

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Impasse Between:

DELAWARE COUNTY DEPUTY SHERIFFS P.B.A.,
Petitioner/Union

OPINION & AWARD

**PERB CASE NO.
IA2003-034; M201-256**

-And-

DELAWARE COUNTY,
Respondent/Employer

BEFORE:

PUBLIC PANEL MEMBER AND CHAIRPERSON

Dennis J. Campagna, Esq.
Public Panel Member and Chairperson
9120 Michael Douglas Drive
Clarence Center, N.Y. 14032-9278

EMPLOYEE ORGANIZATION PANEL MEMBER

Ralph Purdy,
Employee Organization Panel Member
United Federation of Police Officers, Inc.
P.O. Box 76
540 North State Road
Briarcliff Manor, N.Y. 10510-0076

PUBLIC EMPLOYER PANEL MEMBER

Joseph Hanley,
Public Employer Panel Member
Delaware County Budget Director
111 Main Street
Delhi, N.Y. 13753

PRELIMINARY STATEMENT

The County of Delaware, (“County”), and the Delaware County Deputy Sheriffs Police Benevolent Association, (“PBA” or “Association”), are parties to a collective bargaining agreement with effective dates January 1, 1998 through December 31, 2001.

Negotiations for a successor to the 1998-2001 Collective Bargaining Agreement began on or about July 17, 2001. On December 13, 2001, the PBA, filed a Declaration of Impasse with the Public Employment Relations Board, (“PERB”), and requested mediation. Mediation commenced on or about March 5, 2002 and following several mediation sessions, the parties reached a tentative agreement on or about October 2, 2002. On November 6, 2002, the PBA rejected this Tentative Agreement. Notice of the PBA’s rejection was served on the County on November 7, 2002. On December 9, 2002, the parties invited PERB Mediator Anthony Zumbolo to assist them in their attempts to resolve the outstanding issues. While Mr. Zumbolo expended substantial effort, the parties were unable to reach agreement. On or about January 8, 2003, the PBA filed for Fact Finding. PERB appointed Peter Prosper as the Fact Finder to this impasse. On September 11, 2003, Mr. Prosper held a one-day hearing, after which the parties submitted post-hearing memoranda in support of their positions. The Issues addressed before Fact Finder Proper were as follows:

- Term of Agreement
- Wages
- Rank Differential
- Longevity
- Retirement Benefits
- Health Insurance

On November 22, 2003, Fact Finder Prosper released his Report where he made the following Recommendations:

ISSUE	RECOMMENDATION
Term of Agreement	4 Years encompassing Calendar Years 2002, 2003, 2004 and 2005
Wages	A 3.0% increase for each of four (4) years retroactive to January 1, 2002
Longevity	A Longevity Payment of \$500.00 after twelve (12) years of continuous service.
Rank Differential	\$641 (Sergeants), \$484 (Investigators), \$339 (Lieutenants/Investigators)
Health Insurance	Increase Prescription-Drug Co-Payments from \$3/\$6 (Generic/Brand Name) to \$5/\$10.

In December 2003, the foregoing report was accepted in total by the County, and rejected by the PBA. The PBA filed the instant Petition for Compulsory Interest Arbitration on or about February 13, 2004.

On February 9, 2005, PERB, pursuant to Section 209.4 of the New York State Civil Service Law, designated the foregoing Public Arbitration Panel for the purpose of making a just and reasonable determination of the dispute existing between the County and the PBA.

In arriving at a just and reasonable determination of the matters in dispute, the Panel considered the following:

- a. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b. The interests and welfare of the public and the financial ability of the public employer to pay;
- c. Comparison of peculiarities in regard to other trades or professions, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications' (5) job training and skills;

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

Two days of evidentiary hearing took place on July 18th and July 25th, 2005. At such hearing, each party was represented by counsel, was accorded, and took full advantage of the right to call and examine witnesses, as well as the right to introduce relevant evidence. At the conclusion of said hearing, the parties elected to summarize their respective positions on the issues before the Panel with the filing of post-hearing briefs. Following the receipt of said briefs, the Public Arbitration Panel members convened for a one-day executive session held on October 19, 2005. The following issues were submitted and acted upon by the Public Panel pursuant to the statutory criteria set forth above:

1. Term of Agreement
2. Wages
3. Rank Differential
4. Longevity
5. Retirement Benefits
6. Health Insurance

BACKGROUND

Delaware County, New York is located in the scenic foothills of the Catskill Mountains. It is predominately rural in character, and covers approximately 1,450 square miles. The County has a population of 48,055 according to the 2000 U.S. Census. Within the County, there are 19 Towns, 11 Villages and 21 School Districts, which are connected by 331 miles of State roads, 270 miles of County roads and approximately 30 miles of rail lines. The County has 27 municipal water supply systems and 8 municipal sewage treatment facilities. The County is also home to two New York City water facilities, the Cannonsville Reservoir and the Pepacton Reservoir, both of which supply water to the New York City Metropolitan area.

Delaware County shares its border with Ulster County to the Southeast, Chenango County to the West, Schoharie County to the East, Broome County to the Northwest, and Otsego County to the North.

The County is governed by a County Board of Supervisors composed of 19 members. Members are assigned weighted voting powers based on the population of each respective election district. Each member of the Board of Supervisors is elected bi-annually. The County Board of Supervisors has both legislative and executive powers. The Chairman of the Board of Supervisors is selected annually. The County Treasurer, County Clerk and Sheriff are elected for four-year terms and are eligible to succeed themselves.

As of 2003, the following were listed as the County's top ten employers:

NAME	No. OF EMPLOYEES	NATURE OF BUSINESS
Amphonel Corp.	1200	Mfg., Electronic Connectors
Mead Westvaco	1150	Organizers, Planners
Delaware County	775	Government
Tyco Healthcare, Hobart	615	Healthcare
Mirabito Fuel Group	460	Fuel Oil/Gasoline
Tyco Health Care	440	Pharmaceutical Products
SUNY Delhi College	412	Education
Delhi School District	250	Education
Sidney School District	250	Education
Delaware Opportunities	250	Services

Upon information and belief, little has changed since 2003 relative to the status of the ten employers listed above.

The County provides services through approximately 775 employees. The majority of the County's employees are represented by one of four unions. These Unions, together with their Contract status is as follows:

Approximate No. of Employees (Full Time)	UNION	CBA EXPIRATION DATE
600	C.S.E.A.	12-31-05
18	New York State Nurses Association	12-31-05
47	Corrections Officer Council 82	12-31-08
12	P.B.A.	12-31-01

The Delaware County Deputy Sheriffs Police Benevolent Association (“PBA”), is the sole and exclusive bargaining representative for all Road Patrol Deputies of the Delaware County Sheriffs Department with the rank of Deputy, Sergeant, Lieutenant and Inspector. The Unit is comprised of 12 sworn officers which includes seven Deputy Sheriffs, two Sergeants, one Lieutenant, one Investigator and one Senior Investigator. The gross payroll for the bargaining unit for 2005¹ was \$362,746.

THE ISSUES

A. TERM OF AWARD

On October 26, 2005, James E. Eisel Sr., Chairman of the Board of Supervisors, issued a letter in which he stated, in relevant part:

The Legislative Body, known as the Delaware County Board of Supervisors, has, by unanimous vote, authorized an extension of the Interest Arbitration Award decision between the Delaware County Sheriffs Association and the County of Delaware/Delaware County Sheriffs Department beyond the two (2) year statutory limit to a maximum of no more than six (6) years.

The proposal by the County for a term of four (4) years was in accord with the foregoing, to which the PBA did not object. Accordingly:

Term of Interest Arbitration Award: January 1, 2002 through December 31, 2005.

¹ While no unit member has seen a salary increase since 1-1-02, certain unit members have received increments and others have received longevity.

B. WAGES

PROPOSAL ON WAGES

EFFECTIVE DATE	COUNTY POSITION	PBA POSITION
January 1, 2002	3% (Retroactive to 1/1/02)	7.5% (Retroactive to 1/1/02)
January 1, 2003	3% (Retroactive to 1/1/03)	7.5% (Retroactive to 1/1/03)
January 1, 2004	3% (Retroactive to 1/1/04)	7.5% (Retroactive to 1/1/04)
January 1, 2005	3% (Retroactive to 1/1/05)	7.5% (Retroactive to 1/1/05)

The County's Position on Wages

It is the County's position that the hearing panel should accept the recommendation of neutral Fact Finder Prosper, who recommended a 3% increase effective January 1st for each of the four years of the Award. The County notes that the Report and Recommendation authored by Mr. Prosper was written after a hearing virtually identical to and with evidence comparable if not identical to that in the instant case. In adopting the Fact Finder's Recommendations, the County agreed with Mr. Prosper with that the proposed increases would enable unit members to stay ahead of inflation while offering real growth in the spending power of the Unit Members. Moreover, the County notes, this recommended increase in wages is in keeping with other settlements within the County and from around the state for comparable units. Such negotiated increases are as follows:

UNION	CBA EXPIRATION DATE	WAGE (SCHEDULE) INCREASES
C.S.E.A.	12-31-05	3% each of four years
New York State Nurses Association	12-31-05	3% each year 2002-2005
Corrections Officer Council 82	12-31-08	3% each year for 2002-2004 3% each year 2005-2007 3.5% 2008
P.B.A.	12-31-01	Negotiating

In addition to the foregoing, the County asserts that economic conditions in the County simply do not justify an increase over the 3% proposed by Fact Finder Prosper for each year of a four year term. Delaware County is the tenth smallest populated county in New York State. Moreover, the County notes, there are no cities in Delaware County, and agriculture is its primary industry. In addition, the County notes the following:

- Out of the 57 New York counties examined, Delaware County ranks 52nd for median income.
- Nearly 10% of all families living in the County are below the poverty level.
- Approximately 24% of the County's population is composed of residents 60 years of age or older. In this regard, the County notes that Delaware County has the highest percent of elderly population in New York State next only to Hamilton County. This fact is particularly significant when considering the cost of living increases available under Social Security.
- Effective 2002, the County imposed a hiring freeze in order to ameliorate tax increases and lessen the impact upon the tax-paying public. A position may only be filled with specific authorization from the County's Board of Supervisors. Notwithstanding this effort, the tax levy has increased substantially since 2001. Thus since 2001, the tax levy has increased by a rate of approximately seven million dollars.

Next, the County maintains that wage increases cannot be viewed in isolation. In this regard, the County notes that it has borne the lion's share of premium increases associated with the Health Insurance benefit offered its employees. Currently, the County notes that of the six options available to employees, the projected premium increases are expected to exceed 12% for each year. While the County is actively pursuing negotiations to consolidate these plans into one, it is not anticipated that such a move will result in savings for the County. In addition to its health costs, it also faces substantial increases in Medicaid costs as well as other State mandated programs. Lastly, the County notes that its recent construction of a new correctional facility to bring its Jail into compliance with Federal and State law resulted in a significant expenditure of capital.

Finally, Delaware County has chosen to compare itself to Chenango County, Otsego County and Schoharie County, all of which adjoin Delaware County and are comparable in terms of population per square mile, per capita income and median income. Given this list of comparables, the County notes that it compares quite favorably in salary and benefits, and in fact, there are no substantial areas where Delaware County Deputies lag behind these comparables.

The PBA’s Position in Support of its Proposal on Wages

It is the PBA’s position that Delaware County more appropriately compares to the following:

MUNICIPALITY	MEDIUM INCOME	PER CAPITA	POPULATION
Town of Vestal	\$51,098	\$22,363	26,535
County of Ulster	\$42,551	\$20,846	177,749
County of Onondaga	\$40,847	\$21,336	458,336
County of Schoharie	\$36,585	\$17,778	31,582
County of Broome	\$35,347	\$19,168	200,536
County of Chenango	\$33,679	\$16,427	51,401
County of Otsego	\$33,444	\$16,806	61,176
Village of Delhi	\$32,708	\$13,421	4,629
County of Delaware	\$32,461	\$17,357	48,055
Village of Endicott	\$26,302	\$17,274	13,038

When comparing Delaware County salaries to those comparables listed above, the PBA maintains that Delaware County Sheriff Deputies are well behind:

MUNICIPALITY	DEPUTY/POLICE SALARIES
<i>DELAWARE COUNTY</i>	\$26,857-\$29,038 (2002)
BROOME COUNTY	\$48,800 (2003)
ONONDAGA COUNTY	\$41,116-\$53,731 (2005)
OTSEGO COUNTY	\$31,800 (2004)
ULSTER COUNTY	\$37,523 (2002)

VESTAL (TOWN)	\$33,607-\$47,194 (2003) - POLICE
ENDICOTT (VILLAGE)	\$27,058-\$41,197 (2005)- POLICE
DELHI (VILLAGE)	\$34,346 (2005) – POLICE

In addressing the affordability for the County to pay the proposed increases of 7.5% each year for four years, the PBA maintains that Delaware County has the ability to pay for such increases. In this regard, the PBA notes that for each and every year beginning with 2002, the County has managed to end each year with a “healthy” surplus:

FISCAL YEAR	SURPLUS
2002	\$3.8 Million
2003	\$2.6 Million
2004	\$1.5 Million
2005	\$4.5 Million (Estimated)

Moreover, the PBA notes, on or about February 17, 2005, the County announced that a year-end examination of fund balances revealed that the County had a sales tax reserve account of nearly \$8 Million.

Given the foregoing, the PBA asserts that its proposal is both reasonable and affordable.

DISCUSSION ON THE ISSUE OF SALARIES

As an initial and crucial starting point, the County acknowledges that they are fortunate to have a superior Sheriffs Department. The County also recognizes the inherent danger associated with the duties of a Deputy Sheriff, particularly post 9-11. Accordingly, in keeping with this acknowledged asset, where, as here, the County is intent on maintaining its superior police force, then they must, at a minimum, be prepared to expend the resources required to fund a reasonable wage and benefit package.

This Panel recognizes that the County, by prudent budget practices, has been able to contain real property tax increases. However, good fiscal management, as a crucial element in today's society, is not necessarily incompatible with a fair wage and benefit package. It is clear from a reading of Fact Finder Prosper's recommendation that he carefully weighed and considered this fact when making his recommendation.

While the parties may differ on the issue of the reasonableness of their respective proposal on salaries, they agree that substantially identical presentations were made before Fact Finder Peter Prosper, a noted and well respected neutral. In setting forth his rationale for his recommendation on Salaries, Mr. Prosper stated:

The County makes cogent arguments concerning general economic conditions and economic conditions in Delaware County. It is recognized that in recent years the Consumer Price Index (sometimes called the cost of living index) has risen relatively slowly. When a worker receives a wage increase greater than the increase in prices, that worker has spending power. While it appears that Deputy Sheriffs in Delaware County receive less in wages than deputy sheriffs in other counties, because of difficulty [sic] economic times in Delaware County it is not prudent to attempt to "catch up" in one negotiation period. The monetary improvements proposed by the County improves its Deputy Sheriffs' economic conditions, although not as much as Deputy Sheriffs would like. But given the economic conditions that presently exist, the County's proposals on wages and longevity are appropriate.

Fact Finder Prosper recommended a 3% wage increase beginning and retroactive to January 1, 2002, a second 3% wage increase retroactive to January 1, 2003, a third 3% wage increase retroactive to January 1, 2004, and a final 3% wage increase retroactive to January 1, 2005.

Accordingly, following a careful analysis of the wage arguments submitted, the Panel is persuaded that the following Award represents a reasonable adjustment to **wages**².

Therefore, the Panel makes the following **AWARD**:

² Given acceptance of Fact Finder Prosper's recommended increases, there is no need to determine a listing of comparables.

- Year 1: 3% (effective and retroactive to January 1, 2002)
- Year 2: 3% (effective and retroactive to January 1, 2003)
- Year 3: 3% (effective and retroactive to January 1, 2004)
- Year 4: 3% (effective and retroactive to January 1, 2005)

WHILE THE PUBLIC EMPLOYER AND PUBLIC PANEL MEMBERS AGREE, THE EMPLOYEE ORGANIZATION PANEL MEMBER RESPECTFULLY DISSENTS.

C. RANK DIFFERENTIAL

PROPOSAL ON RANK DIFFERENTIAL

EFFECTIVE DATE	COUNTY POSITION	PBA POSITION
January 1, 2002	Sergeant - \$641.00	Sergeant - \$1,500
	Investigator - \$484.00	Investigator - \$2,000
	Lt./Sr. Investigator - \$339.00	Lt./Sr. Investigator - \$3,000

The arguments in support of each party’s respective position are assumed in the arguments in support of Salaries. Following a review of said arguments, Fact Finder Prosper recommended the following:

Sergeants: \$641.00
 Investigators: \$484.00
 Lieutenants/Investigators: \$339.00

The Panel makes the following **AWARD**

Sergeants: \$650.00
 Investigators: \$500.00
 Lieutenants/Investigators: \$350.00

WHILE THE EMPLOYEE ORGANIZATION AND PUBLIC PANEL MEMBERS AGREE, THE PUBLIC EMPLOYER PANEL MEMBER RESPECTFULLY DISSENTS.

D. LONGEVITY

Article IX, Section 3 of the 1998-2001 Collective Bargaining Agreement provides for a \$1000.00 increase added to an employees' annual salary following twenty (20) years of continuous service as a regular full time employee.

The **PBA** has proposed Longevity increases of \$1000 following fifteen (15) years of continuous service, and \$2000 after twenty (20) years of continuous service³.

The **COUNTY** has proposed acceptance of Fact Finder Prosper's recommendation for Longevity increases of \$500 following twelve (12) years of continuous service, and \$1000 after twenty (20) years of continuous service.

The Panel makes the following **AWARD**

Longevity increases of \$500 following twelve (12) years of continuous service, and \$1000 after twenty (20) years of continuous service, for a cumulative total of \$1500 following twenty (20) years of continuous service.

ALL THREE PANEL MEMBERS AGREE.

³ There was no discussion as to whether these amounts were cumulative, or if the twenty-year amount of \$2000 included the \$1000 Longevity increase associated with fifteen years of service.

E. RETIREMENT BENEFITS

Article X (Employee Benefits) of the 1998-2001 CBA provides for a “[n]on-Contributory 1/60th New York State Retirement Plan retroactive to 1938”, a provision for Tier 3 and Tier 4 employees who, by statute, must contribute to said retirement plan, Option 41J and Retirement Plan 75i for Tier 1 and Tier 2 members.

The PBA seeks a change to Retirement Plan Section 551(e)⁴, while the County, in adopting Fact Finder Prosper’s recommendation, proposes a change to Retirement Plan 551, effective January 1, 2004. (The Prosper Fact Finding Report and Recommendations were issued on November 22, 2003).

Section 551 permits Deputy Sheriffs the ability to retire after twenty-five years of service at fifty percent (50%) of their final average salary. Section 551(e) provides all of the benefits of a Section 551 plan, but adds a 1/60th rider for all creditable years of service following 25 years.

The costs (reported as of October 19, 2005) associated with the foregoing plans are as follows:

PLAN	PLAN CODE	Estimated Past Service Cost	5 Year Amortization (1st Year Pmt.)	10 Year Amortization (1st Year Pmt.)
25 Year	551	\$35,515	\$8,236	\$4,901
25 Year with additional 1/60 th (Sheriff Service)	551(e)	\$37,719	\$8,747	\$5,205

While there is a cost difference associated with the foregoing plans, the difference is minor by comparison with the benefit afforded members of the PBA’s Bargaining Unit.

Accordingly, the Panel makes the following **AWARD**:

⁴ The PBA initially sought a change to the Section 553(B) – 1/60th Plan that provides for retirement at 50% of the employee’s final average salary following 20 years of service.

A change to the Section 551(e) Plan be adopted as soon as possible, but in no event later than December 31, 2005.

WHILE THE EMPLOYEE ORGANIZATION AND PUBLIC PANEL MEMBERS AGREE, THE PUBLIC EMPLOYER PANEL MEMBER RESPECTFULLY DISSENTS.

F. HEALTH INSURANCE

The County's Health Insurance Proposal is limited to a change in the Prescription/Drug Co-Payment from its current \$3.00 (Brand Name)/\$6.00 (Generic) payment to a co-payment of \$5.00 (Brand Name)/\$10.00 (Brand Name). The PBA, while expressing a preference to continue the \$3.00/\$6.00 Co-Payments, has not lodged a strong objection to this change. Accordingly, the Panel makes the following **AWARD**:

Effective with the next open enrollment period, and for the purpose of this Award, no later than December 31, 2005, the Prescription/Drug Co-Payments shall be changed to \$5.00 for Generic Drugs, and \$10.00 for Brand Name Drugs.

ALL THREE PANEL MEMBERS AGREE.

CONCLUSION

In conclusion, this Panel believes that the foregoing wage and benefit package represents a reasonable adjustment to the current collective bargaining agreement and is within the County's ability to afford.

ACKNOWLEDGMENTS

I, Dennis J. Campagna, do hereby affirm that I am the individual described herein and who executed the within award on December 1, 2005.

Dennis J. Campagna

I, Ralph Purdy, do hereby affirm that I am the individual described herein and who executed the within award on _____.

Ralph Purdy

I, Joseph Hanley, do hereby affirm that I am the individual described herein and who executed the within award on _____.

Joseph Hanley