

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

-between-

BUFFALO POLICE BENEVOLENT ASSOCIATION, INC.

OPINION

-and-

CITY OF BUFFALO, NEW YORK

AND

AWARD

PERB Case No.: IA 2008-027; M2008-190

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

Kevin M. Kennedy
Employee Organization Panel Member

Sean P. Beiter, Esq.
Public Employer Panel Member

APPEARANCES:

For the Buffalo Police Benevolent Association
Law Office of W. James Schwan
By: W. James Schwan, Esq., Of Counsel

For the City of Buffalo
Goldberg Segalla, LLP
By: Matthew C. Van Vessem, Esq., Of Counsel

BACKGROUND

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 a dispute between the Buffalo Police Benevolent Association, Inc. (PBA) and the City of Buffalo, New York (City).

The City covers nearly 42 square miles in the western part of the State of New York (State). It is located on the eastern shore of Lake Erie. It has approximately 261,000 residents, making it the second largest city in the State. The City provides a full range of services to its residents ranging from police and fire protection to sanitation, highway and recreation.

The PBA represents all sworn police officers, detectives, detective sergeants, police lieutenants, police captains and police inspectors. It currently has approximately 750 unit members.

The City's officers are generally divided into two divisions, namely, the patrol division and the detective division. The Department also has administrative and specialized units.

The City's officers are frequently called upon to handle violent crimes. The City has more violent crime than the cities of Rochester and Syracuse and municipalities in the Buffalo suburbs. While Buffalo's 2010 statistics show it had 1,357 violent crimes per 100,000 residents, Rochester had 1,094 per 100,000 residents and Syracuse had 947 per 100,000 residents. The suburban Buffalo police department with the closest statistics to Buffalo had a high of 232-violent crimes per 100,000 residents.

The City has struggled economically since the 1980s. As recently as the 1980s, the City and its environs was a hub of manufacturing. Indeed, 27% of the area workforce was employed in manufacturing in the 1980s. This number has shrunk to 5.6% at the present time. This has been somewhat offset by job growth in federal, state and local government, as well as higher education, retail, banks and healthcare.

The fiscal affairs of the City arguably hit a low point in 2003. In July 2003, the State determined that the City was in such severe financial crisis that it could not be resolved without State intervention. The Buffalo Fiscal Stability Authority (BFSA) was established to monitor the City's financial plans and ensure that the City was adhering to fiscal requirements set forth in the BFSA Act.

The BFSA began in a control period. This meant it had the maximum authority to take actions to protect the City's financial integrity. In 2003, the BFSA enacted serious austerity measures, including eliminating positions, imposing a hiring freeze and closing fire stations.

By 2004, the BFSA determined that it needed to take more severe measures. It imposed a wage freeze on all employee organizations for fiscal year 2004-2005. The wage freeze continued in 2005-2006 and 2006-2007. All salary increases, including step increments, were frozen during the period of 2004 to 2007.

The PBA's last CBA with the City governed the period from July 1, 2002 through June 30, 2007. In the CBA, PBA members were provided with a \$5,000 annual increase effective July 1, 2002, followed by raises of 3.4% effective July 1, 2003, July 1, 2004, July 1, 2005 and July 1, 2006. Although PBA members received the agreed-upon salary increases in 2002 and 2003, the BFSA had the authority to take actions that superseded

any CBAs. Hence, the wage freezes imposed by the BFSA meant that PBA members did not receive the 3.4% wage increase on July 1, 2004, July 1, 2005 and July 1, 2006.

In 2007, the City presented a four-year financial plan to the BFSA. It demonstrated that the City's severe financial crisis had sufficiently abated to permit a lifting of the wage freeze. The City's plan to the BFSA included requesting a lifting of the wage freezes that were imposed on bargaining units from 2004 through June 30, 2007.

Pursuant to this plan, the BFSA lifted the wage freeze. Effective July 1, 2007, PBA members received the 3.4% salary increase they were supposed to receive on July 1, 2004. Effective July 1, 2007, step increases and other increases due under the CBA that were suspended the preceding three years were allowed to recommence prospectively. Moreover, pursuant to this plan, the 3.4% salary increase PBA members were due to receive on July 1, 2005 was paid to PBA members effective July 1, 2008 and the 3.4% salary increase unit members were due to receive on July 1, 2006 was paid to PBA members effective July 1, 2009. This manner of lifting the wage freeze was litigated and ultimately deemed proper by the New York State Court of Appeals in 2011.

On or about May 1, 2007, the parties began negotiations for a successor contract to the one that expired on June 30, 2007. However, since the BFSA was in what is considered a "control period" where it has maximum authority to make major economic decisions due to the economic distress of the City, the parties engaged in limited negotiations. At a certain point in time, the parties began to actively negotiate 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. On

or about January 30, 2009, the PBA filed a Petition for Interest Arbitration. On February 17, 2009, the City responded to the petition and filed a cross petition for arbitration.

On May 4, 2012, the 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. On July 1, 2012, the BFSAs determined that the City's financial outlook had improved to the point where it voted to move from control period status to advisory status. Simply stated, this provided the City with greater discretion and authority to act on issues involving its fiscal affairs. However, under the statute creating the BFSAs, the BFSAs has the authority to reimpose the control period if it determines that the City is back in the throes of a fiscal crisis at any time through 2037.

Hearings were conducted before the Panel in Buffalo, New York, on September 18 and 19, 2012, October 25 and 26, 2012 and November 9, 2012. At all hearings, both parties were represented by counsel. A transcribed record was taken at all hearings. Both parties submitted numerous and extensive exhibits and documentation, including written closing arguments. Both parties presented extensive arguments on their respective positions.

On March 12, 2013, PERB officially appointed Kevin M. Kennedy to serve as the PBA Panel Member instead of James W. Panus, the PBA's original Panel Member in this proceeding.¹

Thereafter, the Panel fully reviewed all data, evidence, arguments and issues submitted by the parties. Despite significant discussion and deliberations at multiple

¹ Mr. Kennedy attended all arbitration hearings as a member of the PBA's executive committee. He advised that he had a complete record and was prepared to proceed with a scheduled executive session without further delay. Neither Mr. Kennedy nor the PBA requested an adjournment or continuance in order to allow Mr. Kennedy more time to prepare.

Executive Sessions, the Panel was unable to reach consensus on an Award. As a result, this Award represents the determination of the Panel Chair, who was joined by the City Panel Member on an item-by-item basis.

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 July 1, 2007 through June 30, 2009.

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

PBA Position

The PBA stresses that the comparability is the criterion establishing the market to be used to assess how existing terms and conditions of employment compare to similar employees within the relevant market. In other words, it is a search for the market within which a comparison of prevailing wages and benefits is to be made.

The PBA contends that its members should be compared with all of the police agencies in the municipalities surrounding Buffalo. It maintains that the City's proposal to compare it only to other City bargaining units a few select upstate cities is a limiting market that does not comport with the comparability criteria. To the PBA, geographical proximity is much more relevant than limiting the group of comparables to a few select jurisdictions as asserted by the City. In the PBA's view, its proposed group of comparables is most appropriate because it provides a complete picture of the full extent of the market.

The PBA maintains that the City's proposed group of comparables is far too limiting and does not give the Panel a complete assessment of the prevailing wages and

benefits in the market. The PBA asserts that its list of comparables is appropriate because it is comprehensive and neither too big nor too small.

The PBA argues that there is nothing unique about city governments that requires or warrants a comparability analysis limited only to other cities, particularly when those cities are located in different markets with different economic conditions than Buffalo. In the PBA's view, comparability requires a search for the relevant market, not a search for governments of the same type. The PBA maintains that in dozens of cases over the years, arbitration panels have not restricted their comparability analysis in such a way. The PBA urges this Panel to follow the same path and adopt all police agencies in the Buffalo area and the City of Rochester as the group of comparables.

City Position

The City insists that even though it is in a much healthier fiscal position than it was on July 3, 2003, that its financial challenges are unique among the other large cities in the State. While the City concedes that Rochester, Syracuse and Albany share some similarities with Buffalo, the City stresses that its unique financial struggles make it such that there is truly no comparable municipality in the State. The City notes that unlike the other large cities in the State, it is the only municipality in more than 25 years to have a wage freeze imposed on its employees.

The City observes that it has been in a declared fiscal emergency for nine years. This resulted in the creation with the BFSA which has the statutory authority to directly oversee the City's finances. The City maintains that the wealthier suburban municipalities near Buffalo cannot be considered comparable as none of them has contended with such a truly unique fiscal circumstance. None of those communities were as dependent upon

state aid to fund their operations. In the City's view, this is precisely why the closest comparables are the other bargaining units of the City as they all had to contend with the same unique and challenging fiscal circumstances.

To the extent that other municipalities will be considered by the Panel, the City urges the Panel to consider Rochester, Buffalo and Albany as the comparables. The City stresses that these communities are most similar in terms of size, geographical proximity, economics and demographics. Indeed, while these municipalities' economic challenges are not as severe as Buffalo, they have all had their fair share of economic struggles.

The City notes that Rochester, Syracuse and Albany all are within the range of Buffalo in terms of size and population. While Buffalo has a geographic area of approximately 40.5 square miles and a population of approximately 260,000, Rochester has a geographic area of 35.8 square miles and a population of 219,773. Syracuse is 25.1 square miles with a population of 147,306 and Albany is 21.4 square miles with a population of 97,856.

Panel Determination on Comparability

The Panel Chair finds that the cities of Rochester and Syracuse are the most appropriate group of comparables. A number of facts lead the Panel Chair to this conclusion. First and foremost, they are similar in terms of size, population and geographical proximity. Rochester and Syracuse are also most comparable to Buffalo because all three cities have been struggling economically for the past twenty plus years as manufacturing and other traditional industries in upstate New York have either contracted or disappeared. All three cities have suffered fierce population declines and have large numbers of poor residents in need of fiscal assistance. All three cities have

crime rates that are well above where anyone wants them to be. Although Rochester and Syracuse are not as reliant on State funding as Buffalo, the fact remains that all three cities continue to need to look to Albany for assistance.

The Panel Chair does not find Albany to be an appropriate comparable to Buffalo. He so ruled in 2012 in an interest arbitration involving the City of Albany Firefighters and he sees no logical basis to deviate from that determination. As the Panel Chair has previously noted, Buffalo has nearly three times the population as Albany and is nearly twice the size in terms of geography. They are hundreds of miles apart and in a completely different region of the State. Their economies are completely different and their housing markets are completely different. They do not share enough in common to be considered comparable with one another.

To a much more limited extent, the Panel Chair finds that police agencies in the Buffalo area and other City bargaining units should be in the universe of comparables. Other police agencies in the Buffalo area should be considered to a limited extent because they are located in the exact same labor market. Employees in all of these agencies purchase homes in the same market, can compete for jobs in the same market and have similar economic circumstances. Other City bargaining units should be considered because the City is in a truly unique economic circumstance. Thus, the manner in which it handles its negotiations with other bargaining units has some relevance to this dispute.

Accordingly, pursuant to the statutory criteria, the main universe of comparables is Rochester and Syracuse. Other police agencies near Buffalo and other City bargaining units are also in the universe of comparables to a much more limited extent.

ABILITY TO PAY

PBA Position

The PBA maintains that Buffalo is in a vastly different and vastly better economic position than it has been in the past. It is in sound financial condition and has the ability to pay for the proposals made by the PBA.

The PBA's evidence of the City's ability to pay was based on the testimony and exhibits presented by Edward Fennel, a government finance consultant who has been examining the records of the City since 1979. The PBA asserts that the evidence offered through Mr. Fennel conclusively establishes that the City has the ability to pay for a substantial increase in salary and benefits. According to the PBA, Mr. Fennel's presentation should be accorded great weight because he is an expert in municipal finance, he made his recommendations based on the City's records and his testimony was largely un rebutted.

The PBA stresses that the City's year-end fund balance data is emblematic of the City's strong recovery. The PBA notes that while the City only had \$17.86 million in fund balance at the end of 2002, the City's fund balance improved to \$95.661 million in 2006 and reached a recent high of \$142.94 million in 2010. To the PBA, the City's robust fund balance increase demonstrates how ludicrous the City's position is. In other words, the City's claim that there is only \$5.6 million available to fund wage increases for all City employees, including PBA members, cannot be given any credence.

The PBA maintains that there are other noteworthy aspects of the City's financial data that demonstrate the City's good financial health. It cites the following:

- Assets of the City exceeded its liabilities at the close of the fiscal year ending June 30, 2011 by more than \$165 million.
- The committed, assigned and unassigned fund balance for the general fund was more than \$92 million as of June 30, 2011, which is 20.1% of total general fund expenditures.
- The BFSAs special revenue fund holds more than \$17 million of state aid that will be turned over to the City in the future.
- The City's bond indebtedness has decreased in each of the last ten fiscal years from more than \$465,885,000 to \$313,957,579.
- The City has set aside more than \$70 million to pay for anticipated settlements with collective bargaining units from past years that will not affect the City's current revenues or fund balance.

The PBA notes that set forth in the Official Bond Statement regarding the issuance of general improvement serial bonds are matter of fact statements highlighting the City's outstanding recovery. Among other things, it is noted that "as a consequence of the substantial improvement in the City's financial operations, the city has experienced a sizable increase in its cash and liquidity position." (PBA Exhibit 2). The PBA stresses that the City's financial improvement is even more noteworthy because it has occurred while the City is in the midst of a tax reduction plan that has reduced taxes by nearly 25% since 2006.

The PBA stresses that Mayor Brown accentuated the City's improving financial condition after releasing the City's 2012-2013 budget. Among other things he stated:

This year Buffalo earned its fifth successive bond rating increase, bolstering Wall Street's confidence in our City as a result of the significant and continued fiscal

improvements. All three top credit rating agencies graded Buffalo in the "A" category – the highest credit rating in Buffalo history... With \$750,000,000 in construction now underway in downtown Buffalo, where the rapidly growing medical campus continues to expand and a newly revitalized waterfront has become a popular destination, investors from across the country and internationally are taking a serious look at Buffalo... Adding to the interest is the support of Governor Andrew Cuomo and his promise of \$1 billion in state aid to attract new businesses and industry to our City.

In the PBA's estimation, Mayor Brown's positive outlook is corroborated by the fact that in April 2012, the City earned an upgraded credit rating from Moody's going from A2 to A1. In reaching this conclusion, the PBA notes that Moody's was pleased with the City's strong improvement in its General Fund balance increases and its adherence to its financial plan. To the PBA, this objective determination from Moody's, coupled with the fact that the City Comptroller has conceded that the City has more than \$56 million in unspent funds, wholly demonstrates that they City has the ability to pay for the PBA's economic proposals.

City Position

The City insists that the Panel cannot ignore the fact that BFSFA Act was adopted because the City was in a dire situation. The BFSFA pronounced two essential goals, namely, the preservation of services and the affordability of taxes. It concluded that the failure to act consistent with these goals jeopardizes the City's long-term fiscal health.

The City reminds that Panel that its recovery was only made possible due to the State's extraordinary intervention, which included the imposition of a control board that made difficult austerity decisions, including three years of wage freezes and a hiring freeze. This, coupled with massive increases in State aid, helped the City begin its recovery.

The City maintains that its recovery is extremely fragile because it still has a large structural budgetary imbalance. The City insists that its recurring revenues are less than its recurring expenses. Since approximately 80% of the City's recurring expenses are personnel costs, the City maintains that it has an extremely limited ability to pay for any wage increases.

The City stresses that it relies on State aid and fund balance to balance its budget every year. In the City's estimation, any economic increase awarded by the Panel must be offset by equivalent concessions. Otherwise, the structural imbalance between the City expenses and revenue will only be exacerbated.

The City stresses that its ability to pay is also limited by the fact that there is some potential for a real spike in personnel costs. After all, the City's fire department union employees have not had a contract since 2004. The City maintains that the cost to resolve those outstanding years, coupled with the six outstanding years for police, as well as the costs to address seven other bargaining units could be exorbitant. In the City's view, any increases in salary must be extremely moderate. Otherwise, the City risks being right back where it was with virtually no fund balance and a deep structural budget deficit.

The City asserts that it finished the 2007-2008 fiscal year with an unreserved, undesignated fund balance of \$76.02 million. The City insists that its fund balance only reached these levels due to the wage freeze, increased State aid and BFSA borrowing. The City maintains that its limited ability to pay is accentuated by the fact that the City finished fiscal year 2008-2009 with an unreserved, undesignated fund balance of \$58.93 million.

The City opines that its fund balance has declined because it has been forced to use substantial amounts of its fund balance in each of the more recent fiscal years to balance its budget. It used \$12.8 million in 2010 and \$12.3 million in 2011. In the current budget, the City utilizes another \$11.5 million in fund balance. The City insists that this is demonstrative of a City with fiscal pressures in a challenging economic environment. In the City's view, its continued reliance on one-time revenue sources such as fund balance and State aid wholly demonstrates that it has a very limited ability to pay for increases in costs.

The City contends that given its financial circumstances, its ability to pay for any additional wage increases beyond those already provided in 2007 and 2008 is limited to 1.5%. The City avers that it simply does not have the ability to pay for anything beyond that amount. It claims that its current budget cannot absorb any increases beyond 1.5%.

The City reminds the Panel that its largest source of income is State aid. The City points out that in 2010, it received more than \$195 million in State aid. This demonstrates a far greater reliance on State aid than the cities of Rochester, Syracuse and Albany. Indeed, while Buffalo received approximately 39% of its total revenue from State aid in 2010, Syracuse received 27.9% of its revenue from State aid while Rochester received 22% of its revenue from State aid. The City contends that since State aid is unpredictable and non-recurring that it only has the ability to pay for a limited salary increase.

The City contends that the PBA's claim that the City's finances are not dire defies common sense and the data in the record. The City maintains that it simply cannot afford the millions of dollars of retroactivity and future increases demanded by the PBA.

The City argues that its ability to grow its revenues are severely restricted. It suffered a cut in State aid in 2010 while the State was suffering the devastating affects of the last recession. Although the City may have implemented a plan that reduced taxes by nearly 25%, the City still utilizes over seventy percent (71.15%) of its available constitutional tax limit and due to the State's two percent (2%) cap on property tax increases, the City's ability to generate additional revenue through taxes is limited. Moreover, mortgage tax receipts have dropped by 33% from 2007 to 2010. With revenue growth remaining flat or declining in some areas, the City continues to have no choice but to depend on State aid to make ends meet.

While the City recognizes that its financial condition has improved, it implores the Panel to look at the reality of its budget. It was in a uniquely troubled condition that has taken years to pull out of. It is heavily reliant on State aid. It has a declining population that is very poor with a median household income of \$28,490. The City urges the Panel to find that it has a limited ability to pay for any increase and reject the PBA's contention that it has the ability to pay for the PBA's economic proposals.

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 during the term of this Award and beyond, the financial conditions in Buffalo showed significant improvement compared to the past. Due in large part to the receipt of over \$175 million in State aid each year, the City

greatly improved its fund balance, reduced its indebtedness and has become a much better place for investment.

However, much of this positive news is tempered by some stark realities. Personnel costs are a major piece of the City's budget. The City arguably got back on its feet economically because of the austere measures taken by the BFSA control board. Three years of wage freezes and a long-term hiring freeze, coupled with increases State aid, allowed the City to improve its financial condition. In other words, the City became more solvent in many ways because it had three consecutive years where its personnel costs were flat. Subsidized with over \$175 million in State aid, the City's revenues grew while its personnel costs did not (due to the wage and hiring freezes).

When one looks at the City's budget over the past several years, it becomes abundantly clear that it remains challenging. The City's revenues are heavily reliant on State aid. In each of the past few years it has frequently received over \$175 million in State aid. This cannot be assumed to be a given each and every year. Very troubling is the fact that State aid is a much greater revenue source for the City than property tax revenues. The City cannot expect to significantly grow its revenue through property taxes as property tax growth will be limited for the foreseeable future for several reasons. The City has great incentive to keep taxes down so as to provide incentives for investment and give members of its dwindling population both tax relief and an incentive to stay in Buffalo. These unmistakable facts, coupled with the 2% tax cap law, make it abundantly clear that the City has genuine limitations on its ability to increase the revenue side of its budget each year. If there is a limit on the ability of the City to annually grow its revenue, there must be limits on the City's ability to pay.

The positive news is that the Panel Chair finds that the record establishes that the City has reserved funds from prior budgets to pay for anticipated collective bargaining increases. The City clearly can draw on money that is set aside to pay for the amount awarded in this Award. Thus, while the Panel Chair rejects the PBA's contention that the City has the ability to pay for the proposals made by the PBA, the Panel Chair finds that the City has the ability to pay for this Award and that the City's careful planning and ongoing fiscal management, along with its improving economic conditions, will allow it to maintain a positive position despite the challenging economy and the unique economic challenges facing the City. Therefore, the Panel Chair finds that the City has the ability to pay for this Award and that the wage and other increases awarded herein constitute a fair and reasonable Award.

THE INTERESTS AND WELFARE OF THE PUBLIC

PBA Position

In the PBA's view, this consideration encompasses the fact that the City's taxpayers benefit from having a professional, well-trained police department. In the PBA's estimation, this can only happen when its members' wages and benefits are competitive so that the City can attract and retain quality police officers. The PBA opines that the Panel must issue an Award that allows its members to regain some ground on the comparators who did not suffer three years of wage freezes, frozen increments and lost retroactivity. The PBA maintains that it is in the public interest for its members to start making back some ground on salary compared to other police officers in Rochester and

the Buffalo suburbs so as to assure that its police officers will not leave the City for a comparable position elsewhere.

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 to find sustainable well-paying jobs and have grave concerns about the ability of its City government to remain on sound financial footing. 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 City to Pay

The Panel has carefully considered the statutory criteria regarding the interests and the welfare of the public and financial ability of the City 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 PBA's argument that the public benefits by having a competitively compensated staff of police officers must be given credence. It influences the Panel Chair's determination on the issues of the overall wage adjustment and longevity. The Panel Chair's Award in the area of salary and longevity is premised on the recognition that it is prudent for the City and beneficial to the public for its police officers to be competitively compensated. While the Panel Chair is aware that this Award will not allow PBA members to be equally compensated with all of the comparables, the salary and longevity increases awarded

herein provide PBA members with the ability to remain competitive in the context of very challenging economic circumstances.

At the same time, all of the other economic proposals advanced by the PBA have been rejected by the Panel Chair because he is concerned about the detrimental effect that any new long-term financial commitments may have on the City's bottom line. It is not in the interest of the public to significantly augment the economic package provided to police officers as this could have a detrimental impact on the City's budget.

COMPARISON OF PECULIARITIES OF THE POLICE PROFESSION

The Panel has also carefully considered the statutory criteria regarding the comparison of the police 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 PBA asserts that the police 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 police work and the unique training, skills, pressures and dangers that police officers face each day. The PBA correctly stresses that the City has more violent crimes and more property crimes per 100,000 residents than any of the cities and municipalities in the universe of comparables². At the same time, the PBA observes that Buffalo employs fewer police officers per 100,000 residents than the cities of Albany, Syracuse and Rochester. There is no doubt that PBA members have a

² However, as the City points out, there has been an overall decrease in crime in the City over the past five (5) years.

challenging, difficult and dangerous job. The Panel Chair finds that the peculiarities of the profession mandate a direct comparison with police officers.

BASE WAGES

PBA Position

The PBA proposes a fifteen percent (15%) across-the-board salary increase effective July 1, 2007. The PBA also proposed a \$5,000 across the board salary increase effective July 1, 2007. In doing so, the PBA notes that its proposal was made prior to the time the BFSA lifted the wage freeze and before the wage increases that were supposed to be paid on July 1, 2004, July 1, 2005 and July 1, 2006 were paid effective July 1, 2007, July 1, 2008 and July 1, 2009. In other words, the PBA recognizes that its initial proposal may need to be modified downward.

Nonetheless, the PBA insists that additional and significant salary increases are warranted for a number of compelling reasons. First and foremost, while the BFSA eventually lifted the wage freeze and paid PBA members what they were entitled to receive, none of the raises due were paid retroactively. The PBA observes that the City's failure to retroactively pay its members what they deserved collectively cost its members tens of millions of dollars. In real dollar terms for individual PBA members, the PBA presents charts showing the losses for specific job titles. According to the PBA, a PBA member on Step 3 in the 2003-2004 fiscal year lost more than \$29,000. According to the PBA, members in positions of detective, lieutenant and captain lost wages ranging from \$12,500.00 to \$15,695.00. According to the PBA, when FICA and pension savings are added to the equation, it shows that the City saved between \$25,000.00 and \$35,000.00

for a majority of PBA members. The PBA contends that the impact to its members as a result of the wage freeze can only begin to be rectified with a wage increase during the term of this Award that is well in excess of 5%.

The PBA stresses that the wages it has lost over the past several years has resulted in its members losing significant ground when compared to the universe of comparable police officers. Whereas in 2003, PBA members were paid more than most officers in the universe of comparables, as of July 1, 2007, PBA members lost significant ground. At that time, they received less pay over a 26-year career than officers in Orchard Park and Cheektowaga. When total compensation is considered, the PBA argues that it presents an even more dismal picture for PBA members showing that they earn less than all of the officers in the suburban Buffalo police departments. To the PBA, this injustice cannot be allowed to continue, given the dangerous crime and challenges that PBA members are presented with each and every day.

The PBA stresses that it still fares poorly when it is compared to Rochester, the closest and most similar city to Buffalo. The PBA asserts that as of July 1, 2007, its members earned between \$6,000.00 and \$7,000.00 per year less than police officers in Rochester with five years, ten years, fifteen years and twenty years of service. In other words, a raise of approximately 9.1% is required and justified to allow PBA members to be competitive with Rochester, the most relevant comparator.

The PBA presents a comparison showing how its wages will fare against the comparables if a 5% wage increase was granted. It contends that it will not do enough to rectify to disparity in its wages with its comparators.

The PBA stresses that the competitiveness of its members' wages becomes even more dire when one analyzes the wage comparisons in 2008 and 2009. To the PBA, its objective wage comparison charts show that a wage increase well in excess of 5% for the term of this Award is mandated because its members will still struggle to remain competitive even if its proposal was granted by the Panel.

City Position

The City notes that it initially proposed a wage increase of 5% effective July 1, 2007 followed by a 0% increase effective July 1, 2008. The City contends that its proposal is no longer applicable because it was made prior to the time that the wage freeze was lifted and the 10.2% in wages was paid to PBA members. In addition, the City maintains that its proposal was premised on receiving comparable concessions, including health insurance premium contributions, plan changes and certain productivity measures. Hence, the City now proposes a wage increase cumulatively totaling 1.5% over the two years of the Award.

The City reminds that Panel that wage increases are recurring expenses that must be funded each year. The City stresses that until July 1, 2012, it remained in a State-declared fiscal crisis. In the City's view, one of the main reasons for the crisis was the City's structural budget deficit. While the structural budget gap is in a much better place than it was several years ago, it still remains. Hence, any increase to wages must be extremely conservative so as to not exacerbate this ongoing and challenging issue for the City. To do otherwise, may very well result in the BFSA going back to "hard" oversight status from its current "advisory" status.

The City contends that any consideration of monies lost by PBA members is outside the scope of this Panel's authority to address. The City points out that the subject of the wage freeze, back pay and how frozen increases would be implemented after the lifting of the wage freeze are addressed in the BFSA Act and have been sanctioned by the New York State Court of Appeals after litigation.

The City contends that it has a genuine revenue problem. All of the evidence shows that it does not generate enough revenue to meet its financial obligations. The City concedes that it can only pay its bills due to the State's generous assistance.

The City asserts that the most recent BFSA report highlights the challenges facing the City. It notes that the City's expenses in the most recent year rose approximately 4.4% due to increases in pension and health insurance costs. It also warns the City about its use of fund balance to bridge its budget gap because the City is using a non-recurring revenue such as fund balance to fund recurring expenses. The use of fund balance, coupled with a one-time spin up in State aid, is the only reason the past year's budget did not cause the City undue strain. However, the BFSA noted that the enhanced State aid is not recurring and presents a further funding challenge for the City in future years.

The City insists that Ed Fennell, the PBA's financial expert, conceded that the City faces a challenging structural budget problem moving forward. In the City's estimation, this is precisely why any wage increases must be paid for with commensurate savings in health insurance and other productivity measures.

The City notes that its budget director testified that the City built a 1.5% salary increase into this year's budget. Thus, any increase above 1.5% without commensurate

concessions will require the City to utilize reserves or implement service cuts in order to fund the Award.

The City observes that the PBA's financial expert disavowed the PBA's initial proposal for a 15% wage increase. He conceded that anything close to this amount was not tenable for the City. Given the City's budgetary challenges and the limited ability it has to raise revenues in the foreseeable future, the City urges the Panel to Award an increase no greater than 1.5% over the two years of the Award. Anything more will expand the City's structural budget gap and could represent a real setback to the City's recovery.

For all of these reasons, the City urges the Panel to reject the PBA's demand.

Panel Determination on Base Wages

The Panel Chair has carefully considered the statutory criteria balancing the reasonable economic needs of the City's police officers, with the obligations of the City in the context of what is fair and reasonable in the context of the City's challenging economic conditions.

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. When base wages increase, the City's costs for employee pensions, overtime, court time, holiday pay, etc., all increase.

The record contains data that supports both parties' positions. The City faces genuine economic concerns. It has had to contend with flat revenue streams and an economy that is fragile. These are genuine issues that cannot be ignored.

The City's limited ability to grow revenue in the near term raises the greatest concern to the Panel Chair and is the most compelling reason for the PBA's salary increase to be far less than it has proposed. Several factors lead to this conclusion. Buffalo's population has been declining. This means fewer taxpayers and less revenue. The City's mortgage tax income has been declining for the past several years. This means less revenue. The City is in the midst of a tax reduction plan that is intended to provide tax relief to the City's residents and attract more businesses to the City. While this is arguably improving the City's economic climate, the City will not capture revenue growth from this in the immediate future and it certainly does not add revenue at the present time. The 2% tax cap law also restricts the City's ability to grow revenue.

The general state of the economy in Buffalo and the State of New York overall and the unique challenges facing the City on the revenue side of the budget leads the Panel Chair to conclude that the wage proposal made by the PBA must be significantly moderated. The Panel Chair determines that the appropriate salary increase to award is 1% effective June 30, 2008, i.e., on the last day of the first year of this Award. The Panel Chair also determines that on the last day of the second year of this Award PBA members shall receive an additional salary increase of 2%. By deferring these salary increases to the last day of both years, the City will save more approximately \$2 million dollars in retroactive money.

Although all of the police units in the universe of comparables have gained ground on Buffalo's police officers, the salary increase awarded by this Panel will allow PBA members to remain competitively compensated. The data clearly supports this conclusion. PBA members also enjoy a competitive package of benefits and time off.

Moreover, PBA members still have several additional retroactive years to negotiate. The amounts awarded for these two years move PBA members in the right direction.

This is an economic step forward for PBA members. While it is far less than the PBA demanded, the more modest approach is a necessity so that the City can continue to keep its economic house in order and continue to work toward a brighter future with a more booming economy. Of significant note to the Panel Chair is the fact that while the police officers in comparable jurisdictions received greater increases in 2007 and 2008 than the amount awarded herein, all of the police officers in the universe of comparables work in jurisdictions that are significantly less reliant on State aid than the City of Buffalo.

In the Panel Chair's view, the City is in the midst of making changes geared toward significantly improving its economic prospects in the future. However, it is not out of the woods. The City has structural budgetary issues that have required it to use more than \$10 million in fund balance in each of the past three years. Since the City has real challenges on the revenue side of its budget, the personnel side of its budget can only grow in a modest and conservative way so that the City can manage its resources carefully and limit the impact of this Award on its taxpayers by maintaining services and limiting tax increases.

The Panel Chair is cognizant of the fact that the City has set aside approximately \$70 million in funds to pay for retroactive settlements of collective bargaining disputes. While the PBA insists that this justifies a wage increase beyond what is being awarded, the Panel Chair disagrees. He notes that the retroactive costs of this Award are nearly \$10 million. The PBA has four additional years of retroactive years to negotiate over. This

will put a further dent in the \$70 million of funds. In addition, the City has not had an agreement with its firefighters since 2004. The retroactive costs to resolve outstanding contracts with the firefighters will undoubtedly take a large bite out of the \$70 million because it will cover a large number of years. Hence, the Panel Chair determines that this Award is the most appropriate way to handle salary increases for the PBA unit at this time.

At the same time, the money that is set aside for settlements convinces the Panel Chair that it is appropriate to render an Award that is beyond the amount proposed by the City. This is important because the wage increases awarded by the Panel will allow City officers to retain their relative standing vis-à-vis the universe of comparables. The Panel Chair finds it to be important for City officers to maintain their standing relative to other officers in the universe of comparables to the best extent possible. If the Panel awarded the salary increase proposed by the City of 1.5% overall, which is well below the average amount received by officers in the universe of comparables, the Panel could jeopardize the relative standing of the City's police officers.

In reaching the conclusion that salary schedules shall be increased by 1% effective June 30, 2008 and 2% effective June 30, 2009, the Panel Chair finds that the City has the ability to pay for a fair increase in wages overall.

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 4- BASE WAGE

Effective June 30, 2008, the current wage scales shall be increased by 1%.

Effective June 30, 2009, the June 30, 2008 wage scales shall be increased by an additional 2%.

Concur
Kevin M. Kennedy

K/K 7-12-13
Dissent

Concur
Sean P. Beiter, Esq.

Dissent

LONGEVITY

PBA Position

The PBA proposes to adjust the years of service steps when longevity would be granted and to increase the current amount of longevity being provided to officers. Currently, each PBA member receives a longevity payment of \$125.00 for each completed year of service up to a maximum of 25 years. Thus, a PBA member with ten years of service currently would receive \$1,250.00 for that year and a PBA member with 20 years of service would receive \$2,500.00 for that year. The PBA proposes that the longevity schedule be changed as follows:

<u>Years</u>	<u>Amount</u>
0-5	\$1,000.00
6-10	\$2,000.00
11-15	\$3,000.00
16-20	\$4,000.00
Over 20	\$5,000.00

The PBA asserts that its currently longevity schedule lags the market substantially at all of the service levels. It maintains that its officers received fair compensation vis-à-vis the comparables in 2003 but that its rank has greatly worsened over time to the point

where its overall compensation for employees with 20 years of service ranks last among the local, relevant police jurisdictions. To the PBA, the disparity in overall earnings must be addressed with significant increases to longevity as part of an overall package. The PBA notes that officers in Amherst enjoy a payment of \$3,850.00 for longevity at the 25th year while PBA members receive \$3,125.00 per year at the 25th year. In the PBA's view, when the danger of the job its members perform is compared to officers in Amherst it becomes abundantly clear that significant increases toward longevity are warranted.

To the PBA, the evidence demonstrates that longevity payments and overall compensation to senior officers is well below market rates.

City Position

The City insists that the PBA has failed to present any support for this demand. It asserts that its police officers receive competitive longevity payments and that there is no compelling reason to further increase these payments. It points out that in virtually all of the municipalities cited by the PBA, Buffalo officers receive greater longevity payments than officers in wealthier suburban Buffalo police departments.

In the City's view, increases to longevity are unwarranted in these difficult economic times. The City stresses that while its finances are in a better place than they were in 2003, the fact remains that any wage increases beyond 1.5% will have to be paid out of this year's City budget. In other words, if the Panel Awards a base wage adjustment of 1.5% in total over the course of two years, any longevity payments would be beyond the ability of the City to finance without potential service cuts or other economic concessions. Since longevity payments add up over time, the City stresses that the Panel should not increase the City's liability on this already expensive payment.

Panel Determination on Longevity

The Panel Chair finds clear support in the record for an increase to longevity. Police officers in Buffalo are paid the same or less than many of their counterparts in suburban areas when base wages and longevity payments are factored in. Over the past several years, PBA members clearly have lost ground in terms of their overall compensation. Within the context of what is affordable, a modest increase is warranted so PBA members can maintain their relative standing.

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 LONGEVITY

Longevity shall be modified effective June 30, 2009, so that thereafter, each permanent employee who has completed one (1) year of service shall receive annually, in addition to their salary, one hundred fifty-five (\$155) longevity payment for each completed year of service, to a maximum of twenty-five years.

Concur
Kevin M. Kennedy

K 7-12-13
Dissent

X 7/8/13
Concur
Sean P. Beiter, Esq.

Dissent

HEALTH INSURANCE – ELIMINATION OF COSMETIC RIDER

City Position

In addition to proposing that employees share in the cost of their health insurance, the City has also proposed the elimination of the cosmetic surgery rider. It insists that this rider is highly expensive and far too great a luxury for the City to be providing while it tries to avoid severe financial distress. It asserts that this rider is for elective cosmetic

surgery. Hence, this is not a proposal to eliminate cosmetic surgery deemed medically necessary. Rather, it is a benefit that is purely for elective procedures.

The City stresses that this rider alone has cost the City between \$1 million and \$1.5 million in claims in recent years. In actual premium costs, the City contends that eliminating this rider will save the City approximately \$335,000 per year, more than .5% in terms of overall salary.

The City argues that this elective rider does not truly benefit the entire PBA membership, that the costs of this benefit are not justified, and that this expensive benefit has outlived its usefulness. In the City's estimation, numerous interest arbitration panels have recognized the need for employees to make concessions on health insurance. To the City, this concession is warranted and justified.

PBA Position

The PBA contends that the multiple changes proposed by the City regarding health insurance must be rejected. The PBA stresses that the record shows that the City has had multiple breaches of the CBA regarding health insurance. The PBA maintains that it has prevailed in grievance arbitrations to preserve its health insurance benefits after the City inappropriately breached its contract.

The PBA maintains that this is neither the proper or fair time for the cosmetic rider to be eliminated. The PBA asserts that it has retained health insurance experts so that it could find ways to secure cost savings while preserving benefits. In the PBA's view, the City has been less than forthcoming with information. Thus, while the PBA is open to discussions about cost saving measures in the future, it insists that the cosmetic

rider should not be eliminated because this should occur, if ever, in the context of comprehensive negotiations.

The PBA stresses that concessions on health insurance should not occur on a piecemeal basis. The PBA maintains that eliminating the cosmetic rider at this time will undermine its efforts to effectuate comprehensive change.

Panel Determination on the Elimination of the Cosmetic Rider

The parties have a long and active history disputing the issue of health insurance premium contributions, the plans offered by the City, and its overall costs. The City has proposed several cost containment measures in the area of health insurance that are not being granted as part of this Award. Significantly, in consideration of the award on wages, this Panel is rejecting the City's proposal to require contributions toward the cost of health insurance. Further, the Panel denies the City's proposal to increases in deductibles paid by employees and for fundamental changes to the health insurance plans offered by the City to PBA members. The City projects that these changes would save the City hundreds of thousands of dollars on an annual basis for the PBA unit alone.

The PBA objects to the City's proposals in their entirety. It claims that it has won many of its current health insurance benefits through hard fought collective bargaining and through grievance arbitration awards. Moreover, the PBA expresses grave concern about the City's unwillingness to provide it with accurate and detailed data regarding health insurance. It claims that it has retained a health insurance expert who was hired to analyze the current data and offer recommendations for changes to the health insurance plans that would be cost effective while preserving benefits for PBA members.

Throughout this interest arbitration process, the parties have spent significant time discussing the issues raised by both parties regarding health insurance. Comprehensive changes are not being imposed by this Panel and are not recommended by the Panel Chair primarily because this can only occur after the PBA has been provided all of the relevant health insurance data from the City so its experts can provide it with a comprehensive analysis of the status quo and be able to make recommendations for the future. In order for the parties to have productive discussions regarding health insurance cost containment, the first step is for the City to provide the PBA with the necessary data. Once this occurs, the PBA has expressed a willingness to grapple with these issues. If the PBA is well informed, it may be able to make its own recommendations and/or proposals regarding health insurance and provide a win/win for both parties.

The other reason why the Panel Chair is not imposing comprehensive health insurance changes is because this should occur in the context of a long-term overall agreement. In this interest arbitration award, the Panel has authority only for two years covering the dates July 1, 2007 to June 30, 2009. The Panel Chair is of the opinion that in order for comprehensive changes to be considered by the PBA, the City will need to come to the table with some quid pro quo economic improvements in the area of salary in exchange for cost saving and/or containment measures regarding health insurance. It is the Panel Chair's sincere hope that the parties will take this recommendation to heart and that the City will provide the data requested by the PBA. Thereafter, they should engage in negotiations for a long-term settlement of their ongoing dispute regarding salary improvement in exchange for health insurance concessions.

However, the Panel Chair is of the opinion that, in exchange for the salary and longevity increases being granted as part of this Award, the City should be provided with some cost saving measures as a quid pro quo. The cosmetic rider for the traditional plan should be eliminated because it is a luxury that is expensive for the City and no longer makes sense. The Panel Chair is not aware of any comparable group of employees other than City Board of Education employees that enjoy this benefit. Although it is possible that the cosmetic rider benefit is being provided to some public employees somewhere else in the State, there is no evidence of this in the record in this case and the Panel Chair is not aware of any bargaining units in any other jurisdictions that receive such an extraordinary benefit. When the Panel Chair considers the lack of comparable employee units enjoying this benefit and the Panel Chair considers the interests and welfare of the public at large and the fact that he is fairly certain that a majority of taxpayers in the City do not have this benefit, it becomes quite clear that this benefit should be eliminated. Simply stated, the taxpayers of the City and State should not be paying for this "Cadillac" benefit in these challenging economic times. If PBA members want cosmetic procedures that are completely elective and not necessary to maintain their health they can do what everyone else does, namely, pay for such procedures out of their own pocket.

After balancing the statutory criteria, the Panel rejects the City's proposal to have all employees pay for a share of their health insurance and concludes that the elimination of the cosmetic surgery rider is the appropriate quid pro quo for the salary and longevity improvements that are being awarded as part of this Award.

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 HEALTH INSURANCE – ELIMINATION OF THE COSMETIC

RIDER

Effective June 30, 2009, after providing thirty (30) days prior written notice to the Union, the City shall have the right to eliminate the cosmetic rider from the traditional health plan offered to active employees and anyone retiring on or after the date the City implements the elimination of the cosmetic rider benefit. It is understood that the City may not retroactively implement the elimination of the cosmetic rider benefit.

Concur
Kevin M. Kennedy

✕ 7-10-13
Dissent

✕ 7/8/13
Concur
Sean P. Beiter, Esq.

Dissent

SEMI-ANNUAL MANPOWER ADJUSTMENTS

City Position

The City currently has the right to review and adjust manpower levels annually. The City formerly had this right twice a year and the City wishes to again have the right to adjust manpower levels more than once a year. The City contends that this proposal will give it greater flexibility in assigning officers and control unnecessary and substantial overtime costs. By having the right to adjust manpower levels more than once per year, the Police Commissioner will be able to even out manpower across City police districts so that an adequate number of officers are assigned to the appropriate shifts in the appropriate districts.

The City stresses that Police Commissioner Derenda testified that bi-annual manpower adjustment would permit him to respond to retirements or injuries that occur after January 15 in any given year. Under the current system, if a single district or shift has an inordinate number of injuries or retirements after January 15, the City is prohibited from adjusting manpower levels until the following January 15. This creates difficult operational issues and creates unnecessary overtime.

PBA Position

The PBA does not strongly oppose this proposal. It recognizes that the proposal will provide the Commissioner with greater flexibility. The PBA contends that this proposal should only be adopted in conjunction with the PBA's enhanced pay proposals.

Panel Discussion Regarding Semi-Annual Manpower Adjustment

The Panel Chair is persuaded that the City's proposal should be granted. The City has a valid and compelling operational need to adjust manpower levels twice a year. The current system of allowing manpower adjustments once a year is overly restrictive and prevents the City from being able to adjust its manpower levels when situations arise that are out of the City's control such as police officer retirements or injuries. The City's proposal is reasonable and should result in more prudent police coverage and reduced overtime costs.

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 SEMI-ANNUAL MANPOWER ADJUSTMENTS

Modify the manpower adjustment provision by changing it to read as follows:

The parties mutually recognize that there may be a need from time to time to adjust manpower levels in response to retirements and other personnel changes. The City shall have the right to review and adjust manpower levels semi-annually on January 15 and July 15.

Concur
Kevin M. Kennedy

K 7-12-13
Dissent

X 7/8/13
Concur
Sean P. Beiter, Esq.

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. These proposals were considered by the Panel in light of the statutory criteria, testimony, exhibits, documentation and post-hearing briefs filed. However, in the process of arriving at an Award, the Panel was unable to arrive at an agreement on any of these other proposals. 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.

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 PBA's demands are hereby rejected.

Concur
Kevin M. Kennedy

K 7-12-13
Dissent

X 7/8/13
Concur
Sean P. Beiter, Esq.

Dissent

RETENTION OF JURISDICTION

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

Concur
Kevin M. Kennedy

KM 7-12-13
Dissent

SPB 7/8/13
Concur
Sean P. Beiter, Esq.

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 July 1, 2007 through June 30, 2009. The terms of this Award shall be effective on such dates as set forth herein and payable to any unit member working during such award term. Payment of any retroactive wage and/or longevity adjustment shall be made no later than 60 days after the execution of this Award.

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

7/16/13
Date

S P B
SEAN P. BEITER, ESQ.
Employer Panel Member

7/8/13
Date

Kevin M. Kennedy
KEVIN M. KENNEDY
Employee Organization Panel Member

7-17-13
Date

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

On this 16th day of July 2013 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 06/06/2017

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

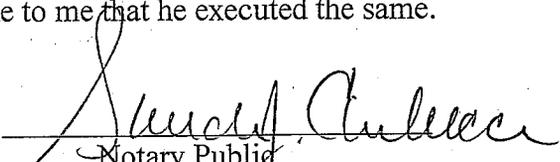
On this 8 day of July 2013 before me personally came and appeared Sean P. Beiter, Esq. to be known and known to me to be the individual described in the foregoing Instrument, and he acknowledged the same to me that he executed the same.



Notary Public
TAMMY L. SWATSWORTH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 26, 2015

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

On this 12th day of July 2013 before me personally came and appeared Kevin M. Kennedy, 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

SANDRA J CARLUCCI
Lic. #01CA5020149
Notary Public-State of New York
Qualified in ERIE COUNTY
My Commission Expires 11/08/2013

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

**In the Matter of the Compulsory Interest
Arbitration**

-between-

**BUFFALO POLICE BENEVOLENT
ASSOCIATION, INC.**

**CONCURRING
OPINION**

-and-

CITY OF BUFFALO, NEW YORK

PERB Case No.: IA 2008-027; M2008-190

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

Kevin M. Kennedy
Employee Organization Panel Member

Sean P. Beiter, Esq.
Public Employer Panel Member

Sean P. Beiter, Esq., Public Employer Panel Member Concurring

After careful consideration of the statutory criteria, testimony, exhibits, documentation, and the post-hearing briefs filed, forming the record in this matter, the Public Employer Panel Member concurs in the Award for the reasons set forth by the Chair in the Opinion and Award.

STATUTORY FACTORS

The Panel has carried out its statutory mandate to make a just and reasonable determination of the matters in dispute, taking into consideration, along with other relevant factors, the following criteria specifically set forth 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.

In light of the City's unique financial conditions, it is difficult to conclude that there is a truly comparable community. The Panel Chair finds that the cities of Rochester and Syracuse are the most appropriate group of comparables; however, there is no question that both Rochester and Syracuse have much stronger financial indicators. As set forth below, Buffalo requires significantly more financial assistance from the State and is required to dedicate a much higher percentage of its budgetary expenses to providing public safety services.

2007

Community	Total Revenue 2007	Total State Aid 2007	Percentage of Total Revenue from State Aid	Total Expenses 2007	Percentage Spent on Public Safety
Buffalo	\$512,896,502	\$178,738,898	34.8%	\$480,491,149	35.2%
Rochester	\$469,600,471	\$86,142,760	18.3%	\$442,732,423	27.4%
Syracuse	\$302,596,920	\$75,610,139	25.0%	\$267,114,730	27.9%

Community	Total Revenue 2008	Total State Aid 2008	Percentage of Total Revenue from State Aid	Total Expenses 2008	Percentage Spent on Public Safety
Buffalo	\$492,005,946	\$179,080,631	36.4%	\$482,722,560	31.9%
Rochester	\$477,040,974	99,308,962	20.8%	\$488,971,503	31.5%
Syracuse	\$299,187,352	\$82,453,901	27.6%	\$280,645,233	27.2%

While geographic size, population, and proximity may be indicators of similarity, for these purposes, the primary indicators of comparability should relate to the community's financial wherewithal.

When the financial position of the municipality is taken into consideration, the comparison of wages, hours and conditions of employment of police officers presented to the Panel does not support the increase in wages sought by the Buffalo Police Benevolent Association, Inc. ("PBA"). There is no formula to be applied to this data as to determine the salary of unit members; however, it is helpful to consider employee work schedules, retirement benefits, and health insurance benefits when evaluating the salaries of police officers in a municipality. In this case, members of the City of Buffalo Police bargaining unit enjoy the best health insurance benefits of any of the employees included in that comparison in terms of available benefit plans, employee premium cost sharing obligations, and retiree benefits. Recognizing that wages are so interrelated to health insurance benefits, this Panel member finds that as the City unit members hold the top position with respect to health insurance benefits, one would not expect City unit members to hold the top position with respect to take home compensation in addition to having the best health insurance package. Ordinarily, a union would need to forego wage increases in order to preserve health insurance benefits. Therefore, in light of the health insurance benefits enjoyed by unit members, this Panel member concludes that the comparable data does not justify making unit employees the highest paid police officers in the comparison.

There is no question that consideration of "the interests and welfare of the public and the financial ability of the public employer to pay" supports the use of restraint by this Panel in requiring the City to take on additional expenses. While the City has prudently reserved monies to fund the retroactive cost of potential wage increases for all

of its employee groups that have been without a contract, any wage or longevity increase will increase City expenses on a recurring basis going forward into the future.

The comparison of peculiarities in regard to other trades or professions indicates that there are hazards arising from employment as a police officer; however, employment as a police officer in the City has long been recognized as potentially hazardous. There is no evidence that this position has become any more dangerous over the period covered by the Award. While officers began one-officer car patrols in 2003, the parties bargained an across-the-board increase of \$5,000.00 in wages in recognition of this change. As City police officer wages already take the hazards of the job into consideration, this factor does not support the significant compensation increases sought by the PBA in this proceeding.

Consideration of the terms of the collective agreements negotiated between the parties in the past reveals an outdated "agreement" that demands modification in terms of managerial and operational issues that will help the Police Department continue to carry out its mission in the new reality of the financial conditions faced by New York municipalities. Therefore, this factor argues in support of the City's operational proposals.

PANEL AWARD

In the end, careful consideration of the statutory criteria, testimony, exhibits, documentation, and post-hearing briefs submitted to the Panel supports the path of moderation taken by the Chair. While the City believes that the Award should go further to address the financial burden placed on the City by the health insurance benefits of unit members and to allow the Commissioner greater flexibility in the management, direction, assignment, and control of City police officers, it acknowledges that the City and the Chair have arrived at a just and reasonable determination of the matters in dispute.

Ten (10) years ago, the City was in a state of fiscal crisis and the welfare of the inhabitants of the City was seriously threatened. On July 3, 2003, the State imposed special legislation and the oversight of a "Control Board," the Buffalo Fiscal Stability Authority ("BFSA"). The BFSA wielded a combination of temporary relief tactics, including deficit borrowing, freezes on hiring, and a wage freeze which provided immediate relief from rising personnel expenses. The current City administration enacted a series of managerial reforms, and the City's fiscal condition improved to the point that, effective July 1, 2007, the BFSA ended the wage freeze that it had imposed. Over the past ten (10) years, the City has adopted reforms in order to avoid conditions that contributed to the 2003 fiscal crisis, such as inadequate reserves, poor cash flow, and unpredictable expenses. The City and the PBA litigated the effect of the termination of

the wage freeze effective July 1, 2007, and the State Court of Appeals ruled that the City correctly implemented all increases that had been frozen.

The PBA proposals, if granted, would undo much of the progress that this administration has made with City finances. The Panel wisely rejected those proposals, which would have put the City back on the path toward the fiscal crisis that existed ten (10) years ago.

While the Award issued by this Panel will not create a fiscal crisis, it will exasperate the City's structural budget deficit by increasing the City's recurring expenses. The reality of compulsory interest arbitration is that the City must join in this award, even though it contributes to the City's structural deficit, in order to avoid an award that likely would have included additional expense for the City if the award was made by the Chair in combination with the PBA.

More than one-third (1/3) of the City's operational expenses are for public safety operations, and the vast majority of those expenses are personnel related. Currently, the City of Buffalo requires over \$161,285,233.00 in Aid and Incentives for Municipalities (AIM) from the State of New York in order to balance its budget. This Award will place greater fiscal stress on the City as it will increase wages and longevity for unit members retroactive to June 30, 2008. Not only will these increases cause the City to utilize funds reserved for potential raises for all City employees in order to fund the retroactive portion of the Award, the increases will add to the City's budget deficit going forward as the City's practical ability to raise revenues is severely limited by economic conditions in the City, by the State-imposed property tax cap, and by the concerns of bond rating agencies. Unless the State elects to fund the additional costs that result from this Award, the City will likely need to cut planned expenses in other areas in order to pay for the increases in this Award going forward.

This Award does recognize that the City is still recovering from a fiscal crisis and exercises restraint:

- The 1.0% wage increase for the first year of the Award takes effect on June 30, 2008, essentially saving the City one (1) year of retroactive costs;
- The 2.0% wage increase for the second year of the Award takes effect June 30, 2009, essentially saving the City one (1) year of retroactive costs.

While the City has agreed to a \$30 increase per year in longevity benefits as part of the Award, it has done so with extreme reluctance. The City does not find any compelling support in the statutory factors for awarding an increase in longevity benefits; however, constrained by the statutory process, the City acquiesces to this portion of the Award in order to secure the other terms, including the delay in the effective date of the wage increases.

FAILURE TO ADEQUATELY ADDRESS CITY PROPOSALS

To the extent the City has an objection to the Award, the objection is not over the terms included in the Award; it is over the terms that were not included in the Award. If there is any hope of binding arbitration gaining acceptance among employers, panels must be willing to make meaningful awards on health insurance benefits, health insurance premium cost sharing, and managerial/operational changes to contracts.

The City proposed that unit members contribute to the cost of the excellent health insurance benefits that they enjoy. While sharing in the cost of health insurance premiums is becoming common place, except for new hires, unit members will continue to enjoy “Cadillac” level health insurance benefits¹ that will continue to be paid in full by the taxpayers of the City of Buffalo, as assisted by aid from the State of New York. This must be the last Award or contract that does not include reasonable health insurance premium sharing by all unit members. Further, the combination of benefits, co-payments, deductibles, and coinsurances must be brought closer to the benefits enjoyed by the City taxpayers and residents who are ultimately paying for the benefits of City police officers. It would be bad public policy and not in the interests and welfare of the public for City of Buffalo Police Officers to have a package of health insurance benefits so rich that it is subject to an excise tax under the Affordable Care Act.

While the Award fails to rectify the overly rich health insurance benefits of unit members, by including a small portion of City Proposal 16, it does finally give the City to take the first step to conform the benefits of its employees to those typical of City residents by allowing the City the right to discontinue the cosmetic rider on the traditional health insurance plan upon thirty (30) days notice to the Union. This is a step toward adjusting the package of health insurance benefits to a reasonable level. Further,

¹ Under Section 9001 of the ACA, effective January 1, 2018, health insurance issuers and sponsors of self-funded group health plans will be assessed an excise tax of forty percent (40%) of the amount considered to be an excess benefit beyond the annual limit of \$10,200 for self-only coverage and \$27,500 for self and spouse or family coverage. The annual limits described above are increased by \$1,650 in the case of self-only coverage and \$3,450 in the case of self and spouse or family coverage for retirees not entitled to Medicare benefits and individuals engaged in high-risk professions. The plan sponsor (e.g., the Employer) is responsible for paying the excise tax for self-funded coverage. The traditional 901 family plan currently costs the City \$24,459 per year. Therefore, if the cost of this plan increases at a rate in excess of six percent (6%) per year, it will likely be subject to an excise tax under the Affordable Care Act in 2018.

relieving the City of the obligation to pay for such "Cadillac" level benefits can only be termed a prudent development. While this is a positive development, it is far from where the City and PBA need to be on the subject of health insurance benefits.

The City sought a number of meaningful changes to managerial/operational provisions of the collective bargaining agreement; however, it is forced to accept smaller concessions relating to changing manpower levels. This is another example of how the system of compulsory interest arbitration fails municipalities. While panels have little difficulty in making retroactive wage increases, they are reluctant to impose managerial/operational changes, especially when the period covered by the award has passed. A bargaining impasse over wages is not different than a bargaining impasse over an operational issue—there is no reason why the remedy of compulsory interest arbitration should be denied to a municipality on an operational issue.

COMPULSORY INTEREST ARBITRATION

The State of New York amended the Taylor Law in 1974 to provide compulsory interest arbitration to resolve impasses in contract negotiations between municipalities and police and fire unions. Uncertain of the long term effect of binding arbitration, the State scheduled the provision to expire just two (2) years after taking effect. This experiment has now been continued in the State for thirty-six (36) years, and it is clear to this writer that compulsory interest arbitration of police and firefighter collective bargaining disputes contributes to ever-expanding fiscal burdens on New York municipalities and results in superior wage and benefit packages for these employees in comparison to the typical wages and benefits of the residents/tax payers in the community. Civil Service Law section 209 (4) is clearly a driver of "fiscal stress" for New York State municipalities.

Noting that "New York's communities are facing a new fiscal reality," the New York State Comptroller has established a system to monitor the "fiscal stress" of a municipality. According to the Comptroller, "fiscal stress" is a concept that seeks to measure the extent to which a local government is in danger of a fiscal crisis warranting intercession by the State. The indicators that the Comptroller monitors in order to measure "fiscal stress" essentially measure different aspects of the same problem: not enough recurring revenue to cover recurring expenses. Too often, compulsory interest arbitration awards exacerbate structural deficits by increasing a municipality's recurring expenses when the municipality has no acceptable means of raising recurring revenue. That is the situation with the City of Buffalo.

The reforms to binding arbitration that are under consideration in Albany, that will call for the panel to give the ability to pay factor a weight of seventy percent (70%) and other factors thirty percent (30%) when the municipality is in fiscal distress, will not compel a compulsory interest arbitration panel to take any specific action. It is suggested that the system needs much more specific reform in order to help municipalities to address the fiscal stress that lies ahead, including to:

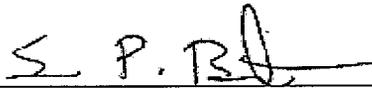
- Require that any award that includes an increase in wages must also include a modification of health insurance benefits that reduces the premium cost of the benefits by at least the same amount as the cost of the wage increase; or
- Require that an award provide that, in any year in which a municipality's costs for the health insurance premiums for unit members exceed the threshold for a "High Cost" plan under Section 9001 of the Affordable Care Act, unit members selecting a "High Cost" plan must pay the cost of the excess benefit and pay the cost of the excise tax by payroll deduction.
- Require that an award provide that, in any year in which a municipality's costs for the health insurance premiums for unit members is projected to exceed the threshold for a "High Cost" plan under Section 9001 of the Affordable Care Act, the municipality may raise deductibles and co-payments in those plans prior to the start of the benefit year in order to reduce the cost of unit benefit plans below the "High Cost" plan threshold.
- Require that in any year in which a municipality's health insurance premiums for unit members exceed two percent (2%), any binding arbitration award for that period must require unit members to pay the amount of increase health insurance costs in excess of two percent (2%) by payroll deduction.
- Prohibit any retroactive wage increase that is not accompanied by a retroactive change in health insurance benefits and/or premium cost sharing.
- Amend the law to allow binding arbitration panels to make awards that may take effect after the date of the award, regardless of whether the statutory period to be covered by the award has passed. Further, allow panels to issue awards that are contingent on the parties reaching agreement on some subject at some point after the award is issued.

While the City has made great strides toward reestablishing its financial health since 2003, significant dangers continue to loom overhead. The City, like most municipalities, is haunted by the ticking time bomb of the cost of retiree health insurance costs. Government Accounting Standards Board (GASB) Statement 45, dealing with liabilities for "Other Post-Employment Benefits," requires a municipality such as the City to calculate the present value of the retiree health insurance costs accrued in its financial statement. The City of Buffalo's UNFUNDED accrued liability for retiree health and dental benefits is \$1,260,645,000, and this liability will continue to increase as the City continues to fund this liability on a "pay as you go" basis.

CONCLUSION

The Panel arrived at the Award in this matter after careful consideration of the statutory criteria, testimony, exhibits, documentation, and the post-hearing briefs. The Panel weighed, considered, and debated the inferences to be drawn from the statutory criteria submitted, and although a unanimous decision was not reached, the Chair and Public Employer Panel Member made a just and reasonable determination of the matters in dispute. Under the constraints of the current compulsory interest arbitration provision of the Taylor Law, this Award is the best outcome that the City can achieve for this term. Therefore, I concur in this Award.

DATED: Buffalo, New York
July 7, 2013



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STATE OF NEW YORK

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest Arbitration

Between

DISSENT OF INTEREST ARBITRATION

BUFFALO POLICE BENEVOLENT ASSOCIATION, INC.

PANEL MEMBER

Employee Organization

And

PERB Case No.:

CITY OF BUFFALO, NEW YORK

IA 2008-027; M2008-190

Public Employer

On behalf of the Buffalo PBA, Inc., this panel member hereby dissents from the entirety of this Award as issued by the majority of the Interest Arbitration Panel herein.

I have been present at all testimony and hearings for this Arbitration process. I have witnessed what I perceive as a lack of impartiality by the Panel Chair during the seven (7) days of testimony, hearing and, one executive session. This panel member did replace the previous PBA panel member after the first executive session. Therefore, I have no knowledge of the arguments put forth in the executive session held on March 8, 2013.

Contract resolution for Police Officers, who risk their lives on a daily basis, should never be considered lightly. Members of the Buffalo PBA have struggled financially for over eight (8) years. To a large extent the suffering was the result of a wage freeze imposed by the Buffalo Fiscal Stability Authority ("BFSA"). This impact was compounded by a lack of willingness to negotiate a fair contract by the City of Buffalo. During those years the members of the PBA have diligently worked beyond expectation. Members of the PBA realized an average loss in wages of \$23,000.00 during these years. Their only hope was that a chairperson would truly work as a neutral and respect their arguments during these proceedings.

The statute is clear regarding matters under Impasse. All matters related to the dispute are to be presented to the panel for consideration. One of the most basic tenants of consideration is a careful thought process and complete deliberation. This panel member believes this award fails the statute mandates of a "just and reasonable determination of the matters in dispute". There can be no justifiable logic assigned to the wage determinations based on the data available to this panel.

The Panel Chair's determination on comparability illustrates a lack of attention to the facts entered into evidence. The Chair determined that Rochester and Syracuse were the most appropriate group of comparability. There is no merit in including Syracuse as a comparable. The City of Syracuse is half the size of Buffalo and has nearly half the population. In making this determination the Chair placed a heavy reliance on evidence not presented in this process and, disregarded the evidence submitted by the PBA. There is no documentation for the Chair's assessment of the weight of this undocumented information. Whereas, the PBA presented fully documented evidence.

Further, the Chair cites that Buffalo is a city with a large number of poor residents in need of fiscal assistance. There is no data in evidence to confirm this assertion and no relevance for this information in the statute. The Chair also states that Buffalo has been struggling economically for over twenty years. This statement completely disregards the fact that Buffalo is now and has been in gales of enormous economic development. At present there is over 500 million dollars in development occurring in downtown Buffalo alone. The City's bond rating has been repeatedly upgraded to a level never before seen in the city's history.

The Chair places far too much weight on Buffalo's budget and its receipt of state aid. Aid from New York State to the City has been consistent for over ten years. The state's budget was decided during the Arbitration process and aid to Buffalo was going to be increasing. Every municipality in New York State receives state aid. In comparison the amounts received by the City of Buffalo is no different than that received by other large municipalities. Therefore, the Chair should not have accounted any part of his decision on such a factor.

The testimony of Edward Fennel was complete and built on published facts, mainly the finalized and reported end of year budgets of the City of Buffalo. Fennel testified that Buffalo had built a surplus of over 142 million dollars. This figure did not include over 70 million dollars that the City of Buffalo had set aside for salary adjustments required through contract settlement. The PBA finds it impossible to fathom how a city in such dire straits could amass such a fortune. These facts again illustrate how little effort this Chair put into analyzing the presented evidence.

Careless disregard of known facts and reliance on the baseless information is a clear indication that the Chair did not fulfill his duties of neutrality. Further, the Chair illustrates this laxity when citing that police agencies in the area and other City of Buffalo bargaining units should be considered in the universe of comparability. If the Chair believed this to be the case, he would have granted weight to the PBA's evidence that members of the PBA fell far behind their counter parts during the covered years. The PBA presented evidence that clearly indicated that the members of the PBA are over 10% behind

the other police agencies in this area. Also, the other city bargaining units were able to negotiate contracts with the City of Buffalo and realized significant wage increases.

Most plainly in those examples is the contract settled by the operating engineers of the City of Buffalo. This bargaining unit was granted a \$5,000.00 immediate raise and three years of two (2) percent raises for the same period under Arbitration. This bargaining unit covers employees that maintain the boiler systems in the buildings owned by the City of Buffalo. This award is diminutive when considering a comparison of the operating engineers and police officers. This point makes it clear that the Chair did not consider the hazards of police work when rendering his decision. The fact that the BFSA unanimously approved the operating engineer's contract for the same period as this Arbitration further solidifies this argument.

The PBA also presented testimony and evidence that the city negotiated and the BFSA approved a contract with Local 282 (Buffalo Firefighters) that would have netted that union a 33% raise in the covered years. That agreement would have granted Local 282 members a \$5,000.00 raise plus a 3.4% increase above that raise in 2007. That local would then realize successive 3.4% raises each year until 2011. How can anyone rationalize that the city did not have the ability to pay when they negotiated such a deal and the control board agreed the city could afford it? Had this Chair paid any attention to these facts there is no way he could justify the 1% raise in 2008 and the 2% raise in 2009 that he determined was "just and reasonable"!

The Chair again assessed far too much weight to received state aid as a basis for the City of Buffalo's excessive fund balances. The evidence clearly indicated that Buffalo grew these fund balances completely off the backs of its workers; who suffered through the wage and hiring freezes compelled by the BFSA. The Chair finds that the City of Buffalos' budget remains challenging. He uses the phrase "abundantly clear". The only proposition that is abundantly clear is that the Chair places more credence on the City's unsupported positions. The PBA feels strongly that the Chair has demonstrated a lack of understanding when considering economic realities.

The logic assigned by the Chair that there is a limit in the City's ability to annually grow its revenue indicates divide between assumption and reality. The City of Buffalo has not raised taxes in over seven (7) years. The Mayor campaigns on this fact. The economic investment in the city is thriving and robust. While the city has not utilized the 2% tax cap law, it still has been able to grow its property tax base and overall property tax income. Further, during this period of tax abatement; the City has grown its fund balances to enormous levels. So, it is clear that the City is managing it finances well enough and the size of the fund balances indicate that it could well handle significant wage increases. The City's taxing margin has steadily improved.

The mere fact that the Chair states he has "carefully considered the statutory criteria" is not borne out in his determination on base wages. The wages awarded are done so by the Chair and not by the panel as he states in his award. The Chair gave no consideration to the argument of the PBA panel member nor, did he cite the volumes of evidence brought forth by the PBA. There is no evidence on the record

that proves that this award on wages will allow the PBA members to remain competitively compensated. The facts in evidence prove completely different result.

When this panel member sent an email in response to the Chair and did not include the City panel member; the Chair corrected his action. However, it has come to the attention of this panel member that there have been multiple communications between these two parties with the exclusion of this panel member. Further evidence of this resounds in that the Chair is sending this Award to the City panel member first for his signature. All communication on this Arbitration should have been done completely inclusive to the parties.

The Chair determined that members of the PBA shall suffer the loss of the cosmetic rider as part of this award. This panel member brought forth a health care expert to testify but could not present him because the city hid facts from this party. This panel member requested that the Chair mandate the city produce the necessary and relevant information regarding the cosmetic rider. The Chair did "direct" the city to produce the information but, did not follow through when the city failed to follow his directive. Information was finally produced on the last day of executive session. This obtrusive act alone should have shown the Chair that there was not enough information on this subject to warrant a determination.

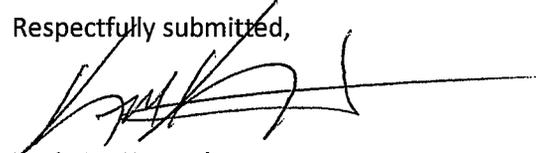
The Chair did, however, render a determination with regard to the cosmetic rider. How was the Chair able to render such a decision without all the facts? Early on in this Arbitration the Chair determined that civil servants did not deserve such a luxury. The Chairs' political and social views should not have entered into consideration when dealing with a fact based arbitration. The Chair clearly made a decision early on in the process on this issue and gave no weight to any evidence presented or evidence hidden.

When considered in its entirety this award is a mockery of the process and a complete insult to the PBA members who have been without a contract since July 1, 2007. The members of the PBA have bravely sacrificed in service to the citizens of this great city and have subsequently been snubbed by this award. Instead of narrowing the gap between the comparable universe this Chair has widened it. This will leave the PBA further behind their counter parts and less likely to ever be able to catch up despite the City's sound and stable finances.

This panel member vehemently dissents with the entire award. This award is neither fair-minded nor equitable. The Chair's rendering will further erode the relationship between the parties to this Interest Arbitration process. The Chair effectively "kicked the can down the street" when stating that the PBA has four additional years of retroactive years to negotiate over. Again, just by placing the word fair in an award does not demonstrate that it is such. This panel member feels that the Chair took the easy route when investigating the claims of the parties.

The Chair found a willing partner in the City's panel member. They collectively bargained the outcome of this Arbitration. Their actions run against the grain of the statute and lays waste to the legislative intent behind this process. Therefore, this panel member vehemently dissents to this award in its entirety.

Dated: Buffalo, New York
July 2, 2013

Respectfully submitted,


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