

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

ALBANY PERMANENT PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 2007 & LOCAL 2007-A, I.A.F.F.,
AFL-CIO

Employee Organization,

-and-

CITY OF ALBANY, NEW YORK

Public Employer,

OPINION

AND

AWARD

PERB Case No.: IA2010-013; M2010-026 (Firefighters, Lieutenants & Captains)

PERB Case No.: IA2010-014; M2010-027 (Battalion Chiefs)

Local 2007-A

BEFORE: Jay M. Siegel, Esq.
Public Panel Member and Chairman

Samuel Fresina
Employee Organization Panel Member

Elayne G. Gold, Esq.
Public Employer Panel Member

NYS PUBLIC EMPLOYMENT RELATIONS BOARD

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CONCILIATION

APPEARANCES:

For the Albany Permanent Professional Fire Fighters Association, Local
2007 and Local 2007-A, I.A.F.F., AFL-CIO
Law Office of Thomas J. Jordan
By: Thomas J. Jordan, Esq., of Counsel

For the City of Albany, New York
Roemer Wallens Gold & Mineaux, LLP
By: Dionne A. Wheatley, Esq., Of Counsel

BACKGROUND

This interest arbitration involves negotiations disputes between the City of Albany (City of Albany) and two different bargaining units represented by the Albany Permanent Professional Firefighters Association, I.A.F.F., AFL-CIO (Union). Local 2007 represents firefighters, lieutenants and captains. Local 2007-A represents battalion chiefs. Pursuant to the provisions contained in Section 209.4 of the Civil Service Law, the undersigned Panel was designated by the Chairperson of the New York State Public Employment Relations Board (PERB) to make a just and reasonable determination of both negotiations disputes.

Albany is the capital of New York State. It is more than 300 years old. It is located in upstate New York, covers approximately 40 square miles, and has a diverse population of approximately 93,000. It is the largest city in the Capital District labor market.

Albany sits on the Hudson River, which runs from the north to south to New York City. The Port of Albany is a major trade port. Several major interstates run through the City. The City is the home to the New York State Governor's mansion and a significant number of State buildings. The City is also the home of several federal buildings, four major hospitals and seven colleges and universities. The daytime population is estimated to swell to 160,000 during regular workdays.

The City's Fire Department operates on a 24/7 basis. It has approximately 240 sworn members, including the Fire Chief, Executive Deputy Chief and three Deputy Chiefs. Local 2007 represents 150 firefighters, 51 lieutenants and 18 captains. Local 2007-A represents six battalion chiefs. Approximately 136 members of the Department.

are certified as emergency medical technicians (EMTs) and approximately 92 are certified as paramedics.

The City's firefighters perform a full array of fire, medical emergency and rescue services. They respond to fire calls, emergency medical calls and hazardous material calls. They conduct building inspections and routinely conduct trainings and other housekeeping and maintenance.

The Department is organized into four platoons that work 24 hour shifts. There are eight fire stations located throughout the City. They are manned by eight engine companies, four ladder companies, three paramedic units and a heavy rescue squad.

The last collective bargaining agreements between the parties covered the period January 1, 2006 through December 31, 2009. In October 2009, the parties began negotiations for a successor contract but the negotiations were unsuccessful. Thereafter, acting pursuant to the rules of procedure of PERB, a PERB-appointed mediator met with the parties. Mediation was unsuccessful and on August 4, 2010, the Union filed a Petition for Interest Arbitration (Joint Exhibit Tab A) pursuant to Section 209.4 of the Civil Service Law.

The City filed a Response to said Petition on August 19, 2010 (Joint Exhibit Tab B). Thereafter, the undersigned Public Arbitration Panel was designated by PERB, pursuant to Section 209.4 of the New York State Civil Service Law, for the purpose of making a just and reasonable determination of this dispute.

Hearings were conducted before the Panel in Albany, New York, on March 21, 2011, March 22, 2011 and May 31, 2011. At all three hearings, the parties were represented by counsel. Both parties submitted numerous and extensive exhibits and

documentation, including written closing arguments. Both parties presented extensive arguments on their respective positions.

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. After significant discussion and deliberations at multiple executive sessions and several telephone conference calls, the Panel reached an Award. The Award consists of many compromises induced by the Panel Chair and represents a complete package. Neither of the concurring Panel members would accept each individual recommendation in isolation. However, as only a simple majority is required on each item, the support of all items by at least the Panel Chairman and one other Panel Member results in this binding Award. Accordingly, all references to "the Panel" in this Award shall mean the Panel Chairman and at least one other concurring Panel Member.

The positions taken by both parties are quite adequately specified in the Petition and the Response, numerous hearing exhibits, and post-hearing written submissions, all of which are incorporated by reference into this Award. Such positions will merely be summarized for the purposes of this Opinion and Award. Accordingly, set out herein is the Panel's Award as to what constitutes a just and reasonable determination of the parties' Award setting forth the terms and conditions for the period January 1, 2010 through December 31, 2011.

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

- a) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing

- similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;
- b) the interests and welfare of the public and the financial ability of the public employer to pay;
 - c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;
 - d) the terms of the 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.

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 with other employees in generally in public and private employment in comparable communities."

Union Position

The Union contends that its members should be compared with other fire departments in the largest cities north of New York City, namely, Syracuse, Rochester, Buffalo and Yonkers. It justifies its universe of comparables by citing the 1989 interest arbitration award of the panel chaired by John E. Sands that concluded that the appropriate comparables to Albany were Syracuse, Rochester, Buffalo and Yonkers. The Union asserts that the 1989 panel clearly justified the significant raises it provided to firefighters by using the large upstate cities as its universe of comparables. The Union contends that just as that panel rejected the City's contention that Utica should be placed

among the universe of comparables, this Panel should continue to reject Utica as a comparable to Albany.

The Union maintains that there is no justification for a change even though more than twenty years has passed since the comparables determination by the Sands' panel. It cites the following reasons:

1. All of the large upstate cities have experienced the same types of problems such as declining populations and decaying infrastructure.
2. Albany's large amount of tax exempt property has not changed because it remains the state capital and home to SUNY Albany.
3. Since Albany's daytime population is approximately 160,000, its daytime population is greater than Syracuse's overall population.
4. The sizes of the fire departments are comparable and Albany continues to have a much larger fire department than any of the City's proposed comparables.

Even though the Union maintains that the comparables should not be changed, the Union nonetheless maintains that the comparables should not be looked at for guidance in this round of interest arbitration. In the Union's view, the comparables are not relevant in this round because only one, the City of Syracuse, has a settlement or interest arbitration award covering the years at issue. Syracuse received a 2/2 split for 2010 but has no agreement or interest arbitration award covering 2011.

The Union notes that Kevin Decker, its economist, testified that he would normally look to the City's other public safety units. Since none of those units have settlements covering the years in question, Mr. Decker opined that he considered the local labor market to be relevant in this proceeding. According to the Union, Mr. Decker

considered the local labor market to be the fire departments of Cohoes, Rensselaer, Scotia, Schenectady, Troy and Watervliet. When looking at their settlements for 2010 and 2011, Mr. Decker noted that none of the raises were less than 3% and that many of the raises were 3.5%.

The Union contends that the pattern of the local labor market raises should be followed by this Panel. It notes that while Albany has only increased its real property tax levy by 0.9% between 2009 and 2011, Rensselaer has increased its levy by 7.4% during the same time period. In the Union's estimation, when this is considered along with the fact that Albany's per capita wealth is in the middle of the local labor market, it becomes abundantly clear that the City should be required to follow the local labor market pattern for 2010 and 2011.

City Position

The City insists that its proposed comparables of Schenectady, Troy, Syracuse and Utica should be adopted by the Panel because they are most similar to Albany in terms of size of the departments and economic demographics. The City observes that even though the population of these cities varies, they are all within a reasonable range of one another. According to the City, Syracuse has a population of 139,386, Albany has a population of 94,083, Schenectady has a population of 61,327, Utica has a population of 58,220 and Troy has a population of 47,748. The City insists that this group is the most logical group of comparables because they face similar economic challenges.

In stark contrast, the City asserts that except for Syracuse, the cities proposed by the Union in its universe of comparables all have more than twice the population of Albany. The City states that Buffalo is the second largest city in New York with a

population of 276,059 and almost three times the number of sworn members in its fire department as Albany. The City notes that Rochester is the third largest city in New York with a population of 210,565 and a unit size that is double the size of Albany. Finally, the City stresses that Yonkers is the fourth largest city in New York. In the City's view, it shares little in common with Albany. It is in a completely different economic region of the State. It has a population of 197,852 and a unit size that is nearly twice the size of Albany. When these facts are considered along with the annual budgets for the cities of Buffalo, Rochester and Yonkers, which are hundreds of millions of dollars greater and more than twice the size of Albany's budget, the only logical conclusion to reach is that the cities of Buffalo, Rochester and Yonkers are not comparables with Albany.

Panel Determination on Comparability

The Panel Chair finds that it is appropriate to make some changes to the universe of comparables. The Panel Chair finds that Buffalo and Yonkers should not be a comparable with Albany. Buffalo has a population and fire department that is almost three times the size of Albany. When this is considered along with the fact that it is hundreds of miles from Albany, in a different region of the State and with a completely different economy, the Panel Chair is not persuaded that these two cities share enough in common to be considered comparable with one another.

The Panel Chair reaches the same conclusion with Yonkers. Yonkers borders New York City. It is in a completely different economic region of the State and shares little in common with the City of Albany from an economic perspective. Their housing markets are completely different and the cities are much different. These facts, coupled with the fact that Yonkers' population is more than double the size of Albany, leads the

Panel Chair to conclude that Yonkers should not be in the universe of comparables with Albany.

The Panel Chair is convinced that it is prudent to continue to include Rochester and Syracuse in the universe of comparables. Although these cities have greater populations than Albany, they continue to have similarities. They are older upstate cities with challenging economies and somewhat similar populations. They share enough in common to be in the universe of comparables.

The Panel Chair also finds that the cities of Schenectady, Troy and Utica should be in the universe of comparables. Schenectady and Troy quite obviously belong in the universe. They are cities with populations in the range of Albany. They are located in the exact same labor market as Albany. Employees in all of these fire departments purchase homes in the same housing market and work in cities with similar challenges.

Although the City of Utica is not in the same labor market as Albany, the Panel Chair finds that it should be used to provide the most logical and comprehensive list of comparables. Utica also faces similar challenges to those facing the other cities in the list of comparables. It is an upstate city with an old infrastructure that is facing economic challenges. Since the Panel is using the larger upstate cities of Syracuse and Rochester, it makes sense to add the smaller city of Utica. It represents balance insofar as population and geographical proximity to the comparables is concerned to provide the broadest, yet most relevant universe of comparables.

Accordingly, the Panel Chair finds that pursuant to the statutory criteria, the universe of comparables is Rochester, Syracuse, Utica, Schenectady and Troy.

ABILITY TO PAY

Union Position

The Union's evidence of the City's ability to pay was based on the testimony and exhibits presented by Economist Kevin Decker. The Union asserts that the evidence offered through Mr. Decker conclusively establishes that the City has the ability to pay for the Union's economic demands. According to the Union, Mr. Decker's presentation should be accorded great weight because his testimony was logical and in line with generally accepted practices in his profession. Among other things, Mr. Decker found that:

- The City has increased its tax levy by an average of 2.14% per year during the period from 2006-2011. The Union states that Mr. Decker testified that this was significant because the average rate of inflation was higher during the same period.
- Although the tax rate for homeowners increased from 2008 to 2011, the tax rate for commercial property decreased during this period. In the Union's view, the City would not have cut its tax rates if it was in any kind of severe financial crisis.
- The average taxpayer pays only \$304 per year or 84 cents per day for its fire department. This is a tiny amount compared to the average annual taxpayer bill of \$4,900.
- The City has been using approximately 40% of its constitutional tax limit. This shows that the City has approximately \$60 million it could legally raise in property taxes.

- The City's revenues from sales taxes are showing growth and recent strength. The City receives 32% of the sales taxes collected by Albany County. The City's sales tax revenue was \$26 million in 2003 and rose to a high of \$30.4 million in 2008. Although the Union concedes that the City's sales tax revenue dipped to \$28.4 million in 2009 due to the recession, revenues in the third and fourth quarter of 2010 showed increases of 3.4% and 4.4% respectively. The Union maintains that this is unmistakable evidence that the City is coming out of the recession and the economic forecasts should be optimistic.
- The City's five year history of general fund fiscal operations shows that Albany is in sound financial shape. Although the Union concedes that the City operated a deficit in three of the past five years, the Union stresses that its deficits were remarkably small, citing the 2008 deficit of \$113,098. The more relevant fact is that the bond rating agencies recommend that 5 to 15% of a municipality's budget be held in fund balance and that the City had a fund balance of more than \$20 million at the end of 2009, which is 13.06%. In other words, it was well within the recommended range.
- The total cost of salary, FICA and pension for all sworn members of the Department was slightly more than \$20 million. This means that every one percent salary increase will cost the City \$200,000. Thus, in the Union's view, its 4% salary increase proposal for each of two years will cost the City approximately \$800,000.

- Mr. Decker stated in his report that the City's general obligation bonds are rated AA- by Standard and Poor's and A1 by Moody's. According to Mr. Decker, the AA- rating represents high grade, high quality bonds and is the fourth highest rating of 22 ratings in its scale. Moody's A1 rating is upper medium grade investment quality debt and is Moody's fifth highest rating out of 21 ratings.
- Mr. Decker testified that the City's official statement in its 2011 Bond statement provided great insight into the real health of the City. Among other things, it notes that the City touts itself as the "hub of New York's tech valley." It highlights numerous areas of the City's financial strength, including the fact that the City's number of building permits increased from 2,397 in 2008 to 3,733 in 2009 to 4,798 in 2010.

The Union maintains that the fundamental economic conditions of the City are strong. For these reasons, after analyzing the costs of the Union's economic proposals, Mr. Decker reasonably determined that the City has the ability to pay for the Union's economic proposals.

The Union objects to the City's assertion that the national fiscal crisis in 2008 should impact this Award. The Union maintains that fire department costs have remained constant because of the decrease of the number of firefighters through attrition. In the Union's view, the fire department has not been the cause of any of the City's alleged budget woes.

The Union stresses that its settlement can be paid for with a limited impact on taxes. It notes that Mr. Decker testified that the tax rates for commercial and non-

commercial property in the City is not excessive and that the City could use the money in its reserved contingency fund to pay for this award. Moreover, although the City claims that increased health insurance and pension costs prevent it from providing raises, the Union points out that all cities in New York are facing these challenges. In the Union's view, Albany's firefighters should be provided with fair salary increases just like the hundreds of firefighters in the local labor market have been.

In the end analysis, the Union contends that the City's 2011 bond prospectus is the best evidence that the City is vibrant and economically healthy. The Union maintains that if the City was in any genuine financial trouble, it would be evident from its bond prospectus. Instead, the City has a coveted AA-rating from Standard and Poor's. For all of the reasons stated above, the Union urges the Panel to find that the City has the ability to pay for its economic proposals.

City Position

The City insists that the Panel cannot ignore the fact that the City is suffering from the effects of one of the greatest economic recessions in this country's history. It asserts that its ability to pay has been adversely affected by forces outside its control, such as frozen credit markets, low interest rates on investments and a shattered housing market. In the City's view, the Panel must be sensitive to the City's taxpayers because the proposals sought by the Union are well beyond the City's ability to pay.

The City stresses that the evidence it presented shows that its revenues have decreased over the past several years. Sales tax revenues have been down or stagnant since 2008. Mortgage tax receipts have been decreasing since 2007 and State Aid per capita has been decreasing. While revenues have been decreasing, the City has been

required to fund significant increases in pension payments for employees in the State Retirement System and significant increases in payments for the cost of health insurance premiums. The result is that the City's year end fund balances have been steadily declining since 2007.

The City notes that City Budget Director Hearley testified that the City's use of fund balance in the past few years to pay for operating expenses is not sustainable. The City contends that it is simply in too precarious a financial condition to fund any salary increases at this time.

The City argues that its financial difficulties should not come as a surprise to the Union. It notes that in Mayor Gerald Jennings' 2009 Budget Message he expressed some of the fiscal challenges facing the City and some of his actions to address those challenges. He explained:

The budget that I presented is one that has been significantly affected by the financial crises facing our State and our Nation. In my State of the City message last January, I warned of significant financial pressures to come and in my report to the State of NY for State Aid funding I predicted a budget shortfall of over \$14 million due largely to stagnant revenues and to increases attributable to employee related health care, negotiated union salary increases, gasoline and utility and the like. At that time, I also pledged to find ways to cut expenses and find new sources of revenues so that this burden would not fall entirely on our property tax owners. Toward that end I was successful in getting legislation passed by both the Senate and the Assembly that would have provided for \$5.5 million more in revenue for 2008, and \$11 million more for each of the next 29 years in the form of PILOT payments on the Harriman Campus. Unfortunately, as a result of the State's fiscal challenges, the Governor vetoed legislation and consequently we had to make decisions in this budget I had hoped to avoid. Those decisions include not funding 10 positions in the Police Department, and 20 positions in the Fire Department, as well as cutting positions throughout other City Departments. We have also eliminated raises for our nonunion workers who earn more than \$35,000, reduced operating expenses in almost every department, and achieved savings in health insurance and prescription drug plans.

The City states that the City's challenging economic picture has not changed. It notes that in Mayor Jennings' 2010 Budget Message he stated that "Albany is facing serious financial challenges due to lower than anticipated State aid payments, lower sales tax revenue and higher pension contributions. To deal with these enormous financial challenges we have once again made incremental cuts to all department budgets."

Similarly, in the 2011 Budget Message, Mayor Jennings described the City's financial predicament as a "financial tsunami." The City stresses that Mayor Jennings then focused on some of the expenses the City had to contend with that were not within its discretion and the hardship resulting from the financial crisis. He stated that "in 2001 our budgeted pension contribution was \$350,000, today it is nearly \$13 million. Our employee health insurance was \$13 million, today it is over \$25 million. To deal with these financial challenges, this budget contains significant cuts in personnel, in programs, and in operating expenses in virtually every City department. Notably, this budget eliminates 155 full, part time and seasonal employees and reduces operating expenses by nearly \$3 million."

The City asserts that the evidence in the record shows that it has been under tremendous financial strains. In the City's view, it would have been imprudent to agree to the Union's demand for wage increases of 4% for each of two years. This would have been prohibitively expensive and inconsistent with the City's overall financial plan that included no raises for three consecutive years for non-union employees.

In the City's estimation, these economic realities make it patently unfair to require it to fund the Union's economic proposals. It notes that it has done its best to have some semblance of a sound financial condition by making difficult decisions and tightening its

belt. It has eliminated numerous positions and made cuts in all areas where it has been possible. The City argues that it remains in a precarious financial position. It insists that the Union's proposals are excessive and do not remotely resemble a fair and reasonable award.

Panel Determination on the City's Ability to Pay

The Panel Chair has carefully considered the statutory criteria regarding ability to pay as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs filed, forming the record in this matter.

The Panel Chair is cognizant that immediately before the term of this Award, the national, New York State and local economy were in an economic crisis unlike anything seen in recent history. In the past few years, the City's revenues have gone down and unemployment has substantially increased. The housing market dipped significantly for the first time in years and numerous companies went out of business or struggled to stay afloat. Although there have been signs that the economy is starting to perk up, the fact remains that all of the economic indicators are mixed at best. New York and its municipalities were significantly affected by the problems caused by the past recession. The State and its municipalities are still struggling to recover from the past recession.

Albany has not been spared by the economic crisis. Its revenues have decreased or remained flat in a number of areas. Mortgage tax receipts have seen the most dramatic decline decreasing from a high of \$3.03 million in 2007 to a low of \$1.37 million in 2010. Sales tax revenue decreases have added further stress to the City's budget. The City has started to rely on fund balance to bridge its budget deficits. It has also made cuts to every department, including the Fire Department, whose ranks of sworn officers have

decreased from approximately 260 in 2007 to 223 in 2010. There is no doubt that the City's fund balance has decreased over the past few years.

On the other hand, the Panel Chair finds that the record establishes that the City's financial condition has some positive signs. The City had a fund balance of approximately \$20 million at the end of 2010. This is universally considered to be a healthy fund balance when compared to the City's overall budget. Equally telling is the fact that bond ratings companies have given Albany solid bond ratings. These ratings reflect a stable outlook and confidence in the City's future. The City has done an excellent job of managing its resources during this difficult and complex time.

The Panel Chair finds that the City does not have the ability to pay for the Union's economic proposals as the cumulative effect of awarding such proposals would put the City in a precarious financial condition. On the other hand, the Panel Chair is confident that the City's prior fiscal management will allow it to maintain a fiscally solvent position despite the difficult economy. Consequently, the Panel Chair finds that the City has the ability to pay for the wage increases provided in this Award (which are significantly less than those proposed by the Union) and that the wage increases awarded herein constitute a fair and reasonable Award.

THE INTERESTS AND WELFARE OF THE PUBLIC

Union Position

In the Union's view, this consideration encompasses the fact that the City's taxpayers benefit from having a professional, well-trained fire department. In the Union's estimation, this can only happen when its members' wages and benefits are sufficient so that the City can attract and retain quality fire fighters. The Union opines that the Panel

must issue an Award that allows its members to remain competitive with other fire departments in its universe of comparables so as to assure that its firefighters will be fairly compensated for the health risks and dangers they face every single day on the job.

City Position

The City stresses that the Panel is obligated to consider the fact that this Award will directly affect the citizens and taxpayers of the City and the economic future of the City for years to come. It must also consider the fact that citizens in the City are struggling with increased unemployment, increased tax burdens and declining values of their homes. These considerations, along with the fact that the economic forecast is not bright, mandate that the Panel exercise its power with great care and caution while fashioning its Award.

Panel Determination on Interests and Welfare of the Public and Financial Ability of the Public Employer to Pay

The Panel has carefully considered the statutory criteria regarding the interests and the welfare of the public and financial ability of the Public Employer to pay, as provided through the positions of the parties from the testimony, exhibits and post-hearing briefs forming the record in this matter. In looking at this specific issue, the Panel Chair finds that the Union's argument that the public benefits by having a competitively compensated staff of professional firefighters must be given credence. It influences the Panel Chair's determination on the issue of the overall wage adjustment. The Panel Chair's Award in the area of salary is premised on the recognition that it is prudent for the City and beneficial to the public for its firefighters to be competitively compensated.

At the same time, the Panel Chair has rejected the Union's demand for a number of increases to other economic proposals, as well as its proposal that the City be contractually obligated to provide firefighters with retiree health insurance paid in full by the City. The Panel Chair rejects these because he is concerned about the long term costs of these proposals. The Panel Chair finds that this Award represents a reasonable balance between the interests and welfare of the public with the other statutory criteria that must be considered.

COMPARISON OF PECULIARITIES OF THE FIRE FIGHTING PROFESSION

The Panel has also carefully considered the statutory criteria regarding the comparison of the firefighting profession with other trades or professions, including specifically: (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; and (5) job training and skills. The Union asserts that the firefighting profession is so unique that no other useful comparison can be made with other trades or professions.

The parties do not dispute the fact that appropriate weight must be given to the especially hazardous nature of firefighting work and the unique training, skills and pressures that firefighters face each day. The Union presented compelling evidence regarding the hazards that firefighters face on a daily basis. Firefighting is and will continue to be a dangerous job. The Union also presented compelling evidence regarding the impact of the smoke and other carcinogens that firefighters are exposed to and the adverse affect it can have on their quality of life and their life span. The Panel finds that the peculiarities of the profession mandate a direct comparison with professional firefighters.

BASE WAGES

Union Position

The Union is seeking a 4% salary increase in each year to the existing salary schedule. The Union maintains that its proposal should be awarded for a number of reasons. According to the Union, Albany firefighters' workload has significantly increased over the most recent five year period (2005 to 2009) for which data is available. Specifically, total calls increased from 19,315 in 2005 to 20,011 in 2009, an overall increase of 8.26%. There was a substantial increase in calls for emergency medical service (EMS) during this period as well. Total EMS calls increased from 14,985 to 17,149, an increase of 14.44%. Notably, Albany firefighters respond to more EMS calls than any city in the Union's list of comparables other than Buffalo.

The Union stresses that the increased workload is exacerbated when one considers the fact that the number of firefighters during the same period of 2005 to 2009 decreased from 250 to 231. The combination of increased call volume coupled with a decreased number of firefighters has required members to handle an average of 13 more calls per year in 2009 than they did in 2005.

The Union contends that Albany firefighters have a significantly greater workload than firefighters in other Capital District fire departments. The Union asserts that firefighters throughout the Capital District have received salary increases of 3% to 3.5% for the years in question in recognition of the risks they take every day. It notes that firefighters in Rensselaer received increases of 3% in 2010 and 3.5% in 2011 and that firefighters in Troy received salary increases of 3.5% in 2010 and 2011.

The Union insists that its proposal is also justified by the fact that the base salary of its firefighters is substantially below the base salary of firefighters in Yonkers, Rochester and Syracuse. Whereas the base salary for Albany firefighters is \$54,538, the base salary for firefighters in Yonkers is \$76,895, Rochester is \$60,121 and Syracuse is \$58,515.

The Union notes that the City has proposed no salary increase for each year of the agreement even though some of the jurisdictions it claims to be the most appropriate comparables provided 3% to 3.5% wage increases in 2010 and 2011 to their firefighters.

The Union stresses that despite the City's claims of gloom and doom, the evidence reflects that the City got through the recession in good shape and that the outlook for Albany is positive. The Union contends that Albany has not had to significantly increase its real property tax levy, having increased it a mere 0.9% from 2009 to 2011. The City remains right in the middle of the Capital District in per capita wealth.

More importantly, the City's fund balance at the end of 2009, the day before the time frame the award covers, remained healthy at more than \$20 million. In the Union's view, this fund balance is well within the recommended levels of all recognized financial experts. Moreover, although the fund balance has experienced a modest decline since 2006, the fact remains that the evidence establishes that Albany's fund balance is much healthier now than it was in 2004 and 2005.

The Union avers that the City's bond ratings and brightening outlook as a technology center also present a positive picture of the City's finances. The Union maintains that the Bond rating agencies would not have provided the City with such

healthy ratings if it did not reflect the City's true economic outlook. When this is considered along with the City's own contention that it has attracted scores of new jobs in the technology industry, it becomes abundantly clear that the City has the resources to provide the salary increases proposed by the Union.

The Union argues that even if the Panel decides not to award its proposed increase of 4% per year that salaries must be increased by at least 3% to 3.5% to allow Albany's fire fighters to remain anywhere near the salaries paid to firefighters in the other large cities in upstate New York and to remain competitive with firefighters in the other capital district departments.

The Union insists that the City's decreased staffing has increased job hazards and the workloads for its members. The Union insists that the increased workload of its fire fighters, coupled with their increased safety risks, makes it abundantly clear that their pay must be increased by the Panel. It maintains that all of the facts and data strongly support salary increases of 4% for both 2010 and 2011. At a minimum, raises of 3% to 3.5% per year should be granted so unit members keep pace with other fire departments in the universe of comparables.

City Position

The City maintains that the Panel should deny the Union's salary proposal. While acknowledging the tremendous lifesaving work that firefighters perform, the City asserts that the Union's proposal should be wholly rejected because the increases would place the City in a very precarious financial condition.

In the City's estimation, the Union's proposed salary increase of 4% is untenable in this economic climate. The City maintains that each one percent increase equals

approximately \$214,000 in total new financial costs to the City. Thus, according to Mr. Hearley, the Union's proposed increase of 4% in 2010 would cost approximately \$854 million. The proposed increase of an additional 4% in 2011 would be slightly higher because of compounding, leading to an overall cost of \$1.75 million for the Union's base wage increase standing alone. The City asserts that this increase would put a significant dent in its fund balance and have an adverse affect on the taxpaying community, which is already overburdened. In the City's view, this proposal also should be rejected because even the Union's comparison of firefighter raises in the Capital District shows that no municipality has provided a 4% increase in 2010 and 2011. Most notably to the City is the fact that Schenectady agreed to no salary increases for 2010 and 2011.

The City argues that awarding 4% increases to firefighters would be completely inconsistent with the City's financial plans in the past several years as highlighted by the Mayor's annual budget messages. The City notes that non-union employees have received no increases for three years and that the City has eliminated dozens of positions from virtually all departments so that it can remain in a fiscally acceptable position. In the City's estimation, it is illogical to provide 4% raises while the Mayor is cutting personnel, programs and operating expenses in virtually every City department.

The City contends that its taxpayers are not in a position to absorb the inevitable tax increases that would result if the Union's economic proposals were awarded. It notes that Mr. Hearley explained that the City's taxpayers already face increases due to the City's homestead, non-homestead option. He testified that, in the 1990s, the City completed its first real property valuation in over 50 years and that the City's

homeowners have been required to pay increased taxes in the recent past because residential taxes were artificially lower than they should have been.

The City emphasizes that its declining revenues cannot be ignored. It expresses grave concern about the decline in mortgage tax receipts from a high of \$3.03 million in 2007 to a low in \$1.37 million in 2010. When this reduction is considered along with the stagnant sales tax receipts and the State's two percent tax cap levy, it becomes abundantly clear that the City cannot increase its revenues. The City contends that this is precisely why it has been reducing expenses for the past few years and is precisely why the City would face dire financial consequences if it was forced to fund 4% salary increases and the Union's other economic proposals by the Panel.

The City rejects the Union's argument that staff reductions have caused unit members to work harder. The City opines that people in all walks of business, including all walks of City government, are being required to do more with less. The City argues that the Union failed to show that any purported staffing shortages actually increased unit members' workload in any significant way.

In the end analysis, the City argues that it should not be required to pay for the increases sought by the Union. It maintains that the proposed increases are out of touch with the City's ability to pay and are unwarranted due to the fact that unit members already receive a generous wage and benefit package. When the dismal local, state and national economy is added to this picture, it becomes clear that this is the time for the Panel to reject the Union's proposal. The City stresses that these times warrant a greater focus on taxpayers who are struggling to keep their homes. Thus, if any wage increase is awarded by this Panel, the City maintains that it is the unit members, and not the local

taxpayer, who should pay for the adjustment in the form of genuine economic concessions.

Panel Determination on Base Wages

The Panel Chair has carefully considered the statutory criteria balancing the reasonable economic needs of the City's fire fighters, with the obligations of the City in the context of what is fair and reasonable in the changed economy.

Wages are one of the most important elements in any labor agreement. Employees have the utmost concern about the wages they will be paid and wages represent the greatest expenditure for the City.

The record contains data that supports both parties' positions. The City faces genuine economic concerns. It has had to contend with recent decreases in revenue and an economy that is more fragile than has been seen in the Capital District and the State for many years. These are genuine issues that cannot be ignored.

The general state of the economy and the overall tax burden faced by taxpayers, whose burden has increased substantially in recent years, leads the Panel Chair to conclude that the wage proposal made by the Union must be moderated. Although the Panel Chair has the utmost respect for the firefighters and the impressive skills and professionalism they exhibited during the hearings, as well as for the risks they take on behalf of the public each and every day, the reality is that the City has genuine economic concerns that require the Union's economic package to be significantly moderated.

This wage increase must be considered in the context of the City's overall economic picture and the way the City has been dealing with the economic crisis of the past few years. The City has been extremely careful about expenses as it has seen its

revenues decline. It has cut personnel and expenses across virtually every department. It has not provided a wage increase to non-union workers. During these belt tightening times, the Union's proposed increase of 4% simply does not comport with the City's overall approach during the past recession and its overall financial condition.

Although there is data in the record showing that there are comparables who have received annual wage adjustments in the range of 3% to 3.5%, the Panel Chair finds that this will have too much of an adverse impact on the City's budget to be accepted. The Panel Chair notes that the Consumer Price Index (CPI) during the relevant time period has been less than 3%. The City simply does not have the resources to devote such a significant portion of money to the salaries of one bargaining unit while it is struggling to preserve services to residents.

The Panel Chair finds that a wage increase of 2% per year for 2010 and 2011 appropriately balances the economic concerns of the City with the desires of the Union to see its members competitively compensated. The Panel Chair determines that this wage adjustment should allow firefighters to remain at or near their present position vis-à-vis the universe of comparables. It will also allow firefighters to maintain the status quo relative to their buying power as the wage adjustments comport with the CPI increases in 2010 and 2011.

Finally and probably most importantly is the fact that the Panel Chair determines that the City has the ability to pay for this award. Since a 1% increase costs the City approximately \$214,000, the total cost of the wage adjustment for both years will be approximately \$850,000. The Panel Chair finds that in the context of some of the concessions awarded to the City, a number of which will save the City significant money

over the long term and some of which will enhance public safety, that these salary increases are reasonable and should be awarded.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON BASE WAGES

ARTICLE 15 (15.1) – SALARIES

Effective January 1, 2010 each step on the salary schedule shall be increased by 2%. Effective January 1, 2011 each step on the salary schedule shall be increased by 2%.

Concur
Elayne G. Gold

~~_____
Dissent~~

~~_____
Concur~~

~~_____
Dissent~~

Samuel Fresina

HEALTH INSURANCE FOR RETIREES

Union Position

The Union states that its proposal regarding retiree health insurance is the most important proposal it has in this proceeding. It proposes to have the Panel add a provision to the CBA requiring the City to pay the full cost of health insurance for any firefighter who retires after December 31, 2009.

Currently, the CBA does not provide for any level of coverage for firefighters in retirement, although the City has historically provided coverage to firefighters in retirement that was at least equal to the coverage they had on their last day of employment. The Union is extremely concerned about the vulnerability of its unit

members. It expresses grave concern regarding the fact that some in City government have proposed unilaterally cutting these benefits and imposing contributions on retirees.

The Union argues that Union President Andrew Hirsch is a typical example of a firefighter who has committed his entire career to the Department and is worried about retiring. Firefighter Hirsch testified that he feels he is at the mercy of whatever the City decides to do regarding retiree health insurance. He testified that without this contractual commitment he and others are working longer at a higher cost to the City. Indeed, the Union asserts that a contractual guarantee for retiree health insurance would lead many of the firefighters eligible to retire to actually retire. In the Union's view, this would result in more than \$1 million annually in savings to the City as higher paid senior firefighters would be replaced by entry level firefighters.

The Union maintains that its proposal is also justified because all other firefighters in its universe of comparables receive fully paid health insurance to retirees and their dependents in retirement. All of the local departments except Rensselaer provide health insurance in retirement as well. The PBA maintains that this is a critically important benefit due to the dangerousness and health hazards of firefighting work.

The Union asserts that there is no cost to the City for this proposal because it is already providing this coverage. Thus, in the Union's view, there should be no issue regarding the City's ability to pay for this proposal. The Union contends that all of the evidence provides a strong justification for this proposal to be awarded by the Panel.

City Position

The City stresses that it has been suffering from ever-escalating health insurance costs. It asserts that total City health insurance costs have skyrocketed over the past

fifteen years. In the City's view, the exorbitant costs of health insurance cannot be ignored.

According to the City, the costs of health insurance are so staggering that the Panel cannot make any permanent obligations on the City to fully fund retiree health insurance. The City states that it recognizes the dedication and work of its firefighters and says they are certainly deserving of medical benefits. However, the City stresses that the City has an obligation to its taxpayers and cannot grant a benefit that will burden the taxpayers well into the future. The City states that its tax base is not so broad that it can absorb a long term contractual commitment of this nature.

The City states that the Union's focus on the cities of Rochester, Buffalo, Syracuse and Yonkers as models for fully paid retiree health insurance is misplaced. The City notes that these cities have all expressed grave concerns about the rising costs of health insurance and that their cities are on the brink of calamity. The City observes that these cities have been forced to eliminate dozens of positions in order to balance their budgets. In the City's estimation, the City of Albany simply does not have the revenues to make a massive long term commitment for retiree health insurance. The City urges the Panel to reject the Union's proposal.

Panel Determination on Health Insurance for Retirees

Health insurance continues to be one of the most difficult and contentious labor-management issues because of its importance to employees and their families and because its cost has grown so dramatically over the past several years.

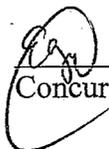
The fact of the matter is that the future costs of retiree health insurance are so staggering that the Panel Chair does not feel that he should require the City to make the

long term contractual commitment of fully contributing to retiree health insurance. The Panel Chair recognizes that firefighters have been receiving fully paid retiree health insurance and that they deserve to have health benefits in retirement due to the sacrifices and risks they take each and every day. In the Panel Chair's view, in this economic climate, this is a financial commitment that should be made through the give and take of collective bargaining between the parties. To do otherwise would be to impose a long term and highly consequential financial commitment on Albany that is not appropriate in the context of the challenging economy the City is dealing with at this time.

Accordingly, and after consideration of the extensive exhibits, documentation, and testimony presented herein; and, after due consideration of the criteria specified in Section 209.4 of the Civil Service Law, the Panel makes the following:

AWARD ON RETIREE HEALTH INSURANCE

The Union's proposal to place a provision in the CBA requiring the City to pay the full cost of health insurance for any firefighter who retires after December 31, 2009 is rejected.


Concur
Elayne G. Gold

Dissent

Concur

Samuel Fresina



Dissent

EMT AND PARAMEDIC STIPEND

Union Position

The Union proposes that the EMT stipend be increased from \$1,000 to \$1,500 and that the stipend for paramedics be increased from \$2,100 to \$2,600. The Union asserts that paramedic and EMT work has increased markedly over the years and is becoming a

larger percentage of the work performed by firefighters. The Union states that Firefighter Trippany, himself a paramedic, testified that his research revealed that Firehouse Magazine ranked the Albany Fire Department as one of the 150 busiest fire departments in the United States. According to the Union, 80% of its firefighters calls require EMT or paramedic work. The Union stresses that as emergency medical service calls have increased by 14% over the past five years, the City has decreased the number of firefighters from 254 to 228, a reduction of force of more than 10%. When firefighters' exposure to infectious diseases such as HIV and tuberculosis and the increased training demands are factored in, it becomes abundantly clear that the Union's proposed increases should be awarded by the Panel.

City Position

The City avers that the Union failed to offer any evidence justifying any increase to the EMT stipend. It maintains that there was simply no evidence presented that unit members' emergency medical services activities increased to the extent that would justify the substantial increase proposed by the Union.

The City asserts that its comparable study of these stipends shows that EMT and Paramedic stipends are competitive without any further increase. The City stresses that the overall cost of the Union's proposal is \$114,000, which is approximately 0.5% of payroll. In the City's view, this is prohibitively expensive in these economic times. In the City's view, when these considerations are coupled with Dr. Dailey's testimony that approximately 2/3 of the paramedics are not using their skill sets on a regular basis, the only logical conclusion is that the Union's proposal should be rejected.

Panel Determination on EMT and Paramedic Stipend

The evidence establishes that unit members spend a considerable amount of time handling emergency medical calls. Unit members are spending a greater amount of their work time devoted to handling emergency calls. Firefighters are expected to perform this work with expertise and precision and training continues to increase for firefighters. Based on the evidence presented, there is clear justification for increasing these stipends. However, in consideration of the economic concerns of the City, the Panel Chair finds that the appropriate increase is \$100. Additionally, since the City is not getting the retroactive benefit of any of its proposals that are being awarded by the Panel and in order to have a minimal impact on the taxpaying public, the Panel will not award these increases until December 31, 2011, the last day of the contract. Thus, there will be no cost to the City for this increase until 2012.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

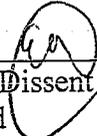
AWARD ON EMT AND STIPEND

APPENDIX "A"

Modify the provision by increasing the EMT stipend to \$1,100 and increasing the Paramedics stipend to \$2,200 effective December 31, 2011. No other changes shall be made to the provision.

Concur

Elayne G. Gold



Dissent



Concur

Samuel Fresina

Dissent

PAY FOR PARAMEDICS WHO PRECEPT

Union Position

The Union proposes a new provision for the CBA that would provide \$3.00 per hour to any paramedic assigned to precept a paramedic intern. The Union established that when paramedic students attend class to get their certification they are assigned a certain amount of practice "ride time" hours to get training from paramedics in the field. The Union asserts that preceptors have the responsibility of training and evaluating the interns. The Union also asserts that this is analogous to pay that Albany police officers receive when they perform field training with a new officer. The Union maintains that since police officers receive \$25.00 per day for training officers (i.e., \$3.13 per hour), that its proposal of \$3.00 per hour is appropriate and reasonable.

City Position

The City contends that this proposal should be rejected. It submits that the paramedic stipend more than adequately compensates employees who are required to precept. Moreover, in the City's view, there is no proof that paramedics are spending substantial amounts of time undertaking precept duties. Since there are too many variables to consider and calculate, the City maintains that the proposal should be rejected.

Panel Determination on Pay for Paramedics Who Precept

The Panel Chair finds that there is adequate support in the record for some compensation to be provided for paramedics who perform this important practical training. Notably, both parties presented evidence on the importance of employees

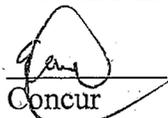
maintaining their paramedic skills. A strong devotion to training will undoubtedly benefit the City and the public.

Based on the evidence presented in the record, and the Panel's deliberations in executive session, it is the Panel Chair's conclusion that this issue needs further discussion between the parties. Issues such as assignments and scheduling need to be discussed further so that this new item will benefit both parties from the outset.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON PARAMEDICS WHO PRECEPT

The Fire Chief and the Union shall each designate a committee of three individuals with the authority to meet, discuss and reach agreement on the specific details of providing pay to paramedics who precept. In the event that the committee does not reach agreement by June 30, 2012, the committee shall be divested of its jurisdiction over this issue and the issue will be determined by the Panel.


Concur
Elayne G. Gold

_____ Dissent


Concur
Samuel Fresina

_____ Dissent

PROCESS FOR BATTALION CHIEFS TO SELECT VACATION

Union Position

Currently, the Battalion Chiefs are required to select vacation by departmental seniority. Battalion Chiefs seek to amend this by allowing them to pick vacation by seniority within rank. The Union maintains that service time as a Battalion Chief should be the most important factor in determining rights for selecting vacation. The Union

stresses that its members do not like the application of the current provision and they request this operational change because it will be fairer to their members.

City Position

The City maintains that there is no justification for this proposal. In the City's estimation, the City already has enough challenges with staffing issues surrounding leave time and vacation. It urges the Panel to reject the proposal.

Panel Determination on Vacation Selection for Battalion Chiefs

The Panel Chair finds that it is appropriate to grant the Union's proposal. The District will not incur any additional costs by having the Union's proposed language. It simply provides individuals who have served longer as Battalion Chiefs with the right to select their vacations before individuals who have served as Battalion Chiefs for a shorter period of time. This is fair and will not adversely affect the City's operation.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON VACATION SELECTION FOR BATTALION CHIEFS

Modify Article 12.3 of the CBA by allowing vacation selection for Battalion Chiefs to be picked by seniority as a Battalion Chief.


Concur _____
Dissent _____
Elayne G. Gold


Concur _____
Dissent _____
Samuel Fresina

**ELIMINATION OF USE OF COMPENSATORY TIME ON CHRISTMAS EVE
AND CHRISTMAS DAY**

City Position

The City asserts that there is a great need to limit the use of compensatory time. In the City's view, this needs to be limited because when too many members use compensatory time it requires the City to cover their work with employees who are eligible for overtime. Among other things the City proposes to delete the option of employees to use compensatory time on Christmas Eve and Christmas Day.

The City stresses that many employees take vacation days on Christmas Eve and Christmas Day. When vacation days are added up with the employees utilizing compensatory time on these days, the City ends up paying significant overtime costs for coverage on that day. Equally important, the City cites the fact that since so many employees are absent the Department ends up having officers assigned to stations and companies that they are not familiar with. The City cites the fact that Deputy Chief Abriel testified that the City ends up with nobody that is on a regular shift and that the "crew doesn't have any continuity."

Union Position

The Union asserts that it already has substantial limitations on its use of compensatory time on these days, i.e., notice by December 1 and no more than ten members off for compensatory time. The Union stresses that this would severely limit the opportunities for firefighters to spend time with their loved ones. In the Union's view, its firefighters should not be subjected to such hardships.

Emergency Medical Organization (REMO). The City will only reimburse for the minimum number of requisite hours.”

The City notes that Deputy Chief Nerney testified that REMO varies its minimum number of hours based on the current requirements, “maybe an educational piece where they want to see us perform better at, or concentrate our efforts on to increase or decrease.” The City argues that its proposal is a practical change that seeks to compensate firefighters for mandated training in a reasonable way.

Union Position

The Union does not object to this proposal if it is granted in the context of an award that is fair and reasonable for its members.

Panel Determination on Payment for Continuing Medical Education

The Panel Chair finds that this proposal is warranted. It is fair, reasonable and logical.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following Award:

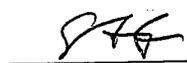
AWARD ON PAYMENT FOR CONTINUING MEDICAL EDUCATION

Article 30.14 shall be amended to specify “continuing medical” education required by REMO and by adding “The City will only reimburse for the minimum number of requisite hours.”


Concur

Elayne G. Gold

Dissent


Concur

Samuel Fresina

Dissent

TIME TO COMPLETE ANNUAL PHYSICALS

City Position

The City proposes to modify the provision regarding annual physicals by requiring employees to be placed on light duty if they fail to complete their annual examination within ten days of the scheduled date of the physical. The City also proposes that if the examination is still not completed within thirty days of being placed on light duty that the employee shall be subject to discipline.

The City stresses that it is very important for employees to appear for their annual physicals. In the City's view, both sides are keenly aware of the importance of having firefighters on the job who are fit to perform their duties. The City maintains that there is no logical reason for the Union to object to this proposal.

Union Position

The Union states that it is willing to accept the City's proposal if some procedural matters are resolved, including clearly allowing firefighters to have their annual physical with their personal physician as is their right under the CBA.

Panel Discussion Regarding Time to Complete Annual Physicals

The Panel Chair finds the City's proposal to be appropriate. The City has compelling health and safety reasons to assure that firefighters will comply with the requirement to have an annual physical. Hence, the City's proposal will be imposed with one modification, a guarantee of written notice to each firefighter who is not in compliance with the provision so they can rectify the problem prior to the time the City initiates discipline against a firefighter for failing to comply with the provision.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON TIME TO COMPLETE ANNUAL PHYSICALS

Amend Article 37 (37.5) to read as follows:

If the employee does not complete the examination within ten (10) days of the scheduled date for the physical, the employee will be placed on light duty. If the physical examination is still not completed within thirty (30) days of being placed on light duty, the employee shall be subject to discipline. The City will inform the employee in writing regarding the potential for discipline prior to imposing discipline by sending a warning letter to the employee's home and to the employee's Battalion Chief. Employees may use their personal physician to complete their physical.

EG
Concur

Elayne G. Gold

Dissent

SK
Concur

Samuel Fresina

Dissent

FIRE PREVENTION UNIT

City Position

The City proposes a new article in the CBA entitled "Fire Prevention Unit." Fire Chief Forezzi testified that the unit has been in existence since the late 1970s but that it needs to have more concrete guidelines and requirements so it can maximize its efficiency. Among other things, the Chief wishes to make sure that members of this unit live close enough to Albany so they can respond to calls in 30 minutes or less. Chief Forezzi also feels it is imperative that members of this unit obtain all of the necessary training and spend a minimum of three years so the City gets some value out of the money it spends to train firefighters to become members of the unit. The Chief also seeks the flexibility to adjust the schedules of members of this unit when necessary to participate in training or other important activities.

Union Position

The Union expresses concern about the broad nature of the City's proposal to change firefighters' schedules. It insists that there should be some language requiring the City to provide firefighters with advance notice prior to altering schedules.

Panel Determination on Fire Prevention Unit

Upon review, the Panel Chair finds that the City's proposal has merit. It should enhance public safety and improve the efficiency of the Department. The Panel Chair is adopting most of the City's proposal. However, he is adding language requiring the City to provide firefighters with advance notice of scheduling changes.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON FIRE PREVENTION UNIT

Amend the CBA by creating a new Article entitled "Fire Prevention Unit" as follows:

1. The work of the Fire Prevention Unit will be conducted from 8:00 a.m. to 4:00 p.m. unless altered by the direction of the Fire Chief when it is necessary for members of the unit to participate in training or to obtain certifications. The Chief will provide a minimum of five calendar days of notice to the firefighter and the Union prior to implementing any scheduling changes. Scheduling changes will not interfere with pre-approved vacation days.
2. In order to qualify as a member of the Fire Prevention Unit an employee:
 - a. Must be able to respond to the scene of an emergency within thirty (30) minutes from the call-in.
 - b. Should have, or be willing to obtain the appropriate New York State certifications to work in the Codes Division as well as the Department's Fire Prevention/Investigation Unit.
 - c. Should be a New York State Code Compliance Technician and must be certified as CEO as such training class is made available by the State.
 - d. Must commit to the position for a period of three (3) years. This will not affect any future promotions.

- e. Will be required to take scheduled "on-call" time with other Fire Prevention Unit members.

EGG
Concur
Elayne G. Gold

Dissent

S.F.
Concur
Samuel Fresina

Dissent

RESCUE SQUAD

City Position

The City seeks to add language regarding a specialized rescue squad unit to the CBA. The City describes this as an elite unit for the Fire Department, somewhat analogous to a SWAT team in a police department. The City would have members of the rescue squad be expert at using the most sophisticated equipment. Members of the rescue squad would be required to complete redundant and specialized training.

The City proposes to have the Fire Chief granted the sole discretion to select members of the rescue squad based on qualifications and without regard to seniority. The City proposes to have the Chief have the sole discretion to determine the size of the squad and to limit rescue squad overtime opportunities to those members on the rescue squad. The City argues that this squad is essential to the department's operations and would enhance public safety.

Union Position

The Union objects to the Chief having the sole and unreviewable discretion to select members of the rescue squad. The Union states that this proposal ignores important provisions of the CBA that require seniority to be considered for job openings. The Union also expresses grave concern about the City's proposed qualifications to be considered by the Chief in his selection of the rescue squad. It asserts that the

qualifications need further discussion and clarification and should not be imposed by the Panel.

Panel Determination on Rescue Squad

Upon review, the Panel Chair determines that much of the City's proposal should be granted. This proposal is about making the City's department as strong and successful as possible. There are scores of police and fire organizations throughout the state that have specialized units. The City seeks to have greater discretion over members of this unit and the operation of the unit so that it can maximize the efficiency of the unit. In the context of this award, the Panel Chair finds that the City's proposed operational change is fair and reasonable. Thus, the Panel is awarding the City's proposal on the rescue squad except for the qualifications to be considered by the Chief in his selection of members of the rescue squad. Since these qualifications are of the utmost importance to the selection process, since the Chief's decisions in this area are unreviewable and since there are some ambiguities in the qualifications that may need further discussion, the Panel Chair finds that the Union should have the opportunity to have further discussions with the Chief regarding the qualifications.

Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON RESCUE SQUAD

A new Article entitled "Rescue Squad" shall be added to the CBA to read as follows:

1. All members of the rescue squad will be selected in the sole discretion of the Fire Chief. Said selection shall be based upon qualifications.¹ The decision of the Fire Chief is final and not subject to review.

2. The Fire Chief shall determine the total personnel necessary for the rescue squad. At no time shall the total personnel on the squad be less than four. Said number shall vary from time to time.

3. For the safety and integrity of the rescue squad and those it serves, overtime opportunities in the rescue squad shall be limited to those assigned to the rescue squad.


Concur

Elayne G. Gold

Dissent

Concur

Samuel Fresina



Dissent

REMAINING ISSUES

The Panel has reviewed in great detail all of the demands of both parties, as well as the extensive and voluminous record in support of those demands. The fact that those demands have not been specifically addressed in this Opinion and Award does not mean that they were not closely studied and considered in the context of terms and benefits by the Panel members. In interest arbitration, as in collective bargaining, not all proposals are resolved, and not all contentions are agreed with. The Panel, in reaching what it has determined to be fair result, has not made an Award on all of the demands submitted by each of the parties.

¹ The Fire Chief and the Union shall each designate a committee of three individuals with the authority to meet, discuss and reach agreement on the specific list of qualifications for members of the rescue squad. If the committee does not reach agreement by June 30, 2012, the committee shall be divested of its jurisdiction over this issue and the qualifications will be determined by the Panel.

AWARD ON REMAINING ISSUES

Except as set forth in this Award, the City's demands are hereby rejected.

Except as set forth in this Award, the Union's demands are hereby rejected.

RETENTION OF JURISDICTION

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

DURATION OF AWARD

Pursuant to the agreement of the parties and the provisions of Civil Service Law Section 209.4(c)(vi) (Taylor Law), this Award is for the period commencing January 1, 2010 through December 31, 2011.

Accordingly, the Panel, after consideration of the record evidence and after due consideration of the statutory criteria, executes this instrument which is our award.



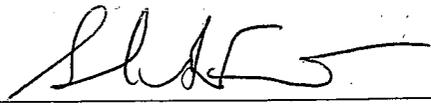
JAY M. SIEGEL, ESQ.
Public Panel Member and Chairman

1/2/12
Date



ELAYNE G. GOLD
Employer Panel Member

12-27-11
Date



SAMUEL FRESINA
Employee Organization Panel Member

12/27/11
Date

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

On this ^{2nd} ~~December~~ ^{January 2012} day of December 2011 before me personally came and appeared Jay M. Siegel, Esq., to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



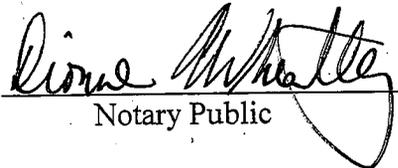
Notary Public

KATHLEEN DUFFETT
Notary Public, State of New York
No. 02DU6128192
Qualified in Putnam County
Commission Expires 06/06/20 13

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

On this ^{27th} day of December 2011 before me personally came and appeared Elayne G. Gold, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.

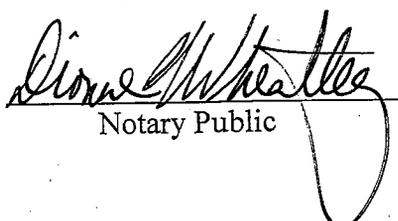
DIONNE A. WHEATLEY
Notary Public, State of New York
Reg. #02WH5075115
Qualified in Albany County
Commission Expires March 24, 20 13



Notary Public

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

On this ^{27th} day of December 2011 before me personally came and appeared Samuel Fresina to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public

DIONNE A. WHEATLEY
Notary Public, State of New York
Reg. #02WH5075115
Qualified in Albany County
Commission Expires March 24, 20 13

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF COMPULSORY INTEREST ARBITRATION
BETWEEN

PERB Case No. IA 2010-013;
M2010-026; IA 2010-014;
M2010-027

ALBANY PERMANENT PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCALS 2007, 2007-A, I.A.F.F.,
AFL-CIO,

Employee Organization,
Petitioner,

-against-

CITY OF ALBANY, NEW YORK,

Public Employer,
Respondent.

DISSENTING
OPINION OF
SAMUEL A. FRESINA,
EMPLOYEE ORGANIZATION
PANEL MEMBER, CONCERNING
HEALTH INSURANCE IN
RETIREMENT

My opinion regarding the Union's proposal for contract language protecting Albany firefighters retiring after December 31, 2009 is offered due to the undisputed evidence presented which supports an award of this proposal.

Currently, the City provides health insurance in retirement at no cost to members of the Union. The City has substantial flexibility in changing plans to contain costs. However, the relevant Union contracts contain no language protecting this longstanding benefit to retirees. Union members are at the mercy of whatever the City wants to provide to them during retirement.

There was substantial unrebutted proof presented at the arbitration hearings of the unique and often disabling injuries and diseases (eg. increased cancer risk) suffered by firefighters which are often not symptomatic until after retirement. In addition, the unrebutted proof shows that all comparables and the overwhelming majority of municipalities in New York State provide contractual protection of health insurance benefits to firefighters who retire.

The City attacked this proposal and the majority of the panel agreed that in recognition of the economic climate, no relief on this proposal is appropriate at this time. Yet, this conclusion ignores that the City is already providing this health insurance benefit, so, there is no additional cost to

granting it. Thus, I respectfully dissent on the panel's decision to deny the Union any relief concerning this proposal.



Samuel A. Fresina
Employee Organization Panel Member

Sworn to before me this
27th day of December 2011



Notary Public

DIONNE A. WHEATLEY
Notary Public, State of New York
Reg. #02WH5075115
Qualified in Albany County
Commission Expires March 24, 2013

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration :
Between the :

ALBANY PERMANENT PROFESSIONAL :
FIREFIGHTERS ASSOCIATION, LOCAL 2007 :
(Firefighters), AND LOCAL 2007-A, I.A.F.F., :
AFL-CIO, :

Petitioner, :

-and- :

CITY OF ALBANY, NEW YORK, :
Respondent. :

**DISSENT OF
CITY PANEL
MEMBER**

**INTEREST
ARBITRATION
PERB Case Nos.:
IA2010-013; M2010-026
IA2010-014; M2010-027**

On behalf of the City of Albany, this Panel Member hereby dissents from the Award with respect to the wages adopted by the majority of the Panel. As the text of the Award details, the Panel determined that in both 2010 and 2011, the Firefighters and the Battalion Chiefs should be awarded a two percent (2%) wage adjustment. It is this Panel Member's opinion that the record evidence does not justify any wage adjustment.

In anticipation of the impact of the economic downturn upon the City of Albany, the Mayor's 2009 Budget Message stated that:

The Budget that I present is one that has been significantly affected by the financial crises facing our State and Nation. In my State of the City Message last January, I warned of significant financial pressures to come and in my report to the State of New York for State AIM Funding, I predicted a Budget shortfall of over \$14 million due largely to stagnant revenues and to increases attributable to employee-related healthcare, negotiated union salary increases, gasoline and utility. . . At that time, I also pledged to

find ways to cut expenses and find new sources of revenues so that this burden would not fall entirely on our property tax owners. Toward that end, I was successful in getting legislation passed by both the Senate and the Assembly that would have provided for \$5.5 million more in revenue for 2008, and \$11 million more for each of the next 29 years in the form of PILOT payments on the Harriman Campus. Unfortunately, as a result of the State's fiscal challenges, the Governor vetoed [this] legislation and consequently, we have had to make decisions in this Budget that I had hoped to avoid. Those decisions include not funding 10 positions in the Police Department and 20 positions in the Fire Department, as well as cutting positions throughout all the City Departments. We have also eliminated raises for our non-union workers who earn more than \$35,000, reduced operating expenses in almost every department, and achieved savings in health insurance and prescription drug coverage plans (City Exhibit Tab F, 2009 Mayor's Budget Message).

The conditions did not improve to any significant degree by 2010. In the Mayor's 2010 Budget Message, he stated that:

Albany is facing financial strains. . . for reasons largely related to the financial crisis impacting both our national and state government. . . [The City of] Albany is facing serious financial challenges due to lower-than-anticipated state aid payments, lower sales tax revenues and higher employee pension contributions.

After our 2009 Budget was enacted, we learned in January that our State AIM Funding for the year would be cut. . . [The City of] Albany bears the burden of lost tax revenue from the high percentage of tax-exempt land, mostly state-owned, within our borders.

This Budget reflects a cumulative loss in 2009-2010 of over \$4.4 million in State AIM Funding, the addition of over \$2 million more in higher State pension contributions; the loss of over \$4 million in projected sales tax revenue and the increase in employee-related health insurance of nearly \$2 million.

This Budget includes no increase in the City's real property tax levy and includes no city-wide employee raises. . . Our alternative was to either make additional Budget cuts, including cuts to

personnel, or to further raise taxes. I do not believe these alternatives are in the City's best interest. (City Exhibit Tab F, 2010 Mayor's Budget Message).

Finally, in the 2011 Budget Message, the Mayor begins by telling us that:

Our State PILOT and the Empire State Plaza fell by almost \$8 million; we lost over \$8 million in scheduled AIM Funding; and our State pension contribution increased by nearly \$3 million. These increases are in addition to increases in employee health insurance premiums, and in utility and operating expenses, and decreases in sales tax revenue and landfill income.

In 2001, our Budget pension contribution was \$350,000. Today it is nearly \$13 million. Our employee health insurance contribution was \$13 million [in 2001] and today it is over \$25 million.

To deal with these financial challenges, this Budget contains significant cuts in personnel, in programs, and in operating expenses in virtually every City Department. . . . Notably, this Budget eliminates 155 full, part-time, and seasonal employees and reduces operating expenses by nearly \$3 million dollars. Again, no city-wide raises have been scheduled for City employees -- for our non-union work force. This will be the third consecutive year no raises have been appropriated. (City Exhibit Tab F, 2011 Mayor's Budget Message).

Given these facts, it is hard to fathom how the majority of this Panel can provide any wage adjustment as part of the Award to the Firefighters. The City's Fire Service Men and Women are of the highest caliber and highest quality; however, when other City employees have not received a raise in the last three fiscal years, it is arguable that all City employees should participate in this "team effort" to help the City ease its financial concerns in these difficult financial times.

Providing raises to the members of the two bargaining units at issue in this Interest Arbitration will have a negative impact upon the Command Staff at the Fire Department.

This Command Staff has not seen a raise in the last three fiscal years while the union members have received raises of 3.5% in 2008 and a split 4% in 2009. Under the parameters of this Award, the employees will receive money in both 2010 and 2011 when their bosses have not.

It appears that the majority of this Panel seems to be punishing the City of Albany for good fiscal management in that the majority seems to believe that merely because the City has a healthy fund balance and a good bond rating, that it should be able to "afford" increases in salary – this despite the clear, documented and testimonial evidence to the contrary (see, testimony of Budget Director Hearley at Tr. 295, etc. . .). There is no justification for the Panel's determination in this regard.

There are several other union negotiations ongoing for both the 2010 and 2011 fiscal years. One other unit is also in Interest Arbitration pending an Award. The impact of this Arbitration Award cannot be understated.

For all of these reasons, the City's Panel Member hereby dissents from the wage adjustments provided by the majority of this Interest Arbitration Panel.

Dated: Albany, New York
December 27, 2011

Respectfully submitted,


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