dissent on the decision and award in this case. Unfortunately, in hindsight, it appears that cards were stacked against Deputies from the start. As Arbitrator Riegel made abundantly clear in his findings and in what he awarded, collective bargaining history for Suffolk County Deputies trumps all other factors, including comparability. Relying almost exclusively on the fact that for many years Deputies and Correction Officers were tied together for bargaining purposes, Chairperson Riegel essentially concluded that no matter what the realities are in what Deputies now do and how our functions have changed, he would never change our pattern. He concluded that there was "insufficient evidence to warrant removing the DSPBA from the Sheriff's pattern and placing it in the police pattern." This conclusion is flawed and is completely contradictory of the testimony and evidence presented.

At the outset, let me be perfectly clear - facing zeroes along with other givebacks at the bargaining table gave us no other choice than to fight this contract through arbitration, without which we would not have obtained the nearly 10.1% wage increases over three years as part of a negotiated deal. Nor would we have gotten longevity increases of any kind, and the investigators (a long ignored group at the bargaining table) would not have gotten the extra salary step they were awarded. But on the merits of the case, we should have done better. We proved our case. I am saddened that the process didn't work this time. I can only hope that this is the exception rather than the rule.

The fact that Deputies' job functions have changed over the years was irrelevant to the Arbitrator. The decision only seems to cite our work on the highways but ignores the many new and expanded responsibilities in other areas - Criminal Investigations Bureau, Task Forces, community outreach programs, non-highway enforcement, etc. Chiefs Kneitel and Sharkey testified on our behalf, along with deputies, investigators, sergeants, and lieutenants from nearly every command and level of experience. All discussed what we do, how we do it, and notably, what has changed over the last five or so years. Many testified about the differences between Deputy Sheriffs and Correction Officers. This is not to suggest that the functions performed by correction officers are not important; rather, they are dramatically different. We even offered the testimony of an expert - Dr. McCabe, a former Commanding Officer in the NYPD and current professor of criminal justice - who rode along with us, visited our commands, interviewed our members, met with our supervisors, and observed what we do every day in every command. He compared our job with other police jobs in the region and the nation, concluding that we are police officers in every sense. Dr. McCabe compared our actual

job functions, the structure of the police division, job training and civil service requirements, and much more. His testimony (and frankly those of most of the other witnesses) was uncontested, but largely ignored.

Instead, Arbitrator Riegel put a rubber stamp on many of the conclusions reached by Arbitrator Townley and did not give any weight to the many new and expanded police duties performed by Deputies. By way of example, Arbitrator Riegel summarily dismissed the legislative history behind deputies obtaining interest arbitration. The history of how that provision came about and how the legislature intended to treat deputies like other police officers throughout the state was rejected without much discussion, even though that evidence was again uncontested. The Governor's Legislative Bill Jacket was accepted without objection and the testimony of lobbyist Bill Schnell was the only testimony offered by anyone involved with the legislation. Yet, Arbitrator Riegel determined that since the language of the statute was different, that is all that mattered.

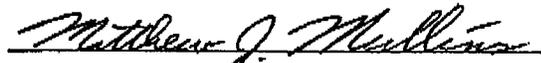
In denying Deputies inclusion in the police pattern and in denying many other proposals, Arbitrator Riegel emphasizes the difference between the interest arbitration provision for Deputies and the interest arbitration provision for police. Specifically, he points out that under the Deputies' provision, only matters directly related to compensation may be addressed (i.e. matters unrelated to compensation are considered inarbitrable). However, the Arbitrator's conclusion here flies in the face of the entire award in that he declares nearly every single proposal to be arbitrable, finding some way to link it to compensation (for example, the County's proposal that Deputies be given a 10 day limit to respond to material placed in personnel files was somehow found to be "directly related to compensation"). If there was such an important distinction between the parties' interest arbitration provisions, why did the Arbitrator find nearly everything arbitrable?

Probably the most disturbing aspect of this arbitration, however, is the methodology employed in determining costs and concessions. Chairperson Riegel and county panel member Tempera concluded that despite not receiving salary increases and other wage benefits at the same level as those unions in the police pattern, we were still required to give back our pro-rata share of savings based upon the police pattern. For example, the PBA received credit for deferring increases in its longevity to the last day of the contract, while the DSPBA award gave no such credit despite a similar deferral. Additionally, the majority of the panel refused to give Deputies the true credit (as a concession) equal to the savings actually generated by (1) working one extra training day per year at straight time, (2) the flexibility given to the Sheriff in transfers, and (3) the overtime violation remedy. On the one hand, Arbitrator Riegel says that Deputies should be denied certain proposed benefits because the proposals presuppose inclusion in the police pattern, which he refused to do. On the other hand, Deputies are required to give up the pro-rata share of concessions based upon police pattern concessions. This conclusion is illogical and arbitrary at best. In addition, references to units like the AME

giving up their pro-rata share of concessions based on the police pattern are simply wrong factually. AME does not have interest arbitration and the AME contract was not part of the record. Additionally, there was no evidence presented nor could there have been with regard to the values of concessions that AME gave up in this contract or the past.

Simply put, I am extremely disappointed by the totality of the award. I sat through the hearings, I heard the testimony, and I read the evidence. And we proved our case. I cannot blame any member who is left frustrated and confused by this award. Case in point – awarding a \$7.50 raise per year in longevity for a 10 year deputy or \$3.75 raise per year in longevity for a 20 year deputy is an outrage. Had there been even a modest longevity increase along with the awarded salary increases and extra step for investigators, I could understand (though reasonably disagree with) the decision.

Therefore, for these reasons (and others) I must dissent on the majority of the award. I am disappointed by the result but admit that the County would not have agreed to the raises we received in any other forum. We continue to fight for fair and reasonable compensation equal to the work we do in protecting the people of Suffolk County and in performing our jobs in a professional manner.


Matthew J. Mullins, *President*

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. Award Item #1 | Concur | Dissent |
| 2. Award Item #2 | Concur | Dissent |
| 3. Award Item #3 | Concur | Dissent |
| 4. Award Item #4 | Concur | Dissent |
| 5. Award Item #5 | Concur | Dissent |
| 6. Award Item #6 | Concur | Dissent |
| 7. Award Item #7 | Concur | Dissent |
| 8. Award Item #8 | Concur | Dissent |
| 9. Award Item #9 | Concur | Dissent |


JEFFREY TEMPERA
EMPLOYER PANELIST

SCHEDULE A

DEPUTY SHERIFFS POLICE BENEVOLENT ASSOCIATION

BU #11

1/1/2008 BI-WEEKLY

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 1558 | 1783 | 1848 | 2109 | 2591 | 2707 |
| Deputy Sheriff II | | | | | | 3221 |
| Deputy Sheriff III | | | | | | 4035 |
| Deputy Sheriff IV | | | | | | 4433 |

1/1/08 ANNUAL

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 40664 | 46536 | 48233 | 55045 | 67625 | 70653 |
| Deputy Sheriff II | | | | | | 84068 |
| Deputy Sheriff III | | | | | | 105314 |
| Deputy Sheriff IV | | | | | | 115701 |

DEPUTY SHERIFF INVESTIGATORS

1-1-08 Biweekly

| | <u>5-1</u> | <u>5-2</u> | <u>5-3</u> |
|--------------------|------------|------------|------------|
| Deputy Sheriff I | 2811 | 2849 | 2897 |
| Deputy Sheriff II | 3326 | 3363 | 3411 |
| Deputy Sheriff III | 4141 | 4177 | 4224 |
| Deputy Sheriff IV | 4542 | 4575 | 4622 |

1-1-08 Annual

| | <u>5-1</u> | <u>5-2</u> | <u>5-3</u> |
|--------------------|------------|------------|------------|
| Deputy Sheriff I | 73367 | 74359 | 75612 |
| Deputy Sheriff II | 86809 | 87774 | 89027 |
| Deputy Sheriff III | 108080 | 109020 | 110246 |
| Deputy Sheriff IV | 118546 | 119408 | 120634 |

DEPUTY SHERIFFS POLICE BENEVOLENT ASSOCIATION

BU #11

1/1/2009 BI-WEEKLY

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 1608 | 1840 | 1907 | 2176 | 2674 | 2794 |
| Deputy Sheriff II | | | | | | 3324 |
| Deputy Sheriff III | | | | | | 4164 |
| Deputy Sheriff IV | | | | | | 4575 |

1/1/09 ANNUAL

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 41969 | 48024 | 49773 | 56794 | 69791 | 72923 |
| Deputy Sheriff II | | | | | | 86756 |
| Deputy Sheriff III | | | | | | 108680 |
| Deputy Sheriff IV | | | | | | 119408 |

DEPUTY SHERIFF INVESTIGATORS

1-1-09 Biweekly

| | <u>5-1</u> | <u>5-2</u> | <u>5-3</u> |
|--------------------|------------|------------|------------|
| Deputy Sheriff I | 2901 | 2940 | 2990 |
| Deputy Sheriff II | 3432 | 3471 | 3520 |
| Deputy Sheriff III | 4274 | 4311 | 4359 |
| Deputy Sheriff IV | 4687 | 4721 | 4770 |

1-1-09 Annual

| | <u>5-1</u> | <u>5-2</u> | <u>5-3</u> |
|--------------------|------------|------------|------------|
| Deputy Sheriff I | 75716 | 76734 | 78039 |
| Deputy Sheriff II | 89575 | 90593 | 91872 |
| Deputy Sheriff III | 111551 | 112517 | 113770 |
| Deputy Sheriff IV | 122331 | 123218 | 124497 |

DEPUTY SHERIFFS POLICE BENEVOLENT ASSOCIATION

BU #11

1/1/2010 BI-WEEKLY

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 1659 | 1899 | 1968 | 2246 | 2760 | 2883 |
| Deputy Sheriff II | | | | | | 3430 |
| Deputy Sheriff III | | | | | | 4297 |
| Deputy Sheriff IV | | | | | | 4721 |

1/1/10 ANNUAL

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 43300 | 49564 | 51365 | 58621 | 72036 | 75246 |
| Deputy Sheriff II | | | | | | 89523 |
| Deputy Sheriff III | | | | | | 112152 |
| Deputy Sheriff IV | | | | | | 123218 |

SCHEDULE B
SALARY SCHEDULE FOR EMPLOYEES HIRED
ON OR AFTER DECEMBER 31, 2010

BI-WEEKLY

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 1150 | 1497 | 1843 | 2190 | 2536 | 2883 |
| Deputy Sheriff II | | | | | | 3430 |
| Deputy Sheriff III | | | | | | 4297 |
| Deputy Sheriff IV | | | | | | 4721 |

ANNUAL

| | <u>1</u> | <u>1A</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> |
|--------------------|----------|-----------|----------|----------|----------|----------|
| Deputy Sheriff I | 30015 | 39061 | 48107 | 57153 | 66199 | 75246 |
| Deputy Sheriff II | | | | | | 89523 |
| Deputy Sheriff III | | | | | | 112152 |
| Deputy Sheriff IV | | | | | | 123218 |

DEPUTY SHERIFF INVESTIGATORS

1-1-10 Biweekly

| | <u>5-1</u> | <u>5-2</u> | <u>5-3</u> | <u>*5-4</u> |
|--------------------|------------|------------|------------|----------------|
| Deputy Sheriff I | 2994 | 3034 | 3086 | 3105.17 |
| Deputy Sheriff II | 3542 | 3582 | 3633 | 3652.15 |
| Deputy Sheriff III | 4411 | 4449 | 4498 | 4517.17 |
| Deputy Sheriff IV | 4837 | 4872 | 4923 | 4942.15 |

1-1-10 Annual

| | <u>5-1</u> | <u>5-2</u> | <u>5-3</u> | <u>*5-4</u> |
|--------------------|------------|------------|------------|---------------|
| Deputy Sheriff I | 78143 | 79187 | 80545 | 81045 |
| Deputy Sheriff II | 92446 | 93490 | 94821 | 95321 |
| Deputy Sheriff III | 115127 | 116119 | 117398 | 117898 |
| Deputy Sheriff IV | 126246 | 127159 | 128490 | 128990 |

* Effective December 31, 2010
 Step 4 additional \$500 Annually