

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration Between  
CAYUGA COUNTY AND THE CAYUGA COUNTY SHERIFF,  
Employer,  
  
-and-  
THE CAYUGA COUNTY DEPUTY SHERIFFS' POLICE BENEVOLENT  
ASSOCIATION,  
Union.

OPINION  
AND  
AWARD  
PERB CASE NO.  
IA2012-025  
M2012-129

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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OCT 03 2013

Before the following Public Arbitration Panel:

Michael S. Lewandowski  
Chairman

Thomas H. Ross  
Public Employee Organization Panel Member

Peter A. Jones, Esq.  
Public Employer Panel Member

CONCILIATION

On March 22, 2013, the Cayuga County Deputy Sheriffs' Police Benevolent Association ("Union" or "Association") filed a petition for compulsory interest arbitration with the New York State Public Employment Relations Board ("PERB"). Thereafter, the County of Cayuga New York ("County") and the Cayuga County Sheriff ("Sheriff") answered the petition on April 8, 2013. The County and the Association had reached impasse in their negotiations for a successor Agreement to the

Collective Bargaining Agreement ("Agreement") between the parties that expired on December 31, 2011. The unit is composed of approximately 35 members holding the title of Deputy Sheriff and related titles such as Deputy Sheriff Sergeant, Lieutenant and Detective among other titles.

In accordance with Section 209.4 of the Civil Service Law, the undersigned were designated as the Public Arbitration Panel members by letter dated April 10, 2013 from the New York State Public Employments Relations Board ("PERB"). The parties submitted data and arguments to the panel for consideration. The panel held an Executive Session in Rochester, New York on July 24, 2013.

The parties were afforded a full opportunity to present relevant evidence in support of their positions. They chose to make written submissions. Each party presented data collected concerning Sheriff's departments that they considered to be comparable to that of the County as well as data pertaining to the County's fiscal condition and past wage and benefits agreements.

The content of this opinion and award reflects the results of consideration of the panel of the data presented against the criteria specified in the Civil Service Law.

Specifically considered were the interests and welfare of the public and the financial ability of the County to pay any salary increase or benefit increases awarded; comparable wages of comparable Sheriff units in other Counties, hours and conditions of employment provided employees involved in similar work or requiring similar skills (Deputy Sheriff); comparison of peculiarities in regard to other professions such as hazards, physical qualifications, educational qualifications, mental qualifications and job training and skills. The panel also considered the terms of the collective bargaining agreement negotiated between the parties in the past. The final disposition of the issues is the result of the deliberations of the panel. The parties were split on what should be the outcome of this award. The award contains the outcome as voted on by a majority of panel members. Two members of the panel concur with the award in on each of the two issues presented for consideration; one member dissents.

The evidence presented by the parties was considered against the criteria set forth in the Law including but not

limited to a comparison of wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions; the interests and welfare of the public and the financial ability of the public employer to pay; the peculiarities in regard to other professions such as hazard, educational qualifications, training and skills and the terms of collective agreements negotiated between the parties in the past providing the compensation and fringe benefit package that currently exists for the bargaining unit members.

#### DISCUSSION AND ANALYSIS

After extensive review of the data presented to the panel for review by the arbitration panel; the panel majority reached agreement on the Award that follows. The Award is a product of the consideration the evidence presented against all of the factors specified in the Civil Service Law. In the opinion of the majority of the panel, the award modifies terms and conditions of employment in a manner which benefits both the Association and the County.

**TERM:** The term of this award shall not exceed the two-year period expressed in Law as the maximum period for an interest arbitration award issued by such panel. The term of this award shall be for a two year period commencing on January 1, 2012 and expiring on December 31, 2013.

**COMPARABLE EMPLOYERS:**

The parties submitted similar lists to be considered by the panel as comparable employers.

The lists consisted of Sheriff's Departments either contiguous to or geographically close to Cayuga County. Both the Union and the County submitted Seneca County, Cortland County, Wayne County, Tompkins County, Oswego County and Onondaga County as comparable employers. The Union also included Madison County and Chemung County on its list of comparable employers. While all of these counties are geographically close to Cayuga County the fact is that the counties submitted vary greatly in size and population. For example Seneca County has a landmass of only 323.71 square miles as opposed to Oswego County; which has a landmass of 951.65 square miles. Seneca County has less than one-half the landmass of Cayuga County. Landmass is relevant in contract disputes involving Sheriff's departments because landmass data shows the area that has to be patrolled.

Similarly, the population of the Counties submitted for comparison varies greatly. Seneca County had a population of 35,251 residents in 2011 while Onondaga County had 467,026 residents in 2011. A comparison between Seneca County at 35,251 residents and Cayuga County with 80,026 residents in 2011 shows that Cayuga County had close to three (3) times the residents of Seneca County in 2011.

While the data tends to show such a variance as to make it difficult to come to a conclusion as to comparability the fact is that the most telling feature of the data is that each of the proposed comparable employers are nearby Counties providing police services in the form of a Sheriff's department to their residents. A review of Cayuga County versus the above listed employers is thus deemed by the panel majority to be proper.

Comparing salaries of Deputy Sheriffs and similar titles is a difficult task considering that each individual collective bargaining agreement has different terms and conditions of employment that contain benefits of different values. In other words, just comparing base wages to base wages may be insufficient. Factors such as how long it takes a deputy to reach the top step of a salary schedule or the value of a health insurance plan can present very different results in

salary comparisons of the net worth of jobs. Wage determination in interest arbitration is not scientific but merely attempts to make valid comparison hopefully on a logical basis.

For example, the Cayuga County Deputy Sheriffs receive a Holiday Pay benefit (valued at \$5,520) that is significantly higher than the value of the Holiday Pay benefit paid to any of the comparable County's employees (ranges from \$534 - \$3,630). For that reason, the below comparison chart shows the wage comparison inclusive of the value of the Holiday pay benefits for Cayuga County and all other County's used in the comparison. The chart shows the base wage including Holiday Pay for a Deputy Sheriff at the 5<sup>th</sup> step of the salary schedule.

County	Base Salary	Holiday Pay	Total Earnings
Cayuga	\$46,003	\$5,520	\$51,523
Cortland	\$53,665	\$2,683	\$56,348
Onondaga	\$52,085	\$2,404	\$54,489
Oswego	\$46,301	\$534	\$46,835
Tompkins	\$56,680	\$654	\$57,334
Seneca	\$44,940	\$3,630	\$48,570

Wayne	\$49,475	\$2,283	\$51,758
Average excludes Cayuga County	\$50,524		52,555

The above chart uses only the County's proposed comparable employers. It shows the Cayuga County deputy to be paid on average, \$1,032 per annum less. This translates to a showing that Cayuga county deputies receive approximately two (2) percent less than the comparable deputies. However the data for Tompkins County is as of 2009. Therefore should the Tomkins County Deputy Sheriffs receive an increase in wages for 2010 the percentage in favor of the Association here would increase although admittedly minimally. The Data shows to the majority of the panel that a two percent increase is supported by the comparison to comparable employers.

Comparability of employers is but one factor in setting wages in interest arbitrations. Comparable employers may pay significantly higher wages and provide significantly higher benefits but if the public employer in the interest arbitration does not have the ability to pay, the other factors become almost meaningless.

The majority of the panel finds that the data here shows that the County has the ability to pay the two percent (2%) increases found proper here. The panel majority finds that the County has (as described by the County in its brief) a relatively stable fund balance for the period 2009-2011 at approximately \$19 million. This fund balance fell in 2012 with the loss of federal stimulus dollars but the balance remained healthy at \$16 million. The County is suffering further erosion of its fund balance in 2013 due to a variety of factors including increased contributions to employee retirement plans among other things. However the 2 percent per year increases found proper here are within the 2% property tax cap permitted by the State especially considering the cap may be increased by increases in employee retirement plan cost among other things.

The County has also projects an increase in Sales Tax receipts of \$850,000 over 2012. The 2% wage increase here does not exceed the 2 percent property tax increase the County projects for 2013 that will provide the County with \$703,482 in increased revenues.

The majority of the panel thus concludes the County has the ability to pay the wage and benefit increases recommend here.

**ISSUES BEFORE THE PANEL:**

**DIRECT COMPENSATION:** The Union proposed increasing wages three percent (3.0%) in each year of a two-year award. The County proposed no increase in base wages during this period. As shown above, the majority of the panel found a two (2%) percent per year increase in base wages to be the appropriate resolution of the wage dispute in this matter.

**OVERTIME COMPENSATION:**

Of all of the County Sheriff's Department employees submitted for review by the panel, Cayuga County is the only employer that does not pay overtime after 40 hours in a week. Cayuga County pays overtime (time and one-half) for hours worked in excess of 86 hours in a two-week period. Comparable Counties pay overtime as shown below.

Chemung County: Time and one-half over 8 hours in a day or 40 hours in a week.

Cortland County: Time and one-half over 8 hours in a day or 40 hours in a week.

Onondaga County: Time and one-half for hours worked beyond regular work schedule.

Oswego County: Time and one-half for hours worked in excess of the basic work day or work week.

Seneca County: Time and one-half for all hours worked over 40

in a week.

Tomkins County: Time and one-half for hours worked over 8 in a 24-hour day, or for hours when an employee is called in to work on a regular day off.

Wayne County: Time and one-half for all hours worked over 40 in a week.

The County proposed no changes in the overtime provision. The Association proposed changing the overtime provision to provide for the payment of overtime at the rate of time and one-half in excess of eight (8) hours per day, or for any hours worked on an employee's day off. At the employee's option, compensatory time at the rate of time and one-half may be taken in lieu of payment.

The majority of the panel elected to support only a change in the overtime provision to provide overtime at the rate of time and one-half for all hours worked over 40 hours in a week. This position reflects the fact that the Cayuga County deputies' overtime compensation lags behind that provided to comparable deputies it also reflects the County's financial condition by not providing the benefit proposed and sought by the Association. While the County is deemed to have the ability to pay increased wages and an increase in the overtime benefit to that of the lowest comparable Sheriff's deputies, the panel recognizes that

the County is facing fiscal challenges.

Considering the above, the award in this matter is as follows.

AWARD

1. The term of this Award shall be 2 years.
2. Base wages for members of this unit shall be increased by 2% effective January 1, 2012.
3. Base wages for members of this unit shall be increased by 2% effective January 1, 2013.
4. The above wage increases shall be paid retroactive to the dates shown above to employees on the payroll as of the date this award is executed.

Concur:

Michael S. Samlow  
Alan H. [unclear]

Dissent:

Butt Jones

5. Commencing on the date this award is executed, employees shall be paid the overtime rate of time and one-half for all hours worked in excess of forty (40) hours in a week.

Concur: Michael S. Lewandowski  
Thomas H. Ross

Dissent: Peter A. Jones

AFFIRMATION

COUNTY OF ERIE )

STATE OF NEW YORK )

We, the public arbitration panel identified above, do hereby affirm upon our oath as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

Date: 9/18/13

Michael S. Lewandowski  
MICHAEL S. LEWANDOWSKI

Date: 9/27/13

Peter A. Jones  
PETER A. JONES, ESQ.

Date: 9/27/13

Thomas H. Ross  
THOMAS ROSS