

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,

-and-

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

OPINION

AND

AWARD

PERB Case No.: IA2023-002; M2023-021.

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
Peter-Daniel Apostol, Esq.
Director of Employee Relations

International Brotherhood of Teamsters Local 294
District Attorney's Investigators
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 314,848 people, as forth in the 2020 census. 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 19 different bargaining units. Seventeen of these units have a current collective bargaining agreement that extends for a four year period.

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 12 Investigators and Senior Investigators who are employed by the County and work for the Albany County District Attorney. The parties were signatories to a Collective Bargaining Agreement for the period

January 1, 2010 through December 31, 2016. An Interest Arbitration Award between the parties was issued on July 24, 2022 to cover the period January 1, 2017 to December 31, 2018. ("2020 Award", Joint Exhibit 8). Thereafter, the parties reached agreement in a Collective Bargaining Agreement for the period January 1, 2019 through December 31, 2021. (Joint Exhibit 9).

The record shows that the parties began negotiations for a successor agreement in February 2022. On May 23, 2023, the Union filed a Declaration of Impasse with PERB (Joint Exhibit 1), and on December 4, 2023, the Union filed its petition for designation of a neutral arbitrator with PERB. (Joint Exhibit 2). Thereafter, on December 19, 2023, PERB designated Jeffrey M. Selchick, Esq., as Public Panel Member and Panel Chairman and Jennifer Clement as Public Employer Panel Member and William H. Ward, Jr., as Employee Organization Panel Member. This Panel's jurisdiction is limited to the two year period from January 1, 2022 through December 31, 2023.

An evidentiary hearing was held before the Panel on February 27, 2024 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 March 29, 2024, at which time the record was declared closed.

As noted above, the Panel's jurisdiction is limited to a two-year period, and the Panel is empowered to decide a just a fair resolution to the parties' dispute for

the years 2022 and 2023. 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 conference calls, the Panel was able to reach an Award. 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 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, 2022 through December 31, 2023.

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.

POSITION OF THE UNION

As the Union views the record, its demands should be accepted by the Panel, namely:

Pay Increases:

1. Effective January 1, 2022, \$1000.00 added to the base salary for all titles and then a 3% increase to all salaries (Retroactive to January 1, 2022)
2. Effective January 1, 2023, \$1500.00 added to the base salary for all titles and then a 3% increase to all salaries (Retroactive to January 1, 2023)

Hazardous Duty Annual Stipend:

2022: \$1000.00

2023: \$1000.00

Retention Stipend (One time):

\$3000.00 (Joint Exhibit 2).

The Union maintains that the County essentially seeks to "pay nothing" to members of the unit on their base wages for either of the two years under consideration and has not given any consideration to hazardous duty pay or a

retention stipend one-time payment for members of this bargaining unit. According to the Union, the County's position is contradicted by its last offer to the Union before impasse was declared, and "is a position which fails completely to take into consideration the prior findings of this panel which indicated that the base wages and benefits payable to the individuals involved in this case should be, at the least, commensurate with those paid to the Sheriff's Department Investigators in Albany County." Were the County's position accepted, the Union argues, members of the bargaining unit "would immediately be completely behind the eight ball in 2024 and thereafter because their base wages would be tremendously behind those of the Sheriff's Department Investigators and they would not have an entitlement to any signing bonuses, nor would they have any hazardous duty payment due them at any time during the contract year."

The Union acknowledges that, in December 2023, members of the bargaining unit were provided a grant by the Governor's Office. The grant, the Union notes, was entitled "Aid to Prosecution," and "was distributed by the District Attorney and his management staff among all the employees in the office by giving them all approximately eleven percent (11%) one time bonuses." The Union further notes the testimony of the Albany County District Attorney that there was no reason to believe that such a grant would be provided in the future and that both the District Attorney and employees to whom the grant was distributed understood the payments under the grant to be a "one time bonus." The Union also observes that the bonus was not added to base wages for members of the

bargaining unit, nor was the grant part of the County's budget but came directly from the Governor's Office. Thus, the Union stresses, the grant did not "affect the County's financial assets or liabilities in any way," but the County nevertheless seeks "to receive 100% of the credit for those [grant] monies received by the bargaining unit members and would like to skip 2 years of wage increases to those individuals' base wages, hazard duty pay, signing bonus, etc."

Turning to the 2020 Award, the Union observes that the Award was issued shortly after the onset of the COVID pandemic "and no one knew what affect it would have on the County's finances." In consequence, the Union observes, the Award did not bring members of the bargaining unit to parity with the Sheriff's Investigators. The Union claims that it "understood that concern on the part of the panel and accepted it given the unusual circumstances of those times." It is the Union's contention, however, because there was a lack of parity, "bargaining unit members lost money every time they were paid" for the period covered by the Award.

The Union also references the Collective Bargaining Agreement between the County and the Sheriff's Investigators for the period of 2017 through 2021 that reflects that Sheriff's Investigators not only received wage increases but, in 2018, received a new benefit in the form of hazardous duty pay, which benefit has increased in the Collective Bargaining Agreement with the Sheriff's Investigators for the period 2022 through 2027 as well as a signing bonus of \$2,500, "none of which was given to the DA's Investigators Bargaining Unit."

Thus, the Union asserts, its members "have been held back in terms of their wages and some benefits," and "even though there was a Collective Bargaining Agreement negotiated between the parties covering 2019 through 2021, the DA Investigators fell further behind during that intervening period covered by the three year collective bargaining agreement." The Union observes that the County has not raised any "inability to pay" defense. According to the Union, the bargaining unit "represents a real bargain to the County," as "[o]nly two (2) out of the ten (10) members of the bargaining unit have retirement and health benefits paid on their behalf." There is evidence in the record, the Union claims, that the County saves over \$302,000 annually because of this fact.

The Union asserts that its demands are "wholly and completely in line with this Bargaining Unit's attempt to get back to the level of at least parity with the Sheriff's Department Investigators in Albany County."

POSITION OF THE COUNTY

The County frames the issue as "not whether or not the County of Albany can afford an increase to titles included in the collective bargaining unit; but rather, is an increase equitable based upon the title, duties and circumstances, as compared to similarly situated investigators in New York State." The County asserts that the Panel must focus on and compare wages for "similarly situated DA investigators" as opposed to the Sheriff's Investigators in Albany County. The County insists that the work performed by DA Investigators and Sheriff's Investigators "is not the same."

The County also claims that there was "no statistical or factual evidence to back up their [Union witness] blanket statements as to scope of their duties or types of cases they handle." Further, the County maintains that the record "established that eight out of ten members of the bargaining unit receive 211 waivers to collect their full pension plus their full salary with no statutory limitation." No individuals in the Sheriff's Office, the County notes, are allowed a 211 waiver.

The County also maintains that the 211 waivers mean that there are no deductions from salary for health care or retirement. The County rejects the probative value of the testimony offered by District Attorney Soares. In the County's estimation, the District Attorney's testimony that the work of the Investigators is now significantly different because of the discovery law reforms in New York only supports its position "that the Union cannot use the comparison of the Sheriff's Office to seek compensation increases as they now perform a primarily administrative function since the implementation of the State's new discovery rules in criminal proceedings."

The County observes that the members of the bargaining unit formerly were part of the Sheriff's Unit, but that they "broke off to have their own unit." Thus, the County asserts, two different Collective Bargaining Agreements "diverged over time by providing for different compensation," which the County finds particularly significant because "the District Attorney confirmed that the work is different." Had the Investigators wanted the same pay, the County opines, they could have remained in the Sheriff's Unit or "could have negotiated for the same compensation

for both units at the same time,” given that both Unions have the same bargaining agent. It is now too late, according to the County, for the Union to “demand a ‘me too’ style of compensation for the District Attorney’s Investigators unit.” It is also the County’s position that the Union acted in bad faith during negotiations by engaging in “duplicitous behavior to take the same amount of money [provided in the grant] without negotiating for it through the collective bargaining progress.”

The County argues that the Union did not produce evidence to support its position that its members should be awarded any increase to base pay beyond the two installments of \$500 the County offered. Moreover, the existence of the 211 waivers, the County emphasizes, “is a substantial benefit which eliminates the maximum salary of \$34,000.00.” In addition, the County notes that Investigators have a “take home” vehicle and a clothing allowance. The County asserts “any award is provided by the panel that the wages of the DA Investigators [should] be set at the proposed rates offered by the County for the years 2022 and 2023.”

PANEL DETERMINATION

A useful starting point of analysis is the 2020 Interest Arbitration Award. (Joint Exhibit 8). The Award, as noted above, was for the two year period from January 1, 2017 to December 31, 2018. On the question of comparability, the Panel observed:

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. (Id., 14).

The Panel thus found "that similar titles in DA's offices and surrounding and upstate counties are not the appropriate comparison for purposes of our review herein." Instead, the Panel found the appropriate frame of comparability to be the Investigators in the Albany County Sheriff's Department. The Panel noted that, while the duties performed by Sheriff Investigators were "not fully comparable" to duties performed by members of the bargaining unit, the Investigators in both units "share the same employer." (Id., 15). Moreover, and significant to the Panel's analysis in the instant proceeding, is that the 2020 Panel concluded 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." (Id.).

The Panel also identified the fact that most of the DA Investigators did not require pension contributions and also did not require health insurance contributions on the part of the County, which resulted in "significant savings to the County." (Id., 16). Accordingly, the Panel concluded "that the unit of DA Investigators and Senior Investigators should be paid on par with those employed by the County in the same title and the Sheriff's Department." (Id., 17).

In awarding wages increases, the 2020 Panel also identified the fiscal "uncertainty" then present because of the COVID-19 pandemic, which influenced its Award on wage increases, but the Panel observed that the Award that "address[ed] the pay inequality existent between employees in the same titles in the two different units, and goes far to address and correct that inequality." (Id.).

At this juncture, the Panel finds that the Sheriff's Investigators should remain the appropriate focus of comparability. The Panel finds that the County adduced no evidence to persuade the Panel that this point of comparability should now be abandoned. On this point, the Panel observes that the lack of complete parity reflected in the 2020 Award between the DA Investigators and Sheriff's Investigators has continued, and it is the Panel's goal to not issue an Award that would increase this discrepancy.

Turning to the statutory factors and their application to questions of salary, hazardous duty, and retention bonus, the Panel observes that there is "no ability to pay" issue, as the County has conceded that point. Further, the Panel finds that the \$8555 bonus that the DA Investigators received in December 2023 as part of

the "Aid to Prosecution" grant has not been considered as "wages" for purposes of reaching a fair Award in this proceeding. The grant did not involve County monies, was a one-time payment not added to base, and was given in recognition of the substantial increase in the workload the DA Investigators faced because of changes brought about by the New York Bail Reform Act, including the significant discovery burdens the act imposed on prosecutors' offices in New York. Thus, although the Panel does take note of the fact that members of the bargaining unit did receive the bonus, that fact by itself does not have a great deal of probative value in terms of the appropriate base salary wage increase for the reasons set forth.

The Panel will proceed to address the three Union demands before it: hazardous duty pay, retention bonus, and salaries.

Discussion of Hazardous Duty Pay & Retention Bonus

First and foremost, the Panel notes that no evidence has been presented on the facts and/or circumstances that led to the inclusion of Hazardous Duty Pay and/or the Retention Bonus which are part of the Sheriff's Investigators negotiated collective bargaining Agreement. In the instant case involving the DA Investigators, it is clear that neither benefit has been included in the most recent collective bargaining Agreement which was negotiated between the parties.


In order for the DA Investigators to achieve similar benefits, at least on the present record, the Union will be required to obtain them in negotiations. The Panel cannot discern what facts existed to support the award of Hazardous Duty

Pay to the Sheriff's Investigators. It is a fair assumption, as to the Retention Bonus, that this benefit was obtained by the Sheriff's Investigators to retain staff who were leaving to accept other employment. It is also a fair observation that it was included as part of a six-year negotiated contract, which saw in return the County achieving some respite from bargaining, planning, budgeting, as well as achieving a stable and predictable relationship with the Sheriff's Investigators for the life of that contract. This proceeding, however, is interest arbitration and is not an appropriate forum to add new benefits typically obtained in negotiated multiyear contracts. Further, the Panel observes that the record contains no evidence that there is any retention problem in the DA Investigators unit or, for that matter, the extent of any retention problem which existed in the Sheriff's Unit.

The Panel's Award, therefore, denies the Union's demands for Hazardous Duty Pay and for a Retention Bonus.

AWARD ON HAZARDOUS DUTY PAY

The Union's demand on hazardous duty pay is denied.



 Concur

Jennifer Clement

 Dissent

 Concur


William H. Ward, Jr.



 Dissent

AWARD ON RETENTION BONUS

The Union's demand for a retention bonus is denied.



 Concur

Jennifer Clement

 Dissent

 Concur

William H. Ward, Jr.



 Dissent

Discussion of Wage Increases

The record shows that for the year 2021 the following comparison can be made between salaries for the DA Investigators and the Sheriff's Investigators:

	DA 2021	Sheriff 2021	Difference
Inv.	\$75,195	\$75,943	\$718
Sr. Inv.	\$78,701	\$79, 952	\$1,251

(Joint Exhibits 9,12)

The record also shows that the Sheriff's Investigators, for the year 2022, received a 2% increase in salary, which, for the year 2022, widens the above gap in 2021 salaries. While "comparable" does not mean the "same," the 2020 Award sought to keep the DA Investigator's from "earning so much less than" the Sheriff's Investigators. (Joint exhibit 8). The Union has asked for a \$1,000 addition to base for all titles and a 3% increase to all salaries for 2022. This demand, if awarded, would exceed what the Panel considers to be a reasonable addition to salaries.

Instead, the Panel, for 2022, will issue an Award that adds \$500 to base for all titles and a 2% increase in salaries. This Award narrows the differences seen above for 2021 and is consistent with the 2020 Award application of comparability. Thus, the Award reflects the following comparison for 2022:

	DA 2022	Sheriff 2022	Difference
Inv.	\$77,209	\$77,462	\$253
Sr. Inv.	\$80,785	\$81,551	\$766

For 2023, the record shows that the Sheriff's Investigators receive a \$1,500 addition to base and a 2% increase. (Joint Exhibit 12). The Panel will apply this same addition to base and salary increase to the DA Investigators for the second year of the Award. The Award reflects the following comparison.

	DA 2023	Sheriff 2023	Difference
Inv.	\$80,283	\$80,541	\$258
Sr. Inv.	\$83,931	\$84,712	\$781

As can be seen, the Award on salaries reduces somewhat the base salary differences set forth in 2021 between DA Investigators and the Sheriff's Investigators, and the "difference" for each of the two year Award essentially remains the same. Put differently, the Award for two years reduces the gap in salaries proportionately for both Investigators and Senior Investigators in the DA Investigator's unit as compared to the Sheriff's Investigators.


AWARD ON WAGE INCREASES

Effective January 1, 2022 and retroactive to that date, \$500 shall be added to base salaries for all titles and base salaries for all titles shall then be increased by 2%.

Effective January 1, 2023 and retroactive to that date, \$1,500 shall be added to base salaries for all titles and base salaries for all titles shall then be increased by 2%.

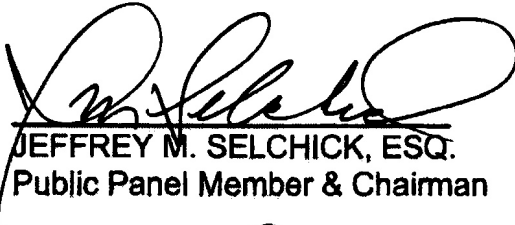
Retroactivity shall only apply to those employees on the payroll on the Date of this Award and/or any employee who has separated from service due to retirement or disability.

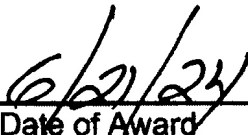

 Concur _____ Dissent _____
 Jennifer Clement


 Concur _____ Dissent _____
 William H. Ward, Jr.

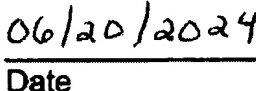
TERM OF AWARD


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, 2022 through December 31, 2023.

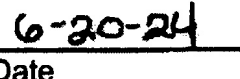

 JEFFREY M. SELCHICK, ESQ.
 Public Panel Member & Chairman


 Date of Award


 JENNIFER CLEMENT, ESQ.
 Public Employee Panel Member


 Date


 WILLIAM H. WARD, JR.
 Employee Organization Panel Member


 Date

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

On this 21 day of June, 2024 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.



Lauren A. Davis
Notary Public

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

On this 20th day of June, 2024 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 he acknowledged to me that she executed the same.

GALAL ALDEEN I CANCER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CA6421886
Qualified in Albany County
My Commission Expires 09-13-2025

Galal Cancer
Notary Public

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

On this 20th day of JUNE, 2024 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.

EMILY SCHULTZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 02SC6441251
Qualified in Albany County
My Commission Expires 09-26-2026

Emily Schultz 6/20/24
Notary Public