

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between the

CITY OF BINGHAMTON, NEW YORK

"Public Employer"

-and the-

BINGHAMTON POLICE PATROLMEN'S ASSOCIATION

"Employee Organization"

O P I N I O N

A N D

A W A R D

**PERB Case #IA 2004-017
#M 2003-021**

INTRODUCTION

This present matter before the Panel is an Interest Arbitration between the City of Binghamton, New York and the Binghamton Police Benevolent Association. Binghamton is the county seat of and the only city within Broome County.

The Binghamton Police Benevolent Association is the sole and exclusive bargaining representative for all police officers who are employed in the Police Department of the City of Binghamton with the exception of the Chief of the Department as provided in Section 1, "Recognition," and Section 1.A, "The Collective Bargaining Unit" of the "current" (2003) Collective Bargaining Agreement. Presently, the total complement of the bargaining unit of the Association is approximately 147, including approximately 116 Police Officers, 19 Sergeants, 5 Lieutenants, 5 Captains, and 2 Assistant Chiefs.

This Interest Arbitration was invoked pursuant to the provisions of New York Civil Service Law, Section 209.4, and Part 205 of the Rules of Procedure of the New York State Public Employment Relations Board (hereinafter referred to as "PERB"). At issue are the terms of a new collective bargaining agreement. Negotiations for a new agreement began on February 18, 2003. Four (4) other negotiation sessions were held before a joint Declaration of Impasse was filed by the parties on May 7, 2003, asking the New York State Public Employment Relations Board to appoint Kevin Flanigan as the mediator to help resolve the open issues. Through Mr. Flanigan's mediation, the parties agreed to and ratified the mediator's recommendations for the calendar year 2003 on June 28, 2004. As part of that Interim Agreement, the parties agreed to continue their negotiations in mediation on terms commencing on January 1, 2004. The parties were not successful in mediating all of their differences.

On January 17, 2005, a petition was filed by the Association for Compulsory Interest Arbitration. That petition was received by PERB on January 20, 2005. The City filed a Response on January 31, 2005 which was received by PERB on February 2, 2005. The City simultaneously filed an Improper Practice Charge alleging a violation of Section 209-a.2(b) of the Public Employees' Fair Employment Act. The Improper Practice Charge was withdrawn on July 14, 2005 after the parties agreed that the ground rules for the negotiation had been violated by the Association when it did not fully support a tentative agreement that had been reached.

The parties are operating under the 2003 Interim Collective Bargaining Agreement. In response to the Employee Organization's petition, PERB, on November 28, 2005, designated a Public Arbitration Panel for the purpose of making a "just and reasonable

determination of the matters in dispute” consistent with the statutory provisions and procedural rules applicable to the Interest Arbitration process.

The designated Panel was constituted as follows:

Douglas J. Bantle, Esq.	Chairperson and Public Panel Member
Gregory J. Poland, Esq.	Public Employer Panel Member
John B. Schamel	Employee Organization Panel Member

The Public Arbitration Panel hearing convened on December 1, 2005 in the City Council Chambers Conference Room of Binghamton City Hall and concluded on the following day, December 2, 2005. The parties were offered full opportunity to present evidence and argument and to examine and cross-examine witnesses.

Representing the parties were:

For the Binghamton Police Benevolent Association (BPBA):

Richard N. Aswad, Esq., Attorney, Aswad & Ingraham

For the City:

David W. Watkins, Director of Personnel & Safety

Appearances for the parties follow:

For the Binghamton Police Benevolent Association (BPBA):

Kevin Decker, Economist
Craig Follett, President, BPBA
John Chapman, BPBA Trustee
Matthew Zandy, Binghamton Police Department (BPD) Investigator
Francis Rice, Vice-President, Benefit Advisors of New York
Duane J. Shaffer, Jr., Police Captain, BPBA Trustee
Douglas Pipher, Vice-President, BPBA
Brian T. Faughnan, Sergeant BPD

For the City:

Richard A. Bucci, Mayor
Scott McNerney, Civil Service Administrator
Beverly J. Palmer, Comptroller, Director of Finance

Initially at the December 1, 2005 hearing, the parties agreed to a process of "final offer binding arbitration by package" with the "final offer package" to be limited to four "open" items:

- 1) Salary,
- 2) Health Insurance,
- 3) On-Call Pay for Detectives, and
- 4) Sick Leave (Payout at time of Retirement).

The parties completed their testimony and evidence on these four items on December 2, 2005. In a subsequent agreement on January 30, 2006, the parties agreed to terminate the "final offer binding arbitration by package" process, to allow alteration of their respective positions, but to continue to limit the scope of the issues to the same four "open" items. The parties also stipulated and agreed that three financial information exhibits were accurate as to the cost of three of the open items and that this information would be used by both parties in their briefs. The agreed-upon exhibits were:

- Exhibit B: health insurance,
- Exhibit C: sick leave pay out, and
- Exhibit D: salary.

The parties agreed that briefs would be sent to panel members by 6 p.m. on February 17, 2006 and that reply briefs, if any, would be sent by 6 p.m. on February 24, 2006. The last submission was received by the Panel on March 6, 2006.

Following the hearing and the receipt of the briefs and reply briefs, the Panel met in Executive Session on June 16, 2006 at which adequate time was taken to review the data submitted. The Panel carefully reviewed and considered the positions of each party, weighed the arguments presented, examined the evidence before it, and engaged in discussions and deliberations in an effort to reach a unanimous Award. The Panel Members signed the Panel Award (Appendix A attached) on that day.

Subsequent to the Panel's award, the question arose as to whether that part of the Award determining the On-Call Pay matter commenced as of the date of the Award or whether it commenced at some other time. Panel members met and agreed to a supplement to the Award (Appendix B attached) in October 2006 with the final signature affixed on October 12, 2006.

Since the original positions of the parties were set forth in detail in the Petition, Response, hearing testimony, exhibits, briefs, and reply briefs, these are all incorporated by reference into this Award. Thus, the positions of the parties which follow are only briefly summarized for this Opinion and Award.

Each party extended jurisdiction to the Panel and authorized the same to submit an Award which would extend for two (2) years. Accordingly, this Panel, by unanimous agreement, issues the following Award which constitutes a "just and reasonable determination" of the parties' contract for the period January 1, 2004 through December 31, 2005.

Furthermore, the Panel has agreed unanimously that this Award be incorporated verbatim into the January 1, 2003 - December 31, 2003 Collective Bargaining Agreement. As a result of this, the January 1, 2004 - December 31, 2005 Collective Bargaining

Agreement will consist of all provisions of the previous Agreement and its amendments, if applicable, plus the provisions contained in this Award. Issues which were presented to the Panel for consideration, but are not changed by this Award, shall be part of the 2004-2005 Collective Bargaining Agreement using the language contained in the 2003 Collective Bargaining Agreement.

This Award is the result of compromises worked out by the parties with the assistance of the Panel Chairperson. It is a product of analyzing voluminous amounts of data, reviewing numerous supporting documents, and lengthy discussions. It must be viewed as a total package and not as a total agreement of all three (3) Panel members on every item. Having said that, the Interest Arbitration Panel has unanimously agreed on the following determinations on the issues presented to it in the hearing held December 1 and 2, 2005.

In making the following determinations the Panel, as well as the parties, took into consideration the following statutory criteria as required by Section 209 of Article 14 of the Civil Service Law. Section 209.4(c)(v) states,

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 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 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.

DISCUSSION AND DETERMINATION OF THE ISSUES

As in all cases of this type, the Panel has spent a great deal of time, individually and together, in examining the evidence that was presented to it. In the Executive Session we have discussed all of the items presented to us. This Opinion will briefly summarize the positions of the parties on the issues. For each issue, after the parties' contentions are summarized, there will follow the determination agreed upon unanimously by the Panel.

SALARY

The Association makes a number of arguments based on the statutory criteria stated above:

- It states with regard to the ability of the public employer to pay that, "[t]his issue is not raised by the City and therefore is not relevant here. (See transcript 306-307)."¹
- The interest and welfare of the public are served by a strong, qualified, well-trained police force. Such a force is needed to combat the increase in reported major crimes in Binghamton. "Providing fair salary and benefits to the police as a morale issue is in the public interest."²

¹Memorandum Submitted on Behalf of Petitioner Employee Organization Binghamton Police Benevolent Association, p. 12.

²*Ibid.*

- Law enforcement in the City of Binghamton is increasingly hazardous as major crimes, the number of dangerous weapons on the streets, congregations of crowds, gangs, the drug trade, and shootings are all on the rise.
- The police in the City of Binghamton face more hazardous conditions than the members of the other full time law enforcement agencies in Broome County and therefore its members should be the highest paid of those comparable agencies: the Broome County Sheriff's Department, the Village of Endicott Police Department, the Village of Johnson City Police Department, and the Town of Vestal Police Department.

To accomplish a salary level commensurate with the higher level of hazardous duty faced by the City of Binghamton Police as compared to these comparable Broome County agencies, the Association asserts that the 2003 base salary for the various positions would have to be increased as follows:

<u>Position</u>	<u>Increase</u>
Patrol Officer	\$629
Sergeants	\$927
Lieutenants	\$5,245
Captains	\$6,106
Assistant Chief	\$6,106

These 2003 base pay adjustment proposals are equivalent in cost to a percentage increase of 2.1276%. Given the announced salary increases for 2004 and 2005 among the comparable agencies, these adjusted 2003 base salaries would have to be increased by an additional 3% across-the-board increase for all positions in each of the 2004 and

2005 years to keep the Binghamton salaries commensurate with the higher level of hazardous duty faced by the City of Binghamton Police as compared to these comparable Broome County agencies. Alternatively, the Association proposes across-the-board increases over the existing 2003 base salaries of 6% for 2004 and 6% for 2005.

The Association cites the testimony of Comptroller Beverly J. Palmer to demonstrate that “parity” with the firefighters does not mean the imposition of exactly the same contractual provisions. It notes several differences between the police and the firefighters’ contracts:

First, the firefighters have a different retirement plan, different wages, different shifts with the ability thereby to supplement income through other employment by virtue of three consecutive days off, different systems for uniforms with the quartermaster system for firefighters and different salary costing mechanisms because of their retirement system choice.³

The City argues that the “interests and welfare of the public and the financial ability of the public employer to pay” mandate the continuation of the “pattern bargaining” established over the past nine years. During that time the Association received the same 26% (without compounding) wage increases as did the firefighter’s union and other City bargaining units. To “exceed the increases granted to other City unions in 2004 and 2005 would severely compromise the City’s future bargaining stance with all its unions and begin the long, slippery slope into the realm of financial instability, and even to the brink of insolvency.”⁴

The City disputes that the “comparable communities” cited by the Association are

³*Ibid.*, p. 58.

⁴Respondent Public Employer’s Post Hearing Brief, p. 4.

comparable as those communities are not comparable to the City of Binghamton “in terms of population, similar size numbers of police officers, similar demographics, similar median incomes and other socio-economic factors.”⁵ Lacking any valid external “comparables,” the City’s own similar bargaining units are the only valid comparisons on the subject of wages. Even so “[a]n award that contained a wage increase of 7%-7.5% in cost over 2 years, such as a 2-2.5%% [sic] in 2004 and a 3%/2% January/July split in 2005 would even seemingly satisfy the BPBA’s argument . . . that . . . their base wage for a 3-year police officer . . . be at the top of all police and other law enforcement agencies in Broome County.”⁶

The City disputes the Association’s contention the City of Binghamton has become a more dangerous place for Association members to work. It cites statistics showing that major offenses in 2004 have been reduced 31% when compared to 1993. It notes that the City has provided its police officers with a number of additional and upgraded resources to combat crime safely including digital fingerprinting, mobile computer terminals, additional overtime, better vests, and a SWAT van, prisoner transport vehicle, and mobile crime lab.

Neither party presented the Panel with compelling examples meeting the statutory factors of relevant comparisons: “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.” The communities cited by the Association are not similar to the City in terms of the size of their forces or their population

⁵*Ibid.*, p. 5.

⁶*Ibid.*, pp. 6-7.

and other demographic characteristics. The City's comparison with other City unions does not take into account the distinct skills, working conditions and degree of hazard unique to law enforcement officers. It is the opinion of this Panel that a "just and reasonable" wage increase has to be a balance involving the elements of the City's ability to pay, the burden on the taxpayers, and the necessity of providing a "fair and equitable" remuneration for the police officers who provide a high level of service in a sometimes dangerous profession. Through this analysis, as well as taking into consideration the other elements of the entire economic package, the Panel has been able to come to a determination of a "*just and reasonable*" salary increase for the unit members. It is,

Salary will be increased across the board:

- A) For contract year 2004 by 2.5%,
- B) For contract year 2005 by 3%, effective 1/1/05, and by an additional 2.75%, effective 7/1/05.

HEALTH INSURANCE

The City of Binghamton contends that the Binghamton Police Benevolent Association has itself argued in negotiations on health insurance from 1987 through 2003 that parity with the IAFF, Local #279 was its goal. Parity as proposed by the BPBA and accepted by the City has been achieved over the nine-year period leading up to the current negotiations. The City now argues that this parity on health insurance should continue and contends that the BPBA has provided no evidence to the contrary. The City further notes that on salary issues the Association claims it should have parity with the Broome County Sheriff's Department, but it ignores the fact that parity with that Department on health care premiums would mandate the elimination of a cap on contributions. To maintain both

internal and external parity, the City proposes:

- the elimination of any “cap” on the 10% contribution made by Association members toward health insurance premiums;
- the annual deductibles be increased from \$50 to \$100 for individual plans and from \$150 to \$300 for family plans;
- the annual stop-loss insurance on the Master Medical portion of the health plan be increased from \$2000 to \$3000; and
- the maximum annual co-pay for an individual under the Master Medical portion be increased from \$400 to \$600.

The City further notes that parity with other City employees would allow Blue Cross/Blue Shield of Central New York to print a summary plan document for all City employees and eliminate the complaint of the Association over the lack of a plan document.

The Association contends that its members suffer from lack of information about exactly what plan and coverage they receive and what entity sets the premiums. It contends that in the light of this uncertainty, the removal of the cap on member contributions would put its members at great risk. The Association also contends that all but one of its universe of comparables has a cap on employee contributions. Therefore, the Association’s position is that the cap on contributions should remain at \$700.

As the Association points out, increased contribution for health insurance is a monetary issue and must be considered in combination with salary increases. After careful consideration of the parties’ positions and the entire economic package, the Panel has reached the following determinations on health insurance:

- A) Effective July 1, 2006, the cap on employee contributions, to the

health insurance plan, shall be increased from the current \$700 to \$1050.

- B) Further, effective July 1, 2006, annual deductibles shall be increased to \$100 individual and \$300 family plan.
- C) Finally, effective July 1, 2006 the effective stop loss maximum under Blue Cross/Blue Shield Major Medical is increased from \$2000 to \$3000.

ON-CALL PAY FOR DETECTIVES

During the negotiations process the Association made a proposal to the City on the issue of On-Call Pay for Detectives and the City made a counterproposal. In its final brief, the Association calculated that when applied retroactively to 2004, the City proposal would cost \$70,000. The Association then proposed that its calculated \$70,000 amount be instead applied to the pay for all members of the bargaining unit and that the parties negotiate on the On-Call Pay issue in the 2006 negotiations. The City contests both the Association's \$70,000 calculation and the Association's proposal to move this amount into the wage increase for all members. The City estimates that the additional cost of its proposal would be \$48,000, not \$70,000. The City argues that either its proposal should be included in the award or the award should not include this issue at all.

As both parties acknowledge, this issue is inextricably linked with the other economic issues. After careful consideration of the parties' positions and the entire economic package, the Panel reached the determination on June 16, 2006 to include the following contractual language in its award:

On-Call Pay for Detectives – The Detective Division of the Police Bureau

assigns up to four (4) detectives each day to act in an on-call capacity between the hours of 4 PM and 8 AM. The City agrees to pay each detective who works in an on-call capacity the sum of \$40.00 per day while serving in such an on-call capacity. However, if the detective is called into work, the \$40.00 shall be considered full compensation for the first hour of work and the detective shall receive either overtime for the remainder of hours worked or two additional hours of overtime, whichever is greater. The Police Chief shall have the right to promulgate a general order regarding this subject including the issue of any detective who is on-call and does not respond when called in.

SICK LEAVE (PAYOUT AT TIME OF RETIREMENT)

The Association proposes to increase the payment at the time of retirement for accumulated sick leave from 50% of the maximum 150 accumulated days (75 days at full pay) to 100% of the 150 maximum days. The Association argues that it is in the public interest and welfare to provide an increased incentive for experienced officers to stay in the force and give the City the benefit of that experience for more time before retirement. It cites the Broome County Sheriff's Department policy as a comparable supporting its proposal.

The City has offered to increase the payment at the time of retirement from 50% (75 days at full pay) to 66% (100 days at full pay) of the maximum allowable accumulation of sick days (150 days), effective prospectively from December 31, 2005. It states that none of the comparable jurisdictions cited by the Association has a more generous cash-out of sick leave provision than this offer. The City further notes that its offer is comparable to the terms it has agreed to with the IAFF, Local #729 and the CSEA effective January 1, 2006.

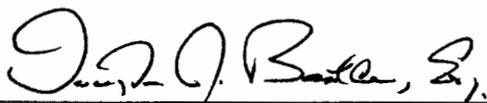
The Panel again examined this proposal as part of the total economic package. There certainly is a potential benefit to "the interests and welfare of the public" of having

officers with substantial experience and ties to the community. Therefore, we award the following:

Sick Leave – Police Officers at time of their retirement, including disability retirement of any kind awarded by the New York State Police and Firemen Retirement System, will be paid for two-thirds of their unused accumulated sick time up to a maximum of 150 days at two-thirds pay (100 days at full pay) effective on and after December 31, 2005. Sick leave pay-out shall be computed solely on the number of sick days accrued as an employee of the City of Binghamton.

As stated previously, unless changed by this Award, the language found in the January 1, 2003 - December 31, 2003 Collective Bargaining Agreement is to be incorporated into the new January 1, 2004 - December 31, 2005 Collective Bargaining Agreement between the parties.

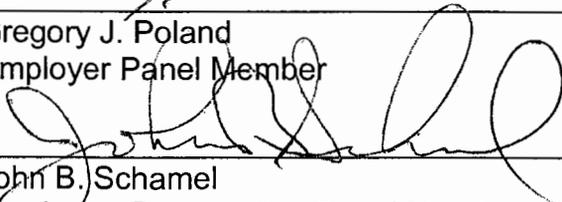
The duly appointed Interest Arbitration Panel, having given due consideration to the issues herein and pursuant to the criteria as contained in the New York State Civil Service Law, Article 14, Sections 209.4 (c)(v) (Public Employees Fair Employment Act or "The Taylor Law") has determined the issues as specified above, on June 16, 2006 in Geneva, New York.



Douglas J. Bantle
Public Panel Member



Gregory J. Poland
Employer Panel Member



John B. Schamel
Employee Organization Panel Member

STATE OF NEW YORK)
) SS.:
COUNTY OF CHEMUNG)


John B. Schamel
EMPLOYEE ORGANIZATION PANEL
MEMBER

Sworn to me before me this 9 day
of October, 2007


Notary Public

TERI J. YORK-BROWN
Notary Public, State of New York
Chemung County No. 01YO6132861
Commission Expires August 29, 2008

PANEL AWARD

The Interest Arbitration Panel has unanimously agreed on the following of the Determinations on the issues presented to it in the hearing held December 1-2, 2005.

This Award will be followed by an Opinion which will set forth the Panel's rationale for its Determinations contained herein.

- 1) SALARY will be increased across the board;
 - A) For contract year 2004 by 2.5%
 - B) For contract year 2005 by 3%, effective 1/1/05, and by an additional 2.75% effective 7/1/05.

- 2) Health Insurance -
 - A) Effective July 1, 2006, the cap on employee contributions to the health insurance plan, shall be increased from the current \$700 to \$1050.
 - B) Further, effective July 1, 2006, cap annual deductibles shall be increased to \$100 individual + \$300 family plan
 - C) Finally, effective July 1, 2006, the effective stop loss maximum under Blue Cross/Blue Shield Major Medical is increased from \$2000 to \$3000.

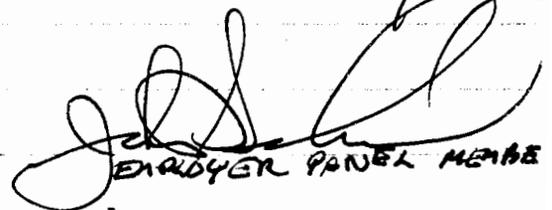
- 3.4) For the issues involving Sick Leave + Ch-Call Pay For Detectives the Panel Awards the following:

Sick Leave – Police Officers at time of their retirement, including disability retirement of any kind awarded by the New York State Police and Firemen Retirement System, will be paid for two-thirds of their unused accumulated sick time up to a maximum of 150 days at two-thirds pay (100 days at full pay) effective on and after December 31, 2005. Sick leave pay-out shall be computed solely on the number of sick days accrued as an employee of the City of Binghamton.

On-Call Pay for Detectives – The Detective Division of the Police Bureau assigns up to four (4) detectives each day to act in an on-call capacity between the hours of 4 PM and 8 AM. The City agrees to pay each detective who works in an on-call capacity the sum of \$40.00 per day while serving in such an on-call capacity. However, if the detective is called into work, the \$40.00 shall be considered full compensation for the first hour of work and the detective shall receive either overtime for the remainder of hours worked or two additional hours of overtime, whichever is greater. The Police Chief shall have the right to promulgate a general order regarding this subject including the issue of any detective who is on-call and does not respond when called in.

The duly appointed Interest Arbitration Panel, having given due consideration to the issues herein and pursuant to the criteria as contained in the New York State Civil Service Law, Article 14, Sections 209(c)(4)(v) (Public Employees Fair Employment Act or "The Taylor Law") has determined the issues as specified above, on June 16, 2006 in Geneva, New York.

Douglas J. Bentley 6/16/06
Public Panel Member


EMPLOYER PANEL MEMBER

Gregory J. Poland - 6-16-06
Employer Panel Member

**In the Matter of the Binghamton PBA
Interest Arbitration, On Call Pay for Detectives
Resolution**

Settlement

Whereas, a Panel Award (hereinafter the "Award") was made in the matter of the Binghamton PBA Interest Arbitration on June 16, 2006, and

Whereas, the Award resolved the "On-Call Pay for Detectives" (hereinafter "On-Call Pay") issue, and

Whereas, thereafter, a question arose as to whether that part of the Award determining the On-Call Pay matter commenced as of the date of the Award or whether it commenced at some other time, and

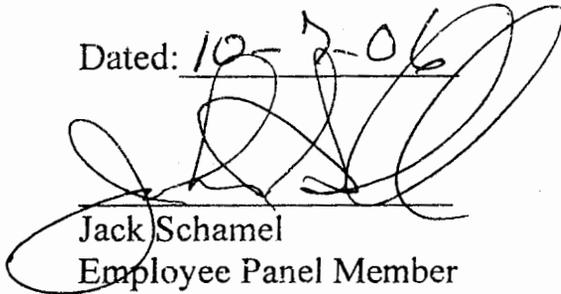
Whereas, the parties have reached agreement on when On-Call Pay, as Awarded, shall commence,

Now Therefore, the Parties, having given due consideration to the issue, Agree as follows:

- 1) On-Call Pay for Detectives, as that issue was determined by the Interest Arbitration Award dated June 16, 2006, shall commence

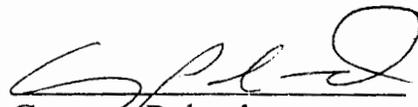
seven months and one pay period prior to June 16, 2006, the date of the Award.

Dated: 10-2-06



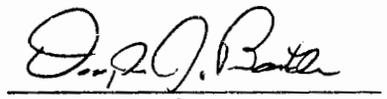
Jack Schamel
Employee Panel Member

Dated: 10-3-06



Gregory Poland
Employer Panel Member

Dated: 10/12/06



Doug Bantle
Public Panel Member

Binghamton PBA

President

City of Binghamton

Mayor