

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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**In the Matter of the Interest Arbitration**

NYS PERB Case No.:  
IA2008-006; M2007-121

-between-

**TOMPKINS COUNTY DEPUTY SHERIFFS' ASSOCIATION INC.,**  
"Petitioner/ Association/ DSA/ Union"

- and -

**TOMPKINS COUNTY AND  
THE SHERIFF OF TOMPKINS COUNTY.**  
"Respondent/ County / Employer/ Department"

FINAL AND BINDING  
OPINION AND AWARD  
OF TRIPARTE  
ARBITRATION PANEL  
For the period: 3/1/06 – 2/28/08

x

**PANEL MEMBERS**

Panel Chairman ..... Roger E. Maher  
Employee Panel Member ..... Anthony V. Solfaro  
Employer Panel Member ..... Elayne G. Gold, Esq.

RECEIVED  
AUG 30 2010  
CONCILIATION

**APPEARANCES**

**For the Tompkins County Deputy Sheriffs' Association, Inc.**  
Law Offices of John K. Grant PC.  
By John K. Grant, Esq.

**For Tompkins County and The Sheriff of Tompkins County**  
Law Offices of Roemer Wallens Gold & Mineaux LLP  
By Dionne A. Wheatley, Esq.

## BACKGROUND

The County of Tompkins and Sheriff (the "County", the "Employer", the "Department") and the Tompkins County Deputy Sheriffs' Association, Inc. (the "Association", the "DSA", the "Union") are parties to a Collective Bargaining Agreement for the term March 1, 2001 through February 28, 2004. The parties are also subject to an Interest Arbitration Award covering the time period March 1, 2004 through February 28, 2006.

The parties commenced negotiations toward a successor agreement, and following their inability to reach settlement at the negotiation table, impasse was declared and a mediator was appointed in August 2007. Mediation did not produce an amicable resolution of the outstanding matters between the parties, and on or about June 16, 2008, the Association filed a Petition for Compulsory Interest Arbitration. On or about June 27, 2008, the County filed its Response and it also filed an Improper Practice Charge on June 27, 2008, stating that several of the proposals submitted by the Association as part of the Interest Arbitration Petition, were not arbitrable as they were not "directly related to compensation" pursuant to New York State Civil Service Law §209.4(g). Subsequently, on or about July 14, 2008, the Association filed an Improper Practice Charge against the County claiming that the County had submitted five proposals in response to the Interest Arbitration Petition that were not subject to the Interest Arbitration. By stipulation between the parties some of the proposals were withdrawn, and others are still pending before PERB for a determination as to whether they can be submitted to the Interest Arbitration Panel. Those demands still pending before PERB will be duly noted in the analysis of the respective proposals of the Association and the County.

Roger E. Maher was appointed as Fact Finder and Chairperson of the Panel being convened to resolve the disputes between the parties. The Association designated Anthony V. Solfaro as its representative on the Panel, and the County designated Elayne G. Gold, Esq. of Roemer Wallens & Mineaux LLP, as its representative. A hearing was held on October 27, 2008, at which each party was represented in making its presentation to the Panel.

The jurisdiction of the Panel is as found in New York State Civil Service Law §209.4(c) (v), as amended. The term to be covered by the Interest Arbitration Award is March 1, 2006 to February 28, 2008.

The parties were both represented by counsel and afforded a full opportunity to present oral and written documentary evidence in support of their respective positions.

DSA President Michael St. Angel, Investigator Jody Combs and Economist Kevin R. Decker, an expert in municipal budgets and finance testified on the DSA's behalf. The DSA submitted forty-seven (47) exhibits that were entered into evidence.

Finance Director David Squires and County Administrator Steve Whicher testified on behalf of the County and Sheriff. The parties agreed that a stenographic record would be taken of the proceedings. Eleven (11) joint exhibits were also entered into evidence. The record was declared closed and a briefing schedule was established. The Panel received the parties' post hearing briefs dated February 13, 2009. Thereafter the Panel awaited PERB's determination regarding each parties improper practice charges before it would issue its award. It became evident that a PERB determination was not imminent for the purposes of resolving those improper practice charges. Thereafter the Panel convened an executive session on March 9,

2010. The Panel Chair also initiated numerous telephonic consultations with Panel members jointly and separately.

## **DEMANDS OF THE DSA**

### **Article 3 - Compensation**

The Union proposes an increase to the existing base wage schedules of 4.75% in each of the two years of the term of the award period with payments made retroactively to any employee who worked during the expired term.

The Union wage proposal also demands that any employee who is a certified police officer with at least one (1) year of full time credited police service within the State of New York, shall be hired at the working rate of pay as opposed to the lower hire rate of pay. Currently such treatment is not mandatory.

The Union also demands an increase to the existing Tour of Duty/Shift Premium amounts from \$1.10 to \$1.60 per hour effective on March 1, 2006 and to \$2.10 per hour on March 1, 2007.

The Union also demands that the Tour of Duty/Shift Premium shall be paid to any employee who is scheduled to work a tour of duty/shift and is on paid leave (i.e., vacation, holiday, personal leave, disability leave, GML 207-c, etc.).

The Union also has presented a demand that overtime shall be paid to a Deputy Sheriff for all travel time for attending the required basic academy.

Additionally a Union demand seeks to have the existing Investigator On-Call Pay of \$1.55 per

hour increased to \$2.55 per hour on March 1, 2006, and to \$3.55 per hour or any part thereof on March 1, 2007.

The Union also presented a demand that deputy sheriffs be provided a two hour overtime minimum call-in.

### **Article 7 - Health Insurance**

The Union has included a demand that the Employer provide to all employees and eligible dependent(s), the Health Insurance coverage under the existing health insurance plan with the Employer paying ninety percent (90%) of the premium.

The Union also demands an increase to the existing Voluntary Employee Benefits Account (VEBA) amounts for unit employees from \$375.00 to \$500.00.

The Union has also proposed changes to the existing retiree health insurance coverage benefit. Currently an employee who retires is to be provided with individual and/or dependent health insurance coverage with the Employer contributing 50% of the individual premium cost and an additional 50% of the difference between the individual and dependent (family) premium cost without returning any paid leave time. The Union proposes that the Employer shall provide a 75% contribution towards the premium cost of retiree and dependent health insurance. The Employer seeks to reduce the level of coverage provided.

### **Article 11 - Vacation**

The Union seeks to include payment of Tour of Duty/Shift Premium pay for an employee on vacation during the hours scheduled to receive that pay. The payment is properly part of a deputy's regular pay.

**Article 13 - Longevity**

The Union has also proposed that an increase to longevity payments shall be made to all employees in the pay period of that employee's anniversary date of hire as follows:

Years of Service	3/1/06	3/1/07
Starting 6 <sup>th</sup> year through 9 <sup>th</sup> year	\$475.00	\$500.00
Starting 10 <sup>th</sup> year through 13 <sup>th</sup> year	\$675.00	\$700.00
Starting 14 <sup>th</sup> year through 17 <sup>th</sup> year	\$875.00	\$900.00
Starting 20 <sup>th</sup> year and above	\$1,075.00	\$1,100.00

This is a modification of the existing 6<sup>th</sup> year (\$450.00), 12<sup>th</sup> year (\$650.00), 15<sup>th</sup> year (\$720.00) and 18<sup>th</sup> year (\$920.00) increments now provided. Notably, there is no other pay differential for years of service as the current pay structure incorporates only a "hire rate" and "working rate".

The Union also seeks to have longevity included in the overtime calculation rate

**Article 16 - Benefits Under Section 207(C) of The General Municipal Law**

The Union has also included a demand that will establish a comprehensive procedure for implementing GML Section 207-c benefits and insure members on GML Section 207-c will receive health insurance in the same manner as when he/she was working, annual uniform and maintenance allowance on a pro-rated basis, Tour of Duty/Shift Premium pay as when working, continued accrual of or crediting of all paid leaves for a period of six (6) months in any calendar year.

### **Article 21- Clothing Allowance**

The Union has presented a demand that seeks to increase the existing uniform and cleaning amounts from the existing \$325.00 to \$375.00 effective on March 1, 2006 and to \$425.00 on March 1, 2007.

### **Health Insurance Buyout**

The Union has incorporated a demand seeking to have the Employer pay a buyout to employees who elect to forego participation in the employee health insurance plan. It is undeniable that the Employer enjoys substantial savings when employees opt out of the Employer's plan and utilize coverage available through a spouse employed elsewhere. Currently there is little incentive for employees to opt out other than the savings associated with the 15% premium contribution savings. The use of a buyout provision is recognized to promote employee participation and generate additional savings for the employer and employee alike. There is no cost to the Employer which can only benefit from encouraging further participation.

Currently, Chemung County, the City of Elmira, the Village of Horseheads and Town of Vestal, all have substantial buyout provisions.

### **Work Schedule**

The Union has presented a demand that the Department implement a 5-2, 5-3 work schedule or 243.33 work days annually for line deputies. President Michael St. Angelo testified that currently the Department is staffed by 7 sergeants and 23-24 line deputies. Deputies work a four-week rotating schedule, with days off rotating every four weeks. Deputies bid shifts twice annually and work steady tours for a 28 week period. The rotation of days off results in deputies

working five consecutive eight hour tours followed by two days off except in the Sunday rotation week, at which time deputies work six consecutive days followed again by two days off. Thus, Deputies work six consecutive days every fifth week with three days off every fifth week as the officer rotates through the schedule. This schedule allows deputies to rotate days off periodically and insures that all deputies get some weekends off during a calendar year. The burden of insuring this is borne fully and solely by the deputies as they must work six consecutive days every five weeks to accomplish this. Ultimately, deputies currently work a 260.18 work schedule. Currently, Civil Deputies and Airport Deputies are excluded from this rotation and have fixed days off.

As described at length by Union President St. Angelo, with current staffing the 5-2,5-3 schedule can be implemented without staffing levels on any tour falling below the current minimum staffing levels and removes the "harshness" of having to work six consecutive days and still insure some equity to all deputies who would continue to rotate days off and ultimately all would receive some weekends off.

In evaluating the economic benefits provided to deputies, it is undeniable that the current "harsh" work schedule which requires deputies to work six consecutive days, without additional compensation, as imposed on deputies results in those deputies working more hours for less money than their counterparts in the City of Ithaca and the other cited communities. Deputies do not receive overtime compensation for those weeks when they work the sixth consecutive day. Thus, this onerous work schedule directly impacts on the value of the annualized wage schedule being examined by the Panel.

In the City of Ithaca, officers work a 4-2 schedule and thus report 243.33 days annually.

Broome County Sheriff deputies work the same 4-2 schedule. All other cited comparable communities work a straight 5-2 schedule without the onerous 6<sup>th</sup> day of work every fifth week (See Union Exhibit 29). The Panel is urged to recognize the burden imposed on deputies in this County who continue to work a schedule which requires more than 5 consecutive days of work on ten occasions or more each year. It is only fair that there be an adjustment to the work schedule to reduce this unfair burden and implement a schedule which insures adequate coverage, but simultaneously places deputies on an equal footing with their counterparts in Ithaca and Broome

### **DEMANDS OF THE COUNTY**

The County submitted the following proposals for consideration by the Interest Arbitration Panel:

#### **Article VII, Health Insurance**

Shall be amended at Section 2B such that all employees shall contribute 15% towards the health insurance premium (delete the language which reads: "for employees hired before June 1, 2003 ").

Amend the language with respect to retiree health insurance to clarify that a retiree must sign up for Medicare Part B, D, or any Medicare-eligible program from the time of retirement or thereafter available and/or any supplemental insurance of the County as an alternative plan.

Furthermore, retirees must contribute 50% towards the individual cost of health insurance and pay 65% of the difference between the family and individual premium costs as those costs are detailed for current active employees.

Amend the language to detail that any retiree who retires pursuant to New York State Disability retirement must contribute towards health insurance costs at the same level and contributions as full-time active employees contribute.

**Retroactivity**

There will be no payment of retroactive monies (wages or other fringe benefits) to any individual who is not on the County/Sheriff payroll at the time of contract ratification and/or at the time of any imposed Interest Arbitration Award.

**STATUTORY CRITERIA**

New York Civil Service Law § 209(4)(c)(v) sets forth the criteria that the Panel must consider in weighing the evidence presented by the parties to reach a "just and reasonable determination of the matters in dispute." Those factors are:

- a. 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;
- 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 traders 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 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.

The Panel may also consider "any other relevant factors" when making its determination of the matters in dispute. Id. Among the "other relevant factors" that panels often consider are the terms and conditions of employment and terms of collective agreements negotiated by other bargaining units in the same municipality, particularly other uniformed public safety employees such as firefighters.

### **SUMMARY OF THE COUNTY'S POSITIONS**

#### **Comparability**

The County offered the following jurisdictions as comparable communities for the Panel to consider in rendering an Award: The Counties of Cayuga, Chemung, Cortland and Ontario. Additionally, the County offered the City of Ithaca and the Villages of Cayuga Heights and Horseheads as comparable communities. Although villages and cities may not truly be comparable to counties because of their own statutory restrictions and obligations, these local municipalities were selected because their median household income is similar to that of the County and they are located within Tompkins County. Furthermore, the counties and local municipalities selected as comparable communities, were previously determined to be appropriate comparable communities in the 2006 Interest Arbitration Award involving the same parties

The Association had proposed the same jurisdictions identified by the County as comparable communities, but included the County of Broome, the City of Elmira, and the Town

of Vestal in its comparable study. In response the County requests that the Panel exclude the additional municipalities proposed by the Association.

### **Ability to Pay**

The Association's financial expert, Kevin Decker testified that although state and federal aid accounted for nearly 29% of the General Fund revenue for 2007, "for our purposes here today, state and federal aid are not a very significant revenue source to consider because most of that aid is tied to the reimbursement of social service programs." Mr. Decker went on to suggest that if the County no longer had the responsibilities as a Medicaid and social service provider, then the state and federal aid the County receives would disappear. This presumption, however, is unavailing because the County has legal mandates that it must comply with regardless of the availability of federal or state aid. Mr. Squires explained that in understanding the constraints of County government, while real property tax and sales tax revenues are important, so are state and federal financing. Mr. Squires testified that changes in state and federal aid have a significant impact on the County. He explained "one of the reasons why every county in New York State is always experiencing distress is because those things are linked to mandated obligations to the County. And when the state and federal government reduces their support of those incomes, the County has to absorb the expenditure impact." Mr. Squires explained that of the \$133 million in revenues for the 2007 budget, approximately \$70 million of it was utilized by the County to operate state programs such as the Medicaid program, the Federal Education Mandate providing education for disabled children, and mental health services. Additionally operating the County Jail is one of the County's biggest mandates. Mr. Squires referred to County Ex. Tab K which

provides a historical summary of the mandated payments that the County has made since 2003. He also explained that the budgeted accounts for mandated programs in 2008 were already overdrawn from what had been budgeted. With respect to the Jail mandate, Mr. Squires explained that the County is responsible for boarding prisoners and providing their medical care. Therefore, when the County Jail is full, the Sheriff has to board prisoners in other counties and continue to provide for their medical services. In 2007 the cost of doing so was \$501,562. Mr. Squires explained that the cost of the Jail mandates fluctuates year-to-year, which requires the County to set aside contingency money to meet changing expenses. He also explained that although sales tax had been growing over the years, "it has been neutralized every year by a decline in state and federal income, which ultimately results in putting pressure on the real property tax, and because of the property tax burden in this County, the County doesn't have the ability to continually raise property taxes."

Mr. Decker testified that the Sales Tax Revenues Chart reflected revenues that would be available for the County to spend. Mr. Squires explained that Mr. Decker's conclusion was not completely accurate because of a sales tax agreement between the County and the City of Ithaca. Part of the sales tax revenue noted in the Association Ex. 12 represents income on behalf of the City of Ithaca. Mr. Squires further explained that because of the sales tax pre-emption by the City of Ithaca, state law requires the County to share equitably with the municipalities outside of the City. Therefore, Mr. Decker's statement that for 2008 the County may collect approximately \$2 million more in sales tax revenue, does not take into account that "\$1,000,004 of sales tax" is for City purposes.

Mr. Squires also explained that Mr. Decker's presentation of the County's 5 year history

of General Fund fiscal operations balance does not accurately reflect revenues available for the County's use. Mr. Squires explained that the County typically every year allocates about \$4 million from the unreserved fund balance to fund the subsequent year's operations. He further explained that, in looking at the financial health of the County, the focus should be on comparing the unreserved fund balance to the cash balance of the General Fund because "having a fund balance is meaningless if you don't have liquidity." He explained: "Our cash balance at year end 2007 was \$12 million. It has averaged around \$12 million for the past three or four years and \$12 million is a minimum amount that the County -- any government, besides the Tompkins County, would need in the General Fund at any one time to meet the obligations of a 6 week period."

Mr. Decker also testified that in 2007, the County had just under \$42 million in debt and that most of it was in bonds and a little bit was in bond anticipation notes. Mr. Squires, however, explained that the outstanding debt amount for 2007 did not include two separate leases in the amount of \$10.2 million and, with that, the County's debt ratio would be higher than other municipalities.

The County's "ability to pay" does not equate to the "ability to tax", nor the ability of the taxpayer to pay. Mr. Squires explained that the County's estimated population includes 25,000 students and, therefore, "one of the burdens of the property tax in this County is that we're spreading it out to approximately 80% of the population. And then on top of that you have this 47% of the tax base is exempt because of New York State lands and the educational institutions. "What that really means is the property tax burden in this County, while it may look low when you take it from a tax rate standpoint, it really is high when it comes to the taxpayer." Mr. Squires stated that although the County has the ability to use the property tax to increase

revenues, when one considers the per capita income, and the average yearly property taxes of about \$3,000, "it's very difficult to levy that burden of taxes on a community. So while there's plenty of capacity to raise the taxes by the tax levy, the willingness to pay is certainly a substantial issue in this County." Tompkins County has established that its "ability to tax" is at its peak and, therefore, increasing taxes to pay out an Interest Arbitration Award would be imprudent and overly burdensome upon an already overly taxed population.

### **SUMMARY OF THE DSA's POSITIONS**

#### **Comparability**

Section 209 A ( c)( d) of the Act requires a comparison of the wages, hours, and other conditions of employment of the at-issue employees with those of "other employees performing similar services or requiring similar skills under similar working conditions."

Implying this statutory criteria the Panel is encouraged to take into consideration not only those sheriff offices in surrounding counties but it must also compare the wage and benefits of the Tompkins Deputy's with those of other municipal police officers in "comparable communities". It is indisputable this comparison must be made with municipal police officers in "comparable communities" and not those in distant locations. It is of no relevance, for example, to compare the Tompkins Deputy's "terms and conditions of employment" to those of police officers working for the City of New York Police Department. The identity of these comparable communities is not fixed by law, only the required comparisons are fixed by law. What defines those "comparable communities" are factors long considered by interest arbitration panels such as population, geographical proximity, size of department, property valuations, retail sales,

income levels, poverty rates, nature of the police force (full time/part time; 24/7 service or otherwise), number and nature of police actions, etc. The Union has sought to compare the Tompkins Road Patrol Deputy's with police officers in the municipal governments in the County of Tompkins that like Tompkins also had a full time police force. Those departments are the City of Ithaca and Village of Cayuga Heights. The Union also offers as comparable communities the Village of Horseheads, the City of Elmira and the Town of Vestal police departments. Lastly, the Union offers the County of Broome, Chemung and Cortland as contiguous counties which appropriately are referenced as part of a broader "comparability analysis".

The City of Ithaca and Village of Cayuga Heights police departments are the most relevant comparable because those police officers render the same police services as do the Deputy's, also on a 24/7 basis. The job description for Deputy Sheriffs and police officers reveal, not surprisingly, that their duties and qualifications are identical and being close in geographical proximity, the Tompkins Deputy's often work side by side with officers from Ithaca and Cayuga Heights. Their training, job duties, hazards of employment and qualifications are identical. As residents of Tompkins County or nearby they are subject to the same demographic and economic factors. The question is not whether Ithaca and Cayuga Heights are relevant comparables because they are unquestionably two comparable communities. The real question is which, if any, of the other agencies offered by the Union or the various sheriffs departments offered by the employer can be considered even nominally relevant in the mix of comparables. A point to which the Union now turns.

The Union submits that a comparison between the Tompkins Sheriffs deputies and those police officers in Ithaca and Cayuga Heights will give the Panel a meaningful sample within

which to do a comparability analysis. Given that there is no difference between the job of a deputy sheriff and the job of any other municipal police officer, there is no compelling need to go outside Tompkins County to find other county deputy sheriffs just for the sake of finding them. If within a given county there are enough police departments to enable an arbitration panel to make the required comparisons, then the panel need not go outside that county. And the Union submits Tompkins County is such a county. The inevitable effect of doing otherwise is to unnecessarily elongate and prolong the search for other comparable jurisdictions, thereby greatly complicating the arbitration hearing and post-hearing processes.

The Union is cognizant of the interest of experienced arbitration panels to employ a method of comparison which affords greater weight to those municipal agencies within a close radius and lesser weight as the radius is expanded further and further. The Union has provided data for the contiguous counties and similarly situated agencies including Broome County, Chemung County, Cortland County, City of Elmira, Village of Horseheads and the Town of Vestal.

Significantly, other municipal police officers have had the availability of interest arbitration since 1974. Deputy sheriffs did not acquire that right until thirty years later and even then on a basis more limited than that available to other municipal police officers because deputies can arbitrate as of right only terms directly relating to compensation while other police officers can arbitrate any mandatorily negotiable subject except certain pension benefits that the State Legislature has blocked from interest arbitration. Historically, deputy sheriffs had to either settle a contract on the Employer's terms, go without a contract, or face a unilateral imposition of employment terms by the Employer's legislative body.

As a result, the wages and benefits of deputy sheriffs generally lag substantially behind those of municipal police officers across the state. By proposing that the Panel rely primarily upon other deputy sheriffs, the Employer hopes to give this Panel a false impression of the terms and conditions of employment that prevail in the market for police officers.

A comparison focusing on other county deputy sheriff units is also inappropriate when the reason for the road patrol deputies being granted interest arbitration is considered.

After thirty years of going without this impasse resolution procedure, the Legislature in 2004 extended deputies what municipal police have had since 1974. The Legislature did not intend to have arbitration panels hearing a deputy sheriff impasse ignore the municipal police officers' three decades of arbitration developments. As deputies have no interest arbitration experience, the Legislature quite obviously intended those deputies to be compared with municipal police officers when their terms and conditions of employment are submitted to an arbitration panel for determination. Comparing deputies who have had no interest arbitration process with other deputies who have similarly been denied that process results in a comparison of the "have-nots" and that is exactly what this Employer wants this Panel to do. But the Legislature could not have intended that result because it does not offer a true picture of the market.

The Legislature was persuaded of the need to extend interest arbitration to road patrol deputy sheriffs because it was aware that the wages and benefits of those deputies were not and are not comparable to those of municipal police officers. That disparity in wages and benefits between groups of police officers who are otherwise identically situated was what the Legislature wanted to be corrected and that correction cannot be accomplished if the only

comparison made is between the at-issue deputies and only other deputy sheriffs as this Employer would have this Panel confine itself to.

The County agrees with the majority of comparable communities cited by the Union, ignoring only Broome County, the City of Elmira and the Town of Vestal. The County offers instead that the Panel consider Cayuga and Ontario Counties to be considered for comparability purposes. But these sheriff departments differ substantially from Tompkins County, handling substantially fewer crimes, in a demographically distinguishable environment and are departments that are substantially smaller in size.

Most significantly, in September 2006, an interest arbitration panel chaired by Dennis J. Campagna issued an Interest Arbitration Award to the parties here. In reaching its conclusion the Panel made the following conclusions relating to comparability:

"The Statutory Criteria noted above requires that the Panel must compare wages and benefits of the Tompkins County Deputy Sheriffs with those 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." In this regard, while the Union suggests that the Tompkins Road Patrol Deputies are best compared with the City of Ithaca and Cayuga Heights, the County suggests that the vest comparisons are among "contiguous counties of Cayuga, Chemung, Cortland, Genesee, Livingston and Ontario Counties." In making a just and fair decision, the Panel finds guidance in its decision and award involving comparability that it determined that the statutory criteria of "comparable communities" in the statute should be interpreted by arbitration panel as encompassing those similar communities in close geographic proximity, i.e., municipalities in the same county that is what this panel will consider.

Given the foregoing, while the parties differ on their choice of comparable communities,

this Panel has determined that the communities of Chemung County lying southwest of Tompkins County, Cortland County lying east of Tompkins County, Cayuga County to the north of Tompkins County, the City of Ithaca, Cayuga Heights and the Village of Horseheads, each residing within the boundaries of Tompkins, Cayuga and Chemung Counties respectively represent a listing of just and fair comparables. In reviewing this list; it is important to note that the Deputy Sheriffs at issue in this proceeding took the same civil service examination, have identical job descriptions, and experience the same hazards of employment as their counterparts in the comparables listed. “

The Union argues, as the prior panel has acknowledged the propriety of focusing comparability analysis on those agencies in the same county and within close geographical proximity to the department, and it properly recognized that appropriate comparability analysis includes municipal police agencies, there is no reason for this panel to proceed in another direction and every reason for it to abide by the logic and sound reason employed by the prior panel in establishing this precedent.

### **Ability to Pay**

The Union contends it is clear that Tompkins County is an economically strong municipality with virtually every economic indicator suggesting that the future of the County will remain strong.

Kevin Decker of Decker Economics testified as to his findings regarding the financial condition of the County after reviewing the various financial documents and budgets available

the last several years. His testimony was largely unrebutted by the various county witnesses, and his report which sets forth his findings and conclusions regarding the financial condition of the County is in evidence.

Whether examined within the context of the statewide economy or within the thirteen county region of the Southern Tier and Central New York region, Tompkins County is consistently enjoying a strong financial condition and at or near the top of every economic indicator for the period of the award term.

First, Tompkins County has enjoyed the strongest positive growth in taxable real property value over the last five years of any county in the Southern Tier/ Central New York region, continuing to grow at an 8.79% annual rate and over the last ten year period, Tompkins ranks third. This region is home to all of the proposed comparable municipalities offered by both parties. Per Capita property wealth, an indicator of the amount of property tax base underlying each person in the community indicates that Tompkins County ranks second of thirteen in the region

Tompkins County also enjoys one of the most stable employment rates in the State of New York, ranking first in the Southern Tier/ Central New York region at 3.4% and enjoying a substantially better unemployment rate than the State of New York at 4.5% or the nation as a whole, at 4.6%. Tompkins County continues to enjoy growth in total employment and private sector employment at a rate among the highest in the region. With a strong and consistent core of employers including Cornell University with a substantial influx of revenue generating students who impose few, if any costs on the community particularly the County government, Tompkins County has an excellent long term forecast. The school year population influx

provides a stable source of revenue generally unharmed by the economic conditions effecting the broader economy.

In 2007, the County raised 29.8% of its revenue from Federal and State Aid, 30 % from the County sales tax, 24.2% from real property tax revenues and the balance from other departmental and local revenue sources. As noted, the property tax rate and overall property tax levy has decreased with a higher level of revenue generation from sales tax and other income sources.

### **Sales Tax**

This annual and consistent influx of non-resident revenue generators directly impacts on the sales tax capability of Tompkins County which has since 1992 imposed a 4% sales tax on all purchases countywide except inside the City of Ithaca which preempts 1.5 % of the 4%. Of the total Ithaca and Tompkins County collections, the County still retains a full 56% of all sales tax revenues including those collected in the City of Ithaca. Since 1998 the sales tax revenues received by the County have increased from 20 million dollars to 29 million dollars, an average annual increase of 4.16% with the County projected to receive 31 million dollars in fiscal 2008, about 2 million dollars more than budgeted by the County. The additional funds are above and addition to the already substantial projected unreserved fund balance available to the County.

Confirming the stability of the sales tax revenue source, Mr. Decker examined the historic trends in volume of sales subject to the sales tax which confirm the continued stable upward trend of sales. Decker found that the total taxable sales and purchases have steadily increased over the last fifteen years such that Tompkins is in the somewhat unusual position of collecting more revenue from sales tax than from property tax. The fifteen year average annual

increase in taxable purchases has consistently risen and was 3.6 %; and the last five years show a 3.5% increase, all considerably in excess of inflation rates over that same period of time, leading to the conclusion that Tompkins over the last fifteen years has enjoyed "very healthy" sales tax rates and revenues with much of the contribution coming from non residents.

### **Property Tax**

Tompkins County presently raises approximately 32.3 million dollars from real property taxes, a lower level of gross real property taxes than collected in 2005. At the same time, there has been a consistent increase in property values in the County of 8.79% average annual growth since 2002. This growth is among the best in the entire state and the best in the Southern Tier/Central New York counties.

The average annual real property tax rate increase since 2002 has been only 1.49%, which when adjusted for the full value tax rate adjustment was even lower at 1.43% annually. The average full value tax rate is now lower in 2008 than it has been since 2002 with full value tax rates being reduced each and every year for the last 4 years. This tax rate leaves Tompkins County with one of the lowest full value tax rates in the Southern Tier/Central New York, ranking 12th of 13 counties as the second lowest taxed county with an average full value tax rate of just \$6.08.

Confirming the strength of the County's financial condition and the relatively minimal impact of County operations on property taxpayers, Tompkins County used only a fraction of its constitutionally permissible taxing limit. Again, Tompkins ranks among the best in the Southern Tier/Central New York Region in this category.

### **General Fund Information**

Unit employees' salaries and benefits are paid from the County's general fund. Although there was a relatively minor single year budget deficit of \$ 280,617 in 2006, the County still had very substantial fund balances in excess of between 13.5 % and 15.42% between 2005 and 2007 with a reserved fund balance of \$18,255,813 and an unreserved fund balance of \$16,096,781 or 12.14% when the State Comptroller recommends and Bond rating agencies recommend only between 5% - 10%. According to Mr. Decker, the County enjoys what's considered to be a very healthy fund balance.

Additionally, Mr. Decker discovered during his review and examination that the County has set aside a contingency fund of \$1,380,000 in 2008. He also found that Moody Investor Services has assigned the County's General Obligations Bonds a rating of Aa2, high grade, high quality and the 3<sup>rd</sup> highest rating on Moody's scale of 21 ratings.

The County's 2009 recommended budget included a tax levy increase of just 2.77% and the legislature's amended budget increases the tax levy by 2.99% which is substantially below the rate of inflation which is averaging approximately 4.6% annually.

Furthermore, Decker found that examination of the County budgets over the last four years reflects annual cost to county taxpayers of the Sheriff's Office of \$ 4.11 million in 2005, the last year of the expired award term and \$4.24 million in 2006 accounting for just 8.6% of total general fund personal spending and just 7.7% of total, all combined county funds, personal services spending by the county for its 763 full and part time employees.

Ultimately, Decker said that the impact for each 1 % increase in personal service spending for the 41 bargaining unit members (including the non law enforcement members) amounts to approximately \$26,400 annually, representing 9/100<sup>th</sup> of one percent of the county sales tax revenue or 5/10<sup>th</sup> of 1 cent on the existing assessed value.

A substantial unreserved fund balance of \$16,096,781, a contingency fund of \$1,380,000, nominal full value real property tax increases averaging only 1.43% over the last ten years, a uniquely stable employment, sale and property tax base and a negligible impact of fair and equitable wage increases on the budget - these are the fundamental findings of economist Decker.

These findings confirm that this employer clearly has the ability, if not the desire to provide a fair and equitable wage and benefit increase for employees in the collective bargaining unit. The award of such adjustments, clearly affordable to this employer, will begin to rectify the blatant disparity between the wage and benefit packages afforded these deputies and that provided to their law enforcement counterparts in the cited comparable communities.

### **The Interests and Welfare of the Public**

This statutory criterion encompasses the public in general and the residents of Tompkins County particular. It is beyond dispute that the "public", however broadly or narrowly that word is construed, is best served by having a professional, well-trained police department staffed with qualified and experienced police officers. That happens only when the wages and benefits of those police officers are at a level sufficient to attract and retain them.

When a municipality, such as this Employer, is fortunate enough to be in a very sound

financial condition, the interests and welfare of the public compel an award at a level which will entice persons to become and remain members of the Sheriff's Office and one that will reflect the police officers' relative status and position in the County and the surrounding law enforcement community. Moreover, part of the County's financial success is attributable to Tompkins's relatively low rate of crime when compared to surrounding counties.

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### **Peculiarities of the Police Profession**

CSL §209.4(v) requires the Panel to compare the attributes of the police profession with other trades or professions. As the police profession is unique no useful comparison can be made with other trades or professions because none is truly comparable. Instead this criterion interpreted and applied over the years by interest arbitration panels looks inward and examines the peculiarities of the police profession itself. In that regard the parties do not dispute that appropriate weight must be given to the especially hazardous nature of a police officer's work and to the special qualifications, training and skills required of a police officer as shown in the civil service job descriptions as introduced.

### **DISCUSSION AND ANALYSIS**

The Chairman submits that he may well be in uncharted waters if he were to entertain many of the demands from both the County and Association by virtue of the fact each party's "scoped issues" regarding their respective substantive demands that are to be considered in fact finding and interest arbitration have yet to be determined by PERB.

With this reality and by the limitation of a statutory two year term it becomes economically impossible and statutorily uncertain to fashion an award incorporating most of the significant demands of each party for a two year interest arbitration award for this interest arbitration which is now more than four years expired.

So that, the heart of any economic package is primarily a wage determination which is the largest cost item for the County, and the most significant term and condition of employment for these bargaining unit members.

The Chairman is cognizant that the tax burden placed upon the County is not decreasing in conjunction with rising overall labor costs, uncertain federal and state revenue sharing while the cost of federal and state mandates continue to increase as well as the negative ramifications of this current deep recession, and the effect of all on current and future municipal budgets.

The Chairman opines that while the Panel must apply the statutory criteria to a time period when there wasn't a severe economic downturn, the fact remains that currently there are great strains on municipal budgets given the current dire economic recession and these current economic realities can not be ignored when fashioning an Interest Arbitration award retroactively.

Although Tompkins County when compared to other comparable counties is in much better fiscal shape and did in fact budget for increased labor costs for its deputy sheriffs for the years covered by this award, it did not however budget enough to encompass all of the Association's demands.

The Chairman is entrusted to incorporating a balance of the wage increases and other monetary demands awarded in other police agreements and or awards in the comparable communities submitted to and used by the Panel.

The DSA's demand for a base wage increase of 4.75% in the first year and 4.75% in the second year of this award is not warranted. However, the County's lack of any direct wage increase for each of the same two years is not justified especially in light of the County's proposal to impose additional costs in the form of health insurance contributions.

The Chairman's view of each party's significant demands or lack thereof is not limited to criticizing the County as the Chairman notes the DSA's proposal for the Department to implement a 5-2, 5-3 work schedule for Deputies of 243 work days versus the current work schedule of 260 work days would represent a significant cost to the County and as previously stated it becomes economically unfeasible to entertain such a proposal in the confines of a two year award and without significant tradeoffs.

The Chairman opines while considering the other DSA's economic demands in balancing this award they were either rejected or substantially reduced in order to curtail the rise in overall labor costs as had been argued by the County. The Chairman was persuaded based upon equitable arguments specifically regarding an increase in the mandatory on call hourly rate, the creation of a minimum two hour call-in guarantee and retroactivity for all bargaining unit employees who are on the payroll covering the period of this award. The Chairman was also persuaded to increase modestly in the second year the shift premium, longevity, clothing allowance and VEBA contributions.

This Panel's findings were based on the statutory criteria, analysis of all the testimony, data, exhibits, documentary evidence and the post hearing briefs submitted.

Accordingly, the Panel makes the following Award:

**1. Base Wage Schedule**

Increase the existing schedule as follows:

	(3.5%)	(3.5%)
	3/1/06	3/1/07
	Hire/Work	Hire/Work
Deputy Sheriff Trainee	\$42,917/\$47,035	\$44,419/\$48,681
Deputy Sheriff	\$47,597/\$51,714	\$49,263/\$53,524
Deputy Sheriff Criminal Investigator	\$57,591/\$62,573	\$59,607/\$64,763
Deputy Sheriff Juvenile Investigator	\$57,591/\$62,573	\$59,607/\$64,763
Deputy Sheriff Sergeant	\$57,591/\$62,573	\$59,607/\$64,763
Senior Criminal Investigator	\$63,350/68,830	\$65,567/\$71,239
Lieutenant	\$63,350/68,830	\$65,567/\$71,239

  2    
 CONCUR      DISSENT

Elayne Gold      8/18/10  
 ELAYNE G. GOLD, ESQ.      DATE  
 EMPLOYER PANEL MEMBER

  X    
 CONCUR      DISSENT

Anthony V. Solfaro      8/16/10  
 ANTHONY V. SOLFARO      DATE  
 EMPLOYEE PANEL MEMBER

**2. Investigator Mandatory on call**

Increase the existing hourly rate as follows:

(N/C)	(+\$.25/HR)
<u>3/1/06</u>	<u>3/1/07</u>
+\$1.55/hr	+\$1.80/hr

    
CONCUR          
DISSENT

Elayne Gold      8/18/10  
ELAYNE G. GOLD, ESQ.      DATE  
EMPLOYER PANEL MEMBER

    
CONCUR          
DISSENT

Anthony V. Solfaro      8/16/10  
ANTHONY V. SOLFARO      DATE  
EMPLOYEE PANEL MEMBER

**3. Call-In**

Effective 11:59 PM on 2/29/2008, any employee called into work shall receive a minimum of two (2) hours of overtime pay. Said employee shall be required to stay at work and perform assigned work for the duration of the call-in unless otherwise released by a supervisor. If an employee completes the assignment before two hours and is otherwise released by a supervisor said employee will be entitled to a minimum of two (2) hours of overtime pay.

    
CONCUR      X see attached  
DISSENT      (eg)

Elayne Gold      8/18/10  
ELAYNE G. GOLD, ESQ.      DATE  
EMPLOYER PANEL MEMBER

    
CONCUR          
DISSENT

Anthony V. Solfaro      8/16/10  
ANTHONY V. SOLFARO      DATE  
EMPLOYEE PANEL MEMBER

**4. Law Enforcement Shift Premium**

Increase the existing hourly rate as follows:

(N/C)	(+\$.25/HR)
<u>3/1/06</u>	<u>3/1/07</u>
+\$1.10/hr	+\$1.35/hr

<u>X</u>	<u>DISSENT</u>	<u>Elayne Gold</u>	<u>8/18/10</u>
CONCUR		ELAYNE G. GOLD, ESQ.	DATE
		EMPLOYER PANEL MEMBER	

<u>X</u>	<u>DISSENT</u>	<u>Anthony V. Solfaro</u>	<u>8/16/10</u>
CONCUR		ANTHONY V. SOLFARO	DATE
		EMPLOYEE PANEL MEMBER	

**5. Health Insurance**

Increase the existing annual VEBA amount as follows:

(N/C)	(+\$25.00)
<u>3/1/06</u>	<u>3/1/07</u>
+\$375.00	+\$400.00

<u>2</u>	<u>DISSENT</u>	<u>Elayne Gold</u>	<u>8/18/10</u>
CONCUR		ELAYNE G. GOLD, ESQ.	DATE
		EMPLOYER PANEL MEMBER	

<u>X</u>	<u>DISSENT</u>	<u>Anthony V. Solfaro</u>	<u>8/16/10</u>
CONCUR		ANTHONY V. SOLFARO	DATE
		EMPLOYEE PANEL MEMBER	

**6. Longevity**

Increase the existing schedule as follows:

<u>Years of Service</u>	<u>3/1/2006</u> N/C	<u>3/1/2007</u>
Start 9 <sup>th</sup> year through 11 <sup>th</sup> year	\$450.00	+ \$25.00 (\$475.00)
Start 12 <sup>th</sup> year through 14 <sup>th</sup> year	\$650.00	+ \$25.00 (\$675.00)
Start 15 <sup>th</sup> year through 17 <sup>th</sup> year	\$720.00	+ \$80.00 (\$800.00)
Start 18 <sup>th</sup> year and above	\$920.00	+ \$80.00 (\$1,000.00)
N/C years of service		

  D    
CONCUR                  
DISSENT

Elayne Gold      8/18/10  
ELAYNE G. GOLD, ESQ.      DATE  
EMPLOYER PANEL MEMBER

  X    
CONCUR                  
DISSENT

Anthony V. Solfaro      8/16/10  
ANTHONY V. SOLFARO      DATE  
EMPLOYEE PANEL MEMBER

**7. Clothing Allowance**

Increase the existing amounts as follows:

	N/C)	(+\$50.00
	<u>3/1/06</u>	<u>3/1/07</u>
	+\$325.00	+\$375.00
Upon promotion	+\$225.00	+\$275.00

  X    
CONCUR                  
DISSENT

Elayne Gold      8/18/10  
ELAYNE G. GOLD, ESQ.      DATE  
EMPLOYER PANEL MEMBER

  X    
CONCUR                  
DISSENT

Anthony V. Solfaro      8/16/10  
ANTHONY V. SOLFARO      DATE  
EMPLOYEE PANEL MEMBER



**IMPLEMENTATION OF THE AWARD**

The terms of this Award shall be implemented no later than thirty (30) days following the date of execution of this by the Panel Chairperson. The Panel retains jurisdiction until payment of retroactivity and implementation of this Award is completed as set forth herein.

  2    
CONCUR      DISSENT

Elayne Gold      8/13/10  
ELAYNE G. GOLD, ESQ.      DATE  
EMPLOYER PANEL MEMBER

  X    
CONCUR      DISSENT

A.V. Solfaro      8/16/10  
ANTHONY V. SOLFARO      DATE  
EMPLOYEE PANEL MEMBER

Roger E. Maher      8-21-10  
ROGER E. MAHER      DATE  
PUBLIC PANEL MEMBER AND CHAIRMAN

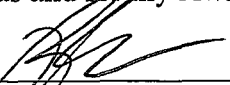
**SUMMARY OF REMAINING ISSUES**

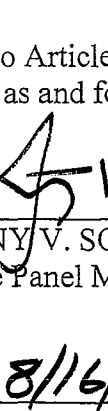
The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are resolved and not all contents are agreed with. The Panel in reaching what it has determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.



ARBITRATOR'S AFFIRMATION

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

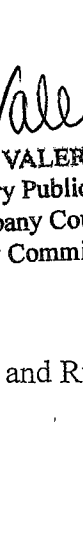
  
\_\_\_\_\_  
ROGER E. MAHER  
Public Panel Member and Chairman

  
Drew Anderson  
Notary Public State of New York  
No. 01AN6157176  
Qualified in Kings County  
Commission Expires Dec 4, 2012

Dated: 8-21-10

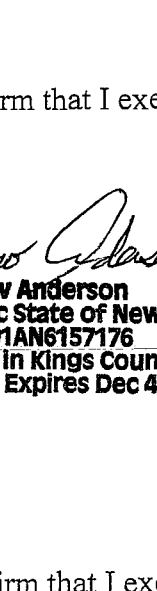
Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
\_\_\_\_\_  
ELAYNE G. GOLD, ESQ.  
Employer Panel Member


  
VALERIE R. BROZZETTI  
Notary Public in the State of New York  
Albany County No.: 01BR6152672  
My Commission Expires 9/18/2010

Dated: 8/18/10

Pursuant to Article 75 of the Civil Practice Law and Rules, I hereby affirm that I executed the foregoing as and for my Award in this matter.

  
\_\_\_\_\_  
ANTHONY V. SOLFARO  
Employee Panel Member

Dated: 8/16/10

  
NANCY L. MARCOJOHN  
Notary Public, State of New York  
No. 4988931  
Qualified in Ulster County  
Commission Expires Nov 13, 2013

STATE OF NEW YORK  
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Interest Arbitration Between :  
Tompkins County Deputy Sheriffs' Association, Inc., : DISSENTING OPINION OF  
Petitioner, : EMPLOYER PANEL MEMBER  
-and- : ELAYNE G. GOLD, ESQ.  
: PERB Case No.:  
Tompkins County and The Sheriff of Tompkins County, : IA2008-006; M2007-121  
Respondents. :

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On behalf of the County of Tompkins and its Sheriff, I dissent with respect to the Interest Arbitration Award concerning implementation of a call-in pay provision. Page 30 of the Award, at item number 3, implements a provision such that

Any employee called into work shall receive a minimum of two (2) hours of overtime pay. Said employee shall be required to stay at work and perform assigned work for the duration of the call-in unless otherwise released by the supervisor. If an employee completes the assignment before two hours and is otherwise released by a supervisor said employee will be entitled full minimum of two (2) hours of overtime pay.

The Panel, by its majority, would implement this provision "effective 11:59 p.m. on 2/29/2008". (Emphasis added). Implementation of a call-in provision on a retroactive basis is not feasible and/or possible.

Although a record of overtime pay amounts have been and is retained by the County and its Sheriff's Department for each member of the at-issue Deputy Sheriffs Bargaining Unit, whether overtime pay is for a hold over assignment, a call back to work assignment,

or for some other reason, has never been delineated. As such, it is not possible to implement such a directive on a retroactive basis.

Neither the County nor its Sheriff's Office keeps track of whether overtime was for an employee being called into work. The Employer cannot implement this section of the Award. Because of this "impossibility of performance" this Panel Member dissents on implementing said provision.



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ELAYNE G. GOLD

Date: August 18, 2010