

NEW YORK STATE PUBLIC EMPLOYMENT
RELATIONS BOARD
Case No. IA 2006-24; M 2006-093

In the Matter of the Arbitration	:	<u>OPINION</u>
- between -	:	<u>OF</u>
THE CITY OF NEW YORK	:	<u>PUBLIC</u>
- and -	:	<u>ARBITRATION</u>
PATROLMEN'S BENEVOLENT ASSOCIATION	:	<u>PANEL CHAIR</u>
OF THE CITY OF NEW YORK, INC.	:	
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Pursuant to Section 209.4 of the New York Civil Service Law ("Taylor Law"), on July 11, 2007 the New York State Public Employment Relations Board ("PERB") designated the undersigned Public Arbitration Panel in the above dispute between the City of New York ("City") and the Patrolmen's Benevolent Association of the City of New York, Inc. ("PBA"): Susan T. Mackenzie, Esq., Public Panel Member and Chair; Carole O'Blenes, Esq., Public Employer Panel Member; and, Jay W. Waks, Esq., Employee Organization Panel Member. By accepting appointment to this Public Arbitration Panel, the Panel Members agreed to "make a just and reasonable determination on the matters in dispute" between the parties over the terms of their collective bargaining agreement for the contract term, August 1, 2004-July 31, 2006. Pre-hearing conferences were held on August 27, 2007 and September 17, 2007, and hearings on November 6, 27, 28 and 29, 2007, December 12, 13 and 14, 2007, and January 7, 8, 9, 10 and 11, 2008. A transcript of the hearings was recorded and all witnesses gave sworn testimony. The parties filed pre-hearing briefs on October 22, 2007, post-hearing briefs on February 20, 2008 and reply briefs on March 11, 2008. The Panel met in executive session on March 19, 2008, April 29, 2008, May 9, 2008 and May 19, 2008.

BACKGROUND

The parties agree that New York City is a unique jurisdiction and that the New York Police Department ("NYPD") is the premier police force in the nation. The parties disagree on what terms and conditions of employment for the August 2004-July 2006 contract term are necessary to preserve that status and whether New York City police officers should receive, as the PBA urges, an increase in compensation that far exceeds a pattern of increases reached through negotiations between the City and other uniformed bargaining units, or, as the City urges, a pattern-conforming increase.

Both positions have merit. In maintaining firm adherence in approach to their respective positions throughout this proceeding and for the past several years, the parties have been unable to engage in a dialogue and exchange that can foster accommodation of their competing goals. Nor has the availability of interest arbitration in its current form had the desired effect of a return

by these parties to collectively bargained settlements. The limitation on awarding a contract term in excess of two years, the fact that the contract term at issue expired almost two years ago and the requirement of concurrence by another Panel Member further restrict the flexibility of this Panel to render an award that may best incorporate the parties' respective interests. These restrictions are matters of public policy to be addressed in political and legislative forums.

This Panel's charge is to render a just and reasonable determination on the issues presented, guided by the statutory criteria. These criteria include: comparison of wages and working conditions with other employees performing similar services or requiring similar skills under similar working conditions and other employees generally in public and private employment in comparable communities; the interests and welfare of the public and ability to pay; peculiarities of police work, including hazards, physical qualifications, educational qualifications, mental qualifications, job training and skills; and, the terms of the parties' prior collective bargaining agreements.¹

The Taylor Law standards are similar to the standards under the New York City Collective Bargaining Law ("City Law") that previously governed resolution of interest disputes between the parties. Both statutes include a standard of comparisons of wages and working conditions of employees performing similar services. The Taylor Law does not, however, include the City Law's requirement of a comparison to "other employees in New York City." Nevertheless, in considering the terms of the parties' past agreements that reflect parity and pattern relationships among bargaining units in the City, the Panel necessarily takes these relationships into account.

¹ New York State Civil Service Law Section 209.4.c, applicable to compulsory interest arbitration provides in relevant part:

(iv) all matters presented to the public arbitration panel for its determination shall be decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in dispute before it, shall, upon the joint request of its two members representing the public employer and the employee organization respectively, refer the issues back to the parties for further negotiations;

(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 employees involved in the arbitration proceeding with 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.

(vi) the determination of the public arbitration panel shall be final and binding upon the parties for the period prescribed by the panel, but in no event shall such period exceed two years from the termination date of any previous collective bargaining or if there is no previous collective bargaining agreement then for a period not to exceed two years from the date of determination by the panel. Such determination shall not be subject to the approval of any local legislative body or other municipal authority.

WAGE INCREASE

PBA PROPOSAL

The PBA proposes a two-year contract term with a minimum wage increase of 34.17%.

The PBA takes the position that under the Taylor Law standards, an award must be based on "appropriate market-based increases" and use of comparability "benchmarks," not on the "lock step pattern" relationships with different City bargaining units. In many rounds of bargaining since 1980 there has been a difference between uniformed and civilian bargaining groups, and in some bargaining rounds a difference among uniformed groups as well.

According to the PBA, a substantial increase in compensation, well above the pattern set and followed by other City bargaining units during the contract term at issue, is warranted and necessary in light of the relative and substantial decline in New York City police officer pay in comparison to police officer pay in other jurisdictions. The 10 local jurisdictions identified in the July 2005 interest arbitration proceeding between the parties are the most appropriate comparators. A 34.17% increase over a two-year term would merely raise compensation of the NYPD police officers to the average compensation in the local jurisdictions by the end of the contract term.

The PBA urges that the City's claim of potential "chaos" in City bargaining and finances as a result of a higher award in this proceeding is without foundation. The City has the ability to pay the PBA proposal and it is a question of unwillingness, not inability to pay. The City finds funding for other priorities such as substantial increases in capital spending. The PBA also urges that the consistently low wages of New York City police officers has resulted in a decline in Departmental morale and an increasing inability by the Department to recruit and retain qualified, let alone the best, officers.

NEW YORK CITY PROPOSAL

The City proposes a wage increase not to exceed a net cost to the City of 6.24%, 3% effective the first day of the 24-month contract term and 3.1% effective the first day of the 13th month of the contract term.

According to the City, under the Taylor Law standards, an award must preserve long-established parity relationships among the uniformed forces—some dating back to the late 19th century—and be consistent with the uniformed pattern for the 2004-2006 round of bargaining. It views pattern bargaining and parity relationships as "well-established historical fact," repeatedly recognized and enforced by impasse panels and interest arbitration panels. Conformance of this Panel, the City urges, is "essential" to the preservation of order and economic stability of the City and to the preservation of stable labor relations in contrast to the parity wars during the late 1960s and early 1970s.

The City emphasizes that since the issuance of the most recent PBA interest arbitration award, all other uniformed force settlements (13 of 14) have adhered to pattern and parity principles for the 2006-2008 round, and 10 of 14 for the 2008-2010 round. These settlements reaffirm recognition of long-standing relationships while at the same time permit flexibility in

fashioning unit-specific enhancements through funding mechanisms and cost-savings measures such as reduction in vacation days, different uses of rescheduling days or joint support for legislation.

The City urges that there is no other community comparable to New York City in terms of size, diversity of population and budgetary demands. The only truly appropriate comparison is with other City employees. If any comparison with other jurisdictions is deemed necessary, overall compensation comparisons with other large cities in the United States as opposed to small urban or suburban jurisdictions is more appropriate, and New York City ranks favorably in such comparisons. A meaningful comparison of compensation levels also includes the other benefits on which the City spends 60% above total direct compensation. Inclusion of cost of living differences in cost comparisons is not appropriate and can result in "seriously distorted and misleading" comparisons.

In the City's view, there is no recruitment crisis, no retention crisis and no other "unique, extraordinary, compelling and critical circumstance" that would justify a break with the pattern. Crime levels have continued to decline during the relevant time period, and there is no threat to public safety. Other advantages of NYPD police officer employment include training and the prestige and recognition of the NYPD as the premier police department in the country. Extensive career paths, including post-retirement opportunities and opportunities for promotion, are available to New York City police officers that are not available to officers in other jurisdictions.

Additionally, the City's ability to pay is restricted by its legally-mandated balanced budget, and the growth of non-discretionary expenses such as pension, health insurance and debt service payments that are continuing to increase. The recent downturn in the economy, increasing projected budget gaps in the upcoming years and the current direction to all City agencies to reduce budgets have a significant, adverse impact on the City's ability to pay any above-pattern increase.

FINDINGS ON WAGE INCREASE

Comparability

Wage or compensation comparisons between New York City and other jurisdictions must take into account the fact that no other jurisdiction, nationally or locally, is a "perfect twin" or comes close to New York City in the size of its police officer workforce. At the end of 2006 there were approximately 23,269 police officers in New York City, but only an estimated 9,500 in Los Angeles. Locally, there are fewer than 2,000 police officers in Suffolk County and in Nassau County, fewer than 1,200 at the Port Authority of New York/New Jersey ("Port Authority"), approximately 500 at the Metropolitan Transit Authority ("MTA") and approximately 400 in Yonkers.

When factors such as diversity and density of populations and neighborhoods, the volume of commercial as well as residential activity and the need for extensive social services are taken into account, the demographics of large urban jurisdictions more closely approximate New York City than do suburban counties or communities. Historically New York City police officer wages were "in general and in the aggregate superior to those prevailing in other major cities," as

recognized by a 1975 impasse panel in a prior dispute between the parties. In more recent years the relative standing of New York City police officer wages has substantially declined.

Variations in the selection of factors in comparisons of "total compensation," such as hours worked, shift differentials, education premiums, termination pay, pay for unused sick leave and vacation days or incentives to stay beyond 20 years, can have a significant impact on any "apples-to-apples" comparison, rendering a comparison of wage rates more appropriate. A comparison of police officer maximum wage rates and 20-year average wage rates as of July 31, 2004 and as of July 31, 2006 for selected national cities where demographics more closely approximate those of New York City demonstrates that New York ranks behind such cities as San Jose, San Francisco, Los Angeles, Chicago, Washington, D.C. and San Diego. In a comparison of police officer maximum wage rates and 20-year average wage rates as of July 31, 2004 and July 31, 2006 for selected local jurisdictions, New York ranks behind Suffolk County, Nassau County, the Port Authority, Yonkers, the MTA and New York State Troopers.

Even using the comparisons of total direct compensation presented by the City's expert, New York City does not rank at the top as in the past. When direct compensation levels in the first year of service as of July 31, 2004 are compared, New York City ranks 19 out of the 20 national jurisdictions. New York City's ranking in comparisons of direct compensation does improve after five years of service, after 20 years of service and when other benefits such as pension and health insurance are added to base pay. City experts did not, however, take into account any differences in the cost of living among the national comparators, although a 2007 Mercer report cited New York City as the most expensive city in the country. Variations in cost of living can have a significant impact on wage or compensation comparisons.

Prior Agreements

Maintenance of the parity relationship of police officers to firefighters dating to the late nineteenth century and other long-standing parity relationships among ranks in the NYPD and with other uniformed forces has been an on-going objective of the City to foster financial stability and consistency in its labor relations. That objective must be given due consideration. Since at least 1975, all City civilian and uniformed bargaining units have at times conformed to a settlement pattern based on net cost to the City, but different patterns were negotiated or awarded for civilian employees and for uniformed forces from 1980-1989, 2000-2004 and 2004-2006. The interest arbitration award for the 2000-2002 contract term for these parties was not strictly pattern-conforming on a net cost basis but on the basis of "equal pay for equal work." Following the issuance of that award, the City settled with most of the other uniformed force units in a manner consistent with its terms. But with two units, the DEA and the SBA, the City elected a non-pattern-conforming settlement. It is instructive to recall that pattern bargaining in the 1970s occurred when not only New York City police officer salaries were ranked at the top nationally, but salaries of other New York City uniformed forces, including firefighters and sanitation workers, were ranked at the top as well.

Peculiarities of Police Work

Police officer duties are distinct not only from those of "civilian" employees, but also from those of other uniformed forces such as firefighters and correction officers whose positions similarly involve substantial physical risk. Unlike firefighters and correction officers, as Former

NYPD Assistant Chief and Commanding Officer of the Borough of Manhattan South Bruce Smolka testified, the most basic police duties are not "regimented." Police officer street patrols do not involve any routine and are generally carried out without supervision. Former corrections officer and current police officer Jason Caputo testified, "When I walked into jail [as a corrections officer], you pretty much know where you were going, where the lockup was, where the hospital was, where the cafeteria was." By contrast, as a police officer, "You don't know when you walk into a three-family home who is where, how many people are in the house, you can't rely on their information: 'Are you alone?' 'Is somebody else here?' So it's – every day is different and you never know."

Police officers now provide the front-line defense in homeland security, serving as the "first preventers" and not just "first responders," as former NYPD Commanding Officer of the Office of Labor Relations and Commander of the Academy James McCabe and former New York City Police Commissioner and current LAPD Chief of Police William Bratton indicated in testimony. In a June 7, 2006 New York Times article on NYPD anti-terrorism activities, Mayor Bloomberg noted that "while technology is important, it's really shoe leather that counts."

Police officers are also required to employ problem-solving and dispute resolution skills under the CompStat and Community Policing paradigms. At any time police officers may be called upon to intervene in domestic violence or other personal circumstances. Police officer activities are increasingly subject to outside scrutiny, and officers must have a basic understanding of the law applicable to the circumstances they face, as noted by former Boston Police Commissioner and Massachusetts Secretary of Public Safety Kathleen O'Toole in testimony. The education requirements of the NYPD are higher than for other uniformed officers in the City. As Chief of Personnel Rafael Pineiro noted, "the Correction Department doesn't have 60 college credits. The Fire Department doesn't have 60 college credits. You are eliminating a whole bunch of people that can't have this job."

Ability to Pay/ Interest and Welfare of the Public

The City has projected out-year budget gaps since 1982, and each year the budget gap has been closed. As City Budget Director Mark Page testified, these conservative revenue projections have permitted the City to achieve and maintain a level of fiscal well-being. This does not mean the City has unlimited resources to fund substantial increases in wages or other benefits. The fiscal constraints under which the City operates are significant. Fixed expenses such as debt service costs and pension and health-care expenses account for approximately 33% of the City's operating budget and continue to increase. For example, the cost to New York City to fund its employee pension systems rose by \$4.5 billion from fiscal year 2004 to fiscal year 2008. If the pension funds fail to achieve an 8% return, the City is required to make up the shortfall. The City must also assume responsibility for covering certain increased costs of health insurance benefits to employees and retirees as a matter of law.

There is a concern over the potential for declining revenues, and the Mayor has recently directed all City departments to reduce spending by \$500 million for FY 2008 and another \$1 billion for FY 2009. The estimated net cost to the City for each 1% increase in PBA wages is approximately \$24 million, and reopener provisions in agreements with other bargaining units could result in additional costs.

There is little, if any, dispute that the low entry-level ("Academy") rate of New York City police officers has adversely impacted recruitment, although the parties disagree whether the Academy rate is the sole factor. Even though NYPD head count has remained stable since 2004 (23,712 at the end of December 2003; 22,504 at the end of 2004; 22,430 at the end of 2005; and 23,269 at the end of 2006), recruitment efforts are not yielding the results of the past, and there are clear indications that retention is an issue as well. NYPD Recruitment Section memorandum "Assessment of Recruitment Efforts and Results for Fiscal Year 2005 and 2006" reports a 40% decrease in the number of applicants and a 30% decrease by in the number of test takers. The Academy dropout rate has increased from approximately 3.6% in 1982-1996, to 13.1% in 1997-2005 and to 19.9% in 2006-January 2007. The dropout rate as a percentage of the starting class has also increased from 10.9% in January 2005 to 13.1% in July 2005, 16.3% in January 2006, 20.3% in July 2006 and 22.9% in January 2007. Of 898 exit interviews of superior officers and police officers available from 2005 and 2006, 574 officers who resigned stated they were leaving for another police department, and 70% went to a police department in the New York metropolitan area.

New York State Senator Eric Adams, who retired as a captain after 22 years of service with the NYPD and now represents Senatorial District 20 in Brooklyn, noted in testimony an increasing difficulty in persuading young people who have an interest in law enforcement to work for the NYPD because it is "on the bottom in salary," even though it is "top in professionalism." Director of the Crown Heights Youth Collective Richard Green, who for many years has worked closely with local precincts and encouraged neighborhood youth to join the NYPD, similarly testified to the difficulties in encouraging NYPD recruitment in light of the low salary rates as compared to police officers in other jurisdictions. There is also a concern that the recent and successful efforts of the NYPD to diversify its workforce may be undermined by ongoing wage disparities.

As Mayor Bloomberg noted when referring to the disparity between salaries of New York State judges and federal judges, "in order to attract the best and the brightest, we need to pay a salary that is competitive...who knows how many excellent candidates may have not applied because the salary isn't competitive?"

CONCLUSIONS ON WAGE INCREASE

In weighing the evidence in light of all the statutory criteria, the Panel Chair concludes that the wage package to be awarded must take into account the critical and compelling circumstance of the decline in police officer applicants and the increase in Academy dropouts. It is also in the public interest that wage increases, at a minimum, do not further disadvantage New York City police officers as against police officers in comparable national and local jurisdictions, and that wage increases continue the appropriately incremental process of returning the salary levels of New York City police officers to a position commensurate with the status of the NYPD as the premier police force in the nation. Strict adherence to the pattern urged by the City would not meet these objectives and would not result in a just and reasonable determination.

At the time the interest arbitration award for the 2002-2004 contract term was rendered in July 2005, a time of increasing revenues in the City, a 5% increase in each of four years (the two years covered by the 2002-2004 contract award and the two years covered by this Award) was viewed as appropriate to start the process of reducing wage discrepancies between New York City police officers and police officers in comparable jurisdictions. Given the current economic climate and the need to address the entry-level salary rate, a just and reasonable determination includes a 4.5% wage increase in the first year and a 5% wage increase in the second year of the contract term at issue, together with the elimination of the Academy rate. It is appropriate and within the authority of the Panel to fashion an award that achieves these goals in part through productivity and cost-saving measures.²

OTHER PROPOSALS

As a result of the focus on wages by the parties in this proceeding and the demonstration of a compelling need to address wage disparities at this time, all other proposals presented to the Public Arbitration Panel at the hearing and in argument set forth in pre-hearing, post-hearing and reply briefs are referred back to the parties. None is awarded at this time. Failure to award any of the following proposals should not be construed as a determination by the Panel Chair that a specific proposal lacks merit or would not be appropriate for consideration in the future. Consistent with the statutory mandates, the Panel Chair addresses each proposal on an individual basis.

² The net cost to the City of the salary increases awarded here closely approximates the net cost to the City of the salary increases awarded for the 2002-2004 contract term, including a 4.5% base salary increase effective the first day of the contract term and a further increase of 5%, compounded, effective the first day of the second year of the contract term, and a new base annual salary rate of police officers in the Police Academy at the same base annual salary rate of Sixth Grade police officers (a net cost to the City of 0.5%). The above-budget cost to the City in the award for the 2002-2004 contract term was funded substantially by cost-savings and productivity measures, including the creation of a new hire salary schedule, loss of a personal leave day and an increase in reschedule tours. The above-budget cost to the City of the Award here is funded in part by productivity and cost-saving measures proposed on the record and adopted by other uniformed force bargaining units in their settlements. These measures include the elimination of 10 annual vacation days only for police officers during their first 5 years of service, an increase of 5 reschedule tours for all police officers, the application of the Detective Rules to reschedule tours for all police officers on six named holidays, and the scheduling of one of the Range Days for each police officer on a vacation day, all to be implemented as set forth in the Award.

EDUCATION AND TRAINING INCENTIVE PAY

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. Each police officer who possesses the following degrees or experience will receive the corresponding premium paid on an annual basis:
 - Associate's Degree or 60 college credits or military service of two years: 10% of salary and longevity
 - Bachelor's Degree or 120 Credits: 15% of salary and longevity
 - Master's or other Post-Graduate Degree: 20% of salary and longevity
- ii. Police officers who do not hold one of the above degrees shall receive Training and Experience pay, based on successfully completing a program jointly agreed to by the Union and the Employer, in the amount of 10% of salary and longevity paid on an annual basis.

Like teachers, police officers should be compensated for job-related education. An educated police force performs better on the job given that police work now requires a higher level of analysis, organizational and communication skills and cultural awareness and sensitivity. All are enhanced by a college education. The nationwide trend is to compensate for educational attainment and continuing education, as demonstrated by educational premiums offered to police officers in 15 out of 20 national cities at an average maximum level pay of \$4,342. Education pay is consistent with fundamental principles governing the labor market and public policy, and it aids in staffing and will stem the exodus of veteran police officers. It is also fair.

CITY POSITION: Additional pay is not warranted for educational qualifications (60 college credits or 2 years of military service) already needed to become a police officer. The PBA's similar proposal during the 1997 interest arbitration, shortly after the 60-college credit requirement was implemented, was rejected at that time. There is no demonstrated need as incoming recruits are the best educated. In the last Academy class, 43% of recruits had an associate degree or higher and 24% had a bachelors degree or higher. The Department is losing officers at a rate of less than 1% per year, and a substantial portion of the voluntary attrition consists of Academy dropouts who have not received extensive training.

FINDINGS AND CONCLUSIONS

The PBA proposal is not awarded at this time. Educational qualifications of police officers are significantly higher than those of other uniformed services. Police officers need 60 credits and a 2.0 GPA, while firefighters only need 15 credits, 6 months' full-time work experience and no minimum GPA. Corrections officers only need 39 credits and no minimum GPA. Sanitation workers only need a high school degree or GED. The percentage of NYPD recruits with BAs is also growing. Other jurisdictions have recognized the value of education in meeting the challenges of urban police work as reflected by the fact that 15 of the 20 national comparators include some form of additional compensation for education.

Educational premiums in other jurisdictions, however, take different forms and are funded through different mechanisms such as the Quinn bill passed by the Massachusetts State

legislature and substitution of an educational premium for longevity. The proposal also represents a potentially significant cost to the City. Given the focus on increases in wages at this time, the proposal is referred to the parties for consideration.

TERRORISM WORKLOAD AND SAFETY RISK PREMIUM

PBA PROPOSAL: The PBA proposes a new contract provision:

In recognition of the increased workload and enhanced safety risks resulting from terrorism threats and incidents within New York City, each police officer shall receive a premium equal to 10% of salary and longevity, which premium shall increase at the same percentage as all future wage increases.

The events of September 11 changed police officers' roles, increasing workload and safety risks as the first preventers of terrorism and counterterrorism and first responders to any future attack, in addition to the traditional roles of crime control, order, maintenance, and service. Police officers now receive extensive terrorism training and are provided with protective equipment. The New York State Troopers, SUNY, NY EnCon, San Francisco, and San Jose compensate their police officers for terrorism training and risks. Police officers are also suffering ill health as a result of the September 11 attacks.

CITY POSITION: No evidence supports that the workload of police officers has increased as a result of "terrorism-related" responsibilities or that counter-terrorism programs have "materially changed" police officer work. The premium the PBA is seeking would be paid to all officers irrespective of assignment, and there has been no change in circumstances since the 2004 bargaining round when this proposal was first and unsuccessfully presented. Counter-terrorism training took the place of other training or regular job duties during compensated time. Terrorism-related duties are not unique to police officers and equally affect sergeants, detectives, lieutenants, captains and firefighters. The UFA settled for this round and the next and sought, but did not receive, special compensation.

FINDINGS AND CONCLUSIONS

The PBA proposal on terrorism workload and safety risk premium is not awarded. Changes in duties resulting from counter-terrorism activities may warrant a premium or adjustment, as other jurisdictions have negotiated, but this proposal represents a potentially significant cost increase not appropriate in the context of this Award.

Health-related problems that may have resulted from September 11-related service is an issue in which both parties and the public have an interest, but the extent of health-related problems was not addressed on the record.

DEFIBRILLATOR PAY

PBA PROPOSAL: The PBA proposes a premium payment of 3% of basic maximum salary and longevity, to be increased by the same percent as future salary increases for each police officer trained to use a defibrillator. Police officers have been trained to use defibrillators since 1999, and this training is valuable to New York City because police officers are first

responders. The assumption of this duty is in addition to general first aid responsibilities already in place. Firefighters receive a similar payment, ranging from \$2,200 to \$2,455, and total compensation should be considered to achieve parity with firefighters.

CITY POSITION: The comparison to firefighter training is not apt because under the Certified First Responder-Defibrillator (CFR-D) program in the Fire Department, all participating firefighters must be CFR-D certified and recertified every three years. Newly hired firefighters must be certified as a condition of their employment and the initial certification program is a 72-hour training course. If firefighters are not trained, the FDNY provides training at the employee's expense. Firefighters receive CFR-D differential pay only for tours when assigned to a particular type of apparatus in a particular company that is "on line" for CFR-D responses, or for specific CFR-D responses. Unlike the firefighters' CFR-D training program, the NYPD defibrillator program is relatively uncomplicated and use of defibrillators by police officers is limited. Other City employees, for example, in the Departments of Marine and Aviation, are trained to use the same equipment and do not receive any additional compensation.

FINDINGS AND CONCLUSIONS

The PBA proposal on defibrillator pay is not awarded. The record establishes a clear distinction between defibrillator training for police officers and the CFR-D certification training for firefighters. Firefighters only receive premiums for assigned tours or for specific responses.

LONGEVITY, ANNUITY AND UNIFORM ALLOWANCE

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. Longevity shall be converted to a percentage of current basic salary and shall increase in the same percentage as all future wage increases, including increases in the current round.
- ii. The adjustment for longevity after the 5th, 10th, 15th and 20th years of service shall be computed as salary for pension purposes.
- iii. The annuity payment will be converted to 2% of basic maximum salary, and will increase in the same percentage as all future wage increases, including increases in the current round.
- iv. Uniform allowance shall be converted into 2% of basic maximum salary and will increase in the same percentage as all future wage increases, including increases in the current round.

When computed from basic maximum salary instead of base salary, the current longevity and annuity payments and the uniform allowance do not increase when general wages increase. Longevity is calculated as a percentage of base salary in other national and local jurisdictions including San Francisco, Washington, D.C., San Antonio, Detroit, Elizabeth, Jersey City, Newark, Yonkers and the Port Authority.

NYC POSITION: The cost to convert longevity payments, annuity payments, and the uniform allowance to a percentage of base salary that would increase by the same percentage as all future wage increases is substantial. No other uniformed union in the City receives these payments on the basis of a percentage of base salary.

FINDINGS AND CONCLUSIONS

The PBA proposals on longevity and annuity payments and uniform allowance are not awarded. The proposals represent a potentially significant cost increase and are without adequate support on the record.

GAIN SHARING

PBA PROPOSAL: The PBA proposes a new contract provision:

At the end of each contract year, all unit members shall share in the savings realized by the City as a result of the reduction in headcount of police officers as measured from the headcount on August 1, 1999. The City shall share the savings equally with the PBA, and the aggregate saving shall be divided equally among all current police officers who were employed during the contract period.

Police officers continue to perform their work at an exceptional level with reduced headcount and increased responsibilities. The City has realized gains from reduced headcounts and all PBA active unit members should receive an equal share in the difference between the salaries of the headcount at the end of the contract period and the headcount on August 1, 1999, which the PBA calculates as an approximately \$263 million savings.

NYC POSITION: Crime rates have declined for a number of years and any drop in the crime rate is likely attributable to factors other than increased productivity. All other City agency employees are performing well with fewer personnel, and awarding an above-pattern increase on the productivity argument is unprecedented.

The PBA presented the same proposal unsuccessfully in 1997, 2002 and 2004, and there has been no change in circumstances since 2004 that would warrant a different approach. In any event, actual productivity has decreased because the headcount has increased. Increased 311 call volume does not translate into higher police officer productivity and is unlikely to lead to an officer dispatch unless the call is transferred to 911. Similarly, multiple 311 calls involve the same situation and do not translate into the dispatch of multiple officers. "Quality of life" summonses have also decreased.

FINDINGS AND CONCLUSIONS

The PBA proposal on gain sharing is not awarded. Headcount fluctuates for numerous reasons, and there is insufficient evidence to demonstrate that any realized "gains," such as reduced crime rates, are the result of productivity increases as opposed to other factors such as administrative decisions on force deployment.

PREMIUM FOR LACK OF NEGOTIABLE DISCIPLINARY PROCEDURAL PROTECTIONS

PBA PROPOSAL: The PBA proposes a premium payment of 10% of basic max, and of overtime and night shift differentials, to compensate police officers for two types of harm: loss of the negotiated disciplinary procedures and implementation of discipline-related programs that would not exist under collective bargaining. The imposed disciplinary system distinguishes police officers from all civilian and other uniformed workers in New York City and from police officers in many other jurisdictions around New York State. A police officer's job is more difficult with the new disciplinary plan, and operational efficiencies are enhanced as a result. The inability to bargain for disciplinary procedures, the consequences of that inability and the loss of previously negotiated procedures entitles police officers to the payment.

CITY POSITION: The New York City Charter grants the New York City Police Commissioner exclusive authority over police officer discipline, and that authority is not subject to collective bargaining. See *City of New York v. MacDonald*, 201 A.D.2d 258 (1st Dep't 1994); *Patrolmen's Benevolent Association v. Public Employment Relations Board*, 6 N.Y.3d 563 (2006). The other four uniformed bargaining units are treated in the same manner and do not receive any such premium payment.

FINDINGS AND CONCLUSIONS

The PBA proposal for a premium for lack of a negotiated disciplinary procedure is not awarded. There is an insufficient demonstration on the record of the impact of the current disciplinary system on police officers.

WORK SCHEDULE - LENGTHENING OF TOURS AND DECREASING NUMBER OF APPEARANCES

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. NYPD will adopt a modern chart for police officers, implementing duty schedules that replicate or are similar to those in other jurisdictions that will require either 10 hour or 12 hour tours, plus or minus increments of less than an hour (i.e., a 12 hour, 15 minute tour, a 10 hour, 30 minute tour), and fewer appearances.
- ii. A Joint Labor-Management Committee shall be convened upon the resolution of all other wage and benefit issues to work out expeditiously the details of this modern work chart. The first issue to be resolved by the Committee is the savings generated by the respective charts.
- iii. Savings realized from the new patrol chart shall be shared equally among all police officers who were active during the contract period.

Changing tour schedules to a "modern chart" with fewer appearances and more hours of work in a given day is a national trend. The proposal would not change the number of hours a police officer works in a year (2088), but the new configuration would increase operational efficiencies

and result in savings from the length of the tour and elimination of a daily one-hour meal period, two daily 20-minute personals and 20 minutes for daily roll call and wash up. It would also reduce commuting consistent with the Mayor's initiatives to reduce petroleum emissions and ever rising costs of traveling. The LBA has negotiated such a tour, with either 10-hour tours (with 209 scheduled appearances per officer per year) or 12-hour tours (with 179 scheduled appearances per officer per year). The changes would also result in reduced overtime and officer fatigue.

CITY POSITION: The current work schedule – 8-hour, 35-minute tour, with 243 scheduled appearances per officer per year – has been in effect for 30 years, and longer tours would reduce operational flexibility. The 10-hour tours would mean 34 fewer appearances per officer, per year and a decrease of 782,000 work days per year for the force. A change to 10-hour tours could increase overtime costs because the same events (i.e., arrests, operational needs) that happen at the end of all tours would occur at the end of the lengthened tours as well, and fewer police officers would be working (34 additional days off per officer, per year). Court appearances and other planned and unplanned special events would be more likely to fall on days off.

The NYC/LBA pilot-program experimented with 12-hour tours and found that costs increased. While the City paid the cost of the program during the 6-month pilot-period, the LBA agreed to pay the cost if 12-hour tours continued. Shorter tours have worked well, as evidenced by the reduction in crime levels below those of cities with longer schedules. Longer hours would lead to increased fatigue and impair performance.

FINDINGS AND CONCLUSIONS

The PBA proposal on the lengthening of tours and decreasing the number of appearances is not awarded. There is an insufficient demonstration of the potential impact or need for the proposed change.

NIGHT SHIFT DIFFERENTIAL

PBA PROPOSAL: The PBA proposes a new contract provision:

- i. The default 10% night shift differential shall not be diminished, whether by a police officer's average sickly, vacation, court time, training, *et al.*
- ii. Eliminate Article 19, Section C of the PBA collective bargaining agreement.

Police officers in other jurisdictions receive percentages for night shift differentials, and the benefit would assist in correcting the total compensation inequity. The City mischaracterizes the scope of the current night shift differential given that Academy recruits do not receive any night shift differential, and the differential would be further diminished by vacations and other forms of leave.

CITY POSITION: There is insufficient evidence to support the proposal. The PBA has offered no rationale for such a fundamental change in a previously negotiated benefit. It is purely another means for getting more money.

FINDINGS AND CONCLUSIONS

The PBA proposal on night shift differential is not awarded at this time. The record does not reflect any demonstrated need for the proposal, and it represents a potentially significant cost to the City.

HEALTH AND WELFARE FUND

PBA PROPOSAL: The PBA proposes a new contract provision:

Effective August 1, 2004 and for each year thereafter, the City shall contribute an additional \$200 per annum for each active member.

The PBA has not received an increase to its health and welfare fund since 2004, whereas other City unions have received one-time cash infusions or rate increases of \$100-\$300.

CITY POSITION: Every other bargaining unit that wanted an increase to the health and welfare fund paid for it through productivity enhancements or internal savings.

FINDINGS AND CONCLUSIONS

The PBA's proposal on additional contributions to the health and welfare fund is not awarded. Current health and welfare benefits are substantial.

TIME VALUE OF DELAYED COMPENSATION

PBA PROPOSAL: The PBA proposes a new contract provision:

In recognition of the fact that the time value of a contract settlement delayed is less than if it was arrived on time, in addition to wage and benefit increase pursuant to a negotiated collective bargaining agreement or the award of an arbitrator pursuant to §209(4)(c)(v) of the Taylor Law, the City shall be obligated to pay an amount reflecting the time value of money held by the City due to any delay in payment of salary increases from the date of expiration of the prior contract to the date of actual payment. This amount shall be calculated by applying a 9% annual interest rate to the retroactive amounts owed to each police officer for each pay period from the date of expiration of the prior contract to the date of actual payment.

Irrespective of which party has been responsible for the delay in reaching successor agreements since 1980, the City has gained in the delays by not having to pay monies owed and the membership of the PBA has been harmed. The proposed 9% annual interest addresses this "structural problem" and is the CPLR rate on contract claims. It would serve as an incentive to the City not to "drag its feet" in negotiations.

CITY POSITION: While the PBA contends that the cause of the bargaining delay is irrelevant, the City tried to negotiate with the PBA in an effort to correct the harm caused by the prior award. The PBA's engaging in "frivolous" litigation over the PERB list caused the delay.

FINDINGS AND CONCLUSIONS

The PBA's proposal on payment for the time value of deferred compensation is not awarded. There is an insufficient demonstration on the record to support this proposal.

SICK LEAVE INCENTIVE

PBA PROPOSAL: The PBA proposes a new contract provision:

Adopt an annual program for limited use of non-line-of-duty sick leave in accordance with below listed chart.

<u>Utilization (Days)</u>	<u>Payout</u>
4	\$100
3	\$200
2	\$400
1	\$800
0	\$1600

The PBA estimates that the City loses over 209,000 police officer workdays to sick leave, and an incentive program would produce increased coverage and productivity. Changing from a punitive approach to an incentive would also increase morale. Similar programs have been adopted in other jurisdictions such as Boston, Indianapolis and Suffolk County.

CITY POSITION: Police officers receive unlimited sick leave for all illnesses or injuries, line-of-duty and non-line of duty. PBA's proposal would encourage police officers to use up to 4 sick days when they might not have used any. No other uniformed union receives incentive pay not to take sick leave.

FINDINGS AND CONCLUSIONS

The PBA proposal for a sick leave incentive is not awarded. The record does not sufficiently demonstrate the likelihood of increased productivity or the experience of jurisdictions with sick leave incentive programs.

HOME CONFINEMENT

PBA PROPOSAL: The PBA proposes a new contract term:

A police officer's period of home confinement while on sick leave shall be limited to the hours of his or her regularly scheduled tours of duty.

Among other public sector employees, confinement is limited to those hours that the employee would be required to work. Police officers are now required to receive permission to leave the

residence and generally avoid doing so, and are harassed if they do leave. Such policies do not exist in the private sector and are not in place for other units, such as firefighters. It is unprofessional.

CITY POSITION: The PBA offered no evidence that other public sector employees are only confined during regularly scheduled work hours or that the two purposes of the program, full recovery and minimization of abuse, would be served by the proposal.

FINDINGS AND CONCLUSIONS

The PBA proposal for a limitation on home confinement during sick leave is not awarded. While no evidence of abuse of sick leave by police officers was presented by the City and the current NYPD approach appears peculiar and may have an adverse impact on morale, there is insufficient evidence on the record to support the proposed change.

CONTRACT MAINTENANCE/WRITTEN COLLECTIVE BARGAINING AGREEMENT

PBA PROPOSAL: The PBA proposes a new contract provision:

Reduce to writing and incorporate into the successor written collective bargaining agreement terms and conditions of employment not presently embodied in the existing collective bargaining agreement, as amended by the September 4, 2002 arbitration award and the June 27, 2005 arbitration award, including: work schedules; provisions for meals; personals; and, procedure for vacation selection.

Incorporating work schedules, provisions for meals, personal breaks and procedures for vacation selection in written form as in other collective bargaining agreements would "enable police officers to know and understand their rights so they can enforce them."

CITY POSITION: There would be a prolonged process to determine what constitutes "terms and conditions of employment" not at present embodied in the parties' agreement. The parties, not an interest arbitration panel, should determine whether a party has become legally obligated to adhere to a practice in the future on a case-by-case basis.

FINDINGS AND CONCLUSIONS

The PBA proposal for incorporation of certain terms and conditions into the written collective bargaining agreement is not awarded. The record proof is insufficient to support the proposed change.

SAFETY AND HEALTH MAINTENANCE

PBA PROPOSAL: The PBA proposes a new contract term:

The employer shall provide health and safety standards for the protection of employees' well-being, commensurate with those presently in effect in the private

sector, and shall provide and maintain safe and healthful working conditions in Department facilities and shall initiate and maintain safe operating practices.

The PBA seeks to incorporate OSHA standards as applied to New York State and local governments through PESH to address "deplorable" conditions in certain police precincts and to provide a venue for addressing safe working environment complaints that is not burdensome and protracted.

CITY POSITION: Health and safety standards are already in place under the PESH Act and there would be disputes over the meaning of "commensurate with those presently in effect in the private sector." The PBA can pursue violations of the PESH Act and regulations with the State Department of Labor. The availability of different problems could lead to forum shopping and inconsistent results.

FINDINGS AND CONCLUSIONS

The PBA proposal for incorporation of OSHA standards into the parties' contract is not awarded. There is an insufficient demonstration of the inadequacy of available forums for the redress of health and safety complaints.

VESTS

PBA PROPOSAL: The PBA proposes a new contract term:

The employer shall issue new bullet-resistant vest to every police officer reflecting the current state of technology no less than once every five years from the date that police officer's current vest was issued, but no later than the expiration date of the warranty for the vest.

Vests are available today to provide "expanded body coverage" that might avoid tragedies such as the death of Police Officer Dillon Stewart, who was killed when a bullet struck an area of his body that was not covered. The Department's alternative of using the date beyond which the manufacturer refuses to stand by its product is not reasonable.

CITY POSITION: The City has already taken the initiative to protect its police officers through its Vest Upgrade Program, started in August 2006 and scheduled to be complete by April 2008.

The proposed five-year replacement framework is not based on empirical data or evidence. By analogy, a warranty expiring on a car means that the manufacturer is no longer responsible for the product, but it does not indicate that it is not fit for use.

The City already provides 22,000 Monarch Summit Maximum Coverage vests, threat level IIIa. The City monitors the performance of vests, conducts annual vest inspection and tracks vests in use through the Intranet Vest Inspection Database. If any lot of vests is deemed unserviceable, the Vest Inspection Database identifies the officers who have those vests, and those vests are replaced. The Vest Inspection Database also contains a Vest Serviceability Guide that gives instructions on how to properly inspect, care for and maintain vests, and the City

conducts annual training on the proper care and maintenance of ballistic armor, including vests. The City tests all new vests through the U.S. Department of Justice's National Institute of Justice and conducts random sampling prior to the warranty expiration. If one vest fails, the whole lot is discarded.

FINDINGS AND CONCLUSIONS

The PBA proposal on upgrading vests is not awarded. The program initiated by the City in 2006 is comprehensive, is at or near completion and appears to address the need for improvement in expanded body coverage.

DATED: May 22, 2008

Susan T. Mackenzie
Public Panel Chair

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Impasse Between

PATROLMEN'S BENEVOLENT
ASSOCIATION OF THE
CITY OF NEW YORK, INC.

-and-

THE CITY OF NEW YORK.

----- X

Case Nos.: IA2006-024, M2006-093

**CONCURRING OPINION OF
THE PUBLIC EMPLOYER
PANEL MEMBER**

IS PUBLIC EMPLOYMENT RELATIONS BOARD
RECEIVED

JUL 29 2008

CONCILIATION

This Concurring Opinion is written for two reasons: first -- to clarify why I, as the Panel Member appointed by the City of New York ("City"), concurred in the Award issued in this case on May 19, 2008; and second -- to address at least some of the flaws in the Opinion of the Chair.

The primary reason for my concurrence is that the Award serves one of the City's main objectives in this proceeding -- increasing the starting salary for new hires in order to mitigate the widely-reported recruitment challenges caused by the salary reductions for new hires imposed by the Schmertz award in the last round of bargaining. For example, after the implementation of the reduced salary schedule for new hires in January 2006, the Department experienced a troubling decline in the number of applicants for the police officer position. In addition, as the Chair notes in her Opinion, the dropout rate in the Police Academy increased during the same period, resulting in even fewer officers joining the ranks from the smaller classes entering the Academy.

These distressing developments are a direct result of the \$25,100 starting salary chosen by the PBA from alternative funding mechanisms proposed by Chairman Schmertz (as the PBA President admitted during cross-examination in this proceeding). In fact, the Department was having no difficulty attracting qualified candidates until awareness of the dramatically reduced new hire salary spread through the candidate pool in 2006. Before that, as Chief of Personnel Raphael Pineiro testified without contradiction, the Department had met every single one of its hiring goals since at least 2002, generally with more fully qualified candidates than the Department sought to hire. (Tr. 2295-96)

At a time when the Department seeks to increase the size of the uniformed force, as it has publicly announced, it was imperative for the City to obtain an outcome to this proceeding that would improve the new hire salary, especially the starting salary rate for recruits in the Police Academy, to address these recruitment issues. This Award serves that objective. In addition to the general wage increases applicable to all steps on the salary schedule, it provides for an increase to the starting rate that, combined with the across-the-board wage increases, raises salaries for new hires by over \$10,000 -- from \$25,100 to \$35,881.

The other reason for my concurrence is that the Award is consistent with the concept of pattern bargaining, which has been the governing principle in New York City municipal labor relations for decades, in at least two important respects. As arbitrators have reaffirmed time and again, the general rule in municipal impasse proceedings is that the award must conform to the established pattern unless there are “unique, extraordinary, compelling and critical circumstances that could not be addressed without stretching the parameters of the pattern.” (City Ex. 07-D at 5 (internal quotations omitted)) One circumstance that has long been recognized as a possible exception to the general rule -- i.e., a circumstance that may constitute a legitimate basis for a

deviation from strict adherence to the pattern -- is the existence of a truly extraordinary and critically urgent recruitment problem. In this case, the Chair found that the facts surrounding the Department's current recruitment difficulties met the standard for invoking this exception to the general rule. Specifically, the Chair found that a deviation from the pattern was warranted by the "critical and compelling circumstance of the decline in police officer applicants and the increase in Academy dropouts." (Chair Op. at 8)

To be sure, I do not agree with the Chair's interpretation of the facts. In my view, the evidence did not establish that the Department's recruitment challenges could not be addressed within the parameters of the pattern. The City presented several proposals in this proceeding that would have enhanced the new hire salary schedule and thus greatly improved the recruitment situation without requiring any deviation from the pattern. In other words, the evidence did not establish the existence of a recruitment problem that "could not be addressed without stretching the parameters of the pattern."

In any event, while I disagree with the Chair's invocation and application of the extremely narrow exception to the general rule requiring pattern-conformity, this is in reality a disagreement over the manner in which the long settled arbitral framework should be applied to the facts -- there is no disagreement over the merit or viability of that framework. Thus, the Chair's decision reaffirms the governing pattern bargaining concept that arbitrators and the bargaining parties themselves in this City have long embraced and adhered to. Indeed, nowhere in her opinion does the Chair even suggest the existence of any alternative framework that might replace pattern bargaining.

The second respect in which the Award is consistent with the pattern bargaining concept is its acceptance of the principle that when there is a perceived need for above-pattern wage increases, those increases should be funded by productivity changes and other internal savings mechanisms. Here, the Award requires important contract modifications in order to generate savings that can be used by the City to fund a substantial part -- specifically, 2.81% -- of the wage increases awarded. These contract modifications include: a reduction of ten annual leave days for new hires for each of the first five years of employment; much greater flexibility in the rescheduling of all police officers on six named holidays without the payment of overtime (in accordance with "Detective Rules"); a requirement that all police officers use an annual leave day (rather than a regular work day) for firearms qualification; and five additional rescheduling days for all police officers without the payment of pre-tour or post-tour overtime upon 24-hours' notice to the employee. These modifications will result in valuable operational and fiscal benefits for the City and the Department.

The funding mechanisms included in the Award well illustrate the flexibility available within the parameters of pattern bargaining -- the flexibility to accommodate the perceived needs of individual bargaining units, in appropriate circumstances, by negotiating productivity changes that will generate savings to pay for wage increases beyond those provided for in the pattern established for a particular round of bargaining. That flexibility is, and always has been, an integral part of the concept of pattern bargaining.

For these reasons, I concluded that it was appropriate to concur in the result here. In addition, the alternative was the distinct possibility that, in the absence of a majority vote¹, this

¹ As the Chair notes in her Opinion, "the requirement of concurrence by another Panel Member further restrict[s] the flexibility of this Panel" in rendering an award. (Chair Op. at 2)

proceeding could become a nullity, with the result of even further delay in addressing the Department's recruitment difficulties and providing already long-delayed raises to incumbent police officers.

I now turn to the Opinion of the Chair. Despite my acceptance of the result reflected in the Award, I must profess my profound disagreement with much of the Chair's Opinion and, in all candor, my disappointment at the lack of intellectual rigor that permeates her decision as well as the troubling absence of even-handedness in her selective treatment of the record.

Perhaps the most glaring illustration of the failure to seriously engage the issues or the record before the Panel is the absence of a coherent rationale for the particular annual wage increases granted. The closest that the Chair comes to offering an explanation for awarding across-the-board annual increases of 4.5% and 5% is that these amounts resemble the increases awarded by Chairman Schmertz for the 2002-04 round of bargaining (and, indeed, inappropriately suggested in his Opinion for the round under consideration by this Panel). (Chair Op. at 8 n.2) Apparently unwilling or unable to analyze the record evidence presented (comprised of 12 days of live testimony and literally hundreds of exhibits), the Chair resorts to mimicking the decision of the panel that preceded her. Never before has an impasse panel in this City's collective bargaining history awarded wage increases based solely on their proximity to what a prior impasse panel awarded. One hopes -- or rather expects -- that no future impartial chair will embrace this facile approach to the discharge of his or her statutory duties.

Another example of cursory treatment of the serious issues before the Panel is the failure even to address the implications of the Award with respect to the issue of parity. Parity, like pattern bargaining, is a critical component of the municipal collective bargaining framework and

has long been embraced and reaffirmed by impasse panels as well as the bargaining parties themselves in this City. As Chairman Eischen stated in the 2002 PBA decision,

Regarding the related concept of parity, it is undisputed that police officers and firefighters have had the same basic maximum salary for more than 100 years, i.e., since 1898; and since 1964 the same “basic max” parity relationship has applied to correction officers. In addition, each group of superior officers (e.g., sergeants, lieutenants, captains) within the NYPD, the Fire Department and the Department of Correction has long adhered to strict vertical parity with all the titles within their respective uniformed force and horizontal parity with their counterparts in the other uniformed forces.

(City Ex. 07-D at 6)

By granting general wage increases that exceed those agreed to by every other uniformed union for the 2004-06 round of bargaining, the Award disrupted the long established parity relationships between police officers and the other uniformed titles at the NYPD, as well as the parity relationships between police officers and their counterparts at the Fire, Correction, and Sanitation Departments. Yet the Chair’s Opinion is silent with respect to the potential impact of the Award, despite the compelling evidence establishing the critical importance of maintaining -- and potentially serious consequences of disrupting -- parity relationships. Notwithstanding the Chair’s failure to expressly address this issue, it must be understood that in no way can the Award be interpreted as an endorsement of a permanent break in the long-standing parity relationships across the uniformed forces.

To the contrary, the Chair’s Opinion recognizes the importance of these parity relationships and expressly states that maintaining them “must be given due consideration.” (Chair Op. at 5) In addition, the Chair notes that an above-pattern increase for the PBA could produce additional increased costs for the City as a result of the reopener provisions in the City’s agreements with the other uniformed unions, thereby acknowledging the prospect that this

Award would trigger reopened wage negotiations with the other uniformed unions that would result in a restoration of parity. (Chair Op. at 6)

As a factual matter, moreover, the record before the Panel provides no credible, or even plausible, support for a departure from the values and standards reflected in the concept of parity -- values and standards accepted and validated at the bargaining table for decades. Indeed, apart from PBA counsel's denigration of the difficulty, danger, and skill involved in the work of firefighters and correction officers in his opening statement, the only "evidence" presented by the PBA purportedly comparing the duties and responsibilities of the other uniformed titles to those of police officers consisted of the patently self-interested testimony of a PBA member who was formerly a correction officer and worked briefly in an unrepresentative part of the Correction Department's operations (tr. 2850-51), a retired NYPD chief's recollections of his brief service as a correction officer in the mid-1970's (tr. 837, 843-44), and the anecdotal testimony of another retired member of the NYPD whose knowledge of the other uniformed services was gleaned from friends and relatives over the years.²

On the other hand, the record amply demonstrates that there is no qualitative or quantitative basis whatsoever for elevating the obviously important work of police officers above that of the equally important work performed by firefighters and correction officers. See, e.g., tr. 2262-88, 2643, 2849-54; City Exs. 07-64, 07-65; PBA Ex. 07-206A. While there are of course differences between the work performed by police officers, firefighters, and correction officers,

² The Chair's unfortunate choice to echo this denigration of the important work of firefighters and correction officers in her opinion (Chair Op. at 5-6) -- a choice that surely must be unique in the history of interest arbitrations in this City -- has made the decision unnecessarily divisive among uniformed bargaining units. And, it certainly has done nothing to enhance the morale of non-PBA uniformed groups.

there simply is no basis in the record for any conclusion that those differences make one position more or less demanding than the others.

Apart from the lack of a factual basis for disturbing parity, compelling prudential and practical reasons caution against a break in these long-established relationships. Those reasons were cogently stated by Chairman Eischen in the 2002 PBA award:

[T]his public arbitration panel should not weigh and balance the other criteria set forth in the Civil Service Law § 209.4(c)(v) in a manner at odds with the values which the parties themselves have validated over the years by their own actions at the bargaining table. For arbitrators to reject such mutually accepted historical standards and impose their own value judgments divorced from the realities of the bargaining relationship would be a clear invitation to the parties to seek more in arbitration than they could obtain in negotiation with knowledgeable negotiators.

Such an award, if it were made, would make successful negotiations between the City and its labor organizations extremely difficult, by undermining a process of collective bargaining which is time-proven to be effective in accommodating the needs of the parties with due regard for the interest and welfare of the public. Even if times and circumstances were otherwise normal, it would be unwise and imprudent for this Panel to impose such major sea changes on an established bargaining relationship by arbitral fiat.

(City Ex. 07-D at 6-7)

A brief consideration of the aftermath of the Award in this case during the two months since it was issued illustrates the wisdom of Chairman Eischen's words. By applying the above-pattern wage increases to the basic maximum salary level, the Award disrupted parity across the uniformed titles in four major agencies and triggered reopener provisions in agreements with thirteen uniformed unions representing over 40,000 employees. As expected, a number of those unions, including unions representing other uniformed titles of the NYPD, promptly invoked their rights under the reopener provisions after the Award was issued and, in reopened wage

negotiations with the City, demanded additional wage increases to match the increases received by the PBA. Other such demands will follow.

The ultimate outcome of all this is still uncertain. Several things, however, are clear. In each case, the reopener and demand for a restoration of parity presents the City with an untenable choice. In the interest of labor relations stability, and to avoid an interest arbitration in which matching increases would undoubtedly be granted (but with no guarantee of offsetting savings), the City can agree to restore parity by granting the above-pattern increases demanded, with the requisite savings offsets -- but only at great incremental cost to the City during a period of serious fiscal challenge. Or, the City can, at least temporarily, avoid those costs by refusing to restore parity -- but only at the cost of the many benefits that have flowed from parity over the decades and a destabilizing of labor relations that would inevitably result in even greater disruption and spiraling labor costs in the future.

Given their mutual recognition of the importance of maintaining parity relationships, the City and the uniformed unions will no doubt spend many months -- perhaps years -- of difficult negotiations in an effort to restore the longstanding parity relationships that the Award has temporarily disrupted.³ But, this will be accomplished (if at all) only at a distressing incremental, unbudgeted cost to the City that will become part of the permanent expense burden of the City and its residents. Notwithstanding the strong public interest in parity, this is a heavy

³ Due to the particular circumstances of their bargaining units, parity-restoring agreements have been reached with a few of the uniformed unions already. Because those unions had already addressed their new hire (or new promotee) salary schedules in prior negotiations, they were able to identify sufficient savings mechanisms to offset the matching wage increases without reductions too painful for the membership to accept. Thus, agreements could be reached without resort to an impasse panel. It is far from clear that this will be the case for the other unions that invoke reopeners.

price to pay for solving a narrow recruitment problem in one bargaining unit that could, and should, have been addressed without tampering with parity.

In addition to these areas where the Chair's Opinion lacks clarity and a meaningful engagement of the record, there are numerous factual and legal errors. For the sake of brevity, I will focus only on a few of the most egregious which are addressed lest they remain uncorrected and permit future mischief.

Illustrative is the Chair's suggestion that the Taylor Law differs from the New York City Collective Bargaining Law in that "the Taylor Law does not . . . include the City Law's requirement of a comparison to 'other employees in New York City.'" (Chair Op. at 2) This is a patently incorrect reading of the CBL, which does not "require" a comparison to other City employees; rather, the CBL provides that one of the criteria for the impasse panel to consider is a comparison of the employees at issue with "other employees generally in public or private employment in New York city or comparable communities[.]" Admin. Code § 12-311(c)(3)(b)(i) (emphasis added). This is effectively identical to the Taylor Law's comparability criterion, which also permits comparisons to "other employees generally in public and private employment in comparable communities[.]" CSL § 209(4)(c)(v)(a). The only difference is that the Taylor Law does not include a reference to New York City -- the obvious reason being that the Taylor Law applies to communities statewide, whereas the CBL applies only to the City of New York. Both statutes, however, provide for comparison to "comparable communities" rendering them substantively identical. Moreover, as discussed in detail in my concurring opinion in the prior impasse proceeding between these parties, and as the record in this

proceeding confirms⁴, there is no substantive difference in the standards governing the issuance of interest arbitration awards under the two statutes.

With respect to the Chair's treatment of certain factual matters, it bears emphasis that the record in this proceeding truly was voluminous and covered extensive testimonial and documentary evidence concerning a number of complex and hotly disputed issues. Yet, the Chair's Opinion reduces many of these issues to a mere handful of disjointed assertions and conclusions (without a single citation to the record) that often distort, mischaracterize or simply misconstrue the evidence -- while placing heavy emphasis on the anecdotal testimony and political rhetoric of PBA witnesses. The result is an Opinion that in many respects bears little resemblance to the record evidence.

A prime example is the cursory and unsupported suggestion that the Department has a retention "issue." (Chair Op. at 7) After acknowledging that police officer headcount remained stable from 2003 through 2006 -- a fact that, by itself, should dispel any notion of a retention problem -- the Chair asserts that "there are clear indications that retention is an issue[.]" Yet the only such "indication" cited is that in 2005 and 2006, a total of 400 officers -- from a uniformed force numbering approximately 36,000 -- left the NYPD for other police departments in the New York metropolitan area. (Id.) That is an average of 200 per year, or about one-half of one percent -- a level of attrition to competitors that most employers could only envy!

This and other objective evidence directly contradicted the PBA's rhetoric and misleading public statements regarding a purported "exodus" of officers to police departments in

⁴ See City Ex. 07-119, Governor's Bill Jacket, L. 1998, C. 641 at 4-5 (Memorandum from PERB Chairman Michael R. Cuevas regarding legislation placing New York City police and fire impasse disputes under the Taylor Law). That memorandum states unequivocally that "the standards governing the issuance of interest arbitration awards" under the two statutes are "substantially the same, if not identical."

the surrounding suburbs. (See City Exs. 07-66A, 07-66B, 07-66C, 07-66D). Indeed, the effort of the PBA's expert witness to manufacture a retention crisis through manipulation of the data was so thoroughly discredited that the PBA abandoned it entirely, with not a single reference to any objective retention data anywhere in the PBA's 250-plus pages of post-hearing briefs. The only conclusion that can reasonably be drawn from the retention data in the record is that police officer salary levels are and have been more than sufficient to retain incumbent officers -- despite the long delay caused by the PBA in the grant of salary increases going back to August of 2004.

The Chair's treatment of the subject of police officer compensation comparisons is equally flawed. She begins with the correct determination that the most appropriate comparisons of New York City police officer compensation are comparisons to other national cities because "the demographics of large urban jurisdictions more closely approximate New York City than do suburban counties or communities." (Chair Op. at 4) She then goes on, however, to present a series of unfounded assertions that display a selective use of the record that seems distressingly result-oriented.

First, the Chair selects six national cities from the 20 that were included in both parties' evidentiary presentations purportedly on the ground that those cities' "demographics more closely approximate New York City." In fact, however, there was no evidence in the record supporting that assertion. Indeed, the notion that San Jose and San Diego -- two of the Chair's selected jurisdictions -- are more comparable to New York City than such urban centers as Philadelphia, Boston, or Baltimore (to name only those East Coast cities omitted) is absurd on its face. In other words the so-called "demographic" similarity between New York City and the selected cities is simply concocted out of whole cloth.

Second, even within the illogical group of cities on which the Chair chooses to focus, her conclusion that New York City ranks last is incorrect. The Chair looks at wage rates alone and disregards all other forms of compensation, such as longevities, differentials, premiums, etc. -- stating that, in her view, the variations in these other forms of compensation across jurisdictions “can have a significant impact on any ‘apples-to-apples’ comparison[.]” (Chair Op. at 5) This is of course true, and is precisely the reason that both the City and the PBA accounted for such payments in their respective compensation comparison presentations. What the Chair really appears to be saying is that it was too complicated to consider these other forms of compensation, notwithstanding their admittedly “significant impact.” Neither the City nor the PBA, however, had any such difficulty. (See City Ex. 07- 61D; PBA Ex. 07-91) They considered these other forms of compensation for the obvious reason that a comparison of only one part of the compensation package received by police officers -- like that relied on by the Chair -- has little or no probative value.

Third, despite her acknowledgement that comparisons must be “apples-to-apples,” the Chair actually compares “maximum wage rates” without regard to the length of time that a police officer must be employed in order to reach them. Thus, she states that New York City “ranks behind” Washington, D.C. in police officer base wages. (Chair Op. at 5) She fails to mention, however, that a police officer in Washington, D.C. (as of the July 31, 2004 date used by the Chair) does not reach maximum salary until his or her 21st year of service, while a New York City police officer reaches basic maximum salary after 5.5 years of service (at most). (PBA Ex. 07-91) In fact, it takes a Washington, D.C. police officer 13 years to earn as much in base wages as a New York City police officer receives after only 5.5 years. (Id.)

Fourth, the Chair's cursory reference to the impact that retirement and health benefits have on police officers' total compensation fails to convey the tremendous value of these benefits. The Chair notes that New York City's ranking "does improve . . . when other benefits such as pension and health insurance are added to base pay." (Chair Op. at 5) Indeed, that is true, but from the Chair's description, one would not know that retirement benefits provided to New York City police officers are vastly superior. As a result of the Variable Supplement Fund, for example, every New York City police officer who retires after 20 years of service will receive -- in addition to his or her pension -- payments of \$12,000 per year for every year of the officer's life. (Tr. 1973-74, City Ex. 07-61E at 8) No other police officers enjoy anything comparable. (Id.) Overall, according to an uncontroverted analysis presented by City expert witnesses Michael Nadol and Christopher Erath, a New York City police officer who retires after 20 years of service receives over \$882,000 in net present pension benefit value. Police in other major cities receive on average \$238,940 less. (City Ex. 07-61G at 15, 16) In addition, New York City police officers and their dependents enjoy post-retirement medical coverage without premium cost sharing -- which surpasses the retiree health benefits of all but a few of the other national cities. (Tr. 2001-05, City Exs. 07-61E, 07-61F)

Fifth, the Chair completely ignores the undisputed evidence demonstrating that when all compensation is considered -- i.e., cash compensation as well as retirement and health benefits -- New York City ranks first, second, or third among the 20 largest cities nationwide in terms of total compensation cost, meaning the cost of providing wages and benefits to police officers, at every major career juncture (except entry level, where the City's ranking is artificially depressed as a result of the PBA's choice to reduce the starting pay rate under the Schmertz award). (City Exs. 07-61D, 07-61H)

Sixth, the Chair opaquely asserts that “City experts did not . . . take into account any differences in the cost of living among the national comparators, although a 2007 Mercer report cited New York City as the most expensive city in the country.” (Chair Op. at 5) In reality, the City’s expert witnesses did not make adjustments in their compensation comparisons to account for cost of living differences because doing so is fundamentally unsound and improper -- as a Senior Vice President from NERA Economic Consulting and a Principal from Mercer Human Resources Consulting both testified at the hearing. (Tr. 2015, 2031-32, 3554-60)

As amply demonstrated by experts who testified on behalf of the City, it is widely accepted and understood, both as a matter of economic theory and in real-world practice, that cost of living is only one of many factors contributing to differences in compensation levels across cities. Thus, any adjustment based solely on cost of living would result in a seriously distorted and misleading comparison (which is precisely what the PBA did in this proceeding). (Tr. 2008-22, 3558-59) The only acceptable analysis of wage levels across cities for comparison purposes is one based on wage differentials -- which accounts not only for cost of living differences but also the myriad other factors that cause wage levels to vary across geographic areas. And, notwithstanding the Chair’s failure to note it, the City’s experts did indeed present precisely such a comparison. (Tr. 2039-42, 3559-60, City Ex. 07-61G) That analysis demonstrated that New York City police officer compensation is entirely consistent with New York City’s ranking among comparable cities based on wage-level differences. (Id.)

In short, on the subject of compensation comparisons, the Chair’s Opinion reduces extensive evidence and testimony to a handful of unsupported observations that are noteworthy only for the degree to which they disregard and/or contradict the record evidence. In reality, the

record demonstrated that New York City police officers are favorably compensated relative to police officers in other large cities.

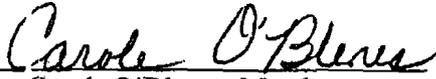
Before closing, there are two other factual errors in the Chair's Opinion that need to be corrected. The Chair incorrectly states that in the 2000-02 round of bargaining, "the City elected a non-pattern-conforming settlement" with the DEA and the SBA. (Chair Op. at 5) In fact, it is undisputed that the settlements with the DEA and the SBA for the 2000-02 round of bargaining fully conformed to the uniformed pattern established by the UFCEA. (Tr. 1508) The PBA did not contend otherwise in this proceeding. The Chair is simply mistaken.

Further, although the Chair reached the correct conclusion in rejecting the PBA's demand to lengthen police officers' tours, her description of the City's position is wrong. (Chair Op. at 14) The City and the LBA did agree to a pilot program to implement 12-hour tours on an experimental basis for lieutenants. (Tr. 1385-86, 3434-35, City Ex. 07-81) However, to date, the pilot program has not commenced. (Tr. 1385) Thus, the Chair's statement that the City and the LBA "experimented" with a pilot program and "found that costs increased" is incorrect and was not the basis of the City's argument against the PBA's demand. In fact, the agreement between the City and the LBA expressly stated that there is a cost associated with 12-hour tours, based on a 1982 Opinion and Award issued by an Office of Collective Bargaining Panel chaired by Arvid Anderson. (Tr. 1608, PBA Ex. 07-118) Accordingly, the City argued in this proceeding that, as reflected in the LBA pilot program agreement and the 1982 Anderson decision, the lengthening of tour proposed by the PBA would result in increased costs.

* * *

In conclusion, in light of the logical, legal and factual flaws permeating the Chair's Opinion, it is fortunate that the Award itself is the only authoritative outcome of this proceeding. Accordingly, as discussed at the outset of this Concurrence, I join in the Award because its terms are consistent with the critical objectives that the City sought to be addressed by this proceeding, and because the Award is consistent in important ways with the pattern bargaining concept that has long been the cornerstone of New York City municipal labor relations and remains so.

Dated: New York, New York
July 28, 2008



Carole O'Blenes, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration between

CONCILIATION

THE CITY OF NEW YORK, INC.,

PERB Case Nos.
IA2006-24; M-2006-093

- and -

PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK, INC.

Before the
Public Arbitration Panel

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OPINION OF PANEL MEMBER JAY W. WAKS

On May 19, 2008 this Public Arbitration Panel issued its Award, followed by the Opinion of its Chair, Susan T. Mackenzie, on May 22, 2008. Both the Award, in which the City's Panel Member has concurred, and Chair Mackenzie's Opinion represent an unprecedented victory for the Patrolmen's Benevolent Association ("PBA") and the 24,000 Police Officers it represents in breaking the stranglehold that ancient theories of pattern and parity have had in holding back Police Officer pay artificially, for all too long. In light of this victory, it may seem inconsistent that I dissent from the Award.¹ But I must, for two paramount reasons. *First*, although the Award continues down the highway paved by Chairman Eric J. Schmertz in the last arbitration between these parties in moving the City's Police Officers towards the top of the rankings of police pay, it does not close the significant wage gap that still exists. *Second*, the concept of givebacks adopted in the Award -- which ostensibly compel Police Officers to concede benefits to pay for a portion of the very wage increases to which they are entitled and have been granted -- is not justified and certainly is not supported by the record evidence. The Taylor Law's

¹ In this opinion, I am specifying the basis for my findings as required of all Panel members. N.Y. CIV. SERV. LAW § 209.4(c)(v).

mandate that this Panel issue a “just and reasonable” award requires, on the record in this case, considerably larger pay increases that are long overdue, without givebacks. If the City’s Police Officers now were paid at market rates, competitive with police officers in higher-paying local jurisdictions, many of whom work within the City, the parties would be able to take advantage of meaningful collective bargaining, and interest arbitration between them would have become the exception and not the rule.

In the three consecutive Taylor Law PERB arbitrations between these parties,² two independent public arbitrators have stated, point blank, that NYC Police Officers deserve wage increases that will move them towards their historical place among the highest paid officers in the nation, and all three have concluded that they deserve a far greater pay package than the pattern argued by the City. Both Chairman Schmertz in the 2002/2004 round arbitration and Chair Mackenzie in this 2004/2006 round have held that the City’s Police Officers should be paid in line with their peers in higher-paying jurisdictions, but that they are not. Chairman Schmertz, Chair Mackenzie and Chairman Eischen, who presided over the 2000/2002 round arbitration, each issued awards that broke the pattern urged by the City. Finally, Chair Mackenzie in her Award and Opinion here has expressly rejected the City’s argument (and threat) that parity relationships between City unions must be preserved lest all havoc in labor relations would break out; and Chairman Schmertz, in the face of the City’s insistence on a pattern which also was designed to maintain parity among the uniformed forces, simply ignored the City’s time-worn mantra of parity and tossed pattern and parity to the wind. Thus, in the past three rounds of arbitration proceedings between these parties -- 2000/2002, 2002/2004 and

² PBA 07-2 (Sept. 4, 2002 Award and Sept. 9, 2002 Opinion of Dana E. Eischen); PBA 07-1 (June 27, 2005 Award and Opinion of Eric J. Schmertz); May 19, 2008 Award and May 22, 2008 (released May 23, 2008) Opinion of Susan T. Mackenzie.

2004/2006, the only three held under the Taylor Law -- the independent public arbitrators have each concluded that the City's Police Officers are not being paid in accordance with the Taylor Law's mandate and that the City's construct of pattern and parity must not hold them back from receiving the much higher level of pay they deserve.³

My principal point of departure with Chair Mackenzie is that, although her Award and Opinion proclaim the death knell of the pattern and parity artifices and provide ample justification to award market-based pay increases to the City's Police Officers, she left for another day the closing of that pay gap once and for all. That pay gap should have been closed now. Moreover, while Chair Mackenzie is commended for many of her substantive findings and rulings that will advance the cause of higher Police Officer pay, her Award and Opinion are woefully deficient in that there is no record justification for givebacks and denial of the PBA's other proposals, and the Chair states none of substance.⁴ These matters are addressed in turn.

³ The arbitration outcomes favorable to the PBA in all three PERB rounds have been reached despite the City's efforts during deliberations in each round to spin the Chair's decision to the advantage of the City and blunt the PBA's precedent-setting victory by leaking certain matters to third parties including the press. Needless to say, all such actions are highly inappropriate and a blatant breach of the confidentiality required of the deliberations process. Yet I recognize that the City's disregard of the integrity of the deliberations process may continue. Should that occur or should there be views expressed in the concurring opinion of the City that warrant further comment, I reserve the opportunity to supplement this Opinion.

⁴ Similarly, the Chair has leveled unjustified blame on "political or legislative forums" for her unexplained perception of being handcuffed by the Taylor Law although, as explained *supra*, the Chair heavily relies on the mandates of that same law and evidence produced in conformance with that law, as did Chairman Schmertz, in rejecting the City's blind obsession with pattern and parity and in holding, without qualification, that the City must "return [] the salary levels of New York City police officers to a position commensurate with the status of the NYPD as the premier police force in the nation." Mackenzie Op. at 2, 8. In reality, the City itself, and certainly not the Taylor Law, has handcuffed collective bargaining with the PBA to its out-of-date insistence on a one-size-fits-all pattern that underpays Police Officers, overpays others and does not serve any public interest. In the final analysis, the Chair's rulings in the PBA's favor have proven herself to be plain wrong in saying that the Taylor Law "restrict[s] the flexibility of this Panel." *Id.* at 2.

Chair Mackenzie's Key Substantive Holdings
Uniformly Favor Moving NYC Police Officers' Pay To Market Levels

A. Chair Mackenzie and Chairman Schmertz Agree in Principle that NYC Police Officers Should Be the Highest Paid and, at Present, They Are Not

In 1968, the esteemed panel led by former United States Supreme Court Justice Arthur J. Goldberg, convened by the Mayor to make findings and recommendations regarding compensation for, among other groups, the NYC Police Officers, concluded that the City's Police Officers should be "among the highest paid officers in the nation."⁵ The PBA persuasively argued in these proceedings, as well as in the prior Taylor Law arbitrations, that, in light of the universal agreement that the City's Police Officers are the hardest working, most skilled, best trained, and best equipped to protect its citizenry against terrorist threats and other threats to public safety, the Goldberg Standard should continue to set the bar for NYC Police Officer compensation. In the last round, Chairman Schmertz agreed, and held that the Taylor Law itself "compel[s] wage increases for the New York City police officers that should and will move them toward the Goldberg panel objective." Schmertz Op. at 15. In her Opinion, Chair Mackenzie independently has decided to continue the process embarked upon by Chairman Schmertz of "returning the salary levels of New York City police officers to a position commensurate with the status of the NYPD as the premier police force in the nation." Mackenzie Op. at 8. This Taylor Law-premised principle, and no other, must control future collective bargaining and, should negotiations fail, any interest arbitration between these parties. In both Chair Mackenzie's and Chairman Schmertz's construct, only by providing these higher market-based salary levels for the City's Police Officers would the Taylor Law achieve a "just and reasonable determination." *Id.*; Schmertz Op. at 29-30.

⁵ *Report of Special Panel at 5* (Oct. 13, 1968) (Goldberg, McDonnell, Schmertz, Carey), PBA07-8.

B. The Taylor Law Requires Police-to-Police Wage Comparisons

The City has argued in each of the three PERB arbitrations that the Panel must issue to the PBA the same “pattern” wage increases the City has negotiated with the other City unions. Since the other unions represent a myriad assortment of civilian employees and uniformed employees with vastly different skills and duties than Police Officers (such as firefighters, correction officers and sanitation workers), the City’s argument would force a comparison of NYC Police wages with wages of other non-police employees doing very different work. Chair Mackenzie correctly rejected this argument and concluded that the Taylor Law permits a comparison only of police-to-police, between the City’s Police Officers and police officers in other jurisdictions. This conclusion is inescapable for both legal and factual reasons. *First*, as Chair Mackenzie highlighted, the Taylor Law does not, as the City Collective Bargaining Law previously did, require a comparison of NYC Police to “other employees in New York City.” Mackenzie Op. at 2. Chairman Schmertz also reached this conclusion:

Under the New York City Collective Bargaining Law comparisons need only be made among employees in the City of New York. To do so would be in compliance with that law because by its language it allows for comparisons either with New York City employees or those in comparable communities. The Taylor Law does not provide for an “either-or” option. It requires comparison with employees “in comparable communities” and therefore, at least for this particular case, has a broader scope.

Schmertz Op. at 17. *Second*, as Chair Mackenzie concluded, NYC Police Officer duties differ substantially from the duties of civilian and other uniformed employees, including firefighters and correction officers, whose jobs also involve physical risk.⁶ *See* Mackenzie Op. at 5-6.

⁶ Tr. 654:9-655:3 (Bratton); Tr. 839:16-24, 843:16-20 (Smolka); Tr. 2642-43 (O’Toole); Tr. 2821, 2823:3-10, 2826:4-7, 2826:25-2827:4, 2830:7-2836-22 (Caputo); Tr. 782:23-783:10, 806:2-6, 808:8-16, 818:17-23, 3060:8-23, 3074:24-3075:2, 3083:4-7 (McCabe); Tr. 727:13-728:8 (O’Donnell); Tr. 2575:10-17, 2576:2-2579:24 (Esposito); Tr. 3413:2-3414:11 (Lockley); Tr. 2405:15-24 (Pineiro).

Unlike those other municipal jobs, as Chair Mackenzie wrote, even “the most basic police duties are not ‘regimented’” and “are generally carried out without supervision.” Mackenzie Op. at 6. Unlike employees in these other forces, Police Officers “are also required to employ problem-solving and dispute resolution skills” and are “increasingly subject to outside scrutiny.” *Id.* These additional duties and responsibilities make the police job one of a kind within the City. NYC Police Officers, Chair Mackenzie has found, have the most difficult, demanding, dangerous job which requires the most training, skill, education, judgment and problem solving capabilities. *Id.* at 5-6. The obvious conclusion from these undisputed facts is that the City’s Police Officers deserve to be paid according to what other police officers are earning in higher-paying communities, not according to what other City workers with much less complex and different jobs are earning within NYC.

In these proceedings, aside from proposing that NYC Police Officers be paid at least as much as those in the police department of the Port Authority of NY & NJ, the PBA put forth two proposals for additional compensation that target unique stand-alone responsibilities and qualifications of NYC Police Officers -- Terrorism Pay and Education Pay.⁷ On Terrorism Pay, the PBA introduced an abundance of evidence establishing that NYC is the #1 terrorist target, this terrorist threat eclipses the other unknowns of the Police Officers’ preventive and responsive missions, its Police Officers’ duties have changed dramatically after the horrific events of September 11, 2001, and the magnitude of their terrorism duties far surpasses that of police officers in any other jurisdiction. Much of this evidence came in the form of testimony from

⁷ Panel 07-1, PBA Reply to Petition for Interest Arbitration, Ex. A at 2-3, Ex. C.

eleven witnesses, most of whom are not affiliated with the PBA and include two City witnesses, the NYPD's Chief of Personnel Rafael Pineiro and Chief of the Department Joseph Esposito.⁸

In her Opinion, Chair Mackenzie did find that "changes in duties resulting from counter-terrorism activities may warrant a premium or adjustment, as other jurisdictions have negotiated" and that "health-related problems that may have resulted from September 11-related service is an issue in which both parties and the public have an interest." Mackenzie Op. at 10. The Chair further concluded that since 9/11, NYC Police Officers "provide the front-line defense in homeland security, serving as the 'first preventers' and not just 'first responders.'" *Id.* The uncontested evidence showed that several jurisdictions in New York State (*e.g.*, NYS Troopers, SUNY Police, NYS Environmental Police) and around the nation (*e.g.*, San Francisco, San Jose) have seized the lead in providing such pay to their police officers, all of whom have less comprehensive anti-terrorism responsibilities than have the Police Officers in NYC.⁹ And, as Chief Bratton testified, New York City is "arguably the most significant terrorist target in the

⁸ These other witnesses include: Chief Inspector of the Ireland Garda Inspectorate Kathleen O'Toole (also former Commissioner of the Boston Police Department and Massachusetts Cabinet Secretary for Public Safety); Chief of the Los Angeles Police Department and former NYPD Commissioner William J. Bratton; Kenneth F. Kahn Dean and Jack Sheinkman Professor of Collective Bargaining Harry Katz of Cornell University's School of Industrial and Labor Relations; Professor Eugene J. O'Donnell of John Jay College of Criminal Justice; Professor James McCabe of Sacred Heart University (former NYPD Commanding Officer of the Labor Relations Office); Chief (ret.) Bruce Smolka; Officer William Hunziker; PBA President Patrick Lynch; and PBA counsel David Nicholson.

The evidence supporting this proposal includes, *inter alia*: Tr. 104:10-125:8 (Lynch); Tr. 231:2-12 (Hunziker); Tr. 647:2-9 (Bratton); Tr. 729:5-730:12 (O'Donnell); Tr. 780-95 (McCabe); Tr. 312:11-18, 315:2-9, 407:4-18, 562:23-563:4 (Katz); Tr. 840, 853:21-854:14 (Smolka); Tr. 952, 957, 961-62, 964-65 (Nicholson); Tr. 2358, 2482-83 (Pineiro); Tr. 2627, 2629:21-2930:25 (O'Toole); Tr. 2548:13-19, 2559 (Esposito); PBA 07-103 at Tab 6 (Commissioner Kelly) ("All of our intelligence continues to point to the fact that New York City remains the number one target for terrorist."); PBA 07-35 at 4 (Commissioner Kelly) ("we're doing more here in terms of our counter-terrorism program than any other city in the world . . ."); PBA 07-103 at Tabs 4A, 4B and 8; PBA 07-91.

⁹ Tr. 967:4-969:11 (Nicholson); Tr. 795:18-796:8 (McCabe).

United States.”¹⁰ Yet, without stating any substantive justification, the Chair declined at this time to grant the PBA proposal for Terrorism Pay. It defies logic that the Police Officers at the forefront of this country’s most challenging counter-terrorism efforts should be denied this additional compensation.

The PBA also sought through its Education Pay proposal separate compensation for the higher educational levels required of Police Officers upon entry into the force, as well as for added levels of education they achieve during their NYPD careers. In recognition of the superior skills and judgment that Police Officers’ duties require, Chair Mackenzie noted, “educational qualifications of police officers are significantly higher than those of other uniformed services.” *Id.* at 9. Eight separate witnesses gave undisputed testimony that additional compensation for education was warranted.¹¹ Indeed, when asked whether it “would be helpful to compensate” for education, City witness Chief Pineiro responded affirmatively.¹²

Chair Mackenzie expressly found that “other jurisdictions have recognized the value of education in meeting the challenges of urban police work as reflected by the fact that 15 of the 20 national comparators include some form of additional compensation for education,” but declined to award the PBA’s proposal, noting her “focus on increases in wages at this time.” *Id.*

¹⁰ Tr. 647:6-7 (Bratton).

¹¹ These witnesses include Chief Bratton, Professor O’Donnell, Professor McCabe, Chief O’Toole, Dean Katz, Councilmember Gail Brewer and David Nicholson. The eighth is NYPD Chief Pineiro.

The evidence supporting this proposal includes, *inter alia*: Tr. 310:16-311:11, 361-64 (Katz); Tr. 650:22-651:21 (Bratton); Tr. 701:8-11, 703:11-23, 745:21-747:25, 749:11-19 (O’Donnell); Tr. 804:8-806:21, 807:17-809:7, 809:25-810:9 (McCabe); Tr. 971:16-972:3, 974:15-975:9, 976:3-5, 979-981 (Nicholson); Tr. 2374, 2405:15-19, 2415:3-21, 2479:8-18, 2480:22-2481:9 (Pineiro); Tr. 1062:19-1063:12 (Bloomberg); Tr. 2634:5-2638:8 (O’Toole); Tr. 858-859 (Green); Tr. 213:18-214:11, 217:9-12, 218 (Brewer); Tr. 274, 277-78 (Monserrate); PBA 07-15 at 7; PBA 07-91 at 17, 18, Tab 5; PBA 07-86 at Tab 2; PBA 07-103 at Tab 12; PBA 07-166; PBA 07-142 at 7; PBA 07-98; PBA 07-103 at Tab 10.

¹² Tr. 2480:22-2481:9.

at 10. There is no logical or pragmatic reason to make these findings and yet deny NYC Police Officers full recognition and compensation, and Chair Mackenzie's failure separately to award Education Pay is contrary to the evidence that was put before her and that she acknowledged. Tellingly, the Chair specifically referred the issue of Education Pay to the parties for consideration, reflecting her support of this separate element of compensation in the next round.¹³ *Id.*

C. The High-Paying Local Jurisdictions Are the Most Relevant Comparators in Setting NYC Police Officer Pay and, at the Least, as Relevant as the High-Paying National Jurisdictions to Which the City Refers

Chair Mackenzie recognized that the Taylor Law limited her comparison of NYC Police Officer compensation to compensation of police officers in "comparable communities." As did Chairman Schmertz (Schmertz Op. at 17-18), Chair Mackenzie held that both local and national comparator jurisdictions are relevant in making police-to-police pay comparisons under the Taylor Law. With regard to the national jurisdictions, Chair Mackenzie correctly rejected the City's attempt to compare NYC Police Officers with officers in small cities, serving communities with far different demographics and facing far less complex challenges, and instead focused her consideration on those cities with similar demographics and challenges to NYC and a relatively high cost of living -- "San Jose, San Francisco, Los Angeles, Chicago, Washington, D.C. and San Diego." Mackenzie Op. at 5. Among these cities, the Chair found, as the record evidence demonstrated, that NYC ranked last in compensation. *Id.*

¹³ Compensation for both Education Pay and Terrorism Pay would fall outside the salary schedule and therefore would not affect the City's concern with parity relationships. These elements of compensation which reflect the highest standards of policing are the types that the City itself would have no good faith reason to reject and should be interested in providing.

Chair Mackenzie also specifically compared NYC Police pay to high-paying local jurisdictions, finding again that NYC ranked last, and further emphasized the “public interest that wage increases, at a minimum, do not further disadvantage New York City police officers as against police officers in comparable national and local jurisdictions” Mackenzie Op. at 8.

Although I agree with the Chair that the local comparator jurisdictions must be considered (indeed, they are the best comparators, as explained *infra*), the Chair’s observation that “when factors such as diversity and density of populations and neighborhoods, the volume of commercial as well as residential activity and the need for extensive social services are taken into account, the demographics of large urban jurisdictions more closely approximate New York City than do suburban counties or communities,” (*id.* at 4), shows a gross misconception of the evidence. This statement is not only contradicted by the remainder of the Chair’s opinion, in which high-paying local jurisdictions are cited approvingly as comparators for NYC, but it is contradicted by the weight of record evidence.

Indeed, the only credible evidence in the record relating to population density is contained in a PBA exhibit which showed that at least three of the suburban local jurisdictions which pay their police considerably more -- Westchester County, Nassau County and Suffolk County -- fall well within the rankings of the top ten urban national jurisdictions on which the City relies.¹⁴ Moreover, the similarities between NYC and the local jurisdictions’ median household income and valuation of real property per capita data, reflections of the demographics of those communities shown in another exhibit in evidence, stand undisputed.¹⁵ Further, the

¹⁴ PBA 07-165 at 1. In total, seven of the higher-paying local jurisdictions fall within the 20 largest jurisdictions relied upon by the City. *Id.*; Tr. 2894:4-2895:10 (Katz).

¹⁵ PBA 07-91 at 8; Tr. 329:14-331:19 (Katz).

undisputed testimony of knowledgeable witnesses, in particular Chief Bratton, Professor Abraham, Dean Katz and City consultant Michael Nadol, establish the similarities in diversity of populations that inhabit NYC and other higher-paying local jurisdictions.¹⁶ Indeed, that the much more highly paid (and valued) NYS Troopers and Port Authority police work within the City, often side-by-side with NYC's Police Officers, *a fortiori* demonstrates that these local police jurisdictions serve demographics which match closely those of NYC.¹⁷ Moreover, the locals exchange with NYC, on a daily basis, large numbers (by some measures, hundreds of thousands) of visitors and workers.¹⁸ Finally, the record is devoid of any other specific evidence, comparing factors between or among the various local or national comparators, on which the Chair could justify her statement. Thus, her statement is contrary to evidence and certainly, not supported by any evidence, and must be considered in context with the rest of her Opinion in which highly-paying local jurisdictions are relied upon as appropriate comparators.¹⁹

In sum, the evidence amassed in these proceedings overwhelmingly supports reliance on the high-paying local jurisdictions, as opposed to the national cities.²⁰ The local jurisdictions

¹⁶ Tr. 663:5-664:4 (Bratton); Tr. 508:25-511:24 (Abraham); Tr. 2893:14-19 (Katz); Tr. 2085:7-12 (Nadol).

¹⁷ Tr. 227:3-228:12 (Hunziker); Tr. 945:2-25 (Nicholson); Tr. 319:25-320:5, 325:24-326:7 (Katz).

¹⁸ Tr. 510:5-511:5 (Abraham); *see* New York City Independent Budget Office, *Inside the Budget*, "Behind the Wheel: Who Drives Into the Proposed 'Congestion Zone?'" at 1-2 (Dec. 11, 2007), *available at* www.ibo.nyc.ny.us/newsfax/insidethebudget154.pdf.

¹⁹ Chair Mackenzie also notes, without comment, that the size of the police officer ranks in NYC dwarfs that of other national and local jurisdictions. This function of gross numbers, however, does not diminish the record evidence of demographic similarities and comparability between NYC and the higher-paying local jurisdictions, many of which, the record also shows, rank higher in size of police departments than a number of the nationals upon which the City relies. PBA 07-134.

²⁰ Tr. 319:6-13, 320:6-321:19, 2892:14-25, 2893:14-2894:3 (Katz); Tr. 510:14-17, 511:12-24 (Abraham); Tr. 2085:7-12 (Nadol); Tr. 945:8-16 (Nicholson); Tr. 227:3-228:12 (Hunziker); Tr. 663:5-664:4, 655:4-11 (Bratton); Tr. 803:11-13, 824:13-825:3 (McCabe); PBA 07-97; Tr. 846:16-25 (Smolka); Tr. 634:3-14 (McCall); PBA 07-89 at 439:10-441:10; PBA 07-100; PBA 07-187; PBA 07-188; PBA 07-189.

share similar demographics and face similar policing challenges, including counterterrorism duties that reflect their regional proximity to NYC. Moreover, the locals are located within the same labor market as NYC, and therefore applicants for the police job as well as incumbents consider the compensation offered in these local jurisdictions when deciding where to work and whether the City truly appreciates their service and commitment to the well-being of the City, its populace and its business base.²¹ Further, even a pay consultant the City presented to support its “wage level” theory, Darrell Cira of Mercer Human Resource Consulting (“Mercer”), has stressed the importance of the *local* market in setting compensation. In his words, compensation should be “determined at the job level using local data and not broad trend data.”²² Additionally, reliance on the locals obviates the need to take into account national cost-of-living differences.²³

D. The Appropriate Basis on Which To Compare Pay Is 20-Year Average and Basic Maximum Wage Rates, and Not City Handpicked, Snap-Shot Calculations Including Health and Pension Benefits

The wage rates paid to the City’s Police Officers are so starkly behind wage rates paid to other police forces, that the City was forced to add to its compensation figures assumed health and pension benefits (and costs) in a vain effort to bridge the difference. To further mask the discrepancy, the City focused on snapshots in time during a Police Officer’s career, conveniently choosing those that will make NYC Police pay look better by comparison than it actually fares. The Chair saw through these tactics and rejected the City’s data manipulation, ruling that flat “wage rates” averaged out over a 20-year career, as well as “police officer maximum wage rates” (*i.e.*, the top base pay reached by a Police Officer after 5½ years of service), are the appropriate

²¹ Tr. 319:4-24, 2892:14-25 (Katz); Tr. 680:21-681:6 (Bratton); *see also* Tr. 231:16-17, 231:23-232:9 (Hunziker); PBA 07-89 (Schmertz Tr. 435:9-17) (Llerena); Tr. 681:14-19 (Bratton).

²² PBA 07-187; Tr. 3585:12-3586:10 (Cira).

²³ Tr. 320:6-13 (Katz); Tr. 508:8-24, 511:6-24 (Abraham).

bases on which to compare police pay, and not figures that assume a monetary equivalent for health benefits or for pension benefits (or costs) received only after twenty or more years on the job. Mackenzie Op. at 5. Chair Mackenzie's ruling is in line with the prior ruling of Chairman Schmertz: "I am not persuaded that the benefits accorded New York City police officers though obviously generous, but so restricted, are so different from other communities and entities to which comparisons are made as to close the pay gap referred to above."²⁴ Schmertz Op. at 22-23. Further, Chair Mackenzie has adopted a naked "wage rate" approach as the best way to make her "apples-to-apples comparison." Mackenzie Op. at 5. This recognizes the reality that Police Officers in New York City work more hours than in many other police jurisdictions, placing the wage rate of the City's Police Officers, whether measured at max or by a 20-year average, even farther behind most other jurisdictions where police are more highly paid for working fewer hours.²⁵

E. Cost-of-Living Differences Must Be Taken Into Account When Comparing Police Wages of National Cities

In the prior PERB arbitration proceedings, the PBA has explained, through testimony of experts and with ample logical and factual support, that when the City compares the wages of the largest national cities across the country to NYC, the vast differences in cost-of-living must be taken into account. The City has countered with a "wage levels" theory. Its theory, boiled down, is that unknown and unquantifiable factors (such as museums, cultural opportunities, air quality and sports teams) completely account for the differences in cost-of-living, such that raw

²⁴ The Chair's focus on wage rates over a 20-year career and the basic maximum wage rates reached after 5½ years of service *sub rosa* rejects the City's argument, discussed *infra*, that a considerable increase in the starting salaries alone is all that is necessary or appropriate. Moreover, the City's argument to include benefits received only after 20 years of service simply confirms the Chair's focus on comparing 20-year average police pay across jurisdictions.

²⁵ PBA 07-91 at 6, 12.

numbers can be compared without any adjustment, despite the fact that there is a 40% range of difference between the least costly and the most costly city, New York City, on its list of national comparators. In the last arbitration, Chairman Schmertz specifically rejected the City's argument and accepted the evidence set forth by PBA witness Professor Katharine Abraham (the former Commissioner of the Bureau of Labor Statistics of the U.S. Department of Labor) regarding the need to make cost-of-living adjustments. Schmertz Op. at 19. Chair Mackenzie echoed that conclusion, finding that "[v]ariations in cost of living can have a *significant impact* on wage or compensation comparisons." Mackenzie Op. at 5 (emphasis added). And, just like Chairman Schmertz, Chair Mackenzie totally ignored the City's alternate wage levels theory in her Opinion.²⁶

F. NYC Police Officer Pay Has Fallen Far Behind the Other Comparable Jurisdictions, Necessitating an Above-Pattern Award

Chair Mackenzie held that NYC Police Officer wages have fallen substantially from a position superior to comparable jurisdictions. Mackenzie Op. at 5. The City's Police Officer pay ranks behind virtually all national cities, local jurisdictions surrounding NYC, and jurisdictions with police officers who work in NYC itself, such as the Port Authority and NYS Troopers. Chair Mackenzie went even further and held that the goal should be to "return[] the salary levels of New York City police officers to a position commensurate with the status of the NYPD as the premier police force in the nation." *Id.* at 8. Regrettably, she tempered her holding by embarking on an "incremental" process of moving the NYC Police Officers to the market

²⁶ Moreover, in a telling twist of evidence that bolsters the PBA's reliance on local comparators and cost-of-living adjustments for nationals, while undercutting the City's own positions, the City itself relied on compensation consultants from the sister consulting firms of NERA and Mercer, whose own advocacy of local pay comparisons is well known and reliance on comparative inter-city cost-of-living adjustments is well established. PBA 07-137; PBA 07-184; PBA 07-185; PBA 07-186; PBA 07-187; PBA 07-188; PBA 07-189; Tr. 3582:5- 3588:5 (Cira); Tr. 2139:21-2144:19 (Erath).

wage levels they deserve, instead of simply awarding the pay increases that would achieve this goal. As she concluded, it is “in the public interest that wage increases, *at a minimum, do not further disadvantage* New York City police officers as against police officers in comparable national and local jurisdictions.” *Id.* (emphasis added).

It is distressing that the increases awarded by Chair Mackenzie are the bare minimum required to prevent the NYC Police from falling farther behind the comparable jurisdictions. Her Award of compounded 4.5% and 5% increases for 2004/2006 is an inadequate step in the direction initiated by Chairman Schmertz, with his pattern-breaking 5% and 5% wage increases for the prior two years. Thus, much work remains to be done. Even as Chairman Schmertz recognized three years ago and Chair Mackenzie acknowledges, the City’s Police Officers deserve *at least* two additional 5% annual increases for the 2004/2006 round since he found “over a four year period at least a 20% wage increase was justified.” Schmertz Op. at 34; Mackenzie Op. at 8. The evidence presented by the PBA in this round showed that NYC Police Officers now need wage increases of at least 41% just to match the 2006 average of local comparators and at least 45% to bring them up to the 2006 average of national comparators on which the Chair relies.²⁷ These discrepancies certainly will not diminish on their own, given that these other jurisdictions continue to give significant increases. While Chair Mackenzie’s award failed to close this huge pay gap, her holdings, coupled with Chairman Schmertz’s holdings, dictate that either through collective bargaining or, if need be, in the next interest arbitration proceeding, the City’s Police Officers must receive sizeable wage increases (without givebacks), regardless of any pattern that the City may agree upon with its other unions.

²⁷ PBA 07-91 at 5, 6, 15, 16; Mackenzie Op. at 5.

G. Sub-Market Pay Accounts for Serious Retention and Recruitment Issues

In further support of her above-pattern award, Chair Mackenzie credited the evidence, largely from City documents and statements made by City witnesses and NYPD officials, reflecting that retention and recruitment problems stem from sub-market career pay. The City nominally argued that there was no retention problem, and that, while the NYPD was having some difficulty recruiting new Police Officers,²⁸ that problem was due solely to the decreased starting salaries (that the City pressed for) in the Schertz round. The City's position ignored key evidence, such as a recent admission by Chief Pineiro, the NYPD official in charge of recruiting, that "[t]he Police Department is currently facing a serious challenge in attracting *and retaining* quality candidates to fill our ranks."²⁹ The Chair rejected the City's arguments and concluded from the evidence that, in addition to recruitment, "there are clear indications that retention is an issue," citing City documentation of Police Officers leaving the NYPD for neighboring police departments at much greater rates than before. Mackenzie Op. at 7.³⁰

The reason for this retention problem is, as the record evidence shows, the low earnings potential during Police Officers' careers, as compared with the opportunity for far higher career

²⁸ The NYPD's recruitment problems are conceded by the City and supported by a vast amount of record evidence. *See, e.g.*, PBA 07-41 (NYPD Recruitment Section memorandum discussing recruitment efforts for FY 2005 and 2006, noting that despite its efforts to create "a comprehensive and professional advertising campaign" and online application system, the Department experienced a "decrease in the number of applications received, fewer persons tested, and a drop in the exam attendance rate during fiscal year 2006 when compared to the resultant efforts of fiscal year 2005"); *see also* Tr. 2418:5-2422:17 (Pineiro) (testifying about NYPD's hiring of outside consultants for recruitment campaigns, in particular PBA 07-143, a City document establishing that it had allocated \$10 million for a recruitment campaign by Graystone Group Advertising, and PBA 07-144, a 2003 NYPD document confirming a 5-year \$20 million contract with Bernard Hodes Group). These tens of millions of advertising dollars would have been more productively spent on pay increases for Police Officers as a way to attract and retain them.

²⁹ PBA 07-91 at 25 (emphasis added).

³⁰ The record support for the Chair's findings on retention problems is considerable. PBA 07-91 at 33 (68% of those who resigned from NYPD and joined another police department cited low pay); Tr. 2882:16-21 (Katz) (70% of those who joined another police department joined one in the New York metropolitan area); PBA 07-91 at 29, 30.

earnings in neighboring jurisdictions. For example, Officer Frank Garafano testified that he took a near 20% pay cut to start over as a Suffolk County police rookie because over his entire career he would earn nearly double in Suffolk as he would with the NYPD.³¹ The City's witnesses agreed -- Chief Pineiro conceded that any raise in the starting salary would have to be accompanied by a raise in salary throughout the pay scale; and Christopher Erath, one of the City's pay consultants, testified that, when deciding whether to take the NYPD job, Police Officers looked at earnings over an entire career, and not just starting pay.³² Chair Mackenzie's holding that 20-year average wages must be considered takes into account all of this evidence and addresses the fact that recruits consider career earnings, and not just starting pay, when deciding whether to take a job with the NYPD, just as more seasoned Police Officers do in reflecting daily upon the higher pay in the neighboring police jurisdictions.

Nothing in the Taylor Law would require retention or recruitment problems in order to justify market-level pay increases, just as nothing permits pattern or parity with other City groups to constrain the setting of NYC Police Officer pay in comparison to other higher-paying jurisdictions. When all is said and done, however, retention and recruitment issues simply supplement the otherwise stand-alone rationale for awarding market-based increases to the City's Police Officers.

H. Pattern Is Not Controlling Under the Taylor Law

The City's entire argument in these proceedings, as in prior proceedings, can be boiled down simply to the claimed sanctity of "pattern" -- that the Panel must award the same pattern of

³¹ Tr. 251:15-252:20 (Garafano); *see also* Tr. 812:17-20, 816:6-815:6 (McCabe); Tr. 208:23-25, 209:23-210:3 (Brewer); Tr. 231:23-232:9 (Hunziker); Tr. 378:24-379:4, 402:4-403:15 (Katz); Tr. 590:5-591:23, 592:21-595:12 (Adams); Tr. 859:24-860:3 (Green).

³² Tr. 2468:3-17 (Pineiro); Tr. 1962:5-8 (Erath).

wage increases that the City has negotiated with the unions preceding the PBA's arbitrations because, if the award exceeds the pattern, the fabric of labor relations will be torn apart and the City will go bankrupt. The Chair wisely rejected this argument, *ipso facto* finding the City's threats hollow and unsupported by the record. Instead, she found that the statutory criteria of the Taylor Law must govern her award and that, on the evidence presented, "strict adherence to the pattern urged by the City would not meet" those criteria and "would not result in a just and reasonable determination." Mackenzie Op. at 8.

The Chair's opinion is an acknowledgement that the recycled "pattern" argument the City continues to recite presents nothing but an illusion, because, the Chair holds, over the years there have been many exceptions to the pattern (*e.g.*, "from 1980-1989, 2000-2004 and 2004-2006," Mackenzie Op. at 5) and, particularly relevant to these proceedings, the pattern has not been followed by either of the prior two independent arbitrators under the Taylor Law. Thus, in the Eischen round the award issued to the PBA broke pattern with every union deal; moreover, despite the City's 13th hour maneuverings with the SBA and DEA after Chairman Eischen broke pattern, those NYPD unions never "caught up" to the PBA as the City had insisted they would. *Id.* Likewise, Chairman Schmertz unequivocally rejected the pattern that the City urged it to adopt, and awarded the PBA wage increases more than double that of the other unions which had settled their contracts, and those unions have not caught up to the PBA. Schmertz Op. at 29-30. Finally, the 9.73% base pay increases (cumulative) that Chair Mackenzie has awarded exceeds the 3%/3.15% City pattern by 56%, without ever taking into account the jump that the Chair awarded in starting pay. As pointed out earlier, even by the City's own calculations which rely heavily upon exaggerated savings generated by illusory givebacks, her Award is, at a minimum, 19% more than the net cost of the pattern agreements the City reached with other groups.

In sum, these three arbitrators, in three consecutive Taylor Law arbitrations, have each recognized that blind adherence to pattern will force the PBA farther behind the comparable higher-paying jurisdictions in contravention of the Taylor Law's requirements.³³

The Chair has highlighted a fatal flaw of the City's pattern mantra -- namely, its ignorance of the crucial fact that pattern bargaining beginning in the 1970s took place when Police and other uniformed unions were all being paid at the top of the comparability pay scales. Mackenzie Op. at 5. As the evidence established, the City's Police Officers are now alone at the bottom of all those jurisdictions while other uniformed unions in NYC continue to enjoy wages far above those of their counterparts in comparable jurisdictions.³⁴ Thus, for anyone who believes in hard data, pattern is no longer a viable option in setting pay for the City's Police Officers.

Moreover, the City's attempts to restrict the PBA to its pattern have caused the NYPD great difficulties in terms of plummeting morale aside from any retention and recruitment issues.³⁵ Indeed, Commissioner Kelly's strong criticism of pattern is a prominent part of the record before this Panel. In his own words: "the whole issue of pattern bargaining has to be re-examined, because it's not working very well [for] the Police Department . . . there's no

³³ Of note, this concern with blind adherence to pattern has been voiced, as well, by arbitrators during the pre-2000 Taylor Law era when the different, more City-friendly criteria of the City's own Collective Bargaining Law governed interest arbitrations. In a 1975 proceeding between these parties, Arbitrator Robert Coulson challenged the City's notion that "when the City has struck a bargain with one union, another union representing other employees must perforce accept the same bargain lest preexisting wage patterns be disturbed." NYC 07-A. Similarly, Arbitrator Arvid Anderson, another NYCCBL arbitrator to whom the City selectively refers, held some 17 years ago: "long existing relationships . . . cannot rigidly be made a basis for imposing upon the PBA a wage settlement which is contingent on exact replicability of benefits and/or cost negotiated by others." NYC 07-B.

³⁴ PBA 07-91 at 3-6, 11-16; PBA 07-165 at 8-17.

³⁵ Tr. 1000 (Nicholson); Tr. 713:17-19, 753:2 (O'Donnell); Tr. 232:21-233:14 (Hunziker); Tr. 680:21-681:6 (Bratton); *see also* Tr. 681:14-19 (Bratton).

immediate end in sight or resolution of this problem.”³⁶ Tellingly, the City never attempted to refute this concern of its top NYPD official.

Like Chairman Schmertz, Chair Mackenzie rejected the argument that pattern is controlling and that a heavy burden must be overcome to break pattern. Chair Mackenzie justified her above-pattern award not by relying upon some shop-worn burden, which finds no support in the Taylor Law, but instead on the criteria expressly listed in the statute. In the final analysis, Chair Mackenzie based her above-pattern award on the “public interest that wage increases, at a minimum, do not further disadvantage New York City police officers as against police officers in comparable national and local jurisdictions, and that wage increases continue the appropriately incremental process of returning the salary levels of New York City police officers to a position commensurate with the status of the NYPD as the premier police force in the nation.” Mackenzie Op. at 8. Chair Mackenzie unqualifiedly held that a “just and reasonable” determination, as required by the Taylor Law, could not ensue from adherence to the pattern. *Id.*

I. Parity Relationships Are Not Controlling Under the Taylor Law

Chairman Schmertz issued his award of wage increases and his recommendation of future increases (aggregating 22% compounded) without concern for how it would affect historical parity relationships between the PBA and other uniformed groups. It was the City’s own unilateral decision subsequently to give away to those other uniformed unions the same net cost settlements as it calculated for the PBA’s award. Taking the next step and in apparent recognition that the City has been “crying wolf” with respect to pattern and parity, Chair

³⁶ PBA 07-13; *see also* PBA 07-38.

Mackenzie's award raised the basic max pay of NYC Police Officers well above what the other unions had already settled on in multi-year contracts with the City, thereby intentionally breaking the maximum base pay parity relationships between them, both vertically and horizontally. Future interest arbitrators must follow the lead of these independent arbitrators and grant the PBA an award based on the merits of its own case, and independent of what other unions have decided to accept or what the City simply may give to them in an effort to sustain the artifice of parity regardless of their position-specific merits.

The PBA Deserves Wage Increases Far Higher Than Those Granted in This Award

As I said at the outset, it may seem inconsistent that I am dissenting in light of the unprecedented and monumental victories the PBA has scored on every major point litigated in setting the basic wage of Police Officers in this third PERB interest arbitration. Nevertheless, the evidence put forth in this proceeding supported the PBA's proposal to match, at a minimum, the compensation received by the Port Authority police officers which would require at least a 20% raise in *each year* of the two-year contract period (and 22-26% in each year, considering the difference in hourly wage rates) -- an amount considerably higher than the award issued by the Chair.³⁷

The parties and Chair Mackenzie agreed that the NYPD is "the premier police force in the nation." Mackenzie Op. at 1. The Chair further held that, contrary to the Taylor Law's mandate, the City's Police Officers are paid far below their counterparts in comparable jurisdictions and that the goal must be to move them back up to the top of the pay charts, where they rightfully belong. Unfortunately, Chair Mackenzie failed to achieve her own goal.

³⁷ PBA 07-91 at 6, 7.

On the record before the Panel in this round, there is no evidence that the City was unable to have paid more than the 4.5% and 5% wage increases that the Chair awarded. The Chair referred in passing to concern over declining revenues and fixed expenses, but ignored the evidence showing that the credit agencies that review the totality of the City's budget have recently upgraded the City's ratings to the highest they have been, and that the City has been increasing its discretionary spending on political projects such as the construction of the Brooklyn Bridge Park and continuation of the real estate tax rebate program.³⁸ If the City has hundreds of millions, if not billions of dollars to spend on these and other discretionary programs, how can it argue it does not have the ability to pay our Police Officers a market wage?

Moreover, in round after round, the City has manipulated the record to support its cries of poverty, always presenting a doom-and-gloom scenario to each Panel, only to announce once the record is closed its ability to raise revenues or its discovery of soaring budget surpluses or to unabashedly and unnecessarily spend huge sums on other initiatives that would have met the pay needs of the City's Police Officers. A few examples should suffice. In the Eischen round, the Mayor claimed to the Panel that the City was unable to raise taxes due to the uncertainty of the post-9/11 economy; yet right after Chairman Eischen's pattern-breaking Award was issued, the Mayor went on to champion an 18.5% property tax increase that was in place through the next bargaining round. Also, although during those proceedings the Mayor, his Deputy, and his Budget Director repeatedly argued that the City did not have the ability to pay \$247 million for Police Officer increases, within weeks after the record was closed the City chose to fund pattern-breaking increases for the teachers union costing more than \$1 billion during the contract term and more than \$420 million above the civilian "pattern" in costs going forward. In the Schmertz

³⁸ PBA 07-161 at 13-15, 17-18; PBA 07-215; City 07-122 at 55; Tr. 1112:17-1113:5 (Bloomberg).

round, the \$2.0 billion surplus projection the City admitted to the Panel magically increased by 175% to a \$3.5 billion surplus reality shortly after the record was closed.

The City continued with the same tactics in this round, as well. Indeed, the Chair herself notes the City's "conservative revenue projections" and has seen through the City's record of self-serving, contrived budget gap projections: "The City has projected out-year budget gaps since 1982, and each year the budget gap has been closed." Mackenzie Op. at 6. Contrary to the City's arguments, the May 2008 report of the City's own Independent Budget Office, released not long after this record was closed and only after the Chair's Award was issued, projects "no budget shortfalls" for 2009 and 2010 and a record \$4.6 billion surplus for the current fiscal year.³⁹ Moreover, in recent testimony to the City Council Finance Committee, the IBO noted that "IBO's revenue forecast is significantly higher than OMB's for each year of the financial plan."⁴⁰ Further discrediting the City's inability-to-pay claims and puncturing City Hall's assertions that the \$700 million in retroactive pay that Chair Mackenzie's Award requires would jeopardize the 7% tax cut the Mayor has promoted, the City's newly-approved \$59.1 billion FY 2009 budget maintains that tax cut as well as a renewal of the annual \$400 homeowners' rebate and hundreds of millions of dollars in added education and other spending.⁴¹

³⁹ New York City Independent Budget Office, *Analysis of the Mayor's Executive Budget for 2009* at 1 (May 2008), available at <http://www.ibo.nyc.ny.us/iboreports/Mayreport2008.pdf>. The IBO's authoritative findings like this contradict sworn City testimony to this Panel, further demonstrating that the City misled the Panel. See, e.g. Tr. 171:9-11 (Bloomberg) ("We have . . . billions of dollars in shortfalls for the next three years as far out as we can see."); NYC 07-58C at 8, 9 ("New York City's expenses are high and growing, leading to a projected budget deficit of \$2.7 billion in FY 09, growing to \$6.5 billion by FY 11."); Tr. 1643:25-1644:19, 1648:4-10 (Page).

⁴⁰ New York City Independent Budget Office, *Testimony of R. Lowenstein to the New York City Finance Committee on the 2009 Preliminary Budget and Four-Year Financial Plan* at 3 (March 4, 2008).

⁴¹ David W. Chen and Michael Barbaro, "Bloomberg and Council Reach Deal on Budget," *New York Times* (June 27, 2008).

(continued...)

On top of this repeated distortion of record evidence, the City is notorious for hiding funds in its budget, and the evidence of this outrage is mounting day by day. Indeed, the political process leading up to the City Council approval of FY 2009's budget spotlighted again the hundreds of millions of budgeted dollars that, for years, the City has kept hidden in a secretive labor reserve fund.⁴² Additionally, the *New York Times* recently published reports of hidden slush funds, apparently an annual practice, including one for \$4.5 million controlled by Mayor Bloomberg as well as a whopping \$360 million controlled by the City Council for discretionary spending, a good portion of which is squirreled away in hidden or misclassified

In addition, the Chair's statements on ability to pay reflect a misunderstanding of or inaccurate reporting of the evidence. For example, the Chair claims that "the cost to New York City to fund its employee pension systems rose by \$4.5 billion from fiscal year 2004 to fiscal year 2008." Mackenzie Op. at 6. However, the cost actually rose by that amount over almost *twice* as long a period of time -- from 2001 to 2008. Compare City 07-60(b) with City 07-122 at 5; City Post-Hearing Mem. at 117. As another example, the Chair notes that "if the pension funds fail to achieve an 8% return, the City is required to make up the shortfall," Mackenzie Op. at 8, as if such obligation represents a burden to the City particularly relevant to these proceedings. But this obligation has been in effect and unchanged since 1999, see Tr. 3250-51 (North), and does not affect an analysis of ability to pay.

Further, once Panel deliberations begin, the City is notorious for planting a stream of bleak budgetary stories that magnify the current fiscal impact of any above-pattern award to the PBA which, in this round as in prior rounds, could not be cross-examined since the Chair had closed off testimony on January 11, 2008 and the record on February 19, 2008. These stories obviously are designed to catch the attention of the Chair and are akin to inappropriate efforts at third-party persuasion banned since the inception of this arbitration proceeding. See Sept. 4, 2007 letter of Chair MacKenzie on behalf of the Panel ("6. Communications and Confidentiality: ... Unless otherwise agreed by the parties, there will be no ex parte communications regarding the case by either party or party-appointed Panel member or the Panel Chair."). Nevertheless, some 13 weeks after the record was closed, the Chair reflected, without citation to the record, upon "the current economic climate." MacKenzie Op. at 8. The extensive record of this arbitration, and this record alone, is the only legitimate basis for any award, and it is impermissible for the City to have raised during deliberations or the Chair to have considered any matters beyond this record.

⁴² Erik Engquist, "City Budget Deal Depletes Rainy Day Fund," *Crain's New York Business* (June 27, 2008), available at <http://www.craigslist.com/apps/pbcs.dll/article?AID=/20080627/FREE/783399754> ("... the City keeps a reserve fund for union raises. City officials won't say how much money remains in the fund, but Doug Turetsky of the Independent Budget Office said it could conceivably be several hundred million dollars."). In point of fact, the \$700 million in retroactive payments awarded here will have no effect on the current budget but instead will be charged back by the City's Office of Management and Budget to undisclosed labor reserve funds for previous fiscal years that the City has maintained all along for this purpose. See FY 2009 Adopted Budget Plan Modification and Detailed Reconciliation between Plans at 7 of "Other Adjustments" (June 30, 2008), available at http://www.nyc.gov/html/omb/pdf/pmadrbp06_08.pdf (only recognizing the going forward cost of the Chair's Award).

reserve accounts.⁴³ Likewise the City was recently charged with falsely over-representing the cost of a “reserve pool” for teachers without permanent assignments by some \$45 million.⁴⁴ Thus, the City’s continued claims of “inability” to pay must be considered within this context of evidence proving just the opposite.

As Chairman Schmertz correctly concluded, the Panel’s “authority and duty is confined to this case and the City’s ability to pay this Award.” Schmertz Op. at 27. To her credit, the Chair paid mere lip service to the impact of reopener provisions contained in the other union contracts which the City argued would allow them to demand whatever award the PBA received. To be sure, the 2004/2006 round contracts, all of which preceded this PBA arbitration, either had no reopener at all, or had a reopener that would not be triggered by an arbitration award.⁴⁵ A careful reading of the reopeners found in contracts for subsequent rounds reveals that there is no effective argument to reopen any contracts for the 2004/2006 round, the period for which this Panel issued its Award. Even if the reopeners were triggered, as Commissioner Hanley testified, the City can simply say “no” to any requests for increases matching the PBA’s Award.⁴⁶

Unless the City again engages in a give-away spree that is papered over with phony savings in another vain effort to argue later that it has preserved “pattern,” those unions would then have to go to impasse arbitration to demonstrate on their own merits that they deserve an increase in pay. As the undisputed record evidence has established, they will not be able to

⁴³ Diane Cardwell, “Long Time Practice of City Council Financing Lands on Speaker’s Shoulders,” *New York Times* (May 11, 2008); Editorial, “Mr. Bloomberg’s Small Pot of Gold,” *New York Times* (May 17, 2008); *see also* Diane Cardwell and Ray Rivera, “Backer of City Hall Openness Trips on a Budget Maneuver,” *New York Times* (April 5, 2008).

⁴⁴ Jennifer Medina, “City and Teachers Union Disagree on Reserve Pool,” *New York Times* (June 7, 2008).

⁴⁵ Tr. 1552:18-19 (Hanley).

⁴⁶ Tr. 1578:13-18 (Hanley).

present anything close to the merits that the PBA has presented here.⁴⁷ Simply put, the City has never asserted that the other unions are underpaid in comparison with their counterparts in comparable jurisdictions; nor has the City ever attempted seriously to refute evidence to the contrary. Hard data alone must drive all City Hall initiatives, and for the City simply to give away taxpayer money to groups which have not demonstrated that they deserve it under the Taylor Law amounts to nothing more than wasteful lazy bargaining and a breach of the public trust.

Finally, the givebacks in the Award find absolutely no support in the record and are not justified. The Chair provides no substantive explanation in her Opinion for why givebacks were necessary at all in light of her findings that the City's Police Officers were grossly underpaid in comparison to other jurisdictions. Nor did the Chair specify any evidentiary justification for the givebacks she awarded, in violation of the Taylor Law mandate that "the Panel shall specify the basis for its findings . . ." (N.Y. CIV. SERV. LAW § 209.4(c)(v)). Moreover, the record here certainly is devoid of any such factual justification. There was no substantive testimony presented in relation to using a vacation day for the scheduling of range training or the need for or cost of the elimination of ten vacation days for new hires in their first five years. In fact, the evidence showed instead that Police Officers are overworked and that vacation days, won as part of unified packages in prior negotiations, provide time for well-needed rest.⁴⁸ While there was testimonial reference to rescheduling days and the Detectives' Rules for rescheduling tours for six named events, that testimony did not establish how such givebacks would provide any real cost savings to the NYPD. Instead, the evidence showed unequivocally that any benefit of

⁴⁷ PBA 07-165 at 8-17; Tr. 2951:21-2963:16 (Katz).

⁴⁸ Tr. 159:22-161:3 (Lynch).

rescheduling is illusory.⁴⁹ Because the need for givebacks generally and the appropriateness of these specific givebacks find no support in the record (and the Chair has referenced none), they can have no precedential effect in future rounds of collective bargaining or future interest arbitrations.

There can be no question that the City has hoodwinked each successive PERB arbitrator who found for the PBA but felt constrained by the City's (empty) threats of dire ability-to-pay consequences that consistently turn out to be bogus as soon as the arbitration records have been closed and their awards have been issued. In the final analysis, the next arbitrator must realize that the City has totally run out of credibility in opposing the closing of the huge pay gap that remains for its Police Officers and that closing that gap must be a fiscal priority since, as the Court of Appeals has recognized,⁵⁰ a Taylor Law arbitrator is not constrained from correcting under-compensation because of budgetary concerns.

The Chair's Denial of Other PBA Proposals Is Unwarranted and Without Prejudice

The Chair explained that her focus at this time is on general wage increases, and, in addressing the additional proposals set forth by the PBA, expressly held that "failure to award any of the following proposals should not be construed as a determination by the Panel Chair that a specific proposal lacks merit or would not be appropriate for consideration in the future."

Mackenzie Op. at 8. In addition to her supportive statements regarding the PBA's Education and

⁴⁹ Tr. 1521:23-24, 1522:4 (Hanley); Tr. 3123:10-15, 3124:2-5 (Nicholson); PBA 07-160 at 85A; *see also* PBA 07-157; PBA 07-158; PBA 07-159.

⁵⁰ *City of Buffalo v. Rinaldo*, 41 N.Y.2d 764, 767-68, 396 N.Y.S.2d 152, 154 (1977) ("[The Panel has] a right to balance the ability of the city to pay against the interest of the public and the PBA members The panel might determine that a particular increase in compensation should take precedence over other calls on existing or even diminishing municipal revenues."; "The panel might determine that a particular increase in compensation should take precedence over other calls on existing or even diminishing municipal revenues.").

Terrorism Pay proposals, noted earlier, the Chair referred all these proposals back to the parties for further consideration.

Any suggestion, however, that there was not enough evidence in the record to grant the other PBA proposals at this time is a fiction. Not only does the Chair's concession that her denial of other PBA proposals was based on her desire to focus on base wages contradict any view that evidence was insufficient, but also it ignores the masses of evidence accumulated in the record as to each proposal and summarized in the PBA's post-hearing briefs.⁵¹ It is no small wonder that the Chair did not provide any substantive explanation for her blanket comments as to the individual proposals. She could not.

Although the Chair summarily addressed each of the PBA's additional proposals and expressly preserved them for another round, the Chair made no mention at all of the City's many proposals. The City submitted a variety of proposals to reduce benefits under the PBA's collective bargaining agreement, including: limitations on sick leave and the welfare and pension funds; payroll lag; Heart Bill elimination; more scheduled appearances; reduction in vacation days for incumbents and annuities for new hires; reductions in holidays, overtime, travel time, night shift and recall pay; reductions in the uniform allowance; among others.⁵² The City proposals that were not addressed in the Chair's Award, such as these, all stand denied. And the failure to award the City's proposals clearly is with prejudice because none fall under the Chair's reservation, explicitly limited to the PBA proposals, that failure to award them is not a determination on the merits and they are saved for another day.

⁵¹ PBA Post-Hearing Mem. at 144-74 (Feb. 19, 2008); PBA Post-Hearing Reply Mem. at 67-86 (Mar. 12, 2008).

⁵² City 07-37; City 07-116; Panel 07-01.

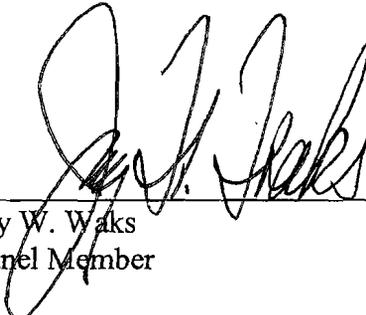
Conclusion

Chair Mackenzie's decision should serve as a wake-up call to the City that Police Officer pay must be at the top, raised to market levels, based on police-to-police comparisons, and independent of artificial, City-imposed constraints in its deals with other employee groups. Chair Mackenzie has refused to impose pattern or parity since both have impeded the City's Police Officers in becoming the highest paid police officers in the Nation, thereby advancing the very same objective of Chairman Schmertz. As Chairman Schmertz explained: "the pattern relied on by the City . . . would not, if applied to the PBA, result in a 'just and reasonable determination of the matter in dispute,' . . . because it would not reduce the discrepancies in pay between the New York City police officers and those of other jurisdictions that I have deemed comparative." Schmertz Op. at 29. Chair Mackenzie clearly framed her Award as a continuation of that mission. Thus, despite her unjustified givebacks and the failure to once and for all close the pay gap between the City's Police Officers and police officers in the highly-paid jurisdictions, these two consecutive awards, taken together, dictate that, whether through collective bargaining or PERB interest arbitration, NYC Police Officers' pay must be set so that they are once again the highest paid police officers in the Nation, as they deserve to be.

In the end, it makes no sense for the City to force the PBA to engage endlessly in interest arbitrations to achieve this goal. These protracted and costly proceedings only amplify the already tense relationship between the City and the PBA and between the City and the NYPD, all the while fueling Police Officer discontent. On the other hand, a major pay increase towards closing the 40+% pay gap that exists between the NYC Police and their counterparts in the Port Authority and elsewhere in the local market would dramatically improve Police Officer morale; unquestionably ensure a motivated, high quality force of professional, career-minded Police Officers committed to fighting crime and terrorism, and providing the host of other services

Police Officers provide to this City; once again put labor relations and collective bargaining between these parties on solid footing; and foreclose the necessity of costly, time consuming and distracting interest arbitrations for every two-year contract period. Only once this pay gap is remedied will a constructive and productive bargaining relationship between the City and its Police Officers be possible and the interest and welfare of the public be served.

Dated: New York, New York
June 30, 2008



Jay W. Waks
Panel Member