

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD
INTEREST ARBITRATION PANEL

In the Matter of the Interest Arbitration between

THE CITY OF ALBANY,

Public Employer,

OPINION

-and-

AND

ALBANY POLICE SUPERVISORS' ASSOCIATION,
Employee Organization.

AWARD

PERB Case No. IA2010-020; M2010-108

BEFORE:

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

Elayne G. Gold, Esq.
Public Employer Panel Member

Anthony V. Solfaro
Employee Organization Panel Member

APPEARANCES:

For the City of Albany
Roemer Wallens Gold & Mineaux, LLP
Dionne A. Wheatley, Esq., of Counsel

New York State Union of Police Associations, Inc., on
behalf of its Affiliate Albany Police Supervisors' Association
John M. Crotty, Esq., of Counsel

PANEL CHAIRMAN NOTE

The Panel Chairman has served in such capacity in many police and fire interest arbitration proceedings under the Taylor Law. In no case outside of the instant one has the Panel Chairman found such unwillingness on the part of the parties to modify their positions so that a Panel Member would be able to agree with the Panel Chairman on the essentials to constitute an interest arbitration award. The delay in this case is the result of ongoing and constant discussions with the Panel members in Executive Sessions and other discussions, to attempt to reach a majority consensus on the issues herein. Neither party was willing, until quite recently, to modify their essential positions. The City has refused, and continues to refuse, notwithstanding a relevant interest arbitration award with City Firefighters (discussed and cited *infra*) and a recent settlement with the City rank and file police unit, to offer anything more than a two year wage freeze to members of this small but important police unit.

In view of the fact that City firefighters and City police have received modest increases for the period at issue herein, the Panel Chairman finds the City position regarding wage increases for members of this police bargaining unit to be unreasonable and a major source of the resultant delay in issuing this Award. Despite numerous attempts by the Panel Chairman to provide the City with a reasonable alternative to the zero wage increases, consistent with the above, the City was unwilling to consider any change in position whatsoever.

In that regard, the Panel Chairman must also comment on the Association's unwillingness, until recently, to modify its demand concerning retiree health insurance benefits to be included in this Award. However, in the final analysis, it was the Association that agreed to modify such position, which has resulted in the issuance of this Award. For the record, the Panel Chairman puts the delay herein squarely where it belongs--on the parties, and to a lesser extent, on the process. The impasse resolution process contemplated by the Taylor Law has worked, albeit much more slowly than desired, due to the necessity to have a Panel member agree with the determinations made by the Panel Chairman, who is the only impartial member of the Interest Arbitration Panel.

BACKGROUND

The instant proceeding concerns a negotiations dispute between the City of Albany ("City" or "Albany") and the Albany Police Supervisors' Association ("SOA" or "Association"). The record shows that the parties were signatories to a collective bargaining agreement that expired on December 31, 2009. It is noted that the bargaining unit is of fairly recent creation, having emerged when members of this unit split from rank-and-file police officers. The parties' first collective bargaining agreement covered the years 2002 to 2005 and the recently expired agreement covered the years 2006 to 2009.

The bargaining unit consists of approximately 53 Police Officers who occupy the titles of Sergeant, Detective Sergeant, Lieutenant and Detective Lieutenant. After negotiations and mediation were not successful, the Association filed a petition with the State Public Employment Relations Board ("PERB") on or about September 27, 2010 for interest arbitration. The City filed its response to the petition on or about October 12, 2010, and the undersigned Panel was thereafter designated by PERB to make just and reasonable determinations of the matters in dispute.¹

Albany is the capital of New York State. It is more than 300 years old and is located in upstate New York, some 140 miles north of New York City. Albany comprises an area of approximately 40 square miles with a diverse population of approximately 98,000 at the 2010 census. It is the largest City in the Capital District labor market.

The City of Albany is situated on the Hudson River, and the Port of Albany is a major trade port. Several major interstate highways run through the City. The City houses offices of the Governor, the Legislature, the Court of Appeals, the central offices of State government and several federal buildings along with being the home of four major hospitals and seven colleges and universities. The

¹ It is noted that there were two Association proposals that the City challenged before PERB. The record shows that PERB sustained the City's challenge to the extent of ruling that Association proposal 7, which sought to amend Article 20, the retirement provision of the parties' Agreement, to provide 1/60th additional credit for police service beyond 20 years was not properly before the Panel.

daytime population of the City exceeds its census population given the number of individuals who enter the City for purposes of work and education.

The hearing in this proceeding was conducted by the Panel on June 8, 2011 in Albany, New York, at which the parties were represented by counsel. Both parties submitted numerous exhibits and documentation, including written closing arguments. Thus, the parties presented extensive arguments in support of their respective positions.

Therefore, 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 was finally able to reach an Award. The Award consists of many compromises included by the Panel Chairman and represents a fair and reasonable Award. 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 employee involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b) the interest and welfare of the public and the financial ability of the public employer to pay;

c) comparison of peculiarities in regard to other trades or professions, including specifically, 1) hazards of employment; 2) physical qualifications; 3) educational qualifications; 4) mental qualifications; 5) job training and skills;

d) the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

COMPARABILITY

Section 209.4 of the Civil Service Law requires that in order to properly assess and determine the issues before it, the Panel must engage in a comparative analysis of terms and conditions of employment 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.”

Association Position

The Association observes that both parties “agree that the Panel cannot confine itself to police departments within Albany County because that would be too narrow a market.” In the Association’s estimation, it must nevertheless be kept in mind “that comparability is a function of geography, not wealth as measured by any one or more factors.” To this end, the Association notes it has selected, among its comparables, several Police Departments in municipalities “within a reasonable geographic proximity of Albany.” It rejects the City’s claim that town police departments cannot be used. It urges the Panel to take into account “the distinction between comparability and ability to pay” and that town police departments can, within the context of comparability, be viewed as an “appropriate market for purposes of wage and benefits comparisons.” That is to say, the Association argues, the comparables it offers “form the marketplace

within which the City competes with other governments for police officer services.”

According to the Association, the City’s comparables are in reality selected and based on the ability to pay criterion. It notes that a “few” of the departments offered by the City should be considered but “those few cities do not constitute the full extent of the market.” Thus, the Association urges the Panel to reject the “City’s proposed marketplace” as being “simply too narrow.” Again, the Association urges the Panel to consider comparability as distinct from ability to pay, and “[w]hether the City can afford to match the wages and benefits that exist in the market as a whole, or in any particular municipality that is a component part of that market, is an ability to pay question, not a comparability question.”

City Position

The City proffers the cities of Schenectady, Troy, Syracuse, and Utica as comparables based on “unit size and the applicable titles and economic demographics.” Its comparables, according to the City, though different in population, are cities that “face similar economic challenges like Albany and other upstate New York municipalities.”

Regarding the Association’s comparables of the cities of Cohoes, Rensselaer, Rochester, Schenectady, Syracuse, and Troy along with the towns of Bethlehem, Colonie, and Guilderland, the City contends that the towns offered

by the Association cannot be considered “truly comparable to cities” because they “do not have constitutionally imposed taxing limits and generally have a different income and tax base than a city.” The “suburban” setting of the towns, according to the City, would reflect “different crime”, and, further, the City observes that the structure of government is significantly different in the towns than in the cities. Accordingly, the City urges that only Schenectady, Troy, and Syracuse, of the Association’s comparables, be utilized by the Panel, along, of course, with the other comparables the City offers.

Panel Determination on Comparability

The parties agree on the city comparables of Schenectady, Troy, and Syracuse. They disagree about the use of other cities as comparables. The City has also advanced the City of Utica and the Association has argued in support of the cities of Cohoes, Rensselaer, and Rochester. On the point of city comparables, the Panel finds some guidance in the very recent Interest Arbitration Award issued on by Arbitrator Jay M. Siegel on January 2, 2012, in *Albany Permanent Professional Firefighters Association, Local 2007 & Local 2007-A, I.A.F.F., AFL-CIO v. City of Albany, New York* (PERB Case Nos. IA 2010-013; M2010-026; IA2010-014; M2010-027 [Siegel Award]).

The Siegel Panel found that the cities of Schenectady, Troy, and Utica should be included in the universe of comparables; Schenectady and Troy because of their geographical proximity to Albany and similar population ranges

as well as the same labor market. Utica was included because it faced “similar challenges to those facing the other cities in the list of comparables”, and in view of “the larger upstate cities of Syracuse and Rochester, it makes sense to add the smaller city of Utica.” (Id., 9). Further, the Panel noted that Rochester and Syracuse should be included in the comparables because “[a]lthough these cities have greater populations than Albany, they continue to have similarities” and “[t]hey are older upstate cities with challenging economies and somewhat similar populations.” (Id.).

The Panel herein finds that the cities of Schenectady, Troy, Utica, Rochester, and Syracuse, in the order listed, based on geographical proximity, should be considered the appropriate universe of city comparables.

The parties disagree about the use of nearby town governments as comparables, with the City arguing that no consideration should be given to any town in a proceeding involving a city because of what the City claims are major differences between towns and cities. The Association argues that its proposed town comparables should be considered because those towns surround the City of Albany and, therefore, are part of the labor market for police officers.

Prevailing views regarding comparability favor inclusion and consideration of all municipalities that form the market for police officer wage and benefit purposes. Arguments that would cause the total rejection of one or more of the comparables offered by the parties are being rejected by interest arbitration

panels in favor of an approach whereby greater weight, lesser weight or no weight at all is given to any given municipality or municipalities offered by the parties as comparables as to any particular proposal under consideration by the panel. That is the approach this Chairman has adopted after a great many years spent in presiding over many police interest arbitration proceedings throughout New York State.²

Consistent with that approach, the Panel Chairman has also accepted as comparables the towns offered by the Association. I am aware, however, of the differences between urban policing and suburban policing and have considered all of the parties' arguments in these regards, certain of which relate more to the separate criterion of ability to pay than to comparability.

In keeping with these observations, the Panel has focused more on the city comparables, but it has also taken into account, as it should, the contiguous town governments of Bethlehem, Colonie and Guilderland. Those surrounding town governments cannot reasonably be excluded from the set of comparables to be considered because they are part of the Capital District market for police officer services.

² See, for example, my awards in City of Peekskill, IA 2009-023; City of Johnstown, IA 2007-027; Town of Newburgh, IA2010-029; County of Erie, IA2009-007.

ABILITY TO PAY

Association Position

The Association focuses on the testimony offered by its witness, Economist Kevin Decker, whom it identifies as “a recognized expert in New York State municipal finance in police and fire interest arbitration proceedings, in tax certiorari proceedings and in civil judicial actions.” According to the Association, the City has acknowledged Mr. Decker’s expertise.

The Association identifies its Exhibit 31, which sets forth a summary of Mr. Decker’s analysis of the City’s financial condition. It asserts that the accuracy of the information contained in the Exhibit was not challenged, nor was his testimony impeached in anyway by the City. The Association maintains that the evidence offered through Mr. Decker would indicate that, “economic challenges” notwithstanding, the City is in “good financial shape.”

It should be understood, according to the Association, that the City’s general fund, representing 84% of its fund structure, is the fund from which members of the Association are paid and is the fund “most relevant to ability to pay issues.” The Association also notes that, of the sources of revenue that make up the general fund, the largest component is real property tax and the second largest revenue source is sales and use tax. The Association identifies Mr. Decker’s testimony that the City has done “very well” in managing the tax levy and that it “ranks ... near lowest in increase in tax levy in all the SOA’s

several comparables and lowest among its city comparables,” with an average annual increase of 2.14%.

Further, the Association observes that sales tax revenues for the City “rose steadily from 2003 through 2008” and then “fell somewhat by the end of 2009” but “[t]he sales tax for 2010 was up 1.5% from 2009”. It notes also that the City has budgeted an increase in sales tax for 2011, an increase that Mr. Decker testified “would be exceeded by at least \$90,000 assuming no economic growth and by \$660,000 assuming a modest 2% growth.” Additionally, the Association observes, there were operating surpluses in the general fund in two of the last five fiscal years and only “small deficits” in the other three years. Significant to the Association is the fact that, in the general fund, there is a fund balance of over \$22 million at the end of 2010 and “contingency account of approximately \$2 million in the 2010 general fund budget and \$891,000 for 2011.” The Association notes that “[t]his contingency fund, like the City’s substantial unreserved fund balance, can be devoted to any purpose the City chooses.”

It is evident, the Association argues, that the City can pay every wage and fringe benefit demand made by the Association in this proceeding, for what clearly is a small bargaining unit for which the cost of a 1% increase in salary driven compensation is \$59,648. The Association notes that the national and state recession has “officially ended” and that the City cannot be considered one of the communities where recovery in New York State has been “slower” than in

other parts of the state. Increased costs, the Association maintains, though such increases can be seen in health insurance and employer contributions to the pension system, cannot be considered equal "to an inability to pay."

The Association also asserts that the City's calculations concerning the costs of its proposals have assumed an Award that would match the proposals 100 % but the Association offers the thought that it "was not naïve as to believe or expect that will happen." In this regard, the City's projected costs, the Association argues, must be considered "exaggerated." Further, the Association again emphasizes that "costs" and "ability to pay" are not the same thing. It urges the Panel not to be confused or misled by the City's argument that an Award should be conservative because "as a practical matter" what is awarded will "have to be given to all of its [the City's] other unionized and non-unionized employees." Any such argument, according to the Association, is "untrue" because "[t]his proceeding affects only about 50 current employees and any future appointees to the unit whose wages and benefits will be whatever is awarded here and negotiated or awarded hereafter." Thus, the Association claims, "[w]hat happens with others is a function of their own negotiations and what the City elects to do for its non-unionized work force." Any alleged "ripple effect", the Association contends, is indeed a "phantom" one.

City Position

Concerning its ability to pay, the City identifies its Mayor's budget messages in 2009 and subsequent years concerning, as set forth in the 2010 budget message, the statement that the City "is facing serious financial challenges due to lower than anticipated State aid payments, lower sales tax revenue and higher pension contributions", which required "incremental cuts to all department budgets." The Mayor's identification of significant increases in pension contributions and health insurance contributions are also noted by the City.

The City identifies the testimony of its Budget Director Christopher Hearley that for the past several years the City has worked with "a structurally imbalanced budget by relying mostly on fund balance to bridge the funding gap" and that, during the 2010 budget process, the City was confronted with a "15 million dollar budget gap which it addressed by making 'cuts to every department' and changes to employee-related health and prescription coverage for non-union employees and retirees but excluded all members of the fire union as well as other union employees." Mr. Hearley's testimony, according to the City, also demonstrates that the City is "very concerned about raising revenue from real property taxes because homeowners in the City already face tax rate increases because of the City's homestead, non-homestead option." This option, according to the City, relying on Mr. Hearley's testimony, has "resulted in residential tax

rates being 'artificially lower than ... [they] should have been and conversely the commercial rate was higher than it should have been.' .

Moreover, the City notes the record evidence that its tax levy since 2008 has resulted in a collection of a smaller amount than the tax levy budgeted and that mortgage tax receipts since 2007 have steadily declined. Added to this factor, the City observes, is the 2% tax cap levy imposed by the State. The City focuses on Mr. Hearley's testimony that it faced a \$23 million deficit in 2011, causing the City to take additional steps to bridge the gap but that the City, nevertheless, "faces the same challenges for 2012 and has projected a deficit between 15 to 20 million dollars." It is fair to conclude, the City contends, that it is faced with an "ongoing financial crisis." It notes Mr. Hearley's testimony reflecting his opinion that the Union's proposals and its presentation of evidence at the hearing is that the City should and can raise taxes to pay for requested raises. The City argues that the matter "is not that simple" and in light of what the City perceives to be its "dire financial condition" there is a significant limitation "on its ability to pay any award issued by the Panel."

Panel Determination on the City's Ability to Pay

The Panel Chairman has closely reviewed the statutory criteria concerning ability to pay as set forth in the positions of the parties based on their evidence and post-hearing submissions. It cannot be gainsaid that during the period preceding the term of this Award, the national, New York State, and local

economies were in a true economic crisis. Nevertheless, the crisis, though perilous and unprecedented during the time the Taylor Law has been in effect in the State of New York, has broken its fever. Its effects of course are still felt in the State and in certain municipalities with greater adverse effects in some areas and on some municipalities than in other areas and for other municipalities. While there is ample evidence in the record that Albany was not spared by the economic crisis, and in fact sharply felt its pain, there is also evidence that its financial condition has improved. In terms of tax levy, the City ranks near the bottom among the comparables and it is not unreasonable to conclude that the City's residents are not currently over taxed.

The Panel Chairman is clearly aware of the maxim that the ability to pay cannot be equated with the ability to tax, but the improving fiscal health of the City can be seen in the tax levy information. Sales tax revenue increased in 2010 and likely will for 2011. The fund balance in the City as of 2010 was \$22 million and well within the range of the State Comptroller's and financial experts' recommendations and in 2010 there was approximately \$2 million in the City's contingency account in the general fund.

The wage increases provided to City Firefighters through an interest arbitration award for and encompassing the same time period at issue herein, clearly put the City on notice that wage increases would be forthcoming for members of this unit, and it certainly had the opportunity to budget for them

accordingly. Any view taken by the City that Firefighters would receive wage increases for 2010 and 2011 and that members of this supervisory police bargaining unit would be awarded a two-year wage and benefit freeze, represents an unrealistic and unreasonable position. This is particularly true in light of the numerous statements made by the Panel Chairman in the countless discussions that occurred in Executive Sessions. The City cannot rightly claim either surprise or inequity when faced with the modest wage increases provided by this Award to members of this bargaining unit. In fact, to have agreed with the City position taken herein, and deny modest wage increases to members of this unit, while the City's other essential public safety personnel were awarded wage increases, would create an inequity which is opposite to the clear intent of the Taylor Law.

Compliance with the specified statutory criteria, and indeed the notion of fairness, compel the Panel Chairman to take a realistic view of the City's financial condition; in so doing, the Panel Chairman finds that the City will, at the very least, remain in a fiscally solvent position in the context of an improving economy. This is also true of the Capital Region generally, which is enjoying an economic surge, and the City is one of the main beneficiaries of such economic growth as the hub of the Capital District's expanding technology driven economy. The Panel Chairman, therefore, finds that the City does have the ability to pay for the modest wage increases and benefits provided in this Award, which are less

than those proposed by the Association, and affect an extremely small and finite bargaining unit. It is clear that such modest increases, in turn, constitute a fair and reasonable Award.

THE INTEREST AND WELFARE OF THE PUBLIC

Association Position

The Association urges the Panel to consider that “however broadly or narrowly that phrase [‘public interest and welfare’] is construed, [it] is best served by having a professional, well-trained police department staffed with qualified, educated and experienced supervisors.” Clearly, the Association posits, such a result could only be obtained if the wages and benefits offered to member of the bargaining unit “are at a level sufficient to attract and retain them.” Given the Association’s conclusion that the City has the “ability to pay” any fair and reasonable Award, the Association maintains that “[a] wage and benefit package that does not continue to match to [a] fair degree the wages and benefits prevailing in the relevant market does not serve the interest and welfare of the public because it restricts the City’s ability to attract and hold the best and brightest.”

City Position

The City, from its perspective, urges the Panel to take into account that the terms and conditions of the Award will affect in a very real way the citizens and taxpayers of the City and the City's economic future far beyond the term of the Award. The City urges the Panel to take into account what it considers to be the conclusive record evidence that it continues to face serious financial challenges because of lower than anticipated state aid payments, lower sales tax revenue, and higher pension contributions and insurance contributions. Incremental cuts to department budgets, the City notes, have been necessary. In this regard, the City identifies the testimony of Mr. Hearley that it faces the same challenges in 2012 as in previous years, with an attendant projected deficit between \$15 to \$20 million.

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

The Panel has taken into account and carefully considered the statutory criteria concerning both the interest and welfare of the public and the financial ability of the Public Employer to pay and the positions of the parties as contained in their witnesses' testimony, exhibits, and post-hearing briefs. The Panel Chairman finds that the Association's position concerning the public benefits to be realized by having an adequately and competitively compensated staff of

Police Supervisors should be credited. This finding influences the Panel Chairman's determination on the issue of the overall wage adjustment.

Thus, the Panel Chairman's Award in the area of wages is based on the prevailing public view that it is prudent and beneficial to both the City and the public for members of the bargaining unit to be compensated at an adequate and competitive level. The quality and morale of police supervisors is instrumental in operating a professional, modern and community oriented urban police department. The Panel Chairman takes particular note of the dedication, professionalism and service to the residents of the City that is provided by the members of this police supervisory unit.

The Panel Chairman also notes that the Panel has rejected a number of the Association's demand for increases, chief among those rejected being a proposal that the City be obligated contractually to provide retired members of the bargaining unit with retiree health insurance. The Association sought this protection because the City changed retiree health care benefits substantially and unilaterally to the detriment of these unit employees whose collective bargaining agreements over time were negotiated upon the assumption those historic benefits would continue for them upon their retirement unless and until they were changed pursuant to the Taylor Law's collective bargaining and impasse processes. Such proposals have been rejected; the Panel Chairman sets forth, predominantly due to the Chair's concern about the uncertain long-

term costs of said proposals. Many of the Association's proposals rejected herein remain warranted, but are cost prohibitive and otherwise not warranted at this time. In the future, assuming the City's continuing economic growth, such proposals, particularly the one for codification of retiree health care benefits, should be seriously considered by the City, and if necessary, subsequent interest arbitration panels.

The Award herein, Panel Chairman finds, represents a reasonable balance that has considered the interest and welfare of the public with the other statutory criteria that also must be taken into account.

COMPARISON OF PECULIARITIES OF THE POLICE OFFICER PROFESSION

The Panel has also carefully considered the statutory criteria regarding the comparison of the profession of police Officers 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 Panel notes that the Association has offered that "the Police profession is unique" and "no useful comparison can be made with other trades or professions." According to the Association, the "peculiarities" criterion requires the Panel, in keeping with past interpretations and applications of the criterion "over many years by interest arbitration panels" to, "look[] inward and examine[] the peculiarities of the police profession itself" and, in so doing, afford

“substantial weight ... to the especially hazardous and demanding nature of a police officer’s work and to the special qualifications, training and skills required of superior officers.”

There is no genuine dispute between the parties concerning the need to give appropriate weight to the “especially hazardous and demanding nature” of the police profession coupled with “the special qualifications, training and skills required” of members of the bargaining unit herein.³ Clearly, the Panel finds, the peculiarities of the police profession compel that a direct comparison be made with other police professionals, as those professionals can be found in the universe of comparables.

BASE WAGES

Association Position

The Association seeks a 5% increase to base wages for both years of the term of the Award. It notes that the Sergeants’ current base wage of \$67,774 puts them fourth among the Association’s comparables for Sergeants’ pay. Lieutenants, the Association notes, have a base wage of \$74,326, which does place them first among the Association’s comparables, but the Association also notes that some of its comparables do not have a represented Lieutenant position. Further, regarding Lieutenants’ pay, the Association observes that the

³ It is well known that Lt. John F. Finn, who made the ultimate sacrifice when he died on 2/12/04 from wounds sustained in the course of responding to an armed robbery on 12/23/03, was a member of this police supervisory bargaining unit.

Lieutenants' base wage is \$1000 more than Lieutenants in Schenectady; approximately \$2000 more for Lieutenants in Syracuse; and \$5000 more than Lieutenants in Utica.

The Association, in setting forth its position regarding base wages, notes that it "has conceded that the City's Sergeants and Lieutenants are not underpaid relative to the market" and "[o]bviously, the percentage base wage increase proposed for Lieutenants will preserve their market ranking." The proposed increases for Sergeants, the Association observes, for 2010, would retain their fourth place wage ranking in the Association's comparables, "but the proposed increase for 2011 will move them to third place in base wage for 2011." According to the Association, its proposals, viewed in this light, must be considered "reasonable."

The Association also argues, in the alternative that if the Panel determines that its proposals are too high, it must also reach the conclusion that the City's two-year wage freeze is "far too low." On this point, the Association repeats its arguments regarding the City's financial ability to pay the increases in base wages sought by the Association or clearly any reasonable increase less than the Association's proposal. Nevertheless, the Association urges, "[a] wage freeze, however, cannot realistically be overcome" since it will have "effects that will last far beyond the term of this award." The Association asserts that there is no basis in the record to allow the standing of its members to be eroded among

the comparables. It also reminds the Panel that “the ever increasing real costs of living in this State ... far outpace the consumer price index that stood at 2% for 2010 and considerably above that for the first quarter of 2011.”

It also cannot be said, the Association contends, that a wage freeze would simply preserve the status quo, since the freeze would amount to an “erosion of wages and benefits” to the extent that the cost of living factor would adversely impact the effects of a freeze. Additionally, the Association asks the Panel “to be particularly sensitive to the long terms effect of a wage freeze given the many unit employees who are now eligible to retire or soon will be.”

City Position

In addressing the Association’s wage proposal, the City identifies Mr. Decker’s testimony on behalf of the Association that it paid \$4,922,356 in total compensation in 2010 to unit members and that 1% for the unit would equal \$59,648. Thus, the City calculates that “5% for 2010 would cost the City \$298,240 and another 5% in 2011 would be compounded for a cost of \$596,480 just for the second year.” In the City’s estimation, a cost of \$894,720 for wages in a two year contract must be considered “outrageous given these harsh economic times and not affordable by the City which has eight other bargaining units.” In support of this argument, the City identifies the testimony of its Budget Director Mr. Hearley regarding ongoing interest arbitration negotiations with other

bargaining units and the “misguided” nature of any argument that a pay raise could be financed by real property tax.

In short, the City claims, it “does not have the financial ability to pay” the demands. Reviewing the comparables submitted by the parties, the City also urges the Panel to reach the conclusion that “unit employees are fairly compensated for their services”, which should lead the Panel to reject the proposals for a 5% increase in each of the two years of the Award.

Panel Determination on Base Wages

The Panel Chairman has carefully considered all of the statutory criteria and, in the process, has balanced the reasonable economic needs of the members of the bargaining unit with the City’s obligations, taking into account the need to reach a fair and reasonable result in an economy that, though improving, is far from robust.

Viewing the city comparables, the Panel Chairman notes that as of 2009 Sergeants fared better than Sergeants in Schenectady, Troy, and Syracuse.⁴ The difference between the Sergeants in Albany and Schenectady, by way of example, is approximately \$2,000 annually. Sergeants were “clustered” in terms of base wages among the other comparables save for the smaller City of Utica,

⁴ Rochester’s Sergeants, at the time the Association submitted its evidence, were working under a schedule that expired in June 2008.

where one finds approximately a \$5,000 annual difference. Regarding the period of the Award, herein, the Panel Chairman notes that the Association's proposal would find Sergeants approximately \$3,000 to \$4,000 ahead annually of the city comparables where information is available, except for Utica where the difference would be approximately \$7,000.

As to Lieutenants, for the period ending 2009, Association members were first on the list of comparables, receiving about \$1,000 more annually than Lieutenants in the City of Schenectady, which finds itself second on the list of comparables in this category. Again, no information is available for the City of Rochester and the City of Troy does not have the Lieutenant position. For the Award period, the Association's proposals would find Lieutenants earning approximately \$3,000 more annually than Detectives in the City of Schenectady.

Needless to say, the differences mentioned above for the period of the Award have been based on the Association's proposals, and an Award of less than the proposals would narrow the differences identified and keep Sergeants and Lieutenants in the rankings they experienced among the comparables going into the period of the Award. There is no doubt that among all of the comparables, the supervisory responsibilities of members of this bargaining unit are subject to high expectations. The professionalism of this unit is beyond reproach, based on the history of the commitment shown by members of this unit

and the current state of respect in the community that the Police Department commands.

The Panel Chairman finds that the task is thus to identify an increase in base wages less than the amount sought by the Association that would generally keep the rankings in place and be compatible with the other statutory criteria, including the uniqueness of the duties of the members of the Association, and the hazards they face on a regular basis and the need of the public to have an adequately compensated Police Department. As importantly, the Panel Chairman finds that there is no basis in the record that would support the City's position of the need for a wage freeze. As found above by the Panel, the City does have the ability to address a fair and reasonable increase in base wages. The Panel also notes that a wage freeze carries with it adverse effects for members of the Association well beyond the period of the Award.

Moreover, the Panel Chairman notes the determination discussed below that rejects the Association's proposal regarding retiree health insurance and the further fact that this Award rejects the Association's proposals for increases in field training pay, command stipends, shift differentials, and any increases in the health insurance waiver for active members of the Association.

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

AWARD ON BASE WAGES

§17.1.1 and Appendix "B" are amended as follows:

Effective January 1, 2010 and retroactive to that date, the base salary schedule shall be increased by 1.5%.

Effective July 1, 2010 and retroactive to that date, the base salary schedule shall be increased by 1.5%.

Effective January 1, 2011 and retroactive to that date, the base salary schedule shall be increased by 1.5%.

Effective July 1, 2011 and retroactive to that date, the base salary schedule shall be increased by 1.5%.

Concur
Elayne G. Gold, Esq.


~~Dissent~~



Concur
Anthony V. Solfaro

Dissent

LONGEVITY

Association Position

The Association notes that the longevity amounts in the parties' Agreement have remained the same since 2004 in both years of the service steps and the flat dollar amounts that are paid for the steps on the schedule. It observes that its proposal is to increase the dollar amounts on all existing contractual steps by \$50 effective January 1, 2010 and then an additional \$50 effective January 1, 2011. Moreover, the Association notes its proposal to add a "21 year and after step" to the longevity schedule, with the new step receiving compensation at \$3,200 effective January 1, 2010 and an increase of \$50 to \$3,250 effective January 1, 2011. The Association also observes that its proposal extends to longevity being included as part of the base wage for all purposes as opposed to the present contractual language found in Section 17.3.4 of the Agreement whereby it is excluded from the base wage for purposes of computing overtime, holiday pay, compensatory time or other premium pay allowances.

In support of its longevity proposals, the Association observes that while the current longevity paid members of the unit is not "woefully out of market", the proposed increases must be considered "reasonable and long overdue." Longevity is a "component of wages" the Association asserts, and thus should not remain stagnant. A fair and reasonable amount in 2004, the Association argues, cannot any longer be considered reasonable because "[t]ime and

inflation has eroded the value of the flat dollar longevity steps.” What the Association refers to as “two \$50 bumps”, it argues, must be considered “strictly necessary just to re-establish former value.” The proposal to add a “21 year” and after step to the longevity schedule, the Association further observes, reflects the fact that many officers are not able to retire after 20 years and the City should “recognize” their “value and reward their ... dedication by the creation of a 21 year+ step.” The amount proposed for the new step, the Association observes, “is in direct correlation to the existing step amounts.” As to the inclusion of longevity in base wages for calculation of various premium pay allowances, the Association asserts that some of the present exclusions are “unlawful under the Fair Labor Standards Act.” Thus, the Association claims that “at the very least, the award should include longevity as part of base wage for purposes of computing overtime compensation, whether paid in cash or compensatory time, because the FLSA requires it to be included.”

City Position

The City resists the Association’s longevity proposals. It notes that the proposed new step 21 “would immediately benefit about six unit members at a cost of \$38,700 for the two years”, which the City claims is entirely inconsistent with the fact that it has “made significant cuts in positions, eliminated youth programming, reduced art funding, and held the line on citywide raises.” In fact,

the City puts forth, the entirety of the longevity proposal must be rejected, including the request that longevity be included in base salary for all purposes.

Panel Determination on Longevity

A review of the comparables for Sergeants shows that as of 2009, at 10 and 20 years Sergeants ranked only below the City of Schenectady. Lieutenants for the same period were similarly ranked among the comparables. Going forward into the period of the Award, based on the Association's longevity proposal, Sergeants and Lieutenants would retain their rankings. It is noted that the Association proposal of adding \$50 to each contractual step is one made in light of the fact that there has been no increase in longevity since 2004. The Panel Chairman incorporates the findings above under the ability to pay determination and also takes note of the rationale also expressed above concerning an increase in base wages. The longevity increases, which will not include the 21+ step requested by the Association, will keep members of the Association essentially in their ranking among the comparables and addresses the fact that a failure to award any increase in longevity would put members of the Association in a negative position in light of cost of living increases. The Panel Chairman, without offering any analysis of external legal standards such as those found under the Fair Labor Standards Act, does note that longevity payments are practically considered part of wages and finds that the increases to

be awarded in longevity should also result in longevity pay to be included in the calculation of overtime, holiday pay, and other premium pay allowances as sought by the Association. The Award, as with the Siegel Award for Firefighters, will lessen the economic impact on the City by making the longevity steps increases retroactive only to January 1, 2011 and the calculation of longevity in premium payments not to be effective until the last day of the Award period, December 31, 2011.

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

AWARD ON LONGEVITY

§17.3 is hereby amended as follows:

Effective January 1, 2011 and retroactive to that date, all longevity steps are increased by \$100.

Effective December 31, 2011 and retroactive to that date, longevity pay is to be included in the calculation of overtime, holiday pay, compensatory time, and other premium pay allowances set forth in §17.3.4 of the Agreement.

Concur
Elayne G. Gold, Esq.



Dissent



Concur
Anthony V. Solfaro

Dissent

CLOTHING ALLOWANCES

Association Position

The Association notes that under Section 17.1.2 of the parties' Agreement Detectives, who do not wear a uniform, receive \$2,500 annually paid equally on a weekly basis. Further, the Association observes that the rate has been in effect since 2004, at which time it was increased from the \$1,700 previously paid. All other members of the bargaining unit, the Association notes, receive a \$650 clothing allowance, which is paid in a lump sum in January of each year. In 2004, the Association notes, the clothing allowance for these members was increased from \$500. The Association observes that it seeks to increase Detectives' clothing allowance and the general clothing allowance by \$50 effective January 1, 2010 and another \$50 effective January 1, 2011.

Viewing its comparables, the Association acknowledges that it does not claim that the existing clothing allowances are "grossly out of line with market rates." Nevertheless, the Association argues, "the value of the clothing allowances for these unit employees has eroded substantially from 2004 when they were last increased." The Association advances the notion that "[p]eriodic, regular, small adjustments to economic fringe benefits are preferred over stagnation that results, eventually, in the need for large increases that appear on their face to be unreasonable when they are not." To avoid such a result, the Association puts forth, its proposals on clothing allowances should be awarded.

City Position

According to the City, the clothing allowances as they now stand compare very favorably to the comparables. No justification can be found, the City posits, to increase the clothing allowances. Thus, the City request that the Panel deny the Association's proposal to increase clothing allowances.

Panel Determination on Clothing Allowances

The record shows that neither Sergeants nor Detectives have received an increase in clothing allowances since 2004. It would appear to be axiomatic that an increase is appropriate based simply on increases in the costs of living. The Panel has already stated its finding that the City has the ability to pay the monetary increases set forth in this Award, which would include a modest increase in the clothing allowance for both Detectives and Sergeants. The financial impact of awarding an increase in clothing allowance will be somewhat lessened by the Award whereby the increases will not take effect until December 31, 2011.

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

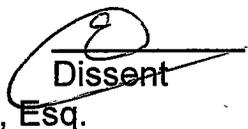
AWARD ON CLOTHING ALLOWANCES

§17.1.2 and §17.1.3 are hereby amended as follows:

Effective December 31, 2011, and retroactive to that date, the clothing allowance for Detectives is increased from \$2,500 to \$2,550.

Effective December 31, 2011, and retroactive to that date, the clothing allowance for all other members of the Association is increased from \$650 to \$700.

Concur
Elayne G. Gold, Esq.


Dissent



_____ Concur
Anthony V. Solfaro

_____ Dissent

MARTIN LUTHER KING DAY AS A HOLIDAY

Association Position

The Association notes that under the current Agreement of the parties, members of the bargaining unit have 11 paid holidays that are set forth in Section 12.1.1 of the parties' Agreement. These holidays, the Association further notes, do not include Martin Luther King Day. The Association identifies its proposal that seeks to add Martin Luther King Day, which is a state and federal holiday, to the list of holidays and thereby increase the number of paid holidays to 12. Most jurisdictions in the comparables, the Association observes, grant 12 or more paid holidays and a "great majority include Martin Luther King Day." The City's refusal

to agree to any new or improved benefits, the Association argues, and its desire, therefore, for a “hard freeze” serves as “no reason to deny these unit employees what prevails in the market.”

City Position

The City states its opposition to this proposal on the ground that the 11 holidays all ready provided “are sufficient.” In the City’s estimation, the record would establish that it “already has staffing issues given the employees compensatory time amounts and usage and thus providing another paid holiday will only add to the City’s expenses.” The City further finds that the Association has simply not offered any justification for the proposal, which should thus be rejected by the Panel.

Panel Determination on Martin Luther King Day

The Panel Chairman takes arbitral notice of the fact that Martin Luther King, Jr. Day is a United States federal holiday to mark the birthday of the Rev. Dr. Martin Luther King, Jr. In 1983, President Reagan signed the bill that created a federal holiday to honor Dr. King, and the holiday as a federal holiday was celebrated for the first time on January 20, 1986. President George H. W. Bush, in May 1989, signed the bill that created the Martin Luther King, Jr. Federal Holiday Commission to oversee observance of this holiday. Every state in the

Union, concluding in 2000 with South Carolina, has enacted legislation to make Martin Luther King, Jr.'s birthday an official state holiday. In 1994, President Clinton, as if to cap the bipartisan approach to celebrating the birthday of this great American, signed into law the King Holiday and Service Act, which in essence challenges Americans by transforming the King holiday into a day of citizen action volunteer service in honor of Dr. King.

The Panel Chairman is somewhat at a loss to understand why this holiday cannot be observed in a collective bargaining agreement between a law enforcement unit and a municipality in the Capital City of the State of New York. Why Martin Luther King Day, one of the established federal holidays, is treated differently by the City for members of this bargaining unit remains an anomaly to this Panel. Frankly, a majority of the Panel finds the City's position to be one that cannot be defended. Thus, a majority of the Panel finds itself persuaded that the Association's proposal to add Martin Luther King Day as a paid holiday should be awarded. The Panel specifically finds no reason, economic or otherwise, that precludes this part of the Award.

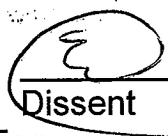
Accordingly, and after careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearings briefs filed, forming the record in this matter, the Panel makes the following:

AWARD ON MARTIN LUTHER KING DAY

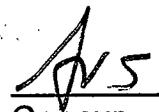
§12.1.1 is amended as follows:

Martin Luther King Day is added to the holiday list effective December 31, 2011 and retroactive to that date.

Concur
Elayne G. Gold, Esq.



Dissent



Concur
Anthony V. Solfaro

Dissent

RETIREE HEALTH INSURANCE

Association Position

The Association notes its proposal that the City pay the full cost of retiree health insurance, including dental and vision, for employees retiring on or after January 1, 2010 on the same terms that are now or may then become applicable to active unit employees by agreement or future interest arbitration awards. The Association notes that the parties' Agreement is now entirely silent concerning retiree health insurance and further observes that "there is not in this City any writing of any kind that serves as a source of right to employees to continue health insurance benefits upon their retirement." The Association acknowledges that the City, outside of the collective bargaining agreement, has historically provided retirees with health insurance, but said health insurance does not

include dental, vision, or hearing coverage save for the retirees over the age of 65 who receive a small dollar stipend toward the cost of such insurance coverage.

Moreover, the Association observes that since January 1, 2005, unit employees pay 10% of the City's self-insured premium equivalent for individual coverage and 25% of premium equivalent for family coverage for an employee's first eight years of service with the City and that the City then picks up the full cost of coverage. On retirement, the Association observes, retirees from the unit thus do not pay any health insurance premium. Effective January 1, 2010, the Association notes, the City determined to make certain changes in retiree health insurance applicable to all retirees such that the City "restricted retirees to a choice of two health plans, instead of the four that are available to active employees", which "restriction on plan choice resulted in additional out-of-pocket costs to many retirees due largely to increased co-pays for goods and services." Moreover, the Association notes that the City "stopped reimbursing retirees for Medicare Part B payment that in 2010 were around \$1,200 annually." It also notes that Medicare Part B payments have already been slated by the federal government to increase in 2011 and for several years thereafter.

The Association emphasizes that its demand is effective January 1, 2010 and it would apply only to unit employees who were employed as of that date or after that date. The demand cannot also be considered applicable to any other

City employee, the Association notes, and “despite the City’s protestations that anything done for these unit employees will necessarily affect all past, present and future City employees”, the City’s assertion, the Association claims, “is simply untrue as a matter of fact and law.”

The Association urges that the proposal to the extent it seeks “a codification” of the City’s existing practice is necessary because without it the City “does not believe that it presently has any legal obligation to provide any retirees with any health insurance benefits” and in turn “believes that it can change or eliminate retiree health insurance benefits at will, as it did unilaterally in 2010.” The Association insists that its members “deserve to know what they will have upon retirement, the terms upon which they will have the health insurance benefit and some reasonable assurance under law that their benefits cannot be changed unilaterally whenever the City feels the need to change the benefits to save money for some other reason.” Moreover, the codification, the Association argues, will not impose a cost on the City “[s]o long as the City observes its historic practice” and would only add a “cost ... if and when and to the extent the City were to change the benefit to the former employees’ detriment, as was done in 2010, and if the City is correct that its retiree health insurance practice is not presently enforceable.”

It is “fair and reasonable”, the Association argues, for the proposal to be accepted. It identifies a number of awards of interest arbitration panels that it

reads as standing for the proposition that “it is manifestly unfair and indefensible to leave the subject of retiree health insurance unaddressed in any labor relations governance document.” At the very least, the Association asserts, it should receive the codification it seeks. By at least codifying the retiree health insurance benefits in place as of January 1, 2010, the Association asserts, the Panel will “provide the parties a meaningful ability to negotiate future collective bargaining agreements”. An alternative approach, the Association contends, will carry with it “the inevitable effect” of the matter being raised in “repeated impasses and interest arbitration”, a result that the Association labels as not consistent with the Taylor Law.

City Position

The City contends that the Association’s demand for retiree health insurance would impose significant costs on the City. It points to the testimony of City Treasurer Sheehan and the fact that “[i]n essence retiree health insurance is an unfunded future liability” and “to contractually mandate that the City provide retiree health insurance and vision and dental coverage will further strain the City’s financial resources.”

The City acknowledges its “unwritten practice of providing retiree health insurance to all employees”, and asserts that “granting the Association the contractual benefit of no cost retiree health insurance would create further inequity among City retirees especially since the retiree benefit package is the

same for all retirees.” In the City’s estimation, the Association’s “demand is unreasonable especially if the Panel considers the fact that most jurisdictions which do provide health insurance to retirees require some level of contribution” and the fact that “the Association already enjoys competitive wages and a rich benefit package.” Moreover, the City identifies the “increasing costs of health care and the unknown landscape ahead as the mandates and changes provided for in the National Healthcare Reform Law take effect over the next few years.” The Panel should take note, according to the City, that it is “self-insured and that all retirees from every City Department including members of the Albany Water Board are eligible to receive retiree health insurance.” There is no basis now, the City argues, to “guarantee retiree health insurance for a specific group of employees.”

Panel Determination on Retiree Health Insurance

In addressing this proposal of the Association, the Panel takes note of the following language in the Siegel Award regarding its rejection of the Union proposal for health insurance for retirees:

... the future costs of retiree health insurance are so staggering that the Panel Chairman 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 Chairman 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 Chairman’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. (Siegel Award, pp. 29-30).

The Panel Chairman finds that the above comments express his view herein that any contractual commitment undertaken by the City in the area of retiree health insurance should be a negotiated one and not imposed, at least at the present time, by the Award of this Interest Arbitration Panel. This is not to say that the Panel does not agree with the Association on the subject of providing retiree health insurance in the collective bargaining agreement. However, due to the uncertainty of the long-term costs, and the relationship of retiree health insurance to the overall issue of health insurance coverage generally, the Panel is constrained to remand the issue to continued negotiations between the parties. It has done the same by its rejection of the City's demands pertaining to health insurance benefits during employment that sought to eliminate plan options and to require employees to contribute toward the cost of insurance for a career and, therefore, on and after retirement.

Accordingly, and after careful 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 Association's proposal to place a provision in the parties' Agreement requiring the City to pay the full cost of health insurance for any member of the Association who have retired on or after January 1, 2010 or will thereafter retire is rejected.



Concur
Elayne G. Gold, Esq.

Dissent

Concur
Anthony V. Solfaro



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 in favor of one party or the other, and not all contentions are agreed with.

AWARD ON REMAINING ISSUES

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

Dissent
MS Except as set forth in this Award, the Association's demands are hereby rejected. *Concur*

Concur
Elayne G. Gold, Esq.

Dissent

Concur
Anthony V. Solfaro

Dissent

RETENTION OF JURISDICTION

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

Concur
Elayne G. Gold, Esq.

E

Dissent

Concur
Anthony V. Solfaro

Dissent

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.

E

Concur
Elayne G. Gold, Esq.

Dissent

Concur
Anthony V. Solfaro

Dissent

RETROACTIVITY AND PAYMENT

The City shall implement this Award as soon as practical, but no later than 30 calendar days of the date of the signature of the Panel Chairman. The City shall pay retroactivity to any employee who worked during the expired period as soon as practical, but no later than 60 calendar days of the date of the signature of the Panel Chair.

Concur

Elayne G. Gold, Esq.



Dissent

Concur

Anthony V. Solfaro

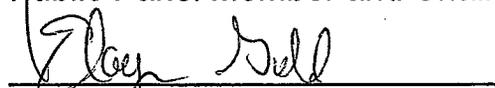
Dissent

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



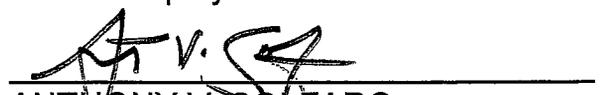
JEFFREY M. SELCHICK, ESQ.
Public Panel Member and Chairman

2/22/13
Date



ELAYNE G. GOLD, ESQ.
Public Employer Panel Member

2/13/13
Date

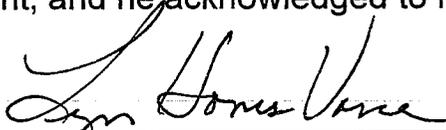


ANTHONY V. SOLFARO
Employee Organization Panel Member

2/20/13
Date

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

On this *22nd* day of *February* 2013 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

LYNN HOMES VANCE
Notary Public, State of New York
No. 02VA6114292
Qualified in Albany County
Commission Expires Aug. 9, 201*6*

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

On this *13th* day of *February* 2013 before me personally came and appeared Elayne G. Gold, Esq., to me known and known to me to be the individual described in the foregoing Instrument, and she acknowledged to me that she executed the same.

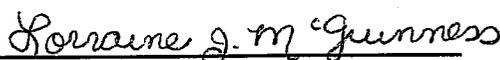


Notary Public

RAYANNE L. SHEEHAN
Notary Public, State of New York
Qualified in Schenectady County
No. 5039263
Commission Expires February 13, *2015*

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

On this *20th* day of *February* 2013 before me personally came and appeared Anthony V. Solfaro, 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

LORRAINE J. Mc GUINNESS
Notary Public, State of New York
Qualified in Orange County
Reg. No. 4620194
Commission Expires June 30, 20 *15*

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration :
between : **DISSENT OF**
 : **INTEREST ARBITRATION**
The City of Albany, Public Employer : **PANEL MEMBER**
 :
and :
 :
The Albany Police Supervisors' Association, : **PERB Case No.:**
Employee Organization : **IA2010-020; M2010-108**
 :

On behalf of the City of Albany, this Panel Member hereby dissents from most of the provisions of the Award as issued by the majority of the Interest Arbitration Panel herein.

First and foremost, it is important to note that it is not the role of the Panel Chairman to condemn or chastise, blame, rebuke or scold any party for the position it takes during negotiations and continued through the mediation and Interest Arbitration processes. The Chairman is unaware and generally unfamiliar with the dynamics of each individual party's considerations which may lead it to the positions that it takes. The City believed and continues to believe that City employees should all be treated fairly and equitably. Non-union managers and various other unionized employees accepted and/or negotiated the wage freeze in the years in question during this Interest Arbitration Award. During the time period covered by this Award, when employees took zeros and when wage freezes were offered to this Bargaining Unit, all the employees of this Bargaining Unit continued to be paid salaries (and benefits), continued to receive longevity increments and continued to have paid time off. In addition, the City continued to contribute to the high cost of pension contributions and continued the "Cadillac" level of health insurance benefits for the members of this Bargaining Unit (in most instances, without any contribution by Unit members toward premium costs).

Therefore, for the Panel Chairman to find the City's position unreasonable and to imply that holding the line on wages by the City of Albany is something to be ashamed of is absurd, shortsighted and not supported by the record.

In support of the economic portion of this Award, the Panel majority cites the Interest Arbitration Award issued December 2011 in the Albany Firefighter Interest Arbitration for the years 2010 and 2011, and a November 2012 settlement by the general Police Unit. However, the Firefighter Award was not a unanimous Award and contained managerial enhancements. Although the police "rank and file" unit ("APOU") settlement provided a "modest" raise in 2010 and 2011, these raises were part of an overall multi-year package whereby the APOU agreed to a major change in health insurance coverage and plan options, as well as agreeing to several managerial and operational contract modifications sought by the City. The herein Arbitration Award fails to afford any of those modifications, although sought by the City. As such, the comparison to either the APOU negotiated agreement or Firefighter Award is misplaced.

The herein Award is neither fair nor reasonable in any of its parameters. The discussion on comparability only focuses on geographic proximity. Comparability is far from geographic proximity alone, and one must look at the overall economics and provision of benefits in each of the "comparable" municipalities. That was not done here. With respect to ability to pay, the Panel majority concludes that the City has managed its finances well. In return for such a "compliment" the Panel decides that the City should be punished and spend some more of its well managed money in unexpected, unplanned and quite frankly, unnecessary wage adjustments. This is certainly the case when the Panel majority fails to give any economic relief to the City in the form of health insurance concessions and/or managerial operational changes which may help with the staffing and/or overtime costs.

It should not be a given that merely because a non-unanimous Panel in the Firefighter Interest Arbitration Award granted wages in 2010 and 2011 to the therein Bargaining Unit members that the "City [was put] on notice that wage increases would be forthcoming" for its Police supervisor unit. In fact, the City had no such notice; it believes its position that wage freezes are warranted is a valid and realistic position that was also set forth in the Firefighter's Interest Arbitration. If the City was to have been "put on notice," there would have been no need to convene this current Interest Arbitration Panel.

Furthermore, telling the City, as this Panel majority seems to do, what it should and should not budget for is clearly a function outside the scope of any Interest Arbitration Panel. A municipality has a right to decide what it needs to and must spend its money on. The Chairman's assertion that "the City cannot rightly claim either surprise or inequity when faced with the modest wage increases" is unwarranted and inappropriate and disregards the statutory criteria such as the welfare of the public and the ability to pay.

The Arbitration Award alleges that the City should act "fairly" with respect to what it provides to its employees. If this Panel followed its own advice of acting in a "fair" manner, then the Panel would have truly followed the Firefighter Interest Arbitration Award by awarding to the City the managerial and operational proposals which it sought during this bargaining. None of those proposals were even considered by the Panel majority.

On the issue of retiree health insurance, I commend the Chairman for the ultimate conclusion reached; however on the unsolicited commentary, the Panel is far outside the scope of its authority. The conclusive statements made in the Award with respect to the City's actions concerning retiree health insurance are not appropriate given the fact that retirees are not employees and therefore, play no part in Interest Arbitration discussions. The language put forth by this Panel (see page 21 of the Award) is inflammatory, misplaced, and at the base,

out of line. It is not the role of the Interest Arbitration Panel to direct or pontificate as to what is or is not within management rights concerning retirees. The language used in this Award sets up a line of argument that, although and perhaps unintended, will have long term ramifications on the parties herein.

To continue in the unsolicited and inappropriate commentary found throughout the Award, one need only look to the discussion concerning an additional holiday, that being a request by the Association for "Martin Luther King Day." The employees of this 24/7 Bargaining Unit have sufficient time off as it currently stands. Granting of another day off boils down to a matter of granting more pay to each employee (as employees get pay automatically for the 11, now 12, holidays whether worked or not); further granting this additional day off will negatively impact the City's Police Department's staffing needs and overtime costs. The issue for the City was not what designation the holiday would have, but merely the fact that it could not afford to grant to any employee more time off. It is important to note that the Union did not provide any testimonial evidence to justify another holiday and the Union's post hearing brief acknowledged that the City's "unwillingness to accede to any new or improved benefits" was solely because of the cost of paying for another holiday. Interestingly, in the Firefighter's Award referenced by the Chairman, the Panel majority awarded the City some relief from the economic and operational costs associated with holidays by eliminating the use of compensatory time on Christmas Eve and Christmas Day.

Nevertheless, the Panel Chairman writes a political dissertation as to what he does and does not understand with respect to the City's position on the Association's Holiday proposal. It was never the position of the City of Albany to deny a holiday because of what the holiday stands for. To even imply such in this Interest Arbitration Award is outrageous. Interest

Arbitration Awards are not places for political commentary, and it is offensive that the Panel Chairman thought this was necessary.

As a whole, the Award is unprofessional and detrimental to the relationship between the parties to the Interest Arbitration process.

This Panel Member vehemently dissents on all aspects of this Award; although she will concur that retiree health insurance language should not be contained in the Collective Bargaining Agreement, she does not concur on the analysis proffered by the Panel.

On a final note, the Panel concludes that "City residents are not currently overtaxed." (See page 17, Award.) This Panel member offers that City residents would disagree with that conclusion. Further, the Proposed Budget submitted by our State's Governor clearly saw the need to include provisions to point out the true meaning of "ability to pay" and seeks to amend the Taylor Law so that Panels will pay greater attention to fiscal realities. It is unfortunate that this Panel's majority did not have the foresight to consider these matters before rendering the Final Award.

Dated: Albany, New York
February 13, 2013

Respectfully submitted,


ROEMER/WALLENS GOLD & MINEAUX LLP
Elayne G. Gold, Esq.
Labor Counsel / Panel Representative
City of Albany, New York
Office & P.O. Box:
13 Columbia Circle
Albany, New York 12203
Tel. No. (518) 464-1300

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Interest Arbitration between

CITY OF ALBANY,

Public Employer,

-and-

ALBANY POLICE SUPERVISORS' ASSOCIATION,

Employee Organization.

PERB Case No. IA2010-020; M2010-108

OPINION

**Anthony V. Solfaro,
Employee Organization
Panel Member**

OPINION

The dissent filed by Ms. Gold, the City's designee to the Panel, requires my response. The dissent is obviously angry with the Chairman and with the contents of this award, except insofar as the substantive terms of the award and its rationale favor the City. Her apparent anger has resulted in a dissent that I believe lacks objectivity and consistency. She unfairly condemns the interest arbitration process in general and this one specifically and she insults this very experienced and highly respected Panel Chairman and, indirectly, everyone with a view, different from hers,, including the APSA, its members, representatives and me.

I will not respond to everything in the dissent because some parts do not merit any comment. Even those points I do address give the comments more than they deserve, but I do not want silence to be taken as proof that the comments are correct or meritorious. Moreover, as the Panel Chairman is likely prevented by law as well as his professional ethics from defending himself and the arbitration process in print, I feel compelled to write.

It is not unusual for panel chairs to explain in their awards the reasons for the time elapsed between the date a petition for interest arbitration was filed and the date an award issues. The interest arbitration process can take a considerable period of time to complete, often for

several different reasons, usually all perfectly legitimate. This particular proceeding took longer to complete than anyone, including the Chairman, would have preferred. The Chairman only expressed his belief about why this award took time to issue, and in this, the Chairman did not fault only the City. Therefore, there is nothing unbalanced about his critique of the parties' actions. In any event, the Chairman's comments in this respect had nothing to do with the terms of the award. The APSA and the City were not punished or rewarded because of the time it took to issue this award or for their insistence upon a given demand or argument.

The Chairman did not use either the interest arbitration award issued by a different arbitrator for the fire fighters or a recent collective bargaining agreement reached between the City and the rank-and-file police officers to set any of the terms of this award. The Chairman observed the fact that there were increased wages and benefits in that fire fighter award and in that rank-and-file police officer contract which should have put the City on notice that these relatively few Police Sergeants and Lieutenants would likely also receive wage and benefit improvements in this proceeding. The Chairman merely expressed that the City should have taken those developments into account and reassessed the merits of the unyielding hard line it took in bargaining, mediation and in this proceeding that called for an unwarranted roll back of these police supervisors' wages and benefits.

The Chairman's discussion of the statutory criterion of comparability is the same he has used in several of his earlier interest arbitration awards, including at least one proceeding in which Ms. Gold was a panel member. The Chairman is, moreover, entirely correct in rejecting the City's argument that only other cities can be regarded as comparables in an impasse involving a city form of government. Comparability compels the identification of the market within which the at-issue employer competes with other employers for police officer services. It is within that market that the comparison of prevailing wages and benefits is made. Comparability has never been restricted to governments of exactly the same type as the government that is the party to the interest arbitration proceeding or to only those governments with the same demographics. Thus, the towns surrounding the City were properly included by the Chairman in the set of comparables just as was a nearby city a comparable in the earlier

interest arbitration proceeding involving a town government in which Ms. Gold was the employer panel member.

The dissent laments that the Chairman did not give any economic relief to the City as to either health insurance benefits or "operational changes". As to both, the Chairman correctly determined that affirmative relief to the City was not necessary or appropriate on the facts or the law. Rather, relief came indirectly, but no less significantly, from the Chairman's denial of several of the APSA's economic demands and his award of wage and benefit improvements that were more modest than I believe the facts of record warranted.

A major APSA demand was to have the current retiree health insurance benefits codified. The Chairman declined to award anything pursuant to the APSA's demand regarding health care on retirement. The dissent applauds the Chairman for denying that major APSA demand, yet it criticizes the few and modest wage and benefit improvements he awarded. This reflects the absurd belief that the only award that is appropriate is one ordering a roll back of wages and benefits for these supervisory police officers through a combination of freezes and concessions favorable to the City. The Chairman correctly and reasonably did not accept the City's argument.

The Chairman was also correct in not awarding the City the several affirmative health insurance concessions it demanded from employees. Significantly, the City had already extracted major concessions from retirees unilaterally. Those changes will cost future retirees from this unit many thousands of dollars over time. To cushion that financial blow, and in recognition of his rejection of the APSA's retiree health care demands, the Chairman decided he could not compound that already unfair situation by making employees pay still more for health insurance during their employment. Moreover, the health insurance benefits these police officers receive are consistent with what prevails in the market. Concessions simply were not warranted.

The dissent's unhappiness with the Chairman's few remarks about the City's changes to retirees' health care benefits is based upon the belief that retiree health care is some managerial prerogative about which the Chairman had no right or reason to comment. Although retirees are

not "public employees" within the meaning of the Taylor law, that does not mean that the health care benefits current employees will receive on their retirement are not mandatorily bargainable terms and conditions of employment. The law is directly to the contrary of the dissent's assertion and it is clear and longstanding. Indeed, were it not so, the City would have "scoped" the APSA's retiree health care demand and prevented that demand from even being submitted to the Panel for award, precisely as it did, with success, as to the APSA's demand to acquire an enhanced pension benefit the fire fighters have had for a long time.

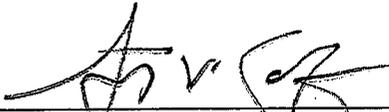
The dissent refers at different points to the fire fighters' interest arbitration award, stating simultaneously, and again inconsistently, that these police supervisors should not receive even what the fire fighters were awarded or what they have acquired through collective bargaining, but certainly no more than what fire fighters were awarded in their recently concluded interest arbitration proceeding.

There is no pattern or parity bargaining in this City and certainly none proven upon the record before this Panel. These police supervisors do not have the same wages or benefits as the fire fighters who, in turn, do not have what other City employees have. Unionized employees bargain separately and obtain whatever the Taylor Law collective bargaining system allows. Differences in terms and conditions of employment, sometimes major, can and do result. The notion that no group of an employer's employees should do better than some other group of its employees is wrong as a matter of law and fact, and is just preposterous in its implications. On that theory, for example, these police supervisors should have the fire fighters' better pension plan, but they do not, and their attempt to obtain that benefit was met by persistent City opposition in this proceeding.

As to the comment in the dissent about the Governor's legislative proposal to cap future interest arbitration awards for fiscally distressed municipalities, I say only this in this forum. That is not currently the law, it may never be the law, and I hope it will not become the law. The Governor's proposal is full of technical defects and its "deeming" of municipal fiscal distress based on either of only two factors, to the complete exclusion of the many other factors which are relevant to a municipality's financial condition, is just wholly arbitrary. If and when the

Governor's proposal becomes law, parties and interest arbitration panels will have to deal with it. For now, and as he was required to do, this Chairman analyzed all of the statutory criteria, including the City's ability to pay, and he applied the facts of record to produce an award that resolves the parties' impasse.

I do not share at all Ms. Gold's opinion that the Chairman's work is unprofessional. To the contrary, he was chosen to serve by mutual agreement of the parties precisely because of his professionalism, integrity and experience. Make no mistake. I do not agree with all that is in this award. The Chairman's declination to at least codify existing retiree health insurance benefits is particularly troubling because I believe a codification of at least the existing retiree health care benefits is appropriate and warranted. The award is, however, fair and reasonable overall and that is every Panel's statutory mandate to meet. This Chairman met all of the statutory requirements. An advocate's upset over a perceived loss may be understandable, but it is no justification for the rant in this dissent.



ANTHONY V. SOLFARO
Employee Organization Panel Member

Dated: 2/20/13