

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration between

THE COUNTY OF ALBANY,

Public Employer,

OPINION

-and-

AND

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
LOCAL 294, (District Attorney's Investigators),
Employee Organization.

AWARD

PERB Case No. IA2018-014; M2018-046

BEFORE:

Jeffrey M. Selchick, Esq.
Public Panel Member and Panel Chairman

Jennifer Clement
Public Employer Panel Member

William H. Ward, Jr.
Employee Organization Panel Member

APPEARANCES:

For the County of Albany
Jeffery V. Jamison, Esq.
Director of Employee Relations

International Brotherhood of Teamsters Local 294
District Attorney's Investigators
Pozefsky, Bramley & Murphy
Bruce C. Bramley, Esq.

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the New York State Public Employment Relations Board ("PERB") to make a just and reasonable determination of a dispute between the International Brotherhood of Teamsters, Local 294, District Attorney's Investigators ("Union") and the County of Albany ("County" or "Employer").

The County of Albany is a municipality in the State of New York, organized and operating pursuant to Charter, and has a designated elected County Executive to direct and manage the operations of the County. The County has a diverse population of approximately 305,500 people and an annual budget of over \$730 million dollars. Amongst other duties, the County Executive, through various staff, prepares and implements the County Budget, and is responsible for negotiations with the various bargaining units which represent County employees. The District Attorney is also an elected official and employs Investigators and Senior Investigators within his office. The County has employees in 18 different bargaining units. All have current collective bargaining agreements which extend through 2021 except for the unit at issue herein for the DA Investigators and Senior Investigators.

The instant proceeding concerns a negotiations dispute between the County and the Union concerning the District Attorney's Investigators bargaining

unit. The bargaining unit consists of approximately 8 Investigators and Senior Investigators who are employed by the County and work for the Albany County District Attorney. After negotiations and mediation were not successful, the Association filed a petition with the State Public Employment Relations Board ("PERB") on or about February 26, 2019 for interest arbitration (Joint Exhibit 1). The City filed its response to the petition on or about March 18, 2019 (Joint Exhibit 2), and the undersigned Panel was thereafter designated by PERB on or about April 22, 2019, to make a just and reasonable determination of the matters in dispute. An evidentiary hearing was held before the Panel in Albany on August 20, 2019 at which both parties were represented by Counsel and had the opportunity to present evidence, examine witnesses, and make arguments in support of their respective positions. The parties filed post-hearing briefs, which were received by the Panel on or about October 16, 2019, and thereafter both parties filed reply briefs which were received by the Panel on or about November 15, 2019, at which time the record was declared closed.

The record indicates that the parties were signatories to a collective bargaining agreement for the period which commenced on January 1, 2010 and continued through December 31, 2016 (Joint Exhibit 5). This was an initial Agreement for a newly constituted bargaining unit consisting solely of Investigators and Senior Investigators employed by the Albany County District Attorney's Office. Prior to that Agreement, the bargaining unit members herein

were part of a larger bargaining unit which included Investigators, Senior Investigators, and other law enforcement supervisors employed by the Albany County Sheriff's Department, which Agreement expired on December 31, 2009 (Joint Exhibit 3). While in the larger bargaining unit with Investigators and Senior Investigators employed by the County Sheriff's Department, DA Investigators and Senior Investigators were paid at the same salary rate as those in the same titles and employed by the County Sheriff's Department (Appendix B, Joint Exhibit 3).

The bargaining and resultant Agreements which followed are the basis for the instant dispute and impasse. Subsequent to the DA Investigators and Senior Investigators leaving the larger bargaining unit consisting of County Sheriff's Department sworn employees, the Union, which represented both units and continues to do so, negotiated the initial Agreement for the DA Investigators and Senior Investigators bargaining unit. This Agreement, reached in 2014, provided wage determinations for the years 2010 through 2016 ranging from zero to 2% per year (see Appendix A, Joint Exhibit 5). As of the end of this Agreement, which was December 31, 2016, DA Investigators had a base salary of \$65,704 and Senior Investigators had a base salary of \$68, 879 (see Appendix B, Joint Exhibit 5).

Thereafter, an Agreement was reached by the Union and the County for the larger bargaining unit consisting of the Investigators and Senior Investigators and other law enforcement supervisors in the County Sheriff's Department for the

period 2010 through 2016 (Joint Exhibit 4). Review of this Agreement indicates that at the end of this Agreement, also December 31, 2016, the base salary for Sheriff's Investigators was \$68,784 and for Sheriff's Senior Investigators was \$72,415 (Appendix B, Joint Exhibit 4). While both units received the same across the board wage increases for the period 2010 through 2016, the Sheriff's Investigators and Senior Investigators were now being paid \$3080 more than DA Investigators and the Sheriff's Senior Investigators were now being paid \$3526 more than DA Senior Investigators. Apparently, this was partially due to line up pay being rolled into base salaries for Sheriff's Investigators and Senior Investigators as of July 3, 2015 (see Article VI, Section 1; and Appendix B of Joint Exhibit 4).

The Union and the County then were able to negotiate an Agreement for the Sheriff's Law Enforcement Supervisors bargaining unit for the period commencing January 1, 2017 and continuing through December 31, 2021 (Joint Exhibit 6). Relevant to the instant impasse, this Agreement, which is currently in effect, provide Sheriff's Investigators and Senior Investigators with a 2% salary increase retroactive to January 1, 2017 and a 2% salary increase retroactive to January 1, 2018. Additional salary increases for the years 2019, 2020 and 2021 were also provided therein, but are not relevant to the instant impasse.

This resulted in Sheriff's Investigators and Senior Investigators having a base salary of \$70, 160 and \$73,863 respectively in 2017 and base salaries of

\$71,563 and \$75,341 in 2018. Additionally, in the 2017-2021 Sheriff's Agreement, a Hazardous Duty Stipend of \$500 was added for 2018 (see Article IX, Joint Exhibit 6).¹

Notwithstanding good faith negotiations, the Union and the County were unable to reach final agreement on an Agreement for the DA Investigators and Senior Investigators unit for any period beyond the expiration of the 210-2016 Agreement. While the parties were able to negotiate and reach agreement on many issues, the issue of the appropriate wage increase that would be provided to the DA Investigators and Senior Investigators for 2017 and 2018 and any years beyond, was not resolved. Accordingly, as the Panel's jurisdiction is limited to a two-year period, the Panel is empowered to decide a just and fair resolution to such wage dispute for DA Investigators and Senior Investigators for the years 2017 and 2018.

To reach such resolution, the Panel has fully reviewed all data, evidence, arguments and issues submitted by the parties. After significant discussion and deliberations at an Executive Session and several telephone conferences calls, the Panel was finally able to reach an Award.² The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, all of which

¹ Additional Hazardous Duty Stipends are provided in the 2017-2021 Sheriff's Agreement for the years 2019 through 2021.

² This Award has been delayed due to the many issues created by the Covid-19 pandemic.

are summarized herein and incorporated by reference into this Award.

Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Award setting forth the terms and conditions for the period January 1, 2017 through December 31, 2018.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following criteria, as detailed in Section 209.4(v) of the Civil Service Law:

(v) the public arbitration panel shall make a just and reasonable determination of the matters in dispute. In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a) comparison of the wages, hours and conditions of employment of the employee 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 interest 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.

POSTION OF THE UNION

On behalf of the 8 members of the DA Investigators bargaining unit, the Union contends that since the County has not claimed that it has any inability to pay the wage increases sought herein, that issue was not addressed in detail by the Union, although a financial report was placed into evidence herein (see Union Exhibit 4). While the Union had a recognized financial expert present and prepared to present testimony at the hearing held before the Panel on August 20, 2019, the County entered into a Stipulation that it was not raising "inability to pay" as a defense in this dispute. However, the Union does point out that the financial analysis conducted by its expert did conclude that the wage relief requested by the Union would not have "a significant effect on the finances of the County" (Exhibit O, Union Exhibit 4).

The Union requests that the Panel award its wage proposal which is a 2% wage increase for both calendar years 2017 and 2018 and a one-time stipend to wages for both the Investigators and Senior Investigators of \$3080 and \$3526 respectively, with both stipends to be effective as of January 1, 2017 (Union Exhibit 1). The Union maintains that in addition to the 2% yearly wage increases, which were also received by the Sheriff's Investigators unit, the one-time stipend is necessary to equalize the DA Investigators and Senior Investigators to the same amount paid to those in the same titles in the Sheriff's Department.

The Union notes that the qualifications for those titles in the DA's Office are exactly the same as those of those employed by the Sheriff's Department and both work for the same employer—Albany County. In fact, as testified to by District Attorney David Soares, the criminal investigators working in the DA's Office have more experience as police in the criminal investigation field, are called upon to do a more difficult level of investigation work, and yet are paid less than those Investigators and Senior Investigators employed by the Sheriff's Department. DA Soares further testified that as Albany is the capital city of New York State, it is different than other upstate District Attorney's Offices due to the presence of government offices, more complex cases involving government, and a resultant greater case load (see Union Exhibits 2A-2F and Union Exhibit 3).

The Union argues that the DA Investigators and Senior Investigators have more experience than those in the Sheriff's Department as all in the DA's Office have worked full careers in other police departments and possess greater experience, training and knowledge, which is necessary for the more complex work performed by the DA's Office. As most of the DA Investigators and Senior Investigators completed prior careers, the County is not required to pay pension costs for any but two, and only three require the County to pay health insurance contributions on their behalf. The Union claims savings from these costs alone, more than covers the cost of the wage proposals sought herein to equalize wages with those employed in the same titles in the Sheriff's Department.

POSITION OF THE COUNTY

The County argues that while the issue is not whether the County can afford the wage increases sought by the Union herein, but rather are such increases equitable based upon the title, duties and circumstances, when compared to other District Attorney investigators similarly situated in upstate New York. The County maintains that the proper comparable to those in the Albany DA's Office are investigators in District Attorney's offices in the surrounding counties and upstate New York. The comparison reveals, according to the County, that Albany DA's Office Investigators and Senior Investigators are the highest paid (see County Exhibit 1). The comparison included Schenectady, Rensselaer, Saratoga, Broome, Monroe, Greene, Oneida and Erie counties. Of note is that Erie County DA's Office pays investigators \$15,000 less even though Erie County has a population of over 925,000 people.

The County argues that the proper comparison is that made above—to other investigators and senior investigators in other DA's Offices and not to those in the Albany County Sheriff's Department. The work performed in each DA Office is identical in that all investigators have the same duties, do the same work, enforce the same laws and provide the same services to the prosecutors in each county. The fact that Albany is the capital does not change the work being performed by the Albany DA's office. In most counties, there are government offices and crimes therein are prosecuted by the local DA and not the Albany DA.

The County further puts forth that as the work of investigators in most DA's office is the same, it is also notable that the caseload of the Albany DA's Office is no greater than that of DA's Offices in comparable counties. While it is true that Albany County may have had more arrest in 2018 when compared to surrounding counties, the Panel should note that the Albany DA's Office has more investigators than many of the other counties. Rensselaer County is provided as an example where numbers for 2018 indicate that Albany County had an aggregate of 7,115 arrests compared to 3,239 in Rensselaer County, the Albany County DA's Office has 7 Investigators, compared to 2 in Rensselaer County. Therefore, contrary to the Union's claim, Albany County Investigators and Senior Investigators, in fact, have a lesser caseload than those in the same titles in comparable counties.

Additionally, the County points out that what the Union is really seeking to do is reopen and renegotiate the 2010-2016 Agreement to achieve parity with the Sheriff's unit. It was the Union which sought to break off from the Sheriff's unit, as they maintained that were significantly different. They cannot now claim parity. Further, the County indicates that many of the members of the DA's investigative unit are receiving full pensions from prior employment and are enjoying the benefits of a waiver. This allows them to receive full salary plus full pension. At the Sheriff's Office, there are no such waivers issued. The Union's request for wage increases must be rejected under the criteria of CSL §209.

PANEL DETERMINATION

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly assess and determine the issue before it, the Panel must engage in a comparative analysis of terms and conditions of employment with "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 relation to the issue of comparability, the Panel found the testimony of Albany County DA Soares to be most instructive and persuasive. The District Attorney testified in support of the Union's request for wage increases that would bring the salaries of DA Investigators and Senior Investigators to the same level as those in the Sheriff's Department. DA Soares testified that when he became Albany County DA in 2005, he was concerned regarding the level of investigation in preparation for cases in court. As he pointed out, the Sheriff's Department investigators work a case from a report of a possible crime through investigation of that report to a determination of probable cause to believe a crime has been committed. In the DA's Office, Investigators pick up the case from a probable cause finding and must work it up through the point of being able to prove beyond a reasonable doubt, in order to effectively negotiate a plea bargain or

take a case to trial. This level of investigative work, according to DA Soares, is more difficult and requires greater experience and expertise on the part of the Investigator.

DA Soares further testified that the Albany County DA's Office has a unique jurisdiction due to being the Capital of NYS government. As a result, it may prosecute cases outside of the County and prosecutes cases investigated not only by local police but also from NYS Agencies and Commissions. The Albany DA's Office often work with the NYS Attorney General on cases resulting from NYS investigations into government and government employees. These types of investigations require the DA's Office investigators to have greater experience and special skills in the areas of internet and cybercrime, fire investigation, domestic violence, child abuse and sex crimes, financial malfeasance, white collar crime and banking and insurance fraud. DA Soares testified that such experience is gained by hiring experienced investigators who often have gained such experience from working full careers with other police agencies. The Albany DA's Office, according to DA Soares, benefits greatly from such experience, and Investigators and Senior Investigators in his office should not be paid less than those who do not have such training, knowledge and experience. DA Soares indicated that like the Assistant District Attorneys and the Public Defenders in the County, DA Investigators and Senior Investigators must have pay equity with those in the same titles in the Sheriff's Department.

DA Soares also testified that Investigators in his office also provide witness protection and security to encourage and maintain cooperation with necessary trial witnesses. While the DA agreed that Sheriff's Department investigators do acquire necessary evidence to reach the probable cause standard, the DA's Investigators often conduct a full investigation to insure there is sufficient evidence to indict and subsequently convict the offender or offenders. They also draft and execute search warrants, based on experience and the DA's Investigators must also coordinate with local police investigators to prepare the case for trial.

In terms of comparability, the Panel is persuaded by DA Soares that the Albany County DA's Office is different from other DA's offices in surrounding and upstate counties. Clearly, it is also different than the work performed by the County Sheriff's Departments investigators. As testified to by DA Soares, the reason for the fragmentation and demand for a separate bargaining unit for DA's Investigators and Senior Investigators was related to control over disciplinary issues, and should not have resulted in DA investigators now receiving a lower wage than those performing similar but in his opinion, somewhat lesser duties for the same employer.

Upon review of such testimony by DA Soares, the Panel finds that similar titles in DA offices in surrounding and upstate counties are not the appropriate comparison for purposes of our review herein. While not fully comparable with

the duties performed by Sheriff's Office Investigators, and in fact more extensive, they both share the same employer, namely Albany County. That fact, in itself, can lead to the conclusion that DA Investigators and Senior Investigators, performing duties that require greater expertise, experience, knowledge and training, should not be earning so much less than those in the Sheriff's Department.

INTEREST AND WELFARE OF THE PUBLIC AND ABILITY TO PAY

Section 209.4 of the Civil Service Law requires that in order to properly assess and determine the issue before it, the Panel must consider "the interest and welfare of the public and the financial ability of the public employer to pay."

At the evidentiary hearing of this dispute on August 20, 2019, and in post-hearing submissions, the County stipulated and agreed that it did not lack the financial ability to pay the wage increases sought herein by the Union. Since that time, Albany County, along with the rest of the USA and the entire world, has suffered financially from the Covid-19 pandemic. Additionally, the County, like all others, has had additional expense attendant to the pandemic. While it is unclear as of this writing whether the Federal government will provide further financial aid to municipalities, the County's future financial condition has changed. In that regard, the Panel recognizes that the County anticipates the loss of significant sales tax revenue due to the pandemic.

However, for several reasons, the Panel finds that the Covid-19 pandemic, and its economic effects, does not change the record herein that the County does not lack the ability to pay the wage increases sought by the Union.

The wage increases sought herein are for 2017 and 2018, and for those years, the County provided employees with 2% across the board salary increases for both years. Clearly, at some point, the County was well aware that the DA Investigator unit herein would receive those increases, as well as the possibility of additional increases beyond that. The 2% across the board salary increases, which the County was prepared to offer this unit at that time, is now a debt come due, and the County cannot now fairly claim it cannot afford to pay that debt, even if it has spent the monies allocated for such purpose.

The record herein, having been closed many months ago, has no evidence concerning the County's current financial situation and cannot speculate on what it may be in the future.

There are only eight (8) members of the DA's Investigator unit, and even if the Union's wage increase proposal was accepted in full, it would still not represent any significant impact on a County budget of over \$733 million dollars. The financial impact is miniscule.

Only two (2) of the current DA Investigators require any pension contributions and only three (3) require health insurance contributions on the part of the County, resulting in significant savings to the County.

WAGE INCREASES

The Panel has concluded, as opined above, that the unit of DA Investigators and Senior Investigators should be paid on par with those employed by the County in the same title in the Sheriff's Department. The Panel has also concluded that the County does not lack the financial ability to pay the wage increases provided herein.

However, the Panel also notes the current and unclear financial future created for all municipalities by the Covid-19 pandemic. In recognition of that uncertainty, the Panel has determined that a fair and reasonable wage increase is less than the wage increases sought by the Union. The wage increases awarded herein recognize and address the pay inequality existent between employees in the same titles in the two different units, and goes far to address and correct that inequality and based on the amount awarded, and the retroactive date provided herein, takes into account to some extent the financial uncertainty faced by the County. And it must be repeated herein, that the wage increases provided herein affect only eight (8) employees and represents a miniscule impact on the County's budget and its ability to pay such increases.

Accordingly, based on the foregoing, the Panel finds and makes the following:

AWARD ON WAGE INCREASES

Effective January 1, 2017 and retroactive to that date, the base salary schedule shall be increased by 2%.

Effective January 1, 2018 and retroactive to that date, the base salary schedule shall be increased by 2%.

Effective July 31, 2018 and retroactive to that date, a one-time equity adjustment in the amount of \$2,500 shall be added to base salary.

Retroactivity shall only apply to those employees on the payroll on the Date of this Award and/or any employee who has separated from service due to retirement or disability.

JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

Date of Award

JENNIFER CLEMENT, ESQ.
Public Employer Panel Member

Date

WILLIAM H. WARD, JR.
Employee Organization Panel Member

Date

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this day of 2020 before me personally came and appeared Jeffrey M. Selchick, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this day of 2020 before me personally came and appeared Jennifer Clement, to me known and known to me to be the individual described in the foregoing Instrument, and she acknowledged to me that she executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

On this day of 2020 before me personally came and appeared William H. Ward, Jr., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public