

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration between
CITY OF AUBURN, NEW YORK

OPINION

Public Employer,

AND

-and-

AWARD

FINGER LAKES REGION POLICE OFFICER
LOCAL 195 OF NEW YORK STATE LAW
ENFORCEMENT OFFICERS UNION, DISTRICT
COUNCIL 82, AFSCME, AFL-CIO,

Employee Organization.

PERB Case No. IA – 2009-002; M2008-09

BEFORE:

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

Ennio J. Corsi, Esq.
Employee Organization Panel Member

Peter A. Jones, Esq.
Public Employer Panel Member

APPEARANCES:

For the City of Auburn
Bond, Schoeneck & King, PLLC
Colin M. Leonard, Esq., of Counsel
Kerry W. Langan, Esq., of Counsel

For the Finger Lakes Region, Police Officers
Local No. 195 and New York State Law Enforcement
Officers Union, Council 82, AFSCME, AFL-CIO
Matthew P. Ryan, Esq. of Counsel

BACKGROUND

Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned was designated by the Chairperson of the New York State Public Employment Relations Board ("PERB") to make a just and reasonable determination of a dispute between the City of Auburn ("City") and the Finger Lakes Region, Police Officers Local No. 195 and New York State Law Enforcement Officers Union, Council 82, AFSCME, AFL-CIO ("Union").

The City of Auburn is a municipal corporation located in Cayuga County with an estimated population of 27,000 in 2008. (City Exhibit 13). The record shows that the City's population has declined by over 8,000 residents since 1960. (Id.). Cayuga County has a population of approximately 80,000 residents, which represents a decline of approximately 2,000 residents since 2000.

The City's government consists of a City Council composed of a Mayor and four Councilors. (City Exhibit 2). These individuals are elected at large, and in turn appoint the City Manager, the City Clerk, the Deputy Clerk, and most of the Boards and Commissions. The City Manager serves as Chief Executive Officer of the City. (Id.). The Chief Financial Officer of the City is the City Comptroller. (Id.).

The City's Police Department operates on a 24/7 basis. It is comprised of approximately 68 full time uniformed positions that are budgeted. The Union includes all individuals who are employed as Patrol Officers, Sergeants, Detectives, Lieutenants, and Captains. (Id.). Excluded from the bargaining unit

are the Chief of Police, the Assistant Chief of Police, Parking Meter Attendants, School Crossing Guards, and all other employees who are ineligible for the State Policeman's and Firemen's Retirement System because of their job duties. (City Exhibit 1). The City has approximately 343 employees, to include full time, part time, and seasonal employees. (City Supplemental Exhibit 4). The number of full time employees in the City declined from 2006 to 2010 from approximately 347 to 310. (Id.). Four other bargaining units have contractual relationships with the City. (Id.).

The Union and the City are parties to a Collective Bargaining Agreement for the period July 1, 2003 through June 20, 2008. (City Exhibit 1). The parties commenced negotiations towards a successor Agreement, and, following their inability to reach settlement during negotiations, the Union filed a declaration of impasse with PERB. Thereafter, the parties engaged in mediation but were not able to reach an agreement. The Union, on April 14, 2009, filed a Petition for Compulsory Interest Arbitration with PERB. (City Exhibit 3). The City's Response to the Petition, opposing each of the Union's proposals, was filed on May 4, 2009. (City Exhibit 4). In addition, the City filed an Improper Practice Charge with PERB on May 4, 2009. (City Exhibit 5). The Union amended its Petition for Compulsory Interest Arbitration on December 11, 2009, withdrawing all but eight of its proposals. (City Exhibit 10).

Hearings were held by the Panel on December 14, 2009 and on May 3, 2010, and, at the hearings, both parties were represented by legal counsel and other representatives. Both parties submitted numerous and extensive exhibits and documentation, and both parties presented extensive arguments on their respective positions. Post-hearing briefs have also been received by the Panel.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by both parties. After significant discussions and deliberations at a number of Executive Sessions, this Panel, consisting of the Panel Chairman, the Employee Organization Panel Member and the Employer Panel Member, reached agreement on the terms of this Interest Arbitration Award.

The positions originally taken by both parties are quite adequately specified in the Petition and the Response, in numerous hearing exhibits, and in the post-hearing briefs, all of which are incorporated by reference into this Award. The parties' positions, as relevant, will merely be summarized for the purposes of this Opinion and Award.

The Panel has been specifically authorized by the parties to exceed the two-year maximum period duration as provided by the Taylor Law in Section 209.4(c)(vi). At the specific request of the parties, this Award therefore provides an Agreement for the period commencing July 1, 2008 and ending June 30, 2012. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the terms and conditions of employment at issue for the period July 1, 2008 through June 30, 2012.

In arriving at such determination, the Panel has specifically reviewed and considered the following factors, as detailed in Section 209.4 of the Civil Service

Law:

- a) comparison of the wages, hours and conditions of employment involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interest and welfare of the public and the financial ability of the public employer to pay;
- c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;
- d) the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

TERM OF AWARD

Commencing July 1, 2008 and continuing through June 30, 2012

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly determine wages and other terms and conditions of employment, the Panel must engage in a comparative analysis of terms and conditions with "other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities."

In this proceeding, the Union proffers that the Cities of Geneva, Elmira, and Ithaca should compose the comparable universe. The City contends that the proper universe should include the Cities of Cortland, Oswego, and Watertown, in addition to Elmira and Geneva.

The Union justifies its comparables by claiming that Geneva, Elmira, and Ithaca are in close proximity to the City, provide similar police services, and utilize officers that have similar training and skills to Union members. According to the Union, the record evidence, as detailed in the testimony of Union President Cottrell, is that officers in the Union's proffered comparables receive training that is the same as City Officers and many have attended the same police training academy. The Union further notes that the Auburn Police Department is the lead

agency in the Finger Lakes Regional Drug Task Force and that its members on the Task Force work closely with officers in the other jurisdictions.

The hiring requirements for the proffered comparables, the Union puts forth, are also similar. It also notes that, save for Geneva, the comparables and the City have roughly the same number of officers, population, and "index crimes." All comparables, the Union observes, have a median household income that is roughly the same as the City's. In viewing its proposed comparables, the Union maintains that Ithaca and Elmira are closest in alignment with the City and should be given greater weight than Geneva but Geneva should be factored in, the Union claims, because of its close geographical proximity to the City.

The Union maintains that the City's proposed comparables of Oswego, Cortland, and Watertown should not be given as much weight as the Union's comparables since Oswego and Cortland have populations less than the City's and have fewer police officers. Watertown's geographical distance from the City, the Union argues, mandates that it be given lesser weight. In setting forth why its comparables should be given the greatest weight, the Union maintains that significant weight should be given to crime statistics in an assessment of comparability since crime statistics reflect the workload of officers in a jurisdiction. It notes that Cortland, Oswego, and Geneva have approximately 40% less "index crimes" than Auburn. The workload in these jurisdictions, the Union observes, is therefore less than that faced by Officers in the City and those cities should therefore not be given as much weight as Elmira and Ithaca.

According to the City, Ithaca should not be considered a comparable because of its status as a "college town." Thus, the City observes that there is a "yearly influx" of 25,000 students and most of them do not count toward the 29,000 residents that constitute Ithaca's population. Ithaca's large student population, the City claims, distorts the reporting of income since students are included when calculating average income even though they typically do not have any significant source of income. Ithaca is not a "poor" city, the City contends, and must be considered a "very affluent community" as seen in the cost of living index for Ithaca which is much higher than the City's or any of the other comparables. The City notes that the average cost of a three bedroom home in Ithaca is \$96,200 whereas the average cost for a three bedroom home in the comparables and in the City is considerably less. Ithaca, unlike the City, the City further argues, has a high rate of tourism and the attendant economy boost generated thereby. Further; Ithaca, the City claims, because of its large student population, has unique law enforcement needs and cannot fairly be included in the comparables.

The City asserts that Oswego, Cortland, and Watertown should be added to the universe of comparables since these cities have many common features when compared to Auburn. It notes that Watertown and Auburn have populations that are almost identical; that the cost of a three bedroom home in Auburn is only slightly higher than in Watertown and slightly below the average cost in Oswego; and the cost of living index for Auburn is the same as Cortland

and just below Watertown. Cortland also is justified as a comparable, the City claims, because of its close geographical proximity to the City.

The City asserts that its comparables should be utilized by the Panel rather than the comparables proffered by the Union. To utilize and limit its analysis to the Union's comparables, the Panel, according to the City, would overlook "compelling evidence" generated by municipalities having much in common with the City. The City claims it has taken the "good" with the "bad" and has not sought to "cherry-pick" its comparables.

Panel Determination on Comparability

The Panel Chairman has the opinion, based on a number of years of experience in presiding over police Interest Arbitration proceedings, that some of the strongest arguments raised concerning the question of comparables are those raised by a party in opposition to the comparables proffered by another party. Often, in the same proceeding, the opposing party offers equally strong arguments against the comparables offered by the other party. Stated differently, it may well be that it is easier to criticize a proffered list of comparables or a particular proffered comparable than make a cogent argument as to why one or another proffered universe of comparables should be accepted.

It may well be that a saving grace in a Panel's conscientious efforts to follow the statutory mandate to take comparables into account is a trend that the Panel Chairman has observed and followed by which Panels give greater weight,

lesser weight, or no weight at all to the comparables offered by both parties in connection with a particular proposal under consideration. Such an approach favors inclusivity over exclusivity and allows for a consideration of the proposals placed before a Panel that is not as result-oriented of an approach as would occur if exclusivity were to prevail by rejecting comparables.

Having said that, the Panel finds, of the comparables offered by both parties, that the Cities of Geneva and Elmira should be considered comparables that best match the City. Geneva's status as a comparable is justified by its very close geographical proximity to Auburn and the fact that its median household income nearly matches the City. (Union Exhibits 22-25). Elmira's selection as a comparable is justified by its location in the same general geographical region of the City, the fact that it has a similar size police force, a similar population, and an "index crime" total in year 2008 that matches the City. (Union Exhibits 16-19). Moreover, Elmira's median household income is similar to that of the City of Auburn. (Union Exhibits 22-25). The Panel would emphasize, however, that it is not excluding the other cities set forth in the comparables of both parties. It does take note of the City's argument that care should be taken when viewing Ithaca as a comparable. Given its very large student population, Ithaca is somewhat of a unique City in the area of comparables and has not been viewed as a significant comparable.

ABILITY TO PAY

The Union maintains that the City can afford to fund all of its proposals. According to the Union, the record shows that the City's General Fund has performed so well in recent years such that the unreserved portion of the General Fund, which the Union identifies as "a source of financial flexibility," totaled \$7.53 million at the end of fiscal year 2009. According to the Union, this amount was greater than the entire police salary and benefit budget for fiscal year 2010. Taking a chronological look at the General Fund's performance over recent fiscal years, the Union observes that, in fiscal year 2006, revenues exceeded the final budget by \$626,726 and that expenditures were short of the final budget by \$1.05 million. For fiscal year 2007, the Union notes, revenues were \$192,769 over final budget and expenditures were \$1.65 million under the final budget. In fiscal year 2008, the Union observes, there was also a favorable variance since revenues exceeded the final budget in almost the same amount as in fiscal year 2007 and expenditures were well below the budget. The unreserved fund balance in the General Fund for fiscal year 2008, the Union notes, exceeded the City's initial projection by a large amount and the amount of unreserved funds grew by nearly 79% over fiscal year 2007. In fiscal year 2009, the Union observes, the City's unreserved fund balance ended up over budget projections by a wide margin, with a total fund balance of \$8.76 million and an unreserved portion of \$7.53 million. The Union observes, therefore, that the unreserved portion grew by 22%. The Union further states that the General Fund "essentially

broke even" in fiscal year 2009 as revenues were "very slightly below expenditures."

According to the Union, when one takes a look at "government-wide information" for fiscal year 2009, one finds that "net assets" increased and that the fall-off in revenues, based on the City's own information, was due to a decrease in federal and state aid for transportation projects that had been completed in 2008. Revenues, according to the Union, could thus be seen as falling in fiscal year 2009 because of lower capital funding and not because of any fiscal difficulties. In fact, the Union observes, the City finished fiscal year 2009 with an excess of \$20 million in unrestricted cash and cash equivalents and over \$5 million in restricted cash and cash equivalents on a government-wide basis. The wage and benefits budget for the Police Department in fiscal year 2010 of \$6.83 million, the Union contends, compares favorably to both the unrestricted cash and cash equivalents and the restricted cash and cash equivalents. Moreover, in fiscal year 2009, the Union notes, though sales tax revenues fell some it can also be seen that property tax revenues grew. In the final analysis, according to the Union, it can be seen that the City's revenues in fiscal year 2009 did not shrink but, in fact, grew larger.

The Union argues that for the first three quarters of fiscal year 2010, it is fair to find that a "disconnect" of sorts exists between what the Union sees as the "strongly positive actual performance" of the General Fund and the City's "slightly negative projections for the Fund for the entire fiscal year." The Union posits that

it is "likely" that there will not be a loss in fiscal year 2010 but for the General Fund, "a substantial surplus." The Union claims that the 2-year cost of its economic proposals would be approximately \$1.51 million, and maintains that even if all of this was spent and even if the General Fund had a large loss in the last quarter of fiscal year 2010, the Fund would nevertheless, as the Union calculates it, have \$5.93 million left in unreserved funds.

The City relies on its hearing exhibits and the testimony of its City Comptroller, Lisa Green, to support the overall conclusion that the City's finances are now in a "precarious spot." The City maintains that it is not "wealthy" and that its residents are "burdened by rising property taxes." In setting forth its position on "ability to pay", the City reminds the Panel that its ability to pay a wage increase cannot be equated to its constitutional taxing limit.

Noting that its revenue sources for the General Fund consist of sales tax, property tax, and state aid, the City observes that revenue from the sales tax is beyond its control and that the sales tax revenue has been "relatively flat" and "declining". No evidence can be found, according to the City, that consumer spending, which generates sales tax revenues, is increasing in the City's local economy, nor could one expect this in view of the current state of the economy in general. As to property tax, the City claims it has raised property taxes to address rising expenditures and shrinking revenue, but, having done so, it can find no justification to "further burden" its residents with increased taxes. State aid, the City maintains, is again another source that it does not control and, in

2010-2011, the City will receive less in state aid than it did in the previous year. Moreover, the City claims that "it is entirely unpredictable as to what amount of aid the City will receive from the State each year."

The City also looks at its expenditures and contends that the record shows that "large fixed costs" have hampered its ability to control expenditures and that expenditures have been increasing "at an uncontrollable rate." Included among expenditures increasing at an "uncontrollable rate", the City maintains, is the cost of health insurance for members of the Union as well as retirement costs. The City observes that the current state of the economy has resulted in high rates of unemployment. Private sector unemployment in 2009-2010, the City claims, reflects that jobs in the private sector in Cayuga County were lost at a greater rate than the state rate. Teaching positions, as well, have been cut in the City, the City notes, as they have in nearby localities. The City also identifies the state "budget crisis", particularly since the City's General Fund is dependent on state aid, and it is from that Fund that the compensation of the Union members is paid.

It is fair to conclude, the City claims, that the current state of the economy has had an adverse impact on the City. It notes that in 2008 a fiber optics plant in the City began a phased shutdown of its operation that had 73 employees and that some 370 manufacturing workers in January 2009 were temporarily furloughed from another industry. Cayuga County, the City notes, has laid off four mental health employees and the Auburn City School Board of Education has issued a 2010-2011 budget calling for the elimination of nearly 27 positions.

Panel Determination on Ability to Pay

The fact that the nation's economy as well as the economy of the State of New York in the past several years went into a tailspin is a reality that the Panel cannot overlook. The City, the Panel also notes, has done a commendable job in weathering the economic storm and has managed to keep its General Fund in reasonably good shape. The Award herein reflects the Panel's understanding that the economic components of this Award have to achieve some kind of balance to address the realistic expectations of members of the Union and the realistic needs of the City. This understanding has resulted in modest wage increases and also, significantly, savings to the City in the area of health insurance. In the final analysis, the terms of this Award, while taking into account all statutory criteria, reflects the considerable attention the Panel has given to the City's ability to pay.

SALARY AND OTHER ECONOMIC BENEFITS

The Union seeks a 4.5% annual increase to base salary. (Union Proposal #6). In setting forth this proposal, the Union observes that, in light of the comparables of Elmira, Geneva, and Ithaca, City Police Officers, Detectives, Sergeants, and Lieutenants, assuming a 9% increase over two years, "would continue to lag behind" the comparables. This observation allows the Union to maintain that a "base salary increase of 4.5% per year would be fair and reasonable."

On the issue of hazardous duty pay (Union Proposal #6a), the Union notes it seeks \$4,000 added to base pay for all unit members and then apply the base raise percentages as a "[o]ne time addition at start of the agreement." The Union observes that payment would then "remain in base salary in perpetuity." It cannot be doubted, the Union asserts, that unit members "face ever present danger on a daily basis." It identifies the number of "index crimes" committed in the City as well as the number of arrests and calls for service. All such instances, the Union observes, create a unique and dangerous risk of exposure for City Officers.

On the issue of longevity (Union Proposal #2), the Union observes that it seeks to add \$750 to each existing longevity step in the 2003 to 2008 Agreement and to create a 23 year longevity step by taking the 19 year step with a proposed \$750 increase and adding another \$750 to the step. The Union asserts that this proposal reflects that longevity must be considered "an economic benefit that

ensures that veteran experienced members of the department are retained as employees and rewarded for their length of service." This proposal, the Union also maintains, would help create parity with what officers receive in the comparable cities of Elmira, Geneva, and Ithaca.

Regarding command pay (Union Proposal #5), the Union seeks \$1,500 command pay for Sergeants, \$3,000 command pay for Lieutenants, and \$4,500 command pay for Captains. The command pay, according to the proposal, would be added to base salary before base raise percentages. There would be a one time addition at the start of the agreement, the Union observes, and the payment would then remain in base pay "in perpetuity." This proposal, according to the Union, "seeks to compensate these members for the added responsibilities of holding these ranks carries." A comparison with its comparables of Elmira, Geneva, and Ithaca, according to the Union, creates added justification for the proposal since at present the salaries at all ranks in the City covered by command pay lag behind the comparables.

The Union notes that its proposal on shift differential (Union Proposal #4) is one that seeks to add compensation for "off" hour shifts. It claims that Officers working afternoons or midnights are inconvenienced and, if its proposal is awarded, there would be more senior officers willing to bid for the "off" hour shifts. The Union contrasts its proposal on shift differential, based on an economic incentive, with the City's proposal to upset the long established seniority based shift bidding procedure.

The Union asserts that if its proposals on salary, command pay, and hazardous duty pay are awarded, then its Officers' base salary would reach the second highest salary on its list of comparables, falling only behind Ithaca, which the Union labels as the "most direct comparable."

The City contends that the Union's proposal on salary should not be accepted since, in the City's estimation, its "police officers are well-compensated on a comparative basis with other police officers in the comparative universe, and compared to the other public safety units in the City – the firefighters, as compared to other City employees, and as compared to public and private sector employees generally." The City maintains that the Union's salary information should not be taken into account by the Panel because the information reflects "data which is skewed in many respects." The City notes that the Union has presented pay comparisons using 2007 data for the City and yet 2009 data for Elmira, Geneva, and Ithaca. According to the City, its presentation is more accurate because it analyzed contracts that were in place in 2007 "which is the only year for which the evidence is complete as to wages paid to police in the six upstate comparable cities."

The Union's is also faulted by the City for including longevity pay in its pay comparisons. When recent upstate police wage settlements are taken into account, according to the City, one finds that in Watertown officers agreed to increases of 2.5%, 2.5%, and 2% for three years, that Watertown has a higher crime rate than the City, and the top salary for Watertown officers is

approximately 4.5% lower than the City. Police Officers in Oswego, the City notes, though Oswego is "substantially below the average", agreed to 3% increases in 2008 and 2009, while Cortland Officers, in January, 2008, agreed to a one year extension with a 3.25% increase. To the City "it is evident that the 4.5% increase per year that the Union insists upon is out of line with the comparative universe."

The City also reminds the Panel that, in its belief, its Officers have "superior health insurance benefits" that the City identifies as being "in the form of low-cost health insurance." The City further notes that its Firefighters agreed to a 0% increase in 2008 and a 3% wage increase in 2009, which establishes that the Union's claim for a 9% wage increase over the same period must be considered unreasonable. It notes, moreover, that the CSEA units that represent other City employees, over the same two year period at issue in this proceeding, agreed to wage increases of either 3% or 2.875%. Union members, the City finally notes, fare well when compared to private sector employees in the City.

As to the Union's proposal for an increase in longevity, the City maintains that no rationale has been produced by the Union to justify the increase. Additionally, the City contends that Union members receive longevity that "is already better than or comparable to the comparative universe." The City notes there are five longevity steps and the Union's demand to add a sixth step is made in the context of a comparable universe where no other city has six steps.

Regarding command pay, the City claims the Union has offered no justification for the lump sum payment that the Union seeks added to supervisors' wages. Specifically, the City contends that no showing has been made by the Union that wage differentials currently in effect are not sufficient. As to hazardous duty pay, the City notes its opposition to the Union's proposal of adding \$4,000 to base salary. The City emphasizes that it is aware of the fact that there are hazards inherent to its Officers' work, but it also identifies the testimony of Police Chief Giannotta that there are no recruiting problems or problems in retaining Officers. In fact, the City puts forth, because of the poor economy, individuals are applying for open officer positions "in record numbers." The City also claims that police work "is relatively less hazardous" in the City "than the other comparable cities."

The City resists the Union's shift differential proposal. According to the City, shift differentials provide an incentive for Officers to work on less desirable shifts. As the City views it, however, the current Agreement that provides for a bid shift system based on strict seniority mandates that junior Officers are forced to work less desirable shifts. Seen in this light, the City argues that "there is no element of choice involved and shifts are all bid upon seniority," and "there is no reason to have a shift differential, let alone an increase in the shift differential rates."

Panel Determination on Salary

As the Panel has stated, the City has the ability to pay a fair and reasonable increase in salaries. It is the Panel's determination that an increase in salaries should essentially maintain the City's ranking among the comparables, particularly the cities of Elmira and Geneva. Viewing salaries only, the Panel observes the following comparisons between and among the City, Elmira, and Geneva:

Police Officers

<u>City</u>	<u>Date</u>	<u>Max Base</u>
Auburn	7/07	\$54,591
Elmira	1/09	\$54,162
Geneva	1/09	\$56,120

Detectives

<u>City</u>	<u>Date</u>	<u>Max Base</u>
Auburn	7/07	\$57,757
Elmira	1/09	\$54,162
Geneva	1/09	\$56,120

Sergeants

<u>City</u>	<u>Date</u>	<u>Max Base</u>
Auburn	7/07	\$59,432
Elmira	1/09	\$64,201
Geneva	1/09	\$67,256

Lieutenants

<u>City</u>	<u>Date</u>	<u>Max Base</u>
Auburn	7/07	\$61,379
Elmira	1/09	\$69,535
Geneva	1/09	\$72,428

Captains

<u>City</u>	<u>Date</u>	<u>Max Base</u>
Auburn	7/07	\$63,322
Elmira	1/09	\$74,868
Geneva	1/09	\$77,567

To achieve a fair increase within the context of all the statutory criteria, including comparability and ability to pay, the Panel would also observe that the Award herein, as seen in the Award on health insurance, creates a further ability for the City to pay modest increases.

Accordingly, in view of all statutory criteria, and based on the Panel's findings and in light of the parties' agreement for a four year Award, the Panel will award an increase in salary as follows:

AWARD

1. Effective July 1, 2008 and retroactive to that date, the base salary scheduled shall be increased by three percent (3%).
2. Effective July 1, 2009 and retroactive to that date, the base salary scheduled shall be increased by three percent (3%).
3. Effective July 1, 2010 and retroactive to that date, the base salary scheduled shall be increased by three percent (3%).
4. Effective July 1, 2011 and retroactive to that date, the base salary scheduled shall be increased by three percent (3%).

Panel Determination on Longevity

The Panel applies the same rationale to its determination on longevity as it applied to the salary determination. Thus, the Panel observes that, at all ranks, maximum longevity is \$1,550 for City Officers. A modest increase in the amount of longevity, when viewed as part of overall economic benefits, will essentially keep the City's ranking among the comparables, particularly the comparables of the cities of Elmira and Geneva. A modest increase also serves the purpose of ensuring that the experienced members of the City's Police Department are both retained as employees and rewarded for length of service.

In view of all statutory criteria, and based on the Panel's findings, and in light of the parties' agreement for a four year Award, the Panel will award an increase in longevity as follows:

AWARD

Effective and retroactive to July 1, 2008, each current longevity step is increased by \$600.00.

Panel Determination on All Other Economic Issues

The Panel's Award on salary and longevity for the four year period of the Award, the Panel finds, creates a fair and reasonable increase in compensation that is also in line with the City's ability to pay, particularly in light of the Award on health insurance. Accordingly, the Panel has determined that the Union's proposals on shift differential, command pay, and hazardous duty pay will not be awarded.

HEALTH INSURANCE

The City has sought to change the parties' Agreement in the area of health insurance by having Officers increase their contribution towards the cost of health insurance for each year of the Agreement. According to the City, "substantial justification" can be found for this proposal for a number of reasons.

The City identifies the fact that other Unions in the City have increased their contributions towards health insurance and that the cost of health insurance for Union members is "rising dramatically - up to 22% in the two (2) years from FY 2007 to FY 2009." In the context of the comparables, the City notes, an increase in employee contribution is also justified. Officers in Cortland and Oswego, the City observes, are required to contribute 17.5% and 13% towards health insurance and in Watertown, though Officers hired before July 1, 1983 make no contribution, Officers hired after that date contribute 12%. Officers in Geneva, the City observes, hired before 1993 are not required to contribute toward health insurance but Officers hired after that date are required to contribute up to 20%.

The Union notes that the City's agreement with the Firefighters provides that employees hired before July 16, 1997, effective January 1, 2010, contribute 5% and, effective January 1, 2012, contribute 10%. Firefighters hired before July 16, 1997, the Union observes, have made a 5% contribution through December 31, 2009, and, effective January 1, 2009, the contribution amount increased to 10%. Effective July 1, 2012, the Union notes, the contribution increased to 15%. The Union claims that, under the Comprehensive Plan, Firefighters "pay the

same contribution rate as Police Officers for the term of this award”, and under the Select Plan, Firefighters pay 5% more only during the final six months of this award. Hence, the Union claims that a “flat increase to 20% is not reasonable under the circumstances as the other public safety unit does not contribute at that rate.”

Panel Determination on Health Insurance

The Panel, in setting forth its determination on health insurance would begin with an observation that is apparent to all, namely, the rising cost of health insurance. Thus, the “actual expenditure” amount for health insurance in fiscal year 2007-2008 for the Department was \$689,959.62. The 2008-2009 amended budget allocated \$733,484.00 for health insurance. The 2009-2010 budget adopted by the City Council placed health insurance at \$844,920.00. (City Exhibit 13, p. 41).

The City, it cannot be doubted, needs to come to grips with the fiscal challenges caused by the rising cost of health insurance. The parties' present Agreement creates two classes of unit members regarding contributions for health insurance. Employees hired before July 1, 1997 have paid 5% contribution for individual and family coverage whereas employees hired after July 1, 1997 have paid 20% only the first year of employment, 15% in the second year of employment, and then 10% for family or individual coverage. The Panel notes that, in Cortland and Oswego, officers, regardless of date of hire, are

PREVIOUS TENTATIVE AGREEMENTS BY PARTIES

The Panel has determined that the term of the Award should include the parties' previous tentative agreements regarding Union Proposals #1, #3, #32, and #33.

Effective upon the date of the Award, the parties' Agreement shall include

the following:

Article VIII – Wages

Language from MOU regarding Lateral Transfer pay scale added to contract for clarity. (Union Proposal #1).

Section #5a

Provision that when a person is promoted they will immediately proceed to Step E or new Step F. (Union Proposal #3).

Article XXV – Out of Title

In the Patrol Division, when a Sergeant is delegated by the Chief of Police or his/her designees to fill the vacancy of a Patrol Lieutenant or a Patrol Captain or if a Lieutenant is delegated by the Police Chief to fill the vacancy of a Patrol Captain, for at least four (4) hours, that Sergeant or Lieutenant shall be paid the base rate of pay for Patrol Captain or Patrol Lieutenant, or if the Sergeant's or Lieutenant's rate is higher than the base rate, then it shall be the next higher step in pay grade for Lieutenant or Captain retroactive to the first day. (Union Proposal #32).

Article XX, Section 4

"Aqua Barrier" Gloves.

Eliminate Section 4. (Union Proposal #33).

BEREAVEMENT

Effective upon the date of this Award, the parties' Agreement shall also including the following:

Add to Bereavement Leave the following per 4/16/09 letter from City Manager Mark Palesh.

Brother in Law
Sister in Law
Grandparent
Aunt
Uncle
Niece
Nephew

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the overall context of contract terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions are agreed with. The Panel, in reaching what it has determined to be a fair result, has not addressed or made an Award on a number of the proposals submitted by each of the parties. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Thus, we make the following award on these issues:

AWARD ON REMAINING ISSUES

Except for those proposals and/or items previously agreed upon by the parties herein, any proposals and/or items other than those specifically modified by this Award are hereby rejected.

RETENTION OF JURISDICTION

The Panel Chairman hereby retains jurisdiction of any and all disputes arising out of the interpretation of this Opinion and Award.

DURATION OF CONTRACT

The Panel has been specifically authorized by the parties to exceed the two year maximum contract duration as provided by the Taylor Law in Section 209.4(c)(vi). This Award therefore provides an Agreement for the period commencing July 1, 2008 and ending June 30, 2012.

	<u>s/Jeffrey M. Selchick</u> JEFFREY M. SELCHICK, ESQ. Public Panel Member and Chairman	<u>11/15/10</u> Date of Award
[Concur]	<u>s/Ennio J. Corsi</u> ENNIO J. CORSI, ESQ. Employee Organization Panel Member	<u>11/8/10</u> Date
[Concur]	<u>s/Peter A. Jones</u> PETER A. JONES, ESQ. Public Employer Panel Member	<u>11/5/10</u> Date

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

On this day of , 2010 before me personally came and appeared Jeffrey M. Selchick, Esq, to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF) ss.:

On this day of , 2010 before me personally came and appeared Ennio J. Corsi, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF) ss.:

On this day of , 2010 before me personally came and appeared Peter A. Jones, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and he acknowledged to me that he executed the same.

Notary Public