

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest Arbitration
Between:

WHITE PLAINS POLICE BENEVOLENT
ASSOCIATION, INC. ("PBA")

**OPINION
AND
AWARD**

-And-

THE CITY OF WHITE PLAINS

OPINION & AWARD PUBLIC EMPLOYMENT RELATIONS BOARD

For the Period of
July 1, 2010 through June 30, 2012

RECEIVED

BEFORE:

JUN 20 2014

Dennis J. Campagna, Esq.
Public Panel Member and Chairman

CONCILIATION

Richard K. Zuckerman, Esq.
Public Employer Panel Member

Harry Greenberg, Esq.
Employee Organization Panel Member

APPEARANCES:

A. For the Employer City of White Plains

Lamb & Barnosky, LLP.
Alyson Mathews, Esq.

B. For the PBA:

Greenberg Burzichelli Greenberg, P.C.
Seth H. Greenberg, Esq.
Genevieve Peeples, Esq.
Daniel Doeschner, Esq.

BACKGROUND

Pursuant to the provisions outlined 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 City of White Plains, ("City") and the White Plains Police Benevolent Association ("PBA").

The City of White Plains, located in New York State just north of New York City, is the commercial hub and seat of Westchester County. White Plains is located in south-central Westchester County, with its downtown about 7 miles east of the Hudson River and 7 miles northwest of Long Island Sound. It is bordered to the north by the Town of New Castle, to the north and east by the Town/Village of Harrison, to the south by the Town/Village of Scarsdale, and to the west by the Town of Greenburgh. As of 2011, the City's total population was estimated to be 57,258, up from 56,853 at the 2010 census. The daytime weekday population is estimated at 250,000.

The PBA is the Collective Bargaining Agent for the uniformed employees of the City's Police Department who have the designation of Police Officer, including Police Officers assigned to the Detective Division, Sergeant, Lieutenant and Captain. As of June 30, 2010, the bargaining unit consisted of 117 Police Officers, 40 Detectives, 18 Sergeants, 13 Lieutenants and three captains. (See City Exhibit 34).

In addition to the PBA, the City has a collective bargaining relationship with the Civil Service Employees Association ("CSEA), the Deputy Chiefs Association, the White Plains Professional Fire Fighters Association ("PFFA"), and the International Brotherhood of Teamsters, Local 456 (IBT 456").

The last Collective Bargaining Agreement ("CBA") between the City and the PBA was for a period of July 1, 2005 through June 30, 2008. Subsequently, an Interest Arbitration Award was issued for the period July 1, 2008 through June 30, 2010 by Arbitrator Alan Viani, Impartial Chairman. Following expiration of this Award, the parties entered into negotiations for the terms

of a new CBA but were unsuccessful. As a result, on March 22, 2012, the City filed a declaration of impasse, and the matter proceeded to mediation before PERB appointed mediator Lori Matles on June 18, 2012. Following unsuccessful mediation efforts, the City filed the instant petition for compulsory interest arbitration on or about July 26, 2012. On August 13, 2012, the PBA filed its response to the City's petition. Subsequently, the City and the PBA each filed improper practice charges with PERB in connection with certain proposals advanced to interest arbitration. The Parties were able to resolve both charges reflected by a joint stipulation of settlement.

The Chair of this Panel was designated by PERB to serve in that position on September 14, 2012, together with the Public Employer Panel Member and the Employee Organization Panel Member, (collectively "Panel"). Hearings were held on April 19, May 1 and May 7, 2013. At such hearings, the parties were represented by Counsel, who were afforded, and took full advantage of calling and examining witnesses, as well as the right to introduce relevant evidence. The hearings were stenographically recorded, and such transcribed record is the official record of the proceedings pursuant to N.Y. Civ. Serv. Law § 209.5. Each witness was sworn, and the parties submitted numerous exhibits, documentation and post hearing briefs that provided arguments in support of each party's respective position. Thereafter, the Panel carefully reviewed all testimony, exhibits, documentation and post hearing briefs on the issues submitted by the parties to this proceeding. The Panel also met in Executive Session on three separate occasions and engaged in meaningful discussions over the issues at bar. Thereinafter, a majority of the Panel reached an agreement on an Interest Arbitration Award covering the two year period of July 1, 2010 through June 30, 2012.

The positions initially taken by the Parties are extensively set forth in their respective petition and response, testimony, exhibits and post-hearing briefs, all of which are incorporated by reference in this Award. Accordingly, these positions will be summarized for the purpose of this Opinion and Award. Accordingly, set out herein is the majority Panel's Award as to what constitutes a just and reasonable determination of the issues submitted by the Parties for the two-year period of July 1, 2010 through June 30, 2012.

In arriving at such determination, the Panel has specifically reviewed and considered all of the following statutory criteria as set forth in N.Y. Civ. Serv. Law, § 209.4:

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

THE OUTSTANDING ISSUES FOR RESOLUTION BY THIS PANEL

The current and unresolved issues for resolution by this Panel are summarized as follows:

ISSUE	CITY PROPOSAL	PBA PROPOSAL
Duration (PBA 1)	No Position	2 Years [7/1/10 – 6/30/12]
Wages & Longevity (PBA 2, 3, 4, 5, 6)	<ul style="list-style-type: none"> • Parity [0%, 0%] • Return Differentials to Pre-June 30,2008 Level 	<ul style="list-style-type: none"> • 3% [7/1/10]; 3% [7/1/11] • Supervisors: PO + 20% • Detectives: Gr 1: PO + 12% Gr 2: PO + 11% Gr 3: PO + 10% • Longevity: Increase each step by 1% • Nt. Diff: 1% Increase
Health Insurance Contribution [Active Employees] – PBA 9,	<ul style="list-style-type: none"> • Parity [15% Employee Pays if hired on/after 7/1/10] 	<ul style="list-style-type: none"> • Active Employee Contribution – Status Quo • Buyout Status Quo (40%)

City 8, 9, 10, 11)	<ul style="list-style-type: none"> Eliminate Dual Health Ins. Retiree Health: Hire Date on/after 7/1/95 but before 6/30/11: 100% 20+ yrs. & 80% 15-19 yrs.; 10-15 yrs. 35% Individual premium. Retiree Health: Hire Date on/after 7/1/11: 85% 20+ yrs.; 50% Individual premium 15-19 yrs.; 10-15 yrs. 35% Individual premium. Flat \$ Amount Health Buyout \$1500 (I), \$1650 (I + S), \$3200 (F). 	<ul style="list-style-type: none"> Retiree Health: Equalize pre & post 7/1/95 employees; Currently, pre 7/1/95 15% ee contribution; post 7/1/95 ee contribution at 0%.
Welfare Fund (PBA 8), (City 12)	Decrease from \$1250 to \$650 7/1/10 Increase by \$7/ee 6/30/11 Decrease by \$35/ee 7/1/11 Increase by \$6/ee	7/1/10: Increase by \$75/ee to \$1275.
Hours of Work City (City 1), (PBA 16)	Status Quo (5-2 8 Hour Chart); Delete Moot CBA Language	12 Hour Chart
Hours of Work (Adm) PBA 17	Status Quo (5-2 8 Hour Chart)	10 Hour Chart
OT & Comp Time (City 7)	FLSA Standards	Status Quo (1 ½ beyond workday, paid time off counts as time worked)
Prior Credit Service (PBA 10)	Status Quo (Years served with City)	Prior Service Credit for benefit purposes
207-c Vacation Accrual (City 13)	Delete current language	Status Quo
Modify Attendance Bonus (City 15)	Based on Sick Leave hours not Number of Tours; Excludes 207-c, W/C or Illness Leave	Status Quo
Reduce Education Account (City 16)	Reduce from \$25K to \$12.5K	Status Quo
Bereavement Leave (PBA 11)	Status Quo (4 Consecutive Days)	4 Consecutive Work Days + Expanded relatives
Veterans Leave (PBA 12)	Status Quo	Add 2 days for Veterans
Decrease Holidays (City 14)	Decrease from 12 to 10	Status Quo
Personal Leave	Status Quo	Increase to 2 per tour

City Vehicles Sole City Discretion (City 18)	Sole discretion to grant or deny police officers take home vehicles	Status Quo (well established past practice)
PBA to pay for all Taxpayer funded Assn. Activities (City 17)	Reimburse City for all Taxpayer Funded Assn. Activities	Status Quo

CRITERIA 1 – COMPARABILITY

N.Y. Civ. Serv. Law §209.4 requires that in order to properly assess and determine the issues before it, the Panel must engage in a comparative analysis of terms and conditions of employment with “other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities.”

A. The PBA’s Position

It is the PBA’s position that when considering its proposals, the Panel should look to other police departments in Westchester County Cities. These cities are: Mount Vernon, New Rochelle, Peekskill, Rye and Yonkers. This is so the PBA notes since these municipalities are geographically close to one another and are all located within the boundary of Westchester County. In addition, each maintains police departments with a similar rank structure and quasi-military chain of command, in a manner similar to the City of White Plains. Further, the PBA adds, police officers employed within these cities possess the same type of training as officers in White Plains. And finally, the PBA notes, officers working within any of these cities live and work in the same general area with the same cost of living and the same demographic considerations.

B. The City’s Position

It is the City’s position that in those situations where there has been no internal City contract in existence to consider, Arbitrators and Fact Finders have, throughout a four decade period,

repeatedly utilized the identical external comparables, namely, the cities of Mount Vernon and New Rochelle as being the most comparable among all external comparables in Westchester County. It is well established historically, that where a settlement has been reached for the year(s) in question by another City unit(s), that settlement sets the “pattern” for all other units during that time frame.

DISCUSSION – COMPARABILITY

A review of the bargaining history between the parties to this impasse is revealing. In this regard, in the interest arbitration award between the City and the PBA covering the period July 1, 2008 through June 30, 2010, (See Joint Exhibit 6), while not engaging in an extensive discussion over the issue of comparable communities, the Panel made it clear that for external comparison purposes, it was looking at the Cities of Mt. Vernon and New Rochelle. (See discussion on pages 27-28). Moreover, since 1975 to and including 2009, the record reflects and it is undisputed that Arbitrators functioning under N.Y. Civ. Serv. Law § 209 on 27 different occasions have determined that the list of external jurisdictions comparable to White Plains is limited to the cities of Mt. Vernon and New Rochelle. (See City Exhibit 146) Since there is no evidence in the record that conclusively demonstrates that circumstances in White Plains specifically and Westchester County generally have changed warranting a relook at comparables to the City of White Plains, the Panel finds and concludes that the list of “external” comparable communities to the City of White Plains is limited to the cities of Mt. Vernon and New Rochelle.

In addition to the listing of “external” comparables noted above, and as discussed in greater detail below, the City urges that the Panel must primarily consider a listing of “internal” comparables consisting of the Professional Fire Fighters Association (“PFFA”) representing 145 bargaining unit employees, the Deputy Chiefs Unit representing 6 unit employees, the C.S.E.A., representing 409 bargaining unit employees, and the I.B.T. Local 456 (“Teamsters”), representing 60 bargaining unit employees. Each of these internal comparables has a collective bargaining relationship with the City, and has had such for many years. In this regard, the City notes that these bargaining units, including the PBA, have, with few occasions over a 40-year history, established an internal bargaining pattern which, with few exceptions, has continued.

Moreover, the record establishes and there is no dispute, that where a pattern was broken, it was broken on a temporary basis with the pattern restored in the next round of City wide negotiations. By way of example, the record reflects that in 1973, the PBA received a wage increase that was 1% higher than that of the PFFA. However, in 1974 when the PFFA CBA was up for renewal, the PFFA received a wage increase what was 1% higher than that of the PBA. (See City Exhibit 14). Similarly and as another example, after all other City bargaining units had settled, the Panel unanimously awarded a \$2,100 salary adjustment effective January 1, 1999 as a method of addressing “badge drain”, a situation where a large number of White Plains police officers left the City’s employ for better terms and conditions of employment elsewhere. However, in keeping with the “pattern” tradition, in September, 2001, the City’s Common Council approved the granting of an additional \$2,100 in salary to unit members represented by the PFFA and the Deputy Chiefs. Aside from these instances, the record evidence reflects that the overall monetary increases afforded all City bargaining units have been identical. As a result, the Panel will also consider those “internal” comparables consisting of the PFFA, the Deputy Chiefs Unit, the CSEA and the Teamsters Local 456 and, for the reasons stated below, will primarily rely upon them in rendering its Award.

CRITERIA 2 – ABILITY TO PAY

A. The PBA’s Position

It is the PBA’s position that the City has the ability to pay for its proposals. In this regard, the PBA produced Kevin Decker of Decker Economics as its expert witness on the issue of City economics. It is the PBA’s position that Mr. Decker’s analysis was comprehensive and largely uncontested by the City.

Mr. Decker testified that while there are a number of City funds from which White Plains budgets its expenses, the “General Fund” represents the primary operating fund and thus accounts for the greater percentage of the City’s economic resources. Significantly, the General Fund is the fund from which PBA salaries are taken. The General Fund’s primary sources of revenue are the City’s Sales and Use Tax and Real Property Tax.

With respect to the City's Sales Tax, effective June 1, 2010, the City increased its sales tax rate from 2.25% to 2.50% with the additional 0.25% of sales tax generated dedicated to a Contingency and Tax Stabilization Reserve Fund. Funds from this Reserve can be withdrawn by an affirmative vote of a super-majority vote of the City's Common Council to (a) lessen or prevent property tax increases greater than 2.5%, (b) finance unanticipated decreases in revenues, or (c) provide emergency funding for anticipated expenditures. With respect to the City's collection of sales taxes generally, Mr. Decker notes that the sales tax estimate (unrestricted) for Fiscal Year ("FY") 2012-13 indicates that at the time the City budget was being approved, the sales tax estimate was projected to be \$45.40 million. Likewise, the unrestricted sales tax estimate for FY 2013-14 indicates that sales tax revenues for 2012-13 were projected to be \$45.40 million. All in all, Mr. Decker notes that the City "[h]as a very large retail sector. Using sales tax revenue and rate information from FY 2010-11, we have calculated the underlying sales tax base in each of the four Westchester County cities imposing their own sales tax. White Plains' per capita taxable sales of \$35,239 are nearly triple the size of the next highest city. This indicates that White Plains has a large retail base that draws shoppers from around the County, region and beyond. It also indicates that a significant portion of the City's sales tax revenues are generated from non-residents, thus resulting in a relatively larger portion of the City's operations (police, fire, etc.) being financed by non-residents."

With respect to the City's Property Taxes, Mr. Decker noted that "real property tax revenue to the City's General Fund was \$43.22 million in FY 2011-12 and accounted for nearly 29% of the total General Fund revenue." The PBA notes that while the City's tax base has contracted since the economic recession, it has managed to keep the tax burden on its citizens at a minimal level. However, the PBA adds, the City is not alone since Mt. Vernon and New Rochelle experienced similar reductions as well. Yet, when the City's property tax bill is examined as a percentage of family income and compared to similar jurisdictions, White Plains places the smallest burden on its residents accounting for 2.1% of family income, with New Rochelle at 2.46% and Mt. Vernon at 4.43%. And, when combined with County, City and School District tax bills, the PBA notes that White Plains continues to retain one of the lowest tax bill burdens on its residents (8.4% of family income), as compared to New Rochelle at 11.0% and Mt. Vernon at 13.7%. Given these factors, the PBA maintains that given the City's strong commercial base together with Moody's

June 11, 2012 Credit Rating Opinion that found White Plains to be “[a] highly affluent city” the City can afford to award “[a] fair and reasonable increase.” [Decker Report at page 16]

B. The City’s Position

It is the City’s position that this Panel must “[c]onsider the City’s limited ability to pay for the PBA’s demands.” The City offers the following in support of this position.

First, the City notes that despite recent budget cuts, rising pension and health insurance costs have all but annihilated funds available to fund the award the PBA seeks. In this regard, the City notes that approximately 6 months prior to the expiration of the 2008-10 Interest Arbitration Award, the impact of the recession took its toll on the City’s finances. The City’s direct debt increased by about 20% since 2007-08, and its General Fund expenditures, which include PBA wages and benefits, was steadily increasing to a point where the available fund balance was at its lowest in four years. Given this grim picture, the City notes that it took drastic measures to remain afloat – with the elimination of 62 unfilled positions and the reduction of 92 full-time employees. However, the City adds, even with these cuts, General Fund expenditures continued to rise at record levels as a result of “skyrocketing retirement and health insurance costs.” In this regard, the City explains that between fiscal years 2009-2011 and 2011-2012, retirement costs for PBA members alone have almost doubled and the New York State Comptroller has projected that costs will continue to rise with double digit increases expected over at least the next two years. With respect to health insurance costs, the City notes that over the last 10-year period, premiums have increased by an average of 8% per year while over that same period, inflation has increased by approximately one-third of that amount. Making matters worse, the City further notes that its projections, as of June 30, 2012 account for a \$335 million unfunded health insurance liability, a figure which is estimated to increase by about \$22 million each year.

Next, the City notes that in addition to the ever increasing costs noted above, it is faced with the Statutory Tax Cap of 2% or the cost of living, whichever is less. In this regard, the City notes that the combined increases of retirement and health insurance have “[s]wallowed almost all of the increased revenue that could be raised pursuant to the New York State real property ‘tax

cap’.” For the 2013-14 fiscal year, the City could levy \$2.6 million without exceeding the tax cap. However, the City adds, Pension and health insurance increases left approximately \$124,000 to fund other budgetary increases such as wages and non-insurance related fringe benefits for all City employees. The City maintains that the PBA demands cost over 16 times this amount thus rendering these demands “unaffordable and unreasonable.”

Next, in addressing its Sales Tax revenues, the City notes that over the last five year period, the City has increased its sales tax rate by 0.5%. However, the City notes, despite this increase, unrestricted sales tax revenue has “plummeted from the 2008-2009 to the 2009-2010 fiscal year.” While tax revenues returned to their 2008-09 levels the following year, they have “steadily declined since then.” In this regard, the City notes that for the 2013-14 fiscal year, the City projects that unrestricted sales tax revenues will remain stagnated. This is devastating from a budgetary aspect the City claims since it depends upon receiving approximately three times more in sales tax revenue on a per capita basis that the Cities of New Rochelle or Mt. Vernon. Moreover, the City adds, between the years 2008 and 2012, the City ended three years with deficits and in two of those years, and revenues were lower than what had been projected.

Next, in addressing Real Property Tax revenues, the City notes that tax rates have risen by an average of 5.44% each year, and for the past four years, City residents have witnessed their tax bills, for City taxes alone, rise by an average of 20.7%. The City adds that but for the use of sales tax revenues, this tax increase would have been much higher.

Given the foregoing, the City asserts that “[i]t is unfathomable to expect taxpayers to pay more for police services.” Moreover, the City adds, there is no evidence demonstrating that the average taxpayer could afford to pay more.

DISCUSSION – ABILITY TO PAY

As we view the economic climate in New York State, White Plains’ ability to pay has been seriously hampered primarily as a result of the economic downturn experienced throughout New York State and the United States. Declining revenue sources coupled with increasing

governmental mandates, the increase in health insurance premiums together with the property tax cap has had a negative effect on the City's ability in this regard. While the Panel has great respect for Mr. Decker and his ability to analyze municipal budgets, we find that Mr. Decker's conclusions provide hope for White Plains as we look into the future. However, it remains an unfortunate but undeniable fact that the sum total of the economic realities that White Plains has experienced over the past five years has resulted in City expenses leading revenue sources, and while sales tax revenues have been increasing, any increases have been used by the City to balance its budget. In addition, the realities of the State Tax Cap have not helped the situation. In this regard, the record reflects the grim fact that for the 2013-14 fiscal year, the City could levy a total of \$2.6 million without an override of the tax cap, and considering the increase in employee pension and health insurance costs, such increases left approximately \$124,000 to fund all other budgetary obligations.

Notwithstanding the foregoing discussion relative to the City's budget, one need look no further than the bargaining pattern set by the City's other bargaining units, including the PFFA and the Deputy Chiefs, each of which has been designated as "essential services" under the Taylor Law. In each of the two years at issue in this proceeding, (2010-11 & 2011-12), all City bargaining units, including the PFFA and the Deputy Chiefs took a zero wage increase and a freeze in longevity benefits. In this regard, the record evidence demonstrates that with rare exception, there has been parity among all essential service personnel in the City with regard to wage and fringe benefit improvements going back to the early 1970s, regardless of which Unit settled first. Thus, as illustrated by the chart below, since 1972, Police and Fire Units in the City have received identical wage and benefit increases in all but four years:

FISCAL YEAR	PBA	PFFA	DEPUTY CHIEFS
1972-1973	7/1/72: \$500 1/1/73: \$500	7/1/72: \$500 1/1/73: \$500	Recognized for Collective Bargaining in the mid-1980s
1973-1974	7%	6%	-
1974-1975	7.3%	8.3%	-
1975-1976	7/1/75: \$900 1/1/76: \$300	7/1/75: \$900 1/1/76: \$300	-
1976-1977	5.8%	5.8%	-
1977-1978	5.7%	5.7%	-
1978-1979	5.5%	5.5%	-

1979-1980	5.5%	5.5%	-
1980-1981	7%	7%	-
1981-1982	9%	9%	-
1982-1983	7.5%	7.5%	-
1983-1984	7/1/83: 4% 1/1/84: 4%	7/1/83: 4% 1/1/84: 4%	-
1984-1985	7%	7%	-
1985-1986	6.5%	6.5%	-
1986-1987	6.5%	6.5%	-
1987-1988	6.0%	6.0%	6.0%
1988-1989	6.0%	6.0%	6.0%
1989-1990	5.75%	5.75%	5.75%
1990-1991	5.75%	5.75%	5.75%
1991-1992	6.0%	6.0%	6.0%
1992-1993	4%	4%	4%
1993-1994	3%	3%	3%
1994-1995	3%	3%	3%
1995-1996	3.5%	3.5%	3.5%
1996-1997	4.0%	4.0%	4.0%
1997-1998	4.0%	4.0%	4.0%
1998-1999	2% 1/1/99: 2% + \$2100	2% 1/1/99: 2%	2% 1/1/99: 2%
1999-2000	7/1/99: 3%	7/1/99: 3%	7/1/99: 3%
2001-2002	3.5%	3.5% + 2100	3.5% + 2100
2002-2003	3.75%	3.75%	3.75%
2003-2004	4.0%	4.0%	4.0%
2004-2005	4.0%	4.0%	4.0%
2005-2006	4.0%	4.0%	4.0%
2006-2007	4.0%	4.0%	4.0%
2007-2008	4.0%	4.0%	4.0%
2008-2009	3.75%	3.75%	3.75%
2009-2010	4.0%	4.0%	4.0%
2010-2011		0%	0%
2011-2012		0%	0%

With regard to other monetary benefits such as Longevity increases, the record evidence demonstrates a parity pattern identical to the wage pattern illustrated above. Thus, each essential services unit enjoys a Longevity increase for five, 10 and 15 years of service at identical amounts beginning with the 1974-1975 fiscal year, through and including 2005. Amounts and increases to the Welfare Trust Fund for each of the foregoing three units have also been identical beginning with 1974 through and including 2011.

The foregoing summary is of significance to the Panel since each of the foregoing essential services bargaining units has access to Compulsory Interest Arbitration in an identical fashion to that of the PBA. Yet, each agreed to be bound by the historical pattern that existed in White Plains to the point of foregoing any salary or longevity increase for the 2011 and 2012 fiscal years. In addition, it is clearly evident that in all but a few years over a 40 year period, the PBA participated in the pattern bargaining that has existed in the City. And equally significant is the fact that all other “non-essential” services bargaining units in the City, consisting of the CSEA and Teamsters Local 456 also agreed to be bound by the historical pattern in White Plains, and also agreed to forego any salary or longevity increase for each of the two years at issue in this proceeding.

Having established the existence of a pattern in White Plains for each of the two years at issue, it is well established that the application of this pattern is not forever etched in stone. However, in order to break free from the pattern as it exists, the PBA must demonstrate compelling reasons as to why this well-established pattern should not apply to them. In this regard, the PBA references the statutory comparability criterion that this Panel must apply in reaching its Award, comparing the PBA’s terms and conditions of employment to that 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.” (See N.Y. Civ. Serv. Law § 209.4(c)(v).) While case law in New York State requires the Panel to consider all of the criteria set forth in Section 209.4, it is well established that it remains the Panel’s discretion to determine what weight should be given to each criterion. More importantly, the Panel has, in fact, placed great weight upon this particular criterion, and has determined that application of the City’s internal pattern bargaining relationships to this proceeding requires that we find that, since an internal pattern of comparability has been set for 2010-2011 by all of the City unions, it should be applied here. Given the economic realities that exist in White Plains, together with the pattern set by all other bargaining units in the City, particularly those designated as “essential services” under the Taylor Law during the relevant time period, the panel finds adherence to said bargaining pattern as most compelling at this time.

1. FINDING – DURATION OF THIS AWARD

Pursuant to Section 209.4(c)(vi), the length of this Award cannot exceed a period of two years. The panel thus finds that whereas said two year period has already expired, the parties are best served with a two-year Award. Accordingly, this Award shall cover the period July 1, 2010 through June 30, 2012.

AWARD

The term of this Award shall be from July 1, 2010 through June 30, 2012.

<u>✓</u> CONCUR	DISSENT	<u></u> RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	<u>6/30/14</u> DATE
<u>✓</u> CONCUR	DISSENT	<u></u> HARRY GREENBERG, ESQ. EMPLOYEE PANEL MEMBER	<u>5/20/14</u> DATE

1. PECULIARITIES OF THE POLICE PROFESSION

While the parties may be at odds on a number of issues, they both agree and accordingly there is no dispute that the police profession is a unique one, and consequently, there are no real comparisons that can be made in terms of work duties or responsibilities with other trades or professions. No other is truly comparable. Appropriate weight must therefore be given to the particularly hazardous nature of a police officer's work as well as to their special qualifications, training and skills required for the position of police officer.

**POSITION OF THE PARTIES ON THE OUTSTANDING ISSUES
AND
THE PANEL'S FINDINGS AND CONCLUSIONS ON THESE ISSUES**

The parties presented testimony, argument and documentary evidence with respect to wages as well as other outstanding terms and conditions of employment, and the City as well as the PBA further developed their respective positions on these issues in their post-hearing submissions. Accordingly, the discussion below is reflective on the manner and method the parties chose to support their positions. It should also be noted that in addition to such arguments, documents and evidence, the Panel, in reaching its determination on the issues discussed below, has carefully considered the statutory guidelines set forth in Section 209.4 as well as the positions of the parties on these guidelines as set forth above.

**2. THE TERMS OF PAST COLLECTIVE AGREEMENTS NEGOTIATED
BETWEEN THE PARTIES & THE ISSUE OF "PARITY"**

A. The P.B.A.'s Position

The P.B.A asserts that there are three major issues confronting this Panel – wages, health insurance, particularly for pre-1995 unit members and future retirees, and the 12-hour work chart. While noting that the City's focus in the proceeding is on the "internal" comparability of the other White Plains bargaining units, to the exclusion of the other two city units (Cities of Mt. Vernon and New Rochelle), the PBA asserts that the City's "blind insistence upon 0% wage increases where other neighboring municipalities received increases and where White Plains' own Commissioners and Deputy Commissioners received a 4% wage increase effective June 30, 2010, must be rejected."

B. The City's Position

The City asserts that in the instant proceeding, as was the case in four decades of collective bargaining history before it, there have been two patterns in the City, one internal and one

external which this Panel must consider in the context of the historical bargaining pattern that defines the City's collective bargaining relationships with all of its Unions. Relative to the internal pattern, as noted in detail above, the internal pattern has existed since the 1970s, and for the Deputy Chiefs since approximately the mid-1980s and has applied to each of the bargaining units within the City consisting of the PBA, PFFA, Deputy Chiefs, CSEA and the Teamsters Local 456. Moreover, the City adds, there have been few occasions where any bargaining unit was able to break the pattern, and then only on a temporary basis. Accordingly, the City urges that settlements reflected by the two-year pattern in the City should apply equally to the PBA. Notwithstanding the City's instance on the sole application of the internal pattern as it exists, should the Panel decide to deviate from this pattern and consider the external pattern, the City maintains that PBA unit members fare well when compared to the other comparables of Mt. Vernon and New Rochelle. In this regard, the City notes that Mt. Vernon Police Officers received a 0% wage increase in 2010 and a 1% wage increase in 2011. New Rochelle Police Officers received a 1.5% wage increase for the 2010 and 2011 calendar years. In addition, the starting salary for all Police Officers hired on or after July 1, 2013 was reduced by 10% and an extra step was added to the salary schedule for those Officers thereby generating savings that could be used to fund increases for existing bargaining unit members. All in all, the City notes that even with a wage freeze for the two years at issue, as demonstrated by the chart below, White Plains Police Officers fare well among the comparables noted:

P.O. START	NEW ROCHELLE	MT. VERNON	WHITE PLAINS
P.O. TOP	July '09: 79,844	July '09: 76,987	July '09: 79,532 July '10: 82,713
DET. 1	July '09: 84,137	July '09: 78,587	July '09: 87,485 July '10: 90,984
SERGEANT		July '09: 91,614	July '09: 96,233 July '10: 10,082

[Ref: APA Westchester Contract Overview]

Given the foregoing, the Panel hereby makes the following Awards.

3. WAGES & WAGE RATES

Police Officers, Sergeants & Detectives:

The P.B.A has proposed wage increases of 3% per year in each of two years applied to all steps of the current salary schedule. Relative to those Supervisors represented by the PBA, the PBA proposes that effective July 1, 2010, Sergeants be paid at the rate of 20% above the top Police Officer. With respect to Detectives, the PBA proposes that effective July 1, 2010, Grade 1 be paid at the rate of 12% above the top Police Officer salary, Grade 2 be paid at 11% above the top Police Officer salary and Grade 3 Detectives be paid at 10% above the top Police Officer salary. As noted and discussed above, the City urges application of the internal bargaining pattern consisting of a wage freeze for each of the two years at issue.

The Panel has carefully considered the statutory criteria, balancing the economic improvements sought by the PBA unit members, with the needs and obligations of the City, in the context of what must be considered fair and reasonable. In reaching its determination as to fair base wage increases, the Panel finds it instructive that even with the application of the City bargaining pattern, White Plains Police Officers fare well among those comparables applied by the Panel. Accordingly, consistent with the Panel's Opinion and Discussion above, the Panel has determined that application of the Parity Pattern should apply for each of the two years at issue and therefore makes the following **AWARD**:

Section 9(A) WAGES:

- Effective July 1, 2010, each step on the salary schedule shall remain the same as was in effect on June 30, 2010.
- Effective July 1, 2011, each step on the salary schedule shall remain the same as was in effect on June 30, 2011.

✓
CONCUR

DISSENT

R. K. Zuckerman
RICHARD K. ZUCKERMAN, ESQ.
EMPLOYER PANEL MEMBER

6/2/14
DATE

CONCUR

✓
DISSENT

Harry Greenberg
HARRY GREENBERG, ESQ.
EMPLOYEE PANEL MEMBER

5/20/14
DATE

4. LONGEVITY

The PBA proposes that each longevity step be increased by 1% resulting in a longevity payment of 3% of the base salary plus \$350 at Five Years, 4% of the base salary plus \$350 at Ten Years, and 5% of the base salary plus \$350 at Fifteen Years. When viewing all other bargaining units particularly the PFFA and the Deputy Chiefs, there was no increase in Longevity for either unit during the two year period at issue. In addition, the record evidence reveals that an increase in Longevity is not part of the internal bargaining pattern for the two years at issue. Moreover, a review of the record conclusively establishes that without any increase over the current amounts, the PBA fares well among its comparables:

YEAR	White Plains PBA	Mt. Vernon	New Rochelle
2010	Five Yrs.: \$2004	Five Yrs. \$450	Five Yrs.: \$1225
	10 Yrs: \$2831	7 Yrs.: \$350	10 Yrs: \$1425
	15 Yrs>: \$3659	10 Yrs.: \$1450 15 Yrs.: \$3000	15 Yrs.: \$1625 17 Yrs.: \$3200
2011	Five Yrs.: \$2004	Five Yrs. \$450	
	10 Yrs: \$2831	7 Yrs.: \$350	
	15 Yrs>: \$3659	10 Yrs.: \$1450 15 Yrs.: \$3000	

For the reasons set forth in the above discussion, the Panel makes the following AWARD on Longevity:

The Longevity schedule set forth in the 2005-2008 Collective Bargaining Agreement shall remain in effect without change.

✓
CONCUR

DISSENT


RICHARD K. ZUCKERMAN, ESQ.
EMPLOYER PANEL MEMBER

6/20/14
DATE

CONCUR

✓
DISSENT


HARRY GREENBERG, ESQ.
EMPLOYEE PANEL MEMBER

5/20/14
DATE

5. HEALTH AND HOSPITALIZATION

The City and the PBA each has proposals dealing with Health and Hospitalization.

The CITY'S Proposals:

1. Eliminate Dual Health Insurance Coverage: The City maintains that it is unnecessary and costly to the taxpayers to permit two married City employees to both obtain family health insurance coverage. The City notes that currently, this is not an issue since at the present time, no PBA unit members are taking dual health insurance coverage.
2. Increase active employee contribution toward their cost of health insurance: Currently, PBA unit members hired on or after January 1, 1990 contribute 25% of the cost of the health insurance plan in which they are enrolled until they have completed 5 years of service with the Police Department. The City proposes to increase this contribution to a straight 25% for as long as the unit member takes coverage from the City. The rationale behind this proposal is obvious – since 2001, the cost of the current NYSHIP Plan's individual premium has increased by 100.9% and the family plan has increased by 104.8%. Moreover, the City notes that all other City bargaining units have agreed to a City contribution rate cap of 85% of the Empire Plan premium for all newly hired employees for the duration of their career with the City. Moreover, the City notes that PBA counterparts in Mt. Vernon pay 20% of the cost of the premium amount, and PBA members in New Rochelle pay 18% (0% for employees hired before January 1, 1983 or members of the New Rochelle PBA prior to January 1, 1998).
3. Increase active employees' retiree health insurance contributions: Currently, the City pays 100% for unit members hired on or after July 1, 1995 and who retire with 20 or more years of service, and 80% for those with 15-19 years of service. As a result of a May 24, 2010 Ordinance, the City changed its contribution rate for PBA Unit Members hired prior to July 1, 1995 to a maximum of 85% of the Empire Plan premium. The City proposes that for employees hired on or after July 1, 1995, the City's contribution rate should be capped at 75% and 60% respectively. The City notes that except for the

Teamsters Local 456 who had not settled on the terms of a second year until after the close of the record in this proceeding, every other City bargaining unit agreed that newly hired active employees (i.e. future retirees) will pay more for their retiree health insurance. Thus the City maintains that their proposal would make it equitable for all PBA members.

4. Convert the Health Insurance buyout to a flat dollar amount. Currently, a PBA unit member who waives health insurance coverage from the City receives a buyout amount of 40% of the premium amount. For 2013, the buyout amounted to approximately \$3686 for individual coverage, and \$8096 for family coverage. The City proposes freezing the buyout at these amounts for those already enjoying the benefit, and converting to a flat dollar payment for others. The City also notes that PBA members in Mt. Vernon and New Rochelle currently have a flat dollar waiver.

The **PBA'S** Proposal (PBA Proposal 9): The PBA proposes as follows:

PBA members who were hired prior to July 1, 1995 shall, upon retirement, continue to receive fully paid health insurance premiums. The PBA notes that the intent of its proposal is to protect health insurance coverage for PBA Unit Members hired prior to July 1, 1995 since at present, as a direct result of the City's May 24, 2010 Ordinance, only less senior officers hired on or after July 1, 1995 receive fully funded health insurance in retirement.

DISCUSSION – HEALTH & HOSPITALIZATION COVERAGE:

We begin with a discussion over the issue of City contributions toward retiree health insurance. The background giving rise to the PBA's proposal 9 is not in dispute.

On or about May 24, 2010, the City's Legislative Body, known as the Common Council, modified Section 2-5-54, "Retirees Health Insurance" as well as other provisions of the White Plains Municipal Code which had the effect of altering the health insurance benefit current employees hired prior to July 1, 1995 would receive at the time of their retirement. This modification, effective July 1, 2010, provided as follows:

Sec. 2-5-54. Retirees' Health Insurance.

- (a) Employees hired before July 1, 1995, who are otherwise eligible to receive health insurance benefits in retirement from the city shall continue to be entitled to maintain the level of health insurance benefits (individual or family) provided by the city to current employees and to have the city contribute eighty-five percent of the premium

charged by the New York State Empire Health Insurance Program toward the cost of providing individual or family coverage under any of the health insurance programs the city makes available to employees. The provisions of this section shall not apply to retired employees covered by a collective bargaining agreement at the time of their retirement, during the term said collective bargaining agreement is in effect.

The terms of the revised Ordinance applied equally to all Unit members represented by the PBA, the PFFA, the Deputy Chiefs Association, the CSEA and Teamsters who were hired before July 1, 1995.

Following the effective date of the foregoing Ordinance change, on or about July 7, 2010, the PBA filed a federal lawsuit and an order to show cause in the United States District Court for the Southern District of New York. On or about August 5, 2010, the City filed a Motion to dismiss which the PBA opposed. On September 30, 2011, the Court granted the City's motion and dismissed the PBA's claims for lack of subject matter jurisdiction without prejudice explaining that among other things, the action was not ripe for review and could be resolved through negotiations.

On June 23, 2010, the PBA filed a contract grievance challenging the City's actions as contrary to the terms of the CBA. The matter proceeded to arbitration and on July 13, 2011, the arbitrator issued his decision denying the grievance.

On November 1, 2011, the PBA filed an improper practice charge with the New York State Public Employment Relations Board ("PERB") alleging that the City violated Section 209-a.1(d) of the Public Employees' Fair Employment Act ("Act"). On July 19, 2012, for reasons that need not be discussed here, PERB dismissed the charge.

As noted above, the City negotiated guaranteed contributions for employees hired before July 1, 1995 only with the PFFA and the Deputy Chiefs. (See City Exhibit 114) The City maintained and the record would appear to confirm, as a quid pro quo for this guarantee, that both Unions agreed to the City's GML 207-a procedure, something the City had tried unsuccessfully to negotiate for 25 years prior. In contrast, as part of the settlement of their respective scope of bargaining improper practice charges in the instant matter, the parties withdrew their proposed

GML Section 207-c procedures. (See Joint Exhibit 3) Accordingly, this Panel is unable to provide a comparable concession in this forum without exceeding its authority.

With respect to the remaining bargaining units (as well as the PFFA and the Deputy Chiefs Association), the record reflects that their agreement on changes in health insurance were part of a package that constituted the terms of a 2010-2015 CBA. Significantly, such package consisted of a two-year freeze, followed by a 2% increase for each of the last three years of their Agreement. Given the strictures of Section 209 of the Act, this Panel is unable to award anything beyond the first two year period. Thus, it is the Panel Chair's opinion that the quid pro quo agreed upon by the City, the PFFA and the Deputy Chiefs in exchange for noted changes in their health insurance provisions is simply not available in this forum. Accordingly, beyond what already exists pursuant to either the CBA or the City Ordinance, the Panel urges that any additional changes should be achieved through the Collective Bargaining process.

Based on the foregoing, while the Panel recognizes the application of the negotiations pattern among all units in the City, the Panel Chair is not inclined to grant the proposals urged by the City or the proposal urged by the PBA, but urges the parties to address these issues in their future negotiations. Accordingly, the Panel hereby makes the following **AWARD** on the issue of Health and Hospitalization:

The City's Proposals over Health and Hospitalization are denied in their entirety.

✓
CONCUR

DISSENT


RICHARD K. ZUCKERMAN, ESQ.
EMPLOYER PANEL MEMBER

6/2/14
DATE

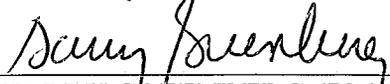
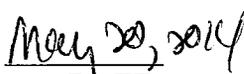
✓
CONCUR

DISSENT


HARRY GREENBERG, ESQ.
EMPLOYEE PANEL MEMBER

5/20/14
DATE

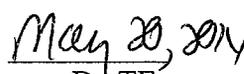
The PBA's Proposal No. 9 is denied in favor of the status quo pursuant to the City's May 24, 2010 Ordinance Change, effective July 1, 2010 (#2-5-54) regarding those bargaining unit members hired prior to July 1, 1995.

✓ _____ CONCUR	_____ DISSENT	 _____ RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	 _____ DATE
✓ _____ CONCUR	_____ DISSENT	 _____ HARRY GREENBERG, ESQ. EMPLOYEE PANEL MEMBER	 _____ DATE

6. WELFARE FUND

The City is proposing a decrease in its Welfare Fund contributions from \$1250 to \$650. While the PBA seeks a \$75 increase to the City's contribution, for a total of \$1275 per employee, the City concedes that its settlements with the PFFA and Deputy Chiefs, and the actual cash "value" of its settlement with the CSEA, requires annual increases of \$7 per employee effective July 1, 2010 and an additional \$6 per employee effective July 1, 2011. The Panel sees no reason to deviate from this pattern as applied to the PBA and accordingly, makes the following **AWARD**:

- Effective July 1, 2010, the City's contribution to the Welfare Fund shall be increased by \$7 per employee per year;
- Effective July 1, 2011, the City's contribution to the Welfare Fund shall be increased by an additional \$6 per employee per year.

✓ _____ CONCUR	_____ DISSENT	 _____ RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	 _____ DATE
✓ _____ CONCUR	_____ DISSENT	 _____ HARRY GREENBERG, ESQ. EMPLOYEE PANEL MEMBER	 _____ DATE

7. HOURS OF WORK [CITY PROPOSAL 1, PBA PROPOSAL 16]

City Proposal #1 proposes the Deletion of Section 5(D) of the CBA (“housekeeping: moot”).

Section 5, Work Schedule, at part 5(D) provides as follows:

The parties shall continue their negotiations about new duty chart(s) including hours of work (10 hour tours). It is understood that criteria and other matters that are not terms and conditions of employment shall not be subject to these negotiations. The results of these negotiations are subject to bi-lateral, written agreement, ratification and approval, but not impasse procedures or compulsory interest arbitration.

PBA Proposal #16 proposes as follows:

Hours of Work: 12 hour chart continue as permanent – length of tours (12 hours and 10 hours), swing periods (time off between sets of tours of duty) starting and ending times for each tour, and other subjects of bargaining that have been implemented.

We begin with a discussion over PBA Proposal 16. The background giving rise to this PBA proposal is not in dispute.

The City and the PBA are parties to a CBA covering a period of July 1, 2005 through June 30, 2008. (Joint Exhibit 4) On November 12, 2008, a Memorandum of Agreement (“MOA”) was agreed upon by former Mayor Delfino and the PBA covering terms for a successor to the 2005-2008 CBA. Among other things, the MOA provided for a modification of the work tour schedule and benefits for PBA Unit Members assigned to patrol. The new schedule provided for a 12-hour work chart. The MOA provided that it was “subject to PBA ratification and approval by the City Council.” Although ratified by the PBA on November 12, 2008, the MOA was rejected by the Common Council by a vote of 5 to 2 on December 17, 2008.

Following the Council’s denial of the terms of the MOA, on or about December 29, 2008, Mayor Delfino and the PBA entered into another MOA (“MOA#2”) which provided for the identical work tour schedule and benefit provisions had already been rejected by the City Council. However, MOA#2 omitted the language requiring ratification by the Common Council. Without Council approval, the terms of MOA#2 were administratively implemented on or about January

1, 2009. Subsequently, at a special meeting of the City Council held on October 27, 2009, the Council, by majority vote, directed the Commissioner of Public Safety to take the necessary steps to terminate the new work (12-hour) tour schedule. The Commissioner failed to follow the Council's directive. The City Council thereafter sought to declare MOA#2 invalid based upon the fact that the 2005-2008 CBA provided in relevant part that "No amendment or alternation of the agreement shall be binding unless in writing and, signed by the Mayor with the approval of the Common Council and the President of the [PBA] with the approval of the Association." On May 2, 2012, the NYS Supreme Court in agreement with the City granted the City's motion, thereby invalidating the 12 hour work chart. (See City Exhibit 138). The Department returned to a 5-2 eight hour work chart.

Following the Supreme Court's decision invalidating the 12 hour work chart, the PBA made the reinstatement of this chart an item for Collective Negotiations. The matter went to impasse and is now properly before this Panel for resolution.

A. The PBA's Position Regarding the 12-Hour Work Chart

It is the PBA's position that the 12 hour work chart it proposes provides a true benefit to both parties – the City and the PBA. In this regard, the PBA notes that prior to the Court invalidating the 12 hour chart, the parties had worked under this schedule for more than one year. During this time, the PBA notes that overtime decreased steadily from roughly \$400K in 2007 to \$283K in 2009. Increases in overtime in 2010 and 2011 were real the PBA notes, but attributable to the Department's decision to layoff police officers in May 2010 and its subsequent decision to discontinue the 12 hour tours and revert back to the straight 5-2 8 hour schedule. The PBA adds that beyond the savings experienced by the Department in overtime, sick time and on-duty injuries dropped during the 12 hour tour implementation. However, sick time and on-duty injuries rose in 2010 and 2011 as a direct result of Departmental layoffs in May 2010.

The PBA notes that the 12 hour work tour was preferred by a "majority of police officers" since 12 hour tours provided a better quality of life since there was more down time during which Offices could enjoy their families, spend time on education and the like which in turn created a

more effective work force and a better *esprit de corps*. In addition, as an added benefit, the PBA notes that the 12 hour tour in addition to costing the City less as compared to its 8-hour counterpart, provided more police coverage in the City. The PBA maintains that whereas the City failed to provide any empirical evidence to refute the benefits of the 12 hour work chart, the Panel should adopt this work chart.

B. The City's Position

It is the City's position that "the PBA demands to recoup that which never properly belonged to it: a 12-hour work chart." That point notwithstanding, the City notes that given the testimony of Chief Bradley, the 12 hour tour was not a good fit for the Department. This is so the City notes since during the 2 ½ years the 12 hour tour was in effect, overall productivity went down and sick/injured time increased. In addition, given the number of appearances (on average 3 to 3 per week) in-service training was downsized and had to be completed at 2:00 a.m. In addition, the City adds that the 12 hour tour also negatively impacted the Department's work. In this regard, Chief Bradley testified that with only three weekly appearances, Officers disengaged from their work. In addition Chief Bradley noted that there were no disciplinary reports from supervisors on patrol for the entire time the 12 hour tour was in place. Moreover, the City adds, the number of Officers interested in transferring to units that did not work the 12 hour tour decreased. And significantly, the City notes that several Officers reported difficulty with stamina for the full 12 hours. Once returning to the straight 8 hour tour, the City has noticed that the Department is operating more efficiently.

Finally, if comparing White Plains to its comparables, the City notes that Mt. Vernon and New Rochelle Police Officers work 8 hour tours.

DISCUSSION - HOURS OF WORK [CITY PROPOSAL 1, PBA PROPOSAL 16]

While opinions differed between the City and the PBA over the positive and negative points associated with a 12 hour work chart, notably missing was any data resulting from recognized studies on the subject which provided insight into advantages as well as the disadvantages of this

work chart. Accordingly, given that any work chart design will have an impact of Officer Safety and performance, the City and the PBA must work together in order to present an objective, rather than subjective, view of any work schedule.

The March 2013 issue of *Police Chief* contains a research in brief of the shift length experiment conducted by the Police Foundation. The experiment was designed to test the impact of three shift lengths (8, 10 and 12 hour) on performance, health, safety, quality of life, sleep, fatigue, alertness, off-duty employment and overtime among police officers. The experiment was conducted in Detroit, MI and Arlington TX Police Departments between January 2007 and June 2009. The Police Foundation's shift length experiment received the 2012 Outstanding Experimental Field Trial Award from the Division of Experimental Criminology/American Society of Criminology (ASC). Beyond these research findings, there are numerous other sources available to the parties to review when bargaining over tour length.

Putting aside any value of a 12 hour work chart, while unaware of any case law on point, the Panel Chair has a genuine concern that even if this Panel had a desire to award the 12 hour work chart sought by the PBA, its award would have no impact given that the extent of our jurisdiction ranges from July 1, 2010 through June 30, 2012. As noted by the drafters of Section 5(D), changes in the Police Officer work schedule are best effectuated through negotiations whereby labor and management may mutually agree to the design and mechanics of Police Officer work charts. However, the Panel Chair is of the opinion that the current contractual language, which excludes use of the Taylor Law impasse procedures, may provide the City with an incentive not to reach agreement on any change in the Police Officer work schedule. Thus, altering the language of 5(D) to incorporate use of the Taylor Law impasse process will act to level the playing field and will likely make future talks between the City and the PBA more fruitful. Accordingly, for all those reasons noted and discussed in this Section, the Panel makes the following **AWARD:**

Section 5(D) will be replaced with the following language:

The City and the PBA will engage in negotiations over the design of duty charts including but not limited to a review of the 8, 10 and 12 hour tours. While it is always best for changes in Work Schedules to be mutually agreed upon, impasses do occur and should the PBA and the City reach a state of impasse in their talks over Work Duty Charts for bargaining unit members, either party shall have the full right and benefit of the Taylor Law impasse procedures for essential personnel, which culminates in binding arbitration pursuant to N.Y. Civ. Serv. Law § 209.4.

✓
CONCUR

DISSENT

R. K. Zuckerman
RICHARD K. ZUCKERMAN, ESQ.
EMPLOYER PANEL MEMBER

6/20/14
DATE

✓
CONCUR

DISSENT

Harry Greenberg
HARRY GREENBERG, ESQ.
EMPLOYEE PANEL MEMBER

5/20/14
DATE

8. City Proposal 18: CITY VEHICLES

The City proposes as follows:

Effective upon the complete ratification and approval of the new agreement, it shall be the sole discretion of the City, on an individual basis, as to which employees shall receive permission to utilize City vehicles to travel to and from work.

The City notes that its proposal, as drafted, is part of the internal pattern, and has minimal impact on PBA unit members since few if any are assigned a take-home City vehicle. The PBA maintains that those Police Officers with take home vehicles provide a valuable service to the Department given their ability to respond quickly to any needed situation.

The Panel finds this City proposal reasonable and in-line with the agreements reached between the City and the Deputy Chiefs. Accordingly, the Panel makes the following **AWARD:**

It will be the sole discretion of the City, on an individual basis, as to which employees will receive permission to utilize City vehicles for travel to and from work.

✓ _____ CONCUR	_____ DISSENT	 _____ RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	<u>6/2/14</u> _____ DATE
----------------------	------------------	--	--------------------------------

_____ CONCUR	✓ _____ DISSENT	 _____ HARRY GREENBERG, ESQ. EMPLOYEE PANEL MEMBER	<u>5/20/14</u> _____ DATE
-----------------	-----------------------	---	---------------------------------

REMAINING ISSUES

The Panel has reviewed the demands and proposals of both parties, as well as the extensive and voluminous record in support of said proposals. The fact that these proposals have not been specifically addressed in this Opinion and Award does not mean that they were not studied and seriously considered in the context of contract terms and benefits by the Panel Members. In Interest Arbitration, as in collective bargaining, not all proposals are accepted, and not all contentions lead to agreement. Moreover, this Panel Chair is of the opinion that Interest Arbitration is not and was never designed to be a substitute for good faith negotiations but was designed as a mechanism to resolve disputes between Labor and Management that may exist notwithstanding their good faith negotiations. Accordingly, the Panel, in reaching what it has determined to be fair results, has not addressed or made an Award on many of the proposals submitted. The Panel is of the view that this approach is consistent with the practice of collective bargaining. Accordingly, we make the following Award:

AWARD ON REMAINING ISSUES - CITY

Any proposals and/or terms other than those specifically modified by this Award are hereby rejected.

<u>✓</u> CONCUR	DISSENT	<u><i>R. Zuckerman</i></u> RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	<u>6/2/14</u> DATE
--------------------	---------	---	-----------------------

<u>✓</u> CONCUR	DISSENT	<u><i>Darry Greenberg</i></u> HARRY GREENBERG, ESQ. EMPLOYEE PANEL MEMBER	<u>5/20/14</u> DATE
--------------------	---------	---	------------------------

AWARD ON REMAINING ISSUES - PBA

Any proposals and/or terms other than those specifically modified by this Award are hereby rejected.

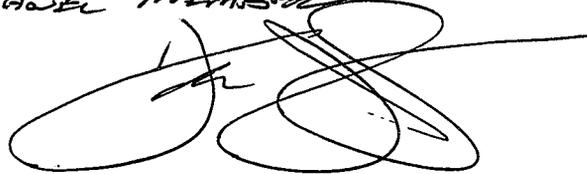
<u>✓</u> CONCUR	DISSENT	<u><i>R. Zuckerman</i></u> RICHARD K. ZUCKERMAN, ESQ. EMPLOYER PANEL MEMBER	<u>6/2/14</u> DATE
--------------------	---------	---	-----------------------

CONCUR	<u>✓</u> DISSENT	<u><i>Darry Greenberg</i></u> HARRY GREENBERG, ESQ. EMPLOYEE PANEL MEMBER	<u>5/20/14</u> DATE
--------	---------------------	---	------------------------

NEUTRAL PANEL MEMBERS

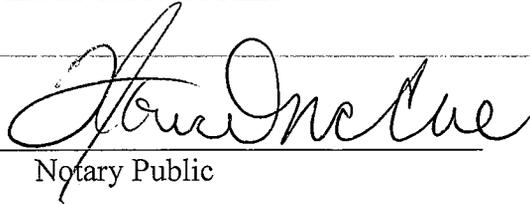
STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

ss. :



On this 6th day of June 2014 before me personally came and appeared **Dennis J. Campagna, 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 same.

Florence T. McCue
Notary Public, State of New York
No. 02MC4996825
Qualified in Westchester County
Commission Expires 5/4/14

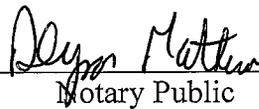

Notary Public

STATE OF NEW YORK)
COUNTY OF SUFFOLK)

ss. :

On this 2nd day of June 2014 before me personally came and appeared **Richard K. Zuckerman, 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 same.

ALYSON MATHEWS
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02MA6123825
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES MARCH 14, 2011

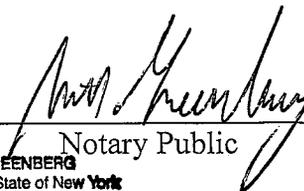

Notary Public

STATE OF NEW YORK)
COUNTY OF NASSAU)

ss. :

On this 20th day of May 2014 before me personally came and appeared **Harry Greenberg, 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 same.

BETH GREENBERG
Notary Public, State of New York
No. 02GR6107620
Qualified in Nassau County
Commission Expires April 5, 2016


Notary Public

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Compulsory Interest Arbitration
Between:

CONCURRING OPINION

WHITE PLAINS POLICE BENEVOLENT
ASSOCIATION, INC. ("PBA")

-And-

THE CITY OF WHITE PLAINS

I have been involved in public sector labor relations for nearly 40 years, spending the first dozen years representing management and the balance of that time advocating on behalf of labor unions and employees. I must express my unequivocal view that the state of labor-management relations in the City of White Plains is the worst I have ever experienced in the four decades I have been involved in this field. It is sad and unfortunate. And the City is solely and directly responsible for such a relationship. Not once during the hearing did a City representative recognize the important role that its police officers play in the continued success of the city. Not even the City's Police Chief. As the PBA's counsel explained, this does little to foster a harmonious and cooperative relationship that is envisioned by the State of New York and espoused by the Taylor Law, and is likely part of the reason why morale is so low.

The purpose of this opinion is to explain, at least in part, my dissent in connection with the wage awards and my concurrence on a health insurance award. At the outset, it should be noted that the reason the parties ended up in arbitration is not out of an unwillingness by the PBA to get a deal done; rather, it was because of a desire by the City to stick the PBA with one of the most regressive contracts in the City's history. And while this interest arbitration award does not give the PBA what I believe it deserves, it certainly prevents the City from imposing changes to the PBA's contract which were downright offensive.

Let me make it perfectly clear - despite what the City Panel Member's Concurring Opinion might say, the Opinion and Award in this matter did not grant "the PBA membership exactly what they would have received during this two year period had their leadership agreed to the City's repeated offers of a settlement." Unlike with the firefighter groups:

1. Newly hired PBA members do not have to contribute 15% toward their health insurance for their entire careers; and
2. All 60 plus police officers hired prior to July 1, 1995 still do not have to contribute toward their retiree health insurance; and
3. New hires do not have to pay increased contributions toward retiree health

- insurance; and
4. Health insurance declination bonus is not reduced to a lower, fixed benefit; and
 5. There is no new, more burdensome GML 207-c procedure.

Wages and Wage Rates

Before anything else, I would be remiss if I also did not address the bold assertion made by the City Panel Member about the historical significance of the wage award here. Interest arbitration awards have granted no wage increases for two year periods (including covering the two year period contained by this Award). To suggest otherwise is patently untrue.

Although external comparable communities, such as Mt. Vernon and New Rochelle, were acknowledged as instructive, the Opinion and Award concluded that "since an internal pattern of comparability has been set for 2010-2011 by all of the City unions, it should be applied here." **In other words, had the firefighters and deputy chiefs not agreed upon a settlement, the result on wages and wage rates, such as supervisor differentials and longevity, would likely have been different. But, since all other comparable White Plains' groups previously agreed there would be no wage increases of any type during the two year period (July 1, 2010 through June 30, 2012), the majority of the Panel was compelled not to grant any wage increase here.** I disagree with the majority's rationale and I have dissented on all relevant award sections relying upon such rationale.

Health Insurance

I am happy that the Panel's chair rejected all health and hospitalization changes proposed by the City. As a result, **no active employee - new or incumbent - will have to contribute any more than already required toward their cost of health insurance.** I also want to explain my concurrence with the Award regarding PBA Proposal No. 9, related to "Health & Hospitalization Coverage."

Among the City's health proposals were that (1) all active PBA members would contribute 25% toward the cost of their health insurance throughout their careers and (2) those PBA members hired after July 1, 1995 and who retire with 20 or more years of service would have to contribute up to 25% of the cost of health insurance upon retirement, and up to 40% for those with 15 to 19 years of service. These were properly rejected.

Related, PBA Proposal No. 9 provided that "PBA members who were hired prior to July 1, 1995 shall, upon retirement, continue to receive fully paid health insurance premiums."

As described in the Opinion and Award, on May 24, 2010, the White Plains Common Council had modified the White Plains Municipal Code, Section 2-5-54, titled "Retirees Health Insurance," wherein it reduced the City's health insurance premium contribution for retirees hired prior to July 1, 1995 upon retirement. The change was effective July 1, 2010. Section 2-5-54,

provides, in pertinent part: "...[t]he provisions of this section shall not apply to retired employees covered by a collective bargaining agreement at the time of their retirement, during the term said collective bargaining agreement is in effect."

In September 2011, a federal court dismissed, without prejudice, the PBA's challenge to the changes in retiree health insurance described above. Despite what the City Panel Member may say, the PBA did not "lose" this case. In its decision, the court explained, among other things, that **the action was not ripe for review and could be resolved through negotiations.**

As explained by the PBA during its presentation, PBA Proposal No. 9 was intended to address retiree health insurance at issue for the roughly 60 current PBA unit members affected. I believe granting the PBA's proposal as presented is fair and reasonable, and the proper course of action. Nevertheless, as described more fully below, while not granting exactly what the PBA proposed, the Award does ensure that PBA members hired prior to July 1, 1995 and who retired (or will retire) on or after July 1, 2010 continue not to have to contribute toward their health insurance at least through June 30, 2012, and continuing during the status quo period that follows until a new collective bargaining agreement is settled.

In denying PBA Proposal No. 9, the Opinion and Award did so "in favor of the status quo pursuant to the City's May 24, 2010 Ordinance Change, effective July 1, 2010 (#2-5-54) regarding those bargaining unit members hired prior to July 1, 1995." Prior to July 1, 2010, affected retirees did not have to contribute toward their retiree health insurance. Thus, by ensuring the "status quo" continues (that is, ensuring that what existed prior to the July 1, 2010 Ordinance Change continues), the roughly 60 PBA members hired before July 1, 1995 are not required to make any contribution toward their retiree health insurance. Accordingly, at least until the next round of negotiations, police officers hired prior to July 1, 1995 will not receive a lesser benefit in retiree health insurance compared to such benefit enjoyed by police officers hired on or after July 1, 1995. For these reasons, among others that need not be explained here, I am compelled to concur with the Chair's conclusion on this issue.

I note that the City Panel Member's Concurring Opinion does not dispute the description of the Panel Award above. Rather, it seeks to divert attention away from this holding by saying simply that the Ordinance remains in effect. It is true that the Ordinance remains in effect, but it is equally true, as acknowledged by the City Panel Member, that the 60 active PBA members so affected do not contribute toward retiree health insurance unless and until a voluntary agreement (like with the PFFA and the Deputy Chiefs settlements) is reached.

Dated: June 9, 2014



Harry Greenberg
Employee Organization Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Compulsory Interest Arbitration
Between the

WHITE PLAINS POLICE BENEVOLENT
ASSOCIATION, INC.

CONCURRING OPINION

-and-

CITY OF WHITE PLAINS.
-----X

I write to ensure that the readers of this Award are clear about what it does, and does not, do. What this Award does is reiterate and maintain four decades of pattern bargaining in the City of White Plains. It does so by, among other things, issuing what I believe to be the first compulsory interest arbitration award in the history of New York State granting absolutely no wage increases of any type during its duration (July 1, 2010-June 30, 2012). It also does so by ‘granting’ the PBA membership exactly what they would have received during this two year period had their leadership agreed to the City’s repeated offers of a settlement based on the pattern voluntarily negotiated by the City with the CSEA, Deputy Chiefs, Local 456 and the PFFA units.

I am also compelled to respond, in part, to the PBA Panel Member’s Concurring Opinion with regard to the Panel’s Award regarding health insurance and, in particular, retiree health insurance for unit members hired prior to July 1, 1995. The Panel Chair’s Opinion explicitly, and correctly, recites that the PBA had previously failed to negotiate a contractual guarantee of 100% taxpayer funded retiree health insurance for those hired before July 1, 1995 (although it did so for many of those hired after that date); the PBA then sued in federal court when the Common Council enacted the May 24, 2010 Ordinance requiring the pre-July 1, 1995 hires to

contribute toward their retiree health insurance premiums; the PBA lost that lawsuit; the PBA grieved the implementation of the Ordinance to binding arbitration; the PBA lost that case; the PBA filed an improper practice charge with the New York State Public Employment Relations Board seeking to annul the Ordinance; the PBA lost that case; and finally, here, the PBA sought to have the Panel invalidate the Ordinance by guaranteeing a 0% retiree health insurance contribution level for the hired before July 1, 1995 employees; and here the Panel unanimously rejected that demand. Nothing in the binding Panel Award, and nothing in the Panel Chair's non-binding Opinion, changes the legal "*status quo*" that existed prior to the issuance of this Award, and that will exist after its issuance: the Ordinance remains in effect unless and until it is changed by either the Common Council or through the collective bargaining process (as occurred, for example, as part of the PFFA and Deputy Chiefs settlements, but only in exchange for substantial concessions sought for decades by the City).

For all of these reasons, as well as those more fully advanced by the City at the hearing and in its post-hearing memorandum, I respectfully concur in every part of the Panel Chair's Award, except for his temporary retention of jurisdiction over potential disputes about the meaning and interpretation of his Award.

Dated: June 2, 2014


RICHARD K. ZUCKERMAN