

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

In the Matter of the Interest Arbitration

between

**THE ONTARIO COUNTY SHERIFF'S ROAD PATROL UNIT
CSEA ONTARIO COUNTY LOCAL 835**

and

ONTARIO COUNTY and ONTARIO COUNTY SHERIFF

PERB Case No. IA 2005-43; M2004-254

Interest Arbitration Panel:

**Adam Kaufman, Esq.
Public Panel Member and Chair**

**Charles S. DeAngelo, Esq.
Employee Organization Panel Member**

**Geoffrey Astles, County Administrator
Public Employer Panel Member**

OPINION AND AWARD

The New York State Public Employment Relations Board, pursuant to New York Civil Service Law, Section 209-a, designated the above Panel by Notice dated March 13, 2006.

A hearing was held on June 26 and 27, 2006, at the Government Complex, Ontario County. Appearing on behalf of the Ontario County Road Patrol Unit ("Union") was Robert L. Leonard, Labor Relations Specialist, CSEA, and on behalf of the County of Ontario and the Ontario County Sheriff ("County") was John W. Park, Esq. County Attorney. At the hearing, the Parties were given a full opportunity to produce witnesses and present documentary and other evidence in support of their respective positions, as well as the opportunity to cross-examine witnesses appearing on behalf of both parties. The Parties, ultimately, submitted post hearing briefs on or before October 31, 2006.

The Panel held Executive Sessions on July 31, September 14, and November 14, 2006.

During the Executive Session of July 31, 2006, the Parties, with the encouragement of the Panel, reached a tentative five (5) year agreement retroactive to January 1, 2005. That tentative agreement provided for wage increases of 2%, 3%, 4%, 4% and 5%; a post employment 105(h) plan contribution of \$35,000 for full time unit members who retire on or after January 1, 2005 with 25 years of service in the Ontario County Sheriff's Office or a deferred compensation 2% per year employer contribution "savings match plan" effective January 1, 2006 each directed at post employment medical costs; increases in shift differential, longevity, on call pay and other contract modifications. On August 15, 2006, the Union president reported that the agreement was rejected by a vote of 46 to 6. The Board of Supervisors, the governing body of Ontario County, by formal resolution approved the tentative agreement.

On September 14, 2006, a modified five (5) year agreement was suggested by the Panel. That proposal, in part, provided for wage increases of 2% plus \$1000 on each salary step, 3%, 4%, 4%, and 5%; no employer savings match plan but a \$20,000 105(h) contribution upon retirement after 20 years of service in the Sheriff's Office and a \$30,000 contribution upon

retirement after 25 years of service. The Board of Supervisors, after deliberation, expressed no interest in that settlement.

The content of this opinion and award reflect the result of consideration of the evidence presented against the criteria contained 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 increase awarded; comparable wages and hours and conditions of employment provided employees involved in similar work or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities; 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 collective bargaining agreements negotiated in the past including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The last negotiated Collective Bargaining Agreement between the Parties covered the period January 1, 2002 through December 31, 2004.

Ontario County is in the Finger Lakes Region of Western New York. Ontario County shares its border with Monroe and Wayne Counties to the North, Livingston County to the West, Steuben and Yates Counties to the South and Seneca County to the East. The County covers approximately 644 square miles.

The County has an estimated 2004 population of 103,127. 2000 Census figures set the Median Housing Cost in Ontario County at \$86,500. Median Household Income in 2005, adjusted for inflation by the Ontario County Office of Economic Development, was \$48,211. Per Capita Income for 2005 was estimated at \$26,825.

The County includes the cities of Canandaigua and Geneva, 16 towns, 9 villages, 2 colleges and 17 school districts. The County contains 252 miles of state roads, 239.2 miles of county roads, 1046.8 miles of town and village roads, and approximately 59 miles of rail lines. The New York State Thruway passes through the width of Ontario County within its borders for a total of 32 miles.

The Ontario County Sheriff's Road Patrol Unit is the sole and exclusive bargaining representative for all county police officers of the Ontario County Sheriff's Office with the rank of county police officer, police sergeant, and investigator. The unit is comprised of 85 sworn officers including 23 part-time officers, 45 full-time officers, 6 sergeants, and 11 investigators. 911 telephone calls that originate within Ontario County requiring police services are assigned using "the closest car concept" and are assigned to a Sheriff's patrol car or to a New York State Police patrol car. Under certain circumstances, responses to calls from a municipality having its own police agency will be dispatched to that agency. The cities of Geneva and Canandaigua have their own police forces.

A County Board of Supervisors composed of 21 members governs Ontario County. Members are assigned weighted voting powers based on the population of each respective election district. Members of the Board of Supervisors are either elected biannually or for four year terms as determined by each respective district. The Board of Supervisors has both legislative and executive powers. The Chairman of the Board of Supervisors is selected annually by the then sitting Board of Supervisors. The County Sheriff is elected to a four year term. The County employs a County Administrator, Mr. Astles, who is the Public Employer Member of this Panel.

Ontario County projects its budget for a two year period. There is no dispute as to the fact that Ontario County is well managed. The County raised \$38,401,867 in property taxes in 2005, as an order of magnitude that levy represents 48% of the \$79.9 million in total property taxes that New York State authorizes for Ontario County.

The sales tax rate in Ontario County in 2005 was 7%, of which 4% of that is collected for and received by the State of New York. The County keeps one-half of the remaining 3%, and the towns, villages and cities in the County receive the other one-half. In 2005, sales tax revenues to the County totaled \$28.25 million, which was a \$664,311 or 2.4% increase above the amount received the year before. The \$28.25 million was also \$792,621 higher than budgeted in 2005. In 2006, a .125% increase in the County sales tax rate was negotiated for the specific purpose of providing additional funding to the Cities of Geneva and Canandaigua.

When the 2006 County budget was prepared, a tentative 2007 budget was prepared also. A proposed 2007 tax rate increase was projected at 1.9%. Ontario County has been able to keep its property tax rates low. In fact, the property tax rate of Ontario County has increased at an annual rate of less than 2.0% over the ten year period ending in 2005. While the increase in tax rate has been conservative, the County's tax levy has increased due to increased property values and economic development. The County tax levy rose from the \$38,401,867 in 2005 to \$41,176,982 in 2006, an increase of 7.23%. It should be noted that between 2005 and 2006 the total cost of County wages and salaries increased 6.5% while the costs of benefits increased 10.4%. Most of the benefits cost increase was attributable to a 16.95% increase in medical insurance costs.¹

After discussion and deliberation at the Executive Session held on November 14, 2006, the Panel made a determination concerning the scope of an Interest Arbitration Award for the period January 1, 2005 to December 31, 2006. The positions originally taken by both parties are quite adequately set forth in the Petition and the Response, the hearing exhibits, presentations, and post hearing briefs, which are all incorporated by reference into this Award. Such positions as to the issues addressed by the Panel will merely be summarized for the purpose of this Opinion and Award.

The Union contends that members of the Ontario County Road Patrol Unit "remain the most under compensated (for pay & benefits) of the major police forces operating in Ontario County." The Union asserts that the City of Canandaigua, City of Geneva and the New York State Police are the most comparable police organizations to compare the Ontario County Sheriff's Road Patrol. The only difference suggests the Union, is that Road Patrol members do not get post employment health insurance benefits and "lag" in pay. The impact of this disparity, it has argued, affects retention within the unit. There is approximately a \$ 2,600 difference between that of an Ontario Sheriff's Deputy at "top step" and Police Officers in Canandaigua

¹ Public employers will soon have to disclose the accrued cost of unfunded retiree benefits to comply with the Governmental Accounting Standards Board's new standard. The new standard only requires that the numbers be reported. Public employers with at least \$100 million in annual revenue will have to begin reporting these numbers in the first fiscal year beginning after Dec. 15, 2006. The rules go into effect Dec. 15, 2007, for those with revenue of \$10 million to \$100 million.

and Geneva. Starting salary for a Road Patrol Deputy in Ontario County on April 1, 2006 was \$35,755; in Canandaigua \$40,671; in Geneva \$37,307.

The County argues that the logical choice of comparables must be other County road patrol units. When compared to the counties of Cayuga, Chemung, Cortland, Genesee, Livingston, Madison, Oswego, Seneca, Tioga, Tompkins and Wayne, Ontario ranks either first or second in starting and top salary for Deputy Sheriffs and Sergeant Deputy Sheriffs. It should be noted that Wayne and Livingston Counties, as well as, Monroe, Steuben and Yates Counties provide varying forms of post employment health insurance related benefits. The County asserts that retention and recruitment are not issues.

The County stresses that it has offered a post retirement benefit with its 2% deferred compensation match program which it has bargained with all its other collective bargaining units. The Union suggests that, while the program has merit, it "is totally useless to officers who plan or need to retire in the next few years."²

The Parties agree that each 1% on the base salaries of the members of the unit, without overtime, is approximately \$40,000.

With regard to the choice of comparables, it is acknowledged that counties in New York State are subject to unique fiscal and political challenges that are different in nature and magnitude than those faced by other municipalities in the State. As a general rule, the Panel understands that the choice of comparables should be other similarly situated County road patrol units, but having so noted, the Panel is not restricted from considering, within the "mosaic of comparability," police departments maintained within Ontario County. Thus, the panel has given consideration in its deliberations, not only to the County Sheriff's Departments cited by the County and Union, but to aspects of terms and conditions of employment in the police departments in the Cities of Geneva and Canandaigua.

² The County has also offered to purchase jail service retirement credit (Chapter 571-1999 amending the Retirement and Social Security Law), which would allow about half the unit to add years spent in the Corrections Division of the Sheriff's Office to their years of service in the 20 year retirement program the County provides to Road Patrol Deputies. The cost to the County, if purchased, is estimated to be \$310,000.

The Panel recognizes, and the Parties acknowledge, that while Ontario County faces fiscal and financial challenges, the financial strength of the County is sound. A review of the financial materials and documentary evidence submitted, including the County of Ontario Basic Financial Statements for the Year Ended December 31, 2005, and the action of the Board of Supervisors in approving the tentative agreement brokered on July 31, 2006, indicate that the County does have the ability to pay for the increase in compensation and the post employment benefit provided by this Interest Arbitration Award. The Panel notes that other Ontario County bargaining units received, in addition to salary increases of 2% and 3% for 2005 and 2006, an additional 2% matching contribution to the deferred compensation plan beginning in 2006.

The Panel believes that while Ontario County has the ability to pay wage increases that capacity is to be balanced and tempered by economic and political reality and must be within reasonable limits. The Panel believes that it is beyond dispute that the public is best served by having a professional Sheriff's Office staffed with qualified and experienced Deputies and that reasonable salaries are necessary to attract and retain individuals in County service. The Award, herein, provides reasonable and fiscally prudent increases in salaries and benefits for Deputy Sheriffs that will keep Ontario County competitive and maintain a stable work force.

This Award and the final disposition of the issues raised by the Parties is the result of extensive review, careful analysis and deliberation by the Panel. The Panel is cognizant of the fact that the period covered by the Award will end within days of its issuance and the Parties will return to the collective bargaining table immediately thereafter. The Panel notes that a number of "open" issues that were the subject of collective bargaining for the successor agreement to the contract for the term 2002 to 2004 were either tentatively resolved pending a complete agreement or in the opinion of the Panel subject to an easily obtained mutual agreement by the Parties. Those issues and contract modifications are left to the parties to resolve in the next round of collective bargaining. Accordingly, set out herein is an Award that, in the opinion of a majority of the Panel, constitutes a just and reasonable determination solely as to the issues of wages and post employment medical cost related benefits.

AWARD

Pursuant to the provisions of Civil Service Law Section 209.4(c) (vi) this Award, as set forth below, is effective for the period commencing January 1, 2005 and ending December 31, 2006.

Wages: January 1, 2005 to December 31, 2005
2% plus \$1000 added to each Step on the Annual Reference – 40 Hour Week Schedule

January 1, 2006 to December 31, 2006
4% added to each Step on the Annual Reference – 40 Hour Week Schedule

Post Employment Benefit: Full-time unit members on 12/31/2004 who retire on or after 1/1/05 with 25 years of service within the Ontario County Sheriff's Office will receive \$30,000 paid into a 105(h) or similar IRS approved medical payment plan 30 days following retirement for post employment medical insurance premiums or other IRS approved expenses.

Except for those proposals and/or items previously expressly agreed upon and "signed off" by the parties, any proposals and/or items other than those specifically modified by this Award are hereby rejected and remain the subject of negotiation by and between the Parties for a collective bargaining agreement effective January 1, 2007.

The Panel Chair hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

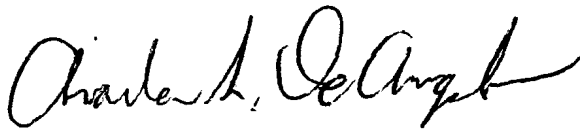
AFFIRMATION

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



ADAM KAUFMAN, ESQ.
Public Panel Member and Chair

Date 12/5/06



CHARLES S. DEANGELO, ESQ.
Employee Organization Member



GEOFFREY ASTLES
Public Employer Member

Concur

Date 11/30/06

Dissent

Date 11/29/06